

DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building T
Pomona, New York 10970
Phone: (845) 364-3434 Fax: (845) 364-3435

Douglas J. Schuetz
Acting Commissioner

Richard M. Schiafo
Deputy Commissioner

RECEIVED

July 21, 2025

JUL 21 2025

Orangetown Planning Board
20 Greenbush Road
Orangeburg, NY 10962

TOWN OF ORANGETOWN
LAND USE BOARDS

Tax Data: 73.15-1-19

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M

Map Date: 05/15/2025

Date Review Received: 06/20/2025

Item: *Databank Orangeburg Phase Two Site Plan Review (GML-25-0340)*

Revised site plan application for construction of Phase 2 of a Databank center on 24.3 acres of a 33.9-acre parcel in the LIO zoning district. Phase 2 comprises a one-story, 146,480 square-foot data center, 7,395 square feet of administrative/office space along the southern portion of the building, a 7,906 square-foot office expansion to connect to the Phase 1 data center, a 52,095 square-foot open equipment yard, and an additional 72,812 square-foot substation area in the northeast corner of the site. A total of 105 parking spaces will be provided. Variances are required for number of parking spaces and number of loading berths. Construction of Phase 1 has been completed with variances approved for number of parking spaces, number of loading berths, non-enclosed loading berths, and 100-foot buffer to an R-80 zoning district.

North side of Corporate Drive cul-de-sac

Reason for Referral:

County Highway Southern Depot

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

Disapprove

The Rockland County Planning Board and Planning Department were previously given opportunities to review Phase 1 of Databank Orangeburg. On January 3, 2023, this department issued to the Orangetown Planning Board our last GML Section 239 review letter concerning the Phase 1 site plan. The letter included comments with concerns regarding the number of parking spaces, scale and energy usage of the proposal, and environmental impact and constraints. The Orangetown Planning Board approved the Phase 1 site Plan on January 11, 2023, and the project has since been constructed.

The applicant is now proposing Phase 2 of the data center, which will mirror the layout of Phase 1. The Rockland County Planning Board reviewed a previous iteration of the Phase 2 site plan at their meeting on December 12, 2024 and unanimously disapproved the application, citing the disruption of onsite wetlands, a high level of energy usage, lack of parking availability, and fire safety issues. The Rockland County Planning Department offers the Orangetown Planning Board the following comments regarding the Proposed Phase 2 Databank, which reflect several issues taken by our Planning Board:

- 1 This department has major concerns regarding the energy and environmental impacts of this proposal. The estimated annual energy demand for Phase 2 is "approximately 1,681,920,000/kwh based on 16 mw for the five (5) data halls operating 24 hours a day, 7 days a week" as indicated in the May 16, 2025 Comment Response Letter from Kimley-Horn Engineering and the Full Environmental Assessment Form (FEAF) revised May 10, 2025, pg. 7, Question D.2.(k). This estimated energy use was confirmed in an email exchange with Kimley-Horn and this department received on June 24, 2025. The referral submitted did not contain any supporting documentation regarding the energy usage estimate nor how it was calculated. This department requested additional information on energy usage as well as any reviews conducted by Orange and Rockland Utilities (O&R). No supplemental information was provided by the Town or the applicant.

According to estimates from the U.S. Energy Information Administration, last updated December 18, 2023, the average US household consumes roughly 10,500/kwh of electricity annually: <https://www.eia.gov/energyexplained/use-of-energy/electricity-use-in-homes.php>. Based on the energy use estimated in this application, the proposed data center will demand more energy than 160,000 homes. Additional information, including calculations, must be provided to verify the accuracy of the estimated energy use of 1,681,920,000/kwh.

This department needs additional information on energy use to be able to conduct an informed review of this proposal. This department recommends that a comprehensive energy analysis be conducted. As stated, supporting documentation must be provided to verify the accuracy of the energy usage estimate and its potential impact on the local utility grid.

Additionally, this department did not receive an estimate of energy use for Phase 1, which was constructed at a similar scale to Phase 2. The cumulative impact on energy use that Phase 2 will have with Phase 1 is of great concern. The Town must have a clear understanding of the total energy demand created by this project, the ability of the local utility grid to service the project, including utility grid resilience, as well as the potential impacts on other local economic development projects. Additional measures should be taken to increase the resiliency of the project and to reduce the overall carbon footprint of the operation including the use of energy efficient equipment and servers. Furthermore, the applicant must provide correspondence with O & R to demonstrate that the energy demands of this facility can be met. In absence of the energy usage details, and significance of the energy estimate provided, this department is issuing a disapproval of this project.

- 2 This department recommends disapproval of this project due to the cumulative environmental impacts; including the loss of wetlands, the site as a potential eagle nesting area, the hydrological, biological and ecological impacts associated with the proposed alteration of a watercourse, the noise generated by the facility, and the potential impacts to a local water supply.

Loss of wetlands is a countywide concern and like the County Planning Board this Department is greatly concerned about the disruption of on-site wetland resulting from this project. Recent amendments to the New York State Freshwater Wetlands Act, which took effect on January 1, 2025, have expanded the jurisdictional authority of the New York State Department of Environmental Conservation (DEC) to include small wetlands of unusual importance. As a result, wetlands of any size meet the jurisdictional criteria for protection if they possess any of eleven characteristics of unusual importance, including being situated within an urban area, as defined by the US Census Bureau. Since the property is located within a

defined urban area, any wetlands on the site would be subject to DEC regulations. According to the FEAF, Page 4, Question D.2. (b) ii., the proposed action will fill 0.10 acres of state-regulated wetlands and 0.02 acres of federally-regulated wetlands and 0.16 acres of surface water onsite. The action will also impact 108 linear feet of a stream. This department discourages the filling of wetlands, as this can potentially affect the area's capacity for flood mitigation and damage and disrupt the local ecosystems.

The eagle monitoring report, dated 3/20/2025, found that adult and immature bald eagles were frequently observed in the area and occasionally landed in trees near the documented nest tree, however no nests or nest-building activities were observed during the limited monitoring events. Based on the information provided the applicant is still waiting for the DEC to review and provide feedback on this report. This department recommends potential eagle nesting habitat be protected.

The sound study, dated 2/12/2025, suggests measures to help reduce the noise impact. Despite these measures the noise generated will still be significant, particularly at night and be close to, if not, potentially exceeding noise standards allowed by local code.

This department recommends that the Town disapproves this project and provide additional protections to on-site as well as off-site natural resources, particularly the protection of wetlands, water supplies and habitat.

The following comments address our additional concerns about the proposal:

- 3 Water is a scarce resource in Rockland County; thus, proper planning and phasing of this project are critical. Data centers use a significant amount of water for cooling and a large amount of water is lost to evaporation. The water and wastewater figures provided in the letter from Highland Associates revised February 10, 2025 appear to be inconsistent with the figures in the FEAF revised May 10, 2025. Additionally, there appears to be an error in the Highland Associates letter where the water usage data for Building 2 (pg. 5 of 7) adds up to 2,590 GPD and for the Total site (pg. 6 pf 7) a figure of 2,690 GPD is used (It is presumed that Building 1 is Phase 1 and Building 2 is Phase 2). An explanation is also warranted as to why Building 2 has significantly less water usage than Building 1, and why in Building 2, 'Accessory Storage' is using 15 GPD.

The Town should be satisfied that the water and wastewater numbers are accurate and consistent, and more importantly that the demand for such large amounts of water and the loss of more than 6,000 GPD of water is not going to have a detrimental impact on the adequate supply of water for current and future residents of the County.

As is indicated in the Rockland County Department of Health July 16, 2025 letter the engineering plans and specifications for public water supply and sanitary sewer extension are required prior to construction to ensure compliance with Article II (Drinking Water Supplies) of the Rockland County Sanitary Code and Part 5 of the New York State Sanitary Code.

- 4 If it has not done so already, the Planning Board may want to familiarize itself with a 'Best Practices Guide for Energy-Efficient Data Center Design' found at: <https://www.energy.gov/femp/energy-efficiency-data-centers>
- 5 Neither data centers nor warehouses are listed as a permitted use in the LIO zoning district per Section 3.11. Unpermitted uses typically require a use variance from the Zoning Board of Appeals (ZBA); however, the Town has not indicated that this is needed. According to the Orangetown Comprehensive Plan, adopted October 10, 2023, there are plans to allow data centers in the LIO district, among other districts, as a conditional use. In the current absence of regulations specifically tailored to a data center as

Databank Orangeburg Phase Two Site Plan Review (GML-25-0340)

a conditional use, the Planning Board must review this plan with a higher level of scrutiny if they are to allow its construction. The energy and water use of the facility, the 24/7 noise produced by the equipment, and the impacts to natural resources must be evaluated and strongly considered.

- 6 The Town must be satisfied with the findings of the Site Sound Study dated February 12, 2025. As recommended by the study, reduced sound chillers must be used to ensure that the minimal extent of noise is produced. Other potential measures must also be considered to further reduce the auditory impact that this facility has on residential properties, including those directly abutting the southern boundary of the site and as the noise generated by the facility moves across the water, residents to the west of Lake Tappan.
- 7 The August 2, 2022 Wetland Delineation Map illustrates two man-made basins and two wetlands on the subject parcel. The October 19, 2022 letter from the United States Army Corps of Engineers (ACOE) indicates that Wetland 1 along the southeastern property boundary, including an unnamed tributary of the Hackensack River, is within their jurisdiction. The April 3, 2025 email from the New York State Department of Environmental Conservation (DEC) confirms that both Wetlands 1 and 2 are within their jurisdiction. The applicant's response letter indicates that per a March 7, 2025 email, the ACOE authorized the project to proceed as proposed; however, this email was not furnished with the application materials received by our department. The applicant must ensure that all concerns of the ACOE and the DEC are addressed, and all required permits are obtained.
- 8 According to the Hudson Valley Natural Resources Mapper <https://giservices.dec.ny.gov/gis/hvnrm/> the subject site is part of a Known Important Area Terrestrial Animals. These are identified as areas of importance for sustaining known population of rare animals based on occurrence records from the New York Natural Heritage Program (NYNHP) database. Proactive planning that avoids or minimizes impact to the habitat of Important areas and maintains habitat connections for wildlife movement will contribute to the long-term biodiversity of the region. The Planning Board must consider the impacts of this large-scale development on the biodiversity of the area, specifically habitat fragmentation and the impact of the movement of species to and from and within these sensitive habitats. This department again recommends that the size and scale of this project be reduced due to the environmental constraints of the site. A pdf titled "An Approach for Conserving Biodiversity in the Hudson River Estuary Corridor" that identifies voluntary, non-regulatory strategies for conserving wildlife and habitat in the region can be found at: <https://hudson.dnr.cals.cornell.edu/library>
- 9 On September 21, 2022, the Orangetown Zoning Board of Appeals (ZBA) granted the applicant approval of a parking variance to allow 69 spaces for Phase 1 with the condition that the applicant demonstrates that they can provide 671 land banked parking spaces. As we had previously stated to the Orangetown Planning Board in our January 3, 2023 GML 239 Review, these land banked parking spaces cannot be provided with the construction of Phase 2. The applicant is now planning to provide 105 of the 1,264 parking spaces required for Phases 1 and 2 together, and no land banked parking spaces. While it was acknowledged that data centers do not require a significant amount of parking spaces, the Rockland County Planning Board, at their December 12, 2024 meeting, has expressed concern about the inability to commit to this previously approved condition by the ZBA. Should there be a change in use for this structure in the future there will be limited space on the site to provide additional parking. As previously indicated, we recommend that the proposal for Phase 2 be reduced in scale so that a lesser parking variance is required from the ZBA.
- 10 We request the opportunity to review the variances needed to implement the proposed site plan, as required by New York State General Municipal Law, Section 239-m (3)(a)(v).
- 11 The applicant must comply with the comments made by the County of Rockland Department of Health in their letter dated July 16, 2025.
- 12 The Orangetown Fire Inspector must be satisfied that the conditions of their letter dated June 25, 2024 have been appropriately addressed by the applicant. In addition, the Rockland County Office of Fire and Emergency Services and the Pearl River Fire District shall have the opportunity to review the proposal to


Databank Orangeburg Phase Two Site Plan Review (GML-25-0340)

ensure that the site is designed in a safe manner and there is sufficient maneuverability on the site for emergency vehicles.

- 13 The Town should work with local first responders, including the Rockland County Office for Fire and Emergency Services, to ensure that first responders are properly trained to handle fires and any other potential emergencies at this facility. This Department recommends that the Town request that the applicant provide training and education to local first responders.
- 14 Prior to the start of construction or grading, all soil and erosion control measures must be in place for the site. These measures must meet the latest edition (November 2016) of the New York State Standards for Urban Erosion and Sediment Control.
- 15 The Stormwater Pollution Prevention Plan (SWPPP), Page 43 indicates that while the peak discharge of Phase 2 is less than the previously existing development, it will increase the from Phase 1 construction at 25 and 100-year storm events to levels nearing pre-construction. This increase in discharge from the previously approved Phase shall be addressed and remedied.
- 16 The May 10, 2025 FEAF, Page 6, Question D.2.e.i indicates that the project will create 7.8 acres of impervious surface. Question D.2.e.iv is answered affirmatively to indicate that the plan will minimize impervious surface, use pervious material, or collect and re-use stormwater. Despite this, the SWPPP, Page 13 informs that no vegetated swales are proposed, no rain gardens are proposed, and while pervious pavers were used for Phase 1, there is no indication for their use in Phase 2. The May 16, 2025 response letter states that green infrastructure and reduction of impervious surfaces were considered for Phase 2, but there were no opportunities to implement this. The amount of impervious surface area to be added in Phase 2 is significant. To help reduce the impact of this development there should be a reduction of impervious surfaces, and green techniques such as permeable pavers, bioswales, rain gardens, and rainwater capture should be considered. For long term effectiveness of these improvements, it is recommended that the applicant review Chapter 5 "Green Infrastructure Practices" of the 2015 NYSDEC Stormwater Design Manual.
- 17 The Planning Board shall be satisfied that the implementation of the SWPPP ensures that construction will not induce a negative impact on the Lake Tappan Reservoir from stormwater runoff as well as dust particles and debris.
- 18 The applicant must obtain any necessary permits from the New York State DEC's Division of Air Resources for the proposed generators.
- 19 The applicant must provide as-built drawings and other documentation to New York State DEC, Region 3, that illustrate the design and installation, as per code, of the petroleum bulk storage tanks for the proposed generators. These tanks must also be registered with them.
- 20 By State Law, the applicant must register with the local fire inspector using Form 209U for the proposed chemical bulk storage materials (batteries). In addition, under the Superfund Amendments and Reauthorization Act (SARA) - Title 3, the applicant must register with the Rockland County Fire Training Center.
- 21 The portion of the property outside of the area of disturbance shall remain uncleared and in its natural state per Section 21-25 of the Orangetown Code. This is especially important to preserve the remaining natural areas of the site and retain buffer between the data center and the residences to the south of the property. This department recommends that conservation easements be placed on any areas intended for protection.
- 22 The 2025 Bald Eagle Nest Monitoring Report notes that a former nesting tree is in close proximity to Phase 2 construction; however, new nesting activity was not observed during the 2025 monitoring season between January 2 and February 24. Bald eagles were, however, observed flying and landing in proximity to the former nesting tree. The impacts that this development, including the noise generated, has on the bald eagle population as well as other nearby wildlife must be more thoroughly evaluated and strongly considered. Any outstanding concerns provided by the DEC must be addressed and the applicant shall

continue to correspond with the DEC regarding the presence of bald eagles on and near the site.

- 23 This department supports the use of a native trees, including Sour Gum (*Nyssa sylvatica*) and White Spruce (*Picea glauca*), on the proposed Landscape Plan. Native plants are better adapted to the local climate and soils, making them easier to care for, and result in the need for less fertilizer, pesticides, and use of water. They also have deeper root systems that help prevent erosion and increased runoff into local waterbodies. A pdf titled "Native Plants for Gardening and Landscaping Fact Sheets" that lists native species and the environments in which they can grow can be found on the New York State Department of Environmental Conservation's website: <https://www.dec.ny.gov/get-involved/living-green/sustainable-landscaping>.
- 24 All proposed signage shall conform to the sign ordinance in Chapter 31C of the Orangetown Code.
- 25 Retaining walls shall be designed by a licensed New York State Professional Engineer and be in compliance with the NYS Fire Prevention and Building Code. Design plans shall be signed and sealed by the licensed NYS Professional Engineer.
- 26 Pursuant to New York State General Municipal Law (GML) Sections 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County's Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.
- 27 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County agencies are prohibited from issuing a County permit, license, or approval until the report is filed with the County's Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner's report approving the proposed action or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.
- 28 The following additional comment is offered strictly as an observation and is not part of our General Municipal Law (GML) review. The Board may have already addressed this point or may disregard it without any formal vote under the GML process:
 - 28.1 This department's previous GML Section 239 reviews for both Phase 1 and Phase 2 have continuously noted that "data centers" are only listed as a permitted use within the RPC-OP zoning district and are not given a definition within the Orangetown Zoning Code. Warehouses, as an alternative descriptor, are also not permitted as a principal use in the LIO district. As noted in Comment 2 above, the 2023 Orangetown Comprehensive Plan indicates plans to allow data centers in the LIO district, among other districts, as a conditional use. However, until a local law is officially adopted, this department remains unclear on how this proposal can be evaluated and permitted. In addition, the parking regulations applied to this development are those for offices and warehouses, whereas no definitive parking requirements exist in the zoning code for data centers. We again urge the Planning Board to make a recommendation to Town Board to amend the Town's zoning code to establish a clear definition and regulations for data centers within the zoning districts suggested in the 2023 Orangetown Comprehensive Plan.



Douglas J. Schuetz
Acting Commissioner of Planning

Databank Orangeburg Phase Two Site Plan Review (GML-25-0340)

cc: Supervisor Teresa Kenny, Orangetown
NYS Department of Environmental Conservation
Orange and Rockland Utilities
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Highway Department
Rockland County OFES
United States Army Corps of Engineers
Kimley-Horn Engineering
Pearl River Fire Department

*New York State General Municipal Law § 239(5) requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.

The review undertaken by the County of Rockland Department of Planning is pursuant to and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions nor determines whether the proposed action reviewed implicates the Religious Land Use and Institutionalized Persons Act. The County of Rockland Department of Planning defers to the municipality referring the proposed action to render such opinions and make such determinations as appropriate under the circumstances.

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Pursuant to New York State General Municipal Law §§ 239-m and 239-n, the referring body shall file a report of its final action with the County of Rockland Department of Planning within thirty (30) days after the final action. A referring body that acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.