

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8
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BY E-MAIL

May 2, 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
NYSDEC Jurisdiction Under 6 NYCRR Part 182
Plug Power Associated Projects
National Grid 115kV transmission line, substation, connection from the substation
to the rerouted line, and laydown area
Alabama (T), Genesee (C)

Dear Mr. Masse:

In a letter dated March 23, 2022, (with follow-up letters/emails with further needed details from Katlyn Hojnacki, CC Environment and Planning, received on April 13 and April 18, 2022) Genesee County Economic Development Center (GCEDC) consultant Sheila Hess (CC Environment & Planning) has requested a jurisdictional determination for a proposed electrical supply infrastructure project to facilitate future development of the STAMP project. This project includes the relocation of a National Grid 115kV transmission line, construction of a substation, connection from the substation to the rerouted line, and a laydown area (which is also the planned site of the STAMP Wastewater Treatment Plant). The existing line (1.2 miles of line supported by 13 structures) traverses the northern portion of the STAMP site on a straight NW-SE direction and would be replaced with 1.9 miles of new line supported by 23 new steel pole structures on a "C" shaped route. The new line is also proposed to be accompanied with a new 14-foot-wide gravel permanent access road (existing line does not have an access road). Additionally, 0.4 mile of this road will be paved between the end of the gravel road and Crosby Road to provide access to a future STAMP Utility Area (this site is proposed to be used as a "laydown area" during the power line work). The substation will be in the central northern edge of the STAMP footprint and tap into the New York Power Authority transmission lines to supply electrical power to the STAMP facility through a new line sharing poles with the rerouted National Grid line.

The substation will be connected to the rerouted line by a 1,039-foot-long line and then to the Power Plug facility by a service line 663 feet in length parallel to Crosby Road.

In the winter of 2021-22, surveys conducted by GCEDC consultant CC Environment & Planning documented the presence of both Northern Harrier (NYS Threatened) and Short-eared owl (NYS Endangered), and a determination by NYS Natural Heritage Program indicated that much of the STAMP project site falls within the "Occupied Habitat" for these two species. Both the existing and proposed transmission line routes pass through this occupied habitat for both Short-eared Owl and Northern Harrier, and directly through areas observed being used by these species during the surveys. The substation footprint also overlaps into areas documented as actively used habitat by both species, and the connector line passes through these same occupied habitat areas.

According to the jurisdictional determination request letter dated April 13, 2022, there will be approximately 54 acres of ground disturbance during the proposed. This amounts to direct impacts to about 15% of the open field habitat present in the Northwest portion of the STAMP property. Permanent conversion from open habitat suitable for use by Northern Harrier and Short-eared Owl to structures (substation, roadway, power pole structures etc.) is stated to affect 15 acres. Additionally, 35 acres are proposed to be subjected to direct temporary impacts that will affect habitat availability for at least 1-2 wintering seasons, due to ground clearing preventing cover from being restored prior to winter.

Additional surrounding habitat may be subjected to temporary disturbance impacts if work cannot be restricted to avoid the wintering season (November-April), and thus birds are prevented from using suitable habitats that would otherwise be available

Despite the claim in the request letter, work during daylight hours would indeed have potential effects on foraging behavior for Northern Harrier which are diurnal. It may have less effect on the more crepuscular short-eared owl which are less active in daytime, provided the work is not occurring near a roost site. Possible roosting was documented during the surveys (Dec 20 Point #2-Short-eared owl calling from hedgerow, but never seen in flight). If, however, GCEDC commits in writing to constructing the powerline prior to November 1st, then the Department could consider the powerline as a separate project, not subject to Part 182 jurisdiction and could issue a condition letter. However, if work was not completed before the wintering period (Nov. through April), then work would need to stop work or obtain a Part 182 permit before work could resume.

In addition, if you can commit to the construction and operation of the laydown area to be completed before November 1st, it is possible that a conditioned Part 182 permit could be issued that would require mitigation of any areas in the laydown area which would have permanent impacts and not be converted back to habitat. Therefore, the

permanent impact related to the wastewater treatment plant would need to be addressed in a future Part 182 permit for the STAMP site.

Given the proposed impacts from temporary habitat removal and/or permanent conversion for this project, both to habitat directly documented as being used by listed Threatened and Endangered Species, as well as contiguous blocks of similar open habitat adjacent to the documented use areas, and the likely inability to avoid disturbance to birds attempting to use remaining habitat adjacent to the direct impact areas, Part 182 jurisdiction applies and a Part 182 Incidental Take Permit will be needed for this project.

Issuance of a Part 182 permit requires that impacts be avoided and minimized to the extent practical before mitigation can be considered. In the situation, for this project, because the project was well into design and entering the permitting process when the listed species were documented on the site and because of the tight construction timelines, there is likely reduced ability to minimize impacts through seasonal restrictions. The other requirement for a Part 182 permit is that the project must provide a Net Conservation Benefit to mitigate for the impacts to the affected species.

It should be noted that a stated reason for the relocation of the National Grid transmission line is to allow future development of the northern portion of the STAMP site. Given the recorded use of a large portion of this area by Endangered and Threatened species, this future develop will further impact the occupied habitats and require a Part 182 permit as well. While the impacts to occupied habitat from the electrical infrastructure project discussed above are small enough that the mitigation can likely be accommodated elsewhere on the STAMP site, the impacts from the larger future development will likely require mitigation somewhere off-site. For this reason, it would make sense to develop a plan for addressing this issue for the entire STAMP site rather than piece meal for each individual development project. However, due to project time constraints, the mitigation for the Plug Power associated projects, could possibly be accomplished on-site, by setting aside and managing acreage of buffer ag land, in grassland habitat. For example, the buffer areas that are proposed to surround the development areas of the site, could be proposed to be changed from ag lands to suitable habitat.

Please provide a written plan which evaluates the possibility of downsizing, or moving the proposed projects, and conducting the work during work restrictive periods, to avoid and/or minimize impacts to the E&T species. If the impacts cannot be avoided, please provide a Part 182 permit application with Proposed Net Conservation Benefit Plan.

In addition to the Part 182 permit application, the SEQR full EAF and LOR Initial Assessment documentation will be required.

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The Department understands the time constraints associated with this project; thus, we will prioritize this review upon receipt.

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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