

**Memo**

To	Rowan Percheron Team
From	ERM
Date	16 July 2023
Reference	Percheron Data Center Project, Morrow County, Oregon
Subject	Land Use and Zoning Addendum to Alternatives Analysis to Support Goal Exceptions Request

1. 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)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.

In the Alternative’s Analysis (**Appendix D**, Application) the Applicant identified eight siting criteria for selecting a viable site for the proposed data center. Land Use and Zoning are an integral part of the Alternatives Analysis and should be described in sufficient detail to support the decisions and conclusions of the Applicant. ERM provides the below and attached in support of the Alternatives Analysis, specific to Land Use and Zoning.

1.1 Morrow County Zoning Districts

The Applicant evaluated the possibility of siting the Project outside the Urban Growth Boundary (UBG), but within zones where a data center may be allowed, such as industrial or commercial zones, specifically General Industrial (MG), Port Industrial Zone (PI) and Airport Light Industrial Zone (ALI) for Morrow County. A Data Center use is permitted outright in Morrow County’s General Industrial Zone (MG Zone) and Airport Light Industrial Zone (ALI) and permitted with a zoning permit in Port Industrial Zone (PI). Although data centers are listed as permitted uses, the County does not have specific siting criteria or development standards included in the Morrow County Zoning Ordinance (MCZO), only a definition of the term “data center” in MCZO

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).

1.030. Data centers are listed as a conditional use only in the Umatilla Army Depot Military (UADM) Zone. Finally, the Space Age Industrial (SAI) zone allows many industrial, utility, and other emerging uses but does not allow for a data center use. All other Morrow County Zoning Districts and Overlay Zones do not provide for data centers as a permitted or conditional use.

Table 1 Morrow County Zoning Districts- Data Center Use Table

Use	Permitted Outright	Permitted with a Conditional Use Permit	Prohibited/ Not Allowed*
Data Center	<ul style="list-style-type: none"> ■ MG Zone ■ PI Zone ■ ALI Zone 	<ul style="list-style-type: none"> ■ UADM Zone 	<ul style="list-style-type: none"> ■ SAI Zone ■ AI Zone ■ AA Zone ■ AH Zone ■ EFU Zone ■ FR-2 Zone ■ FU Zone ■ CG Zone ■ RRI Zone ■ RLI Zone ■ RR-1 Zone ■ RSC Zone ■ SF-40 Zone ■ SR-2A Zone ■ SR Zone ■ TC Zone ■ UDWH Zone ■ UMCD PI Limited Use Overlay Zone

*Note: All other zoning districts data centers are not listed or the district or overlay zone is not applicable.

1.2 Port Industrial (PI)

A data center can be permitted in the Morrow County PI Zone with a zoning permit. Per section 3.073 of the MCZO the purpose of the PI Zone is:

The PI zone is intended to regulate development at portions of the Port of Morrow Industrial Park and other appropriate locations. The zone is intended to provide for port-related industrial uses and be an industrial sanctuary, limiting commercial uses to those appropriate and necessary to serve the needs of the workers employed within the zone. (MC OR-2014-1)

The Applicant evaluated the PI zoned areas of Morrow County during its siting and evaluation process as part of its Overarching Assessment of permitted zones, inclusive of the PI zoned parcel adjacent to the Morrow County UADM Zone (Umatilla Ordinance Depot; *UADM discussed separately in section 1.3 below*) and determined the parcel available would not meet the siting and development requirements. In addition to the description provided in **Appendix D** of the Application, the Applicant offers the below in additional support:

- The availability of power capacity and electrical service sufficient to meet the Project need was not and is not currently available;
- Clear title, required for the purchase of the property, was not available and was only recently acquired by the current landowner; and
- Number of buildable acres was not sufficient for the design parameters typical to data centers.

1.3 Umatilla Army Depot Military (UADM) Zone

As stated above, a data center can be permitted in the Morrow County UDAM Zone with a Conditional Use Permit (CUP). Per MCZO 3.074, the purpose of the UADM Zone is to “recognize the area in the Morrow County portion of the Army Depot that will be utilized by the National Guard Bureau (NGB), Oregon National Guard (ONG) and the Oregon Military Department (OMD).” The Applicant evaluated both the Morrow County and Umatilla County portions of area zoned UADM in Morrow County and DI-U in Umatilla County, known as “Umatilla Ordinance Depot,” for feasibility and potential siting of a data center. The Applicant evaluated the Umatilla Ordinance Depot, Alternative 2 in Appendix D, area during its siting and evaluation process and determined the parcels available would not meet the siting and development requirements. In addition to the description provided in Appendix D of the Application, the Applicant offers the below in additional support:

- The availability of power capacity and electrical service sufficient to meet the Project need was not and is not currently available;
- Clear title, required for the purchase of the property, was not available and was only recently acquired by the current landowner; and
- The “Umatilla Ordinance Depot” is a former EPA Superfund site (EPA ID: OR6213820917) (See Criteria 4 of Alternatives Analysis which discusses contamination). The development of previously contaminated properties is a complex and protracted process; the Applicant was unable to realistically explore development within the area known as “Umatilla Ordinance Depot” based also on timing and contractual requirements to deliver the Project, as well as the financial feasibility of securing financing and insuring a previously contaminated site.

1.4 Limited Use and Overlay Zones

The Applicant's application includes a request for a Limited Use Overlay. Morrow County appears to have adopted a total of six (6) overlay zones, two (2) overlay zones are "Limited Use" (LU) zones including the UMCD PI Limited Use Overlay Zone and the Speedway Limited Use Overlay Zone (SO). The UMCD PI limited use overlay zone was developed to provide guidance on the development of the nearly nine hundred fifty-nine (959) acres of PI zoned lands. The SO limited use overlay was intended to direct development and activities related to a "a speedway." Per MCZO 3.110, the purpose of the Limited Use (LU) zone is "to limit the list of permitted uses and activities allowed in the zone to only those uses and activities which are justified in the comprehensive plan 'reasons' exception statement under ORS 197.732(1)(c)." This LU zone is also intended to address the 'reasons' exceptions pursuant to OAR 660-14-018(3). A data center use is not a permitted or conditional use in either of the currently adopted Limited Use Overlay Zones.

Per section 3.110(A) of the MCZO, the Limited Use Overlay Zone "is to be applied through the plan amendment and rezoning process at the time the primary plan and zone designation is being changed." Included in the Applicant's Alternatives Analysis Siting Criteria No.7, Land Use and Zoning, (Appendix D) the Applicant also requires "that there be a viable pathway for rezoning a site" to advance as a feasible alternative. Based on the unique characteristics of the Project parcel, the Applicant understood that there was a pathway to rezoning the Project parcel as well as a method to limit the potential impacts of the data center with an LU Overlay Zone. The intention of the overlay request is to address concerns related to the data center use and limit the uses just to what is permissible for Applicant's requested 'reasons' exception. The data center use would be limited to the minimum acres necessary to develop and operate the Project and also subject to reasonable conditions when necessary to carry out the provisions of the Comprehensive Plan and the MCZO.

2. MORROW COUNTY AMENDMENTS

Exhibit J, of the record of the June 27, 2023 Morrow County Planning Commission Public Hearing on the Applicant's Applications, includes a list of the adopted amendments to the Morrow County Zoning Map and Comprehensive Plan from 1987-2016, as well as excerpts from the 2021-2021 DLCD Farm Forest Report, both related to EFU lands. Based on Exhibit J, Morrow County has only adopted fifteen (15) amendments in the last thirty-six (36) years related to EFU zoned lands most of which occurred between 1987 and 2009. Since 2011, Morrow County has approved and adopted three (3) amendments related to EFU acreage. The number of applications which were withdrawn, denied, or overturned/ remanded was not included in Exhibit J.

In addition to the above, Exhibit J also provides data from the DLCD Farm Forest Report, which provides state-level data on farmland zone changes from 1989-2021 and forest and mixed farm-forest zone changes as well as USDA National Agricultural Statistics Service (NASS) data for Acres in Farm Use by County from 1997-2017. The DLCD Farm Forest report does not include data specific to Morrow County but according to the USDA NASS data Morrow County is ranked thirteenth for loss of farmland in across all Oregon Counties in the last two decades. In 2017, according to USDA NASS data, Morrow County had over one million acres of land in farm use. The rezoning of approximately 274 acres (Project parcel) would represent a 0.02% loss of EFU designated land in Morrow County.

3. CONCLUSIONS

A Data Center use is permitted outright in Morrow County's MG and ALI zones and permitted with a zoning permit in PI zones. Data centers are listed as a conditional use only in the UADM Zone and not permitted elsewhere in the County by either zoning permit or conditional use. The Morrow County PI zones were reviewed and evaluated during the Applicant's Overarching Assessment of permitted zones and were unable to obtain power capacity, availability clear insurable title, and insufficient buildable acreage. The available UADM zones were evaluated by the Applicant in its Alternative 2 (Appendix D) and the results were the same as for the PI zone except, the "Umatilla Ordinance Depot" is a former EPA Superfund site and, as stated above, the Applicant was unable to realistically explore development within the area based also on timing and contractual requirements to deliver the Project, as well as the financial feasibility of securing financing and insuring a previously contaminated site or in close proximity to a previously contaminated site. Additionally, the Applicant's applications include a request for a LU Overlay Zone like the ones adopted previously in the county to address and to limit the potential impacts of the data center rezoning with an LU Overlay Zone. The intention of the overlay request is to address concerns related to the data center use and limit the uses just to what is permissible for Applicant's requested 'reasons' exception. Based on materials submitted into the record, Morrow County has only approved and adopted three (3) amendments related to EFU acreage since 2011. Additionally, according to the USDA NASS data Morrow County is ranked thirteenth for loss of farmland in across all Oregon Counties in the last two decades. Finally, in 2017, according to USDA NASS data, Morrow County had over one million acres of land in farm use. The rezoning of approximately 274 acres (Project parcel) would represent a 0.02% loss of EFU designated land in Morrow County.