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Buffalo, NY 14202
May 11, 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: Additional 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:

I am unable to attend today's public meeting in Alabama, NY, due to other commitments. Please take into consideration the following comments in addition to my previous comments dated March 29, 2023.

1. The Part 182 regulations “do not specify how a net conservation benefit must be met, so applicants have flexibility on what they can propose.”¹ Flexible proposals must nevertheless meet, in a demonstrable and plausible way, the net benefit requirement of 6 NYCRR 182.11(a). Proposals that rely on implausible or frivolous claims should not be accepted by DEC as providing a net benefit.

2. Mitigation plans approved by DEC for various other projects have included “many options for mitigation measures, including: the purchase and protection by conservation easement of existing occupied habitat...”² This does not mean that any and all purchases or conservation easement proposals will be or must be approved by DEC.

3. Here, the project sponsors are claiming that 25 acres of the whole site would serve to mitigate 275 acres of occupied habitat removal, with the claimed mitigation coming partly from a proposed conservation easement. The sponsors' proposal to inflate 25 acres of land into 275 acres of mitigation, based partly on the conservation easement, is implausible³ and should not be approved; it fails to show or contribute to a net benefit.

¹ DEC web page, New York's Endangered Species Regulations, subheading “Permits Issued,” <https://www.dec.ny.gov/animals/68645.html>

² Id.

³ See ¶ 5 of my March 29 comment letter for additional detail.

4. Similarly, the project sponsors are claiming that 33 acres of the whole site would serve to mitigate 396 acres of occupied habitat removal, with the claimed mitigation coming partly from a proposed deed of the 33-acre parcel to DEC. The sponsors' proposal to inflate 33 acres of land into 396 acres of mitigation, based partly on the proposed deed, is implausible⁴ and should not be approved; it fails to show or contribute to a net benefit.

5. An additional problem with the proposed 25-acre conservation easement is that the proposed easement holder has not been identified as meaningfully independent from the project applicant.⁵ Does the proposed easement holder have the skill and commitment to carry out the long-term duties of a conservation easement holder? For example, there are well-known stewardship responsibilities that include baseline documentation, establishing and maintaining stations for ongoing photographic documentation, carrying out annual monitoring, and (especially) having the professional skill to recognize and take appropriate steps to prevent degradation of the subject parcel. If the conservation easement holder intends to rely on qualified contractors to carry out these long-term tasks, are there enforceable provisions to ensure performance of the tasks?

6. The conservation easement plan set forth in the Environmental Notice Bulletin (ENB) appears contradictory. According to the ENB:

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).⁶

A “permanent conservation easement” in this context should maintain the 25-acre site in grassland habitat in perpetuity, not just for a period of 45 years. Why the discrepancy? Does the conservation easement holder have a demonstrable organizational plan to remain in existence for the long term? Does it have a reasonable expectation of funding for the long term? Does it rely predominantly on the project sponsor for its funding and, if so, are there enforceable provisions to ensure funding for the long term?

7. The timetable for deeding the 33-acre parcel to DEC is not stated in the ENB⁷ and remains unclear. If deeded within less than 30 years, what is the enforceable plan for the project sponsor to fulfill its 30-year responsibilities (converting from row crop to grass and maintaining the grassland habitat) on the DEC-owned site? If deeded 30 or more years from now, how does this relate to the ENB statement that deeding the land would account for six 5-year cycles, totaling 198 acres of mitigation?

⁴ Again, see ¶ 5 of my March 29 comment letter for additional detail.

⁵ See ¶ 7 of my March 29 comment letter for additional detail.

⁶ ENB Region 8 Notices 4/19/2023.

⁷ Id.

8. Does DEC have a reasoned elaboration for accepting the proposed “inflation” of 33 acres of land into either 198 or 396 acres of mitigation? Is there an enforceable plan to maintain the 33 acres in grassland habitat for more than 30 years, and who is responsible for maintaining such habitat? How is the required net benefit achieved, and is there a reasoned elaboration that shows that the net benefit extends beyond 30 years?

Thank you again 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.