



November 6, 2020

Town of Torrey Planning Board
C/o Betty Daggett
Town of Torrey Town Clerk
56 Geneva St.
Dresden, NY 14441
Email: townclerk@townoftorrey.com

**Comments on the Conditioned Negative Declaration for
the Proposed Greenidge Generation Onsite Data Center**

Dear Chairman Granzin and Members of the Planning Board:

The Sierra Club Atlantic Chapter submits the following comments on the conditioned negative declaration issued on September 21, 2020, by the Town of Torrey Planning Board for the onsite data center project proposed by Greenidge Generation LLC (the “Greenidge Data Center Project”),¹ notice of which was published in the Environmental Notice Bulletin on October 7, 2020 (the “Conditioned Negative Declaration” or “CND”).² We are a volunteer led environmental group of over 50,000 members statewide dedicated to the protection of New York’s air, water and remaining wild places.

The Sierra Club requests that the Planning Board rescind the Conditioned Negative Declaration, issue a positive declaration requiring the preparation of a draft environmental impact statement (“EIS”) and conduct a coordinated review of the impacts of the project with the New York State Department of Environmental Conservation (“DEC”). The reason for our request is that the Planning Board did not comply with the requirements of the State Environmental Quality Review Act (“SEQRA”) in issuing the Conditioned Negative Declaration. SEQRA requires that the Planning Board adequately assess the potentially significant adverse environmental impacts of the Greenidge Data Center Project and impose adequate mitigation measures to address the impacts identified.

In this letter we identify a number of potentially significant adverse environmental impacts that the Planning Board did not identify and assess or that it inadequately assessed in its SEQRA review, and a number of deficiencies in the Planning Board’s proposed mitigation measures. Because of the deficiencies in the CND we identify, the SEQRA regulations require that the CND must be rescinded.³

¹ Environmental Assessment Form, Part 3, <https://preservethefingerlakes.org/pfl/wp-content/uploads/2020/10/2020-9-23-EAF-Part-3-Evaluation-of-Magnitude-and-Determination-of-Significance-4.pdf>

² https://www.dec.ny.gov/enb/20201007_not8.html .

³ Section 617.7(d)(2) of the SEQRA regulations provides that “[a] lead agency must rescind [a conditioned negative declaration] and issue a positive declaration requiring the preparation of a draft EIS if it receives substantive comments that identify: (i) potentially significant adverse environmental impacts that were not previously identified

Failure to Adequately Assess Environmental Impacts Requires Rescission of the CND

The first ground upon which the Conditioned Negative Declaration must be rescinded under 6 NYCRR 617.7(d)(2) is that the Planning Board failed to identify or adequately assess potentially significant adverse environmental impacts from the Greenidge Data Center Project.

SEQRA requires a comprehensive disclosure and evaluation of potential adverse environmental impacts of a proposed project. SEQRA's substantive requirements are based on the widely accepted standard explained by the Court of Appeals in *Jackson v. New York Urban Dev. Corp.*, 67 N.Y.2d 400, 415 (1986); and incorporated into the SEQRA regulations at 6 NYCRR 617.7(b). Under these standards, the lead agency (here the Planning Board) must identify the relevant areas of potential impact, take a "hard look" at each identified area, and provide a reasoned elaboration of the basis for its decision approving or disapproving a proposed project, including supporting documentation.

The Conditioned Negative Declaration issued by the Planning Board does not comply with this standard. The Planning Board did not even fill out the first section of the Environmental Assessment Form ("EAF") Part 3 in which it was required to provide "Reasons Supporting This Determination."⁴ In addition, the EAF Part 2 completed by the Planning Board shows that the Planning Board did not identify or adequately assess a number of potentially significant adverse environmental impacts of the Greenidge Data Center Project.⁵ Among the impacts that were not assessed or were inadequately assessed are the following:

Increased Air Emissions by Greenidge Generating Station

The EAF Parts 2 and 3 show that the Planning Board failed to evaluate the impacts of increased air emissions by Greenidge Generating Station as a result of the Greenidge Data Center Project. This failure is difficult to understand in view of the fact that the EAF Part 1 submitted by the Applicant states that the project will result in annual electric demand of 300,000 megawatt hours per year and that this demand will be met by onsite generation by the Greenidge Generating Station. An additional 300,000 MWh of electric generation per year by the gas-fired turbines at the Generating Station will inevitably result in greatly increased toxic air emissions. The potential significant adverse impacts of these additional toxic emissions should have been evaluated by the Planning Board in making its determination of significance under SEQRA and they were not.

and assessed or were inadequately assessed in the review; or (ii) a substantial deficiency in the proposed mitigation measures." 6 NYCRR 617.7(d)(2).

⁴ See EAF Part 3, cited in Footnote 1.

⁵ See EAF Part 2, <https://preservethefingerlakes.org/pfl/wp-content/uploads/2020/10/2020-9-23-EAF-Part-2-Identification-of-Potential-Project-Impacts-3.pdf>.

Climate Change Impacts from the Increased Air Emissions

The EAF Parts 2 and 3 show that the Planning Board failed to evaluate the climate change impacts from increased greenhouse gas emissions by Greenidge Generating Station as a result of the Greenidge Data Center Project. As in the case of the Planning Board's failure to evaluate increased toxic air emissions, this failure to evaluate increased greenhouse gas emissions is difficult to understand in view of the fact that the EAF Part 1 submitted by the Applicant states that the project will result in annual electric demand of 300,000 megawatt hours per year and that this demand will be met by onsite generation by the Greenidge Generating Station. An additional 300,000 MWh of electric generation per year by the gas-fired turbines at the Generating Station will inevitably result in greatly increased greenhouse gas emissions. The potential significant adverse impacts of these additional greenhouse gas emissions should have been evaluated by the Planning Board in making its determination of significance under SEQRA and they were not.

Increased Water Withdrawals and Heated Water Discharges by Greenidge Generating Station

The EAF Parts 2 and 3 show that the Planning Board failed to evaluate the impacts of increased water withdrawals and water discharges by Greenidge Generating Station as a result of the Greenidge Data Center Project. As in the case of the Planning Board's failure to evaluate increased toxic air emissions, this failure to evaluate increased water withdrawals and heated water discharges is difficult to understand in view of the fact that the EAF Part 1 submitted by the Applicant states that the project will result in annual electric demand of 300,000 megawatt hours per year and that this demand will be met by onsite generation by the thermo-electric Greenidge Generating Station. An additional 300,000 MWh of electric generation per year by the Generating Station will inevitably result in greatly increased water withdrawals and heated water discharges from the operations the plant's once-through cooling system. The potential for significant adverse impacts of these additional water withdrawals and heated water discharges on fish and aquatic life in Seneca Lake and on hazardous algae blooms should have been evaluated by the Planning Board in making its determination of significance under SEQRA and they were not.

Consistency with Community Plans and Community Character

The EAF Parts 2 and 3 show that the Planning Board failed to adequately evaluate whether the increased impacts on Seneca Lake that would result from the Greenidge Data Center Project are consistent with the Town of Torrey's plans and community character as set forth in the Town of Torrey Zoning Law, the Town of Torrey Comprehensive Land Use Plan⁶ and the Seneca Lake Watershed Management Plan, which the Town of Torrey has agreed to as part of its membership in the Seneca Watershed Intermunicipal Organization.

⁶ https://www.townoftorrey.org/comp_plan.php.

Nowhere in EAF Parts 2 and 3 does the Planning Board acknowledge that the Town of Torrey Zoning Law requires that it be determined that a proposed use “will not adversely impact adjacent properties, existing infrastructure or environmentally sensitive features on or near the site such as steep slopes, Seneca Lake or other bodies of water, water courses, the Outlet Trail, mature woodlands, or wetlands” and “will not adversely impact adjacent properties with regard to excessive or unreasonable disturbance such as noise, light, glare, vibration, shadow, vapors, smoke, fumes, dust, particulate emissions or odors.”⁷ These requirements were not considered by the Planning Board in evaluating potential impacts from the Greenidge Data Center Project.

The potential for significant adverse impacts on community plans and community character should have been evaluated by the Planning Board in making its determination of significance under SEQRA and, with one exception, they were not.

Noise impacts were the only potential adverse impact on community plans and community character that was evaluated by the Planning Board, and that noise evaluation was not adequate. The noise assessment report provided by the Applicant was not adequate to demonstrate that the Greenidge Data Center Project would operate in accordance with noise requirements contained in the Town of Torrey Zoning Law. The requirement in the Conditioned Negative Declaration that noise leveling testing be conducted does not excuse the Planning Board from making an adequate evaluation of potential noise impacts before issuing its SEQRA determination.

Invalid Segmentation

The Planning Board’s failure to evaluate impacts from increased operations at Greenidge Generating Station indicates that it segmented its review of the construction of the data center from consideration of the impacts that might result from generating the electricity necessary to run the data center. Segmentation of the review of a project is explicitly prohibited by the SEQRA regulations. The regulations state that “[c]onsidering only a part or segment of an action is contrary to the intent of SEQR[A].” 6 NYCRR 617.3(g)(1). The regulations define “segmentation” as “the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.” 6 NYCRR 617.2(ag). A SEQRA determination based on the failure to review all parts of a project must be annulled. See e.g., *Matter of Sierra Club v. Village of Painted Post*, 134 A.D.3d 1475 (4th Dept. 2015). The Planning Board must consider the impacts of increased operations at Greenidge Generation Station as part of its review of the impacts of the Greenidge Data Center Project.

Consideration of Impacts Identified by Members of the Public Opposed to the Project

We understand that the Planning Board has been advised by counsel that its SEQRA determination can not be based on strong public opposition. This advice misstates the law. The Planning Board is mandated by SEQRA to consider all potential impacts of the Greenidge Data

⁷ Town of Torrey Zoning Code § 98.105.

Center Project. The fact that impacts are identified by members of the public expressing concern about the Greenidge Data Center Project does not provide a basis for ignoring those impacts.

Rescission of the CND Required

Because the Planning Board did not adequately evaluate the potential for significant adverse impacts: (1) from increased air emissions by Greenidge Generating Station, (2) from climate change impacts from the increased air emissions, (3) from increased water withdrawals and heated water discharges by Greenidge Generating Station, or (4) consistency with community plans and community character before issuing the Conditioned Negative Declaration, the Conditioned Negative Declaration must be rescinded and a positive declaration requiring the preparation of a draft EIS must be issued.

Failure to Adequately Mitigate Environmental Impacts Requires Rescission of the CND

The second ground upon which the Greenidge Conditioned Negative Declaration must be rescinded under 6 NYCRR 617.7(d)(2) is that the Planning Board's proposed mitigation measures are not sufficient. SEQRA requires that project approval be supported by a demonstration that the project proposal "avoids or minimizes adverse environmental impacts to the maximum extent practicable . . . by incorporating as conditions to the decision [to approve] those mitigative measures that were identified as practicable." 6 NYCRR 617.11(d)(5).

The Conditioned Negative Declaration determined that "the [Greenidge Data Center] project will have a significant adverse impact on the environment."⁸ But it provided that those impacts "will be avoided or substantially mitigated because of the following requirements imposed by the Lead Agency [i.e., the Planning Board]." The requirements listed by the Planning Board are:

1. All power will be generated on site with no impact to the grid.
2. Noise Leveling testing will verify compliance to the Town of Torrey Zoning Code.
3. Applicant will fulfill all New York State Department of Environmental Conservation (NYS DEC) requirements relative to the Greenidge Generation operations.

None of these three requirements constitute mitigation measures for the adverse impacts of the Greenidge Data Center Project.

The impacts of the additional power generated are not in any way mitigated by the fact that the increased electricity generated will not be sent to the electric grid but will be provided directly to the data center. The impacts caused by increased electricity generation occur at the Greenidge Generation Station and in the land, air and waters surrounding the plant. The impacts of dispatching power to the grid are minimal. In fact, the use of the electricity at the data center increases the local impacts, because the need for cooling of the data center operations is

⁸ Greenidge Conditioned Negative Environment, EAF Part 3, cited above, footnote .

happening locally.

Noise level testing is not a mitigation measure when no requirements have been put in place to protect against noise level exceedances.

It is not a mitigation measure for the Planning Board to point to DEC permits that were issued before the data center was proposed. DEC has not reviewed the impacts of the data center operations and these impacts are not addressed in the DEC permits. Furthermore, the SEQRA Handbook states that “[r]equiring that the applicant obtain the approval of another agency, when that approval is already legally required, is not a mitigation measure.”⁹ Similarly, it is not a mitigation measure to refer to already issued permits.

Rescission of the CND Required

Because the Planning Board did not adequately mitigate the significant adverse impacts of operations at the data center or at Greenidge Generating Station, the Conditioned Negative Declaration must be rescinded and a positive declaration requiring the preparation of a draft EIS must be issued.

In addition, the Planning Board should inform DEC about the Greenidge Data Center Project and invite DEC to participate in a coordinated SEQRA review of the project.

Respectfully yours,



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Cc: Commissioner Basil Seggos
Thomas Haley, DEC Region 8 Permit Administrator

⁹ SEQR Handbook, Conditioned Negative Declarations (CNDs), page 96,
https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.