

Summary of STAMP Public Comments by Topic and DEC Response

Genesee County IDA d/b/a Genesee County Economic Development Center (GCEDC) has applied for a site-wide Article 11, Part 182 permit to take overwintering habitat used by the State-Listed Endangered short eared owl (SEOW) and the State-listed Threatened northern harrier (NOHA) on the Western New York Science & Technology Advanced Manufacturing Park site (the “STAMP site”) being developed by GCEDC in Genesee County, located west of State Route 77/63, south of State Route 77, and north of Judge Road in the Town of Alabama. The proposed taking and associated mitigation is intended to, for 6 NYCRR Part 182 (Part 182) purposes, address the full development of the STAMP site for future tenants. The impacts would be 665 acres of permanent impacts to overwintering habitat which has been deemed occupied habitat by the SEOW and NOHA.

The regulations for issuing a permit under 6 NYCRR Part 182 require that any take of threatened or endangered species be considered and addressed through a permit issued pursuant Part 182. Taking is defined in the regulations to include not only the direct killing of listed species, but also actions that are expected to result in harm to individuals, including adverse impacts to habitats occupied by listed species. The permit required under existing law (ECL Section 11-0535) and regulations (Part 182) for activities that may result in the take of endangered or threatened species is an incidental take permit. These regulations refer to the permit as an incidental take permit because the take authorized by the permit is incidental to (i.e., not the primary purpose of) an otherwise lawful activity.

The permit requirements under these regulations only apply to animal species listed as endangered or threatened as defined in Part 182. An incidental take permit is not required for activities affecting species of special concern in Part 182. DEC regulates activities that will result in direct harm to listed species or the adverse modification of the occupied habitat of endangered or threatened species. DEC's authority to regulate such activities is based upon court decisions that have ruled that the term take, as used in the State's Endangered Species Act, includes adverse modification of the habitat of protected species. The regulations adopt the definition of take as articulated by those court decisions.

On February 3, 2023, GCEDC submitted the site-wide Part 182 application. Resubmittal documents were received on February 17th. On March 1, 2023, DEC issued a Notice of Complete Application (NOCA) in the Environmental Notice Bulletin (ENB), which included an opportunity for public comment and review. On March 10, DEC received a resubmittal which responded to a Request for Additional Technical Information. DEC subsequently noticed a May 11, 2023 Part 621 legislative hearing, which also extended the public review and comment period, in the ENB on April 19, 2023. On May 5th a revised Implementation Agreement was submitted. The public comment period was extended through midnight on the date of the hearing which was held on May 11th. On June 15th, DEC received a revised Implementation Agreement including a revised Mitigation Cost Estimate and mitigation details.

DEC has carefully reviewed all comments received regarding the above referenced project. This document provides a summary of these comments and DEC response.

Net Conservation Benefit, Part 182 Taking Permit:

A. Additional Impacts

Comment: Additional onsite impacts (ex: vehicle traffic, noise, light, air pollution, etc.) need to be considered.

Response: All on-site impacts to overwintering short-eared owls and northern harriers under the regulatory authority of Part 182 have been assessed as part of this permit action. Additional mitigation measures will be put in place; for example, downward facing lighting is to be used on all development at the STAMP site which will mitigate offsite lighting impacts to these species.

Comment: Additional future onsite impacts (ex: pesticide and rodenticide use) should also be considered for this permit action.

Response: All onsite impacts to overwintering short-eared owls and northern harriers under the regulatory authority of Part 182 have been assessed as part of this permit action. Additional potential future onsite impacts from pesticide and rodenticide use have been negated, as the habitat on which these activities may occur have already been accounted for in the 665 acres of permanent impacts. A condition has been placed in the Part 182 permit that prohibits the use of rodenticides on GCEDC owned lands located immediately adjacent to the mitigation sites.

Comment: Onsite impacts cannot be fully considered until all elements of future site build-out are known.

Response: All onsite impacts to overwintering short-eared owl or northern harrier under the regulatory authority of Part 182 have been assessed as part of this permit action. Potential future onsite impacts to these species associated with the site build-out have already been accounted for by this permit action, which assumes full development of the 665 acres. If any new E&T species are found at the site, a new Part 182 permit would be required if impacts are identified.

B. Impacts to the Short-Eared Owl and Northern Harrier

Comment: The Application lacks a demonstration that this project will not jeopardize the recovery of short-eared owls and northern harrier.

Response: Managing habitat for grassland birds is a priority within the northeast, including New York State. The STAMP site lies within the Oak Orchard – Iroquois Grassland Bird Conservation Center, one of five State focus areas for managing habitat for grassland birds designated within the NYSDEC Strategy for Grassland Bird Habitat Management and Conservation. As part of this strategy, the DEC is committed to managing open habitat to benefit grassland birds within the John White, Oak Orchard, and Tonawanda WMAs. The strategy also calls for working with partners and private landowners to encourage best management practices for grassland birds outside of DEC land within the concentration area. These efforts will help to maintain short-eared owl and northern harrier populations in and around the Iroquois wildlife complex. The mitigation plan proposes to enhance grasslands at John White Wildlife Management Area (WMA) by removing a portion of a large hedgerow to connect a proposed grassland field with existing grassland on the state-owned property, thereby establishing additional grassland habitat connectivity. A proposed 33-acre grassland area will be deeded to DEC for incorporation into the John White WMA for permanent habitat protection. The long-term commitment of maintaining the grassland that is proposed

within the STAMP site Mitigation Plan provides that SEOW and NOHA, along with other grassland-dependent bird and pollinator species will have some grassland habitat remaining at the STAMP site. As a result of these proposed habitat improvements and expansions, SEOW and NOHA that winter in this area will be able to continue to forage at both the STAMP site and on the existing habitat in the surrounding landscape with no anticipated impacts to either species' population.

C. Onsite Avoidance and Minimization

Comment: The Application lacks a showing of effort to avoid and minimize impacts. Avoidance and minimization of onsite activities are needed to limit impacts.

Response: To avoid and minimize impacts to SEOW and NOHA, GCEDC will remove developable acreage within the STAMP site from their planned development and will instead use this acreage to create grassland habitat for use by these species. Lands were selected proximate to John White WMA, a known and important winter raptor use area, to further limit disturbance to species that are utilizing that nearby habitat and to build upon areas of known occupied habitat. Buffers and setbacks have also been established to reduce impacts to sensitive features. Agricultural activities will continue up until the time of construction, which will ensure these fields remain open and accessible to wintering raptors. Open buffers along the edges of the STAMP site, adjacent to neighboring open fields, may continue to provide habitat even after development either as direct foraging areas or as a potential source population of prey species that could recolonize former fields after development or disturbance.

Additional avoidance and minimization activities, are included in the sitewide Part 182 permit including downward facing lighting, alternative pesticide (bird sensitive pesticide use) and parcels adjacent to mitigation sites and inclusion of bird-safe windows in future construction

Comment: Educational programs are needed to raise public awareness about the importance of these species.

Response: Thank you for your comment. DEC has a long tradition of promoting and conserving avian diversity and will continue to promote programs ranging from the Bird Conservation Areas Program, I Bird NY, the Breeding Bird Atlas and the 2022 release of the NYSDEC Strategy for Grassland Bird Management. As part of this strategy, where possible, landowners within the Grassland Bird Conservation Centers will be encouraged to implement best management practices to benefit grassland birds.

D. Net Conservation Benefit

Comment: Commenters requested clarification as to how the project achieves the Net Conservation Benefit standard required by the Part 182 regulations.

Response: To mitigate the impacts to known occupied habitat on the STAMP site, GCEDC has proposed the use of two areas totaling 58 acres within the STAMP site. The first area is a 25-acre parcel that GCEDC would maintain as grassland habitat for 45 years (nine 5-year cycles) and place a permanent conservation easement on (additional credit of two 5-year cycles for a total of a 55-year mitigation term and 275 acres of

mitigation). The second area is 33 acres of a larger 46-acre parcel that GCEDC would convert to and maintain as grassland habitat for 30 years (six 5-year cycles) and eventually transfer to DEC for incorporation into the adjacent John White WMA (additional credit of six 5-year cycles for a total of a 60-year mitigation term and 396 acres of mitigation).

The total take assessment of 665 acres is based on full project build out. In the short run, many parcels will remain undeveloped and remain in agricultural production. While the goal of the project is to enable 665 acres of development, individual projects may ultimately result in less impact to the occupied habitat. Therefore, in addition to the mitigation package being implemented by the applicant, a significant portion of the property will continue to be maintained as open field habitat. The agricultural fields and open spaces remain available for foraging winter raptors until development occurs.

Based on the calculations and credits described above, GCEDC will implement 671 acres of total mitigation; expansion by 33 acres of the John White WMA; and establish a conservation easement on an additional 25-acre parcel, permanently protecting open space and ecological values. The length of time proposed for these collective grassland mitigation efforts ensure that this essential habitat type, which tends to be ephemeral in nature, will exist on the landscape for significantly longer than it may have without such protections. While it may be counterintuitive how mitigation on less acreage can result in a net conservation benefit, it is important to realize there is no law or regulation that requires a landowner to actively maintain a particular habitat on their property. The open field habitats used by the wintering raptors now would naturally become less suitable over time with the property becoming increasingly wooded in the absence of management. The long-term commitment to maintain acreage under best management practices for bird use accomplishes a net conservation benefit over time, as the mitigation plan ensure persistence of quality habitat on the landscape long after it would no longer have been suitable in the absence of the project. In an area identified as a Wintering Raptor Concentration Area, having properly managed grassland on the landscape is crucial to the long-term support of these species

Comment: NOHA has been shown to use the area for breeding. This is not being considered. Ratio should be 3:1.

Response: The MHDB and recent surveys have not demonstrated that the NOHA is using the area for breeding.

E. Mitigation Plan

Commentors request clarification that the proposed mitigation is appropriate for the protection of SEOW and NOHA.

Response: The proposed mitigation plan is designed to achieve a net conservation benefit to SEOW and NOHA and is legally, technologically, economically, and biologically practicable. The proposed mitigation ensures the ideal plant composition colonizes the site by converting active row crop directly to grassland by planting the appropriate vegetation. The first step for creating grassland habitat within the 25-acre field that will be subject to a conservation easement has already been initiated via the

removal of large, dense shrubs in October 2022, previously authorized by the Department under Permit ID 8-1820-00032/00001 to mitigate impacts resulting from the development of the STAMP Substation and Wastewater Treatment Facility. Plans are currently underway for the next step of grassland establishment which includes treatment of re-sprouting woody vegetation and seeding of bare areas in the late Spring/early Summer 2023. A contract between GCEDC and the Genesee County Highway Department is in place to mow this field in late August in accordance with the mitigation plan. The management of this field will be transferred to this Part 182 sitewide permit in 2030.

Comment: Short eared owls and norther harriers require hundreds of acres of contiguous grasslands for wintering and breeding habitat and two small non-contiguous parcels will not meet their habitat needs.

Response: While both species require large blocks of contiguous grassland habitat for breeding, neither species is known to have been breeding on the STAMP site. Overwintering birds can and will use smaller and less contiguous blocks of habitat as long as the individual fields are at least 25 acres or larger and have some connection to other open fields to provide a larger overall block of suitable habitat. As both mitigation parcels are at/or above this minimum threshold, they will help meet the wintering habitat needs of these two species.

Comment: There are lands surrounding the westernmost mitigation parcel that aren't controlled by STAMP. What if they are developed? That would negate any benefit of that parcel.

Response: In the event that these adjacent lands are proposed for development by the owners, that development would be subject to Part 182 requirements. These lands are currently in agricultural production and provide open habitat that connects the mitigation parcel to the large grasslands at John White WMA.

F. Monitoring

Comment: Monitoring is needed to ensure effectiveness. It is unclear if the proposed mitigation plan allows for significant changes if declines in the SEOW and NOHA occur in the first five (5) or ten (10) years of the plan, for example.

Response: An annual monitoring report will detail management actions undertaken and all vegetation and raptor survey results. Management/monitoring actions and timing may be adjusted as necessary to meet the goals and objectives of the Net Conservation Benefit Plan and to ensure a net conservation benefit to the northern harrier and short-eared owl. Additionally, the mitigation plan focuses on the enhancement and long-term maintenance of wintering raptor habitat. The number of wintering birds that utilize any particular habitat patch in any year is largely the result of weather (e.g., snow cover) and habitat quality, with habitat being the factor an applicant can manage. Monitoring of plan implementation is focused on ensuring that the appropriate habitat is provided.

Implementation Agreement:

Comment: Comments request additional information about the funding for implementation of the mitigation plan.

Response: GCEDC is a public benefit corporation that was established in 1970 by the Genesee County Legislature. GCEDC is the lead agency for countywide economic development strategy, sales, and marketing and receives annual funding from Genesee County. GCEDC will be establishing and maintaining a restricted account in the amount of the budgeted mitigation and monitoring costs of \$564,000. Additionally, Genesee County will be providing to the Department a guarantee that it will implement the requirements of the permit in the event GCEDC does not do so. Both GCEDC and Genesee County must certify on an annual basis that they are able meet certain financial criteria and can fulfill the financial obligations associated with implementing all requirements of the permit. If at any time the aforementioned requirements cannot be met, GCEDC must provide a financial assurance instrument in the form of an irrevocable bond, letter of credit, or funded trust in the amount up to \$564,000.

The allocation of these funds will be distributed as follows:

Estimated Costs of Mitigation and Monitoring Plan	
Task	Estimated Cost
Preliminary Site Management	\$8,000
Vegetation Management	\$239,500
Vegetation Monitoring/Reporting	\$200,000
Raptor Monitoring/Reporting	\$116,500
Total:	\$564,000

Comment: Comments request additional information about the schedule for implementation of the mitigation plan.

Response: Genesee County Economic Development Center will implement the proposed mitigation plan through the life of the permit. Grassland management within the 33-acre field, adjacent to John White WMA will begin in 2023. The 25-acre field will undergo conversion to grasslands and management and monitoring under Permit ID 8-1820-00032/00001. Monitoring and management will then transfer to this site-wide permit in 2030. Although the 25-acre field will be placed within a conservation easement within four months after permit issuance, as a requirement of this sitewide permit. Vegetation management and monitoring will occur annually to ensure high-quality grassland habitat is maintained. Winter raptor surveys will also be conducted annually for the first 15 years. An annual monitoring report will detail management actions undertaken and all vegetation and raptor survey results. Management/monitoring actions and timing may be adjusted as necessary to meet the goals and objectives of the mitigation plan and to ensure a net conservation benefit to the northern harrier and short-eared owl. The estimated implementation schedule is shown below:

Table 1. Estimated Implementation Schedule

Year	Activity	Start	End	Comments
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0	Pre-Management Vegetation Monitoring	6/15/2023	7/15/2023	Establish permanent photo points.
	Tilling and Planting of Cover Crop	7/15/2023 – 8/15/2023	8/30/2023	Will occur after winter wheat is harvested.
	Removal of Hedgerow	8/15/2023	10/31/2023	Obtain TRP from DEC if hedgerow on WMA.
	Post-Management Vegetation Monitoring	9/1/2023	10/15/2023	After completion of vegetation management.
	Monitoring Report	Due after completion of Vegetation Monitoring		
	Conservation Easement	in accordance with DEC Permit 8-1820-00032/0003 Permit Condition: Permanent Conservation Easement for 25-Acre Property		For 25-acre field.
1	Winter Raptor Survey	11/1/2023	3/31/2024	Will extend into April, if needed.
	Mowing Cover Crop and Seeding Permanent Vegetation	5/1/2024	5/31/2024	
	Vegetation Management – New Grassland	7/1/2024	9/30/2024	If necessary, mow early to help with grassland establishment. Survey for listed breeding birds first, delay mowing if present.
	Vegetation Monitoring	9/1/2024	10/15/2024	After completion of vegetation management.
	Monitoring Report	Due after completion of Vegetation Monitoring		
2	Winter Raptor Survey	11/1/2024	3/31/2025	Will extend into April, if needed.
	Additional seeding, if necessary	5/1/2025	5/31/2025	
	Vegetation Management – New Grassland	7/1/2025	9/30/2025	If necessary, mow early to help with grassland establishment. Survey for listed breeding birds first, delay mowing if present.

	Vegetation Monitoring	9/1/2025	10/15/2025	After completion of vegetation management
	Monitoring Report	Due after completion of Vegetation Monitoring		
3 – 15	Winter Raptor Survey	11/1/2025-2037	3/31/2026-2038	Will extend into April, if needed.
	Vegetation Management	8/15/2026-2038	9/20/2026-2038	
	Vegetation Monitoring	9/1/2026-2038	10/15/2026-2038	After completion of vegetation management.
	Monitoring Report	Due after completion of Vegetation Monitoring		
16 – 30	Vegetation Management	8/15/2039-2053	9/30/2039-2053	
	Vegetation Monitoring	9/1/2039-2053	10/15/2039-2053	After completion of vegetation management.
	Monitoring Report	Due after completion of Vegetation Monitoring		
	Deed 33-acre Field to NYSDEC	12/1/2053	12/31/2053	
31 – 62	Vegetation Management	8/15/2054-2085	9/30/2054-2085	In 25-acre field only.
	Vegetation Monitoring	9/1/2054-2085	10/15/2054-2085	In 25-acre field only. After completion of vegetation management.
	Monitoring Report	Due after completion of Vegetation Monitoring		

Comment: Comments ask what the enforceable provisions are to ensure the conservation easement is properly held.

Response: The issued permit requires the final conservation easement to meet the requirements for conservation easements contained in Article 49, Title 3 of the Environmental Conservation Law (ECL). These requirements specify what entities may hold conservation easements and how they may be enforced. In this case, the easement will be held by not-for-profit conservation organization that meets the requirements of ECL Article 49, Title 3. The issued permit also requires DEC to be granted a third-party enforcement right pursuant to ECL Article 49, Title 3. This will allow DEC to ensure the easement is implemented for its intended purposes.

Comment: How will DEC manage to oversee this mitigation project for 60 years?

Response: The Department will utilize a combination of the "mitigation plan", implementation agreement, conservation easements, deed transfer along with compliance monitoring and enforcement to oversee the mitigation. Regarding the 33-

acre parcel to become part of John White WMA future management, the Department can incorporate the future management into the WMA plan documents.

G. Species Protection

Comment: Part 182 requires projects to assess and protect species. Grassland bird populations – specifically Northern Harrier and Short Eared Owls – are in sharp decline and must be protected. In particular, Grassland Bird Conservation Centers have been prioritized by NYS for conservation as they have the greatest chance of sustaining threatened and endangered grassland bird populations. They should be avoided or subject to high mitigation standards if avoidance is not possible.

Response: Grassland Bird Conservation Centers (GBCC) are prioritized areas for the active management of grassland bird habitat through protection of grasslands and or creation of grasslands that can be managed as habitat. GBCC are large areas of the landscape that are centered on existing large managed grasslands with a goal of adding more managed grassland habitat within the surrounding landscape likely through conversion of current cropland into grassland habitat. Creation of managed grassland habitat along with long-term protection of that habitat as part of the mitigation under this Part 182 permit furthers the goal of the GBCC

Comment: National and state commitment to the 30 by 30 Initiative that seeks to permanently protect 30 percent of US lands and freshwater by 2030 should be considered. This permit is inconsistent with these federal and state goals.

Response: DEC is working on multiple fronts to conserve land for species and landscape conservation and public recreation to achieve 30 x 30 goals. These goals are statewide in scale and each project reviewed for permitting by DEC is assessed on an individual basis. In the instance of this project, both the 33-acre parcel to be protected by fee acquisition and the 25-acre parcel to be conserved through conservation easement will support 30 x 30 conservation objectives.

H. Exemptions from incidental take permit requirements

Comment: The ag exemption in Part 182.13 for agricultural activities should not apply.

Response: The agricultural exemption only applies to impacts from normal agricultural practices such as crop rotation, including switching the crop from hay to row crops. No exemption for agricultural activity has been requested or included in this permit action. All agricultural land is still considered occupied habitat and is included in this Part 182 permit application. The conversion of a portion of the existing row crops to managed grassland on this site, as part of the mitigation will provide habitat enhancement for these species.

I. Significance of the E&T species and to the Haudenosaunee

Comments: Northern harriers and Short-eared owls are species of cultural significance for the Tonawanda Seneca Nation and Haudenosaunee people, whose federally

recognized reservation territory and sacred grounds within the Big Woods will also be negatively impacted by the project. Rapid declines make it critically important that we protect or fully mitigate the areas they are found in.

Taking of species of cultural importance to the Tonawanda Seneca nation (TSN) will result in disproportionate and irreversible impacts to Seneca cultural practices. Environmental Justice policy should be followed.

Discussed impacts on TSN culture including ceremonial life ways and connections between owls and harriers, and the food they eat and the earth that grows it.

“When we wear feather on the Gustoes (headdresses), they have a spiritual connection to birds. We wear feathers in ceremonies so they can still be part of the ceremonies, and their spirit lives on.” (many wore feathers to the hearing).

“We have legends of stories of the owls. They send us messages from the spiritual world. They warn us of any harm. They are already warning us of the harm this project will have on our... have on us.

Response: DEC acknowledges that raptor species such as short-eared owl (SOEW) and northern harrier (NOHA) are of significant cultural value to the Haudenosaunee overall and specifically to the Tonawanda Seneca Nation. Although the Part 182 permit does not prohibit cultural practices or observances of SOEW or NOHA, it will result in altering occupied winter habitat affecting the timing and location of the species as development by the applicant progresses. As stated herein, GCEDC’s proposed mitigation results in a net conservation benefit for both the SOEW and NOHA.

While we recognize the significant cultural value of these species to the Nation, Part 182 is not a covered permit type under DEC’s Environmental Justice Policy (Commissioner’s Policy 29). DEC has consulted with the TSN on this permit, and at the Nation’s request offered further consultation and on-territory meetings to understand how to improve access and observance of SOEW and NOHA in the identified mitigation parcels and any alternative grassland sites around the STAMP campus vicinity.

J. The Big Woods and Environmental Impacts

Comments: The 182 permit will open up the lands adjacent to the Big Woods to development. This will spread invasive species into the Big Woods.

Invasive plant seeds will invade the Big Woods like they have in other places.

Response: Department agrees this is a risk that comes with development. As for the sitewide Part 182 application currently under consideration there will be no change in risk since the proposed activities in advance of the potential future industrial development will be very similar to past and current farming activities. Additionally, the buffer established between the proposed STAMP parcels planned for future development will reduce the likelihood of invasive species being introduced to the Big Woods.

Comments: STAMP flows could flood and pollute TSN waters they consume and cause issues with their ability to fish.

This could disturb the ecosystem of the sacred land as well as on the STAMP site.

Response: This Part 182 Permit does not address alterations to stormwater runoff or allow for the release of any chemical substance to the environment. These concerns may be addressed at such time that an industrial occupant may apply for additional permits from DEC.

Comments: Impacts to Indigenous peoples, impacts to hunting, fishing, foraging, ceremonies and historic archaeological and cultural resources.

Pointed out, “the birds, the animals, the trees, the plants, the medicine plants that are all over in the Big Woods... we need those things to survive.

Impacts to Big Woods animals, waters, and plants will result in food insecurity to the Nation.

Many people from the Haudenosaunee Confederacy rely on the medicines in the Big Woods as they are hard to find in their home territories. Impacts to the Big Woods impact more than just TSN, they impact the Haudenosaunee statewide.

Response: The Part 182 permit will result in altering occupied winter habitat of SEOW and NOHA affecting the timing and location of the species as development by the applicant progresses. As stated herein, GCEDC’s proposed mitigation results in a net conservation benefit for both the SOEW and NOHA. The Part 182 permit does not authorize taking habitat or any impacts on TSN territory.

Comment: STAMP will impact the adjacent wetlands.

Response: No impacts to the wetlands are being proposed at this time so the intent of the comment is unclear.

Comments: Chemical spills are common. They will happen here and get into Stormwater which will end up in the TSN reservation. The 182 permit will open the STAMP site to industrial development which will cause increased human presence, noise, light, traffic, air and water emissions.

This Part 182 Permit does not address alterations to stormwater runoff or allow for the release of any chemical substance to the environment.

Response: These concerns may be addressed at such time that an occupant may apply for additional permits from DEC. The archeological resources identified at the site are being addressed through an OPRHP approved data recovery plan as discussed above in Section J above.

Comment: There are enumerable species excluded by your reporting and more research, accurate reporting, and Nation to Nation relations are needed.

Response: DEC has invited the Tonawanda Seneca Nation to supply additional species information to the New York Natural Heritage Program to develop element occurrences where appropriate.

Health Impacts to the Nation

Comments: The 182 permit issuance opens up the STAMP site to industrial development. With that comes air emissions from traffic and factories which can cause and worsen asthma, allergies, emphysema, as well as heart disease. Also, cancer, nausea, coma, intellectual and developmental delay, not to mention GHGs.

Safety concerns: what if Edwards blows up?

Response: The above Health Impact and Safety comments are beyond the scope of the Part 182 application currently under review. These concerns may be addressed at such time that an occupant may apply for additional permits from DEC.

Comment: Plug Power is already impacting nearby residents; they are working at night with lights on, equipment running, intrudes on our sleep.

Response: While this comment is beyond the scope of the Part 182 application currently under review, this issue has been discussed with GCEDC and they indicated that it is a temporary situation and that they will discuss with Plug Power.

Comment: This project is bringing emotional stress to the Nation. And they are reliving historical traumas related to colonialism.

Response: It is unclear if “this project” is referring to the entire STAMP project or just the Part 182 Sitewide project. DEC has offered an on-territory information meeting to provide Tonawanda Seneca Nation members information about what the proposed Part 182 Permit covers. Future environmental impacts associated with the development of the STAMP lands would be addressed under the applicable regulatory programs.

K. Environmental Justice

Comments:

- Our nation's genocidal history of atrocities towards Indigenous People simply cannot be continued. It should not fall to the Tonawanda Seneca Peoples to shoulder the burden of this development.
- This project perpetuates colonial oppression toward Native People, and therefore, it is a human rights issue.
- The DEC's Environmental Justice policy requires the fair treatment of all people, which means that “no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.” If the STAMP Take Permit is granted, this will place a disproportionate share of negative environmental consequences on the Tonawanda Seneca Nation.
- TSN has had a history of having their land taken away. It is sacred and protects wildlife. When will the taking end?
- Taking large vibrant area for the grassland birds and reducing it to a tiny area. Exactly what the federal government did to the TSN.
- HEFT demands EJ be considered, and natural rights protected which is guaranteed in their treaties. Discussed Great Law of Peace – Gayananshogowa, expect the hunters of

the Haudenosaunee Nations for mid-winter ceremonies and how the STAMP project will cause this to be lost forever.

- This is an issue of environmental justice – cross species justice and intergenerational justice. We should not be destroying the natural heritage of our children, especially at this time of a major extinction event when it is predicted that we will lose 40% of the natural flora and fauna of the United States due to climate change.
<https://biologicaldiversity.org/w/news/press-releases/new-analysis-40-of-us-wildlife-ecosystems-are-imperiled-2023-02-06/> Only 12% of our country’s land is ‘protected’ and with such a small dedication of land for other species, we should be holding sacred and inviolate all existing protected lands.
- The obvious lack of caring and concern for the Native Americans continues in the 21st Century as it has since Europeans landed. As keepers of Mother Earth, Turtle Island, we have watched other races destroy her, all for the sake of money. NYS and its politicians are at the forefront of this effort. Their GREED is staggering.
- It should not fall to the TSN peoples to shoulder the burden of this development, and they *will* be the ones to shoulder this burden.
- Group is involved in advocacy for Community Advisory Groups for Brownfield Projects and has been consistent in calling for enhanced participation from permitting and other cleanup process. EJ implications and complexity warrant a community advisory group and public hearings.

Response: The Department recognizes the history and traditions of the TSN. However, the review of the proposed taking of habitat and mitigation under the Part 182 application review process is not subject to the Department’s Environmental Justice policy (i.e., CP-29).

L. CLCPA

Comments:

- Requests that CLCPA be done, including 7(2) and 7(3) which must take into account the Nation’s relationship with the natural world. See e.g., the Tonawanda Seneca’s Heroic Battle Against Removal.
- CLCPA 7(2) and 7(3) should be applied to this permit and project as a whole because this project disproportionately burdens a disadvantaged community
 - o The taking of these culturally significant E&T spp. disproportionately burdens TSN, part of a DAC
- Taking species of cultural importance to the TSN will result in disproportionate and irreversible impacts to Seneca cultural practices, so CP-29 should be followed
- We should consider social justice factors in assessing the impacts to the vulnerable and historically impacted communities.
- The CLCPA specifically acknowledges the responsibility to avoid harm to DACs and in advancing climate solutions. And yet, this project would inflict profound damage on the homelands of a sovereign Indigenous Nation.

Response: Per CP-49, the Department’s formal policy on Climate Change and DEC Action, Part 182 permit applications are not specified as permit types to which the policy applies.

No greenhouse gas emissions or co-pollutants are associated with this Part 182 application. Therefore, CLCPA Sections 7(2) and 7(3) are not applicable. As GCEDC seeks to develop lands it is likely that the proposed develop will be subject to future CLCPA review (CP-49) and Environmental Justice procedures pursuant to CP-29 review. Though the Department has determined the Part 182 application is not subject to CP-29 and CLCPA, we have regularly offered to meet with TSN representatives, including the offering of an on-territory public information meeting on the Part 182 application.

M. Treaties

Comments:

- Respect our sovereignty and our Treaty Rights.
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- The Tonawanda have residual fishing and hunting rights under the federal Treaty of Big Tree of September 1797, and the continuing of this project threatens those federal treaty rights.
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- “STAMP’S proposed building permit in an environmentally sensitive area, the “Alabama Swamp,” not only threatens the Iroquois National Refuge, but the federal treaty rights of the Tonawanda Seneca Nation. In our system of governance, the questionable actions by the local Genesee County Legislature cannot take precedent and overturn a federal treaty.”

The birds and their cultural practices associated with them are protected by Treaty o Canandaigua called the Colonel Pickering Trat. Colonel Pickering was an agent of George Washington. They were later reserved in the Treat of Big Tree for Seneca People.

Response: DEC administrative actions, such as issuing of permits, cannot unilaterally abrogate any treaty reserved rights of an Indigenous Nation, or diminish an Indigenous Nation’s standing to assert its treaty reserved rights.

N. Land Claim

Comment: Nation lands were stolen from them long ago. There is archaeological evidence which points to the fact that the STAMP land falls under the jurisdiction of the TSN. The SHPO (State Historic Preservation Office) is currently reviewing the 13 archeological findings within STAMP which are being studied by the NYS office of park. A permit cannot be issued until SHPO issues letters regarding the findings and could be grounds for legal action by TSN for encroaching on what could be considered their territory should the site become NRE (national register eligible).

Response: In the United States, only Congress has plenary authority to resolve land claim cases, which was enacted in the 1857 Treaty with the Seneca, Tonawanda Band, 11 Stat. 735. DEC is not aware of any remaining claims or pending actions that would be affected by this Part 182 permit.

O. SHPO National Register Eligibility

Comment: SHPO is currently reviewing the 13 archaeological findings within STAMP, which are being studied by the NYSOPRHP. A permit cannot be issued until SHPO issues letters regarding the findings, which could be grounds for legal action by TSN for encroaching on what could be considered their territory, should the site become National Register Eligible.

Response: The Part 182 permit does not require a SHPO determination. As further development activities area proposed, the additional permitting will include coordination with SHPO, including obtaining an effect determination, when appropriate. To date, the US Army Corps of Engineers and SHPO have provided comment letters on the completed archeological investigations, except for the Phase II site examination for the Crossen Indigenous Site. An approved data recovery plan is being used to guide these investigations.

P. Impacts to Other Species and Areas Not Considered

Comments:

SEQR does not evaluate impacts to Pied-billed grebe, Sedge Wren, Cerulean Warbler, Common Nighthawk, Bobolinks (another Special Concern Species which is struggling, nest in these fields), or NLEB.

This project would “further compromise the survival of the E&T wildlife, including the endangered and threatened birds such as the Black Tern, the Common Term, King Rail, Least Bittern, Peregrine Falcons, Pied-billed Grebe, ... and Sedge wren... all of whose presence is well documented in Iroquois National Wildlife Refuge and Tonawanda WMA, and Oak Orchard WMA...”

Northern Long-eared bat is also known to use and occupy this area and will be listed as an Endangered Species effective March 31st. DEC should not allow destruction of potential NLE Bat habitat under these circumstances and instead first require a robust assessment of NLE bat presence on and near the STAMP site.

Tri-colored bat, heart leaved plantain, shellbark hickory, could also be impacted.

Industrial mega site between the WMAs, and federal refuge will be a drastic change and will remove connectivity between these lands during migration, not just wintering. It will impact the trans-continental migratory bird flyway.

STAMP land is part of the Eastern US “Wildway” Plan to conserve a migratory route for wildlife responding to climate change and habitat loss in the eastern US from Gulf of Mexico to main.

In addition to known and unknown populations of pollinators, native plants, native plant communities, and associated habitats, this area is part of a critical migratory flyway for many species of birds and pollinators including the declining Monarch Butterfly.

Recent plant surveys found 2 state threatened species on this site (*Carex frankii* and *Carya laciniosa*) and a state rare plant (the amazing *Plantago cordata*, which is part of the largest extant population in the state) as well as another Threatened species (*Lithospermum latifolium*) and Endangered species (*Bromus nottowanus*) very close to the development site, and potentially overlooked on the property.

Impacts to Alabama Swamp, which is a state significant wetland complex and of great benefit to human beings and wildlife, are not considered.

5 slides showing WNY Wildway Planning Area and maps of STAMP. letter discussing Alabama Swamp (an ancestral great lake), reference the Natural Heritage Program's State Riparian Opportunity Assessment which states that STAMP project is located at the heart of only 3 sub watersheds in Western NY with a high comprehensive health score – how will STAMP development change this?

Response: The STAMP site does not contain breeding or wintering habitat for other E&T species based on this data. Offsite E&T species are not relevant or addressed by this Part 182 permit which is for on-site E&T species, particularly wintering grassland birds.

The 33 acres to be deeded to the DEC is a positive opportunity to expand a Wildlife Management Area (WMA). DEC will continue to work to protect the remaining grasslands at the John White, Tonawanda, and Oak Orchard WMAs to protect these sensitive species.

The STAMP site does include habitat for other species mentioned above including Special Concern Species and common species. However, DEC's jurisdiction for Part 182 permits is limited to the Endangered and Threatened species and habitat directly impacted by the project.

DEC is commenting on the STAMP Land Management Plan which will include protecting stream and federal wetland corridors on the STAMP site which will help mitigate some of the referenced impacts.

Stormwater will be managed for each project in order to maintain water quality and quantity which will mitigate impacts to wetlands, the adjacent Big Woods, and on-site and offsite species and plants.

Q. SEQR

Comment: Commenters remind DEC that the Findings Statement must include a reasoned justification.

Response: Statement acknowledged. Full Findings Requirements are listed in 6 NYCRR Part 617.11(d).

Comment: Commenters remind DEC that Part 617.11(d)(5) requires decisions to avoid or minimize adverse impacts to the maximum extent practicable.

Response: Adverse impacts have been avoided and minimized to the maximum extent practicable in this action.

Comments:

- A Supplemental Environmental Impact Statement should be completed to evaluate the potential impact on E&T species, as GCEDC's own Neg Dec states that the impacts of this project were not addressed or adequately addressed in the GEIS.
 - o 6 NYCRR 617.10(d) and 617.7(c)(1)(iii) state that substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species, is considered an indicator of a significant adverse impact on the environment
- GCEDC did not take the requisite "hard look," or do a reasoned elaboration to explain how they came to their conclusion that no significant environmental impacts would occur
- 6 NYCRR 617.11(d)(5) states any decision must avoid or minimize adverse impacts to the extent practicable, which has not been done in this case
- The SEQR evaluation does not meet 6 NYCRR 617.9(b)(5)(iii)(i), which states that an EIS must include measures to avoid or reduce...an action's impact on climate change
- 6 NYCRR 617.3(g)(1) states that considering only a part or segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance...the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Reviewing the impact of this permit without reviewing the related impacts that further development will have on the site is segmentation, and contrary to the intent of SEQR.
- This review does not adequately consider the impacts on Short-eared Owl and Northern Harrier from the present proposal. A full proposal-specific assessment is necessary to meet the requirements of SEQRA.
- The SEQR review should consider the impact that the removal of habitat will have on surrounding areas, such as Tonawanda WMA, John White WMA, Iroquois NWR, and TSN's Big Woods, which all act as natural habitat for E&T species.
Project is reviewed in isolation of what is happening to the rest of the state from large-scale renewable energy projects. Failure to complete a comprehensive environmental review. The only way to evaluate cumulative impacts of other solars (Cider Soar, Hemlock Ridge Solar, and Heritage Wind project which will take up 1,000s of acres in this area.) would be through a supplemental.

Supplemental Environmental Impact Statement has repeatedly been requested to examine the full range of direct, indirect, and cumulative impacts from STAMP on the Nations. This should be completed prior to permitting.

Requests a SEIS for E&T species and impacts to TSN. 6 NYCRR 617.10(d) and 617.7(c)(1)(ii) substantial adverse impacts on a threatened or endangered species of animal or plant, or the habit of such a species is considered an indicator of significant adverse impacts on the environment.

GEIS is outdated – 11 years old. A SEIS is required.

There are serious concerns over the environmental review of the proposed development of these land in an earlier Generic Environmental Impact Statement. And Negative Declaration under the State Environmental Quality Review Act. This review does not adequately consider the impacts on Short-eared Owl and Northern Harrier from the present proposal.

- GCEDC application action was not addressed in the 2012 GEIS or SEQR Neg Dec and the action could have one or more significant adverse environmental impacts on E&T species. GCEDC did not take the requisite “hard look”, nor do a reasoned elaboration of significance process.
- Inability to accurately describe the timeline makes impact of full campus impossible, plus it should allow significantly more flexibility.
- The application downplays the adverse impact of SEOW which is particularly sensitive to habitat loss and fragmentation, requires large blocks of habitat 247 acres according to several publications.
- A SEIS should look at the primary food source for the two E&T species: meadow Chip money would trigger NEPA, not SEQR.

Nature of SEQR not clearly identified in ENB notice.

Response: The GCEDC is the lead agency for this project and, therefore, responsible for SEQR except for the DEC’s responsibility to issue SEQR Findings. DEC’s SEQR findings for this project were issued concurrently with the Part 182 permit.

R. Other Impacts

Comment: Commenters remind DEC of the requirements of Part 617.7 and 617.9 to consider the impacts of climate change.

Response: The Department is cognizant of these requirements. While the future buildout of the STAMP lands will need to further consider the climate change impacts referenced above, the Department has determined the proposed taking of occupied habitat, and mitigation, will not result in significant climate change impacts.

Comments:

- High CO2 emissions as this is not near water supply or markets – therefore, doesn’t meet definition of green. Poor tradeoff for taking E&T species, impacts to TSN. Scannell warehouses, far from markets, not green! STAMP GEIS doesn’t cover the Scannell Project which appears to be warehouses – intensive land use and traffic, but not promised jobs (or green energy)Traffic analysis is inadequate. It is based on old data.
- The 9-mile water main being built from the Niagara River should not be allowed without any wetland permits or public hearings
- Why is water being transported 9 miles to STAMP?
- Niagara Power Project’s hydropower should not be used for STAMP; it is needed for our population as fossil fuel electrical generation is phased out.
- NYPA’s allocation of low-cost hydropower to Plug Power violates NYPA’s own rules for allocating such power, because Plug Power and STAMP as a whole are located outside of the 30-mile radius from the Niagara Power Project.
- Encourage us to see if SEQR, FEMA, and other state and federal rules are being addressed in light of increased in the frequency and intensity of extreme events associated with climate change.
- STAMP and such complexes should go to a reclaimed brownfield.

- Phosphorous loadings from WWTF have potential to impact benthic life in Oak Orchard Creek.

Response: The comments presented in the above section are not directly related to the Part 182 permit and are outside of the scope of this project, such as Phosphorous loadings which were addressed in a previous action. Some of these comments should be raised during the review of the future development projects. Some comments, such as the water main and the WWTF, relate to projects that are separate actions. Some comments are outside of the purview of the Department, such as the Niagara Power project or the NYPA projects.

S. Comments in Support of the Project

Comment: Several commenters provided comments in general support of the project including:

- The site has been undergoing development for years at this point.
- Half a billion dollars has been invested in the STAMP project already, including money from New York State
- It helps fulfill the state's goal of chip fab/semiconductor industry growth
- STAMP has already undergone environmental review (for the past 10 years) and the mitigation plan follows NYSDEC agreed mitigation algorithms
- The land to be taken is farmland and therefore isn't "pristine," and any comments to the contrary are a distraction tactic to delay the development of the STAMP site

Response: No response to these comments is necessary. These comments were considered in the Findings Statement, which summarizes the Department's weighing of social, economic, and environmental factors.