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June 30, 2025

Chairman Warren and Honorable Members of the
Town of Orangetown Planning Board
26 Orangeburg Road
Orangeburg, NY 10962

Re: Phase I and II Databank Orangeburg, Orangetown, NY

Dear Chairman Warren and Honorable Members of the Town of
Orangetown Planning Board:

I am counsel for David B. Rosen, 10 Buckingham Place, Old Tappan, NJ, 07675 and Chris Kielbiowski, 6 Buckingham Place, Old Tappan, NJ 07675, and several of their neighbors, all direct and adjacent neighbors to the Databank Phase I and II application ("Databank"), and who will be directly impacted by Databank. This letter is in opposition to the site plan application of Databank, which is not permitted in the Light Industrial Office LIO zoning district. This letter with exhibits is submitted to be placed in the administrative record for the July 23, 2025 public hearing.

I submitted a letter to this Board, dated January 15, 2025, which is attached hereto as Exhibit A.

I address the key issues before this Board.

- A. The Application Before This Board Should Not
Proceed Because A Data Center in the LIO District
Is Not Permitted

There is no provision for a data center, as here, in the LIO zoning district as set forth in the Table of General Use

Regulations, 43 Attachments 10, 8 and 12A, attached hereto as Exhibit B.

There is no dispute on this point as set forth in the Orangetown Comprehensive Plan, which was adopted by the Town on October 10, 2023. As set forth at page 48 of the 2023 Comprehensive Plan the only zoning district in which data centers are permitted is in the RPC-OP district. At page 69 of the Comprehensive Plan it proposes to expand data centers to the LIO zoning district, not as a permitted use as in the RPC-OP district, but only as a Conditional Use Permit.

As this Board well knows Article VIII of the Zoning Code provides general conditions and standards for Conditional Use Permits together with specific standards for every use defined as a Conditional Use Permit. Here, the Zoning Code provides for no Conditional Use standards for a data center. And that makes sense as there is nowhere in the present code for a data center as a conditional use. The only mention of conditional uses is only set forth in the Comprehensive Plan, AND NOT in the Zoning Code. **The Town Board HAS NOT adopted any changes to the Zoning Code permitting data centers in the LIO District.**

My analysis is entirely consistent with the December 20, 2024 Denial letter from the Rockland County Department of Planning, attached hereto as Exhibit C. That letter makes clear that until the zone change is in effect, and there is no application to do so, "it remains unclear how this proposal can be evaluated and permitted." Id. at page 2.

On May 16, 2025 Kimley Horn submitted a response to the Rockland County Department of Planning in which it "**Acknowledged**" that data centers are not permitted in the LIO District. Databank did not dispute that it was **NOT A PERMITTED USE**. The May 16, 2025 Kimley Horn letter is attached as Exhibit D. See page 1, Condition 1.

In the Full Environmental Assessment Form, C.3.b, Databank falsely states that the data center is a permitted or conditional use in the LIO zoning district. It is not. It is also false that it is not a phased project, D.1.e. Databank is Phase II. The EAF is attached hereto as Exhibit E.

Only the Town Board, and not this Board, has the right to enact zoning changes. This Board cannot find zoning compliance when there is no zoning compliance.

B. The Notice Improperly States This
Application Should Be Unlisted

This application should be a Type I action. The State regulations which mandate an application to be classified as a Type I are set forth at 6 NYCRR Section 617.4, which is attached hereto as Exhibit F and which is highlighted for this Board's convenience.

As the EAF makes clear the application must be designated as a Type I action because it disturbs more than 10 acres (12.87), requires over 500 parking spaces (1264 parking spaces), and the proposed facility has more than 100,000 square feet of gross floor area (the proposed data center has proposed gross floor area of 146,480 square feet). Once these thresholds, and only one threshold triggers the Type I designation, are surpassed this Board has no discretion and must designate the action as a Type I.

As set forth at Section 617.4(a) "The purpose of the list of Type I actions in this section is to identify, for agencies, project sponsors and the public, those actions and projects that are more likely to require the preparation of an EIS than Unlisted actions." 6 NYCRR Section 617.4(a). Moreover, "the fact that an action or project has been listed as a Type I action carries with it the **presumption** that it is **likely to have a significant adverse impact on the environment** and may require an EIS." 6 NYCRR Section 617.4(a)(1). (Emphasis supplied).

C. On The Complex Facts Before this Board
The Planning Board Must Require An Environmental
Impact Statement ("EIS")

As this Board well knows the threshold for an EIS is quite low. 6 NYCRR 617.7(a)(1)(2):

"(a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the **potential** for at least **one** significant adverse environmental impact.

(2) **To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.**" (Emphasis supplied).

The Environmental Assessment Form ("EAF"), last revised in May 2025 evidences that there is the potential for at least one significant adverse environmental impact. Of course there are

adverse environmental impacts that need to be studied in an EIS.

On page 2 of the EAF it sets forth how complicated the application is requiring Town Board Review (Watercourse Diversion Permit), Planning Board approval of the site plan and the SWPPP review, multiple variances from the Zoning Board, approval from Veolla Water as to a water connection, Rockland County Planning Board site plan approval and discharge approval from Sewer District 1, NYSDEC approval for oil storage and Generator Permit, Stream Disturbance Permit and Wetlands, and approval from the Army Corps of Engineers. The EAF fails to state that it needs approval of its substation from Orange and Rockland.

The EAF also fails to state that the Rockland County Planning Department rejected the application requiring an approval from the planning board of a majority plus one. GML Section 239-m.5. Exhibit C.

The EAF shows the extraordinary disturbance by the application. It sets forth that 12.87 acres will be disturbed and that it is an expansion of the Phase I project by 36.1 %. EAF page 3.

The EAF recognizes that it is adjacent to Tappan Lake, which is a critical source for public drinking water, which needs to be protected. The EAF fails to set forth that Tappan Lake is within the required 100 foot buffer. See Attachment 18, note 2, attached as Exhibit G.

Kimley Horn in response to the Rockland County Department of Planning's statement that "Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water" responds that "The applicant will submit a water services application to Veolla Water to support the proposed project." It is believed that such a submission has not been made at this time. Exhibit D, page 5, Condition 17.

The EAF at pages 4-5 sets forth that the application is within New York State wetlands. What DataBank fails to set forth in the EAF is that the NYSDEC has already made a jurisdictional determination that the proposed Databank project disturbs and is within two wetland, one identified as a Class I wetland, which means it "provide[s] the most critical of the State's wetland benefits, reduction of which is acceptable only in the most unusual circumstances", and the second identified as a Class II wetland, which means it "provide[s] important wetland benefits, the loss of

which is acceptable only in very limited circumstances."

The determination by the NYSDEC as to the critical and important wetlands being disturbed is set forth in the April 3, 2025 email, attached hereto as Exhibit H. Class I is the access area, while Class 2, which will be fully filled in, as proposed, is where the data center is proposed to be located.

Attached hereto as Exhibit I are the New York State regulations which demonstrate the significant and unlikely thresholds that Databank must overcome before the NYSDEC can grant a wetlands permit. Yet, Databank provides no such information before this Board to analyze.

It must be further noted that the project application is incomplete, as confirmed to us by the NYSDEC. The process is at a very early stage. There needs to be project jurisdiction, and Databank has yet to submit an application for wetlands permits for the Class I and II wetlands. Databank has not done so at this time.

Without input from the NYSDEC on the critical issue of wetlands this application should not be further processed as Databank will most likely have to reduce its footprint and reroute its access so that the wetlands will not be disturbed.

The EAF continues to raise significant issues that need to be addressed. At page 5 of the EAF DataBank raises the significant demand for water usage from the public water supply of Veolla, the great daily creation of liquid waste, and the need to rely on the Orangetown Wastewater Treatment Plant.

The EAF creates an additional 7.8 acres of impervious surface which addresses significant issues of runoff, and in which Databank admits that stormwater runoff will run to adjacent properties. Id. page 6.

The Databank project puts incredible demands on the electrical grid, needing on a daily basis 1,681,920,000/kwh. EAF page 7. Yet Databank provides no explanation as to how this will affect Orangetown and other neighboring municipalities. It does not address whether it will cause a drain on the residents who use Orange and Rockland as a supplier of electricity. There is no study as to the impact on the electrical grid. This needs to be thoroughly studied in an EIS.

In the Kimley Horn letter it fails to respond to the Rockland County Department of Planning's condition at Condition 21, which

states **"This development will result in an increase demand for energy and appears to pull that energy from the grid."** Exhibit C, Condition 21. (Emphasis supplied).

Databank fails to address head on the very issue of the impact on the electric grid and its impact on the community and beyond.

The EAF further states that DataBank will require a new substation, which needs to be approved by Orange and Rockland, as well as this Board. This needs to be thoroughly studied in an EIS.

Kimley Horn in its response letter **Acknowledged** at paragraph 5, page 3 of the letter that "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.**" Id. (Emphasis supplied).

The EAF provides at page 8 that there will be a minimum of disposal of three tons of solid waste per week during construction. This needs to be thoroughly studied in an EIS.

The EAF concedes that within 1500 feet of the site there is an assisted living and memory care facility, baseball fields, and the American Legion. Yet there is no discussion of impacts. This needs to be thoroughly studied in an EIS.

The EAF at page 13 states that it is within 900 feet of Rockland Psychiatric Center. This needs to be thoroughly studied in an EIS.

Attached hereto as Exhibit J is the Objection Resolution, dated March 3, 2025, of the neighboring municipality of the Borough of Old Tappan. The resolution points out that electrical demand of this one center will detrimentally impact the electrical grid. The Resolution raises health concerns relating to the substation. The Resolution further raises the increased demand on emergency services and potential pollution to Lake Tappan. The Resolution requests that the project be denied.

An EIS needs to address emergency services and how intense electrical fires are to be handled by the Town's volunteer fire

department. As this Board well knows there have already been electrical fire conditions at the Phase I project. For the Board's education I attach pertinent literature relating to the dangers from data centers. See Exhibit K. This is especially problematic and needs to be closely studied because the on site batteries contain lithium, which when on fire emit potential hazardous and toxic substances.

D. The Planning Board Must Act
Consistent With Its January 11, 2023
Approval of Phase I

The Planning Board found at condition 14 of its January 11, 2023 Resolution, that Phase II cannot be constructed because Phase I is using landbanked parking spaces which are in the location where Phase II was to be developed. The Resolution, attached in part here as Exhibit L, states plainly as follows: **"The landbanked parking spaces will be located where a second phase of the databank center was proposed in previous iterations of the site plan. The applicant must understand that with the proposed land banked parking spaces, Phase II as formerly illustrated, cannot be constructed."** (Emphasis supplied).

If Databank can locate its databank center where it was supposed to provide landbanked parking spaces than Resolution 14 is a paper tiger and never had any meaning. It is respectfully submitted that an applicant cannot segment its project into two connected parts and then after agreeing to a condition that Phase II would not be built where landbanked parking was supposed to be then assert that landbanked parking should be eliminated. This Board's integrity should remain and the applicant must live with the representations that it made during Phase I.

During the Phase I process Databank knew exactly what it was representing to get approval from this Board. It cannot, after getting its approval for Phase I, in the Phase II process state that it never meant what it represented during the Phase I process and that this Board should now just ignore the conditions that it imposed on Databank. Not even Databank has the audacity to state that somehow circumstances changed and Databank should be given a "pass". There are no changed circumstances.

"Segmentation is defined as follows: "Segmentation means the division of the environmental review of an action such that various activities or stages or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance." 6 NYCRR Section 617.2(ah).

This is classic improper segmentation. The phases are completely interconnected and Phase II was referenced in the Phase I process.

Databank realized that it needed to landbank parking spaces and agreed there would be no Phase II to obtain its approval of Phase I. Databank cannot now demand there be no landbanking so it can get its approval of Phase II.

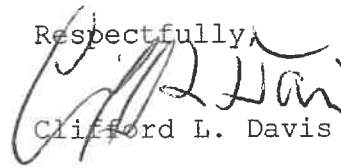
Attached hereto as Exhibit M is the September 21, 2022 Decision of the Zoning Board of Appeals which required that there be 670 landbanked parking spaces. Databank cannot now go back to the Zoning Board of Appeals and assert that there should be no landbanked parking spaces where it specifically represented to the Zoning Board of Appeals that it only be required to construct 69 parking spaces based on the very condition that 670 parking spaces had to be landbanked.

The Rockland County Department of Planning in its December 24, 2024 Denial letter, Exhibit C, made clear that it was improper for Databank to build Phase II where Phase I was conditioned upon landbanked parking spaces, and it was further improper to seek a new variance where the already agreed to 670 landbanked parking spaces were to be completely eliminated: "As we had already stated to the Orangetown Planning Board in our January 3, 2023 GML 239 Review, **these landbanked parking spaces cannot be provided with the construction of Phase 2.** The applicant is now planning on providing 105 of the 1,264 parking spaces required for Phases 1 and 2 together, and no landbanked 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. **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.**" Id. Condition 7. (Emphasis supplied).

We look forward to presenting at the public hearing in which the Planning Board **must** designate this action as a Type I action and eventually **issue a positive declaration** requiring an Environmental Impact Statement to thoroughly study these issues which is **mandated** as the low threshold under the SEQRA regulations has been surpassed here and there is the **potential** for at least **one significant adverse environmental impact**. For the Planning Board

to act otherwise subjects the Town to litigation.

Respectfully,

A handwritten signature in dark ink, appearing to read "Clifford L. Davis", is written over the typed name.

Clifford L. Davis

Encl.