

STAMP SEWER WORKS, INC. adopting positive findings consistent with the SEQRA for the exercise of eminent domain to facilitate the installation of a force main

Discussion: Attached is a resolution that the STAMP Sewer Works, Corp. adopts positive findings pursuant to SEQRA for the exercise of eminent domain proceedings on any outstanding easements that are needed for the force main project.

Fund Commitment: None.

Board Action Request: Recommend approval of the positive findings pursuant to SEQRA for the STAMP Sewer Works Corp.'s exercise of eminent domain proceedings for the installation of a force main.

A meeting of the Board of Directors of the STAMP Sewer Works, Inc. (the "Board") was convened in public session at 99 MedTech Drive, New York _____, 2023, at 4 p.m., local time.

The meeting was called to order by the _____, upon roll being called, the following members of the Board were:

PRESENT:

Pete Zeliff	Chairman
Paul Battaglia	Vice Chairman
Steve Mountain	Secretary
Tim Hens	Treasurer
Marianne Clattenburg	Member
Robert Crossen	Member
Craig Yunker	Member

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Matthew Fitzgerald, Esq.	Board Counsel
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The attached resolution no. _____ was offered by _____, seconded by _____:

Resolution No. __

RESOLUTION OF THE BOARD OF DIRECTORS OF
THE STAMP SEWER WORKS, INC.,
ADOPTING POSITIVE FINDINGS CONSISTENT WITH THE STATE
ENVIRONMENTAL QUALITY REVIEW ACT FOR THE EXERCISE
OF EMINENT DOMAIN TO FACILITATE THE INSTALLATION OF
A FORCE MAIN

Name of Project: Infrastructure Improvements to the Western New York Science & Technology Advanced Manufacturing Park

Location: Town of Alabama, Genesee County, NY; Town of Shelby, Orleans County, NY.

SEQR Status: Type I

Determination of Significance: Adoption of Positive Findings for an Action that has been the subject of a Final Generic Environmental Impact Statement

WHEREAS, the STAMP Sewer Works, Inc. (the "Corporation") is a sewage-works corporation under the laws of the State of New York that was created on or about January 13, 2021, pursuant to Section 3 of the State of New York Transportation Corporations Law (the "Act"), and more particularly organized under Article 10 and Section 122 of the Act; and

WHEREAS, the Corporation is authorized and empowered by the Act to provide a sewer system for the disposal of sewage, through a system of pipe lines, treatment plants and other means of disposal; and to erect, operate, maintain, and perform other necessary acts incidental thereto, disposal systems for sewer areas within municipal areas of the State; and

WHEREAS, to accomplish its stated purposes, the Corporation is authorized and empowered under the Act to acquire real estate, or any interest therein, necessary for the purpose of its incorporation, and the right to lay, repair, and maintain conduits and sewer pipes with connections and fixtures, and other necessary portions of the system, in, through or over the lands of others, and may acquire the same by condemnation; and

WHEREAS, the Genesee County Economic Development Center, as lead agency ("Agency") in conjunction with the Genesee Gateway Local Development Corporation ("GGLDC"), the non-profit real estate affiliate of the Agency, has been working for more than a decade for the development of the Western New York Science & Technology Advanced Manufacturing Park ("STAMP"); an advanced manufacturing technology campus on approximately 1,262 acres located on the west side of New York State Route 63/77, approximately five miles north of the I-90/New York State Thruway ("STAMP Site") and

WHEREAS, subject to the provisions of the Corporation's resolution approved April 24, 2023 ("April 24 Resolution"), the Corporation will consider the acquisition of permanent easements, and temporary construction easements, over certain real property, together with the improvements thereon, that is situated within the Towns of Alabama, New York and Shelby, New York, and which primarily runs parallel to a portion of New York State Route 63, in a north-south fashion, including SBLs 101.-1-25, 90.16-1-1, 90.16-2-26, 90.16-2-23.1, 6.-1-47.12, 6.-1-26.1, 6.-1-29, 6.-1-19.2, 10.-1-16 and 10.-1-19 (the "Property"), whether by purchase, gift, grant, devise, or condemnation, in accordance with Article 10 and Section 124 of the Act;

WHEREAS, the Corporation desires to acquire permanent easements, and temporary construction easements, over the Property, whether by purchase, gift, grant, devise, or by condemnation pursuant to the procedures set forth in the New York State Eminent Domain Procedure Law ("EDPL"), for the purpose of: (a) laying, maintaining, constructing, installing, inspecting, operating, extending, replacing, repairing, servicing, upgrading, modifying, and/or removing a pipe/conduit ("Force Main"), and other equipment and appurtenances over, through, across, above, and under the easements, together with the right of unimpaired access to said forced main and equipment, and the right of ingress and egress on, over, and through the Property, for any and all purposes necessary and incident to the exercise of all rights thereunder, which shall ultimately facilitate the sanitary disposal of treated sanitary wastewater and treated process wastewater in accordance with all local, state, and federal requirements, through an established system of pipe lines, from a wastewater treatment facility located on STAMP ("WWTF") to a discharge point in Oak Orchard Creek in the Town of Shelby, NY ("Discharge Site"), pursuant to Sections 115 and 122 of the Act, and which shall service STAMP located in the Town of Alabama, New York; (b) providing critical infrastructure to STAMP, which is a 1,250-acre mega site designed for advanced manufacturing in upstate New York; and (c) ensuring that STAMP is equipped with an adequate sewage disposal system, thereby facilitating the creation of jobs and economic revenue at STAMP (together, the Force Main, WWTF, and Discharge Site constitute the "Project"); and

WHEREAS, the Project has received all necessary approvals from the New York State Department of Environmental Conservation ("NYSDEC"), the New York State Department of Transportation ("NYSDOT"), the United States Fish and Wildlife Service ("USFWS"), the United States Army Corps of Engineers ("USACE"), the Town of Alabama, the Town of Shelby, and the Genesee County Department of Health, and the Orleans County Department of Health; and

WHEREAS, the Corporation now finds it necessary to acquire certain easements necessary for the Project by condemnation across the Property in order to enable construction of the Force Main ("Acquisition"); and

WHEREAS, Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by NYSDEC, being 6 NYCRR Part 617, et. seq., as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA") applies to State and Local Agencies; and

WHEREAS, SEQRA defines a State Agency as any state department, agency, board, public benefit corporation, public authority or commission; and

WHEREAS, SEQRA defines a Local Agency as any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the state; and

WHEREAS, the Corporation, being a sewage-works corporation organized pursuant to the Act, is not a State or Local Agency subject to SEQRA; and

WHEREAS, nevertheless, the Corporation has undertaken a review of the Acquisition consistent with SEQRA's requirements for State or Local agencies relative to the Acquisition; and

WHEREAS, in 2010, the Agency, acting as Lead Agency conducting a coordinated environmental review, commenced preparation of a generic environmental impact statement for STAMP consisting of the Draft Generic Environmental Impact Statement ("DGEIS") accepted by the Agency on April 14, 2011 and the Final Generic Environmental Impact Statement ("FGEIS") accepted by the Agency on January 19, 2012; and

WHEREAS, the Agency, issued a written Findings Statement on March 12, 2012 ("2012 Findings") approving STAMP and committing to undertake it (collectively, the DGEIS, the FGEIS and the 2012 Findings are referred to as the "STAMP GEIS"); and

WHEREAS, the STAMP GEIS analyzed the impacts from full build out of STAMP consisting of the rezoning the entire STAMP Site from agricultural/ residential use to industrial/advanced manufacturing use, and with constructing and operating 6,130,000 square feet of advanced technology manufacturing uses at full build-out, providing direct employment for over 9,000 people and certified that, consistent with social, economic and other essential considerations from among reasonable alternatives evaluated, STAMP avoided or minimized adverse environmental impacts to the maximum extent practicable; and

WHEREAS, the Agency prepared a smart growth impact statement ("SGIS") pursuant to the State Smart Growth Public Infrastructure Policy Act separately from the GEIS in February, 2012; and

WHEREAS, in 2016, a number of changes were made including changes to the STAMP master plan including an expansion of the footprint of STAMP, demolition of additional houses along Crosby Road, construction of a new municipal water system to serve the residents of the Town of Alabama, and construction of a new sewer force main to discharge wastewater from STAMP to the Village of Medina wastewater treatment plant ("Medina Force Main"), twelve miles north of the STAMP Site, as well as the reroute of on-Site powerlines to the western edge of the STAMP Site ("Powerline Reroute" and together with the Medina Force Main, the "2016 Project Modifications"); and

WHEREAS, the 2016 Project Modifications necessitated further environmental

review and such review was undertaken by the Agency to determine whether the 2016 Project Modifications would result in any significant adverse environmental impacts not previously addressed in the FGEIS; and

WHEREAS, in July of 2016, after providing notice to all involved and interested agencies and re-establishing itself as lead agency, the Agency adopted an Amended Findings Statement to the FGEIS ("2016 Amended Findings") approving the 2016 Project Modifications in accordance with the requirements of the GEIS and SEQRA; and

WHEREAS in in 2019 and 2020, the Agency again considered certain infrastructure modifications to STAMP including all actions necessary to undertake the construction of the STAMP WWTF, Force Main, water line, and substation and

WHEREAS, in August of 2020, after providing notice to all involved and interested agencies and re-establishing itself as lead agency, the Agency adopted an Amended Findings Statement to the FGEIS ("2020 Amended Findings") approving the above-referenced infrastructure in accordance with the requirements of the GEIS and SEQRA; and

WHEREAS, in February of 2021, after providing notice to all involved and interested agencies and re-establishing itself as lead agency, the Agency adopted a SEQRA determination ("2021 SEQR Determination") that the proposed use of a portion of the STAMP Site for a hydro-powered electrolysis hydrogen production facility ("Project Gateway") would be carried out in conformance with the conditions and thresholds set forth in the STAMP GEIS, as amended; and

WHEREAS, on July 21, 2022, after providing notice to all involved and interested agencies and re-establishing itself as lead agency, the Agency adopted a SEQRA determination ("2022 Negative Declaration") that the proposed development of certain infrastructure on STAMP would not result in any potential significant adverse environmental impacts, including a review of the Force Main, WWTF, and Discharge Point; and

WHEREAS, at its meeting on August 4, 2022, the Agency resolved to amend the 2022 Negative Declaration to include responses to substantive comments received from The Tonawanda Seneca Nation ("Nation"), to provide further clarification, and to document the Agency's hard look at the concerns raised by the Nation ("2022 Amended Negative Declaration"); and

WHEREAS, at its meeting on October 6, 2022, the Agency resolved to further amend the 2022 Amended Negative Declaration to include modifications to a certain incidental take permit issued by NYSDEC ("2022 Second Amended Negative Declaration"); and

WHEREAS, at its meeting on February 1, 2023, after providing notice to all involved and interested agencies and re-establishing itself as lead agency, the Agency, issued a negative declaration and positive findings with regards to the certain infrastructure improvements at the STAMP Site as well as proposed development by two new tenants at STAMP, including Scannell Development and Edwards Vacuum (the

“February 2023 Negative Declaration”); and

WHEREAS, together, the GEIS, the 2012 Findings, the SGIS, the 2016 Amended Findings, the 2020 Amended Findings, the 2021 SEQR Determination, 2022 Negative Declaration, 2022 Amended Negative Declaration, 2022 Second Amended Negative Declaration, and the February 2023 Negative Declaration constitute the prior environmental reviews for STAMP (collectively, these documents are the “STAMP Findings” and, together with each and every supporting document referenced therein and relied upon thereby, are referred to as the “STAMP Environmental Record”); and

WHEREAS, in furtherance of completion of the Project and the Acquisition by condemnation, the Corporation now issues this resolution (“Resolution”) even though the Corporation is not subject to SEQRA; and

WHEREAS, the Corporation, held a public hearing pursuant to the EDPL on July 27, 2023 whereat it received public comment on the Project (“Public Hearing”); and

WHEREAS, pursuant to SEQRA, to aid the Corporation in determining whether, considering the relevant environmental impacts, facts and conclusions disclosed in the STAMP Environmental Record, and weighing and balancing relevant environmental impacts with social, economic and other considerations, the Corporation certifies that, consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the Project remains one which avoids or minimizes adverse environmental effects to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures which were identified as practicable, the Corporation has received and reviewed: (1) the STAMP Environmental Record; (2) the comments provided at the corporation’s July 27, 2023 meeting; (3) the EDPL record, and; (4) other relevant environmental information (collectively, with 1-4 shall be referred to as the “Environmental Information”); and

WHEREAS, a thorough analysis of the Environmental Information reveals that the Project will not have any potentially significant adverse environmental impacts that were not addressed in the STAMP Environmental Record; and

WHEREAS, after careful review of the Environmental Information, the Corporation has elected to issue its own findings statement in accordance with the requirements of SEQRA for State and Local Agencies; and

WHEREAS, the findings contained herein are based on the full record of the proceedings and submissions that were presented to the Corporation and are included as part of its administrative record.

NOW, THEREFORE, BE IT RESOLVED BY THE STAMP SEWER WORKS, INC. AS FOLLOWS:

Section 1. Based upon a thorough review and examination of the Project and Environmental Information, and upon the Corporation’s knowledge of the area surrounding the Property and such further investigation of the Project and its

environmental effects as the Corporation has deemed appropriate, the Corporation concurs with the Agency's STAMP Findings and the Corporation hereby adopts the Agency's STAMP Findings in their entirety as the Corporation's own finding statement, the contents of which are incorporated herein by reference. The Corporation makes the following findings with respect to the Project:

- (A) The Environmental Information sufficiently evaluates impacts of the Acquisition.
- (B) The Environmental Information thoroughly evaluates impacts to land use, zoning, public policy, visual and aesthetic resources, socioeconomics and demographics, soil conditions and topography, hydrology and water conditions, ecological conditions, transportation, historic and archaeological resources, community facilities and services, air quality, noise, and cumulative impacts of adjacent development.
- (C) The Environmental Information fully encompassed and addressed the actions considered in the Project and do not result in any significant adverse environmental impacts not addressed in the Environmental Information.

Section 2. Based upon the Corporation's review of the Environmental Information and considering the relevant environmental impacts, facts and conclusions disclosed therein, and weighing and balancing relevant environmental impacts with social, economic and other considerations, the Corporation certifies that, consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the Acquisition remains one which avoids or minimizes adverse environmental effects to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures which were identified as practicable.

Section 3. The Corporation received numerous comments at the Public Hearing expressing environmental concerns about the Project. Attached is a summary of most relevant concerns expressed and responses thereto as Appendix A. The Corporation finds that the responses reasonably address the expressed concerns.

Section 4. Having considered the Environmental Information, and having considered the relevant environmental impacts, facts and conclusions relied upon to meet the requirements of 6 N.Y.C.R.R. § 617.11, and having weighed and balanced the relevant impacts with social, economic and other considerations, the Corporation certifies that the requirements of 6 N.Y.C.R.R. Part 617 have been met; and

Section 5. The Chairman is hereby authorized to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 6. This Resolution, together with the Agency's Findings Statement, which are adopted by a majority vote of the Board of Directors of the Corporation, shall serve as the Findings Statement for the Project, and is issued by the Corporation pursuant to and in accordance with SEQRA in connection with the Agency's condemnation proceedings, and shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Pete Zeliff	VOTING
Paul Battaglia	VOTING
Steve Mountain	VOTING
Tim Hens	VOTING
Marianne Clattenburg	VOTING
Robert Crossen	VOTING
Craig Yunker	VOTING

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF GENESEE)

WE, the undersigned officers of the STAMP Sewer Works, Inc. (the “Corporation”), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Corporation, including the Resolution contained therein, held on _____, 2023 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Corporation had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Corporation present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this ____ day of _____, 2023.

Chairman

APPENDIX A

RESPONSE TO COMMENTS

The Acquisition will not have a significant adverse impact on phosphorus levels in Oak Orchard Creek.

Several commenters claim that because Oak Orchard Creek (“OOC”) is listed as impaired for phosphorus loading by the State, the Acquisition will further the impairment due to the claim that the wastewater from the Force Main will significantly increase phosphorus levels further. They argue that the NYSDEC’s claim that phosphorus loading will be offset by STAMP’s conversion of agricultural land is not supported by the evidence. They state rather that the source of Phosphorus in OOC is from distant concentrated animal feeding operations (“CAFOs”) and farmland known as the Mucklands, which will not decrease phosphorus loading to OOC. Furthermore, the Nation has stated that discharge of the effluent into OOC will have significant impacts on the citizens of the Nation.

The issue of phosphorus impairment was thoroughly analyzed by NYSDEC before it approved the discharge permit for the Project. In response to the above-referenced comments with respect to the discharge from the Force Main, the NYSDEC issued a State Pollutant Discharge Elimination System Permit No. NY0272078 (“SPDES Permit”) for the Project, effective September 2, 2022, permitting it to discharge effluent into OOC pursuant to certain conditions. During the permitting process, NYSDEC specifically responded to these claim in its September 2022 responsiveness summary (“Responsiveness Summary”). Therein, the NYSDEC explained that under its regulations, it classifies waterbodies by their best use and that OOC is classified as a Class C waterbody, which designates its best use is for fishing. Responsiveness Summary at 2. NYSDEC explained that there are no numerical limits on phosphorus loading in Class C waterbodies, but rather narrative standards under 6 NYCRR 703.2 limit phosphorus to “None in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.” *Id.* Previous guidance indicated a permitted Project effluent concentration standard for phosphorus would be 0.5 mg/L. However, in response to the above comment, the NYSDEC reviewed a biological stream assessment (“BSA”) for OOC to ensure that permitted levels of phosphorus would not impair OOC. After reviewing the BSA, the NYSDEC revised the final SPDES Permit to allow a reduced effluent concentration of only 0.2 mg/L of phosphorus, which is lower than the background levels of phosphorus in OOC. Responsiveness Summary at 2-3. As such, the Project will not cause any impairment on the best uses of OOC from phosphorus.

In addition, it is noted that the Village of Medina Wastewater Treatment Facility (“Medina WWTF”), located just downstream from the proposed discharge location of the Project, currently discharges double the volume of treated effluent (2 million gallons per day [“GPD”] versus 1 million GPD as currently proposed) at significantly higher levels than authorized for the Project. For example, the phosphorus limit for the Medina WWTF is set at 1.0 mg/L. This phosphorous limit is five times the permitted limit for the Project (0.2 mg/L), at double the volume, and at a concentration four times greater than background levels in Oak Orchard Creek. The Medina WWTF also has a daily limit

of mercury discharge of 50 ng/L, while the Project is permitted for only 0.7 ng/L - over fifty times lower.

In addition, the Nation provided comment as to the adequacy of the design to handle the low flows of the early stages of the Force Main, as also raised in the Report Comment Letter. As stated above, this issue is primarily concerned with the ongoing permit construction process of the Force Main which will be satisfied prior to completion of the Force Main. The design of the Force Main as planned has been determined through previous SEQRA review to not have an adverse impact. Furthermore, the Force Main has received a current and valid SPDES Permit. Therefore, the implementation of the Force Main and its SPDES permit are not at issue and do not present a barrier to the ability of the Corporation to issue findings pursuant to this Resolution.

The Project will not substantially increase the risk of flooding in OOC

Several comments were received that the addition of treated effluent from the Project will increase flooding risks in OOC resulting in impacts along the waterbody including areas of the Medina and Shelby.

The Project will not cause an increase of flooding of OOC. While the Project currently proposes to discharge only up to 1 million GPD of treated effluent, JM Davidson Engineering PC (“JM”) completed hydraulic modeling of OOC to analyze the risk of flooding that could be caused from the Project as a result of the addition of up to 6 million GPD of treated effluent to OOC (“JM Discharge Study”). The results of this study indicated that the increased flow from the Project would have a negligible effect on flood elevations downstream of the discharge point of the Project, increasing 100 yr flood elevations by approximately .01 ft. Due to concerns expressed by Medina and Shelby over the validity of these results, Wendel was contracted to provide an independent analysis of the JM Discharge Study. As detailed in the Wendel Letter, Wendel confirmed the adequacy of the methodology and independently verified the results. Wendel concluded that “the increased flow from the STAMP Discharge will not have a noticeable impact on the 100yr flood elevations downstream nor will it have an impact on the stream velocity or water levels.”

The Project has been subject to adequate analysis of potential impacts to the Tonawanda Seneca Nation.

Several commenters raised the objection that the Nation strongly opposes the Project and has not been granted adequate opportunity for robust consultation in violation of federal law.

Development of STAMP, including the Project, has been significant. Discussions on a programmatic agreement (“PA”) between the Agency, Nation, USACE, SHPO, and NYSDEC began 2016. The PA established consultation protocols for review and protection of archaeological sites and reduction of impacts to the Nation’s Traditional Cultural Property (“TCP”) identified at STAMP. The PA was executed in 2018 and the Agency signed on as a signatory. Following the execution of the PA, the Agency assisted the Nation in documenting TCP for potential inclusion on the National Register.

Pursuant to a 2021 Letter of Resolution (“LOR”) between the Agency, NYSDEC and SHPO, the Agency must provide the Nation with an assessment of each project at STAMP that requires any permitting from NYSDEC for potential impacts to the Nation's territory. Furthermore, the Agency provides the Nation with weekly written email updates on the status of development at STAMP and participates in monthly calls with the Nation and NYSDEC to help keep the Nation fully informed on development of the STAMP Site. Upon entering the LOR, the Agency, pursuant to the NYSDEC Commissioner Policy 29 (“CP-29”) governing environmental justice and permitting, prepared an Enhanced Public Participation Plan (“EPPP”) due to the STAMP Site’s proximity to Nation territory. The LOR specifically required that the EPP provide for enhanced public participation respectful of the Nation’s status, culture and heritage. Therefore, pursuant to the EPPP, the Agency was specifically required to offer informational meetings with the Nation’s leadership and general public and to hold follow-up meetings responding to comments received.

In addition, when the Agency determined to undertake the Project, it specifically resolved to amend the 2022 Negative Declaration to include responses to substantive comments received from the Nation, to provide further clarification, and to document the Agency's hard look at the concerns raised by the Nation. Furthermore, the Environmental Information includes a letter from the Nation's counsel dated November 3, 2022 ("Nation Letter") providing substantive comments which were incorporated into the Agency’s environmental review of the Project. As such, the Nation was afforded substantial and adequate opportunity for robust consultation.

Lastly, in response to claims that the Force Main will adversely impact the Nation, the NYSDEC directly responded to this comment in its Responsiveness Summary. Specifically, the NYSDEC stated that due to the location of the construction and outfall, treated effluent from the Project will have no opportunity to enter Nation reservation territory or impact the wildlife in the vicinity of the Nation or surrounding areas. *See* Responsiveness Summary at 5-6. Furthermore, the conditions of the SPDES Permit do not allow effluent from the Project to impair OOC for its best uses as waterbody for fishing, nor do they permit any other impacts to people or animals to occur. Responsiveness Summary at 6.

The Project is consistent with local plans.

Several commenters complained that the local municipalities, including Orleans County, and the Village of Medina (“Medina”) were not provided with adequate opportunity for consultation with respect to impacts on local plans. They raise concerns asserted by the Mayor of Medina regarding alleged design irregularities and omissions found by engineering firms hired by the Agency that could result in increased erosion at the pipeline outlet at OOC.

As explained above, the sufficiency of the SEQRA review of the Project by the Agency is not at issue in this Resolution and cannot be retroactively negated at this time. The time to raise concerns regarding the sufficiency of the SEQRA review for the Project has long since passed and the Corporation is bound by the Agency’s determinations. Therefore, these complaints are inapplicable to the Corporation and this Resolution.

Notwithstanding the above, the Town of Medina has had material participation with the development of the Project since at least 2015, when it entered into a memorandum of understanding (“MOU”) with the Agency in furtherance of a plan to divert STAMP wastewater to the Medina Wastewater Treatment Plant (“WWTP”). That plan was not adopted after Medina declined to extend the MOU in 2017. Additionally, the Town of Shelby, as an interested or involved agency, has been provided with all SEQR documentation of the Project throughout its development and provided necessary approvals for the Project.

Furthermore, based upon feedback provided by elected members of the Orleans County Legislature, Shelby, and Medina (collectively, the “Municipalities”), the Agency and Corporation have incorporated all substantive feedback into the final design for the Project. Specifically, upon the request from the Municipalities, Wendel Engineering (“Wendel”) was contracted to provide an independent review of the Project and SPDES Permit application. Wendel completed review and issued a findings letter on February 22, 2022 (“Wendel Letter”). Wendel determined that the hydraulic modeling and statistical analysis conducted for the Project met Wendel’s expectations and provided reasonable estimations of real world conditions of OOC. Furthermore, Wendel agreed with the Corporation’s engineers that increased flow resulting from the Project will not have a noticeable impact on the 100yr flood elevations downstream or the stream velocity or water levels.

The Wendel Letter did state that it determined the pipeline outfall for the Project at OOC was not adequately designed to avoid soil erosion and recommended design changes. Thereafter in response to these comments, and as explained by letter dated March 31, 2022 from CPL (“CPL Concurrence Letter”), the primary engineering firm for the Project, the recommendations from Wendel regarding the outfall design were incorporated to alleviate any further concerns regarding erosion caused by the Project. Therefore, the Municipalities have been afforded ample opportunity consultation and their concerns have been accordingly incorporated into the Project to ensure that the Project will not adversely impact local plans.

The Project will not limit the expansion of the Medina WWTP

Several commenters stated that the addition of up to 6 million GPD of treated effluent from the Project would limit the ability of Medina WWTP to service potential growth within Medina and limit the economic development opportunities within Orleans County.

As noted above, the currently proposed and permitted discharge from the WWTF is only 1 million GPD. Further, the permitted monthly average flow to the Medina WWTP is currently 4.5 million GPD, however, as part of a Long Term Control Plan (“LTCP”) prepared for the Medina WWTP, it is reported it could seek approval for an increase in its permitted discharge by an additional 10 million GPD. JM was commissioned to complete an additional study of OOC to determine its capacity to receive additional discharge from Medina WWTP consistent with the LTCP (“JM Discharge Study”). The JM Discharge Study determined that, given the capacity of the Glenwood Lake Dam downstream and the Project’s negligible impact to flooding, peak discharge from the Project will not impact the ability of the Medina WWTP to increase its permitted

discharge to 10 million GPD. JM Discharge Study at 4. As such, the Project will not impact future expansion of the Medina WWTP or by extension limit economic growth in Orleans County.

The Project will not have a significant adverse impact plants or wildlife in or adjacent to INWR.

Several commenters expressed concerns that the Project will have adverse impacts to wildlife and plants located in and around INWR, including migrating and endangered birds and medicinal plants utilized by the Nation. In addition, these comments question whether there was adequate identification and analysis of suitable alternatives which could have mitigated these potential impacts.

The Project was designed to limit disturbance of INWR to only areas within or immediately adjacent to the NYSDOT Rt. 63 right-of-way ("ROW"). Approval to construct the Project through the INWR along the ROW required the granting of a right-of-way permit from the USFWS ("ROW Permit"). Pursuant to obtaining the ROW Permit, an environmental assessment was performed ("EA") which required the analysis and mitigation of any potential impacts to the INWR. Further, a significant portion of the EA was devoted to analysis of viable alternatives to deliver sewer service to STAMP.

The EA determined that there were no federally listed threatened or endangered species along the ROW with the exception of the northern long-eared bat ("NLEB"). EA at 20. The EA noted that there was minimal potential habitat in the ROW. EA at 21. However, to mitigate risks of adverse impacts to NLEB, a project commitment was secured to require that any tree removal necessary for the construction of the Project occur outside of NLEB pupping season. By requiring such mitigation measure, the EA concluded that the Project is unlikely to adversely affect the NLEB. *Id.*

The EA also identified seven state-listed threatened or endangered species which may exist in the Project's vicinity, including five avian species: pied-billed grebe, sedge wren, Henslow's sparrow, bald eagle, and northern harrier, as well as the eastern massasauga rattlesnake and the endangered bog turtle. EA at 21-22.

Regarding impacts to avian species, the EA determined that given the abundance of suitable habitat in the area, such species would be unlikely to nest in or adjacent to the ROW roadway corridor. Regardless however, it recognized that adverse impacts may still occur. Therefore, the EA provided mitigation of these potential impacts by requiring that construction be prohibited during breeding and nesting season for these species, to be determined by coordination between USFW and NYSDEC. Due to adequate mitigation, the EA concluded, no impacts to state listed migratory birds are anticipated to result from the Project construction through the ROW. *See* EA at 25.

With regard to the eastern massasauga rattlesnake and the bog turtle, the EA determined that no mitigation was necessary because neither is anticipated to be present in the INWR or the ROW. EA at 26.

Lastly, with regard to appropriate alternatives, the Project has undergone significant review of viable alternatives. The GEIS alternatives analysis included three separate

levels of consideration: 1) Regional site selection analysis across Western New York; 2) Site alternatives analysis within Genesee County; and 3) Alternatives for use and layout of the preferred site location. DGEIS at 1-14. After a period of evolution, the preferred alternative was to send untreated waste water to the Medina WWTP and the Agency entered into the MOU in furtherance of that alternative. *See* EA at 4. However, the MOU expired in 2017 after Medina declined to renew it. After further review, the current Project design was determined by the EA as the alternative with the least potential adverse impacts. EA at 34. The current Project design alternative has been since the subjected to numerous SEQRA review through the 2020 Amended Findings, the 2022 SEQR Update, the 2022 Negative Declaration, the 2022 Second Amended Negative Declaration, and the February 2023 Negative Declaration. As such, alternative analysis of the Project has been robust, and of all the design alternatives considered, the Project minimizes any potential adverse environmental impacts to the maximum extent possible.

Effluent from the Project will not contain toxic chemicals, bacteria, or high temperatures.

Comments were received stating that due to the nature of the industrial tenants at STAMP, the effluent from the Project will contain highly toxic contaminants such as arsenic, antimony, and other “forever chemicals” the discharge of which will not be monitored.

The Project will not result in impacts from discharge of toxic chemicals or high temperatures. The effluent discharge from the Project will be subject to the SPDES Permit, the issuance of which by the NYSDEC requires that discharged effluent not impact OOC. Discharge from the Project is permitted under the SPDES Permit up to 6 mgpd. However, of that potential 6 million GPD, 1 million GPD will be sanitary wastewater from relatively innocuous sources such as sink water. The remaining 5 million GPD potential discharge will come from STAMP tenants. Industrial tenants discharging wastewater to STAMP WWTF are required to obtain an industrial SPDES permit which will ensure their industrial waste water is pretreated prior to entering the STAMP WWTF. Such pre-treatment will be required to remove all industrial chemicals to ensure the effluent discharge from STAMP into OOC complies with the SPDES Permit. As such, the Project will not result in impacts from toxic chemicals.

Furthermore, with regard to temperature, the SPDES Permit regulates the same and limits effluent from the Project to 90 degrees Fahrenheit as measured at the STAMP WWTF. The SPDES Permit temperature limit is designed in accordance with NYSDEC regulations for the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the discharge body of water. Responsiveness Summary at 8. OOC is not classified as a trout stream, which would require a lower temperature limit. As such, the temperature limit is wholly appropriate for discharge into OOC. Furthermore, measurement for temperature at the STAMP WWTF ensures compliance with required temperature limits because there is no plausible basis to anticipate an increased temperature along the length of the outlet pipe - such limits are of more concern for cooling process wastewater (not currently permitted or proposed), and will be imposed if and when an industrial user has such a need.

The effluent from the Project will not cause impacts from odor.

Several comments expressed concern that the effluent from the Project will omit foul odors in OOC which will impact use of the waterbody for recreation.

The Project will not emit odor that would impact recreational users of OOC. The NYSDEC in its Responsiveness Summary responded to these concerns upon issuing the SPDES Permit for Project, stating:

Pursuant to 6 NYCRR 750-2.8(a)(2), “[t]he permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit.” Furthermore, 6 NYCRR 750-2.8(a)(6) specifically requires that the permittee operate the facility “in such a manner as to minimize odors and other nuisance conditions to a degree that is achievable when compared to standard practices for operation.” Also, 6 NYCRR 211.1 states that, “No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.”. . . [T]he narrative water quality standard (6 NYCRR 703.2) applicable to Oak Orchard Creek, a Class C waterbody, limits “odor producing substances” in the effluent discharge to, “None in amounts that will adversely affect the ... odor thereof, or impair the waters for their best usages.” (There is no numeric water quality standard for odor producing substances for a Class C waterbody at this time.)

Responsiveness Summary at 4-7.

As the Project will at all times operate in compliance with the SPDES Permit which requires that the Project will not emit odors that impacts recreational use of OOC, the Project will not cause any adverse impacts from odors.

Furthermore, it should be noted that breadth of potential environmental impacts were considered by the Agency in its SEQRA review of the Project, including odor, and the Agency has determined the Project would not have adverse environmental impacts.

The potential adverse impacts of “frac-out” from construction of the Project are adequately addressed and mitigated in the Environmental Information

Comments were received that expressed concern over the risk of adverse impacts stemming from the use of horizontal directional drilling (“HDD”) for the Project. Specifically, these comments assert there is a risk that the use of HDD will result in “frac-out” which is a circumstance where slurry used in the HDD process inadvertently reaches the surface, impacting plants and animals.

The concerns of frac-out are noted. The Corporation has recognized there is a

concomitant risk of frac-out with the use of HDD. Therefore, as a condition of the Project's Article 24 Wetland Permit issued by NYSDEC on September 2, 2022 ("Wetland Permit") the Project maintains a mitigation plan in the event a frac-out occurs during construction ("Frac-out Plan"). Among other requirements, the Frac-out Plan as conditioned under the Wetland Permit, requires: frac-out mitigation training; a person be on-site at all times to monitor for potential seepage of drilling fluid; drilling pressure be reduced in areas prone to frac-out; a vacuum truck be on site to quickly remove any drilling fluid in the event of a release; dilution of any drilling fluid too small to be removed; as well as monitoring and suspension of drilling during a release. Wetland Permit at 3. Therefore, as recognized in the Wetland Permit, conformance with the Frac-out Plan will adequately minimize the risk of adverse impacts from frac-out during construction of the Project.

Nevertheless, the Corporation continues to consult with NYSDEC, USFWS, and USACE with respect to the risk of frac-out and improvements to the Frac-out Plan on an ongoing basis. To date, the Project has experienced two frac-out events for which the Frac-out Plan was implemented. Based on the Corporation's experience during these events, and following extensive consultation with the above agencies, the Corporation has revised the Frac-out Plan and Stormwater Pollution Prevention Plan associated with the Project.