

State Environmental Quality Review
FINDINGS STATEMENT AMENDMENT
STAMP WWTF, Force main, Laydown Area, and Substation and Associated Roads

October 31, 2022

Pursuant to Article 8 of the Environmental Conservation Law [ECL] (New York State Environmental Quality Review Act [SEQRA]) and its implementing regulations at 6 NYCRR Part 617, the NYS Department of Environmental Conservation (DEC), as an involved agency, makes the following findings with respect to the project named and described below:

Name of Action: Addition of Authorization for Powerline Construction under the ECL Article 11/Part 182 Endangered and Threatened Species Incidental Take Permit for the Western New York Science and Technology Advanced Manufacturing Park (STAMP) Infrastructure Projects.

Name of Applicants: Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (GCEDC) and STAMP Sewer Works, Inc.

DEC Application Numbers:

8-9908-00210/00005, 00007 (SPDES and ECL Article 24 Freshwater Wetlands)
8-1820-00032/00001(ECL Article 11 Endangered and Threatened Species, Part 182)

Description of Action:

Permittee Genesee County Industrial Development Agency (IDA), doing business as Genesee County Economic Development Center (GCEDC), and co-permittee STAMP Sewer Works, Inc., applied to modify their ECL Article 11/Part 182 Endangered and Threatened Species Incidental Take Permit which NYSDEC issued on September 2, 2022. The permit modification would allow the take of over-wintering habitat used by the State-Listed Endangered Short Eared Owl and the State-Listed Threatened Northern Harrier this winter (between November 1, 2022 and April 1, 2023) at the STAMP located west of State Route 77/6 of State Route 77, and north of Judge Road, in the Town of Alabama. The permit NYSDEC issued on September 2 did not authorize the current project because the initial permit application did not include it; at the time of the application for the initial permit, the applicant advised that the powerline (to connect the electrical substation to the Plug Power facility and future tenants of the STAMP) would be constructed prior to November 1, 2022, to avoid impacts to the Short Eared Owls and Northern Harriers during their winter foraging season. This modification includes construction of the power line after November 1, 2022, because the disturbance after this date will result in a taking of the habitat of these endangered and threatened birds this winter.

The construction of the powerline after November 1, 2022, will have a temporary impact on the over-wintering habitat of Short Eared Owls and Northern Harriers, over approximately 21 acres, or more, of the STAMP, and is thus required to be authorized by this Incidental Take (ECL Article 11/Part 182) Permit. Total temporary ground disturbance for the Project will be an additional 21.6 acres, with some additional incidental disturbance.

The existing powerline will be removed outside the winter foraging season of the Short-Eared Owls and Northern Harriers, i.e., between April 1 and November 1, to avoid impacts to these species and associated need for permitting under ECL Article 11/Part 182 for a taking. .

To the extent future development within the site may require further DEC review, separate Findings Statements will be issued at the appropriate time.

Location:

The STAMP site is in the Town of Alabama, Genesee County, consisting of approximately 1,300 acres generally northwest of the intersection of NYS Route 77, NYS Route 63, and Judge Road.

The new powerline will start at a pole located approximately mid-way down the north side of STAMP Road. The line will then extend to the west for approximately 1.1 mile before turning north, along the conservation easement protected area between the STAMP site and the Tonawanda Seneca Nation [TSN] Reservation for approximately 0.8 miles. The new line rejoins the existing line in a forested area along the northern boundary of STAMP. In addition to the new poles and line, a 14-foot-wide gravel access road will be installed from the laydown area (used for staging Project materials and equipment) to the northern end of the line, spanning approximately 1.2 miles (Figure 1). A gated entrance will secure access to the new gravel access road, excluding all except National Grid from using it.

Agency Jurisdiction(s):

- SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001)
- Article 11 ECL/Part 182, Endangered and Threatened Species

Date Final Generic EIS Filed and Findings:

The Draft Generic EIS was filed April 14, 2011, and the Final Generic EIS was filed January 19, 2012, by Genesee County Economic Development Center (“GCEDC”) as the SEQR Lead Agency. The Lead Agency Findings Statement on the Final Generic EIS was issued March 12, 2012. Pursuant to requirements in 6 NYCRR 617.10(d), the lead agency has evaluated additional information since preparation of the Final Generic

EIS and has filed the additional SEQR resolutions listed below. The last resolution listed is specific to this project:

- 2016 SEQR resolution adopting an amended findings statement.
- 2020 SEQR resolution affirming prior SEQR record
- 2021 SEQR resolution
- 2022 SEQR resolution adopting a negative declaration.
2022-SEQR Resolution to Amend a Neg Dec, full EAF and Neg Dec signed on 10-02-2022

Facts and Conclusions in the EIS, and other SEQR Record Documents, Relied Upon to Support the Decision:

SEQR Records:

NYS SEQR Signed Amended Findings Statement for the Western New York STAMP site dated July 2016

A Full EAF dated June 13, 2020, by GCEDC,

the Final Generic EIS referenced above; the “State Environmental Review Act Update for Proposed Improvements for Western New York Science and Technology Advanced Manufacturing Park” dated June 29, 2020, which includes a summary of changes,

The “Resolution of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center Pursuant to the State Environmental Quality Review Act for the Proposed Improvements at the Western New York Science and Technology Advanced Manufacturing Park” signed August 6, 2020.

GCEDC Notice of Intent to Act as Lead Agency and FEAF dated January 4, 2021, for STAMP Gateway Project.

The “Resolution of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center Pursuant to the State Environmental Quality Review Act Concerning Project Gateway- Proposed Future Use of a Portion of the Western New York Science and Technology Advanced Manufacturing Park dated February 2021.

The Updated SEQR for Proposed Improvements to Western New York Science & Technology Advanced Manufacturing Park – Wastewater Treatment Facility, Force Main, Substation, Powerline Reroute dated June 7, 2022 (which included a Notice of Intent to Act as Lead Agency and a Full Environmental Assessment Form (EAF) dated June 7, 2022).

GCEDC SEQR Determination for STAMP infrastructure Project dated July 21, 2022 (Neg Dec), which includes a Full Environmental Assessment Form and a Resolution of the Genesee County Economic Development Agency D/B/A Genesee County Economic Development Center Pursuant to the SEQRA Concerning Certain Proposed Infrastructure Improvements to the Western New York Science and Technology Advanced Manufacturing Park. Adopting a Neg Dec. Resolution of the Genesee County Industrial Development Agency D/B/A Genesee County Economic Development Center to Amend a Negative Declaration Pursuant to the State Environmental Quality Review Act Concerning Certain Proposed Infrastructure Improvements to the Western New York Science and Technology Advanced Manufacturing Park including FEAF, signed August 5, 2022.

Infrastructure Improvements to the Western New York Science and Technology Advanced Manufacturing Park. Adopting a Neg Dec. Resolution of the Genesee County Industrial Development Agency D/B/A Genesee County Economic Development Center to Amend a Negative Declaration Pursuant to the State Environmental Quality Review Act Concerning Certain Proposed Infrastructure Improvements to the Western New York Science and Technology Advanced Manufacturing Park including FEAF, signed October 6, 2022.

Application Records:

The “Science and Advanced Manufacturing Park (STAMP) Off-site Wastewater, Joint Permit Application, Pre-Construction Notification” dated June 2016, revised October 2020 (with attachments) and February 2021 (updates only, no attachments). Basis of Design Reports dated January 2022 (Separated into two reports for a) Force main and Main Pump Station and b) Wastewater Treatment Facility) dated January 2022

Part 182 permit application entitled, “Western New York Science and Technology Advanced Manufacturing Park (STAMP) Endangered and Threatened Species of Fish and Wildlife Incidental Take Permit” dated June 2022 and the application to modify the permit NYSDEC issued to GCEDC and STAMP Sewer Works, Inc. in September 2022 pursuant to ECL Article 11/Part 182 .

Stormwater Pollution Prevention Plans submitted for coverage under State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001) for the powerline:

- National Grid, T1510 Lockport – Batavia #112, 115KV, 10477- Western New York Science and Technology Advanced Manufacturing Park (STAMP) Relocation Project, Stormwater Pollution Plan, prepared by DDS Companies, dated December 1, 2021.

Environmental Impacts Considered:

Wildlife:

The project site is currently comprised primarily of active cropland and active hayfields, with some wooded area contained on the WWTF site. In addition to these land uses, some of the surrounding areas within several thousand feet of each project component are comprised of forested wood lots. Consistent with these land use types, the site would be occupied by common wildlife species like whitetail deer, coyote, red fox, woodchuck, racoon, eastern cottontail, eastern gray squirrel, eastern chipmunk, and wild turkey, among others. The site would also be occupied various mice and voles, and various birds common to agricultural cropland and hayfields. Less common species are also present within the project site and are addressed in the following section under “Endangered and Threatened Species and Imperiled and Critically Imperiled Species”.

Based on the existing land uses within the project area there will be some local displacement of common wildlife species associated with the installation of the powerline reroute and WWTF force main. However, these project components will have no long-term impacts to wildlife species once the utility corridors are stabilized and any disturbed land is revegetated. Construction of the WWTF will also displace some wildlife during construction and once permanent structures are completed. However, no substantial long-term impacts to common wildlife species will occur given the remaining areas available for the movement and occupation of those species in the reservation and surrounding areas.

Similarly, future further development of the STAMP site would have localized impacts to common wildlife species with some species experiencing displacement as the habitat is replaced with development, and other species potentially benefiting from different habitats being created. However, these impacts are likely to be restricted to the STAMP site itself and not measurably extend beyond the site borders. Each new development project will be reviewed for potential impacts, as impacts are specific to the actual project and not hypothetical generic development plans.

Endangered and Threatened Species and Imperiled and Critically Imperiled Species¹:

A review of potential impacts to federally and state-listed bird species was conducted by the Department. It was determined that the WWTF and substation would be constructed in “occupied habitat.”

The WWTF and substation Part 182 permit are necessary to serve the existing legal and authorized development at the site. Plug Power was approved prior to any documentation of the northern portions of STAMP being used by wintering northern harriers and short-eared owls. The WWTF needs to be centrally located to serve the future tenants of STAMP. The WWTF and substation have been designed with the smallest permanent footprints to minimize disturbance of the occupied habitat. Approximately 1/3 of the substation's permanent impacts will be in forest/shrubland, not considered suitable for wintering raptors. Additionally, the substation has been sited so the grasslands that are impacted are grasslands closest to the forest edge leaving the remaining habitat less fragmented.

Since the construction of the WWTF and substation will result in approximately 11.5 acre of permanent impact to overwintering habitat used by NYS listed species, the Northern harrier and Short-eared owl, the applicant is required to mitigate the impacts. It is important to note that the impacted areas are overwintering areas and not confirmed breeding areas. As a result, the applicant is required to mitigate the proposed habitat impacts at a 1:1 ratio. The applicant is committed to restoring 11.5 acres of reverting farmland back to grassland. Because grassland birds require habitat blocks of at least 25 acres in size, the applicant has committed to not only restoring the 11.5 acres to grassland habitat but also maintaining the adjacent existing grassland habitat such that a total grassland area of 25 acres is maintained throughout the mitigation period.

The applicant submitted a Net Conservation Benefit Plan which includes restoring 11.5 acres of reverting farmland back to grassland by mowing/brush-hogging the field of tall shrubs, herbicide treatment, seeding with native forb mix and mowing annually to encourage grass and forb mix to establish. The created grassland must be maintained for a period of 7-years and the property must remain under GCEDC control. The plan includes maintaining 25 acres in grassland habitat which results in a 1:1 mitigation ratio which covers both permanent and temporary impacts of 23.7 acres (this excludes woodland impacts since they were not habitat for the subject species.).

¹ State-listed “endangered” and “threatened” species are designated and regulated pursuant to 6 NYCRR Part 182. “Imperiled” and “critically imperiled” species are identified and ranked by the New York Natural Heritage Program. “Critically imperiled” species are those ranked “S1” and where there are “Typically 5 or fewer occurrences, very few remaining individuals, acres, or miles of stream, or some factor of its biology making it especially vulnerable in New York State.” “Imperiled” species are those ranked “S2” and where there are “Typically 6 to 20 occurrences, few remaining individuals, acres, or miles of stream, or factors demonstrably making it very vulnerable in New York State.”

The size of the parcel required for mitigation must be able to stand on its own for purposes of providing enough acreage for wintering raptors. Therefore, if the neighboring parcels (which are currently in open ag field) are converted to other uses or habitats, the parcel should still be able to support the wintering raptors. However, it should be noted that any change in the adjacent grasslands to other habitats or other uses, would require a 6 NYCRR Part 182 permit. The applicant will be required to monitor and the mitigation area and report out on the status of it annually, as well as continue surveys on the wintering raptors. The mitigation meets the Part 182 standards, and the Part 182 permit reflects all these requirements.

A review of potential impacts to federally and state-listed bird species was also conducted for the WWTF force main. As a result, the freshwater wetland permit requires construction of the outfall pipe/force main not to occur during the breeding season for listed grassland bird species within areas of large grassland habitat. Construction of the force main may take place during the overwinter raptor season; however, the freshwater wetland permit and Iroquois National Wildlife Refuge access permit restrict it to the road right-of-way to protect listed winter raptors including Northern Harrier, Short-eared owls, and grassland birds. The Iroquois National Wildlife Refuge access permit also has time of year restrictions for work during the breeding season within the refuge.

The original (September 2022) Findings Statement indicated that the Department sent a No Jurisdiction letter for the powerline reroute based on the sponsor's proposal and adherence to a seasonal work period that excludes work between November 1st and April 1st to avoid impacts to wintering raptors. However, GCEDC was unable to accomplish the project before the November 1st deadline.

This permit modification includes construction of the power line after November 1, 2022, because the disturbance after this time will result in a taking of habitat.

The construction of the powerline past this date will have a temporary impact on the state listed species, over approximately 21 acres, or more, and is thus required to be authorized by this Incidental Take (Part 182) Permit. Total ground disturbance for the Project will be an additional 21.6 acres, with some additional incidental disturbance.

An acceptable Net Conservation Benefit has been approved which includes maintaining the previously permitted mitigation site for an additional year to mitigate for one season of disturbance impacts to occupied habitat.

Note: The existing powerline will be removed between April 1 and November 1, thus that disturbance will not require a taking permit.

Cultural Resources:

WWTF, Substation, and Powerline Reroute

The WWTF, substation, and powerline reroute were subject to review pursuant to Section 14.09 of the State Historic Preservation Act (SHPA). In accordance with SHPA and applicable regulations (9 NYCRR Part 428), The GCEDC, NYSDEC, and New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) entered a Letter of Resolution (LOR) which governs how SHPO and NYSDEC consider impacts of the project on the Nation's Territory and on the Nation's Territory's status as a Traditional Cultural Property. Pursuant to the LOR, GCEDC prepared an Initial Assessment (IA) for all projects subject to the LOR.

In accordance with the LOR, GCEDC prepared an Initial Assessment for the powerline reroute dated March 2022 and a Cultural Resource Assessment for the substation dated April 2022. The Department participated in a consultation meeting with the TSN on August 16, 2022.

The SHPO issued a No Adverse Impact Letter dated July 1, 2022, for the 115kV powerline reroute and substation for archaeological resources. In addition, the SHPO issued No Adverse Impact Letters regarding cultural resources dated August 25, 2022, for the 115kV powerline reroute and dated September 2, 2022, for the substation.

In addition, on September 29, 2022, DEC notified the TSN that they had an opportunity to comment on, and have discussions with the Department, about the permit modification application provided they occur by October 28, 2022.

Environmental Justice:

As required under DEC Commissioner Policy on Environmental Justice and Permitting (CP-29), GCEDC prepared an Environmental Justice Enhanced Public Participation Plan for the WWTF. The plan was developed with input from Nation Leadership. GCEDC held an information meeting with the Nation Leadership, and a separate meeting with the members of the Nation. GCEDC's consultant responded to the Nation's questions in writing in a September 17, 2021, letter. A Final Report Summarizing Activities for the Enhanced Public Participation Plan was submitted for the STAMP WWTF dated January 2022. A document repository was set up by GCEDC to make STAMP information, including the Final Enhanced Public Participation Report, available to Nation Leadership and members of the Nation.

Visual:

The area is mostly farm fields, so the WWTF will be visually different from the

surrounding landscape, however, it should not result in a significant visual impact to the surrounding area as the footprint is quite small. The large substation will be visually different from the surrounding landscape. However, the applicant did evaluate potential visual impacts of these WWTF, substation and powerline in the Initial Assessment/Cultural Resource Screening documents prepared by the applicant. The August 4, 2022 Resolution by GCEDC indicates that the photo simulations prepared in connection with the Substation and Powerline Initial Assessments demonstrate that the project infrastructure are screened by existing vegetation as well as significant buffers between the project and surrounding properties.

Noise:

Temporary noise impacts are anticipated during the construction period of the WWTF because of the operation of construction equipment. These impacts will be during daylight hours when noise sensitivity is lowest and will largely be contained on the STAMP site itself. Noise impacts will be similar to other commercial construction activities in the area. The construction of the force main, substation, and powerline will also result in construction noise which is temporary in nature and will take place during daylight hours.

CERTIFICATION OF FINDINGS TO APPROVE/FUND/UNDERTAKE

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met.
2. Consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.
3. (and, if applicable) Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

New York State Department of Environmental Conservation

Signature:



Kimberly Merchant
Deputy Permit Administrator
NYSDEC Region 8
6274 East Avon-Lima Road
Avon, NY 14414

Date: October 31, 2022

NOTE: THIS AMENDED FINDINGS STATEMENT IS AN ADDITION TO THE ORIGINAL FINDINGS STATEMENT AND SHOULD BE KEPT WITH IT. (IT DOES NOT REPLACE THE ORIGINAL FINDINGS STATEMENT).