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November 10, 2014

**VIA First-Class**

Daniel Richmond  
Zarin & Steinmetz  
81 Main Street  
Suite 415  
White Plains, New York 10601

Re: RE: FOIL #0818-14-001  
DATE RECEIVED: August 18, 2014

Dear Mr. Richmond:

This letter responds to your request for access to records under New York State's Freedom of Information Law (FOIL) dated August 18, 2014 and subsequent Appeal of Denial dated September 15, 2014.

Please find attached documents in response to your request.

If all records are not provided because the records are excepted from disclosure, you will be notified of the reasons and of your right to appeal the determination.

Very truly yours,

Javid Afzali

JA/alw

Encls.

cc: Village of Kiryas Joel

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**MARCH 4, 2012 - 7:30 P.M.**

NAME	LOCATION	DESCRIPTION
<b>Proposed New Residential:</b>		
A BE & YO Realty	12 Quickway Road	16 residential apartments
B Cheskal Braver	5 Van Buren Drive	20 residential apartments
C Chaim Hersh Leimzider	11 Prag Boulevard	14 residential apartments
D Berl Polatsek	29 Satmar Drive	5 residential apartments
<b>Proposed New Commercial:</b>		
A UTA	Bakertown Road	New Boy's School
<b>Commercial Additions:</b>		
A Aishes Chayil	7 Chevron Road	addition
B Bnai Yoel School	156 Acres Road	addition
<b>Miscellaneous:</b>		
A Issue building Permits for sub-basements without additional parking spaces		

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**MAY 6, 2012 - 7:00 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
<b>A</b> BE & YO Realty	12 Quickway Road	18 residential apartments
<b>B</b> BE & YO Realty	6 Yoel Klein Boulevard	3 residential apartments
<b>C</b> Chaim H. Leinzider	11 Prag Boulevard	14 residential apartments
<b>D</b> Cheskal Braver	5 Van Buren Drive	18 residential apartments
<b>E</b> Aron Weinberger	Kahan Drive	residential apartments
<b>F</b> Moshe Jacobowitz	16 Fillmore Court	23 residential apartments
<b>G</b> Shmiel Z. Kahan	17 Fillmore Court	16 residential apartments
<b>H</b> Avrum M. Rosenwasser	18 Fillmore Court	18 residential apartments
<b>I</b> Avrum M. Rosenwasser	10 Siget Court	12 residential apartments
<b>J</b> Avrum M. Rosenwasser	2 Schunnemunk Road	4 residential apartments
<b>K</b> Pinchus Abish	19 Forest Road	29 residential apartments

AGENDA ... CONTINUE  
 VILLAGE OF KIRYAS JOEL  
 PLANNING BOARD  
 MAY 6, 2012 - 7:00 P.M.

NAME	LOCATION	DESCRIPTION
<b>Subdivision:</b>		
A Yitzchok Mandel	3 Van Buren Drive	subdivision
<b>Commercial:</b>		
A Bnai Yoel School	Acres Road	new school building
B UTA	Bakertown Road	new boy school
C UTA	Israel Zupnik Drive	auditorium
<b>Miscellaneous:</b>		
A Hamaspik of Orange County	61 Bakertown Road	basement apartments
B Polatchek	29 Satmar Drive	high steps
C Zalmen L. Weiss	3 Buchanan Court	high steps
D Handicap Parking		

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**JUNE 10, 2012 - 7:30 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A Zalmen Leib Weiss	3 Buchanan Court	20 residential apartments
B Berl Polatsek	29 Satmar Drive	3 residential apartments
C BE & YO Realty	6 Yoel Klein Boulevard	3 residential apartments 4 stories in height
D Moshe Jacobowitz	16 Fillmore Court	23 residential apartments
E Moshe R. Indig	24 Lizensk Boulevard	4 residential apartments
F Stern	15 Schunnemunk Road	32 residential apartments
<b>Proposed New Commercial:</b>		
A UTA of KJ	Bakertown Road	new boy's school building
<b>Additions:</b>		
A Horowitz & Kaller	4 Sasev Court #201-301	sukkah room addition

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**AUGUST 5, 2012 - 7:00 P.M.**

NAME	LOCATION	DESCRIPTION
<b>Proposed New Residential:</b>		
A Chaim H. Leimzider	11 Prag Boulevard	16 residential apartments
B Cheskal Braver	5 Van Buren Drive	18 residential apartments
C Pinchas Abish	19 Forest Road	28 residential apartments
D Stern	15 Schunnemunk Road	26 residential apartments
E Moshe Reuven Indig	24 Lizensk Boulevard	4 residential apartments
F Berl Polatsek	29 Satmar Drive	3 residential apartments
<b>Additions:</b>		
A Chaim Sofer	20 Hayes Court	1 additional room
<b>Subdivisions:</b>		
A BE & YO Realty	2 Van Buren Drive	.subdivision
<b>Miscellaneous:</b>		
A Joshua Blumenthal		KJ Fire Department
B Zalmen Stern		KJ DPW
C Vazel & Jaroslowitz	2 Meron Drive	deck issue
D Mayer Indig	6 Lemberg Court	more apartments than provided parking spaces

**AGENDA  
VILLAGE OF KIRYAS JOEL  
PLANNING BOARD  
DECEMBER 2, 2012 - 7:00 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
<b>A</b> Aron Weinberger	Kahan Drive	112 residential apartments
<b>B</b> Avrum Meir Rossenwasser	18 Fillmore Court	18 residential apartments
<b>C</b> Moshe Jacobowitz	16 Fillmore Court	23 residential apartments
<b>D</b> Abraham Yida Goldberger	13 Van Buren Drive	12 residential apartments and a Shul
<b>E</b> Joseph Mendlowitz	4 Yoel Klein Boulevard	3 residential apartments
<b>Additions:</b>		
<b>A</b> Lee Gardens c/o Schwimmer	Izrael Zupnick Drive	Shul
<b>B</b> Chaim Y. Wertzberger	2 Rimenev Court	additional units and extension to Shul
<b>C</b> Yoseph Duvid Hirsch	7 Getzel Berger Boulevard	8 additional units
<b>D</b> Joel Falkowitz	3 Lizensk Boulevard	additional floor to building
<b>E</b> Cong. Vyoel Moshe	5 Garfield Road	addition to Shul back
<b>F</b> Itzkowitz & Berkowitz	2 Gorlitz Court	additional room in rear
<b>Subdivisions:</b>		
<b>A</b> Cheskal Braver	5 Van Buren Drive	subdivision
<b>Miscellaneous:</b>		
<b>A</b> Reuven Rutter	13 Meron Drive	basement sewer issues
<b>B</b> Jaroslowitz	28 Getzel Berger Drive	2 Meron Drive - addition

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**APRIL 14, 2013 - 7:00 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A Moshe Jacobowitz	16 Fillmore Court	23 residential apartments
B Moshe Reuven Indig	24 Lizensk Boulevard	3 residential apartments
C Yosef Duvid Hirsch	7 Getzel Berger Boulevard	8 residential apartments
<b>Additions:</b>		
A Paneth	49 Satmar Drive	Shul & apartment
B Khal Charidim	2 Van Buren Drive	addition to front of existing shul
<b>Miscellaneous:</b>		
A Mayer Indig	12 Lemberg Court	setback issue



**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**MAY 5, 2013 - 7:00 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A Moshe Jacobowitz	16 Fillmore Court	23 residential apartments
B Moshe Reuven Indig	24 Lizensk Boulevard	3 residential apartments
C Yosef Duvid Hirsch	7 Getzel Berger Boulevard	8 residential apartments
D BE & YO Realty	2 Van Buren Drive	4 residential apartments
E Hoffman	5 Lizensk Boulevard	30 residential apartments
F BE & YO Realty	2 Lizensk Boulevard	6 residential apartments
<b>Additions:</b>		
A Paneth	49 Satmar Drive	shul & apartment
B Khal Charidim	2 Van Buren Drive	addition to front of existing shul
C Aishes Chayil	7 Chevron Road	addition to left side of building
D Wolf Perl	14 D.A. Wieder Blvd.	sukkah room
E Isaac Lowy	19 Israel Zupnick Drive	addition to right side
<b>Subdivisions:</b>		
A Village of KJ	Industrial Road	subdivision

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**JULY 7, 2013 - 7:00 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
<b>A</b> Zalmen L. Weiss	7 Van Buren Drive	11 residential apartments
<b>B</b> Avrum Yida Goldberger	13 Van Buren Drive	12 residential apartments & shul
<b>C</b> BE & YO Realty	2 Lizensk Boulevard	6 residential apartments
<b>D</b> BE & YO Realty	2 Van Buren Drive	4 residential apartments
<b>E</b> Chaim Y. Wertzberger	2 Rimenev Court	3 residential apartments & addition to shul
<b>F</b> Aron Weinberger	Kahan Drive	108 residential apartments
<b>G</b> Jacob Sofer	Karlsburg Road	18 additional residential apartments
<b>H</b> Yosef D. Hirsch	6 Getzil Berger Blvd.	8 residential apartments and addition to shul
<b>I</b> Mayer Indig	2 & 4 Drubige Way	42 residential apartments
<b>Commercial:</b>		
<b>A</b> UTA	Rimenev Court	New Building
<b>Additions:</b>		
<b>A</b> Chaim M. Landau	139 Acres Road	3 additional residential apartments

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**OCTOBER 20, 2013 - 7:30 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A Drubige Gardens	2 & 4 Drubige Way	42 residential apartments
B BE & YO Realty	2 Lizensk Boulevard	6 residential apartments
C Zalmen L. Weiss	7 Van Buren Drive	11 residential apartments
D Abraham Yida Goldberger	13 Van Buren Drive	11 residential apartments and a Shul
E Berish Meisels	15 Van Buren Drive	16 residential apartments
<b>Additions:</b>		
A Chaim Aron Klein	23 Hayes Court	6 additional apartments
B Schnitzler	5 Orshava Court	3 additional apartments
C Mrs. Handler	11 Satmar Drive	2 additional apartments
D Aron Yoseph Landau	139 Acres Road	3 additional apartments
<b>Subdivisions:</b>		
A Drubige Gardens	Drubige Way	subdivision
<b>Commercial:</b>		
A Business Center	48 Bakertown Road	New Office Building

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**DECEMBER 12 ,2013 - 7:30 P.M.**

**(did not take place)**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A BE & YO Realty	Kahan Drive	100 residential apartments
B Moshe Friedman	28 Quickway Road	20 residential apartments
C Berish Meisels	15 Van Buren Drive	16 residential apartments
D Yosef D. Hirsch	7 Getzel Berger Blvd.	8 residential apartments
E Zalmen L. Weiss	7 Van Buren Drive	11 residential apartments
F KJ Housing	D.A. Wieder	New Garage
<b>Additions:</b>		
A Tosch Beis Hamedresh	34 Satmar Drive	Addition to Shul
B Yida Hersh Gelb	18 Satmar Drive	Addition
C Cong. Vyoel Moshe	5 Garfield Road	Addition to Rear of Shul
<b>Subdivisions:</b>		
A Drubige Gardens	Drubige Way	subdivision
<b>Miscellaneous:</b>		
A Berl Polatchek	29 Satmar Drive	deck issue

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**JANUARY 12, 2014 - 7:30 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A A.W. Developers	Kahan Drive	114 residential apartments
B Moshe Friedman	28 Quickway Road	20 residential apartments
C Berish Meisels	15 Van Buren Drive	16 residential apartments
D Yosef D. Hirsch	7 Getzel Berger Blvd.	8 residential apartments
E Zalmen L. Weiss	7 Van Buren Drive	11 residential apartments
F KJ Housing	D.A. Wieder	New Garage
G BE &YO Realty	2 Van Buren Drive	Residential - Commercial
<b>Additions:</b>		
A Tosch Beis Hamedresh	34 Satmar Drive	Addition to Shul
B Yida Hersh Gelb	18 Satmar Drive	Addition
C Cong. Vyoel Moshe	5 Garfield Road	Addition to Rear of Shul
D Avrum Bikel	15 Hayes Court	Addition
<b>Commercial:</b>		
A Mesivta of KJ	Berdichev Road	2 Buildings
<b>Miscellaneous:</b>		
A Berl Polatchek	29 Satmar Drive	deck issue

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**MAY 4, 2014 - 6:30 P.M.**

NAME	LOCATION	DESCRIPTION
<b>Proposed New Residential:</b>		
A Aron Weinberger	Kahan Drive	110 residential apartments
B Berish Meisels	15 Van Buren Drive	15 residential apartments
C BE & YO Realty	5 Lizensk Boulevard	32 residential apartments
D Avrum Bikel	15 Hayes Court	5 residential apartments
E Chaim Aron Klein	23 Hayes Court	4 residential apartments
F Zalmen L. Weiss	4 Yoel Klein Boulevard	2 residential apartments
<b>Additions:</b>		
A Zalmen Feder	15 Zenta Road	3 additional units
B Mendel Schwimmer	9 Hayes Court	left side garage and mikvah addition
C Chaim Sofer	20 Hayes Court	front addition
D Furth	139 Acres Road #202	back addition
E Fogel	19 Lizensk Boulevard	Sukkah Room
<b>Commercial:</b>		
A KJ Poultry	7 Dinev Road	addition
<b>Miscellaneous:</b>		
A Zalmen L. Weiss	3 Buchanan Court	front sidewalk and deck at left
B Akiva Weinstock	Strelisk Court	Village road

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**AUGUST 3, 2014 - 7:00 P.M.**

NAME	LOCATION	DESCRIPTION
<b>Proposed New Residential:</b>		
A BE & YO Realty	5 Lizensk Boulevard	28 residential apartments
B Avrum Bikel	15 Hayes Court	6 residential apartments
C Koppel & Rosenwasser	2 Schunnemunk Road	16 residential apartments
D Hershkowitz	32 Israel Zupnick Drive	3 residential apartments
E Aron Weinberger	Kahan Drive	150 residential apartments
F Berish Meisels	15 Van Buren Drive	18 residential apartments
<b>Additions:</b>		
A Yoseph D. Hirsch	7 Getzel Berger Boulevard	8 additional units
B Mendel Schwimmer c/o Lee Gardens	16-18-20 Israel Zupnick Dr.	68 additional units
C Yida Hersh Gelb	18 Satmar Drive	addition
D Stern & Shlagger	6 Lipa Friedman Lane	addition
E Jacob Porgesz	7 Hayes Court	4 additional units
<b>New Commercial:</b>		
A Ohel Feige	10 Druvige Way	addition
B KJ Heights	24-26 Israel Zupnick Dr.	Community Room
C Bnei Yoel	Acres Rd.	New Building
<b>Subdivisions:</b>		
A Aron Weinberger	Kahan - Israel Zupnick	subdivision
<b>Miscellaneous:</b>		
A Morris Jacob	Preshburg Boulevard	Road

**AGENDA**  
**VILLAGE OF KIRYAS JOEL**  
**PLANNING BOARD**  
**SEPTEMBER 7, 2014 - 4:00 P.M.**

<b>NAME</b>	<b>LOCATION</b>	<b>DESCRIPTION</b>
<b>Proposed New Residential:</b>		
A BE & YO Realty	5 Lizensk Boulevard	28 residential apartments
B Koppel	2 Schunnemunk Road	12 residential apartments
C Zalmen L. Weiss	6 Garfield Road	22 residential apartments
D Mayer Indig	4 Drubige Way	24 residential apartments
E Avrum Bikel	15 Hayes Court	6 residential apartments
F Schnitzler	5 Orshava Court	3 residential apartments
<b>Additions:</b>		
A Shulem Yitzchok Friedman	17 Garfield Road	deck
<b>Commercial:</b>		
A Bnai Yoel School	156 Acres Road	new school building



# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** March 4, 2012

**TIME:** 7:30 P.M.

**PRESENT:**

Chairman: Gershon Neuman  
Board Members: Jonas Hoffman  
Aron Fuchs  
Isaac Glanzer  
Village Administrator: Gedalye Szegedin  
Code Enforcement Officer: Isaac Goldberger  
Public Works Superintendent: Zalmen Stern  
Village Engineer: Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan #11133.0 submitted by BE & YO Realty for construction of 16 residential apartments to be located on 12 Quickway Road, at Section 304, Block 4, Lot 7. The Board reviewed the plans and insisted on adding more space for parking.
2. The Board then discussed the preliminary site plan submitted by Cheskal Braver for construction of 20 residential apartments to be located on 5 Van Buren Drive, at Section 304, Block 3, Lot 2. The Board requested submission of finalized plans.
3. The Chairman then presented to the Board the site plan submitted by Chaim Hersh Leimzider for construction of 14 residential apartments to be located on 11 Prag Boulevard, at Section 309, Block 3, Lot 15. The Board disapproved the site plan as it extended into the setback area.
4. The Board then discussed the site plan submitted by Berl Polatsek for construction of 5 residential apartments to be located on 29 Satmar Drive, at Section 322, Block 10, Lot 1.-2.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Hoffman, the Board unanimously voted to determine that project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Neuman, the Board voted unanimously to approve said site plan with the condition to move front staircase to the side of the house.

5. The Chairman then presented to the Board the site plan submitted by Aishes Chayil of Kiryas Joel for construction of an addition to be attached to existing building located on 7 Chevron Road, at Section 307, Block 1, Lot 7.22. The Board discussed the proposal.
6. The Board then discussed the site plan submitted by Bnai Yoel School for construction of an addition to be attached to existing school building located on 156 Acres Road, at Section 301, Block 2, Lot 5. The Board conferred about the submission.
7. Code Enforcement Officer Isaac Goldberger then opened discussion on the matter of issuing building permits for sub-basements without adding parking space. The Board concluded that parking space is required with every permit issued.

On a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 9:30 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** May 6, 2012

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershön Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** May 6, 2012

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan #11133.0 submitted by BE & YO Realty for construction of 18 residential apartments to be located on 12 Quickway Road, at Section 304, Block 4, Lot 7.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Glanzer, the Board voted unanimously to adopt the attached SEQRA form, determining that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

2. The Board then discussed the preliminary site plan submitted by BE & YO Realty for construction of 3 residential apartments to be located on 6 Yoel Klein Boulevard, at Section 309, Block 3, Lot 17. The Board requested plans to be finalized.
3. The Chairman then presented to the Board a preliminary site plan submitted by Chaim H. Leimzider for construction of 14 residential apartments to be located on 11 Prag Boulevard, at Section 309, Block 2, Lot 15. The Board reviewed the plans and asked that it be finalized.

4. The Board then discussed the preliminary site plan submitted by Cheskal Braver for construction of 18 residential apartments to be located on 5 Van Buren Drive, at Section 304, Block 3, Lot 2. The Board reviewed the plans and called for finalized plans to be submitted.
5. The Chairman then presented to the Board an open project submitted by Aron Weinberger for construction of residential apartments to be located on Kahan Drive, at Section 302, Block 2, Lots 24.1, 24.2, & 23.1. The Board discussed the proposal.
6. The Board then discussed the site plan submitted by Moshe Jacobowitz for construction of 23 residential apartments to be located on 16 Fillmore Court, at Section 308, Block 1, Lot 1.11. The Board did not approve the site plan.
7. The Chairman then presented to the Board the preliminary site plan submitted by Shmiel Z. Kahan for construction of 16 residential apartments to be located on 17 Fillmore Court, at Section 308, Block 1, Lot 14. The Board requested final plans to be submitted.
8. The Board then discussed the preliminary site plan submitted by Avrum M. Rosenwasser for construction of 18 residential apartments to be located on 18 Fillmore Court, at Section 308, Block 1, Lot 16. The Board discussed the plans.
9. The Chairman then presented to the Board the preliminary site plan submitted by Avrum M. Rosenwasser for construction of 12 residential apartments to be located on 10 Siget Court, at Section 301, Block 5, Lot 30. The Board discussed the plans.
10. The Chairman then presented a site plan submitted by Avrum M. Rosenwasser for construction of 4 residential apartments to be located on 2 Schunnemunk Road, at Section 325, Block 15, Lot 1. The Board disapproved the plans as it indicated insufficient parking space.
11. The Chairman then presented to the Board the preliminary site plan submitted by Pinchus Abish for construction of 29 residential apartments to be located on 19 Forest Road, at Section 304, Block 1, Lot 8. The Board reviewed the plans.

12. The Board then discussed the subdivision map submitted by Yitzchok Mandel to subdivide property located on 3 Van Buren Drive, at Section 304, Block 2, Lot 1.-1. The Board did not approve the subdivision.

13. The Chairman then presented to the Board the site plan submitted by Bnai Yoel School for construction of a new school building to be located on 156 Acres Road, at Section 301, Block 2, Lot 5. The Board reviewed the proposal and asked for finalized plans to be submitted.

14. The Board then discussed the site plan submitted by UTA of KJ for construction of an auditorium to be located on Israel Zupnick Drive, at Section 302, Block 1, Lot 38. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted unanimously to determine that said project will not have a significant affect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Neuman, the Board voted unanimously to approve said site plan.

15. The Chairman then presented to the Board plans submitted by Hamaspik of Orange County to utilize the basement at 61 Bakertown Road, at Section 302, Block 1, Lot 4.42, by constructing apartments. The Board approved the plans.

16. The Board then discussed the site plan submitted by Berl Polatsek for 29 Satmar Drive, at Section 322, Block 10, Lot 1.-2, that has been denied, as it demonstrated high front stairs. The Chairman described the changes made to the plan.

17. The Chairman then presented to the Board an improved site plan for #AFR 9033 submitted by Zalmen L. Weiss, that has previously been denied due to having high staircases in the front of the building. The Board reviewed the revisions.

On a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 11:00 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** June 10, 2012

**TIME:** 7:30 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan #AFR 9033 submitted by Zalmen Leib Weiss for construction of 20 residential apartments to be located on 3 Buchanan Court, at Section 303, Block 4, Lot 13. The Board reviewed the plan.

**RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Fuchs, the Board voted unanimously to adopt the attached SEQRA form, determining that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

2. The Board then discussed site plan #2017 submitted by Berl Polatsek for construction of 3 residential apartments to be located on 29 Satmar Drive, at Section 322, Block 10, Lot 1.-2. The Board did not approve the submission, as it did not show wide enough spaces for parking, and had excessively high front stairs.
3. The Chairman then presented to the Board the site plan submitted by BE & YO Realty for construction of 3 residential apartments, 4 stories in height, to be located on 6 Yoel Klein Boulevard, at Section 309, Block 3, Lot 17. The Board asked for submission of finalized plans.

4. The Board then discussed the site plan submitted by Moshe Jacobowiz for construction of 23 residential apartments to be located on 16 Fillmore Court, at Section 308, Block 1, Lot 1.11. The Board did not approve the plan.
5. The Chairman then presented to the Board the site plan submitted by Moshe R. Indig for construction of 4 residential apartments to be located on 24 Lizensk Boulevard, at Section 305, Block 1, Lot 15.11. The Board did not approve the plan.
6. The Board then discussed the plans submitted by Stern for construction of 32 residential apartments to be located on 15 Schunnemunk Road, at Section 313, Block 10, Lot 1.-8. The Board did not approve such.
7. The Chairman then presented to the Board site plan #AFR 9082 for construction of a new boys' school building to be located on Bakertown Road, at Section 310, Block 1, Lots 4.14, 4.16, and 4.171.

**RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Fuchs, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

8. The Board then discussed the plans submitted by Horowitz & Kaller for construction of a Sukkah room addition to be attached to left side of existing building located on 4 Sasev Court #201-301, at Section 328, Block 2, Lots 1.-3 & 1.-4. The Board approved the addition.

On a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 10:00 P.M.



# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** August 5, 2012

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan #BM-12127.0 submitted by BE & YO Realty for construction of 16 residential apartments to be located on 11 Prag Boulevard, at Section 309, Block 3, Lot 15. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to adopt the attached SEQRA form, determining that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted unanimously to approve the site plan.

2. The Board then discussed site plan #BM-12110.0 submitted by Cheskal Braver for construction of 18 residential apartments to be located on 5 Van Buren Drive, at Section 304, Block 3, Lot 2. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Glanzer, the Board voted unanimously to adopt the attached SEQRA form,

determining that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

3. The Chairman then presented to the Board site plan #AFR-9063 submitted by Pinchas Abish for construction of 28 residential apartments to be located on 19 Forest Road, at Section 304, Block 1, Lot 8. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Glanzer, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

4. The Board then discussed the preliminary plans submitted by Stern for construction of 26 residential apartments to be located on 15 Schunnemunk Road, at Section 313, Block 10, Lot 1. The Board denied the sketch.
5. The Chairman then presented to the Board a preliminary site plan submitted by Moshe Reuven Indig for construction of 4 residential apartments to be located on 24 Lizensk Boulevard, at Section 305, Block 1, Lot 15.11. The Board did not approve the plan.
6. The Board then discussed the newly revised site plan submitted by Berl Polatsek for construction of 3 residential apartments to be located on 29 Satmar Drive, at Section 322, Block 10, Lot 1.-2. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Fuchs, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted unanimously to approve the site plan with the condition that said addition will match the exterior of existing building.

7. The Chairman then presented to the Board the plan submitted by Chaim Sofer indicating the construction of a one-room addition to be attached to existing dwelling located on 20 Hayes Court, at Section 301, Block 5, Lot 17.1. The Board approved the addition.
8. The Board then discussed the subdivision map submitted by BE & YO Realty to subdivide property located on 2 Van Buren Drive, at Section 304, Block 5, Lot 1.22. The Board approved the subdivision.
9. Mr. Joshua Blumenthal, Director of K.J. Fire Department, attended the meeting to discuss some overall safety issues pertaining to construction.
10. The Chairman then introduced to the Board Mr. Vizel and Mr. Jaroslowitz, to discuss the issue of a deck that Mr. Vizel has extended into Mr. Jaroslowitz's property, which defies the Village Law of a required 30 feet setback.

On a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 9:45 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** December 2, 2012

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegegin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board the preliminary site plan submitted by Aron Weinberger for construction of 112 residential apartments to be located on Kahan Drive, at Section 302, Block 2, Lots 24.1 & 23.12. The Board did not approve the proposal.
2. The Board then discussed the preliminary site plan submitted by Avrum Meir Rossenwasser for construction of 18 residential apartments to be located on 18 Fillmore Court, at Section 308, Block 1, Lot 1.-16. The Board did not approve the plans.
3. The Chairman then presented to the Board the preliminary site plan submitted by Moshe Jacobowitz for construction of 23 residential apartments to be located on 16 Fillmore Court, at Section 308, Block 1, Lot 1.-11. The Board requested final plans to be submitted.
4. The Board then discussed the preliminary site plan submitted by Abraham Yida Goldberger for construction of 12 residential apartments and a Shul to be located on 13 Van Buren Drive, at Section 308, Block 1, Lot 5.22. The Board reviewed the plan and requested it to be finalized.

5. The Chairman then presented to the Board the site plan submitted by Joseph Mendlowitz for construction of 3 residential apartments to be located on 4 Yoel Klein Boulevard, at Section 343, Block 4, Lot 1.-1. The Board did not approve the plan.
6. The Board then discussed the site plan submitted by Lee Gardens c/o Schwimmer for construction of a Shul to be attached to existing complex situated on Israel Zupnick Drive, at Section 302, Block 3, Lot 7. The Board asked for the submission of final plans.
7. The Chairman then presented to the Board the plans submitted by Chaim Y. Wertzberger for construction of additional units and an extension to existing Shul located on 2 Rimenev Court, at Section 304, Block 4, Lot 3.1. The Board disapproved the plans.
8. The Board then discussed the preliminary site plan submitted by Yoseph Duvid Hirsch for construction of 8 additional units to be attached to existing dwelling located on 7 Getzel Berger Boulevard, at Section 302, Block 2, Lot 4.1 The Board denied the plan.
9. The Chairman then presented to the Board the preliminary site plan submitted by Joel Falkowitz for construction of an additional floor to be added to existing dwelling located on 3 Lizensk Boulevard, at Section 325, Block 1, Lot 1.-7. The Board required the settling of some issues prior to a subsequent approval.
10. The Board then discussed the plans submitted by Congregation Vayoel Moshe for construction of an addition to be attached to rear of existing Shul located on 5 Garfield Road, at Section 302, Block 1, Lot 2.1. The Board denied the proposal.
11. The Chairman then presented to the Board site plan #AFR 4080A submitted by Itzkowitz and Berkowitz for construction of an additional room to be attached to rear of existing dwelling located on 2 Gorlitz Court, at Section 321, Block 2, Lot 1.-13 & 1.-17.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

12. The Board then discussed subdivision map #AFR 9084 submitted by Cheskal Braver to subdivide property located on 5 Van Buren Drive, at Section 304, Block 3, Lot 2. The Board approved the subdivision.

The Board briefly discussed:

1. Reuven Rother – 13 Meron Drive - basement sewer issues
2. Jaroslowitz – 28 Getzel Berger Boulevard- addition on 2 Meron Drive

On a motion by Mr. Fuchs and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 10:30 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** April 14, 2013

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan# KR-13103.0 submitted by Moshe Jacobowitz for construction of 23 residential apartments to be located on 16 Fillmore Court, at Section 308, Block 1, Lot 1.11. The Board requested final plans to be submitted.
2. The Board then discussed site plan #AFR-9046 submitted by Moshe Reuven Indig for construction of 3 residential apartments to be located on 24 Lizensk Boulevard, at Section 305, Block 1, Lot 15.11. The Board disapproved the plan.
3. The Chairman then presented to the Board preliminary plans submitted by Yosef Duvid Hirsch for construction of 8 residential apartments to be located on 7 Getzel Berger Boulevard, at Section 302, Block 2, Lot 4.1. The Board discussed the plans.
4. The Board then discussed the sketch submitted by Joseph Paneth for construction of an addition to existing Shul and a residential apartment to be attached to existing dwelling located on 49 Satmar

Drive, at Section 321, Block 17, Lot 1.-4. The Board requested finalized plans to be submitted.

5. The Chairman then presented to the Board plans submitted by Khal Charidim for construction of an addition to be attached to existing Shul located on 2 Van Buren Drive, at Section 304, Block 5, Lot 4.12. The Board discussed the proposal.

6. The Board then conversed about a setback issue on 12 Lemberg Court, constructed by Mayer Indig.

On a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted to adjourn the meeting at 9:15 P.M.



# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** May 5, 2013

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan #KR-13103.0 submitted by Moshe Jacobowitz for construction of 23 residential apartments to be located on 16 Fillmore Court, at Section 308, Block 1, Lot 1.11. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Hoffman, the Board voted unanimously to approve the site plan.

2. The Board then discussed site plan #AFR-9046 submitted by Moshe Reuven Indig for construction of 3 residential apartments to be located on 24 Lizensk Boulevard, at Section 305, Block 1, Lot 15.11. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Hoffman, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

3. The Chairman then presented to the Board a sketch submitted by Yosef Duvid Hirsch for construction of 8 residential apartments to be located on 7 Getzel Berger Boulevard, at Section 302, Block 2, Lot 4.1. The Board discussed the proposal.
4. The Board then discussed the preliminary site plan submitted by BE & YO Realty for construction of 4 residential apartments to be located on 2 Van Buren Drive, at Section 304, Block 5, Lot 1.221. The Board reviewed the plans and requested further plans to be submitted.
5. The Chairman then presented to the Board the sketch submitted by Hoffman for construction of 30 residential apartments to be located on 5 Lizensk Boulevard, at Section 325, Block 14, Lot 1.-5. The Board reviewed the draft and called for a further plan to be submitted.
6. The Board then discussed the preliminary site plan submitted by BE & YO Realty for construction of 6 residential apartments to be located on 2 Lizensk Boulevard, at Section 305, Block 1, Lot 46.1. The Board reviewed the plans.
7. The Chairman then presented to the Board site plan Civil Tech-#3001 submitted by Joseph Paneth for an addition to existing shul and one residential apartment to be attached to existing dwelling located on 49 Satmar Drive, at Section 321, Block 17, Lot 1.-4. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

8. The Board then discussed a sketch plan submitted by Khal Charidim for construction of an addition to be attached to the front of existing shul, located on 2 Van Buren Drive, at Section 304, Block 5, Lot 1.12. The Board reviewed the plans and asked for further submissions.

9. The Chairman then presented to the Board the plan submitted by Aishes Chayil of Kiryas Joel for construction of an addition to be attached to the left side of existing building, located on 7 Chevron Road, at Section 307, Block 1, Lot 7.32. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Hoffman the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Hoffman, the Board voted unanimously to approve the site plan.

10. The Board then discussed the plans submitted by Wolf Perl for construction of a sukkah room to be attached to rear of existing dwelling located on 14 D.A. Wieder Boulevard, at Section 306, Block 1, Lot 8.31. The Board approved the plan.

11. The Chairman then presented to the Board the plans submitted by Isaac Lowy for construction of an addition to right side of existing dwelling located on 19 Israel Zupnick Drive, at Section 302, Block 2, Lot 19.4. The Board requested permission to be granted by the neighbors prior to subsequent approval.

12. The Board then discussed the subdivision map submitted by the Village of Kiryas Joel to subdivide property on Industrial Road, at SBL #310-1-4.14, 310-1-4.71, 310-1-1.2, and 347-2-1.3. The subdivision was approved by the Board.

On a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted to adjourn the meeting at 9:45 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** July 7, 2013

**TIME:** 7:00 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board the preliminary site plan submitted by Zalmen L. Weiss for construction of 11 residential apartments to be located on 7 Van Buren Drive, at Section 304, Block 3, Lot 3. The Board discussed the proposal.
2. The Board then discussed the preliminary site plan submitted by Avrum Yida Goldberger for construction of 12 residential apartments and a shul to be located at 13 Van Buren Drive, at Section 308, Block 1, Lot 5.22. The Board discussed the submission.
3. The Chairman then presented to the Board the preliminary sketch submitted by BE & YO Realty for construction of 6 residential apartments to be located on 2 Lizensk Boulevard, at Section 305, Block 1, Lot 46.1. The Board requested finalized plans to be submitted.
4. The Board then discussed the preliminary site plan submitted by BE & YO Realty for construction of 4 residential apartments to be located on 2 Van Buren Drive, at Section 304, Block 5, Lot 1.-22. The Board discussed the proposal.

5. The Chairman then presented to the Board site plan #AFR-6864 submitted by Chaim Y. Wertzberger, for construction of 3 residential apartments and an addition to be attached to existing Shul, at Section 304, Block 4, Lot 3.1. The Board discussed the submission.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

6. The Board then discussed the plans submitted by Aron Weinberger for construction of 108 residential apartments to be located on Kahan Drive, at Section 302, Block 2, Lot 24.1 & 23.12. The Board did not approve such.
7. The Chairman then presented to the Board site plan #KR-11112.0 submitted by Jacob Sofer for construction of 18 additional residential apartments to be added to the initial site plan on Karlsburg Road, at Section 307, Block 1, Lot 1.17 & 12.22.

**RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Glanzer the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer the Board voted unanimously to approve the site plan.

8. The Board then discussed the site plan submitted by Yosef D. Hirsch for construction of 8 residential apartments and an addition to be attached to existing Shul located on 7 Getzel Berger Boulevard, at Section 302, Block 2, Lot 4.1. The Board disapproved the plan.
9. The Chairman then presented to the Board the preliminary site plan submitted by Mayer Indig for construction of 42 residential apartments to be located on 2 & 4 Drubige Way, at Section 302, Block 1, Lot 23.4. The Board discussed the proposal.

10. The Board then discussed the preliminary site plan submitted by UTA of KJ for construction of a new building to be located on Rimenev Court, at Section 309, Block 1, Lot 7. The Board reviewed the plans and asked for further submissions.

11. The Chairman then presented to the Board a preliminary plan submitted by Chaim M. Landau for an addition of 3 residential apartments to be attached to existing dwelling located on 139 Acres Road, at Section 302, Block 1, Lot 23.4. The Board reviewed the submission.

On a motion by Mr. Neuman and seconded by Mr. Fuchs the Board voted to adjourn the meeting at 10:30 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** October 20, 2013

**TIME:** 7:30 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board site plan #AFR 9170-SP submitted by Drubige Gardens for construction of 42 residential apartments to be located on 2 & 4 Drubige Way, at Section 308, Block 1, Lot 8.2. The Board granted approval only on 20 residential apartments to be located on 4 Drubige Way with aforementioned tax map number.

**RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Glanzer, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted unanimously to approve the site plan.

2. The Board then discussed site plan #BM 13118.0 submitted by BE & YO Realty for construction of 6 residential apartments to be located on 2 Lizensk Boulevard, at Section 305, Block 1, Lot 46.1. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Hoffman and seconded by Mr. Fuchs, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

1. The Chairman opened the meeting by presenting to the Board site plan #11133.0 submitted by BE & YO Realty for construction of 18 residential apartments to be located on 12 Quickway Road, at Section 304, Block 4, Lot 7.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Glanzer, the Board voted unanimously to adopt the attached SEQRA form, determining that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

2. The Board then discussed the preliminary site plan submitted by BE & YO Realty for construction of 3 residential apartments to be located on 6 Yoel Klein Boulevard, at Section 309, Block 3, Lot 17. The Board requested plans to be finalized.
3. The Chairman then presented to the Board a preliminary site plan submitted by Chaim H. Leimzider for construction of 14 residential apartments to be located on 11 Prag Boulevard, at Section 309, Block 2, Lot 15. The Board reviewed the plans and asked that it be finalized.
4. The Board then discussed the preliminary site plan submitted by Cheskal Braver for construction of 18 residential apartments to be located on 5 Van Buren Drive, at Section 304, Block 3, Lot 2. The Board reviewed the plans and called for finalized plans to be submitted.
5. The Chairman then presented to the Board an open project submitted by Aron Weinberger for construction of residential apartments to be located on Kahan Drive, at Section 302, Block 2, Lots 24.1, 24.2, & 23.1. The Board discussed the proposal.
6. The Board then discussed the site plan submitted by Moshe Jacobowitz for construction of 23 residential apartments to be located on 16 Fillmore Court, at Section 308, Block 1, Lot 1.11. The Board did not approve the site plan.
7. The Chairman then presented to the Board the preliminary site plan submitted by Shmiel Z. Kahan for construction of 16 residential



apartments to be located on 17 Fillmore Court, at Section 308, Block 1, Lot 14. The Board requested final plans to be submitted.

8. The Board then discussed the preliminary site plan submitted by Avrum M. Rosenwasser for construction of 18 residential apartments to be located on 18 Fillmore Court, at Section 308, Block 1, Lot 16. The Board discussed the plans.
9. The Chairman then presented to the Board the preliminary site plan submitted by Avrum M. Rosenwasser for construction of 12 residential apartments to be located on 10 Siget Court, at Section 301, Block 5, Lot 30. The Board discussed the plans.
10. The Chairman then presented a site plan submitted by Avrum M. Rosenwasser for construction of 4 residential apartments to be located on 2 Schunnemunk Road, at Section 325, Block 15, Lot 1. The Board disapproved the plans as it indicated insufficient parking space.
11. The Chairman then presented to the Board the preliminary site plan submitted by Pinchus Abish for construction of 29 residential apartments to be located on 19 Forest Road, at Section 304, Block 1, Lot 8. The Board reviewed the plans.
12. The Board then discussed the subdivision map submitted by Yitzchok Mandel to subdivide property located on 3 Van Buren Drive, at Section 304, Block 2, Lot 1.-1. The Board did not approve the subdivision.
13. The Chairman then presented to the Board the site plan submitted by Bnai Yoel School for construction of a new school building to be located on 156 Acres Road, at Section 301, Block 2, Lot 5. The Board reviewed the proposal and asked for finalized plans to be submitted.
14. The Board then discussed the site plan submitted by UTA of KJ for construction of an auditorium to be located on Israel Zupnick Drive, at Section 302, Block 1, Lot 38. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted unanimously to determine that said project will not have a significant affect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Neuman, the Board voted unanimously to approve said site plan.

15. The Chairman then presented to the Board plans submitted by Hamaspik of Orange County to utilize the basement at 61 Bakertown Road, at Section 302, Block 1, Lot 4.42, by constructing apartments. The Board approved the plans.

16. The Board then discussed the site plan submitted by Berl Polatsek for 29 Satmar Drive, at Section 322, Block 10, Lot 1.-2, that has been denied, as it demonstrated high front stairs. The Chairman described the changes made to the plan.

17. The Chairman then presented to the Board an improved site plan for #AFR 9033 submitted by Zalmen L. Weiss, that has previously been denied due to having high staircases in the front of the building. The Board reviewed the revisions.

On a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 11:00 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** January 12, 2014

**TIME:** 7:30 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board the preliminary site plan submitted by A.W. Developers for construction of 114 residential apartments to be located on Kahan Drive at Section 302, Block 2, Lot 24.1 & 23.12. The Board requested the roads to be widened on subsequent plans.
2. The Board then discussed the preliminary site plan submitted by Moshe Friedman for construction of 20 residential apartments to be located on 28 Quickway Road, at Section 304, Block 4, Lot 1. The Board discussed the submission and requested plans to be finalized.
3. The Chairman then presented to the Board the preliminary site plan submitted by Berish Meisels for construction of 16 residential apartments to be located on 15 Van Buren Drive, at Section 308, Block 1, Lot 20. The site plan was denied.
4. The Board then discussed the preliminary site plan submitted by Yosef D. Hirsch for construction of 8 residential apartments to be located on 7 Getzel Berger Boulevard, at Section 302, Block 2, Lot 4.1. The Board requested final plans to be presented.

5. The Chairman then presented to the Board site plan #AFR-9160 presented by Zalmen L. Weiss for construction of 11 residential apartments to be located on 7 Van Buren Drive, at Section 304, Block 3, Lot 3.2. The Board reviewed the proposal.

**RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Hoffman, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted unanimously to approve the site plan.

6. The Board then discussed site plan #AFR-9173 submitted by KJ Housing for construction of a two story garage to be located on 11 D.A. Wieder Boulevard at Section 306, Block 1, Lot 6. The Board discussed the plans.

**RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Hoffman, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted unanimously to approve the site plan

7. The Chairman then presented to the Board the site plan submitted by BE & YO Realty for commercial and residential construction to be located on 2 Van Buren Drive, at Section 304, Block 5, Lot 1.221. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Hoffman, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

8. The Board then discussed the site plan submitted by Tosh Beis Hamedresh for construction of an addition to be attached to existing shul located on 34 Satmar Drive, at Section 301, Block 5, Lot 11. The Board approved the addition.

9. The Chairman then presented to the Board the site plan submitted by Yida Hersh Gelb for construction of an addition to be attached to existing dwelling located on 18 Satmar Drive, at Section 301, Block 5 Lot 24.42. The Board denied the addition as it extended into designated setback area.
10. The Board then discussed the site plan submitted by Congregation V'Yoel Moshe for construction of an addition to be attached to rear of existing shul located on 5 Garfield Road, at Section 303, Block 1, Lot 2.-1. The Board reviewed the plans and required it to be finalized upon further submission.
11. The Chairman then presented to the Board the site plan submitted by Avrum Bikel for construction of an addition to be attached to existing dwelling located on 15 Hayes Court, at Section 301, Block 3, Lot 19.1. The Board denied the proposal as it interferes with the required setback.
12. The Board then discussed site plan #KR-09105.0 submitted by Mesivta of KJ for construction of 2 new buildings to be located on Berdichev Road, at Section 305, Block 1, Lot 12.2. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Neuman, the Board voted unanimously to determine that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

13. The Chairman then opened discussion on 29 Satmar Drive, Section 322, Block 10, Lot 1.-2, at which site there's an issue with decks. The Board consulted the Mayor. Upon Mayor Wieder's consent, the decks were approved.

On a motion by Mr. Neuman and seconded by Mr. Hoffman, the Board voted to adjourn the meeting at 10:20 P.M.

# VILLAGE OF KIRYAS JOEL MEETING OF THE PLANNING BOARD

**DATE:** May 4, 2014

**TIME:** 6:30 P.M.

**PRESENT:**

Chairman	Gershon Neuman
Board Members	Jonas Hoffman
	Aron Fuchs
	Isaac Glanzer
Village Administrator	Gedalye Szegedin
Code Enforcement Officer	Isaac Goldberger
Public Works Superintendent	Zalmen Stern
Village Engineer	Gerald McDonald

1. The Chairman opened the meeting by presenting to the Board the site plan submitted by Aron Weinberger for construction of 110 residential apartments to be located on Kahan Drive and Israel Zupnick Drive, at Section 302, Block 2 Lots 24.2 & 23.12. The Board did not approve the submission, as the site plan is not finalized.
2. The Board then discussed the preliminary site plan submitted by Berish Meisels for construction of 15 residential apartments to be located on 15 Van Buren Drive, at Section 304, Block 5, Lot 4.1. The Board requested the submission of finalized plans for subsequent approval.
3. The Chairman then presented to the Board the preliminary site plan submitted by BE & YO Realty for construction of 32 residential apartments to be located on 5 Lizensk Boulevard, at Section 325, Block 14, Lot 1. The Board did not approve the plans, as project is too big for given property.
4. The Board then discussed the preliminary plan submitted by Avrum Bikel for construction of 5 residential apartments to be located on 15 Hayes Court, at Section 301, Block 3, Lot 19.1. The Board disapproved the submission due to insufficient parking space.

5. The Chairman then presented to the Board a preliminary sketch submitted by Chaim Aron Klein for construction of 4 residential apartments to be located on 23 Hayes Court, at Section 301, Block 5, Lot 15.1. The Board requested finalized plans for subsequent approval.
6. The Board then discussed site plan #KR-13146 submitted by Zalmen L. Weiss for construction of 2 residential apartments to be located on 4 Yoel Klein Boulevard, at Section 309, Block 3, Lot 16.3. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Glanzer and seconded by Mr. Fuchs, the Board voted unanimously to adopt the attached SEQRA form, determining that said project will not have a significant effect on the environment.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Fuchs, the Board voted unanimously to approve the site plan.

7. The Chairman then presented to the Board plans submitted by Zalmen Feder for construction of 3 additional units to be attached to existing dwelling located on 15 Zenta Road, at Section 304, Block 1, Lot 22. The Board did not approve the submission.
8. The Board then discussed the preliminary plans submitted by Mendel Schwimmer for construction of a left side garage and a Mikvah addition to be attached to existing dwelling located on 9 Hayes Court, at Section 303, Block 2, Lot 6. The Board requested finalized plans for subsequent approval.
9. The Chairman then presented to the Board plans submitted by Chaim Sofer for construction of an addition to be attached to front of existing dwelling located on 20 Hayes Court, at Section 301, Block 5, Lot 17.1. The Board approved the addition with submission of finalized plans.
10. The Board discussed the site plan submitted by Furth for construction of an addition to be attached to the back of existing dwelling located on 139 Acres Road #202, at Section 302, Block 1, Lot 23.3. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted unanimously to approve the site plan.

11. The Chairman then presented to the Board the plans submitted by Fogel for construction of a sukkah room addition to be attached to existing dwelling located on 19 Lizensk Boulevard, at Section 305, Block 1, Lot 38. The Board disapproved the submission, as it extends into the required setback.

12. The Board then discussed the plans submitted by KJ Poultry Meat Market, Corp. for an addition to be attached to the existing processing plant located on 7 Dinev Road, at Section 310, Block 1, Lot 4.22. The Board reviewed the plans.

**RESOLVED**, upon a motion by Mr. Fuchs and seconded by Mr. Neuman, the Board voted unanimously to adopt the attached SEQRA Full Environmental Assessment Form for said Project.

**FURTHER RESOLVED**, upon a motion by Mr. Neuman and seconded by Mr. Glanzer, the Board voted unanimously to approve the site plan.

13. The Chairman then opened discussion on a concern presented by Zalmen Leib Weiss, regarding a front sidewalk and a deck at the left side of the new building under construction at 3 Buchanan Court, Section 303, Block 4, Lot 13.

14. The Board then discussed the issue raised by Akiva Weinstock to establish Strelisk Court, Section 304, Block 1, Lot 9.2, as a Village road.

On a motion by Mr. Hoffman and seconded by Mr. Fuchs, the Board voted to adjourn the meeting at 9:30 P.M.



## Krista Yacovone

---

**From:** Afzali, Javid <JAfzali@woh.com>  
**Sent:** Wednesday, November 19, 2014 11:08 AM  
**To:** Krista Yacovone  
**Subject:** RE: FOIL Response

Hi Krista,

The Village has not withheld any documents and will not be producing any further records.

Best Regards,  
Javid

**Javid Afzali, Esq. | Whiteman Osterman & Hanna LLP**

*Associate*

One Commerce Plaza | Albany | New York | 12260

| o | 518.487.7666 | f | 518.487.7777

| e | [jafzali@woh.com](mailto:jafzali@woh.com) | w | [www.woh.com](http://www.woh.com)

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**From:** Krista Yacovone [mailto:[kyacovone@zarin-steinmetz.com](mailto:kyacovone@zarin-steinmetz.com)]

**Sent:** Monday, November 17, 2014 4:08 PM

**To:** Afzali, Javid

**Cc:** Daniel Richmond

**Subject:** FOIL Response

Dear Javid,

We are in receipt of your letter, dated November 10, 2014, providing Records in response to the FOIL request made to the Village of Kiryas Joel on behalf of United Monroe on August 18, 2014.

Please confirm that you are not producing any further Records. Please also confirm whether any Records are being withheld as exempt from disclosure under FOIL. If this is the case, Public Officers Law Section 89 requires that the Village provide us with a written explanation as to why it is withholding these Records.

Thank you,

Krista

**Krista E. Yacovone, Esq.**

Associate



**ZARIN &  
STEINMETZ**

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White Plains, New York 10601

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*Add to address book | Bio*

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DAVID J. COOPER  
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JEREMY E. KOZIN  
KRISTA E. YACOVONE

\* ALSO ADMITTED IN D.C.  
° ALSO ADMITTED IN CT  
△ ALSO ADMITTED IN NJ

April 4, 2014

MARSHA RUBIN GOLDSTEIN  
HELEN COLLIER MAUCH<sup>△</sup>  
LISA F. SMITH<sup>°</sup>  
OF COUNSEL

**By Overnight Delivery**

Robert L. Ewing  
Environmental Analyst II  
New York State Department of Environmental Conservation  
Division of Environmental Permits, 4<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-1750

Re: Lead Agency Dispute  
Proposed Ca. 510 Acre Land Annexation from  
Town of Monroe to Village of Kiryas Joel  
Town of Monroe, Orange County

Dear Mr. Ewing:

This Firm represents United Monroe, which consists of residents of the Town of Monroe and others who live in the surrounding community. United Monroe respectfully submits this letter to alert the Department to matters that raise serious doubts about the ability of the Village of Kiryas Joel ("Village") to investigate the impacts of the proposed annexation, and its capabilities for providing the most thorough environmental assessment of the proposed annexation. See 6 N.Y.C.R.R. § 617.6(b)(5)(v). Also, serious concerns exist regarding the Village's willingness and ability to undertake an open and transparent process, which encourages meaningful public participation, as the State Environmental Quality Review Act ("SEQRA") requires.

**Environmental Concerns**

The Village has exhibited repeated failures to fulfill its obligations under SEQRA and other environmental laws, which raise serious concerns about its willingness and ability to conduct a lawful and thorough environmental review in connection with the annexation.

The Appellate Division Second Department, for example, held that the Village Board of Trustees prepared an inadequate environmental impact statement (“EIS”) in connection with its review of a project to construct a public water supply facility and a pipeline to connect the facility to the Catskill Aqueduct. County of Orange v. Vill. of Kiryas Joel, 44 A.D.3d 765, 844 N.Y.S.2d 57, 61-62 (2d Dept. 2007). The Court held that 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. For these reasons, the Second Department held that the Village Board of Trustees failed to take the requisite “hard look” under SEQRA.

Moreover, once the Kiryas Joel Wastewater Treatment Plant was constructed and operational, your Department found that it was not in compliance with the State Pollutant Discharge Elimination System (“SPDES”) Permit and Article 17 of the Environmental Conservation Law. By letter dated May 16, 2013, for example, your Department issued a Notice of Violation to the Village Mayor and Trustees. The findings in this letter reflect a serial disregard for environmental conditions. By way of example, the letter notes that the Department had previously noted that certain improvements were required at the Plant to prevent rags and other solids from entering the system, and that the Department had previously required that these improvements be completed by March 1, 2008. More than five (5) years later, however, as of the date of the letter, these improvements still had not been effectuated.

Similarly, by letter dated December 23, 2013, your Department issued a Notice of Violation in connection with the Village's Municipal Separate Storm Water System ("MS4"). The Department noted that an inspection revealed that site disturbance greater than one acre had occurred without compliance with the Department's SPDES General Permit for Stormwater Discharges from Groundwater Activity.

By letter dated November 22, 2013, the United State Environmental Protection Agency ("EPA") also found that "the Village has violated and remains in a state of noncompliance with [Clean Water Act] Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the MS4General Permit. (Copy of EPA's November 22, 2013 letter and the accompanying Administrative Compliance Order (the "ACO") are annexed hereto.) The factual findings in the ACO demonstrate that the Village failed to fulfill fundamental requirements, such as failing to map its storm sewersheds, failing to implement and enforce requirements pertaining to obtaining Construction General Permit ("CGP") coverage, a lack of any procedures for Stormwater Prevention Plan ("SWPP") review, inaccurate records in a variety of areas, and a lack of a training program to ensure that staff receive necessary training.

These repeated and serious violations of environmental laws raise legitimate concerns about the Village's abilities to comprehensively investigate the impacts of the proposed annexation, and to provide an impartial, meaningful environmental assessment of the proposed annexation.

### **Public Participation Concerns**

The ACO also shows that the Village disregarded legal requirements intended to promote public participation, stating that the Village violated its obligation to make its draft Annual Report available to the public for comment. (ACO at 3.). Similarly, as set forth in the annexed letter of John Allegro, the Village has not been responsive to Freedom of Information Law ("FOIL") requests from the public for basic information. Moreover, the Village does not appear to conduct the meetings of its public bodies in a manner designed to promote public participation. As Allegro notes, the Village Planning Board meetings are scheduled for the unusual time of the first Sunday of every month at 9:00 p.m. Moreover, when Allegro went to the location noticed for the Planning Board Meeting at the scheduled time, the doors to the Village offices were locked, and there was no notice of a meeting change or cancellation was posted at the entrance of the building.

The Village's failure to fulfill its obligations to conduct official business in an open and transparent manner raises concerns about its ability to conduct a legitimate SEQRA review, which is intended to be an open process and one that promotes public involvement.

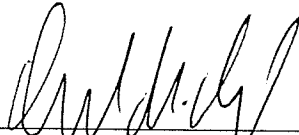
**Conclusion**

The Village's repeated and serious violations of environmental laws, and its apparent disinclination to involve the public in the public review process or otherwise conduct its affairs in an open and transparent manner, raise legitimate concerns about the Village's abilities to comprehensively investigate the impacts of the proposed annexation and to provide the most thorough environmental assessment of the proposed annexation.

Please let us know if you have any questions.

Respectfully,

ZARIN & STEINMETZ

By:   
Daniel M. Richmond

DMR/mth

enc.

cc: United Monroe  
Joe Martens, Commissioner  
Lawrence H. Weintraub, NYS DEC Office of General Counsel

EPA 11/22/13  
Ltr. & ACO



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

NOV 22 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5967 6837**

Ms. Gedalye Szegedin, Village Administrator  
The Village of Kiryas Joel  
PO Box 566  
Monroe, New York 10949

Re: **Administrative Docket No. CWA-02-2014-3014**  
Village of Kiryas Joel MS4, SPDES Permit No. NYR20A496  
Clean Water Act Information Request and Administrative Compliance Order

Dear Administrator Szegedin:


Please find enclosed a combined Information Request and Administrative Compliance Order (together, the "Order"), which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to the Village of Kiryas Joel ("Village") pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). The EPA is issuing the Information Request to require the Village to provide specific information regarding the condition of its Municipal Separate Storm Sewer System ("MS4") and the actions needed to attain compliance with the CWA and with the State Pollutant Discharge Elimination System ("SPDES") General Permit for Storm Water Discharges from MS4s ("MS4 General Permit" or "Permit"). The EPA is issuing the Administrative Compliance Order because the Village has violated and remains in a state of noncompliance with CWA Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the MS4 General Permit.

Enclosed are two originals of the Order. Please acknowledge receipt of the Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Town of Rotterdam to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Also enclosed is the Audit Report for the Audit of the Village of Kiryas Joel's MS4 conducted by the EPA, on March 20 and 21, 2013.

If you have any questions regarding the enclosed Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC  
Zalmen Stern, Village of Kiryas Joel (With Enclosures)  
Natalie Browne, NYSDEC, Region 4 (electronic)



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2  
290 Broadway  
New York, New York 10007-1866

**IN THE MATTER OF:**

The Village of Kiryas Joel  
PO Box 566  
Monroe, NY 10949

SPDES Permit No. NYR20A496

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of the  
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a)

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2014-3014**

**A. STATUTORY AUTHORITY**

The following Information Request and Administrative Compliance Order (together the "Order") are issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA and permits issued by authorized States there under.
3. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.

4. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, associations, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States, and "waters of the United States" is defined at 40 C.F.R. 122.2 to include, among other things, waters which are currently used in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and all other waters, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.
9. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objective of the CWA.
10. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Director makes the following findings of fact and conclusions of law:

1. The Village of Kiryas Joel ("Village" or "Respondent") is a public body established under the laws of the State of New York that owns and operates the Municipal Separate Storm Sewer System ("MS4") within the Village of Kiryas Joel and has jurisdiction over the conveyance and discharge of stormwater.
2. Respondent is a person under Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).

3. Respondent's MS4 includes over 105 piped outfalls, which are point sources from which Respondent discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to the Palm Brook, Forest Brook, Tributary No. 25, Highland Brook and Coronet Brook which all are tributaries of the Ramapo River, a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
4. On January 8, 2003, the NYSDEC issued permit No. GP-0-02-02, the SPDES General Permit for Storm Water Discharges from MS4s ("MS4 General Permit" or "Permit").
5. The MS4 General Permit became effective January 8, 2003, and expired on January 8, 2008.
6. On April 15, 2008, the NYSDEC issued MS4 General Permit No. GP-0-08-002, with an effective date of May 1, 2008, and an expiration date of April 30, 2010. GP-0-08-002 was administratively extended until the issuance of GP-0-10-002.
7. On April 29, 2010, the NYSDEC issued MS4 General Permit No. GP-0-10-002, with an effective date of May 1, 2010, and an expiration date of April 30, 2015.
8. On April 14, 2004, Respondent applied for and subsequently received authorization under the MS4 General Permit pursuant to permit No. NYR20A496, and has been covered under the conditions and limitations in the permit at all relevant times addressed by the Order.
9. The MS4 General Permit authorizes Respondent to discharge pollutants from MS4 outfalls to the Palm Brook, Forest Brook, Tributary No. 25, Highland Brook and Coronet Brook, which all are tributaries of the Ramapo River, under the conditions and limitations prescribed in the permit.
10. On March 20 and 21, 2013, the EPA and the NYSDEC conducted an Audit of the Respondent's MS4.
11. Based on the Audit findings, the EPA finds that Respondent has failed to comply with the CWA and the conditions and limitations of the MS4 General Permit, including but not limited to the following:
  - a. Part IV.D of the Permit requires all permittees to fully develop and implement their Stormwater Management Program ("SWMP"). At the time of the Audit, the Village failed to update their SWMP to incorporate the 2010 MS4 Permit (GP-0-10-002) changes. Therefore, Respondent is in violation of Part IV.D of the Permit.
  - b. Part VII.A.2.d of the Permit requires that permittees, *prior* to submitting the final annual report to the NYSDEC by June 1 of each reporting year, present the draft Annual Report in a format that is open to the public, where the public can ask questions about and make comments on the report. This can be done at a public meeting or on the internet, per the requirements listed in Part VII.A.2.d.i of the Permit. According to Village representatives, the draft Annual Report is not made available to the public prior to submitting the final Annual Report. Therefore, Respondent is in violation of Part VII.A.2.d of the Permit.

- c. Part VII.A.3.b.ii of the Permit requires that "by March 9, 2010, all covered entities must develop (for newly authorized MS4s) and maintain a map showing the preliminary boundaries of the covered entity's storm sewersheds have been determined using GIS or other tools, even if they extend outside of the urbanized area (to facilitate track down), and additionally designated area within the covered entity's jurisdiction." At the time of the Audit, the Village had not mapped its storm sewersheds. Therefore, Respondent is in violation of Part VII.A.3.b.ii of the Permit.
- d. Part VII.A.3.f of the Permit requires permittees to prohibit, through a law, ordinance, or other regulatory mechanism, *illicit discharges* into the MS4 and implement appropriate enforcement procedures and actions. At the time of Audit, Village representatives provided Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled "Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems," as its local illicit discharge ordinance. Upon further review, it was determined that Chapters 125-13 through 125-32 were never filed and are not part of the Village Code. Therefore, at the time of the Audit, the Village did not have a local ordinance for illicit discharges as required by the Permit. Therefore, Respondent is in violation of Part VII.A.3.f of the Permit.
- e. Part VII.A.3.g of the Permit requires permittees to "develop (for newly authorized MS4s) and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include, but is not limited to, the following: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for eliminating illicit discharges; and, procedures for documenting actions." Although the Village's SWMP Plan does include the required information, based on the Audit and information provided, EPA has determined that the Village has not adequately implemented its program. Therefore, Respondent is in violation of Part VII.A.3.g of the Permit.
- f. Part VII.A.3.l of the Permit requires permittees who have been covered for at least three years or more to report on the following: number and percent of outfalls mapped, percent of outfalls for which an outfall reconnaissance inventory has been performed, status of system mapping, etc. During the Audit, Village representatives stated that no formal tracking program exists or that an inventory is taken for outfall inspections. Therefore, Respondent is in violation of Part VII.A.3.l of the Permit.
- g. Part VII.A.4.a.i of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that provides equivalent protection to the NYSDEC Construction General Permit ("CGP"). At the time of the Audit, the Village's MS4 program did have a Local law for stormwater management that required sites to obtain CGP coverage, submit an NOI, and receive acknowledgement from the NYSDEC verifying coverage prior to the start of construction activity. Although this ordinance was in place, based on the Audit and information provided, EPA has determined that it was not being implemented or enforced. Therefore, Respondent is in violation of Part VII.A.4.a.i of the Permit.

- h. Part VII.A.4.a.ix of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, which includes determining that it is acceptable for the owner or operator of a construction project to submit the Notice of Termination ("NOT") to the NYSDEC by performing a final site inspection themselves or by accepting the Qualified Inspector's final inspection certification(s) required by the NYSDEC CGP. The principal executive officer, ranking elected official, or duly authorized representative shall document their determination by signing the "MS4 Acceptance" statement on the NOT. At the time of the Audit, the Village's MS4 program did not contain a mechanism that ensured that the "MS4 Acceptance" statement was signed by a qualified individual on the NOT. As evidenced by the inaccurate list of active construction sites, the Village has not been diligent in enforcing the NOT procedures. Therefore, Respondent is in violation of Part VII.A.4.a.ix of the Permit.
- i. Part VII.A.4.a.vii of the Permit requires permittees, implement and enforce procedures for Stormwater Pollution Prevention Plan ("SWPPP") review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements. At the time of the Audit, the Village did not have any procedures in place for SWPPP review. Therefore, Respondent is in violation of Part VII.A.4.a.vii of the Permit.
- j. Part VII.A.4.a.xii of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that establishes and maintains an inventory of active construction sites, including the location of the site and owner/ operator contact information. At the time of the Audit, it was clear that the list of active construction sites was not properly maintained due to the abundant discrepancies of active and closed construction sites on the list. The NYSDEC construction stormwater database for Orange County/Kiryas Joel contained several construction sites that were said to have been completed, but no NOT was filed including, but not limited to, the following sites:
- i. Village of Kiryas Joel Business Center
  - ii. KJ Union Free School
  - iii. Kiryas Joel School
  - iv. Kiryas Joel Sidewalks Phase 7
  - v. Kiryas Joel Sidewalks Phase 6
- Therefore, Respondent is in violation of Part VII.A.4.a.xii of the Permit.
- k. Parts VII.A.4.a.xiii and VII.A.4.a.xiv of the Permit requires permittees to develop (for newly authorized MS4's) record, periodically assess and modify as needed measurable goals; and select appropriate construction stormwater BMPs [sic] and measurable goals to ensure the reduction of all pollutants of concern ("POCs") in stormwater discharges to the Maximum Extent Practicable ("MEP"). At the time of the Audit, the Village's SWMP Plan had all measurable goals identified as being completed in 2008. Upon review onsite, EPA representatives concluded that not all of the expired measurable goals were completed and the SWMP Plan had not been assessed and/or modified in recent years. Therefore, Respondent is in violation of Parts VII.4.a.xiii and VII.4.a.xiv of the Permit.

- l. Part VII.A.4.b.ii of the Permit requires permittees to report on the number and type of enforcement actions at construction sites. Based on review of Annual Reports from 2011 and 2012, which indicated that two (2) stop-work orders had been issued, did not accurately reflect the enforcement activity of the Village. It was determined that no stop-work orders were actually issued during 2011 & 2012. Therefore, Respondent is in violation of Part VII.A.4.b.ii of the Permit.
  - m. Parts VII.A.5.a.vi of the Permit requires permittees to maintain an inventory of post-construction stormwater management practices within the covered entities jurisdiction. Based on review of the Annual Reports and discussion with Village representatives during the Audit, the number of post-construction controls inspected and maintained has not been accurate. Therefore, Respondent is in violation of Part VII.A.5.a.vi
  - n. Part VII.A.6.a.ii of the Permit requires that all permittees must at a minimum frequency of once every three years, perform and document a self assessment of all municipal operations addressed by the SWMP to: determine the source of pollutants potentially generated by the covered entity's operations and facilities; and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Village had never performed a self assessment of its operations or facilities. Therefore, Respondent is in violation of Part VII.A.6.a.ii of the Permit.
  - o. Part VII.A.6.a.vi of the Permit requires that all permittees develop (for newly authorized) and implement a pollution prevention / good housekeeping training program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training. At the time of the Audit, there was no training program in place at the Village to ensure staff received necessary training. Therefore, Respondent is in violation of Part VII.A.6.a.vi of the Permit.
  - p. Part V.D of the Permit requires permittees to submit a Municipal Compliance Certification ("MCC") form, which is provided by NYSDEC on an annual basis. The MCC certifies that all applicable conditions of Parts IV, VII, VIII and IX of this SPDES General Permit are being developed, implemented and complied with. Furthermore, Part V.D states, if compliance with any requirement cannot be certified to on the MCC form, a complete explanation with a description of corrective measures must be included as requested on the MCC form. Failure to submit a complete annual report, as required by Part V.C, and a complete MCC form shall constitute a permit violation. During the Audit, EPA representatives observed numerous discrepancies in the information reported in the 2011 and 2012 Annual Reports. Therefore, Respondent is in violation of Part V.D of the Permit.
12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the MS4 General Permit.

### C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing a written response regarding each of the listed Areas of Concern and Recommendations in the enclosed Audit Report within ninety (90) days of receipt of this Order.

### D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Respondent shall complete the following items in accordance with the schedule listed below:

<u>Item</u>	<u>Completion Deadline</u>
i. Implement the Village's written procedures for detecting and addressing non-stormwater discharges into the MS4, as required by Part VII.A.3.g of the Permit.	Immediately upon receipt of Order.
ii. Develop, and submit to EPA and NYSDEC, written procedures for an inventory, tracking and implementation system for providing equivalent protection to the NYSDEC Construction General Permit, as required by Part VII.A.4.a.i of the Permit. Procedures shall be implemented upon EPA approval.	Immediately upon receipt of Order.
iii. Develop, and submit to EPA and NYSDEC, an accurate post construction inventory as required by Part VII.A.5.a.vi of the Permit.	Immediately upon receipt of Order.
iv. Develop, and submit to EPA and NYSDEC, written procedures for an inventory and tracking system for outfall reconnaissance inspections, as required by Part VII.A.3.l of the Permit. Procedures shall be implemented upon EPA approval.	December 31, 2013
v. Develop, and submit to EPA and NYSDEC, a written inventory and tracking system for active construction sites, as required by Part VII.A.4.a.xii of the Permit. System shall be implemented upon EPA approval.	December 31, 2013

vi. Develop, and submit to EPA and NYSDEC, updated measurable goals for all minimum control measures, as required by Part VII.A.4.a.xii and VII.A.4.a.xiv of the Permit.	December 31, 2013
vii. Develop, implement, and submit to EPA and NYSDEC, updates to the SWMP reflecting changes to the MS4 General Permit (GP-0-10-002), as required by Part IV. D of the Permit.	January 31, 2014
viii. Submit, to EPA and NYSDEC, a copy of an enacted law, ordinance, or other regulatory mechanism, which prohibits <i>illicit discharges</i> into the small MS4 and implements appropriate enforcement procedures and actions as required by Part VII.A.3.f of the Permit.	January 31, 2014
ix. Develop, and submit to EPA and NYSDEC, a program that describes procedures for SWPPP review which includes consideration of potential water quality impacts, consistency with state and local sediment and erosion control requirements, and training requirements for individuals performing SWPPP review as required by Part VII.A.4.a.vii of the Permit. Program shall be implemented upon EPA approval.	January 31, 2014
x. Develop, and submit to EPA and NYSDEC, a program that describes procedures for site inspections, enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection, enforcement, and procedures for signing the MS4 acceptance statement on the Notice of Termination, as required by Part VII.A.4.a.ix of the Permit. Program shall be implemented upon EPA approval.	January 31, 2014
xi. Develop, and submit to EPA and NYSDEC, an employee pollution prevention and good housekeeping training program that ensures employee training is provided to staff and utilized as required by Part VII.A.6.a.vi of the Permit. Program shall be implemented upon EPA approval.	January 31, 2014
xii. Develop, and submit to EPA and NYSDEC, a map showing the preliminary boundaries of storm sewersheds, as required by Part VII.A.3.b.ii of the Permit.	February 28, 2014



<p>xiii. Conduct, and submit to EPA and NYSDEC, a self assessment of all municipal operations addressed by the SWMP to determine sources of pollutants and identify the municipal operations and facilities that will be addressed by the pollution prevention / good housekeeping program, as required by Part VII.A.6.a.ii of the Permit.</p>	<p>February 28, 2014</p>
<p>xiv. Present the draft Annual Report in a format that is open for public comment, as required by Part VII.A.2.d of the Permit. After presenting the draft Annual Report for public comment, Respondent must submit a written report to EPA and NYSDEC summarizing the public comment period and a list of comments received.</p>	<p>June 1, 2014</p>

**E. GENERAL PROVISIONS**

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Douglas McKenna, Chief  
 Water Compliance Branch  
 Division of Enforcement and Compliance Assistance  
 U.S. Environmental Protection Agency - Region 2  
 290 Broadway - 20th floor  
 New York, NY 10007-1866

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

2. Immediately upon receipt of the original copies of this Order, a responsible official of Respondent shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Agency representative named above, in paragraph E.1., in the enclosed envelope.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.

Village of Kiryas Joel

Docket No. CWA-02-2014-3014

4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: NOVEMBER 22, 2013

Signed: \_\_\_\_\_

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

The Village of Kiryas Joel  
PO Box 566  
Monroe, NY 10949

SPDES Permit No. NYR20A496

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of  
the Clean Water Act, 33 U.S.C. §§ 1318(a) and  
1319(a).

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2014-3014**

**ACKNOWLEDGMENT OF RECEIPT OF  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an officer of the Respondent, with the title of,  
\_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-  
2014-3014.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_





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**Municipal Separate Storm Sewer System (MS4) Audit**  
**Kiryas Joel (NYR20A496)**  
**March 20 – March 21, 2013**

**Prepared by:**

**United States Environmental Protection Agency Region 2**  
**290 Broadway**  
**New York, New York 10007**

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## 1. INTRODUCTION

On March 20 through March 21, 2013 the United States Environmental Protection Agency (EPA), Region 2, conducted a program evaluation, or Audit, of the Village of Kiryas Joel (Village or KJ) Municipal Separate Storm Sewer System (MS4). EPA is granted the authority to conduct the Audit through 40 CFR 122.41(i) and Section 308 of the Clean Water Act. Mr. Christopher Mecozzi of EPA Region 2 conducted the Audit. Mr. Murray Lantner, also from EPA Region 2, was present for the Audit, as well as EPA interns Richard Lee, Andrea Scher and Lei Zhang. EPA staff was accompanied by Ms. Natalie Brown from New York State Department of Environmental Conservation (NYSDEC or DEC).

The following Town departments and individuals were present during the Audit:

Kiryas Joel Department of Public Works (Zalmen Stern, Lipa Klein)  
MacDonald Engineering (Gerald P. MacDonald, P.E.)  
Jacobowitz & Gubits, LLP (Donald G. Nichol)  
NYSDEC (Natalie Browne)

The purpose of the Audit was to determine the Village's compliance with the terms of its State Pollutant Discharge Elimination System MS4 Permit and to evaluate the current implementation status of the Village's stormwater management program. For the detailed Audit agenda see Attachment A. Prior to conducting the Audit, EPA Region 2 reviewed program materials provided by the Village and NYSDEC for a list of said materials, see Attachment B. EPA Region 2 was provided with copies of additional program materials during and after the Audit for a list of said materials, see Attachment C. During the Audit, EPA evaluated the six (6) Minimum Control Measures (MCMs) established by the Permit, specifically, Public Education and Outreach; Public Involvement and Participation; Illicit Discharge, Detection and Elimination; Construction Site Stormwater Runoff Control; Post Construction Stormwater Management; and Pollution Prevention and Good Housekeeping for Municipal Operations. EPA Region 2's Audit included in-field verification of program implementation.

## 2. HISTORY & BACKGROUND

The State of New York is the delegated permitting and enforcement authority for the National Pollutant Discharge Elimination System (NPDES), or State Pollutant Discharge Elimination System (SPDES), program. NYSDEC is the delegated agency that implements the SPDES program and as such, issued a SPDES General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002), which became effective on May 1, 2010 and expires on April 30, 2015 (Permit).

The Village of Kiryas Joel submitted a Notice of Intent (NOI) signed on April 14, 2004 to NYSDEC and subsequently received Permit coverage under the SPDES General Permit (GP-02-02) (Permit No. NYR20A496) (the acknowledgement letter from NYSDEC is dated April 28, 2004). Former SPDES General Permit GP-02-02 became effective January 8, 2003 and expired on January 8, 2008. Permit coverage remained in full force and effect and was automatically carried over upon the reissuance of SPDES General Permit GP-08-002, which became effective on May 1, 2008 and expired on April 30, 2010. Upon expiration, permit coverage was automatically carried over to the current permit, GP-0-10-002, which, became effective on May 1, 2010 and expires on April 30, 2015.

### **3. PROGRAM EVALUATION FINDINGS**

#### **A. Evaluation Stormwater Management Program (SWMP), Management Structure and Effectiveness**

Based on information provided by Village representatives during the Audit, the Village of Kiryas Joel is approximately 1.1 square miles with a population size of approximately 22,195 residents. There are approximately 8-10 miles of Village-dedicated roadway, which are maintained by the Village except for snow removal which is done by the Town of Monroe. The Village is located in Orange County, New York and is fully within the Town of Monroe except for portions of the Village that is bordered by the Town of Woodbury on the east. The Village of Kiryas Joel's stormwater collection system is a combination of storm sewers, inlets, catch basins, drywells, recharge basins and outfalls.

Mr. Gerald MacDonald, Village Engineer, is the current MS4 contact for the Village. Mr. MacDonald and Mr. Zalmen Stern, Superintendent of the Department of Public Works (DPW), are responsible for the coordination of the Village's MS4 program.

There is not a "stormwater committee" that meets on a regular basis in the Village as part of the overall coordination of the MS4 program. Communication and coordination regarding compliance with the MS4 program is done at a minimum on a weekly basis between Mr. Stern and Mr. MacDonald.

Kiryas Joel is a permitted MS4 within, and separate from, the Town of Monroe. Although there are interconnections (e.g. Schunnemunk Road and Koznits Road), there is no intermunicipal agreement to form a coalition with Monroe or Woodbury. Although there is no written contract, there is a verbal agreement with Kiryas Joel and the Town of Monroe to provide services, including winter snow removal and allowing the Village to dump their street sweeper waste, among other things at the Monroe DPW yard. The Village of Kiryas Joel does not have a working relationship with the Town of Woodbury.

According to Mr. Stern, the Village's Stormwater Management Plan (SWMP) was originally developed in 2004 by Jacobowitz & Gubtis, LLP. The SWMP was referenced in the April 28, 2004 Acknowledgement of Notice of Intent by DEC. The Illicit Discharge Detection and Elimination portion of the SWMP was revised in November 2011 by Jacobowitz & Gubtis, LLP and have not been revised or updated since. In accordance with the 2003 permit, the Village was required to have fully implemented its SWMP Plan by January 8, 2008. Mr. Stern stated at the time of the Audit that the SWMP Plan has been fully implemented. During the 2009 Compliance Audit performed by the NYSDEC it was deemed to not be fully implemented. At the time of the EPA Audit on March 20 – 21, 2013, the SWMP Plan had not yet been updated to reflect changes in the 2010 MS4 Permit. The Village does not have a website to display the SWMP Plan; however, it would be made available for review by the public upon request, according to Mr. Stern.

According to Mr. Stern, the program is funded solely from Tax money and they have not applied or received any grants from the state of New York. There are multiple funding sources to leverage grants, including public bonds and capital improvement accounts, none of which have been explored by the Village.

The Village of Kiryas Joel is not located within a current TMDL watershed listed in Part III.B.2 of the Permit. In accordance with Part III.B.1 of the Permit, by January 8, 2013, covered entities must assess

potential sources of discharge of stormwater Pollutants of Concern (POC(s)), identify potential stormwater pollutant reduction measures, and evaluate their progress in addressing the POC(s). During the Audit, Village representatives stated that the Village has not formally assessed potential sources of POCs the program is reactive and not proactive. In the 2009 DEC MS4 Audit report, floatables were marked as the identified POC's.

**B. Public Education and Outreach / Public Involvement and Participation (MCMs 1 and 2)**

In accordance with Part VII.A.1.a of the Permit, the Village must identify target audiences in its SWMP Plan, amongst additional requirements. The Village's SWMP Plan does not identify target audiences or impaired waterbodies. During the Audit, Mr. Stern stated that public outreach is addressed through the ongoing decaling of stormwater curb inlets which was observed in the field, and issued EPA public awareness bulletins in water and sewer bills. These materials are also being circulated in schools and posted in public places such as Village Hall.

According to Village representatives, there has been no annual meeting for solicitation of comments for the SWMP Plan in the past; however, as stated by Mr. Stern there is not much community involvement with the program and they expected that no one would come if there was a meeting.

Measurable Goals

**MCM 1**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 1 – Public Education and Outreach

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Indicator: Public meeting on annual report	Village "Hot line" for reporting illicit discharges established and published in the local newspaper  Start including USEPA Stormwater publications with semi-annual utility bills to Village residents.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	8 Events, No public comments received	Village Officials notice streets and sidewalks cleaner and garbage disposal better controlled.
<b>Measurable goal for next reporting cycle?</b>	None reported	Continued semi-annual publication of a EPA published article on municipal stormwater management in local newspaper  Continued mailing of USEPA Publications with Village Semi-annual utility bills  Continued holding of annual meeting on recommended stormwater management practices with contractor.

**MCM 2**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

**Measurable Goals for MCM 2 – Public Involvement**

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Indicator: Public meeting on annual report	By informing the public of importance of stormwater management practices via newspaper articles and brochures included with utility bills, the Village hopes to begin engendering a sense of community participation in keeping the Village looking clean and free of debris.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	8 Events, No public comments received	Village officials are beginning to see an increase in public responsibility for keeping a clean appearance in sections of the Village.
<b>Measurable goal for next reporting cycle?</b>	None reported	Village officials are beginning to see an increase in public responsibility for keeping a clean appearance in sections of the Village.

**C. Illicit Discharge Detection and Elimination (“IDDE”) (MCM 3)**

IDDE Ordinance

In accordance with Part VII.A.3.f of the Permit, the Village is required to have an ordinance prohibiting illicit discharges into the MS4. The Village drafted the Stormwater Management Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled “Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems.” The law was certified by Donald G. Nichol, Esq, Village Attorney, October 10, 2008 and attached as Appendix “B” of the MS4 program manual for IDDE. After further review, Chapter 125-13 through Chapter 125-32 do not exist in the Village Code. Appendix “B” of the IDDE manual is a local law filing form which was never carried out and accepted. At the time of the Audit, the Village of Kiryas Joel did not have an ordinance prohibiting illicit discharges into the MS4 as required.

Outfall Mapping

The Village’s 2011 and 2012 Annual Report indicates that there are 105 identified outfalls, and 100% of these have been mapped. The Village’s IDDE manual that was revised in 2011 states 106 total outfalls. When questioned about the difference, Village representatives explained it as an oversight; the correct number is 105 outfalls.

During the Audit, Village representatives stated that the original mapping was not completed by January 8, 2005 as stated in the initial SWMP. Village representatives stated that the mapping was completed on December 16, 2008, and that since this completion date, the maps have not updated. The maps are in hardcopy format only and are not available in GIS. Preliminary storm sewershed boundaries have not been mapped by the Village as required to be completed by March 9, 2010 by part VII.A.3.b.ii of the permit.

### Outfall Inspections

The Village's initial SWMP Plan states that the Village will be able to start inspecting the system as early as January 8, 2005. Village representatives stated during the inspection that the outfall screening is done annually and a random 20% of the outfalls are inspected. The IDDE manual states that the screening will be broken down by Subwatershed which will be rotated through the following 5 years to get to 100% of the system. Village representatives stated that the outfalls are inspected visually and checked off a list. When asked to provide a copy of the outfall inspection records for the last 5 years, none were available at the time of the Audit. Village representative showed a copy of the outfall maps with check marks next to the outfalls that had been inspected. This is the only record of outfall inspections that was available at the time of the Audit. Village representatives were asked for a list of priority areas of concern for screening that are regularly visited, which was not available at the time of the Audit. The IDDE manual states 9 locations that have a "High potential for illicit discharges." The IDDE manual references the attached "Outfall Reconnaissance Inventory Field Sheet." No completed copies of this inventory list were available at the time of the Audit.

### IDDE Investigation and Enforcement

The Village's IDDE manual lists procedures for *identifying and locating* illicit discharges, dry weather screening, as well as procedures for *eliminating* illicit discharges. Annual reports show that the Village has yet to identify an illicit connection.

The Audit confirmed that the Village has developed a written program that includes the following: available equipment for investigating potential illicit discharges; procedures for track down; and procedures for eliminating illicit discharges; however, the program has not been adequately implemented.

### Spill Prevention & Response

In response to complaints reporting spills, the Village's representative stated that for all spills DEC is contacted. For spills that are large enough, contractors will be called in to clean and/or remove contaminated area. There have been 3 spills in the Village where DEC has been contacted and contractors have been hired. The Village does not have a tracking system to record any information such as cost, total amount spilled, etc. of these spills. One spill was for an estimated 1,000 gallons of fuel that resulted in 6,000 tons of contaminated soil to be removed for a cost of \$150,000. The second spill was approximately 10 gallons of fuel into a wetland for an undisclosed cost of cleanup. The third spill was from a homeowner draining home fueling tanks into the sanitary lines that led to the Harriman Waste Water Treatment Plant. Village representatives stated that the Village trucks have sorbent pads and socks for smaller spills. It was noted that no formal spill response training is administered to Village employees.

The Village does not track the number of public calls or complaints reporting spills or any other type of public complaint. Village representatives stated that none of the Village is on septic systems.

Measurable Goals

- Included in SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 3 – IDDE

<u>Year Annual Report Submitted</u>	2011	2012
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Indicator: Number of illicit Discharges identified/eliminated	This year ended 5-year program to complete all Village stormwater outfall inspections. The periodic inspection of potential “hot spots” continued with advisory comment by Village inspection when necessary.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	The Village has developed a tracking system and illicit discharges that have been identified are being eliminated, on average within two weeks of discovery.	Stormwater outfalls remained free of illicit discharges and hot spots have greatly improved.
<b>Measurable goal for next reporting cycle?</b>	N/A	Start second round of stormwater outfall structure inspections starting with Pam Brook subwater shed with contains 20% of Village outfalls. Bi-monthly inspections of Village “hot spots” will continue with follow-up inspections as necessary.

Field Component

EPA conducted outfall reconnaissance on both March 20 and March 21, 2013. EPA’s findings and observations at each outfall are summarized in the table below. Weather conditions at the time of the outfall observations were dry, however it snowed on March 19, 2013 which caused EPA to postpone the Audit until March 20, 2013. Photographs of the outfalls and catch basins observed are included in Attachment E.

**EPA Outfall Reconnaissance March 20 and 21, 2013– Village of Kiryas Joel**

<b>KJ MS4 Outfall Visited</b>	<b>Description</b>	<b>Status</b>
401	Behind Kiryas Joel DPW garage	Small flow ammonia levels 0.25, chlorine 0 mg/l. No odors observed. This is the outfall that would most likely receive overflows from the KJ Poultry Pretreatment Plant if they were occurring.
400	Across Highland Brook and downstream from the DPW garage.	There was a clear, non-turbid flow from this outfall. Ammonia and Chlorine levels were 0 mg/l. There were some bottles and debris

		observed at the outlet.
501	Catch basin discharges to Coronet Brook on Israel Zupnick Drive	No foams or sheens seen at this outfall.
502	Catch basin discharges to Coronet Brook on Israel Zupnick Drive	There was a trickle, no odor, ammonia levels 0 to 0.25 mg/l.
405	Bakertown Road/Highland Brook (outfall on the same side of the Highland Brook and Bakertown Road as Dinev Road.	No Discharge; No problems noted.
403	Bakertown Road/Highland Brook (Outfall across Bakertown Road from Dinev Road and across Highland Brook from Dinev Road	No Discharge; No problems noted.
404	Bakertown Road/Highland Brook (was said during the inspection to be outfall 402, but appears to be 404) (Outfall is on the same side of Highland Brook as Dinev Road and across Bakertown Road from Dinev Road)	The outfall and tributary catch basin had a considerable amount of mud and were in need of cleaning. There was no discharge at the time of this inspection.

### **Kiryas Joel Poultry/Dinev Road**

1. Based upon an EPA Compliance Evaluation Inspection of the Kiryas Joel Poultry plant on May 11, 2010, EPA identified that the Kiryas Joel Poultry facility failed to obtain the required NYSDEC Multi Sector General Permit for Stormwater Discharges (MSGP) and that the facility was discharging untreated and partially treated wastewater as well as chicken parts into the Kiryas Joel MS4 see Attachment E. MSGP coverage for the KJ Poultry Plant was obtained on or about May 1<sup>st</sup>, 2011. KJ Poultry's pretreatment facility is located adjacent to KJ DPW garage and the KJ Poultry plant is located within 1,000 feet of the KJ DPW garage
2. On February 21, 2013, EPA visited catch basins on Dinev Road. At this time there was a strong odor that, based on previous EPA visits to the poultry plant, appeared to be a poultry plant related waste/wastewater in the catch basin that is shown in photos 120, 122, 123 and video 121 see Attachment F and identified on the map (see Attachment G). 4) During the March 20 and 21, 2013 inspection KJ MS4 and Kiryas Joel Poultry personnel indicated that the trucks associated with Kiryas Joel Poultry would no longer be parked on Dinev Road which will avoid any leakage or other material from these trucks entering the catch basins on Dinev Road. Trucks will now be parked across Dinev Court from the Kiryas Joel Poultry facility. This new Kiryas Joel Poultry truck parking area must be added to Kiryas Joel Poultry's Stormwater Pollution Prevention Plan (SWPPP) and appropriate Best Management Practices (BMPs) installed so that pollutants associated with the truck parking area are not discharged to the Kiryas Joel MS4 or nearby surface waters.
3. On February 21, 2013 EPA observed a damaged catch basin at the corner of Bakertown Road and Dinev Road as shown in photographs 124 and 125 and video 126.

### **D. Construction and Post Construction Site Stormwater Runoff Control (MCMs 4 and 5)**

#### Construction Site Ordinance

The Village ordinance for Stormwater Management Chapter 125-1 through Chapter 125-12, was

adopted by the Village Board on September 4, 2007. The basis for the plan review procedures for Chapter 125 was the August 2005 New York State Standards and Specifications for Erosion and Sediment Control, and the New York State Stormwater Management Design Manual from August 2010. The Village ordinance includes SWPPP requirements, performance and design criteria, maintenance and repair of stormwater facilities, administrative enforcement, enforcement penalties, and fees for service. Included in the stormwater management ordinance are §125-7.G & §125-9.C, Contractor certifications and Maintenance after Construction, respectively, both of which Kiryas Joel representatives expressed as not being developed during the Audit.

### Construction Site Inventory

Prior to the Audit, the Village provided EPA with the following list of active construction sites within the Village MS4 greater than one (1) acre:

- (1) Mountainview Road Condominium, Mountain Road
- (2) Acres Estate II - Lemberg Court & Acres Road
- (3) Bakertown Road Condominiums - Dinev Road

EPA compared the inventory provided by the Village with active sites listed in the NYSDEC's Notice of Intent (NOI) database for active construction sites, which is available online at <http://www.dec.ny.gov/imsmaps/stormwater/viewer.htm>. According to the NYSDEC database, 13 construction sites were listed, with 11 marked as active without termination dates. During the Audit, representatives explained that of the 11 sites listed as active, 7 of them were finished with construction but did not submit Notice of Termination (NOT) forms. Mountain Hill Condos, aka Delta Bronze V was not listed on the active construction list submitted to EPA prior to the Audit, but was on the NYSDEC database and a portion of the Delta Bronze V site was still active with ongoing construction activities. Two other active sites, The United Talmudical Academy of Kiryas Joel (UTA of KJ) and Kinder Park were also not on the list of active construction sites submitted to EPA prior to the Audit. The UTA of Kiryas Joel was not in the NYSDEC Database. The Kinder Park, which is within the Town of Monroe, but owned and operated by the Village of Kiryas Joel, did have NYSDEC Construction General Permit coverage. All 6 active construction sites were inspected for compliance during the Audit. UTA of KJ is an unpermitted construction site that is active, and is located directly behind the DPW garage. The Village does not maintain an accurate inventory of active construction sites within the MS4's jurisdiction.

### SWPPP Review

The Village's SWMP Plan states the Planning Board Engineer review any SWPPP to ensure compliance with all state and local standards. The Planning Board Engineer stated that he does not have any written SWPPP review procedures to ensure compatibility with local and state laws and relies on his experience to determine if the SWPPP's are adequate. The 2011 Stormwater Pollution Prevention Plan Review Procedures & Construction Site Monitoring & Enforcement Procedures manual submitted to EPA states, "The planning board looks to its engineer to verify a site's plan technical compliance prior to considering site plan approval."

After a SWPPP is reviewed and accepted, the MS4 Acceptance form is not utilized to inform the contractor of the approval, instead a letter from the Village Engineer to the MS4 coordinator is issued with the contractor copied. This process is utilized for citing deficiencies at construction sites as well.



### Construction Site and Post-Construction Inspections

§125-10.A.1 of the Village Code requires the construction site applicant to notify the Village at least forty-eight (48) hours prior to the start of construction activities and completion of final landscaping, amongst additional milestones throughout the construction process, for the purpose of the Village conducting an inspection prior to, during and after these milestones. The notification and inspection requirements in the Village Code mirror those included in the NYSDEC Sample Local Law for Stormwater Management and Erosion and Sediment Control. Gerald McDonald, P.E. is the only Consulting engineer for the Village for stormwater related issues.

According to the SWMP Plan, a detailed SWPPP must be prepared in compliance with current stormwater management requirements, and construction personal onsite must be supervised by full time construction manager, who has a minimum of 4 hours DEC training. Full-time Village staff must visit construction sites regularly, and for larger construction sites over one acre must have a self-inspector review the site within 24 hours of a rain event consisting of .5" of rainfall and at a minimum of once per week. The SWMP states that if underground stormwater features are installed without Village staff present, the site manager is required to provide job photographs as necessary to ensure proper construction.

The SWMP plan states, "The Village has adopted model stormwater and illicit discharge local laws," upon further review it was noted that the stormwater ordinance is in the Village code; however, the illicit discharge ordinance is not. The Village has also prepared a local law permitting the Village to perform any stormwater work on a site that is required, yet the property owner has failed to perform. In this event, the Village can perform the necessary work to return the site to compliance and assess the cost back against the property owner on a tax bill. The draft language of this law is in Appendix "A" of the 2011 SWMP Review Procedure & Construction Site Monitoring & Enforcement Procedures. At the time of the Audit, this law was also not found in the Village Code.

The Village does not have a tracking system in place to document inspections of construction sites or post-construction stormwater management practices and maintenance performed.

### Construction Site Enforcement

Chapter 125 of the Village Code includes enforcement authority mechanisms for penalties, stop work orders and imprisonment.

The Village's SWMP Plan states the following: "Notice of Violation. If the Village determines that a violation has occurred, the notice of violation should generally contain: (1) The name and address of landowner, developer or applicant; (2) the address when available or a description of the building, structure or land upon which the violation is occurring; (3) a statement specifying the nature of the violation; (4) a description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action; and (5) a statement of the penalty or penalties that may be assessed against the person(s) to whom the notice of violation is directed."

At the time of the Audit, the Village provided copies upon EPA's request for any enforcement actions issued by the Village in 2013 for construction violations. EPA received copies of 6 NOV's and 1 stop work order issued in 2013. Upon further review of these documents it was discovered that all of the

issued actions were addressed to the DPW Superintendent (Mr. Stern) from the Consulting Engineer (Mr. MacDonald) and the landowner, developer or applicant responsible received a copy of the correspondence. It is the position of EPA that this procedure does not constitute an issuance of a Notice of Violation or a Stop Work Order as claimed by the Village. At the time of the Audit, Village representatives stated that the Village has not collected a penalty against any construction site for any violation since the MS4 was incorporated.

The annual report for 2011 and 2012 reported that a combined 34 NOV's and 2 Stop Work orders had been issued, which does not accurately reflect the enforcement activity performed by the Village, since no Notices of Violations or stop work orders were actually issued to an Owner or Operator of a construction site.

Notice of Termination (NOT)

As previously mentioned, and evidenced by the active construction list discrepancies, the Village does not conduct final inspections before signing off on NOT's at permitted construction sites. The Village's SWMP Plan does not include a written procedure for final inspections and signing the MS4 acceptance statement on the NOT. Chapter 125-11 Part F. of the Village code, Withholding of certificate of occupancy, states "If any building or land development activity is installed or conducted in violation of this local law, no certificate of occupancy shall be issued and no building or land shall be occupied." Village representatives stated that they have used this enforcement tool in the past, but no record of this could be produced to document withholding of the certificate of occupancy.

Training

At the time of the Audit, the Village representatives stated that they do not provide training to local construction operators but check to make sure they have training and ask them to get the required training if they do not have it. The Village submitted a staff training schedule to EPA that listed five total training events from 2005 until the time of the Audit. The list submitted did not have the names of the participants or completion certifications for the trainings.

Measurable Goals

**MCM 4**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 4 – Construction

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Percent SWPPs reviewed	All ongoing construction sites are periodically inspected. SWPPP sites are Self-inspected weekly by qualified professionals with reports. Smaller sites are inspected weekly
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	100% of SWPPs were reviewed. 67% of the SWPPs reviewed were returned with comments reflecting NYS standards. (3 reviewed)	Officials are noticing closer compliance with approved plans, stormwater management and erosion and sediment control details resulting in less adverse environmental impacts from construction sites

<b>Measurable goal for next reporting cycle?</b>	None reported	Village plans to continue its on-site inspections of all ongoing construction sites to insure compliance with SWPPP. On site foremen will be frequently checked form proof of erosion control training.
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During the Audit, the Village representatives stated that there is no formal SWPPP review process in place to assure compliance with state and federal regulations. SWPPPs are reviewed by the Village engineer who relies on his years of experience in the field to determine compliance.

During the Audit it was confirmed by Village officials that there is no tracking system in place to monitor active construction sites after SWPPP acceptance. The Village does not use the NYSDEC MS4 acceptance form to notify the applicant of SWPPP approval, instead the Village engineer sends a letter to the applicant stating that their SWPPP has been accepted.

With regards to complaints, Village representatives stated that there is no record to track complaints but they are usually addressed within one to two days. According to the 2011 annual report the Village issued (14) Notice of Violations, and (1) Stop Work Order. According to the 2012 annual report, the Village issued (20) Notice of Violations, and (1) Stop Work Order.

Based on EPA’s review of the Notice of violations and stop-work orders issued by the Village, all correspondence is addressed to the DPW superintendent and not the violating party.

**MCM 5**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

**Measurable Goals for MCM 5 – Post Construction**

<u>Year Annual Report Submitted</u>	2011	2012
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Number of reports of detention/ treatment device overflows during storms	All post-aeration construction stormwater management facilities continue to be the responsibility of the individual Homeowner Associations who contract for required ongoing maintenance.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	No overflows or flooding of any post construction devices.	All existing post-construction permanent facilities are observed by the Village Officials for adverse impacts and to date, none have been observed.
<b>Measurable goal for next reporting cycle?</b>	None reported	Village considers a system for municipal take-over of permanent post-construction stormwater facilities, the individual Homeowner Associations must continue to contract for necessary maintenance.

During the Audit, Village representatives admitted that there is no tracking system in place to monitor post construction maintenance or a list of permanent post construction BMPs. The Stormwater management local law adopted 2007 states that at a minimum a preventative and corrective maintenance program must be established for all facilities and systems of treatment and control which are installed or used by the owner or operator to achieve the goals of this law. According to the 2011 annual report, the Village inspected (1) filter system, (25) infiltration basins, and (2) ponds. According to the 2012 annual report, the Village inspected (1) filter system, (12) infiltration basins, and (2) ponds, which shows a reduction of 13 permanent post-construction infiltration basins.

### Field Component

During the Audit, EPA visited (4) permitted construction sites in the Village to assess the implementation of construction stormwater plans:

1. Mountainview Road Condominiums
2. Acres Estates II
3. Bakertown Road Condominiums
4. Mountain Hill Condos aka Delta Bronze V. (Note: The Delta Bronze site was not included in the original inventory of active sites provided by the Village, but it was discussed during the Audit.)

EPA also visited the United Talmudical Academy of Kiryas Joel, an unpermitted construction site in the Village. Findings and observations from each site are summarized below.

### **Mountainview Condominiums (SPDES Construction Permit No. NYR10V297), Mountainview Road, Kiryas Joel, NY (March 20 and 21, 2013)**

EPA conducted a reconnaissance inspection of this site on March 20 and 21, 2013, and met with site representatives Moshe Silverstein and Abe Muller during these inspections. The facility has a stormwater retention pond that receives flow from the higher portions of this site and also flows from the Vaad Mountain development across Mountain Road.

The SPDES General Permit for Stormwater From Construction Activity (CGP) GP-0-10-001 as well as previous CGPs require that at the completion of an inspection, the qualified inspector shall notify the owner or operator of any corrective actions that need to be taken, and the contractor shall begin implementing the corrective actions within one business day of this notification. Based on review of the site inspection records there were multiple items that the stormwater consultant outlined as deficiencies that existed for at least several weeks without being corrected. For example, the inspection reports conducted by the qualified site inspector on February 15, February 21, and March 7, 2013 each identified that;

- The swale and check dam need to be restored;
- All disturbed idle areas at the construction site need to be stabilized;
- All silt fence that is blown out or knocked down needs to be restored;
- Construction entrance needs to be restored;
- The inspections from February 21 and March 7, 2013 indicated that the Temporary Diversion Swale needs to be directed to the basin.

Part IV.C of the CGP requires that Qualified Site Inspections be conducted weekly (unless there is notification to the NYSDEC for a winter or temporary site shutdown and stabilization of the site).

During the inspection EPA reviewed the Qualified Site Inspection reports for the past year (dates in the table below). As indicated in the table below there are gaps in the inspections for period well over 7 days (see highlighted entries in the Table below).

Table: Qualified Site Inspections August 2012 to March 7, 2013			
Date of Site Inspection by Qualified Site Inspector	No. of Days from Previous Inspection	Date of Site Inspection by Qualified Site Inspector	No. of Days from Previous Inspection
8/23/2012		1/3/2013	6
8/30/2012	7	1/10/2013	7
9/6/2012	7	1/17/2013	7
10/5/2012	29	1/25/2013	8
10/11/2012	6	2/7/2013	13
11/15/2012	35	2/15/2013	8
11/29/2012	14	2/21/2013	6
12/6/2012	7	3/7/2013	14
12/13/2012	7		
12/20/2012	7		
12/28/2012	8		

**Acres II Estates, Lemberg Court, SPDES Permit No. NYR10P524, Kiryas Joel**

EPA conducted a reconnaissance inspection of this construction site along with KJ MS4 personnel along with site representatives Mr. Hillel Kahan and Mr. Joel Indig (Project Manager). EPA reviewed the dates of site inspection reports for weekly inspections as required by the CGP. Based on a review of the inspection reports there were gaps of 14 days or greater prior to the inspections on 8/13/12, 9/4/12, 10/15/12, 1/21/13, and 2/18/13 which do not conform to the permit requirements (see highlighted entries in the table below). During the site inspection, EPA also found various construction and post-construction BMP deficiencies.

Table: Acres II Estates Site Inspection Report dates on file conducted by Michael Sendor P.E. July 3, 2012 to March 11, 2013			
Inspection Report Date	No. of Days since Previous Inspection	Inspection Report Date	No. of Days since Previous Inspection
7/3/2012		11/19/2012	7
7/9/2012	6	11/26/2012	7
7/16/2012	7	12/3/2012	7
7/24/2012	8	12/10/2012	7
7/30/2012	6	12/17/2012	7
8/13/2012	14	12/26/2012	9
9/4/2012	22	1/7/2013	12
10/15/2012	41	1/21/2013	14
10/22/2012	7	1/27/2013	6

Table: Acres II Estates Site Inspection Report dates on file conducted by Michael Sendor P.E. July 3, 2012 to March 11, 2013			
Inspection Report Date	No. of Days since Previous Inspection	Inspection Report Date	No. of Days since Previous Inspection
10/29/2012	7	2/18/2013	22
11/7/2012	9	2/26/2013	8
11/12/2012	5	3/4/2013	6
		3/11/2013	7

Cells highlighted in yellow depict gaps of at least 14 days from the previous site inspection.

**Bakertown Condominiums – (NYR10J085) March 20, 2013**

During the site inspection EPA representatives visually inspected the stormwater retention pond used for post-construction stormwater control at Bakertown Condominiums. Construction activity appeared to be complete; however, this must be confirmed with the MS4 or facility representatives and a NOT filed only if the conditions in Part V of the CGP have been met.

**Delta Bronze V (Mountain Hill) NYR10J655 (Prag Boulevard)**

On March 21, 2013 EPA along with KJ MS4 personnel visited this site. Currently, there is one lot of this site that is currently under construction. KJ MS4 personnel stated that the development of the road and one of the lots was conducted by Mr. Chaim Werczberger. Mr. Werczberger and his engineer, Leonard Jackson Associates, applied for CGP coverage for the site in September 9, 2005 for a 12.3 acre site that would disturb 6.1 acres. KJ MS4 personnel then explained that individual lots were sold off to other developers that were developing sites less than an acre. KJ MS4 personnel explained that Mr. Werczberger was no longer associated with the site, However, Mr. Werczberger did not file a Notice of Termination for the site, nor did any of the new developers apply for CGP coverage for this site.

The CGP requires that permit coverage be obtained for construction activities involving soil disturbances of one (1) or more acres; including disturbances of less than one acre that are part of a larger common plan of development. The CGP also specifies that termination of coverage can take place when all construction activity identified in the SWPPP has been completed, and all areas of disturbance have achieved final stabilization. Therefore, Delta Bronze V must comply with its existing CGP or the new developer at the site must obtain CGP coverage for this specific site.

**United Talmudical Academy of Kiryas Joel (UTA of KJ) (Unpermitted NPDES ID NYU400900)**

As described in the attached inspection report for this facility see Attachment I, there was unpermitted construction activity that disturbed greater than 1 acre at this site (Village representatives said that 2 acres were disturbed). Construction activity at this site began prior to July 26, 2012. Disturbed soils, stockpiles, and unfinished building construction existed on the inspection dates of March 20 and 21, 2013 within 100 to 200 feet of the Village’s Department of Public Works facility. The construction site is adjacent to Highland Brook and stormwater associated with construction activity discharges to Highland Brook. The Village could not explain why it did not address this non compliant construction

activity that they were aware of. The Village's consultant Mr. MacDonald sent a non-compliance letter dated March 18, 2013 to the DPW with a copy to the UTA of KJ for this construction activity that did not have a SWPPP or Permit. He recommended that construction activity at the site be stopped.

## **E. Good Housekeeping and Pollution Prevention (MCM 6)**

During the Audit, the Village expressed that there are five municipal buildings that are Village operated and maintained, the DPW building, fire house, Drinking Water pump station(s), Drinking Water Treatment Plant, Kinder Park, and the Waste Water Treatment facility. The Village's SWMP Plan does not include a list or inventory of Village owned or operated facilities, or list municipal operations that contribute or potentially contribute pollutants of concern to the MS4.

### Municipal Operations and Facilities Self-Assessments

According to Village representatives, no self-assessments have been completed for any of the municipal facilities. The SWMP Plan does mention municipal facilities that are involved in the municipal operations; however, specific BMPs implemented at municipal facilities, should be included in the SWMP Plan. If stand-alone documents, such as a Best Management Practices (BMP) manual, have been developed for any municipal facility, such documents should be attached to or referenced in the SWMP Plan. Both the 2011 and the 2012 Annual Reports stated that self assessments were performed for over 8 Operations or facilities in the past 3 years.

According to Village representatives, a large plow vehicle is stored inside the DPW garage, as well as the smaller sidewalk plows. The Village utilizes Town of Monroe's facilities to wash its vehicles. There is no written agreement between the Village and Monroe for these services. No power washing of vehicles is conducted by the Village. Fueling for Trucks is conducted at gas stations, and emergency generators are refueled by a contractor. The wastewater treatment plant has an emergency generator that runs on natural gas. The Village street sweeper and Vacuum Truck are stored outside of the DPW garage.

### Parks

According to Village representatives, Kinder Park is the only park owned and operated by the Village, but it is located in the Town of Monroe. Construction of the 7.2 acre park is in the final stages of development, and at the time of the Audit a SWPPP for Kinder Park could not be produced. Don Nichol stated that the Village of Monroe NY MS4 program did not have oversight of the Kinder Park since it was a KJ Village facility that was being overseen by Kiryas Joel, even though the Kinder Park was located within the Village of Monroe and not Kiryas Joel.

During the inspection EPA observed a few areas of concern. There were unstabilized material storage piles located near the drinking water well/pump station, and the dirt road that leads to and across the lake was also in need of stabilization. KJ personnel indicated that in the future they planned on creating a walking path on this dirt road. Also, EPA and KJ MS4 staff could not locate the discharge point or outlet from the retention pond in the western portion of the site.

### Pesticide, Herbicides and Fertilizers

According to Village representatives, pesticides and fertilizers are not used at all within the Village. The SWMP does not have anything documented about pesticides or fertilizers.

### Catch Basin Cleaning

At the time of the Audit, it was unclear what percentages of catch basins were mapped. Village representatives stated that none of the storm drain pipes were mapped and they were unsure of the amount of catch basins in the collection system. Village representatives stated that catch basins are marked annually with a stencil that informs the public that they drain to surface waters.

Village representatives stated that hot spots in the system are cleaned 2-3 times per year but no written routine maintenance schedule or tracking record of catch basin inspections or cleanings was available at the time of inspection. The street cleaning and catch basin maintenance program that was submitted to EPA is incomplete. Jet/Vacuum trucks are used for cleaning, and solid wastes are undocumented and disposed in a designated area in the Town of Monroe. Representatives stated that if the Village experiences a clog in the storm drain, the jet/vacuum truck is used to free the blockage. No written procedure was available at the time of inspection for cleaning blockages in pipes.

### Street Sweeping

During the Audit, Village representatives said that approximately 8-10 miles of Village roads are swept weekly from the spring until the fall as weather permits. According to the Village's submitted Annual Reports, 10 miles of streets were swept during 2011 and 300 miles were swept during 2012. There was no clarification provided for the difference between 2011 and 2012. The Village has one street sweeper that cleans both parking lots and Village streets. According to the annual reports submitted, 20 acres of parking lots were swept in 2011 and 5 acres were swept in 2012. Street sweeper waste is disposed at the Town of Monroe high garage in a designated area. No records are kept for the amount of debris collected or the street sweeping schedule.

### Deicing Activities and Salt Storage

The Village uses a mixture of Calcium Chloride flakes and salt to deice the sidewalks. The mixture is approximately  $\frac{3}{4}$  salt and  $\frac{1}{4}$  calcium chloride. There is no record keeping for the amount used, but it is spread on all sidewalks. After storm events the material is left on the sidewalks and is not picked up by street sweepers. Salt is picked up at the Town of Monroe DPW building and any remaining salt left in the trucks which are stored inside the Village DPW garage overnight. There are no salt storage piles or containers in the Village. The de-icing of roadways in the Village is not done by the Village of Kiryas Joel, but is done by the Town of Monroe.

### Road Maintenance

When the Village conducts road maintenance procedures, the Village does not incorporate stormwater BMPs for street sweeping. However, Village reps stated that sand bags and inlet protection are utilized during curb repairs and painting.



Waste Management

According to Village representatives, yard debris is picked up by contractors. Due to the nature of the community and the multifamily dwellings, all landscaping work is contracted out. These companies are responsible for yard debris pick up and all landscaping activities. Garbage collected within the Village daily and at the village park weekly. There is no program for the collection of household hazardous waste by the Village, however Orange county holds household hazardous waste collection days.

According to Mr. Stern, smaller roadkill is disposed of in the woods by village employees, but in the case of larger roadkill the Town of Monroe will be called to come pick it up.

Training

The Village’s SWMP Plan has in its measurable goals that an employee training program will be in place by January 2005. During the Audit, Village representatives stated that no employee training program exists. The Village submitted a staff training summary which identified names and dates of five trainings from 2011 to 2005. There is record of who attended these trainings or if certifications were received. The Village does not have any program for which new employee trainings are required.

The 2011 Annual Report submitted by the Village listed stormwater management training provided to municipal employees in the last reporting period with a date of 4/14/2010; this date was not listed on the submitted staff training summary. The 2012 Annual Report submitted by the Village listed one stormwater management training provided to municipal employees in the last reporting period with a date of 4/20/2011; this date was not listed on the submitted staff training summary.

Measurable Goals

- Included in SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measureable Goals for MCM 6 – Good Housekeeping and Pollution Prevention

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Catch basins inspected and cleaned	The Village DPW, which includes garbage truck oversight, has taken on responsibility for “good housekeeping” at all Village Operations, Including truck storage and maintenance facilities.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	In this reporting period scheduled inspections were increased by 50%. Maintenance was performed 50% more often than last year. This resulted in a decrease in deployment of personnel during storm events to perform emergency maintenance.	With singular responsibility, Village Officials have observed a noticeable improvement in cleanliness with garbage pick-up, truck storage and maintenance facilities.
<b>Measurable goal for next reporting cycle?</b>	None Reported	The Village DPW will continue to work on improvement of “housecleaning” at all its Village operations and facilities.

## Field Components

During the Audit, EPA visited two (2) Village of Kiryas Joel municipal facilities, the DPW garage and Kinder Park. Findings and observations for Kinder Park were described previously under Parks.

### Department of Public Works Garage

On March 21, 2013, EPA visited the DPW facility along with Zalman Stern of the Kiryas Joel DPW. The DPW facility was kept in good condition and was very tidy inside. Most vehicles are stored inside and there was no sign of oil leaks or spills on the floor. There were two potential non compliance/areas of concern that need to be addressed. The facility has an oil/water separator that appeared to be clean, but the discharge from the oil water separator is connected into the MS4 and not into the sanitary sewer. The DPW also has a sink that is piped directly outside of the building to the ground. This wastewater could (depending on flow from the sink, weather and soil conditions) flow downhill into the adjacent Highland Brook. The Village of Kiryas Joel does not have a SPDES permit to discharge from its oil/water separator or the sink in the DPW garage.

## **F. Annual Report Review**

As required by Part V.A of the Permit, the Village must conduct an annual evaluation of its program compliance, the appropriateness of its identified BMPs, meeting new permit requirements, and progress towards achieving its identified measurable goals, which must include reducing the discharge of pollutants to the maximum extent practicable (MEP). Where the evaluation shows that the SWMP Plan is not reducing discharges to the MEP, the SWMP Plan shall be revised.

Village representatives stated that Michelle Babcock of Jacobowitz and Gubits, LLP has completed and submitted the last few annual reports. During the Audit, Ms. Babcock was not available to explain her procedures for evaluating progress towards measurable goals, program effectiveness, or information to include in the report.

## **4. POTENTIAL NON-COMPLIANCE ITEMS, AREAS OF CONCERN**

### **A. Stormwater Management Program (SWMP), Management Structure and Effectiveness**

#### **i. Potential Violation**

- a. Part IV.D of the Permit requires all permittees to fully develop and implement their SWMP. At the time of the Audit, the Village failed to update their SWMP to incorporate the 2010 MS4 Permit changes. In accordance with Part X of the Permit, a SWMP needs to include *measurable goals* for each of the BMPs, at the time of the Audit, all measurable goals in the SWMP concluded in 2008.

ii. Area of Concern

- a. In accordance with Part III.B.1 of the Permit, by *January 8, 2013*, covered entities must assess potential sources of discharge of stormwater POC(s), identify potential stormwater pollutant reduction measures, and evaluate their progress in addressing the POC(s). Covered entities must evaluate their SWMP with respect to the MS4's effectiveness in ensuring there is no net increase discharge of stormwater POC(s). At the time of the Audit, the Village had not formally assessed the potential sources of discharge of stormwater POCs such as litter and floatables.

**B. MCMs 2 – Public Involvement/Participation**

i. Potential Violation

- a. In accordance with Part VII.A.2.d of the Permit covered entities must, *prior* to submitting the final annual report to the NYSDEC by June 1 of each reporting year, present the draft annual report in a format that is open to the public, where the public can ask questions about and make comments on the report. This can be done at a public meeting or on the internet, per the requirements listed in Part VII.A.2.d.i of the Permit. According to Village representatives, the draft annual report is not made available to the public prior to submitting the final annual report.

**C. MCM 3 – Illicit Discharge Detection and Elimination**

i. Potential Violations

- a. In accordance with Part VII.A.3.b.ii of the Permit, by March 9, 2010, all covered entities must develop and maintain a map showing the preliminary boundaries of the covered entity's storm sewersheds have been determined using GIS or other tools, even if they extend outside of the urbanized area (to facilitate track down), and additionally designated area within the covered entity's jurisdiction. At the time of the Audit, the Village had not mapped its storm sewersheds.
- b. In accordance with Part VII.A.3.f of the Permit, prohibit, through a law, ordinance, or other regulatory mechanism, *illicit discharges* into the small MS4 and implement appropriate enforcement procedures and actions. At the time of Audit, Village representatives provided Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled "Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems," as its local illicit discharge ordinance. Upon further review, it was determined that Chapters 125-13 through 125-32 were never filed and are not part of the Village Code. Therefore, at the time of the Audit, the Village did not have a local ordinance for illicit discharges as required by the Permit.
- c. Part VII.A.3.g of the Permit requires covered entities to develop and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include, but is not limited to, the following: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for

eliminating illicit discharges; and, procedures for documenting actions. Although the Village's SWMP Plan does include the following information: available equipment for investigating potential illicit discharges; procedures for track down; and, procedures for eliminating illicit discharges, the Village has not adequately implemented its program.

- d. Part VII.A.3.I of the Permit requires covered entities that have been covered for at least three years or more to report on the following: number and percent of outfalls mapped, percent of outfalls for which an outfall reconnaissance inventory has been performed, status of system mapping, etc. During the Audit, Village representatives stated that no formal tracking program exists or that an inventory is taken for outfall inspections.
- e. On numerous occasions the Kiryas Joel Poultry Plant was observed to be discharging process wastewaters, non-allowable non-stormwater into the Kiryas Joel MS4 by EPA. Prior to April 2011 the Kiryas Joel Poultry Processing Plant did not have coverage under the required SPDES Multi-Sector General Permit for Stormwater Associated with Industrial Activity. As recent as February 2013, EPA identified a catch basin on Dinev Road with an odor of poultry waste. The Kiryas Joel MS4 never initiated enforcement action against the Kiryas Joel Poultry Plant, nor did it identify or take action on the large number of illicit discharges into the MS4.

#### **D. MCMs 4 & 5 – Construction and Post Construction**

##### **i. Potential Violations**

As required by Part VII.A.4.a.i of the Permit, all covered entities must develop, implement and enforce a program that provides equivalent protection to the NYSDEC Construction General Permit (CGP). At the time of the Audit, the Village's MS4 program did have the Local law for stormwater management that required sites to obtain CGP coverage, submit an NOI, and receive acknowledgement from the NYSDEC verifying coverage prior to the start of construction activity. Although this ordinance was in place, it was evident during the Audit that it was not being implemented or enforced.

- a. As required by Part VII.A.4.a.ix of the Permit, all covered entities must develop, implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, which includes determining that it is acceptable for the owner or operator of a construction project to submit the Notice of Termination (NOT) to the NYSDEC by performing a final site inspection themselves or by accepting the Qualified Inspector's final inspection certification(s) required by the NYSDEC CGP. The principal executive officer, ranking elected official, or duly authorized representative shall document their determination by signing the "MS4 Acceptance" statement on the NOT. At the time of the Audit, the Village's MS4 did not contain a mechanism that ensured that the "MS4 Acceptance" statement was signed by a qualified individual on the NOT. As evidenced by the inaccurate list of active construction sites, the Village has not been diligent in enforcing the NOT procedures.
- b. As required by Parts VII.A.4.a.vii and VII.A.4.a.ix of the Permit, the covered entity must ensure that individuals performing SWPPP reviews and site inspections are

adequately trained and understand the State and local sediment and erosion control requirements. Adequately trained means receiving inspector training by a NYSDEC sponsored or approved training. At the time of the Audit, the Village's MS4 program did not include a mechanism for tracking or documenting training completed by Engineering Department SWPPP reviewers and inspectors.

- c. As required by Part VII.A.4.a.xii of the Permit, the covered entity shall establish and maintain an inventory of active construction sites, including the location of the site, owner/ operator contact information. At the time of the Audit, it was clear that the list of active construction sites was not properly being maintained due to the abundant discrepancies of active and closed construction sites on the list. The NYSDEC construction stormwater database for Orange County/Kiryas Joel contained several construction sites that were said to have been completed, but no NOT was filed which includes but is not limited to: Village of Kiryas Joel Business Center; KJ Union Free School; Kiryas Joel School; KIRYAS JOEL SIDEWALKS PHASE 7; KIRYAS JOEL SIDEWALKS PHASE 6.
- d. As required by Parts VII.A.4.a.xiii and VII.A.4.a.xiv of the permit, covered entities shall develop (for newly authorized MS4's) record, periodically assess and modify as needed measurable goals; and select and appropriate construction stormwater BMPs and measurable goals to ensure the reduction of all POCs in stormwater discharges to the MEP. At the time of the Audit, the Village's SWMP Plan had all measurable goals identified as being completed in 2008. Upon review onsite, EPA representatives concluded that not all of the expired measurable goals were completed and the stormwater management plan had not been assessed and/or modified in recent years.
- e. As required by Part VII.A.4.b.ii of the Permit, covered entities are required to report on the number and type of enforcement actions at construction sites. Based on review of annual reports and documentation of stop-work orders provided by the Village during the Audit and the Annual Reports for 2011 and 2012, which indicated that two (2) stop-work orders had been issued, the data provided do not accurately reflect the actual enforcement activity of the Village during those years. It was determined that no stop-work orders were actually issued during 2011 & 2012.
- f. As required by Parts VII.A.5.e.iv and VII.A.5.e.v of the Permit, covered entities are required to report on the number and type of post-construction stormwater management practices inspected and maintained. Based on review of the Annual Reports and discussion with Village representatives during the Audit, the number of post-construction controls inspected and maintained has not been accurately reported. The Village should track all inspection and maintenance activities associated with all post-construction BMPs so that it may accurately report post-construction activities in its annual reports.

ii. Areas of Concern

- a. Part VII.A.4.a.vii of the Permit requires that covered entities develop, implement and enforce a program that describes procedures for SWPPP review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements. The Village's SWMP Plan should be updated to clearly indicate that procedures for SWPPP review. If a checklist will be used by SWPPP reviewers, it should also be referenced in the SWMP Plan.
- b. The Village's SWMP Plan should be updated to include greater detail with regard to the Village's procedures for conducting inspections at construction sites. The SWMP Plan should include a minimum frequency at which construction sites are inspected by the Village and should include the Village's protocol for inspecting sites after rain events. If a checklist is used by Village inspectors, the SWMP Plan should reference the checklist so that it may be easily identifiable.

**E. MCM 6 – Good Housekeeping and Pollution Prevention**

i. Potential Violations

- a. Part VII.A.6.a.ii of the Permit requires covered entities to, at a minimum frequency of once every three years, perform and document a self assessment of all municipal operations addressed by the SWMP to: determine the source of pollutants potentially generated by the covered entity's operations and facilities; and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Village had never performed a self assessment of its operations or facilities.
- b. Part VIII.A.6.a.iii.vi of the Permit requires that the covered entities should include an employee pollution prevention and good housekeeping training program and ensure that staff receives and utilize training. At the time of the Audit, there was no training program to ensure staff received necessary training.

ii. Areas of Concern

- a. During the field portion of the Audit, EPA identified a sink in the back of the DPW building reportedly used for hand-washing that directly drains outside onto the ground. As discussed with Village representatives during the Audit, the Village should must connect the discharge into the sanitary sewer line or obtain an individual SPDES Permit for the discharge.
- b. During the field portion of the Audit, EPA identified floor drains in the DPW building that drain to an oil/water separator. The discharge of the oil water separator goes into an MS4 outfall which is an illegal connection, and an illicit discharge. During the Audit, EPA representatives explained that discharge needed to be piped into the sanitary sewer plant for treatment or an individual SPDES Permit obtained for the discharge.

- c. On February 21, 2013 EPA visited catch basins on Dinev Road during a separate inspection from the Audit, and observed a strong odor that, based on previous EPA visits to the poultry plant, appeared to be a poultry plant related waste/wastewater discharge in the catch basin. During the March 20 and 21, 2013 Audit, Kiryas Joel MS4 and Kiryas Joel Poultry personnel indicated that the trucks associated with Kiryas Joel Poultry would no longer be parked on Dinev Road which would prevent any leakage or other material from these trucks entering the catch basins on Dinev Road. Trucks will now be parked across Dinev Court from the Kiryas Joel Poultry facility.

## **F. Annual Reporting**

### **i. Potential Violations**

- a. Part V.D of the Permit states, the MCC form, provided by the Department, certifies that all applicable conditions of Parts IV, VII, VIII and IX of this SPDES General Permit are being developed, implemented and complied with. Furthermore, Part V.D states, if compliance with any requirement cannot be certified to on the MCC form, a complete explanation with a description of corrective measures must be included as requested on the MCC form. Failure to submit a complete annual report (Part V.C) and a complete MCC form shall constitute a permit violation. During the Audit, EPA representatives highlighted numerous discrepancies in the information reported in the 2011 and 2012 Annual Reports.

**ATTACHMENT A**



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## **ATTACHMENT F**

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## **ATTACHMENT G**

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**ATTACHMENT H**

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**ATTACHMENT I**



Allegro Itr.

John Allegro  
288 Seven Springs Mountain Road  
Monroe, NY 10950

April 2, 2014

Robert L. Ewing  
Environmental Analyst II  
New York State Department of Environmental Conservation  
Division of Environmental Permits, 4<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-1750

Re: Lead Agency Dispute  
Proposed Land Annexation from  
Town of Monroe to Village of Kiryas Joel  
Town of Monroe, Orange County

Dear Mr. Ewing:

I respectfully submit this letter to advise the Department of certain facts that should be relevant to the Commissioner's Lead Agency determination. In particular, I would like to point out various facts and circumstances that raise questions about the Village of Kiryas Joel's willingness and ability to have an open and transparent review process that promotes public participation, as SEQRA requires.

A. The Village Has Not Been Responsive To My FOIL Requests: On February 12, 2014, I entered the Kiryas Joel Village offices, at 51 Forest Rd. Floor 3, at about 12:30 pm. The purpose of my visit was to deliver a request for copies of documents under the Freedom of Information Law. My request was formatted based on a template provided on the NY State Committee on Open Government website, submitted in writing, signed, and hand delivered to a woman behind the front counter. It was directed to the attention of Kiryas Joel Village Administrator Gedalye Szegedin, as I was instructed to do during a visit to the Village office on February 11. I was seeking the following basic information:

1. Names of the Village Board members
2. Names of Village Planning Board members
3. Names of Zoning Board of Appeals members
4. Location and scheduled dates of Zoning Board of Appeals meetings
5. Location and scheduled dates of Planning Board meetings
6. Minutes from all Planning Board meetings held from July 2012 through February 2014
7. Minutes from all Zoning Board of Appeals meetings held from July 2012 through February 2014
8. Minutes from all Village Board meetings held from July 2012 through February 2014
9. List of all Village employees, including: Name, Title, Job Description, Salary

I have received no communications from any Kiryas Joel Village employee in response to this request.

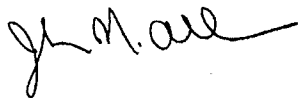
On March 5, 2014, I visited the Kiryas Joel Village offices to submit another request for information under the Freedom of Information Law. My request was formatted in the same manner as the request that was submitted on February 12, 2014, and was directed to the attention of Gedalye Szegedin, the Village Administrator. The request that I brought to the Village on this date was for copies of documents relevant to a petition to annex 507 acres from the Town of Monroe into the Village of Kiryas Joel, specifically; signed copies of a restrictive covenant and easement between Kiryas Joel and owners of properties that are listed on the annexation petition.

In this instance, the Village employee brought my request to the office of Mr. Gruber. She came back without any form of receipt. I asked that she generate a photocopy of the document and either stamp or initial and date it. She went back into Mr. Gruber's office, and returned with my original request. She told me that Mr. Gruber would not provide any form of receipt of the document. I asked several times, and was repeatedly told that I can "take it (the FOIL request) back." This Village employee made great efforts to place the document in my hand, to the point that I had to back away and tell her that I did not want it back. I left without any record that my document was received, other than the audio recording that I made of my visit.

I have received no communications from any Kiryas Joel Village employee in response to this request.

B. Lack of Open Meetings: On February 28, 2014 at 12:30 p.m., I called the Village offices of Kiryas Joel. My purpose was to confirm the location and time of the Village Planning Board meeting for March 2014. I found information on the Orange County, NY website stating that Village Planning Board meetings are held on the first Sunday of every month at 9:00 p.m. (<http://www.orangecountygov.com/content/124/1362/1460/10182/10928/default.aspx>) I spoke with a Village staff member who confirmed that the information I obtained was correct, but that I needed to confirm with the building department. I left a voice message with the building department immediately after this conversation. My call was never returned. On Sunday March 2, 2014, I went to the notice location for the meeting, 51 Forest Road, at 9:00 p.m. with the intention of attending the scheduled Planning Board meeting. The doors to the Village offices were locked. No notice of a meeting change or cancellation was posted at the entrance of the building.

Respectfully Submitted,



John N. Allegro



ZARIN &  
STEINMETZ

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

November 24, 2014

**Via ECF Only**

Hon. Vincent L. Briccetti  
United States Courthouse  
300 Quarropas Street, Room 630  
White Plains, New York 10601

***Re: United States v. Kiryas Joel Poultry Processing Plant, Inc., and  
Kiryas Joel Meat Market Corp., No. 14-cv-8458(VB)  
Comments on Consent Decree***

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

Your Honor:

This Firm represents United Monroe, a group committed to transparent and open government, whose members include residents of the Town of Monroe and others who live in the surrounding community. Pursuant to 28 C.F.R. § 50.7, we respectfully submit these comments on the Consent Decree proposed in the above-referenced Action brought by the United States of America against the Kiryas Joel Poultry Processing Plant, Inc. (“KJPPP”) and Kiryas Joel Meat Market, Inc., for violations of the Clean Water Act. We write to alert the United States to the apparent relationship between KJPPP and the Village of Kiryas Joel (the “Village” or “Kiryas Joel”), a municipality with a longstanding history of environmental violations and serial failure to follow federal, state and local laws.<sup>1</sup> The penalties imposed by the Consent Decree should be high enough to promote environmental compliance by not only KJPPP, but the Village as well.

**The Village Has Close Ties To KJPPP Management**

It appears that the Village is the actual impetus behind multiple private entities conducting business within its borders, including KJPPP, and/or that there is a close relationship between the Village and such entities. Upon information and belief, KJPPP’s president Mayer Hirsch was a Village Trustee from 1982 to 1990, and Chairman of the Planning and Zoning Boards from 1990 to 1997. During this time, upon information and belief, he was also Chairman of the Kiryas Joel Municipal Local Development Corporation, a quasi-governmental agency, and later served as Vice Chairman of the same corporation. Upon information and belief, he has also served as a Trustee of the United Talmudical Academy, the private school system in the Village, and is now CEO of Burdock Realty Corp., which owns property within an area adjacent to the Village

<sup>1</sup> The Village is located within the Town of Monroe’s borders. As such, United Monroe is concerned with governance practices in the municipalities of both Monroe and Kiryas Joel.

that the Village is seeking to annex.<sup>2</sup> In 1989, upon information and belief, Hirsch incorporated Vaad Hakiryah of Kiryas Joel, Inc., which owns several hundred acres of land in Orange County. The current Mayor of the Village, Abraham Wieder, was apparently president of Vaad Hakiryah in the early 1990s. During his tenure as president, upon information and belief, Wieder was also serving as Deputy Mayor of the Village, as well as president of Congregation Yetev Lev, the local synagogue, and president of Board of the Kiryas Joel Village Union Free School District, a public school district for special education students in the Village. Like Hirsch, upon information and belief, Wieder was also a Trustee of the United Talmudical Academy. Wieder has been Mayor of the Village since 1995.

Given the apparent connection between KJPPP and Village officials, any representations by KJPPP that it will observe the Compliance and Mitigation Requirements, as well as Reporting Requirements, imposed under the Consent Decree must be analyzed in light of the Village's history of noncompliance with federal, state and local laws. Moreover, respectfully, the Court should recognize that it is not enough to compel compliance from KJPPP. The penalty should also be sufficiently high to encourage the Village to obey all environmental laws, as well.

### **The Village Systemically Fails To Abide By Environmental Laws**

The Village has routinely flouted applicable land use and environmental laws and regulations, resulting in a pattern of disregard for the environment and its citizens. Exactly one year ago, the U.S. Environmental Protection Agency found that “the Village has violated and remains in a state of noncompliance with [Clean Water Act] Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the MS4 General Permit.” The factual findings in the made in the subsequent Administrative Consent Order demonstrate that the Village failed to fulfill fundamental requirements, such as failing to map its storm sewersheds, failing to implement and enforce requirements pertaining to obtaining coverage under the Construction General Permit, a lack of any procedures for review of Stormwater Pollution Prevention Plans, inaccurate records in a variety of areas, and a lack of a training program to ensure that staff receives necessary training.

Similarly, the Village has continuously failed to comply with state environmental regulations, including the New York State Environmental Quality Review Act (“SEQRA”). See, e.g., Cnty. of Orange v. Vill. of Kiryas Joel, 11 Misc.3d 1056(A), 815 N.Y.S.2d 494 (Sup. Ct. Orange Cnty. 2005) (holding that the Village did not take the requisite “hard look” under SEQRA at the potential adverse environmental impacts of a proposed water pipeline), aff'd as modified, 44 A.D.3d 765, 844 N.Y.S.2d 57 (2d Dept. 2007). Moreover, once the Kiryas Joel Wastewater Treatment Plant was constructed and operational, the New York State Department of Environmental Conservation (“DEC”) found that it was in noncompliance with the State Pollutant Discharge Elimination System (“SPDES”) Permit and Article 17 of the New York State Environmental Conservation Law. By letter dated May 16, 2013, DEC issued a Notice of

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<sup>2</sup> United Monroe is opposing the Village's action for annexation, which has taken the form of two Petitions for Annexation: one Petition to annex 507 acres of land, and another Petition to annex 164 acres of land. Again indicative of the relationship between the Village and local businesses, the Village is hiding behind Simon Gelb, a developer who is the supposed “petitioner” for annexation.

Violation to the Village Mayor and Board of Trustees. The findings in this letter reflect a serial disregard for environmental conditions. By way of example, the letter states that DEC had previously noted that certain improvements were required at the Plant to prevent rags and other solids from entering the system, and that DEC had previously required these improvements be completed by March 1, 2008. More than five years later, however, as of the date of the DEC letter, these improvements still had not been effectuated.

Courts consider an agency's history of noncompliance with environmental regulations when, for example, reviewing the adequacy of any environmental review. 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."); Natural 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 environmental impact statement 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). Here, your Honor, and Plaintiff the United States, should consider the Village's history of poor environmental stewardship before approving and/or entering into a final Consent Decree with KJPPP.

### **Recent FOIL Response Confirms Village's Continued Failure To Comply With The Law**

A recent response from Kiryas Joel to a request made by United Monroe under the New York State Freedom of Information Law ("FOIL") raises further doubts about the Village's ability and willingness to comply with federal, state and local regulations. By letter dated August 18, 2014, United Monroe requested that the Village provide basic information relating to its planning processes pursuant to FOIL, 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; (iv) copies of all determinations by any Village agency(ies) pursuant to SEQRA; and (v) 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.

This information would reflect Kiryas Joel's compliance with the most basic land use and environmental laws, and should be neither difficult to locate, nor onerous to produce. Kiryas Joel, however, did not even send United Monroe an acknowledgment of its FOIL request, let alone produce any responsive documents. Accordingly, on September 15, 2014, United Monroe appealed Kiryas Joel's constructive denial of its August 18<sup>th</sup> FOIL request. In response, on September 29, 2014, Kiryas Joel provided a copy of its 1999 Comprehensive Plan and its Village Code. On October 28, 2014, United Monroe sent another letter to Kiryas Joel, inquiring as to whether it would be producing any further documents in response to the August 18<sup>th</sup> FOIL Request. On November 10, 2014, Kiryas Joel responded by producing all agendas and minutes prepared in connection with Village Planning Board Meetings since January 2012. Kiryas Joel

did not produce any determinations under SEQRA, any documents indicating compliance with New York General Municipal Law 239-m, any showing of Board members' satisfaction of state law requirements, or any relevant documentation from the Zoning Board of Appeals. On November 19, 2014, counsel for Kiryas Joel confirmed that there would be no further documents forthcoming, and that none were being withheld as exempt under FOIL. Thus, Kiryas Joel's limited response to United Monroe's August 18<sup>th</sup> FOIL request further demonstrates its routine failure to comply with local and state land use and environmental laws.

**Conclusion**

KJPPP appears to be closely connected with the Village of Kiryas Joel. Accordingly, the penalty imposed by the Court should be sufficient to compel compliance by both KJPPP and the Village.

Please do not hesitate to contact us should you have any questions.

Respectfully submitted,

ZARIN & STEINMETZ

By: 

Daniel M. Richmond (DR2652)

Krista E. Yacovone

cc:

(via overnight mail)

Preet Bharara, Esq.

United States Attorney for the Southern District of New York

Tomoko Onozawa, Esq.

Assistant U.S. Attorney, Southern District of New York

Ellen Mahan, Esq.

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Dep't of Justice

Eric Schaaf, Esq.

Regional Counsel, U.S. Environmental Protection Agency, Region 2

Edward Scarvalone, Esq.

Doar Rieck Kaley & Mack

Mayer Hirsh

President, Kiryas Joel Meat Market, Inc.

Chaim Oberlander

Vice President, Kiryas Joel Poultry Processing Plant, Inc.

John Allegro

United Monroe



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Daniel M. Richmond  
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David S. Steinmetz ■  
Krista E. Yacovone  
Michael D. Zarin

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

December 3, 2014

**Via Overnight Mail**

Robert L. Ewing  
Environmental Analyst II  
New York State Department of Environmental Conservation  
Division of Environmental Permits, 4<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-1750

**Re: Lead Agency Dispute  
Proposed Land Annexation from  
Town of Monroe to Village of Kiryas Joel**

Dear Mr. Ewing:

As you know, this Firm represents United Monroe, a group of concerned residents committed to transparent and open government. Its members include residents of the Town of Monroe (the “Town”) and others who live in the surrounding community. United Monroe submits this letter in connection with the Lead Agency Dispute that remains pending before your Department regarding the proposed annexation of 507 acres of land by the Village of Kiryas Joel (“Kiryas Joel” or the “Village”) from the Town. Kiryas Joel has, once again, failed to abide by environmental laws and regulations, further demonstrating that it is unfit to serve as Lead Agency for the annexation.

By letter dated November 7, 2014, your Department issued a Notice of Violation (“NOV”) to the Village in connection with a recent “Unsatisfactory” rating at Kiryas Joel’s municipal Wastewater Treatment Plant following a Comprehensive Annual Compliance Inspection. (A copy of the NOV and accompanying Municipal Wastewater Facility Inspection Report is annexed hereto.) The NOV noted that Kiryas Joel is currently operating its Wastewater Treatment Plant without a valid SPDES Permit, and has been doing so since July 31, 2014. The NOV also requested that the Village submit a corrective action plan by December 1, 2014, to remediate certain deficiencies at the Plant, including: (i) solid handling problems as a result of the



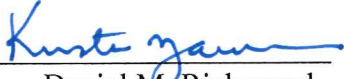
pump house's broken mechanical screen, which has been out of service since June 1, 2014; (ii) incorrect calculations of reported discharge values in the May 2014 Discharge Monitoring Report; (iii) failure to produce the April 2014 laboratory reports; and (iv) failure to correct other deficiencies at the Plant cited in the Department's last inspection letter, dated August 26, 2013.

In light of this information, respectfully, United Monroe reiterates its position that it would be improper and irresponsible to allow Kiryas Joel to serve as Lead Agency for the annexation.

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

Respectfully submitted,

ZARIN & STEINMETZ

By:   
Daniel M. Richmond  
Krista E. Yacovone

Encl.

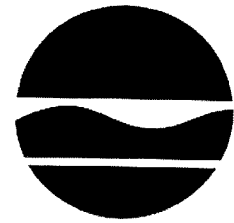
cc: John Allegro (via email)  
Emily Convers (via email)

**New York State Department of Environmental Conservation  
Division of Water, Region 3**

100 Hillside Avenue • Suite 1W, White Plains, New York 10603-2860

Phone: (914) 428-2505 • FAX: (914) 428-0323

Website: www.dec.state.ny.us



**Joe Martens  
Commissioner**

November 7, 2014

Mayor and Village Trustees  
Village of Kiryas Joel  
P. O. Box 566  
51 Forest Road  
Monroe, NY 10950

**Re: Annual Compliance Inspection – Notice of Violation  
Kiryas Joel Wastewater Treatment Plant  
SPDES Permit No.: NY0250520  
Order on Consent: Case No. R3-20080229-14, R3-20080229-14-A15, R3-20030930-124**

Dear Village Officials:

On September 17, 2014, a compliance inspection of the above referenced facility was performed for the purpose of evaluating compliance with the State Pollutant Discharge Elimination System (SPDES) Permit and Article 17 of the Environmental Conservation Law. Please refer to the attached copy of the inspection report for detailed information and note the unsatisfactory rating.

The mechanical screen at the pump station has been out of service since June 1, 2014 and as a result problems with solid handling still persist at the wastewater treatment plant. Please submit to the Department a corrective action plan and schedule for repair or/and replacement of the mechanical screen. In addition some of the issues noted in the last inspection letter dated August 26, 2013, have not been satisfactorily addressed. Please refer to the inspection report for detailed information on the deficiencies at the wastewater treatment plant. According to 6 NYCRR Part 750-2.8, the permittee shall at all times, properly operate and maintain all disposal facilities which are installed or used by the permittee to achieve compliance with the conditions of the permit.

The reported value for Phosphorus on the May 2014 Discharge Monitoring Report (DMR) was not correctly calculated. Recompute the monthly average from the laboratory report results and submit an amended DMR to the Department. The April 2014 laboratory reports were also not available for review. Please ensure that adequate provision is made for access to records that must be kept under the conditions of the SPDES permit during compliance inspection and within a reasonable time.

The SPDES permit for this facility expired on July 31, 2014 and therefore, the facility has been operating without a SPDES permit. This is a violation of Article 17 of the NYS Environmental Conservation Law which states it shall be unlawful to discharge pollutants to the water of the state from any outlet or point source without a SPDES Permit or in a manner other than as prescribed by such permit.

Please provide the Department with a corrective action plan to correct the aforementioned deficiencies by December 1, 2014.

Your cooperation in operating and maintaining this facility, complying with your SPDES Permit and the protection of New York's waters is appreciated. Should you have any questions, please contact me at (914) 428-2505, Ext 365.

Very truly yours,



Adedayo Adewole, P.E.  
Environmental Engineer 1

cc: Shohreh Karimipour, P.E., Regional Water Engineer  
Manju Cherian, P.E. NYSDEC White Plains  
Carol Krebs, Esq., Assistant Regional Attorney



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
 DIVISION OF WATER  
**MUNICIPAL WASTEWATER FACILITY INSPECTION REPORT - COMPREHENSIVE (Part I)**

Purpose of Inspection <b>Comprehensive</b>		DEC Region <b>3</b>	Date of Inspection <b>09/17/14</b>
SPDES No. <b>NY0250520</b>	Facility Name (V) <b>Kiryas Joel WWTP</b>		Location (C,T,V) <b>((V) Kiryas Joel</b>
County <b>Orange</b>	Name of Inspector <b>Adedayo Adewole</b>	Part II Attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Summary Rating: <b>Unsatisfactory</b>			
Weather Conditions: <b>Sunny, 60s</b>			
Rating Codes: S = Satisfactory U = Unsatisfactory M = Marginal NI = Not Inspected NA = Not Applicable			
Items	Rating	Comments (Note units out of operation/outstanding operation/etc)	
<b>A. General</b>			
1. Buildings/Grounds/Housekeeping	M	Hoses to RBC influent from thickener overflow/ sand filter backwash	
2. Flow Metering	S	Calibrated 07/14	
3. Stand-by Power	S	Monthly Test	
4. Alarm Systems	S		
5. Odors/Odor Control	S		
6. Influent Impact on Operations	M	Rags	
7. Preventive Maintenance	U	see comments B2, B4-B6, C2	
8. Safety	M	Accessibility to clarifiers and thickeners hampered by railings.	
<b>B. Preliminary/Primary</b>			
1. Influent Pumps	NA		
2. Bar Screen/Comminutor	M		
3. Disposal of Grit/Screenings	S		
4. Grit Removal	NA		
5. Settling Tanks	U	Broken Skimmer system. Weir Fouling. Short-Circuiting.	
6. Scum/Sludge Removal	U	Excessive scum /rag build up	
7. Effluent	M	Scum in effluent weirs.	
8.			
<b>C. Secondary/Tertiary</b>			
1. RBC	S		
2. Secondary Clarifiers	U	excessive solids in effluent wiers	
3. Sand Filters	S		
4. Post Aeration	S		
5.			
6.			
7.			
8.			
<b>D. Effluent</b>			
1. Disinfection	S		
2. Effluent Condition	S		
3. Receiving Water Condition	S		
4.			
<b>E. Sludge Handling/Disposal</b>			
1. Digesters	NA		
2. Sludge Pumps	M	One primary pump is oos and one secondary pump needs repair.	
3. Sludge Dewatering	NA		
4. Sludge Disposal	S		
5. Sludge Thickener	U	Weir Fouling. Short-Circuiting. Excessive scum.	
Signature of Inspector: <i>Adedayo Adewole</i>		Title: Environmental Engineer I	Date: 09/17/14
Name of Facility Representative: Ed Grogan		Title: Operator	Date: 09/17/14

MUNICIPAL WASTEWATER FACILITY INSPECTION REPORT - COMPREHENSIVE (Part II)

Facility Name (V) Kiryas Joel WWTP	SPDES Number NY0250520	Comments
<p><b>A. Collection System</b></p> <p>(1) <u>100</u> % Separate _____ % Combined <span style="float:right">__Yes __No <input checked="" type="checkbox"/> N/A</span></p> <p>(2) Did sewer overflows occur upstream of the plant in the past year? <span style="float:right">__Yes __No <input checked="" type="checkbox"/> N/A</span></p> <p>(3) Reason for overflow(s). No information available. OCSD #1 keeps records.</p> <p>(4) Was overflow sewage chlorinated? <span style="float:right">__Yes __No <input checked="" type="checkbox"/> N/A</span></p> <p>(5) Were there any unpermitted overflows/bypasses? <span style="float:right">__Yes __No <input checked="" type="checkbox"/> N/A</span></p> <p>(6) Were appropriate agencies notified promptly, when required, of each overflow? <span style="float:right">__Yes __No <input checked="" type="checkbox"/> N/A</span></p> <p>(7) Is the capability for bypass designed into the plant? <span style="float:right">__Yes __No <input checked="" type="checkbox"/> N/A</span> If so, list units which can be bypassed.</p> <p>(8) Does sewage by-pass the plant? <span style="float:right"><input checked="" type="checkbox"/> Yes __No __N/A</span> Define conditions under which bypass occurs (e.g. what flow): Diversion of flow to OCSD #1 Harriman WWTP.  Bypass frequency (times per year): _____ Average duration of bypass (hours): _____</p> <p>(9) Infiltration/Inflow problems, e.g., is sewage ordinance enforced with respect to illegal stormwater connections? Explain as needed (include reference to corrective action or lack thereof). <span style="float:right">__Yes <input checked="" type="checkbox"/> No __N/A</span></p> <p>(10) Is there a BMP/Wet Weather Operations Plan? <span style="float:right">__Yes <input checked="" type="checkbox"/> No __N/A</span></p> <p>(11) Number of pump stations in system: <u>1</u> Number inspected this inspection: <u>1</u> Comments (consider access, ventilation, lighting, emergency power, safety, etc): Pump Station - Accessible, Standby Generator, mechanical screen. The mechanical screen has been out of service since June 1, 2014.</p>		
<p><b>B. Industrial Waste</b></p> <p>(1) Are industrial waste loadings causing problems at this facility? <span style="float:right">__Yes <input checked="" type="checkbox"/> No __N/A</span> Explain as needed (describe nature of problem an extent and adequacy of measures to address the problem):</p> <p>(2) Is there a sewer use ordinance? <span style="float:right"><input checked="" type="checkbox"/> Yes __No __N/A</span> Date: _____ OCSD #1  Based on Model: _____ Is it being enforced to control Industrial Waste? <span style="float:right"><input checked="" type="checkbox"/> Yes __No __N/A</span></p> <p>(3) Does this facility accept septage? <span style="float:right">__Yes <input checked="" type="checkbox"/> No __N/A</span> How much?  How is it introduced?</p>		

**C. Laboratory Information**

(1) Is the permittee using an ELAP certified laboratory?  Yes  No  N/A  
 Details:

(2) Is a commercial laboratory used?  Yes  No  N/A  
 Lab Name: Environmental Labworks

Lab Address: P O Box 733, Malboro, NY 12542

(3) Pertaining to SPDES Self-Monitoring:

(a) Does the permittee have a written sampling plan?  Yes  No  N/A  
 If yes, are they following their plan?  Yes  No  N/A

(b) Is testing done for all parameters at required frequency and punctually reported?  Yes  No  N/A

(c) Do sampling techniques meet requirements and intent of permit?  Yes  No  N/A

(d) Are EPA-approved procedures used?  Yes  No  N/A

(e) Is calibration and maintenance of instrumentation and equipment satisfactory?  Yes  No  N/A

(f) Is quality control used? (Spiked/duplicate samples)  Yes  No  N/A

(g) Should sampling frequencies/types be modified?  Yes  No  N/A  
 If yes, please explain:

(h) Are lab records satisfactory?  Yes  No  N/A

(i) Is a minimum of 3 years data kept?  Yes  No  N/A

(4) Pertaining to Process Control:

(a) Is testing performed for all necessary parameters?  Yes  No  N/A

(b) Is testing performed at necessary frequencies?  Yes  No  N/A

(c) Are procedures technically sound?  Yes  No  N/A

(d) Is sampling adequate?  Yes  No  N/A

Activated Sludge Facility:

(e) Does the facility operator test for the following:

MLSS?  Yes  No  N/A

Dissolved Oxygen?  Yes  No  N/A

Settleability?  Yes  No  N/A

Microscopic Analysis of Sludge?  Yes  No  N/A

Final Clarifier Sludge Blanket Depth?  Yes  No  N/A

Process Control "Target Values"?  Yes  No  N/A

(f) Does the facility operator calculate the following process control parameters:

MCRT?  Yes  No  N/A

Sludge Age?  Yes  No  N/A

(g) Is the testing applied towards process control adjustments?  Yes  No  N/A

(h) What approach (if any) is used to determine changes in:

Sludge Age?  Yes  No  N/A

NA

Waste Sludge Flow?

NA

(i) Was laboratory information used to prepare the DMR and Monthly Operating Report properly?

(5) Explanation as needed for any of the above:  Yes  No  N/A

**D. Personnel Information**

(1) Is staffing and training adequate? (Consider all aspects, including management/supervision, operations, laboratory, maintenance, safety, availability of training, development of staff, etc.)  Yes  No  N/A

## (2) Certified Operators:

Chief Operator - Name, Certificate Number, Grade, Renewal Date:  
 Mike Tremper 8015 4A 07/01/2015

Assistant Operator - Name, Certificate Number, Grade, Renewal Date:

Ed Grogan 11335 3 11/01/2015  
 Ed Alexander 12647 3 09/06/2017

(3) Is operational staff certified at the appropriate level(s)?  Yes  No  N/A  
 Explain if needed:

(4) Do facility operators have renewal certification and/or training records?  Yes  No  N/A  
 (5) Plant Classification: \_\_\_\_\_  
 (6) Plant Score: \_\_\_\_\_  
 (7) Explain as needed for any of the above:

**E. Additional Information**

(1) Is treatment facility properly operated and maintained?  Yes  No  N/A  
 Details: See Section F, Inspector's Comments.

## (2) Check Adequate/Inadequate as appropriate:

(a) Preventive maintenance schedules exist and are followed?	<input type="checkbox"/> Adequate	<input checked="" type="checkbox"/> Inadequate
(b) Records are kept for maintenance, repairs and replacement?	<input type="checkbox"/> Adequate	<input checked="" type="checkbox"/> Inadequate
(c) Spare parts inventory is maintained?	<input type="checkbox"/> Adequate	<input checked="" type="checkbox"/> Inadequate
(d) O&M Manual exists and is available?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate
(e) O&M Manual kept up-to-date?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate
(f) As-built plans and specifications exist and are available?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate
(g) Manufacturers' O&M specifications exist and are available?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate
(h) Other records kept as needed (e.g. flow recorder charts)?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate
(i) Alarm system for power or equipment failures is properly maintained and tested?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate
(j) Standby power system exists and is routinely tested?	<input checked="" type="checkbox"/> Adequate	<input type="checkbox"/> Inadequate

(3) Current copy of Part I and Part II of SPDES permit on premises?  Yes  No  N/A  
 (4) Has facility been subject of complaints (odors, others)?  Yes  No  N/A  
 If yes, describe:

The SPDES permit expired on 07/31/14.

(5) Is sludge disposal satisfactory and are required permits in force?  Yes  No  N/A

(a) Name and location of sludge disposal site (and/or name and permit number of scavenger):

Coppola, NJ-790

(b) Is there an alternate sludge disposal site or contingency plan?  Yes  No  N/A  
 If yes, please describe:

Marangi

- (6) Does facility have effective administrative structure and adequate financial systems (e.g. Repair Reserve Fund, Uniform Accounting System)?  Yes  No  N/A
- (7) Is progress on compliance schedule(s) (e.g. Upgrading, CSO, Pretreatment) satisfactory?  Yes  No  N/A
- (8) Explanation as needed for any of the above:

Consent order requirements have not been fully implemented.

**F. Inspector Comments**

Hoses used to connect convey thickener overflow/ sand filter backwash to RBC influent.

Weir fouling, short-circuiting and floating sludge in primary clarifiers, secondary clarifiers and thickeners.

A preventive maintenance schedule needs to be developed and kept on-site.

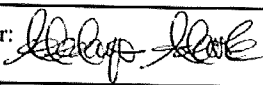
Construction work has started on the sand filter backwash holding tank. The Department should be notified when the tank is put into service.

The mechanical screen has been out of service since June 1, 2014. Submit a corrective action plan and schedule for repair or/and replacement.

April 2014 laboratory reports were not available for review.

The reported value for Phosphorus on the May 2014 Discharge Monitoring Report (DMR) was not calculated correctly. Please recompute the monthly average from the laboratory report results and submit an amended DMR to the Department.

The SPDES permit expired on July 31, 2014. Operating a wastewater treatment plant with an expired permit is a violation of the SPDES permit and Article 17 of the NYS Environmental Conservation Law.

Signature of Inspector: 	Title: Environmental Engineer I	Date: 09/17/14
Name of Facility Representative: Ed Grogan	Title: Operator	Date: 09/17/14





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

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

December 16, 2014

**Via Overnight Mail**

Patrick Ferracane  
Jennifer Zunino-Smith  
New York State Department of Environmental Conservation  
Division of Water, Region 3  
100 Hillside Avenue, Suite 1W  
White Plains, NY 10603-2860

***Re: Potential SPDES Violation  
Illegal Construction Activity Between Prag Blvd. and Rimenev Ct.  
Village of Kiryas Joel, Orange County, New York***

Dear Mr. Ferracane and Ms. Zunino-Smith:

This Firm represents United Monroe, a group of concerned residents committed to transparent and open government. Its members include residents of the Town of Monroe and others who live in the surrounding community. This Letter serves to inform your Department that upon information and belief, the Village of Kiryas Joel (“Kiryas Joel” or the “Village”) has potentially caused a violation of your laws and regulations governing stormwater discharges.

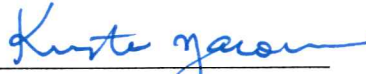
By letter dated November 26, 2013, your Department issued a Notice of Violation and Cease and Desist Order (“NOV”) to the Village in connection with an inspection of construction activity on Village-owned land between Prag Boulevard and Rimenev Court (the “Site”). (A copy of the NOV and accompanying Construction Stormwater Inspection Report is annexed hereto.) The NOV ordered Kiryas Joel to immediately cease and desist all construction activity at the Site for failing to gain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001). As you know, coverage under the General Permit and subsequent compliance with its terms through erosion and sediment controls is crucial to prevent contravention of water quality standards.

Upon information and belief, the Village has recently resumed construction activities at the Site. United Monroe has no knowledge of Kiryas Joel ever obtaining coverage under SPDES General Permit GP-0-10-001 for such activity. Accordingly, any construction activity resulting in disturbance greater than one acre would be unpermitted. This would directly violate your Department's orders, as well as state environmental laws and regulations governing land disturbance and stormwater discharges.

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

Respectfully submitted,

ZARIN & STEINMETZ

By:   
Daniel M. Richmond  
Krista E. Yacovone

Encl.

cc: Robert Ewing, NYSDEC, Division of Environmental Permits  
John Allegro (via email)  
Emily Convers (via email)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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In the Matter of the Application of

VILLAGE OF KIRYAS JOEL and MAYOR ABRAHAM WIEDER; VILLAGE TRUSTEE MOSES GOLDSTEIN; VILLAGE TRUSTEE JACOB REISMAN; VILLAGE TRUSTEE SAMUEL LANDAU; VILLAGE TRUSTEE JACOB FREUND; and VILLAGE ADMINISTRATOR GEDALYE SZEGEDIN, each individually and in his official capacity,

Plaintiffs-Petitioners,

For a Judgment Pursuant to Article 78 of the CPLR and a Declaratory Judgment Pursuant to Section 3001 of the CPLR

- against -

TOWN OF BLOOMING GROVE, VILLAGE OF SOUTH BLOOMING GROVE, TOWN BOARD OF THE TOWN OF BLOOMING GROVE, VILLAGE BOARD OF THE VILLAGE OF SOUTH BLOOMING GROVE, PLANNING BOARD OF THE VILLAGE OF SOUTH BLOOMING GROVE, ZONING BOARD OF APPEALS OF THE VILLAGE OF SOUTH BLOOMING GROVE, COUNTY OF ORANGE, ORANGE COUNTY SEWER DISTRICT #1, OCCR ENTERPRISES, LLC, THE CORDISH COMPANIES, INC., and PENN NATIONAL GAMING, INC.,

Defendants-Respondents.

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2014 ... 6348

**VERIFIED PETITION  
AND COMPLAINT**

Index No.:  
RJI No.:  
Date Filed:

ORANGE COUNTY COURT  
SUPREME & COUNTY N.Y.  
GOSHER, N.Y.  
2014 AUG 15 PM 3:02

Plaintiffs/Petitioners (hereafter referred to as “Petitioners”), by and through their attorneys, Whiteman Osterman & Hanna LLP, for their Verified Petition and Complaint allege as follows:

### INTRODUCTION

1. This is a combined declaratory judgment action and CPLR Article 78 proceeding seeking (1) to annul the actions by Defendant-Respondent the Village of South Blooming Grove (the “Village”) resolving the Village’s commitment to future approval of the expansive (\$750 million) gambling resort and casino development Casino Project (the “Casino Project”) by Defendants-Respondents OCCR Enterprises, LLC (“OCCR”), Penn National Gaming, Inc. (“Penn”), and The Cordish Companies, Inc. (“Cordish”) (collectively, the “Casino Respondents”); and (2) to annul the actions by Defendant-Respondent Town of Blooming Grove (the “Town”) resolving the Town’s commitment to future approval of the Casino Project; and (3) to preliminarily and permanently enjoin all Respondents from taking any action in furtherance of the Casino Project.

2. The Casino Project includes the development and construction of an expansive gambling resort and casino facility on approximately 120.4 acres along New York Route 208, in close proximity to Exit 130 off the New York State Highway Route 17. The Property is located in the Village of South Blooming Grove, Town of Blooming Grove, and County of Orange, and is identified on the tax maps of the Village of South Blooming Grove as Section 223, Block 1, Lot 1 and Section 223, Block 1, Lot 2 (the “Property”). The Property is in close proximity to the Plaintiff-Petitioner Village of Kiryas Joel (“Kiryas Joel”).

3. The Casino Project also includes significant construction and other actions on land outside of the Property, including substantial upgrades to roadways, police, fire, sewer, water, and other infrastructure and services in Orange County to accommodate the Casino Project.

4. The Casino Project will require large volumes of water that will adversely affect the existing limited water resources of neighboring communities, including Kiryas Joel.

5. The Casino Project will generate large volumes of sewage requiring treatment that will overburden the existing limited treatment capacity available at the Orange County Harriman Wastewater Treatment Plant and adversely affect existing members of the Orange County Sewer District ("OCSD") #1, including residents and property owners in Kiryas Joel, in addition to having potential adverse impacts on the Ramapo River.

6. Upon information and belief, the sewage treatment required by the Casino Project is in excess of the capacity available to the Town and Village from OCSD #1, and thus will require the Town and/or Village to acquire additional treatment capacity from OCSD #1.

7. As Orange County concluded in its Amended Final Environmental Impact Statement addressing the availability of prior sale of excess sewage treatment capacity to sell to non-District members, such as the Town and Village, sufficient capacity to serve the members of the OCSD #1 may only be available through 2015. This review did not account for the hundreds of thousands of gallons of capacity needed for the Casino Project and inexplicably guaranteed by the Town and Village.

8. Additionally, the Casino Project includes significant expansion of traffic and roadway infrastructure in and around Orange County and will generate increased noise, odors, light pollution and other undesirable environmental impacts.

9. Upon information and belief, on or about April 17, 2014, Defendant-Respondent Village Board of the Village of South Blooming Grove (the "Village Board") enacted a resolution pledging the Village's full support for the Casino Project, and commitment to taking all actions necessary to enable completion of the Casino Project (the "Village Resolution"). A copy of the Village Resolution is attached hereto as **Exhibit A**.

10. On or about April 17, 2014, Defendant-Respondent Town Board of the Town of Blooming Grove (the "Town Board") enacted a similar resolution pledging the Town's full support for the Casino Project, and commitment to taking all actions necessary to enable completion of the Casino Project (the "Town Resolution"). A copy of the Town Resolution is attached hereto as **Exhibit B**.

11. On or about June 27, 2014, the Village entered into a Host Community Agreement with Defendant-Respondent OCCR wherein the Village committed to approve and undertake all actions necessary to enable completion of the Casino Project in exchange for staggering amounts of financial compensation (the "Village Agreement"). A copy of the Village Agreement is attached hereto as **Exhibit C**.

12. The Village Agreement included a commitment from the Village to provide the Casino Respondents with 260,000 gallons per day ("gpd") of wastewater treatment capacity at the Orange County Harriman Waste Water Treatment plant (the "HWTP").

13. The HWTP is owned and operated by Respondents-Defendants County of Orange (the "County") and the Orange County Sewer District #1 ("OCSD #1" or the "District"). The District is a part-county sewer district established and operated pursuant to the County Law.

14. The villages of Monroe, Harriman and Kiryas Joel and a portion of the Town of Monroe are located within OCSD #1.

15. The Town of Blooming Grove and the Village of South Blooming Grove are not located within OCSD #1.

16. The Village Resolution, the Village Agreement, and the Town Resolution (collectively, "Respondents' actions") to authorize and approve the Casino Project are all "actions" subject to the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617.

17. Respondents' actions were taken prior to completion of any SEQRA review and thus were taken in violation of both the procedural and substantive mandates of SEQRA.

18. Respondents' actions were made in violation of lawful procedure, were affected by error of law, were arbitrary and capricious and an abuse of discretion, and were not supported by substantial evidence in the record.

19. The Village's action to offer 260,000 gpd of wastewater treatment capacity at the HWTP to the Casino Respondents was ultra vires, arbitrary and capricious and affected by error of law, and was made in violation of General Municipal Law §§ 119 and 119-a.

#### **PARTIES**

20. Plaintiff-Petitioner the Village of Kiryas Joel (“Kiryas Joel”) is a municipal corporation in the County of Orange, State of New York.

21. Kiryas Joel is located in close proximity to the Village and the Town and will experience significant and unique adverse impacts as a result of Respondents’ actions.

22. On or about May 16, 2014, the Kiryas Joel Board of Trustees passed a resolution expressing its official opposition to the Casino Project. A copy of the resolution is attached hereto as **Exhibit D**.

23. In Kiryas Joel, the November 2013 ballot proposal on casino gaming was overwhelmingly rejected by the voters 3,687 to 139.

24. The operation of the casino Casino Project is directly adverse to the peaceable, family and children-oriented culture of the residents of Kiryas Joel.

25. Kiryas Joel is home to a significant Hasidic Jewish population. Casino gambling is contrary to the religious beliefs of this community of residents.

26. Kiryas Joel is located entirely within OCSD #1.

27. The Individual Plaintiffs-Petitioners all reside within Kiryas Joel and are property owners within OCSD #1.

28. Kiryas Joel also owns property within OCSD #1 and has continuously paid District benefit assessments with respect to such property.



29. As members of OCSD #1, the Individual Plaintiffs-Petitioners and Kiryas Joel and its residents have a constitutionally-protected property right to wastewater treatment capacity at the HWTP.

30. The Village has no authority to provide, through sale or otherwise, any District wastewater treatment capacity to the Casino Project without written agreement of the County and a determination by the District that excess capacity exists above the needs of District members. See Village of Kiryas Joel v County of Orange, Sup Ct, Orange County, Nicolai, J., Aug. 7, 2008, Index Nos. 1892/2007 & 3958/2007. A copy of the decision in that action is attached hereto as **Exhibit E**.

31. The Village's ultra vires offer to provide 260,000 gpd of District wastewater treatment capacity to the Casino Project Applicants will deprive Individual Plaintiffs-Petitioners and Kiryas Joel and its residents of constitutionally protected property and will impose unnecessary duplicative cost and expense in obtaining alternative wastewater treatment facilities.

32. In addition, the commitment to provide 260,000 gallons of wastewater treatment capacity may lead to potentially significant adverse impacts on the environment, including the Ramapo River, which have not been analyzed or mitigated.

33. Kiryas Joel obtains its current municipal water supply from a series of groundwater wells located within and outside of its boundaries.

34. Due to the pressures on the groundwater aquifer from all of the local communities, the existing supply has become inconsistent and unreliable. This has led to disputes between local communities, including numerous lawsuits against Kiryas Joel.

35. In an effort to avoid further conflict over groundwater resources, Kiryas Joel has embarked on an ambitious Casino Project to construct a 13-mile long pipeline (“Pipeline Casino Project”) to connect to the New York City Catskill Aqueduct in order to provide its residents with a more safe and reliable water supply.

36. The Pipeline Casino Project has faced rigorous opposition and litigation from other neighboring communities, including opposition from the Town and Village based on potential adverse impacts to traffic, growth and community character and lack of adequate sewage treatment capacity, among others.

37. The Village of South Blooming Grove has also expressed opposition to other activities affecting the Kiryas Joel community, including a pending annexation action in the Town of Monroe, based on alleged potential adverse impacts on the local water supply, wastewater treatment capacity for the Village, increased traffic and other local impacts. See Letter from Village to New York State Department of Environmental Conservation, dated March 19, 2104, a copy of which is attached hereto as **Exhibit F**.

38. The irony of the Town and Village’s position is unmistakable. In addition to the impacts from the generation of significant volumes of sewage, the commitment here by the Town and Village to provide a water supply of approximately 260,000 gallons per day (based on sewage generation Casino Projections) to the Casino Applicants may lead to potentially significant adverse impacts on the environment, including the groundwater aquifer and water supply for Plaintiffs-Petitioners, which have not been analyzed or mitigated.

39. In addition to expressing Kiryas Joel's opposition to the Casino Project, the May 16, 2014 Village Board resolution also authorized the Kiryas Joel Administrator to retain legal counsel to initiate this proceeding in the name of Kiryas Joel, pursuant to Village Law §§ 4-400(d) and (f).

40. Petitioner Mayor Abraham Wieder is the Mayor of the Village of Kiryas Joel. Pursuant to Village Law § 4-400(1)(f), the Mayor is obligated to intervene in any and all actions where deemed necessary to protect the rights of Kiryas Joel and its inhabitants. In his individual capacity, he is an owner of developed and undeveloped property, a taxpayer and father of a large family in Kiryas Joel, Orange County and OCSD #1.

41. Petitioner Moses Goldstein is a Trustee of the Village of Kiryas Joel. In his individual capacity, he is a property owner, a taxpayer and father of a large family in Kiryas Joel, Orange County and OCSD #1.

42. Petitioner Jacob Reisman is a Trustee of the Village of Kiryas Joel. In his individual capacity, he is an owner of developed and undeveloped property, a taxpayer and father of a large family in Kiryas Joel, Orange County and OCSD #1.

43. Petitioner Samuel Landau is a Trustee of the Village of Kiryas Joel. In his individual capacity, he is a property owner, a taxpayer and father of a large family in Kiryas Joel, Orange County and OCSD #1.

44. Petitioner Jacob Freund is a Trustee of the Village of Kiryas Joel. In his individual capacity, he is a property owner, a taxpayer and father of a large family in Kiryas Joel, Orange County and OCSD #1.

45. Petitioner Gedalye Szegedin is the duly appointed Village Administrator and Village Clerk of the Village of Kiryas Joel. In his individual capacity, he is a property owner, a taxpayer and father of a large family in Kiryas Joel, Orange County and OCSD #1.

46. Petitioners have standing in this proceeding as County and District members and because their interests in the adequacy of water supply and sewage treatment capacity for the properties that they own, along with the adequacy of the sewage treatment capacity for all citizens within Kiryas Joel, are directly and uniquely impacted by the Village's ultra vires offer to sell water and wastewater treatment capacity in a manner that is unique from other Orange County residents.

47. Petitioners also have standing in this proceeding because their interests in the community in which they live are directly and uniquely impacted by Respondents' unlawful determinations to authorize and approve the Casino Project.

48. Petitioner Mayor Abraham Wieder has standing pursuant to Village Law § 4-400(1)(f), because this proceeding is necessary to protect the rights of Kiryas Joel and its citizens.

49. Petitioners will all be subject to significantly increased traffic, noise, light pollution, and other external impacts should the Casino Project proceed.

50. Petitioners and the residents of Kiryas Joel will all be subject to the potential adverse impacts to result from the development and operation of the Casino Project in extremely close proximity to Kiryas Joel.

51. Petitioners also have standing because Kiryas Joel provides its residents, including the individual Petitioners, with a municipal water supply from a groundwater aquifer that may be adversely impacted by the Casino Project.

52. Should the Casino Project proceed, the peaceable, family and children-oriented culture that the residents of Kiryas Joel have fostered and seek to maintain within their community will be harmed.

53. Petitioners also have standing because the Casino Project includes significant overhauls of the regional and local roadways/traffic infrastructure that provide access to, from and within Kiryas Joel.

54. These interests are all within the zone of interests intended to be protected by SEQRA.

55. Defendant-Respondent Town of Blooming Grove is a municipal corporation of the State of New York with an address of 511 Route 32, P.O. Box 1004, Highland Mills, New York 10930.

56. Defendant-Respondent Town Board of the Town of Blooming Grove is a municipal entity and performs executive and legislative duties for the Village, including authorizing the adoption of local legislation such as zoning.

57. Defendant-Respondent Village of South Blooming Grove is a municipal corporation of the State of New York with an address at P.O. Box 295, Blooming Grove, New York 10914.

58. Defendant-Respondent Village Board of the Village of South Blooming Grove is a municipal entity and performs executive and legislative duties for the Village, including authorizing the adoption of local legislation such as zoning, in accordance with New York State Village Law.

59. Defendant-Respondent Planning Board of the Village of South Blooming Grove (the "Planning Board") has responsibility to review and approve, approve with modification or deny applications for conditional uses and to review and approve, approve with conditions and deny site plan applications within the Village and the Town.

60. Defendant-Respondent Zoning Board of Appeals of the Village of South Blooming Grove (the "ZBA") has responsibility to, among other things, determine the appropriate interpretation of the Village Zoning Code on appeals from any determination of the Village's Zoning Enforcement Officer, as well as to grant or deny applications for use variances.

61. Defendant-Respondent County of Orange is a municipal corporation in the State of New York subject to the New York State County Law ("County Law"). The County is the designated permit holder of the State Pollution Discharge Elimination System ("SPDES") permit for the Harriman Plant.

62. Respondent-Defendant Orange County Sewer District No. 1 is a part-county sewer district established and operated pursuant to the County Law. The villages of Monroe, Harriman and Kiryas Joel and a portion of the Town of Monroe are located within OCSD #1. The Village of South Blooming Grove and the Town of Blooming Grove are not located within OCSD #1. The District was established and is controlled by the County.

63. Defendant-Respondent OCCR Enterprises, LLC is a corporation organized under the laws of the State of New York and authorized to do business therein.

64. OCCR is a joint venture and/or subsidiary of Defendant-Respondent The Cordish Companies, Inc., which is a corporation organized under the laws of the State of Maryland, with an address at 601 East Pratt Street, Suite 600, Baltimore, Maryland 21202, and Defendant-Respondent Penn National Gaming, Inc., which is a corporation organized under the laws of the State of Pennsylvania with an address at 825 Berkshire Blvd., Wyomissing, Pennsylvania 19610.

## **BACKGROUND**

### The Casino Project

65. On July 30, 2013, Governor Cuomo signed into law the Upstate New York Gaming Economic Development Act of 2013 (see New York Racing, Pari-Mutuel Wagering and Breeding Law, Article 13), which authorized the siting of no more than four destination resort casinos within three regions of the State of New York, including up to two resort casinos in the Hudson Valley/Catskill area, and set forth the process and procedure for the selection and licensing of such casinos.

66. Shortly thereafter, upon information and belief, the Casino Respondents commenced preparation of an application for a license to construct and operate a destination resort casino in the Town and Village, and immediately instituted discussions with representatives of the Village and Town in an effort to obtain approval to move forward with that Casino Project.

67. On March 31, 2014 the New York State Gaming Facility Location Board (the “Gaming Board”) issued a Request for Applications to Develop and Operate a Gaming Facility in New York State (the “RFA”), which outlined the requirements to apply for a destination casino license.

68. Under the RFA, an application for a gaming license must obtain and submit the Gaming Board “a resolution passed by the local legislative body of its Host Municipality supporting the Application.” RFA, pg. 7. For purposes of this requirement, “[t]he Host Municipality of a Casino Project Site located in a village is the village and the town in which the Casino Project Site is located.” Id.

69. On or about April 11, 2014, the Village Board held a meeting in open public session wherein the Casino Respondents presented information as to their qualifications as applicants for a destination resort casino license from the State of New York.

70. On or about April 16, 2014, during an open public meeting conducted by the Village Board, a presentation was made by the Casino Respondents to review the proposed Casino Project. At this work session, the Village Board and the public were given a limited opportunity to make relevant inquiries and provide comments, and public opposition to the Casino Project was heard.

71. On April 17, 2014, a special work session was jointly held by the Town Board and the Village Board, at which time a presentation as made by the Casino Respondents to review the proposed Casino Project. At this work session, both municipal boards and the public were given



a limited opportunity to make relevant inquiries and provide comments, and public opposition to the Casino Project was heard.

72. Upon information and belief, the presentation also outlined major road re-construction proposed by the Casino Respondents.

#### The Town's Action

73. At the April 17, 2014 special work session, the Town Board adopted the Town Resolution in full support of the Casino Project.

74. The Town's April 17, 2014 Resolution was an "action" subject to the requirements of SEQRA.

75. The Town's April 17, 2014 action was a Type I SEQRA action.

76. Upon information and belief, the Town failed to conduct any review of its action whatsoever pursuant to SEQRA.

#### The Village's Actions

77. At the April 17, 2014 special work session, the Village Board adopted the Village Resolution in full support of the Casino Project.

78. Approximately one month later, on or around May 16, 2014, the Village Board prepared Part I of a Full Environmental Assessment Form, which Part outlined the Casino Project and its setting, but did not identify or describe the Casino Project's environmental impact.

79. On or around May 17, 2014, the Village Board received from the Casino Respondents an application for a “Special Permit” regarding an Application for Special Use and Site Plan Approval for development of the Casino Project, including “inter alia, a hotel, conference center, entertainment complex, retail establishments, restaurants, club, bar and casino.”

80. On or about May 19, 2014, the Village Board passed a resolution and circulated a notice of intent to be lead agency to involved agencies.

81. On or about June 27, 2014, the Village executed the Village Agreement with OCCR, wherein the Village committed to approve and undertake all actions necessary to enable completion of the Casino Project in exchange for staggering amounts of financial compensation.

82. In contrast to the generalized and scant descriptions of the construction and development required by the Casino Project that were presented at the Village’s sole public hearing, the Village Agreement bound the Village to authorize and allow a plethora of specific and expansive construction and other actions.

83. For example, the Village Agreement provides that the Village “fully supports the Casino Project and will reasonably facilitate and cooperate, subject to applicable law, with OCCR in their efforts to obtain all permits, certifications, legislation or regulatory approvals from governmental entities and officials in connection with the Casino Project.” Village Agreement, § 8.

84. Pursuant to Section VIII.C.3.a of the Casino Respondents’ application for a gaming license, the Casino Project will require, among other approvals: (1) approval of a special use

permit from the Village Board, (2) variances from the Village ZBA with respect to building height and Surface Water Overlay District setback requirements, (3) a conditional use permit approval from the Village Planning Board for restaurant uses within the Casino Project, and (4) site plan approval the entire Casino Project by the Village Planning Board.

85. Under the Village Agreement, this support also includes approving, authorizing, and cooperating with implementation of, among other things, construction of water system infrastructure in Orange County, including drilling wells, pumps and treatment facilities; construction of fire suppression facilities; construction of sewer facilities, pipes, pumps and infrastructure, including pipeline connection infrastructure; potential construction of a park and/or recreational fields; reconstruction of roadways in and around the County, including construction at the intersection of Clove Road and New York Route 208. Id., §§ 2(f)-(g); 4; 6.

86. Furthermore, the Village Agreement binds the Village to make 260,000 gpd of sewer capacity at the HWTP available to the Casino Project. Id., § 2(g).

87. Under the Village Agreement, OCCR agreed to indemnify and reimburse the Village for any costs and expenses incurred in connection with the Casino Project and the Village Agreement, including the costs of reviewing and processing OCCR's SEQRA application, engaging and utilizing third parties to review, approve and inspect OCCR's construction plan submissions and permit applications, any and all legal fees with respect to any claim, action or proceeding arising out of the Agreement, any review and/or approvals of permits, and any actions by the Village Board in support of the Casino Project. Id., §§ 2(a) and 11.

88. In return for the Village's support of the Casino Project, the Village Agreement provides for the Village to receive staggering amounts of compensation from the Casino Respondents, including payment of \$10 million dollars in "Community Benefit and Impact Payments," \$2.25 million of public safety service capital start-up costs that the Village expects to incur in connection with the Casino Project, all connection, municipal, and permit fees, approximately \$23 million dollars in upgrades to electrical, water, sewer, and off-site traffic infrastructure, and an additional \$1 million dollars for traffic construction in and around the intersection of Clove Road and New York Route 208. *Id.*, §§ 2(a)-(c), (e)-(g); 5; 6(b).

89. On or about July 7, 2014, the Village Board issued a resolution stating that the Casino Project is subject to SEQRA, and identifying the Casino Project as a Type I Action under SEQRA.

90. The Village's actions on April 17, 2014 and June 27, 2014, to authorize and commit to the construction and/or development associated with the Casino Project (collectively, the "Village's actions") were "actions" subject to the requirements of SEQRA.

91. The Village's actions were Type I SEQRA actions.

92. The Village failed to conduct the required SEQRA review prior to taking any of its actions and otherwise committing the Village to a definite course of future decisions.

#### Orange County Sewer District #1

93. OCSD #1 was established in 1970. The District was financed on the "benefit" assessment basis, pursuant to County Law Article 5-A. Properties located in OCSD #1 have paid

benefit assessments for over thirty years related to the construction and improvement of wastewater treatment facilities within the District.

94. As a consequence of the payment of benefit assessments, property owners in the District have a constitutionally-protected property interest in wastewater treatment service. See HBP Assocs. v. Marsh, 893 F. Supp. 271, 278 (1995).

95. The HWTP is the District's primary wastewater treatment plant.

96. The HWTP was originally constructed in 1974 with a treatment capacity of 2.0 million gpd. The construction of the HWTP in 1974 eliminated fourteen local treatment plants and hundreds of individual septic systems within the District. By eliminating these existing facilities, the District committed to provide adequate treatment capacity to serve all properties in the District.

97. The HWTP came on line in or around 1978.

98. In 1978, OCSD #1 entered into an intermunicipal agreement with several municipalities outside of the District to provide wastewater treatment capacity to these out-of-District communities ("1978 Intermunicipal Agreement"). These communities included the Village of Chester and the towns of Chester, Blooming Grove, Woodbury, and a portion of the Town of Monroe (the "Moodna Communities"). The Village of South Blooming Grove had not yet been established at this time. The 1978 Intermunicipal Agreement enabled the HWTP to expand to approximately 4.0 mgd.

99. In 1988, OCSD #1 and the Moodna Communities modified and superseded the 1978 Intermunicipal Agreement to establish strict maximum numerical limits on the wastewater

treatment capacity allocated to each of the Moodna Communities and to the District (the “1988 Amendment”). The 1988 Amendment set limits of 1.985 mgd for OCSD #1 and 2.015 mgd for the Moodna Communities combined.

100. Upon information and belief, flow to the Harriman Plant has exceeded the 4.0 mgd contemplated by the 1988 Amendment and, accordingly, the numerical limits on wastewater treatment capacity allocated to the Moodna Communities by the 1988 Amendment have been reached.

101. The strict limits of the 1988 Amendment effectively nullified all rights of the Moodna Communities to any future capacity thereafter constructed by OCSD #1.

102. Since the establishment of OCSD #1, the County has neither formally expanded OCSD #1 to incorporate the Moodna Communities nor created a new district.

103. In 2006, OCSD #1 completed construction of the expansion of the Harriman Plant that increased treatment capacity by 2.0 mgd (the “2006 Expansion”).

104. The demand for wastewater treatment capacity within OCSD #1 continues to grow, both within Kiryas Joel and in the other District communities.

105. According to a report prepared by McLaren Engineering Group, on behalf of the Casino Respondents, submitted as part of the Casino Respondent’s license application, the Casino Project alone will require an additional 260,000 gpd of capacity from the District, which amount would, upon information and belief, exceed the capacity currently available to the Village and/or Town, and illegally subordinate the needs of District members to satisfy the demands of the Casino Project.

106. General Municipal Law § 119 and County Law § 253-a authorize the County to construct excess capacity beyond that needed to serve properties within the District. The County Law prescribes the procedure for establishing such additional capacity and how such capacity is to be financed.

107. When expanding the HWTP to 6 mgd, the County did not formally authorize the construction of excess capacity.

108. Prior to the construction and completion of the 2006 Expansion, no agreements were executed with the Moodna Communities to share in the joint construction of that additional capacity for the benefit of any of the Moodna Communities.

109. With the possible exception of 189,000 gallons per day, the 2006 Expansion was constructed by and for the sole benefit of properties within OCSD #1.

110. In fact, the County averred that the 2006 Expansion of the Harriman Plant would be almost entirely exhausted by the time it was brought on line in October 2006.

111. Nonetheless, in January 2007, the County attempted to sell portions of that capacity to non-District members, including the Town and/or Village without first conducting a SEQRA review and otherwise complying with the procedures and requirements of the County Law for the sale of capacity outside of the District.

112. Kiryas Joel commenced a suit in the Environmental Claims Part of the Ninth Judicial District challenging the County's authority to sell capacity to non-District members, including the Town and Village without first complying with SEQRA and the County Law.

113. On or about August 7, 2008, Judge Francis A. Nicolai granted Kiryas Joel's petition and enjoined the County from selling any District capacity to non-District members until such time as it complied with SEQRA and made a demonstration under the County Law that there was adequate excess capacity over and above the current and future needs of the District members to support the sale of capacity to the Moodna communities.

114. To address the injunction, on or about February 4, 2010, the County completed an Amended Final Environmental Impact Statement ("AFEIS") pursuant to SEQRA. As part of the AFEIS, the County prepared a report assessing available treatment capacity at District facilities and concluded that the District had adequate capacity to meet District members' needs through the year 2015, and thus excess capacity existed to sell to non-District communities.

115. The proposed Casino Project here, however, will not be completed until after 2015 and thus the County again has not demonstrated that sufficient excess capacity exists both to meet the needs of District members and to sell excess capacity to non-District communities, including the Town and Village to support the Casino Project.

### **RELEVANT LEGISLATION AND REGULATION**

#### **SEQRA**

116. Article 8 of the Environmental Conservation Law ("ECL") sets forth the statutory provisions of SEQRA. SEQRA's implementing regulations are set forth at 6 NYCRR Part 617. An agency must strictly comply with SEQRA's procedural and substantive mandates before



undertaking an action that poses the potential for adverse environmental effect. See 6 NYCRR § 617.2(b); 6 NYCRR § 617.3(a).

117. SEQRA provides that before any state or local agency takes an action, it must consider and choose alternatives that, consistent with the social, economic and other essential considerations, to the maximum extent practical, minimize or avoid adverse environmental impacts. ECL § 8-0109.1.

118. The purpose of SEQRA is to “incorporate the consideration of environmental factors into the existing planning, review and decision making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR[A] requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.” 6 NYCRR § 617.1(c).

119. As used in SEQRA, the term “environment” means the physical conditions that will be affected by a proposed action including land, air, water, minerals, flora, fauna, noise, objects of history or aesthetic significance, existing patterns of population, distribution or growth of an existing community or neighborhood character. ECL § 8-0105.6.

120. SEQRA defines an “action” as, among other things, “agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions.” 6 NYCRR §§ 617.2(b) (2) and 617.2(k).

121. SEQRA's purpose is to "incorporate the consideration of environmental factors into the existing planning, review and decision making processes of state, regional and local government agencies at the earliest possible time." 6 NYCRR § 617.1(c); see Spitzer v. Farrell, 100 N.Y.2d 186, 190 (2003); New York Canal Improvement Ass'n v. Town of Kingsbury, 240 A.D.2d 930, 931-932 (3d Dept 1997).

122. SEQRA and its implementing regulations mandate strict procedural and substantive compliance, and require an agency undertaking an action to: (1) properly define the proposed action; (2) identify all potential adverse environmental impacts that may result from the action; (3) thoroughly analyze the relevant impacts (the "hard look"); and (4) provide a reasoned elaboration for the basis of its significance determination with reference to any supporting documentation. 6 NYCRR § 617.7(b).

123. As the initial procedural step in the environmental review process, SEQRA requires that the agency classify the proposed activity into one of three categories: "Type I," "Type II," or "Unlisted" actions. 6 NYCRR § 617.6.

124. The implementing regulations contain a list of specific types of actions that are classified as either "Type I" and "Type II" actions. Type I are those that carry "the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." 6 NYCRR § 617.4(a)(1).

125. After proper classification of an action, SEQRA requires the agency to prepare an Environmental Assessment Form ("EAF") to determine the environmental significance of the proposed action. 6 NYCRR §§ 617.6; 617.2(m).

126. If the agency properly classifies a proposed action as either a Type I action or an Unlisted action, SEQRA requires the agency to determine the significance of a proposed action. If it determines that the action may include the potential for at least one significant adverse impact, the agency must issue a Positive Declaration and an EIS must be prepared. 6 NYCRR § 617.7(a)(1).

127. Conversely, before an agency may issue a Negative Declaration determining that an EIS will not be required, the agency “must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.” 6 NYCRR § 617.7(a)(2).

128. The criteria for determining significance of a proposed action include, among others, the following “indicators of significant adverse impacts on the environment: ... (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production . . . (iv) the creation of a material conflict with a community’s current plans or goals as officially approved or adopted; (v) the impairment of the character or quality of important historical, archeological architectural, or aesthetic resources and of existing community or neighborhood character; ... (viii) a substantial change in the use, or intensity of use of land including agriculture, open space or recreational resources, or in its capacity to support existing uses; (ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action; (x) the creation of a material demand for other actions that would result in [environmental impacts]; [and] (xi) changes in two or more elements of the environment on one of which has a significant

impact on the environment, but when considered together result in a substantial adverse impact on the environment ....” 6 NYCRR § 617.7(c)(1).

129. Further, in making its significance determination, the agency “must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are: (i) included in any long-range plan of which the action under consideration is a part; (ii) likely to be undertaken as a result thereof; or (iii) dependent thereon.” 6 NYCRR § 617.7(c)(2).

130. An impact is “significant” under SEQRA if it is material, substantial, large or important, and the significance determination for a given potential impact must take into account: “(i) its setting (e.g., urban or rural); (ii) its probability of occurrence; (iii) its duration; (iv) its irreversibility; (v) its geographic scope; (vi) its magnitude; and (vii) the number of people affected.” 6 NYCRR § 617.7(c)(3).

131. The agency’s significance determination must be contained in a writing. 6 NYCRR § 617.7 (b)(4).

132. Courts reviewing SEQRA compliance are required to ensure that the agency in question has satisfied SEQRA both procedurally and substantively, and specifically, to review the record to determine whether the agency identified the relevant areas of environmental concern and took a “hard look” at such relevant areas.

#### General Municipal Law

133. Section 239-m of the General Municipal Law requires that municipalities refer certain types of actions to the county or regional planning agency for review and recommendation prior to the adoption.

134. Both the Town and the Village are located in Orange County, New York, and therefore within the jurisdiction of the Orange County Planning Agency.

135. Among the actions required by Section 239-m to be referred to the Orange County Planning Agency are (1) the adoption or amendment of a zoning ordinance or local law, (2) issuance of special use permits, (3) approval of site plans, and (4) granting of use or area variances.

136. The referral under General Municipal Law § 239-m must consist of a “full statement of such proposed action” as defined in General Municipal Law § 239-m(1)(c), which states:

The term “full statement of such proposed action” shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a complete environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations. When a proposed action referred is the adoption of an amendment of a zoning ordinance or local law, “full statement of such proposed action” shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning counsel.

#### General Municipal Law Article 5-D

137. General Municipal Law Article 5-D provides enabling authority for the construction and development of excess sewage capacity.

138. General Municipal Law § 119 provides authority to the County for the “construction and development of [sewage treatment] capacity *in excess of its own needs* ... for the purpose of conveying, treating and disposing of sewage of another public corporation ....” General Municipal Law § 119. (Emphasis added).

139. General Municipal Law § 119-a further authorizes the County to contract for the sale of such excess capacity. Under this provision, the County can only contract to serve the needs of an out of district user if the use by the outside user would not render the system inadequate for the needs of the District users. (See, Op. State Compt. 89-25).

140. Nearly identical parallel authority is provided to village or town districts in Village Law Article 14, section 14-1404, and Town Law, Article 12, section 192-a.

141. It is a fundamental legal tenet underlying the foregoing enabling authorities that a district is prohibited from contracting for the out-of-district sale of sewage treatment capacity if such capacity is not actually excess or if the district would lack adequate capacity to meet the needs of in-district property owners. See Simson v. Parker, 190 N.Y. 19 (1907).

#### **AS AND FOR A FIRST CAUSE OF ACTION**

##### **(The Village Failed to Strictly Comply with SEQRA Procedural Mandates)**

142. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

143. At the April 17, 2014 special work session, the Village Board adopted the Village Resolution.

144. Pursuant to SEQRA, the Village's April 17, 2014 action to commit to approval of the Casino Project was an "action" that will significantly affect the environment and commit the Village to a definite course of future decisions.

145. On or about June 27, 2014, the Village entered into the Village Agreement.

146. Pursuant to SEQRA, the Village's June 27, 2014 action to commit to approval of the Casino Project was an "action" that will significantly affect the environment and commit the Village to a definite course of future decisions.

147. Pursuant to SEQRA, the Village's actions to commit to approval of the Casino Project were "Type I" actions (6 NYCRR 617.4[b]).

148. The Village violated SEQRA when it failed to properly carry out any of the required SEQRA procedures prior to taking the April 17, 2014 action.

149. The Village violated SEQRA when it failed to properly carry out virtually all of the required SEQRA procedures prior to taking the June 27, 2014 action.

150. As a result of the Village's failure to comply with the strict procedural requirements of SEQRA, either individually or taken as a whole, any subsequent action taken in reliance thereon was and will be illegal, arbitrary and capricious, affected by an error of law, and a violation of SEQRA, and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

### **AS AND FOR A SECOND CAUSE OF ACTION**

**(The Village Failed to Strictly Comply with SEQRA Substantive Mandates)**

151. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

152. When considering an action such as authorization of all construction and/or development associated with the Casino Project, SEQRA requires the lead agency to take a hard look at any and all direct, indirect, and secondary potential adverse environmental impacts of the action before undertaking the action.

153. In addition to defining and classifying its actions (as described above), the Village was required to (1) identify all direct, indirect, and secondary potential adverse environmental impacts that may result from its actions; (2) thoroughly analyze the relevant impacts; and (3) provide a written reasoned elaboration for the basis of its significance determinations, with reference to any supporting documentation.

154. The record is devoid of any indication that the Village identified or analyzed any direct, indirect, or secondary potential adverse environmental impacts from the Casino Project prior to its actions.

155. The Village failed to take the required requisite "hard look" at potential adverse environmental impacts associated with the Casino Project prior to its actions.

156. Because Village failed to take the requisite "hard look" at the environmental impacts associated with the Casino Projects, its actions to commit to approval of the Casino Project and all construction and/or development associated with the Casino Project were illegal, arbitrary and capricious, affected by errors of law, and a violation of SEQRA and, therefore,



must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(The Town Failed to Strictly Comply with SEQRA Procedural Mandates)**

157. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

158. At the April 17, 2014 special work session, the Town Board adopted the Town Resolution.

159. Pursuant to SEQRA, the Town's April 17, 2014 action to commit to approval of the Casino Project and all related work/construction was an "action" that will significantly affect the environment and commit the Town to a definite course of future decisions.

160. Pursuant to SEQRA, the Town's action to commit to approval of the Casino Project was a "Type I" action.

161. The Town violated SEQRA when it failed to properly carry out any of the required SEQRA procedures prior to taking the aforementioned action.

162. As a result of the Town's failure to comply with the strict procedural requirements of SEQRA, either individually or taken as a whole, any subsequent action taken in reliance thereon was and will be illegal, arbitrary and capricious, affected by an error of law, and a violation of SEQRA, and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**(The Town Failed to Strictly Comply with SEQRA Substantive Mandates)**

163. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

164. When considering an action such as authorization of all construction and/or development associated with the Casino Project, SEQRA requires the lead agency to take a hard look at any and all direct, indirect, and secondary potential adverse environmental impacts of the action before undertaking the action.

165. In addition to defining and classifying its action (as described above), the Town was required to (1) identify all direct, indirect, and secondary potential adverse environmental impacts that may result from its action; (2) thoroughly analyze the relevant impacts; and (3) provide a written reasoned elaboration for the basis of its significance action, with reference to any supporting documentation.

166. The record is devoid of any indication that the Town identified or analyzed any direct, indirect, or secondary potential adverse environmental impacts from the Casino Project prior to its action.

167. The Town failed to take the required requisite “hard look” at potential adverse environmental impacts associated with the Casino Project prior to its action.

168. Because the Town failed to take the requisite “hard look” at the environmental impacts associated with the Casino Projects, its action to commit to approval of the Casino Project and all construction and/or development associated with the Casino Project was illegal,

arbitrary and capricious, affected by errors of law, and a violation of SEQRA and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR A FIFTH CAUSE OF ACTION**

**(The Village and Town's Actions to Commit Sewage  
Treatment Capacity to the Casino Project were Ultra Vires)**

169. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

170. The Village Board's April 17, 2014 action to commit to approval of the Casino Project implicitly included a commitment to provide sufficient wastewater treatment to support the Casino Project.

171. The Town Board's April 17, 2014 action to commit to approval of the Casino Project implicitly included a commitment to provide sufficient wastewater treatment to support the Casino Project.

172. The Village Board's June 27, 2014 action to commit to approval of the Casino Project explicitly included a commitment to obtain and transfer to the Casino Respondents 260,000 gpd of additional wastewater treatment capacity from OCSD #1.

173. The Town and Village are located outside of OCSD #1.

174. Upon information and belief, neither the Town nor Village currently has adequate sewage capacity to supply that required by the Casino Project.

175. Pursuant to General Municipal Law § 119, only the County and the District hold authority to provide for the construction and development of capacity in excess of the District's own needs for conveyance, treatment or disposal of sewage of other communities outside of the District.

176. The Town Board is thus without legal authority to authorize expansion of its access to OCSD #1 treatment capacity, and its April 17, 2014 action to commit to approval of the Casino Project was therefore ultra vires.

177. The Village Board is thus without legal authority to authorize expansion of its access to OCSD #1 treatment capacity, and its April 17, 2014 and June 27, 2104 actions to commit to approval of the Casino Project and provide the Casino Respondents with 260,000 gpd of additional treatment capacity were therefore ultra vires.

178. Because the Village Board's April 17, 2014 action and the Town Board's April 17, 2014 and June 27, 2104 actions were ultra vires, they are null and void, and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

#### **AS AND FOR A SIXTH CAUSE OF ACTION**

##### **(The Town and Village Failed to Comply With General Municipal Law § 239-m)**

179. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

180. General Municipal Law § 239-l states the legislative intent and policy for coordination of certain municipal zoning and planning actions. The intent of Sections 239-l and 239-m is to "bring pertinent intercommunity and countywide planning, zoning, site plan and

subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction.” Gen. Mun. Law § 239-l(2).

181. In furtherance of that intent and policy, section 239-m of the General Municipal Law requires that municipalities refer certain types of actions to the county or regional planning agency for review and recommendation prior to undertaking such actions.

182. The Village Board’s April 17, 2014 action to approve the Casino Project is an action subject to the referral requirements of General Municipal Law § 239-m.

183. The Town Board’s April 17, 2014 action to approve the Casino Project is an action subject to the referral requirements of General Municipal Law § 239-m.

184. The Village’s June 27, 2014 action to commit to approval of the Casino Project is an action subject to the referral requirements of General Municipal Law § 239-m.

185. Both the Town and the Village are located in Orange County, New York, and therefore within the jurisdiction of the Orange County Planning Agency.

186. Among the actions required by Section 239-m to be referred to the Orange County Planning Agency are (1) the adoption or amendment of a zoning ordinance or local law, (2) issuance of special use permits, (3) approval of site plans, and (4) granting of use or area variances.

187. Pursuant to Section VIII.C.3.a of the Casino Respondents’ application for a gaming license, the Casino Project will require, at minimum, (1) approval of a special use permit from the Village Board, (2) variances from the Village ZBA with respect to building height and Surface Water Overlay District setback requirements, (3) a conditional use permit approval from

the Village Planning Board for restaurant uses within the Casino Project, and (4) site plan approval the entire Casino Project by the Village Planning Board.

188. Upon information and belief, the Casino Project encompasses amendment of zoning ordinances and local laws.

189. The Village's actions to commit to approval of the Casino Project were made without first referring a full statement of the action to the Orange County Planning Agency, and without obtaining the Orange County Planning Agency's prior review and recommendation.

190. The Town Board's April 17, 2014 action to commit to approval of the Casino Project was made without first referring a full statement of the action to the Orange County Planning Agency, and without obtaining the Orange County Planning Agency's prior review and recommendation.

191. The failure to strictly comply with the referral requirements of the General Municipal Law deprived the Town and the Village of any jurisdiction to act.

192. Because the Town and Village failed to refer full statements of their actions to approve the Casino Project to the Orange County Planning Agency, and further failed to obtain the Orange County Planning Agency's review and recommendation prior to said actions, their actions to commit to approval of the Casino Project and all construction and/or development associated with the Casino Project were illegal, arbitrary and capricious, affected by errors of law, and a violation of General Municipal Law § 239-m and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

**(The Village's Host Community Agreement is Illegal Contract Zoning)**

193. Petitioners repeat and reallege the allegations in the above paragraphs as if fully set forth herein.

194. Upon information and belief, the Village Board's April 17, 2014 action to commit to approval of the Casino Project was made pursuant to an agreement between the Village and the Casino Respondents, wherein the Casino Respondents would provide substantial financial and other compensation in exchange for the Village's approval and cooperation with the Casino Project.

195. Under the Village Agreement, the Casino Respondents agreed to provide substantial financial and other compensation in exchange for the Village's approval and cooperation with the Casino Project.

196. Pursuant to Section VIII.C.3.a of the Casino Respondents' application for a gaming license, the Casino Project will require, at minimum, (1) approval of a special use permit from the Village Board, (2) variances from the Village ZBA with respect to building height and Surface Water Overlay District setback requirements, (3) a conditional use permit approval from the Village Planning Board for restaurant uses within the Casino Project, and (4) site plan approval the entire Casino Project by the Village Planning Board.

197. Upon information and belief, the Casino Project will require a legislative amendment to the Village zoning law.

198. Upon information and belief, the Casino Project will require use and area variances from the Village ZBA prior to construction.

199. The Village Agreement constitutes a contract that is binding upon the Village, the Village Board, the Village Planning Board, and/or the Village ZBA.

200. The Village Agreement includes a binding promise on behalf of the Village, the Village Board, the Village Planning Board, and/or the Village ZBA, in advance, to exercise the Village's legislative and zoning authority in a bargained-for manner by, among other things, changing the Village's zoning law to ensure that the Casino Project is in compliance therewith, and/or approving all zoning, site plan, and use variance applications required for the Casino Project to move forward.

201. The Village bargained away the legislative and administrative power of its zoning authority.

202. For the foregoing reasons, the Village's actions to commit to approval of the Casino Project should be declared invalid, null and void, and Respondents should be enjoined from taking any action in furtherance of the contract zoning agreement between the Village and the Casino Respondents.

#### **AS AND FOR AN EIGHTH CAUSE OF ACTION**

**(The Village Actions to Commit to Approvals by the Planning Board were Ultra Vires)**

203. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.



204. Pursuant to Section VIII.C.3.a of the Casino Respondents' application for a gaming license, the Casino Project will require, at minimum, a conditional use permit approval from the Village Planning Board for restaurant uses within the Casino Project, and site plan approval from the Village Planning Board for the entire Casino Project.

205. Pursuant to the Village Zoning Code, the Village Planning Board has sole responsibility and/or authority to review and approve, approve with modification or deny applications for conditional uses and to review and approve, approve with conditions and deny site plan applications within the Village.

206. The Village Board's April 17, 2014 action to commit to approval of the Casino Project implicitly included a promise to grant the Casino Respondents all site plan approvals and conditional use permit approvals required to move forward with the Casino Project.

207. The Village's June 27, 2014 action to commit to approval of the Casino Project included a promise to grant the Casino Respondents all site plan approvals and conditional use permit approvals required to move forward with the Casino Project.

208. The Village Board is without legal authority review and approve, approve with conditions and deny site plan applications and conditional use permit applications within the Village, and its actions to commit to approval of the Casino Project were therefore ultra vires.

209. Because the Village's actions were ultra vires, they are null and void, and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR A NINTH CAUSE OF ACTION**

**(The Village Actions to Commit to Approvals by the**

**Zoning Board of Appeals were Ultra Vires)**

210. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

211. Pursuant to Section VIII.C.3.a of the Casino Respondents' application for a gaming license, the Casino Project will require, at minimum, use and/or area variances from the Village ZBA with respect to building height and Surface Water Overlay District setback requirements.

212. Pursuant to the Village Zoning Code, the Village ZBA has sole responsibility and/or authority to, among other things, determine the appropriate interpretation of the Village Zoning Code on appeals from any action of the Village's Zoning Enforcement Officer, as well as to grant or deny applications for use and/or area variances within the Village.

213. The Village Board's April 17, 2014 action to commit to approval of the Casino Project implicitly included a promise to grant the Casino Respondents all use and/or area variance approvals required to move forward with the Casino Project.

214. The Village's June 27, 2014 action to commit to approval of the Casino Project included a promise to grant the Casino Respondents all use and/or area variance approvals required to move forward with the Casino Project.

215. The Village and the Village Board are without legal authority review and approve, approve with conditions and deny use variance applications within the Village and the Town, and the Village's actions to commit to approval of the Casino Project were therefore ultra vires.

216. Because the Village's actions were ultra vires, they are null and void, and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR A TENTH CAUSE OF ACTION**

**(The Village Actions are Inconsistent with the Village's Comprehensive Plan)**

217. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

218. Upon information and belief, the Village has a Comprehensive Plan, pursuant to Village Law § 7-722.

219. Upon information and belief, the Village's Comprehensive Plan is comprised of, among other things, resolutions, maps, charts, studies, reports, zoning ordinances and all prior land use and zoning determinations rendered by Village officials.

220. Upon information and belief, the Village's Comprehensive Plan provides for the Village to exclusively contain a family-friendly mix of small-town, suburban and rural settings.

221. Upon information and belief, the Village's Comprehensive Plan prohibits large-scale development Casino Projects, tourist attractions, and vice such as gambling.

222. Upon information and belief, the Village's actions to commit to approval of the Casino Project constitutes a "land use regulation" within the meaning of Village Law § 7-722(11)(a).

223. Upon information and belief, the Casino Project is inconsistent with the Village's Comprehensive Plan.

224. The Village's actions to commit to approval of the Casino Project were not in accordance with the Village's Comprehensive Plan, and are thus null and void, and Respondents should be enjoined from taking any action in furtherance of the Casino Project.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION**

**(Violation of County Law § 266 and General Municipal Law § 119-a)**

225. Petitioners repeat and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

226. Upon information and belief, the County and the District have purported to offer to sell 260,000 gpd of OCSD #1 sewage treatment capacity to the Village and/or Town to cover the treatment needs created by the Casino Project.

227. The Town and Village are located outside of OCSD #1.

228. The County is not authorized under General Municipal Law § 119-a or County Law § 266 to enter into such a contract because, upon information and belief, it has not demonstrated that the capacity it proposes to sell outside of the District is excess.

229. The County is not authorized under General Municipal Law § 119-a or County Law § 266 to enter into such contracts because, upon information and belief, it has not demonstrated that the use of the capacity by the out-of-District users would not render the wastewater treatment system inadequate for the needs of the District users.

230. The County and District violated the County Law and General Municipal Law when they, upon information and belief, commenced actions to sell District sewage treatment capacity to the Village and/or Town.

231. Because Respondents failed to demonstrate that the sewage treatment capacity at the HWTP that they, upon information and belief, propose to sell to the Village and/or Town is excess and would not render the sewage treatment system inadequate for the needs of the District users, including the Petitioners, the County and District's action was illegal, arbitrary and capricious, affected by errors of law, and a violation of the County Law and General Municipal Law, and, therefore, must be declared null and void, and Respondents should be enjoined from taking any action in furtherance of the sale of District sewage treatment capacity to communities outside of the District.

**WHEREFORE**, Petitioners respectfully request that this Court enter a Judgment/Order granting the Verified Petition and Complaint in its entirety and awarding judgment to the Petitioners as follows:

1. Restraining and enjoining Respondents from entering any contract or agreement and undertaking any further efforts in furtherance of the Casino Project;
2. Declaring the April 17, 2014 resolutions by the Town and the Village to support the Casino Project were actions subject to SEQRA;
3. Declaring the June 27, 2014 agreement by the Village committing to the approval of the Casino Project was an action subject to SEQRA;

4. Annuling and setting aside the April 17, 2014 resolutions of the Town and the Village and any and all contracts, agreements or other actions taken in reliance thereon;

5. Annuling and setting aside the June 27, 2014 agreement by the Village and any and all contracts, agreements or other actions taken in reliance thereon;

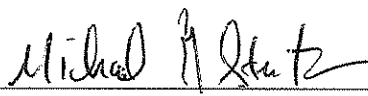
6. Restraining and enjoining Respondents from entering any contract or agreement and undertaking any further efforts to obtain and sell District wastewater treatment capacity outside of the District;

7. Awarding Petitioners the costs, disbursements and attorneys' fees incurred in connection with this proceeding; and

8. Awarding Petitioners such other relief as this court shall deem just, proper or equitable.

Dated: Albany, New York  
August 15, 2014

WHITEMAN OSTERMAN & HANNA LLP

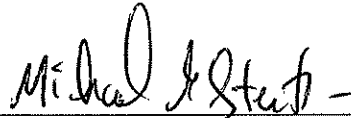
By:   
Michael G. Sterthous, Esq.  
Attorneys for Plaintiffs/Petitioners  
One Commerce Plaza  
Albany, New York 12260  
(518) 487-7600

VERIFICATION

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

MICHAEL G. STERTHOUS, being duly sworn, deposes and says as follows:

1. I am a member of Whiteman Osterman & Hanna LLP, attorneys for Plaintiffs/Petitioners in this matter.
  
2. I have read the foregoing Verified Petition and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and information provided by my clients.
  
3. The reason why this verification is made by me and not Plaintiffs/Petitioners is that Plaintiffs/Petitioners do not have their principal place of business within the County of Albany.



\_\_\_\_\_  
MICHAEL G. STERTHOUS

Sworn to before me this  
15<sup>th</sup> day of August, 2014.



\_\_\_\_\_  
Notary Public  
Lisa D. Rice  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01R14805553  
Commission Expires May 31, 2018

# **EXHIBIT A**



**RESOLUTION**

Resolution No.: 48 of 2014

**Roll Call Vote**

Name	Ayes	Noes	Abstain	Absent
<i>Mayor</i> <b>Mr. Robert Jeroloman</b>	X			
<i>Deputy Mayor</i> <b>Mr. John Hickey</b>	X			
<i>Trustee</i> <b>Mrs. Dorine Sas</b>	X			
<i>Trustee</i> <b>Mr. Garry Dugan</b>	X			
<i>Trustee</i> <b>Mr. James Mullany</b>	X			
<b>TOTAL</b>	5			

The following was presented

By Trustee Mullany

Seconded by Trustee Sas

Date of Adoption April 17, 2014

**RESOLUTION – VILLAGE BOARD OF THE VILLAGE OF SOUTH BLOOMING GROVE, NEW YORK IN FULL SUPPORT AS A HOST MUNICIPALITY FOR OCCR ENTERPRISES, LLC REGARDING THE UPSTATE NEW YORK GAMING ECONOMIC DEVELOPMENT ACT OF 2013 TO DEVELOP AND OPERATE A GAMING FACILITY ON LAND LOCATED ADJACENT TO NEW YORK STATE ROUTE 208 IN THE VILLAGE OF SOUTH BLOOMING GROVE BY OCCR ENTERPRISES, LLC**

**WHEREAS**, on March 31, 2014, the New York Gaming Facility Location Board (the “State Gaming Board”) issued a Request for Applications to Develop and Operate a Gaming

Facility in New York State (the “RFA”) pursuant to The Upstate New York Gaming Economic Development Act of 2013 (the “Act”); and

**WHEREAS**, prior to the enactment of such Act, no Project had been proposed, applied for or otherwise developed in the Village of South Blooming Grove, New York (“Village”) by an entity that would qualify under the Act as said Act was previously being considered before its enactment, but other entities had already applied for facilities elsewhere in New York State that could qualify if the Act were approved by the New York State voters as eventually the Act was in November 2013; and

**WHEREAS**, an entity such as OCCR Enterprises, LLC (“OCCR”), not having already proposed, applied for or constructed any facility that would qualify under the Act prior to its expression of interest in the Village was accordingly at a disadvantage in being considered equally as others and therefore time requirements for actions by any municipality such as the Village must be expeditious to provide equally opportunity for all entities being so considered under the Act;

**WHEREAS**, OCCR has informed the Village that it has entered into contracts to purchase land in the Village of South Blooming Grove known as Section 223, Block 1, Lot 1 and Section 223, Block 1, Lot 2 on the Tax Map of the Village of South Blooming Grove (the “Project Site”). The Project Site is situated on New York State Route 208 in close proximity to Exit 130 off New York State Highway Route 17 soon to be Interstate Route 86; and

**WHEREAS**, OCCR at a Village Board meeting on April 11, 2014 in open public session provided information to the Village Board that OCCR is a qualified applicant with substantial experience in financing, developing and operating entertainment, restaurant and gaming facilities; and

**WHEREAS**, at the April 11, 2014 meeting, the Village Board heard from OCCR as well as considered and discussed matters relating to the potential development of certain types of gaming and/or casino projects in the Village and the potential positive economic and community development that could flow from such development; and

**WHEREAS**, the facility proposed by OCCR is a joint effort of the Cordish Companies and Penn National Gaming, Inc., who collectively have extensive experience in the development and operation of the type of facilities being considered in the Village; and

**WHEREAS**, the affiliates and principals of OCCR are qualified applicants with substantial experience in financing, developing and operating entertainment, restaurant and gaming facilities; and

**WHEREAS**, OCCR has stated its intent to file an application with the State Gaming Board in response to the RFA (the “Application”) seeking a license to develop and operate a Gaming Facility, with a hotel and other amenities, including retail space and entertainment venues (the “Project”) on the Project Site, as same may be expanded. As a condition to the

filing of the Application with the State Gaming Board, OCCR is required to submit a Resolution passed by the Village Board supporting the Application; and

**WHEREAS**, failure of the Village Board to pass a Resolution of support of OCCR would preclude further review and consideration of such potential development by the Village as the application would not be accepted by the State Gaming Board; and

**WHEREAS**, any such Project, even if approved for a license by the State Gaming Board, would still be required to comply with all the Village's planning, zoning and environmental review process as well as proceeding through public hearings where any and all aspects of any construction or operations of OCCR can be discussed by the public for all appropriate approvals in order to ensure the protection of the health, safety and welfare of the residents of the Village, including but not limited to, work required in and around such Gaming Project (e.g. major alteration to the Rt. 208 corridor leading to the site); and

**WHEREAS**, as a result of the development of such facility, residents of the Village of South Blooming Grove could benefit from significant job opportunities, lower taxes, additional aid to local schools, increased local investment, and various economic and community benefits that could derive from such Project; and

**WHEREAS**, the Village Board recognizes the uniqueness of the Project Site, the qualifications of OCCR and the opportunity the Project represents to the Village of South Blooming Grove and its residents; and

**WHEREAS**, by fully supporting the development and operation of the Project at the Project Site by OCCR, the Village and County of Orange can realize lower taxes, more job opportunities and other benefits as part of a balanced as well as sustainable economy and can expand the commercial tax base of the Village and the County of Orange so as to lessen the burden on local taxpayers; and

**WHEREAS**, on April 16, 2014, the Village Board, during an open public meeting, heard from the representatives of OCCR, including representatives of Cordish Companies and Penn National Gaming, Inc., including the presentation of questions from the members of the Village Board and the public as well a presentation of the relevant laws from Special Counsel; and

**WHEREAS**, on April 17, 2014, the Village Board, during an open and public meeting in a joint session with the Town of Blooming Grove Town Board, received information pertaining to the relevant laws and application process from Special Counsel; a presentation from the OCCR representatives, comments and questions from members of the public and municipal representatives; and

**NOW THEREFORE IT IS RESOLVED**, that the Village Board of the Village of South Blooming Grove fully supports the Application to be filed by OCCR Enterprises, LLC with the State Gaming Board for the development and operation of the Gaming Project on the Project Site as same may be expanded and fully supports and encourages the proposal for

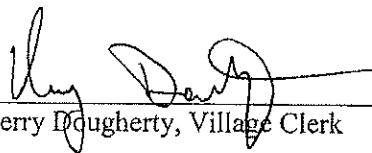
development and operation of the Gaming Project on the Project Site by OCCR Enterprises, LLC and its successors and assigns; and

**IT IS FURTHER RESOLVED**, that the South Blooming Grove Village Clerk is hereby directed to forward a copy of this Resolution to the State Gaming Board and move its adoption.

**MOTION CARRIED** The foregoing resolution was thereupon declared duly adopted on April 17, 2014

**BY ORDER OF THE VILLAGE BOARD OF THE  
VILLAGE OF SOUTH BLOOMING GROVE, NEW YORK.**

DATED: April 17, 2014

  
Kerry Dougherty, Village Clerk

# **EXHIBIT B**

# Town of Blooming Grove

## *Supervisor*

Robert A. Fromaget  
(845) 496-5223  
FAX (845) 496-1362

## *Council Members*

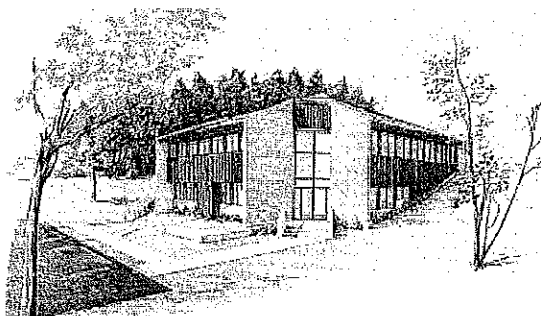
Thomas J. DeVinko  
Ronald S. Jurain  
Johanna K. Kiernan  
Brandon L. Nielsen

## *Highway Superintendent*

John Dolson  
(845) 496-3816  
FAX (845) 496-1466

## *Town Comptroller*

Angela Doering



P. O. BOX 358  
HORTON ROAD and ROUTE 94  
BLOOMING GROVE, N.Y. 10914

## *Town Clerk*

Darlana E. Decker-Geyer  
(845) 496-3895  
FAX (845) 496-1787

## *Receiver of Taxes*

Joan L. Kelly  
(845) 496-6670  
FAX (845) 497-2361

## *Assessor's Office*

Lori Coady  
(845) 496-7601  
FAX (845) 496-1945

## *Building Inspector*

Jeanne Ovensen  
(845) 496-7011 ext. 725  
FAX (845) 496-1945

May 27, 2014

To Whom It May Concern:

I, Darlena E. Decker-Geyer, Town Clerk, Town of Blooming Grove, Orange County, New York, do hereby certify that the annexed is a true and accurate copy of a resolution that was duly adopted by the Town Board of the Town of Blooming Grove at a Special Town Board Meeting held on the 17th day of April 2014:

**RESOLUTION – TOWN BOARD OF THE TOWN OF BLOOMING GROVE, NEW YORK IN SUPPORT OF THE APPLICATION TO DEVELOP AND OPERATE A GAMING FACILITY ON LAND LOCATED ADJACENT TO NEW YORK STATE ROUTE 208 IN THE VILLAGE OF SOUTH BLOOMING GROVE BY OCCR ENTERPRISES, LLC**

On a motion by Councilman DeVinko, Seconded by Deputy Supervisor Kiernan, the Town Board resolves the following:

**WHEREAS**, on March 31, 2014, the New York Gaming Facility Location Board (the “**State Gaming Board**”) issued a Request for Applications to Develop and Operate a Gaming Facility in New York State (the “**RFA**”) pursuant to The Upstate New York Gaming Economic Development Act of 2013; and

**WHEREAS**, OCCR Enterprises, LLC, an affiliate of The Cordish Companies, has entered into contracts to purchase land in the Village of South Blooming Grove, Town of Blooming Grove, County of Orange, known as Section 223, Block 1, Lot 1 and Section 223, Block 1, Lot 2 on the Tax Map of the Village of South Blooming Grove (the “**Project Site**”). The Project Site is situated on New York State Route 208 in close proximity to Exit 130 off New York State Highway Route 17 soon to be Interstate Route 86; and

**WHEREAS**, the affiliates and principals of OCCR Enterprises, LLC are qualified applicants with substantial experience in financing, developing and operating entertainment, restaurant and gaming facilities; and

**WHEREAS**, OCCR Enterprises, LLC has stated an intent to file an application with the State Gaming Board in response to the RFA (the “**Application**”) seeking a license to develop and operate a Gaming Facility, with a hotel and other amenities, including retail space and entertainment venues (the “**Gaming Project**”) on the Project Site. As a condition of filing its application with the State Gaming Board, OCCR Enterprises, LLC is required to demonstrate community support for its application; and

**WHEREAS**, the Town Board has discussed matters relating to the potential location of certain types of gaming or casino facilities in the Town of Blooming Grove; and

**RESOLUTION – TOWN BOARD OF THE TOWN OF BLOOMING GROVE, NEW YORK IN SUPPORT OF THE APPLICATION TO DEVELOP AND OPERATE A GAMING FACILITY ON LAND LOCATED ADJACENT TO NEW YORK STATE ROUTE 208 IN THE VILLAGE OF SOUTH BLOOMING GROVE BY OCCR ENTERPRISES, LLC - Continued**

**WHEREAS**, a Special Work Session was jointly held on April 17, 2014 by the Town Board and the Village Board of the Village of South Blooming Grove, at which time a presentation was made by the Village Board of the Village of South Blooming Grove, at which time a presentation was made by OCCR Enterprises, LLC to review the proposed Gaming Project. At said Special Work Session, comments were made by County Executive Steven Neuhaus in support of the Gaming Project. In addition, both municipal boards and the public were given the opportunity to make relevant inquiries and provide comments pertaining to the Gaming Project; and

**WHEREAS**, the residents of the Town of Blooming Grove, would welcome the job opportunities, increased local spending, and economic and community benefits that would most assuredly derive from such Gaming Project; and

**WHEREAS**, the Town Board recognizes the uniqueness of the Project Site, the qualifications of OCCR Enterprises, LLC and the opportunity the Gaming Project represents to the Town of Blooming Grove; and

**WHEREAS**, by encouraging the development and operation of the Gaming Project at the Project Site by OCCR Enterprises, LLC, the Town of Blooming Grove and the County of Orange can expand their tourism base by providing services and overnight accommodations for visitors as part of a balanced economy and can expand the tax base of the Town. In addition, the Town Board believes that the development and operation of the Gaming Project at the Project Site would have a positive impact on Orange County, New York, the Monroe-Woodbury Central School District, and surrounding communities, through the increase of property tax revenues and the expansion of employment opportunities for the citizens of Orange County, New York; and

**WHEREAS**, failure of the Town Board to pass a resolution of support for the submission of an application by OCCR Holdings, LLC would preclude further review and consideration of such potential development by OCCR Enterprises, LLC within the Town as the application would not be accepted by the State Gaming Board; and

**WHEREAS**, any such project, even if approved for a license by the State Gaming Board, would still be required to comply with the local planning, zoning and environmental review process for all appropriate approvals in order to ensure the protection of the health, safety and welfare of the residents of the community; and

**WHEREAS**, The Town Board recognizes a land owner's right to develop and has no opposition to development, as long as the development is a responsible one that complies with the all applicable laws and ensures proper protections of our cherished resources and that the public interest is protected; and

**WHEREAS**, The Blooming Grove Board is in full support of the Gaming Project and OCCR Enterprises, LLC's Application to the State Gaming Board for a license to develop and operate the Gaming Facility at the Project Site; and

**NOW THEREFORE IT IS HEREBY RESOLVED**, that the Town Board of the Town of Blooming Grove fully supports the Application to be filed by OCCR Enterprises, LLC with the Board for the development and operation of the Gaming Project on the Project Site and fully supports and encourages the development and operation of the Gaming Project on the Project Site by OCCR Enterprises, LLC and its successors and assigns, and

**BE IT FURTHER RESOLVED**, that this Resolution is intended to satisfy the eligibility requirements of NYS Racing, Pari-Mutuel Wagering and Breeding Law § 1314(2) and specifically to satisfy the condition of local support for the gaming license applicant, and

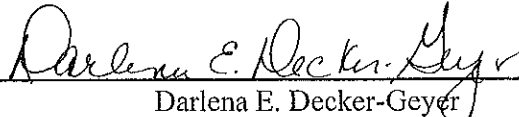
**RESOLUTION – TOWN BOARD OF THE TOWN OF BLOOMING GROVE, NEW YORK IN SUPPORT OF THE APPLICATION TO DEVELOP AND OPERATE A GAMING FACILITY ON LAND LOCATED ADJACENT TO NEW YORK STATE ROUTE 208 IN THE VILLAGE OF SOUTH BLOOMING GROVE BY OCCR ENTERPRISES, LLC - Continued**

**BE IT FURTHER RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to the State Gaming Board and the Clerk of the Village of South Blooming Grove and moves its adoption.

ROLL CALL VOTE:	AYE	NAY
Supervisor Fromaget:	X	
Deputy Supervisor Kiernan:	X	
Councilman Devinko:	X	
Councilman Jurain:	X	
Councilman Nielsen:		X

**MOTION CARRIED**

The foregoing resolution was thereupon declared duly adopted on April 17, 2014

  
\_\_\_\_\_  
Darlena E. Decker-Geyer  
Town Clerk



# **EXHIBIT C**

## HOST COMMUNITY AGREEMENT

**THIS HOST COMMUNITY AGREEMENT** (this “**Agreement**”) is made and entered into as of June 27, 2014 (the “**Effective Date**”), by and between the **VILLAGE OF SOUTH BLOOMING GROVE** (the “**Village**”) a village organized in accordance with the laws of New York State, and **OCCR ENTERPRISES, LLC**, a New York limited liability company (“**OCCR**”).

### RECITALS

The following are the recitals underlying this Agreement:

**WHEREAS**, on March 31, 2014, the New York State Gaming Facility Location Board (the “**Board**”) issued a Request for Applications to Develop and Operate a Gaming Facility in New York State (the “**RFA**”) pursuant to The Upstate New York Gaming Economic Development Act of 2013 (as same may be amended, modified or replaced from time to time, the “**Act**”); and

**WHEREAS**, prior to the enactment of such Act, no “**Gaming Facility**” (as that term is defined in the RFA) had been proposed, applied for or otherwise developed in the Village by an entity that would qualify under the Act as said Act was previously being considered before its enactment, but other entities had already commenced the local approval, permitting and development process of Gaming Facilities elsewhere in New York State that could qualify if the Act were approved by the New York State voters as eventually the Act was in November 2013; and

**WHEREAS**, an entity such as OCCR, not having already proposed, applied for or constructed any facility that would qualify under the Act prior to its expression of interest in the Village was accordingly at a disadvantage in being considered equally as others and therefore time requirements for actions by any municipality such as the Village must be expeditious to provide equally opportunity for all entities being so considered under the Act; and

**WHEREAS**, OCCR has informed the Village that OCCR has entered into contracts to purchase approximately 125 acres of land located in the Village known as Section 223, Block 1, Lot 1 and Section 223, Block 1, Lot 2 on the Tax Map of the Village (the “**Project Site**”); and

**WHEREAS**, the Project Site is situated on New York State Route 208 and is in close proximity to Exit 130 off New York State Highway Route 17 soon to be Interstate Route 86; and

**WHEREAS**, OCCR plans to submit to the Board on June 30, 2014 an application (the “**Application**”) to develop and operate a Gaming Facility on the Project Site in response to the RFA. If the Board awards a License (as that term is defined in the RFA) to OCCR to develop and operate a Gaming Facility on the Project Site, the Gaming Facility, as will be more particularly described in the Application, will consist of a hotel, a casino and associated amenities, including bars, restaurants, entertainment venues, meeting space and parking facilities

(as same may be modified from time to time, the "Project") and is projected to create approximately 4,000 permanent jobs and thousands more construction related jobs; and.

**WHEREAS**, the Village, in Village Board Resolution No. 48 Of 2014, made certain findings regarding the Project and economic development in the Village regarding new jobs for residents and new sources of income for the Village, and accordingly, the Village desires to support the Application and OCCR's efforts to develop the Project: and

**WHEREAS**, OCCR desires to address impacts from the development and operation of the Project; and

**WHEREAS**, OCCR and the Village desire to enter into this Agreement to memorialize their agreements concerning certain issues regarding the development and operation of the Project.

**NOW THEREFORE**, the Village and OCCR, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby enter into this Agreement to effectuate the purposes set forth above and to be bound by the provisions set forth below:

**Section 1. Definitions**

Any term used herein that is defined in the RFA shall be given such definition for purposes of this Agreement, except the term "Host Community" which shall be as defined in Article 13 of the New York State Racing Pari-Mutuel Wagering and Breeding Law.

The term "Commencement of Construction" shall mean the substantial completion of the pouring of the foundations for the Gaming Facility on the Project Site.

The term "Commencement of Operations" shall mean the first date upon which the any portion of the gaming or casino floor that is part of the Gaming Facility is open for business at the Project Site as a casino.

**Section 2. Payments to the Village, Public Safety Services, Permit Fees, Water Service and Sewer Service.**

**A. Project Planning Payments.**

OCCR agrees to pay all of the Village's actual, reasonable costs involved in: (i) negotiating, reviewing and preparing this Agreement (legal and accounting); (ii) reviewing and processing OCCR's SEQRA application; (iii) engaging and utilizing a dedicated third-party to review, approve and inspect OCCR's construction plan submissions for the Project and the initial construction of the Project; and (iv) engaging and utilizing a third party service to assist in the management and oversight of the review process. In addition, OCCR agrees to pay the costs incurred by the Village to third party governmental agencies for the review and processing of OCCR's permit applications concerning the initial construction of the Project. The Village shall provide OCCR with a reasonable budget for items (i), (ii), (iii) and (iv) above, which shall be

subject to OCCR's approval, which shall not unreasonably be withheld. The Village shall provide reasonable substantiation and documentation for any and all costs paid for or reimbursed by OCCR. As OCCR is paying all of the Village's planning and review costs directly, it will not be subject to any additional planning and review fees, except as otherwise specifically set forth herein.

OCCR has previously deposited \$80,000 in escrow with the Village for payment of the above costs and shall maintain a minimum balance of \$40,000 in escrow through the Commencement of Operations. The Village shall utilize such funds (and the interest accrued thereon) to pay such costs. The Village will provide OCCR with a monthly accounting of such escrow.

**B. Community Benefit and Impact Payments.**

OCCR and the Village, recognizing that the scale of the proposed Project will significantly impact the Village and its residents, agree to the Community Benefit and Impact Payments (the "CBI Payments") set forth in this Section 2. B. The CBI Payments shall be for the purpose of addressing any direct and indirect impacts related to the Project, as determined and approved by the Village; to provide any appropriate community benefits to the Village and its residents in connection with construction of the Project and the anticipated effects of such Project, as determined and approved by the Village. OCCR shall pay to the Village the CBI Payments totaling Ten Million and 00/100 Dollars (\$10,000,000.00). The CBI Payments shall be paid in accordance with the following schedule:

**Payment #1.** On the later of February 1, 2015 and ten (10) days after the Board's final and non-appealable award of a License to OCCR for the Project, OCCR shall pay to the Village the sum of One Million and 00/100 Dollars (\$1,000,000.00);

**Payment #2.** On the later of August 1, 2015 and one hundred eighty (180) days after the Board's final and non-appealable award of a License to OCCR, OCCR shall pay to the Village the sum of One Million and 00/100 Dollars (\$1,000,000.00);

**Payment #3.** Within thirty (30) days after the later of the Board's final and non-appealable award of a License to OCCR for the Project and the issuance of a final and non-appealable building permit for the Project, OCCR shall pay to the Village the sum of Four Million and 00/100 Dollars (\$4,000,000.00); and

**Payment #4.** Within thirty (30) days after the later of the Board's final and non-appealable award of a License to OCCR for the Project and the Commencement of Construction, OCCR shall pay to the Village the sum of Four Million and 00/100 Dollars (\$4,000,000.00).

The following Village fees as set forth in the Village's Code and fee schedule shall also be deemed to be included, in full, as part of the CBI Payments with respect to the Project: sewer hook-up fees; water system hook-up fees; park /recreation fees; Soil Grading and Disturbance fees and Building Permit fees.

**C. Public Safety Services.**

OCCR and the Village will work cooperatively with the appropriate public safety service providers to determine the public safety service needs directly related to the Project. Provided that a final and non-appealable award of a License to OCCR for the Project is made by the Board and a final and non-appealable building permit for the Project has been issued to OCCR by the Village, OCCR shall pay up to the first Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00) of reasonable start-up related capital costs that the Village expects to incur prior to the opening of the Project that are directly related to increased public safety services resulting from the Project. Such payment shall be non-refundable and shall be made in installments, with each installment due within thirty (30) days after the Village provides OCCR with a reasonably detailed invoice for such costs, which invoice is accompanied with reasonable back-up documentation. In the event that such costs exceed Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00), at the election of the Village, OCCR shall advance to the Village the excess amount of such expected costs using the same invoice and payment procedure as above. The Village shall provide OCCR with reasonable estimates for such costs. In the event that OCCR has made an advance to the Village for such costs (as opposed to the non-refundable up to \$2,250,000 payment), the Village shall reimburse OCCR for such advance, without interest, fees or penalties, out of the first monies received by the Village from the State of New York as the Village's share of any taxes paid by OCCR to the State of New York (or any agency thereof) under the Act.

**D. Annual Gaming Tax Benefit.**

The Village recognizes and agrees that the funds that it will receive from the Village's share of any taxes and fees paid by OCCR to the State of New York (or any agency thereof) under the Act will compensate the Village for any impacts caused by the operation of the Project. In the event that the Village enters into a contract with another jurisdiction to provide enhanced police services to the Village in order to directly service the demands of the Project, and in any year the costs paid by the Village under such contract exceeds the Village's share of any taxes paid by OCCR to the State of New York (or any agency thereof) under the Act, OCCR shall reimburse the Village for the shortfall amount within thirty (30) days of the date that the Village provides OCCR with an invoice for such shortfall with reasonable documentation establishing such shortfall. At the request of OCCR, the Village shall provide OCCR with a copy of any such contract.

**E. Permit Fees.**

Subject to the provisions of Sections 2.A. and 2.B. hereof and the other provisions of this Section 2.E., OCCR agrees to pay to the Village all connection and other municipal fees, other than the fees listed in Section 2.B., in connection with the development, maintenance, repair, expansion and operation of the Project as are normal and customary with respect to commercial development in the Village (the "Permit Fees"). As OCCR has agreed, pursuant to the provisions of Section 2.A. hereof, to pay all of the plan review and construction inspection, administration costs actually incurred by the Village in connection with the initial development

and construction of the Project, the Village shall not charge OCCR additional plan review and construction inspection, administration costs or fees in connection with the construction of the Project.

**F. Water Infrastructure System.**

OCCR shall be responsible, at its cost, for constructing the necessary water system infrastructure for the Project, including but not limited to, drilling required wells, pumps, treatment facilities, any and all related infrastructure and constructing all fire suppression facilities. Except as otherwise provided in this Section 2.F., OCCR shall, upon the completion of the necessary water infrastructure system for the Project Site, dedicate such water infrastructure system (i.e., the wells, pumps, treatment and all related infrastructure, but not fire suppression facilities located within buildings, such as sprinkler systems and kitchen fire suppression systems) to the Village's water district and become integrated into the Village water district water system, in which case, after such dedication, the Village water district will own, operate and maintain the system. OCCR shall not be subject to water system hook-up fees as set forth in Section 2.B. hereof.

Within fifteen (15) days after the later of the Board's final and non-appealable award of a License to OCCR for the Project and the issuance of a final and non-appealable building permit for the Project, OCCR shall have the right to notify the Village, in writing, whether it elects to maintain a private water infrastructure system and not dedicate same to the Village's water district. If OCCR timely elects to maintain a private water infrastructure system, OCCR shall not be obligated to dedicate such system to the Village's water district and shall be entitled to reduce the CBI Payment #3 (Section 2.B) in an amount equal to the Village's water hook-up fees for the Project at the rate in effect at the time of execution of this Agreement, such deduction not to exceed the total amount of the CBI Payment #3.

**G. Sewer Service.**

OCCR shall be responsible, at its cost, for constructing the necessary public sewer service connection infrastructure for the Project, including but not limited to, constructing all facilities, pipes, pumps and infrastructure. Except as otherwise provided in this Section 2 G., OCCR shall, after the completion of such sewer connection infrastructure, dedicate such sewer connection infrastructure (i.e., the pumps, pipes and all related infrastructure) to the Village's sewer district and become integrated into the Village's sewer district sewer system. Upon such dedication, the Village's sewer district shall own, operate, and maintain the system. OCCR shall not be subject to sewer system hook-up fees as set forth in Section 2.B.

Subject to the last sentence of this paragraph, the Village will pursue all reasonable efforts to make 260,000 gallons per day ("gpd") of sewer capacity available to the Project, at customary rates. OCCR recognizes that 260,000 gpd of sewer capacity is the amount of additional sewer capacity the Village believes is available to the Village via agreements with the County of Orange. The Village has, at OCCR's request, sent notice to the County Executive of Orange County, requesting the County to provide the Village with written verification of the 260,000 gpd of excess sewer capacity. To the extent that the Village obtains 260,000 gpd of

excess sewer capacity, it agrees to allocate 260,000 gpd of such excess sewer capacity to OCCR. OCCR shall pay the Village for all expenses reasonably incurred by the Village for the Village to obtain the aforesaid sewer capacity as well as all costs charged by the County of Orange, New York, or others for that additional capacity to become integrated into the Village's sewer district. In the event OCCR determines at any time, in its sole discretion, that it has excess sewer capacity, OCCR shall be entitled to sell back to the Village or County the excess capacity at fair market value. The Village shall have the right of first refusal should OCCR opt to sell back any such excess capacity. Notwithstanding anything to the contrary contained in this Section 2.G., if OCCR elects, pursuant to the next paragraph, to maintain a private sewers system and not connect to the Village's sewer district, the Village shall have no further obligation to pursue such excess sewer capacity on behalf of OCCR.

Within fifteen (15) days after the later of the Board's final and non-appealable award of a License to OCCR for the Project and the Commencement of Construction, OCCR shall have the right to notify the Village, in writing, whether it elects to maintain a private sewer system for the Project and not dedicate the necessary public sewer service connection infrastructure to the Village's sewer district. If OCCR timely elects to maintain a private sewer system for the Project, OCCR shall not be obligated to dedicate the Project's sewer connection infrastructure to the Village's sewer district and shall be entitled to reduce CBI Payment #4 (Section 2.B.) in an amount equal to the Village's sewer hook-up fees for the Project at the rate in effect at the time of execution of this Agreement, such deduction not to exceed the total amount of the CBI Payment #4.

### **Section 3. Workforce Development; Local Hiring Preference.**

#### **A. Construction Jobs.**

OCCR will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified Village of South Blooming Grove residents and/or Town of Blooming Grove residents for contracting, subcontracting and servicing opportunities in the development and construction of the Project.

OCCR intends for the Project to be constructed using union labor. To that end, OCCR's construction manager will develop a roster where residents of the Village of South Blooming Grove, or the Town surrounding the Village, who are members of the various construction unions working on the Project, can express their interest in working on the Project. The construction managers will then review and consider the individuals on the roster prior to filling any openings and encourage the project contractors to hire such individuals if they are qualified. To the extent permitted by law and practicable, OCCR will instruct subcontractors and vendors to utilize union labor from local chapters located in the Village of South Blooming Grove residents and/or Town of Blooming Grove.

Subject to the above obligations concerning the residents, businesses and unions located in the Village or the Town surrounding the Village, OCCR will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified and price competitive Orange County residents, businesses and unions for

contracting, subcontracting and servicing opportunities in the development and construction of the Project.

As used above, "Town of Blooming Grove" shall include the Village of South Blooming Grove.

**B. Permanent Jobs.**

In seeking to fill vacancies at the Project, OCCR will give priority to properly qualified residents of the Village, with secondary priority to properly qualified residents of the Town surrounding the Village that are not residents of the Village and with third priority to properly qualified residents of Orange County, New York that are not residents of the Town of Blooming Grove.

Prior to beginning the process of hiring employees (other than current employees at the Project Site) for the Project, OCCR shall advertise and hold at least two events at venues to be approved by the Village, at which it will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the Project.

**C. Local Vendor Preference.**

OCCR shall make a good faith effort to utilize contractors and suppliers for the construction and future operations of the Project that are located in the Village and shall afford such opportunities to vendors in the Village when such contractors, suppliers and vendors are properly qualified and price competitive. Such efforts shall include actively soliciting bids from Village vendors through local advertisements, coordination with the Blooming Grove/Washingtonville Chamber of Commerce and/or any Chamber of Commerce that services the Village of South Blooming Grove and such other reasonable measures as the Village may from time to time request. OCCR also agrees to make reasonable efforts to utilize women-owned and minority-owned vendors within the Village and the Town of Blooming Grove.

Subject to the above obligations concerning contractors, suppliers and vendors located in the Village, OCCR will give secondary preferential treatment to qualified and price competitive contractors, suppliers and vendors located in the Town of Blooming Grove and third preferential treatment to qualified and price competitive contractors, suppliers and vendors located in Orange County, New York.

All such hiring, employment related activities and local vendor preference activities set forth above in Section 3(A), (B) and (C) hereof shall be carried out and administered solely by OCCR and the inclusion of these provisions in this Agreement shall not be construed in any manner to imply, directly or indirectly, that the Village is involved with, administering, overseeing or otherwise exercising any influence or authority over such hiring and employment activities.



**D. Regional Marketing and Tourism.**

OCCR will collaborate with the economic development team of the Village and local and regional chambers of commerce to promote and cross-market local shops, restaurants and attractions. OCCR will provide space in a prominent location of its choosing within the Gaming Facility for a booth or kiosk to provide patrons of the Project with information regarding area attractions and businesses.

**Section 4. Parks and Recreational Impacts**

Pursuant to Section 2.B. hereof, OCCR shall be deemed to have paid the applicable Parks and Recreation fees set forth in the Village Code based on a project with 900,000 square feet of commercial space. However, the Village and OCCR may choose to enter an agreement at any time prior to the occurrence of the CBI Payment #4 allowing OCCR to construct, at its expense a park or recreational field of comparable value to the amount of such fees (as they exist at the time of execution of this Agreement) and, upon completion of construction and final approval and inspection by the Village, OCCR shall dedicate such park/field to the Village. If OCCR chooses to construct a park or recreational field of equal and comparable value, it may deduct such amount (of comparable value to the Village fees) from the CBI Payment #4 at the time of such payment. If such park or recreational field is not yet dedicated at the time that the CBI Payment #4 is made, OCCR shall make a payment equal to the applicable park and recreation fees into an escrow account to be held by the Village until dedication of such park or recreational field and the remainder of the CBI payment #4 that would otherwise be payable by OCCR shall be paid directly to the Village. Within thirty (30) days after dedication of such park or recreational field, the amount in escrow shall be returned to OCCR.

**Section 5. Project Demand on Village Services**

**A. General.**

In connection with the development of the Project, pursuant to the terms of this Agreement, OCCR recognizes that it is solely responsible for the cost of upgrading all utilities and roadways serving the Project Site to adequately serve the Project. In doing so, OCCR estimates that it will spend approximately Twenty Three Million and 00/100 Dollars (\$23,000,000.00) in connection with upgrading the electrical service, water service (pursuant to Section 2.F. hereof), sewer services (pursuant to Section 2.G. hereof) and off site traffic infrastructure (Section 6 hereof) that will serve the Project.

**B. Utilities.**

Except as otherwise set forth herein, OCCR shall pay all fees and assessments required for such improvements in accordance with such rates and schedules as are of general applicability in the Village. OCCR hereby agrees and commits to make all such improvements as may reasonably be required by any Village Board, in consultation with the Mayor and Village staff, and the Village's consultant(s), in connection with OCCR's application for a special permit and/or site plan approval and any other required approvals in order to serve the Project. Such

requirements and conditions of any Board are specifically incorporated herein by reference. This agreement shall not impair OCCR's rights to appeal any such special permit decision(s) or conditions thereof, and shall not be deemed a waiver of any argument OCCR may make in support of any such appeal. It is presently contemplated that OCCR will construct a water well and infrastructure on the Project Site to provide the required capacity as stated in the Village Code for the Project. OCCR shall either retain and operate such well or dedicate and integrate such well and infrastructure to the Village's water district system as provided in Section 2. F. hereof. It is also contemplated that OCCR will have to address the capacity of the Village's water storage for the purpose of firefighting and standard water service to the Project as provided in Section 2.G. hereof.

Pursuant to Section 2.G. hereof, OCCR will construct sewer pumps and infrastructure on the Project Site. It is also contemplated that OCCR will have to address the capacity of the Village's sanitary sewer system as provided in Section 2.G. hereof and pumping station(s).

**C. Public Safety.**

OCCR will provide the Village with a detailed security and public safety plan prior to Commencement of Operations. In preparing such security plan, OCCR shall meet with a duly designated representative of the Village and the Chief of Police and the Fire Department Chief that service the Village and shall give good faith consideration to their reasonable and appropriate suggestions and requests.

**Section 6. Transportation Improvements**

**A. Mitigation Improvements.**

OCCR shall make all necessary road improvements identified in third party traffic studies prepared by OCCR as necessary to mitigate any adverse impacts caused by the Project, including any improvements required by NYS DOT.

**B. Clove Road.**

Upon Commencement of Construction, OCCR shall pay the Village a sum not to exceed ONE MILLION and 00/100 Dollars (\$1,000,000), which the Village shall use for any Village costs, expenses and fees necessary to improve the intersection of Clove Road and New York Route 208, and related areas, which shall include reconstruction of the intersection and installation of a traffic light.

**Section 7. Responsible Gaming in the Village**

OCCR recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of any population that may not game responsibly. Therefore, OCCR will implement a Responsible Gaming Plan at the Project in accordance with the requirements of the New York State Gaming Statute as regulated and enforced by the New York State Gaming Commission. OCCR will accomplish the responsible gaming goals by: (a)

educating its employees and providing information to patrons about the odds of games and how to make responsible gaming decisions; (b) promoting responsible gaming in daily operations; and (c) supporting public awareness of responsible gaming.

**Section 8. Village Obligations**

In consideration of the impacts and mitigation measures to be undertaken by OCCR in this Agreement, and in further recognition of the many benefits the Project should bring to the Village, the Village, as permitted by law, fully supports the Project and will reasonably facilitate and cooperate, subject to applicable law, with OCCR in their efforts to obtain all permits, certifications, legislation or regulatory approvals from governmental entities and officials in connection with the Project. Such support and cooperation shall continue after commencement of operations, particularly with regard to initiatives with the Gaming Commission and other State agencies and instrumentalities. All fees and expenses incurred by the Village in providing such support, facilitation and cooperation shall be borne by OCCR, subject to the budget and approval process set forth in Section 2.A. The Village shall utilize reasonable efforts to be appointed Lead Agency for purposes of the SEQRA review of the Project. Nothing herein shall be deemed to impair the Village's rights, powers and duties with respect to enforcing its duly promulgated ordinances and regulatory requirements.

**Section 9. Agreement Transferrable**

OCCR shall have the right to transfer or assign its interests in this Agreement to any entity that acquires the Project Site from OCCR or the right to operate a gaming facility at the Project Site. Any assignee of or successor in interest to OCCR shall be bound by the terms of this Agreement to the fullest extent allowed by law. OCCR shall provide the Village with at least ten (10) days notice of the closing of any such transfer or assignment of interests. OCCR's rights and obligations concerning water and sewer contained in this Agreement shall be deemed rights and obligations that run with the Project Site, as same may be expanded, from time to time, by OCCR.

The Village acknowledges and agrees that this Agreement (and all documents, agreements, understandings and arrangements relating to the transaction contemplated hereby) may be pledged or otherwise collaterally assigned by OCCR, its successors or assigns at any time and on one or more occasions in order to provide security to a lender, mezzanine lender or equity holder in connection with a financing or equity contribution.

At the request of OCCR, made from time to time, the Village shall, to the extent permitted by law, enter into a lender's rights agreement with OCCR's potential or then current lender, mezzanine lender and/or equity holder that is in a commercially reasonable form. OCCR shall reimburse the Village for the reasonable legal fees incurred by the Village in negotiating and entering into such a lender's rights agreement.

**Section 10. Choice of Law and Consent to Jurisdiction**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions in such state. Subject to the next sentence, any litigation regarding this Agreement shall be exclusively located in the County of Orange, New York and all parties consent to the jurisdiction of the Supreme Court of the State of New York for the County of Orange, New York. Notwithstanding the above, to the extent that the United States District Court for the Southern District of New York has jurisdiction over a dispute or litigation concerning this Agreement, either member shall have the right to elect to file, in the first instance, or to have removed, such dispute or litigation to such Court and such action shall be located where such Court sits.

**Section 11. Indemnification**

OCCR agrees to and shall indemnify and hold harmless the Village from and against any and all claims, actions, proceedings or demands brought against the Village, its agents, departments, officials, employees, consultants, professionals, insurers or successors, by any third party in connection with this Agreement, or exercise of its rights or obligations hereunder, or the issuance of Village permits and approvals for the Project, and any reasonable costs incurred by the Village in connection with defending legal challenges of Village actions, except to the extent that any such claims, actions, proceedings or demands are premised upon the gross negligence or intentional improper acts of the Village or its agents, consultants or professionals. OCCR agrees, within thirty (30) days of written notice by the Village, to reimburse the Village for any and all reasonable costs and fees incurred in defending itself, or otherwise protecting its interests, with respect to any such claim, action, proceeding or demand.

**Section 12. Notices**

Any notices, consents, demands, requests approvals or other communications issued under this Agreement or related thereto shall be made in writing and shall be delivered by hand or by overnight delivery service or by Certified Mail (Return Receipt Requested), to the other party at the following addresses:

If to the Village:       Village of South Blooming Grove  
                                  811 Route 208  
                                  Monroe, New York 10950  
                                  Attention: Mayor

With copy to:           Dennis E. A. Lynch, Esq.  
                                  Feerick Lynch MacCartney PLLC  
                                  96 South Broadway  
                                  South Nyack, New York 10960

If to OCCR: OCCR Enterprises, LLC  
601 East Pratt Street, Sixth Floor  
Baltimore, Maryland 21202  
Attention: Managing Member

With a copy to: OCCR Enterprises, LLC  
601 East Pratt Street, Sixth Floor  
Baltimore, Maryland 21202  
Attention: General Counsel

And with a copy to: OCCR Enterprises, LLC  
825 Berkshire Boulevard  
Wyomissing, Pennsylvania 19610  
Attention: General Counsel

Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

**Section 13. Miscellaneous**

**A. Governing Law.**

This Agreement, the construction thereof and the rights and obligations of the parties hereunder, shall be governed in all respects by the laws of the State of New York, without regard to the conflict of laws provisions in such state.

**B. No Third Party Beneficiaries.**

Except as may be granted to a lender of OCCR, no provisions of this Agreement shall be construed in any manner so as to create any rights in any third parties not party to this Agreement. The Agreement shall be interpreted solely to define specific duties and responsibilities between the Village and OCCR, and shall not provide any basis for claims of any other individual, partnership, corporation, organization or municipal entity.

**C. Exercise of Rights and Waiver.**

The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

**D. Severability.**

In the event that any clause, provisions or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

**E. Headings and Construction.**

The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of the agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

**F. Recitals.**

The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this Agreement.

**G. Time of the Essence.**

The parties agree and acknowledge that time is of the essence with respect to OCCR's performance of its obligations hereunder.

**H. Reporting/Documentation.**

OCCR agrees to make such reports and provide such documentation as the Village may from time to time reasonably request to ensure compliance with the provisions of this Agreement.

**I. Estoppel Certificates.**

Each of the parties hereto agrees to provide to the other, or to such third parties as may be reasonably requested by the other, from time to time, a written estoppel certificate, executed by such party, certifying, among other matters, the continued viability of this Agreement, the absence of any defaults hereunder (or, if defaults exist, specifying in detail the nature of such defaults), the status of the obligations of the parties each to the other, and such other matters as may reasonably be requested by the party requesting such estoppel certificate(s).

**J. Force Majeure.**

OCCR shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event (as defined below). If OCCR is prevented or delayed in the performance of any such obligation by a Force Majeure Event, it shall provide reasonable notice to the Village of the circumstances preventing or delaying performance and the expected duration thereof, if known. For the purposes of this Agreement, a Force Majeure Event is any circumstance not within the reasonable control, directly or indirectly, of OCCR comprised of: strikes or other significant labor disputes; significant supply shortages caused by no fault of OCCR; substantial and severe adverse weather conditions and other acts of nature; acts of God, fire caused by no fault of OCCR; other substantial property damage or any condition caused by no fault of OCCR that prevents or significantly interferes with the operations of OCCR's gaming establishment; significant, unforeseeable subsurface conditions; riot or civil unrest; and actions or failures to act

of any governmental authority or agency. The Village likewise shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented by any comparable Force Majeure Event.

**K. Integration Clause.**

This Agreement and any attachments hereto constitute the entire agreement between the parties. No agents, representative, employee or officer of the Village or OCCR has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Agreement which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, or changes to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by all Parties in accordance with the terms herein.

**L. Right to Representation.**

Each party to this Agreement has had the opportunity to have counsel of its choice review this Agreement and such party's obligations hereunder on its behalf prior to such party's execution and delivery of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of either party by any court or other governmental or judicial authority by reason of which party having or being deemed to have drafted, structured or dictated such provision. All parties have freely negotiated this Agreement.

**M. Conditional on Award of Gaming License.**

Except for OCCR's obligations under this Agreement with respect to payments made to or on behalf of the Village for legal and consulting services, as well as any other Village costs or expenses prior to the award of a final and non-appealable gaming license to OCCR for the Project by the Board pursuant to the RFA, OCCR's obligations under this Agreement are subject to the Board's final and non-appealable award of a gaming license to OCCR for the Project pursuant to the RFA.

**N. OCCR's Right to Terminate.**

Notwithstanding any provision of this Agreement to the contrary, prior to the Commencement of Construction, OCCR shall have the right, for any reason or no reason, to abandon its efforts to develop the Project on the Project Site and to terminate this Agreement by notifying the Village in writing of such abandonment and termination. Upon such a termination, OCCR shall remain obligated to pay the Village for legal and consulting services incurred prior to the date of such termination in accordance with the terms of this Agreement. OCCR shall not seek recovery of any fees and costs paid to the Village and its agents prior to the termination of this Agreement.

**O. No Consequential Damages.**

Notwithstanding any provision of this Agreement to the contrary, the parties hereby agree in any action hereunder against the other to seek recovery only of actual damages incurred, and each party waives any right to recover punitive and/or consequential damages as a result of any default by the party under this Agreement.

**P. Burial Site.**

OCCR acknowledges that there is a known burial site on the Project Site. OCCR shall comply with all applicable laws concerning such burial site.

**Q. Counterparts.**

This Agreement may be executed in two (2) or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

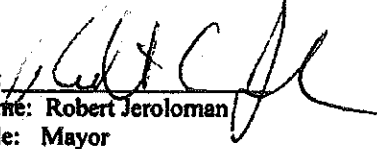
**SIGNATURES ON NEXT PAGE**



**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

**Village of South Blooming Grove,  
New York**

**OCCR Enterprises, LLC,  
a New York limited liability company**

By:   
Name: Robert Jeroloman  
Title: Mayor

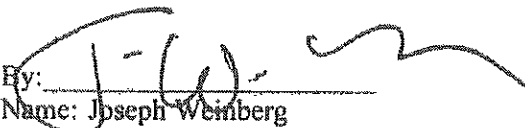
By: \_\_\_\_\_  
Name: Joseph Weinberg  
Title: Authorized Person

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

**Village of South Blooming Grove,  
New York**

**OCCR Enterprises, LLC,  
a New York limited liability company**

By: \_\_\_\_\_  
Name: Robert Jeroloman  
Title: Mayor

By:  \_\_\_\_\_  
Name: Joseph Weinberg  
Title: Authorized Person

# **EXHIBIT D**



# VILLAGE OF KIRYAS JOEL

Post Office Box 566, Monroe, NY 10949  
Phone: 845.783.8300 • Fax: 845.783.9491 • TDD: 800.662.1220

**Mayor**  
Abraham Wieder  
**Administrator-Clerk**  
Gedalye Szegedin

**Trustees**  
Moses Goldstein  
Jacob Freund  
Samuel Landau  
Jacob Reisman

## Village of Kiryas Joel

### Resolution

#### **Opposing the Location of a Gambling Casino in Woodbury and in South Blooming Grove near Kiryas Joel**

**Whereas**, so-called “gaming casinos” have been proposed to be located near the Village of Kiryas Joel in the neighboring Villages of South Blooming Grove and Woodbury; and

**Whereas**, the operation of such gambling casinos is directly adverse to the peaceable, family and children oriented, culture of the residents of Kiryas Joel; and

**Whereas**, adverse traffic conditions already exist in the vicinity of the proposed locations due to the inadequate highways and existing shopping /commercial facilities (and their ongoing expansion); and

**Whereas**, South Blooming Grove and Woodbury officials and residents currently are complaining about inadequate water supplies and interference with local municipal wells serving these areas without consideration of the additional demand imposed by the proposed casinos; and

**Whereas**, South Blooming Grove and Woodbury officials and residents are currently complaining about inadequate sewage treatment capacity and potential adverse effects on the nearby Ramapo River without consideration of the additional demand imposed by the proposed casinos; and

**Whereas**, existing and expanded water and wastewater treatment capacity must first respond to the needs of existing communities and internally generated growth of those communities; and

**Whereas**, the Village of Kiryas Joel is a wonderful place to live, work, and raise a family, and we want to preserve and protect these qualities so that the future generations born and raised in the Village may also enjoy them; and

**Whereas**, the proposed casinos are located in close proximity to the Women’s Services Center, Public and Religious Schools, and the Village’s Kinder Park and will subject our residents and young people to adverse influences; and

**Whereas**, the proposed casinos do not conform to the South Blooming Grove, Woodbury, or Orange County comprehensive plans; and

**Whereas**, the NYS Gaming Commission standards for license applications of gaming casinos require demonstration of local support for the casino and evidence of mitigation on host and *nearby* municipalities, which evidence should be provided to the local municipalities prior to any expression of support; and

**Whereas**, no Environmental Impact Studies have been performed to analyze and mitigate the manifest adverse impacts of the proposed casinos in South Blooming Grove and Woodbury so as to inform local officials whether their support of the proposed casinos is in the public interest; and

**Whereas**, Kiryas Joel needs be considered as an involved agency under SEQRA if the gaming casinos propose to utilize the Orange County Sewer District No 1 facilities, which are supported by Kiryas Joel owned facilities; and

**Whereas**, tens of thousands of citizens in this local area have expressed their opposition to having any gaming casino in or near their community, and in the Village of Kiryas Joel, the November ballot proposal on casino gaming was overwhelmingly rejected by the voters 3,687 to 139; and

**Whereas**, there are other locations in Orange County not proximate to Kiryas Joel where casinos may be located, for example in the City of Newburg or at the Stewart Airport in New Windsor, if the County and State wants to have such a facility;

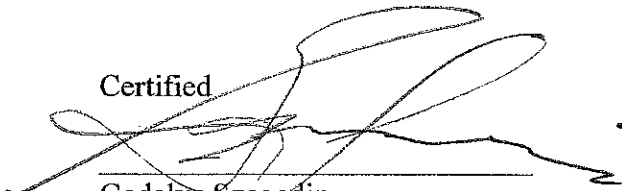
**Now Therefore, Be It Resolved** by the Village Board of the Village of Kiryas Joel, Orange County, New York opposes the location of any gaming casino in South Blooming Grove or Woodbury in the neighborhood of Kiryas Joel and this opposition shall be expressed to all relevant public officials having a part in the location and approval process; and

**Be it Further Resolved** that the Village Administrator is authorized to retain legal counsel to oppose the siting of any gaming casino in South Blooming Grove or Woodbury, Orange County New York.

Dated: May 16, 2014

On a motion by Trustee Landau, seconded by Trustee Reisman the foregoing resolution was adopted on a vote of 4 ayes, 0 nays, 1 abs. Mayor Abraham Wieder declared the Resolution adopted.

Certified



Gedalye Szegedin  
Village Clerk

# **EXHIBIT E**

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order with notice of entry upon all parties

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE  
ENVIRONMENTAL CLAIMS PART

-----X

In the Matter of the Application of

VILLAGE OF KIRYAS JOEL and MAYOR ABRAHAM WIEDER; VILLAGE TRUSTEE JACOB MITTELMAN; VILLAGE TRUSTEE BARUCH MARKOWITZ; VILLAGE TRUSTEE SAMUEL LANDAU; VILLAGE TRUSTEE JACOB FREUND; and VILLAGE ADMINISTRATOR GEDALYE SZEGEDIN, each individually and in his official capacity,

Plaintiffs/Petitioners,

**DECISION AND ORDER**

For a Judgment Pursuant to Article 78 of the CPLR and a Declaratory Judgment Pursuant to Section 3001 of the CPLR

Orange County  
Index Nos. 1892/07  
3958/07  
Motion Date: Jan. 21, 2008

- against -

COUNTY OF ORANGE, ORANGE COUNTY SEWER DISTRICT # 1, TOWN OF WOODBURY, TOWN OF CHESTER, TOWN OF MONROE, TOWN OF BLOOMING GROVE, VILLAGE OF CHESTER, (Moodna Defendants/Respondents) VILLAGE OF WOODBURY, and VILLAGE OF SOUTH BLOOMING GROVE (Non-Contract Defendants/Respondents),

Defendants/Respondents.

-----X

NICOLAI, J.

The following papers numbered 1 to 141 were read on this combined declaratory judgment action and CPLR Article 78 proceeding on plaintiffs'/petitioners' application pursuant to CPLR §6301 and §6311 for an order granting a preliminary

injunction and upon the defendants'/respondents' motions, pursuant to CPLR §3211(a) and §7804 for an order dismissing the complaint/petition.

Papers Numbered

Respondents/Defendants County of Orange and Orange County  
Sewer District #1 Notice of Motion - Attorney Affirmation - Exhibits  
(OC Index No. 07/1892) .....1-5

Respondents/Defendants County of Orange and Orange County Sewer  
District #1 Notice of Motion - Attorney Affirmation - Exhibits - Reply  
Memorandum of Law (OC Index No. 07/3958) ..... 6-11

Respondents/Defendants County of Orange and Orange County Sewer  
District #1 Reply Memorandum of Law (OC Index Nos. 07/1892  
and 07/3958) ..... 12

Respondents/Defendants County of Orange and Orange County Sewer District #1  
Notice of Motion - Attorney Affirmation - Exhibits - Affidavit of David Lindsey -  
Exhibits - Affidavit of Robert Jeroloman - Exhibits - Memorandum of Law -  
Reply Memorandum of Law (Previously Adjourned by the Court [Owen, J.]  
(OC Index No. 07/1892) .....13-43

Respondent/Defendant Town of Woodbury  
Notice of Motion - Attorney Affirmation - Reply Affirmation  
(OC Index No. 07/1892) ..... 44-46

Respondent/Defendant Town of Woodbury  
Notice of Motion - Attorney Affirmation - Exhibits - Reply Affirmation  
(OC Index No. 07/3958) .....47-60

Respondents/Defendants Town and Village of Chester  
Notice of Motion - Attorney Affirmation – Memorandum of Law -  
Reply Affirmation - Exhibit - Reply Memorandum of Law  
(OC Index No. 07/1892) ..... 61-66

Respondents/Defendants Town and Village of Chester  
Notice of Motion - Attorney Affirmation – Memorandum of Law -  
Reply Affirmation - Exhibit - Reply Memorandum of Law  
(OC Index No. 07/3958) ..... 67-72

Respondent/Defendant Town of Blooming Grove -  
Notice of Motion - Attorney Affirmation - Bohan Affidavit  
Memorandum of Law (OC Index No. 07/1892) ..... 73-76



Respondent/Defendant Town of Blooming Grove - Notice of Motion - Attorney Affirmation - Bohan Affidavit Memorandum of Law (OC Index No. 07/3958) . . . . .	77-80
Respondent/Defendant Village of Woodbury Notice of Motion - Attorney Affirmation - Exhibits - Memorandum of Law (OC Index No. 07/1892) . . . . .	81-86
Respondent/Defendant Village of South Blooming Grove Notice of Motion - Attorney Affirmation - Supplementary Attorney Affirmation - Exhibits - Memorandum of Law (OC Index No. 07/1892) . . . . .	87-103
Respondent/Defendant Village of South Blooming Grove Notice of Motion - Attorney Affirmation - Supplementary Attorney Affirmation - Exhibits - Memorandum of Law (OC Index No. 07/3958) . . . . .	104-120
Respondent/Defendant Village of South Blooming Grove Reply Memorandum of Law (OC Index Nos. 07/1892 and 07/3958). . . . .	121
Plaintiffs/Petitioners Village of Kiryas Joel, et. al. Attorney Affirmation in Opposition - Exhibits - Memorandum of Law (OC Index Nos. 07/1892 and 07/3958) . . . . .	122-126
Plaintiffs/Petitioners Village of Kiryas Joel, et. al. Attorney Affirmation in Opposition - Exhibits - Affidavit of Gedalye Szegedin - Exhibits - Memorandum of Law - Exhibit (Previously Adjourned by the Court [Owen, J.]) (OC Index No. 07/1892) . . . . .	127-141

Upon the foregoing papers, it is ordered that this application is resolved as follows.

***Facts and Procedural History***

Plaintiff/petitioner, Village of Kiryas Joel (Kiryas Joel) is one among a number of municipalities within the defendant/respondent County of Orange and defendant/respondent County of Orange Sewer District #1 (OCSD) (collectively, the County). The individual plaintiffs/petitioners are Village Trustees and other officials of Kiryas Joel who have brought this action/proceeding individually and in their official capacity. They have brought a combined declaratory judgment action and CPLR Article

78 proceeding seeking to preliminarily or permanently enjoin the County from entering into a contract for sale or otherwise undertaking any further action towards the sale of wastewater treatment capacity from the County's Harriman Wastewater Treatment Plant to communities outside the OCSD. Petitioners contend that the County's efforts to allocate some of the OCSD's newly-acquired wastewater treatment capacity to non-OCSD municipalities violate County Law, General Municipal Law and SEQRA.

The OCSD has one water treatment facility, the Harriman Wastewater Treatment Plant, which serves Kiryas Joel, the Village of Harriman, the Village of Monroe and part of the Town of Monroe, all of which are located within the OCSD. The portion of the Town of Monroe that is outside the OCSD as well as the Town and Village of Woodbury, the Town of Blooming Grove, the Village of South Blooming Grove and the Town and Village of Chester, which have been joined in this action/proceeding as necessary parties, pursuant to the order of the Court dated July 2, 2007 (Owen, J.), are the municipalities outside the OCSD to which the County seeks to allocate some of the OCSD's wastewater treatment capacity. These out-of-OCSD municipalities that have been joined to this action/petition may be grouped into two categories for the purposes of this determination. The first group of these defendant/respondent municipalities are denominated as "the Moodna communities" and are comprised of the Town and Village of Chester, the Town of Monroe, the Town of Woodbury and the Town of Blooming Grove. They are so named because all are members of the Moodna Basin Joint Regional Sewerage Board and, along with the OCSD, were signatories to the 1978 Moodna Basin Inter-municipal Agreement (and its 1988 amendment), by which the OCSD agreed to enhance its wastewater treatment capacity by 2 million gallons per day and to allocate both the

expense and the expanded wastewater treatment capacity to these Moodna communities. The Villages of Woodbury and South Blooming Grove are the “non-contracting municipalities” which form the second group of out-of-OCSD municipal defendants/respondents. They are parties to this petition/action but were not signatories to the 1978 Inter-municipal Agreement (nor to the subsequent amendment).<sup>1</sup> Collectively, these two groups of defendants/respondents are referred to in this decision as the out-of-OCSD municipalities.

Pursuant to the terms of a Consent Decree and Order of the United States District Court for the Southern District of New York, the County was given until August 1, 2006 to expand the wastewater treatment capacity at the Harriman Wastewater Treatment Plant from 4.0 million gallons per day (the capacity which resulted from the expansion that followed the 1988 amendment to the 1978 Inter-municipal Agreement) to 6.0 million gallons per day. In 2001, Environmental Impact Statements were prepared as was the Statement of Findings. Notably, the Statement of Findings, as adopted by the Orange County Legislature, expressly states that the “purpose of the proposed enhancements [was] to meet the wastewater treatment needs of [the OCSD] and the Moodna Basin Southern Region Joint Sewerage Board sewer service areas.” The Orange County

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<sup>1</sup>It is useful to note that the non-contracting municipality of the Village of South Blooming Grove, which was incorporated on July 14, 2006, is located wholly within the Town of South Blooming Grove which is itself a Moodna Community. Moreover, the Village of South Blooming Grove is part of the Town of Blooming Grove's sewer district which discharges to the Harriman Sewer Treatment Plant pursuant to the inter-municipal agreement of 1978. As for the Village of Woodbury, it is subject to an inter-municipal agreement of its own with the Town of Woodbury. According to this agreement, the Village of Woodbury has undertaken the responsibilities, rights and obligations of the sewer district of the Town of Woodbury (a Moodna community) as of January 1, 2008.

Legislature then petitioned the New York State Comptroller for its consent to make the expenditures necessary to complete the expansion project. During the petition process, it was the County's position that the then-current capacity of the Harriman Wastewater Treatment Plant was inadequate to serve the needs of the communities within the OCSD, that the Moodna Communities were allocated 2.0 million gallons of wastewater treatment per day and that it was the County's intention to provide the non-contracting municipalities a limited (maximum 189,000 gallons per day) portion of the expanded capacity of the Harriman Wastewater Treatment Plant. The County's petition also reflected that more than 1.0 million gallons per day of the yet-to-be-expanded wastewater treatment capacity was already accounted for with various pending in-OCSD development projects and existing in-OCSD properties which had not been able to receive OCSD services because of a lack of capacity. Following the approval of its petition and the adoption of the resolution by the Orange County Legislature, the Harriman Wastewater Treatment Plant was improved and expanded such that it now has a wastewater treatment capacity of 6.0 million gallons per day.

In 2006, after the OCSD completed the expansion project, the County initiated a plan to allocate more than 1.0 million gallons per day of the OCSD's newly-enhanced wastewater treatment capacity, and the associated costs, to the out-of-OCSD municipalities. Petitioners objected on the grounds that the County had not quantified the excess treatment capacity, had not determined that there was adequate capacity within the OCSD and had not conducted a SEQRA review. By letter dated January 8, 2007, the County informed the out-of-OCSD municipalities that the Harriman Wastewater Treatment Plant was on line and fully operational at a 6.0 million gallon per day capacity.

The letter stated that its purpose was to “inquire as to your interest in a) purchasing capacity; and b) consolidation of your sewer district into the [OCSD].” The letter specifically referenced the provision in the 1978 Inter-Municipal Agreement for allocating expanded wastewater treatment capacity and the associated costs among the participating Moodna communities.

Petitioners commenced the first proceeding/action (Orange County Index Number 07/1892) on March 1, 2007 by Order to Show Cause and Verified Petition and Complaint. Thereafter, the County moved to dismiss this petition/action inter alia, on the ground that petitioners had failed to join the Moodna communities as necessary parties pursuant to CPLR 1003 and 3211(a)(10). While that application was pending before the Court, petitioners commenced a second petition/action (Orange County Index Number 07/3958) on May 7, 2007 by Summons and Verified Petition and Complaint. This second proceeding/action is virtually identical to the first save that in addition to the County, it names the Moodna communities and the non-contracting municipalities as defendants/respondents. By Decision and Order of this Court dated July 2, 2007 (Owen, J.), the Moodna communities and the non-contracting municipalities were joined in the first action as necessary parties. The substantive aspects of the motion to dismiss were deferred until joinder was fully affected. On July 17, 2007, petitioners filed a Supplemental Summons and Notice of Petition and Amended Verified Petition and Complaint seeking injunctive relief, a judgment under CPLR Article 78 and a declaratory judgment against the County, the Moodna communities and the non-contracting municipalities. The County's original motion to dismiss has been deemed submitted as to petitioners amended petition/action. In addition to the County's motion to dismiss, similar

motions have been filed by the Village of South Blooming Grove, the Town of South Blooming Grove, the Town and Village of Chester, the Town of Woodbury and the Village of Woodbury. The Town of Monroe, which initially made a motion to dismiss, has withdrawn that application and submitted its Verified Answer. This matter has been transferred to the Environmental Claims Part and is resolved as follows.

### ***Analysis***

With respect to any Article 78 proceeding, it must be determined, as a preliminary matter, whether petitioners' proceeding is timely. An Article 78 proceeding "must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner" (CPLR 217 [1]). *Save the Pine Bush v. City of Albany*, 70 NY2d 193, 203 (1987). Petitioners contend that the County's letter of January 8, 2007 to the out-of-OCSD municipalities offering the sale of wastewater treatment capacity derived from the completed expansion project built and financed by the OCSD property owners was the trigger to their right to commence this action.

Petitioners argue that the January 8, 2007 letter constituted "the County's first formal offer to convey to the Moodna Communities more than 1.0 million gallons per day (mgd) of the new capacity built and financed by the District property owners". Respondents contend that the Statement of Findings, adopted by the Orange County Legislature on August 10, 2001 for the first expansion of the wastewater treatment facility, which states that the "purpose of the proposed enhancements [was] to meet the wastewater treatment needs of [the OCSD] and the Moodna Basin Southern Region Joint Sewerage Board sewer service areas" was the event that should have triggered the injury and therefore the commencement of the Statute of Limitations.

Inasmuch as the apportionment of future wastewater treatment capacity between the County and the Moodna communities was undertaken in the 1978 Inter-municipal Agreement (IMA), a reasonable argument cannot be made that any concrete injury resulting from wastewater capacity allocation would have been incurred some thirty (30) years ago. Respondents cannot claim that the Statute of Limitations commenced in 1978 with the execution of the IMA. The County's contention that the January 8, 2007 letter merely effectuated a long standing provision in the IMA is not plausible.

The terms of the 1978 IMA may have anticipated the necessity of an elastic mechanism for constructing additional wastewater treatment capacity to serve OCSD municipalities as well as the Moodna communities, however, the County cannot act contrary to the applicable laws. The County must comply with the SEQRA process and a determination of excess must be made prior to the sale or offer to sell any excess wastewater treatment capacity. Although the County's January 8, 2007 letter seeks to allocate the additional wastewater treatment capacity in a manner that is consistent with the historical operation of the Harriman Sewer Treatment Facility and with the 1978 IMA, the County has failed to make the required determination for its actions under SEQRA, General Municipal Law §119 and County Law §253-a(1) and §266. The County never made a determination that the existing sewage treatment capacity at the Harriman Plant was adequate to meet the needs of the in-OCSD municipalities.

Extending the use of 1.0 mgd of wastewater treatment to out-of-OCSD municipalities requires a review of the circumstances surrounding the capacity. Circumstances have undoubtedly changed for the OCSD members with regard to many instances including population and housing markets. At a bare minimum, the County

should have undertaken to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate relevant environmental concerns to the OCSD members and their proposed increased needs. See *Doremus v. Town of Oyster Bay*, 274 AD2d 390, 393 (2d Dep't. 2000). The County has made a determination to sell capacity at its wastewater treatment facility without consulting the members of the OCSD to see what, if any, projects are proposed that will add to the in-OCSD municipalities wastewater. There has been a history where in-OCSD municipalities have had moratoriums on construction due to a lack of capacity at the Harriman Wastewater Treatment Facility. The petitioners herein were subject to such limits on their development and therefore, the County must take all necessary steps to insure that the in-OCSD municipalities are adequately allocated with regard to their wastewater treatment needs and that is precisely an issue to be studied pursuant to the SEQRA process.

In addition to the environmental concerns that have to be addressed by the County, the sale of wastewater treatment capacity requires a determination from the County that the capacity to be sold is actually beyond the needs of the members of the sewer district. County Law § § 253-a and 266 and General Municipal Law § 119 require a determination be made by the OCSD that the treatment capacity actually be "in excess of its own needs". The County has an obligation to assess the treatment capacity needs of the district members and to make a reasoned determination of excess capacity on the record.

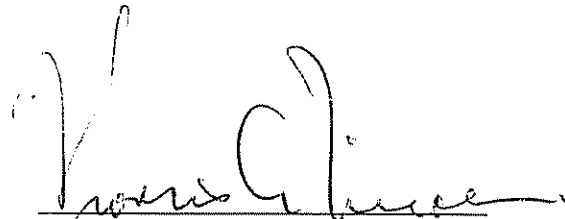
There is no indication in the record that the County undertook such a study or even discussed future needs of in-OCSD municipalities. Members of the OCSD financed and constructed the expanded capacity at the Harriman Plant for its own use and gain.



Without an inquiry into proposed development plans for in-OCSD properties and a determination of that the existing sewage treatment capacity at the Harriman Plant is adequate for the needs of the OCSD members, the County cannot offer 1.0 mgd of wastewater treatment to out-of-OCSD municipalities.

Accordingly, the defendants'/respondents' motions to dismiss are DENIED and the defendants/respondents are hereby enjoined from selling any wastewater treatment capacity to any entity outside the OCSD without first complying with the provisions of SEQRA, the County Law and the General Municipal Law.

Dated: White Plains, New York  
August 7, 2008



FRANCIS A. NICOLAI, J.S.C.

TO:

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FILED  
ORANGE COUNTY CLERK

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# **EXHIBIT F**

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(ALSO ADMITTED IN)

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(ALSO ADMITTED IN)

Writer's E-Mail  
[jmckay@cmmrlegal.com](mailto:jmckay@cmmrlegal.com)

March 19, 2014

Jack A. Nasca, Director  
Environmental Permits and Pollution Prevention  
New York State Department of Environmental Conservation  
Division of Environmental Permits  
625 Broadway, 4th Floor  
Albany, NY 12233-1750

RE: Lead Agency Review for Annexation  
of Properties into the Village of Kiryas Joel

Dear Mr. Nasca:

This firm represents the Village of South Blooming Grove. We are in receipt of a copy of your correspondence, dated March 12, 2014, to Daniel Petigrow, Esq., concerning the request of the Monroe-Woodbury Central School District to act as lead agency with respect to the proposed 510 acre annexation petition pending before the boards of the Town of Monroe and the Village of Kiryas Joel.

Your correspondence, which denied the school district's request, was copied to various "interested parties", including the Town of Woodbury, the Village of Monroe, the Village of Woodbury and the Village of Harriman.

Please be advised that the Village of South Blooming Grove considers itself an interested agency (6 NYCRR Part 617.2(t)) with respect to the pending annexation petition and wishes to ensure that it has a full and fair opportunity to participate in the SEQR review process of the proposed action.

CATANIA, MAHON, MILLIGRAM & RIDER, PLLC

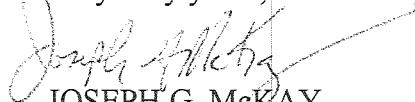
Jack A. Nasca, Director  
Environmental Permits and Pollution Prevention  
March 19, 2014  
Page 2

As you are aware, the proposed annexation is a Type I action, and if it is approved, the Village of South Blooming Grove would share a common border with the Village of Kiryas Joel. The Village Board believes that the proposed annexation will have significant environmental impacts on South Blooming Grove, as well as the other communities copied on your letter. Specifically, the village is concerned with the proposed annexation's potential adverse impacts on the local water supply, wastewater treatment capacity for the communities, such as South Blooming Grove, that are served by Orange County's Wastewater Treatment Plant, increased traffic and other local impacts. These potential impacts have been cited by the Village of Kiryas Joel itself, and is the reason that it has stated its intention to issue a positive declaration with respect to the proposed annexation. As such, we ask that your agency copy the Village of South Blooming Grove on all future correspondence concerning this matter.

By copy of this letter to the Village of Kiryas Joel and the Town of Monroe, we ask that those agencies provide the Village of South Blooming Grove with all relevant SEQR review materials and information.

Thank you for your attention to this matter.

Very truly yours,



JOSEPH G. MCKAY

JGM/lr/lf/939130

cc: Hon. Harley E. Doles, III, Town Supervisor, Town of Monroe  
Hon. Abraham Wieder, Mayor, Village of Kiryas Joel  
Hon. Joseph Martens, Commissioner, NYS DEC

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