

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

X

In the Matter of the Application of  
PRESERVE HUDSON VALLEY, INC., UNITED MONROE,  
JOHN ALLEGRO, JACQUELINE CRUZ, and JAVIER DAM,  
Petitioners,

For a Judgment Pursuant to Article 78 of  
The Civil Practice Law and Rules,

PETITION PURSUANT TO  
CPLR ARTICLE 78

-against-

Index No.

THE NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, and THE COMMISSIONER  
OF THE NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, JOSEPH MARTENS  
Defendants,

And

TOWN BOARD OF TOWN OF MONROE; BOARD OF  
TRUSTEES VILLAGE OF KIRYAS JOEL; THE COUNTY OF  
ORANGE; MONROE-WOODBURY CENTRAL SCHOOL DISTRICT;  
MONROE KJ CONSULTING, LLC; 12 BAKERTOWN HOLDING, LLC ;  
127 SPRINGS LLS; 131 ACRES RD. LLC; 155 BAKERTOWN RD. LLC;  
248 SEVEN SPRINGS IRREV TRUST; 257 MOUNTAINVIEW  
TRUST/ERWIN LANDAU TR.; 282 MOUNTAINVIEW DR. LLC; 481  
COUN. CORP.; 483 105 CORP.; 7 SPRINGS VILLAS LLC; 72 SEVEN  
SPRINGS RD. LLC; AM SEVEN SPRINGS LLC; AMAZON REALTY  
ASSOC. INC.; AMAZON/BURDOCK RLTY ASSOC. INC; ATKINS BROS  
INC.; BAKERTOWN ESTATES LLC; BAIS YISROEL CONG BE & YO  
REALTY, INC; BRUCHA PROPERTIES LTD; BUILDING 54 LLC;  
COMMANDEER REALTY ASSOC. INC. CONG BETH ARYEH; CONG  
LANZUT OF OC DER BLATT INC. EMET VESHALOM GROUP LLC;  
FD FAMILY TRUST 2012/ESTHER GLAUBER TR. FOREST EDGE  
DEVELOPMENT LLC; FOREST ROAD CAPITAL LLC HASHGUCHA  
PUTIUS LLC HERBST FAMILY HOLDINGS LLC ; JACOBS HICKORY LLC;  
KENT NEIGHBORHOOD LLC.; KONITZ ESTATES, LLC; MOUNTAIN NY  
ESTATES, INC; NDS PROPERTY MANAGEMENT INC; PORT ORANGE  
HOLDINGS; PROVIDER-HAMASPIC OC; SEVEN SPRINGS CORP; SEVEN  
SPRINGS RLTY INC.; SILAH ROSENBERG FAM LLC; SOUTH SPRING 1 LLC;  
STRULOVICH, LILLIAN & PINCUS J.; STULOVITCH 1, LLC; VINTAGE  
APPARTMENTS LLC; VISTA PEARL LLC ; and, as Individuals ESHTER ARNSTEIN,

HARRY ARNSTEIN, NAFTALI AUSCH; YESHUDA BERGER, YESHUDA;  
ERNO BODEK; RACHEL BODEK, SIGMOND BRACH, BREUER  
BRACH, ELLA BREUER, MENDEL BREUER, ISRAEL EKSTEIN,  
ISRAEL, ISRAEL MENDEL EKSTEIN, RAIZY ELLENBOGEN, SOLOMON  
ELLENBOGEN, DAVID EPSTEIN, KRASSIE EPSTEIN, BETH FREUND,  
RAIZEL EVA FREUND, CHAIM FRIEDMAN, FRIDA FRIEDMAN,  
GOLDY FRIEDMAN, JOSEF FRIEDMAN, JOEL GANZ, SHIRLY GANZ,  
SARA GELB, SIMON GELB, ELIAZER GLANZER, ESTHER GLANZER,  
ISSAC GLANZER, JUDY GLANZER, BRIENDEL CHAVI GOLDBERGER,  
DAVID GOLDBERGER, MOSES GOLDBERGER, TZIPORA GOLDBERGER,  
MOREDCHAI GOLDBERGER, RELY GREEBAUM, SHRAGA GREEBAUM,  
SHRAGA, BENJAMIN GREEN, CHAYA GREEN, MOSES HIRSCH, NATAHN  
HIRSCH, NATHAN, SAMUEL KAHAN, SIMON KATZ, RAFOEL KAUSZ,  
RAFOEL AKIVA KLEIN, AKIVA, ZAIDE KRAUSZ, CHAIM LANDAU,  
ISADOR LANDAU, EMANUEL LEONOROVITZ, RIFKA MALIK, ARTHUR  
MEISELS, ELIEZER NEUHAUSER, ALEX NEUSTADT, VALERIE NEUSTADT,  
LIPA OPPENHEIM, MENDEL OPPENHEIM, MENDEL, MOISHE OPPENHEIM,  
RIVKA OPPENHEIM, CHAIM PARNES, MIRIAM PARNES, HANA PERLSTEIN,  
HANA, ELIYAHU POLATSECK, ROSA POLATSECK, JOEL REICH, JOEL  
REISMAN, PAULA REISMAN, ABRAHAM ROSENBERG, ABRAHAM,  
DEBORAH ROSENBERG, ISSAC ROSENBERG, BASYA SABOV, FIEGE  
SCHREIBER, TOBAIS SCHREIBER, JACOB SCHWARTZ, RENE SCHWARTZ,  
ISRAEL SIMONOVITZ, ISRAEL BERSH STERN, ZALMEN STERN, ESTHER  
STESSEL, MARSHA WAGSCHAL, ISRAEL WEBER, ISRAEL CHAYA WEIDER,  
JACOB WIEDER, DEBORAH WEINER, YEHOSUA WEINER, ALFRED  
WEINGARTEN, HENRY WEINSTOCK, BENNY WERCBERGER, RACHEL  
WERCBERGER, WOLF WERCBERGER, ISRAEL WERZBERGER, JOSSI  
LEIB WERZBERGER, YITTELE WERZBERGER, JACOB WIEDER,  
ABRAHAM ZUSSMAN,

Nominal Defendants.

X

---

The Petitioners, PRESERVE HUDSON VALLEY, INC., UNITED MONROE, JOHN  
ALLEGRO, JACQUELINE CRUZ, and JAVIER DAM by their Attorney Susan H. Shapiro,  
Esq. as and for its Verified Petition, alleges as follows:

## **PARTIES**

1. Petitioner John Allegro (“Allegro”) (“Petitioner”) owns property and resides, at 288 Seven Springs Mountain Road, Monroe, NY 10950, within 500 feet of the proposed annexation. The proposed annexation completely surrounds his property. The proposed Annexation will separate and isolate his property from the rest of the Town of Monroe.

2. Petitioner Jacqueline Cruz, (“Petitioner”) owns property and resides, at 288 Seven Springs Mountain Road, Monroe, NY 10950, within 500 feet of the proposed annexation. The proposed annexation completely surrounds her property. The proposed Annexation will separate and isolate her property from the rest of the Town of Monroe.

3. Petitioner Javier Dam (“Petitioner”) owns property and resides, at 228 Seven Spring Mountain Road, Monroe, NY 10950, within 500 feet of the proposed annexation. The proposed annexation completely surrounds his property. The proposed Annexation will separate and isolate his property from the rest of the Town of Monroe.

4. Petitioner Preserve Hudson Valley, Inc., is a not-for-profit organization representing residents of the Town of Monroe and Orange County, with offices at 1150 E. Mombasha Drive, Monroe, NY 10950. Preserve Hudson Valley, Inc., is a not-for-profit organization whose articles of incorporation state that its purpose is to, through litigation and activism, preserve the natural resources and beauty of the Hudson Valley region as well as working towards the protection of the separation of church and state.

5. Petitioner United Monroe is a grass roots organization, with an office at 22 Sunset Heights, Monroe, NY 10950, with members residing in the Town of Monroe and other areas of Orange County, committed to transparent and open government.

6. At all times hereinafter mentioned the Respondents, New York State Department of

Environmental Conservation (“DEC”) and having its district office, Region 3 is at 21 S. Putts Corner, New Paltz, NY, and the DEC Commissioner, Joseph Martens (“Commissioner”) having offices as 625 Broadway, Albany, NY 12233, are responsible for state wide-implementation and enforcement of the federal Clean Water Act (“CWA”, as delegated by the Environmental Protection Agency (“EPA”).

7. At all times hereinafter mentioned the Nominal Respondents, the Village of Kiryas Joel (“Village”) is a Municipal Corporation having its offices at 51 Forest Road, Suite 340, Monroe, New York 10950.

8. At all times hereinafter mentioned the Nominal Respondents, the Town of Monroe (“Town”) is a Municipal Corporation having its offices at 101 Mine Road, Monroe NY 10950.

9. At all times hereinafter mentioned the Nominal Respondent the County of Orange, New York (“County”) is a Municipal Corporation having its offices at 40 Matthews Street, Suite 104, Goshen NY 10924.

10. At all times hereinafter mentioned the Nominal Respondent the Monroe-Woodbury Central School District (“MWCSD”), a New York State licensed public central school district, having its offices at 278 Route 32, Central Valley, NY 10917.

11. At all times hereinafter mentioned the Nominal Respondents Monroe KJ Consulting, LLC, whose address is P.O. Box 51, Monroe, New York 10949, c/o Steven Barshov, Esq., with offices at Sive, Paget & Riesel, PC, 460 Park Ave, 10<sup>th</sup> Floor, New York, NY 10022, (see Exhibit R) represents the following 177 tax lots owned by the 116 private property owners by the following organizations and individual annexation petitioners: 12 Bakertown Holding, Llc Map 93 S.B.L(1-3-17.1); 127 SpringsLls Map (N/A) S.B.L(1-1-41.2);131 Acres Rd. Llc Map 83 S.B.L(1-3-7); 155 Bakertown Rd. Llc Map(N/A) S.B.L(1-3-3); 248 Seven Springs Irrev Trust

Map (N/A) S.B.L(1-1-4.2); 257 Mountainview Trust/Erwin Landau Tr. Map 125 S.B.L(43-5-6); 282 Mountainview Dr. Llc Map 169 S.B.L(66-1-1.-1); 481 Coun. Corp. Map 172 S.B.L(2-1-4.21); 483 105 Corp. Map 171 S.B.L(2-1-4.1); 7 Springs Villas Llc Map 25 S.B.L(1-1-25.4); 72 Seven Springs Rd. Llc Map 9 S.B.L(1-1-13.1); Am Seven Springs Llc Map 24 S.B.L(1-1-25.3); Amazon Realty Assoc. Inc. Map 95 S.B.L(2-1-1); Amazon/Burdock Rlty Assoc. Inc Map 89 S.B.L(1-3-14.21), Map 90 S.B.L(1-3-15), Map 94 S.B.L(1-3-40); Atkins Bros Inc. Map 103 S.B.L(43-1-12); Bakertown Estates Llc Map 86 S.B.L(1-3-11); Bais Yisroel Cong Map 73 S.B.L(1-2-32.12); Be & Yo Realty, Inc Map 97 S.B.L(43-1-2); Brucha Properties Ltd Map 63 S.B.L(1-2-27); Building 54 Llc Map 145 S.B.L(65-1-8), Map 147 S.B.L(65-1-10), Map 150 S.B.L(65-1-13), Map 151 S.B.L(65-1-14), Map 157 S.B.L(65-1-20), Map 158 S.B.L(65-1-21), Map 160 S.B.L(65-1-23), Map 161 S.B.L(65-1-24), Map 166 S.B.L(65-1-29), Map 166 S.B.L(65-1-29), Map 167 S.B.L(65-1-30), Map 168 S.B.L(65-1-31), Map 164 S.B.L(65-1-27); Commandeer Realty Assoc. Inc. Map 21 S.B.L(1-1-23); Cong Beth Aryeh Map 109 S.B.L(43-2-5); Cong Lanzut Of Oc Map 39 S.B.L(1-1-47.232); Der Blatt Inc. Map 23 S.B.L(1-1-25.2); Emet Veshalom Group Llc Map(N/A) S.B.L(1-1-16); Fd Family Trust 2012/Esther Glauber Tr. Map(N/A) S.B.L(43-5-5); Forest Edge Development Llc Map 56 S.B.L(1-2-8.21); Forest Road Capital Llc Map 53 S.B.L(1-2-6); Hashgucha Putius Llc Map 32 S.B.L(1-1-44), Map 33 S.B.L(1-1-45); Herbst Family Holdings Llc Map 58 S.B.L(1-2-8.6); Jacobs Hickory Llc Map 30 S.B.L(1-1-42), Map 34 S.B.L(1-1-46), Map 46 S.B.L(1-1-54); Kent Neighborhood Llc. Map 41 S.B.L(1-1-49); Kingsville Synagogue Map(N/A) S.B.L(1-1-4.32); Konitz Estates, Llc Map 69 S.B.L(1-2-30.7); Mountain NY Estates, Inc Map 102 S.B.L(43-1-10); Nds Property Management Inc Map 113 S.B.L(43-3-1); Port Orange Holdings Map 27 S.B.L(1-1-39); Provider-Hamaspic Oc Map 84 S.B.L(1-3-8); Seven Springs Corp Map 19 S.B.L(1-1-22.1);

Seven Springs Rlty Inc. Map 28 S.B.L(1-1-41.1); Silah Rosenberg Fam Llc Map 71 S.B.L(1-2-31.1); South Spring 1 Llc Map(N/A) S.B.L(1-2-3.1); Strulovich, Lillian & Pincus J. Map 55 S.B.L(1-2-8.11);Stulovitch 1, Llc Map 87 S.B.L(1-3-12); Vintage Appartments Llc Map(N/A) S.B.L(65-1-12);Vista Pearl Llc Map 153 S.B.L(65-1-16), Map 154 S.B.L(65-1-17); Arnstein, Esther Map 115 S.B.L(43-3-3);Arnstein, Hary Map 115 S.B.L(43-3-3); Ausch, Naftali Map 72 S.B.L(1-2-32.11); Berger, Yeshuda Map 18 S.B.L(1-1-21); Bodek, Erno Map 70 S.B.L(1-2-30.8); Bodek Rachel, Map 70 S.B.L(1-2-30.8); Brach, Sigmond, Map 40 S.B.L(1-1-48); Brach Joel, Map 162 S.B.L(65-1-25); Breuer, Ella, Map 127 S.B.L(43-5-8); Breuer, Mendel, Map 117 S.B.L(43-4-1), Map 129 S.B.L(43-5-11); Ekstein, Israel, Map(N/A) S.B.L(1-2-30.52); Ekstein, Israel Mendel Map(N/A) S.B.L(1-1-77.1); Ellenbogen Raizy Map 42 S.B.L(1-1-50); Ellenbogen, Solomon, Map 136 S.B.L(63-1-1.-1); Epstein, David, Map(N/A) S.B.L(1-1-51); Epstein, Krassie Map(N/A) S.B.L(1-1-51); Freund, Beth Map 57 S.B.L(1-2-8.222); Freund, Raizel Eva Map 59 S.B.L(1-2-11.12); Friedman, Chaim Map 22 S.B.L(1-1-24); Friedman, Frida Map 66 S.B.L(1-2-30.51); Friedman, Goldy Map 22 S.B.L(1-1-24); Friedman, Josef Map 66 S.B.L(1-2-30.51); Ganz, Joel Map(N/A) S.B.L(1-2-30.6); Ganz, Shirley Map(N/A) S.B.L(1-2-30.6); Gelb, Sara Map 35 S.B.L(1-1-47.1); Gelb, Simon Map 130 S.B.L(56-1-1.-1); Glanzer, Eliazzer and Esther Map 62 S.B.L(1-2-16); Glanzer, Isaac and Judy Map 61 S.B.L(1-2-15); Goldberger, Briendel Chavi Map(N/A) S.B.L(1-2-30.1); Goldberger, David Map 123 S.B.L(43-5-4.1); Goldberger, Moses Map 65 S.B.L(1-2-30.1); Goldberger, Tzipora Map 123 S.B.L(43-5-4.1); Goldberger, Mordechai Map 165 S.B.L(65-1-28); Greebaum, Rely Map 115 S.B.L(43-3-3); Greebaum, Shraga Map 99 S.B.L(43-1-7), Map 100 S.B.L(43-1-8), Map 104 S.B.L(43-1-13), Map 105 S.B.L(43-1-14), Map 107 S.B.L(43-2-3); Green, Benjamin Map 99 S.B.L(43-1-7), Map 100 S.B.L(43-1-8), Map 104 S.B.L(43-1-13), Map 105 S.B.L(43-1-14), Map 107 S.B.L(43-2-3);

Green, Chaya Map 100 S.B.L(43-1-8), Map 104 S.B.L(43-1-13); Hirsch, Moses Map(N/A) S.B.L(1-1-11.21); Hirsch, Nathan Map(N/A) S.B.L(1-1-11.21); Kahan, Samuel Map 131 S.B.L(56-1-1.-2); Katz, Simon Map 128 S.B.L(43-5-10); Kausz, Rafoel A. Map 44 S.B.L(1-1-52); Klein, Akiva Map(N/A) S.B.L(1-2-13); Krausz, Zajde Map(N/A) S.B.L(1-1-53); Landau, Chaim Map 25 S.B.L(1-1-25.4); Landau, Isador Map 26 S.B.L(1-1-26.1); Leonorovitz, Emanuel Map 112 S.B.L(43-2-9); Malik, Rifka Map(N/A) S.B.L(1-1-47.22); Meisels, Arthur Map 10 S.B.L(1-1-13.2); Neuhauser, Eliezer Map(N/A) S.B.L(1-1-14); Neustadt, Alex Map 15 S.B.L(1-1-17.3); Neustadt, Valerie Map(N/A) S.B.L(1-1-17.2); Oppenheim, Lipa Map 17 S.B.L(1-1-20); Oppenheim, Mendel Map 20 S.B.L(1-1-22.2); Oppenheim, Moishe Map 5 S.B.L(1-1-7); Oppenheim, Rivka Map 16 S.B.L(1-1-18); Parnes, Chaim Map 118 S.B.L(43-4-3); Parnes, Miriam Map 118 S.B.L(43-4-3); Perlstein, Hana Map 137 S.B.L(63-1-1.-2); Polatseck, Eliyahu Map 44 S.B.L(1-1-52); Polatseck, Rosa Map 44 S.B.L(1-1-52); Reich, Joel Map(N/A) S.B.L(1-1-17.2); Reisman Joel Map 170 S.B.L(66-1-1.-2), Map 126 S.B.L(43-5-7); Reisman, Paula Map 126 S.B.L(43-5-7); Rosenberg, Abraham Map 75 S.B.L(1-2-32.22); Rosenberg, Deborah Map 74 S.B.L(1-2-32.211); Rosenberg, Isaac Map 75 S.B.L(1-2-32.22); Sabov, Basya Map 112 S.B.L(43-2-9); Schreiber, Feige Map 119 S.B.L(43-4-4); Schreiber, Tobias Map 119 S.B.L(43-4-4); Schwartz, Jacob Map 115 S.B.L(43-3-3); Schwartz, Rene Map 115 S.B.L(43-3-3); Simonovitz, Israel Map (N/A) S.B.L(2-1-4.21); Stern, Bersh Map 8 S.B.L(1-1-11.22); Stern, Zalmen Map 13 S.B.L(1-1-17.1); Stessel, Esther Map 121 S.B.L(43-5-2); Wagschal, Marsha Map 38 S.B.L(1-1-47.231); Weber, Israel Map 85 S.B.L(1-3-9); Weider, Chaya Map 36 S.B.L(1-1-47.21); Wieder, Jacob Map 36 S.B.L(1-1-47.21); Weiner, Deborah Map 116 S.B.L(43-3-6); Weiner, Yehosua Map 116 S.B.L(43-3-6); Weingarten, Alfred Map 101 S.B.L(43-1-9); Weinstock, Henry Map 122 S.B.L(43-5-3.2); Wercberger, Benny Map

111 S.B.L(43-2-7); Wercberger, Rachel Map 111 S.B.L(43-2-7); Wercberger, Wolf Map 4 S.B.L(1-1-6), Map 6 S.B.L(1-1-8); Werzberger, Israel Map 113 S.B.L(43-3-1); Werzberger, Jossi Leib Map 113 S.B.L(43-3-1); Werzberger, Yittele Map 113 S.B.L(43-3-1); Wieder, Jacob Map 36 S.B.L(43-4-3); Zussman, Abraham Map S.B.L(43-2-4)., are a necessary nominal Defendants, (hereafter referred to as 12 Bakertown Holding, Llc etal., Nominal Defendants) parties as they are applicants of the annexation and owners of parcels of land subject to the annexation and are named as applicants for of the annexation. On December 27, 2103 , Mr. Steven Barshov, of Sive, Paget & Riesel, P.C., with offices at 460 Park Ave, 10<sup>th</sup> Floor, New York, NY 10022 represented that he represented the property owners who petitioned to have their land annexed to the Village of Kiryas Joel from the Town of Monroe. (*see* Exhibit Q)

12. The 510 acre annexation would impact numerous portions of the Town of Monroe and will directly impact members of both Preserve Hudson Valley, Inc and United Monroe due to increased need for community services especially water and sewer, change the community character and watershed. These possible impacts must be objectively investigated and considered to comply with State Environmental Quality Review Act “SEQRA”) and the Municipal Annexation Law as to whether the proposed annexation is “in the over-all public interest.” *See* N.Y. Gen. Mun. Law § 711.

13. Petitioners will be negatively impacted by an unfair annexation process as citizens of the Town of Monroe. Additionally, increased water and sewer usage, change in community character, increased traffic, reduction in permeable surfaces and increased runoff, as a result of the proposed annexation. As such, Petitioners have standing to bring this action against the Department of Environmental Conservation (“DEC”) which arbitrarily and capriciously appointed the Village of Kiryas Joel (“Village”) to be “Lead Agency” in the Annexation review



for 510 acres on January 15, 2015, (*See*. Exhibit A) despite ample evidence that the Village was the least qualified and most biased of the three municipal corporations which submitted Notice of Intent to be “Lead Agency”.

## **FACTS**

14. The instant petition seeks to annul the actions of the DEC determination to appoint the Village of Kiryas Joel as “ “Lead Agency”” for SEQRA review of the proposed Annexation submitted on December 27, 2013 for annexation of 507 acres from the Town of Monroe (“Town”) into the Village of Kiryas Joel (“Village”). (*see* Petition for Annexation and Map Exhibit B).

15. On or about December 31, 2013, the Village circulated its Notice of Intent to Establish “Lead Agency”. (*see* Exhibit C.)

16. On or about January 29, 2014 the Monroe-Woodbury Central School District (“MWCSD”) circulated its Notice of Intent to Establish “Lead Agency”, (*see* Exhibit D)

17. On or about January 31, 2014 the Village submitted to the New York State Environmental Facilities Corporation (“EFC”) an Aqueduct Connection Project Business Plan Supplement II request for financing, which pre-supposes approval of the proposed annexation. (*see* Exhibit L)

18. On or about February 14, 2014 the Town of Monroe circulated its Notice of Intent to Establish “Lead Agency” with the DEC, (*see* Exhibit E).

19. On February 19, 2014 the Orange County Executive, Steve M. Newhaus, wrote DEC Commissioner Martens, expressing the willingness to have the Orange County Planning Department assume the role of “Lead Agency”, due to the widespread skepticism in Orange

County that either the Town of Monroe or the Village of Kiryas Joel has the capacity to conduct a SEQRA in a fair and impartial manner. (*see* Exhibit S)

20. The DEC is the only agency empowered to resolve a “Lead Agency” dispute under SEQRA. *See* 6 N.Y.C.R.R. § 617.6(b)(5); N.Y.S. D.E.C., *SEQR Handbook*, at 63 (3d ed. 2010). From on or about February 13, 2014 through April 4, 2014, the DEC received letters from elected officials and hundred of emails and an on-line petition objecting to the appointment of Village as “Lead Agency”. (*see* Exhibit F)

21. On or about January 15, 2015 the DEC made a final Decision and appointed Village as “Lead Agency”. (*see* Exhibit A)

22. From January 29, 2015 to on or about February 7, 2015 Petitioners and several hundred residents of the Town and Orange County (“County”) submitted email objections to DEC Commissioner’s appointment of the Village as “Lead Agency.” (*see* Exhibit G).

23. The DEC has no internal appeals process, therefore Petitioners exhausted all administrative remedies. All final DEC Commissioner decisions may be reviewed in State Supreme Court by proceedings brought under Article 78 of the Civil Practice Law and Rules. These proceedings may be brought by persons affected by the decision, such as the Petitioners. The DEC Commissioner’s final Determination of “Lead Agency” under Article 8 of the Environmental Conservation Law on January 28, 2015 is a decision which may be reviewed in State Supreme Court.

24. No previous application has been made to this or any Court for the relief requested herein.

**AS AND FOR A FIRST CAUSE OF ACTION  
NYS DEC’S APPOINTMENT OF THE VILLAGE OF KIRYAS JOEL AS “LEAD**

**AGENCY” FOR THE PROPOSED ANNEXATION WAS IMPROPER, ARBITRARY AND CAPRICIOUS AND VIOLATED 6 N.Y.C.R.R. §617.6 (a)( 6)(b)(5)(v)**

25. Petitioners re-alleges paragraph 1 through 24, as if fully set forth herein.

26. The DEC, failed to give due consideration to the criteria set forth in 6 N.Y.C.R.R. §617(a)(6)(b)(5)(v) to designate “Lead Agency” for actions for which “Lead Agency” cannot be agreed upon.

27. In the event that there is a question as to which is the “Lead Agency”, the Commissioner shall designate the “Lead Agency”, giving due consideration to whether the proposed action will have local, regional or statewide impacts, which agency has the broadest authority in investigating environmental impacts; and whether such agency to fulfill adequately the requirements pursuant to 6 N.Y.C.R.R. §617.6 (a)( 6)(b)(5)(v).

28. Petitioners are challenging the final decision of the DEC to name the Village the “Lead Agency” for the proposed annexation of more than 500 acres into the Village. This is not a challenge to SEQRA findings by a “Lead Agency”.

29. The appointment of “Lead Agency” is a vital and crucial part of the DEC’s responsibility in upholding the laws and regulations of the Clean Water Act (“CWA”). The Environmental Protection Agency (“EPA”) delegated some of its responsibilities of investigation and enforcement under the Clean Water Act to the States, under the auspices of the DEC. The DEC, in turn, delegated some of these responsibilities to the local agencies, such as counties, towns and villages, as well as MS4 designated entities. The DEC is responsible to ensure the local agencies properly adhere to the federal and state environmental laws.

30. The Village has an extensive history of repeated failures of compliance with state and federal environmental laws and have been repeatedly fined by the DEC and EPA. For

example, On March 20 and 21, 2013, the EPA and the NYSDEC conducted an Audit of the Village. Based on the Audit findings, the EPA found the Village failed to comply with CWA. (Village of Kiryas Joel, EPA Docket No. CWA-02-2014-3014, p. 3, *see* Exhibit H). Subsequently, the Village continued to fail to comply with the CWA and on November 22, 2013, the EPA issued the Village an administrative compliance order for violations of CWA, 33 U.S.C. §1311(a); CWA, 33 U.S.C. §1342.

31. In his determination naming the Village as “Lead Agency” the Commissioner failed to acknowledge the Village’s past and on-going environmental violations. The Village’s history of violations raises serious questions about the ability of Village to investigate the impacts of proposed annexation and its capabilities for providing the most thorough environmental assessment of the proposed annexations. See 6 N.Y.C.R.R. §617.6 (b)(5)(v).

32. Serious concerns have been raised regarding the Village’s willingness, ability and capacity to conduct an open and transparent process including meaningful public participation, as “SEQRA” requires, as the Village does not comply with standard municipal practices for public hearings and document requests under the Freedom of Information Act.

33. The Village has a history of dealing with environmental impact studies in a nonchalant manner in order to expediently serve their own interests. Notably the Village made an attempt at a negative declaration regarding the Village’s 13-mile water pipeline project. It was only after numerous court orders that the Village begrudgingly conducted an environmental impact study, which was thereafter found by the Appellate Division, Second Department to be inadequate. *See Cnty. of Orange v. Vill. of Kiryas Joel*, 11 Misc.3d 1056(A), 815 N.Y.S.2d 494 (Sup. Ct. Orange Cnty. 2005) To date, further environmental litigation concerning SEQRA

review of the pipeline conducted by the Village remains pending determination by the Court.

34. On the other hand, the Town has extensive experience competently and lawfully handling complicated SEQRA proceedings.

35. It is also important to consider the Village's track record of blatant lack of respect for the state Open Meetings Law and Freedom of Information Law (FOIL). Routinely the Village does not respond to FOIL requests, required by state and federal law. (*see* Exhibit I)

36. The Village has no website and, thus, no posting of meeting agendas or minutes, and often cancels meetings at a whim. In 2012, the Times Herald- Record reported that "attempts to [determine when meetings were held were] met with almost comical obstruction."

(*see* Exhibit J)

37. The Village's continuing disrespect for required legal disclosure is unacceptable for a "Lead Agency" during a critical and controversial application such as the Annexation petition.

38. The Village has exhibited repeated failures to fulfill its obligations under SERQA and other environmental laws including the Clean Water Act, which raise serious concerns about its capacity, ability and willingness to conduct a lawful and thorough impartial environmental review in connection with the proposed annexation to increase the area of Village from 1.1 square miles to 1.8921 square miles, a 71.8% increase. The Village's Comprehensive Plan clearly states that the Village has already contemplated approval of the proposed annexation (Kiryas Joel Comprehensive Plan, page 30, *see* Exhibit K) in order double the size of the Village which was formed for the sole benefit of the exclusive, all white Satmar community (a specific religious separatist sect) (Comp Plan, page 8 *see* Exhibit K). The Comprehensive Plan also

contemplates a land grab from the Town of Monroe and Woodbury, which is an inappropriate action for a municipality to commence or consider. This manifest density attitude in the Village's Comprehensive Plan is reason enough for the Village to be barred from acting as "Lead Agency" for any annexation. (Comp Plan page 6, ¶12 *see* Exhibit K)

39. The Village's current allowable density is a maximum of 22 units per acre, compared to Monroe's maximum density of 8 units per acre. Therefore the annexation will result in increased density in the annexed area. This increase in density will create an increased need for additional water supply and waste water sewer systems; additional community services; and, it will dramatically change the community character, increase traffic and noise ; and increase destruction of environmental resources.

40. Annexation of 510 acres is a very large action, added to this is the complication of the unique co-current school district boundaries as required by State Law (*see* MWCS D Notice, *see* Exhibit D); and the unusual and bizarre baroque municipal boundaries being proposed by the annexation. The proposed annexation unusually is attempting to annex various unconnected parcels of land throughout the Town.

41. The baroque municipal boundaries of the proposed annexation is highly unusual, and inconsistent with regular and orderly municipal borders. (*See* Exhibit B)

42. The proposed annexation is to annex a total of .7921 square miles or 507 acres into the Village. Currently the total area of the Village is 1.1 square miles or 704 acres, whereas the Town encompasses totaling 21.3 square miles or 13,623 acres. (*see* Exhibit B)

43. The lots subject of this annexation, are in many cases, not directly adjacent to each other. The proposed annexation creates a bizarre lace-like municipal boundary. This unprecedented, bizarre, baroque annexation may result in significant harm to Town taxpayers.

44. The Village financially benefits from the annexation due to increased tax revenues to Village and the Village contracted with all the Petitioners that upon completion of the annexation approval, the Petitioners will pay \$25,000 per water hookup. According to the Villages own development projections the projected windfall will be approximately \$213,750,000 for 8,550 dwelling units. (Growth Projection Spreadsheet, Exhibit L). Self interest clearly makes it impossible for the Village to conduct a meaningful investigation as required by SEQRA, in order to comply with the Clean Water Act (“CWA”), since the Village has financial self interest in finding that the proposed annexation complies with state and federal laws, whether it does or not.

45. In the Village’s Comprehensive Plan and again in the Villages recent loan application to the EFC, a state agency the Village has already pre-determined that it will approve the annexation. Pre-judgment of the outcome a statutorily required investigation, make the investigation nothing more than a farce. Thus, for the Commissioner to select the Village as the “Lead Agency” when it has already pre-determined the outcome of its SEQR review and which has clear self-interest in approving the proposed annexation, makes a joke of the entire SEQR process.

46. An additional complication of the proposed annexation is the issue regarding the boundaries between Monroe-Woodbury Central School District (“MWCSD”) and the Kiryas Joel Union Free School District (KJUFSD”) were statutorily authorized because the boundaries of KJUFSD are coterminous with the boundaries of the Village (See. N.Y. Educ.

Law§1504[3])(see Exhibit D)

47. The Village's pre-determined outcome of approving the annexation, make it impossible for the Village to conduct an impartial SEQRA review, or to protect the interests of taxpayers in the Town of Monroe and Orange County, as well as the environment. The Village's Comprehensive Plan and its January 31, 2104 submittal to EFC requesting financing, pre-supposes approval of the proposed annexation, prior to a required investigation and environmental impact study (*see* Exhibit L). There is ample evidence that the Village due to self interest cannot conduct an impartial, fair SEQRA and thorough investigation into the potential environmental impacts of the proposed annexation as required by SEQRA. (*see* Exhibit K, Map 12).

48. A legal SEQRA of this complicated, complex and controversial annexation requires an experienced "Lead Agency" to properly conduct a thorough and impartial investigation with all aspects of the proposed annexation. The DEC has vastly more experience as "Lead Agency" than the Village and has not no pre-judgement of the outcome of the SEQR process, as the Village has already expressed in its Comprehensive Plan and EFC application.

49. The Commissioner's Determination fails to use the criteria required by §617.6 (a)( 6)(b)(5)(v) in selecting a "Lead Agency." Instead, he accepted on face value the Villages, self-serving conclusory statements. The Commissioner improperly considers the ability to walk around the village to be of greater importance than statewide and regional issues of clean water, adequate sewer capacity, over development and the protection of Town taxpayers.

50. §617.6 (a)( 6)(b)(5)(v)(a) requires the Commissioner consider whether the proposed action has "statewide, regional, or local significance (i.e. if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will



be “Lead Agency”.)”

51. 6 N.Y.C.R.R. §617.6 (a)(6)(b)(5)(v)(b) requires consideration by the Commissioner as to which involved agency has the “broadest governmental powers for investigation of the impact(s) of the proposed action.”

52. 6 N.Y.C.R.R. §617.6 (a)(6)(b)(5)(v)(c) requires consideration by the Commissioner as to “which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.”

53. Petitioners provided the DEC with a plethora of evidence that the Village has been a repeat offender with multiple fines for Clean Water Act violations. A “Lead Agency” is delegated the responsibilities of implementing the Clean Water Act, yet the Village has a history of non-compliance to the Clean Water Act. Appointing the Village, a known repeat offender of the Clean Water Act, to be “Lead Agency” is a total abdication of the DEC’s delegated responsibility to uphold the Clean Water Act, by allowing the fox to guard the fox house.

54. Petitioners provided the DEC ample evidence Village did not have the capability of providing a proper unbiased SEQRA review, as the Village does not routinely conduct SEQRA reviews, and the few SEQRA review the Village has conducted have been overturned by the Courts as being inadequate. (see pipeline discussion below).

55. Of all the involved parties, including the DEC and the Town of Monroe and the Monroe-Woodbury School District, and the Village of Kiryas Joel that submitted Notices of Intent to be “Lead Agency”, the Village is the agency with least capacity to conduct fair and impartial investigation of the impacts of the proposed annexation as required by SEQRA §617.6 (a)(6)(b)(5)(v)(b).

56. The DEC's appointment of the Village as "Lead Agency" is incomprehensible, arbitrary and capricious. There is no legitimate reason, to make the Village "Lead Agency". The cases cited by the Village in its Notice of Intent are all distinguishable from the facts here. Every case listed on the DEC's website regarding "Lead Agency" disputes, regarding annexation of annexations under a hundred (100) acres. This annexation of Five hundred (500) acres will almost double the size of the Village, is not a small matter. A village is the smallest municipal body in New York State, a Town has greater jurisdiction, County even greater, and the DEC itself has the largest jurisdiction. In the majority of the "Lead Agency" disputes, the DEC designated the greatest municipal body involved. The DEC has repeatedly designated a city over a town, a county over a town, and a town over a village planning board.

57. In the majority of the "Lead Agency" disputes, the properties being annexed were already owned by the municipality to which it was being annexed, or were commercial or industrial properties, that is not the case here. In the one matter in which the DEC designated a village over a town and where the property was not owned by the municipality that it was being annexed to, the 5.79 acre property was owned by a single family, and was already fully developed. Once again that is not the case here, where there are 177 individual property residential owners are involved, and a large portion of the property to be annexed is not developed. It is known that annexation will result in a significant zone change. This extremely large annexation and requires an impartial arbiter to conduct the SEQRA, not a Village that has already pre-determined the outcome of the SEQRA.

58. Courts generally give deference to the "Lead Agency" findings under SEQRA, therefore this Final Decision by the DEC naming "Lead Agency" is crucial to ensure compliance with the Clean Water Act.

59. It is axiomatic that SEQRA requires strict procedural compliance. *King v. Saratoga Cnty. Bd. of Supervisors*, 89 N.Y.2d 341, 653 N.Y.S.2d 233, 235-36 (1996). This is because “the substance of SEQRA cannot be achieved without its procedure, and [] departures from SEQRA’s procedural mechanisms thwart the purposes of the statute.” 653 N.Y.S.2d at 235. “Anything less than strict compliance, moreover, offers an incentive to cut corners and then cure defects only after protracted litigation, all at the ultimate expense of the environment.” *Id.* at 235-36.

60. By naming the Village as “Lead Agency” the DEC failed to comply with the procedural requirements of SEQRA 6 N.Y.C.R.R. §617.6 (a)( 6)(b)(5)(v), resulting in an arbitrary and capricious abdication of the DEC’s statutory responsibilities under the CWA.

**AS AND FOR A SECOND CAUSE OF ACTION  
THE DEC FAILED TO CONSIDER THE STATEWIDE AND REGIONAL IMPACTS  
OF THE PROPOSED ANNEXATION**

61. Petitioners re-alleges paragraph 1 through 60, as if fully set forth herein.

62. The DEC failed to consider the significant statewide and regional impacts of the proposed annexation as required by the criteria set forth in §617.6 (a)( 6)(b)(5)(v)(a).

“whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be “Lead Agency””).

It follows therefore, that if such impacts and regional than the regional agency involved will be lead agency.

63. In the instant matter the proposed annexation may directly impact the water supply to New York City (“NYC”). The Village is currently building a pipeline which will tap

into the NYC water supply, despite the Appellate Division, Second Department finding the Village's SEQRA review of the pipeline failed to comply with law. The proposed annexation will drastically increase water and sewers needs of Village given the high density allowed by the Village's zoning regulations. The average build out density in the Village is 22 units per acres, whereas the current zoning on the proposed land to be annexed allows for one (1) unit per acre to a maximum of 2 units per acre for "Rural Residential Zoning, or a maximum of 8 units per acre for URM (Urban Residential Multi-Family) zoning.

64. The Village has recognized the limited water supply and sewer capacity in this area, noting recently that "[d]ue to the pressures on the groundwater aquifer from all local communities, the existing supply has become inconsistent and unreliable." (*See* Verified Petition and Complaint, *Village of Kiryas Joel v. Town of Blooming Grove*, No. 2014-6346, ¶ 34 (Sup. Ct. Orange Cnty. Aug. 15, 2014), (*see* Casino Exhibit M)

65. To enhance the Village's already overtaxed water supply since 2005 the Village has attempted to access water from other parts of Orange County, such as tapping wells in Mountainville and Cornwall, as well as the constructing a pipeline to tap into the New York City aqueduct system. Doubling the size of the Village will result will undoubtedly create a greater need for water resources which impacts the entire County, and region including New York City.

66. For years the Village has been in contentious litigation with the County and surrounding municipalities over sewer allocations. Currently the sewer capacity for the densely developed Village it already near capacity. The Village sits within Orange County Sewer District # 1, utilizing the Harriman Wastewater Treatment Plant, which already exceeds capacity during periods of extreme weather. Doubling the size of the village will undoubtedly result in adequate sewer capacity which impacts the surroundings town villages and downstream

communities, such as Rockland County and New Jersey, which rely on the Ramapo River for drinking water.

67. The impact the annexation will have on the Monroe-Woodbury Central School District (“MWCS D”) is not limited to the loss of school district tax revenue of \$1.1 million dollars. The proposed annexation will have significant educational and financial impacts. If approved the annexation will trigger a required concurrent action to address the unique conterminous boundaries of the Kiryas Joel Union Free School District (“KJUFSD”) pursuant to Education Law Section 1504. This will require statewide legislation and will impact all school districts throughout the state. (*see* Exhibit D)

68. Therefore the Commissioner failed to consider the large statewide and region impacts as required by 6 N.Y.C.R.R §617.6 (a)(6)(b)(5)(v)(a) of the proposed annexation when he appointed the Village as ‘Lead Agency.’”

**AS AND FOR A THIRD CAUSE OF ACTION  
THE DEC FAILED TO CONSIDER WHICH AGENCY HAS THE BROADEST  
GOVERNMENTAL POWERS FOR INVESTIGATION OF THE IMPACTS  
OF THE PROPOSED ANNEXATION**

69. Petitioners re-alleges paragraph 1 through 68, as if fully set forth herein.

70. The DEC Commission failed to comply with the criteria set forth in 6 N.Y.C.R.R §617.6 (a)(6)(b)(5)(v)(b), “(b) which agency has the broadest governmental powers for investigation of the impact(s) of the proposed action.”

71. The DEC, itself, the County, and the Town clearly have broader governmental powers for investigation of the environmental impacts of the Annexation, than the Village. SEQRA is not a home rule based issue, as environmental impacts are not limited to the boundaries of any given property in land use.

72. Of all the involved agencies, the DEC has the broadest governmental power to investigate the local and region impact of the proposed extensive annexation with unusual baroque boundaries. ( *see* Map, Exhibit B) The Town is an involved agency with broader governmental powers to investigate and conduct an impartial review of the environmental impacts of the proposed extensive annexation with baroque borders. The Village’s investigative powers are limited by its pre-judgment that the annexation will occur as evidence by the Village’s own Comprehensive plan ( *see*, Exhibit K). The Villages self interest, will limit its investigation and result in an unfairly skewed review, in favor of the annexation, despite potential negative environmental impacts.

73. There is a preponderance of evidence showing the Village has a history of environmental violations non-compliance with New York State and Federal environmental laws. (“Lead Agency” Dispute, Violations and Audit, *see* Exhibit N)

74. The Appellate Division, Second Department did not accept KJ’s inadequate environmental review. *See Cnty. of Orange v. Vill. of Kiryas Joel*, 11 Misc.3d 1056(A), 815 N.Y.S.2d 494 (Sup. Ct. Orange Cnty. 2005) Despite the Village’s claim that has the ability to conduct SEQR because it had conducted a SEQR review for the proposed water pipeline, the Appellate Division, Second Department held that the Village environmental review for proposed water pipeline did not comply with SEQRA:

- 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.” 844 N.Y.S.2d at 61-62.

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

75. It should be noted that Courts usually give “lead agencies” wide deference and rarely over turn “Lead Agency” SEQRA determinations. The Court held that few SEQRA the Village conducted was wholly inadequate. Since the Village already has a poor track record in implementing SEQRA. *See Cnty. of Orange*, 844 N.Y.S.2d 57. The Village’s history of SEQRA noncompliance is a legitimate line of inquiry where the subject action (*i.e.*, the Annexation) would make the Village responsible for additional SEQRA review. *Cf.* N.Y.S. D.E.C. Commissioner’s Policy, “Record of Compliance Enforcement Policy,” at 3 (establishing that “the environmental compliance history of a permit applicant is a relevant consideration regarding qualification for permitting”).

76. Courts will consider an agency’s history of noncompliance with environmental regulations when reviewing the adequacy of any environmental review conducted by that agency. *See, e.g., Citizens Advisory Comm. on Private Prisons, Inc. v. U.S. Dept. of Justice*, 197 F. Supp. 2d 226, 251 (W.D. Pa. 2001), *aff’d*, 33 F. App’x 36 (3d Cir. 2002) (“[I]n cases where

the agency has already violated [the National Environmental Policy Act], its vow of good faith and objectivity is often viewed with suspicion.”); *Nat’l Res. Def. Council, Inc. v. U.S. Army Corps of Eng’rs*, 457 F. Supp. 2d 198, 222 n.178 (S.D.N.Y. 2006) (citing *Citizens Advisory Comm. on Private Prisons* requiring agencies to show a good faith and objective review of potential environmental impacts of the proposed action).

77. Assessment of the Village’s history of poor environmental stewardship was not considered or weighed by the DEC Commissioner in its Decision to appoint the Village as “Lead Agency”. The DEC’s appointment of the Village as “Lead Agency” is akin to aiding and abetting a convicted felon in its next crime.

78. The inadequacy and limitation of Village as the “Lead Agency” is already evident in its draft Scoping Document’s omission of hypothetical development scenarios is particularly inappropriate in light of the Village’s submissions to the State Environmental Facilities Corporation (“EFC”), where it set forth growth projections premised on the development of the land that is the subject of the proposed Annexation. The Village indicated that, at a minimum, the Annexation would lead to build-outs at the maximum density allowed under Town zoning. (*Aqueduct Connection Project Business Plan Supplement II (Jan. 31, 2014)*, see Exhibit L ) Even though municipalities are not allowed to use annexation to evade current zoning constraints, see *Bd. of Trustees of Spring Valley v. Town of Ramapo*, 264 A.D.2d 519, 694 N.Y.S.2d 712, 714 (2d Dept. 1999) (“Annexation may not be used as a means by which the owner of land in one municipality may escape the effect of that municipality’s local legislation by having the land transferred to an adjoining municipality.”), the Village further suggested that the Annexation created the “potential rezoning [of the Town land] for increased densities.”



79. The Village has already represented to a State agency, Environmental Facilities Corporation, a New York State lender, that it will promote development at intense levels on the land it would like to annex in order to fund significant infrastructure expansion. As such, the environmental review should “be more extensive” and “address the specific use of the property [that the Village laid out for the EFC] in evaluating the related environmental effects.” *Id.* at 94.

80. Consideration of such growth inducing impacts is critical here, where the Village has already represented to a State agency that it has intense development goals for the lands it wants to annex. *See SEQRA Handbook*, at 147 (stating that a “generic EIS should describe any potential that proposed actions may have for ‘triggering’ further development”). As DEC, the agency primarily responsible for SEQRA’s implementation, states, “[i]f such a ‘triggering’ potential is identified, the anticipated pattern and sequence of actions resulting from the initial proposal should be assessed.” *Id.*

81. Petitioners provided the DEC ample evidence that the Town of Monroe, being larger and being a town has the broadest governmental powers to investigate the impacts of the proposed annexation.

82. Given the Village’s prior track record of environmental violations, inadequate SEQRA proceedings, and the pre-determination in its Comprehensive Plan and Loan documents that the annexation would be approved, the Village has limited its ability to conduct a fair and impartial SEQRA, as required by law. The DEC failed to use the criteria of §617.6 (a)(6)(b)(5)(v)(b ) in determining which agency has the broadest governmental powers to investigate the proposed annexation.

**AS AND FOR A FOURTH CAUSE OF ACTION THE DEC FAILED TO CONSIDER WHICH AGENCY HAS THE CAPACITY FOR PROVIDING the MOST THOROUGH ENVIRONMENTAL ASSESSMENT OF THE ANNEXATION**

83. Petitioners re-alleges paragraph 1 through 82, as if fully set forth herein.

84. The DEC failed to comply with the criteria required by §617.6 (a)(6)(b)(5)(v)(c), to determine in order of importance to designate “Lead Agency”: which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

85. The DEC and Town routinely conduct SEQRA investigations. Upon information and belief the Village rarely conducts SEQRA reviews.

86. The Village of Kiryas Joel leaders has notoriously been a bad stewards of the environment, as evidenced by the multiple DEC and EPA violations on record. (*see* Exhibit N) Most recently the Village has been fined for operating a sewer treatment facility without a permit since July of 2014, and without a functioning gate for solid waste (EPA violation 2013, *see* Exhibit O). The Village’s poultry processing plant also has been issued multiple violations recently from the EPA (*see*, Exhibit P).

87. The Commissioner’s determination reference high density housing as preferable from an environmental perspective since it eases the ability to walk, bicycle and for public transit, yet failed to acknowledge or consider the Villages many large, serious and ongoing environmental violations. The Village has almost no open space and almost no permeable surfaces. The Village does not contain cluster developments, only urban developments, where apartments boundaries run directly to sidewalks, paved driveways, and curbs. There is a conspicuous absence of park land, trees, shrubs and grass in the Village and a nearly continuous foul order emanating from the small sewage treatment plant within the Village.

88. In addition, the Village is not a properly functioning government. They are in constant violation of open meetings laws, do not regularly perform SEQRA and their Planning Board doesn't communicate with the County Planning Department as required by Municipal Law. They do not hold regular, open Planning Board meetings, and refuse to answer FOIL requests regularly. The Village regularly operates business behind closed doors.

89. It is axiomatic that SEQRA requires strict procedural compliance. *King v. Saratoga Cnty. Bd. of Supervisors*, 89 N.Y.2d 341, 653 N.Y.S.2d 233, 235-36 (1996). This is because “the substance of SEQRA cannot be achieved without its procedure, and [] departures from SEQRA’s procedural mechanisms thwart the purposes of the statute.” 653 N.Y.S.2d at 235. As such, “the requirement of strict compliance and attendant spectre of de novo environmental review insure that agencies will err on the side of meticulous care in their environmental review.” *Id.* “Anything less than strict compliance, moreover, offers an incentive to cut corners and then cure defects only after protracted litigation, all at the ultimate expense of the environment.” *Id.* at 235-36.

90. Upon information and belief the Village does not fully adhere to other critical land use review requirements. By letter dated August 18, 2014, United Monroe requested that the Village provide basic information relating to its planning processes pursuant to the New York State Freedom of Information Law (“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. (FOIL Request to the Village, dated Aug. 18, 2014, *see* Exhibit “I”) The Village initially did not even acknowledge the request, which is deemed by operation of law to be a constructive denial of the request, and United Monroe was compelled to commence an administrative appeal. The Village, by counsel, in a letter dated September 29, 2014, indicated that it would produce certain documents in response to this request. To date the Village has not fully satisfied the FOIA request from August 18, 2014.

91. Both DEC and the EPA have also found repeated violations in the Village of applicable environmental protection requirements. (*see* Exhibit “N”) These include, by way of example, failure to implement required improvements to the Village’s sanitary sewer system. (*See id.*)

92. Failure to enforce environmental requirements during SEQR proceeding could cause additional adverse impacts. The Village does not have the greatest capability to provide the most thorough environmental assessment of the proposed annexation as required by §617.6(a)(6)(b)(5)(v)(c). Nor does the Village have the ability to impartially investigate and address the Village’s pattern of noncompliance with established planning, zoning and environmental laws, regulations, and practices, necessary to discuss the potential adverse environmental impacts that may flow from the Village’s proposed annexation.

ADDENDUM

FIFTH CAUSE OF ACTION

**AS AND FOR A FIFTH CAUSE OF ACTION THE DEC WAS ARIBTRARY AND CAPRICIOUS IN DELEGATING THE VILLAGE OF KIRYAS JOEL AS “LEAD AGENCY” AS EVIDENCED BY ITS FIRST SCOPING SESSION**

93. Petitioners re-alleges paragraph 1 through 92, as if fully set forth herein.

94. On February 11, 2015 the Village invited the public to comment on the Draft Generic Environmental Impact Statement, Tuesday, on March 3, 2015. (*see* Exhibit T)

95. Petitioners had planned to file and serve this Petition on March 3, 2015, however due to inclement weather could not and have subsequently added this addendum, Fifth Cause of Action.

96. On Tuesday, March 3, 2015 the United States National Weather Service issued a Winter Weather Advisory for Orange County, New York in effect from 3:00 PM EST until Wednesday 10:00 AM EST. “A Winter Weather Advisory means that periods of snow...sleet...or freezing rain will cause travel difficulties, be prepared for slippery roads and limited visibilities... and use caution while driving.” Carl Ericksson, a senior meteorologist with AccuWeather.com said “ the latest winter storm arrived by 3 p.m. Tuesday, in the mid-Hudson, bringing 1-3 inches of snow before the dreaded “wintery mix” of sleet and freexing rain arrives by 6 or 7 p.m. (*see* Exhibit U).

97. The Monroe Woodbury School District and all the other school districts which rely on bus transportation throughout Orange County, except for Kiryas Joel School District, called an early dismissal in anticipation of the storm and dangerous road condition. Throughout the day, Petitioners and residents of Monroe contacted the Village requesting postponement of the scoping session due to the dangerous road conditions. (*see* Exhibit V).

99. New York State Assemblyman James Skoufis, wrote the Village “Given the weather forecast for tonight. I respectfully request that the Village of Kiryas Joel postpone the planned scoping session. The potential for sleet or ice, in particular, would make it dangerous or even impossible for many residents to attend tonight’s session. (see Exhibit W)

99. Orange County Executive, Steven M. Neuahs issued the following statement ahead of the Village’s scoping session, In light of the inclement weather and difficult travel conditions, tonight’ scoping session in Kiryas Joel should be rescheduled. ... Failure to do so puts the public’s safety at risk.” (see Exhibit Neuhaus X)

100. Despite the hazardous road conditions and multiple requests the Village refused to reasonably postpone the scoping session in the interest of public safety, even though throughout the day residents of the Town contacted the Village requesting a postponement. Kiryas Joel Village Administrator Mr. Gedalye Szegedin responded in an email that “it is not a big storm, the schools in KJ are all open on regular schedule, the Village sees no reason to delay the process further.” (see Exhibit V)

101. Upon information and belief all other public meetings throughout Orange County had been postponed or cancelled. The roads were sheer ice and hazardous. A drive that normally takes 45 minutes took over 3.5 hours, due to road icing, accidents and skidding. The public hearing was poorly attended due to the weather, the Times Herald Record reported that only 70 people turned out and only 20 spoke, compared to around 300 who attended a similar session for a different but related annexation in September. (see Exhibit Y)

102. The Village’s refusal to act reasonably to protect public safety is shocking. This is clear evidence that the Village necessary concern for public safety SEQR requires and lacks the capacity to act as “Lead Agency” for a very large and controversial annexation. As a “Lead

Agency” they are responsible for making sure all the public is given an opportunity to participate in the public hearing process, not just their community within the Village, as this annexation involves 510 acres of Town land. The very purpose of SEQR review is to encourage public participation through public hearing.

103. Upon information and belief the ice storm closed roads, delayed traffic and resulted in many accidents throughout Orange County between 3 PM and 10 PM on March 3, 2015. The Village’s unreasonable behavior to endanger public safety and to rush the process unnecessarily will result in irreparable harm and lacks the serious necessity of a “Lead Agency to conduct a fair and open SEQR and thwarts the very intent and purpose of SEQRA. Petitioner’s reserve the right to seek a temporary restraining order, if the Village continues to act with reckless regard for public safety.

104. The Village’s total disregard for public safety is clear evidence that the Village does not have the capacity or impartial judgment to protect local taxpayers or the environment. There is no legitimate reason for the Village’s refusal to reschedule the March 3, 2015 scoping session. Instead the Village endangered public safety and prevented interested members of the public from participating in the Scoping session a vital part of the SEQR process. The Village’s behavior on March 3, 2015 is un-refutable evidence that the DEC’s delegation of the Village as “Lead Agency” was arbitrary capricious and without reason, and cannot be sustained.

## **RELIEF REQUESTED**

For all of the above reasons the DEC Commissioner's Decision to appoint the Village "Lead Agency" was arbitrary, capricious, not supported by the evidence in the record and contrary to law. Therefore the DEC's appointment of the Village Kiryas Joel as "Lead Agency" must be nullified.

Petitioner further requests that the court order the NYS DEC to act as "Lead Agency", due the large environmental issues of the annexation of 510 acres.

WHEREFORE the Petitioner requests that the Court grant the relief requested in this petition as well as the costs of this proceeding and such other and further relief as to the court may seem just and proper.

**PLEASE TAKE FURTHER NOTICE** that pursuant to CPLR Section 7804(c), answering papers, if any, must be served at least five days before the return date herein.

Dated: Nanuet, New York  
March 10, 2015

---

SUSAN H. SHAPIRO, ESQ.  
Attorney for the Petitioner  
75 North Middletown Road  
Nanuet, New York 10954  
845-371-2100



VERIFICATION

STATE OF NEW YORK )  
) SS:  
COUNTY OF ORANGE )

I, \_\_\_\_\_, am a Petitioner in the within Article 78 Proceeding. I have read the foregoing complaint and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

\_\_\_\_\_  
Plaintiff's Signature

Subscribed and Sworn to before  
me on this 2nd day of March, 2015

---

NOTARY PUBLIC