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By Email to DEP.R8@dec.ny.gov
March 20, 2023

Thomas P. Haley
NYSDEC Region 8 Headquarters
6274 E. Avon-Lima Road
Avon, NY 14414

Re: STAMP Endangered/Threatened Species Sitewide Incidental Take Permit

Dear Mr. Haley:

Please consider this correspondence my written comments on the STAMP Endangered/Threatened Species Sitewide (Full Campus) Incidental Take Permit (“STAMP Application”). I am submitting these comments on my own behalf as a concerned citizen.

Point I. GCEDC’s STAMP Application constitutes a subsequent proposed action under SEQRA that: (a) was not addressed or not adequately addressed in either the 2012 GEIS or 2023 Negative Declaration; and (b) that may have one or more significant adverse environmental impacts on the endangered Short-eared Owl, the threatened Northern Harrier, or the habitat of such species. Accordingly, pursuant to 6 NYCRR 617.10(d)(4), any determination by DEC of said application must be preceded by the preparation of a supplement to the 2012 GEIS.

The SEQRA regulations - at 6 NYCRR 617.10(d) - instruct a lead agency on how to address a subsequent proposed action when a final generic environmental impact statement has been filed, such as the 2012 GEIS filed for the STAMP facility. More specifically, where a subsequent proposed action was not addressed or was not adequately addressed in the generic EIS, and the subsequent action MAY have one or more significant adverse environment impacts, “a supplement to the final generic EIS must be prepared.” Id.

GCEDC’s STAMP Application is a subsequent action under SEQRA, a project or physical activity that may affect the environment that requires an approval by an agency - here, a discretionary determination by DEC to issue or deny the full-campus incidental take permit. [6 NYCRR 617.2(b)&(e).] According to the SEQRA regulations, “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 significant adverse impacts on the environment.” [6 NYCRR 617.7(c)(1)(ii)]

Given this agency's recognition of the Short-eared Owl's essential need for large blocks of habitat exceeding 100 hectares/@247 acres (discussed in greater detail at "Point III" below), it can reasonably be expected that GCEDC's proposed removal of 607 acres of its 665 acres of open fields - land determined to be "occupied habitat" for the endangered Short-eared Owl and threatened Northern Harrier - and the accompanying replacement of such fields with industrial development, will result in "substantial adverse impacts on a threatened or endangered species of animal ... or the habitat of such a species." Id. That reality, when coupled with the following facts, means that DEC's determination of the pending STAMP Application must be preceded by the preparation of a supplement to the 2012 GEIS:

(1) As expressly acknowledged and determined at "Section 2" of GCEDC's 2023 Negative Declaration, "the potential environmental impacts associated with the Current Proposed STAMP Development on Winter Raptors was not addressed or not adequately addressed in the STAMP GEIS." [Emphasis added.] It follows that the 2012 GEIS also did not address or adequately address the potential environmental impacts on the Short-eared Owl or Northern Harrier associated with development of the "remaining developable acreage of the STAMP site" - that is, the 665 acres of occupied habitat that are the subject of the pending STAMP Application.¹

(2) In its 2023 Negative Declaration, GCEDC, as lead agency, concludes that "the Current Proposed STAMP Development will not have any significant adverse impacts on plants or animals not previously considered in the STAMP GEIS." Putting aside the question whether this determination of non-significance meets the requirements of SEQRA, a careful reading of the 2023 Negative Declarations reveals that the February 2023 document does not address or adequately address the potential environmental impacts on the Short-eared Owl, the Northern Harrier, and/or the habitat of such species associated with development of the "remaining developable acreage of the STAMP site" - that is, the 665 acres of occupied habitat that are the subject of the pending STAMP Application.²

¹ The 2023 Negative Declaration describes "the Current Proposed STAMP Development" to include the Scannell Project, Edwards Vacuum project, "and a number of additional infrastructure projects at STAMP." For the purpose of these written comments, I assume that the term "remaining developable acreage of the STAMP site," that is, "a total of 665 acres of open habitat" which are the subject of the STAMP Application under consideration by DEC, includes the land encompassing "the Current Proposed STAMP Development," but is a significantly larger area.

² Pursuant to 6 NYCRR 617.7(c)(ii), substantial adverse impacts on the habit of an endangered or threatened species is, in and of itself, an indicator of a significant adverse environmental impact. To the extent impacts of the STAMP facility on the open fields at the STAMP site were addressed in the 2012 GEIS and/or Negative Declaration, such land was not characterized, treated as, or seen through the lens of an "occupied habitat" of the Short-eared Owl and/or Northern Harrier.

(3) The proposed “Net Conservation Benefit Plan” is so inherently defective - as discussed in detail below at “Point IV” - that it cannot reasonably be considered a lawful or adequate substitute for the “hard look” and “reasoned elaboration” mandated by SEQRA’s determination-of-significance process. [See 6 NYCRR 617.7.]

Point II. GCEDC’s inability to accurately describe the time-line of construction or the precise nature of future development makes it difficult, if not impossible, to properly assess the impacts of the proposed full-campus activities on the endangered Short-eared Owl and threatened Northern Harrier populations or their habitat. Such uncertainty should, however, allow the STAMP site owner to exercise significantly more flexibility in considering mitigation strategies than it has exhibited to date.

The STAMP Application states, at pages 1-2, that the STAMP master plan “continues to evolve as tenants commit and design their facilities,” that “[c]onstruction of tenant facilities will occur progressively over the next several years as companies commit to developing at STAMP,” that “[s]ite infrastructure will follow suit, constructing on an as-needed basis to support the new development until full build out has been reached,” and that “[i]t is anticipated that there will be some level of construction occurring within the STAMP site year-round for the next several years.” Such characterizations of the proposed activities are too imprecise and ambiguous to provide members of the public, or, I would presume, the DEC, with the “detailed description of proposed activity and its location” needed to properly assess the impacts of the proposed full-campus activities on the Short-eared Owl and Northern Harrier populations. References to construction occurring “progressively” on an “as-needed basis” over “the next several years” - when the dictionary definition of several is “more than two but fewer than many” - strongly suggest that GCEDC itself does not know, and is unable to responsibly predict, either the time-line of construction or the precise nature of future development.

GCEDC’s lack of knowledge about the future of its 1,263-acre STAMP site should provide the permit applicant much more flexibility than it has exhibited to date in devising a mitigation plan that would provide a true “net conservation benefit” for the Short-eared Owl and Northern Harrier. The opportunity exists, it would seem, to re-imagine the layout of the advanced manufacturing technology campus in order to create a configuration that would both rely less on the whim of prospective tenants, and better serve wildlife species and the rural nature of the surrounding community.

Point III . The Stamp Application inappropriately downplays the adverse impacts that would affect the endangered Short-eared Owl - if the requested take permit were to be approved - by disregarding the scientifically-recognized observation that this species, known to be particularly sensitive to habit loss and fragmentation, requires large blocks of habitat encompassing a minimum of 100 hectares (that is, @247 acres).

According to the Cornell Lab of Ornithology’s “*Birds of the World*,” the Short-eared Owl is

considered the “*rarest and most threatened owl*” in northeastern U.S.A.³ Although the STAMP Application includes as one of its references the *Birds of the World* article by D.A. Wiggins that expresses this conclusion, the submissions to DEC on behalf of GCEDC, including the supplemental information dated March 10, 2023, does not mention this inconvenient truth.

Significantly, the same *Birds of the World* article contains the following assessment and conclusion that the Short-eared Owl requires large blocks of habitat of at least 100 hectares (approximately 247 acres) in area:

Short-eared Owls appear particularly sensitive to habitat loss and fragmentation, as they require relatively large tracts of grassland and are ground nesters...

... [I]t is important to note that large blocks of habitat are essential for short-eared owls, and habitat preservation/restoration programs should aim to conserve large blocks of habitat (> 100 ha).

[Note: A hectare - abbreviated “ha” - equals 10,000 square meters, and is the approximate U.S. equivalent of 2.47 acres. Therefore, 100 ha = @ 247 acres.]

If the authors of the STAMP Application somehow missed this critically important statement while reviewing the Wiggins article at *Birds of the World*, they had another opportunity to observe and properly consider this important fact while reading DEC’s “Species Status Assessment on the Short-eared owl” (“DEC’s S-E-O Assessment”),⁴ a document also listed as a reference in the STAMP Application.

DEC’s S-E-O Assessment mentions the essential nature of large blocks of habitat for this endangered species a minimum of three times, and expressly embraces Wiggins’ 100-hectare recommendation:

- “... *Extensive blocks of habitat are essential for this owl (Wiggins et al. 2006)...*
[DEC’s S-E-O Assessment, p. 12, Habitat Discussion]

- “...*Short-eared owls appear particularly sensitive to habitat loss and fragmentation, as*

³ Wiggins, D. A., D. W. Holt, and S. M. Leasure (2020), *Short-eared Owl* (*Asio flammeus*), version 1.0, in *Birds of the World* (S. M. Billerman, Editor). Cornell Lab of Ornithology, Ithaca, NY, USA. <https://doi.org/10.2173/bow.sheowl.01>. Also see, Holt, D. W. and S. M. Leasure, 1993, *Short-eared Owl* (*Asio flammeus*), *In The Birds of North America*, No. 62, p. 15, where the authors state: “Most serious declines in the ne. United States... This decline best summarized by Maslow (1983), as being a result of ‘ordinary economic processes’ - loss of habitat due to human encroachment.”

⁴ NYSDEC 2014a, Special Status Assessment for the Short-eared owl.

they require relatively large tracts of grassland and are ground nesters... ”
[DEC’s S-E-O Assessment, p. 13, Threats]

- “... [I]t is important to note that large blocks of habitat are essential for short-eared owls, and habitat preservation/conservation programs should aim to conserve large blocks of habitat (>100 ha) (Wiggins et al. 2006)... ”
[DEC’s S-E-O Assessment, p. 14, Management/Conservation]

Despite this agency’s recognition of the Short-eared Owl’s essential need for large blocks of habitat exceeding 100 hectares/@247 acres, the STAMP Application merely generalizes, at page 5, that “the birds require large, intact tracts of grassland for both breeding and wintering (Wiggins et al. 2020).” The recommended minimum size of the “large blocks” is not mentioned. Even more problematic, GCEDC then proceeds to submit to DEC a proposed mitigation plan that would replace 665 acres of permanent impacts to open “occupied habitat” with two non-adjacent sites of 25- and 33-acres. The total area of these non-contiguous parcels, 58 acres, constitutes less than one-quarter the minimal 247 acres recommended in both DEC’s S-E-O Assessment and Wiggins’ *Birds of the World* article.

Point IV. The STAMP Application’s claim of “671 acres of mitigation” amounts to an act of ecological alchemy, a scheme that transmutes the woefully-deficient 58-acre set-aside into “Part 182 Gold” that purportedly meets the “net conservation benefit” requirement.

If GCEDC ruled the world (or, at least, New York State), there would be nothing (other than the realities of the market place) to prevent it from industrializing all 665 acres of open fields at the STAMP site, land currently or recently under agricultural production. However, GCEDC does not rule the Empire State, and must meet the requirements of 6 NYCRR Part 182, Endangered and Threatened Species of Fish and Wildlife. As a result of DEC’s determination that the entirety of such land is considered “occupied habitat” where the Short-eared Owl and Northern Harrier have exhibited one or more “essential behaviors,” GCEDC may not lawfully engage in “a take or taking”⁵ of the subject species unless it first receives an incidental take permit from DEC.

As a precondition to DEC’s granting of an incidental take permit for the full-campus STAMP site, GCEDC’s take permit application must include a “mitigation plan” - as described at 6 NYCRR 182.11(d) - that DEC determines will result in a “net conservation benefit” to the two listed species. Part 182 defines “net conservation benefit” as follows:

6 NYCRR Section 182.2(o). Net conservation benefit means a successful enhancement of the species' subject population, successful enhancement of the species' overall population or a contribution to the recovery of the species within New York. To be classified as a net conservation benefit, the enhancement or

⁵ See 6 NYCRR Section 182.2(y)’s definition of “take or taking.”

contribution must benefit the affected species listed as endangered or threatened in this Part or its habitat to a greater degree than if the applicant's proposed activity were not undertaken.

As expressed in the above-quoted provision, a mitigation plan fails the “net conservation benefit” test if the proposed enhancement or contribution does not benefit the affected species or its habitat “to a greater degree than if the applicant's proposed activity were not undertaken.”

GCEDC informs the public at page 8 of its STAMP Application that, “NYSDEC has stated that to achieve a net conservation benefit for wintering grassland birds, a 1:1 (new/improved: impacted) ratio of quality habitat must be created or enhanced.” But, in GCEDC’s mind, the one-to-one ratio does not mean that the mitigation plan would need to replace the 665 acres it wishes to eliminate with a minimum of 665+ acres of site open fields suitable as habitat for the subject species. Far from it.

The STAMP Application offers to meet the proposed project’s mitigation obligation by permanently eliminating 607 acres of occupied habitat of the Short-eared Owl and Northern Harrier, and replacing it with two non-adjacent, on-site fields - one 25 acres and one 33 acres in area. Further diminishing the significance of GCEDC’s proposal is the fact that the 25-acre parcel is “the same field currently utilized as mitigation” for an existing take permit approved by DEC in the Fall of 2022.⁶

In effect, it is GCEDC’s intention to proceed with development of 607 acres of its 665 acres of open fields, leaving the endangered Short-eared Owl and threatened Northern Harrier a paltry 58 acres of land - already determined by DEC to be occupied habitat - for overwintering and feeding. As noted above, the total acreage of these separated parcels, 58 acres, is less than one-quarter the minimum 247 acres (100 hectares) recommended in both DEC’s S-E-O Assessment and Wiggins’ *Birds of the World* article to preserve an endangered species extremely sensitive to habitat loss or fragmentation.

The STAMP Application then engages in an act of ecological alchemy, concocting a mathematical scheme that mysteriously transmutes the markedly-deficient 58 acres into “Part 182 gold,” that is, a purported net conservation benefit of “671 acres of mitigation,” six acres more than the proposed acreage available for development under the requested Full Campus Incidental Take Permit. [STAMP Application, pp. 8-10]

DEC must reject this proposal. First, GCEDC has not provided evidence of the scientific validity of multiplying “the number of acres” by “the number of years that acreage will be utilized for mitigation,” to accurately determine “net conservation benefit.” Second, even if, for the sake of argument, we accepted this approach as valid, **the resulting product would not be 671 acres, but 671 acre-years.** Logic, fairness, and the desirability of comparing “apples to

⁶ See March 10, 2023 letter of Adam S. Walters, Esq., p 3.

apples,” demand that 671 acre-years be compared, not to the 665 developable acres referenced in the STAMP Application, but to the total number of acre-years of occupied habitat the proposed development would eliminate.

For example, if we were to presume that the full-campus buildout, once it is completed, will remain in existence for 20 years, then, for each of the 20 years, the 607 developed acres will have removed 607 acres of potential grassland habitat for the Short-eared Owl and Northern Harrier. Applying the same approach used in the STAMP Application for determining acres of mitigation, the full-campus buildout would eliminate 12,140 acre-years of grassland habitat over that 20-year period, that is, 607 acres x 20 years = 12,140 acre-years.

Accordingly, to meet the “net conservation benefit” standard, and benefit the affected species listed as endangered/threatened, or their habitat, “to a greater degree than if the applicant’s proposed activity were not undertaken,” the full-campus buildout would require more than 18 times the purported 671 acres of mitigation claimed in the STAMP Application.

As DEC is aware, starting this year, the Edwards Vacuum project, located on undeveloped farmland, plans to create 35 acres of impervious surfaces (building roofs, parking areas, and access drives) on its 80-acre campus. If we presume that the project will persist for 20 years, then, for each of the 20 years, the 35 developed acres would have removed 35 acres of available open field habitat currently occupied by the subject species.⁷ Applying the approach used in the STAMP Application for determining acres of mitigation, the Edwards Vacuum project alone would eliminate 700 acre-years of potential grassland habitat (35 acres x 20 years = 700 acre-years). As a result, to meet the “net conservation benefit” standard, *Edwards Vacuum alone* would require mitigation acreage 29 acres larger than the 671 acres of mitigation claimed in GCEDC’s mitigation plan.

Similarly, the Scannell Project, also located on currently undeveloped farmland, would create 22.76 acres of impervious surfaces (including building roofs, parking lots, internal roadways, and concrete pads) on its site. If we presume that Scannell’s project, once it is completed, would persist for 20 years, then, for each of the 20 years, the 22.76 developed acres would remove 22.76 acres of currently available habitat for the subject species. Applying the STAMP Application’s approach for determining acres of mitigation, the *Scannell project alone* would eliminate 455.2 acre-years of potential habitat (22.76 acres x 20 years = 455.2 acre-years).

⁷ I am using the 35 impervious acres, rather than the entire 80 acres, in presenting this example in an effort to place the STAMP Application in a light most favorable to GCEDC. However, given the proximity of the remaining 45 acres of the Edwards Vacuum site to the construction and staging areas used in developing and then operating the site, I believe that it would be more accurate to utilize the entire 80 acres when performing this exercise given the likely adverse impacts on the feeding and overwintering behavior of the subject species.

That is, to meet the “net conservation benefit” standard, Scannell alone would require more than two-thirds of the 671 acres of mitigation claimed in GCEDC’s mitigation plan.

Point V. It appears that GCEDC has taken steps to intentionally devalue - it least in its own eyes - the 665 acres of undeveloped land as habitat for the endangered Short-eared Owl and threatened Northern Harrier, despite its status as “occupied habitat.”

It appears that DEC’s determination that the 665 undeveloped acres at the STAMP site should be considered “occupied habitat” has led to a campaign by the site’s owner to diminish the value of its own property as a useful habitat for the subject endangered and threatened species. As stated on the 19th page of GCEDC’s February 2023 Amended Negative Declaration resolution:

*... Since NYSDEC’s initial determination that portions of the STAMP Site constitute potentially occupied habitat for the species in question, **the STAMP Site has seen significant changes** to the on-the-ground conditions of the area considered by the DEC to be occupied habitat. [Emphasis added.] Specifically, the majority of the open space on the STAMP Site (consisting of approximately 665 acres) is now in row crops while a relatively small portion remains as hay or fallow fields. **The approximately 170 acres of hay fields** that were primarily used by both species during the previous winter **were converted to row crops** (by way of the Ag. Exemption) or developed in 2022... [Emphasis added.]*

At page 10 of the Stamp Application, GCEDC makes the ambiguous, hyperbolic, and inadequately supported statement that the essential habitat for the Short-eared Owl and Northern Harrier “tends to be ephemeral⁸ in nature.” Then, intensifying its efforts to degrade the land it wishes to industrialize, the applicant’s March 10, 2023 supplemental submission states the following:

*... **The vast majority of the 665 acres is currently in row crop**, (unfavorable to the relevant species), and is currently subject to brush or scrub fields, entirely unsuitable for habitat. **The 58 acres of replacement habitat will be pristine, managed habitat**, for a significant period of time. [Emphasis added.] This proposed mitigation ensures lasting suitable habitat protection for the relevant species, whereas existing potential habitat is subject to transition and degradation.⁹ [Emphasis added.]*

GCEDC’s self-serving and hyperbolic assertions disregard or distort the following facts:

⁸ “Ephemeral” literally means “lasting one day only,” and has come to be used to describe something “lasting a very short time.” See Merriam Webster’s Collegiate Dictionary.

⁹ See March 10, 2023 letter of Adam S. Walters, Esq., p. 4.

A. DEC's Short-eared-Owl Special Status Assessment states that Short-eared Owls use "a variety of open habitat" for breeding and wintering, including "grasslands, shrublands, and agricultural areas where small, mammal populations - especially meadow vole - are adequate." Three of the top four "Primary Habitat" types listed by this agency for this threatened species are pasture/hay, old field managed grasslands, and cultivated crops.¹⁰ Similarly, DEC's Northern Harrier Species Status Assessment identifies pasture/hay, old field managed grasslands, and croplands as Northern Harrier breeding and wintering habitat for the threatened species.¹¹ GCEDC's 665 acres of open fields (57 acres of hay fields, 103 acres of fallow fields, and 505 acres of row crop),¹² fall within the "variety of open habitats" used by the subject species, as DEC has recognized by its treatment of the entire 665 acres as "occupied habitat." As acknowledged at page 6 of the STAMP Application: "Short-eared owls and northern harriers have adapted to utilize agricultural areas as native grasslands have decreased."

B. As the owner of the 1,262-acre STAMP facility, GCEDC - the permit applicant - has control over whether this essential habitat maintains its current status or significantly transitions over time. The STAMP Application, at page 6, includes the following assertion:

*... Though some agricultural activities, such as haying and grazing, are good management tools for grassland habitats when completed at appropriate times and intervals, **typical agricultural activities** such as frequent disturbance and fertilizer/pesticide application **are all generally undertaken without respect to grassland bird populations**, and thus decrease the value of the habitat for these species. [Emphasis added.]*

The March 10, 2023 Memorandum submitted to DEC by GCEDC's consultant, CC Environmental & Planning, refers to "land ownership" by GCEDC, and the "relationships and (lease) agreements that GCEDC has with local farmers," as assurance that the mitigation plan as designed would be implemented. These statements demonstrate the likelihood of two facts: (1) To the extent "the STAMP Site has seen significant changes to the on-the-ground conditions of the area considered by the DEC to be occupied habitat," those changes were overseen by GCEDC. And, (2) GCEDC has the authority to make certain that future agricultural activities at the STAMP site "are all undertaken WITH respect to grassland bird populations, so as to increase the value of the habitat for the Short-eared Owl and Northern Harrier.

Lastly, it is correct that 6 NYCRR Section 182.13(a)(3) exempts from the incidental take permit requirements "a taking of any species listed as endangered or threatened [in Part 182] resulting from existing, routine and ongoing agricultural activities." Nonetheless, it is highly

¹⁰ DEC's S-E-O Assessment, p. 11.

¹¹ DEC's N-H Assessment, p. 11.

¹² STAMP Application, p. 7.

unlikely that the purpose of the exemption is to allow a land owner in the process of seeking such a permit to intentionally engage in agricultural activities intended to decrease the value of occupied habitat for the subject species. In my opinion, such activity constitutes an “adverse modification of habitat” and “interference with or impairment of an essential behavior” of a species listed as endangered or threatened, in contradiction of the letter and spirit of Part 182.

Point VI. GCEDC has failed to provide scientific data and information to ensure that its non-contiguous, 58 acres - which it characterizes as “pristine and “high quality” - provides a “net conservation benefit” when compared to 665 acres of open fields it refers to as “relatively marginal winter habit.”

GCEDC’s March 10, 2023 Supplemental Memorandum, at page 5, says that its mitigation plan is “designed” to increase the likelihood of survival of the subject species when compared to “keeping land within active agriculture.” It boasts that its “high quality grassland habitat” would be managed for 60 years, significantly longer than the 10 to 15 years typically required under a federal grassland conservation program. It states, correctly, that grassland creation and maintenance are important management tools for supporting grassland birds.

But GCEDC’s consultants never provide scientific data and information that meaningfully address the bottom-line question: Are two well-managed, but non-contiguous, parcels of land totaling only 58 acres (less than 5% of the total STAMP site and 9% of the 665 acres of open fields) truly better for the endangered Short-eared Owl and threatened Northern Harrier than the currently undeveloped 665 acres of open fields deemed occupied habitat for DEC?

It would be one thing if GCEDC were to propose a mitigation plan that envisions dividing its 665 acres of occupied habitat into 333 pristine and high quality acreage - to be managed for the lifetime of the STAMP facility specifically for Short-eared Owls and Northern Harrier - and 332 acres to be developed as an advanced technology and manufacturing park. Were that the proposal, one could reasonably argue that a net conservation benefit would be the end result.¹³ Such a scenario would provide the coveted 1:1 ratio. And it would meet the minimum 100-hectare/247-acre large block of habitat recognized as essential for short-eared owls. [See “Point III” above.]

But, that is far from the case here.

Rather than carving an open field of 665 acres into 333 managed acres and 332 developed acres, **GCEDC has offered the Short-eared Owl and Northern Harrier a total of 58 managed acres and 607 developed acres.** The 607 acres proposed for industrial development is a

¹³ I am not suggesting that the full-campus incidental take permit should automatically be granted under this 333/332 scenario. There are many other factors for DEC to take into consideration, including issues pertinent to the Climate Leadership and Community Protection Act (CLCPA), Disadvantaged Communities, SHPO, etc.

whopping 10.46 times the area of the “managed” 58 acres.¹⁴ Rather than a one-to-one ratio, they are offering a 1-to-10.46 ratio (1:10.46).

GCEDC offers conclusory statements regarding the benefits of its mitigation proposal. But the information and data provided in its submissions fall far short of ensuring that the taking sought to be authorized by the requested incidental take permit will not reduce the likelihood of the survival of the Short-eared Owl and Northern Harrier.

Point VII. The Supplement to the 2012 GEIS must take a “hard look” at the proposed development and mitigation plans’ impacts on the meadow voles, the primary food source of the Short-eared Owl and Northern Harrier.

As noted above at “Point I,” it is my professional opinion that the pending STAMP Application must be preceded by preparation of a supplement of the 2021 GEIS. One of the topics that should be thoroughly analyzed as part of the SEQRA review process is the impact of GCEDC’s proposed development and mitigation plan on the meadow vole population, given its vital role in providing a food source for the subject avian species.

The closest the STAMP Application documents come to addressing the impacts on the vole is this passing reference at page 3 of the March 10, 2023 Memorandum: “Row crop fields are used significantly less by meadow voles, the primary food source for these species (citation omitted).” This casual reference to the meadow voles preference is rather ironic. As addressed in detail above at “Point V,” the permit Applicant has utilized its control of the undeveloped land to ensure that “the majority of the open space on the STAMP Site (consisting of approximately 665 acres) is now in row crops while a relatively small portion remains as hay or fallow fields. [See 19th page of GCEDC’s February 2023 Amended Negative Declaration resolution.]

Here is a partial list of the questions that need to be addressed regarding the humble meadow vole:

(A) How has the meadow vole population already been impacted by what GCEDC characterizes as “significant changes to the on-the-ground conditions of the area considered by the DEC to be occupied habitat”?

(B) What is the foreseeable impact on the overall population of meadow voles as a result of GCEDC’s plan to develop 607 acres of presently open fields?

¹⁴ I have little doubt which of the two scenarios the endangered and threatened species would choose, especially when the “pristine” 33-acre field would be “adjacent to land slated for development” (see STAMP Application, p. 9), and the 25-acre field would be located near Crosby Road in close proximity to the Scannell distribution/manufacturing site, and, as referenced in GCEDC’s counsel’s March 10, 2023 letter, is the same field currently utilized as mitigation for an existing take permit approved by DEC in the Fall of 2022.

(C) If GCEDC's mitigation were to be implemented, will the 58 "managed" acres be overpopulated by meadow voles?

(D) What impact, if any, would the proposed removal of a portion of the hedgerow have on the meadow vole population?

(E) How will the impacts on the meadow vole population affect the likelihood of survival or recovery of the endangered Short-eared Owl and/or Northern Harrier?

Point VIII. GCEDC and its co-applicants must promptly provide the detailed information and data needed by DEC relating to its role as an "involved agency" under SEQRA, the Climate Leadership and Community Protection Act (CLCPA), the Commissioner's Policy regarding Environmental Justice and Permitting (CP-29), and impacts to Disadvantaged Communities.

Based on the information that I have seen to date, I concur with the positions expressed, and the requests and instructions made, in the two letters dated February 27, 2023 sent by DEC (by Kimberly A. Merchant) to Mark Masse at the GCEDC.

I support any and all efforts by DEC to seek input from contemporary residents of the Tonawanda Seneca Nation (TSN), and to elicit data and information regarding the potential impact to TSN as a result of the removal of Short-eared Owl and Northern Harrier species habitat, noise and lighting impacts to TSN resulting from the proposed Scannell project (including, without limitation, impacts on the Big Woods and on TSN cultural uses such as hunting, gathering and ceremonies), traffic impacts on the TSN Reservation, and impacts on TSN historic, architectural, archaeological, and cultural resources.

Thank you for your kind attention to, and thoughtful consideration of, the matters raised in this correspondence.

Respectfully submitted,
/s/ Arthur J. Giacalone
Arthur J. Giacalone