



PLANNING DEPARTMENT

P.O. Box 40 • Irrigon, Oregon 97844
(541) 922-4624 or (541) 676-9061 x 5503
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AGENDA

Morrow County Planning Commission
Tuesday, June 27, 2023, 6:00 pm
Morrow County Government Building
Irrigon, OR 97844

[For Electronic Participation See Meeting Information on Page 3](#)

Members of Commission

Stanley Anderson
Charlene Cooley
Stacie Ekstrom

John Kilkenny
Mary Killion
Elizabeth Peterson

Wayne Seitz
Karl Smith
Brian Thompson

Members of Staff

Tamra Mabbott, Planning Director
Stephen Wrecsics, GIS Planning Tech
Katie Keely, Compliance Planner

Stephanie Case, Planner II
Michaela Ramirez, Office Manager

Call to Order

Roll Call

Pledge of Allegiance: I pledge allegiance to the flag of the United States of America and to the republic for which it stands: one nation under God, indivisible with liberty and justice for all.

1. **Election of Officers**
2. **Minutes:** April 25, 2023 [pages 3-16](#)
3. **PUBLIC HEARINGS** to begin at 6:00 pm (COMMISSION ACTION REQUIRED):

Presented By: Katie Keely, Compliance Planner

[Memo pgs 17 & 18 Findings 19-26](#)

Continued from April 25th meeting-Conditional Use Permit Compliance Review CUP-N-339-19: Cesar Andrade applicant, Victor Nunez owner. The property is described as tax lot 1600 of Assessor's Map 5N 26 36BC. The property is zoned Rural Residential (RR) and located southwest of Irrigon on the south corner of Wagon Wheel Loop. This is a review of a previously approved conditional use permit for a home occupation supporting the applicants trucking business. Criteria for approval is found in the MCZO Article 3 Section 3.040 RR Zone and Article

6 Conditional Uses.

Presented By: Tamra Mabbott [pgs 27-96](#)

AC-145-23; ACM-146-23; AZM-147-23 Comprehensive Plan and Map Amendment. Rowan Percheron, LLC, Applicant. The property is located approximately 9 miles south of I-84 on Tower Road. The application proposes to amend the Comprehensive Plan to allow for rezoning approximately 274 acres from Exclusive Farm (EFU) Use to General Industrial (MG) and adopt a Limited Use Overlay Zone to limit MG uses to a data center only. The application also includes an exception to Statewide Planning Goals 3 Farmland, Goal 11 Public Facilities, and Goal 14 Urbanization. Applicable Criteria include Morrow County Zoning Ordinance (MCZO) Article 8 Amendments, Oregon Administrative Rules (OAR) 660-004-0010.

Presented By: Katie Keely, Compliance Planner [pgs 97-101](#)

OTHER BUSINESS -Planning update

Correspondence-

Public Comment
Adjourn

Next Meeting: Tuesday, July 25, 2023, at 6:00 p.m.
Location: Bartholomew Building, Heppner, OR

ELECTRONIC MEETING INFORMATION

Morrow County Planning is inviting you to a scheduled Zoom meeting. Topic: Planning Commission
Time: June 27, 2023, 06:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/6554697321?pwd=dFMxR2xlaGZkK1ZJRFVrS1Q0SmRxUT09>

Meeting ID: **655 469 7321**

Passcode: **513093**

Find your local number: <https://us02web.zoom.us/j/6554697321?pwd=dFMxR2xlaGZkK1ZJRFVrS1Q0SmRxUT09>

Should you have any issues connecting to the Zoom meeting, please call 541-922-4624. Staff will be available at this number after hours to assist.

This is a public meeting of the Morrow County Planning Commission and may be attended by a quorum of the Morrow County Board of Commissioners. Interested members of the public are invited to attend. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours before the meeting to Tamra Mabbott at (541) 922-4624, or by email at tmabbott@co.morrow.or.us.



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**Minutes of the Public Meeting of the
 Morrow County Planning Commission
 Tuesday, April 25, 2023, 6:00 p.m.
 Morrow County Government Center, Irrigon, Oregon
 (All meetings will be offered through video conferencing via Zoom)**

Morrow County Planning Commissioners Present: Chair Stacie Ekstrom, Karl Smith, Charlene Cooley, Mary Killion, Elizabeth Peterson, Brian Thompson, Wayne Seitz, Stanley Anderson

Attendance via Zoom: John Kilkenny

Morrow County Staff Present: Tamra Mabbott, Planning Director; Michaela Ramirez, Office Manager, Stephanie Case, Planner II, Stephen Wrecsics, GIS Planning Technician., Katie Keely, Compliance Planner.

Called to Order: Meeting was called to order by Chair Ekstrom at 6:01 pm.

The Pledge of Allegiance was recited.

Approval of Minutes: Commissioner Seitz moved to approve the minutes of January 31, 2023, meeting as written. Commissioner Smith seconded, and the motion carried.

Director Mabbott asked that everyone introduce themselves as it was the first time that all the new commissioners were together in person.

Public Hearings: Planning Commission Chair Ekstrom read the Planning Commission Statement and Hearing Procedures.

Subdivision SD-N-226-23: Albert and Barbara Phillips, Applicants, and Owners. The property is described as tax lot 1901 of Assessor's Map 5N 26E 23D. The property is zoned Rural Residential (RR) and located west of Irrigon on Columbia Lane, east of the Seventh Road intersection. The request is to partition an approximately 18.62-acre parcel into seven lots. Criteria for approval included Morrow County Zoning Ordinance (MCZO) Section 3.040 RR Zone and the Morrow County Subdivision Ordinance (MCSO).

Stephanie Case, Planner II presented the current status of the proposed subdivision. There currently is a shop and approval to build a structure on the west side of the property. She informed the Planning Commission that there was a Subdivision Review Committee made up to go over the criteria and some issues that came up. Staff recommends approval of the application subject to the following conditions prior to filing the final subdivision plat:

1. It is recommended that the property owners have their water tested annually for nitrate and nitrate levels.
2. Each property will be proposed to have its own septic and drain fields installed in accordance with the Umatilla County Health approvals.
3. The applicant has each undeveloped lot have site suitability prior to signing the final subdivision plot.
4. It is listed that the applicant submits and records an agreement for road maintenance and repairs of the internal road.
5. The applicant provides proof of title or contract interest to the property as required in our ordinance.
6. Letters provided that the potential land owners will have service for each of them from utilities in the area including West Extension Irrigation District, Umatilla Electric, telephone, and internet providers.
7. The applicant is to provide a letter from the district stating that it meets the subdivision requirements for fire safety and protection requirements showing they have adequate room to turn around in the internal roadway.
8. The applicant shall work with Morrow County Public Works and receive design and construction approval and receive any access and approach permits and install signs that are required
9. The name of the roadway will have to be approved by the Planning Department.
10. The applicant and any subsequent land owner shall obtain any necessary zoning and building permits.

Planner Case summarized parts of the application.

Pages twelve-fourteen relate to design standards of the streets not applicable to this application because of its small size.

Page fifteen states Columbia Lane is a major collector and there is a proposed and internal roadway. It is not within the influence of a highway interchange or adopted interchange management area and the applicant is required to obtain appropriate access permits.

Pages 20 and 21 are precedent and subsequent conditions of approval that are recommended. The precedent conditions would have to complete before filing the final plat. Subsequent Conditions would be required afterward, before development permits are issued. Enclosed are the preliminary findings, vicinity map, and the intended plan that was provided at the time of the application. Comments were received after sending out the Public Notice to adjoining owners and agencies that were requested to be added to the record. Comments received from the City of Irrigon, which addressed nitrates.

Planner Case requested Director Mabbott to give comment on nitrates and letter from city.

Director Mabbott asked the Commission to add both letters to exhibit for the record -West Extension and the City of Irrigon

Chair Ekstrom asked Planning Commissioners for a motion to as the letters to the record.

Commissioner Cooley motioned, Commissioner Smith seconded and all voted unanimously.

Director Mabbott summarized the letter from the City of Irrigon. The City was concerned with the lot size and proposed larger lots. They based their suggestion on a study by Curt Black from the Environment Protection Agency done in 2002. In his study, he recommended two-acre lots because of nitrate levels. The city also suggested that the Planning Commission impose a condition of approval that required an alternative septic system. Currently, the County does not

have any standards for septic systems. The Planning Department does not have anything to do with septic system permitting as it is up to Umatilla County Environmental Health.

Chair Ekstrom pointed out that she didn't ask if there were any conflicts of interest, there were none.

Chair Ekstrom invited the applicant to present any testimony or evidence.

Testimony: Barbara Phillips, the applicant, introduced herself and her husband Al Phillips. She explained that their intention with the property was to subdivide. They are working diligently to follow all the county standards. Al had test holes for septic dug and inspected. They would like only allow stick-built homes with garages. They were accompanied by their surveyor and septic installer in case anyone had questions for them.

Chair Ekstrom asked if the Planning Commission had any questions.

Director Mabbott proposed to add an extra condition of approval. Director Mabbott suggested that the applicant inform the new home buyers to pick up a home buyers packet from the Planning Department. Director Mabbott and Planner Case will update the new homeowner packets with information about water quantity, quality, exempt wells.

Commissioner Kilkenny asked if this one is a one-time condition or can the Planning Department do it all the time.

Director Mabbott explained that the Planning Department does it regularly but will add the new information to the homeowner's packet.

Neutral comments: Ron McKinnis, the surveyor, commented that the existing water rights from West Extension will stay. Because of the conditions made the access road a dedication, there will be a modification on the plat for the right of way. Each lot will exceed two acres.

Chair Ekstrom asked for any additional or proponents.

Neutral comments: Brent Bradfield spoke about the applicant using irrigation water and asked if there is going to be an easement on the north side.

The applicant, Al Phillips, answered no.

Chair Ekstrom announced the commission was done with that portion and then asked if there were any opponents to testify or to present evidence.

Neutral comment: Brent Bradfield from Brace Rd commented that their well is really close to a fence that is on a slope of sand and is concerned about his septic.

Chair Ekstrom asked if there was anybody in favor or opposed.

Chair Ekstrom if there was anybody or agencies that had neutral testimony.

Director Mabbott pointed out that the Public Work's director, Eric Imes, was present and asked if he had any comments.

Neutral comment: Eric commented that he did not have any, but would like to address the surveyor about creating a hammerhead in the cul-de-sac and that the homeowners would be

responsible for the road maintenance. He will discuss the cul-de-sac with the developers at a later time.

In opposition: Carla McLane from McLane Consulting testified on behalf of the City of Irrigon. The County declared a state of emergency because of nitrates in the ground and drinking water. Having seven wells and septic would be a concern because the city is still recovering. She would like the Planning Department to consider protecting the water situation.

Chair Ekstrom asked if there were any questions, comments or rebuttals.

In favor: Brandon Brown a local well contractor commented about drilling depths and the static level of water. He explained that tightly cemented gravel is a good filtering system. He stated that the state of emergency that occurred was west of Irrigon. He went on to explain that he is not finding high nitrate levels in the wells he has drilled. He believes where he is drilling there will be no quality problems.

Commissioner Anderson commented that he was told to be concerned about radioactivity in the fish in the river.

Mr. Brown replied that we are not drinking river water and that where nitrates are found is in shallow wells. They are now drilling deeper wells and claimed water is filtered through the gravel.

Commissioner Kilkenny asked Mr. Brown if he would not expect to find nitrates in the wells.

Mr. Brown answered there would be significantly less.

Chair Ekstrom asked if they were done.

In favor: Brady Rettkowski, installs septics, stated Irrigon has a valid nitrate concern but his company is following the DEQ's rules. DEQ does not require sand filters or any kind of altering treatment technology. The setup for the subdivision has been done very nicely. They are set for 450 gallons per day at its peak and they really only expect to see 250 gallons per day. If they go higher the DEQ would require a different treatment setup. Mr. Rettkowski claimed that the soils in this area were high in organic matter and work well for the septic systems they are to install. He also said that the septic systems were being installed fairly shallow so that the oxygen helps the good bacteria to thrive. He will coordinate with Mr. Brown as to the location of the wells.

Commissioner Smith asked Mr. Rettkowski if quite a bit of the water from the drain fields evaporate.

Mr. Rettkowski replied: that is why we keep them shallow and keep them in the riff zone.

Chair Ekstrom closed the public hearing and asked if there were questions for Planning Commission. There were none. She called for motion.

Commissioner Smith motioned to approve the request Subdivision SD-N-226-23 and Commissioner Seitz seconded, vote was unanimous, motioned carried.

Chair Ekstrom opened the second hearing and asked if there were any conflicts of interest, there were none.

Presented By: Katie Keely, Compliance Planner

Conditional Use Permit Compliance Review CUP-N-337-19: Joshua and Shannon Karl, applicants and owners. The property is described as Tax Lot 202 of Assessor's Map 4N 25E 21 and is located on Kunze Lane adjacent to the intersection of Kunze Lane and S. Main Street, Boardman. Property is zoned Suburban Residential (SR) and is within the Boardman UGB. This is a review of a previously approved conditional use permit for a home occupation supporting the applicant's towing and short-term storage of vehicles. Criteria for approval are found in the MCZO Article 3 Section 3.050 SR and Article 6 Conditional Uses.

Compliance Planner Keely asked if the letter from the City of Boardman could be added to the record.

Chair Ekstrom asked to add the letter from the City of Boardman to the record.

Chair Seitz approved the motion and Chair Smith seconded, vote was unanimous, motion carried.

Commissioner Seitz asked Planning staff about the final notice of July 28, 2021, if there was any communication received from the applicant.

Compliance Planner Keely replied no, She started January 2022 and had not received any communication. Mr. Karl came in and spoke to Planner Case, but didn't know what the conversation was about.

Commissioner Seitz asked if there was any communication received after the March 27, 2023 letter.

Compliance Planner Keely responded no.

Chair Ekstrom invited the applicant to present any testimony in evidence.

Josh Karl testified that he hadn't received anything about this meeting or anything on April 7th. He went on to read from a letter that stated he had received letters continually and that the owner is Mildred Baker that has been deceased for a year now. He also stated he didn't know who was being notified. He said that he is the owner and the letter stated he lived outside the area. He and his family have lived there. When he initially submitted his application in 2019 he lived in Yakima. Lee Dockens filled out the application for him and he wasn't aware of what was written on it. Lee Dockens asked him to go along with him so he would get the application approved. He pointed out that the hours of 7 am to 11 pm didn't make sense because people don't stop crashing at 11 o'clock at night to 7 in the morning. If a policeman calls to say someone is trapped in their car or someone needs towed, we can't say no we can't tow until 7 in the morning. He hadn't noticed that detail until he read the packet.

As for the wrecking yard, there are no parts taken off the vehicles because that was one of the conditions. As for the access permit he never came to pick up an application but did discuss it with-he didn't remember who-but he came in with Randy Baker. The access was already there prior to Kunze Lane being built and it was being grandfathered in. He asked for more proof of where he had to go to get the letter for not having the access permit because there are three accesses on the property before he bought it. He currently only uses two of them, one for business and the other for personal. He is still waiting to hear back from that issue and never got a reply. He knew who to go to get the access permit as through the application but who to talk to about that he didn't need an access permit. He consulted with Randy and neither of them

was told where to get it. His son is currently running the business and no one else. Yes, he did advertise for a driver but it was not on J & S Towing's Facebook page it was on his private page, which no one had any business bringing up. He is starting up another business outside of Boardman which has no relation to the towing company in Boardman, so that is irrelevant He claimed that many of the pictures that were taken were told there were some that are current. He admitted that there is a lot of stuff there now. He went on to say he wasn't able to take care of much at the time because he has been traveling a lot to take care of a very ill sister. His reason for things accumulating on the property was that his son does not have the authority to remove anything off the property and he hadn't had time to fill out paperwork so that he can do so. He is working on getting the vehicles moved and now has the paperwork to get things going.

Chair Ekstrom asked if staff or commission had questions for the applicant.

Compliance Planner Keely commented that the county was aware that the property owner is not Mildred Baker and she has not been mailed anything in the last two years. The March 23rd letter was specifically mailed to Josh & Shannon Karl at the 70270 Kunze address.

Mr. Karl asked if that was the letter for the access permit or a request for an access permit.

Compliance Planner Keely communicated to the Planning Commission the correspondence between Public Works and Mr. Karl was included in their packet.

Mr. Karl responded that he was at the meeting when the Conditional Use Permit was approved.

Planner Case was also present.

Compliance Planner Keely read the condition where Mr. Karl was to tow cars from 7 am to 11 pm and nothing should have been moving from 11 pm to 7 am. She also pointed out that Mr. Karl was to only store cars for thirty days and that the location was not to be a full tow wrecking yard. Another condition stated that Mr. Karl was to apply for an access permit and it has now been three years and it has not been done. As for the advertisement on a public forum, the advertisement was found on a Boardman page and it was assumed that it was for Boardman.

Director Mabbott asked Public Works Director Eric Imes to clarify the access permit process for Mr. Karl because it was her understanding property owners are only granted one access per parcel.

Mr. Imes responded that accesses pose an issue when they are closer to town because they are dealing with more city-like style situations. Mr. Imes recalled visiting the location and wasn't concerned with any safety issues. He said he would have to go back to his file to look through his notes, but he did remember that the job was never completed. He stated three approaches were something they would typically not approve and maybe that's why it didn't get finished.

Planner Case commented that one of the accesses was too close to the intersection at Main if she recalled correctly.

Mr. Imes agreed.

Mr. Karl commented that it was three acres wide.

Mr. Imes reiterated that he did recall an application, going out to look at the property, noticed

there were already two approaches, and for whatever reason wasn't completed. He needs to go back and look at the file. There will not be an issue with an approach permit but there will be an issue with having three approaches.

Mr. Karl stated that only two were being used, one for the house and one for the business. He also stated that the farmer next to him also uses the business approach even though they have their own.

Mr. Imes asked if it was the neighbor to the east.

Mr. Karl responded yes.

Mr. Imes said he remembers the neighbors applied for an access permit and it also wasn't complete. He understood now it was because the neighbor used Mr. Karl's.

Mr. Karl said they began grading the approach and stopped because they were accessing the graveled access on his property. He said the West Irrigation people also use his access to get to the irrigation area.

Mr. Imes recalled that he never approved the neighbor's access because they never improved it.

Mr. Karl said the others were put in when Kunze was made, aprons were also put in, at least that is what he was told by Randy Baker and they didn't have to have an access permit.

Planner Case spoke with Kirsti Cason at Public Works after having a conversation with Josh and Randy. Kirsti and Planner Case concluded because there was a change of use in that approach they needed to obtain a permit to use it for the business.

Mr. Imes pointed out on the map where the neighbors requested access but were never finished.

Mr. Karl says the access on the east end is never used.

Director Mabbott wanted to clarify with Mr. Imes that the applicant needed to submit an access permit.

Mr. Imes said yes, that is correct.

Director Mabbott clarified that Mr. Karl needed to submit an access permit for it to be approved but it just hasn't happened, but there is a path forward.

Mr. Imes, agreed, all they have to do is reapply and he could come and take a look. The accesses to the west and east could be worked out.

Commissioner Peterson asked how long it would take Mr. Karl's son until he gets the documentation to scrap the vehicles.

Mr. Karl responded they would start it tomorrow.

Commissioner Peterson asked how long will it take to scrap the vehicles.

Mr. Karl responded a month to sixty days.

Director Mabbott asked if he was scrapping them onsite.

Mr. Karl answered no.

Director Mabbott informed him that he wasn't licensed to scrap onsite.

Mr. Karl replied that they do not dismantle any vehicles.

Commissioner Peterson noticed the correspondence in the packet where Mr. Karl was asking why he was required an access permit. It looks like the correspondence isn't complete because the staff had met with him.

Commissioner Seitz asked if Mr. Karl had commented earlier that he couldn't live with the seven to eleven which was the original condition. Is that still true?

Mr. Karl said he had no control over the drivers if he received a tow call he has to respond. He had not received any complaints from his neighbors about noise and he believes it's not a nuisance. He said he had no excuse he should have read the conditions a little better.

Commissioner Thompson replied that being the case something totally different would have to be approved. There are specific conditions that had not been accomplished not that they couldn't be. The Planning staff had put in a lot of their time. The applicant asked for thirty days to clean up but would like sixty. I know it would take some time and to get into compliance we would have to change the agreement.

Compliance Planner Keely replied that it is a rural residential zone and those conditions would not change because of the zone it is in.

Commissioner Thompson commented that he would have to do something different between eleven and seven or he would be out of compliance. Those are the rules that have to be complied with.

Commissioner Kilkenny read part of the permit- reading that the proposed shall be conducted not should be, emphasized shall, further stating that the proposed business shall abide by section 8 and shall operate seven am through eleven pm. It is not an option that is how the business shall be conducted, there is no exception.

Commissioner Peterson asked if there is another location to take vehicles outside of this area.

Mr. Karl responded that he tried to look for other properties to buy or rent for this purpose and hadn't had any luck. It's been really tough.

Commissioner Peterson asked if he had spoken to the Port to see if there was something available.

Mr. Karl responded he had not. He spoke with Karen Pettigrew from the Cemetery District so he could get some information on some properties they managed.

Commissioner Peterson advised him to talk to the Assessor's office about it.

Mr. Karl responded that the cemetery owns it but doesn't know who was renting it from them. He reached out to them and hadn't received a response. He had looked into other properties to no avail.

Compliance Planner Keely expressed to Mr. Karl that the County wants his business to stay in Morrow County it just can't be in a Rural Residential zone.

Director Mabbott asked Mr. Karl to come to the Planning Department to get some contact information for him.

Planner Case clarified that there were no noise complaints which was not the reason we were pursuing a compliance issue.

Chair Ekstrom asked if there was an opponent to testify or present any evidence, there were none

Neutral: Carla McLane-agreed that there were no complaints of noise but they had the same pictures similar to the ones in the packet. One of the conditions was to give you a year to comply but we like it to be a shorter amount of time, suggesting one hundred-eighty days but sixty sounds better.

Chair Ekstrom invited the applicant if he had a rebuttal, testimony, or any final comments.

Mr. Karl responded no.

Chair Ekstrom asked if there were anyone who would like to continue the hearing or hold the record open.

Director Mabbott and Compliance Planner Keely came up with three options. They also spoke with legal counsel Dan Kearns. His recommendation was to continue this hearing until the next meeting to be held in Irrigon. Two months is close to sixty days which would give him a chance to get into compliance.

Commissioner Killion said there is a lot on the property to clean up to get into compliance. She asked the applicant if that was possible for him in that amount of time and understood it would be a lot financially.

Mr. Karl responded that it would have to be.

Commissioner Peterson asked the Planning Commission if they would agree to ninety days. She added if that was realistic for Mr. Karl

Mr. Karl responded he had to do what he had to do.

Director Mabbott replied that she wanted to set Mr. Karl up for success. She told Mr. Karl that the business would have to be subtle so that when people pass by they see it as a home not a home occupation and that is not the case. She mentioned that she is launching other neighborhood programs offering incentives and Mr. Karl could maybe benefit from them. Director Mabbott asked Compliance Planner Keely if he would qualify for the 272 forms.

Compliance Planner Keely told Mr. Karl if he requested certain information from the Sheriff's office about the vehicles so that he could get the vehicles off the property

Mr. Karl responded that he had a private company that does that for him.

Compliance Planner Keely shared with him that form 272 may be an option for him.

Mr. Karl said he knew nothing about that.

Compliance Planner Keely advised him to speak with Lt. Braun in regards to it because he was very familiar with it.

Chair Ekstrom asked Mr. Imes what the timeline was on the permits he needed for access.

Mr. Imes responded if they were straightforward he could approve them in a week.

Director Mabbott explained the access permit process to Mr. Karl.

Planner Case pointed out that the permit is valid for ninety days.

Mr. Imes explained the process again and he could get it done as long as it meets the criteria.

Director Mabbott asked Chair Ekstrom if they wanted to make sure that he brought the property into compliance they could continue this hearing until August 29th and by then there should be no vehicles on his property, a final approved access permit with Public Works, no operating between eleven pm and seven am and not unloading at the property.

Compliance Planner Keely mentioned that that was her concern, the unloading of the vehicles at the property because that is what has accumulated over the years. There were vehicles that had been there for over fifteen months.

Director Mabbott asked how many tow trucks he had when he applied in 2019 and how many he intended for this property.

Mr. Karl answered nine altogether and he bought another in 2020.

Planner Case asked if he had a tow company before he moved here.

Mr. Karl responded yes

Director Mabbott asked the Planning Commission to go back to the original permit to see what they had originally permitted. She couldn't imagine that nine were approved for a Rural Residential Zone. If Mr. Karl has nine tow trucks it's not a home occupation it is a full-blown industrial business.

Mr. Karl said he didn't use them all.

Director Mabbott asked if they were parked on the property.

Mr. Karl responded yes

Commissioner Thompson felt it was something they didn't ask but it was not what they intended it to be. He went on to say that they had given him ninety days and go from there.

Director Mabbott stated she would like to dig further into the number of tow trucks there are.

Mr. Karl says that each truck is used for different scenarios and many would be going over to the Hermiston company.

Director Mabbott made a recommendation to the Chair about specifics of what he should be allowed to have in a residential zone for the next time we meet. She thought three would be the maximum goal. She asked Mr. Karl to reach out to the Planning Department because we can be pretty resourceful and of big help.

Chair Ekstrom would like to see him again at the August 29th meeting.

Commissioner Peterson asked if Mr. Karl would be willing to share documents of when vehicles were towed.

Compliance Planner Keely reiterated the question about the documentation.

Mr. Karl responded that he would be willing to share.

Commissioner Thompson asked to make a motion and then asked how many days does he have until the August date. Commissioner Thompson made a motion to revisit this hearing on August 29th with the thoughts laid out by staff that Mr. Karl needs to get an access permit, hours of business, thirty-day vehicle removal, and the number of tow trucks.

Planner Case pointed out it is one hundred twenty-six days until the August 29th meeting.

Commissioner Seitz seconded the motion.

It was a unanimous vote to continue the hearing to the next Irrigon meeting on August 29th at 6 pm.

Presented By: Katie Keely, Compliance Planner

Conditional Use Permit Compliance Review CUP-N-339-19: Cesar Andrade applicant, Victor Nunez owner. The property is described as tax lot 1600 of Assessor's Map 5N 26 36BC. The property is zoned Rural Residential (RR) and located southwest of Irrigon on the south corner of Wagon Wheel Loop. This is a review of a previously approved conditional use permit for a home occupation supporting the applicant's trucking business. Criteria for approval is found in the MCZO Article 3 Section 3.040 RR Zone and Article 6 Conditional Uses. Chair Ekstrom pointed out the applicants were not present and asked if there were questions for staff, there were none.

Chair Ekstrom asked if there were opponents to testify or present evidence.

Barbara Phillips is the neighbor of the applicant. She wanted to be anonymous. Ninety percent is true of the noise, traffic, and burning. She doesn't mind noise but between seven-eleven. People that live in the country should be able to do things out in the country. She explained the

business they currently run. No one is upkeeping the road but her husband. He has spent a lot of money on gas and time on the road. There should be control over the size of the business. She gets along with her neighbors.

Chair Ekstrom asked if anyone else had questions.

Commissioner Killion asked if he is being communicated with a language of his choice.

Compliance Planner Keely explained that the daughter is the one communicating with the dad. She explained after the family had received the compliance letter they contacted the Boardman officials for a permit and Boardman advised them to get in contact with us and we have not heard anything from them. With the Counsel, Dan Kearns the Planning Department approved a Zoning Permit for the shop.

Commissioner Killion asked how old is the daughter.

Compliance Planner Keely responded she is college-age.

Commissioner Killion responded that she was old enough.

Commissioner Peterson replied that she is not a certified translator.

Commissioner Peterson shared her experience with the medical field that children shouldn't be used in a legal business because they may not do it correctly.

Planner Case said we don't know what language they would need translated as a request wasn't indicated.

Commissioner Peterson commented that they might be intelligent but might not understand planning language.

Chair Ekstrom says they knew enough to apply

Compliance Planner Keely stated that they must have understood because they communicated with Boardman about the shop they had already built.

Compliance Planner Keely said that she was the one that applied for the permit.

Commissioner Peterson said that that solved her question she had about translating.

Director Mabbott suggested if she wanted to continue this to the next hearing we would get a certified translator for the next time we have a meeting in Irrigon on June 27th. We could also send a certified letter and have it translated or have it translated at the county level to make sure it's clear.

Planner Case said that could be an issue we might not know what language to translate to and we shouldn't make an assumption.

Commissioner Peterson suggested that we might want to apply this in the future and not go backwards.

Planner Case said that as of this month, our Zoom has the capability for translation and they can choose what language they need.

Commissioner Thompson asked how many times had the Planning Department reached out to them and how many times had they responded.

Planner Case said several times over the years.

Compliance Planner Keely said they hadn't responded to her since she started compliance. The communication was with Planner Case or former employee Shambra Cooper.

Commissioner Thompson asked if they understood what it was they needed to do.

Planner Case said yes, she had spoken with the daughter.

Commissioner Thompson asked if she gets it.

Planner Case responded yes, explaining that the Nunez are owners and Andrade are buying on contract, but that they do receive all the letters we sent to the Andrade's.

Compliance Planner Keely explained that she went out on medical leave and when she came back the shop was built. A stop-use order was sent out and that is when they came in and filled out a Zoning Permit in the daughter's name. Our Counsel suggested we approve it. The daughter went to Boardman for a building permit and was advised to contact Planning Department and we haven't heard anything from them.

Commissioner Kilkenny said it sounded like they were running a business in a residential zone, either they know or they don't know and they're just not complying.

Commission Peterson said that it looked like we did our due diligence and they didn't come tonight.

Director Mabbott responded no.

Commissioner Kilkenny asked if there was an opportunity for them to appeal a decision in a county court and that decision can be translated properly.

Director Mabbott responded that she would have to think about it because that would mean we are revoking a permit. She said if that is the way the Commission chooses to go or chooses to continue the meeting. If the Planning Commission revokes the permit then it could go to Justice Court as an enforcement matter.

Chair Ekstrom asked for neutral comments and have the hearing held open, there were none.

Mr. Imes commented about maintenance in that area as everyone knows the county can not maintain that loop but has great ideas of how to get it done without using county dollars. Just reach out to him and he would discuss with anyone on that issue.

Commissioner Thompson suggested a registered letter sent with a plan to take steps in order to get them in compliance in sixty days and see them back here in Irrigon at the next meeting. If there isn't compliance then we take it back up again.

Commissioner Peterson asked that we find out what language to send the letter in.

Director Mabbott responded we would do our best to find out what language.

Commissioner Thompson says that they are so far out of compliance whether they understood it or not they would have to stop business.

Planner Case was concerned that the shop was built in the BPA easement. Planning staff did reach out to the BPA to notify them and so

far, have not heard back. She would really like to coordinate with them so that they understand where their easements were.

Director Mabbott said the motion would be to continue the hearing to June 27th and summarized with a list for the next hearing:

1. identify the language of choice
2. provide written correspondence in their native language
3. Planner Case will do some research on the BPA easement and share the plan with the applicant at the meeting indicated previously.

Commissioner Thompson suggested that there needs to be a plan for the applicant.

Commissioner Thompson motioned for the hearing to continue and the motion was seconded by Commissioner Seitz, the vote was unanimous.

Other Business Director Mabbott shared information on the Monthly Update and an experience with trucking businesses in Umatilla County.

Chair Ekstrom asked for public comment

Madison Phillips from La Grande introduced herself.

Chair Ekstrom closed the meeting at 8:15 pm.



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MEMORANDUM

To: Morrow County Planning Commission
From: Katie Keely, Compliance Planner
Cc: Tamra Mabbott, Planning Director
Date: June 16, 2023
RE: Follow up to April 25, 2023 meeting
Conditional Use Permit Compliance Review for
CUP-N-339-19 Cesar Andrade & Victor Nunez

Summary of Hearing

Conditional Use Permit CUP-N-339-19 Home Occupation. Original request was for the “storage of two semi-trucks that would be exiting the property once per week,” and, to allow “several (7) smaller farm trucks that would only operate one month out of the year during harvest.”

Over the past couple years, Planning Department has received numerous complaints in regards to the trucking business, semi-truck traffic and operating a repair shop. The Planning Department has conducted several onsite visits and communicated with the landowner in depth. The Planning Department has determined that this permit is not in compliance with the conditions of approval listed below:

- Condition 1- Operations related to this permit should not interrupt or interfere with surrounding residential use.
- Condition 2- All heavy equipment and truck traffic shall take place between the hours of 7:00am and 11:00pm, consistent with the Morrow County Noise Ordinance.
- Condition 5- Any person employed at this location will be limited to immediate family members.

Staff has amended the findings to show June hearing date.

See attached findings for CUP-N-339-19.

At the April 25, 2023 hearing, Planning Commission asked staff to follow up with the landowner and applicant. The matter before the Planning Commission is to determine whether CUP-N-339-19 is in compliance with the adopted conditions of approval.



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Below is a summary of interactions with the landowner since the April 25th commission meeting.

- 05/08/23 Letter Sent out about continued compliance review for June 27,2023
- 05/18/23 Established property owner would like correspondence in English & Spanish
- 05/30/23 Contact with Selene Andrade (English speaking daughter) about setting up a meeting at the office.
- 06/02/23 Contact with Selene Andrade to set up meeting for June 6 at 11 am at the Planning Department.
- 06/06/23 Meeting with Selene Andrade and Cesar Andrade to discuss their CUP conditions. They are unsure on how to meet compliance with the original permit without having to stop the repair shop. Cesar was advised that they would need to meet the conditions of original permit. Cesar requested a meeting with a planner to discuss the possibility of applying for a change of his property.
- 06/12/23 Dave Thatcher, BPA Compliance Officer, contacted Planning Department. (Planning had attempted to contact BPA prior to the April commission meeting to discuss restrictions BPA has regarding the BPA easement on Andrade property.) Mr. Thatcher informed that he would be working with the BPA legal team; he believes the shop is too close to the BPA easement. BPA is also concerned with the semi-trailer parked under the transmission tower, various out buildings, fencing and "stuff" stacked up around tower.
- 6/15/23 Cesar Andrade and Selene Andrade met with Planning Director and Planner Wrecsics this day to discuss options to rezone his property. Planners advised that they could file an application to rezone but likely Planning Commission would not approve a spot zone. Planners spent time looking up industrial parcels in the county. Mr. Andrade indicated he would look for a different property would need time. He confirmed he would be at the June 27th meeting. Planners offered to meet anytime and look up zoning prior to purchase of a property for the trucking business.

ACTION / OPTIONS FOR PLANNING COMMISSION

With any of the options below Compliance Planner will work with landowner to bring property into compliance over time.

Option 1. Revoke the permit.

Option 2. Amend and clarify terms and conditions and approve permit.

**PRELIMINARY FINDINGS OF FACT
CONDITIONAL USE REQUEST
Application Number CUP-N-339-19**

2023 COMPLIANCE REVIEW

The purpose of the Planning Commission hearing and these updated Findings is to evaluate the 2019 land use permit and determine if the permittee is in compliance with conditions of approval and then take action on the permit.

Findings for the original request is shown below in standard font. The 2023 compliance review is shown in blue italic font.

ORIGINAL REQUEST: To allow a home occupation to support the applicant's trucking business.

REVIEW REQUEST: To review Conditional Use permit for Home Occupation.

APPLICANT: Cesar Andrade
81032 Wagon Wheel Loop
Irrigon, OR 97844

OWNER: Victor & Susana Nunez
30687 Birtrand St.
Hermiston, OR 97838

PROPERTY DESCRIPTION: Tax Lot 1600 of Assessor's Map 5N 26 36BC

PROPERTY LOCATION: Located on the South corner of Wagon Wheel Loop approximately one mile southwest of Irrigon.

FINDINGS OF FACT:

- I. **BACKGROUND INFORMATION:** The applicant currently owns and operates a trucking company and this proposal is the result of Code Enforcement for operation of a home occupation without first being properly permitted. The applicant wishes to continue to utilize this property for storage of all trucks and move them in and out of the property primarily during harvest season.

2023 Updated Findings BACKGROUND INFORMATION

This operation was originally permitted in 2019 as a "home occupation" that was described as "2 semi-trucks that work nearly all year round and only enter and leave the property once per week. The seven other smaller trucks are only active and moving one month per year. Throughout this month, the smaller trucks enter and leave the property one time each week." Since then, the Planning Department has observed what appears to be a full-time trucking company operated from this residential property. The original proposal, storage of trucks during the harvest season, has grown to a large fleet of continuously circulating trucks, truck storage and truck repair on-site operating under the business name of Andrade Repair. Planning Department has received noise complaints from the

residential neighbors of trucks running and being moved during all hours day and night. The Compliance Planner has observed employees working on trucks in the shop. The shop that is being used for service and repair of commercial vehicles was built and started operation without obtaining permits from the Planning Department or the Building Official. Staff have sent 6 letters to the applicant describing the non compliance. Response from applicant has been limited. As documented herein, this full-scale trucking operation dominates the site, does not qualify as a "home occupation," has several nuisance impacts on the surrounding residential neighbors, is in violation of the conditions of the 2019 permit approval and the original approval criteria for "home occupations" in a residential zone.

- II. **COMPLIANCE WITH MORROW COUNTY ZONING ORDINANCE SECTIONS 6.020, 6.030, 6.050.** The requirements for approval are listed below in bold type, followed by a response in standard type.

SECTION 6.020 General Criteria In judging whether or not a conditional use proposal shall be approved or denied, the Commission shall weigh the proposal's appropriateness and desirability, or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met or can be met by observance of conditions.

(1) The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies and regulations of the County.

The proposed use is allowed as a Conditional Use Permit in the Rural Residential Use Zone. Staff would find that the proposed use would be consistent with the Comprehensive Plan and Zoning Ordinance once approved with the outlined conditions.

The traffic from multiple trucks has been shown to not be compatible with the rural residential character of the neighborhood. The scope of the original proposal has evolved to be a full-blown commercial/industrial scale business rather than a use that is compatible in a rural residential area. Given the applicant is not able to comply with the conditions of approval and the trucking business has become a nuisance in the residential neighborhood, county finds the applicant does not comply with this criterion.

(2) If located within the Urban Growth Boundary of a city, that said city has had an opportunity to review and comment on the subject proposal.

This criterion is not applicable as the proposed use is located outside the Urban Growth Boundary.

(3) The proposal will not exceed carrying capacities of natural resources or public facilities.

Planning staff have determined that the proposed use will not affect natural resources and public facilities are not needed the applicant states that the trucks travel on gravel roads and public roads, therefore there is no demolishing of natural habitat. See discussion below regarding the public access entrance of Wagon Wheel Loop from the County Road System.

County finds that the heavy traffic volume exceeds the carrying capacity of the county and public roadways. County also finds that the oil, petroleum products and other waste noted by photo

and record by the Compliance Planner is not consistent with this standard. Based on this, staff finds the applicant cannot meet this criterion.

SECTION 6.030 General Conditions In addition to the standards and conditions set forth in a specific zone, this article, and other applicable regulations; in permitting a new conditional use or the alteration of an existing conditional use, the Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the County as a whole. These conditions may include the following:

- A. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.**

The proposed use shall be conducted in a way that will not disturb neighboring residences. The proposed business shall abide by Section 8 of the Morrow County Code Enforcement Ordinance related to Noise as a Public Nuisance. Section 8 of the Code Enforcement Ordinance establishes that noise made between the hours of 11:00pm and 7:00am is a public nuisance, therefore, all heavy equipment and truck traffic shall take place between the hours of 7:00am and 11:00pm. This is recommended and listed as a condition of approval, any complaints received will result in a review of the activity and potential revocation of the permit.

County has received complaints as recently as 4/8/2023 of Semi trucks being left running late at night. Compliance Planner has a record of complaints received over the past several years. Truck traffic is constant, coming in and out during the daytime and night, which is in direct violation of the original conditions.

- B. Establishing a special yard or other open space or lot area or dimension.**

This proposed use will utilize existing structures and lot area, the application states that fencing is already in place and surrounds the entire property. Please see Subsection J for fencing requirements. Planning staff would not recommend any additional requirements for open space.

- c. Limiting the height, size or location of a building or other structure.**

The applicant has not made any requests for changes to the height, size, or location of any buildings or structures.

- D. Designating the size, number, location and nature of vehicle access points.**

- 1 Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required*

Access is from Wagon Wheel Loop, a public right of way from Depot Lane, which is a County Road. Due to the nature of the proposal, the applicant will need to coordinate with Morrow County Public Works to make any necessary improvements to the public access entrance of Wagon Wheel Loop to minimize impact to the County Road System. Planning staff recommend and list as a condition of approval that the applicant obtain approval from Morrow County Public Works for improvements and maintenance of the public access entrance of Wagon Wheel Loop from Depot Lane.

- 2 In addition to the other standards and conditions set forth in this section, a TIA will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.

The applicant indicated the total number of trips to be 60 automobile trips per week. The application states, "there are 2 semi-trucks that work nearly all year round and only enter and leave the property once per week. The seven other smaller trucks are only active and moving one month per year. Throughout this month, the smaller trucks enter and leave the property one time each week. The average automobile trips is well below the 400 automobile mark. Should this home occupation generate more than 400 trips per day or should complaints be received additional review may be required up to and including a Traffic Impact Analysis. Should operations outside of those identified in the application, additional review and approval could be warranted.

Application narrative from the original 2019 application shows the original intent as to permit two semi-trucks that would be working nearly all year round. Those 2 trucks would be entering and leaving property one time per week. Compliance planner has observed and documented 6 to 8 semi-trucks on the property being stored, serviced or operating at any given time.

- E. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.
No increase in street dedication, roadway width, or improvements in the right-of-way are proposed by the applicant. See discussion below regarding the public access entrance of Wagon Wheel Loop from Depot Lane. These preliminary Findings of Fact have been provided to Morrow County Public Works for their review and comment.
1. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development.
The existing driveway and parking area provides appropriate access for emergency vehicles. Preliminary Findings of Fact have been provided to the Irrigon Rural Fire Protection District for their review and comment.
- F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or loading area.
The application states that no portion of the land is subject to flooding. This area is currently used in residential and farming applications. Planning staff would not add any new conditions and would find this criterion met.
- G. Limiting or otherwise designating the number, size, location, height, and lighting of signs.
No business signs are required or intended to be used according to the application. Should any be installed they need to comply with MCZO Article 4 Section 4.070. This is recommended and listed as a condition of approval.
- H. Limiting the location and intensity of outdoor lighting and requiring its shielding. Home Occupations are secondary to the primary use of a residential dwelling. The application

indicates that no alterations are required or requested, therefore any outdoor lighting should be for residential use.

- I. Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance. The proposed use would not require diking, screening or landscaping to protect nearby property. Planning staff would not require any of these provisions due to the proposed use.
- J. Designating the size, height, location and materials for a fence. Any fencing over six feet in height will require zoning and building permit approval. Planning staff would not require any actions under this criterion at this time.
- K. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources. The application states that the occupation has the ability to use the existing entries, gravel roads, and public roads for transportation. The business is compatible with surrounding land uses. Planning staff would not place any additional requirements under this criterion.
- L. Other conditions necessary to permit the development of the County in conformity with the intent and purpose of this Ordinance and the policies of the Comprehensive Plan. Home Occupations are secondary to the primary use of a residential dwelling; therefore, the dwelling should be maintained as such. This application would allow the property to be used as part of the semi-trucking business of the applicant. The proposed use is in support of surrounding agricultural operations; however, the operations are in a residential zone and should not interrupt or interfere with surrounding residential uses. This is listed as a condition of approval.

No additional requirements are deemed necessary by Planning staff.

Since 2019, there have been a number of complaints about the truck traffic and trucking repair business. The business has grown in scope, volume and intensity. See attached photos. The business exceeds what was originally requested and approved for parking trucks on the parcel seasonally. Even if conditions could mitigate the impacts, the record since 2019 is that the applicant is operating a much different business than what was proposed or approved and has not complied with conditions of approval.

SECTION 6.050 STANDARDS GOVERNING CONDITIONAL USES

- G. Home Occupations, when permitted as a conditional use and conducted as an accessory use, shall be subject to the following limitations:
1. The home occupation is to be secondary to the main use of the property as a residence and shall be conducted only by the resident of such dwelling within the same dwelling or in an accessory building on the same or adjacent property.
The proposed occupation will be a secondary use of the property and will be operated by the residents of the dwelling. This criterion has been met.

The trucking business is not being operated in a manner that is secondary to the residential use of the property or the residential nature of the area. The current business operation dwarfs any residential use of the property. Under the Morrow County Development Code, the business operation is supposed to be secondary/accessory to the primary residential use of the property. In this case, however, the business amounts to a full-on commercial trucking business operation, with a large fleet of ever-circulating trucks, truck repair and everything needed to support a full trucking business on-site. The residential use is distinctly secondary to this level of business use.

2. **No structural alterations shall be allowed to accommodate the home occupation except when otherwise required by law, and then only after the plans for such alteration have been reviewed and approved by the Planning Commission. Such structural alterations shall not detract from the outward appearance of the building as an accessory structure to a residence. No structural alterations are proposed by the applicants or required for the proposed use. This criterion is met.**

The applicant built a large shop which appears to be intended for truck repair without obtaining Zoning or Building permits for the new shop building. Andrade Repair, registered with the Corporation Division of Oregon Secretary of state on April 1, 2021, Cesar Andrade Morales as the Authorized representative. Compliance Planner has observed employees working on trucks inside the Bay of the truck repair shop. (See attached photos with date stamp.)

3. **One non-illuminated sign not to exceed 200 square inches and bearing only the name and occupation of the resident shall be permitted. No signs have been proposed by the applicants. See the discussion above in Section 6.030 General Conditions.**
4. **No materials or mechanical equipment shall be used which will be detrimental to the residential use of the property or adjoining residences because of vibration, noise, dust, smoke, odor, interferences with radio or television reception, or other factors. Please see the discussion above in Section 6.030 General Conditions.**

Planning Department has received complaints of improper disposal of Solid waste (garbage) and hazardous waste (oil and petroleum products). Decomposing agricultural waste has been observed dumped in piles on the property. Noise complaints pertaining to the trucks being left running at all hours and truck movement have been reported. The operation is not in compliance with this standard.

5. **No materials or commodities shall be delivered to or from the property which are of such bulk or quantity as to require delivery by a commercial vehicle or a trailer or the parking of customer's vehicles in a manner or frequency as to cause disturbance or inconvenience to nearby residents or so as to necessitate off-street parking. Parking facilities are adequate as to not require off-street parking. See above discussion and Conditions of Approval relating to uses in the residential area.**

Given the number of trucks being stored on the property there does not appear to be adequate parking on the subject parcel, even if that level of truck/vehicle use could be allowed as a "home occupation."

6. Retail sales shall be limited or accessory to a service.

No retail sales are proposed. This criterion is met.

7. No persons shall be employed except members of the immediate family. The applicants are the owners/operators of the business and should employees be needed in the future; the applicant has stated this standard would be applied. This is a requirement under this section and is listed as a condition of approval.

Planning Department staff have researched and obtained information on several businesses registered and operated from this location with the Secretary of State and USDOT. Gilberto C Chapa is registered with 7 employees; Cesarin Trucking LLC registered with 5 employees; Monarch Transport LLC registered with 4 employees. Andrade Repair number of employees unknown. A condition of the 2019 permit limited employees at the site to family members only.

8. The permit allowing a home occupation shall be reviewed every 12 months following the date the permit was issued and may continue the permit if the home occupation continues to comply with the requirements of this section.

This permit shall be reviewed annually by Planning Department staff with other home occupation permits as long as the proposed use continues. This is listed as a Condition of Approval.

This permit has been reviewed annually and has been found to not be in compliance with the conditions of approval.

III.LEGAL NOTICE PUBLISHED:

April 5 & 6th, 2023

Heppner Gazette and East Oregonian

IV.PROPERTY OWNERS NOTIFIED:

April 7, 2023

V.AGENCIES NOTIFIED: Mike Gorman, Morrow County Assessor; Eric Imes, Morrow County Public Works Director; Irrigon Rural Fire Protection District; Morrow County Land Use Counsel; Morrow County Sheriff's Office.

VI.HEARING DATE:

April 25, 2023

North Morrow Annex Building, Irrigon, Oregon

VII. DECISION OF PLANNING COMMISSION: The Planning Director recommends approval of the application subject to the following **CONDITIONS OF APPROVAL:**

1. Operations related to this permit should not interrupt or interfere with surrounding residential uses. *The business is a nuisance and disruptive to adjoining residential properties. The applicant has not operated the business in compliance with this condition.*
2. All heavy equipment and truck traffic shall take place between the hours of 7:00am and 1:00pm, consistent with the Morrow County Noise Ordinance. *Truck traffic has operated outside the bounds of this condition.*
3. The applicant must obtain approval from Morrow County Public Works for improvements and maintenance of the public access entrance of Wagon Wheel Loop from Depot Lane.
4. Should any signs be installed in the future they would need to comply with the regulations in place at that time.
5. Any persons employed at this location will be limited to immediate family members. *Based on evidence attached, there are at least 16+ employees at this location.*
6. This permit shall be reviewed annually by Planning Department staff with other home occupation permits as long as the proposed use continues.

2023 Updated DECISION OF THE PLANNING COMMISSION: Based on the above Findings, Planning staff provides the Planning Commission with three options:

1. *Find that the applicant is not in compliance with the original permit and the conditions of approval and revoke the permit, or,*
2. *Find the applicant can come into compliance with the underlying home occupation approval criteria and the conditions of 2019 approval and allow the operator a set period of time to achieve/demonstrate compliance, not to exceed one year, or*
3. *Continue the hearing to the May meeting, allowing the applicant time to make changes to the business operation and prove that the business can be operated in compliance with the permit.*

Chair, Morrow County Planning Commission

Attachments:

Vicinity Map

Documents from Compliance Planner

**Morrow County Board of Commissioners
Draft Findings of Fact
Rowan Percheron, LLC
AC-145-23, AC(Z)-146-22, AZM-147-23**

REQUEST: to amend the Comprehensive Plan to change the Plan and zoning designation of a 274-acre parcel from Exclusive Farm Use (EFU) to General Industrial (MG) and adopt a Limited Use Overlay (LUA) Zone to limit use to a data center. Application also includes an exception to Statewide Planning Goal 3, 11 and 14 to allow for a data center use.

APPLICANT: Rowan Percheron, LLC
1330 Post Oak Boulevard, Suite 1350
Houston, TX 77056

OWNER: Threemile Canyon Farms
75906 Threemile Road
Boardman, OR 97818

PROPERTY DESCRIPTION: Tax Lot 100 of Assessor's Map 3N 24

PROPERTY LOCATION: Property is located on Tower Road approximately 9 miles south of Interstate 84, west and south of the City of Boardman. Parcel is just north of the old PGE Coal Fire Plant.

FINDINGS OF FACT:

I BACKGROUND INFORMATION:

The 274-acre parcel is vacant, non-irrigated, undeveloped land. Along the western boundary of the parcel is an existing 230-kV transmission line that runs south approximately 1.6 miles to the existing transmission infrastructure at the Portland General Electric (PGE) Carty natural gas generating plant. To the east of the parcel is the Boardman Conservation Area (BCA) and to the southeast is the existing Carty site. There is a parcel of land zoned General Industrial (MG) approximately 5,000 feet to the south and west and a large parcel to the north and east zoned Space Age Industrial.

Project Description:

Rowan Percheron, LLC (Applicant) is the contract purchaser of the 274-acre parcel. Rowan Percheron proposes to develop a data center campus. The Project Parcel is currently zoned Exclusive Farm Use (EFU). The purpose of the EFU Zone is to "preserve, protect and maintain agricultural lands for farm use, consistent with historical, existing and future needs, including economic needs, which pertain to the production of agricultural products." MCZO 3.010

The project parcel has not been put into productive use. The parcel is comprised predominately of nonarable soils and the applicant and owner consider it to be not suitable for farm use. The property owner has been unsuccessful in putting the land into agricultural cultivation and does

not believe grazing is an option. The landowner submitted an affidavit to this effect.

According to the application, the project parcel is suitable for data center use given its proximity to critical infrastructure. The project parcel is located about 5,000 feet from the Portland General Electric Carty generating plant site and adjacent to an existing 230 kV transmission line ROW. The existing 230-kV transmission runs about 1.6 miles along the western boundary of the Project Parcel and Tower Road. The Portland General Electric Carty site includes a 450-megawatt (MW), combined-cycle natural gas-fueled electric generating power plant, the Grassland Switchyard, the Carty Substation, a 500-kV transmission line and the Carty Reservoir. In total, the Carty site encompasses an approximately 4,997-acre site boundary.¹ According to the application, the data center anticipates receiving power from Pacific Power via the existing and planned electrical infrastructure at the Carty site and via the existing transmission ROW along Tower Road.

According to the application, the parcel is suitable for a data center due to the flat topography (less than 15 percent slope) and is situated to avoid adverse environmental impacts to water availability, wetlands, habitat, and sensitive species and is not located within a floodplain.

The application indicates that development of the data center campus will be phased according to market demand and conditions, with an estimated full build-out of the project footprint over a number of years. The Applicant anticipates full build-out to include multiple data warehouse buildings, and all associated accessory components as described below. The primary and associated components of the proposed data center constitute a “data center” within the meaning of MCZO 1.030 and are anticipated to be limited to the project footprint. See “**Figure 5** Project Area Components” attached. The primary and accessory components of the proposed development may include:

- A data center campus including multiple data system warehouse buildings
- Parking areas for employees and interior access roads
- Anticipated onsite septic, stormwater, and wastewater management systems
- Fire protection system, including water storage tank(s)
- Back-up power supply systems
- Onsite substations and electrical interconnection equipment

These are the primary and accessory facility components based on the applicant’s conceptual design and represent the likely facility components of the final design, although the specific number and size of the particular facility components may vary. The applicant maintains that such variation does not undermine the analysis to support the requested goal exceptions and zone change to allow a data center within the Project Footprint.

The applicant has experience with data center development and plans to locate the proposed data center and accessory buildings in a manner that avoids impacts to the wetlands and floodplain within the project parcel. Additionally, the Applicant will maintain a buffer (250-feet) of the project footprint from the adjacent conservation area that runs along the eastern edge of the

parcel. In general, data centers have a relatively lower level of impact to the surrounding area than other industrial uses, due to less intensive operational traffic, noise, emissions, and viewshed impacts.

Surrounding Land Uses. The surrounding land use is primarily agriculture however, to the east is the PGE natural gas plant and to the south is the site of the former PGE Coal fired plant.

Soil Types: As provided in the soil report provided by the applicant, land capability classifications within the project footprint are predominantly 7e (non-irrigated) for Koehler and Quincy, 6e (non-irrigated) for Royal and Taunton, and a very small percentage of 4e (non-irrigated) for Sagehill fine sandy loam. Outside of the project footprint, soils are Class 4e, 6e, and 7e soils. The predominate non-irrigated soil land capability classifications indicate severe limitations (land capability classes 6 and 7) to cultivation for most of the project footprint and moderate limitations (land capability class 4) for the remaining area of the project parcel.

Water Supply According to the application, the project will require potable water for employees and industrial water for processing and cooling. For industrial process water, the Applicant anticipates about 20 to 60 million gallons of annual total water use for the data center campus. Applicant is evaluating options for sourcing the needed water. Currently, potential water supply sources for domestic and industrial water include but are not limited to (1) a water supply agreement for use or transfer of existing water rights from nearby water rights holder(s) and (2) water supply and an infrastructure agreement with the Port of Morrow to obtain water from the Port's proposed water treatment facility located near the Boardman Airport Industrial Park. See attached Port of Morrow Water Supply Memorandum of Understanding [MOU]).

The application describes the benefits of working with the Port of Morrow as a water supplier. "First, the Port of Morrow is currently designing additional infrastructure to serve potable industrial uses near the Boardman Airport Industrial Park and extension of these services may serve the Project Parcel. In addition, this option would help to minimize impacts to the ground and surface water conditions in the immediate vicinity of the Project Parcel, including to adjacent productive farmlands. Applicant requests the Goal 11 exception as a part of this application because the Applicant seeks the flexibility to select a water supply source that may involve extension of public services from the Port of Morrow. (Note, the application includes a Goal 11 exception for the extension of public water services "despite the plain language of the goal and the implementing administrative rules because of the court's ruling in *Foland v. Jackson County*, 239 Or App 60, 64-65 (2010) (finding that the overarching policies of Goal 11 and the history of amendments to the goal supported Land Use Board of Appeal's [LUBA] decision that Goal 11 prohibits the extension of city water services to serve an *urban use* on rural land without a Goal 11 exception)." Goal 11 exception is below.

Power:

The project parcel is directly adjacent to an existing transmission line ROW that runs south along Tower Road for about 1.6 miles to the Carty site and Grassland Switchyard. The application indicates that the project will receive power from Pacific Power via a new 230-kV transmission line utilizing existing ROW along Tower Rd, and 34.5kV distribution facilities. The data center campus project will also include the installation of onsite back-up power supply systems.

Wastewater:

Applicant proposes to manage stormwater and industrial wastewater onsite with one or more onsite evaporation ponds. The on-site retention pond design includes an infiltration rate of 2 inches/hour with a 6-foot pond depth and up to 2 feet of freeboard. Application indicates that a state 1200-Z Permit will not be needed, as there is no anticipated direct discharge or stormwater. However, a copy of Public Notice and Findings were sent to DEQ who has regulatory authority over stormwater.

According to the application, for onsite black and grey water, the estimated annual volumes for a data center could range from 10,000 to 15,000 gallons per day (GPD). The application indicates that the data center campus will seek to minimize stormwater runoff to the extent possible. Applicant also will construct an onsite septic system.

For industrial wastewater (process and blowdown water), the applicant anticipates recycling the water using an onsite wastewater treatment system. Specific design was not included in the application however the application indicates that “once the water is no longer capable of being recycled, wastewater will be treated, managed onsite in a retention pond, or treated using other appropriate water recycling technologies. If needed, the wastewater treatment systems are expected to be designed and engineered for the appropriate quantities of produced industrial waste water.”

Transportation & Access: Applicant provided a traffic study as part of the application which concludes that no roadway improvements are necessary. The traffic study recommended that development include a new access to Tower Road be constructed and to install a stop sign.

The data center will operate 24-hours per day in shifts. On average, data center will employ at least 35 full-time equivalent employees and many additional third-party vendor employees. The jobs include data center engineering operations (managing the facility), data center operations (managing the servers in the data halls), and security operations staff.

II MORROW COUNTY ZONING CODE STANDARDS APPLICABLE TO LEGISLATIVE DECISIONS

To approve the request county will be required to adopt findings to show that the request meets the necessary criteria which are presented below in **bold** print with responses in regular print.

MCZO 8.040 provides the applicable approval criteria for a zone change. Applicant response is in standard font below.

MCZO 8.040, CRITERIA. The proponent of the application or permit has the burden of proving justification for its approval. The more drastic the request or the greater the impact of the application or permit on the neighborhood, area, or county, the greater is the burden on the applicant. The following criteria shall be considered by the Planning Commission in preparing a recommendation and by the County Court in reaching their decision.

A. *The local conditions have changed and would warrant a change in the zoning of the subject property(ies).*

Response: The Project Parcel has been zoned EFU since Comprehensive Plan and Zoning Ordinance acknowledgement on January 30, 1986. Applicant provides the following analysis. “The purpose of the EFU Zone is to “preserve, protect and maintain agricultural lands for farm use, consistent with historical, existing and future needs, including economic needs, which pertain to the production of agricultural products.” “Agricultural Lands” are defined as land of predominately Class I-VI soils and “other lands suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. MCCP, Goal 3 (Agricultural Lands Element): OAR 660-033-0020(1)(a). The Project Parcel is comprised predominately of nonarable soils, not suitable for farm use. The underlying soils are unproductive, highly erodible, and the property owner has been unsuccessful in putting the land into agricultural cultivation; it is not even productive for grazing.” Applicant provided an affidavit declaring the land is not farmable.

According to the application, “the historic and current conditions of the Project Parcel arguably disqualify the Project Parcel from being “agricultural land” under Goal 3.” This argument implies that given that the land has not been farmed and is not practicably suitable for farming, the land should not be considered “agricultural land” under Goal 3.

Applicant further notes that “future conditions of the Project Parcel, given the changing environmental conditions of the area, likely ensure that it will remain unproductive into the future with likely increased soil erodibility.”

If county concurs with the analysis above, county may find that conditions have changed to warrant rezoning the Project Parcel.

B. *The public services and facilities are sufficient to support a change in designation including, but not limited to, water availability relevant to both quantity and quality, waste and storm water management, other public services, and streets and roads.*

Response:

Stormwater or Wastewater Services and Facilities. No *public* stormwater or wastewater services or facilities are proposed or needed. Applicant anticipates managing all stormwater or industrial wastewater onsite.

Water Services and Facilities. The development will require potable water for employees and industrial water for processing and cooling. For industrial process water, applicant anticipates about 20 to 60 million gallons of annual total water use for the data center, depending on a variety of factors. Applicant is evaluating options for sourcing the needed water. Currently, potential water supply sources include, but are not limited to (1) a water supply agreement for use or transfer of existing water rights from nearby water rights holder(s) and, (2) a water supply agreement with the Port of Morrow to obtain water from the Port’s Boardman Airport Industrial Park. Initially, an onsite exempt groundwater well may provide up to 5,000 GPD of potable water for supplying the restrooms, sinks, lunchroom, until such time as POM facility water is available.

Police/Fire/Emergency Response Services and Facilities. The Project Parcel is within the

Boardman Rural Fire Protection District's (RFPD) service area. A copy of the Public Notice was sent to Boardman Rural Fire Protection District.

Transportation Services and Facilities. Applicant provided a Traffic Impact Analysis that concluded the proposed zone change will not result in significant impacts to the County's transportation system and the existing roads. The TIA analysis calculated traffic impacts during construction and operation. Based on the TIA and the conditions recommended in the TIS, County may find that the public transportation system is adequate to support the zone change. Morrow County Public Works is evaluating the TIA and may provide additional comments.

1. Amendments to the zoning ordinance or zone changes which significantly affect a transportation facility shall assure that land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

- a. Limiting allowed land uses to be consistent with the planned function of the transportation facility or roadway;***
- b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,***
- c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel to meet needs through other modes.***

Response: As discussed under Subpart (2) below, this zone change application does not significantly affect a transportation facility, therefore Subpart (2) does not apply to this application.

2. A plan or land use regulation amendment significantly affects a transportation facility if it:

- a. Changes the functional classification of an existing or planned transportation facility;***
- b. Changes standards implementing a functional classification;***
- c. Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or***
- d. Would reduce the level of service of the facility below the minimal acceptable level identified in the Transportation System Plan. (MC-C-8-98)***

Response: The application concludes that the zone change application does not significantly affect a transportation facility, as demonstrated in the Traffic Impact Analysis. Morrow County Public Works reviewed the TIA and found that the recommendations for an access permit and stop sign are acceptable however, Public Works also recommends the developer enter a Road Use Agreement to pay for a chip seal of the northerly eight (8) miles of Tower Road after construction is complete (prior to issuance of an Occupancy Permit). Morrow county has responsibility to maintain the northerly 8 miles of Tower Road, from the intersection of Interstate 84 south to milepost 8. From milepost 8 to the south, Portland General Electric has responsibility for road maintenance, including snow plowing and surface improvements. Applicant could consult with PGE and develop an agreement for maintenance on the southerly

section of Tower Road.

That the proposed amendment is consistent with unamended portions of the Comprehensive Plan and supports goals and policies of the Comprehensive Plan, that there is a public need for the proposal, and that the need will be best served by allowing the request. If other areas in the county are designated for a use as requested in the application, then a showing of the necessity for introducing that use into an area not now so zoned and why the owners in should bear the burden, if any, of introducing that zone into their area.

Response: Application included an alternatives analysis of other locations and concluded that “[t]he proposal serves a public need of providing safe, reliable data storage, benefitting individuals, as well as public and private entities.” The Alternatives Analysis (attached) indicates that “another site is not reasonably available.” The proposed Project Parcel is in proximity to other industrial uses and transmission infrastructure. The application concludes that they do not “anticipate offsite impacts that would burden area landowners.” The alternatives analysis could be more specific in order to make affirmative Findings that the application complies with this standard.

D. The request addresses issues concerned with public health and welfare, if any.

Response: Applicant demonstrates in the EESE Analysis that the proposal will not result in significant adverse impacts to nearby lands. Applicant does not anticipate the proposed construction and operation of the data center would result in public health or welfare concerns and will respond on the record if any such concerns are raised.

III. GOALS 3, 11, AND 14 EXCEPTION REQUESTS

The Applicant proposes to develop an urban-scale industrial use on rural agricultural land that may require public services for water supply. In such circumstances, when urban-scale development and public services or facilities are proposed to be located on rural agricultural land, an applicant must demonstrate compliance with the applicable standards for goal exceptions in both OAR 660-004 and OAR 660-014.

COMPLIANCE WITH OAR 660, DIVISION 4

Goal Exception Process, OAR 660-004-0010

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

** * **

(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9)

(d) Goal 14 "Urbanization" as provided for in the applicable paragraph (l)(c)(A), (B), (C) or (D) of this rule:

** * **

(D) For an exception to Goal 14 to allow urban development on rural lands, a local government must follow the applicable requirements of OAR 660-014-0030 or 660-014-0040, in conjunction with applicable requirements of this division;

Response: Application includes goal exceptions under OAR 660-004-0010(1)(a) Agricultural Lands, (c) Public Facilities, and (d)(D) urbanization. Findings below evaluate whether this application meets the applicable requirements of OAR 660-004-0020, 660-004-0022, 660-011-0060(9), and 660-014-0040 to allow the requested goal exceptions.

Planning for the Goal Exception Area, OAR 660-004-0018

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, OAR 660-014-0040,

or OAR 660-014-0090, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.

Response: Applicant seeks reason exceptions to Goals 3, 11, and 14 to allow for urban-scale industrial use and provision of public water service on land designated and zoned agricultural.² The Project Parcel is also considered “undeveloped rural land” under OAR 660-014-0040(1). To ensure that the County meets OAR 660-004-0018(4), the Applicant requests that the County impose a Limited Use (LU) overlay zone on the Project Parcel to limit the industrial uses allowed in the M-G Zone to only a data center under MCZO 3.070(16). The proposed development falls within the definition of “data center” under MCZO 1.030, as discussed above under Section 2, Project Description.

Goal Exception Requirements, OAR 660-004-0020

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

Response: The Applicant requests that the County amend the MCCP to document the exceptions to ensure compliance with OAR 660-004-0020(1).³

(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

Reasons Justify the Requested Exceptions:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

Response: OAR 660-004-0020(2)(a) provides the first of four standards for goal exception requests. It requires an applicant to (1) demonstrate reasons justifying why the applicable goal policies should not apply, (2) describe the amount of land for the use, and (3) explain why the use requires a location on resource land.

With respect to “reasons,” justifying why the applicable policies of Goals 3, 11, and 14 should not apply to the Project Parcel, the affected Goal 3 Policy would not apply as the policy preserves agricultural lands for farm use, the affected Goal 11 Policy would not apply as the

² While OAR 660-011-065 does not explicitly require an exception to be taken to extend water service to rural land, case law suggests that such an exception is in fact required. *See Foland v. Jackson County*, 239 Or App 60, 64-65 (2010) (finding that the overarching policies of Goal 11 and the history of amendments to the goal supported LUBA’s decision that Goal 11 prohibits the extension of city water services to serve an *urban use* on rural land without a Goal 11 exception).

³ Applicant notes that OAR 660-014-0040(4) mirrors OAR 660-004-0020(1), requiring that exceptions be captured in the MCCP.

policy prohibits extension of public services to serve industrial uses on rural lands, and the affected Goal 14 Policy would not apply as the policy prohibits urban-scale uses on rural land.

OAR 660-004-0020(2)(a) does not prescribe the “*reasons*” that may be used to justify an exception. OAR 660-004-0022, 660-011-0060(9), and 660-014-0040 provide reasons for justifying the requested goals exceptions, although these rules do not provide an exclusive list of reasons. The language is clear that the list of reasons to justify an exception “include but are not limited to” those in rule.⁴ Applicant demonstrates below that reasons that justify why the state policies embodied in Goals 3, 11, and 14 should not apply to the Project Parcel.

With respect to the “*amount of land for the use being planned,*” Applicant is requesting up to a 274-acre exception area for the Project Parcel. However, the actual footprint of the development will be smaller than 274-acres. Rather, applicant proposes to microsite the Project within the project parcel to avoid impacts to drainages and wetlands and limit permanent impacts to about 190 acres. See attached “conceptual example layout.”

According to the application, with respect to “*why the use requires a location on resource land,*” the location on agricultural land, adjacent to large tracts of agricultural land, “allows for the opportunity to manage process water onsite, alleviating the need for the extension of public sanitary services or facilities. In addition, rural resource land proposed for the Project Parcel is adjacent to existing transmission with capacity, a siting factor that was severely constrained for other sites considered as a part of the Alternatives Analysis.”

The application claims that it is proposing “the minimal amount of land to accommodate the use” and that “no non-resource land is available.” Applicant seeks to remove approximately 274 acres from Goals 3, 11 (water supply only), and 14 protections as “this is the minimal amount of land to support the proposed data center campus.” Applicant provided the Alternatives Analysis “to support findings that justify why the Goal 3, 11, and 14 protections should not apply to the Project Parcel and locating the use on resource land is justified.” See attached Alternatives Analysis.

Rural Industrial Development (OAR 660-004-0022(3)(c))

The proposed development is industrial-scale in nature and would be located on resource land outside of an Urban Growth Boundary (UGB). According to the applicant, the data center campus is appropriate at this location based on the following:

- **Proximity to Transmission and Capacity.** The Project Parcel is directly adjacent to an existing transmission line ROW that runs south along Tower Road for about 1.6 miles to the Carty site and Grassland Switchyard. The Applicant understands the Carty site to be in close proximity to existing and planned Pacific Power transmission infrastructure and capacity. The Project will receive power from Pacific Power, who anticipates providing service via a

⁴ *1000 Friends of Oregon v. Jackson County*, 292 Or App 173, 183-184 (2018) (citing *State v. Kurtz*, 350 Or 65, 75 (2011) to find that, within the context of OAR 660-004-0022, 660-011-0060, and 660-014-0040, “statutory terms such as ‘including’ and ‘including but not limited to,’ when they precede a list of statutory examples, convey an intent that an accompanying list of examples be read in a nonexclusive sense”).

new 230-kV transmission line utilizing existing ROW along Tower Rd and capacity in the area.

- Proximity to Industrial Activity and Energy Facility. The Project Parcel is almost adjacent to the existing Carty site that is zoned for industrial use and historically operated as a power generation facility with supporting transmission infrastructure. The Project Parcel is effectively co-locating next to an existing industrial operation and its associated power infrastructure.
- Availability of Suitable Land for Onsite Stormwater and Wastewater Management. The Project Parcel is of sufficient size, topography, and soil composition to accommodate onsite stormwater management, thereby minimizing the need for offsite land application or extension of public sanitary services.

The applicants Alternatives Analysis concludes that the “Project Parcel met all of the Applicant’s siting criteria with the exception of Siting Criteria 7, Land Use and Zoning.”

Urban-Scale Facility Supports Economic Activity (OAR 660-014-0040(2))

A reason to support the Goal 14 exception includes, but is not limited to, findings that an “urban population and urban levels of facilities and services are necessary to support an economic activity that *is dependent upon* an adjacent or nearby natural resource.” The project parcel is near industrial/utility use as well as farmland. The application indicates the “proposed development supports the ongoing agricultural production of the adjacent farming operation (Threemile Canyon Farms) by putting the Project Parcel to higher, better use and providing revenue to support the ongoing farming operation.” This standard does not require the development foster economics of the farmland rather, that the use is dependent upon nearby natural resource. While arguably a data center may be compatible with farmland the application does not conclude how the specific location is “dependent upon adjacent or nearby natural resources.” Further, the application does not describe how the development is dependent upon an urban location. The nearest urban area is the city of Boardman, located approximately 10 miles to the north.

Based on the above, it is not clear the application has adequately justified compliance with this standard.

Other Reasons (OAR 660-004-0022(1)): Minimal Impact to Productive Agriculture

The application claims that the “proposed development and removal of the Project Parcel from Goal 3 protections will have no impact to productive agriculture” based primarily on the fact that the parcel is comprised predominately of Class 7, nonarable soil and has not been irrigated. The parcel has not been grazed or farmed due to poor soil conditions and topography. The applicant concludes that “[r]emoving the Project Parcel from the agricultural land supply will not diminish any potential agricultural economic benefit because historically, no benefits have been derived from the area of the Project Parcel.”

Applicant requests county approve the Goal 3 exception here and requests county utilize the Goal 3 exception Findings to support the Goal 14 exception to allow urban scale use of rural resource land. Applicant correctly points out that “reasons for a Goal 14 exception are not limited to only those set forth in OAR 660-014-0040(2). OAR 660-014-0040(2) specifically provides that “[r]reasons that can justify why the policies in Goals 3, 4, 11, and 14 should not

apply can include, but are not limited to * * *.” Further, applicant concludes that “a reason that supports a Goal 3 exception may also support a Goal 14 exception.” Staff concurs that the Goal 3 may in part support a Goal 14 exception notwithstanding the application complies with other Goal 14 exception requirements.

Other Reasons (OAR 660-004-0022(1)): Comparative Economic Benefit

The applicant claims the parcel “is unused because it has no economic value for agricultural operations.” Goal 3 does not require that resource land be highly productive. In fact, Goal 3 protects lands that have moderate to low economic value. The Goal 3 exception would likely bring higher revenues than a marginally productive farm use however that is not sufficient to justify compliance with this reasons standard. The Applicant did submit an third-party analysis of the economic impacts of data center projects in the area and of local market wages and employment characteristics. A summary of the economic impact analysis is below:

- On average, data center projects in the greater Oregon region have brought between \$500 million to \$800 million in initial investment to the Oregon economy, with subsequent expansions bringing total investment figures to over \$1.8 billion to \$2 billion. This project is assumed to bring investment figures commensurate with these projects.
- Over the course of data center expansions, similar projects of similar anticipated size have grown to support construction employment in the thousands, and over 200 full-time permanent positions.
- During operation, the Project may offer a minimum of 35 full-time jobs with direct employment opportunities with estimated average wages of \$75,000 per employee, well above the median annual earnings of Morrow County residents with full employment (\$44,500).

Applicant correctly points out that the data center development “furthers the goals and policies MCCP Goal 9, Economic Element. The Economic Element provides the foundation for the economic situation in Morrow County. The County adopted amendments to the Economic Element in 2015 to guide land use decisions for the next 20 years and beyond. One important focus of the Economic Element Amendments is large industrial activity sector and industrial diversification of the County’s traditional agricultural economic base. Applicant’s proposal directly contributes to industrial diversification and adds to the large industry activity sector, helping further the County’s Economic Element Goals and Policies, specifically Goals 2-4.

Goal 2: To expand job opportunities and reduce unemployment, reduce out-migration of youth and accommodate the growth of the County work force.

Policy 2A: To maximize utilization of local work force as job opportunities increase.

*Policy 2B: To increase the income levels of County residents by * * * encouraging the location of industries in the County which will hire local residents.*

Response: The project appears to support SWPG Goal 2 and MCCP Policy 2A and Policy 2B by providing increased job opportunities during construction and operation.” The application claims the new data center jobs will increase “wages well above the median annual earnings of County residents.” Although, applicant did not submit an demographic and labor study that

supports that conclusion the data provided does show the jobs will exceed the average wage in Morrow County. During construction, applicant estimates there will be 200 FTE at a wage “well above median earnings of a county resident, and for operation, a minimum of 35 FTE at about \$75,000 per FTE is anticipated (well above the \$44,500 median annual earnings of a full-time employed County resident).“ This finding supports MCCC Policy 2B.

Goal 3: To diversify local businesses, industries and commercial activities and to promote the economic growth and stability of the County.

Policy 3A: To encourage local producers to new markets for local products and to seek out new products that are in demand in the market place and that can be produced locally.

Response: The Project promotes continued growth in the cloud storage and energy sectors in Morrow County, as well as the construction and technology industries, including supporting service providers. Application appears to support MCCC Goal 3 above. However, it is not clear how applications supports Policy 3A.

Goal 4: To encourage the development of compatible land uses throughout the County and to protect areas suitable for industrial development from encroachment of incompatible land uses.

Policy 4A: To limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with industrial and commercial development.

Response: Application claims they “selected the Project Parcel given its significant comparative advantages of being located next to the Carty site and existing and planned transmission infrastructure to serve the Project. This co-locating minimizes the need for transmission line extensions.” Given this and the proximity to infrastructure, application appears to foster MCCC Goal 4 and Policy 4A.

No Alternative Site Can Reasonably Accommodate the Project:

OAR 660-004-0020(b) and OAR 660-014-0040(3)(a) require Applicant to demonstrate that new areas, not requiring an exception, cannot reasonably accommodate the use and that the use cannot be accommodated through an expansive of UGB or intensification of development in an existing rural community. Applicant provided an Alternatives Analysis. See attached.

The alternatives analysis for Goal 14 exception provides that “Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities.” OAR 660-014-0040(3)(a). Application provides that the proposed findings under OAR 660-004-0020(2)(b) demonstrate that Applicant also satisfies OAR 660-014-0030(3)(a).” Application also notes that to “the extent that stand-alone findings are required for Goal 14, Applicant incorporates by reference the analysis and findings under OAR 660-004-0020(2)(b) as findings for OAR 660-014-0040(3)(a).”

(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

Response: Applicant submitted a map of possible alternative areas considered in the Alternatives Analysis.

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

(C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Response: Applicant identified eight siting criteria for selecting a data center project location and noted that no single criteria was determinative. Applicant evaluated all the required land types as a part of the Alternatives Analysis before identifying the Project Parcel. See attached Alternatives Analysis to support findings under OAR 660-004-0020(2)(b)(B) and (C).

Environmental, Economic, Social and Energy Consequences (“EESA Analysis”):

An EESA Analysis required for a goal exception. OAR 660-004-0020(2)(c) (e.g., Goal 2, Part II(c)(4)) provides the general EESA Analysis for goal exceptions. OAR 660-014-0040(3)(c)

provides additional considerations for an EESE Analysis when taking an exception to Goal 14. Below is the applicable Goal 14 ESEE standards.

(c) “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.”

The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding.

The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

Applicant provided the following analysis to show how the proposed parcel meets ESEE requirements. NOTE: Appendix referenced below (B, G, K, H, L, M, N and Figure 4) are part of the record and available upon request.

Environmental. Applicant has evaluated agricultural productivity, water availability, wetlands, habitat, and sensitive species for the Project Parcel to demonstrate that the proposed data center will not have an adverse environmental impact. The Project Parcel meets the Applicant’s siting criteria, including avoiding environmentally sensitive resources and protected areas, having a topography of less than 15 percent, and being underutilized, vacant, and/or undeveloped land. Moreover, the Project Parcel anticipates avoiding the adjacent floodplain, existing jurisdictional water features by at least 80 feet, and incorporate a 250-foot BCA buffer.

Applicant has characterized the vegetation onsite and performed a preliminary site survey for sensitive habitat and species. See **Appendix K** (Threatened and Endangered Species Habitat Assessment) and **Appendix H** (WGS Protocol Survey Results). The Project Parcel contains no WGS. AKS also concluded that the Project Parcel does not hold a high potential to support Laurence’s milkvetch. No other sensitive species or habitat was identified. Applicant also performed a wetland delineation, had a site visit with DSL, and filed the wetland delineation with DSL for concurrence. See **Appendix L** (Wetland Delineation Report and DSL Concurrence). Applicant will avoid wetlands, drainages, and development within the Federal Emergency Management Agency (FEMA) floodplain. See **Figure 4** (Project Area and Key Site Features).

In addition, Applicant has evaluated potential cultural resource impacts for the Project Parcel and engaged in consultation with the Oregon SHPO and the Confederated Tribes of the Umatilla Indian Reservation. There are no known cultural resources onsite and Applicant will implement an inadvertent discovery plan during construction. See **Appendix M** (Cultural Resources Desktop Report) and **Appendix N** (Tribal Email Correspondence).

Applicant seeks to minimize adverse impacts from construction and operational activities. Applicant will conduct all construction and operational activities such that they comply with local and state permitting requirements. Applicant discusses the anticipated state-level permits required for construction and operation in **Section 4**, which is incorporated herein by reference. For these reasons, the County may conclude that the proposed data center will not result in negative environmental impacts.

Economic. The Project Parcel has no history of agricultural productivity or any other viable productive use. See **Appendix B** (Landowner Affidavit). Removing the Project Parcel from the agricultural land supply will have no economic ramifications on area agricultural operators or land supply. Further, the proposed data center will result in economic benefits to the local community, provide family-wage jobs, and continue to support the County's economic development goals. See **Appendix G** (Economic Analysis Summary Memo); see **Section 6** above for Reasons Analysis. Applicant will be responsible for sourcing any water supply and is anticipating managing industrial wastewater onsite. There should be no increase in burden on any public service provider. Accordingly, the County may find that the proposed data center will not result in negative economic impacts.

Social. The Project will provide increased local job opportunities for area residences, during construction and operation. It will also provide social benefits in the form of taxes for the County's social programs. In addition, Applicant has evaluated potential cultural resource impacts for the Project Parcel and engaged in consultation with the Oregon SHPO and the Confederated Tribes of the Umatilla Indian Reservation. There are no known cultural resources onsite and Applicant will implement an inadvertent discovery plan during construction. See **Appendices M** and **N**. Applicant maintains that the proposed data center will not result in negative social impacts.

Energy. The proposed data center requires high-voltage transmission service and proximity to existing and planned transmission infrastructure with capacity to serve the Project. The Project Parcel is ideal given its proximity to existing and planned transmission infrastructure at the Carty site and the advantage of an existing transmission ROW running from the Carty site to the Project Parcel, along Tower Road. Applicant is in conversations with Pacific Power to provide the required power infrastructure and supply for the Project in accordance with Oregon Public Utility Commission-approved rules and regulations and tariffs. Applicant requests that the County find that the proposed data center will not result in negative energy impacts.

Response: Based on the above analysis, county may find the application complies with this standard.

The Project is Compatible with Adjacent Uses:

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe

how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Response: To the north and west, adjacent land is in center pivot irrigation and is farmed. Land to the east is uncultivated and located within the conservation area. To the south is the Carty site. The Project does not appear to have significant adverse impacts on the environment or existing public services or facilities. Temporary impacts from construction may involve dust and increased traffic, but these impacts will be managed with dust control, traffic management, and other measures to ensure compatibility with adjacent uses during construction. Applicant seeks the flexibility to use public water supply to avoid having to use groundwater. If groundwater is the source, the project may have impacts to groundwater and therefore farming in the region. The onsite or offsite management of process wastewater is not anticipated to create incompatibilities, as it is already a common practice in the County and subject DEQ regulation. Threemile Canyon Farms is the surrounding property owner and views the proposed data center as compatible with its existing operations. With the exception of a possible reliance on groundwater, county may conclude that the proposed data center use will be compatible with the adjacent uses.

Compliance with OAR 660-014-0040

Applicant requests goal exception for “rural agricultural land” or “undeveloped rural land” as used within the meaning of OAR 660-014-0040. County may justify the requested Goal 14 exception based on reasons set forth under OAR 660-004 and OAR 660-014-0040.

Reasons Justify the Exception

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

Response: The reasons identified by the applicant to justify the Goal 3 exception also support the extension of public water service to the Project Parcel and the requested Goal 11 exception. The development would have significant economic benefits and will bring higher economic value to a parcel of farmland compared to farming on the parcel. The economic benefits are dependent on having access to existing and planned transmission infrastructure with capacity. The application does show how economic benefits are dependent upon having a large parcel with relatively flat topography and well-drained soil types that will accommodate the onsite stormwater and wastewater management. However, the application does not show how the specific location is “dependent upon an adjacent or nearby natural resource.”

UGB Sites Cannot Reasonably Accommodate the Project

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed

urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

Response: The applicant evaluated alternative sites, including potential sites located within existing UGBs of Umatilla and Morrow Counties, as well as sites already zoned for data centers. The Alternatives Analysis concludes that sites within existing UGBs or rurally zoned industrial areas cannot reasonably accommodate the Project. Applicant applied 8 siting criteria as a part of the Alternatives Analysis and the Project Parcel met 7/8 criteria. Sites that could not accommodate Project and meet the siting criteria were deemed not reasonable sites.

County may find the application complies with this standard.

EESE Analysis

(3) To approve an exception under section (2) of this rule, a county must also show:

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

Response: Application incorporated by reference the EESE Analysis above to support findings under OAR 660-014-0030(3)(b).

The Project is Compatible with Adjacent Uses:

(3) To approve an exception under section (2) of this rule, a county must also show:

** * **

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

Response: Application referenced a Compatibility Analysis to show that the amount of land included in the exception area is appropriate in order that the development will avoid impacts to environmental resources. The parcel appears to be sufficient to manage stormwater and wastewater onsite through evaporation and retention ponds. Applicant indicated they have studied the potential environmental impacts and demonstrates, based on available information, the development “should not, with appropriate minimization and mitigation measures achieved through appropriate permitting, result in adverse impacts to air, water, energy, and land resources of the surrounding area.” Additionally, to verify application complies with this standard, applicant will be obligated to obtain all local, state, and federal environmental permits prior to

construction and operation.

County may find the application complies with this criteria.

Appropriate Level of Public Water Services:

(3) To approve an exception under section (2) of this rule, a county must also show:

** * **

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

Response: Application identifies two sources of water, a transfer of irrigation water rights or use of a municipal (Port) water supply. Applicant provided evidence that it is in discussions with the Port of Morrow to provide water from a proposed Water Treatment plant.

Based on the above, county may find application complies with this standard.

IV. RESPONSE TO MCZO 3.110 LIMITED USE (LU) OVERLAY

The goal exception rules in OAR chapter 660, Division 004, require that the uses permitted by a goal exception are limited to only those evaluated under the goal exception request. The purpose of the LU overlay zone is to ensure that the uses allowed under a goal exception are limited to only those analyzed and justified in the exception request. Therefore, applicant requests that the county impose an LU overlay zone limiting the use of the parcel to those uses allowed either under MCZO 3.010 (EFU) and a data center under MCZO 3.070(16). Applicant proposes the additional provisions for the LU overlay zone:

- The data center construction is subject to ministerial site plan review under MCZO 4.165
- The data center must obtain all necessary local, state, and federal permits and approvals.
- The data center must report findings of cultural, archaeological or historical artifacts if uncovered. Reports shall be made to the Oregon State Historic Preservation Office (SHPO) and the Cultural Resources Protection Program (CRPP) of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR).
- The data center must use drought tolerant landscaping and to the extent practicable, native plants to meet any landscape requirements; no long-term irrigation shall be allowed
- The data center perimeter does not require screening, as no adverse impacts to visual resources have been identified (as supported by EESE analysis)

V. CONSISTENCY WITH MORROW COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES

The MCCP goals and policies identified below are most relevant and applicable to this application.

Goal 1 (Citizen Involvement)

The Citizen Involvement Goal develops and implements a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. Citizen Involvement Policy 3 encourages people to attend and participate in Morrow County Planning Commission and County Court meetings and hearings. The goal and policy are satisfied through the opportunities afforded to the public to participate at public hearings before the Planning Commission and Board of Commissioners on the proposed amendments, as provided for by state law and the county's Zoning Ordinance. Additionally, Applicant hosted a public meeting on November 3, 2022, to hear comments and obtain feedback on the proposed Project Parcel.

Goal 2 (General Land Use)

General Land Use Policy 9 requires that all plan and zone changes comply with all applicable state-wide planning goals and County policies and procedures. This policy can be satisfied upon approval of the Findings and analysis of compliance with the state-wide goals and applicable County zoning provisions that are contained in this application.

Goal 3 (Agricultural Lands Element)

Applicant is seeking a Goal 3 exception. Nonetheless, applicant did address the project's consistency with the MCCP's Goal 3 policies to the extent the Project Parcel furthers the County's policies.

Agricultural Land Objective 3 seeks to minimize and prevent conflict between farm and nonfarm uses. The proposed development appears to be consistent with this policy because, as demonstrated by over decades of ongoing use, the existing industrial operations (Carty site) and existing agricultural operations (Threemile Canyon Farms) are compatible.

Agriculture Policy 2 permits development outside of UGBs only where conflicts with productive agricultural areas are minimal and where the development complies with the Comprehensive Plan. Conflicts between data centers and agricultural uses appear to be minimal. Industrial development nearby appears to be compatible and is a good comparison for determining the proposed data centers would also be compatible with farming.

Agriculture Policy 6 provides that the County to consider the needs of the farming community in evaluating future development projects in other sectors of the economy. This policy appears to be partially satisfied because the land proposed for conversion from agriculture to industrial is not productive and the lease or sale of the land could be reinvested in farming. However, where increased traffic on Tower Road may interfere with farming, particularly during harvest season, the proposed development may have some negative impact to farming.

Goals 5 and 6 (Natural & Cultural Resources Elements)

The Natural Resources Element of the plan provides a general overview of all natural resources common to the County. In general, natural resources are considered vital to the County's historical and future development and are recognized as a primary base for the County's economy.

In the context of this application and amendments, Natural Resource General Policy M states that the County should establish policies for the analysis of zone changes effect on air, water, and land quality. Application claims that this policy is met because the development "will have a limited impact on air quality, water, and land quality." However, see analysis below regarding compliance with Goal 5 and 6. The project does appear to have an impact on water quantity where groundwater supplies in the basin are limited. Although the development is required to meet all federal, state, and local permitting requirements for air and water impacts, compliance with Oregon Water Resources Department rules and regulations may not supplant findings to show compliance with a local standard or comprehensive plan policy such as here.

Water Resources Policy F discusses the need to evaluate the quality and quantity of groundwater prior to approving projects or developments that would impact those resources. Water quality and quantity is regulated by the Oregon Department of Water Resources (OWRD) and water quality is regulated by the Oregon Department of Environmental Quality. While development-related approvals will be obtained, county may require the applicant to show further analysis to evaluate the impacts to water supply.

Goal 9 (Economic Element)

A number of economic goals and policies apply to this proposed plan amendment. Most of these goals and policies are aspirational or directory to the County, rather than mandatory to an applicant.

Economic Goal 1 provides direction to Morrow County relating to economical housing facilities and affordability to meet housing needs. While not directly relevant, the impact of construction workers and housing needs is important to consider.

Economic Goal 2 and its various economic policies directs Morrow County to reduce unemployment, as well as promote various factors to decrease outmigration of the County's youth through growth of the County's workforce. The application meets this goal with this plan amendment request as it seeks to optimize the County's industrial zoning to attract development and jobs in an emerging field and technology (data center).

Economic Goals 2 and 3 seek to diversify local business, industry, and commercial activity. This plan amendment application appears to foster diversification of job opportunities.

Economic Goal 4 encourages compatible land uses throughout Morrow County. The proposed amendments further these goals by providing new industrial development opportunities on land that is only marginally suitable for farming and because of its location between and adjacent to existing industrial uses, such as the Carty site and several commercial dairy operations. There is established compatibility between agriculture and industrial uses.

Economic Goal 5 seeks to minimize noise levels and heavy traffic volumes, as well as other undesirable effects of heavy commercial and industrial developments. This plan amendment meets the goal of minimizing noise as the remote location would be a fair distance away from residences. The increased traffic volumes could prove problematic based on the already high traffic volumes and overall condition of Tower Road and the congestion at the Interstate 84 and Tower Road intersection.

Economic Goal 6 seeks to maintain a balance between economic and environmental activities. The proposed parcel to be rezoned for industrial use is located in an area with other industrial zoning and uses and will not negatively impact adjacent agricultural or industrial uses. As stated throughout this document, the subject parcel has never been farmed. The proposed development may have impact on water supply, an important environmental consideration as noted above in discussion about impacts to Goal 5 resources. The parcel contains limited habitat for threatened or endangered species, contains one wetland and one stream, both of which will be avoided, and no known cultural resources. The proposed rezone to industrial zoning appears to have only minimal impact to environment except for water supply.

Economic Goal 7 requires the county ensure adequate water supplies to meet all needs associated with economic development. Applicant is coordinating with the Port of Morrow to ensure adequate water supply for the Project, avoiding use of a high-volume groundwater well and potential impacts to surrounding water users. However, where water supply is not certain, specific Findings to show compliance with the Economic Goal 7 cannot yet be written. That is, additional detail is warranted in order to make conclusive findings with this Goal.

Goal 11 (Public Facilities and Services Element)

Applicant is seeking a Goal 11 exception. Nonetheless, applicant addressed the application's consistency with the MCCP's Goal 11 policies to demonstrate how the project furthers other Goal 11 policies.

General Policy D requires that the provision of public facilities and services to rural areas being changed to urban use shall be based on (1) the least time required to provide the service, (2) the most reliable service, (3) lowest financial cost, and (4) adequate levels of service that satisfy long range needs. General Policy E calls for the coordinated development of all necessary urban facilities and services appropriate to an urban area. The application seeks the flexibility to extend public water services to avoid using limited groundwater. Applicant does not seek the extension of public sanitation services. The Port MOU helps demonstrate that such public water services may be provided. The development will utilize fire and law enforcement services, however applicant does not expect that to be burdensome as the data center would be developed with a state-of-the-art fire suppression system and security systems, limiting the need and potential need for response by the county. County Sheriff's office did review the application relative to potential impacts to law enforcement and emergency response and did note that response time to calls on or off Tower Road can be slow if Tower Road is blocked. Further consultation with County Sheriff's Office and emergency services may be warranted.

General Policy F calls for the siting of utility lines and facilities on or adjacent to existing public or private ROW or through generally unproductive lands to avoid dividing existing farm units. Application indicates that a transmission line ROW already exists to the west, along Tower Road. However, no evidence to this effect was noted. Tower Road ROW varies in width between 60 feet and 150 feet. An application for a transmission line would be required prior to development, unless applicant can provide evidence that there is capacity to serve the property with the existing transmission line.

General Policy G requires that public facilities and services not exceed the carrying capacity of the air, land, and water resources. Application notes that "through compliance with DEQ air quality regulations for industries, high air quality standards can be maintained. Similarly, water quality can be maintained through the permitting process. Finally, the land is both suitable for the Project use and proposed to be developed in an environmentally friendly and responsible manner with respect to slopes, soils, water resources, and wildlife." As noted above, compliance with a state agency permit is not, as a stand alone matter, sufficient to demonstrate compliance with a Plan Policy. Additional findings or details may be warranted here.

General Policy K is an aspirational policy that establishes a goal of achieving a maximum balance of public costs versus benefits and revenues in the provision of public facilities and services. This policy may be satisfied because the development does not propose requesting or requiring the provision of additional county services and the project will provide economic benefits such as new employment, payroll, spending with vendors on construction and operations, and new tax revenue.

Utilities Policy F calls for coordination of development with utilities providing electrical, natural gas, cable television, and telephone services. The Project will coordinate with and use local services available to serve the data center.

Water and Sewer Policy A provides that when development occurs in unincorporated areas,

minimum state sanitation and health requirements are required. The proposed development will require permits for subsurface sewage disposal system, and waste water permitting.

Solid Waste Policies A and B can be met by a new industrial development using the same processes for which solid waste management occurs elsewhere in the county which is typically with a contract for solid waste services or direct hauling of waste to Finley Buttes Landfill.

Goal 12 (Transportation Element)

While most of the county's Goal 12 objectives are general in nature and directly towards the County, four – Objectives 2, 5, 14, and 15 – apply more directly to this application. This application complies with the objectives for the following reasons:

- This application may be consistent with Objective #2, as the proposed land use amendment can be accommodated by the existing transportation infrastructure network, a single county roadway connecting the land to Interstate 84. However, as noted elsewhere, the conditions and traffic volume on Tower Road may warrant additional analysis and/or mitigation.
- This application may be consistent with Objective #5, as the proposed land use amendment will have some impact to the existing county's roadway system. This development as a stand-alone matter will not necessarily result in a reclassification of Tower Road. Where some impacts to the roadway will occur county may require a Road Use Agreement. This was recommended by county Public Works Director.
- This application is generally consistent with Objective #14, however the proposed land development will have some impact to Tower Road. One remedy for this impact is to require a Road Use Agreement to repair Tower Road and/or agree to fund a chip seal of the northerly eight (8) miles of Tower Road.
- This application is consistent with Objective #15, as the proposed land use amendment will not require nor will it prevent expansion of the County's transportation system.

Applicable Transportation Policies 1, 2, 4, 5, 6, 7, 9, 10, and 11 are summarized below.

- The overall transportation network is capable of accommodating the overall transportation-related demands on the multi-modal network (Policy 1).
- No modifications or updates are needed to the Morrow County Transportation System Plan (Policy 2).
- No changes are required to the roadway functional classification system (Policy 4).
- No changes to the standards that implement the management and maintenance of the system (Policy 5).
- Traffic impacts may require ROW modification and/or roadway facility upgrades (Policy 6). The application may demonstrate compliance with this standard with a Road Use Agreement where applicant agrees to pay costs to improve a portion of Tower Road and also agrees to help PGE maintain the southerly portion of Tower Road.
- Traffic generation will be compatible with the function of the applicable roadway network (Policy 7).

- Traffic generation may not meet carrying capacity of roadway (Policy11).
- Traffic impacts may impact roadway function or require modifications to roadway classifications (Policies 9 and 10). The classification of Tower Road is appropriate to accommodate the limited movement of the data center employees and personnel. After construction, the Project estimates only 252 (138 weekday a.m., 114 weekday p.m.) peak hour trips, which represent a nominal increase in traffic along Tower Road.

Goal 13 (Energy Conservation Element)

Energy Conservation Policies 1 and 14 are applicable to this application. As with many other MCCP policies identified, these policies are directory or aspirational in nature, rather than mandatory to an applicant. While they are not standards upon which approval or denial is based, they are nevertheless addressed herein.

Energy Conservation Policy 1 encourages the use of renewable and/or efficient energy systems, design, siting, and construction materials in all new development in the County. The data center campus operations are anticipated to be supported with 100% renewable energy, with procurement structure and approach to be finalized prior to operations.

Energy Conservation Policy 14 encourages the County to combine increasing density gradients along high-capacity transportation corridors to achieve greater energy efficiency. This proposal is consistent with this policy by consolidating lands for industrial development in an area bordering a minor collector, Tower Road, which should encourage greater utilization of appropriate industrial infrastructure by industry in the County.

Goal 14 (Urbanization Element)

Applicant is seeking a Goal 14 exception to allow for the siting flexibility to extend public water service to the Project Parcel to avoid using limited groundwater resources.

VI COMPLIANCE WITH APPLICABLE STATEWIDE PLANNING GOALS.

County will be required to adopt findings to show that the request complies with applicable Statewide Planning Goals (SWPG). This application includes an exception to three Statewide Planning Goals, 3, 11 and 14. The goals are presented below in **bold** print with responses in regular print.

Statewide Planning Goal 1: Citizen Involvement

Goal 1 requires a citizen involvement program that is widespread, allows two-way communication, allows for citizen involvement through all planning phases and is understandable, responsive and funded.

Generally, Goal 1 is satisfied when a county complies with public notice and hearing requirements in the Oregon Statutes and in the local Comprehensive Plan and Land Use Code. The County's Zoning Ordinance is consistent with State law with regards to notification requirements. Pursuant to Section 9 of Morrow County Zoning Ordinance at least one public hearing before the Planning Commission and Board of Commissioners is required. Legal notice

in a newspaper of general circulation is required. The County has met these requirements and notified DLCDC 35 days prior to the first evidentiary hearing.

Statewide Planning Goal 2: General Land Use

General Land Use Policy 9 requires that all plan and zone changes comply with all applicable state-wide planning goals and County policies and procedures. This policy is satisfied for the reasons set out in the analysis of compliance with the state-wide goals and applicable County zoning provisions that are contained in this application.

Statewide Planning Goal 3: Farmland

Applicant is seeking a Goal 3 exception. Applicant provided the following analysis to show consistency with MCCP's Goal 3 policies.

“Agricultural Land Objective 3 seeks to minimize and prevent conflict between farm and nonfarm uses. The Project is consistent with this policy because, as demonstrated by over decades of ongoing use, the existing industrial operations (Carty site) and existing agricultural operations (Threemile Canyon Farms) are compatible.

Agricultural Land Policy 1 is an aspirational policy that seeks to balance economic and environmental considerations, limit incompatible non-agricultural development, and maintain a high level of livability in the county. While not a mandatory review criterion, this policy is met because this application will not impact or remove productive agricultural land from existence and because industrial uses are not incompatible with adjoining or adjacent agricultural uses.

Agriculture Policy 2 permits development outside of UGBs only where conflicts with productive agricultural areas are minimal and where the development complies with the Comprehensive Plan. As described above, conflicts between industrial and agricultural uses are minimal. Industrial development in the proposed location is consistent with the Comprehensive Plan, as reflected by the existence of several approved MG and (SAI zoning and land use designations immediately adjacent to the proposed Project Parcel.

Agriculture Policy 6 provides for the County to consider the needs of the farming community in evaluating future development projects in other sectors of the economy. This policy is satisfied because the land proposed for conversion from agriculture to industrial is not productive and the lease or sale of the land to the Applicant (and associated payments) may allow for the expansion of agricultural activities on productive irrigated lands by the landowner, thereby benefitting the agricultural community.

Agriculture Policy 10 states that the County should support energy generating projects offering to release water from their reservoirs for irrigation purposes and provide Morrow County farmers with surface water. The Project will likely not be able to provide industrial wastewater to farmers due to the high salinity levels.”

Statewide Planning Goal 5: Cultural, Natural and Historic Resources and Statewide Planning Goal 6: Air, Land & Water Quality (Note: Morrow County Comprehensive Plan has these goals combined into a single chapter.)

Morrow County Comprehensive Plan Goal 5 Natural Resources Element provides an overview and inventory of all natural resources of “significance” in the county. In general, natural

resources are considered vital to the county's historical and future development and are recognized as a primary base for the county's economy.

The parcel is located within the Lower Umatilla Basin Groundwater Management Area (LUBGWMA) an area designated based on drinking water levels that exceed the 10pp/m federal drinking water standard. The subject parcel is just north of the Ella Butte *Classified* Groundwater Management Area. A *Critical* Groundwater Area designation is a “Significant Goal 5 Resource” that would require mitigation. The attached map includes both the LUBGWMA and the GWA areas in county. The subject parcel is not located in a “Critical Groundwater Area.” https://www.co.morrow.or.us/sites/default/files/fileattachments/planning/page/15301/cgwa_area_2021.pdf

General Policy M (page 27 of 31 (10-1-13) states that county should “establish a policy of analysis of requests for zone changes, use permits and the like to determine their affect on air, water and land quality.” County has not promulgated such a policy and relies instead on individual, site specific and project specific circumstances and conditions. The applicant concludes that this policy is met because the project will have a limited impact on air quality, water, and land quality. Given that the applicant has provided only tentative solutions for water supply county may not yet conclude that the project will have no negative impacts to water supply, particularly where the region has demonstrated declines in water supply and the property is in proximity to Critical Groundwater Areas and Limited Groundwater Management Area. However, as noted in the application, the development will be required to meet all federal, state, and local permitting requirements for air and water impacts, which will include a guaranteed water supply and water right adequate to serve the data center.

Land Resource Policy A “[c]ounty shall conserve land resources in the manner most supportive of the county’s economic base” and Land Resource Policy B, “[c]ounty shall recognize the predominant need for the maximum preservation of land for agricultural and forestry uses” apply to this exception and rezone application. Applicant did not address these Policy in their application but did conclude that the subject parcel “should be considered non-productive.”

Water Resources Policy F “[w]here information is available, county shall take into consideration the quality and quantity of groundwater resources, prior to approving projects or developments that would impact those resources.” Application notes that water quality and quantity of water and groundwater is regulated primarily by the Oregon Department of Water Resources (OWRD) and Oregon Department of Environmental Quality (DEQ) and that “all project-related approvals will be obtained, should this application be approved.” Deferring to a state agency regulatory function may not substitute for demonstrating compliance with a Plan Policy. Additional information from the applicant is warranted to show that the project meets the intent of this policy.

Although OWRD has responsibility to regulate water use, OWRD does not actively plan for future water supply. Securing a water right as a stand-alone matter is not sufficient to demonstrate that the project will not have a negative impact on water supply or comply with Water Policy F as noted above. It is well documented that the region has multiple declining water aquifers. Should the project be able to secure water from Port of Morrow, and provide Findings to show compliance with Water Policy F, county may be able to make reasonable Findings that the rezone and plan amendment and new development will have minimal negative impacts to water supply.

In terms of water quality, data centers do not appear to have negative water quality impacts. Rather, the data centers produce wastewater that is relatively clean but for higher-than-normal salinity content. Saline can be diluted and put to beneficial farm use.

The application includes documentation that the parcel is sited and designed to minimize impacts to the natural environment and appears to create minimal, if any negative impacts to soils, wildlife, geology, and water quality. However, additional and specific evidence relative to water is warranted.

Statewide Planning Goal 9 Economy

A number of economic goals and policies apply to this proposed plan amendment. Most of these goals and policies are aspirational rather than mandatory to an applicant.

Economic Goal 1 provides direction to Morrow County relating to economical housing facilities and affordability to meet housing needs and is not directly germane to this plan amendment request, as this plan amendment is relating to industrial development.

Economic Goal 2 and its various economic policies directs Morrow County to reduce unemployment and decrease outmigration of the county's youth through growth of the county's workforce. This plan amendment request seeks to create new industrial zoning to attract development and jobs in an emerging field and technology (data center). Although data centers are allowed in other types of zoning, the availability of suitable land meeting the needs of data centers is now more limited. With this new development county may attract similar emerging and higher-salary type jobs to a new area within Morrow County.

Economic Goals 2 and 3 seek to diversify local business, industry, and commercial activity. While this plan amendment application cannot ensure diversification of job opportunities, as stated under Goal 2 above, locating industrial zoning in an area where a natural industrial corridor is organically happening, due to the current land base and land use and zoning designations, could lead to diversification of new and existing job opportunities in the County.

Economic Goal 4 encourages compatible land uses throughout Morrow County. The amendments further these goals by providing new industrial development opportunities on land that is not high value farmland and may be more suitable for industrial development because of its location between and adjacent to existing industrial uses, such as the Carty site and several commercial dairy operations. There is established compatibility between agriculture and industrial uses.

Economic Goal 5 seeks to minimize noise levels and heavy traffic volumes, as well as other undesirable effects of heavy commercial and industrial developments. This plan amendment may meet this goal as it proposes to use an existing county roadway that is already accustomed to higher traffic volumes and noises associated with the operation of commercial dairy and other farming uses, as well as traffic for the generation station. However, as noted by the Public Works Director, the high traffic volume creates safety concerns and excess congestion which may require mitigation. The noise and traffic attributable to the Project Parcel would produce a nominal impact to the area.

Economic Goal 6 seeks to maintain a balance between economic and environmental activities. The Project Parcel proposed to be rezoned for industrial use is located in an area with other

industrial zoning and uses and will not impact adjacent agricultural or industrial uses. As stated throughout this document, the Project Parcel has never been farmed or used for productive agricultural activities. Additionally, the proposed Project Parcel will have limited impact on the natural environment, as the parcel contains limited habitat for threatened or endangered species, contains one wetland and one stream, both of which will be avoided, and no known cultural resources. Based on this, the proposed industrial zoning appears to be in a good location to accommodate industrial activity with minimal impact to the environment and farming.

Economic Goal 7 requires the County ensure adequate water supplies to meet all needs associated with economic development. Applicant is coordinating with the Port of Morrow to ensure adequate water supply for the Project, avoiding use of a high-volume groundwater well and potential impacts to surrounding water users. See comments above under Water Resources Policy. In summary, until applicant can provide further documentation, county cannot consider Findings to demonstrate compliance.

Statewide Planning Goal 11 Public Facilities and Services

Applicant is seeking a Goal 11 exception. Nonetheless, Applicant addresses the Project's consistency with the MCCP's Goal 11 policies to the extent the Project furthers the County's policies.

General Policy D requires that the provision of public facilities and services to rural areas being changed to urban use shall be based on (1) the least time required to provide the service, (2) the most reliable service, (3) lowest financial cost, and (4) adequate levels of service that satisfy long range needs. General Policy E calls for the coordinated development of all necessary urban facilities and services appropriate to an urban area. The Project seeks the flexibility to extend public water services to avoid using limited groundwater. Applicant does not seek the extension of public sanitation services. The Port MOU may provide reliable water service to the development and at little to no cost to the county. According to the application, the Project "utilization of fire and police services is not expected to place a burden on existing county capacity, as the data center would be developed with a state-of-the-art fire suppression system and security systems, limiting the need and potential need for response by the county." A copy of the Public Notice was provided to Morrow County Sheriff's Office for review. The Sheriff's Office noted that when accidents occur, access can be very limited. Given that Tower Road is the only major ingress and egress to Interstate 84, alternative safety routes may be a consideration. Safety and evacuation routes could be addressed in the traffic study.

General Policy F calls for the siting of utility lines and facilities on or adjacent to existing public or private ROW or through generally unproductive lands to avoid dividing existing farm units. The application indicates that "a transmission line ROW necessary for the extension of service to the project already exists to the west, along Tower Road." However, application did not include evidence that existing line will be used for the proposed development or if there is adequate ROW to provide a second transmission line.

General Policy G requires that public facilities and services not exceed the carrying capacity of the air, land, and water resources. The application claims that "[t]hrough compliance with DEQ air quality regulations for industries, high air quality standards can be maintained. Similarly, water quality can be maintained through the permitting process. The land appears to be suitable for the proposed development to transpire in an environmentally friendly and responsible manner

with respect to slopes, soils, and wildlife.” Where this is a summary statement and not actual proof, application would be enhanced with a more detailed and secure source of water supply.

General Policy K is an aspirational policy that establishes a goal of achieving a maximum balance of public costs versus benefits and revenues in the provision of public facilities and services. This policy may be satisfied because the project does not propose requesting or requiring the provision of additional county services but does provide economic benefits. The impacts include new employment, payroll, spending with vendors on construction and operations, and new tax revenue.

Utilities Policy F calls for coordination of development with utilities providing electrical, natural gas, cable television, and telephone services. The development will coordinate with and use local services available to serve the data center. Project is located within the Pacific Power Service Territory. Application indicates the developer is in consultation with Pacific Power to provide service.

Water and Sewer Policy A provides that when development occurs in unincorporated areas, minimum state sanitation and health requirements be met, including an approved subsurface sewage disposal system. The proposed development will require a source of drinking water and onsite sewer system. The parcel includes ample space for the installation and maintenance of a septic system to serve the project. Drinking water supply is not clarified in the application.

Solid Waste Policies A and B can be met by a new industrial development using the same processes for which solid waste management occurs elsewhere in the county by signing up for garbage collection service and hauling larger types of waste to Finley Buttes Landfill.

Statewide Planning Goal 12: Transportation

Application appears to comply with Goal 1 Coordination/Process as coordination has taken place as part of the application review process.

Goal 2 Policy 2.5 Require new development to identify transportation impacts and provide appropriate mitigation. Applicant provided a traffic impact analysis. Based on review of the Public Works Director, a Road Use Agreement and/or mitigation may be warranted.

Goal 2 Policy 2.6 Require new development to dedicate right-of-way for transportation system improvements where appropriate. Establish procedures for the dedication of right of way necessary for the transportation system. New right of way was not recommended in the TIA.

Goal 3 Economic Development Enhance economic development through transportation improvements. Policy 3.1 Support transportation system improvements that contribute to economic development opportunities. Although the TIA did not recommend improvements except for a new driveway and a stop sign, increased traffic volume on Tower Road is generating mobility and safety constraints. Emergency response can be limited if an accident occurs on Tower Road. A Road Use Agreement or traffic or other mitigation may be warranted in order to demonstrate compliance with this standard.

Goal 5 Roadway System Provide and maintain a safe, efficient roadway system to provide mobility throughout the county. County provides maintenance on Tower Road

Objective #5 requires that the existing roadway will not be significantly impacted or require reclassification of the system. Tower Road, a county, two-lane roadway is the only public roadway that connects the property to Interstate 84 to the north. That roadway has a high volume of traffic, especially during farm harvest season. There is no other ingress and egress suitable for emergency purposes. Tower Road will have a measurable impact and may require mitigation. County Public Works is reviewing the traffic analysis. County may refer the traffic analysis to engineer of record for further review to better quantify the impact and to determine whether the new development will result in a new classification. County may also consider a Road Use Agreement or other mitigation to offset commensurate impacts to the roadway.

The application may or may not comply with this objective. A condition of approval requiring a Road Use Agreement may be a suitable tool to mitigate impacts.

- The application claims that the application is consistent with Objective #14, “as the proposed land use amendment will not impact the existing overall roadway network in a way that would require modification or further coordination with other agency infrastructure.” However, based on the above, traffic impacts may warrant further analysis.
- This application does appear to be consistent with Objective #15, as the proposed land use amendment will not require nor will it prevent expansion of the County’s transportation system.

The applicable Transportation Policies are Policies 1, 2, 4, 5, 6, 7, 9, 10, and 11. The application concludes that “the proposed land use amendment is consistent with each of these policies.”

- **Policy 1 The overall transportation network is capable of adequately accommodating the overall transportation-related demands on the multi-modal network.** Public Works review is pending, however, generally, Tower Road is a well-maintained access to the proposed site as well as other numerous farm and industrial uses.
- **Policy 2 No modifications or updates are needed to the Morrow County Transportation System Plan (Policy 2).**
- **Policy 4 No changes are required to the roadway functional classification system (Policy 4).**
- No changes to the standards that implement the management and maintenance of the system (Policy 5).
- No traffic impacts that would require ROW modification and roadway facility upgrades (Policy 6).
- All forecast traffic generation will be compatible with the function and carrying capacity of the applicable roadway network (Policies 7 and 11). The increased volume and truck traffic will generate impacts to Tower Road that may warrant mitigation.
- No traffic impacts that would impact roadway function or require modifications to roadway classifications (Policies 9 and 10). The classification of Tower Road is particularly appropriate to accommodate the limited movement of the data center employees and personnel. After construction, the Project estimates 252 (138 weekday a.m., 114 weekday

p.m.) peak hour trips, which represent a nominal increase in traffic along Tower Road. Nonetheless, construction and post construction traffic will impact Tower Road and industrial and farming operation sin the area and may warrant mitigation as noted above.

Statewide Planning Goal 13 Energy Conservation

Energy Conservation Policies 1 and 14 are applicable to this application. As with many other MCCP policies identified, these policies are directory or aspirational in nature, rather than mandatory to an applicant. While they are not standards upon which approval or denial is based, they are nevertheless addressed herein.

Energy Conservation Policy 1 encourages the use of renewable and/or efficient energy systems, design, siting, and construction materials in all new development in the county. According to the application, “[T]he data center campus operations are anticipated to be supported with 100% renewable energy, with procurement structure and approach to be finalized prior to operations.” Documentation was not included to support the desire to rely on 100% renewable energy 365 days per year.

Energy Conservation Policy 14 encourages the county to combine increasing density gradients along high-capacity transportation corridors to achieve greater energy efficiency. The application concludes that this development “is consistent with this policy by consolidating lands for industrial development in an area bordering a minor collector, Tower Road.” However, county believes that where Tower Road is the only north-south collector provided access to the industrial area, it may require mitigation to guarantee quality and capacity to serve additional density such as the proposed industrial development.

Statewide Planning Goal 14 Urbanization

Applicant is seeking an exception to Goal 14 in order to allow for the siting of a large-scale industrial development. Application requires an exception to Goal 14 where the size of the buildings and scope of development is a high density or urban scale. The application includes an exception to Goal 14. See also attached OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands.

VII AGENCIES NOTIFIED: Dawn HERT, Hilary Foote, Department of Land Conservation and Development; Teresa Penninger, Oregon Department of Transportation; Department of Environmental Quality, Bend Region Office and Eastern Region Office, Pendleton, , Air Quality Specialist; Mike Gorman, Morrow County Assessor; Eric Imes, Morrow County Public Works; Ione Rural Fire Protection District; Boardman Rural Fire Protection District, Kimberly Peacher, Community Planning & Liaison Officer, US NAS Whidbey Island, Jessica Salgado, Jurisdiction Coordinator, DS, State Historic Preservation Office; Teara Farrow, Director, CTUIR Cultural Resources Protection Program. Chris Kowitz and Greg Silbernagel, OWRD, Lisa Mittelsdorf and Mark Patton, Port of Morrow, City of Boardman, Glenn McIntire, Building Official, Kevin Payne, Morrow SWCD, Paul Gray, Morrow County Emergency Management.

VIII ATTACHMENTS:

Conceptual Example Layout, Partition Plat Map, Zoning Map
 Vicinity Map and adjacent landowners
 Soils Map
 Critical Groundwater and Groundwater Management Area Map
 Soils Analysis by David Weymann, P.E., ERM International
 Alternatives Analysis by ERM International
 Wetland Delineation approval, Peter Ryan SPWS, Department of State Lands
 Transportation Planning Rule Analysis by Kittelson & Associates
 MOA with Port of Morrow
 Geotech report by Kristopher Hauck, P.E., Terracon
 OAR 660-014-0040 Establishment of New Urban Developed on Undeveloped Rural Lands
 Letters of support from City of Heppner and Boardman Chamber of Commerce

IX HEARING DATES:

Planning Commission
 North Morrow Government Building
 June 27, 2023
 North Morrow Government Center
 215 NE Main Street
 Irrigon, OR 97844

HEARING MAY BE CONTINUED TO JULY 25, 2023

Board of Commissioners
 August 16, 2023
 North Morrow Government Center
 215 NE Main Street
 Irrigon, OR 97844

X RECOMMENDATION OF THE MORROW COUNTY PLANNING COMMISSION:

Options for Planning Commission consideration.

1. Accept the Findings [as amended] and recommend Board of Commissioners approve the application.
2. Vote to recommend Board of Commissioners not approve based on application and Findings as presented.

Conditions of Approval

Applicant anticipates, based on the preliminary Project design, that the following state-level permits may be required for construction and operation:

- Oregon Department of Environmental Quality (DEQ), National Pollutant Discharge Elimination System (NPDES) 1200-C Permit
- DEQ, Onsite Septic Permit
- DEQ, Basic Air Contaminant Discharge Permit (ACDP)
- DSL, Removal/Fill Permit (if doing wetland enhancement, which is not anticipated)
- Identify alternative or secondary access to and from data center location.
- Sign and record a Road Use Agreement with Morrow County Public Works

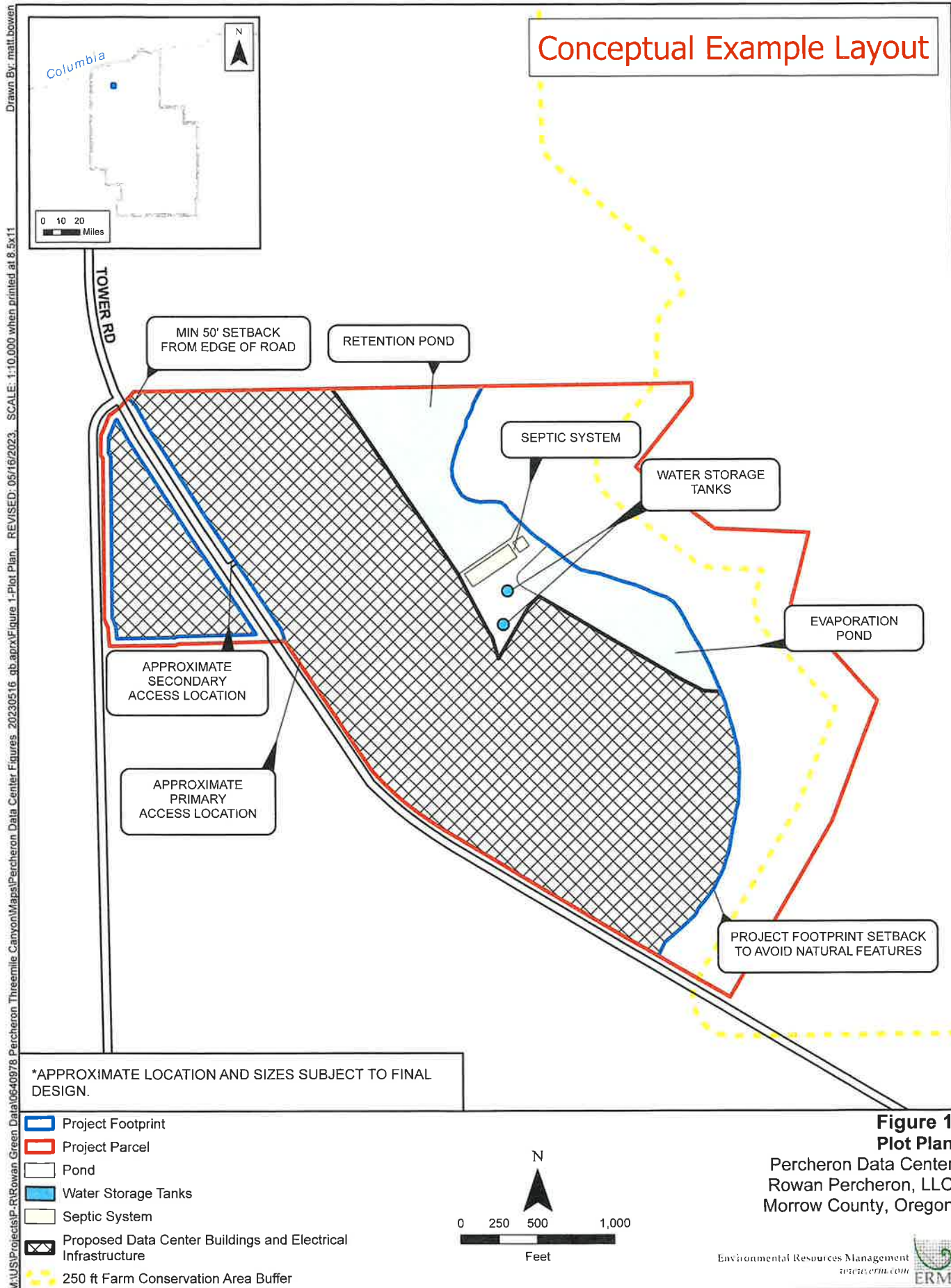
MORROW COUNTY BOARD OF COMMISSIONERS

David Sykes, Chair

Jeff Wenholz, Commissioner

Roy Drago, Commissioner

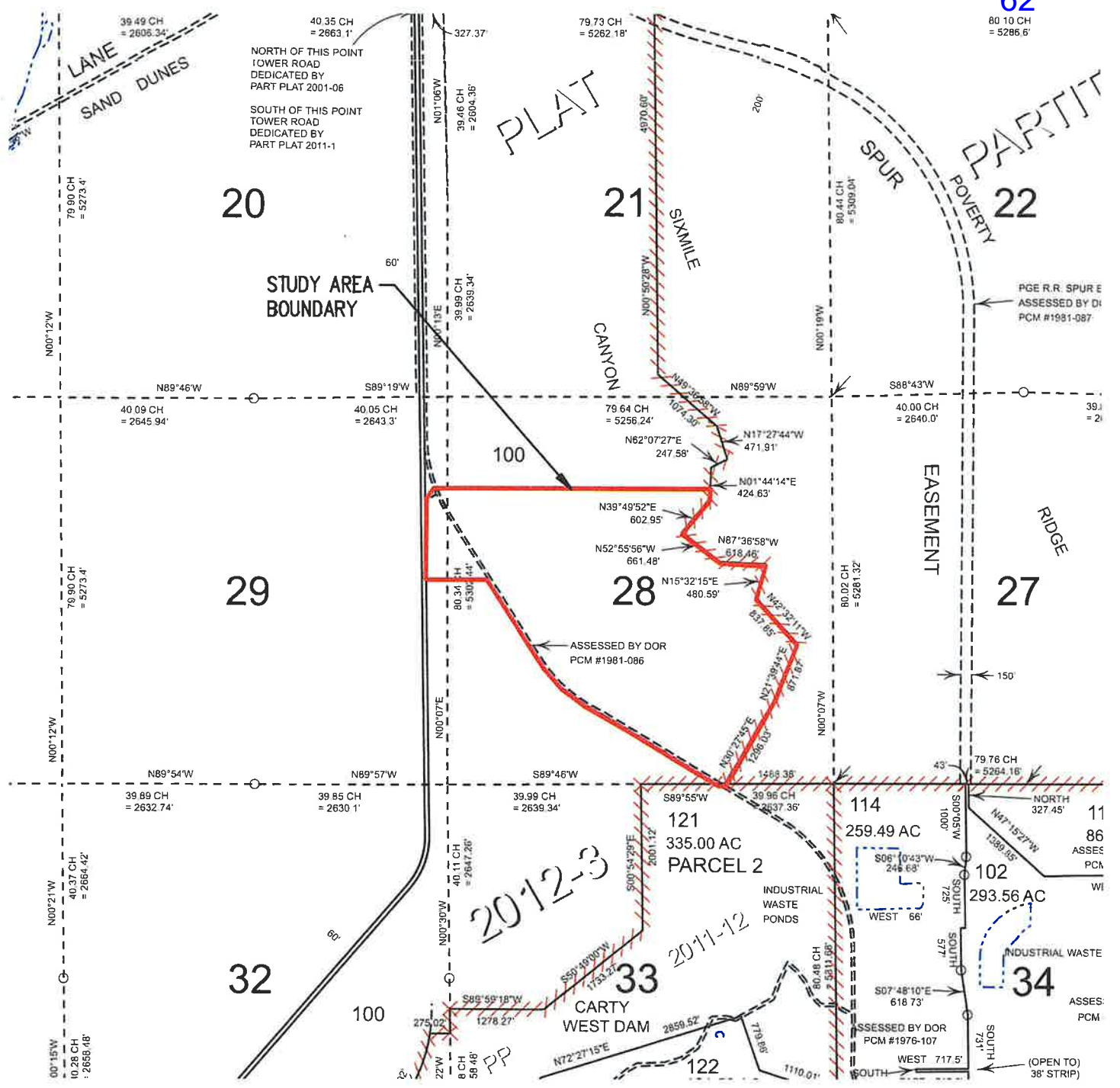
Conceptual Example Layout



**Figure 1
Plot Plan**
Percheron Data Center
Rowan Percheron, LLC
Morrow County, Oregon

Drawn By: matt bowen
 MAUS\Projects\P-R\Rowan Green Data\0640978 Percheron Threeemile Canyon\Maps\Percheron Data Center Figures 20230516 gb.aprx\Figure 1-Plot Plan... REVISED: 05/16/2023... SCALE: 1:10,000 when printed at 8.5x11

Source: Esri - World Imagery; NAD 1983 CORS96 StatePlane Oregon North FIPS 3601 Ft Intl



MORROW COUNTY
 PORTION OF TAX LOT 100
 TAX MAP 3N 24E W.M.

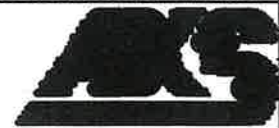
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SCALE: 1" = 2000 FEET



ORIGINAL PAGE SIZE: 8.5" x 11"

TAX MAP (MAP 3N 24E W.M.)		FIGURE
THREATENED AND ENDANGERED SPECIES ASSESSMENT MEMO		2
AKS ENGINEERING & FORESTRY, LLC		DRWN: RAS
12965 SW HERMAN RD, STE 100		CHKD: SKT
TUALATIN, OR 97062		AKS JOB:
503.563.6151 WWW.AKS-ENG.COM		8858-04



PARTITION PLAT NO. 2023-3

4 PARTITION OF PARCEL 1, PARTITION PLAT 2019-3
 LOCATED IN SECTION 28 & EAST HALF OF SECTION 29, TOWNSHIP 3 NORTH,
 RANGE 24 EAST, T.4N., MORROW COUNTY, OREGON
 L.P.-N-508-22, R.-N-076-22

OWNER'S DECLARATION

I, THE UNDERSIGNED, OWNERS OF THE LANDS SHOWN AND DESCRIBED HEREON HAVE CAUSED THE SAME TO BE SURVEYED AND RE-PARTITIONED INTO PARCELS AS SHOWN ON THIS PLAT IN ACCORDANCE WITH O.R.S., CHAPTER 92, REVEALED, AND MORROW COUNTY ORDINANCES.

B. Antilla
 BILL ANTILLA, PRESIDENT
 THREE MILE CANYON FARMS

ACKNOWLEDGEMENT:

STATE OF OREGON
 COUNTY OF MORROW

THIS IS TO CERTIFY THAT ON THIS 20th day of April, 2023, I PERSONALLY APPEARED BEFORE ME *Beth A. Russell, J.C.* TO ME KNOWN TO BE THE NOTARIAL IN AND WHO EXECUTED THE FOREGOING "OWNER'S DECLARATION", AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS HIS VOLUNTARY ACT AND DEED IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.



Heather L. Baumgartner
 Heather L. Baumgartner
 Notary Public in the State of Oregon

RESIGNED AT *Oregon*

MY COMMISSION EXPIRES *07-01-2024*

COUNTY PLANNING DIRECTOR:

I HAVE EXAMINED THE ACCOMPANYING PLAT AND CERTIFY THAT IT COMPLES WITH MORROW COUNTY PLATTING REGULATIONS WITH REFERENCE TO SUCH PLATS AND TO THE PLANG AND RECORDING OF SUCH PLATS AND THEREFORE APPROVE AND PLAT

Kay M. Mallick
 Kay M. Mallick
 MORROW COUNTY PLANNING DIRECTOR

DATE *4-27-2023*

COUNTY SURVEYOR:

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ACCOMPANYING PLAT, THAT IT COMPLES WITH THE LAWS OF THE STATE OF OREGON WITH REFERENCE TO THE PLANG AND RECORDING OF SUCH PLATS AND THEREFORE APPROVE SAID PLAT.

Mark K...
 MORROW COUNTY SURVEYOR

DATE *4-27-2023*

MORROW COUNTY ASSESSOR & TAX COLLECTOR:

I HEREBY CERTIFY THAT ALL TAXES DUE ON THE PROPERTY PARTITIONED HEREON HAVE BEEN PAID IN FULL.

Michael D...
 MORROW COUNTY ASSESSOR/TAX COLLECTOR

DATE *4-27-2023*

MORROW COUNTY CLERK:

MORROW COUNTY, OREGON 2023-52876
 PLAT NO. 2023-3 64272023 0112:55 PM
 \$10.00 \$11.00 \$30.00 \$60.00 \$100.00 \$481.00

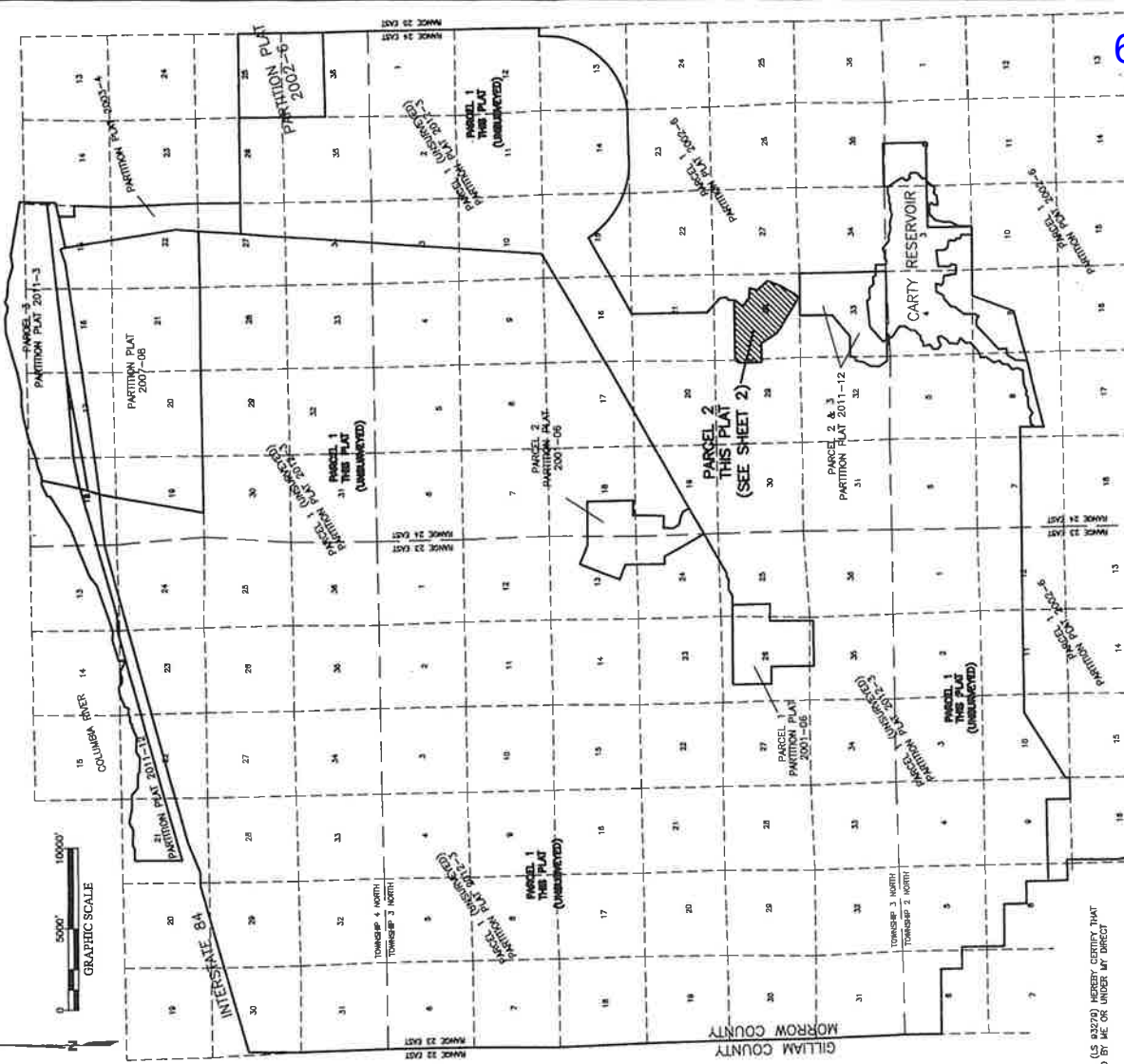
00059242023023023
 L. Tyler Trullio, County Clerk for the State of Oregon
 I have caused this plat to be recorded in the public records of the State of Oregon.
 Beth Churba, County Clerk

SURVEYOR'S CERTIFICATION:

I, TYLER TRULLIO, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON (LS 63270) HEREBY CERTIFY THAT THIS PARTITION PLAT CORRECTLY REPRESENTS A PARTITION OF LAND CONDUCTED BY ME OR UNDER MY DIRECT SUPERVISION IN DECEMBER 2022. THIS IS AN UNSUBMITTED PARTITION.

REGISTERED
 LAND SURVEYOR
 OREGON
 SEPTEMBER 14, 2021
 TYLER TRULLIO
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 63270 - STATE OF OREGON

EXPIRATION DATE: *9-14-25*



PROJECT: THREE MILE CANYON FARMS
 JOB NUMBER: 1022072586
 DATE: 02/07/2023
 SCALE: 1" = 500'
 SURVEYOR: TYLER TRULLIO
 TECHNICIAN: ANTHONY SOPAL
 DRAWING NO.:
 TRACT NO.:
 PLAT BOOK NO.:

SAM
 488 E Winchester St.
 Suite 125
 Murray, UT 84107
 Ofc: 365.255.0115
 Email: info@sam.biz

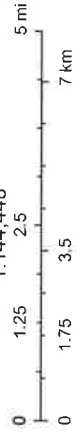
ArcGIS Web Map



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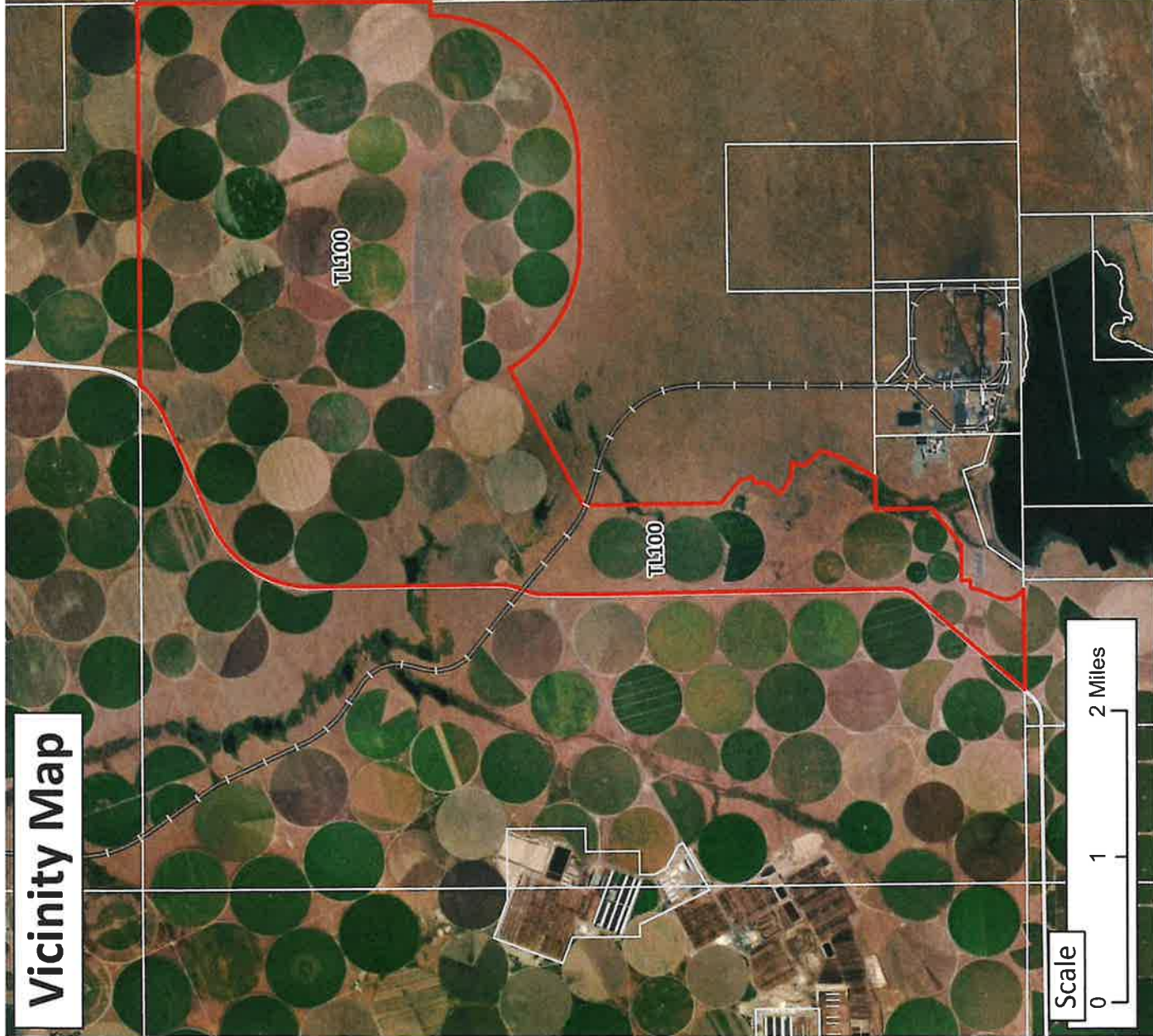
-  Morrow County Boundary
-  Morrow County City Limits
-  Morrow County Tax Lots
-  MG
-  PUB
-  EFU
-  FR2
-  SAI
-  AI
-  TC

1:144,448



Earthstar Geographics

Vicinity Map



Scale



AC-145-23 | ACM-146-23

AZM-147-23

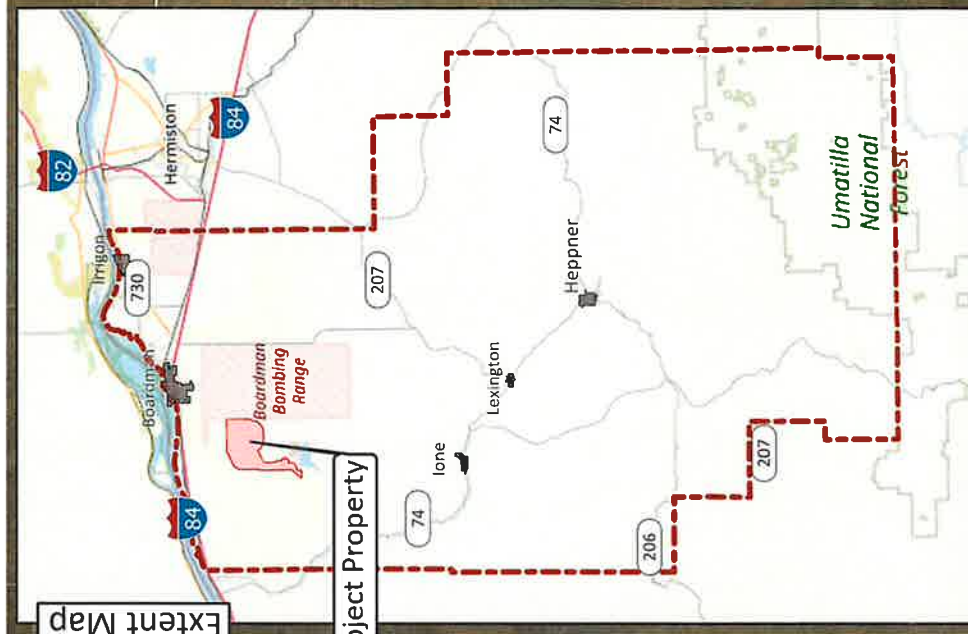
Rowan Green Data, LLC.

Legend

Tax Lot

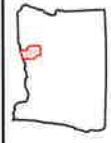
Tax Lot selection

Extent Map



Subject Property

© OpenStreetMap (and) contributors, CC-BY-SA, Oregon State Parks, State



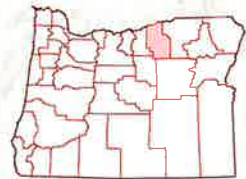
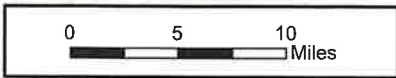
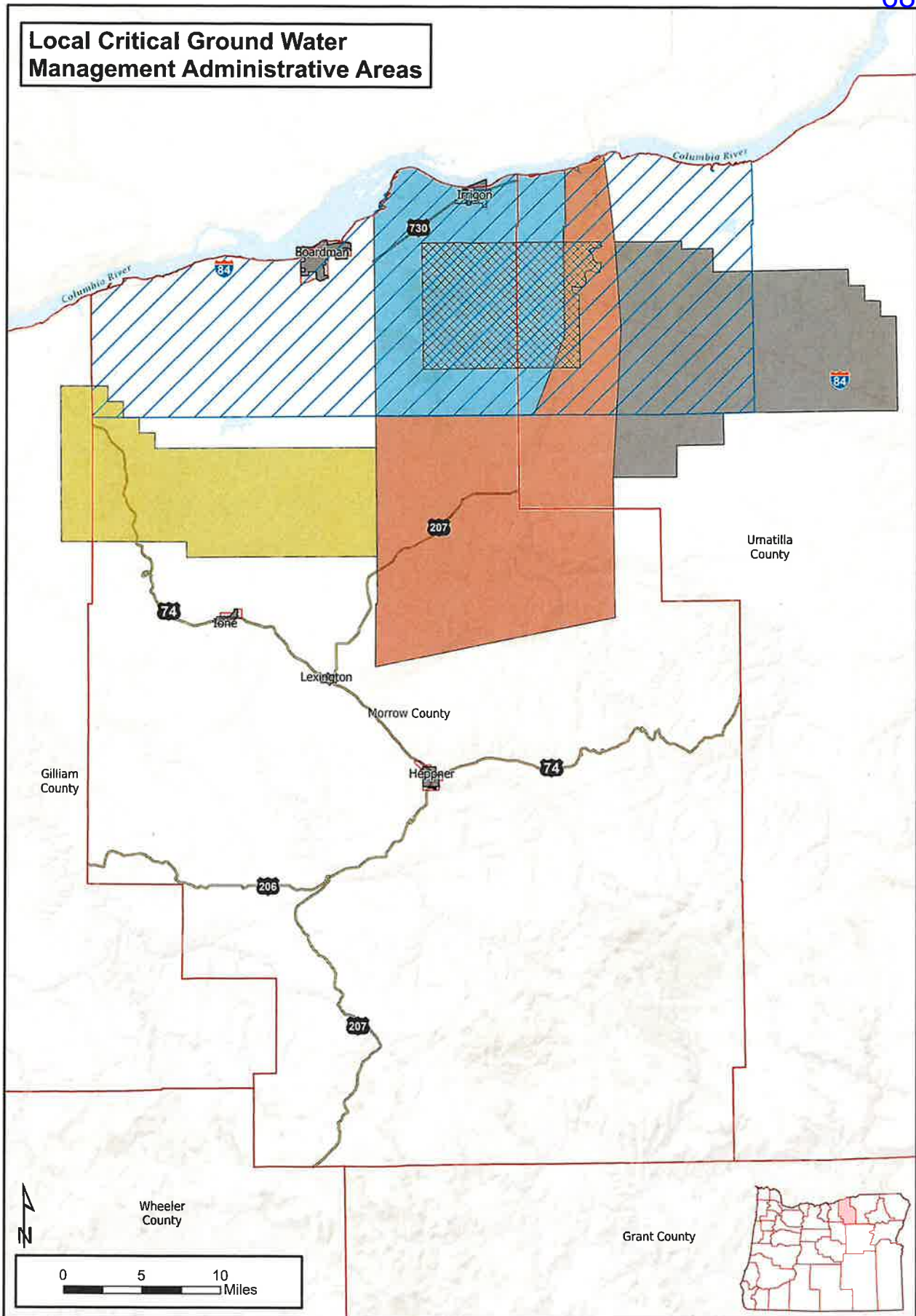
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Cartography By: Stephen Wreccics
Morrow County Planning Department
Coordinate System: NAD83 Oregon GIC Lambert ft
Datum: North American 1983
Projection: Lambert Conformal Conic

CORRECTED	OWNER 1	OWNER 2	MAIL ADDRESS	CITY	STATE	ZIPCODE
3N25E 100	USA (BOMBING RANGE)					0
4N24E 5600	USA (BOMBING RANGE)					0
3N24E 101	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 102	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
2N24E 102	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
2N24E 103	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 104	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
2N24E 105	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
2N24E 106	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 113	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 114	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 115	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 116	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 117	PORTLAND GENERAL ELECTRIC COMPANY ETAL		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 121	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
3N24E 122	PORTLAND GENERAL ELECTRIC		121 SW SALMON ST	PORTLAND	OR	97204
4N25E 1600	USA (DEPT OF NAVY)		3730 N CHARLES PORTER AVE	OAK HARBOR	WA	98278
3N23E 100	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
2N23E 100	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
3N24E 100	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
3N24E 100	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
2N24E 100	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
2N24E 101	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
2N24E 107	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
3N24E 112	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
4N24E 120	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
3N24E 120	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
4N24E 121	THREEMILE CANYON FARMS, LLC		75906 THREEMILE RD	BOARDMAN	OR	97818
4N24E 134	CITY OF BOARDMAN		PO BOX 229	BOARDMAN	OR	97818
4N24E23 901	FRANK TIEGS, LLC		PO BOX 3110	PASCO	WA	99302

AC-145-23, ACM-146-23, AZM-147-23 | Rowan Green Data LLC. | EPU: 2 Mile Notice
 3N 24E TL100
 S:\Planning\Amendments - ZO CP or TSP\2023\Rowan Green Data Perchiron AC145-23

Local Critical Ground Water Management Administrative Areas



Legend

- State Highway
- ▭ UGB
- ▭ City Limits
- ▭ LUBGWMA
- ▭ Stage Gulch CGWA
- ▭ Ordnance Gravel CGWA
- ▭ Butter Creek CGWA
- ▭ Ordnance Basalt CGWA
- ▭ Ella Butte Classified GWA

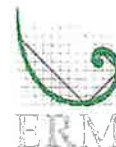


1050 SW 6th Avenue
Suite 1650
Portland, OR 97204

Telephone: +1 503 488 5282
www.erm.com

Memorandum

To	Rowan Percheron LLC
From	David Weymann, P.E.
Date	February 2023
Reference	Percheron Data Center Project, Morrow County, Oregon
Subject	Soils Analysis



INTRODUCTION

Environmental Resources Management, Inc. (ERM) prepared this soils analysis for Rowan Percheron, LLC (Rowan or Applicant). Rowan proposes to develop a data center on the Project Parcel (Project Parcel or Project). The Project Parcel includes approximately 275 acres of vacant land on one parcel owned by Threemile Canyon Farms. The Project is adjacent to Portland General Electric's (PGE) Carty Generating Station, approximately 10 miles southwest of Boardman on Tower Road, Morrow County (County), Oregon. The Project Footprint will be up to approximately 190 acres of the Project Parcel. This memorandum summarizes the soil classifications for the 275-acre Project Parcel. Figure 1 shows the Project Parcel, the Project Footprint, and site soils.

SOIL TYPES

Applicant evaluated the soil types within the Project Parcel and the Project Footprint. Applicant then classified the soils under the Natural Resource Conservation Service (NRCS) Land Capability Classification System (LCCS).

Attachment A provides the NRCS Soil Survey Report for the Project Parcel. Table 1 lists the soil types and farmland designations for the non-irrigated lands of the Project Parcel.

ERM

February 2023
 Percheron Data Center Project
 Morrow County, Oregon
 Page 2

Table 1: Soil Types

Mapping Unit Symbol	Soil Mapping Unit	NRCS Capability Class ⁽¹⁾	Project Parcel		Project Footprint		Farmland Designation (Project Parcel) ^(2, 3)
			Acres	%	Acres	%	
26B	Koehler loamy fine sand, 2 to 5 percent slopes	7e	109.2	40	107.8	57	Not prime farmland
26C	Koehler loamy fine sand, 5 to 12 percent slopes	7e	8.1	3	8.1	4	Not prime farmland
58B	Taunton fine sandy loam, 2 to 5 percent slopes	6e	33.8	12	33.8	18	Not prime farmland
40C	Quincy loamy fine sand, 2 to 12 percent slopes	7e	38.4	14	7.3	4	Not prime farmland
58C	Taunton fine sandy loam, 5 to 12 percent slopes	6e	23.9	9	23.7	12	Farmland of state-wide importance
53A	Royal silt loam, 0 to 3 percent slopes	6e	4.5	2	—	—	Not prime farmland
55B	Sagehill fine sandy loam, hummocky, 2 to 5 percent slopes	4e	33.9	12	9.5	5	Not prime farmland
55C	Sagehill fine sandy loam, hummocky, 5 to 12 percent slopes	4e	22.3	8	—	—	Farmland of state-wide importance
TOTALS			274.1	100	190.2	100	

Notes:

⁽¹⁾ NRCS class: Non-irrigated

⁽²⁾ Soil Survey Farmland Designation, 7 Code of Federal Regulations (CFR) Part 657
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

⁽³⁾ None of the Project Parcel is irrigated

— =Not present within Project Footprint

In total, the Project Parcel is comprised of approximately 57 percent Class 7 soil, 23 percent Class 6 soil, and 20 percent Class 4 soil. Within the Project Parcel, the Project Footprint is comprised of about 65 percent Class 7 soil, 30 percent Class 6 soil, and 5 percent Class 4 soil. The Project Footprint is sited within the Project Parcel to minimize impact to Class 4 soils, which are predominately located near the existing wetlands that will be avoided.

HIGH-VALUE, PRIME AND STATE-WIDE IMPORTANCE FARMLAND

ERM also evaluated whether the Project Parcel and Project Footprint are comprised of any high-value, prime, or farmland of state-wide importance. The Project Parcel, while predominately Class 7 soil, has Class 6 and some Class 4 soils adjacent to or intermingled with the Class 7 soil and the County, therefore, inventoried the Project Parcel as "agricultural land" under Oregon Administrative Rules (OAR) 660-033-0020(1).¹

The Project Parcel is not irrigated and contains no Class 1 or 2 soils. It is not, therefore, considered "high-value farmland" under OAR 660-033-0030(8).² In addition, the NRCS Morrow County Soil Survey Report (Attachment A) identifies farmland as prime or not prime based on its soil characteristics and irrigation status. The Project Parcel is not irrigated and none of the Project Parcel is designated as prime farmland based on the NRCS LCCS (Table 1).³

The NRCS Morrow County Soil Survey Report also identifies about 17 percent of the Project Parcel as "farmland of state-wide importance," with Class 6e soils comprising about 9 percent and Class 4e soils comprising about 8 percent of the farmland of importance. The Project Footprint would impact no Class 4e farmland of statewide importance. Of the Class 6e soil impacted within the Project Footprint, the soils are considered nonarable soil and not suitable for cultivation notwithstanding its classification of "important." Overall, the underlying soil characteristics within the Project Parcel

¹ OAR 660-033-0020 provides the definition of "agricultural land":

- (1)(a) "Agricultural Land" as defined in Goal 3 includes:
- (A) Lands classified by the U.S. NRCS as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon.
 - (B) Land in other soil classes that is suitable for farm use, as defined in Oregon Revised Statutes (ORS) 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.
 - (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.
- (b) Land in Capability Classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed.

² OAR 660-033-0020 also provides the definition of "high value farmland"

- (8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that are:
- (A) Irrigated and classified prime, unique, Class I or II; or
 - (B) Not irrigated and classified prime, unique, Class I or II.
- (b) In addition to that land described in subsection (a) of this section, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa;
- *** [applies to land in Willamette Valley]
 *** [applies to land west of the Coast Range summit]
 *** [applies to land west of Highway 101]

³ 7 CFR Part 657 includes regulations for the Department of Agriculture and defines "prime" farmlands. Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is available for these uses. The states define farmlands of state-wide importance based on the soil properties and information on specific high-value food and fiber crops that are grown in a particular area.

demonstrate that the land, while considered agricultural, has low agricultural productivity with high risk for erosion, and other severe or very severe limitations.

ORS 195.300(10) also provides definitions of "high value farmland" for purposes of [ORS 195.301 \(Legislative Findings\)](#) and [195.305 \(Compensation for restriction of use of real property due to land use regulation\)](#) to [195.336 \(Compensation and Conservation Fund\)](#) (Measure 49). The Department of Land Conservation and Development's siting standards for wind and energy facilities specifically reference ORS 195.300 when defining "high value farmland," although the statutory definitions have not been directly incorporated into any Goal 3 agricultural lands framework. Nonetheless for completeness, ERM evaluated the Project Parcel against the definitions in ORS 195.300(10). ORS 195.300(10) includes the "high value farmland" definition from OAR 660-033-0020(8) and expands upon it.⁴ By application of law, the Project Parcel contains "high-value farmland" within the meaning of ORS 195.300(10)(f) because portions of the Project Parcel are within the Columbia Valley American Viticultural Area (AVA). In total, the Project Footprint may impact up to 49.8 acres of land located within the Columbia Valley AVA.

⁴ ORS 195.300 provides:

(10) "High-value farmland" means:

(a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007.

(c) Land that is in an exclusive farm-use zone or a mixed farm and forest zone and that on June 28, 2007, is:

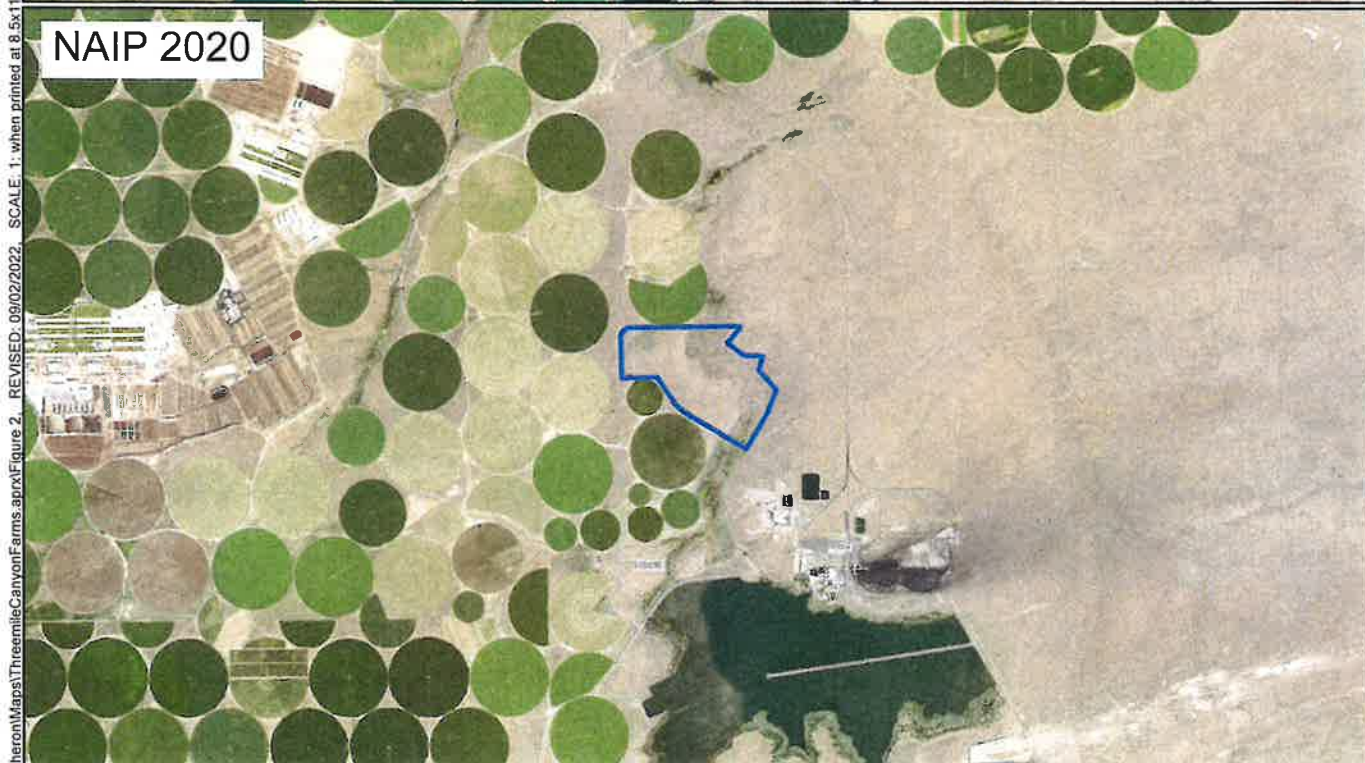
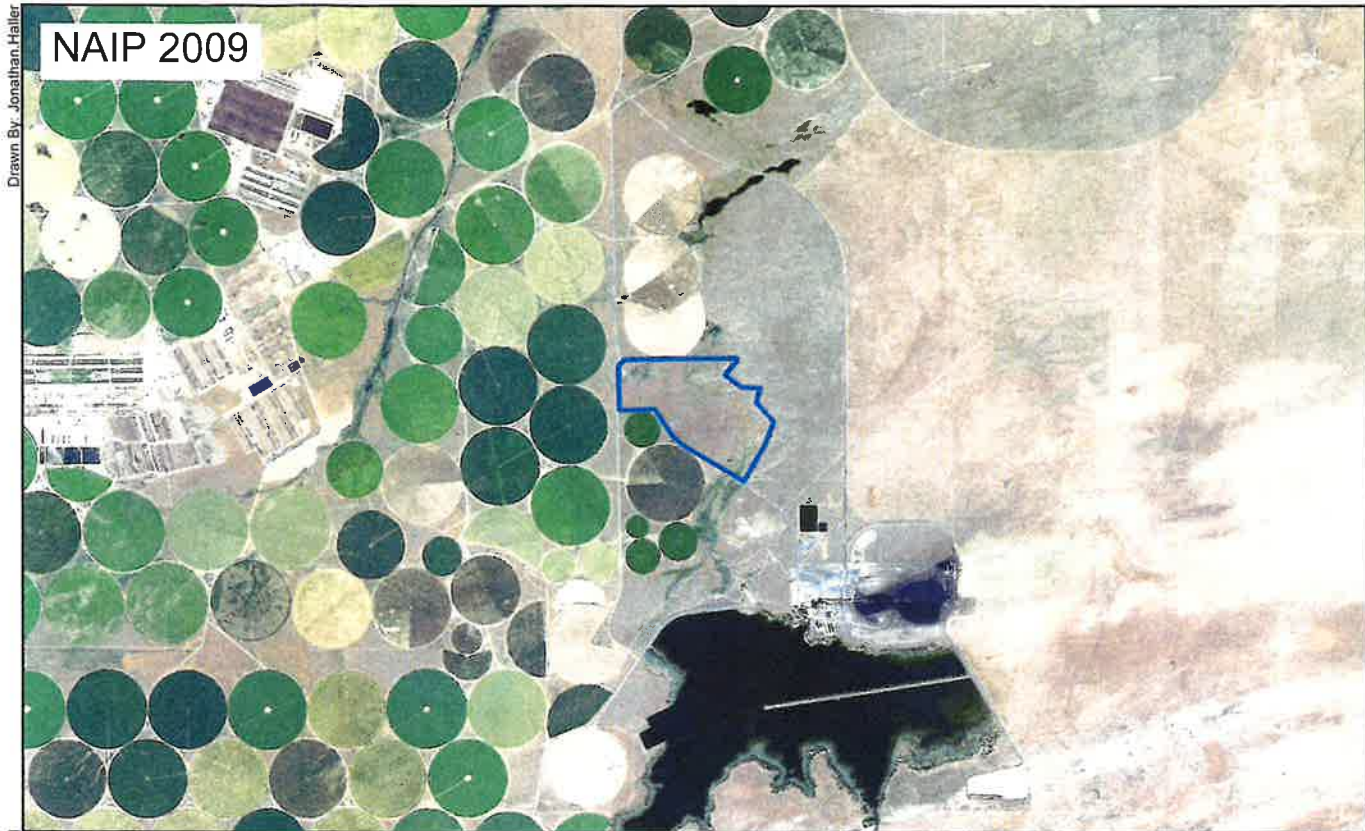
(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;

(B) Within the boundaries of a district, as defined in ORS 540.505; or


(C) Within the boundaries of a diking district formed under ORS Chapter 551.

(f) Land that is in an exclusive farm-use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(C) The portion of the Columbia Valley viticultural area as described in 27 CFR 9.74 that is within the State of Oregon.



Legend

 Site Location

0 3,000 6,000 12,000
Feet

Figure 2
Aerial Imagery
Threemile Canyon Farms
Rowan Digital Infrastructure
Morrow County, Oregon

Environmental Resources Management
ERM

Drawn By: Jonathan Haller
 C:\Users\jonathan.haller\Desktop\Percheron\Maps\ThreemileCanyonFarms.aprx\Figure 2 - REVISED: 09/02/2022. SCALE: 1: when printed at 8.5x11
 Source: Esri - World Topographic Map; NAD 1983 2011 StatePlane Oregon North FIPS 3601 F1 Intl



1050 SW 6th Avenue
Suite 1650
Portland, OR 97204

Telephone +1 503 488 5282
www.erm.com

Memorandum

To	Rowan Percheron LLC
From	ERM
Date	May 7, 2023
Reference	Percheron Data Center Project, Morrow County, Oregon
Subject	Alternatives Analysis to Support Goal Exceptions Request



INTRODUCTION

Goal 2, Part II(c) requires that an applicant demonstrate that “areas that do not require a new exception cannot reasonably accommodate the use.” The elements of the required alternatives analysis are set out in Oregon Administrative Rules (OAR) 660-004-0020(2)(b)(A)-(C).¹ Rowan Percheron, LLC (Applicant) performed an alternatives analysis with a study area that included the entire area of Umatilla and Morrow Counties, a region that has seen recent growth in significant cloud infrastructure presence. Applicant first identified siting criteria for the minimum requirements necessary for a site to reasonably accommodate the proposed Percheron Data Center (data center or Project). Applicant then applied the siting criteria to land within Umatilla and Morrow Counties to identify sites that could reasonably accommodate the proposed data center without requiring a new goal exception. The results of the analysis show that there are no available sites in Umatilla or Morrow Counties that meet the Project’s defined siting criteria and would not require a new goal exception.

SUMMARY OF APPLICANT’S SITING CRITERIA

Applicant identified eight siting criteria for selecting a viable site for the proposed data center. These siting criteria account for locational, infrastructural, and physical parameters, as well as economic factors affecting the viability of a potential project. These criteria reflect the relevant factors, including economic, for determining that the proposed data center cannot be reasonably accommodated in other areas.²

The eight siting criteria are listed below. No one siting criteria is determinative in site selection; each factor into whether a potential site is reasonable to accommodate the proposed data center.

1. Access to Electrical Infrastructure and Power Availability
2. Water Supply and Discharge

¹ Note that OAR 660-014-0040 also requires than an applicant consider alternatives to satisfy Goal 2, Part II(c), showing that “the proposed urban development cannot be reasonably accommodated in or through expansion of existing [UBG] boundaries or by intensification of development in existing rural communities.” Applicant maintains that alternatives analysis for purposes of OAR 660-014-0040(2)(a) requires the same analysis as OAR 660-004-0020(2)(b)(A)-(B). Therefore, for purposes of this application, Applicant relies on the proposed findings under OAR 660-004-0020(2)(b)(A)-(C) to meet both alternatives analysis requirement in Goal 2, Part II(c).

² See OAR 660-004-0020(2)(b)(B).

3. Land Characteristics
4. Environmentally Sensitive Resources and Protected Areas
5. Road Access
6. Fiber Network Connectivity
7. Land Use and Zoning
8. Financial Feasibility

DESCRIPTION OF APPLICANT'S SITING CRITERIA

1. **Access to Electrical Infrastructure and Power Availability.** The proposed data center requires considerable electrical power and power reliability. Key siting considerations related to power delivery include:
 - a. Proximity to existing infrastructure to minimize impacts and reduce project costs. Only lands directly adjacent or with clear access (e.g., via a transmission easement) to an existing electrical infrastructure (e.g., substation or high-voltage transmission line) were assessed as reasonable alternatives.
 - b. A viable site required electrical infrastructure (i.e., transmission lines and a substation) with available load capacity of at least 200 megawatts (MW).
 - c. Power needed to be available and delivered at high voltages (138 kilovolt [kV] or higher) due to the power use of the proposed data center and electrical pricing.
 - d. Power needed to be available and delivered to a site within 24–36 months of the initial load interconnection application.
 - e. System upgrades to provide the requested power load needed to be economically feasible for the Project.
2. **Water Supply and Discharge.** The proposed data center requires water supply and sufficient land to manage industrial wastewater onsite or have access to a municipal sanitary system. Applicant considered sites that could be served by private infrastructure, as well as municipal infrastructure. Key siting considerations related to water supply and discharge include:
 - a. Either location within the service territory of a municipal utility with sufficient capacity to service the needs of the Project or the potential for financially feasible upgrades to service the Project.
 - b. Alternatively, feasibility for private onsite wells and wastewater treatment facilities to be permitted and constructed.
3. **Land Characteristics.** The proposed data center requires a particular parcel size and topography. Key siting considerations related to land include:
 - a. A site with a minimum of 200 contiguous acres (about 0.5 to 1.0 acre per MW is required in order to accommodate the proposed Project's infrastructure).
 - b. A vacant undeveloped site.
 - c. Sites could include more than one parcel as long as contiguous.
 - d. Topography needed to be less than 15 percent slope to minimize grading.

4. **Environmentally Sensitive Resources and Protected Areas.** Applicant seeks to avoid sensitive biological, water, and cultural resources, as well as areas that are potentially contaminated or under legal protection or conservation. Key siting considerations related to environmentally sensitive resources and protected areas include:
 - a. A site must have approximately 200 acres that are unconstrained by sensitive resources. Avoiding sensitive reasons minimizes adverse environmental impacts and streamlines permitting.
 - b. A site must be permissible within 1 year or less to meet the Applicant's commercial operation date.
 - c. Contaminated sites with potential remediation liabilities may be viable in some circumstances, but are generally less desirable for Project siting.
5. **Road Access.** Applicant requires that a site be located within 100 feet or less of public right-of-way access to allow for direct or near direct access to the site and avoid construction of new access roads.
6. **Fiber Network Connectivity.** The proposed data center requires reasonable access to multiple long-haul fiber lines with available capacity to service the data center's communication needs. Key siting considerations for fiber network connectivity include:
 - a. Fiber network with an available capacity must be available regionally.
 - b. Fiber network connectivity to the site must be feasible via easements.
 - c. Fiber network providers must be willing and able to meet the Project's needs within 12 months of the service request.
7. **Land Use and Zoning.** Applicant requires that the proposed data center be located on land zoned for data center use, as a permitted or conditional use or that there be a viable pathway for rezoning a site.
8. **Financial Feasibility.** While not determinative, Applicant requires that costs for land, energy, water, fiber easements, grading, and environmental mitigation be aligned with the financial feasibility goals for the Project.

ALTERNATIVES ANALYSIS METHODOLOGY

Applicant evaluated sites within Umatilla and Morrow Counties between 2020 and early 2021. The process involved many months of interactions and inquiries with local utilities, landowners, and other stakeholders to assess viability against the siting criteria.

Applicant first evaluated the possibility of siting the Project on non-resource lands within the Urban Growth Boundaries (UGBs) of Umatilla and Morrow Counties. Applicant then evaluated the possibility of siting the Project outside the UBG, but within zones where a data center may be allowed, specifically Rural Light Industrial Zone (RLIZ), Limited Rural Light Industrial Zone (LRLIZ), and Heavy Industrial (HI) for Umatilla County and General Industrial (MG, Port Industrial Zone (PI) and Airport Light Industrial Zone (ALI) for Morrow County. Based on this review, no reasonable alternative sites were identified in either the UGB areas or zones allowing a data center. The identified sites did not meet the siting criteria with the main constraints being lands already

developed with another use, availability of existing transmission infrastructure and capacity, topography, and land availability (e.g., willing landowner). Table 1 details the analysis of the siting criteria, describes why these sites failed to satisfy the siting criteria, and therefore, were not reasonable alternatives.

Applicant next assessed other non-resource lands in Umatilla and Morrow Counties that may have required a zone change, but would not require a goal exception. As described further in Table 1, there were available sites that met some of the siting criteria, but ultimately, none of the identified sites were reasonable alternatives because they failed to satisfy the siting criteria, with the main constraints being availability of transmission capacity and land characteristics.

Lastly, Applicant evaluated Exclusive Farm Use (EFU)-zoned sites against the siting criteria that would require a goal exception. Of these sites, the main constraints were land characteristics, sensitive resources, and financial feasibility, with the exception of the Project Parcel that met all siting criteria except for being zoned to allow a data center and requiring an exception.

RESULTS OF ALTERNATIVES ANALYSIS

Applying the siting criteria and methodology described above, Applicant considered over 10 sites for the proposed data center. Applicant selected the Project Parcel for the proposed data center because it met all the siting criteria except for Criteria 7, Land Use and Zoning. The key siting considerations for Applicant in selecting the Project Parcel is its proximity to existing transmission infrastructure at the Portland General Electric (PGE) Carty Generating Station and Reservoir (Carty site); the existing high-voltage transmission line right-of-way adjacent to the Project Parcel along Tower Road that provides direct access to the existing transmission infrastructure at the Carty site; the ability of the electrical service provider to provide the required power for the Project; and the lack of sensitive resources within a large portion of the Project Parcel, including unproductive, unfarmed land. In addition, the Project Parcel has existing public access, its relatively flat to minimize grading and ground disturbance, and is of adequate size to manage all stormwater and industrial wastewater management onsite.

TABLE

Table 1 Alternatives Analysis

Alternatives Sites Considered	Distance from Selected Site (miles)	Jurisdiction	Zoning	Within or Distance to USB	Zoning of Adjacent Lands	Criteria Assessment	Conclusion
Overarching Assessment: Umatilla County UGBs	25-30	Umatilla County	Various	Within	Various	As shown on Figure 1a, UGBs within Umatilla County are either already occupied or lack suitable electrical infrastructure. Specifically, Hamiston and Hinkle are already saturated with developments, whereas Stanfield lacks available transmission capacity and Pendleton is too far to be a commercially viable (e.g., no marked) fiber network.	Criteria 1, 3, and 6 not met
Overarching Assessment: Umatilla County RLIZ, LRLIZ, HI Zones	25	Umatilla County	RLIZ, LRLIZ, HI	0-1 miles	Various	Figure 1a shows the limited areas that fall within the zones that allow data centers to be permitted outright. All of these zoned areas are already occupied with existing infrastructure.	Criteria 3 not met
Overarching Assessment: Umatilla County Non-resource Lands	20+	Umatilla County	Various	Various	Various	Areas outside of the UGBs and permitted zones, but not requiring a Goal 3 exception, were analyzed and deemed not to have available electrical infrastructure or meet the landowner and land requirements of Criteria 4.	Criteria 1 and 3 not met
Overarching Assessment: Morrow County UGBs	12 -20+	Morrow County	Various	Within	Various	As shown on Figure 1b, UGBs to the north within Boardman and Irigon, Oregon, are already occupied. UGBs to the south do not meet requirements related to available transmission capacity and topography.	Criteria 1 and 3 not met
Overarching Assessment: Morrow County MG, PI, ALI Zones	0.27 - 20	Morrow County	MG, PI, ALI	0 - 20 miles	Various	No undeveloped, vacant land available that meets the size requirements of Criteria 3. See relevant zones on Figure 1b.	Criteria 3 not met
Overarching Assessment: Morrow County Non-resource Lands	5+	Morrow County	Various	Various	Various	Areas outside of the UGBs and permitted zones, but not requiring a Goal 3 exception, were analyzed and deemed not to have available electrical infrastructure or meet the landowner and land requirements of Criteria 4.	Criteria 1 and 3 not met
Alternative 1a: Carly Generating Station	0.24	Morrow County	MG	12 miles	MG	Land already occupied by a generating station.	Criteria 3 not met
Alternative 1b: Carly Open Space/BCA	0.40	Morrow County	EFU	10 miles	EFU, MG	Landowner not interested in selling or leasing property and partially within the BCA or slated for future 50-megawatt solar development.	Criteria 3 not met
Alternative 2: Umatilla Army Depot	20	Umatilla County	UDM, DI-U	3 miles	EFU, LI	No available power capacity within criteria distance. Also, concern with prior uses and potential contamination.	Criteria 1 and 3 not met
Alternative 3: Pedro Land Company	28	Umatilla County	EFU-40	3 miles	LI	Site was previously under control with landowner in 2020/2021, though power analysis determined that interconnection would be too costly and not arrive within the Project's schedule. Also zoned agriculture.	Criteria 1 and 8 not met
Alternative 4: JR Simplot Property	28	Umatilla County, Hinkle area	HI, EFU	Directly adjacent	DI-U, EFU, LI	Adjacent to the Calpine Power Facility in Hinkle, and it was assumed power would be available. However, the owner was not interested in selling or leasing the parcels. There were also substantial wetlands and floodplains encumbering the site.	Criteria 3 and 4 not met
Proposed Sites: Selected Alternative	0	Morrow County	EFU	12 miles	EFU, MG, SAI	Adjacent to electrical infrastructure that meets all elements of Criteria 1 and 2. Threatle Canyon Farms is willing to sell land. Land was never farmed, grazed, or irrigated. Outside of the BCA and able to meet siting criteria, while avoiding wetlands and floodplain. Existing fiber back haul accessible from site. Access to site through Tower Road. Parcel zoned EFU though surrounded by MG and SAI uses, including the Carly Generating Station.	Meets all siting criteria except for 7 (the subject of this application)

Notes:

- Airport Light Industrial Zone (ALI)
- Boardman Conservation Area (BCA)
- Depot Industrial (DI-U)
- Heavy Industrial (HI)
- Exclusive Farm Use (EFU)
- General Industrial (MG)
- Light Industrial (LI)
- Limited Rural Light Industrial Zone (LRLIZ)
- Port Industrial Zone (PI)
- Rural Light Industrial Zone (RLIZ)
- Military (UDM)
- Urban Growth Boundaries (UGBs)



April 18, 2023

Rowan Percheron, LLC
Attn: David Shiflett and Kenneth Davies
160 E. State Street, Ste 120
Traverse City, MN 49684

State Land Board

Tina Kotek
Governor

Re: **WD # 2022-0436 Approved**
Wetland Delineation Report for Percheron Industrial Campus
Morrow County; T3N R24E S28 TL100 (Portion)

Shemia Fagan
Secretary of State

Tobias Read
State Treasurer

Dear David Shiflett and Kenneth Davies:

The Department of State Lands has reviewed the wetland delineation report prepared by AKS Engineering & Forestry, LLC for the site referenced above. Please note that the study area includes only a portion of the tax lot described above (see the attached maps). Based upon the information presented in the report, a site visit on April 11, 2023, and additional information submitted upon request, we concur with the wetland and waterway boundaries as mapped in revised Figure 5 of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map.

Within the study area, one wetland (Wetland A, totaling approximately 1.75 acres) and one waterway (Intermittent Water 1) were identified. The wetland and water are subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. We recommend that you attach a copy of this concurrence letter to any subsequent state permit application to speed application review. Federal, other state agencies or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates revision. Circumstances under which the Department may change a determination are found in OAR 141-090- 0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. If you have any questions, please contact the Jurisdiction Coordinator for Morrow County, Jessica Salgado, at (541) 388-6421.

Sincerely,



Peter Ryan, SPWS
Aquatic Resource Specialist

Enclosures

ec: Sonya Templeton, AKS Engineering & Forestry, LLC
Morrow County Planning Department
Michael Neal, US Army Corps of Engineers
Richard Fitzgerald, DSL

TRANSPORTATION PLANNING RULE COMPLIANCE

This section addresses the Oregon Administrative Rule Section 660-12-0060 of the Oregon Transportation Planning Rule (TPR) requirements for the proposed zone change.

TRANSPORTATION PLANNING RULE

OAR Section 660-12-0060 Plan and Land Use Regulation Amendments of the TPR sets forth the criteria for evaluating plan and land use regulation amendments. The criteria establish the determination of significant effect on a transportation system resulting from a land use action; where a significant effect is identified, the criteria establish the means for achieving compliance. The relevant portion of this section of the TPR is reproduced below in italics followed by the response for this project in standard text.

660-12-0060 Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

Response: The proposed General Industrial zone will not require or result in any changes to the functional classification of any transportation facility in the vicinity of the site.

(b) Change standards implementing a functional classification system; or

Response: The proposed General Industrial zone will not require changes to the standards that implement the functional classification system.

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

Response: The proposed General Industrial zone would result in future traffic volumes that remain consistent with the functional classifications of the roadways in the study area.

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

Response: The proposed General Industrial zone would not degrade operations of the study intersections below adopted performance targets.

MCZO 3.070(E) TRAFFIC IMPACT ANALYSIS

As noted herein, the transportation system/study intersections can accommodate the peak-hour transportation-related impacts of the proposed data center complex and its assumed site access connection to Tower Road. Although the analysis is a long-term 20-year assessment completed primarily to address the impacts of the zone change, it can be deduced that all of the study intersections will operate acceptably during both the weekday AM and PM peak hours upon a near-term buildout of the data center complex. As such, no additional operations analysis is required to address MCZO 3.070(E).

To support a follow up land use application for the data center complex, the following section includes an assessment of preliminary sight distance at the site access connection of Tower Road.

PRELIMINARY INTERSECTION SIGHT DISTANCE

Intersection sight distance (ISD) was evaluated at the proposed site access roadway connection along Tower Road. For this assessment, preliminary intersection sight distance measurements were evaluated using the recommended observation reference points¹ outlined in *A Policy on Geometric Design of Highways and Streets*. While there is no posted speed along this section of Tower Road, 55 mph was used. As noted in *A Policy on Geometric Design of Highways and Streets*, the minimum passenger car intersection sight distance requirement for a 55-mph design speed is 610 feet (left-turn from stop) and 530 feet (right-turn from stop).

From the approximate location of the proposed site access driveway approach to Tower Road, there is adequate sight distance (>850 feet) looking to the north and adequate sight distance (>930 feet) looking to the south.

To provide and maintain adequate intersection sight distance post development, it is recommended that any proposed signage or landscaping be appropriately located such that the minimum intersection sight distance can be maintained. To confirm adequate sight lines, it is further recommended that a final sight distance evaluation be performed post access road construction and prior to site beginning formal operations.

SITE ACCESS TRAFFIC CONTROL

To accommodate future traffic movements on the site access road, a STOP (R1-1) sign should be installed on the westbound access driveway approach to Tower Road in accordance with County standards and the *Manual on Uniform Traffic Control Devices (MUTCD)* in conjunction with site development.

¹ For passenger cars, an eye height of 3.5 feet, an object height of 3.5 feet, and an observation point located 14.5 feet from the edge of the cross-street travel lane.

CONCLUSIONS

Based on the results of the transportation analysis outlined in this report, the proposed General Industrial zone and the assumed data center complex is not anticipated to result in a significant effect on the surrounding transportation network or require offsite mitigation under long-term planning conditions or near-term buildout conditions. To support the land use application for a data center complex, the following is recommended:

- Construct a new site access driveway along the Tower Road site frontage. A STOP (R1-1) sign should be installed on the westbound approach to Tower Road in accordance with Morrow County standards and the *Manual on Uniform Traffic Control Devices (MUTCD)* in conjunction with site development.
- To provide and maintain adequate intersection sight distance at the site access road connection to Tower Road, locate any proposed signage or landscaping appropriately such that the minimum intersection sight distance can be maintained. To confirm adequate sight lines, it is further recommended that a final sight distance evaluation be performed post site access driveway construction and prior to site occupancy.

We trust this traffic impact analysis adequately addresses impacts associated with the proposed General Industrial zone and proposed data center complex. Please contact us if you have any questions or comments regarding the contents of this report or the analyses performed.

Sincerely,
KITTELSON & ASSOCIATES, INC.



Matt Hughart, AICP
Principal Planner



Julia Kuhn, P.E.
Senior Principal Engineer



April 22, 2023

SENT VIA EMAIL

Port of Morrow
2 East Marine Drive
Boardman, OR
Attn: Mark Patton, Chief Operations Officer
Email: markp@portofmorrow.com

Re: Memorandum of Understanding for provision of industrial water to the real property located on or under the Latitude: 45.425479, Longitude: -119.495556 in Morrow County, Oregon (the "Property").

Dear Mark,

This Memorandum of Understanding ("MOU") confirms the understanding between Rowan Percheron LLC ("Rowan") and the Port of Morrow regarding the potential supply of industrial water from the Port of Morrow to the Property (the "Proposed Transaction").

This MOU shall serve as the basis for further discussions and negotiations with respect to the Proposed Transaction based upon the non-binding indicative terms set forth below, and sets forth certain binding agreements of the parties, as provided in Section 4 below. Except as set forth in Section 4 below, the matters set forth in this MOU do not constitute binding agreements of the parties or any of their affiliates. Any binding agreement as to the Proposed Transaction will only arise upon the negotiation, execution, and delivery of mutually satisfactory definitive agreements (the "Definitive Agreements").

1. Proposed Transaction. In connection with Rowan's further development of the Property, Rowan requires a certain quantity of industrial water to serve the Property and the Port of Morrow will explore the possibility of providing such industrial water to the Property, upon certain terms and conditions listed below and subject to further investigation and negotiation between the Parties.

a. The Port of Morrow intends to provide up to 36 million gallons per year of industrial water and other related customer services to the Property. Rowan will provide onsite storage on the Property to meet any peak hour demand.

b. The parties anticipate that certain infrastructure improvements will be required for the provision of such industrial water by Port of Morrow to the Property, including but not limited to the installation of pipe, a water treatment plant and pump station (the "Infrastructure Improvements").

c. The Parties endeavor to agree upon the (i) scope of work for such Infrastructure Improvements by June 1, 2023; and (ii) the scope of work for any permitting requirements in connection with the Infrastructure Improvements and the Proposed Transaction by December 1,



2023, with a targeted delivery date of December 31, 2026, or sooner, of the industrial water to the Property.

d. The Port of Morrow shall be responsible for the design, engineering, procurement, and construction of the Infrastructure Improvements and obtaining all permits related thereto, provided such design, engineering, procurement, and construction of such Infrastructure Improvements shall be at Rowan's cost (potentially to be shared between Rowan and another third party, but in no event shall such costs be borne by the Port of Morrow). The Port of Morrow shall be responsible for the operation, maintenance, and repair of the Infrastructure Improvements, provided that the Port of Morrow may delegate those responsibilities to a third party via a separate agreement. The Parties agree that Rowan will have no obligation related to operation, maintenance, and repair.

e. The Parties agree that this MOU is non-binding and only sets forth the parties' intent to work on the Proposed Transaction regarding the Property, and the Parties will enter into a Definitive Agreement that shall govern the terms and conditions of the provision of any industrial water to the Property, the Infrastructure Improvements and the costs and expenses Rowan is obligated to pay the Port of Morrow in connection therewith.

f. The Parties agree to use diligent and commercially reasonable efforts to negotiate the Definitive Agreements in a manner consistent with the timeline of Rowan's underlying development of the Property.

2. Successors and Assigns. Section 4 of this MOU shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This MOU is not made for the benefit of any person or entity not a party hereto, and nothing in this MOU shall be construed as giving any person or entity, other than the parties and their respective successors and permitted assigns, any right, remedy or claim under or in respect of this MOU or any provision hereof.

3. Termination of Discussions. Either Party may terminate discussions at any time without liability, provided that the binding provisions of this MOU shall survive the cessation of negotiations.

4. Confidentiality. Except to the extent required by applicable law and to the extent required in connection with any permitting or zoning in connection with the Property, neither party shall make or permit any disclosure to any person or entity regarding (i) the existence or terms of this MOU, (ii) the existence of discussions or negotiations between Port of Morrow and Rowan, or (iii) the existence or terms of any proposal regarding a Proposed Transaction.

5. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Oregon (without giving effect to principles of conflicts of laws).

6. Oregon Public Records Laws. Notwithstanding anything to the contrary, all of Port of Morrow's obligations under this MOU are subject to the Oregon Public Records Laws, ORS 192.410-192.505. The



Port of Morrow may disclose confidential information to the extent disclosure is required by Oregon Public Records Laws; court order or government order. If the Port of Morrow is subject to such a disclosure order or receives from a third party any public records request for the disclosure of confidential information, the Port of Morrow shall notify Rowan within a reasonable period of time of the request. Rowan is exclusively responsible for defending Rowan’s position concerning the confidentiality of the requested information. The Port of Morrow is not required to assist Rowan in opposing disclosure of confidential information.

7. Counterparts. This MOU may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

8. Facsimile or Electronic Delivery. This MOU may be duly executed and delivered by a party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other party.

If this MOU accurately sets forth the terms and conditions upon which we have agreed to continue our discussions concerning the Potential Transaction, then please have an authorized representative of Port of Morrow sign in the space provided below and return an executed signature page to my attention.

Sincerely,

Rowan Percheron LLC

DocuSigned by:
Bobby Hollis
625DDEE61BE3465

Bobby Hollis
Chief Commercial Officer

The foregoing is hereby accepted and approved by the undersigned this 30th day of April 2023.

PORT OF MORROW

By: *Mark Patton*
Name: Mark Patton
Title: COO



700 NE 55th Avenue
 Portland, OR 97203
 P (503) 659-3281
Terracon.com

May 2, 2023

Rowan Percheron, LLC
 1330 Post Oak Boulevard, Suite 1350
 Houston, Texas 77056

Attn: Joel Zemanek
 P: 231-463-6079
 E: jzemanek@rowandigit.al

Re: Geotechnical Engineering Report
 Percheron Data Center
 Tower Road
 Morrow County, Oregon
 Terracon Project No. 82225118

Dear Mr. Zemanek:

We have completed the scope of Geotechnical Engineering services for the above referenced project in general accordance with Terracon Proposal No. P82225118 dated February 6, 2023. This report presents the findings of the subsurface exploration and provides geotechnical recommendations concerning earthwork and the design and construction of foundations and floor slabs for the proposed project.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning this report or if we may be of further service, please contact us.

Sincerely,

Terracon

Ryan T. Houser, CEG
 Project Geologist



Kristopher T. Hauck, P.E.
 Senior Principal | Office Manager

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- Exploration and Testing Procedures**
- Photography Log**
- Exploration and Laboratory Results**
- Supporting Information**

Note: This report was originally delivered in a web-based format. **Blue Bold** text in the report indicates a referenced section heading. The PDF version also includes hyperlinks which direct the reader to that section and clicking on the  logo will bring you back to this page. For more interactive features, please view your project online at client.terracon.com.

Refer to each individual Attachment for a listing of contents.

Report Summary

Topic ¹	Overview Statement ²
Project Description	<p>Site consists of a single 275-acre parcel. Project consists of construction of four, 225,000-square-foot data center buildings, a power substation, security guard house, generator yards, retention ponds, and associated pavements.</p>
Geotechnical Characterization	<ul style="list-style-type: none">■ Data Center Building Area: The surface soils underlying the data center area consisted of a thin mantle of rooted topsoil underlain by loose silty sand and silt soils up to about 15 feet below the ground surface (bgs). These soils are interpreted to be wind-blown (loess) deposits and are susceptible to collapse. The loess was generally underlain by dense to very dense cemented silty sand soils and basalt bedrock. Basalt bedrock was encountered in the data center building area at depths as shallow as 2 feet bgs. Perched groundwater was observed in one boring in the data center building area at a depth of about 22½ feet bgs.■ Substation and Guard House Area: The substation and guard house area was generally underlain by the same materials as described above, with the exception of one boring that did not encounter bedrock. In this boring (SS-3), subsurface materials consisted of loess extending to about 15 feet bgs, underlain by flood deposits consisting of silty sand, sand, and elastic silt to the full depth explored (61½ feet bgs). Groundwater was encountered in this area ranging from 6½ to 9½ feet bgs.
Loess Soils Collapse Risk	<p>The near surface loess soils exhibit moderate risk collapsible and the deeper soils exhibit negligible to slight risk collapsible soils. The collapse of the “honeycomb” structure is typically instigated by wetting and loading or overstressing from the loading without wetting. Therefore, we recommend mitigation of the collapse risk by removing and replacing the shallow loess soils or performing ground improvement of these soils within the proposed building areas.</p> <p>Ground improvement is also recommended where total settlements for duct banks and utilities outside of the data center building pads must not exceed 1 inch.</p>

Topic 1 **Overview Statement 2**

We understand the data center pads will be developed by maintaining a building pad with 7 to 10 feet of excavatable material for installation of underground utilities (i.e. 7 to 10 foot separation from bedrock). Depending on finish grades, this likely will require removal of basalt bedrock, which was encountered as shallow as 2 feet bgs in our explorations. Amount of rock excavation is not known, since the grading plan is currently in development.

Earthwork

Much of the site surficial soils consist of low-density material, we expect significant shrinkage that should be accounted for in the grading planning from excavation to placement and compaction of the loess materials.

The moisture content of the in-situ material is significantly below optimum moisture content and will require moisture conditioning in order to be able to be compacted in accordance with the compaction requirements. It is possible that a significant water import to the site will be needed.

Shallow Foundations

Shallow foundations can be used to support the structures following mitigation of the loess soils and/or ground improvements.

Deep Foundations

Cast-in-place reinforced concrete drilled shafts may be used to support the planned dead-end support structures for the substation.

Pavements

With a minimum of 12 inches of scarified and compacted subgrades prepared as noted in Earthwork, typical pavement section can be expected for this development.

General Comments

This section contains important information about the limitations of this geotechnical engineering report.

1. If the reader is reviewing this report as a pdf, the topics above can be used to access the appropriate section of the report by simply clicking on the topic itself.
2. This summary is for convenience only. It should be used in conjunction with the entire report for design purposes.

660-014-0040**Establishment of New Urban Development on Undeveloped Rural Lands**

(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

(4) Counties are not required to justify an exception to Goal 14 in order to authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and



City of Heppner
111 N Main St.
Heppner, OR 97836

Morrow County Board of County Commissioners
100 S Court St.
Heppner, OR 97836

June 5, 2023

Dear Chair Sykes, Vice-Chair Wenholtz and Commissioner Drago:

On behalf of the City of Heppner, we write to you today in support of Rowan Digital Infrastructure's data center project in Morrow County. We understand the project will have its first hearing before the County Planning Commission on June 27, 2023 and provide this letter into the record ahead of that hearing to express our support for the project.

The City appreciates the significant economic opportunities that a data center can provide to the regional economy, which will stand to benefit the residents of Heppner. The establishment of this project will not only create new quality, well-paying jobs but also stimulate various sectors of our local economy. With the increasing demand for data storage and processing capabilities, this new project will attract significant investment, both in terms of capital expenditure and ongoing operational expenses, and lead to increased revenue for our businesses and overall prosperity for our residents.

Moreover, from the City's perspective, using an unproductive agricultural parcel for a higher value opportunity seems appropriate and does not, in our opinion, undermine our region's continued support for a vibrant, productive agricultural economy. The proposed data center appears aligned with our region's commitment to responsible land management - like all municipalities in the County; the City recognizes the importance of preserving agricultural land. However, the proposed project parcel is currently of no use to the County or its residents because it cannot be farmed.

We also understand the importance of maintaining our natural resources and protecting the environment. By leveraging the availability of renewable energy, the new data center can take advantage of these clean energy sources, ensuring that its operations have a minimal impact on the environment and are aligned with our region's collective vision of sustainable growth.

In addition, the construction and operation of a new data center will have a positive ripple effect on the local economy. Ancillary businesses in communities throughout the region - such as construction firms, suppliers, and service providers - will benefit from the project, leading to additional job creation and economic growth in the County and beyond.

THE CITY OF HEPPNER

Boardman Chamber of Commerce
101 Olson Road
Boardman, OR 97818

Morrow County Board of County Commissioners
100 S Court St.
Heppner, OR 97836

June 16, 2023

Dear Chair Sykes, Vice-Chair Wenzholz and Commissioner Drago:

I am writing to you on behalf of the Boardman Chamber of Commerce to express our support for Rowan Digital Infrastructure's proposed data center project in Morrow County. We believe that this exciting project aligns with our shared vision of sustainable development and robust economic growth, and we respectfully endorse Rowan's application to rezone the land under consideration in favor of their intended use.

Our primary goal at the Boardman Chamber of Commerce is to promote the building of a strong community in Northeastern Oregon.

The team at Rowan has shown a willingness to be meaningful partners in this mission and we are thrilled to welcome them to our community. We are currently working with them and other interested stakeholders on creative ways to address the key issues facing our community, even beyond the scope of their data center development.

We recognize that by leveraging an economically unproductive parcel and converting it into a significant revenue-generating property, this project will be a net positive for our region. The development of a sustainably built data center will bring hundreds of construction jobs and will create many well-paying permanent jobs for decades to come. By deploying over half a billion dollars of capital investment locally, the project will considerably stimulate the regional economy, which will help to bolster our residents' livelihoods.

This new project builds on the momentum that eastern Oregon is working hard for, in terms of attracting new business investment and defining ourselves as a sought-after destination for emerging technologies and the workforce of tomorrow. By positioning ourselves in this manner, we stand to benefit from a more diversified local tax base that helps to keep our region more competitive and resilient against unforeseeable market fluctuations.

Furthermore, Rowan's commitment to sustainable practices is commendable. Rowan expects the data center operations to be supported 100% by renewable energy and plans to implement energy-efficient technologies. As such, we are confident that this project seeks to contribute to a cleaner and more sustainable future. We firmly believe that this alignment with our community's values will not only benefit the residents of Boardman but also position Morrow County as a leader in environmentally responsible development.

In conclusion, the Boardman Chamber of Commerce stands firmly in support of Rowan's proposed data center. We believe it presents an exceptional opportunity for our community to thrive economically while promoting sustainability. We kindly request that you consider our endorsement and support the necessary measures to facilitate the successful implementation of this project.

We look forward to continued collaboration with the Rowan team to reach our community's goals around economic development and enhanced livability. Thank you for your careful consideration.



MEMORANDUM

To: Morrow County Board of Commissioners
 From: Tamra Mabbott, Planning Director
 CC: Planning Commission
 BOC Date: June 21, 2023
 RE: Monthly Planning Update

Mission Statement

Morrow County Planning Department provides guidance and support to citizens for short-term and long-range planning in land use, to sustain and improve the county's lands for future generations. Our goal is to foster development where people can live, work & play.

Planning Permits **April 2023**

Zoning Permits	7
Land Use Compatibility Reviews	4
Land Partitions	1
Property Line Adjustments	1
Land Use Decisions	2
Rural Addresses	2
Plan and Zone Amendment	1
Floodplain Dev Permits	14

Energy Projects

Status of energy projects in Morrow County is found here on the department webpage:

<https://www.co.morrow.or.us/planning/page/renewable-energy-1>

Staff hosted several in-person and phone meetings with renewable energy developers who are in various stages of entitlement process.

Morrow County Heritage Trail

High School Intern Caren Cardenas and planners made final changes to the sign plan, including an inventory of trail markers and interpretive panels. Staff issued an RFP for Heritage Trail Interpretive Panel update and construction. Staff also met with Ducote Consulting to discuss grant applications and walked sections of the trail which has varied terrain, surface type, and ecosystem.



Willow Creek Valley Community Development Projects

Met with Lexington staff to clarify parcels and add information to the Buildable Lands Inventory and analysis. Completed review of the final reports which will include a report for Lone, Lexington, and Hepner. Draft Goal 9 Economic Development and Employments Lands Reports are prepared for each city to be presented to Board of Commissioners.

Data Centers

Planners met in person and on calls with various firms working for AWS, along with AWS staff, to discuss various permitting and construction projects.

Access to Transportation – Rural Transit Equity (RTE) Pilot Project

The Project Management Team and the Technical Advisory Committee held their final meeting and provided input on survey results shared by Dr. Daniel Costie and Rural Engagement and Vitality (REV) staff. Coordinated with REV and Euvalcree on interviews. Final report will be posted soon on the Planning Department webpage.

WATER

GSI Water Solutions Inc., continues contractual work serving as “Water Coordinator” for Morrow County. The Board of Commissioners appointed the charter Water Advisory Committee (WAC) and the first meeting on May 22nd was well attended and included an overview of water topics and discussion about the draft briefing papers on water quality, quantity, and drinking water. Committee recommended an additional paper be developed to overview projects in the basin and featuring successful projects in Morrow County such as the new Willow Creek project which is an irrigation project that has also had beneficial water quality outcomes.

LUBGWMA

LUBGWMA Committee met in Boardman on May 5th. Dr. Salini Sasidharan, OSU, and committee co-chair, presented an informative historical overview of the work of the committee. The bi-county Scoping Committee, including Commissioner Drago and Planning Director Mabbott from Morrow County, met again with Umatilla County and HDR to develop a scope of work. Sub-committee is working with HDR, contracted with Umatilla County, to identify methods to remove nitrates from the aquifer. After scoping, counties will work together to identify funding sources to implement remediation activities. An extensive overview of the Committee and the LUBGWMA can be found on the LUBGWMA website <https://lubgwma.org/>

Port of Morrow SEP Project

Planning and Public Health Directors continue to meet with Port of Morrow officials who may be able to allocate funds for the LUBGWMA. More information to come soon.

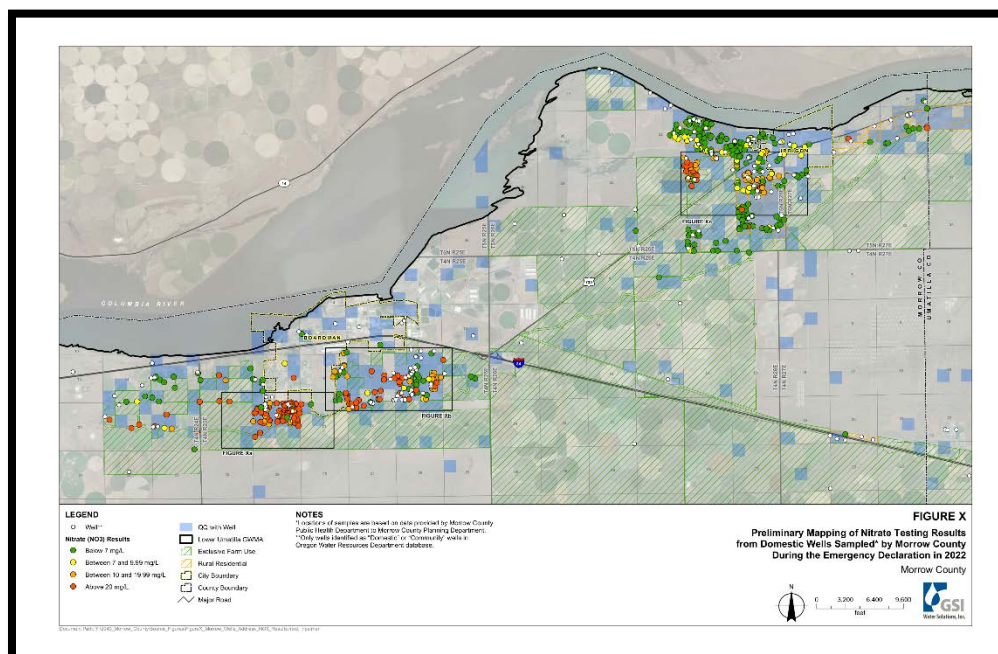


Drinking Water

On behalf of Umatilla and Morrow Counties, a grant application was submitted to the Environmental Protection Agency (EPA). The grant is required to access the \$1.7 million congressional earmark. Following approval of the grant the two counties will work together to develop a Request for Proposal (RFP).

Water Data and Mapping

GIS Tech Stephen Wrecsics, continues to work with GSI Water Solutions and state agencies to develop a series of maps that will help the county better understand location of wells with high nitrates and wells that serve the parcel. Staff recently held a meeting to develop mapping protocol and to share mapping and data resources for the basin. Agencies working together on the data sharing effort include Morrow and Umatilla County,



Department of Environmental Quality, Oregon Water Resources Department, and Oregon Health Authority. Gabriela Goldfarb and Courtney Crowell of the Governor’s Office attended in addition to agency staff. The overall objective is to coordinate data and mapping resources for the basin. Stephen is developing a platform for the data which will be useful for the nitrate challenges. The database will be modeled after a program developed for the Klamath Basin and will be valuable for many water-related efforts in the future.

Code Compliance

Staff continues to work on the “Neighborhood Compliance Program.” The department hosted a meeting on May 22nd at the North Morrow Annex in Irrigon, 6:30-8:00, with landowners. Resources were shared at the meeting to answer questions about land use and code enforcement ordinances. Staff shared different resources, including the new voucher program “litter credit” to help clean up their rural residential properties. Ana Pineyro from Public Health assisted in putting together materials and with speaker translation equipment. A Spanish translator was at the meeting to translate the presentation and facilitate the discussion. Most of the attendees were there to talk about their trucking companies and their desire to keep their trucking business. Staff explained that trucking businesses are not allowed in residential zones. There was a robust discussion about alternatives for truck business owners.

Compliance Planner has been working with a handful of property owners to help them clean up their properties into compliance. The code violations include abandoned vehicles and RVs, accumulation of junk and solid waste, as well as other code violations. Communication with these property owners has been appreciated and working well for a path forward on compliance.

- 3 new complaints- RV as dwelling, junk property, and home occupation
- 1 complaint- Business in a residential location
- 1 complaint- RV as dwelling
- 1 Complaint- Junk on property; garbage bags filling up trailer
- 1 Closed Complaint- Home Occupation permit violation
- 1 Complaint- Site Visit for Home occupation, unfounded
- 1 Complaint- Compliance achieved with clean-up of junk and debris.
- Communicating with 18 non-permitted trucking business operations located in residential zone
- Assisting two landowners who are in violation of their Conditional Use Permits. Both permits were presented to Planning Commission April 25th, 2023, and continued to a later date for final consideration. due to non-compliance with conditions of the permit. Commission asked staff to work with landowners to find remedies for the violations.
- Other outstanding/ongoing cases – 36

Oregon Legislature

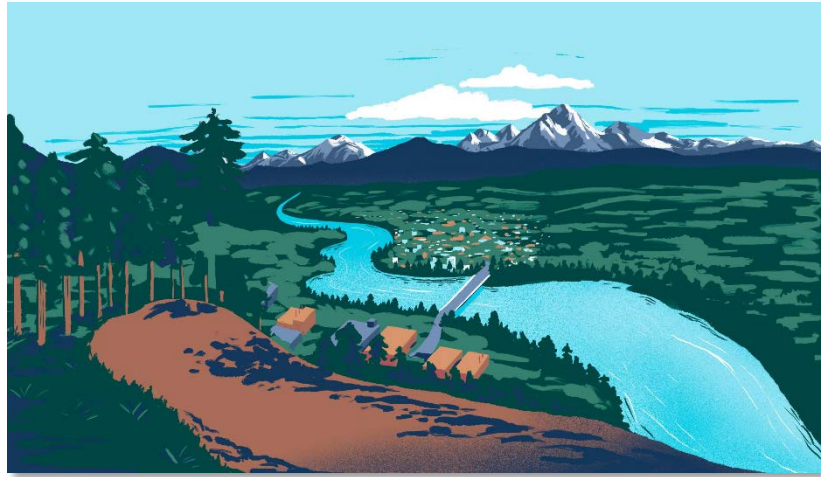
Planning Director continues to monitor land use and other natural resource bills. Several organizations host weekly calls to get input from counties and planning professionals.

Natural Hazard Mitigation Plan (NHMP) Update The NHMP Committee held an in person meeting on May 16th with project consultant Susan Millhauser from the Oregon Department of Land Conservation and Development (DLCDD). Several cities were in attendance and provided

input on hazards in their communities. Stephen Wrecsics, GIS Planning Tech is providing maps for the project and helping with meetings. Project is scheduled to be complete January 2024.

Senate Bill 100 turns 50

The state hosted an event on the Capitol Mall on May 24th to acknowledge the 50th-anniversary celebration of Senate Bill 100. It was almost 50 years to the day with the new law that was signed and established Oregon's Statewide Planning Program and the establishment of the Department of Land Conservation and Development and the Land Conservation and Development Commission.



While not everyone agrees on the merits of the program, and certainly there is room for improvement, Oregon is well known for its unique quality and quantity of natural resources and the built environment, managed urban growth; protection of farm and forest lands, preservation of coastal and natural resource areas; and livable communities. The state program is implemented by cities and counties.

To learn more about the 50 years of Oregon's Planning Program, try this link to a story map:

<https://storymaps.arcgis.com/stories/9341ad98b88c4d6fa6e47dd513445e40>

If you are interested in an assessment of how the Statewide Program has protected farm and forest land, see the links below, including a report to the Land Conservation and Development Commission, the 2020-2021 Farm & Forest Land Use Report and a slide presentation to the commission.

https://www.oregon.gov/lcd/Commission/Documents/2022-11_Item_7_Staff_Report_FarmForestReport.pdf

https://www.oregon.gov/lcd/Commission/Documents/2022-11_Item_7_FarmForestReport_Attachment_A.pdf

https://www.oregon.gov/lcd/Commission/Documents/2022_11_Item_7_FarmForest%20Report%20PPT.pdf