

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8
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BY E-MAIL

March 28, 2022

Mr. Mark Masse
Genesee County IDA
dba Genesee County Economic Development Center &
STAMP Sewer Works Inc.
99 Medtech Dr Ste 106
Batavia, NY 14020

Re: Science and Technology Advanced Manufacturing Park (STAMP) Site
Small Infrastructure Projects
Crosby Road water main, road widening, and culvert widening
Plug Power Hold and Haul
NYSDEC Jurisdiction Under 6 NYCRR Part 182
Alabama (T), Genesee (C)

Dear Mr. Masse:

In a letter dated March 18, 2022, Genesee County Economic Development Center (GCEDC) consultant Sheila Hess (CC Environment & Planning) has requested a jurisdictional determination for three infrastructure projects at the WNY STAMP project. These projects are construction of a hold and haul septic tank, installation of an on-site water main, and reconstructing a short section of Crosby Road. GCEDC and Ms. Hess propose that the timing and limited size of these three projects should have limited impact and not require a Part 182 Incidental Take Permit for impacts to Northern Harrier (NYS Threatened) and/or Short-eared Owl (NYS Endangered).

This letter addresses the Part 182 jurisdictional request only and does not address whether other law or regulations may require DEC approval prior to implementation. Determinations regarding the applicability of the Letter or Resolution (LOR) and the 401 Water Quality Certification Application for the Crosby Road widening, culvert, and water main projects will be sent under separate cover. This letter also does not address SHPA requirements associated with the SPDES Construction Stormwater General Permit.

In the winter of 2021-22, surveys conducted by GCECD consultant CC Environment & Planning documented the presence of both Northern Harrier and Short-eared owls, and a determination by NYS Natural Heritage Program indicated that much of the STAMP project falls within the “Occupied Habitat” for these two species. These species have only been documented using the site as wintering habitat, and active roadways (Crosby Road and STAMP Drive) combined with the agricultural row crops present in most of the area immediately adjacent to these proposed small infrastructure projects would not be expected to be attractive as potential nesting habitat. At this point Part 182 jurisdiction on most of the site would be limited to impacts to wintering habitat or use of the site by wintering birds (a small portion of the site is also currently mapped as occupied habitat for sedge wren, but the projects for this jurisdictional determination are not proposed within open field areas in that location). Part 182 jurisdiction for each of the small projects will be described below.

1. **Hold and Haul**--The hold and haul septic tank (16,000-gallon tank) will be installed in a small 2.6-acre field directly across Crosby Road from the Plug Power facility. This small field is surrounded on two sides (east and south) by blocks of forest and separated from the open fields to the north by a wooded stream corridor. Given this separation from large open field areas, this small field is not likely to support grassland raptors. Thus, the construction of the hold and haul septic tank as described can be considered non-jurisdictional for impacts to wintering raptors.
2. **On-site Water Main**—The installation of the on-site main will occur within the Right-of-Way of STAMP Drive and along Crosby Road south to Plug Power. Due to the continuous nature of the open field habitat between this project and the sites where wintering Northern Harrier and Short-eared Owls have been documented, much of this project falls within the occupied habitat buffer for the documented locations. The jurisdiction determination request states the construction work will begin after April 1 and will be completed by November 1. The limited habitat disturbance will be temporary and occur outside the time when wintering raptors are present. If the work will indeed be performed outside the wintering season, the installation of the on-site water main can be considered non-jurisdictional for impacts to wintering raptors.
3. **Crosby Road Reconstruction**— Due to the continuous nature of the open field habitat between this project and the sites where wintering Northern Harrier and Short-eared Owls have been documented, this project falls within the occupied habitat buffer on the documented locations. The widening of Crosby Rd. from just north of STAMP Drive south to Plug Power is similar to the water main installation discussed above, except that there are minor permanent impacts to potential habitat due to the widened footprint of the roadway.

The proposed work will increase road width from 20 feet of pavement (two 10-foot travel lanes) to 32 feet of pavement (two 12-foot travel lanes plus 4-foot paved shoulders) will disturb 2.8 acres of potential habitat in total, but only 0.43 acres will be new permanent disturbance due to the new road width. There will be temporary disturbance to 2.37 acres. As long as the construction work is performed outside wintering season (does not begin until after April 1 and is completed by November 1) the minor level of permanent impacts to habitat immediately adjacent to an existing roadway is low enough that the Crosby Road reconstruction can be considered non-jurisdictional for impact to wintering raptors.

In summary, the projects as described in the jurisdictional request are all likely to have no or minor impacts to wintering raptors provided the work is completed outside the wintering period. As such, no Part 182 permit is required for these projects to proceed as described.

Please contact Mike Wasilco at Mike.wasilco@dec.ny.gov or (585) 226-5460 or Heidi Kennedy at Heidi.kennedy@dec.ny.gov at (585)948-5182 if you have any questions or concerns about the requirements of Part 182 for activities at the STAMP site.

Please contact me at (585)226-5392 or kimberly.merchant@dec.ny.gov if you have questions about other permit jurisdictions or requirements pertaining to these projects.

Sincerely,



Kimberly A. Merchant
Deputy Regional Permit Administrator

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