



## Phillips Lytle LLP

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Re: Genesee County Industrial Development Agency d/b/a Genesee County  
Economic Development Center Response to Comments on SEQRA review for  
the Data Centers

Dear Alex:

As you know, we represent the Genesee County Economic Development Center (“GCEDC”) with respect to the development of the Western New York Science and Technology Advanced Manufacturing Park (“STAMP”) campus in the Town of Alabama, New York.. The GCEDC is in receipt of a comment letter dated January 30, 2025 (“Comment Letter”) from the Tonawanda Seneca Nation (“Nation”) with respect to the review of three data center projects proposed pursuant to the State Environmental Quality Review Act (“SEQRA”). We write to you, as counsel to the Nation, to provide written responses to the Nation’s comments, questions, and concerns regarding the projects.

As you know, GCEDC has received applications to locate a data center on the western portion of the STAMP Site. Specifically, Potentia Holding, LLC (“Project Hydroscale”); Project Rampart, LLC (“Project Rampart”), and; Stream U.S. Data Centers, LLC (“Project Double Reed”) (collectively, the “Data Centers”); all seek to locate a data center on the same general parcel within the STAMP Site located at 6840 Crosby Road. GCEDC will select only one, if any, of the Data Centers for siting at STAMP.

Pursuant to SEQRA, GCEDC has comprehensively analyzed the environmental impacts associated with the development of STAMP, resulting in a final Generic Environmental Impact Statement being accepted in 2012 (as amended and updated, together with the negative declarations issued to date, the “GEIS”). The STAMP GEIS evaluated the potential environmental impact of a full buildout of STAMP totaling 6,130,000 square feet of floor space and over 9,000 employees.

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The GCEDC is now evaluating the Data Centers to determine whether any potential adverse environmental impacts associated with each are adequately addressed in the STAMP GEIS, and if not, whether the Data Centers will result in any potential significant adverse environmental impacts.

Through ongoing discussions and review with GCEDC, the application materials submitted by the Data Centers have undergone several updates since their initial filing in Fall 2024.

The GCEDC has carefully reviewed the Comment Letter and the issues raised by the Nation therein. By this letter, on behalf of GCEDC, we provide responses to each of the Nation's comments as detailed in the Comment Letter.

1. Nation Comment 1: The Nation objects to GCEDC taking Lead Agency status for SEQRA. As we have in the past, the Nation calls upon DEC to act as Lead Agency by invoking a dispute pursuant to 6 NYCRR § 617.6(B). Because a data center at STAMP would have regional/statewide implications, not simply local; because DEC has broader governmental authority than the county development agency; and because DEC is better situated to assess environmental impacts and impacts to Nation cultural resources, DEC should serve as Lead Agency here.

*GCEDC Response: GCEDC acknowledges the Nation's on-going objections to GCEDC serving as the SEQRA Lead Agency for STAMP. In response, we note that GCEDC was properly established as the SEQRA Lead Agency for the development of STAMP in 2008, and remains the SEQRA Lead Agency for purposes of all SEQRA updates related to STAMP. Further, since the inception of STAMP almost two decades ago, the New York State Department of Environmental Conservation ("NYSDEC") has recognized that GCEDC, as the developer of STAMP, is the appropriate Lead Agency based upon the primary location of STAMP's potential impacts (within Genesee County), and GCEDC's ability to appropriately investigate and mitigate those potential impacts. For the purposes of the Data Centers, GCEDC submitted an updated notice to all interested and involved agencies of its intent to act as lead agency for the SEQRA review, and no*



*involved agency, including NYSDEC, objected. Accordingly, GCEDC properly reestablished lead agency status over SEQRA review of the Data Centers.*

2. Nation Comment 2: In the event GCEDC ultimately serves as Lead Agency for SEQR review of the data center projects, however, the Nation makes the following requests, incorporating by reference the Nation's prior requests in relation to SEQR review by GCEDC:
  - a. GCEDC formally rescind and apologize for its position that information from the Nation "will do nothing to change the actual analysis of impacts to the Nation's Territory." (GCEDC Letter of March 1, 2024 at 6)

*GCEDC Response: GCEDC responded directly to this comment in a separate letter to the Nation, the response to which is incorporated by reference.*

- b. GCEDC conduct a supplemental EIS for each data center, working with appropriate experts and the Nation to ensure impacts on the Nation, the Nation's environment, and the Nation's cultural resources, are adequately assessed.

*GCEDC Response: GCEDC acknowledges the Nation's perspective that a supplemental EIS should be prepared for any development at STAMP including the Data Centers. However, pursuant to the requirements of SEQRA, a supplemental EIS is only required if some proposed development at STAMP has to potential to have significant adverse impacts that were not previously analyzed in the context of the GEIS. A GEIS is used to assess potential environmental impacts of, inter alia, a number of separate actions in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts. 6 NYCRR 617.10(a). When a final GEIS has been filed, "[n]o further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the [GEIS]." 6 NYCRR 617.10(d)(1). Pursuant to SEQRA, a supplement to the STAMP GEIS need only be prepared "if the subsequent proposed action was not addressed or was not adequately addressed in the [GEIS] and the subsequent action may have one or more significant adverse environmental impacts." 6 NYCRR 617.10(d)(4). While the SEQRA review of the Data Centers is still ongoing,*



*and GCEDC has not yet determined whether a supplement to the GEIS need be prepared, to date, no significant adverse environmental impacts that were not addressed or were not adequately addressed in the GEIS, have been identified (see responses below for more detail regarding same).*

- c. That GCEDC's SEQRA review include assessment of impacts on archeological, cultural, and historic resources of the Nation, as well as on the Nation as a disadvantaged community immediately adjacent to the proposed data centers

*GCEDC Response: We note that the proposed data centers are not, in fact, "immediately adjacent" to the Nation's Territory. The data centers are proposed over a half-mile from the Nation's Territory, with the closest proposed data center located approximately 3,000' away. All SEQRA review of developments at STAMP include an assessment of potential impacts on archeological, cultural, and historic resources of the Nation as well as an analysis of potential impacts on the Nation as a disadvantaged community<sup>1</sup> ("DAC"). As detailed in the STAMP GEIS, the STAMP Site itself was thoroughly and comprehensively studied and any potential impact to archeological, cultural, and historic resources has been mitigated to the maximum extent practicable, taking into account social, economic, and other essential considerations. Notwithstanding, pursuant to the LOR, GCEDC does additional research and analysis of any potential impacts to the Nation through the creation of Initial Assessments ("IA"), and invites the Nation to provide input on the same for incorporation into the analysis prior to finalizing. GCEDC submitted IAs to the Nation for each of the Data Centers for review and comment.*

*With regard to analysis of impacts to the Nation as a DAC, GCEDC's SEQRA review of the Data Centers, as it has with other STAMP projects in the past, expressly incorporates such analysis. Furthermore, GCEDC recognizes the proposed amendments to the SEQRA regulations promulgated by NYSDEC with regard to analysis of DAC impacts, and, while not required to address the requirements of those regulations into its SEQRA review of the Data Centers because of the GEIS, nonetheless, GCEDC is carrying out*

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<sup>1</sup> GCEDC recognizes and respects the Nation's disagreement of the use of the term "disadvantaged community" to characterize the Nation, and uses it only with regard to the classification of pursuant to the Environmental Conservation Law, consistent with the Nation's usage of the term.



*review of the Data Centers in accordance with the requirements contained in New York's Environmental Justice Law ("EJL") which require GCEDC to determine whether any proposed project would cause a disproportionate pollution burden on a DAC.*

- d. That GCEDC incorporate SHPA/NHPA review into SEQR review, not treat SHPA/NHPA separately after SEQR review is completed

*GCEDC Response: GCEDC does incorporate SHPA/NHPA review into its SEQRA review of STAMP Projects and will continue to do so for its review of the Data Centers. Specifically, GCEDC utilizes the IA's developed for a given project, in this case the Data Centers, and uses the same to analyze potential impacts to cultural, historical, and archaeological resources in its SEQRA review. Pursuant to the Settlement Agreement between the Nation and GCEDC, the GCEDC prepares Initial Assessments pursuant to the LOR and circulates the same to the Nation at least 30 days in advance of taking any final action on SEQRA for a tenant project. Here, the Initial Assessments (along with the detailed design documents for each project) were circulated to the Nation on January 7, 2025. While the Nation has not explicitly provided comments on the findings there, the Initial Assessments, the Nation's Comment Letter, this response letter, and all other relevant documents/correspondence are incorporated into the SEQRA record for the GCEDC's analysis of the projects.*

- e. That GCEDC consider direct, indirect and cumulative impacts of the data center projects as part of SEQR. 6 NYCRR Part 617.7(c)(2). These may include, but are not limited to, noise, light, water resources, wildlife, visual impacts, impacts on community character, and impacts on emergency services. To fulfill SEQR's requirement that the agency take a hard look at adverse environmental impacts, GCEDC must work with the Nation to assess impacts in all SEQR categories, including but not limited to those discussed below.

*GCEDC Response: As noted above, the GEIS for the STAMP Site included a comprehensive analysis of the full build out of the STAMP Site including direct, indirect and cumulative impacts. Accordingly, as each individual project proposes to locate at STAMP, GCEDC does consider the potential direct, indirect, and cumulative impacts in*



*its SEQRA review, including its review of the Data Centers. Provided such potential cumulative impacts are within the thresholds contemplated and impacts studied under the GEIS, SEQRA does not require supplemental analysis. See GCEDC Response to Nation Comment 2.b. above.*

*Additionally, as it has in the past, GCEDC remains ready and willing to receive input from the Nation with regard to potential impacts of projects sited at STAMP, including the Data Centers, even after the SEQRA process concludes.*

3. Nation Comment 3: Each applicant submitted two EAFs, an initial version and a revision. The revised EAFs and associated materials differ in significant ways from the original EAFs and contain numerous internal contradictions as well as certain claims that appear baseless.

*GCEDC Response: EAFs for each project are prepared by applicants and then reviewed by GCEDC, the Nation, interested and involved agencies, and any other parties interested in reviewing the same. The design proposals for the Data Centers have evolved over the course of the initial outreach to GCEDC. To the extent documents have undergone changes or revisions since initial submission to GCEDC and dissemination by same, GCEDC will be basing its ultimate SEQRA determination on the most current and final documents and information provided by the Data Centers. Any material inconsistencies identified in the EAF's have been requested to be addressed by the Data Center applicants as a condition for continued consideration of their respective project. As a general matter, it is typical for projects to evolve throughout the review process in response to feedback received from members of the public, interested and involved agencies, and other stakeholders.*

4. Nation Comment 4: Project Double Reed's EAF states there will be no impacts on wetlands, but its conceptual site plan shows buildings to be constructed at/on the edges of two wetlands. No information is provided to explain how the foundation and walls of a 41 foot high, 300,000 square foot structure could be constructed on the edge of a wetland without impacting it.



*GCEDC Response: Project Double Reed does not propose to construct any buildings at or on the edges of any wetlands on the STAMP Site. If selected, Project Double Reed would be required to construct its data center in full compliance of all NYSDEC and U.S. Army Corps of Engineers ("USACE") regulations, including a General Construction Permit ("GCP") under the State Pollutant Discharge Elimination System ("SPDES"); and construction would be in strict accordance to a stormwater pollution prevention plan ("SWPPP"). Preliminary stormwater designs for Double Reed adhere to the SPDES General Permit for Stormwater Discharges from Construction Activity and include a Stormwater Pollution Prevention Plan (SWPPP) to ensure projects control erosion, sediment, and pollutants in surface runoff during construction and after buildout. These regulations ensure best management practices are utilized, installed, and maintained for the life of the project including erosion and sediment control features during construction and bioretention basins, stormwater management ponds, and vegetated swales to filter pollutants and control flow thereafter. Green infrastructure elements are indicated as well including rain gardens for roof drainage, infiltration trenches for parking areas, and vegetated buffers. Designs indicate that treated water will be discharged into Trib 2 directly (Project Rampart) or via use of a level spreader that will naturally sheet flow discharge following existing drainage patterns at the same flow rate (Double Reed). These designs ensure that water will continue to flow at the appropriate rate and quality into the large, forested wetland complex in the northwest corner of the site.*

*Critical to note is that the conversion of farmland for development of one of the Data Centers would have a benefit on surface water and wetland quality within and adjacent to the STAMP Site. Converting active agricultural land to developed areas with effective stormwater management systems can reduce nutrient loading, sediment runoff, and agricultural pollutants. The proposed development and associated stormwater management designs could improve water quality over the current agricultural discharges into Trib 2 by reducing sediment, nutrient, and chemical inputs associated with ongoing tillage, pest control and fertilization.*

5. Nation Comment 5: EAFs for Projects Double Reed and Hydroscale/Potentia each state that the projects will include no impoundments, but Double Reed's site plan depicts massive stormwater retention ponds and Hydroscale/Potentia's EAF states it will have "onsite [stormwater] retention via ponds."



*GCEDC Response: We have requested that the applicants revise their EAFs to address this feedback from the Nation, however, we note that developers often do not consider stormwater retention ponds to be “impoundments” within the meaning of the EAF. As noted above, stormwater features on the sites will have a beneficial impact upon stormwater flows across the STAMP Site.*

6. Nation Comment 6: The revised Rampart EAF states that the project needs no water whatsoever for cooling and just 3,675 gallons for sanitary sewer, but would include a nearly eight-acre pond holding ten million gallons of water. The revised Rampart EAF further states that while it will require 1.5 million gallons of diesel fuel / bulk petroleum storage, it will not need any air pollution permits or generate any air emissions.

*GCEDC Response: All Data Centers propose various sized retention ponds for the only purpose of managing stormwater runoff in a manner which prevents any adverse impacts to surface or groundwaters and flooding. As noted above, the design proposals for the Data Centers have evolved over the course of the initial outreach to GCEDC. To the extent documents have undergone changes or revisions since initial submission to GCEDC and dissemination by same, GCEDC will be basing its ultimate SEQRA determination on the most current and final documents and information provided by the Data Centers. Any material inconsistencies identified in the EAF’s have been requested to be addressed by the Data Center applicants as a condition for continued consideration of their respective project.*

*With regards to Project’s Rampart’s air emissions, the omissions in its EAF have been noted and revised in subsequent submissions which were previously provided to the Nation. As discussed above, applicants prepare the EAFs for GCEDC’s review, the EAFs are not completed by GCEDC for companies. Notwithstanding, GCEDC has engaged C&S Companies (“C&S”) as its air impacts consultant to assist with its review of the Data Centers. C&S is thoroughly analyzing all of the Data Centers regarding estimated emissions and impacts therefrom as well as regulatory requirements. Needless to say, any project selected for siting at STAMP will include a comprehensive analysis of*



*potential air impacts and regulatory requirements consistent with the GEIS thresholds for the same.*

7. Nation Comment 7: And while GCEDC's 1/8/25 Notice of Intent to Take Lead Agency Status is based on an EAF stating that no air permits will be required for Project Hydroscale, the 1/3/25 EAF submitted by Hydroscale/Potentia states that air permits - specifically an Air Facility Registration – will in fact be required.

*GCEDC Response: As above, the applicant has updated the EAF in response to this comment from the Nation. NYSDEC was included in the distribution of the GCEDC's Notice of Intent for all of the data center projects. In addition, see GCEDC's Response to Nation Comment 6, above regarding analysis of each of the Data Center's potential air impacts and anticipated regulatory requirements.*

8. Nation Comment 8: While Project Rampart's original EAF dated 10/15/24 acknowledges a "potential for low level noise from building equipment," the revised EAF – like those of Hydroscale/Potentia and Double Reed – omits any mention whatsoever of the potential for ongoing noise from operations.

*GCEDC Response: In addition to the EAFs, GCEDC also provided the Nation with detailed reports and studies for each of the Projects, including noise studies for each project. The most current EAF's for Project Rampart and Project Double Reed disclose that these projects would produce low levels of noise during operation of their respective data centers. In addition, GCEDC has required all three Data Centers to provide detailed reports modeling estimated noise impacts from each project in accordance with the guidelines and assumptions in the GEIS. GCEDC is currently evaluating these noise reports for content and accuracy and will detail any potential noise impacts of the selected project (if any) at the culmination of the SEQRA review.*

9. Nation Comment 9: None of the EAFs or other materials reviewed by the Nation thus far provide any information about heated water discharge, a well-known environmental impact of many data centers. This thermal pollution "endangers health and wildlife habitability, including but not limited to potential harmful



algal blooms, fish deaths, biodiversity loss and migration, oxygen depletion, direct thermal shock, and changes in dissolved oxygen."

*GCEDC Response: None of the Data Centers propose to discharge heated water as part of any cooling operations.*

10. Nation Comment 10: Together, the size of the retention ponds, references to "closed loop" systems, and lack of information about heated discharge suggest the impoundment ponds may be intended to serve more of a cooling function than a stormwater retention function.

*GCEDC Response: There is no information regarding heated discharge because none of the Data Centers propose to discharge heated waters as part of its cooling operations or otherwise. The sizes of the proposed retention ponds are in relation to the stormwater management for the Data Centers given the addition of impervious surfaces proposed for each. To the extent the Data Centers elect to operate closed loop cooling systems utilizing captured stormwater, the Data Centers would not be permitted to discharge any such heated water.*

11. Nation Comment 11: Internal inconsistencies, incomplete information, and information that is not credible make it impossible for the Nation to accurately assess the specific nature of each project. Information must be clarified so that impacts of the projects, which derive from project specifics, can be assessed.

*GCEDC Response: GCEDC has noted any alleged inconsistencies or incomplete information raised by the Nation and has required each of the Data Centers to provide revised documentation accordingly. In addition, we respectfully note that the GCEDC provided comprehensive design documentation for each of the Data Centers on January 7. GCEDC has also been offering to meet with the Nation to discuss the Data Center projects since September. Further, it is the nature of the process that applicants revise application materials in response to feedback received, as discussed above.*

12. Nation Comment 12: Equipment at data centers emits continuous noise at levels comparable to a jet engine and can create ongoing vibration felt by humans and



non-human species. Excessive noise exposure such as that created by the constant humming or buzzing from data centers causes a range of health harms including headaches, stress, and sleep disturbance, and can also harm other species. In more extreme cases, noise pollution can cause tinnitus, migraines, vertigo and hearing loss.

Noise and vibration can irreparably damage the quiet and peaceful character of a rural community such as the Nation. Moreover, data center noise levels could impair or destroy altogether the Nation's ability to carry out ceremonies and cultural activities it has pursued since time immemorial. While the Nation does not typically divulge details regarding ceremonial activities, certain activities take place out of doors and require natural, quiet conditions.

None of the three data center applicants has conducted a comprehensive, meaningful noise study that takes into account the community character of the Nation and its particular need for quiet in order to pursue ceremonies and other cultural activities. As noted below, noise impacts on wildlife are a particular concern of the Nation's, since wildlife comprise an integral part of the Nation's lifeways, and a noise study conducted by a qualified, independent third party expert should be required for each proposed data center project.

*GCEDC Response: All three Data Centers have submitted detailed reports on noise impacts for each project at nearby sensitive receptors outside of the STAMP Site, including at the Nation's Territory. Furthermore, the Data Centers propose to locate on a parcel at STAMP which would be well to the east of the substantial buffer between the Nation's Territory and STAMP developments. In fact, the closest proposed Data Center is over ½ mile away from the nearest border with the Nation. Any project seeking to locate at STAMP would be required to comply with the guidelines contained within the GEIS regarding noise impacts as promulgated by NYSDEC, which contemplates that no project would exceed 65dBa during the day and 45 dBa at night as measured from the border of the STAMP Site, as those thresholds were established during the GEIS process from 2010-2012.*



13. Nation Comment 13: The data center applications provide virtually no information regarding impacts of lighting on and around these massive facilities aside from reference to "dark sky compliant" lighting systems. However, the sites on which the data centers would be located are currently fully unlit. Lighting required for parking lots, building perimeters, and worker safety will irreparably alter the peaceful nighttime appearance of these spaces, where currently avian and other species are free to carry out their natural activities. None of the data centers has addressed the extent to which lighting will impact views from the Nation during nighttime hours or will affect species' use of the areas on or around the site, in turn affecting connected species, the environment, and potentially Nation cultural practices. These impacts must be investigated.

*GCEDC Response: As an initial matter, we note that the Data Center projects are proposed to be located a great distance from the boundary of the Nation's Territory. The closest structure (Project Rampart) would be located over a half-mile, approximately 3,000' feet from the Nation's Territory, while the farthest (Hydroscale and Double Reed) would be located approximately nearly three quarters of a mile, 3,800' away. Nevertheless, GCEDC has requested additional lighting information from the Data Centers to better assess the potential impacts. Project Hydroscale has indicated it intends to design its data center to have minimal impacts on surrounding uses. Project Rampart provided detailed information and data on its lighting plan and designs for its proposed data center, explaining that it proposes:*

- *Dark Sky Compliance - designed to eliminate uplight, thereby reducing skyglow and minimizing light pollution to preserve nighttime visibility and environmental quality*
- *Property Line Cutoff Controls - utilizing backlight shields and precision-engineered directional LED optics to prevent light spillover beyond the site boundaries*
- *Glare Reduction and Light Pollution Mitigation - limiting height of lighting fixtures, including pole based lighting, to a maximum of 28 feet*



- *High Performance Fixtures - energy-efficient, high-quality LED fixtures designed for durability, longevity, and optimal photometric performance*

*Project Rampart also acknowledges that the ultimate site plan approval process for any selected Data Center will require completion of a comprehensive photometric analysis which will verify compliance with site specific lighting controls. Project Double Reed has provided a photometric plan which confirms that Double Reed will not result in light spillage across its proposed property lines. As Project Double Reed is located approximately three quarters of a mile away from the Nation's Territory, the photometric plan confirms that no light associated with the Project will impact the Nation's Territory or species on or around the STAMP Site.*

*GCEDC will thoroughly evaluate SEQRA information provided by the Data Centers and will not render a SEQRA decision if it determines it has not been provided with adequately comprehensive and credible information necessary to evaluate potential lighting impacts from the Data Centers.*

14. Nation Comment 14: Noise pollution and vibration associated with data centers can disrupt animal behavior and communication and force animals to seek new migration and habitation patterns. Noise from the data centers would affect wildlife in the adjacent Big Woods, where Nation citizens practice subsistence and ceremonial hunting of deer, turkey, squirrel, pheasant, rabbit and other species. Moreover, migratory species like hawks hold specific cultural importance to the Nation, and their movements on and near Nation territory would likely be significantly disrupted by data center noise.

The data center applicants do not address noise (or any other) impacts to threatened, rare, and endangered species found on and around the Nation and STAMP. These impacts will not be limited to the STAMP site or to the area or particular species covered by the 2023 Part 182 permit. Threatened and endangered species in the area include the Short Eared Owl, Northern Harrier, Bald Eagle, Sandhill Crane, Tri-Colored Bat, Salamander Mussel, and Hellbender, among others. Each of these species could be affected by noise and vibrations generated by data centers.



*GCEDC Response: As detailed above, the various projects submitted detailed noise studies addressing the noise impacts associated with each project. With respect to the species identified by the Nation, as the Nation is aware, GCEDC has developed a Net Conservation Benefit Plan which includes permanent protection of sufficient acreage of suitable habitat for Winter Raptors for a sufficient period of time, with a NYSDEC-approved monitoring and habitat restoration plan. Projects on the site are also required to install bird safe windows to avoid impacts to migratory or other avian species. With respect to the other species reference, analysis completed to date suggests that such species are either not present on the STAMP Site (hellbenders, salamander mussels, and bald eagles), are not documented on the STAMP Site but nevertheless do not have habitat which would be impacted by development of the data centers (tricolored bats) or have been identified on the site but are neither federally nor state listed nor a species of special concern within New York, and able to make use of the abundant offsite habitat. See GCEDC's Response to Nation Comment 12.*

15. Nation Comment 15:

- a. Each of the data center applicants at STAMP would rely on backup diesel generators and would store significant quantities of diesel fuel onsite, adjacent to and upstream from the Nation. Wetlands on and around the data centers are directly connected to wetlands and waterways on the Nation. While the full extent of diesel storage cannot be reliably determined from the EAFs or associated materials, it might range from 60,000 to 1,500,000 gallons or more.

*GCEDC Response: The number of backup generators proposed varies by each applicant, with Project Double Reed proposing 6 generators, while Project Rampart proposes 120 generators, and Project Hydroscale proposes 200 generators. The amount of diesel fuel storage proposed for each project is 60,000 gallons, 1,500,000 gallons, and 1,000,000 gallons, respectively. There are 3 medium to low-quality wetlands located in the vicinity of the proposed site for the Data Centers. As discussed above, these wetlands currently receive unregulated agricultural runoff. Construction of one of the Data Centers would result in an increase in water quality due to the regulated stormwater management required for such project, which would also manage flow rate to the wetlands at the same*



*rate or lower than pre-construction flows. Storage of petroleum for the Data Centers would be strictly regulated per federal Spill Prevention Control and Countermeasure ("SPCC") and NYSDEC regulations for the bulk storage of petroleum. Protections required per these regulations include, among others, secondary containment, tank testing and standards, handling procedural requirements, and emergency response and recordkeeping requirements. These regulatory regimes comprehensively regulate the storage, transfer, and use of petroleum and are specifically implemented to prevent significant risk and harm from storage of bulk petroleum storage. In addition, the STAMP GEIS specifically contemplated bulk storage of petroleum for operations such as backup power supplies on the STAMP Site.*

- b. Double Reed would maintain onsite diesel generators using 60,000 gallons of diesel fuel per year, according to the EAF, and producing emissions of 533 tons of CO<sub>2</sub>, as well as possible NO<sub>2</sub> and Hazardous Air Pollutant ("HAP") emissions known to be associated with diesel fuel.

GCEDC Response: *Project Double Reed's proposed NO<sub>2</sub> emissions are being carefully analyzed, however, we note that these levels are well below the emission limits described in the GEIS for a single project proposed for siting at the STAMP Site. Project Double Reed has also indicated it would produce negligible HAPs given the relatively low emissions associated with its 6 proposed generators.*

- c. The revised Rampart EAF acknowledges backup power generation requiring bulk storage of 1.5 million gallons of diesel fuel, raising questions about contamination of ground and surface waters, but claims no air permits are required and projects zero air emissions. The original application stated that 1,471,586 tons/yr CO<sub>2</sub>, 441 tons/yr N<sub>2</sub>O, and 88 tons/yr HAPs would be created, numbers that were deleted in the revised EAF. Accurate information on Rampart's projected emissions and need for permitting must be provided before impacts on the Nation and its Territory can be assessed.

GCEDC Response: *See GCEDC's response to Nation Comment 6, above.*



- d. The Hydroscale/Potentia EAF states that Potentia will use an estimated 1,285,050 gallons of diesel fuel per year and will generate 14,622 tons/year of CO<sub>2</sub> in emissions.

*GCEDC Response: GCEDC notes this comment and will consider the same in its review of the project pursuant to SEQRA.*

- e. While Rampart's failure to acknowledge any air emissions whatsoever from its 1.5 million gallons of diesel fuel is particularly concerning, investigative reporting has shown that the data center industry routinely and dramatically underreports data center air emissions. According to an analysis by the Guardian, "from 2020 to 2022 the real emissions from the 'in-house' or company-owned data centers of Google, Microsoft, Meta and Apple are probably about 662% – or 7.62 times – higher than officially reported."

*GCEDC Response: Any project proposed to be located at STAMP, including any one of the Data Centers, would be required to meet the GEIS air emission limits that no single facility exceed the Title V Major Source thresholds. If approved, any one of the Data Centers would require compliance with either a state facility air permit or registration. Compliance with such permitting includes monitoring and reporting of emissions. Any project at STAMP which exceeds its permitted emissions would be subject to state and federal enforcement to ensure compliance as well as additional environmental review by GCEDC pursuant to SEQRA if emissions exceed levels exceed those contemplated in the GEIS.*

- f. DEC has highlighted the negative health impacts of diesel fuel generation on disadvantaged communities, noting the role that particulate emissions – in addition to CO<sub>2</sub>, NO<sub>2</sub>, and N<sub>2</sub>O – play in these impacts. "Nitrogen oxides or NO<sub>x</sub> (nitric oxide or nitrogen dioxide) are produced with black carbon [PM<sub>2.5</sub>] when diesel and other petroleum-based fuels are burned. Exposure to NO<sub>x</sub> may irritate the respiratory tract and aggravate respiratory diseases such as asthma. Longer term exposures to NO<sub>x</sub> may cause asthma and increase susceptibility to respiratory tract infections."



Likewise, according to the United States Environmental Protection Agency, "exposures to elevated concentrations of NO<sub>2</sub> may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of NO<sub>2</sub>. NO<sub>2</sub> along with other NO<sub>x</sub> reacts with other chemicals in the air to form both particulate matter and ozone. Both of these are also harmful when inhaled due to effects on the respiratory system."

And according to the Federal Department of Health and Human Services, Native children are twice as likely to suffer from asthma as non-Hispanic white children. Elevated levels of CO<sub>2</sub> are likewise concerning to the Nation. "Symptoms of mild CO<sub>2</sub> exposure may include headache and drowsiness. At higher levels, rapid breathing, confusion, increased cardiac output, elevated blood pressure and increased arrhythmias may occur." As the STAMP site's immediate neighbor, the Nation, its people, and its territory will bear the brunt of data center emissions at STAMP. Data center emissions would create a disproportionate pollution burden on the Nation as a disadvantaged community.

*GCEDC Response: Genesee County is classified as attainment for parameters subject to National Ambient Air Quality Standards ("NAAQS") which are set at levels designed to ensure the respiratory health of sensitive populations. The GEIS determined that potential air impacts resulting from the technology manufacturing facilities sited at STAMP will be avoided, minimized, and/or mitigated to the maximum extent practicable through adherence to strict air permitting requirements and the expectation that no project would exceed Title V Major Source thresholds. Review of the Data Centers' air emissions is ongoing at this time but no project will be considered for locating at STAMP if it exceeds the emissions limits provided in the GEIS without further review, consistent with the requirements of SEQRA. Furthermore, prevailing winds are from the westerly direction, meaning emissions from the STAMP Site would generally not impact the Nation's Territory and not disproportionately burden the Nation.*



16. Nation Comment 16: As a threshold matter, it is critical to note that tributaries and wetlands on the data center site are directly connected to Nation waters. For this reason, impacts on these tributaries and wetlands will directly and significantly affect the Nation, whose treaties with the United States protect its right to water quality under federal law.

Impacts to water quality (including temperature) may occur for a wide range of reasons. These include, but are not limited to, significant new impervious surface areas and consequent stormwater runoff contaminated by salts and vehicular fuel discharges; leaks of stored diesel fuel during generator fueling, operations, and/or maintenance, as well as possible catastrophic contamination in the event of fuel tank failure; impacts on wetland waters created by construction at their very edges; changes in water temperature due to introduction of heated discharge; and indirect impacts to aquatic and shoreline ecosystems caused when other species avoid the area due to noise and light. Massive increases in impervious surfaces adjacent to and upstream from the Nation threatens impacts related to erosion, flooding, and drainage. Each of these kinds of impacts, other impacts, and all the impacts cumulatively constitute part of the pollution burden data centers would impose on the Tonawanda Seneca Nation.

*GCEDC Response: As noted above, none of the proposed Data Centers impact on-site wetlands. The wetlands and tributaries on the STAMP Site have been subject to unregulated agricultural stormwater runoff for decades which is known to reduce water quality. The siting of one of the Data Centers would not directly impact any wetland or surface waters within the STAMP Site, including the low-medium quality wetlands located in the area proposed for use by the Data Centers. The creation of impervious surfaces resulting from the Data Centers would require the development of comprehensive stormwater management controls. Unlike current conditions, the stormwater runoff from the Data Centers would be regulated for quality and quantity to prevent any adverse impacts to surface waters. Risks from petroleum spills would be mitigated through compliance with federal SPCC and NYSDEC petroleum bulk storage*



*regulations as discussed above. No Data Center proposes to discharge heated waters as part of its operations.*

*Furthermore, any project seeking to locate at STAMP would be required to comply with the guidelines contained within the GEIS regarding noise impacts as promulgated by NYSDEC, which contemplates that no project would exceed 65 dBa during the day and 45 dBa at night as measured from the border of the STAMP Site. Any Data Center which exceeds these limits based on the information provided in its noise study would be required to provide necessary mitigation to comply with noise limits before being considered for approval by GCEDC. Additionally, all three Data Centers propose downward facing and dark sky compliant lighting as required under the GEIS. Accordingly, siting of one of the Data Centers in accordance with the limitations provided in the GEIS would not result in any impact to surface waters, groundwaters, or wetlands, or any habitats associated with the same and would not result in any significant pollution impacts to the Nation.*

- a. Heated Water Discharge: Many data centers use water to cool their hardware, producing superheated water as effluent. This may be discharged into nearby waterways, directly raising ambient water temperatures, or may be stored in onsite cooling ponds, which can discharge their contents into the surrounding landscape due to leaching or impoundment failure. The impacts on aquatic life and water bodies can be profound, particularly when this water has been admixed with chemicals or is reintroduced to its source at heightened temperatures, both standard data center practices. A data center sited on Seneca Lake discharges water directly into the lake at 108 degrees Fahrenheit.

None of the three data center applications has provided information about the temperature of water to be discharged from the facilities. And, as discussed more fully below, STAMP site waters lie upstream from and are directly connected to Nation waters. Impacts of heated water discharge must be assessed.

GCEDC Response: See GCEDC Response to Nation Comment 9, above.



b. Stormwater management and increased risk of flooding

All three data center applicants propose creation of additional impervious surface cover, which would lead to increased runoff onto the Nation. Runoff from paved surfaces will carry salts, traces of vehicular fuel, and other contaminants, with potentially serious impacts on Nation waters. Likewise, each data center site plan shows massive stormwater retention ponds which, in a storm or high water event, would overflow onto Nation land and into Nation waters. One of the three data centers, Rampart, acknowledges its intent to use adjacent wetlands and waterways for the express purpose of dealing with stormwater runoff.

Moreover, plans for stormwater retention ponds pose threats to the health of the environment on and around the data centers, including the Nation's Big Woods. For example, Project Rampart apparently intends to bring in truckloads of offsite fill to construct the perimeter of its massive stormwater retention pond, which will cover 7.7 acres and be five feet deep. Double Reed's proposed retention pond would cover twenty acres. The amount of fill required and the method of construction for data center retention ponds will have significant impacts on downstream wetlands and waterways connected to the Nation. Fill could include contaminants and/or foreign substances. Even if not contaminated with chemicals, fill brought from elsewhere would be expected to include noxious and invasive species not found on the Nation, which to this day retains relatively pristine ecosystems largely free of invasive species found elsewhere in the area.

*GCEDC Response: With regards to stormwater management, see GCEDC Responses to Nation Comments 4 and 16. With regards to control of invasive species, there is no evidence that fill used for construction of any of the Data Centers would contain invasive species that could harm the functionality of wetlands in or adjacent to the STAMP Site, and any party bringing fill into the site would be required to control for invasive species. Further, as explained in the GEIS, the majority of wetlands on the STAMP Site are low to medium quality, due in part to the pre-existing presence of invasive species. The GEIS*



*explains that expected impacts from STAMP development to wetlands encompass 9.54 acres of these low to medium quality wetlands, with mitigation included as wetland impacts are proposed.*

c. Impacts to wetlands

The STAMP site lies at the heart of a vast wetlands complex connected to the Tonawanda Wildlife Management Area, Iroquois National Wildlife Refuge, and Tonawanda Seneca Nation Reservation Territory. These protected lands provide critical ecological benefits like carbon sequestration, flood mitigation, and habitat preservation. Industrial runoff, hydrological disruptions, and heated water discharge from a data center would devastate these fragile systems.

Specifically, the sites under consideration by the three projects would be located on and near extensive wetlands and adjacent to the Tonawanda Seneca Nation's Big Woods and the Tonawanda Wildlife Management Area. This portion of the STAMP site contains multiple tributaries, some of which flow directly onto the Nation, others of which are connected to wetlands spanning the boundary between the Nation and STAMP.

Each of the data center applicants at STAMP would rely on backup diesel generators and would use and store significant quantities of diesel fuel onsite. While the full extent of diesel storage cannot be reliably determined from the EAFs or associated materials, it might range from 60,000 to 1,500,000 gallons or more. Diesel fuel tanks must be refilled regularly, meaning fueling truck traffic on and off the STAMP site as well as inevitable smaller spills and the potential for periodic catastrophic fuel spills. As discussed above, parking lots and associated vehicular traffic will send salts, gasoline, and other contaminants into downstream waters, including those linked to the Nation. Large quantities of foreign (non-native) fill will be brought in to create impoundment ponds directly linked to Nation wetlands. Water discharged to impoundments can be expected to raise ambient water temperatures, creating serious threats to extant aquatic and shoreline ecosystems. The magnitude of potential risks



to wetlands on and near the Nation is significant, and must be more carefully assessed.

*GCEDC Response: See GCEDC Responses to Nation Comments 4, 5, 9, and 16, above.*

17. Nation Comment 17: As the Nation has repeatedly pointed out, analysis of visual impacts cannot be adequately conducted without reference to Nation citizens. Visual impacts from the proposed data center projects are a grave concern for the Nation and its citizens, and the nature of those impacts on the Nation cannot be assessed or understood without the Nation's involvement.

The hulking proposed data center structures will fundamentally alter the visual landscape as viewed from and around the Nation by Nation citizens, as well altering views of the Nation from elsewhere. Project Hydroscale/Potentia's revised EAF states that its two-story, sixty foot high facility will comprise an incredible 1.8 million square feet, the size of more than fifteen football fields. Project Rampart's forty-foot-high, single-story structure would be 750,000 square feet, according to its revised EAF, or the size of thirteen football fields. For its part, Project Double Reed's three forty-one foot tall "one-story" buildings would comprise 900,000 square feet, equivalent to more than fifteen football fields. While it may be difficult to grasp abstractly the enormity of the visual impact of such facilities – particularly in a rural, undeveloped area – conceptualization and assessment of those impacts on the people who will experience them daily is required here.

The Nation has never been consulted on how to choose viewpoints to analyze, how many viewpoints should be required; what conditions and/or times of day analysis should consider (dark, dusk, sunshine, cloud cover), or other key analytic factors. See, e.g., "Guide to Assessing Visual Impact Assessments for Renewable Energy Projects" at 18-19, National Park Service(2014) (summarizing elements of the "complex multistep process" required to conduct an adequate visual impact assessment, including "gathering information about [viewshed] users" and analyzing "sensitivity of the viewers to changes in the landscape"); "Evaluating Photo simulations for Visual Impact Assessment," National Park



Service (2021); DEC Program Policy on Assessing and Mitigating Visual and Aesthetic Impacts (2019). SEQR's requirement to analyze visual / aesthetic impacts requires further study of data center impacts in consultation with the Nation.

*GCEDC Response: All of the Data Centers have been required to provide photo simulations of the proposed projects from various viewpoints around the area, including from the boundary of the Nation's Territory. The simulated visual impacts are then compared against the expected impacts analyzed under the GEIS. The GEIS in turn, contemplated that the full buildout of STAMP would result in development of 6,130,000 sq. ft. of floor space, or roughly the area of 106 football fields. To date, only a small portion of that development has been built or planned for development, and construction of one of the Data Centers would still be well under the full build.*

*The GEIS also contemplated that the development of the largest, most intensive uses at STAMP would occur on the western part of the STAMP Site, where the Data Centers seek to locate, because it would be well buffered from surrounding uses, including the Nation. According to the underlying zoning for this area, technology manufacturing uses, including data centers, are expressly permitted. The maximum height of such uses is 110 ft. and the minimum lot size for such development is 100,000 sq. ft., there is no lot coverage requirements. The GEIS explains that STAMP is designed to only develop 46% of the available acreage, therefore providing a campus setting that is respectful of and compliments its natural landscape, including through the incorporation of substantial buffers. The buffers along the boundary with the Nation's Territory range from 400-1,600 ft. and was developed with direct input from the Nation in the context of the Settlement Agreement with the Nation. Further, the Data Centers themselves are proposed to be located at least 3,000' away..*

*The tallest height of the proposed Data Centers is approximately 60 ft., almost half the permitted height in the underlying zoning district. The closest Data Center from the Nation's Territory is set back over ½ mile. Visual renderings of views from the western boundary of STAMP adjacent to the Nation indicate that the Data Centers would have minimal intrusion on the horizon profile, and would be well screened through additional proposed landscaping.*



18. Nation Comment 18: Improper handling of data center electrical equipment or overloading of circuits can lead to short circuits and fires. Onsite storage of large volumes of diesel fuel needed to power backup generators is also associated with elevated risk of fire and explosion. As Earthjustice has found:

Mining equipment operating 24 hours a day, 7 days a week in small, enclosed spaces generates tremendous amounts of heat, creating a fire risk. The risks of fire at the facility can originate from "unsafe equipment, wiring failure, overloading of electrical network[s], overheating of the equipment due to incorrect cooling systems. Cryptocurrency mining facilities often operate in low-tech environments, in previously unused warehouses, or old industrial sites. Fires and fire risk are common enough as to drive a market in cryptocurrency mining insurance and industry "guidelines". There is also fire and explosion risk associated with electric grid equipment serving the mining operations, in addition to the mining facilities. For example, recently in Buffalo, New York, there was a fire and explosion from "faulty equipment" serving a mining operation. Some localities have instituted new fire and safety regulations or instituted moratoria on the basis of fire risks for neighbors and damaged grid equipment not sized for the load. These fire risks are especially of concern in drier areas of the country where wildfires abound and especially in the dog days of summer, when drought warnings cover much of the country.

Energy Bomb at 15 (internal citations omitted). The data center submissions claim that existing emergency services are sufficient for these massive new facilities, but the Nation has serious concerns this is untrue. The Town of Alabama has only a volunteer fire-fighting unit already stretched thin with responsibilities throughout the Town. This issue requires further assessment.

*GCEDC Response: GCEDC prioritizes the safety of its development projects to surrounding persons and property above all and appreciates the Nation's concerns. The*



*concerns cited by Eathjustice do not appear to be relevant with regards to the Data Centers. No mining of cryptocurrency is being proposed or permitted at STAMP at this time. Further, the Data Centers do not seek to locate in unsafe low-tech environments, in previously unused warehouses, or old industrial sites. Rather, the Data Centers seek to construct state of the art, special purpose designed and built facilities with all modern safety systems included. Additionally, electric service to the Data Centers would be provided through a brand new upgraded electrical substation designed specifically to handle enough capacity to power the entire STAMP Site, including the Data Centers.*

*Additionally, each Data Center provided comprehensive emergency management plans and procedures designed to minimize or eliminate potential impacts in the event of an unforeseen emergency. Furthermore, these emergency response plans are specifically tailored to operation of a data center. As required under the GEIS, Project Rampart and Project Double Reed each prepared emergency service reports detailing expected impacts on emergency service providers from the respective project, based on direct feedback from the emergency service providers. In sum, these reports indicate that emergency service providers do not anticipate any impacts to their services from the Data Centers.*

*Finally, GCEDC has contacted the Town of Alabama ("Alabama"), from which fire services would be provided. In accordance with a letter from Alabama, it has adequate capability to provide emergency response services to any of the Data Centers in the event of an emergency, without the need for additional resources. Indeed, Alabama has increased its capacity to deal with fire hazards posed from increased storage of large volumes of petroleum fuels given the gas stations operated on the Nation's Territory, for which Alabama also provides emergency services.*

19. Nation Comment 19: The Environmental Justice Law applies to both permitting and SEQR review of possible data centers at STAMP. Conducting SEQR review without regard to the law's requirements, or issuing permits absent required determinations would violate the EJL. Incorporation of the EJL into SEQR review at STAMP is particularly important in order to advance the stated purpose of the law to "ensure no community bears a disproportionate pollution burden, and to actively reduce any such burden."



The EJL requires agencies to prepare an "existing burden report" prior to issuing certain permits, including air pollution permits (§ 19-0101 et. seq), that may cause more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community. N.Y. Env't Conserv. Law § 70-0118 (2)(a). The EJL prohibits issuance of permits that would significantly increase the existing disproportionate pollution burden on the disadvantaged community. N.Y. Env't Conserv. Law § 70-0118 (3)(b).

In addition, significance analysis for purposes of SEQR must now take into account whether the proposed action would "increase a disproportionate pollution burden on a disadvantaged community," N.Y. Env't Conserv. Law § 8-0105, and Finding Statements issued pursuant to Section 617.11 and based on a prior GEIS must incorporate these requirements. See 6 NYCRR 617.11(d)(4). (requiring that Findings Statements certify they meet all requirements of Part 617).

For purposes of EJL analysis, the current definition of "pollution" should be understood to capture the unique environmental and public health impacts felt by Indigenous Nations. See N.Y. Env't Conserv. Law §§ 1-0303.19, 8-0105.10 ("Pollution' shall mean the presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the state as shall be affected thereby.") In implementing the EJL, "pollution" must be understood to include conditions and contaminants that endanger treaty-protected resources and traditional ways of life for Indigenous Nations, all of which "unreasonably interfere with the comfortable enjoyment of life and property."

In addition, implementation of the EJL must ensure that the unique status and situation of the disadvantaged community be considered when determining whether a "disproportionate pollution burden" exists. For the Tonawanda Seneca Nation and other Indigenous Nations, there is a disproportionate pollution



burden stemming from the long history of state-sanctioned actions that cause environmental degradation of Nation territory and public health stressors on Nation citizens. This disproportionate burden includes, but is not limited to:

1. Limited access to and contamination of treaty-protected resources, including habitats used for subsistence hunting and fishing;
2. Lack of access to clean water systems and reliance on wells resulting in a heightened risk of contamination;
3. Heightened rates of illness and disease in the community;
4. Historical efforts by the state and federal governments, as well as private actors, to destroy Indian cultures through such methods as banning religious practices; banning and discouraging use of Native languages; breaking up Indian families via Indian Boarding Schools and adoption of Indian children by non-Indian families; pressuring Indian Nations to adopt non-traditional governments; and other methods;
5. Encroachment by non-Indians onto Nation territory, which can and does include not only such environmental harms as illegal dumping but also less well-understood burdens such as the impact on Nation citizen mental health when Nation sovereignty and territorial boundaries are violated; and
6. Dispossession from ancestral lands, including locations of ceremonial value.

Likewise, compilation of an "existing burden report" under the statute must take into account the particular burdens borne by disadvantaged communities, and those burdens may be different for Indigenous communities like the Nation as compared to other communities. The EJI states that the existing burden report must include an assessment of "relevant baseline data on existing burdens, including relevant criteria used to designate the particular disadvantaged communities pursuant to subdivision one of section 75-0111 of this chapter." N.Y. Env't Conserv. Law § 70-0118(5)(a). As it relates to the Nation, relevant baseline data must include the specific negative environmental and public health stressors borne by the Nation as an Indigenous Nation and the historical injustices that lead to those stressors, including environmental pollution on and adjacent to Nation territory and lack of access to treaty-protected resources.



Further, relevant baseline data for the existing burden report must be gathered through consultation with the Nation. Neither agencies nor permit applicants, who may lack understanding of the specific pollution burdens on an Indigenous Nation, should unilaterally determine relevant baseline data for the Nation.

Required analysis of "environmental or public health stressors" already borne by the Nation, N.Y. Env't Conserv. Law § 70-0118(5)(b), should include impacts stemming from dispossession, historical trauma, and encroachment, including but not limited to:

1. Lack of access to traditional foods, medicine, and resources necessary for ceremonial items;
2. Limited access to habitats with treaty-protected resources, including hunting and fishing locations;
3. Lack of access to locations of ceremonial value;
4. Contamination and degradation of soil and water sources;
5. Historical trauma deriving from past practices of state and federal governments; and
6. Heightened levels of disease, illness, and mortality.

In order for the EJJ to fulfill its legislative purpose, implementation of the EJJ must take into account the unique pollution burdens and public health stressors felt by Indigenous Nations and the historical injustices committed against them

*GCEDC Response: GCEDC acknowledges the historical injustices that have been wrought against all indigenous nations, including the Nation, and it is GCEDC's intent to not perpetuate, but alleviate the same where practicable. Notwithstanding, the requirement to develop an existing burden report applies only to NYSDEC when issuing permits via the Uniform Permit Procedures. N.Y. Env't Conserv. Law § 70-0107(2).*

*GCEDC also acknowledges that, while regulations have not yet been promulgated, statutory obligations under the EJJ require agencies to consider during SEQRA review,*



*whether any project it is reviewing would result in a disproportionate pollution burden on a disadvantaged community. We note that, as a Draft GEIS was issued for STAMP over a decade ago, the EJL's requirements are not applicable to the development of STAMP. Nevertheless, GCEDC is actively considering the same in its SEQRA review of the Data Centers and is taking into account the unique burdens and stressors applicable to the Nation, including its reliance on the Big Woods adjacent to STAMP for hunting, ceremony, and medicine preparation, as well as its reliance on well-water. As discussed above, any project seeking to locate at STAMP would be required to comply with the limitations and conditions provided in the GEIS, and would undergo additional comprehensive review if it exceeded any such thresholds.*

20. Nation Comment 20: To date, GCEDC has refused to disclose the identities of the companies represented by the data center investor groups or the nature of their operations. "Data center" is a generic term that can encompass a wide variety of activities having a range of different impacts. These companies would be the Nation's neighbors and the nature of their operations as well as their records on environmental protection, community relations, safety, and other matters and important to determining likely impacts from their facilities. The Nation has the right to know what companies seek to locate next door and how they have impacted their neighbors in other locations.

*GCEDC Response: GCEDC has provided the Nation with all information regarding the representatives, developers and or/owners of the proposed Data Centers in conjunction with the notice for the February 3, 2025 public hearings on the Data Centers. GCEDC has not been apprised of the specific tenant(s) utilizing any to-be constructed Data Center except that there is interest from fortune 500 companies to utilize all available capacity for Project Double Reed. While the exact tenant identity of any Data Center is not set at this time, none of the Data Centers propose, and GCEDC would not permit, the mining of cryptocurrency. GCEDC will timely provide the Nation with updated information regarding future tenants as it becomes available.*

21. Nation Comment 21: Commissioners Policy 29 ("CP-29") applies to permits subject to the Uniform Procedures Act ("UPA"). Because the data centers will require air permits subject to the UPA and because the Nation is an



environmental justice community, CP-29 applies here to require enhanced public processes. In addition, pursuant to the provisions of the 2021 Letter of Resolution among DEC, GCEDC and SHPO, these processes must specifically include opportunities for public meetings on Nation Territory and extended comment periods for Nation citizens.

*GCEDC Response: GCEDC acknowledges the requirements of CP-29 as they apply to NYSDEC when issuing permits, however, CP-29 is not relevant to GCEDC's SEQRA review of the Data Centers. Furthermore, as detailed in section 3(c) of the LOR, NYSDEC is only required to implement the provisions of CP-29 and "in relation to any NYSDEC administered permit applications subject to the NYS Uniform Procedures Act at the STAMP Site." To the extent any of the Data Centers require UPA permits, GCEDC looks forward to working with the Nation and NYSDEC on an Enhanced Public Participation Plan for the same.*

22. Nation Comment 22: Because the data centers will emit greenhouse gases and associated pollutants and will need air permits, Section 7 of the CLCPA applies to require that agencies involved in funding and permitting the projects must determine whether an administrative action is "inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits," or would "disproportionately burden disadvantaged communities." In considering the compliance of a particular project with CLCPA Section 7, an agency must therefore conduct "a case-specific inquiry" into the greenhouse gas impacts of the particular activity under review as well as reasonably foreseeable downstream emissions associated with the approved activity. To satisfy the requirements of CLCPA Section 7, information on greenhouse gas emissions resulting from vehicle traffic, heating systems, and any other sources associated with the data centers must be analyzed.

The requirements of CLCPA Section 7 are not coextensive with those of the Clean Air Act and associated regulatory guidance. CLCPA requires not only analysis of the impacts of pollutants like CO and VOC, but also (among other requirements) assessments of greenhouse gas intensity of vehicle traffic measured in CO<sub>2</sub>e. In addition, beyond prohibiting state agencies from granting



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approval for projects that disproportionately burden disadvantaged communities, CLCPA Section 7 requires agencies to prioritize reductions of all emissions in those communities. It does not appear that these elements of CLCPA Section 7 have been met.

*GCEDC Response: The GCEDC is not a “state agency” within the meaning of the CLCPA. Accordingly, to the extent CLCPA compliance is implicated, it would only be in relation to actions/permits by state agencies. Notwithstanding, GCEDC endeavors to further New York’s climate goals to the maximum extent practicable. In addition to analysis of the criteria pollutant emissions estimated for each Data Center, GCEDC’s expert air consultant, C&S, is analyzing the GHG emissions from each Data Center in comparison to the goals of the CLCPA. GCEDC will analyze such information in its review of the Data Centers in line with its goals of achieving the benefits of STAMP while reducing any potential adverse impacts on surrounding DACs to the maximum extent practicable.*

GCEDC again thanks the Nation for its valuable comments and looks forward to further cooperation on the development of STAMP. Please feel free to reach out should you have any questions or concerns.

Very truly yours,

Phillips Lytle LLP

By /s/ *Adam S. Walters*

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