

DEPARTMENT OF PLANNING

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December 20, 2024

Orangetown Planning Board
20 Greenbush Road
Orangeburg, NY 10962

Tax Data: 73.15-1-19

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 11/18/2024

Date Review Received: 12/03/2024

Item: *Databank Orangeburg Phase 2 Site Plan (GML-24-0330)*

Site plan application for construction of Phase 2 of a data bank center on 24.3 acres of a 33.9-acre parcel in the LIO zoning district. The proposal comprises a one-story data center, administrative/office space, open equipment yard, an office addition to connect to the Phase 1 building, and an additional 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. Variances were approved for Phase 1 including 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:

Recommend the Following Modifications

The Rockland County Planning Board and Planning Department were previously given opportunities to review Phase 1 of Databank Orangeburg. Our department provided numerous comments in our final GML Section 239 Review letter, dated January 3, 2023 including issues pertaining to the number of parking spaces, scale and energy usage of the proposal, and environmental constraints. The Orangetown Planning Board approved the Phase 1 site Plan on January 11, 2023. 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 the application for Phase 2 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 among their concerns. The Rockland County Planning Department offers the Orangetown Planning Board the following

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comments regarding the Proposed Phase 2 Databank:

- 1 As stated in this department's GML Section 239 Review of January 3, 2023, "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. According to the Orangetown Comprehensive Plan, adopted October 10, 2023, there are plans to allow data centers in the LIO district as a conditional use, among other districts. 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 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.
- 2 According to the FEAF, question D.2. (b) ii., the proposed action will fill 0.08 acres of ACOE wetlands and 0.16 acres of surface water onsite, and also impact 108 linear feet of a stream. This department discourages the filling of wetlands, as this can potentially affect the areas capacity for flood mitigation and damages and disrupts the local ecosystems. It is recommended that the Town protect these significant water resources and satisfactorily mitigate that the effects of the loss of wetland and stream. We furthermore recommend that the scale of this proposal be reduced to decrease the amount of filling required and additional protection of onsite resources are provided.
- 3 As previously stated, the site contains Federally regulated wetlands. An updated review must be completed by the United States Army Corps of Engineers and all required permits obtained.
- 4 If the US Army Corps of Engineers requires a permit pursuant to Section 404 of the Clean Water Act for the discharge to fill in Waters of the U.S., then a Section 401 Water Quality Certification (WQC) will be required to verify compliance with State water quality regulations. Issuance of these certifications is delegated in New York State to the NYSDEC. If the project qualifies for a Nationwide Permit, it may be eligible for coverage under a DEC Blanket WQC. Coverage under a Blanket requires compliance with all conditions for the corresponding Nationwide Permit. For more information and to view the DEC Blanket WQCs, please visit <https://www.dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program>. A determination on Corps jurisdiction and a Nationwide Permit eligibility is likely necessary for a DEC jurisdictional determination.
- 5 According to the Hudson Valley Natural Resources Mapper <https://gisservices.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>
- 6 A review must be completed by the New York State Department of Environmental Conservation, any comments or concerns addressed, and all required permits obtained.
- 7 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 demonstrate 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 on providing 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. 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.

- 8 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).
- 9 A review must be done by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.
- 10 A review must be completed by the County of Rockland Highway Department, all comments or concerns addressed, and all required permits obtained.
- 11 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 ensure that the site is designed in a safe manner and there is sufficient maneuverability on the site for emergency vehicles.
- 12 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.
- 13 There shall be no net increase in the peak rate of discharge from the site at all design points.
- 14 Question D.2.e.iv (page 6) of the FEIS indicates that plan minimizes impervious surface, use pervious material or collect and re-uses stormwater, however the SWPPP page 10 indicates that no vegetated swales are proposed, no rain gardens are proposed, pervious pavers were used for Phase 1 but there is no indication for their use in Phase 2. It appears that this question should be answered negatively, or alternatively 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.
- 15 The Planning Board shall be satisfied that the implementation of the Stormwater Pollution Prevention Plan (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.
- 16 The Planning Board shall be satisfied that the SWPPP and stormwater discharges comply with the state and local Municipal Separate Storm Sewer System stormwater management program including post-construction runoff control and pollution prevention/good housekeeping.
- 17 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. If any public water supply improvements are required, engineering plans and specifications for these improvements shall be reviewed and approved by the Rockland County Department of Health prior to construction in order 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.
- 18 According to the DECInfo Locator <https://gisservices.dec.ny.gov/gis/dil/> Lake Tappan is on the NYSDEC Waterbody Inventory/Priority Waterbodies List. The DEC fact sheet on Lake Tappan states “Water supply uses of Lake Tappan are thought to be threatened due to the considerable amount of urban, residential, and commercial development in the watershed, resulting (from) nonpoint source runoff and possible other discharges.” The health of Lake Tappan and the health of the watershed should be carefully taken into consideration in the approval and construction of this facility.

- 19 The size of the proposed improvements indicated in the project description on the FEAF are not consistent with those depicted on the site plan drawing. The FEAF states that Phase 2 will include a 145,000 square-foot data center with a 6,500 square-foot administrative office, while the site plan demonstrates that these improvements will be 146,480 square feet and 7,395 square feet, respectively. The application materials must be revised so that all information is consistent and accurate. In addition, the square footage of the proposed equipment yard should be labeled on the site plan drawing.
- 20 A Databank operating 24 hours a day, 7 days a week uses a significant amount of energy. The August 16, 2024, architectural drawings indicate that for Phase 2, five (5) data halls would be constructed. This is being proposed in addition to the five data halls constructed in the Phase 1 building. The FEAF dated November 13, 2024, question D.2. (k) estimates the annual electricity demand for operating the proposed action with "TBD." The Town should have a clear understanding of the 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. 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.

There are other questions on the FEIS which the applicant should be able to provide answers to such the amount of fuel oil to be stored and solid waste generated.

- 21 This project presents an opportunity to advance the goals of the New York State Climate Leadership and Community Protection Act (the Climate Act) through the inclusion of the inclusion of on-site renewable energy. This development will result in an increase demand for energy and appears to pull that energy from the grid. Presuming the proposed commercial buildings will have flat roofs they may very well be conducive to the installation and use of solar panels. It is recommended that the potential use of on-site renewable energy be evaluated and strongly considered. Likewise, the building should be designed and constructed to maximize energy efficiency. Solar car ports can also be considered for the parking areas.
- 22 The applicant must obtain any necessary permits from the New York State Department of Environmental Conservation's Division of Air Resources for the proposed generators.
- 23 The applicant must provide as-built drawings and other documentation to New York State Department of Environmental Conservation, 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.
- 24 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.
- 25 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.
- 26 The SWPPP states, on page 48 that all new vegetation will be native species however the list of species provided, included Norway Spruce, Siberian Spruce and Green Giant Arborvitae are not native to New York State. This department recommends that the applicant use plants that are native to New York for the proposed landscaping to help preserve and promote biodiversity. 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>.
- 27 All proposed signage shall conform to the sign ordinance in Chapter 31C of the Orangetown Code.

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- 28 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.
- 29 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.
- 30 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.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Supervisor Teresa Kenny, Orangetown
NYS Department of Environmental Conservation
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.