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Nya:wëh Sgë:nö', Mr. Haley

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

The Nation learned this week that on June 17, 2022, DEC issued a Notice of Complete Application ("NOCA") for application #8-9908-00210/00011 for a permit under Part 182 to take habitat at the STAMP site used by the Northern Harrier and the Short-Eared Owl. For the reasons set forth below, the Nation objects to DEC's completion determination, publication of the Notice of Complete Application in the Environmental Notice Bulletin and any publication by the applicant in the Batavia Daily News. The Nation intends to provide detailed comments on the application after the required consultation and at a later date.

As a preliminary matter, DEC has acknowledged by email from Kimberly Merchant dated June 7, 2022, that the Part 182 application is subject to consultation with the Nation. That consultation has not yet occurred. DEC proceeding to public notice in advance of that consultation raises the troubling question whether DEC will meaningfully consider the substance of consultation with the Nation or view consultation merely as a box to check off. The Nation has serious concerns about the application that should be discussed and addressed before a valid determination can be made that the application is complete and publication is appropriate.

Most glaringly, the NOCA incorrectly states that "the proposed action is not subject to CP-29." To the contrary, the Nation's territory, which abuts the STAMP site, has been identified as a Potential Environmental Justice Area, and DEC's 2021 Letter of Resolution ("LOR") states that "NYSDEC acknowledges that the Nation's Territory has been identified as a Potential Environmental Justice Area and that, due to the STAMP Site's location adjacent to Nation

Territory, [NYSDEC] will apply NYSDEC Commissioner Policy 29, Environmental Justice and Permitting (“CP-29”) and CP-42, as provided for herein, to all applicable elements of the Project undergoing environmental review and permitting.” LOR at 3(a). Further, per the LOR, “NYSDEC and the Applicant agree to implement the provisions of CP-29 and NYSDEC agrees to implement the provisions of CP-42 in relation to any NYSDEC administered permit applications subject to the NYS Uniform Procedures Act at the STAMP Site. In terms of CP-29, the required Enhanced Public Participation Plan shall provide for enhanced public participation respectful of TSN’s status, culture and heritage. Specifically, such a plan shall consist of Applicant offering TSN leadership: 1) the opportunity for public information meetings on the Nation’s territory, and 2) a special comment period for TSN citizens.” LOR at 3(c).

Further, Section 6 CRR-NY 621.7(b)(6) requires the NOCA to include “[t]he deadline for submission of written comments on the application, including any request for a public hearing.” While DEC’s Notice of Completion issued in this matter includes a public comment deadline, it fails to provide any instruction or timeline for requesting a public hearing. The Nation requests a public hearing on the matter.

In addition, the NOCA is inconsistent with the application itself in a number of ways. The Notice indicates that STAMP Sewer Works, Inc. has applied for the permit, while the application identifies Genesee County Economic Development Corporation (“GCEDC”) as the applicant. The application indicates that the impacts are not from the construction of the wastewater treatment facility but from the laydown area for the substation, which is not a project of STAMP Sewer Works, Inc. Neither does STAMP Sewer Works, Inc. have sufficient site control of the project to apply for the permit. STAMP Sewer Works, Inc. does not own the proposed mitigation site or host habitat. The Notice thus misrepresents the applicant and is in violation of 6 CRR-NY 621.7(b)(1).

The Notice also violates 6 CRR-NY 621.7(b)(5). It fails to identify the lead SEQR agency, which has not yet been established, and references a DEIS that has not been provided to the Nation or the public. The Nation objects to GCEDC’s stated intent to take lead agency status.

The Notice describes the project as including construction and operation of a wastewater treatment plant and associated infrastructure as well as the construction and operation of a substation and an access road. None of these construction projects has been approved thus far and thus cannot justify take of rare species. In fact, the applicant has acknowledged that construction of the WWTF is dependent on securing additional tenants at the STAMP site, which GCEDC has thus far failed to do.

As noted above, the Nation intends to raise its concerns during consultation and in subsequent comments but notes here that the proposed mitigation is wholly inadequate as it fails to offer adequate habitat and does not comply with DEC’s own standards for grassland bird habitat.

The Notice of Complete Application and the publication of it in the ENB should be withdrawn and it should not be published in the local newspaper of record until the fundamental flaws in the Notice and the Application are fully addressed.

Da:h ne'hoh,

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

cc: Kimberly Merchant, Deputy Regional Permit Administrator, NY DEC Division of Permit
Scott Sheeley, Chief Permit Administrator, , NY DEC Division of Permits
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