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July 15, 2022

Board of Directors
GCEDC
99 MedTech Drive, Suite 106
Batavia, NY 14020
via email to Peter Zeliff, mustang56pz@gmail.com

Nya:wëh Sgë:nö,

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

The Nation received GCEDC's draft "SEQR Resolution" on July 1, just prior to the holiday weekend. We informed you by letter on July 6 that the Nation objects to the Resolution and would like to provide comments, setting ourselves a tight deadline of July 25. On July 7, you informed the Nation by email that GCEDC "is unable to extend the comment period" past July 15, which would allow the Nation just nine business days to review and provide comments on the thirty page Resolution, which incorporates by reference hundreds of additional pages. We hope you can understand why more time is needed. The Nation has just two full time office staffers, each of whom is on travel for Nation business this week. It is simply not possible for the Nation to thoroughly review and comment on so much material in nine business days. We provide the following preliminary comments as a matter of good faith and ask that you respect the Nation's right to provide further comments by July 25, per our earlier letter.

The Nation strongly objects to GCEDC acting as lead agency for the STAMP development. As a local development agency, GCEDC cannot work with the Nation on a government-to-government basis and has demonstrated again and again that it does not take seriously its obligation to consult meaningfully with the Nation. The Nation has repeatedly been asked to comment or consult on something without sufficient time or adequate information. GCEDC has shown not appropriate respect for the Nation's sovereignty. And the STAMP project and its infrastructure will have vast regional impacts on Haudenosaunee territory, from the Niagara River to Lake Ontario. As a county development agency, GCEDC is poorly suited to consider these impacts, which extend far beyond county borders.

The Nation objected to GCEDC's lead agency status and sent a letter on July 6, 2022 to DEC Commissioner Basil Seggos asking for DEC to seek lead agency status. The Nation does not acknowledge GCEDC as proper lead agency for any further environmental review of any portion of the STAMP project.

The proposed resolution continues GCEDC's pattern of piecemealing the STAMP project and obscuring facts from the Nation, showing a "develop at whatever cost" attitude that undermines the purpose of SEQR reviews.

The proposed Resolution would deny the Nation the right to robust environmental impact assessments at and related to the STAMP site. Since 2016, the Nation has called for updated environmental reviews of the proposed STAMP project that would fully consider impacts of this facility on the Nation, our environment, our people, and future generations. These reviews are badly needed because the project's FEIS was completed over a decade ago; because the Nation's reservation Territory was not yet recognized as a Traditional Cultural Property (TCP) eligible for listing on the National Register at that time; and because the initial EIS failed to examine impacts beyond the STAMP's site's boundaries. Throughout the permitting process, we have seen again and again how GCEDC fails to consider the impacts on the Nation and makes conclusory and inaccurate assessments of those impacts. Nevertheless, the proposed Resolution concludes that -- despite the significant changes in the project, the identification of threatened and endangered species on the site, documented and projected climate change in the region, and the strong objection of the Nation and others to a number of proposed project components -- no further environmental review is necessary, and a Negative Declaration is appropriate. This conclusion mocks the importance of SEQR in New York and threatens the health and welfare of our Nation and our environment.

In its June 7, 2022 letter, GCEDC deemed itself "lead agency" and asserted that it was going to undertake "additional environmental review." However, the proposed Resolution shows GCEDC intends to do the opposite. The SEQR Resolution does not include any new environmental review. In its June 7 letter, GCEDC stated that it would "undertake an updated review of the WWTF, FM, substation and powerline reroute in order to determine whether the additional environmental analysis reveals any significant adverse environmental impacts that were not analyzed in the GEIS and Findings Statement." GCEDC letter at 2. The proposed Resolution, sent less than a month later, references only documents created prior to June 7, 2022, but claims that they comprise "additional environmental analysis" and that this "additional environmental analysis" shows there will be no adverse impacts to the Nation or the environment from STAMP. This approach is insulting to the Nation and flies in the face of our longstanding request for additional environmental review of the impacts of the STAMP project that is substantive and conducted in consultation with the Nation.

The proposed Resolution incorporates by reference forty nine documents, in what appears to be an effort to paper over fundamental flaws in the 2010 environmental review. Sheer quantity cannot make up for substantial qualitative deficiencies. Review of some of the referenced documents exposes conclusory and outcome-based approach underlying the Resolution. For example, the documents include multiple communications from the Nation objecting to the

SPDES permit application and raising significant concerns about the impact of the proposed discharge to Oak Orchard Creek.

Neither GCEDC nor DEC has provided any written response to these concerns, which were first lodged by letter over eight months ago. To the best of the Nation's knowledge, GCEDC has never analyzed the impact of a sewage discharge containing Phosphorus on the Phosphorus-impaired Oak Orchard Creek. GCEDC's claim that 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" is simply false. Neither the original nor the amended GEIS acknowledged that Oak Orchard Creek is impaired for Phosphorus. Neither DEC nor GCEDC has completed a waste load allocation for Oak Orchard Creek to determine the current Phosphorus loading, nor has any Phosphorus reduction from other Phosphorus sources been identified. GCEDC's assertion the WWTF discharge will have no significant impact on Oak Orchard Creek is unsupported in the record.

Compounding its failure to adequately assess impacts on Oak Orchard Creek, GCEDC has also failed to analyze the impact of the proposed six million gallons per day discharge during low flow. That volume of discharge will render the creek an industrial-effluent dominated waterway – clearly an adverse impact. And, despite its recitation in the proposed Resolution that 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," the Nation has seen no such limitations nor any response to its comments and communications. Because these effluent limits have not been provided to the Nation or otherwise made public, they cannot serve as the basis for a negative declaration.

The so-called "Force Main" offers another example of the failure to adequately assess environmental impacts. The force main is proposed to be an outfall for as-yet-unidentified and unpermitted industrial discharges. GCEDC concedes this in other documents yet baldly concludes in the proposed Resolution that the force main will have no impact on the environment.

GCEDC also refers to the application for an incidental take permit to support its proposed negative declaration. However, the public comment period for that permit remains open and the Nation has not yet submitted its comments, the timeline for which is distinct from that of "the public." The Nation has a number of concerns with respect to species on the site, including the extent of surveying, potential roosting, segmentation, the adequacy of mitigation and the reliability of seasonal restrictions.

Likewise, the Nation has raised the need for a robust visual impact assessment of all elements of the STAMP development, an assessment that cannot be completed without consultation and collaboration with the Nation. For example, the power line project GCEDC is pursuing at STAMP would result in huge steel towers being constructed directly adjacent to the Nation's Territory, and as the Nation has informed GCEDC, the National Park Services deem visual impact assessment of such towers a "complex, multistep process" that includes "gathering information about [viewshed] users" and analyzing "sensitivity of the viewers to changes in the

landscape.” (Nation letter of April 22 quoting NPS and BLM guidance). The Nation has called upon GCEDC to initiate the consultations required for an adequate visual impacts assessment; instead, GCEDC continues to employ a consultant who has never set foot on the Nation’s Territory, much less communicated with the Nation about viewshed users or sensitivity to landscape changes or any other aspect of visual impact assessment.

Finally, GCEDC has chosen to pursue a “cultural resource screening” strategy that literally erases the Nation and its citizens from analysis of cultural resource impacts. Each and every cultural resource impact report GCEDC has commissioned expressly “privilege[s] non-Indian perspectives and perceptions” and intentionally omits “culturally specific information.” This methodology is very familiar to the Nation, as we have faced centuries of efforts to ignore our people and erase our culture.

To date, there has been no response or resolution to these or other serious environmental, cultural and legal issues raised by the Nation. Simply including the Nation’s correspondence raising those objections in the proposed SEQR Resolution does not demonstrate an absence of environmental impacts or support a negative declaration. Instead, it underscores the need for additional analysis.

The Nation will provide additional comments by July 25. We call upon GCEDC to acknowledge that allowing nine business days to comment on hundreds of pages of documentation is not appropriate consultation with the Nation.

Sincerely,

A handwritten signature in black ink, appearing to read "Chief Roger Hill". The signature is stylized and cursive.

Chief Roger Hill
Tonawanda Seneca Nation

cc: Basil Seggos, DEC
Kimberly Merchant, DEC
Scott Sheeley, DEC
Thomas Haley, DEC
Jacqueline Lendrum, DEC
Alanah Keddell-Tuckey, DEC
Adriana Espinoza, DEC
Beynan Ransom, DEC
David Witt, DEC
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Matthew Tejada, EPA
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Grant Jonathan, EPA
Argie Cirillo, EPA