

HAUDENOSAUNEE

MOHAWK • ONEIDA • ONONDAGA • CAYUGA • SENECA • TUSCARORA

TONAWANDA SENECA NATION

PO BOX 795 • 7027 MEADVILLE ROAD • BASOM, NEW YORK 14013

PHONE (716) 542-4244 • FAX (716) 542-4008

E-MAIL: tonseneca@aol.com

April 22, 2022

Mark Masse
Genesee County Economic Development Center
99 MedTech Drive
Batavia, NY 14020

Nya:wëh Sgë:nö', Mark:

On behalf of the Tonawanda Seneca Nation, Council of Chiefs, I'd like to extend greetings to you and your associates and give thanks that all are enjoying good health.

The Nation writes to provide comments on the draft "Cultural Resource Screening" for the STAMP "Lockport-Batavia #112 115kV Relocation Project" ("Power Line Initial Assessment" or "PLIA") compiled by kta preservation specialists ("kta") and dated March 2022.

Because the bulk of the text of the PLIA mirrors that of previous Initial Assessments for which the Nation has already provided comments, the Nation hereby incorporates by reference those comments.

Visual Impacts Assessment

As a preliminary matter, the Nation strongly objects to (1) GCEDC's decision to conduct a visibility analysis for the power line project that included no consultation with the Nation; and (2) the suggestion that the document produced by Saratoga Associates is a "visual impacts analysis." Visual impacts from the proposed project are a grave concern for the Nation and its citizens, and the nature of those impacts on the Nation cannot be assessed or understood without the Nation's involvement. The massive steel towers and road proposed for the new power line will dramatically alter the landscape as viewed from the Nation by Nation citizens, as well altering views of the Nation from the elsewhere. The document produced by Saratoga Associates erases Nation citizens from the landscape altogether and fails to meet even the most basic standards for visual impacts assessments. *See, e.g.*, "Guide to Assessing Visual Impact Assessments for Renewable Energy Projects," National Park Service, at 18-19, https://blmwyomingvisual.anl.gov/docs/NRR_VIAGuide-RenewableEnergy_2014-08-08_large.pdf (summarizing elements of the "complex multistep process" required to conduct an adequate visual impact assessment, including "gathering information about [viewshed] users" and analyzing "sensitivity of the viewers to changes in the landscape"); "Evaluating Photosimulations for Visual Impact Assessment," National Park Service, https://blmwyomingvisual.anl.gov/docs/PhotoSimulation_Review_Guide_ASIA.pdf; https://www.dec.ny.gov/docs/permits_ej_operations_pdf/visualpolicydep002.pdf; DEC Program Policy on Assessing and Mitigating Visual and Aesthetic Impacts, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/visualpolicydep002.pdf. The Nation calls on GCEDC to initiate consultations with the Nation on an actual visual impact assessment comporting with state and federal

guidelines, and to incorporate that assessment into a revised PLIA. Careful analysis of visual impacts is particularly important for projects like the power line project, where it is far from clear any need exists to justify creation of adverse visual impacts on the Nation and its citizens.

PLIA General Approach

Reviewing the PLIA in the context of previous Initial Assessments and Nation comments on them, the Nation finds the approach taken by GCEDC and kta to the Initial Assessment process to be cynical, misleading, and shameful. Kta has not only ignored the Nation's feedback on key concerns, but has doubled down in its approach, embracing a methodology that expressly "privilege[s] non-Indian perspectives and perceptions," and admittedly contains only "limited" "culturally specific information." (p. 21). This methodology is very familiar to the Nation, which has faced centuries of efforts to erase and ignore it. Most historians have moved past this blatantly Eurocentric approach. It is disgraceful that kta continues to issue reports embracing Eurocentrism at the expense of Native perspectives while claiming to assess impacts on Native cultural resources. The LOR requires assessment of "adverse impact to the Nation's Territory as a property of religious and cultural significance." By designing an Initial Assessment template that intentionally excludes Nation perspectives and Nation culture, kta (with funding and direction from GCEDC) undermines the Nation's culture and poisons the LOR process. This approach must be changed.

Ongoing Concerns

As noted above, the Nation reiterates and incorporates by reference comments provided on previous Initial Assessments, including but not limited to the following:

Any study of impacts on the Nation's cultural resources must take into account the uses of the Nation's Territory by its citizens. Kta acknowledges the availability of information about these uses, and even includes Nation citizen testimony about certain uses in the report, but fails to analyze impacts on even the uses documented in the PLIA. For example, the PLIA contains information about hunting, fishing and ceremonial activities that are conducted in the Big Woods. (pp. 41-43). Nonetheless, the PLIA fails to consider how the power line project with its massive steel towers and roadway within 500 feet of the Big Woods, might impact those activities.

Actually seeing the Territory is necessary to developing any basic level of understanding of the Nation and its cultural resources, and no one should purport to assess impacts on the Nation without ever having visited the Nation. Physical presence on Nation Territory is also necessary to assess the presence of cultural and historic resources.

The Nation strongly objects to GCEDC's and kta's stated efforts to exclude any research or study that may potentially be included in the Nation's TCP study. (See, for example, the Letter of Adam Walter to David Witt, September 30, 2021, at 3, stating that "looking at the direct impact on the people who live on the Nation's Territory... would necessitate research consistent with what is required in a TCP investigation, which is being handled solely by the Nation and is *entirely outside the scope of the Initial Assessment process laid out in the LOR.*" (emphasis added)). Nothing in the LOR limits the sources of information to be consulted or methods to be employed in preparing an Initial Assessment. Any such limit would be nonsensical, because the same sources would likely be useful to each inquiry and because the TCP Study has not yet been completed, meaning there has been no final determination what sources and methods will and will not be utilized as a part of it.

By limiting its eligibility determination to historic events that occurred in the mid-1800s, the PLIA locates eligibility in a way that makes it virtually impossible for any modern day development, even one that

would radically change 1,200 acres directly adjacent to the Nation, to be found to have significant adverse impacts on the Nation's Territory as National Register Eligible.

Additional Concerns Specific to the PLIA

The Nation further highlights the following concerns with the PLIA:

The PLIA fails to include sufficient information regarding the scope and design of the power line project for assessment of impacts on the Nation. Specifically, the PLIA includes no information whatsoever about design of the proposed roadway that would travel along the proposed power line, aside from the fact that "there may be USACE approvals associated with" it. (p. 12) The PLIA lacks any information regarding grading of the roadway, earthmoving required for its construction, sediment controls, or anything else. By email subsequent to transmission of the PLIA, GCEDC has informed the Nation that the project has been modified such that no USACE approvals will be needed. GCEDC refused the Nation's request that the PLIA be updated to include accurate information about plans for the roadway, instead providing an aerial view detail of a planned portion of the roadway. The detail depicts the road, instead of crossing a wetland directly linked to the Nation, ending at either edge of the wetland, with "timber matting (elevate)" superimposed on the wetland in place of road. This detail raises more questions than it answers. The PLIA must be revised to include accurate, detailed information about the road, which the PLIA acknowledges to be "part of the project." (p. 12). Accurate, detailed project information must also include information about the impacts on wetlands that span the boundary between STAMP and the Nation. The PLIA's conclusory statement that "project impacts to wetlands are limited to the STAMP site and do not include any discharge into wetlands on the Nation's Territory," p. 44, is belied by the nature of wetlands and publicly available information demonstrating that wetlands do not end neatly at the STAMP boundary.

The PLIA includes irrelevant information about the proposed project, including the odd claim that "[t]iming of the project is critical, because facility construction is slated to begin in Summer 2022," (p. 14) which appears to mean that timing is critical because the developer wants it to be. This opinion on the need for hasty construction has no place in an analysis of impacts on cultural resources.

The PLIA fails to adequately explore the need for the project, suggesting by implication that the project is intended to upgrade existing power lines while deemphasizing the fact that the plan would create a large bow in a currently straight power line, adding nearly a mile of new lines, 10 additional towers, and a new road, among other things. According to the PLIA, the current tack of the power line "represents a barrier to efficient space utilization of the STAMP property," p. 14, suggesting that a desire to maximize profits drives the project.

The PLIA fails to consider the cumulative impacts on the Nation of the components of the STAMP project. By segmenting development at STAMP into discreet projects and analyzing each in isolation from the others, the PLIA denies the real-world implications of the development as a whole. This is particularly true of the power line project, which appears to include as a component a new substation, see p. 14, as well as rebuilt lines to the north and south of the project area, neither of which is included in the PLIA.

The PLIA is based on flawed definitions of "direct" and "indirect" impacts, p. 44. The fact the project "will not physically occur within the [Nation's Territory]" does not preclude it having direct impacts. *See, e.g.*, DEC SEQR Handbook at https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf (clarifying that impacts outside a defined project area may be direct).

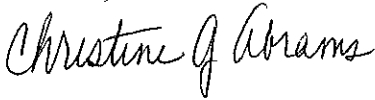
The PLIA fails to assess impacts as required by the State Historic Preservation Act. *See, e.g.*, SHPA Section 428.7, which requires that “alteration of the property’s environment” and “introduction of visual, audible or atmospheric elements which are out of character with the property or alter its setting” be considered.

The PLIA fails to assess how noise from construction of the steel towers and access road; use of the access road over time; or presence of the towers in migrating bird habitat (including threatened and endangered species) might impact the Nation’s citizens or the environment, including avian and aquatic species that are important to the Nation and that freely cross the boundary between STAMP and the Nation. The contention on p. 44 that “noise impacts will be similar to other commercial construction activities in the area” is wholly insufficient to constitute a noise impacts analysis, particularly since there has never been any commercial construction in the project area.

Conclusion

The Nation remains concerned about impacts to the Nation and its cultural resources from the power line project, including construction of the massive steel towers and new road as well as operation of the project and use of the road in the future. The Nation urgently requests a supplemental environmental impact survey be conducted, incorporating Nation participation to adequately assess any such impacts, including direct, indirect, and cumulative impacts.

Da:h ne’ho,



Christine G. Abrams
On behalf of the Council of Chiefs
TSN Office Administrator
Tonawanda Seneca Nation

cc: Kimberly Merchant, DEC
Nancy Herter, SHPO