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September 30, 2014

Via E-Mail ([tim@timmillerassociates.com](mailto:tim@timmillerassociates.com)) & Regular Mail

Village of Kiryas Joel Board of Trustees  
C/O Tim Miller Associates, Inc.  
10 North Street  
Cold Spring, NY 10516

Attn: Gedalye Szegedin, Village Administrator

RE: Village of Kiryas Joel/Town of Monroe Annexation of 164 Acres  
Comments on Draft Scope of the DGEIS  
Our File No.: 03923-62403

Dear Mr. Szegedin:

This firm represents the Town of Woodbury. In conjunction with the Town of Woodbury's special counsel, David Gordon, Esq, we collectively submit these comments on the Village of Kiryas Joel ("Village") Village Board's Draft Scope, on behalf of the Town Board for the Town of Woodbury.

Many of the 71 tax parcels subject to this 164 acre annexation abut land located within the Town of Woodbury. In addition, there are existing roads maintained by the Town of Woodbury that eventually serve many of the subject parcels. Thus, the proposed annexation creates concerns with respect to the Town Woodbury's community character and public facilities.

Segmentation and the Circumvention of the Environmental Review Process for the Pending 507 Acre Annexation Proposal

The Village's intended SEQR review is classic segmentation, and flatly illegal. There is already a 507 acre annexation proposal currently pending between the Village of Kiryas Joel and Town of Monroe. The 164 acre proposal is fully included within the 507 acre annexation proposal. The SEQR regulations define segmentation as, "...the division of the environmental review of an action so that various activities or stages are addressed as though they were independent, unrelated activities...."<sup>1</sup> Here, the proposed 164 acre annexation is clearly an activity, stage or part of the broader ongoing 507 acre annexation proceeding between the same two municipalities. Thus, there is no doubt the proposals are closely related for purposes of segmentation, and that their SEQR review must therefore be unified.

Reviewing the whole action is a fundamental principle in SEQR.<sup>2</sup> The SEQR regulations specifically note that, "considering only a part or segment of an action is contrary to the intent of SEQR."<sup>3</sup> The Draft Scope appears to recognize this, stating that the 507 acre annexation will be analyzed as one of three alternative actions. The attorney for the landowner applicants noted this as well in his comments on the project. But, such analysis will be insufficient and will not contain the necessary level of detail given the fact the 507 acre proposal is still active as the lead agency designation is still pending before the New York State Department of Environmental Conservation ("DEC").

Even if the Village's proposed SEQR review intends to fully analyze the 507 acre proposal, which is doubtful, it would raise a further segmentation problem under the circumstances here. In such case, the Village's instant SEQR review would fully reiterate the SEQR review for the 507 acre proposal. As the Village is well aware, that SEQR review is currently before the DEC for designation of lead agency, in which the Village board is one of the candidates. Given its congruency with the ongoing 507-acre proceeding currently before DEC, there is no doubt that the Village's proposed SEQRA review here will pre-empt that already existing proceeding. Indeed, it is difficult to avoid the conclusion that the Village is attempting an end run around the DEC's choice of lead agency. DEC's guidance document notes that the most logical choice for lead agency in an annexation proceeding is the agency that has had the longest standing jurisdiction within the area; i.e. the agency of the municipality from which the annexed parcel may be taken.<sup>4</sup> Thus, rather than wait for the DEC's choice of the lead agency between the Town of Monroe and the Village on the 507 acre annexation proposal, the Village here is simply commencing the review itself.

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<sup>1</sup> See, 6 NYCCR Part 617.2(ag).

<sup>2</sup> See, NYSDEC SEQR Handbook, 3<sup>rd</sup> Edition-2010, p. 55

<sup>3</sup> See, 6 NYCCR Part 617.3(g)(1).

<sup>4</sup> See, NYSDEC SEQR Handbook, 3<sup>rd</sup> Edition-2010, p. 189.

Therefore, the SEQR process for the 164 acre annexation proposal (and corresponding annexation petition) should be stayed until the DEC designates the lead agency with respect to the 507 acre annexation proposal pursuant to the SEQRA regulations. Once the lead agency is determined by the DEC, a Draft Scoping Document for a Draft Generic Environmental Impact Statement should be prepared with the larger 507 acre annexation proposal analyzed as the main proposal; and the smaller 164 acre annexation proposal analyzed in detail as an alternative.

Additional Items to Include in the Scope

Land Use and Zoning: Describe existing land uses and zoning for relevant portions of the Town of Woodbury that border the subject parcels to be annexed. Also, address the community character impacts to the areas in the Town of Woodbury that border the subject parcels to be annexed and subsequent high density residential development that has been historically built in the Village.

Community Services and Facilities: Include discussion on impacts to social services and recreational facilities.

Traffic and Transportation: Expand the scope of the locations to include more areas in the Town of Woodbury and expand the study of traffic impacts to those areas within the Town of Woodbury. In addition, the Scope should consider pending project proposals within the Town of Woodbury that are near the project area.

Community Water/Sewer: The Scope should include a detailed discussion about any agreements with Orange County and the Orange County Sewer District.

Natural and Cultural Resources: The Scope should include a discussion on Agricultural lands, if any, and potential visual impacts.

Since the proposed annexation would increase the amount of land under the jurisdiction of the Village, the DGEIS should discuss the effect of annexation in light of the noncompliance with applicable environmental regulations by the Village, or developers regulated by the Village, and the impacts resulting from such noncompliance. These include, without limitation: illegal filling of freshwater wetlands,<sup>5</sup> construction

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<sup>5</sup> See e.g., April 17, 2013 and November 25, 2013 DEC Notices of Violation from Biologist Douglas Gaugler to Village Administrator Gedalye Szegedin; May 19, 2009 DEC Notice of Violation from Biologist Douglas Gaugler to Chaim Werczberger; March 6, 2008 DEC Notice of Violation from Regional Enforcement Coordinator Joseph Battista to Kiryas Joel Village Clerk Gedalye Szegedin; March 25, 2008 DEC Notice of Violation from Biologist Douglas Gaugler

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stormwater violations,<sup>6</sup> MS4 violations,<sup>7</sup> illicit discharges,<sup>8</sup> and wastewater violations.<sup>9</sup> The DGEIS should also discuss the impact of increased discharges from the Harriman Wastewater Treatment Plant, on receiving streams and on the odor nuisances experienced by the community.

In addition, the DGEIS should discuss the effect of annexation in light of the Village's failure to refer any development proposals to the Orange County Planning Department, for inter-community or county-wide considerations pursuant to sections 239-l and 239-m of the New York State General Municipal Law.

#### Conclusion

The Village's attempt to circumvent and pre-empt the DEC's determination of lead agency for the 507 acre annexation proposal is wholly unjustified segmentation. The Village should stay the environmental review on the 164 acre annexation proposal pending the DEC chooses the correct lead agency on the pending 507 acre proposal, and upon that lead agency's inclusion of the 164 acre proposal as an alternative, should terminate the instant SEQR review.

Very truly yours,



JOHN W. FURST

JWF/1000398

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to Kiryas Joel Village Clerk Gedalye Szegedin; May 19, 2009 DEC Notice of Violation from Biologist Douglas Gaugler to Kiryas Joel Village Clerk Gedalye Szegedin;

<sup>6</sup> See e.g., May 9, May 30 and June 2, 2006 and March 30, 2007 DEC Notices of Violation from Environmental Program Specialist Natalie Browne to Jake Sofer; January 18, 2008 and June 12, 2009 DEC Notices of Violation from Environmental Program Specialist Natalie Browne to Mayer Indig; May 27, 2009 DEC Stop Work Order from Environmental Program Specialist Natalie Browne to Moshe Silberstein; September 18, 2007 Environmental Program Specialist Natalie Browne to Chaim Werczberger; May 19, 2009 DEC Notice of Violation from Biologist Douglas Gaugler to Chaim Werczberger; May 27, 2009 DEC Notice of Violation/Stop Work Order Environmental Program Specialist Natalie Browne to Chaim Werczberger; July 10, 2009 DEC Notice of Violation/Stop Work Order Environmental Program Specialist Natalie Browne to Chaim Werczberger; August 16, 2007 DEC Notice of Violation from Environmental Program Specialist Natalie Browne to Kiryas Joel Mayor Abraham Weider; June 8, 2009 DEC Notice of Violation from Environmental Program Specialist Natalie Browne to Kiryas Joel Mayor Abraham Weider; June 12, 2009 DEC Notice of Violation from Environmental Program Specialist Natalie Browne to Kiryas Joel Mayor Abraham Weider

<sup>7</sup> See e.g., July 20, 2009 DEC Consolidated Notice of Violation from Regional Enforcement Coordinator Joseph Battista to Kiryas Joel Mayor Abraham Weider.

<sup>8</sup> See e.g., March 27, 2008 DEC Notice of Violation from Environmental Program Specialist Natalie Browne to Kiryas Joel Mayor Abraham Weider.

<sup>9</sup> See e.g. March 7, 2012 DEC Notice of Noncompliance (with December 9, 2010 Consent Orders R3-20080229-14, R3-20080229-14-A15, 2003-0930-124) from Regional Engineer Thomas Rudolph to Kiryas Joel Mayor Abraham Weider and Village Administrator Gedalye Szegedin.

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Cc: Via Regular Mail Only  
Town of Woodbury, Town Board  
David Gordon, Esq.  
Village of Kiryas Joel Board of Trustees  
Town of Monroe, Town Board

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