



August 9, 2022

Re: Genesee County Economic Development Center Amended SEQRA
Determination for STAMP Infrastructure Project.


Dear Interested or Involved Agency:

Please find enclosed a resolution by the Genesee County Economic Development Center dated August 4, 2022, which includes an amended SEQRA determination for the above-referenced matter, for your records.

Very truly yours,

Genesee County Economic Development Center

By:



Mark Masse
Senior Vice President of Operations

***Full Environmental Assessment Form
Part 3 - Evaluation of the Magnitude and Importance of Project Impacts
and
Determination of Significance***

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

Reasons Supporting This Determination:

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

(See attached GCEDC Negative Declaration SEQR Determination for the STAMP Infrastructure Improvements)

Determination of Significance - Type 1 and Unlisted Actions

SEQR Status: Type 1 Unlisted

Identify portions of EAF completed for this Project: Part 1 Part 2 Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information
See attached determination of significance.

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the
Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center _____ as lead agency that:

A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

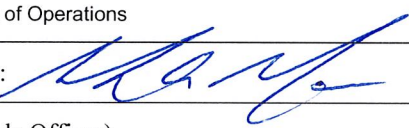
C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: STAMP Infrastructure Improvements

Name of Lead Agency: Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center

Name of Responsible Officer in Lead Agency: Mark A. Masse

Title of Responsible Officer: Senior Vice President of Operations

Signature of Responsible Officer in Lead Agency: 

Date: 8/9/2022

Signature of Preparer (if different from Responsible Officer)

Date:

For Further Information:

Contact Person: Mark A. Masse

Address: 99 MedTech Drive, Batavia, New York 14020

Telephone Number: 585-343-4866

E-mail: mmasse@gcedc.com

For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

PRINT FULL FORM

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 &
TECHNOLOGY ADVANCED MANUFACTURING PARK

Project Name: Infrastructure Improvements to the Western New York Science & Technology Advanced Manufacturing Park
Location: Town of Alabama, Genesee County, NY; Town of Shelby, Orleans County, NY (see location map attached to EAF, (“**Site**”))

WHEREAS, the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Center (“**GCEDC**” or “**Agency**”), in conjunction with the Genesee Gateway Local Development Corporation (“**GGLDC**”), the non-profit real estate affiliate of the GCEDC have been working for more than a decade on the development of the Western New York Science & Technology Advanced Manufacturing Park (“**STAMP**” or the “**Project**”), an advanced manufacturing technology campus on approximately 1,262 acres located on the west side of New York State Route 63/77, approximately five miles north of the I-90/New York State Thruway (“**STAMP Site**”) in the Town of Alabama, New York (“**Town**”), and

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”) and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-e of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “**Act**”) to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “**projects**” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in 2010, the Agency, acting as Lead Agency conducting a coordinated environmental review, commenced preparation of a generic environmental impact statement for STAMP consisting of the Draft Generic Environmental Impact Statement (“DGEIS”) accepted by the Agency on April 14, 2011 and the Final Generic Environmental Impact Statement (“FGEIS”) accepted by the Agency on January 19, 2012

WHEREAS, the GCEDC, as lead agency, issued a written Findings Statement (“**2012 GCEDC Findings**”) on March 12, 2012 approving the Project and committing to undertake it (collectively, the DGEIS, the FGEIS and the 2012 GCEDC Findings are referred to as the “**STAMP GEIS**”); and

WHEREAS, the purposes of the STAMP GEIS were to identify and evaluate the potential significant adverse environmental impacts of STAMP, compare the reasonable alternatives, and, where applicable, to identify reasonable mitigation measures to reduce the effect of those impacts to the maximum extent practicable, while weighing the substantial potential social and economic benefits of STAMP; and

WHEREAS, the STAMP GEIS analyzed the impacts from full build out of STAMP consisting of the rezoning the entire STAMP Site from agricultural/residential use to industrial/advanced manufacturing use, and with constructing and operating 6,130,000 square feet of advanced technology manufacturing uses at full build-out, providing direct employment for over 9,000 people and certified that, consistent with social, economic and other essential considerations from among reasonable alternatives evaluated, STAMP avoided or minimized adverse environmental impacts to the maximum extent practicable; and

WHEREAS, the Agency prepared a smart growth impact statement (“SGIS”) pursuant to the State Smart Growth Public Infrastructure Policy Act separately from the GEIS in February, 2012; and

WHEREAS, in 2016, a number of changes were made to the Project including changes to the STAMP master plan including an expansion of the footprint of STAMP, demolition of additional houses along Crosby Road, construction of a new municipal water system to serve the residents of the Town of Alabama, and construction of a new sewer force main to discharge wastewater from STAMP to the Village of Medina wastewater treatment plant (“**Medina Force Main**”), twelve miles north of the STAMP Site, as well as the reroute of on-Site powerlines to the western edge of the STAMP Site (“**Powerline Reroute**” and together with the Medina Force Main, the “**2016 Project Modifications**”); and

WHEREAS, the 2016 Project Modifications necessitated further environmental review and such review was undertaken by the Agency to determine whether the 2016

Project Modifications would result in any significant adverse environmental impacts not previously addressed in the FGEIS; and

WHEREAS, in July of 2016 the Agency adopted an Amended Findings Statement to the FGEIS ("**2016 Amended Findings**") approving the 2016 Project Modifications in accordance with the requirements of the GEIS and SEQR; and

WHEREAS in August of 2019, the Agency again considered certain infrastructure modifications to the Project and the Agency circulated a notice of intent to re-establish itself as lead agency pursuant to SEQR; and

WHEREAS, the Project modifications reviewed in 2019 and 2020 included all actions necessary to undertake the following:

- a) Construction of a wastewater treatment facility ("**WWTF**") on the STAMP Site within the utility infrastructure area to treat the sanitary wastewater generated by STAMP's manufacturing and other tenants. The WWTF will not treat the manufacturing tenants' process wastewater, rather, the tenants will treat their own process wastewaters directly before discharging to the main pump station wet well. The main pump station will then pump the combined flows through a proposed force main ("**Force Main**") to a new discharge point to be located on Oak Orchard Creek in the Town of Shelby, Orleans County, New York. While the design of the WWTF was updated, the GEIS included an analysis of the impacts for a previous design of a WWTF on the STAMP Site.
- b) Construction of the Force Main which involves the installation of approximately 44,750 linear feet of sanitary force main, metering vaults, and maintenance manholes along the same route as the previously analyzed Medina Force Main. The vast majority of installation of sewer related infrastructure will be along public roads via a combination of open cut method and directional drill methods. The Force Main will convey up to six (6) million gallons per day ("**MGD**") of treated wastewater from the STAMP Site to a new discharge in Oak Orchard Creek. In connection with the Agency's review of the prior WWTF design, the construction of a force main was also considered and analyzed in the STAMP Environmental Record.
- c) A new water main ("**Water Main**") of approximately 23,000 linear feet to be installed along the Lewiston Road right of way between the Genesee County line with Niagara County and the STAMP Site. The new water main will bring up to six (6) MGD of water from the

Niagara County Water District (“NCWD”) to the STAMP Site. The layout of the water main system has been extended, however, the STAMP Environmental Record includes an analysis of the impacts for the construction of the previously constructed municipal water system to serve the residents of the Town of Alabama as well the general plan to provide greater water service to the STAMP Site.

- d) The development of an approximate 20 acre parcel located immediately north of STAMP for the siting of a new substation to service the STAMP Site (“**Substation**”). The landlocked parcel lies between the STAMP Site and a utility corridor which houses the Empire Pipeline and a 345 KV Power Line which will ultimately supply power to STAMP tenants. This parcel is located to the west of the intersection of Lewiston Road (NYS Route 77) and Crosby Road in the Town of Alabama and is bounded by the Empire Pipeline/345 KV Power Line utility corridor to the north, hedgerows to the east and south, and woods and brush to the west. The STAMP Environmental Record includes an analysis of the impacts of minor expansions of the STAMP Site as well as the impacts for the demand for energy for the Project, and potential infrastructure improvements relating to the same.

WHEREAS, in August of 2020, the Agency adopted an Amended Findings Statement to the FGEIS (“**2020 Amended Findings**”) approving the 2020 Project Modifications in accordance with the requirements of the GEIS and SEQR; and

WHEREAS, the 2020 Amended Findings included, among other things, amendments to the water, sewer, and electrical thresholds set forth in the GEIS; and

WHEREAS, in February of 2021, the Agency adopted a SEQR determination (“**2021 SEQR Determination**”) that the proposed use of a portion of the STAMP Site for a hydro-powered electrolysis hydrogen production facility (“**Project Gateway**”) would be carried out in conformance with the conditions and thresholds set forth in the STAMP GEIS, as amended; and

WHEREAS, in June of 2021 the Tonawanda Seneca Nation (“Nation”) commenced a lawsuit against the Agency with respect to the Agency’s 2021 SEQR Determination that was ultimately dismissed by the Genesee County Supreme Court (“**Gateway Litigation**”); and

WHEREAS, the Nation and Agency entered into a Stipulation of Settlement (“**Plug Power Settlement Agreement**”) which provided, among other things, that the

Powerline Reroute would be located within a future easement to National Grid located within the Restricted Protected Property Area set forth therein; and

WHEREAS, GCEDC has signed on to a 2018 Programmatic Agreement ("**Programmatic Agreement**") between the United States Army Corps of Engineers ("**USACE**") and the New York State Office of Parks, Recreation and Historic Preservation State Historic Preservation Office ("**SHPO**"), SHPO, the New York State Department of Environmental Conservation ("**NYSDEC**") as an Invited Signatory; and

WHEREAS, the Nation was invited to sign the Programmatic Agreement as an Invited Signatory but has declined to do so; and

WHEREAS, the Programmatic Agreement governs USACE's compliance with Section 106 of the National Historic Preservation Act and, at the request of the Nation, sets forth that the Nation shall undertake an investigation of the Nation's Territory as a Traditional Cultural Property ("**TCP**") to evaluate the eligibility of the Nation's Territory for listing on the National Register as a property of religious and cultural significance and to guide evaluation of potential adverse effects to the Nation's Territory as a TCP; and

WHEREAS, to date, the Nation has declined to share any results from the TCP investigation with the USACE, SHPO, NYSDEC, GCEDC, or any other party to the Programmatic Agreement other than such information as was disclosed by the Nation's members in certain affidavits submitted in connection with the Gateway Litigation; and

WHEREAS, the Programmatic Agreement also details the extensive archaeological investigation undertaken for the STAMP Site, including a detailed and comprehensive plan for those areas of the STAMP Site requiring further investigation; and

WHEREAS, because the Programmatic Agreement's provisions governing the evaluation of potential impacts to the Nation as a TCP only apply to those STAMP-related projects which are subject to USACE permitting authority, NYSDEC, SHPO, and GCEDC have entered into a 2021 Letter of Resolution ("**LOR**") which governs how SHPO and NYSDEC consider impacts of the Project on the Nation's Territory as a TCP; and

WHEREAS, the LOR requires the Agency to prepare an initial assessment of each project at STAMP that requires any permitting from NYSDEC for potential impacts to the Tonawanda Seneca Nation's ("**Nation**") Territory as a potential property of religious and cultural significance based on the National Register Criteria for eligibility; and

WHEREAS, the LOR further provides that such initial assessment is provided to the Nation for a 30 day review and comment period, after which NYSDEC and SHPO must then make a determination of whether there are adverse impacts to the Nation's Territory as a potential property of religious and cultural significance based on the National Register Criteria for eligibility from the undertaking described in such initial assessment; and

WHEREAS, notwithstanding the fact that the Nation has declined to share any results from the TCP investigation other than such information as was disclosed during the Gateway Litigation, for the purpose of analyzing impacts on the Nation as a TCP in accordance with SEQR, the Agency assumes that the Nation's Territory would be eligible for the National Register; and

WHEREAS, the Agency provides the Nation with weekly written email updates on the status of development at STAMP and participates in monthly calls with the Nation and NYSDEC to help keep the Nation fully informed on development of the STAMP Site; and

WHEREAS, NYSDEC, as required by the LOR and its consultation obligations, has undertaken extensive outreach and consultation to the Nation and does so for each permit issued by NYSDEC; and

WHEREAS, together, the GEIS, the 2012 GCEDC Findings, the SGIS, the 2016 Amended Findings, the 2020 Amended Findings, and the 2021 SEQR Determination constitute the prior environmental reviews for STAMP (collectively, these documents are referred to as the "**STAMP Environmental Record**"); and

WHEREAS, since the issuance of the 2020 Amended Findings, the Agency has completed significant additional environmental analysis with respect to portions of the 2016 Project Modifications and 2020 Project Modifications in conjunction with the permitting processes for the same; and

WHEREAS, in comment letters received by the Agency, the Nation has called upon the Agency to prepare a supplemental GEIS and NYSDEC has suggested that a supplemental GEIS may need to be prepared; and

WHEREAS, the Agency has elected to undertake an updated review of the WWTF, Force Main, Substation, and Powerline Reroute ("**Project Infrastructure**") with respect to this additional environmental analysis to determine if a supplemental GEIS is warranted under the circumstances (the "**2022 SEQR Update**"); and

WHEREAS, in connection with the 2022 SEQR Update, in June of 2022, the Agency circulated a notice of intent to re-establish itself as lead agency pursuant to SEQR for purposes of undertaking the 2022 SEQR Update; and

WHEREAS, all involved agencies consented, or did not respond and were deemed to have consented, to the Agency acting as lead agency and thus, the Agency has properly been established as the lead agency for purposes of these infrastructure improvements; and

WHEREAS, pursuant to the STAMP GEIS, final designs for less-defined Project components, as well as any proposed changes to the more well-defined elements (defined in the STAMP GEIS as "Future Project Use(s)"), may require further evaluation pursuant to SEQR; and

WHEREAS, the STAMP GEIS further provides that GCEDC, as lead agency, will be responsible for performing an environmental determination on Future Project Uses pursuant to SEQRA, and will consider Future Project Uses proposals in relation to the STAMP GEIS, as amended; and

WHEREAS, the STAMP GEIS further provides that the GCEDC must determine if the environmental impacts associated with Future Project Uses have been adequately addressed in the STAMP GEIS DGEIS, taking into account whether the Future Project Uses exceed any of the thresholds set forth in the STAMP GEIS and

WHEREAS the STAMP GEIS further provides that in the event that GCEDC determines that: (i) Future Project Uses would be carried out in conformance with the conditions and thresholds set forth in the STAMP GEIS, then no further SEQRA compliance will be required; (ii) Future Project Uses would be carried out in conformance with the conditions and thresholds set forth in the STAMP GEIS, but are not addressed or are not adequately addressed in the STAMP GEIS, then an amended Findings Statement will be prepared; (iii) the Future Project Uses are not addressed or are not adequately addressed in the STAMP GEIS, but the proposal does not exceed any of the conditions or thresholds set forth in the STAMP GEIS, or the proposal does exceed a threshold set forth in the STAMP GEIS, but would not result in any potential significant adverse environmental impacts, then a Negative Declaration will be prepared pursuant to 6 N.Y.C.R.R. § 617.10(d)(3); or (iv) the Future Project Uses are not addressed or are not adequately addressed in the STAMP GEIS, and/or the proposed use would exceed the conditions or thresholds set forth in the STAMP GEIS, and may have one or more potential significant adverse environmental impacts, then a supplement to the STAMP GEIS will be prepared; and

WHEREAS, on June 30, 2022, the Agency provided to the Nation a draft SEQR determination for the 2022 SEQR Update for the Nation's review and comment; and

WHEREAS, at the Nation's request, on July 7, 2022, the Agency elected to table a vote on the SEQR determination to afford the Nation more time to comment on the draft SEQR determination; and

WHEREAS, on July 21, 2022, upon the Agency's review of the Environmental Information and investigations of the potential environmental impacts associated with the Project Infrastructure, considering both the magnitude and importance of each potential environmental impact indicated, and upon the Agency's knowledge of the STAMP Site and surrounding area and such further investigations of the Project Infrastructure and its environmental effects as the Agency has deemed appropriate, the Agency determined that, while the Project Infrastructure was not addressed or not adequately addressed in the STAMP GEIS, and the Project Infrastructure exceeds thresholds set forth in the STAMP GEIS, the Environmental Information demonstrates that the Project Infrastructure will not result in any potential significant adverse environmental impacts, and, pursuant to the STAMP GEIS, a Negative Declaration was issued pursuant to 6 N.Y.C.R.R. § 617.10(d)(3) ("**2022 Negative Declaration**"); and

WHEREAS, on July 22, 2022, the Agency provided a copy of the 2022 Negative Declaration to the Nation, as well as all Interested and Involved Agencies;

WHEREAS, on July 22, 2022, the Nation informed the Agency that the Nation had provided correspondence on the 2022 Negative Declaration via email to an Agency Board Member who was travelling and not present during the July 21, 2022, Agency meeting; and

WHEREAS, the Agency has also been provided with copies of correspondence relative to the Project Infrastructure sent from the Nation to NYSDEC; and

WHEREAS, pursuant to 6 N.Y.C.R.R. § 617.7(e)(1) at any time prior to its decision to undertake, fund or approve an action, a lead agency, at its discretion, may amend a negative declaration when new information is discovered and the lead agency determines that no significant adverse environmental impacts will occur; and

WHEREAS, the Agency and the STAMP Technical Team ("**STAMP Tech Team**") have carefully evaluated the new information provided by the Nation and determined, that in the interest of having a full and complete record, it is appropriate to amend the 2022 Negative Declaration to include the Nation's substantive comments, to provide further clarification, and to document the Agency's hard look at the issues raised by the Nation; and

WHEREAS, to aid the Agency in evaluating what actions are required relative to the Project Infrastructure and all of the additional environmental analysis regarding

same work to comply with SEQRA pursuant to the STAMP GEIS, the Agency has completed, received and/or reviewed:

- (1) the STAMP Environmental Record;
- (2) Part 1 of a Full Environmental Assessment Form for the WWTF, Force Main, Substation, and Powerline Reroute ("**EAF**");
- (3) a Settlement Agreement between the Tonawanda Seneca Nation and the Agency ("**Plug Power Settlement Agreement**");
- (4) a revised Joint Permit Application and draft Pre-Construction Notification for Offsite Wastewater prepared by CC Environment & Planning and revised in February 2021 ("**Wastewater PCN**");
- (5) a Letter of Resolution between New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation, and Genesee County Economic Development Center regarding STAMP executed by the parties in March 2022 ("**Letter of Resolution**");
- (6) an Enhanced Public Participation Plan dated July 2021 ("**EPPP**");
- (7) minutes from a meeting between the Nation, NYSDEC and Agency leadership on September 9, 2021 ("**EPPP Leadership Meeting Minutes**");
- (8) a transcript from an EPPP public informational meeting ("**EPPP Transcript**");
- (9) a final summary report and certification completed by the Agency ("**EPPP Certification**");
- (10) a STAMP Onsite Wastewater Treatment Facility Basis of Design Report ("**WWTF BODR**") prepared by CPL dated January 2022;
- (11) an updated STAMP Force Main, Main Pump Station Basis of Design Report ("**Force Main BODR**") prepared by CPL dated April 2022;
- (12) a revised Cultural Resource Screening and Initial Assessment for the WWTF dated October 2021 ("**WWTF IA**");
- (13) a Letter from the Nation commenting on the WWTF IA ("**Nation WWTF IA Letter**");
- (14) a Response to the Nation WWTF IA Letter from the Agency ("**GCEDC WWTF IA Response Letter**");
- (15) a comment letter from NYSDEC on the WWTF IA ("**NYSDEC WWTF IA Letter**");
- (16) a letter from the Office of Parks, Recreation and Historic Preservation's Division of Historic Preservation regarding the WWTF ("**WWTF SHPO Letter**");
- (17) a letter from the Agency in response to the WWTF SHPO Letter ("**GCEDC SHPO Response Letter**");
- (18) a Cultural Resource Screening and Initial Assessment for the Powerline Reroute ("**Powerline IA**")
- (19) a Letter from the Nation commenting on the Powerline IA ("**Nation Powerline IA Letter**")
- (20) a Response to the Nation Powerline IA Letter from the Agency ("**GCEDC Powerline IA Response Letter**")

- (21) a Cultural Resource Screening and Initial Assessment for the Substation (**"Substation IA"**)
- (22) a Letter from the Nation commenting on the Substation IA (**"Nation Substation IA Letter"**)
- (23) a revised State Pollutant Discharge Permit Application dated March 5, 2021 (**"WWTF SPDES Permit Application"**);
- (24) an Application for Permit Transfer and Application for Transfer of Pending Application form dated January 21, 2021 (**"Permit Application Transfer Form"**);
- (25) a Notice of Complete Application from NYSDEC dated July 30, 2021 (**"Complete Application Notice"**);
- (26) a letter from the Nation to Kimberly Merchant, NYSDEC regarding phosphorus discharge from the SPDES permit dated October 22, 2021 (**"Nation Phosphorus Letter"**);
- (27) a joint letter from Jeff Smith, Supervisor of the Town of Shelby, and Michael Sidari, Mayor of the Village of Medina concerning the WWTF SPDES Permit Application dated September 2, 2021 (**"Shelby/Medina Joint SPDES Letter"**);
- (28) a letter from the Agency responding to the Shelby/Medina Joint SPDES Letter dated September 17, 2021 (**"GCEDC Shelby/Medina Response Letter"**);
- (29) a letter from NYSDEC allowing the Nation's additional time to comment on the WWTF SPDES Permit Application dated December 23, 2021 (**"NYSDEC Comment Extension Letter"**);
- (30) a letter from Joshua Kogan, Acting Chief of the United States Environmental Protection Agency Region 2 NPDES Section, to Kimberly Merchant, NYSDEC concerning the WWTF dated January 11, 2022 (**"USEPA WWTF Letter"**);
- (31) a letter from the Nation to NYSDEC opposing the WWTF SPDES Permit Application dated January 13, 2022 (**"Nation SPDES Letter"**);
- (32) a memorandum prepared by CPL analyzing the technical feasibility of treating wastewater prior to discharge to meet the mercury limit proposal of the WWTF (**"Mercury Memo"**);
- (33) a STAMP Discharge Analysis to Oak Orchard Creek prepared by JM Davidson Engineering dated May 22, 2020 (**"Hydraulics Report"**);
- (34) Maps prepared by NYSDEC relative to the status of occupied habitat on the STAMP Site (**"NYSDEC Preliminary Maps"**);
- (35) a STAMP Mussel Survey of Oak Orchard Creek prepared in October 2020 (**"Mussel Survey"**);
- (36) a letter from the Agency to NYSDEC requesting clearance under Part 182 for minor infrastructure at STAMP (**"Part 182 Clearance Request for Minor Infrastructure"**);
- (37) a letter from NYSDEC in response to the Part 182 Clearance Request for Minor Infrastructure (**"NYSDEC Part 182 Response on Minor Infrastructure"**);
- (38) a letter from the Agency to NYSDEC requesting clearance under Part 182 for electrical infrastructure at STAMP (**"Part 182 Clearance Request for Electrical Infrastructure"**);

- (39) a letter from NYSDEC in response to the Part 182 Clearance Request for Electrical Infrastructure ("**NYSDEC Part 182 Response on Electrical Infrastructure**");
- (40) a letter from the Agency to NYSDEC in response to the NYSDE Part 182 Response on Electrical Infrastructure ("**GCEDC Part 182 Response on Electrical Infrastructure**");
- (41) an Incidental Take Permit Application submitted to NYSDEC (together with all studies undertaken to date, the "**Take Permit Application**");
- (42) a supplement to the Take Permit Application;
- (43) a letter from O'Connell Electric Company, Inc. in response to public comments with respect to the Substation ("**Substation Letter**");
- (44) United States Fish and Wildlife Services ("**USFWS**") Environmental Permitting Documentation ("**Refuge NEPA Record**");
- (45) Draft Land Management Plan for the STAMP Site ("**LMP**");
- (46) an updated USACE jurisdictional determination ("**USACE JD**");
- (47) an acknowledgement letter from the USACE confirming the completion of archaeological work relating to the Programmatic Agreement;
- (48) all documentation filed in connection with the Gateway Litigation, including but not limited to affidavits, the complaint, answering papers, and related items ("**Gateway Litigation Record**");
- (49) an email dated July 22, 2022, from Alex Page, the Nation's counsel to Mark Masse, titled "Re: TSN Letter" with attached correspondence from the Nation dated July 15, 2022 regarding the 2022 Negative Declaration;
- (50) an email dated July 25, 2022, from Mark Masse, Senior Vice President of Operations of the Agency;
- (51) Correspondence from the Nation to NYSDEC dated June 24, 2022, July 6, 2022, and July 21, 2022 received by GCEDC on July 26, 2022 regarding the STAMP WWTF Permit application, the Part 182 Permit application and the 2022 SEQUR Update (these letters, together with the July 15th letter are referred to hereinafter "**Nation Correspondence**");
- (52) STAMP Site Part 182 survey data collected by CC Environmental ("**Part 182 Surveys**");
- (53) a memorandum prepared by the STAMP Tech Team dated July 29, 2022 ("**Tech Team Memo**") analyzing the comments and concerns expressed by the Nation in the Nation Correspondence; and
- (54) other relevant environmental information (collectively, 1-54, together with all analysis and supporting documentation referenced therein or relied upon thereby, are incorporated by reference herein in their entirety and shall be referred to as the "**Environmental Information**"); and

WHEREAS, a thorough analysis of the Environmental Information and potential environmental impacts associated with the Project Infrastructure reveals that, while the Project Infrastructure is not addressed or not adequately addressed in the STAMP GEIS, and the Project Infrastructure exceeds thresholds set forth in the STAMP GEIS, the Environmental Information demonstrates that the Project Infrastructure will not result in any potential significant adverse environmental impacts, and this, pursuant

to the STAMP GEIS, a Negative Declaration should be prepared pursuant to 6 N.Y.C.R.R. § 617.10(d)(3);

WHEREAS, it is appropriate that the Agency issue an amended negative declaration pursuant to 6 N.Y.C.R.R. § 617.10(d)(3) and 6 N.Y.C.R.R. § 617.7(e)(1) for the Project Infrastructure.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. Based upon a thorough review and examination of the Project Infrastructure and the Environmental Information, and upon the Agency's knowledge of the area surrounding the STAMP Site and such further investigation of the Project Infrastructure and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings with respect to the Project Infrastructure:

- (A) The Project Infrastructure remains a Type I Action;
- (B) The Agency, as Lead Agency for the Project, has undertaken a coordinated review of the Project Infrastructure in accordance with SEQR and the STAMP GEIS, as amended; and

Section 2. Based upon the Agency's review of the Environmental Information and investigations of the potential environmental impacts associated with the Project Infrastructure, considering both the magnitude and importance of each potential environmental impact indicated, and upon the Agency's knowledge of the STAMP Site and surrounding area and such further investigations of the Project Infrastructure and its environmental effects as the Agency has deemed appropriate, the Agency has determined that, while the Project Infrastructure is not addressed or not adequately addressed in the STAMP GEIS, and the Project Infrastructure exceeds thresholds set forth in the STAMP GEIS, the Environmental Information demonstrates that the Project Infrastructure will not result in any potential significant adverse environmental impacts, and this, pursuant to the STAMP GEIS, an Amended Negative Declaration is hereby issued pursuant to 6 N.Y.C.R.R. § 617.10(d)(3) and 6 N.Y.C.R.R. § 617.7(e)(1). Reasons supporting this determination are provided below:

1. Project Infrastructure. The Project Infrastructure includes:
 - a) Construction of the WWTF on the STAMP Site within the utility infrastructure area to treat the sanitary wastewater generated by STAMP's manufacturing and other tenants. The WWTF will not treat the manufacturing tenants' process wastewater; rather, the tenants will

treat their own process wastewaters directly before discharging to the main pump station wet well. The main pump station will then pump the combined flows through the proposed Force Main to a new discharge point to be located in Oak Orchard Creek in the Town of Shelby, Orleans County, New York. The 2020 Amended Findings included a detailed analysis of the WWTF. While the design remains largely unchanged, the Take Permit Application and various correspondence relating to the SPDES permit for the WWTF (including extensive consultation with the Nation) post-date the 2020 Amended Findings and are analyzed below.

- b) Construction of the Force Main involves the installation of approximately 47,000 linear feet of sanitary force main, metering vaults, and maintenance manholes along the same route as was analyzed in the 2020 Amended Findings. The vast majority of installation of sewer related infrastructure will be along public roads via a combination of open cut method and directional drill methods. The Force Main will continue to have the capacity to convey up to six (6) MGD of treated wastewater from the STAMP Site to the discharge in Oak Orchard Creek. While the design of the Force Main remains largely unchanged, certain additional analysis regarding potential impacts to Oak Orchard Creek (including modification to the outfall location to prevent erosion) are analyzed below.
- c) The development of an approximate 20 acre parcel located immediately north of STAMP for the siting of the Substation. The landlocked parcel lies between the STAMP Site and a utility corridor which houses the Empire Pipeline and a 345 KV Power Line which will ultimately supply power to STAMP tenants. This parcel is located to the west of the intersection of Lewiston Road (NYS Route 77) and Crosby Road in the Town of Alabama and is bounded by the Empire Pipeline/345 KV Power Line utility corridor to the north, hedgerows to the east and south, and woods and brush to the west. While the design of the Substation remains largely unchanged, the Take Permit Application and various correspondence relating to the Substation (including extensive consultation with the Nation) post-date the 2020 Amended Findings and are analyzed below.

2. Impact on Land.

WWTF

The WWTF does not include any new potentially significant adverse impacts to land resources or land use that were not analyzed in the STAMP GEIS, as amended. The DGEIS proposed an on-site WWTF and the WWTF footprint and design remain largely unchanged from what was previously reviewed in 2020. Further, the WWTF remains consistent with current uses of the STAMP Site, which are commercial and industrial in nature.

The Shelby/Medina Joint SPDES Letter raises concerns about the impact of the discharge from the WWTF through the Force Main on erosion. However, as noted in the GCEDC Shelby/Medina Response Letter and Force Main BODR, the outfall has been designed to minimize soil erosion. Further, the outfall discharge includes grouted heavy stone rip rap to dissipate the anticipated flow and reduce velocity, as well as heavy stone rip rap along the entire stream bank to reduce erosion and stabilize the creek banks.

Additionally, as noted in the EPPP, the WWTF will include a screw press to dewater solids for final landfill disposal. As discussed in the EPPP Leadership Meeting Minutes, any hazardous materials stored at the WWTF will be stored in accordance with DEC bulk storage requirements, including secondary containment measures such as loading areas for trucks, designed to mitigate risks in the event of a spill.

As part of the Plug Power Settlement Agreement (and as detailed extensively below) STAMP Infrastructure, including the WWTF, was specifically designed to avoid potential adverse impacts to the Nation and a buffer was agreed to in order to minimize impacts to surrounding land. In fact, the WWTF (and associated Force Main) are designed to reduce impacts on the Nation's Territory by carrying treated effluent miles away from the Nation's Territory rather than to Whitney Creek (as originally proposed and analyzed in the STAMP GEIS).

Force Main

As noted in the Wastewater PCN, the Force Main involves the physical disturbance of approximately eight acres of land and is anticipated to take approximately 8 months to construct. Approximately 1.02 acres of land will be temporarily disturbed for staging. A SWPPP for the Force Main has been developed under the requirements of the SPDES GP-0-10-001, and stormwater will be managed in accordance with the SWPPP.

The Wastewater PCN notes that approximately 50% of the local watersheds are dominated by agriculture interspersed with forest and forested/non-forested wetlands. There will be a temporary disturbance during

construction of the Force Main but any impacts will be mitigated by horizontal direction drilling (“HDD”) installation methods through all wetland and stream crossings.

The Shelby/Medina Joint SPDES Letter raises concerns about the impact of the discharge on erosion. However, as noted in the GCEDC Shelby/Medina Response Letter and FM & MPS BODR, the outfall has been designed to minimize soil erosion. Further, as mentioned above, the outfall discharge includes grouted heavy stone rip rap to dissipate the anticipated flow and reduce velocity, as well as heavy stone rip rap along the entire stream bank to reduce erosion and stabilize the creek banks.

The NEPA Refuge Record included an extensive analysis of the Force Main’s compatibility crossing through the Iroquois National Wildlife Refuge (“Refuge”). As detailed therein, the Force Main has been extensively reviewed, with substantial mitigation proposed.

Substation

As detailed in the Substation Letter, the Substation is a permitted use in the underlying zoning districts and has been sited and designed to minimize impacts to adjacent land uses. While the Substation will be visible to adjacent property owners, the Substation is located in the vicinity of existing transmission infrastructure and is consistent with the same in terms of scale and design. The Substation is located far from the Nation’s Territory, and will not be appreciably visible or audible from the same, such that no impacts to land use on the Nation’s Territory are anticipated.

Powerline Reroute

The Powerline Reroute will enable more efficient usage of the STAMP Site by moving the existing powerlines on the Site into an area agreed-upon pursuant to the Plug Power Settlement Agreement. As detailed therein, the Powerline Reroute will create 100 feet of additional buffer space between future tenants at the STAMP Site and the Nation’s Territory, on top of the existing 400’ buffer present along the majority of the western edge of the STAMP Site. Further, the Powerline Reroute (as detailed in the Powerline IA) has been carefully sited to avoid impacts to trees and wetlands.

Accordingly, the Project Infrastructure are not anticipated to create any potentially significant adverse impacts to land that were not analyzed in the STAMP Environmental Record.

3. Impact on Geological Features. The Site does not contain, and is not adjacent to, any unique geologic features or National Natural Landmarks, nor will the Force Main pass through or near any unique geologic features or National Natural Landmarks off-Site. Accordingly, the Project Infrastructure are not anticipated to create any potentially significant adverse impacts to geological features that were not analyzed in the STAMP Environmental Record.

4. Impact on Surface Water.

WWTF/Force Main

As noted in the 2020 Amended Findings, the Project Infrastructure WWTF will enable an increase in the sewer discharge threshold capacity of the STAMP Site. As detailed in the Environmental Information, the WWTF (along with the Force Main) allows for an increase in the STAMP sewer capacity threshold set forth in the GEIS from 3 MGD up to 6 MGD, including 1 MGD of sanitary wastewater and 5 MGD of treated process wastewater (the 2020 Amended Findings similarly increased the water capacity threshold from 3 MGD up to 6 MGD in connection with the Water Main). As observed in the WWTF BODR, by utilizing onsite recycling for the industrial process water, the overall potential total volume of wastewater decreased significantly from 12 MGD to 6 MGD. Based on this, the WWTF was designed to have an average daily flow of 1.0 MGD with a peak design flow capacity of 2.0 MGD for system redundancy purposes.

The WWTF will not create a new body of water, result in an increase or decrease of the surface area of a waterbody, and does not involve the dredging of a wetland or waterbody. The 2020 Amended Findings extensively detail that, as noted in the Environmental Information, the WWTF will involve construction well-outside of the 100-foot zone of an existing surface water feature, namely Whitney Creek, a Class C stream.

Per the LOR, and as discussed in greater detail below, the Agency has engaged with, and taken the input of the Nation, regarding SPDES permitting at STAMP. Further, as reflected in the EPPP Leadership Meeting Minutes, sewage will be screened and will undergo a three-step sanitation process. According to the EPPP Leadership Meeting Minutes, the WWTF will not be served by an existing sewer line, as none presently exists; however, 100,000 GPD have been reserved for the Town of Alabama in the event the Town decides to create a sewer district in the future and send wastewater to the WWTF.

The SPDES permit effluent limitations have been specifically drafted, with feedback from the Nation and USEPA, to ensure that a discharge does not adversely impact surface waters, and the WWTF will comply with the requirements of the SPDES permit. Similarly, as noted in the Permit Application Transfer Form, STAMP Sewer Works, Inc. (the eventual owner of the Force Main and WWTF) will comply with all conditions of the SPDES Permit. In addition, the Force Main (and associated discharge) has been extensively peer-reviewed by the Town of Shelby, which has consented to the route and design of the Force Main.

As thoroughly outlined in the Environmental Information, the construction of the Force Main will be done primarily through HDD methods in order to minimize impacts to wetlands, which total only temporary impacts to approximately 0.11 acres of wetland and stream crossings regulated by NYSDEC or the USACE and approximately 0.28 acres of land located within the NYSDEC-regulated 100' wetland-adjacent buffer area. The Force Main BODR was supplemented by a frac out plan reviewed and approved by NYSDEC which provides assurance of adequate monitoring, detection, containment, and cleanup for any potential discharge of drilling fluid or other materials resulting from the HDD. The impacted areas will be returned to existing conditions when construction is complete, and all applicable permits will be secured prior to the construction of the Project Infrastructure. As the Hydraulics Report details and EPPP Transcript further describes, the proposed discharge from the Force Main to the Oak Orchard Creek (a Class C stream) is a very small quantity compared to the overall statistical peak discharges and will result in no significant changes in the elevation of Oak Orchard Creek. The outflow from the WWTF will be sanitary wastewater and will not have an adverse impact on the quality of the water in Oak Orchard Creek. A stormwater retention pond is proposed in order to mitigate any potential adverse impacts due to the increase in impermeable surfaces associated with the Project Infrastructure.

In the Nation Phosphorus Letter and Nation Correspondence, the Nation raises various concerns relating to the discharge limits set forth in the SPDES Permit for the WWTF. As detailed in the Tech Team Memo, relative to surface waters, the Nation alleges potential impacts to Oak Orchard Creek due to phosphorus, and discharge during low flow periods. The Tech Team Memo addresses each of the Nation's concerns in extensive detail, and documents that modifications to the phosphorus levels set forth in the SPDES permit, as well as the nature of the WWTF discharge (treated sanitary process water rather than industrial process water) have resolved those concerns.

The Nation Correspondence raises questions as to the SPDES permit limit for phosphorus (set at 0.5 mg/L). As detailed in the Tech Team Memo, following extensive consultation with CPL and USEPA, NYSDEC has adjusted the discharge limit for phosphorus from 0.5 mg/L down to 0.2 mg/L, the strictest available water quality based limit to ensure that the discharge from the WWTF could only result in a dilution of phosphorus levels going forward. As such, the proposed discharge limit of 0.2 mg/L will not result in growth of algae, weeds, or other slimes and will not otherwise impair the waters for their best usages.

The Nation Correspondence recites that Oak Orchard Creek could be adversely impacted during low flow periods. The Tech Team Memo confirms, however, that most of the year, Oak Orchard Creek's flow is at or above the proposed discharge rate of the force main. While the low flow condition of Oak Orchard Creek could result in an "effluent dominated" classification of Oak Orchard Creek during such low flow condition, the SPDES permit limits are calibrated to ensure no decrease in the water quality standards. In addition, the force main discharge location includes extensive riprap and outflow mitigation to ensure that the discharge is appropriately channeled without impacting existing wildlife or recreational uses. Further, the WWTF will discharge only treated sanitary water, which will not result in discharges exceeding 5 degrees above Oak Orchard Creek. As noted in the CPL SPDES Memo, sanitary wastewater does not create temperature concerns due to its naturally low temperature. To the extent a future industrial user seeks to discharge through the force main, such discharge will be subject to an independent SPDES permit with its own temperature analysis in order to ensure that no discharge exceeds 5 degrees above Oak Orchard Creek. Similarly, NYSDEC has concluded, and the Agency along with the Tech Team agrees, that there is no reasonable potential that the WWTF effluent flow will contain dioxin, PCBs, PFOA or PFOS in any meaningful amounts. As noted above, future industrial dischargers will be subject to their own SPDES permits, with appropriate mitigation and limitations set forth at the time of such permitting.

As noted in the Force Main BODR and analyzed in the Hydraulics Report, the Agency will comply with its SPDES permit regulations which requires that a discharge complies with applicable water quality standards and does not adversely impact surface waters. Per the Letter of Resolution, GCEDC has engaged with, and taken the input of the Nation, regarding SPDES permitting at STAMP. Moreover, the Wastewater PCN confirms that the WWTF and

Force Main have been designed to minimize all impacts to the “greatest extent practicable.”

Powerline Reroute/Substation

While the Powerline Reroute will include development adjacent to existing wetland resources, no permanent impacts to the wetlands are proposed. Instead, the access drive servicing the Powerline Reroute will end at the edge of the wetland, and access across the same will be accomplished by placing temporary mats across the wetland when access is needed.

Substation

The Substation will include development far away from Whitney Creek and has been carefully sited to avoid impacts to adjacent wetlands, as detailed in the Substation Letter.

Accordingly, the Project Infrastructure do not pose any risk of significant adverse impacts on water that were not analyzed in the STAMP Environmental Record.

5. Impact on Groundwater.

WWTF

As analyzed in the 2020 Amended Findings, while the WWTF will include the storage of aluminum sulfate, the BODR details that the chemical will be stored in a chemical bulk storage area located in the headworks and control building of the WWTF. As described in the EPPP, the WWTF “will utilize a sequencing batch reactor process, as well as disc filters, and a UV Disinfection system to treat sanitary wastewater.” Such process is “suited to accept sanitary wastewater and biological waste streams such as from food processing plants.” Spill prevention measures, including double containment per NYSDEC bulk storage requirements, will be included to mitigate any risk to groundwater.

Further, the SPDES permit effluent limitations will ensure that a discharge does not adversely impact groundwater, and the WWTF will comply with the requirements of the SPDES permit. Similarly, as noted in the Permit Application Transfer Form, STAMP Sewer Works, Inc. will comply with all conditions of the SPDES Permit.

Force Main

As mentioned in the EPPP Leadership Meeting Minutes, under the Right of Way permit from the USFWS, GCEDC is required to monitor the flow rates at the points entering and existing the wildlife refuge to ensure no leaks or other issues with the Force Main. Additionally, as described in the FM & MPS BODR, the Force Main will be marked by pipeline markers to help identify the location of the underground pipe.

As noted in the EPPP Transcript, the Force Main will be monitored 24-hours a day, utilizing failure and high water alarm systems, and if needed, the maintenance manholes with metering and valve control installed along the Force Main.

Powerline Reroute/Substation

Neither the Powerline Reroute nor the Substation entails the types of activities or operations that would be associated with any risks to groundwater, such as the storage or handling of hazardous materials.

Accordingly, the Project Infrastructure are not anticipated to create any potentially significant adverse impacts to groundwater that were not analyzed in the STAMP Environmental Record.

6. Impact on Flooding.

WWTF/Force Main

While the WWTF is not in a designated Floodway, as noted in the 2020 Amended Findings, the Force Main discharge location is in the 100-year and 500-year Floodplains. The discharge area itself will not be a significantly large impervious surface. The Hydraulics Report directly addresses the discharge from the Force Main and concludes that the increased discharge from the Force Main will have a negligible effect on the flood elevations in Oak Orchard Creek, without significant observable changes to the anticipated water surface elevations.

As noted in the Shelby/Medina Joint SPDES Letter, Orleans County "has an extremely flat topography" and "[d]rainage and flooding concerns are . . . main issues." However, as noted in the GCEDC Shelby/Medina Response Letter and demonstrated in the Hydraulics Report, the discharge was shown to have an unappreciable increase in water surface elevations downstream, even during a 100-year flood event.

In addition, in response to the Shelby/Medina Joint SPDES Letter, the GCEDC Shelby/Medina Response Letter further details that the discharge into Oak Orchard Creek was carefully analyzed by a NYSDEC-reviewed and approved Hydraulics Report. Accordingly, the Project Infrastructure are not anticipated to create any potentially significant adverse impacts to flooding that were not analyzed in the STAMP Environmental Record.

Powerline Reroute/Substation

Neither the Powerline Reroute nor the Substation entails the types of activities or operations that would be associated with any risks to flooding. While the Substation and Powerline Reroute will result in the creation of impervious surfaces, all stormwater discharge associated with these projects will be managed in accordance with NYSDEC requirements pursuant to a SWPPP.

Accordingly, the Project Infrastructure are not anticipated to create any potentially significant adverse impacts to flooding that were not analyzed in the STAMP Environmental Record.

7. Impact on Air. The Project Infrastructure will not be a significant source of air emissions. The Project Infrastructure do not entail the types of activities or operations that require the Applicant to acquire an Air Facility Permit or that are associated with a significant potential for air emissions. Any impacts to air quality from construction activities will be minor, and temporary in nature. Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impacts to air resources that were not analyzed in the STAMP Environmental Record.
8. Impact on Plants and Animals. As detailed in the 2020 Amended Findings, the Force Main will take place in habitat for various plants and animals noted in the EAF, Iroquois EA, Mussel Survey, and Wastewater PCN including several species listed as threatened or endangered. Pied-Billed Grebe, Sedge Wren, Henslow's Sparrow, Bald Eagle, Northern Harrier, Upland Sandpiper, Least Bittern, Short-eared Owl, Bog Turtle, Eastern Massasauga, and Mussels were all independently analyzed and evaluated in the context of the Force Main. The Iroquois EA and Wastewater PCN lays out the potential impacts to such species as well as the mitigation that is proposed in order to reduce impacts to the same. As detailed in the Iroquois EA and Wastewater PCN, the mitigation measures reduce the potential impact of the Force Main such that they are not likely to adversely affect the species noted in the Environmental Information.

In addition, following the submission of the Part 182 Clearance Request for Electrical Infrastructure, NYSDEC has determined that a Part 182 Incidental Take Permit will be required for the development of the Substation and WWTF in order to address the presence of the Short-Eared Owl and Northern Harrier (together, the "**Winter Raptors**") on the northwestern portion of the STAMP Site. Notably, NYSDEC confirmed in the NYSDEC Part 182 Response on Electrical Infrastructure that the Powerline Reroute (including its associated laydown area) would not require any additional permitting due to the minor and temporary nature of the disturbance associated with those projects. While the GEIS previously noted the presence of Winter Raptors on the STAMP Site, and the Agency disagreed that a Part 182 Incidental Take Permit was required for any of the Project Infrastructure (for the reasons detailed in the Agency's Part 182 correspondence with NYSDEC), the Agency nevertheless conducted extensive additional monitoring of Winter Raptor activity on the STAMP Site as detailed in the Take Permit Application at the request of NYSDEC. The Substation and WWTF will permanently impact approximately 11.5 acres of NYSDEC-designated "occupied habitat" for the Winter Raptors. Notably, as detailed in the Take Permit Application, the Project Infrastructure has been designed with the smallest permanent and temporary footprints possible to minimize disturbance to the occupied habitat, including locating roughly one-third of the Substation in forest/shrub land that does not serve as occupied habitat.

Accordingly, pursuant to Part 182, the Agency has proposed to mitigate any potentially adverse impacts associated with the loss of such habitat by establishing and maintaining new and improved habitat to replace the lost habitat. 11.5 acres of land that has transition into an old field/shrubland matrix will be mowed/brush-hogged, with treatment and successional mowing thereafter as needed to allow grass and forb species to be established. The proposed mitigation site is located on the STAMP Site, is owned by the Agency, and is located approximately 700' from the adjacent grasslands at the John White Wildlife Management Area. The Agency has consulted closely with NYSDEC to ensure that the proposed mitigation plan confers a net conservation benefit to the Winter Raptors, as required by Part 182. As the Tech Team Memo recites, the Winter Raptors prefer open fields of 25 or more acres, and the mitigation plan includes provisions for creating the appropriate conditions for the species on the mitigation parcel and maintaining the mitigation parcel as suitable habitat. The Agency is also in the process of evaluating pursuing a Part 182 Permit application for the remainder of the STAMP Site, however, the Tech Team Memo confirms that no environmental harm caused by the approach rejected by the Nation in the Nation Correspondence - establishing appropriate mitigation on a project-by-project basis may be less efficient from a permit processing perspective (meaning the

DEC has to process more than one permit), however, any future Part 182 Permit applications that involve the development of occupied habitat will be subject to the same stringent "Net Conservation Benefit" standard as the current application.

It is also worth noting that the LMP (a mitigation document pursuant to the GEIS) provides for the management of STAMP land and environmental resources (including species). Pursuant to the GEIS, the LMP is updated every five years, and is currently in the process of being updated. As noted in the LMP, extensive mitigation has been proposed to ensure that threatened and endangered species are not adversely impacted by the development of STAMP generally, as well as the Project Infrastructure specifically.

The Nation Correspondence expresses concern that there is an absence of survey information relating to the presence of the Winter Raptors during the breeding season, however, as the Tech Team Memo notes, breeding season surveys were undertaken by CC from May 18, 2022, through July 19, 2022, in accordance with a NYSDEC-approved survey plan consistent with the NYSDEC Survey Protocol for State-listed Breeding Grassland Bird Species (August 2021). No breeding behavior by the Winter Raptors has ever been documented on the STAMP Site.

Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impacts to plants, animals or natural communities, or wildlife habitat that were not analyzed in the STAMP Environmental Record. In fact, the additional mitigation measures proposed in connection with the Take Permit Application will confer a net conservation benefit to the Winter Raptors.

9. Impact on Agricultural Land Resources. The STAMP Environmental Record includes an analysis of the impacts of minor expansions of the STAMP Site and potential infrastructure improvements relating to the same. As described in the Environmental Information, the Force Main will be constructed within existing rights of way to avoid impacts to agricultural resources. The WWTF will be constructed on the STAMP Site, within the existing utility infrastructure area. The Substation will remain constructed partially within the STAMP Site and partially within a parcel immediately north of the STAMP Site, as detailed in the 2020 Amended Findings. Therefore, the Project Infrastructure are not anticipated to create any significant adverse impacts to agricultural land resources that were not analyzed in the STAMP Environmental Record.

10. Impact on Aesthetic Resources. The Project Infrastructure will not be visible from any officially designated federal, state or local scenic or aesthetic resource. As detailed in the 2020 Amended Findings, the Force Main and Water Main will be buried underground, and the remainder of the Project Infrastructure are situated adjacent to the STAMP Site, which is anticipated to be a well-developed commercial and industrial area. In addition, the photo simulations prepared in connection with the Substation IA and Powerline IA demonstrate that the Project Infrastructure are substantially screened by existing vegetation as well as the significant buffers between the Project Infrastructure and surrounding properties. Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impacts to aesthetic resources that were not analyzed in the STAMP Environmental Record.

11. Impact on Historic and Archeological Resources. The Project Infrastructure do not contain, nor are they adjacent to, a building, or district which is listed on, or that has been nominated to the State or National Register of Historic Places. The Project Infrastructure include an area designated as sensitive for archeological sites by the NYS Historic Preservation Office, however, the Agency has historically coordinated with the NYS Historic Preservation Office on the development of the STAMP Site, with such coordination continuing for the Project Infrastructure. Impacts to historic and archaeological resources are analyzed extensively in the STAMP Environmental Record, and the Programmatic Agreement comprehensively cleared the STAMP Site of Archaeological resources.

The Agency has engaged in extensive consultation with the Nation with respect to the Project Infrastructure, including weekly written updates to the Nation and monthly consultation conference calls. Further, as required by the LOR that was negotiated between NYSDEC, GCEDC, SHPO, and the Nation, the Agency has prepared the WWTF IA, Substation IA, and Powerline IA in order to evaluate whether the Project Infrastructure will have any adverse impact upon the Nation's Territory as a potential property of religious and cultural significance based on the National Register Criteria for eligibility. Each of the IA's analysis and findings (including subsequent correspondence from the Agency to the Nation, SHPO, and NYSDEC) are incorporated herein by reference. The IAs provide an extensive analysis of the Nation's history, including a detailed understanding of the Nation's usage of the Nation's Territory as explained by the Nation. The IAs have historically been updated whenever specific feedback is provided by the Nation. To the extent the Nation believes that information or perspective is missing from the Initial Assessments, the LOR process provides the Nation

the opportunity to comment substantively on each Initial Assessment, and the Nation's input is a valued part of the review process for the Agency. While the Nation has provided comments letters voicing generalized opposition the Project Infrastructure, none of the Nation's letters have alleged any specific, substantiated significant adverse environmental impacts resulting from the Project Infrastructure.

Substation

As detailed in the Substation IA, the Substation will be located approximately 3,800 feet, or 3/4ths of a mile, from the Nation's Territory at its closest point. The visual assessment provided therein further demonstrates that the Substation will not be substantially visible above the significant intervening vegetation. Further, as the buffer areas provided for in the Plug Power Settlement Agreement are allowed to continue to grow in their natural state, additional screening will naturally be provided. As detailed below, noise levels from the Substation fall well below ambient noise levels at the border of the Nation's Territory.

WWTF / Force Main

The GEIS originally included an on-site wastewater treatment plant to treat wastewater generated at STAMP, before it would discharge to Whitney Creek. After the Nation expressed concerns about the original discharge location, which would be upstream from the Nation's Territory, GCEDC addressed this concern by negotiating a pathway for review and approval of the installation of a new force main sewer line from STAMP to Medina, New York as detailed in the 2016 Project Modifications. In the 2020 Project Modifications, GCEDC reviewed and approved changes to the proposed force main sewer line, with a proposed discharge location in Oak Orchard Creek just upstream from Medina and an on-Site WWTF.

In addition to the WWTF IA that was prepared for the WWTF and Force Main, the Agency prepared and executed an Enhanced Public Participation Plan consistent with NYSDEC's Commissioner Policy 29 ("CP 29"). CP 29 was issued by NYSDEC to promote the fair involvement of all people in the environmental permitting process and to ensure that NYSDEC's environmental permitting processes promote environmental justice. Accordingly, as detailed in the EPPP Certification, the Agency held information meetings with both Nation leadership and citizens of the Nation. The Agency also maintained a document repository to make information about the WWTF readily available to the Nation and its citizens. Throughout the EPPP process, the Agency addressed all comments, questions, and concerns raised by the Nation with respect to the WWTF.

As detailed in the WWTF IA and as noted below, given the distance between the proposed WWTF and the Nation's boundary the WWTF will not be substantially visible, audible, or emanate odors which would impact the Nation's Territory. The WWTF and Force Main now proposed represent a substantial investment by the Agency to mitigate any potential impacts of the development of STAMP on the Nation, as detailed in the Tech Team Memo and above under the discussion of Surface Waters. While the Nation has also expressed concern that the WWTF wet well is insufficiently sized, the relevant BODR clearly details that the wet well is appropriately sized and has numerous safety systems in place to prevent backflow. As the NYSDEC Comment Letter concisely summarizes, "unlike the other wastewater treatment configurations GCEDC considered prior to the final version of the SPDES permit application, no wastewater from the proposed WWTF would enter the TSN reservation watershed under the SPDES permit. Rather, the force main/effluent pipe from the WWTF would run for nine miles to an Oak Orchard Creek discharge point well away from that watershed."

Powerline Reroute

As detailed in the GCEDC Powerline IA Response Letter, the Agency and the Nation's discussion of the Powerline Reroute dates back to at least 2018. At the recommendation of NYSDEC, the Agency began conducting direct consultation with the Nation with respect to the Project. Over the course of approximately 18 months, the Agency provided the Nation with information relating to the Project including design plans, and conducted site visits with representatives of the Nation in order to assist the Nation in better understanding any potential impacts of the Project on the Nation's Territory.

In the Plug Power Settlement Agreement, the Agency and Nation agreed not only to the relocation of the power lines, but also the exact location of the 100' wide area in which the power lines would be placed. The Plug Power Settlement Agreement clearly states that "the future easement to National Grid associated with the power line reroute on the STAMP Site" will be located partially "within the Restricted Protected Property Area." The Settlement Agreement went so far as to acknowledge the terms and conditions of pesticide usage in connection with the Project. Moreover, by placing the powerlines along the course of the proposed reroute, there has been a significant expansion of the buffer area between the Nation and STAMP - in essence, everything west of the Powerline Reroute has now been designated as protected buffer area.

The Agency then prepared the Powerline IA to evaluate potential impacts to the Nation's Territory as a TCP. As detailed therein (including the detailed visual analysis performed at the recommendation of NYSDEC), the Powerline Reroute will not result in any adverse impacts to hunting, fishing, or ceremonial activities conducted in the Big Woods, as no significant visual, audible, or water-related impacts will result from the Powerline Reroute. While the Nation has expressed its objection generally to the Powerline Reroute, the Nation has not alleged any specific adverse impacts that the Powerline Reroute could have on the Nation's Territory, and the extensive Environmental Record demonstrates that the Powerline Reroute will not have any such adverse impacts. While the Nation Correspondence recites that the Nation was not consulted with respect to the visual simulations that were prepared, as the Tech Team Memo notes, when Saratoga Associates was preparing its first visual impact assessment pursuant to the LOR, the Agency informed the Nation that the Agency had retained Saratoga Associates to conduct field work to gather background visual data to be utilized in future impact assessments for the benefit of the Nation. The Agency requested permission from the Nation to allow Saratoga Associates to enter the Nation's Territory to gather visual data, however, the Nation declined to respond to this offer.

Accordingly, it is not anticipated that the Project Infrastructure will create any significant adverse impacts to historical or archaeological resources that were not analyzed in the STAMP Environmental Record.

12. Impact on Open Space and Recreation. The Site does not comprise public open space nor is the Site or surrounding area currently used for public recreation. While the WWTF IA, Powerline IA, and Substation IA acknowledge that the Nation utilizes the Big Woods located to the west of the STAMP Site for certain hunting and cultural activities, the Project Infrastructure is not anticipated to have any impact on such activities for the reasons detailed above. Accordingly, the Project Infrastructure are not anticipated to create any significant impacts to open space or recreational resources that were not analyzed in the STAMP Environmental Record.
13. Impact on Critical Environmental Areas. The Project Infrastructure are not located in or substantially contiguous to any Critical Environmental Areas, including the off-Site component of the Force Main. As such, the Project Infrastructure are not anticipated to create any significant adverse impacts to Critical Environmental Areas that were not analyzed in the STAMP Environmental Record.

14. Impact on Transportation. In accordance with the GEIS and SEQR, as new projects are proposed at the Site, the traffic impacts of such projects are analyzed against the thresholds set forth in the GEIS. The Project Infrastructure do not involve any of the activities which would be associated with an increased demand for transportation, and the minor additional vehicle trips associated with construction and maintenance of the Project Infrastructure were previously analyzed in the GEIS. Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impacts to transportation that were not analyzed in the STAMP Environmental Record.
15. Impact on Energy. As noted in the 2020 Amended Findings, the Project Infrastructure (specifically, the Substation) will enable an increase in the electrical capacity of the STAMP Site. As detailed in the Environmental Information, the Substation (together with associated improvements to existing powerlines) allows for an increase in the STAMP electrical demand threshold from 185MW to 535MW. The STAMP Environmental Record includes an analysis of the impacts of minor expansions of the STAMP Site as well as the impacts for the demand for energy for the Project, and potential infrastructure improvements relating to the same. As such, the Substation increases the energy capacity threshold for STAMP, and the Project Infrastructure will not create any significant adverse impacts to energy resources that were not analyzed in the STAMP Environmental Record.
16. Impact on Noise, Odor and Light. The Project Infrastructure are not expected to appreciably increase ambient noise or lighting levels or to create odors.

Substation

The EAF explains that lighting fixtures servicing the Project Infrastructure will be limited to the vicinity of the Site for maintenance and emergency purposes, and that such lights will be Dark Sky Compliant.

The Substation Letter details that any noise associated with the Substation will fall well below the threshold set forth in the GEIS of 45 decibels. In fact, the Substation letter details that, at the point of the closest structure to the Substation's nearest transformer (a distance of approximately 715 feet), the sound pressure level will be only 28.914 decibels - well below existing ambient noise levels as detailed in the Environmental Record.

The Substation does not involve the types of activities that create significant noise. Any impacts to noise and/or odor from construction activities will be minor, and temporary in nature.

WWTF

The EAF explains that lighting fixtures servicing the Project Infrastructure will be limited to the vicinity of the Site for maintenance and emergency purposes, and that such lights will be Dark Sky Compliant.

As detailed in the WWTF BODR, the Force Main will contain only treated effluent and treated process water. The treatment processes where odors are a concern are contained within buildings to mitigate odors. No odors are expected to be experienced outside of such structures as a part of the operations of the WWTF.

Similarly, as all treatment processes are contained within structures, the WWTF is not anticipated to appreciably increase noise levels. Further, the WWTF will be centrally located on the STAMP Site, immediately north of the location of Project Gateway.

Force Main

The Force Main will be buried below ground and accordingly does not involve the types of activities that create significant noise, odors, or lighting. As detailed in the WWTF BODR, the Force Main will contain only treated effluent and treated process water. The treatment processes where odors are a concern are contained within buildings to mitigate odors. Any impacts to noise and/or odor from construction activities will be minor, and temporary in nature.

Powerline Reroute

The Powerline Reroute does not involve the types of activities that create significant noise, odors, or lighting. Any impacts to noise and/or odor from construction activities will be minor, and temporary in nature.

Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impacts to noise, odors or light that were not analyzed in the STAMP Environmental Record.

17. Impact on Public Health. The Project Infrastructure do not entail the types of activities or operations that are associated with a significant potential for affecting public health, such as storing large amounts of hazardous or toxic materials. As detailed in the 2020 Amended Findings, a portion of the Site is listed in the NYSDEC Spills Incidents Database (DEC ID 9607396), however,

that incident was listed as "Closed" due to the successful remediation of soils in 2004.

Substation

As detailed in the Substation Letter, the Substation will follow all the safety parameters set forth by the New York State Public Service Commission, the New York Power Authority, and National Grid. The Substation itself will include a ground grid system that includes grounding of the fencing surrounding the Substation in order to ensure safety to those in the vicinity of the Substation, while those outside of the Substation perimeter will not be affected.

WWTF

The WWTF's design and operation are laid out extensively in the BODR, and will be necessary to service the STAMP Site in a safe, environmentally friendly manner. The WWTF BODR provides that local emergency management services will be trained for emergency safety and response at the WWTF. Emergency management services will further be taught the hazards of any chemicals stored onsite.

Chemicals stored on-Site will include alum for phosphorus precipitation and polymer for screw press dewatering. The alum will be stored in a chemical bulk storage area located in the headworks and control building. The polymer will be stored in a chemical bulk storage area in the dewatering building. The chemical bulk storage areas will include spill prevention measures including double containment equal to the largest storage volume per NYSDEC bulk storage requirements.

Force Main

The Force Main itself does not entail the types of activities or operations that are associated with a significant potential for affecting public health. As detailed in the Force Main BODR, the Force Main will only carry flows of combined sanitary treated effluent and treated process water. No untreated effluent or process water will enter the Force Main at any point. Further, main line valves will be installed approximately every 1,000' along the Force Main to provide a means to isolate sections of the Force Main for testing and maintenance purposes. Flow rates will be monitored 24/7 south of and immediately north of the US Fish and Wildlife Refuge, and the SPDES Permit sets forth a rigid sampling regime to ensure compliance with all applicable discharge limits.

Powerline Reroute

The Powerline Reroute itself does not entail the types of activities or operations that are associated with a significant potential for affecting public health. The Powerline Reroute is located within a portion of the STAMP Site's western buffer area, the 100' wide "Restricted Property Area", as provided for in the Plug Power Settlement Agreement. The Powerline Reroute is buffered to the west by an additional 400' of STAMP Site designated as Permanently Protected Property pursuant to the Plug Power Settlement Agreement, and to the east by the remainder of the STAMP Site.

Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impact to public health that were not analyzed in the STAMP Environmental Record.

18. Impact on Character of the Community, and Community Plans. The Project Infrastructure is in character with adjacent development and surrounding uses, including the industrial development of Plug Power. The Project Infrastructure itself does not include the type of development that would result in significant population growth or other typical drivers of impacts to Community Character and Community Plans. The GEIS analyzed the impacts from full build out of STAMP consisting of the rezoning the entire STAMP Site from agricultural/residential use to industrial/advanced manufacturing use, and with constructing and operating 6,130,000 square feet of advanced technology manufacturing uses at full build-out, providing direct employment for over 9,000 people, whereas the Project Infrastructure are minor infrastructure projects. Accordingly, the Project Infrastructure are not anticipated to create any significant adverse impacts to the growth or character of the community that were not analyzed in the STAMP Environmental Record.

Section 3. Having considered the Environmental Information, STAMP Environmental Record, and having considered the relevant environmental impacts, facts and conclusions relied upon to meet the requirements of 6 N.Y.C.R.R. § 617.11, and having weighed and balanced the relevant impacts with social, economic and other considerations, the Agency recertifies that:

- (i) The requirements of 6 N.Y.C.R.R. Part 617 have been met; and
- (ii) Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the Project remains one which avoids or minimizes adverse environmental effects to the

maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 5. This Resolution, which is adopted by a majority vote of the Agency, shall serve as the Amended Negative Declaration (as defined in 6 N.Y.C.R.R. 617.2(y)) for the Project Infrastructure, and is issued by the Agency pursuant to and in accordance with SEQRA, shall take effect immediately.

Section 6. For further information on this Determination of Significance/ Amended Negative Declaration contact:

Mark Masse
99 MedTech Drive, Suite 106
Batavia, New York 14020
Phone: 585-343-4866
Email: mmasse@gcedc.com

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Peter Zeliff	[X]	[]	[]	[]
Matthew Gray	[]	[]	[X]	[]
Paul Battaglia	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Todd Bender	[]	[]	[X]	[]
Marianne Clattenburg	[]	[]	[X]	[]
Chandy Kemp	[X]	[]	[]	[]

The foregoing Resolution was thereupon declared duly adopted.

CERTIFICATION

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

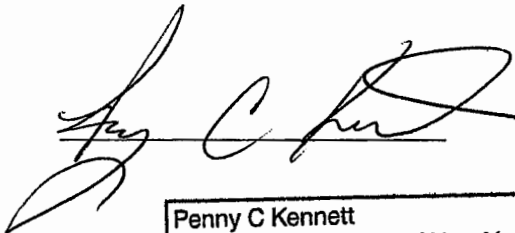
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on August 4, 2022, with the original thereof on file at the Agency's office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 5th day of August, 2022.



Penny C Kennett Notary Public - State of New York Qualified In Genesee County Reg #01KE6134587 My Commission Expires <u>10/3/25</u>
