

ZARIN & STEINMETZ
ATTORNEYS AT LAW
81 MAIN STREET
SUITE 415
WHITE PLAINS, NEW YORK 10601

DAVID S. STEINMETZ*
MICHAEL D. ZARIN
DANIEL M. RICHMOND
BRAD K. SCHWARTZ

TELEPHONE: (914) 682-7800
FACSIMILE: (914) 683-5490
WEBSITE: WWW.ZARIN-STEINMETZ.NET

MEREDITH BLACK°
DAVID J. COOPER
JODY T. CROSS°
JEREMY E. KOZIN

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

MARSHA RUBIN GOLDSTEIN
HELEN COLLIER MAUCH^A
LISA F. SMITH^F
OF COUNSEL

May 30, 2013

By Certified Mail, Return Receipt Requested

Chairman Sylvain Klein and Members of the
Town of Ramapo Planning Board
Town Hall
237 Route 59
Suffern, NY 10901

Re: Patrick Farm Final Subdivision Approval

Dear Chairman Klein and Members of the Board:

As you will recall, this Firm represents Ramapo Organized for Sustainability and a Safe Aquifer (“ROSA”) in connection with the project proposed to be located on the east side of Route 202 and the south side of Route 306 (the “Site”), commonly known as Patrick Farm (the “Project”).

Respectfully, recent correspondence from the United States Army Corps of Engineers (“ACOE”) makes it clear that the Preliminary and Final Subdivision Plat Approvals (the “Approvals”) granted by your Board for the Project were improperly premised on significant misinformation. By Letter to the applicant, Scenic Development (the “Applicant”), dated May 16, 2013 (“May 16th ACOE Letter,” copy annexed hereto as Exhibit “A”), ACOE confirmed that it has never made a Jurisdictional Determination (“JD”) for the Project. The May 16th Letter confirms that your Board’s understanding that ACOE had “reviewed and accepted the delineation shown by the Applicant’s professionals” was in error.

Based on this new information, ROSA strongly suggests that your Board re-evaluate its Approvals and revisit its State Environmental Quality Review Act (“SEQRA”) review in light of May 16th ACOE Letter. ROSA has continuously conveyed to your Board the absolute necessity of requiring the Applicant to receive a JD before your Board could properly

conduct its SEQRA review and grant the Approvals. This has now been confirmed by numerous governmental agencies. Respectfully, your Board should rescind the Approvals and conduct supplemental review after the Applicant obtains a JD from ACOE.

The May 16th ACOE Letter Confirms Other Agencies' Conclusions That A JD Is Required

The May 16th ACOE Letter states that the Applicant did not call to ACOE's attention construction "which appears to involve potential fill in waters of the United States on the Patrick Farm Site." (See May 16th ACOE Letter Exhibit A at 1). ACOE, thus, is formally requiring the Applicant to receive a Jurisdictional Determination ("JD") that would delineate, *for the first time*, the location of all ACOE wetlands on the Site.

This new evidence undermines the SEQRA analysis upon which your Board relied on for the Approvals, and triggers the need for supplemental SEQRA review and your Board's independent Site Plan review responsibilities. Notably, the May 16th ACOE Letter is consistent with the conclusions of multiple other agencies that a JD is required to understand the Project's impacts. The New York State Department of Environmental Conservation, for example, specifically advised the Applicant that it was requiring a JD from ACOE "regarding the full scope of the project as currently proposed." (See Letter to Applicant from DEC, dated Jan. 3, 2013 (the "January 3rd DEC Letter", copy annexed hereto as Exhibit "B").)

Similarly, the United States Environmental Protection Agency ("EPA") advised the Rockland County Sewer District #1 ("RCSD#1") that, in light of the lack of an ACOE JD, "[c]onsidering the questions about the extent of project area wetlands that have recently been raised, as well as the time that has passed since completion of the existing site delineation, we are concerned about the possible environmental ramifications if it is determined that the delineation included within your waiver request package [relating to new development in environmentally sensitive areas] is found to be inaccurate." (See Letter to RCSD#1 from EPA, Region 2, dated March 11, 2013 (the "March 11th EPA Letter", copy annexed hereto as Exhibit "C").)

Thereafter, demonstrating the significance of the March 11th EPA Letter, by letter dated March 26, 2013, the RCSD#1 also notified the Town of Ramapo that "as a condition of allowing the Patrick Farm project to connect to the District's sewerage system, the District requires the project sponsor to obtain and forward to the EPA and the District a jurisdictional determination from the U.S. Army Corps of Engineers verifying the extent of the project area wetlands." (March 26th RCSD#1 Letter," copy annexed hereto as Exhibit "D".)

There can now be no dispute: ACOE never signed off on a wetland delineation for the Project. As other agencies have concluded, and as ROSA has repeatedly informed your Board, it is not possible to understand the Project's impacts and otherwise take the "hard look" required by SEQRA without a complete understanding of the extent of wetlands on the Site.

**The Board Has The Authority And
The Responsibility To Rescind The Approvals**

Due to the numerous legal infirmities stemming from the Applicant's lack of a JD for the Site, your Board has legal authority and the responsibility to rescind the Approvals and engage in supplemental SEQRA review. New York case law is replete with examples where Planning Boards have rescinded approvals after "a material change of circumstances since its initial approval of the plat or [after] new evidence is presented." 1066 Land Corp. v. Planning Bd. of Austerlitz, 218 A.D.2d 887, 630 N.Y.S.2d 389, 390 (3d Dep't 1995); see also, e.g., Steele v. Town of Salem Planning Bd., 200 A.D.2d 870, 606 N.Y.S.2d 810, 812 (3d Dep't 1994) (holding that Planning Board properly rescinded subdivision approval based on a new set of facts made known to the Planning Board after the approval was granted). With regards to the Project's Approvals, your Board is now on notice that the Applicant never received a JD from ACOE for the Site. Not only is this information new, but it materially affects your Board's specific Subdivision, Site Plan and SEQRA analyses and requirements. For your Board to allow the Approvals to remain unaltered would amount to a conscious, arbitrary and capricious decision, contrary to the bevy of evidence.

**The New Information Establishes That
The Approvals Violate The Town Code**

It is now apparent that, due to the lack of a JD, and in turn, an incomplete understanding of where wetlands exist on the Site, your Board's prior Approvals do not comply with the Town of Ramapo's Subdivision Regulations (the "Regulations"). Section 43(A) of the Regulations, for example, states that the subdivision's "lot arrangement shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with the Zoning Ordinance and County Health Department Regulations, and in providing driveway access to buildings on such lots from an approved street." (Town Subdivision Regulations § 43(A).) Undelineated wetlands certainly constitute a "condition" that presents "foreseeable difficulties" for the Applicant in securing a building permit to build on all lots. Without a proper wetland delineation, the appropriate arrangement of the proposed subdivided lots remains unknown. Because your Board did not have the correct information, the Approvals lack substantial evidence to support them, and are arbitrary and capricious.

Moreover, upon information and belief, many of the undelineated wetlands are low-lying and are adjacent to and/or near streams and other watercourses. The Regulations further mandate that low-lying areas "subject to flooding or overflowing during storm periods . . . shall be preserved and retained in their natural state as drainage ways." (Town Subdivision Regulations § 45(B)(4).) "Such land or lands subject to periodic flooding shall not be computed in determining the number of lots to be utilized for average density procedure nor for computing the area requirement of any lot." (*Id.*) The Approvals, however, appear to allow the Applicant to build multi-family housing on top of these protected areas, and are predicated on the wrong average density because these low-lying lands have not been properly subtracted.

There are other specific regulatory requirements that we do not believe could not have been met without a JD, including:

1. Subdivision Regulation Section 50(A)(7): Sketch Plats submitted to your Board must include “[t]he approximate location, dimensions and areas of all proposed or existing lots.” Without a complete understanding of where all wetlands are on the Site, it is unclear how the Applicant could submit a Sketch Plat to your Board and/or how your Board could approve said Sketch Plat.

2. Subdivision Regulation Sections 51(B)(3) & (5): Preliminary Plats submitted to your Board must include “[t]he location of existing streets, easements, water bodies, streams and other pertinent features such as swamps, railroads and buildings . . . [and] . . . [T]he locations, dimensions and areas of all proposed or existing lots.” Without a JD it is unclear how your Board approved a Preliminary Plat that locates roads and buildings in locations that may be infeasible. Once again, the locations and dimensions of all proposed or existing lots are contingent on the location of the ACOE wetlands.

Supplemental SEQRA Is Required

Supplemental environmental review is required to address the significant adverse environmental impacts that were not addressed or inadequately addressed in the prior SEQRA review and the Approvals that arise from newly discovered information or changes in circumstances related to the Project. See Comm. for Environmentally Sound Dev., Inc. v. City of N.Y., 190 Misc.2d 359, 737 N.Y.S.2d 792, 800-801 (Sup. Ct. N.Y. Co. 2001) (“[W]hen changes are proposed for a project or *new information is discovered*, the lead agency is required to take a ‘hard look’ at the changes or new information and must prepare a supplemental EIS (“SEIS”) if it concludes that adverse environmental impacts not addressed in the EIS would arise.”). Inasmuch as the Town Board was the Lead Agency for the SEQRA review, it would be appropriate for them to undertake the supplemental review. If, however, the Town Board will not perform this review, as an Involved Agency charged with drafting its own SEQRA Findings, your Board should fulfill its independent continuing obligation to review the Project’s environmental impacts.

The Second Department, the specific State appellate court with jurisdiction to hear cases arising out of Rockland County, has repeatedly recognized the importance of supplemental SEQRA review where public drinking water sources, like here, are at stake. See Doremus v. Town of Oyster Bay, 274 A.D.2d 390, 711 N.Y.S.2d 443 (2d Dept. 2000); Bryn Mawr Properties, Inc. v. Fries, 160 A.D.2d 1004, 554 N.Y.S.2d 721 (2d Dept. 1990); see also 6 N.Y.C.R.R. § 617.7(c)(1)(i) (establishing that substantial adverse changes in ground or surface water quality or quantity are indicative of significant adverse impacts on the environment). The Project is located within the Ramapo Sole Source Aquifer, and is adjacent to a Rockland County groundwater protection zone for two of United Water’s groundwater supply field wells. Supplemental environmental review is required in order to analyze and evaluate new information relating to wetlands and impacts to public drinking water sources.

Town Bulk Requirements

In light of the failure to delineate all ACOE wetlands on the Site, your Board should recalculate the maximum allowable unit density for this Project. Town Code Section 376-42 mandates that your Board subtract fifty percent (50%) of land encumbered by wetlands and other sensitive properties when calculating maximum unit density. The Town Code does not distinguish between types of wetlands. As such, this provision relates to *all* wetlands on the Site. Your Board, respectfully, could not have rationally engaged in this calculation in the absence of the requisite ACOE wetland delineation.

Conclusion

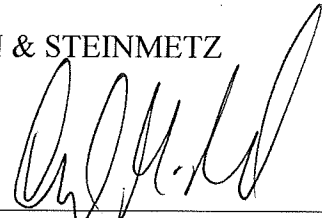
Again, based on this new information, your Board should rescind the Approvals and conduct supplemental review after the Applicant obtains a JD from ACOE.

We look forward to working with your Board in the continuing review of this project. Please do not hesitate to contact us with any questions.

Very truly yours,

ZARIN & STEINMETZ

By: _____



Daniel M. Richmond
Jeremy E. Kozin

DMR/mth

encs.

cc: ROSA

Susan Shapiro, Esq.
Doris F. Ulman, Esq.
Terry A. Rice, Esq.
Town of Ramapo Town Board
Alan Berman, Esq.
Deputy Town Attorney
Town of Ramapo

Exhibit A



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

MAY 16 2013

REPLY TO
ATTENTION OF:

Regulatory Branch

SUBJECT: Permit Number NAN-2010-00757
by Scenic Development, LLC

Scenic Development, LLC
c/o Mark A. Chertok
Sive, Paget and Riesel, P.C.
460 Park Avenue
New York, NY 10022-1906

Dear Mr. Chertok:

On January 25, 2011, this office issued a letter to Patrick Farms/Scenic Development stating that its proposed construction of arch culverts in upland areas would not require a Department of the Army Permit. Since that letter was issued, we have reviewed information that now requires the Corps of Engineers to reevaluate the circumstances that supported the issuance of the "no permit required" letter. Our authority for reevaluation is found at 33 CFR 325.7.

In requesting our 2011 action, your client submitted drawings made by Leonard Jackson Associates that show proposed rip-rap related to dam improvements, construction of which appears to involve potential fill in waters of the United States on the Patrick Farm site. Leonard Jackson Associates did not call this construction to our attention at the time, and it was recently reported to us by staff of the New York State Department of Environmental Conservation, along with other possible impacts to wetlands and/or waters of the United States.

Based on our latest review of this information it appears that Scenic Development has proposed work in wetlands and/or waters of the United States that may require a Department of the Army permit. However, until a jurisdictional determination is prepared and approved by the Corps of Engineers for the site, we cannot determine the extent of Corps jurisdiction at the site nor can we determine the extent of proposed work in Corps jurisdiction.


Therefore, the Corps recommends that Scenic Development now submit to this office a request for a Corps jurisdictional determination for the entire site to clarify the extent of wetlands and Waters of the United States on the property. Please include the following items with the jurisdictional determination request:

1. A delineation map depicting a point to point survey of the wetlands, and any other waters of the United States, boundaries as flagged by the consultant in the field. The consultant should review the survey for accuracy before submittal to this office. We prefer topographic maps with contour intervals of one or two feet and at a scale of 1 inch equals 100 feet. However, these specifications may vary depending upon the scope of the delineation and the nature of the project. The wetlands boundary must be marked with survey flagging or stakes in the field before this office will conduct a site inspection to verify the delineation. The flags or stakes must be sequentially numbered and those numbers shall appear on the survey for each point.
2. The respective sizes of wetlands in acres, and streams in width and length, should be included on the map.
3. The location of all sample sites should be shown on the delineation map(s).
4. Wetlands delineation data forms, or similar data sheets, for each sample site, cross-referenced to the sites should be shown on the delineation map(s). The data for each sample site shall clearly list the indicators or lack of indicators for soils, vegetation and hydrology, and shall include the basis for determining whether the sample site is wetland or upland. The number of sample sites will vary depending upon the size and shape of the wetlands, the degree of difficulty in differentiating wetland and upland, width of transition zones, etc. A wetlands delineation field data sheet is available from a Corps office or through the New York District Corps website at Wetland Determination Data Form for field use.
5. A site location map, preferably a 7.5-minute USGS quadrangle, any other pertinent maps of the site, and the latitude/longitude or UTM coordinates of the site should also be included.
6. A brief written report should be included with the submittal. This report should list the property owner(s)

and/or the developer(s) requesting the delineation. The report should also describe the nature of the proposed development, and when a permit application will be submitted for the project. The report should list any intermittent or perennial streams located on the site, the type(s) of wetlands present, such as palustrine forested, riverine emergent, etc., the dates of the actual field work, and include representative color photographs of the site.

Upon receipt of the above requested information, we will contact your office to schedule our site visit to confirm the extent of Corps jurisdiction on the site. A copy of this correspondence is being provided to John Filippelli, Clean Air and Sustainability Division, U.S. Environmental Protection Agency and Scott Ballard, New York State Department of Environmental Conservation, Region 3. If you have questions, please contact Naomi Handell of my office, at (917) 790-8523.

Sincerely,

A handwritten signature in cursive script that reads "Jodi M. McDonald". The signature is written in dark ink and is positioned above the printed name and title.

Jodi M. McDonald
Chief, Regulatory Branch

Exhibit B

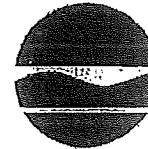
New York State Department of Environmental Conservation

Division of Environmental Permits, Region 3

21 South Putt Corners Road, New Paltz, New York 12561-1620

Phone: (845) 256-3000 • FAX: (845) 255-4659

Website: www.dec.ny.gov



Joe Martens
Commissioner

January 3, 2013

YECHIEL LBOVITS
SCENIC DEVELOPMENT, LLC
3 ACHEL STREET
MONSEY, NY 10952

RE: DEC Application No.'s: 3-3926-00570/00002 **DAM SAFETY**
3-3926-00570/00004 **STREAM DISTURBANCE**
3-3926-00570/00006 **WATER QUALITY CERTIFICATION**
Patrick Farm Development Project - 497 Residential Units on 208 Acres
Town of Ramapo, Rockland County
NEED FOR ADDITIONAL INFORMATION

Dear Mr. Lebovits:

On October 12, 2012, the permit applications related to the above referenced project were deemed Complete, at which time the Department commenced its technical review of the permit applications. One issue identified through this technical review is the extent of the permitting requirements of the United States Army Corp of Engineers (USACE) associated with the placement of fill in waters of the United States. This is relevant for DEC permitting review purposes because the extent of federal permitting determines the scope of the Department's review under the Section 401 Water Quality Certification program (see attachment).

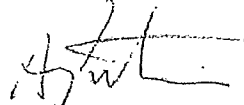
To date, the Department is in receipt of three letters from USACE regarding the Patrick Farm project (all attached). These letters cumulatively, however, do not appear to constitute a jurisdictional determination by USACE regarding the entire project as proposed. The two letters dated January 5, 2011, and November 28, 2011, respectively, appear to represent USACE review of only discreet portions of the overall project (i.e., various proposed stream crossings). The February 1, 2007, letter appears to represent USACE confirmation of the extent of the federally regulated areas on-site. The February 1, 2007, letter, however, does not depict the presently proposed project, but rather shows a project of lesser scale. Additionally, none of the letters appear to address the fill placement associated with the proposed dam reconstruction.

Accordingly, please obtain a jurisdictional determination from USACE regarding the full scope of the project as currently proposed and provide the Department a copy of such determination by **February 1, 2013**. This information will allow the Department to definitively determine the necessary scope of its review under the Section 401 Water Quality Certification program. Please note that no final permitting decision can be made until this information is received, and further information may be requested as the Department continues to review the project.

DEC Application No. 3-3926-00570/00002
Patrick Farm Development Project
January 3, 2013

Should you have any questions regarding the above, please contact the undersigned at (845)256-3096, or Scott Ballard, at (845) 256-2250.

Sincerely,



Adam Peterson
Environmental Analyst

Enclosures: April 19, 2012, Memorandum Re: Section 401 Water Quality Certification
February 1, 2007, Letter from USACE
January 5, 2011, Letter from USACE
November 28, 2011, Letter from USACE

Cc w/enclosures: Town of Ramapo Town Board
Town of Ramapo Planning Board

Ecc w/enclosures: Mark Chertok, Sive Paget & Risel
Joyce Giudice, DEC OGC
Scott Ballard, DEC DEP
Dennis Rocks, Leonard Jackson Associates
Mike Scarano, P.E., USACE
Brian Drumm, DEC
Syed Alam, DEC

Exhibit C



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

MAR 11 2013

Dianne T. Philipps, P.E.
Executive Director
Rockland County Sewer District No. 1
4 Route 340
Orangeburg, New York 10962

Dear Ms. Philipps:

On March 22, 2011, you requested that the U.S. Environmental Protection Agency (EPA) waive the special condition placed on the Rockland County Sewer District No. 1 (RCSD#1) construction grant (Project Number C-36-745), restricting sewer connections from new development in environmentally sensitive areas (ESA). Specifically, your waiver request concerned the Patrick Farm project, a proposed 496 residence subdivision to be constructed on 208.5 acres in the Town of Ramapo [Tax Lots 3./12A1 (32.11-1-15 & 16), and 3./13A2 (32.11-1-4 & 14 and 32.14-2-3)].

On August 18, 2011, the EPA approved a partial waiver of the ESA special grant condition for this project. Our approval was based on the information that was provided in support of your request indicating that the proposed development would not infringe upon wetlands. As noted in our letter, the sewer connection restriction was to remain in effect for the wetlands on this site. Subsequently, EPA became aware of questions regarding the actual extent of wetlands on the referenced lots. Accordingly, on January 5, 2012, we notified you that the wetlands issue was being examined further, and the grant condition restriction remained in place for all site wetlands.

We have recently been informed that the extent of project area wetlands was not subject to verification through a U.S. Army Corps of Engineers issued jurisdictional determination (JD). Considering the questions about the extent of project area wetlands that have recently been raised, as well as the time that has passed since completion of the existing site delineation, we are concerned about the possible environmental ramifications if it is determined that the delineation included within your waiver request package is found to be inaccurate. If site wetlands are unexpectedly disturbed during construction of this project, our waiver approval would be invalid. Further, the RCSD#1 would be in violation of the ESA grant condition if it subsequently allowed this project to hook up to the federally-funded sewer treatment works constructed under Project Number C-34-745. Accordingly, we believe it would be in the best interest of both the project sponsor and the RCSD#1 for the project sponsor to obtain a JD from the ACE, confirming the current extent of wetlands on these parcels. This JD should then be sent to EPA for our review and determination of whether a revised waiver approval will be needed.

We appreciate your assistance in this complicated matter. If you have any questions, or would like additional information, please feel free to contact Steven Ferreira of my staff at (212) 637-3759.

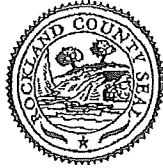
Sincerely,



John Filippelli, Director
Clean Air and Sustainability Division

cc: Scenic Development, L.L.C.
Dennis Rocks, Leonard Jackson Associates

Exhibit D



COUNTY OF ROCKLAND

SEWER DISTRICT NO. 1

4 Route 340
Orangeburg, New York 10962
(845) 365-6111
Fax. (845) 365-6686

C. SCOTT VANDERHOEF
County Executive

JULIUS GRAIFMAN
Chairman
CHRISTOPHER P. ST. LAWRENCE
Vice-Chairman
DIANNE T. PHILIPPS, P.E.
Executive Director

March 26, 2013

Mr. Anthony Mallia
Director of Building, Planning and Zoning
Town of Ramapo
237 Route 59
Suffern, NY 10901

Re: Patrick Farm
Route 202 and Route 306
Tax Lots 89/32.11-1-2, 3, 4, 12, 13, 14, 15 & 16 and 32.14-2-3

Dear Mr. Mallia:

Our office has received and reviewed correspondence dated March 11, 2013 from the United States Environmental Protection Agency (EPA) to Rockland County Sewer District No. 1 (RCSD#1) regarding the environmentally sensitive area (ESA) waiver for the Patrick Farm project. Attached please find a copy of the above referenced correspondence from the EPA.

On March 22, 2011, the District had forwarded an ESA waiver request package from the project sponsor to the EPA for review and approval. On August 18, 2011, the EPA approved the ESA waiver request for the wetlands as delineated in the submitted package. However, the EPA has informed the District that it subsequently became aware of questions regarding the actual extent of wetlands on the referenced lots.

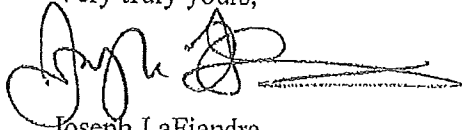
The EPA letter states, "We have recently been informed that the extent of the project area wetlands was not subject to verification through a U.S. Army Corps of Engineers issued jurisdictional determination (JD)." The letter continues: "If site wetlands are unexpectedly disturbed during construction of this project, our waiver approval would be invalid. Further, the RCSD#1 would be in violation of the ESA grant condition if it subsequently allowed this project to hook up to the federally-funded sewer treatment works constructed under Project Number C-34-745" (i.e., the District's sewage treatment plant in Orangeburg).

Therefore, as a condition of allowing the Patrick Farm project to connect to the District's sewerage system, the District requires the project sponsor to obtain and forward to the EPA and to the District a jurisdictional determination from the U.S. Army Corps of Engineers verifying the extent of the project area wetlands.

Mr. Anthony Mallia
Page 2
March 26, 2013

Please inform us of all developments in this project. If you have any questions, please contact this office at 845-365-6111.

Very truly yours,



Joseph LaFiandra
Engineer II

Attachment

cc: D. Philipps M. Saber M. Dolphin
Scott McKane, P.E. – Rockland County Department of Health
Helen Kenny-Burrows – Rockland County Department of Planning
Thomas M. Mascola – Rockland County Department of Law
Michael Sadowski, P.E. – Town of Ramapo DPW
Steven Ferreira – United States Environmental Protection Agency
Dennis Rocks, P.E. – Leonard Jackson Associates
Scenic Development, LLC – 3 Ashel Lane, Monsey, NY 10952

File: TOR 32.11-1-4 et al. – Patrick Farm
ESA
Reader