

Memorandum

To: Genesee County Economic Development Center
Date: March 11, 2016
From: Sheila S. Hess – Principal Ecologist/CEO
Subject: **STAMP Aquatic Resource Permitting Update**



BACKGROUND

The Genesee County Economic Development Center (GCEDC) and its affiliate, the Genesee Gateway Local Development Corporation (GGLDC) have been working for the last several years on the development of the Western New York Science & Technology Advanced Manufacturing Park (STAMP), an advanced manufacturing campus to be developed on approximately 1,261.7 acres of land (Project) in the Town of Alabama, New York located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway (STAMP Site).

A joint permit application (JPA) was submitted in November 2013 pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), to the United States Army Corps of Engineers (USACE), Buffalo District (Department of the Army Application No. 2010-00964), and the New York State Department of Environmental Conservation (NYSDEC), Region 8 (NYSDEC No. 8-1820-00020/00002) for activities within wetlands and waters of the United States in association with the development of the Project. Both GCEDC and GGLDC were identified as the Applicant. The purpose of this memo is to provide the GCEDC and GGLDC with an overview and update on aquatic resource investigations and permitting activities at the STAMP Site including:

1. A brief summary of aquatic resource investigations completed to date at the STAMP Site.
2. An overview and status of the JPA process.
3. A summary of remaining aquatic resource investigations and permit review actions required for development of the STAMP Site to full build out.

ATTACHMENTS

Three attachments as described below are included to facilitate this update.

1. Attachment 1 shows the mapped location, number, and regulatory jurisdiction of aquatic resources within the 1,261.7-acre STAMP Site as per the USACE jurisdictional determination received February 1, 2012.
2. Attachment 2 shows a plan view map identifying unavoidable impacts to aquatic resources and the location of proposed mitigation areas.
3. Attachment 3 provides an overview of regulatory requests for additional information associated with the JPA and the Applicant's response status.

SUMMARY OF AQUATIC RESOURCE INVESTIGATIONS COMPLETED TO DATE

The following investigations and actions have been completed to date at the STAMP Site to support aquatic resource impact avoidance and mitigation.

1. Aquatic resources were delineated at the site in 2010 by Earth Dimensions, Inc. A delineation report was completed on July 14, 2010 with three revisions (September 14, 2010, November 11, 2010, and November 16, 2011).
2. A Wetland Functional Assessment Report was completed in July, 2010 by Earth Dimensions, Inc.
3. A STAMP Watershed Assessment was completed by CC Environment & Planning (Conservation Connects) in 2010.

4. A stormwater management report including a preliminary analysis of the reroute of Tributary 3 was completed by Clark Patterson Lee in March 2011.
5. A Jurisdictional Determination letter for the STAMP Site was received from USACE on February 1, 2012.
6. A Stream Visual Assessment Report was completed by CC Environment & Planning (Conservation Connects) in September, 2013.

In December 2015, a preliminary investigation of aquatic resources was completed by CC Environment & Planning in association with off-site proposed water/sewer lines extending along proposed utility routes from the STAMP Site through Alabama to Oakfield for water and north to Medina along Route 63 for sewer. This investigation report is currently being used to help guide final design of utilities to maximize avoidance of impacts and will be included with the upcoming SEQR update.

OVERVIEW AND STATUS OF JPA PROCESS

1. A JPA was submitted to USACE and NYSDEC in November 2013. Several pre-application meetings were held with regulatory staff to review portions of the application package throughout its development. The November 2013 JPA package was completed by the GCEDC and GGLDC in association with CC Environment & Planning, Clark Patterson Lee, Phillips Lytle, and IDC Architects/CH@M Hill. The JPA included the following:
 - Project overview
 - Existing conditions
 - Development details
 - Impacts assessment
 - Public interest review
 - On and off-site alternatives analysis
 - Conceptual compensatory mitigation plan

A regulatory review meeting was held at the USACE Buffalo District office in Buffalo, NY on December 11, 2013 to present the contents of the JPA and discuss the permit review process. At the time of submission, the STAMP Site was approximately 1,280 acres. There were 47 wetlands totaling 106.96 acres delineated at the Site along with seven streams, ditches and drainage ways totaling approximately 30,053.04 linear feet. The JPA described the process of design iterations for a potential semiconductor manufacturing tenant at the STAMP Site that reduced potential wetland impacts from 69 acres to 9.50 acres during the State Environmental Quality Review (SEQR) process to 5.49 acres at the time of JPA submittal. Of these 5.49 acres, 3.83 acres are federally regulated. The November 2013 design also identified unavoidable impacts to approximately 8,153.26 linear feet of stream. No wetlands or adjacent areas potentially regulated by NYSEC under Article 24 were identified for impact. An on-site mitigation strategy to compensate for resource impacts included preservation of 101.53 acres of wetlands, restoration of 8.50 acres of wetlands, enhancement of 15 acres of wetlands, preservation of 21,899.78 linear feet of streams including preservation of 100' buffer along each side of the stream, and enhancement of 11,833.20 linear feet of stream. The 8.5-acre wetland restoration area was located in an upland area in the central region of the Site within the natural resource corridor along Tributary 5 and adjacent to Wetlands 20 and 21.

2. A request for additional information (RAI) was received by the Applicant in a letter dated February 11, 2014 and by the NYSDEC in a Notice of Incomplete Application letter dated March 21, 2014. Attachment 3 provides a summary of these information requests along with a status of Applicant response.

3. A regulatory review meeting was held on December 4, 2014 at the Genesee County Economic Development Center in Batavia, NY to review preliminary responses to the RAI letters and to discuss the USACE public notice schedule. Another item discussed at the December 4, 2014 meeting was the potential impact associated with entrance road development connecting Route 77 to the planned 1366 facility. It was determined that any unavoidable impacts to aquatic resources associated with development of this road would be within nationwide thresholds and be reviewed separately from the 2013 JPA.
4. A Phase I response to the RAI was submitted to USACE and NYSDEC in December 2014 after the December 4, 2014 meeting. The response document included a description of modifications to the STAMP project since first described in the November 2013 JPA. These modifications included:
 - Modification to Site boundary to include all parcels along the north end of Crosby Road. The current STAMP Site encompasses 1,261.7 acres.
 - Modification to proposed Tributary 3 reroute based on additional analysis of reroute alternatives.
 - Modifications to the entrance road/interior road.
 - Updates to location of utilities.
 - Adjustment to proposed aquatic resource impacts. More detailed project design resulted in a slight increase in wetland impacts from 3.83 acres to 4.24 acres of federally regulated wetlands. There was also an 850 linear foot increase in unavoidable impacts to streams.
 - Adjustments to proposed mitigation strategy. Preservation of wetlands decreased slightly from 101.53 to 101.06. Restoration acres remained the same at 8.5 acres but the proposed location was shifted to the west side of the Site in an upland area immediately south of Wetland 2. Additional detail was provided for the proposed mitigation including mapped location, size, and type of each mitigation component.
 - Land ownership changes as GCEDC continued to purchase more properties with the STAMP Site.

Many of these modifications such as the inclusion of parcels along the north end of Crosby Road, modifications to proposed utilities, and modification to the proposed Tributary 3 reroute facilitated meeting project buildable area goals without significant increases to aquatic resource impacts. The Phase I response to agency RAIs addressed RAI No. 1 through 9 (Attachment 3) to facilitate continued review of the JPA including the USACE public notice process.

5. The USACE issued a Public Notice (PN) No. 2010-00964 on June 19, 2015 describing the project, project location, unavoidable impacts, and proposed mitigation as submitted in the November 2013 JPA and as updated by the Phase I response to agency RAIs submitted in December 2014. Comments were received by the USACE from the U.S. Fish and Wildlife Service (USFWS), a private landowner, and the Environmental Protection Agency (EPA). The USFWS identified consultation requirements associated with the recently listed northern long-eared bat and provided recommendations for Site development that would further decrease potential impacts to the ecology of the Site and area. The private landowner expressed general concern about the project and its location, stated a public hearing is warranted, and detailed specific concerns about the proposal to reroute Tributary 3. The EPA stated that there was no objection to issuance of a Section 404 permit provided a semiconductor manufacturing tenant was secured prior to permit issuance.

REMAINING AQUATIC RESOURCE INVESTIGATIONS AND PERMIT REVIEW ACTIONS REQUIRED FOR FULL SITE DEVELOPMENT

Subsequent submittals to USACE and NYSDEC will address RAI No. 10-13 and 15 (Attachment 3). Future submittals will include additional details regarding the Aquatic Resource Mitigation Strategy and include a SEQR update. Items that require additional investigation and design include:

1. Analysis of potential secondary impacts associated with reroute of Tributary 3.
2. Additional detail regarding location, design, and implementation of stream enhancement measures.
3. Wetland restoration details including hydrology, grading plan, and planting plan.
4. Additional detail regarding potential impacts to northern long-eared bats.
5. Water/waste water requirements and designs for SEQR update.
6. Clarification of long-term ownership and management of the Site including stormwater and mitigation features.

Each of these items above are progressing with continued design and development of the STAMP Project. It is anticipated that these remaining items will be completed and submitted to USACE and NYSDEC by December, 2016.
