

534 Delaware Ave, Suite 302
Buffalo, NY 14202
March 29, 2023

Thomas P. Haley
NYSDEC Region 8 Office
Division of Environmental Permits
6274 East Avon-Lima Road
Avon, NY 14414
By email: DEP.R8@dec.ny.gov

Re: Comments on proposed issuance of Article 11 Incidental Take permit for STAMP project in Genesee County, application ID 8-1820-00032/00003

Dear Mr. Haley:

Please take into consideration the following comments on the proposed action:

1. The SEQR determination that the “Project is a Type I action and will not have a significant effect on the environment” is unsupported for the reasons set forth below. The proposed action may have a significant effect on the environment, and an Environmental Impact Statement is therefore needed.

2. The nature of the SEQR action is not clearly identified in the ENB notice, which says:

The proposed taking and associated mitigation addresses the full development of the STAMP site for future tenants, with the exception of the areas that are covered by existing Part 182 permits and areas designated to remain undeveloped. The impacts would be 665 acres of permanent impacts to open habitat which have been deemed occupied habitat by the Endangered and Threatened species referenced above.

(Emphasis added.) If this means that the proposed action consists of more than permit issuance and also includes full development of the site, then there are many additional impacts and issues that need to be taken into account in the SEQR determination of significance.

3. For example, under 6 NYCRR 617.9(b)(5)(iii)(i), draft EISs must include “measures to avoid or reduce...an action’s impacts on climate change...” Full development of the 665-acre site would need to take climate impacts into account and could not rely on an unsupported or poorly supported negative declaration to bypass this draft EIS requirement.

4. If the proposed action consists entirely of the Incidental Take permit, is this permit-issuance action being improperly segmented from the full development of the 665-acre site?

5. If the proposed action consists entirely of the Incidental Take permit, its impacts have not been properly addressed. Much of the difficulty arises from the following claim in the ENB notice whereby 25 acres of habitat is counted repeatedly at 5-year intervals to “mitigate” the impacts of removing habitat protection from 275 acres.

The 25-acre site would be maintained in grassland habitat for a period of 45 years (which would account for nine 5-year cycles), along with a permanent conservation easement to the recently formed not-for-profit, New York Green, Inc., within the next five years (which account for two 5-year cycles); therefore, the plan is proposed to mitigate 275 acres of occupied habitat removal (11 5- year cycles of 25 acres).

A similar difficulty arises from the proposal in the ENB that 33 acres would be counted repeatedly at 5-year intervals to “mitigate” the impacts of removing habitat protection from 198 acres. Such double-counting and habitat fragmentation do not benefit the species at risk here.

6. Furthermore, 6 NYCRR 182.12 (a)(3) creates a requirement of net conservation benefit:

...the implementation of the conditions in the incidental take permit and the measures set forth in the endangered and threatened species mitigation plan will result in a net conservation benefit to the species in question. This determination will be based upon the best scientific and other information that is reasonably available to the department...

(Emphasis added.) The double-counting and habitat fragmentation referred to above do not result in a net benefit to the species at risk here.

7. The entity named in the ENB notice as conservation easement holder (New York Green, Inc.) has not been identified as meaningfully independent from the project applicant, thus raising a question of apparent conflict of interest and/or a question of conflicting loyalties with respect to the easement and its long-term administration. See, for example, this online listing at <https://opengovus.com/sam-entity/K811ML25MEK1>:

NEW YORK GREEN, INC. is an entity in Batavia, New York registered with the System for Award Management (SAM) of U.S. General Services Administration (GSA). The entity was registered on March 28, 2016 with Unique Entity ID (UEI) #K811ML25MEK1, activated on April 22, 2020, expiring on October 19, 2021, and the business was started on February 14, 2012. The registered business location is at 99 Medtech Dr Ste 106, Batavia, NY 14020-9712. The current status is Expired. The entity structure is 8H - Corporate Entity (Tax Exempt). The business types are A8 - Non-Profit Organization. The officers of the entity include Mark Masse.

This listing, while evidently not current (“expiring on October 19, 2021”), is augmented by other listings that are readily available online and show New York Green’s address as 99 Medtech Drive, Suite 106, in Batavia – which is the same street address and same suite number as shown

in the ENB notice for the project applicant, Genesee County IDA. It's well known that not-for-profit board members, for example, may have corporate affiliations that may occasionally conflict with certain activities or policies of the not-for-profit entity on whose board they sit – but in accordance with their duties of loyalty and care, and by abstaining where appropriate, they are able to avoid conflicts of interest. Here, the facts are less clear and need to be clarified.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rayd Vaughan", with a long horizontal flourish extending to the right.

Raymond C. Vaughan, Ph.D., P.G.