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VIA ELECTRONIC and FIRST CLASS MAIL

David Coburn, Director
Onondaga County Office of the Environment
John H. Mulroy Civic Center, 14th Floor
421 Montgomery Street
Syracuse, NY 13202

**Re: DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE
LAKEVIEW AMPHITHEATER PROJECT ON WASTEBEDS**

Dear Mr. Coburn:

On behalf of the Onondaga Nation (“the Nation”), I am submitting the following comments on the Draft Environmental Impact Statement (DEIS) for the proposed Lakeview Amphitheater Project. The Onondaga Nation is the Firekeeper or central council fire of the Haudenosaunee, which is composed of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations. From colonial times to the present, the Nation has maintained a government-to-government relationship with New York State and related local governments and submits these comments in that capacity and not as a member of the general public.

Onondaga Lake is sacred to the Onondaga and Haudenosaunee people. It was on the shores of the Lake that, over 100 years ago, the Peacemaker brought together the then Five Nations to form the Haudenosaunee Confederacy under the Great Law of Peace. The Lake is also the birthplace of western democracy. Historically, Onondaga Lake was central to the Nation’s way of life, providing material goods such as fish, food and medicinal plants, and salt. The Lake should be properly treated as a sacred site, and not have its shores covered in up to 80 feet of industrial wastes.

The Onondaga Nation and the Haudenosaunee have an obligation to care for the lands on which we all live, to ensure that future generations have clean air and clean water, and to help protect natural areas and wildlife. The Nation is working for a healing of the relationship between the land and the water; and among themselves and the people

of Central New York. The Nation has a sacred duty to work toward its vision of the lake and surrounding areas as an integrated and functioning ecosystem.

Towards that end, the Nation has consistently advocated for the removal of the industrial wastes that currently ring Onondaga Lake. The Nation has serious concerns about constructing an entertainment venue on Wastebeds 1-8, which will institutionalize a permanently polluted landscape on the western shore of the Lake and preclude additional remediation. In addition, there are serious flaws with the DEIS itself and with the limited opportunities being provided by the County for public deliberation regarding this proposal.

Under the State Environmental Quality Review Act (SEQRA), an Environmental Impact Statement (EIS) must be prepared for any state action that “may have a significant impact on the environment. E.C.L. § 8-0109(2). SEQRA defines “environment” broadly as “the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.” E.C.L. § 8-0105(6). The purpose of SEQRA review is to ensure that the environmental impacts of state actions are identified early and mitigated or avoided to the extent possible. *Jackson v. New York State Development Corp.*, 67 N.Y.2d 400, 414-15, 503 N.Y.S.2d 298, 303 (Ct. App. 1986).

To meet this goal, agencies are required to take a “hard look” at the environmental impacts of a project, potential mitigation measures for those impacts, and a range of alternative designs that might limit impacts. *Jackson*, 67 N.Y.2d at 417, N.Y.S.2d at 305. Agencies are then required to weigh unavoidable environmental impacts against the social and economic benefits expected from a project and to provide a “reasoned elaboration” of the basis for their final decision. *Id.*

The DEIS produced for this project utterly fails to meet this obligation, omitting significant impacts, glossing over potential mitigation, and unduly constraining its alternatives analysis. Without significant revision, it is difficult to see how the this DEIS will allow the County to provide a “reasoned elaboration” of its decision on this project.

I. The DEIS Does Not Evaluate Potential Adverse Impacts on Wildlife or Habitat.

The western shore of Onondaga Lake provides a rare wildlife resource – undeveloped, ungroomed natural area along an urban lake shore. The proposed Lakeview

Amphitheater project will permanently displace 70 acres of undeveloped land – almost 20% of the undeveloped or minimally developed land remaining along the western shore of Onondaga Lake. It will temporarily disrupt an additional 30 acres and will fragment the broader undeveloped area. However, the DEIS minimizes disruption to wildlife and vegetation, fails to quantify off-site impacts, and completely ignores fragmentation and other potential negative effects of the project on wildlife and habitat.

The DEIS mentions some construction-related impacts, including direct habitat loss and disturbance, disruption from additional noise and human activity, potential silt and sediment impacts on aquatic wildlife, and possible accidents involving wildlife and construction equipment. However, these impacts are characterized as insignificant, since “the western shoreline of Onondaga Lake (including portions of the project site) has been experiencing disturbance from construction-related machinery for years” (DEIS, p. 59). This dismissive assertion fails to consider the distance between other remediation activities and this site; differences between concentrated, intensive construction in a previously undisturbed area and more scattered remediation activities; the effects of fragmentation on the larger parcel; or the importance of the potential renaturalization of this area in light of on-going disturbances throughout the remainder of the lakeshore.

The DEIS also downplays the potential negative impacts of project operation on wildlife. The County points to limited remediation activities occurring on and around this site to argue that wildlife are habituated to human presence and will not be significantly affected by the noise, lights, and intensive human use generated by multiple large concerts throughout the course of the summer. However, these uses are quite different. If successful, the Amphitheater will routinely draw almost eighteen thousand people to the site for large concerts, hundreds of people for community theater events, and additional regular daytime visitors to its more scattered trails, nature areas and picnic sites.

The DEIS provides no data or other evidence to justify its inappropriate comparison of intense, dispersed, unpredictable human use throughout the event complex and related trail systems to localized and limited construction operations. The DEIS also fails to consider differences in duration, timing, or quality of noise generated by construction to that generated by rock concerts; differences in lighting required for confined construction operations versus lighting needed to ensure the safety of thousands of concert-goers and to create the concert atmosphere desired by performers; or the differences between temporary construction disturbances and summer-long disruptions extending into the foreseeable future.

Perhaps most importantly, the DEIS provides absolutely no support for the

baseline assertion that wildlife have become “habituated” to the current construction activity. American bittern, for example, have been noted on or near the site in the past and were once common throughout the watershed. In recent years, American bittern have been sited north of Wastebeds 1-8, near Nine Mile Creek. If this parcel remained undeveloped, given the wetlands present north of the site and those being constructed south of the site, the American bittern might return to nest in the area. Carving out 70 acres of landscaped lawns and inviting the noise, bright lights and crowds of an amphitheater onto the on a regular basis throughout the summer could well drive American bitterns and other and other sensitive birds and wildlife away.

The DEIS appears to recognize that direct human trespass on “sensitive areas” during project operations may generate some negative impacts and suggests mitigation is possible through appropriate landscape design, signs, and other “wayfinding tools” to keep users in designated areas. However, the document does not designate any “sensitive areas,” describe how those sites will be determined, or describe specific mitigation measures to be used.

Further, the DEIS entirely fails to consider the effects of fragmentation on adjacent naturalized areas. Carving out roughly 20% of the undeveloped or minimally developed land at the heart of the western lakeshore may have serious implications for the integrity of the broader habitat. The intensively used, landscaped tract may create a barrier to movement within this undeveloped area. The altered habitat is likely to attract different species, such as starlings, which are known to aggressively compete with other birds and mammals for food and nesting areas.

Noise and light disruption will certainly extend beyond the developed tract to adjacent areas. Human disruption within adjacent areas may increase as well, as visitors to the amphitheater site are drawn to adjacent wild areas. All of these impacts may be felt, in particular, in renaturalized areas along Geddes Brook and Ninemile Creek to the north of this site and in mitigation wetlands that will be built along the shoreline to the south. Developing a public project that may undermine the investments already made in these renaturalization/reconstruction projects is particularly troubling.

The DEIS briefly mentions, but does not provide any meaningful consideration of the herbicides, fertilizers or other chemical inputs that will be used to maintain the landscaped portions of the complex; the potential for these chemicals to disperse to adjacent, undeveloped areas or wash into nearby water bodies; or their effects on wildlife remaining in the area. Similarly, despite site maps showing parking lots and roadways running directly along the shoreline behind the proposed amphitheater and discussion of

this area within the Conceptual Design Report as a staging and parking space for trucks and trailers carrying concert-related equipment, there is no more than a brief mention of typical traffic-related runoff, including hydrocarbons, heavy metals, and salt, or its potential impact on nearby streams or Onondaga Lake itself. Neither of these assessments is included in the section on wildlife or habitat impacts.

The DEIS fails to adequately evaluate the presence of or potential project effects on endangered species, threatened species, or species of special concern. For instance, the DEIS explicitly defers assessment of the project's potential impact on endangered pondweed until after opportunities for public comment within the SEQRA process are complete. The DEIS mentions that the endangered Indiana bat and possibly endangered northern long-eared bats have been seen on or might be drawn to the site, but dismisses potential impacts with the unsupported statement that these bats would simply move to area north or south of the site and fails to acknowledge the likely off-site impacts of concert noise, crowd noise and light shows on these nocturnal animals. Although some endangered, threatened or of special concern bird species were acknowledged to be present in the broader area, the DEIS fails to note that many of these birds, including the pied-billed grebe, bald eagle, and common loon, were counted on the lake itself in a 2008-2009 Fish and Wildlife Service study.

More recent studies and casual sitings confirm that many of these birds live, breed or hunt in and around the wastebeds. A 2012-2013 survey of the wastebeds by a SUNY-ESF graduate student found bald eagles, osprey, and common tern in addition to a host of other more common birds. Area birders have spotted osprey, common loon, horned larks, American bittern and other birds of interest, such as bobolinks, yellow-bellied flycatchers and Arcadian flycatchers, on or near the wastebeds. The DEIS does not account for these more recent and more site-specific studies and sitings.

In short, the DEIS is wholly inadequate in its consideration of project impacts on wildlife or vegetation. The County should amend this section to consider the broader impacts of its proposed development on the integrity and functionality of adjacent habitats, on the reconstructed habitats and wetlands to the north and south of this site, and on wildlife remaining within the area.

II. The DEIS Fails to Consider Potential Health and Safety Impacts of the Project.

The County fails to properly characterize the health and safety risks presented by its proposed use of this site. In particular, the DEIS does not acknowledge the range of

industrial wastes dumped at the site, the level or type of contaminants present, or the distribution of those contaminants. In addition, it relies on an incomplete Human Health Risk Assessment (HHRA) and an undeveloped remediation plan to assure visitor safety from contaminants. Additional assessment is required to fully characterize potential health and safety risks of the proposed use.

First, the DEIS fails to properly characterize the site and, in doing so, minimizes human health risks posed by the site. The project area is described as “man-made land” or as waste that is “largely . . . calcium carbonate, gypsum, sodium chloride and calcium chloride” with some added fly ash (DEIS, p 110). This description fails to convey the significance of contamination on site or to recognize that most of the contaminants of concern – benzene, toluene, ethylbenzene, xylene, PAHs, phenols, mercury, arsenic and chromium – are associated with industrial wastes that were dumped randomly across the site without recording locations or amounts. As a result, “hot spots” have turned up in unexpected areas, including sites just north and west of the current parking area. This is important because large areas within the project area, including sections proposed for lawn seating, additional hiking trails, and the community theater, remain uncharacterized and could contain dangerous contaminant levels.

The DEIS insists that these contaminants are of no concern, relying on an HHRA generated by EPA and a remediation plan for the site that has yet to be developed. However, the HHRA is inadequate for several reasons and reliance on an undeveloped remediation plan is inappropriate.

The HHRA is based on known contamination levels and, as noted above, large sections of the proposed project site have not been tested. Even with this limited information, the HHRA found unacceptable risks for some site users (construction workers and recreational ATV users). The HHRA fails to evaluate potential exposure of or risks to young children (ages 6 and under). This group was not considered likely to trespass on the site in its undeveloped state and therefore was not included in the original assessment. However, as a community park and concert venue complex, the area is likely to draw a significant number of young visitors. The lawn seating and picnic areas may be particularly attractive to families with young children. Despite acknowledging that dust generation created unacceptable risks for ATV users on the site, the HHRA does not consider the potential for dust to be generated by heavy foot traffic, dancing or other

operational elements, particularly on the “festival grounds” proposed for the Crucible Steel hazardous waste landfill area. The HHRA assumes that visitors will only be on site for concerts, neglecting to consider the fact that the site will be open to hikers, picnickers and other users when concerts are not scheduled. If the DEIS continues to rely on the HHRA for its environmental analysis, the health assessment should be revised to address all of these concerns.

The DEIS also relies on an undeveloped remediation plan for the site to mitigate contamination-related health and safety impacts. While the DEIS provides some information on various proposals, no remediation plan has been chosen or finalized. Assuming that an alternative incorporating soil and vegetative covers is chosen, the actual depth and location of these covers are unknown, meaning that it is impossible for the County to fully assess the health and safety impacts of its project or to consider appropriate mitigation. As a result, the mitigation measures discussed in this section are vague at best, relying on unspecified “wayfinding features, natural barriers and enhanced access pathways” to discourage visitors from accessing unidentified sensitive portions of the site and to ensure the integrity of any cover that is installed. A simple assertion that any future remediation plans will comply with federal environmental laws is inadequate for SEQRA analysis.

The DEIS fails to consider timing issues related to the proposed remediation. According to the most recent Revised Feasibility Study (Rev'd FS) for the site, if a soil and vegetative cover option is chosen, Remedial Action Objectives (RAOs) are not expected to be fully achieved until 6 to 8 years after approval/initiation of remediation (Revised FS, p. 35). Even simple vegetative covers are expected to take approximately 3 years to reach maturity and be fully protective of both human and animal site users (Revised FS, p. 35). The County plans to put the Amphitheater into use in Fall 2015 and to schedule a full series of events beginning in Spring 2016. Under the best case scenario, this schedule means that thousands of people will be regularly invited to the site more than a year before any vegetative cover would be deemed mature and fully protective and between 4 and 7 years before RAOs are fully achieved. The DEIS provides no assessment of interim risks, the potential effects of intensive human use on immature soil/vegetative covers, or mitigation measures needed to protect recently installed soil and vegetative covers.

Finally, the DEIS does not directly address the health and safety implications of project construction – for construction workers, the general public, or wildlife. Although the County acknowledges that there may be some negative impacts from intrusive construction work on a known contaminated site, the DEIS avoids any effort to quantify those impacts or to develop specific mitigation measures. Rather, the DEIS simply states that plans will be developed at some point in the future to manage these risks. Such generic statements and blanket assurances do not constitute the “hard look” at environmental impacts and potential mitigation required by SEQRA.

As a result of these failures, neither the public nor the County can be assured that human health and safety issues related to the contamination site will be appropriately managed. The County should amend these sections of the DEIS to provide more details about contaminant levels on site and should wait for specific remediation plans to allow development of appropriate and specific mitigation proposals.

III. The Noise Analysis is the DEIS is Inadequate.

The DEIS provides a minimal assessment of the potential noise generated by the project, ignoring several relevant factors, and essentially punts the issue of mitigation. As discussed below and in the July 6, 2014 letter from Environmental & Safety Associates, Inc., submitted as part of Lloyd Wither’s comments and adopted by reference herein, this assessment is wholly inadequate and should be redone.

Although past experience with concert venues indicates that noise is by far the most significant impact on surrounding communities, the noise study conducted for the DEIS is a mere three pages long. The study does not measure existing ambient noise levels to allow a proper assessment of change in conditions. It ignores the fact that noise travels farther over water (i.e., over Onondaga Lake) than over land. It acknowledges that sound propagation varies considerably depending on atmospheric, weather, or wind conditions and could change sound levels at any particular receptor by 10dB or more, but make no effort to calculate these impacts. It asserts without citation that concert noise will not typically exceed 100 dB at the edge of the lawn seating, despite other sources that suggest that rock concert noise typically ranges between 105 and 114 dB (American Academy of Audiology, Levels of Noise in Decibels, available on-line at

www.audiology.org/practice/resources/PublishingImages/NoiseChart16x20.pdf; Purdue University Department of Chemistry Safety, Noise Sources and Their Effects, available on-line at www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm). The DEIS acknowledges that the more disruptive low frequency (bass) noise is not adequately captured by its methodology, but makes no effort to supplement its analysis to evaluate this impact. The study does not consider the timing of concert-related noise (either time of day or day of the week) or assess the impacts of more frequent noise intrusions throughout the course of a summer concert season.

Given the brevity and inadequacy of the noise impact “study” in the DEIS, it completely fails to acknowledge that noise from multiple concerts at this location will severely impact the homeowners and residents in both Lakeland and Liverpool. Further, the noise is likely to violate the zoning ordinances in both communities. Because the DEIS fails to acknowledge these threats to these communities, the citizens of the communities and their elected official have been kept in the dark about this threat. In addition, repeated noise violations may result in a forced closure or schedule reduction for the Amphitheater, as has happened for other music venues in the area. So, the County is very likely squandering \$30 million of tax paper money on a venue, that will likely not be able to operate; and thereby, repeat the mistakes we have witnessed in Baldwinsville and the Paper Mill venue.

Despite this minimal analysis, the DEIS concludes that there will be unacceptable concert-related noise levels within adjacent residential areas. The sole mitigation measures proposed are an undefined reconfiguration of one set of speakers and advice to community members to take refuge indoors or simply leave their homes for the evening. Given this inadequate response, the DEIS should explicitly recognize that the project will cause unmitigable noise intrusion into adjacent communities and should take the time to quantify this harm, at least in terms of number and timing of such noise impacts as well as the probable increase in noise levels above ambient noise at those times.

IV. The DEIS Fails to Acknowledge the Unmitigable Traffic Impacts Created by the Project.

Although the DEIS contains a relatively detailed traffic analysis within its appendices, the DEIS itself minimizes the results of that study. Specifically, the DEIS fails to acknowledge that traffic backups will remain at unacceptable levels at multiple intersections despite the proposed mitigation, nor does it attempt to quantify the frequency or duration of project-related traffic jams. The DEIS also fails to acknowledge or quantify the expenses related to traffic mitigation—such as how many law enforcement or security personnel will be necessary to handle the multiple traffic problems. This failure only adds to the over-all failure to produce any meaningful business plan.

Traffic impacts are typically described in terms of Level of Service (LOS), which is defined in terms of driver delay and traffic queue lengths. LOS is rated from A to F with D being the minimally acceptable level for urban areas. Under existing conditions, the intersections studied were all rated LOS C or above. Where concerts at the project were estimated to have an impact on traffic flow (four of the five intersections originally studied and two of the four intersections added in the assessment of large events), the study showed that proposed mitigation would generate minimal, if any, improvements. In fact, as presented in the Lakeview Amphitheater Traffic Impact Study, attached as Appendix G to the DEIS, there were no instances where mitigation measures raised the LOS from unacceptable to acceptable and only a handful of individual lane assessments in which LOS improved at all. However, this utter failure of proposed mitigation is not directly addressed in the DEIS. Instead, the LOS achieved through various mitigation proposals related to large concert events is studiously avoided. Short-term mitigation measures, including manned intersections, additional signs, monitored lights, and defined lane expansions, are simply described as “improving” the situation with additional undefined long-term mitigation required.

Beyond ignoring the failure of its proposed mitigation measures, the DEIS assumes that concerts will occur on weekends without any data or evidence in support. It fails to consider the potential cumulative impacts of events that might be scheduled during the State Fair. Further, as noted in Section VI below, it fails to consider the air

quality impacts of the idling traffic generated by long wait times to enter the project site during large events.

VI. The DEIS Fails to Properly Evaluate Air and Water Impacts.

The DEIS includes sections on air and water quality impacts of project construction and operation. However, as with many other portions of the analysis, these sections are incomplete and inappropriately rely on future planning documents to assess impacts and ensure that adequate mitigation is undertaken.

With respect to air quality impacts, the DEIS fails to consider the effects of idling trucks associated with large concerts. As described in the Conceptual Design Report, trucks will transport concert equipment and crew to the site overnight and are expected to remain idling for large portions of the day as drivers sleep inside. The DEIS acknowledges that there will be sporadic increases in dust and air emissions from the cars arriving at the concert, but makes no effort to quantify that impact or to consider the additional emissions from concert-related traffic delays on adjacent roadways. In addition, the mitigation discussed in Section 3.3.3.2 is puzzling at best, since it focuses on keeping site visitors out of sensitive areas. While this may be relevant to keeping dust down on the site, it seems otherwise unrelated to air impacts.

As for water quality impacts, the DEIS mentions potential impacts from construction-related erosion and chemical contaminants related to run-off from parking lots, roadways, and landscaped areas. However, there is no effort to quantify these impacts in any way or to assess their significance. The minimal discussion of mitigation is limited to suggestions that the project will incorporate integrated pest management measures, will avoid work in the floodplain, and will implement a Stormwater Management Pollution Prevention Plan (SWPPP) with no description of the mitigation that might be imposed under any of these plans. As a result, there is no meaningful assessment of either the significance of the water quality impacts or the likely success of mitigation measures.

In addition, the SWPPP, like the remediation plan discussed in Section II above, is required by law. SEQRA demands more than a simple assertion that a project will comply

with environmental laws, which is a minimal presumption for all projects. SEQRA requires actual assessment of the environmental impacts that may be generated despite compliance with environmental law.

VII. The DEIS Fails to Consider Project Impacts on Community Resources.

The DEIS asserts that there will be no significant or unmanageable impacts on public services or utilities. However, these assessments are not fully justified and are frequently based on questionable assumptions.

The DEIS states that there will be no impact on local emergency services, since local services already provide coverage for several large summer events. However, this “assessment” is not based on any hard data and fails to consider the difference between one-time events, such as BalloonFest or JazzFest, and an on-going summer concert schedule or the potentially differing needs of day-time, family-focused events and night-time, adult-oriented concerts. The DEIS makes no effort to quantify typical emergency service usage at similarly sized concert venues in the area, to assess the routine demands that the project may place on emergency responders (such as directing traffic or providing security at the facility), or to assess whether there is sufficient excess capacity and manpower to handle the increased number of events per summer season.

The DEIS presumes that there will be adequate water and sewer services for the site. However, the document relies on unsupported estimates of the water and sewer demand that will be generated by the events complex and makes no effort to quantify the excess water or sewage capacity of local infrastructure. In addition, there is currently no water or sewage service to the site and future service is predicated upon connecting the site to an existing 12 inch water pipe “in the vicinity” of the site and a sewage pumping station that is “somewhat underutilized.” The difficulty and cost of creating these connections is not considered nor is the potential growth-inducing aspects of bringing such services onto the previously unserved lakeshore area.

VIII. The Project is Not Compatible with Community Preferences for or Public Commitments to Increased Public Access to the Lakeshore.

In the sections titled “Growth and Character of the Community” and “Open Space and Recreation,” the DEIS discusses the impacts on and project compatibility with community preferences and existing development plans for increased public access to the lakeshore. Unfortunately, these sections downplay impacts on shoreline access, mischaracterize community goals, and largely ignore project elements that are incompatible with these goals.

The DEIS repeatedly emphasizes that the Lakeview Amphitheater will be a publicly-owned facility and will be accessible to the public when events are not being held. However, the shoreline along this site is already accessible to the public and the natural areas viewable through the expanded West Shore Trail. Rather than increasing public access to the shoreline, this project will require moving the trail away from the shore into a landscaped area comparable to the groomed areas on the eastern shoreline, and eliminating access to an even larger section of the shoreline trail for an undefined period around scheduled events. Assuming that the “auxiliary trail,” which is marked on a single figure within the DEIS and mentioned nowhere in the text, is open during concerts, trail users will be treated to a view of the parking lots and area highways rather than the Lake. This is a significant reduction in access, not an increase.

In addition, the planning documents referenced in the DEIS largely conflict with the proposed use. While the 1991 Onondaga Lake Development Plan may envision a seasonal performing arts center along the lakeshore, the more recent documents all call for continued public ownership of and access to the shoreline in the form of trails, wildlife viewing stations, and other low- or no-cost options that are compatible with a natural setting. In fact, the 2010 Development Guide for Onondaga County suggests designating the project site as “Protected Open Space” and, in the 2012 FOCUS report, the most frequently cited priority for the Lake was maintenance or restoration of natural areas.

Sacrificing 70 undeveloped acres – almost 20% of the remaining undeveloped or minimally developed lands along the lakeshore – for an amphitheater complex that will

be limited to paying customers for an undetermined portion of the summer season is simply not compatible with the visions expressed in the cited planning documents. The DEIS should recognize this fundamental incompatibility.

IX. The DEIS Does Not Consider a Reasonable Range of Alternatives.

In addition to defining a project's environmental impacts and evaluating potential mitigation, SEQRA requires consideration of alternatives that might avoid such environmental impacts altogether. The DEIS for the Lakeview Amphitheater Project does not meet this requirement, constraining potential alternatives by describing project purposes and goals to support this particular site and this particular site only. Such artificial limitations are inappropriate and violate the intent of SEQRA review.

SEQRA requires that a "reasonable consideration of alternatives" be included in any Environmental Impact statement. *County of Orange v. Village of Kiryas Joel*, 44 A.D. 2d 765, 769 (2d Dept. 2007). Although this analysis need not include every potential alternatives, *id.*, the EIS must include a "reasonable range" of alternatives, *Halperin v. City of New Rochelle*, 24 A.D. 3d 768, 777 (2d Dept. 2005), that would achieve "the same or similar objectives" as the preferred alternative, *Sun Co., Inc. v. City of Syracuse Indus. Development Agency*, 209 A.D.2d 34, 50, (4th Dept. 1995).

In this case, the County has unreasonably constrained its alternatives analysis by creating purposes and goals unrelated to the specific project and designed to limit alternatives to the specific proposed site. Such predetermined commitments to a particular course of action which effectively preclude meaningful consideration of otherwise reasonable alternatives violates SEQRA. *See Sun, Co., Inc.*, 209 A.D.2d at 50.

Specifically, the DEIS lists the project's purposes and goals as: "(1) to help enhance public access to the western shore of Onondaga Lake; (2) to take advantage of the new opportunities available as a result of the remediation and restoration efforts taking place on the lakeshore; and (3) to further economic development and revitalization in the Town of Geddes and surrounding areas" (DEIS, p. 145). In reality, none of these stated goals will be achieved by this proposed placement of the amphitheater on the wastebeds. As noted above, the proposed amphitheater would, in fact, limit public access

to the Lake. The remediation and restoration efforts have yet to be defined and this rush to build will interfere with the on-going study and planning of the Natural Resource Damages trustee council. The County has provided absolutely no evidence that the proposed Amphitheater itself will generate economic development in Geddes and Solvay and the economic development that has been proposed for the town of Geddes, in the form of revamped streetscaping and brownfield redevelopment, is being planned independently as part of the Onondaga Lake West Project and separately funded by an additional \$70 million.

Even if the stated goals were met by this project, taken together, they are narrowly tailored to support development of this particular site and preclude analysis of feasible alternative locations on or around Onondaga Lake that could reasonably support a concert venue. In addition, these goals are wholly unrelated to creation of a concert venue. There are multiple endeavors, ranging from wildlife viewing areas to environmental education centers to kayak/bike rental centers, which would better meet the stated objectives of this project. The failure of the DEIS to consider any of these uses for the site is similarly unreasonable in light of the stated objectives of the project.

To comply with its SEQRA obligation to consider a reasonable range of alternatives, the County should either amend the project objectives to focus on provision of a concert venue and expand its alternatives analysis to include sites not located on the western shoreline of the lake or retain the stated objectives and expand its alternatives to include other types of projects. In addition, the DEIS provides no data or evidence in support of its assertion that a viable concert venue must be of the proposed size or include the related amenities. For that reason, smaller venues should be considered, as well as less ambitious event complexes, which would limit disturbance of natural or potentially renaturalized areas.

Finally, the DEIS limited alternatives analysis to property already owned by the County. However, given the County's power of eminent domain, such a narrow focus is not reasonable. *Horn v. Int'l Business Machines Corp.*, 110 A.D.2d 87, 95, 493 N.Y.S.2d 184, 191 (2nd Dept. 1985). Additional sites not owned by the County should be considered. At minimum, the existing State Fair Grandstand and sites near the Inner Harbor should be evaluated.

X. The DEIS Improperly Defers Analysis of Specific Environmental Impacts and Potential Mitigation Measures.

As noted within several of the sections above, the DEIS improperly defers analysis of some environmental impacts, relies on undeveloped mitigation-related documents, and fails to fully quantify specific project-related service needs or to justify its assumption that those needs can be met by existing services. As a result, neither the public nor the County can properly assess project-related environmental impacts or the effectiveness of mitigation measures in addressing those impacts and the County cannot make a reasoned determination that the benefits of the project outweigh its costs, as required by SEQRA. With its heavy reliance on so many undeveloped mitigation-related documents, the DEIS is essentially kicking the can down the road on far too many critical environmental issues, while rushing ahead without proper planning or public input.

The County cites many documents, reports and plans that will address potential environmental impacts and necessary mitigation. The Site Management Plan is expected to set out mitigation for construction-related impacts, including dust control, worker safety, air quality monitoring and management of erosion and run-off to protect water quality, as well as methods for managing erosion and run-off related to intensive site use to protect fragile areas and prevent exposing visitors to contaminants.

A more detailed site and landscape design plan is expected to detail the best management practices, design elements and wayfinding tools that will direct visitors to appropriate areas of the site, both to protect sensitive natural areas and to preserve any remediation-related site covers. Presumably, this plan will also identify those sensitive areas to be avoided. Specific noise mitigation measures are to be developed on an ad hoc basis in the future. Potential human health and environmental risks to be mitigated through a yet-to-be-developed remedial action plan. A detailed construction plan will identify the specific measures needed to support project-related facilities given the unstable and corrosive nature of Solvay Wastes. The presence of an endangered plant species may be revealed in a future site survey. In fact, these vague promises of future studies outnumber the actual studies conducted to support this DEIS.

The County cannot simply rely on vague promises to consider identified impacts

or potential mitigation in more detail in subsequent permitting or review processes. Review and approval of mitigation measures after completion of the SEQRA process “denies . . . the public their intended input with respect to whether such analysis and mitigation are appropriate or acceptable.” *Brader v. Town of Warren Town Bd*, 18 Misc.3d 477, 481-82, (Sup. Ct., Onondaga Cty, 2007). Such “tentative plans for mitigation measures” and reliance on mitigation plans to be developed in the future are wholly inadequate for SEQRA purposes. *Id.* at 483-8.

While detailed mitigation plans may be deferred where the exact contours of a development are not within the control of the lead agency, *Eadie v. Town Bd of Town of North Greenbush*, 7 N.Y.3d 306, 318-19, (2005), that is not the case here. The only reason that mitigation plans are being postponed until after environmental review is complete is the County’s overly ambitious development schedule, which was not designed to allow full analysis or consideration of alternatives and mitigation measures.

XI. The DEIS Fails to Consider Impacts on the Nation’s Culture.

The DEIS includes a section discussing impacts on cultural and archaeological resources. However, this section focuses only on the potential presence of concrete, physical objects of cultural or historic importance, such as submerged ships within the lake or funerary objects. For reasons provided in our comments on the Draft Scoping Document, this narrow focus is inadequate.

The cultural and historic importance of Onondaga Lake to the Nation is broader than specific, concrete items. The Lake itself and its shores are sacred to the Nation, as is the vision of the Lake and surrounding areas as an integrated and functioning ecosystem. The County should consider the negative cultural impacts of a project that institutionalizes a permanently polluted waste beds on and around the Lake; precludes additional remediation; and obstructs the potential to create a sustainable, functioning Lake-wide ecosystem.

Although the DEIS notes this concern, the response is to discuss federal obligations under National Historic Preservation Act. These obligations are largely irrelevant to the concerns raised. The County should specifically consider the negative

impacts of permanently relegating the last remaining undeveloped area along a culturally sensitive lakeshore as a landfill on the Onondaga Nation and on the broader Syracuse area.

Additionally, the County's failure to properly and respectfully consult with the Nation on this and many other important aspects of this project is extremely disappointing. The County is well aware of the Nation's cultural and spiritual connections with the Lake; and with its on-going opposition to leaving the waste beds on the shore of the Lake in general, and its specific opposition to this proposed amphitheater. Yet, the County has not written to the Nation directly on this project or held any meeting with the Nation's leaders and Clan Mothers to discuss this project. Essentially, the County has acted as though the Nation was merely another part of the "public", whose views and opinions have been essentially ignored.

XII. The County Does Not Have Sufficient Information on the Potential Economic and Social Benefits of the Project or on Project Costs.

The DEIS recognizes that this project will result in environmental losses and unmitigable environmental impacts. In particular, the project will result in the loss of 70 acres of previously undeveloped habitat and unavoidable impacts on adjacent wildlife. For larger concerts, noise impacts on adjacent residential communities are described as inevitable and no adequate mitigation has been found for identified traffic delays. Despite assertions that the DEIS is the "primary means by which the potential costs and benefits of the Project are described and weighed" (DEIS, p. 136-137), the County has failed to provide any assessment, quantification, or even discussion of the economic or social benefits of this project.

SEQRA is intended to ensure that government actors and the public have sufficient information to balance the environmental costs of a potential projects against its social, economic or other benefits and to reach a reasoned decision about whether to move forward. *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 775 (2d Dept. 2005). To meet its SEQRA obligations, the County must be able to provide a "reasoned elaboration" of the final decision based on the information provided in the Final EIS. *Id.* Unfortunately, the DEIS provides absolutely no information about any project benefits,

simply presuming that they exist and that they outweigh the identified unavoidable environmental impacts.

To date, the County has not provided or referenced a business plan, which would at minimum assess demand for additional concert venues in the area, analyze the likelihood that artists already booked into nearby venues would add a stop in Syracuse, and estimate the number of concerts required per year for the Amphitheater to remain profitable. This failure to reference any business plan is of particular concern when one looks at other amphitheater venues in New York State and elsewhere. These amphitheatres all lose money, and can only stay afloat with either corporate or tax payer support. There is no indication or likelihood that this venue will ever approach annual revenues to even meet the \$2.5 million, economic development casino money that will be used to finance the bond necessary for planning and construction.

Despite the fact that one of the project objectives is to spur economic development in Solvay and surrounding communities, there has been no discussion of the potential for incidental spending, job creation, or other economic benefits spilling into these areas. This is a particularly important discussion given the limited benefits that appear to have been realized by State Fair events, which are in similar proximity to these communities. As a result, the gross economic benefits are unknown.

Similarly, there has been no public discussion and no consideration or analysis within the DEIS of the likely costs of construction and operation for this facility, particularly the added costs of building on the unstable and potentially toxic Solvay Wastes or of the extensive mitigation measures proposed for traffic impacts. The DEIS also fails to assess the costs to adjacent communities for traffic assistance, emergency services or other support. These costs are important to understanding the net economic and social benefits of the project.

Without this information, it is difficult to imagine that County can fulfill its SEQRA obligation to “weigh and balance relevant environmental impacts with social, economic and other considerations,” 6 N.Y.C.R.R. 617.11(d); *Town of Amsterdam v.*

Amsterdam Indus. Development Agency, 95 A.D.3d 1539, 1544 (3d Dept. 2012), and provide a “reasoned elaboration” of the basis for its final decision, *Id.*, at 1544. The DEIS should be amended to include an assessment of the likely economic benefits of this project, both in general and for Solvay and surrounding communities in particular, and any other social benefits expected.

XIII. The County Has Provided Inadequate Opportunity for Public Review of and Comment on the DEIS.

Despite the complexity of the DEIS and the critical importance of this project, which constrains remediation options for this site and shapes future uses of the sole remaining undeveloped or minimally developed landscapes along Onondaga lake, the County provided a limited period for public review and comment. Although the Legislature granted a 30-day extension, the entire review period fell in the heart of the summer, when many people are on vacation or otherwise engaged.

In addition, public review was limited by the DEIS failure to provide key details about actual impacts and proposed mitigation measures, repeated reliance on yet-to-be-developed documents which were assumed to adequately address many of the identified environmental and community impacts, and the failure to include an appropriate range of alternatives for comparison. To the extent that information was available within the DEIS, such as in the traffic assessment, public review was hampered by the highly technical presentation and the failure of the County to schedule any informational meetings or other opportunities for concerned members of the public to ask questions, get additional information, or get assistance in understanding this technical data.

CONCLUSION

For all these reasons, the DEIS does not meet the minimum requirement of SEQRA. The County should require that the DEIS be amended to address the environmental impacts that have been ignored, to incorporate the additional mitigation described in the multiple planning and design documents yet to be developed, and to expand its alternatives analysis.

Sincerely,

Joseph J. Heath

Joseph J. Heath

cc: Onondaga Nation Council of Chiefs
Onondaga County Legislators
EPA Region 2
DEC Region 7
Gov. Andrew Cuomo