

November 3, 2022

Kimberly Merchant
Deputy Permit Administrator, Region 8
New York State Department of Environmental Conservation
via email to kimberly.merchant@dec.ny.gov

Mark Masse
Genesee County Economic Development Center
Via email to mmasse@gcedc.com

Dear Ms. Merchant and Mr. Masse:

I write on behalf of the Tonawanda Seneca Nation to express the Nation's concerns regarding the October 28, 2022 letter submitted to DEC by counsel for the Genesee County Economic Development Center ("GCEDC") with regard to the development of the Scannell Project on the Western New York Science and Technology Advanced Manufacturing Park ("STAMP") and to GCEDC's intent to assume SEQR lead agency status. Among other points, the Nation is concerned about GCEDC's characterization of the obligations of agencies and applicants for permits and other administrative approvals arising from the Climate Leadership and Community Protection Act ("CLCPA").

As you know, under Section 7 of this statute, each time a New York state agency grants an approval or engages in decision making, the agency must determine whether the administrative action is "inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits," or would "disproportionately burden disadvantaged communities."¹ In considering the compliance of a particular project with CLCPA Section 7, the Department must engage in "a case-specific inquiry" into the greenhouse gas impacts of the particular activity under review as well as reasonably foreseeable downstream emissions associated with the approved activity.²

GCEDC suggests that these duties have been discharged, in large part, by analysis included in the STAMP GEIS, which was completed in 2012.³ For instance, GCEDC suggests that duties under the CLCPA are discharged by information contained in the GEIS regarding the natural gas demand of the entire STAMP site.⁴ But the GEIS was enacted years before the CLCPA was drafted by the legislature and enacted into law. And rather than identifying a detailed analysis of the project-specific greenhouse gas emissions, GCEDC points to projections of the natural gas demand of the whole STAMP site contained in the GEIS. GCEDC fails to

¹ See CLCPA § 7(2), (3); see also Greenidge Title V Decision at 6–7, available at https://www.dec.ny.gov/docs/administration_pdf/greenidgefinal630.pdf.

² *Id.* at 7-16, 19-20; CP-49 Climate Change and DEC Action at 6, available at https://www.dec.ny.gov/docs/administration_pdf/cp49revised.pdf.

³ October 28, Letter at 3-4.

⁴ *Id.* at 3.

identify a case-specific inquiry into the consistency of a specific project with statewide greenhouse gas emissions goals. GCEDC also fails to point to any case-specific explanation for why the specific greenhouse gas impacts of the Scannell project might be justified and/or how these greenhouse gas impacts might be mitigated. To satisfy the requirements of CLCPA, GCEDC will need to supply Section 7 information on greenhouse gas emissions resulting from vehicle traffic, heating systems, and any other sources associated with the Scannell Project.

GCEDC's response to DEC's concerns about vehicle traffic associated with the Scannell Project is particularly concerning.⁵ Pointing once again to the GEIS, GCEDC states that micro-and-mesoscale air quality impacts of vehicle traffic at the STAMP site have been conducted.⁶ This section of the October 28 letter erroneously presumes that the requirements of CLCPA Section 7 are coextensive with those of the Clean Air Act and associated regulatory guidance.⁷ GCEDC also conflates air quality analyses considering the impacts of pollutants, like CO and VOC, with assessments of greenhouse gas intensity of the vehicle traffic measured in CO₂e.⁸

Finally, the GEIS does not contain an analysis of the impacts of the Scannell Project on disadvantaged communities—nor could it, as the New York State Climate Justice Working Group's draft criteria identifying these communities was not released until years after the GEIS was conducted. In addition to prohibiting state agencies from granting approval for projects that disproportionately burden disadvantaged communities, CLCPA Section 7 requires agencies to prioritize reductions of all emissions in those communities. It is the duty of the applicant for the administrative approval to provide the presiding agency with the information necessary to make the determination that a particular project complies with the disadvantaged communities provision of CLCPA Section 7.⁹ The GEIS cannot be used to discharge this duty.

As expressed in our letter of July 15, 2022 to Commissioner Seggos and email communication of October 31 to GCEDC, the Nation strongly objects to GCEDC assuming lead agency status on projects at STAMP. GCEDC's October 28 letter to DEC raises a number of concerns, only some of which we address here. The Nation welcomes any additional information from either DEC or GCEDC that would demonstrate the Scannell Project's compliance with the CLCPA. We look forward to discussing this matter further with you at your convenience.

Sincerely,



Alex Page

Cc: Adam Walters, Philips Lytle LLP
Beynan Ransom, DEC
Adriana Espinoza, DEC

⁵ *Id.* at 3-4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See, e.g.*, Greenidge Title V Decision at 19-20.