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January 30, 2025

Board of Directors
GCEDC
99 MedTech Drive, Suite 106
Batavia, NY 14020

Re: Data Center SEQR, Incentives, and Process – Nation Preliminary Comments

Nya:wëh Sgë:nö',

On behalf of the Tonawanda Seneca Nation, Council of Chiefs, I extend greetings to you and your associates and give thanks that all are enjoying good health.

I. State Environmental Quality Review ("SEQR")

In early January, the Nation received via hard copy to its Post Office box a Notice of Intent to Take Lead Agency status in relation to three data center projects, dated December 31, 2025. We understand that transmittal of this notice triggers a 30-day period during which Interested and Involved Agencies may object to GCEDC's taking lead agency status. 6 NYCRR § 617.6(B). The Nation reiterates its longstanding request that SEQR notifications be provided not only via hard copy to its P.O. Box but also electronically to both the Nation at its office email address and the Nation's General Counsel, Alex Page of Berkey Williams LLP.

The Nation objects to GCEDC taking Lead Agency status for SEQR. 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. 6 NYCRR § 617.6(B)(5)(v).

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:

(1) That 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);

(2) That 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;

(3) That GCEDC's SEQR review include assessment of impacts on archeological, cultural, and historic resources of the Nation, as well as on the Nation as a disadvantaged community[1] immediately adjacent to the proposed data centers;

(4) That GCEDC incorporate SHPA/NHPA review into SEQR review, not treat SHPA/NHPA separately after SEQR review is completed; and

(5) 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.

In addition, as addressed more fully below, SEQR review must incorporate the requirements of the Environmental Justice Law, N.Y. Env't Conserv. Law § 8-0105 et seq.; N.Y. Env't Conserv. Law § 70-118 et seq. (2024).

II. Preliminary Concerns Regarding Data Center Impacts

The Nation is still reviewing and analyzing the hundreds of pages of documentation on the three data center applications received from GCEDC on January 9, 2025. This review includes careful analysis of the Environmental Assessment Forms ("EAFs"), which lay out the contours of each project, and associated materials. The Nation provides preliminary comments on these materials below and expressly reserves the right to provide further comment as its review and analysis of these materials continues. Complete and accurate information about the proposed data center projects is an essential precondition to assessing impacts from them.

A. Concerns About Completeness and Accuracy of Information

[1] While the Nation does not agree with use of the term "disadvantaged community," the use of the term in the Environmental Conservation Law is the basis for its use here.

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.

For example, 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.

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/Potentias's EAF states it will have "onsite [stormwater] retention via ponds."

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.

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.

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.

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."[2]

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.

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

[2] DeRoche, M., Fisher, J., Thorpe, N., and Wachspress, M., The Energy Bomb: How Proof-of-Work Cryptocurrency Mining Worsens the Climate Crisis and Harms Communities Now (Sept. 2022), at https://earthjustice.org/wp-content/uploads/energy_bomb_bitcoin_white_paper_101322.pdf at 15

must be clarified so that impacts of the projects, which derive from project specifics, can be assessed.

B. Concerns Requiring Further Review

Even given the questionable and internally contradictory information on the projects provided thus far, the data center projects create a number of serious concerns for the Nation and require further review in order to fulfill SEQR's requirements. These concerns include but are not limited to the following:

1. Noise/Vibrations

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.[3] 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,[4] and can also harm other species. In more extreme cases, noise pollution can cause tinnitus, migraines, vertigo and hearing loss.[5]

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.

2. Light

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'

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[3] *Id.*

[4] https://www.osha.gov/noise/health-effects

[5] https://environmentamerica.org/center/resources/big-data-centers-big-problems/ at 25-26

use of the areas on or around the site, in turn affecting connected species, the environment, and potentially Nation cultural practices.[6] These impacts must be investigated.

3. Impacts to wildlife

Noise pollution and vibration associated with data centers can disrupt animal behavior and communication and force animals to seek new migration and habitation patterns.[7] 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.[8]

4. Air Pollution

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.

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[6] *See, e.g.*, Stone, E. L., S. Harris, and G. Jones. Impacts of artificial lighting on bats: a review of challenges and solutions, Mammalian Biology 80:213–219 (2015); *see also* Longcore, Travis, and Rich, Catherine, Ecological Light Pollution, Frontiers in Environment and Ecology, Vol. 2 (2004) (reviewing and distinguishing "astronomical light pollution", which obscures the view of the night sky, from "ecological light pollution", which alters natural light regimes in terrestrial and aquatic ecosystems).

[7] *See, e.g.,* Dooling, Robert J. "The Effects of Noise on Birds." The Journal of the Acoustical Society of America, vol. 129, no. 4, Apr. 2011, pp. 2395–2395, https://doi.org/10.1121/1.3587789; Hoose, Natalie van. "Noise Pollution Causes Chronic Stress in Birds, with Health Consequences for Young." Florida Museum, 8 Jan. 2018, https://www.floridamuseum.ufl.edu/science/noise-pollution-causes-stress-in-birds/ ; Bottalico, Pasquale, et al. "Effects of Noise Generated by Construction Sites on Wild Birds." Noise Control Engineering Journal, vol. 64, no. 4, 2016, pp. 544–54, https://doi.org/10.3397/1/376400.

[8] *See, e.g.,* Zhou et. al, Spectrally non-overlapping background noise disturbs echolocation via acoustic masking in the CF-FM bat, *Hipposideros pratti* , *Conservation Physiology*, Volume 11, Issue 1 (2023) at https://academic.oup.com/conphys/article/11/1/coad017/7136202 ("Our results provide further evidence of negative consequences [for bats] of anthropogenic noise. On this basis, we sound a warning against noise in the foraging habitats of echolocating bats").

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_2, as well as possible NO_2 and Hazardous Air Pollutant ("HAP") emissions known to be associated with diesel fuel.

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_2, 441 tons/yr N_2O, 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.

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_2 in emissions.

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."[9]

DEC has highlighted the negative health impacts of diesel fuel generation on disadvantaged communities, noting the role that particulate emissions – in addition to CO_2, NO_2, and N_2O – play in these impacts. "Nitrogen oxides or NOx (nitric oxide or nitrogen dioxide) are produced with black carbon [$PM_{2.5}$] when diesel and other petroleum-based fuels are burned. Exposure to NOx may irritate the respiratory tract and aggravate respiratory diseases such as asthma. Longer-term exposures to NOx may cause asthma and increase susceptibility to respiratory tract infections."[10]

Likewise, according to the United States Environmental Protection Agency, "exposures to elevated concentrations of NO_2 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_2. NO_2 along with other NO_x 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."[11]

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[9] "Data Center Emissions 662% Higher Than Big Tech Claims," The Guardian (Sept. 15, 2024), https://www.theguardian.com/technology/2024/sep/15/data-center-gas-emissions-tech

[10] https://dec.ny.gov/sites/default/files/2024-07/camblackcarbon.pdf

[11] https://www.epa.gov/no2-pollution/basic-information-about-no2

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.[12]

Elevated levels of CO_2 are likewise concerning to the Nation. "Symptoms of mild CO_2 exposure may include headache and drowsiness. At higher levels, rapid breathing, confusion, increased cardiac output, elevated blood pressure and increased arrhythmias may occur."[13]

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.

5. Impacts to Wetlands and Water

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.

Specific water-related concerns include but are not limited to those listed below.

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

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[12] https://minorityhealth.hhs.gov/asthma-and-american-indiansalaska-natives#:~:text=From%202019%20to%202021%2C%20American,than%20non%2DHispanic%20white%20children.&text=In%202023%2C%20American%20Indian%2FAlaska,than%20non%2DHispanic%20white%20adults.

[13] https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/Carbon-Dioxide.pdf

reintroduced to its source at heightened temperatures, both standard data center practices.[14] A data center sited on Seneca Lake discharges water directly into the lake at 108 degrees Farenheit.

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.

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.[15]

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

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[14] Dr. Rasheed Ahmad, American Society of Civil Engineers (Mar. 4, 2024), https://www.asce.org/publications-and-news/civil-engineering-source/civil-engineering-magazine/issues/magazine-issue/article/2024/03/engineers-often-need-a-lot-of-water-to-keep-data-centers-cool

[15] *See, e.g.,* 2019 SUNY-ESF Bioblitz Report Excerpt (Nation land contains "relatively sparse populations of both herbaceous and woody invasive plant species… which appear to be kept at bay by healthy populations of native species. This is significant to avian (and all other wildlife) species who rely on diverse habitats and are threatened by monoculture or near monoculture habitats created by aggressive invasive species.")

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.

6. Visual / Aesthetic Impacts

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 Photosimulations 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.

7. Emergency Services / Danger of fires and explosions

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.

III. Consistency with Environmental Justice Law (EJL)

The Environmental Justice Law applies to both permitting and SEQR review of possible data centers at STAMP.[16] 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."[17]

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

[16] N.Y. Env't Conserv. Law § 8-0105 et seq.; N.Y. Env't Conserv. Law § 70-118 et seq. (2024).

[17] S1317 ("Legislative Intent") (2023).

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

IV. Additional Substantive and Procedural Concerns

In addition to the afore-mentioned concerns directly related to the SEQR process and analysis of impacts from data center projects proposed for STAMP, the Nation raises the following concerns, which may also implicate SEQR analysis.

A. Lack of transparency

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 are 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.

B. CP-29

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.

C. Climate Leadership and Community Protection Act (CLCPA)

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."[18] 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.[19] To satisfy the requirements of CLCPA Section 7, information on greenhouse gas emissions resulting from

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[18] *See* CLCPA § 7(2), (3).

[19] *Id.* at 7-16, 19-20; CP-49 Climate Change and DEC Action at 6, available at https://extapps.dec.ny.gov/docs/administration_pdf/cp492022.pdf

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.[20] 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 CO2e.[21] In addition, beyond prohibiting state agencies from granting 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.

V. Conclusion

We look forward to hearing from you regarding this important matter.

Da:h ne'hoh,

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[20] *Id.*

[21] *Id.*