



# HAUDENOSAUNEE

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## TONAWANDA SENECA NATION

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November 4, 2022

Via email to Kimberly.Merchant@dec.ny.gov

Kimberly Merchant  
NYSDEC  
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Avon, NY 14414

**RE: Comments Opposing STAMP Part 182 Permit Modification and Requesting Suspension of Work at STAMP**

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

The Nation understands that DEC has already issued the permit to which these comments relate. DEC's conduct toward the Nation in issuing this permit prior to consulting with the Nation is shameful, shockingly disrespectful, and violates DEC Commissioner's Policy 42. We are outraged but no longer surprised at DEC's blatant disregard for the Nation and our people. We will continue to fight to protect our territory and future generations, and, as detailed below, we call upon DEC to order work at STAMP temporarily suspended in order to address not only consultation with the Nation but also newly discovered Threatened and Endangered Species.

I. GCEDC's Activities Threaten Imminent Harm to Tri-Colored Bat

The Tonawanda Seneca Nation urgently requests that DEC order work at STAMP temporarily suspended so that the possible presence of tri-colored bats on the STAMP site can be assessed. In recent weeks, researchers affiliated with SUNY-ESF have collected evidence of tri-colored bats on the Nation's territory directly adjacent to the STAMP site and within hundreds of feet of the proposed high voltage power lines. *See* Statement of Jonathan Kresge, attached. Tricolored bats have also been found at the Iroquois National Wildlife Refuge, just north of STAMP, and the United States Fish and Wildlife Service is considering listing the species as Endangered under the Endangered Species Act. Further fieldwork is urgently needed to ensure activities at STAMP allowed by DEC's recent permit modification do not result in threats to this imperiled species.

II. The Part 182 Permit Modification Should Be Withdrawn

The permit modification issued on November 1 should be withdrawn for the following reasons:

A. NOCA Deficiencies

First, the permit was not issued pursuant to a valid Notice of Complete Application (“NOCA”) as required by 6 CRR-NY 621. In its October 10, 2022 NOCA, DEC identifies the applicant as “GENESEE COUNTY IDA d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER.” The applicant’s signature page, however, lists the applicant as “Stamp Sewer Works LLC.” Because a NOCA must accurately identify the applicant, 6 CRR-NY 621.7(b)(1), and an application must have a valid applicant signature page, the NOCA was improperly issued. The NOCA should be reissued and a new comment period provided.

B. Failure to Consult / Violation of CP-42

DEC’s issuance of the permit without consultation violates CP-42, and should result in withdrawal of the permit until adequate consultations are completed. “‘Consultation’ means open and effective communication in a cooperative process that, to the extent practicable and permitted by law, works toward a consensus before a decision is made or an action is taken.” CP-42 at V(B).

In October, the Nation informed DEC of its interest in consultation on this matter and its intent to submit comments by November 4. The Nation specifically asked DEC to raise any concern about this timeframe, and DEC raised no concern. Then, without explanation, DEC issued the permit on November 1. DEC’s refusal to properly consult with the Nation is particularly egregious here for two reasons: (1) this permit relates to harms to threatened species – hawks – that occupy a special place in the Nation’s culture and traditions; and (2) the proposed powerline construction is located directly adjacent to the Nation, just a few hundred feet from the Nation’s unique and pristine Big Woods and closer to the Nation than any other proposed project at STAMP. The Nation has long raised concerns about the proposed power line and only recently, through work with SUNY-ESF, learned that power line construction might harm not only threatened and endangered raptors, but also threatened and endangered bat species. The Nation has a special obligation to respect and protect all aspects of the natural world, and DEC’s refusal to engage in consultation not only violates DEC’s own policies but also seriously impairs our ability to fulfill our obligations.

C. Permit Fails to Protect Threatened and Endangered Species:

In addition, the Permit should be withdrawn because it fails to adequately protect threatened and endangered species. The Nation notes the following:

1. Issues with the powerline and its movement/reconstruction

- The new powerline would be longer and have twice as many new pole structures (23 versus 13). These pole structures provide perches for red-tailed hawks and eagles, raptors that prey on short-eared owls (SEOW) and northern harrier (NOHA). That is, the new powerline will double opportunities for predation on SEOW and NOHA.

- Human disturbance—construction, noise, lights, traffic—makes the birds more vulnerable to predation.
- Powerlines themselves present a hazard due to raptor collisions and electrocutions, especially during migration. The increase in length of the powerline increases chances of these collisions and electrocutions.
- Placing the poles next to the highest quality habitat (including high quality wetlands and forest/field edge) exacerbates the harm done during and after construction.
- Short eared owls roost in conifers, near the forest edge. The placement of powerline poles right along this edge adds to the danger for predation, electrocution and related harms.

## 2. Issues with the survey method for winter raptors used by GCEDC contractors

The WNY Stamp Winter Raptor Survey Summary states that “[s]urveys were conducted from one hour prior to sunset to 0.5 hours after sunset, for a total survey time of 1.5 hours.”

- The survey methods used could easily miss raptor presence and would be expected to underestimate raptor use of the site. Morning and nocturnal surveys are needed to fully assess raptor presence and use of the site.
- Survey methods used inadequate numbers of points to detect raptor use of the STAMP site.
- Survey maps show areas used, but not frequency of use or density of sightings, making it impossible to evaluate actual raptor use of the area.

## 3. Issues with mitigation plan:

The permit application states that “[a]s the potential impacts to short-eared owl and northern harrier are temporary in nature, causing potential disturbance for a single wintering season, the proposed mitigation for this Project builds on the mitigation currently underway for the existing Part 182 permit (see Appendix A for details). An additional year will be added to the existing mitigation, meaning that GCEDC will manage the 25-acres mitigation grassland for a total of eight years instead of the seven years required under the current permit. All other permit mitigation actions, maintenance, and monitoring will remain as stated in the existing Permit (Appendix A).”

- The application provides no evidence showing the adequacy of the mitigation site? It fails to explain whether or how it support a population of meadow voles, for example. The permit application provides no evidence that the mitigation site is in any way sufficient.
- The application also fails to explain current vegetation or the expected result of brush-hogging. What will prevent it from turning into Phragmites, knapweed, or other invasive forb that does not support preferred prey species?
- Vole populations can take years to build up in grasslands; for newly created grasslands (conversion from shrublands) there is no basis to assume that the number of voles is adequate to support the T&E species.

### III. Survey Plans Must Be Improved

The Nation requests that DEC provide dates in the next 1-2 weeks for a meeting to discuss necessary improvements to the Winter Raptor Survey Plan, which is wholly inadequate to assess the presence of Winter Raptors, and to discuss plans for bat surveys.

As to the Winter Raptor Survey Plan, the Nation notes the following:

#### A. Timing of surveys

*“Surveys will be conducted twice a month (every other week) from November 1, 2022 through March 31, 2023”*

Twice a month is not sufficient frequency for detecting vagile, itinerant species such as short eared owl and northern harrier. Biologists should go out multiple times per week to accurately assess raptor use of the site.

*“Surveys will be conducted from one hour prior to sunset to 0.5 hours after sunset, for a total survey time of 1.5 hours.”*

The survey should include morning hours as well, so both ends of the crepuscular hours are included (dusk and dawn). Surveying only at dusk runs the risk of missing sightings.

#### B. Survey locations

The number of points surveyed is not adequate from a raptor biology perspective. Even with spotting scope as well as binoculars, biologists will be unable to see all areas well due to dips in topography, hedgerows, etc. that block the view.

#### C. General

The birds are responding to variability in prey cycles, mainly voles. The voles in turn respond to conditions on the ground for burrows and food. Even cornfields could support voles if stubble remains along with seed that could provide food for voles. Due to this variability, a truly rigorous and accurate assessment of raptor use of the site requires many more survey hours and times than planned in the current protocol. The protocol does not even meet minimum standards for raptor surveys.

### IV. Conclusion

In sum, the Nation requests that DEC:

- Order work at STAMP suspended pending investigation into possible presence of tri-colored bat;
- Withdraw the Part 182 Permit Modification issued on November 1 pending consultations with the Nation; and
- Identify dates for a meeting with the Nation and ESF to discuss (1) necessary improvements to the Winter Raptor Study plan and (2) plans for bat surveys.

We look forward to discussing these matters with you at your earliest convenience.

Da:h ne'hoh,



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

Cc: Heidi Kennedy, DEC Region 8, Division of Fish and Wildlife  
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