Western New York
Science & Technology Advanced Manufacturing Park (STAMP)

Endangered and Threatened Species of Fish and Wildlife

Incidental Take Permit

SUBMITTED TO:

NYS Department of Environmental Conservation
Region 8
6274 East Avon-Lima Road
Avon, NY 14414

June 2022

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1.0 Introduction

Genesee County Economic Development Center (GCEDC) is in the process of constructing the Western New York Science and Technology Advanced Manufacturing Park (STAMP; the Site) on approximately 1,263 acres in the Town of Alabama in Genesee County, New York (Figure 1). Construction of the first tenant facility, Plug Power, began in September 2021. Alterations and additions to current STAMP Site infrastructure are required to provide the services necessary to operate this new facility and future tenant facilities. GCEDC is proposing to construct an electrical substation within the northern portion of the Site and a wastewater treatment facility (WWTF) within the center of the Site (the substation and WWTF, collectively "Project"; Figure 1).

On behalf of GCEDC, CC Environment & Planning completed desktop review and field investigations to evaluate the potential impacts from construction of the Project on any protected species that may occur within the Site. Based on consultation with the New York State Department of Environmental Conservation (NYSDEC) the construction of the Project may result in potential impacts (incidental take) to the state-listed short-eared owl (*Asio flammeus*) and northern harrier (*Circus hudsonius*). This permit application has been prepared in accordance with the requirements of the State Endangered Species Act (Environmental Conservation Law §11-0535 [ECL Article 11]) and its implementing regulations at 6 New York Codes, Rules, and Regulations (NYCRR) Part 182. A Joint Application Form can be found in Appendix A.

2.0 Project Information

2.1 Project Location and Description

The STAMP Site is located west of State Route 77/63, south of State Route 77, and north of Judge Road. The electrical substation will be located within the northwestern portion of the STAMP Site while the laydown area will be located within the center of the Site, west of Crosby Road (Figure 1). The approximate midpoint location of the substation is 43.096754, -78.410894 and the laydown area/WWTF is 43.085075, -78.408182.

The 345 kV to 115 kV substation will tap into the New York Power Authority (NYPA) 345 kV transmission line that crosses just north of the STAMP Site, which delivers power from the Niagara Falls hydroelectric power plant. A second circuit will be added to the National Grid Line 112 that currently traverses the Site during the relocation of this line in order to transmit the needed electricity from the substation to the Plug Power facility. The substation will include both NYPA and National Grid infrastructure.

Placement of the substation is based upon multiple criteria, including (1) connectivity and proximity to the 345 kV transmission line as the line will be broken to run through the substation, (2) proximity to the 115 kV transmission line that runs through the STAMP Site to reduce the amount of additional line and structures needed to tie into the existing line, (3) maximum distance from all residences adjacent to STAMP, and (4) avoids impacts to wetlands (Figure 1).

The WWTF will be constructed to treat the sanitary wastewater generated by the manufacturing tenants. This facility will be located within the "Utility Area", a centrally located area within the STAMP Site, allowing for easy collection from all future companies (Figure 1). The access road from Crosby Road will be built separately, as it will be utilized for the powerline relocation project prior to WWTF construction but is included within this permit application. This road will remain gravel until construction of the WWTF, at which point it will be paved.

2.2 Project Construction and Sequence

Construction of the substation is slated to begin July 2022 and proceed until mid-October 2023 and is slated to provide energy to both the substation and the Plug Power Facility. The construction sequence can be found in Table 1.

Table 1 – Substation Construction Schedule

Activity	Estimated Start Date	Estimated End Date
Below Grade Construction: • Grading substation and access road • Foundation installation • Below grade grounding • Fence installation	July 2022	January 2023
Steel Structure Construction	October 2022	February 2023
Electrical Equipment Installation	December 2022	April 2023
Transformer Installation	September 2023	October 2023
Energizing Substation and Plug Power	October 2023	October 2023

No date has been set for construction of the WWTF, as this is dependent upon securing additional tenants. The gravel access road from Crosby Road will be constructed in June 2022.

3.0 Listed Species Review

3.1 Agency Database Review and Consultation

Based on the results of agency database review and consultation (NY Natural Heritage Program, NYSDEC, US Fish and Wildlife Service), the state-listed endangered short-eared owl and the state-listed threatened northern harrier have been identified as potentially occurring within the STAMP Site, and therefore has the potential for incidental take as a result of Project construction. Monarch butterfly (*Danaus plexippus*), a candidate species for federal listing, was also noted by United States Fish and Wildlife Service (USFWS).

As it is not currently listed, impacts to the monarch butterfly do not need to be formally evaluated. See consultation documentation in Appendix B.

Due to STAMP's location within a state-significant Raptor Winter Concentration Area and known occurrence of short-eared owl and northern harrier on nearby state and federal lands, NYSDEC requested updated winter raptor survey data. Previous surveys were conducted in the 2010 – 2011 wintering season. CC Environment & Planning initiated an updated investigation on December 20, 2021. The winter raptor survey design was approved by NYSDEC staff. Surveys were conducted every other week through the end of April 2022 at four survey points, providing views of the developable acreage within the STAMP Site.

3.2 NYSDEC Part 182 Determination

Short-eared owl and northern harrier were both documented utilizing the STAMP Site for foraging starting on December 20, 2021. NYSDEC was provided with the survey data on February 7, 2022, after which they expanded the area mapped as "occupied habitat" for both species (Appendix B). Any open fields greater than 25 acres within these mapped occupied habitat boundaries are now considered occupied habitat by NYSDEC. Part 182 defines occupied habitat as:

> *Occupied habitat means a geographic area in New York within which a species listed as endangered or threatened in [6 NYCRR Part 182] has been determined by the department [i.e., NYSDEC] to exhibit one or more essential behaviors. Once identified as occupied habitat, the department will continue to consider that area as occupied habitat until the area is no longer suitable habitat for that species or monitoring has indicated that reoccupation by that species is unlikely.*

Due to occupied habitat occurring within the Site, NYSDEC has determined that construction of the substation and WWTF will result in adverse impacts to the species and that "take" is likely to occur due to the "adverse modification of habitat". Part 182 defines take as:

> *Take or taking means the pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting of any species listed as endangered or threatened in this Part, and all lesser acts such as disturbing, harrying or worrying. Lesser acts means, for the purposes of this Part, harassing, harming, maiming, wounding or collecting any species listed as endangered or threatened in section 182.5 of this Part, any act which is likely to cause the death of or injury to any individual member(s) of a species listed as endangered or threatened in section 182.5 of this Part, any adverse modification of habitat of any species listed as endangered or threatened in section 182.5 of this Part, and any interference with or impairment of an essential behavior of a species listed as endangered or threatened in section 182.5 of this Part.*

Therefore, the Regulations require GCEDC to develop a mitigation plan that demonstrates an overall net conservation benefit for the affected species. A net benefit is achieved when adverse impacts of a

proposed activity on a protected species or its occupied habitat are outweighed by positive impacts anticipated from the proposed mitigation measures. This Net Conservation Plan includes a summary of the Project's impact, avoidance, and minimization efforts as well as a mitigation plan, developed to ensure that construction of the Project results in a net conservation benefit for short-eared owl and northern harrier.

4.0 Species Background and Site Presence

The New York Natural Heritage Program identified the STAMP Site as occurring within a Winter Raptor Concentration Area, with known wintering occurring by short-eared owl and northern harrier on surrounding state and federal lands. This section provides a summary of the two species as well as additional details regarding their occurrence within STAMP.

4.1 Habitat and Natural History

4.1.1 Short-eared Owl

The short-eared owl is one of the world's most widely distributed owls occurring on every continent except Australia and Antarctica. Within the United States, they have been documented in all 50 states, with larger populations occurring in the western and central portions of the country than the east. The short-eared owl is listed an endangered in New York State due to declining populations related to loss of habitat.

Short-eared owls occupy large open areas with low vegetation such as prairies, coastal grasslands, heathlands, shrub-steppe, tundra, marshes, meadows, and agricultural areas (Wiggins et al. 2020). Wintering habitat is similar to breeding habitat, with birds migrating southward to areas of minimal snow cover that allows them continued access to their preferred food source. Their primary prey is small mammals, especially meadow voles (*Microtus pennsylvanicus*), although they have also been known to consume birds and some insects (Wiggins et al. 2020). Short-eared owls forage mainly on the wing. In winter this occurs primarily in the low-light conditions near sunset (Clark 1975, Swengel and Swengel 2002).

New York State is at the southern edge of the short-eared owl breeding range, with breeding rare within the state and limited to the St. Lawrence and Lake Champlain Valleys, the Great Lakes plains, and the marshes of Long Island's south shore (NYNHP 2022a). Wintering owls are more numerous in the state, with significant numbers occurring within the Finger Lakes, Lake Ontario plains, the Hudson Valley, and Long Island (NYNHP 2022a). The date of arrival to the wintering grounds varies each year, generally occurring within October or November. Birds may occupy a single wintering area for the full season, departing in late March or early April, or they may only remain for part of the season, likely dependent upon food resources and snow depth. Short-eared owls are considered a nomadic species, moving in relation to the cyclic nature of vole populations, thus they may not occupy the same breeding or wintering areas from year to year (Wiggins et al. 2020).

Short-eared owl populations are difficult to estimate with certainty due to their nomadic behavior, tendency to occupy remote areas, and the lack of standardized data collection for the species (Booms et al. 2014). With the data that is available, the species appears to be experiencing a decline throughout North America over the past half century. Breeding Bird Survey (BBS) data collected since 1966 show a decline of 1.7% through 2019, although the data was considered "quite imprecise" as this species isn't well suited to the BBS methodology as they are not very vocal and tend to be active outside of the daily survey timeframe (Sauer et al. 2019). Christmas Bird Count (CBC) data from the United States and Canada between 1966 and 2010 showed a statistically significant decline in the number of owls counted per survey party-hour, with an approximately 50% decline in the number of owls counted per party hour in the United States and an 80% decline in Canada (Booms et al. 2014). Like the BBS, the CBC results must be interpreted cautiously because the survey is not well-matched to the crepuscular activity cycles of short-eared owls and has inherent limitations and biases (Bart et al. 1995, Sauer et al. 2012). However, the CBC covers more of the winter range of short-eared owls than the BBS does of the breeding range, thus it likely monitors a larger percentage of the continent's owl population (Booms et al. 2014).

In New York State, the population seems to have declined significantly between 1914 and 1974 (NYNHP 2022a). More recent data from the two completed Breeding Bird Atlases also show a decline. The first Atlas (1980-95) documented occupancy in 36 survey blocks statewide whereas the second (2000-05) documented occupancy in 24, a 33% decrease (NYDEC 2014a). The third Atlas is currently underway (2020-25), with no confirmed breeding records through May 2022 and records of probable breeding in only two blocks (Cornell Lab 2022). There is no published data on wintering populations within the state besides those collected during the Christmas Bird Count, thus the trend for this population is not fully known.

The main threat to the species is grassland habitat loss and fragmentation, as the birds require large, intact tracts of grassland for both breeding and wintering (Wiggins et al. 2020). In the United States, native grasslands have declined by 97% of their historical extent causing grassland birds to incur some of the largest declines throughout the country (North American Bird Conservation Initiative 2011). Secondary declines associated with this habitat alteration include increased nest predation and human disturbance (Wiggins et al. 2020). Being ground nesters, short-eared owls are highly susceptible to disturbance and predation at the nest site. In New York, the majority of grassland habitats are privately owned, typically agricultural fields (Morgan and Burger 2008). Loss or degradation of these habitats has been caused by changes in farming practices, including conversion to row crops or more frequent mowing, abandonment of farming leading to succession to shrublands and forests, development, and fire suppression (Post 2005).

4.1.2 Northern Harrier

Northern harriers are a state-threatened species with a broad distribution across North America. They occupy large, undisturbed tracts of wetlands and grasslands with low, thick vegetation. Breeding occurs in freshwater and brackish marshes, lightly grazed meadows, old fields, tundra, prairies, shrub-steepe, and riverside woodlands (Smith et al. 2011). They utilize a range of open habitats during winter, including

deserts, coastal sand dunes, pasturelands, croplands, dry plains, grasslands, old fields, estuaries, open floodplains, and marshes (Smith et al. 2011). Birds from northern breeding areas migrate south while other birds remain in the same location year-round, likely dependent upon snow cover and access to food resources. Like the short-eared owl, northern harriers forage on the wing. Small mammals and birds comprise the majority of their diet, with consumption of meadow voles occurring almost exclusively by those wintering in the northern part of the range (Smith et al. 2011).

Breeding northern harriers are more common than short-eared owls and are more widespread within New York, but they are still an uncommon species. Confirmed breeding in the state include the western Great Lakes plain, open habitats in the Adirondacks, the western Finger Lakes, Long Island, and the Hudson, Saint Lawrence, and Lake Champlain Valleys (NYNHP 2022b). The winter range is similar. Along with these two seasons, the northern harrier is a fairly common to common fall migrant and a very common spring migrant (NYSDEC 2014b). As with the short-eared owl, northern harriers are nomadic, moving in relation to prey availability.

While northern harriers remain fairly common across North America, their populations are declining. From 1966 to 2019, the North American Breeding Bird Survey records a steady decline of over 1% per year, resulting in a cumulative loss of about 34% throughout the United States and Canada (Sauer et al. 2019). Within New York, the species was considered a common breeder until the 1950s, when the population began to decline (Levine 1998). The population has appeared to stabilize in recent decades, with no change in occupancy between the two completed Breeding Bird Atlases, although shifts in occupied areas were noted (NYSDEC 2014b). Christmas Bird Count data shows an increasing trend from 1950 to 2010 for New York's wintering population and for wintering populations in states adjacent to New York (NYSDEC 2014b).

Threats to this species are the same as for short-eared owl, mainly the loss and fragmentation of large grasslands. Additionally, due to their proclivity to nest within wetlands, loss and degradation of these habitats through draining, dredging, and filling has also negatively impacted harrier populations (Evers 1992). New York has lost over half of its wetlands since colonization (Tiner 1984).

4.2 Habitat Suitability and Species Presence

Short-eared owls and northern harriers have adapted to utilize agricultural areas as native grasslands have decreased. While these species have been documented foraging within row crop fields, they primarily use grass-dominated areas, including hay fields, pastures, fallow fields, and fresh and salt marshes, where meadow vole populations are the highest. Though some agricultural activities, such as haying and grazing, are good management tools for grassland habitats when completed at appropriate times and intervals, typical agricultural activities such as frequent disturbance and fertilizer/pesticide application are all generally undertaken without respect to grassland bird populations, and thus decrease the value of the habitat for these species.

4.2.1 2021 – 2022 Survey Results

Winter raptor surveys were conducted from December 20, 2021, through April 28, 2022, following NYSDEC's *Survey Protocol for State-listed Wintering Grassland Raptor Species August 2021* (NYSDEC 2021), with an approved modification of conducting surveys every other week at each of the four survey points.

Short-eared owls were observed foraging at the STAMP Site during each survey period except the final one, in late April. They were primarily observed from Point 2, within the northwest corner of the Site, utilizing several large hay/fallow fields (Figure 2). On December 21, 2021, two owls were observed foraging within the large hay field in the southern portion of the Site, along Crosby Road, but were not observed in this location after this date (Figure 2). A high count of four birds was observed on January 11, 2022, although typically two birds were observed at Point 2 during each survey. It total, 26 observations of foraging short-eared owls were documented during 11 surveys.

Northern harrier habitat was more varied during the 2021 – 2022 survey season than short-eared owls (Figure 2). As with the short-eared owl, they primarily utilized the large fields in the northwest portion of the Site. They also utilized the hay/fallow fields in the southern portion of the Site on numerous occasions. On December 20, 2021, a pair of harriers was observed foraging along the edge of a cut corn field on their way to John White Wildlife Management Area. A single harrier was also observed briefly foraging within a wheat field in the northern portion of the Site, just east of Crosby Road. More harriers were observed flying over the Site (27) than were seen foraging within the Site (23).

5.0 Potential Impacts

As noted in Section 3.2, potential impacts to short-eared owl and northern harrier are related to the adverse modification of habitat. Given that both species share wintering habitat requirements and have similar threats to species recovery (habitat modification and loss), impacts on these species are assumed to be similar.

The Substation Project Area consists of successional northern hardwood forest, cropland/field crop (hay field), and cropland/row crop. The total limit of disturbance for substation construction will be 21.5 acres, with 10.1 acres being temporary disturbance during construction and 11.4 acres of permanent impacts, including the substation and permanent access roadway from Crosby Road (Figure 3). Of the 11.4 acres of permanent land conversion, 7.6 acres are located within deemed occupied habitat for short-eared owl and northern harrier (Figure 3). This includes portions of a hay field with documented listed species use, a hay field without documented use, and a row crop field with limited documented use. The majority of these fields (81.8, 46.6, 65.8 acres, respectively) will remain unchanged and will continue to be farmed. Additional acreage, including temporarily impacted areas, will return to agricultural production after construction is complete. See Table 2 for impacts by current habitat type.

Table 2 – Substation Impacts by Habitat Type			
Habitat Type	**Temporary Impacts (acres)**	**Permanent Impacts (acres)**	**Total Impacts (acres)**
Hay Field (SEOW/NOHA Use Documented)*	3.7	4.5	8.2
Hay Field (No SEOW/NOHA Use Documented)*	2.2	2.4	4.6
Forest/Hedgerows	2.9	3.7	6.6
Row Crop*	0.9	0.7	1.6
Fallow – Roadside, Former Residence	0.4	0.1	0.5
TOTAL	**10.1**	**11.4**	**21.5**

*Occupied habitats

Total limits of disturbance for the WWTF will be 8.8 acres, with 4.9 acres of temporary disturbance and 3.9 acres of permanent habitat conversion (Figure 4). This calculation includes 1.4 acres of temporary disturbance that will be associated with construction of the access road from Crosby Road, which will initially be installed as a gravel road for the powerline relocation project but will later be paved during WWTF construction. A portion of the WWTF will be located within the footprint of the laydown area, which will be used for staging materials and equipment for use during the powerline relocation project[1]. The limits of disturbance for the WWTF will occur wholly within the limits of disturbance for the laydown area, thus no additional acreage will be disturbed for WWTF construction (Figure 4).

The location of the future WWTF is currently a cropland/row crop field that was farmed consistently prior to 2021 but remained fallow in 2021 in anticipation of construction. At the time of construction of the WWTF, the area will consist of the gravel pad used as the laydown area and previously disturbed fallow land (Table 3). Post construction, the remainder of the field (17.4 acres) will be managed as open space until future development requires its use.

[1] The laydown area will be constructed and utilized only during the non-wintering months (i.e., May – October), thus avoids the need for a Part 182 Permit, pursuant NYSDEC's letter dated May 2, 2022 (Appendix B).

Table 3 – WWTF Impacts by Habitat Type			
Habitat Type	**Temporary Impacts (acres)**	**Permanent Impacts (acres)**	**Total Impacts (acres)**
Gravel Pad	1.6	1.8	3.4
Fallow – Previously Disturbed	1.9	1.6	3.5
Fallow Row Crop*	1.4	0.5	1.9
TOTAL	**4.9**	**3.9**	**8.8**

*Access road construction

6.0 Avoidance, Minimization, and Mitigation

6.1 Avoidance and Minimization Strategy

The Applicant will implement the following measures to avoid and minimize possible impacts to short-eared owl and northern harrier:

- Facilities have been designed with the smallest permanent and temporary footprints possible to minimize disturbance to the occupied habitat. Roughly one-third of the substation's permanent impacts will be located in forest/shrubland, a habitat not considered suitable for winter raptors. Additionally, the grassland habitat to be impacted is close to the forest edge, allowing the majority of the fields to remain unfragmented.
- Monitoring during the winter survey period will continue in order to evaluate species use and/or impacts within the project areas.

6.2 Mitigation

6.2.1 Net Conservation Benefit

According to 6 NYCRR Part 182.2, the term "net conservation benefit" is defined as follows:

> *Net conservation benefit means a successful enhancement of the species' subject population, successful enhancement of the species' overall population or a contribution to the recovery of the species within New York. To be classified as a net conservation benefit, the enhancement or contribution must benefit the affected species listed as endangered or threatened in this Part or its habitat to a greater degree than if the applicant's proposed activity were not undertaken*.

Though the avoidance and minimization measures described in Section 6.1 will reduce take as a result of construction of the Project, mitigation will be required to offset unavoidable habitat impacts. The proposed mitigation must provide a net conservation benefit to the affected listed species as defined above.

6.2.2 Proposed Mitigation Plan

NYSDEC has stated that to achieve a net conservation benefit for wintering grassland birds, a 1:1 (new/improved: impacted) ratio of quality habitat must be created or enhanced. The Applicant proposes to accomplish this on-site on a 25-acre field the southeastern portion of the Site (Figure 5). The 25-acre field was historically farmed. Farming ceased in a portion of the field around 2009 and in the remainder of the field around 2018. This has allowed succession to transition the field from open grassland to an old field/shrubland matrix. The area that has not been farmed in over a decade is now primarily 5 to 7-foot-tall shrubs with small pockets of open areas comprised of herbaceous cover. The more recently farmed area is still primarily open with a scattering of shrubs that are in the 1 to 3-foot-tall size range. It is the shrubland portion of the field, located at the north end, that is being proposed for mitigation, as this area no longer provides habitat for grassland birds. See Appendix C for photographs.

To re-establish suitable habitat for short-eared owl and northern harrier, 11.5 acres of shrubs will be cleared through brush-hogging or other mechanical methods. This will allow for revegetation by grasses and forbs, which will provide the habitat structure necessary for occupation by meadow voles. Removing the shrubs will expand the suitable habitat acreage within the field and within the adjacent landscape as this field is approximately 700 feet from the grasslands at John White Wildlife Management Area. Additionally, the 25-acre mitigation field is located between two private fields currently managed as hay (~26 acres) and row crops/pasture (~23 and ~15 acres, respectively).

Once the proposed mitigation action is complete, a report, including photographs, will be submitted to NYSDEC Region 8 detailing the actions that occurred and the current habitat present within the mitigation area.

6.3 Commitment to Fund and Execute

GCEDC currently owns the property proposed for mitigation. As soon at the mitigation plan is approved, GCEDC will contract with an insured individual or company to initiate brush clearing. Completion of the mitigation is projected for the end of October 2022. A board resolution approving the mitigation action and funding required to complete will be provided to NYSDEC.

7.0 References

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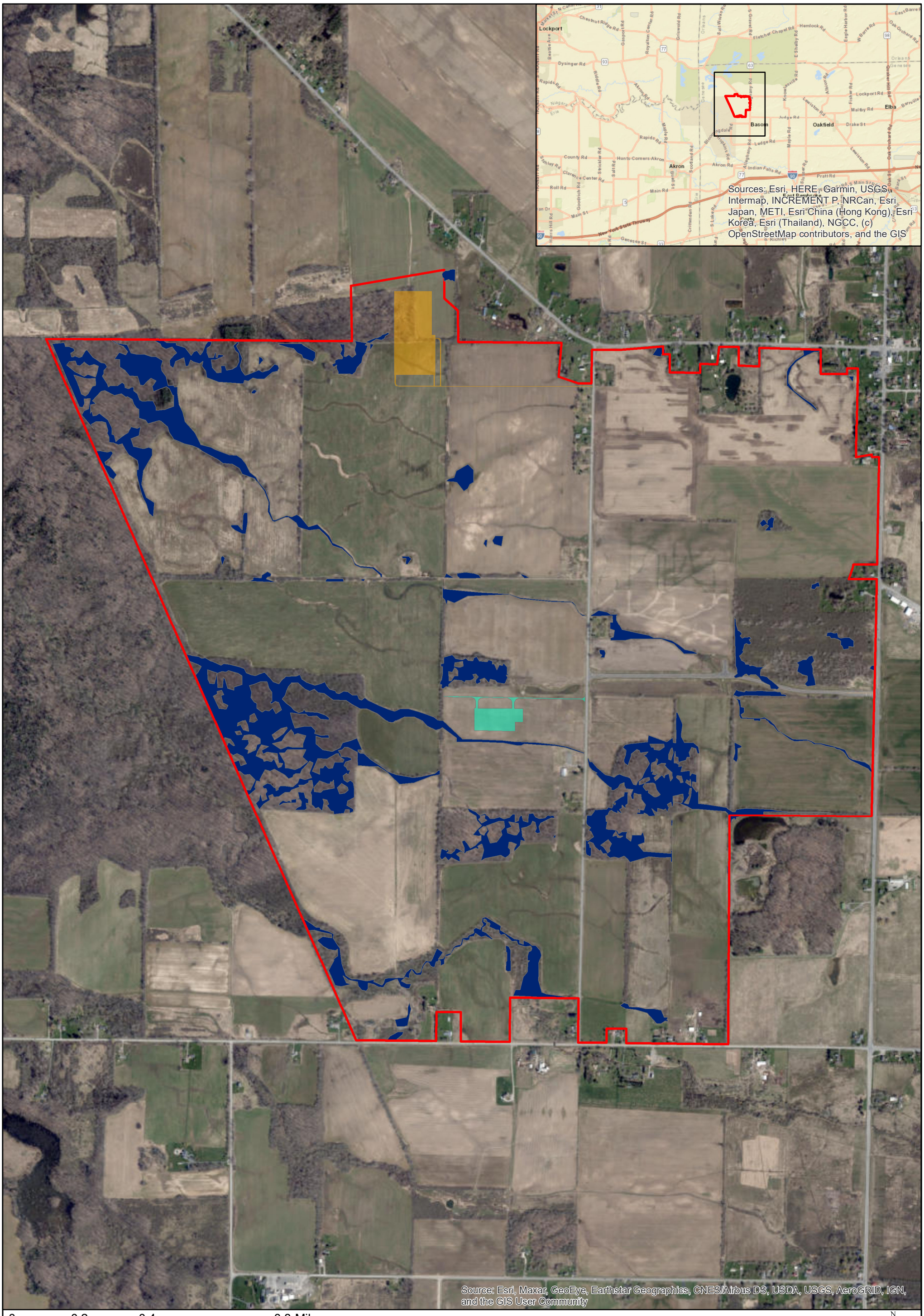
Figures



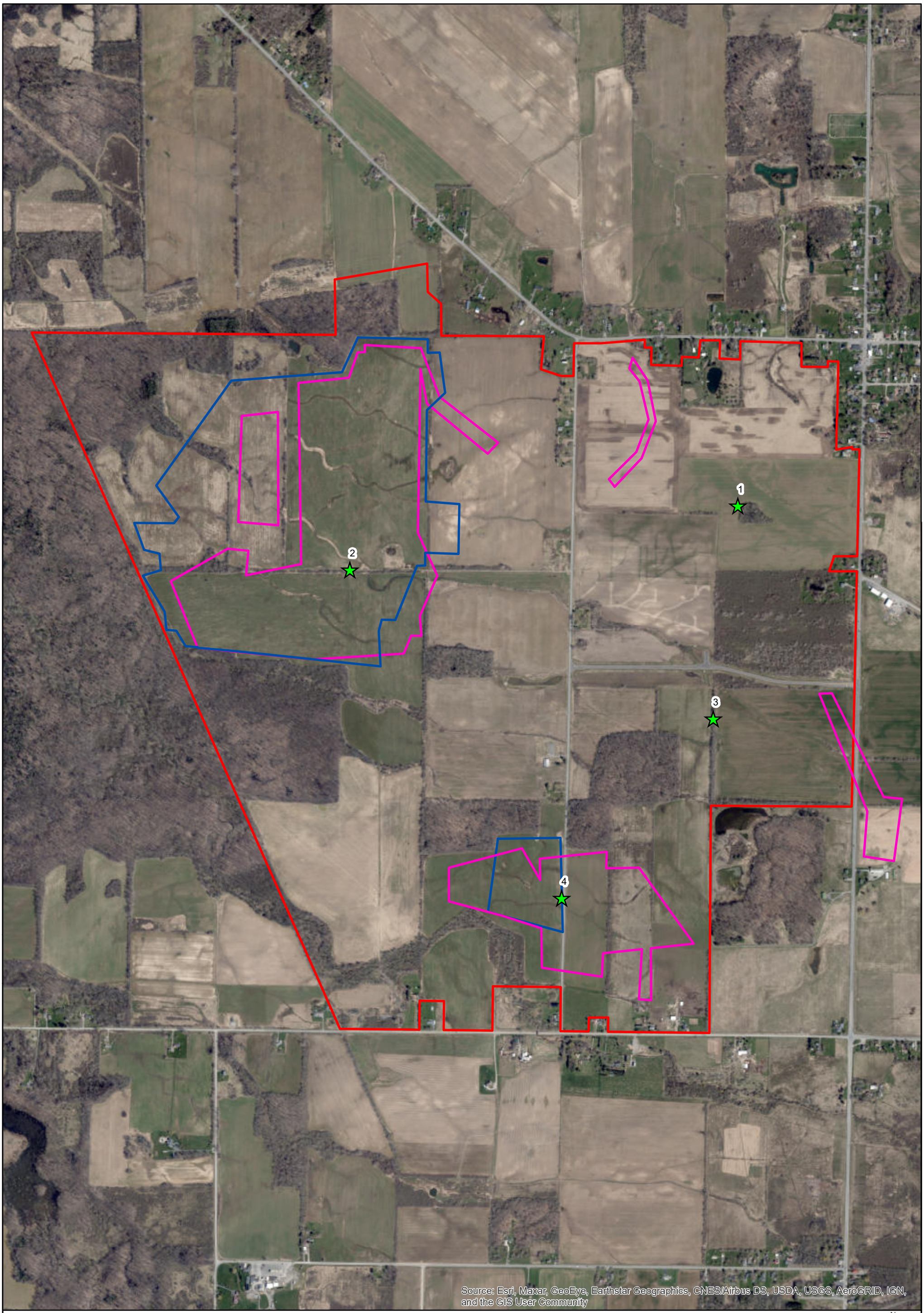
Project Location

Science and Technology Advanced Manufacturing Park
Town of Alabama, Genesee County, New York

K. Hojnacki, Date: 6/2/2022

- Substation
- WWTF
- Wetlands and Streams
- STAMP Boundary

Figure 1



CC Environment & Planning

Short-eared Owl/Northern Harrier Foraging Areas

Science and Technology Advanced Manufacturing Park
Town of Alabama, Genesee County, New York

K. Hojnacki, Date: 5/31/2022

Short-eared Owl
Survey Points
Northern Harrier
STAMP Boundary

Figure 2

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

0 0.05 0.1 0.2 Miles

N

Substation Impacts

Science and Technology Advanced Manufacturing Park
Town of Alabama, Genesee County, New York

K. Hojnacki, Date: 6/2/2022

CC Environment & Planning

Permanent Impacts
Limits of Disturbance
STAMP Boundary

2022 Land Use

Hay - Convert to Corn
Soybeans
Forest
Young Forest
Fallow
No Farming Due to Development
Developed
Wetlands and Streams

Figure 3

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

0 0.0325 0.065 0.13 Miles

N

Wastewater Treatment Plant Impacts

Science and Technology Advanced Manufacturing Park
Town of Alabama, Genesee County, New York

K. Hojnacki, Date: 6/2/2022

Permanent Impacts
- WWTF
- Laydown Area

Limits of Disturbance
- WWTF
- Laydown Area

2022 Land Use
- Soybeans
- Hay
- Forest
- Developed
- No Farming Due to Development
- Wetlands and Streams

Figure 4

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

0 0.0475 0.095 0.19 Miles

N

CC Environment & Planning

Proposed Mitigation Area

Science and Technology Advanced Manufacturing Park
Town of Alabama, Genesee County, New York

K. Hojnacki, Date: 5/31/2022

Proposed Mitigation
Privately Owned Fields
GCEDC-Owned Field
STAMP Boundary
John White WMA

Figure 5

Appendix A
Joint Permit Application Form

NEW YORK STATE | Department of Environmental Conservation | Office of General Services | Department of State

US Army Corps of Engineers

JOINT APPLICATION FORM

For Permits for activities activities affecting streams, waterways, waterbodies, wetlands, coastal areas, sources of water, and endangered and threatened species.

You must separately apply for and obtain Permits from each involved agency before starting work. Please read all instructions.

1. **Applications To:**

>NYS Department of Environmental Conservation ☑ Check here to confirm you sent this form to NYSDEC.

Check all permits that apply:

- ☐ Stream Disturbance
- ☐ Excavation and Fill in Navigable Waters
- ☐ Docks, Moorings or Platforms
- ☐ Dams and Impoundment Structures
- ☐ 401 Water Quality Certification *
- ☐ Freshwater Wetlands
- ☐ Tidal Wetlands
- ☐ Wild, Scenic and Recreational Rivers
- ☐ Coastal Erosion Management
- ☐ Water Withdrawal
- ☐ Long Island Well
- ☑ Incidental Take of Endangered / Threatened Species

* See Instructions Page 3

>US Army Corps of Engineers ☐ Check here to confirm you sent this form to USACE.

Check all permits that apply: ☐ Section 404 Clean Water Act ☐ Section 10 Rivers and Harbors Act

Is the project Federally funded? ☐ Yes ☑ No

If yes, name of Federal Agency:

General Permit Type(s), if known:

Preconstruction Notification: ☐ Yes ☑ No

>NYS Office of General Services ☐ Check here to confirm you sent this form to NYSOGS.

Check all permits that apply:

☐ State Owned Lands Under Water

☐ Utility Easement (pipelines, conduits, cables, etc.) ☐ Docks, Moorings or Platforms

>NYS Department of State ☐ Check here to confirm you sent this form to NYSDOS.

Check if this applies: ☐ Coastal Consistency Concurrence

2. **Name of Applicant**

Genesee County Economic Development Center

Taxpayer ID (if applicant is NOT an individual): 331101375

Mailing Address: 99 MedTech Drive, Suite 106

Post Office / City: Batavia

State: NY

Zip: 14020

Telephone: 585-343-4866, ext 17

Email: mmasse@gcedc.com

Applicant Must be (check all that apply): ☑ Owner ☐ Operator ☐ Lessee

3. **Name of Property Owner (if different than Applicant)**

Mailing Address

Post Office / City

State

Zip

Telephone

Email

For Agency Use Only	Agency Application Number:

4. **Name of Contact / Agent**

Sheila Hess/ CC Environment & Planning

Mailing Address	Post Office / City	State	Zip
23 Jackson Street, Suite 201	Batavia	NY	14020

Telephone 585-219-4030 Email shess@ccenvironment.com

5. **Project / Facility Name**

STAMP Plug Power Electrical Project

Property Tax Map Section / Block / Lot Number: See Attached Location Map

Project Street Address, if applicable	Post Office / City	State	Zip
		NY	

Provide directions and distances to roads, intersections, bridges and bodies of water

West of Route 77/63, south of Route 77, north of Judge Road

☑ Town ☐ Village ☐ City

County	Stream/Waterbody Name
Genesee	See Attached Map

Alabama

Project Location Coordinates: Enter Latitude and Longitude in degrees, minutes, seconds:

Latitude: 43 ° 05 ' 6.698 " Longitude: -78 ° 24 ' 30.281 "

6. **Project Description:** Provide the following information about your project. Continue each response and provide any additional information on other pages. **Attach plans on separate pages.**

a. Purpose of the proposed project:

GCEDC is constructing additional infrastructure (electrical substation and wastewater treatment facility(WWTF)/ laydown area) to support development of the Western New York Science and Technology Advanced Manufacturing Park (STAMP).

b. Description of current site conditions:

The project is within uplands, mainly is areas previously disturbed due to farming. The substation will be located within cropland/field crop (hay fields), cropland/row crop, and successional northern hardwood forest. The WWTF/ laydown area will be located within a cropland/row crop field that was farmed consistently prior to 2021 but remained fallow in 2021 in anticipation of construction.

c. Proposed site changes:

Permanent impacts include an electrical substation and access road on 11.4 acres and WWTF on 3.4 acres. See attached Incidental Take Permit for details.

d. Type of structures and fill materials to be installed, and quantity of materials to be used (e.g., square feet of coverage, cubic yards of fill material, structures below ordinary/mean high water, etc.):

See attached Incidental Take Permit for details.

e. Area of excavation or dredging, volume of material to be removed, location of dredged material placement:

No dredging of wetlands will occur. Some grading will be necessary for both project elements.

f. Is tree cutting or clearing proposed? ☑ Yes If Yes, explain below. ☐ No

Timing of the proposed cutting or clearing (month/year): July - September 2022

Number of trees to be cut: Acreage of trees to be cleared: ~6 acres

g. Work methods and type of equipment to be used:

Typical construction equipment and methods will be used for earthwork, project construction.

h. Describe the planned sequence of activities:

Substation construction: Mid-June 2022 through mid-October 2023. See attached Incidental Take Permit for details. Laydown area construction: ASAP in June 2022 and be completed by late June. No date has been set for construction of the WWTF, as this is dependent upon securing additional tenants.

i. Pollution control methods and other actions proposed to mitigate environmental impacts:

All wetlands are being avoided. Intensive earthwork will be conducted during the summer months to decrease impacts to wintering raptors. Each aspect of the project has an individual Storm Water Pollution Prevention Plan (SWPPP).

j. Erosion and silt control methods that will be used to prevent water quality impacts:

Care will be taken to secure silt fencing near wetlands. Each aspect of the project has an individual Storm Water Pollution Prevention Plan (SWPPP).

k. Alternatives considered to avoid regulated areas. If no feasible alternatives exist, explain how the project will minimize impacts:

All wetlands are being avoided. Facilities have been designed with the smallest permanent and temporary footprints possible to minimize disturbance to the winter raptor occupied habitat.

l. Proposed use: ☐ Private ☐ Public ☑ Commercial

m. Proposed Start Date: June 2022 Estimated Completion Date: October 2023

n. Has work begun on project? ☐ Yes If Yes, explain below. ☑ No

o. Will project occupy Federal, State, or Municipal Land? ☐ Yes If Yes, explain below. ☑ No

p. List any previous DEC, USACE, OGS or DOS Permit / Application numbers for activities at this location:

q. Will this project require additional Federal, State, or Local authorizations, including zoning changes?

☐ Yes If Yes, list below. ☑ No

7. **Signatures.**

Applicant and Owner (If different) must sign the application. If the applicant is the landowner, the **landowner attestation form** can be used as an electronic signature as an alternative to the signature below, if necessary. Append additional pages of this Signature section if there are multiple Applicants, Owners or Contact/Agents.

I hereby affirm that information provided on this form and all attachments submitted herewith is true to the best of my knowledge and belief.

Permission to Inspect - I hereby consent to Agency inspection of the project site and adjacent property areas. Agency staff may enter the property without notice between 7:00 am and 7:00 pm, Monday - Friday. Inspection may occur without the owner, applicant or agent present. If the property is posted with "keep out" signs or fenced with an unlocked gate, Agency staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site. I understand that failure to give this consent may result in denial of the permit(s) sought by this application.

False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the NYS Penal Law. Further, the applicant accepts full responsibility for all damage, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from said project. In addition, Federal Law, 18 U.S.C., Section 1001 provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both where an applicant knowingly and willingly falsifies, conceals, or covers up a material fact; or knowingly makes or uses a false, fictitious or fraudulent statement.

Signature of Applicant | Date

Applicant Must be (check all that apply): ☑ Owner ☐ Operator ☐ Lessee

Printed Name: Mark Masse | Title: Senior VP of Operations

Signature of Owner (if different than Applicant) | Date

Printed Name | Title

Signature of Contact / Agent | Date

Printed Name: Sheila Hess | Title: CEO/Principal Ecologist

For Agency Use Only **DETERMINATION OF NO PERMIT REQUIRED**

Agency Application Number

(Agency Name) has determined that No Permit is required from this Agency for the project described in this application.

Agency Representative:

Printed Name | Title

Signature | Date

Appendix B
Agency Consultation and Database Review

United States Department of the Interior

FISH AND WILDLIFE SERVICE
New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9385
Phone: (607) 753-9334 Fax: (607) 753-9699
http://www.fws.gov/northeast/nyfo/es/section7.htm

In Reply Refer To: September 15, 2021
Consultation Code: 05E1NY00-2018-SLI-0016
Event Code: 05E1NY00-2021-E-12988
Project Name: STAMP

Subject: Updated list of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This list can also be used to determine whether listed species may be present for projects without federal agency involvement. New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list.

Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the ESA, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC site at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list. If listed, proposed, or candidate species were identified as potentially occurring in the project area, coordination with our office is encouraged. Information on the steps involved with assessing potential impacts from projects can be found at: http://www.fws.gov/northeast/nyfo/es/section7.htm

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the Services wind

energy guidelines (http://www.fws.gov/windenergy/) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm; http://www.towerkill.com; and http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the ESA. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9385
(607) 753-9334

Project Summary

Consultation Code: 05E1NY00-2018-SLI-0016
Event Code: Some(05E1NY00-2021-E-12988)
Project Name: STAMP
Project Type:
Project Description: The proposed action consists of construction of low-density, campus-setting manufacturing facilities. In addition, depending on the technology, a series of utility buildings and warehouse areas are required to support the manufacturing facilities themselves. In addition to manufacturing facilities, there is an anticipated need for parking for employees and other vehicles, stormwater management areas, and ample setbacks and buffer zones from adjacent development.

Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@43.08670706361628,-78.40609443277464,14z

Counties: Genesee County, New York

Endangered Species Act Species

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

---

1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Insects

NAME	STATUS
Monarch Butterfly *Danaus plexippus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

June 13, 2021

Katlyn Hojnacki
CC Environment & Planning
23 Jackson Street
Batavia, NY 14020

Re: Science and Technology Advanced Manufacturing Park (STAMP)
County: Genesee Town/City: Alabama

Dear Katlyn Hojnacki:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the above project.

Enclosed is a report of rare or state-listed animals and plants, and significant natural communities that our database indicates occur in the vicinity of the project site.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our database. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the NYS DEC Region 8 Office, Division of Environmental Permits, at dep.r8@dec.ny.gov.

Sincerely,

Heidi Krahling
Environmental Review Specialist
New York Natural Heritage Program

413

The following state-listed animals have been documented in the vicinity of the project site.

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed.

For information about any permit considerations for your project, please contact the Permits staff at the NYSDEC Region 8 Office at dep.r8@dec.ny.gov, (585) 226-5400.

Birds

COMMON NAME	*SCIENTIFIC NAME*	*NY STATE LISTING*	*FEDERAL LISTING*	
The following species have been documented adjacent to the project site.				
Short-eared Owl *Nonbreeding*	*Asio flammeus*	Endangered		15235
Northern Harrier *Nonbreeding*	*Circus hudsonius*	Threatened		15013
Note: This area is also a state-significant Raptor Winter Concentration Area				
The following species has been documented within 1/4 mile of the project site.				
Sedge Wren *Breeding*	*Cistothorus platensis*	Threatened		14766
The following species has been documented within 1/2 mile of the project site.				
Pied-billed Grebe *Breeding*	*Podilymbus podiceps*	Threatened		10651

This report only includes records from the NY Natural Heritage database.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, and from NYSDEC at www.dec.ny.gov/animals/7494.html.

The following rare plants, rare animals, and significant natural communities have been documented at the project site, or in its vicinity.

We recommend that potential impacts of the proposed project on these species or communities be addressed as part of any environmental assessment or review conducted as part of the planning, permitting and approval process, such as reviews conducted under SEQR. Field surveys of the project site may be necessary to determine the status of a species at the site, particularly for sites that are currently undeveloped and may still contain suitable habitat. Final requirements of the project to avoid, minimize, or mitigate potential impacts are determined by the lead permitting agency or the government body approving the project.

The following plant is rare in New York State, and so is a vulnerable natural resource of conservation concern.

COMMON NAME	*SCIENTIFIC NAME*	*NY STATE LISTING*	*HERITAGE CONSERVATION STATUS*
Vascular Plants			
Heart-leaved Plantain	*Plantago cordata*	Rare	Vulnerable in NYS

Documented at the project site in an unamed creek north of Whitney Creek. 1999-05-09: The plants occur along and within a small, mud bottom stream. With the exception of that portion flowing through the wildlife management area the stream is shaded by a mature canopy of hemlock and hardwoods. Those plants observed within the wildlife management area are primarily in the open and exposed to direct sunlight for much of the day. 10050

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the rare animals and plants in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, from NatureServe Explorer at www.natureserve.org/explorer, and from USDA's Plants Database at http://plants.usda.gov/index.html (for plants).

The following rare plants and rare animals have historical records in the vicinity of the project site.

The following rare plants and animals were documented in the vicinity of the project site at one time, but have not been documented there since 1979 or earlier, and/or there is uncertainty regarding their continued presence. There is no recent information on these plants and animals in the vicinity of the project site and their current status there is unknown. In most cases the precise location of the plant or animal in this vicinity at the time it was last documented is also unknown.

If suitable habitat for these plants or animals is present in the vicinity of the project site, it is possible that they may still occur there. We recommend that any field surveys to the site include a search for these species, particularly at sites that are currently undeveloped and may still contain suitable habitat.

COMMON NAME	*SCIENTIFIC NAME*	*NYS LISTING*	*HERITAGE CONSERVATION STATUS*
Butterflies			
Karner Blue	*Plebejus melissa samuelis*	Endangered *and Federally Listed as Endangered*	Critically Imperiled in NYS and Globally Rare

1970-06-13: The butterflies were observed at Tonawanda Seneca Nation. There was a small population of lupine with approximately 900 plants. 3648

Frosted Elfin	*Callophrys irus*	Threatened	Critically Imperiled in NYS and Globally Rare

1970: The butterflies were observed at Tonawanda Seneca Nation. The butterflies were observed in a small patch of lupine with approximately 900 plants. The area covered about 1 hectare. 13558

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the rare animals and plants in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, from NatureServe Explorer at www.natureserve.org/explorer, and from USDA's Plants Database at http://plants.usda.gov/index.html (for plants).

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8
6274 East Avon-Lima Road, Avon, NY 14414-9516
P: (585) 226-5400 | F: (585) 226-2830
www.dec.ny.gov

BY E-MAIL

February 17, 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: STAMP Site
Part 182 Jurisdiction
Alabama (T), Genesee (C)

Dear Mr. Masse:

This letter serves as notice to GCEDC about occupied habitat of New York State listed species and the subsequent regulatory jurisdiction.

Please see attached two maps confirming the new and existing short-eared owl and northern harrier occupied habitat boundaries. Short-eared owl is listed as an endangered species and northern harrier is listed as a threatened species in New York State, and they are both regulated under Part 182. Within these boundaries, any open field area >25 acres would be considered occupied habitat. Occupied habitat areas impacted by the project would be considered adversely modified and subject to needing an incidental take permit under Part 182. If the project cannot avoid impacts, minimization actions must be considered, and mitigation required for any unavoidable impacts.

Sedge wren occupied habitat is currently mapped on a portion of the STAMP site adjacent to John White Wildlife Management Area, but at this time, the occupied habitat boundary for sedge wren does not extend as far as the proposed laydown area.

We look forward to speaking with you at 11 today.

Sincerely,

Kimberly Merchant

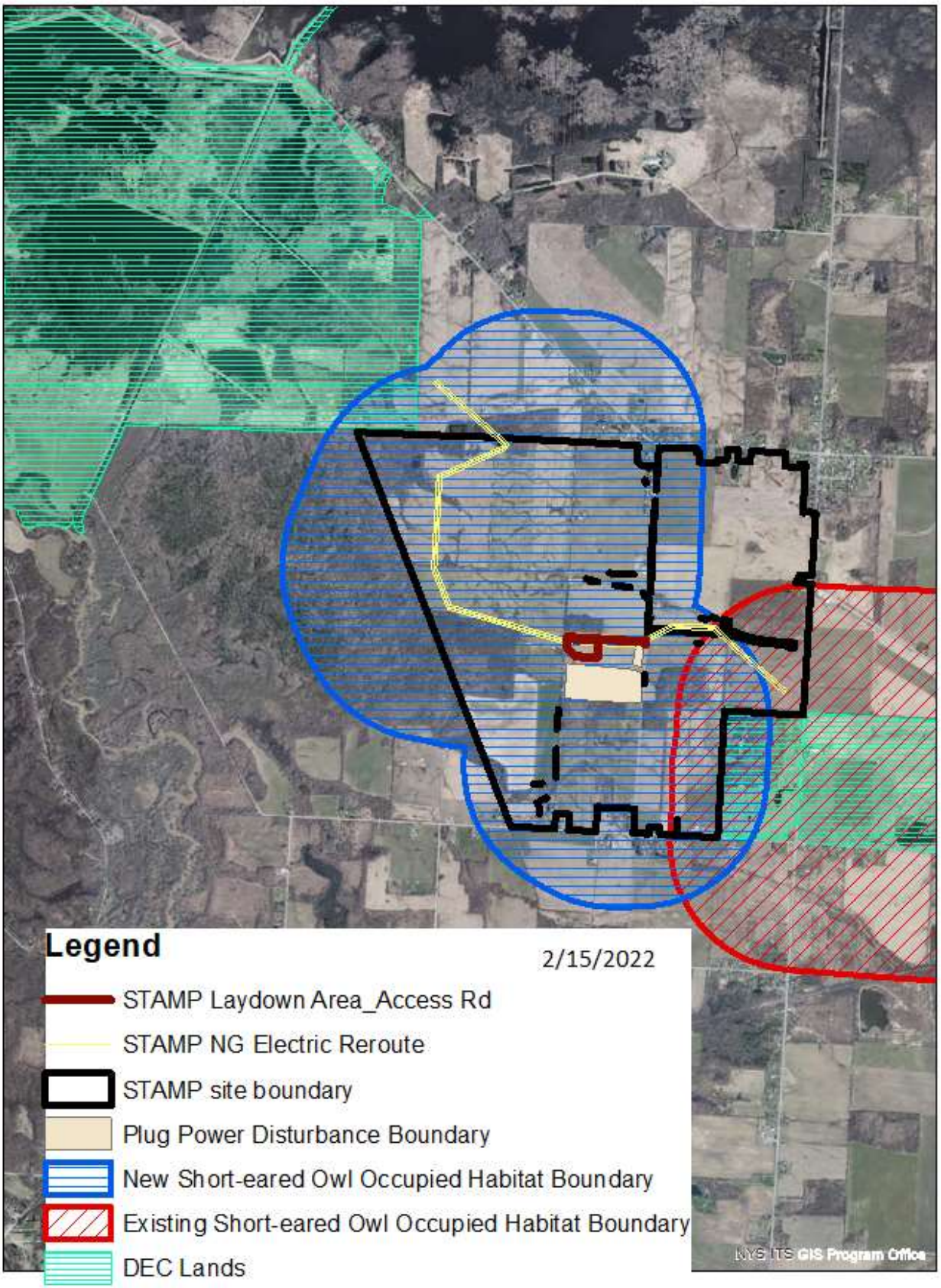
Kimberly A. Merchant
Deputy Regional Permit Administrator

Attachments: Listed Species Maps

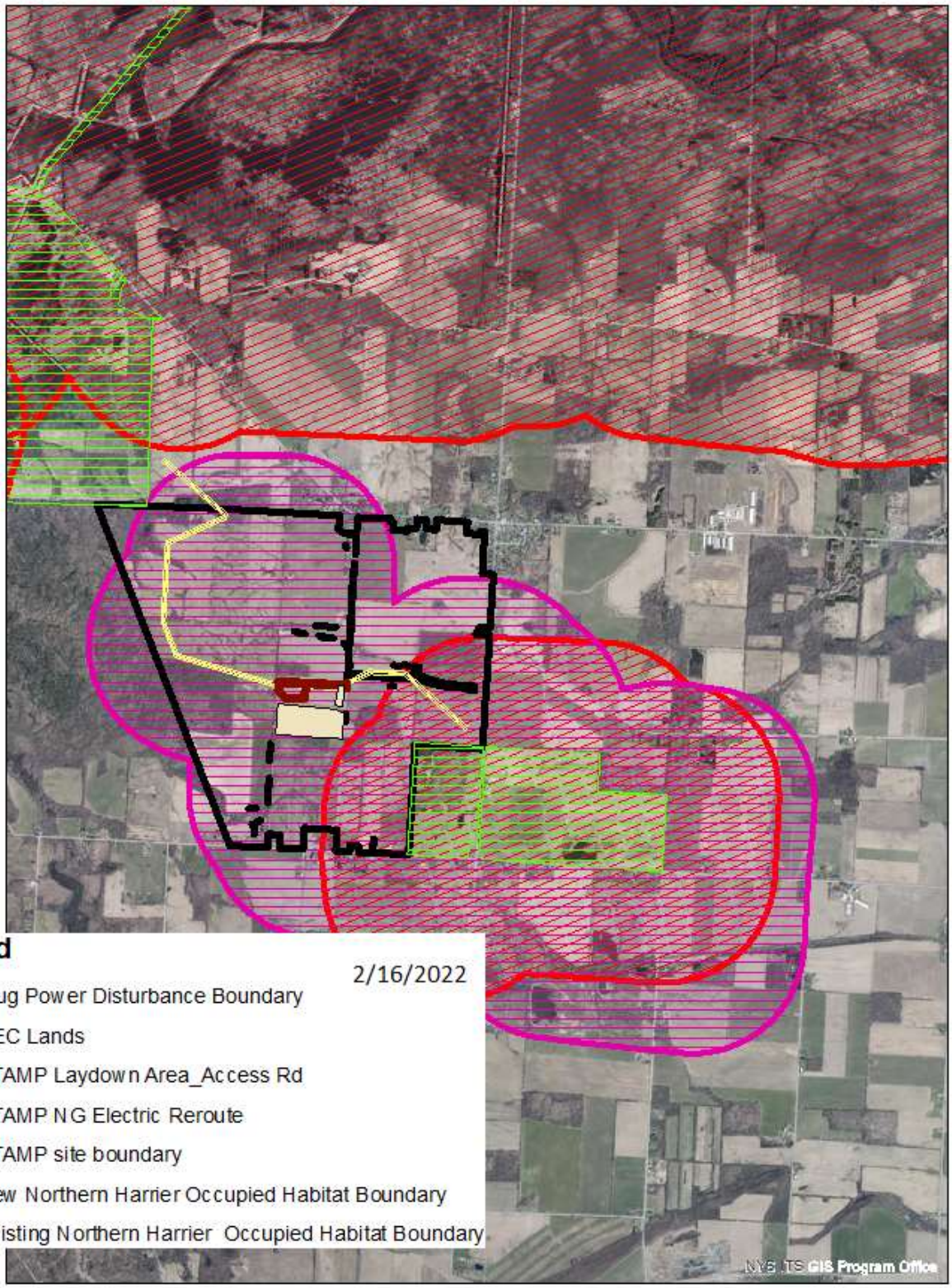
Cc by email:

A. Walters, Esq., Phillips Lytle LLP
N. Herter, OPRHP
T. Roster, USFWS
S. Hess, CC Environment and Planning
K. Hojnacki, CC Environment and Planning
T. Walsh, Regional Director, NYSDEC Region 8
T. Haley, Regional Permit Administrator, NYDEC Region 8
L. Schwartz, Office of General Counsel, NYSDEC Region 8
D. Witt, Indian Nations Affair Coordinator, Office of Environmental Justice
C. Vandrei, Agency Historic Preservation Officer, Lands and Forests
J. Landry, Bureau of Ecosystem Health, NYSDEC Region 8
H. Kennedy, Wildlife, NYSDEC Region 8
M. Wasilco, Wildlife, NYSDEC Region 8
B. Schilling, Regional Engineer, NYSDEC Region 8
T. Blum, Regional Water Engineer, NYSDEC Region 8
L. Scannell, Division of Water, NYSDEC Region 8
J. Flaum, PSC

Short-eared Owl Part 182 Occupied Habitat at the STAMP Site



Northern Harrier Part 182 Occupied Habitat at the Stamp Site



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8
6274 East Avon-Lima Road, Avon, NY 14414-9516
P: (585) 226-5400 | F: (585) 226-2830
www.dec.ny.gov

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.

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 Merchant

Kimberly A. Merchant
Deputy Regional Permit Administrator

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Appendix C
Mitigation Area Photographs

STAMP Mitigation Area

June 1, 2022

Photo 1

Small, sparse shrubs found within more recently farmed area. Facing south.

Photo 2

More recently farmed area in the foreground with tall, dense shrubs in the background. Facing north.

Photo 3

Farming ceased along the western hedgerow (right) earlier than remainder of field. Tall shrub patch to the left is surrounded by more open habitat. Facing south.

Photo 4

Herbaceous patch within the shrubland portion of the field. Facing east.