

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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Village of South Blooming Grove, Town of
Blooming Grove, Village of Monroe, Village of
Woodbury, Town of Woodbury, Village of
Harriman, Village of Cornwall-on-Hudson, Town
of Cornwall, County of Orange (on behalf of itself
and Orange County Sewer District No. 1), Town
of Chester, Monroe Joint Fire District, and The
Black Rock Fish and Game Club of Cornwall,
Inc.,

Petitioners,

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

- against -

Village of Kiryas Joel Board of Trustees, Village
of Kiryas Joel, Town of Monroe Town Board, and
Town of Monroe,

Respondents,

- and against -

Emanuel Leonorovitz, Basya Sabov, Mendel
Breuer, Ella Breuer, Congregation Beth Aryeh,
Esther Stessel, 257 Mountainview Trust, David
Goldberger, Tzipora Goldberger, 483 105 Corp.,
481 Coun. Corp., Port Orange Holdings, Isidor
Landau, Provider-Hamaspic OC, Joel Brach,
Henry Weinstock, Beth Freund, Joseph Stulovitch
1, LLC, Lillian and Pincus J. Strulovitch, Herbst
Family Holdings LLC, Hashgucha Prutius LLC,
Be & Yo Realty, Inc., Benny Wercberger, Rachel
Wercberger, Israel Weber, Sigmond Brach, Forest
Edge Development LLC, Brucha Properties Ltd.,
Naftali Ausch, Kent Neighborhood LLC, Rafoel
A. Krausz, Eliyahu Polatseck, Rosa Polatseck,
Wolf Wercberger, Moishe Oppenheim, Zalmen
Stern, Rivka Oppenheim, Lipa Oppenheim,
Yehuda Berger, Seven Springs Corp., Mendel

Index No. 2015 007410

NOTICE OF PETITION

ORAL ARGUMENT REQUESTED

GRANGE COUNTY
SUPREME & COUNTY COURT
GOSHEN, N.Y.
2015 OCT -2 PM 3:32

Oppenheim, Raizel Eva Freund, Isaac Glanzer, :
 Judy Glanzer, Moses Goldberger, Simon Gelb, :
 Samuel Kahan, 7 Springs Villas LLC, Chaim :
 Landau, Josef Freidman, Frida Freidman, Silah :
 Rosenberg Fam LLC, Deborah Rosenberg, :
 Abraham Rosenberg, Isaac Rosenberg, Forest :
 Road Capital, LLC, Commandeer Realty :
 Associates, Inc., Amazon/Burdock Realty :
 Associates Inc., Amazon Realty Associates Inc., :
 Atkins Brothers Inc., Der Blatt Inc. , Bais Yisroel :
 Congregation, Bersh Stern, Alex Neustadt, Chaim :
 Friedman, Goldy Friedman, Seven Springs Realty :
 Inc., Sara Gelb, Erno Bodek, Rachel Bodek, :
 Arthur Meisels, AM Seven Springs LLC, Jacobs :
 Hickory LLC, 282 Mountainview Drive, LLC, :
 Joel Reisman, Paula Reisman, Vista Pearl LLC, :
 Konitz Estates, LLC, Jacob Wieder, Chaya :
 Weider, Marsha Wagschal, Congregation Lanzut :
 of Orange County, Eliazer Glanzer, Esther :
 Glanzer, 72 Seven Springs Rd LLC, 131 Acres Rd :
 LLC, Bakertown Estates LLC, 12 Bakertown :
 Holding, LLC, Harry Arnstein, Esther Arnstein, :
 Shraga Greebaum, Rely Greebaum, Jacob :
 Schwartz, Rene Schwartz, Yehosua Weiner, :
 Devorah Weiner, Alfred Weingarten, Solomon :
 Ellenbogen, Hana Perlstein, Simon Katz, Raizy :
 Ellenbogen, Building 54 LLC, Mordechai :
 Goldberger, Mountainview NY Estates, Inc., :
 Israel Werzberger, Yittele Werzberger, NDS :
 Property Management Inc., Jossi Leib :
 Werzberger, Benjamin Green, Chaya Green, :
 Chaim Parnes, Miriam Parnes, Tobias Schreiber, :
 Feige Schreiber, Upscale 4 Homes Corp., AES 11- :
 07 Trust, Bakertown Realty Equities, Jacob :
 Bandua Trust, Martin Terkeltaub, Zigmund Klein, :
 Orange NY Homes Inc., and Vintage Apartments :
 LLC, :
 :
 :

Additional Respondents. :

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PLEASE TAKE NOTICE that upon the annexed Petition an application will
 made to the Supreme Court, Orange County, at the Courthouse, 285 Main Street, Goshen, New

York, on December 7, 2015, at 9:30 a.m. for a judgment granting the relief demanded in the Petition, including without limitation an order and judgment invalidating, vacating and annulling:

- (i) the Resolution, Findings and Order of the Village of Kiryas Joel Board of Trustees Approving the Petition for Annexation of 507 Acres from the Town of Monroe to the Village of Kiryas Joel dated September 6, 2015;
- (ii) the Resolution, Findings and Order of the Village of Kiryas Joel Board of Trustees Approving the Petition for Annexation of 164 Acres from the Town of Monroe to the Village of Kiryas Joel dated September 6, 2015;
- (iii) the supporting Statement of Findings of the Village of Kiryas Joel Board of Trustees under the State Environmental Quality Review Act (“SEQRA”) dated September 6, 2015;
- (iv) the Decision and Findings of the Village of Kiryas Joel Board of Trustees dated September 6, 2015;
- (v) the Decision, Resolution and Order of the Town of Monroe Town Board dated September 8, 2015 with respect to the annexation petitions but only to the extent that such Decision, Resolution and Order approved the 164-acre annexation petition;
- (vi) the Findings Statement of the Town of Monroe Town Board under SEQRA dated September 8, 2015 but only to the extent that such Findings Statement made SEQRA Findings with respect to the annexation petition for the 164-acre annexation; and

- (vii) the two annexation petitions to which the above-referenced findings and determinations relate.

The Petition also demands that respondents be restrained and enjoined from taking any further actions to effectuate the aforementioned annexation petitions, resolutions, determinations and findings, and such other and further relief as the Court may deem to be just and proper. Among the grounds stated for relief in the Petition are that the environmental review undertaken for the aforementioned annexation petitions, resolutions, determinations and findings did not comply with the requirements of the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and that the annexation petitions and findings and determinations relating thereto did not comply with the Municipal Annexation Law (Article 17 of the General Municipal Law).

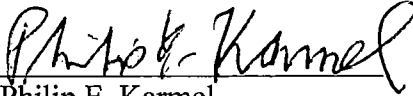
Pursuant to CPLR 403(b) and 7804(e), you are directed to serve your verified answer, together with the administrative record, including a certified transcript of the record of the proceedings that are the subject of the Petition, and any other papers in opposition, so as to be received by the undersigned counsel for the Petitioners on or before November 30, 2015.

Orange County is designated as the venue of this proceeding because it is the county in which respondents' offices are located.

Dated: New York, New York
October 2, 2015

Yours, etc.

BRYAN CAVE LLP

By: 
Philip E. Karmel

1290 Avenue of the Americas
New York, New York 10104

Telephone: (212) 541-2311

Email: pekarmel@bryancave.com

Attorneys for Petitioners

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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Village of South Blooming Grove, Town of
Blooming Grove, Village of Monroe, Village of
Woodbury, Town of Woodbury, Village of
Harriman, Village of Cornwall-on-Hudson, Town
of Cornwall, County of Orange (on behalf of itself
and Orange County Sewer District No. 1), Town
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Wolf Werberger, Moishe Oppenheim, Zalmen
Stern, Rivka Oppenheim, Lipa Oppenheim,
Yehuda Berger, Seven Springs Corp., Mendel
Oppenheim, Raizel Eva Freund, Isaac Glanzer,

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 Abraham Rosenberg, Isaac Rosenberg, Forest :
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 07 Trust, Bakertown Realty Equities, Jacob :
 Bandua Trust, Martin Terkeltaub, Zigmund Klein, :
 Orange NY Homes Inc., and Vintage Apartments :
 LLC, :

Additional Respondents. :

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Petitioners Village of South Blooming Grove, Town of Blooming Grove, Village
 of Monroe, Village of Woodbury, Town of Woodbury, Village of Harriman, Village of

Cornwall-on-Hudson, Town of Cornwall, County of Orange (on behalf of itself and Orange County Sewer District No. 1), Town of Chester, Monroe Joint Fire District, and The Black Rock Fish and Game Club of Cornwall, Inc., by their attorneys Bryan Cave LLP, as and for their Petition, allege as follows:

NATURE OF THE PROCEEDING

1. This proceeding challenges the determinations of the Kiryas Joel Village Board and Monroe Town Board to approve a petition to annex 164 acres of land to Kiryas Joel; the determination of the Kiryas Joel Village Board to approve a petition to annex 507 acres of land to Kiryas Joel; the adequacy of the environmental review undertaken for these annexation petitions under the State Environmental Quality Review Act (“SEQRA”); the adequacy of the annexation petitions submitted by the Additional Respondents identified in the litigation caption¹; and the findings made by the Kiryas Joel Village Board and Monroe Town Board pursuant to Municipal Annexation Law (General Municipal Law, Article 17).

2. All of the land proposed to be annexed to Kiryas Joel is located in unincorporated areas of the Town of Monroe. The Kiryas Joel Village Board served as the lead agency for the environmental review, which included preparation of a Draft Generic Environmental Impact Statement (“DGEIS”) and Final Generic Environmental Impact Statement (“FGEIS”) (the DGEIS and FGEIS are referred to collectively as the “GEIS”). The Monroe Town Board served as an involved agency for the environmental review.

¹ No affirmative relief is sought against the Additional Respondents. They are named here in the event that the Court determines them to be necessary parties.

3. As presently constituted, Kiryas Joel is a village of approximately 700 acres (1.1 square miles) with a population of approximately 22,248 persons.² The GEIS assumed that Kiryas Joel would rezone the annexed areas to permit multi-family dwellings at the density levels that have been approved in Kiryas Joel in recent years.

4. The GEIS failed to take the required hard look at the potential environmental impacts of the annexation either in the short-term (through 2025, the arbitrary cut-off date for analysis in the GEIS) or the long-term (after 2025).

5. According to the GEIS, the planned rezoning of the lands to be annexed would result in the rapid construction of many new apartment buildings in the annexed areas by 2025, resulting in a new population by 2025 of 11,517 persons and 1,952 new housing units in the 164-acre annexation area (if that area were to be annexed by Kiryas Joel) and a new population of 19,663 persons and 3,825 new housing units in the 507-acre annexation area (if that area were to be annexed by Kiryas Joel). *See* FGEIS at 3.2-19.

6. The GEIS did not assess the environmental impacts of this projected intensive development and population growth in the annexed areas. Instead, it assumed that 100% of the development and projected population growth in the areas to be annexed would displace population growth that would otherwise occur within the existing boundaries of Kiryas Joel and its environs by 2025, such that the annexation and resulting build-out and occupancy of thousands of new apartment units in the annexed areas would not result in *any* population growth in Kiryas Joel and its environs. With this assumption in hand, the GEIS then compared an Annexation Scenario and a No Action Scenario involving the same explosive growth in the local population using an arbitrary 2025 cut-off date.

² <http://quickfacts.census.gov/qfd/states/36/3639853.html> (U.S. Census estimate for 2014).

7. Wielding the analytical framework described above, the GEIS concluded that the “Annexation Scenario” comprising the rapid construction of as many as 3,825 new housing units in the annexed areas by 2025 and resulting influx of thousands of people to these areas by 2025 would not result in any environmental impacts, because they would cause no incremental increases in water use, sewage, traffic or anything else of relevance to a proper environmental analysis, compared to the “No Action Scenario.”

8. The analytical framework of the GEIS, described above, avoided any analysis of the environmental impacts of the contemplated rezoning of the annexed areas and associated influx of thousands of new residents into these areas, and was arbitrary and capricious for the following reasons:

(a). The GEIS assumes that the only people who would live in the thousands of new housing units planned for the annexed areas are members of the Satmar Hasidic sect who would otherwise live in Kiryas Joel or its environs anyway. This assumption is blatantly discriminatory, as it presumes that the real estate developers who will build and own the new apartment buildings in the annexed areas will only rent or sell to members of the Satmar Hasidic sect, a violation of the Fair Housing Act of 1968.

(b). The GEIS ignores the dynamics of the Satmar Hasidic community, whose population has grown rapidly in the last several decades from a few thousand persons in the early 1960s to tens of thousands of persons today, due to early marriages and large family sizes. The nucleus of the rapidly growing population of Satmar Hasidim is presently located in Williamsburg and Borough Park, two gentrifying neighborhoods of Brooklyn, creating a housing crisis that will cause thousands of new families within the Satmar Hasidic community to search

elsewhere for housing over the coming decade and beyond.³ The environmental review assumes that the annexation of substantial additional land to Kiryas Joel and the construction of thousands of new housing units in the annexed areas would not cause additional migration of members of the Satmar Hasidic community in Brooklyn to look for new housing in Kiryas Joel.

(c). The analytical framework of the GEIS is a dramatic and totally unwarranted departure from the standard methodology for preparing an environmental impact statement under SEQRA. The standard methodology would assume that a contemplated annexation and higher-density zoning resulting in the construction of thousands of new dwelling units would result in incremental population growth whose environmental impacts should be fairly analyzed. Indeed, the assumption of no induced growth made in the GEIS is the same assumption that Kiryas Joel made in a different environmental impact statement for the expansion of its water supply system, which this Court annulled as violating SEQRA. *See County of Orange v. Village of Kiryas Joel*, 44 A.D.3d 765, 768-69 (2nd Dep't 2007) (“The Supreme Court also properly found that the 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, other than a conclusory assumption that the Village birth rate would continue to grow at a steady rate of 6% per year, and thus failed to take a ‘hard look’ at the secondary impacts of the project.”).

9. A second fundamental flaw in the GEIS is that it failed to examine long-term environmental impacts after 2025. It has been estimated that the contemplated rezoning of

³ Cf. Rabbi Gershon Tannenbaum, “The Doubling of Kiryas Joel,” THE 5 TOWNS JEWISH TIMES (Jan. 23, 2014) (“[T]he demand for housing in Williamsburg, regardless of its high price tag, overwhelms the present and contemplated supply. Alternative affordable housing simply does not exist in Williamsburg or anywhere nearby.”) (available at <http://5tjt.com/the-doubling-of-kiryas-yoel/>).

the annexed areas could result in 17,272 people in the 164-acre annexation area and 66,340 people in the 507-acre annexation area at full build-out under the intensive patterns of development that Kiryas Joel has allowed in recent years.⁴ Instead of analyzing the full build-out of the annexed areas, the environmental review adopted 2025 as an arbitrary cut-off date. As a result, it assumed a build-out at a small fraction of the build-out potential allowed by the dense development patterns permitted by zoning within Kiryas Joel. The GEIS is not consistent with the SEQRA methodology recommended by the New York State Department of Environmental Conservation (“NYSDEC”), whose published guidance states that “Municipal decisions on annexation are similar in their consequences to rezoning decisions; both decisions have the potential to change land use patterns and require a hard look at the consequences of the whole action” and that “[a] municipality should consider the most intensive uses allowable under the proposed zoning to judge potential impacts.” THE SEQRA HANDBOOK at 184, 188 (3rd Ed. 2010) (emphasis added).⁵

10. A third flaw in the conceptual framework that the GEIS used to eliminate the disclosure of environmental impacts is that it baked into the “No Action Scenario” against which the “Annexation Scenario” was compared thousands of new residential units that can be built only with the *discretionary* approval of the Kiryas Joel Planning Board and/or Kiryas Joel Village Board of Trustees. *See* DGIES at 3.1-2 (describing Kiryas Joel zoning, which requires the discretionary approval of planned unit developments). Such discretionary approvals are

⁴ These estimates were made by the Monroe Town Board’s environmental consultant in a memorandum dated June 18, 2015.

⁵ THE SEQRA HANDBOOK is available at the following link: <http://www.dec.ny.gov/permits/6188.html>.

themselves subject to SEQRA review and cannot be presumed in the “No Action Scenario” against which the “Annexation Scenario” is compared.⁶

11. Finally, the annexations proposed here are merely one component of a long-range growth plan by the Village of Kiryas Joel and its Village Board. Other components of this plan include the Village’s discretionary approval of thousands of new apartment units in the Village, and the Village’s “proactive ... planning and providing for municipal water and sewer services for its growing population.” DGEIS at 2-4. Demographers have projected that the Village’s long-range plan for growth will result in a Village of between approximately 79,000 and 96,000 people by 2040, depending on a variety of factors, including the extent of migration of Satmar Hasidim to Kiryas Joel from the sect’s population centers in Brooklyn.⁷ The annexation of additional land is a key component of the Village’s long-range plan for growth in a highly concentrated area. Such a plan calls for the preparation of a comprehensive environmental review under SEQRA to determine the environmental impacts of such an extraordinary increase in the local population, but Kiryas Joel has never prepared such a document. The GEIS sidesteps the issue by arbitrarily claiming that the annexation, when considered alone, would not contribute to population growth. But the GEIS should not have considered the annexation without regard to the larger growth plan of which it is a component.

⁶ If there are two discretionary actions – Action A and Action B – each of which would have significant adverse impacts if approved by the agency, the agency cannot fail to disclose the environmental impacts of Action A because it would not have any incremental impacts over Action B. Put differently, discretionary Action B cannot be used as the “No Action Scenario” to study the environmental impacts of discretionary Action A. Such a methodology would ignore the true No Action Scenario – that the agency approves neither Action A nor Action B. It is this true No Action Scenario against which Action A and Action B should be compared.

⁷ CGR and The Chazen Companies, Kiryas Joel’s Proposed Annexation of Unincorporated Land in the Town of Monroe: An Independent Assessment of the Circumstances Surrounding the Annexation at 8 (Aug. 21, 2015).

Because the annexation of substantial additional land to the Village and the contemplated rezoning of that land to allow dense development is a key component of the Village's long-range growth plan, the environmental review for the annexation should have considered the long-range plan in its entirety. *See* 6 N.Y.C.R.R. § 617.7(c)(2) ("the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative effects, 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.").

12. The flawed environmental review for the annexation petitions has subverted the fundamental purposes of SEQRA: to disclose and mitigate potential environmental impacts and consider alternatives before approval of an action. Due to its population growth (growing from a population of 13,138 in the 2000 census to an estimated population of 22,248 in 2014), Kiryas Joel is already straining water and sewage resources. To alleviate its acute water shortage, Kiryas Joel is planning the construction of new groundwater wells in other municipalities (such as the Town of Cornwall) to tap their aquifers. The sewage treatment plant in Kiryas Joel is presently operating near capacity and is unable to meet permitting requirements due to the operation of the Kiryas Joel Poultry Processing Plant,⁸ whose chlorides are polluting downstream surface water and groundwater and whose operations can be expected to expand with a growing population of kosher-food consumers. The excess sewage generated by Kiryas Joel's present population is piped to a sewage treatment plant operated by Orange County in the Village of Harriman; this sewage treatment plant is also running out of capacity due to the

⁸ *See United States v. Kiryas Joel Poultry Processing Plant, Inc., et al.*, 14 Civ. 8458 (S.D.N.Y.) (Consent Decree entered on March 24, 2015).

projected load growth, and is the subject of persistent odor complaints by local residents. In addition, the transportation network linking Kiryas Joel to the principal highways and arterial roads in Orange County has intersections and road segments that could be overwhelmed with congestion and safety issues from a rapidly growing Kiryas Joel population. There has been no evident planning to provide for new park land within Kiryas Joel for a rapidly growing population, which is likely to cause strains on Gonzaga Park (owned and operated by the County of Orange) and Airplane Park and Millponds Park (owned and operated by the Village of Monroe), all of which are close to and often utilized by residents of Kiryas Joel.

13. Instead of taking a hard look at any of these or other substantive environmental issues, or impacts to the community character of the surrounding largely rural areas, all of which would be greatly exacerbated by an annexation of additional land that is projected to result in the construction of thousands of new dwelling units in a largely rural area, the GEIS simply assumed that the construction and occupation of thousands of new dwelling units in the annexed areas would reduce construction elsewhere in Kiryas Joel and its environs, causing no incremental increase in the population living in the area. As a result, it failed to consider alternatives to avoid significant new environmental problems or measures to mitigate the environmental impacts of annexing new land that would result in the construction of thousands of new dwelling units and tens of thousands of new residents.

14. The proper remedy for Respondents' failure to take a hard look at the potential environmental impacts of the annexation petitions is to vacate the Respondents' approvals of the petitions and remand the matter for preparation of a new Environmental Impact Statement prepared in accordance with SEQRA procedures, including an adequate opportunity for public comment.

15. In addition to the SEQRA issues outlined above, the Petition also pleads claims under the Municipal Annexation Law, as described below.

PARTIES

16. Petitioner Village of South Blooming Grove is an incorporated village located in Orange County. The Village adjoins land proposed to be annexed to Kiryas Joel. The Village Board authorized the filing of this lawsuit by resolution adopted on September 28, 2015. For decades the Village of South Blooming Grove residents have suffered under water restrictions due to the limited potable water supply of its water district. During this time period, the Village water district has been unable to meet maximum daily water demand to supply its residents with potable water. The Village will be impacted by the growing water usage in Kiryas Joel, which would be exacerbated by the proposed annexations, which will spur additional development that would adversely affect the aquifer from which the Village's water department relies for its source of municipal water supply. The Village will also be impacted by traffic resulting from the proposed annexations and resulting development, which will adversely affect the intersection of Mountain Road (CR 44) and State Route 208 within the Village and other roadways, harming Village government operations, including snow removal and road maintenance. The Village will also be impacted by the growing sewer load from Kiryas Joel, which would be exacerbated by the proposed annexations, which would adversely affect the available capacity of the sewage treatment plant operated by Orange County in the Village of Harriman (the "OCSD#1 STP"), upon which the Village of South Blooming Grove relies. Plans have been announced to study potential steps to increase the capacity of the OCSD#1 STP, but it is not known at this time whether such steps can or will be taken or approved. The Village of South Blooming Grove will also be impacted by Kiryas Joel's plan to encourage urban, dense

development in the proposed annexation areas that would conflict with the rural character of South Blooming Grove, resulting in adverse impacts to the character of the community.

17. Petitioner Town of Blooming Grove is a municipal corporation located in Orange County. The Town (in an area within the Village of South Blooming Grove) adjoins land proposed to be annexed to Kiryas Joel. The Town also contains unincorporated land (that is, land not within an incorporated village) approximately 600 feet from the proposed annexation area. The Town Board authorized the filing of this lawsuit by resolution adopted on September 8, 2015. The Town will be impacted by traffic resulting from the proposed annexations, which would spur development adversely affecting the intersection of Mountain Road (CR 44) and State Route 208 and other roadways within the Town, adversely impacting Town government operations, including those of its police force. The Town will also be impacted by Kiryas Joel's plan to encourage urban, dense development in the proposed annexation areas that would conflict with the rural character of the Town, resulting in adverse impacts to the character of the community.

18. Petitioner Village of Monroe is an incorporated village located in Orange County. The Village is in close proximity to the land proposed to be annexed to Kiryas Joel. The Village Board authorized the filing of this lawsuit by resolution adopted on September 10, 2015. The Village will be impacted by the traffic resulting from the proposed annexation by Kiryas Joel, which will adversely affect the intersection of Schunnemunk Street and Route 208 as well as Forest Avenue. This is the main gateway from the proposed annexed territories, through the Village of Monroe, to Route 17 – the main arterial south and east to Rockland County and New York City, and north and west to Sullivan County (from which poultry is trucked in to slaughterhouses in Kiryas Joel) and beyond. Such congestion would adversely

affect the operation of Village government, including those of its sanitation trucks, Department of Public Works equipment, and other vehicles. The increased traffic on Village roads will also increase wear and tear of the Village roadways in this area, requiring repairs. The Village will also be impacted by the growing sewer load from Kiryas Joel, which would be exacerbated by the proposed annexations, and which will adversely affect the available capacity of OCSD#1 STP, upon which the Village of Monroe relies. Plans have been announced to study potential steps to increase the capacity of the OCSD#1 STP, but it is not known at this time whether such steps can or will be taken or approved. The Village of Monroe will be further impacted by the additional development resulting from the annexation that will increase the burden on two public parks within the Village (Airplane Park and Millponds Park). The Village will also be impacted by the increase in impervious surfaces and clear cutting of forested land resulting from the proposed annexation of additional areas into Kiryas Joel and associated development; these activities will increase peak storm runoff into Ramapo Creek, increasing the potential for flooding in the areas of the Village near that creek and adversely affecting adjoining wetlands in the Village. The Village will also be impacted by the increased use of the Village's water source by the Monroe Joint Fire District to fight fires within the annexation area. The Village will also be impacted by Kiryas Joel's plan to encourage urban, dense development in the proposed annexation areas that would conflict with the character of the Village, resulting in adverse impacts to the character of the community.

19. Petitioner Village of Woodbury is an incorporated village located in Orange County. The Village adjoins land proposed to be annexed to Kiryas Joel. The Village Board authorized the filing of this lawsuit by resolution adopted on September 24, 2015. The Village will be impacted by the traffic resulting from the proposed annexation by Kiryas Joel

which will increase traffic and congestion on Route 105, Route 44 (Seven Springs Road) and Bakertown Road in the Village, and adversely affect Village operations, including those of its fire department. The Village will also be impacted by the growing sewer load from Kiryas Joel, which would be exacerbated by the proposed annexations, and will adversely affect the available capacity of OCSD#1 STP, upon which the Village of Woodbury relies. Plans have been announced to study potential steps to increase the capacity of the OCSD#1 STP, but it is not known at this time whether such steps can or will be taken or approved. The Village of Woodbury will also be impacted by Kiryas Joel's plan to encourage urban, dense development in the proposed annexation areas that would conflict with the predominantly rural character of the Village, resulting in adverse impacts to the character of the community.

20. Petitioner Town of Woodbury is a municipal corporation located in Orange County. The Town adjoins some of the land proposed to be annexed to Kiryas Joel. The Town Board authorized the filing of this lawsuit by resolution enacted on September 9, 2015. The proposed annexation by Kiryas Joel will injure the Town by increasing traffic and congestion on County Route 105, County Route 44 (Seven Springs Road), County Route 64 (Nininger Road), Bakertown Road and state Routes 17 and 32 in the Town, thereby adversely affecting Town operations, including those of its police department. The increased traffic and congestion will add to noise and pollution in the Town, further injuring the Town and its quality of life. The OCSD#1 STP is located in the Town, and its potential expansion as a result of the annexation will likely result in increased nuisance odors and pollution of the Ramapo River, and may also increase potential violations, all of which would further damage the Town. The growth in Kiryas Joel from the annexation would increase pollutant discharges from the Kiryas Joel STP, including increased chloride discharges from expanded operations at the Kiryas Joel

poultry processing plant, which also degrade streams and associated aquifers in the Town. Kiryas Joel's plan to encourage urban, dense development in the proposed annexation areas would conflict with the Town's predominantly rural character in the western area of the Town, resulting in adverse impacts to the character of the community.

21. Petitioner Village of Harriman is an incorporated village located in the Towns of Woodbury and Monroe, Orange County. The Village is in close proximity to the land proposed to be annexed to Kiryas Joel. The Village Board authorized the filing of this lawsuit by resolution adopted on September 8, 2015. The Village will be adversely impacted by increased traffic resulting from the proposed annexation by Kiryas Joel on State Route 17, which traverses the Village. Traffic incidents or congestion on Route 17 causes vehicles to be diverted from Route 17 through Village streets to avoid the incident or congestion, resulting in congestion in Village streets, adversely impacting the Village by adding noise and pollution and placing a strain on Village services, including its police department. The Village of Harriman is one of the municipalities that is part of OCSD #1. The OCSD#1 STP is located in the Village. Its potential expansion as a result of the annexation will likely result in increased nuisance odors and pollution of the Ramapo River, which runs through the Village, and may also increase potential effluent violations, all of which would further damage the Village as the host municipality of OCSD#1 STP and a member municipality of OCSD #1. The growth in Kiryas Joel from the annexation will increase pollutant discharges from the Kiryas Joel STP, which discharges to a tributary of the Ramapo River. These pollutants include elevated levels of chloride discharges that will increase as a result of expanded operations at the Kiryas Joel poultry plant, causing elevated chloride levels in the Ramapo and associated aquifers in the Village, which are recharged from the Ramapo and upon which the Village relies for its drinking water. The likely

increase in impervious surfaces and clear cutting of forested land resulting from the proposed annexation of additional areas into Kiryas Joel and associated development will increase peak storm runoff into the Ramapo, increasing the potential for flooding streets in the Village and causing damage to homes and businesses in the Village and impacting Village services.

22. Petitioner Village of Cornwall-on-Hudson is an incorporated Village located in Orange County. The Village Board authorized the filing of this lawsuit by resolution adopted on September 10, 2015. The Village of Cornwall-on-Hudson provides municipal water services to its residents and to a substantial number of residents in the Town of Cornwall. Cornwall-on-Hudson has implemented a long-term plan to expand its municipal water supply to serve Cornwall residents by applying to the NYSDEC for a water withdrawal permit. In order to increase its municipal water supply and service area, Cornwall-on-Hudson will be utilizing a groundwater well field located in the Mountainville area of the Town of Cornwall. The Village of Kiryas Joel has also applied to the NYSDEC for a water withdrawal permit in the Mountainville area. Kiryas Joel has proposed to draw water from the same aquifer that Cornwall-on-Hudson has sought to utilize. Previously, Kiryas Joel had proposed to use a very large groundwater well in Mountainville as a secondary, or backup, source for its municipal water supply. Its annexation FGEIS has now proposed that its Mountainville well be used as a primary municipal water source to serve the Kiryas Joel community. Once it has laid a pipeline to the proposed well in the Town of Cornwall, Kiryas Joel may also seek to locate additional wells in the Town of Cornwall in the future, to meet its increased water demands resulting from the annexation and associated higher density zoning and development. Likewise, the Village of Cornwall-on-Hudson may need to further expand its water supply system by using additional groundwater wells located in the Town of Cornwall. Although Kiryas Joel has stated an

intention to connect to the New York City Catskill Aqueduct in the future, it has not obtained an approval for that connection or made a commitment to purchase water from that system, rather than pumping “free” groundwater from its Mountainville well and other potential wells in the Town of Cornwall. The growing water usage in Kiryas Joel, which would be exacerbated by the proposed annexations, will withdraw large volumes of water from the aquifer, and thereby limit the Village of Cornwall-on-Hudson’s future options for providing municipal water service to Cornwall residents.

23. Petitioner Town of Cornwall is a municipal corporation located in Orange County. The Town Board authorized the filing of this lawsuit by resolution adopted on September 8, 2015. Kiryas Joel has proposed to locate a very large groundwater well (the Mountainville well discussed in the preceding paragraph) in the Town as a new source of water supply for the Kiryas Joel community and has applied to NYSDEC for a water withdrawal permit. Once it has laid a pipeline to the proposed well in the Town, Kiryas Joel may also seek to locate additional wells in the Town in the future, as a result of the increased water demand resulting from the annexation and associated higher-density zoning and development. Although Kiryas Joel has stated an intention to connect to the New York City’s Catskill Aqueduct in the future, it has not obtained an approval for that connection or made a commitment to purchase water from that system rather than pumping “free” groundwater in the Town. The increased utilization of the Town’s aquifer by Kiryas Joel as a result of the annexation will cause impacts to groundwater resources within the Town, including but not limited to the Woodbury Creek and the private wells of residents within the Town.

24. Petitioner County of Orange is a county in New York State. Kiryas Joel, and the territories it seeks to annex, are located in the County. The County Legislature passed

Resolution 178 of 2015, approved by the County Executive on September 17, 2015, to appropriate funds to enable the County to file this lawsuit. The County administers, manages or provides a significant range of programs and services that would be impacted by growth that would occur as a result of the proposed annexation of additional land to Kiryas Joel. These include but are not limited to Section 8 Housing Vouchers, Supplemental Nutrition Assistance Program, Medicaid, Family Health Plus, Home Energy Assistance Program, Public Transit aid, and others. These impacts have the potential to result in socioeconomic impacts within the County and harm to the County's finances and operations. The County also owns and operates Gonzaga Park, which is partially located in the land proposed to be annexed to Kiryas Joel. The County also owns and operates roads in the areas proposed for annexation. The County will be impacted by the increased development from the annexation, if not accompanied by sound planning and new parks within Kiryas Joel, because such development will increase demands on Gonzaga Park. The County will also be impacted by the potential safety, congestion and maintenance impacts on County roadways due to the new population resulting from the annexation and associated rezoning and development in the annexed areas. As noted above, the County operates the OCSD#1 STP, which is expected to receive the increased sewer load from Kiryas Joel resulting from the annexation and concomitant higher-density zoning and construction of thousands of new apartment units. The County will be impacted by the growing load that will strain the capacity of OCSD#1 STP. Plans have been announced to study potential steps to increase the capacity of the OCSD#1 STP, but it is not known at this time whether such steps can or will be taken or approved and what their environmental impacts may be.

25. Petitioner Town of Chester is a municipal corporation located in Orange County. Its Town Board authorized the filing of this lawsuit by resolution adopted on September

23, 2015. The Town will be impacted by the growing sewer load from Kiryas Joel, which would be exacerbated by the proposed annexations, and will adversely affect the available capacity of OCSD#1 STP, upon which the Town relies. Plans have been announced to study potential steps to increase the capacity of the OCSD#1 STP, but it is not known at this time whether such steps can or will be taken or approved.

26. Petitioner Monroe Joint Fire District is a joint fire district formed pursuant to Article 11-A of the New York State Town Law. It is a 100% all-volunteer force. In 2011, the three fire companies serving the Town of Monroe (Mombasha Fire Company, Harriman Engine Company, and Lakeside Fire and Rescue Company) merged to create the Monroe Joint Fire District. The three fire companies respond together for calls within the Town of Monroe and the Village of Harriman. The service area of the Monroe Joint Fire District includes the land proposed to be annexed to Kiryas Joel. Through requests for mutual aid, the Monroe Joint Fire District also responds to fires within Kiryas Joel. At its monthly meeting held on September 17, 2015, the Board of Fire Commissioners of the Monroe Joint Fire District passed a resolution authorizing the filing of this lawsuit. The Monroe Joint Fire District will be negatively impacted by the annexation because of the increased development within its fire district (unless the district boundaries are subsequently adjusted to exclude the annexed areas), without any concomitant increase in volunteer firefighters. If the district boundaries are adjusted to exclude the annexed areas from the Monroe Joint Fire District, the increased development resulting from the annexation will increase calls for mutual aid in the annexed areas, which result in unreimbursed services from the Monroe Joint Fire District to Kiryas Joel, taking a toll on the time of the district's volunteers and causing wear and increased maintenance of its fire trucks.

27. Petitioner The Black Rock Fish and Game Club of Cornwall, Inc. (the “BRF&G Club”) is a not-for-profit corporation incorporated in 1944. It is dedicated to outdoor sporting activities and wildlife conservation. The BRF&G Club owns land in the Town of Cornwall and the Village and Town of Woodbury, and maintains offices for the transaction of business at 5 Pleasant Hill Road, Mountainville, New York. On September 16, 2015, its Board of Directors authorized the BRF&G Club to file this lawsuit. BRF&G Club has over 1,400 members, many of whom fish in the Woodbury Creek, a portion of which runs through land owned and maintained by the BRF&G Club for fishing and other outdoor sporting activities. The BRF&G Club maintains a clubhouse for its members on this land, making the creek accessible to its members for fishing. In addition, the BRF&G regularly stocks the Woodbury Creek with trout. The Woodbury Creek is hydraulically down gradient of the Mountainville aquifer that Kiryas Joel intends to tap to supply its growing population with water; that aquifer serves as an important source of water re-charge for the Woodbury Creek. The annexation and associated population growth in Kiryas Joel are expected to cause adverse ecological impacts to the Woodbury Creek, particularly during periods of low rain fall, during which the creek is expected to be too dry for its trout to survive, as a result of the more intensive use of the proposed Mountainville Well, which was identified for the first time in the GEIS as a primary source of water supply for Kiryas Joel, rather than a backup well to the New York City Catskill Aqueduct. The annexation and resulting population growth in Kiryas Joel may also cause Kiryas Joel to seek to locate additional water withdrawal wells in this aquifer, utilizing its water pipeline from that area to Kiryas Joel. The adverse ecological impacts on the Woodbury Creek resulting from the Kiryas Joel annexation and associated development will harm the BRF&G Club, the

achievement of its conservation goals, the Woodbury Creek that runs across its land, and its members' ability to fish in that creek.

28. Respondent Village of Kiryas Joel Board of Trustees is the elected board of trustees of the Village of Kiryas Joel. The Village Board served as the lead agency for the SEQRA review for the proposed annexations and adopted the resolutions approving both the 507-acre and 164-acre annexation petitions.

29. Respondent Village of Kiryas Joel is an incorporated Village in Orange County.

30. Respondent Town of Monroe Town Board is the elected board of the Town of Monroe and participated in the SEQRA review for the annexation petitioners as an involved agency. The Town Board's own environmental consultant, in memoranda dated June 18, 2015 and August 31, 2015, concluded that the DGEIS and FGEIS, respectively, failed to properly analyze the environmental impacts of the annexations. The Town Board made SEQRA findings acknowledging that the FGEIS was flawed in numerous respects. Nevertheless, the Town Board approved the 164-acre petition (but disapproved the 507-acre petition).

31. Respondent Town of Monroe is a municipal corporation in Orange County.

32. According to the 164-acre and 507-acre annexation petitions, the Additional Respondents identified in the litigation caption are the owners of record for certain lots in the territories proposed to be annexed in the respective petitions. The Village of Kiryas Joel Village Board determined that the Additional Respondents signed, as applicable, one or both of the annexation petitions.

JURISDICTION AND VENUE

33. The Court has jurisdiction pursuant to CPLR § 7803(3) because the actions of Respondents challenged herein are final agency action.

34. Respondents have their principal offices in Orange County, which is the proper venue pursuant to CPLR § 506(b).

35. The Additional Respondents purport to own identified lots in the Town of Monroe within Orange County.

FACTUAL BACKGROUND

36. Kiryas Joel prepared the SEQRA documents for the annexations at issue here at a breakneck speed.

37. On January 28, 2015, NYSDEC designated the Kiryas Joel Village Board as the lead agency pursuant to 6 N.Y.C.R.R. § 617.6(b)(5)(v).

38. Shortly thereafter, after completing the scoping process, the Kiryas Joel Village Board released the Draft Generic Environmental Impact Statement (“DGEIS”) for the two annexation petitions on May 1, 2015.

39. Numerous commenters, including a number of the Petitioners herein, submitted detailed, substantive and critical comments on the DGEIS, many of which argued that there was no rational basis for the DGEIS’s assumption that annexing substantial additional areas into Kiryas Joel with a plan to rezone the annexed areas to allow high density apartment buildings would not be a growth-inducing action.

40. Notwithstanding these comments, the Kiryas Joel Village Board released the FGEIS on August 14, 2015, without undertaking any additional, substantive analysis of the environmental impacts of the proposed annexations.

41. On September 6, 2015, the Kiryas Joel Village Board passed (i) the Resolution, Findings and Order of the Village of Kiryas Joel Board of Trustees Approving the Petition for Annexation of 507 Acres from the Town of Monroe to the Village of Kiryas Joel; (ii) the Resolution, Findings and Order of the Village of Kiryas Joel Board of Trustees Approving the Petition for Annexation of 164 Acres from the Town of Monroe to the Village of Kiryas Joel; (iii) the supporting Statement of Findings under SEQRA; and (iv) the Decision and Findings of the Village of Kiryas Joel Board of Trustees.

42. On September 8, 2015, the Monroe Town Board passed (i) the Decision, Resolution and Order of the Town of Monroe Town Board, which approved the 164-acre annexation petition but disapproved the 507-acre annexation petition and (ii) its supporting Statement of Findings under SEQRA.

FIRST CLAIM FOR RELIEF
(STATE ENVIRONMENTAL QUALITY REVIEW ACT)

43. Paragraphs 1-42 are re-alleged.

44. SEQRA and its implementing regulations and caselaw require that an environmental review take a “hard look” at the potential environmental impacts of a proposed action and provide a “reasoned elaboration” of its conclusions.

45. The environmental review undertaken for the two annexation petitions discussed above was fundamentally inadequate. It failed to take the required “hard look” at the growth-inducing potential of annexing substantial additional territory into Kiryas Joel and the resulting impacts with respect to water supply, sewage, traffic congestion, traffic safety, parks, fire services, community character, the ecology of affected surface water bodies, and other areas of environmental concern. It also failed to provide the required “reasoned elaboration” for its conclusions.

SECOND CLAIM FOR RELIEF
(THE ANNEXATION PETITIONS ARE INVALID UNDER GML § 705)

46. Paragraphs 1-42 are re-alleged.

47. As applicable here, the General Municipal Law (“GML”) requires that an annexation petition represent the owners of a majority in assessed valuation of the real property in the territory sought to be annexed. *See* GML § 705(1)(c).

48. According to the Kiryas Joel Village Board, with respect to the 164-acre petition for annexation, owners of only 50.12% of the assessed value signed the petition.

49. As a result, the invalidation of only one or two signatures may invalidate the 164-acre annexation petition, depending on the assessed valuation of the lots purportedly represented by such invalidated signatures.

50. According to the Kiryas Joel Village Board, with respect to the 507-acre petition for annexation, the petitioners’ signatures represent 65.8% of the total assessed value of the territory.

51. The Town of Woodbury and certain members of the public presented substantial evidence in the administrative proceedings held before Respondents that certain of the signatories to 164-acre and/or 507-acre petitions were not qualified therefor.

52. The defects established by the Town of Woodbury and others included the failure of several signatories on behalf of corporate entities, limited liability companies or other such entities to present any documentary or other specific evidence that such signatory was authorized to sign on behalf of such entity, notwithstanding the Town’s request for such documentary or other specific evidence.

53. In dismissing these objections, the Kiryas Joel Village Board relied upon City of Batavia v. Howland, 43 A.D.2d 787 (4th Dept. 1973), but the corporate entity in that case

had submitted into the administrative record before the two municipalities a written instrument signed by its stockholders ratifying the corporate officer's execution of the annexation petition. No analogous proof was presented by the corporate signatories here.

54. Other flaws identified by the Town of Woodbury and certain other members of the public included unexplained variances between certain names used in the signatures and the corresponding names in the annexation petitions.

55. In addition, both the 164-acre and 507-acre petitions are insufficient and defective because they fail to accurately describe the territory to be annexed.

56. With respect to the 507-acre annexation petition, there are also instances where petitioners who signed the annexation petition no longer own the subject property proposed to be annexed to Kiryas Joel. Also, there are supporting affidavits attached as exhibits to the Kiryas Joel Village Board Decision and Findings that address certain comments raised, but those supporting affidavits are not signed or notarized.

57. Moreover, as established by comments submitted by the County of Orange and the Town of Woodbury during the administrative proceedings, it appears that the 164-acre Petition and 507-acre was "gerrymandered" so as to exclude numerous parcels, which in some instances would create an island, geographically, of property in the unincorporated Town of Monroe surrounded by the Village of Kiryas Joel.

58. As a result of such defects, the 164-acre and 507-acre annexation petitions should be invalidated by this Court pursuant to section 711(3) of the General Municipal Law.

THIRD CLAIM FOR RELIEF
(CHALLENGE TO THE “PUBLIC INTEREST” FINDING UNDER GML § 711(1))

59. Paragraphs 1-58 are re-alleged.

60. The Municipal Annexation Law required the Kiryas Joel Village Board and Monroe Town Board to determine whether each of the annexation petitions is in “the over-all public interest.” GML § 711(1).

61. This determination can only be made after a thorough evaluation of the environmental and other impacts of a proposed annexation.

62. No such examination occurred here, because the purported assessment of environmental and other impacts was fundamentally flawed by an analytical framework that assumed that the annexation of substantial additional areas into Kiryas Joel and the resulting rezoning of those areas for dense urban development would not be a growth-inducing action.

63. Furthermore, the Monroe Town Board determined that it would not be in the over-all public interest for Kiryas Joel to annex the areas encompassed by the 507-acre petition.

64. Accordingly, the 507-acre annexation petition is not subject to the provision of the Municipal Annexation Law stating that “[i]f the governing board of all the affected local governments shall determine ... that it is ... in the over-all public interest to approve the proposed annexation, such determination shall be final and conclusive.” GML § 711(4).

65. The Kiryas Joel Village Board's "over-all public interest" determination with respect to the 507-acre annexation petition was arbitrary and capricious for the reasons stated above.⁹

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully ask this Court to enter an order and judgment:

(a) vacating and annulling (i) the Resolution, Findings and Order of the Kiryas Joel Board of Trustees Approving the Petition for Annexation of 507 Acres from the Town of Monroe to the Village of Kiryas Joel dated September 6, 2015; (ii) the Resolution, Findings and Order of the Village of Kiryas Joel Board of Trustees Approving the Petition for Annexation of 164 Acres from the Town of Monroe to the Village of Kiryas Joel dated September 6, 2015; (iii) the supporting Statement of Findings of the Village of Kiryas Joel Board of Trustees under SEQRA dated September 6, 2015; (iv) the Decision and Findings of the Village of Kiryas Joel Board of Trustees dated September 6, 2015; (v) the Decision, Resolution and Order of the Town of Monroe Town Board dated September 8, 2015 with respect to the annexation petitions but only to the extent that such Decision, Resolution and Order approved the 164-acre annexation; and (vi) the Findings Statement of the Town of Monroe Town Board under SEQRA dated September 8, 2015 but only to the extent that such Findings Statement made SEQRA Findings with respect to the annexation petition for the 164-acre annexation;

⁹ If the Village of Kiryas Joel files a proceeding in the Appellate Division pursuant to GML § 712 to challenge the Town of Monroe's determination that the proposed 507-acre annexation is not in the over-all public interest, each of the Petitioners herein reserves its right to participate in that proceeding to the extent permitted by law. One purpose for pleading the third claim pleaded herein is to preserve such rights against any contention of "claim-splitting."

- (b) invalidating, vacating and annulling the annexation petitions to which the above-referenced findings and determinations relate;
- (c) restraining and enjoining Respondents from taking any further actions to effectuate the aforementioned annexation petitions, resolutions, determinations and findings;
- (d) awarding Petitioners the costs and expenses of this lawsuit; and
- (e) granting Petitioners such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 2, 2015

Yours, etc.

BRYAN CAVE LLP

By: 

Philip E. Karmel

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New York, New York 10104
Telephone: (212).541-2311
Email: pekarmel@bryancave.com
Attorneys for Petitioners

VERIFICATION

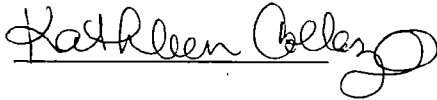
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Philip E. Karmel, an attorney admitted to practice in the State of New York,
affirms the following to be true under the penalties of perjury pursuant to CPLR 2016:

1. I am the lead attorney for Petitioners in the within proceeding. I make this Verification pursuant to CPLR 3020(d)(3) and 3021.
2. I have read the attached Petition and know the contents thereof, and the same are true to my knowledge, except as to those matters asserted based upon information and belief, as to which matters I believe them to be true.


Philip E. Karmel

Sworn to before me this
2nd day of October, 2015



Notary Public

KATHLEEN COLLAZO
Notary Public, State of New York
No. 01CO6316786
Qualified in New York County
Commission Expires December 22, 2018