

Attachment 2

Applicant's Response to DLCD Email

(original text from DLCD email is shown in italics)

DLCD has reviewed the application materials and wanted to provide you with comments as well as identify inconsistencies.

First, it appears that the appendices documents that you shared with DLCD staff was not included in the PAPA Download. The application stated, "SEE PACKAGE OF APPENDICES UNDER SEPARATE COVER." If you or Stephanie could please download those onto our PAPA database, that would be great and ensure that we have all the application materials.

Applicant's Response:

Overall staff is concerned with the deficiencies in the application submittal and do not believe this application submittal is complete. As promised, we wanted to provide you with some specifics:

Goal 14 exception criteria in OAR 660-014-0040(3)(A) and (B) do not appear to have been addressed. The text in the application incorrectly cites a different section of rule.

OAR 660-014-0040(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 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.

Applicant's Response: Applicant reviewed its application materials and believes this information has been addressed. In response to DLCD's comments, Applicant proposed revised and supplemental findings to bolster those found in the Staff Report. Specifically, Applicant updated the compatibility analysis for Goal 14 on page 25-26 of the Supplemental Findings (Attachment 1).

Details on water resources is minimal. Additional information and analysis needs provided. The applicant indicates that they are evaluating options for sourcing water supply to the site for both potable water and industrial processing water that will amount to between 20 and 60 million gallons of total annual water use. Applicant states that water may be provided by the Port of Morrow through a water service line extension for which a Goal 11 exception is being requested, or through transfer of water rights from existing nearby water rights holders. The application indicates that the latter option may have impacts to the ground and surface water conditions in the immediate vicinity of the Project and that groundwater is becoming more restricted in use. If the latter option is pursued, what are the anticipated impacts to ground and surface water conditions in the vicinity of the project and how will such anticipated impacts effect agricultural operations in the vicinity? If water service is provided by the Port of Morrow, will such service detract from the utility's ability to serve urban uses within their district?

Applicant's Response: After further evaluating its options, Applicant eliminated using existing or nearby water rights for its water supply thereby eliminating the need for a new groundwater well. Based on this project modification, Applicant does not anticipate any surface or groundwater impacts from the project, either on the groundwater supply or agricultural operators in the vicinity.

Compatibility of this proposed use on the adjacent site uses. This is a very urban-large-scale use being proposed in a rural area, the application does not identify assurances that the proposed use will not negatively impact the adjacent properties/uses. The application indicates that there are surrounding 'ongoing agricultural operations' and 'pivots', but it is unclear from the narrative what farm uses are occurring in the vicinity of the project site or what the potential impacts to such agricultural uses might be during construction or operation of the proposed facility. Potential impacts from such things as traffic impacts on farm equipment, noise impacts on livestock, and dust and litter impacts on crops, as well as changes to air quality and water quality and quantity are commonly addressed in assessing the compatibility of a proposed use with nearby agricultural operations.

Applicant's Response: The Project Parcel is mostly surrounded by Threemile Canyon's farming operations, the Boardman Bombing Range, and PGE's Carty power generation facility and water reservoir. Threemile Canyon supports the project and does not anticipate impacts to its agricultural operations. To respond to DLCD's concern, Applicant proposed a condition of approval requiring coordination Threemile during construction to avoid and minimize impacts to harvest farm traffic. See page 46 of Supplemental Findings ([Attachment 1](#)).

Goal 14 Exception criteria in OAR 660-014-0040(2). The application claims that a Goal 14 exception is warranted because the use is an "economic activity that is dependent upon an adjacent or nearby natural resource." The application does not clearly explain what the "dependance on a natural resource is." This needs to be better defined. The application appears to assert that the "natural resource" is land protected for farm use and that the use is "dependent" on the subject property because the establishment of the use will provide a revenue stream that could help the other farmland remain in production. We do not understand the rule to operate in this way.

Applicant's Response: Applicant appreciates DLCD's comment and provided supplemental findings to better define the required analysis and evidence to support Applicant's compliance with the rule language. See pages 16-20 and page 25 of Supplemental Findings (Attachment 1).

Goal 14 exception. Concerns that exception criteria in OAR 660-014-0040(3) are not adequately met, including:

(a) Alternative area analysis – Insufficient detail regarding all other candidate lands, both within and adjacent to existing UGBs within Morrow and Umatilla Counties. Only four sites mapped, others categorically excluded. No sites in Umatilla County at all?

(b) EESE analysis does not consider impacts relative to other candidate sites.

(c) Managing stormwater and wastewater onsite through “evaporation and retention ponds” requires more explanation in relation to potential impacts to air, water, energy, and land resources.

(d) Water service discussions with the Port of Morrow does not meet the criterion for “likely to be provided in a timely and efficient manner.”

(e) Criterion (e) is not addressed.

Applicant's Response: With respect to (a), Applicant addresses DLCD's comments on the alternatives analysis above. With respect to (b), Applicant maintains that it does not need to address EESE consequences for other alternative sites because no other site was reasonable for the project location. With respect to (c), Applicant is unclear what impacts DLCD is concerned about – the onsite stormwater and wastewater management systems will be subject to DEQ permitting and ongoing regulatory compliance. The operation of these systems is not anticipated to require significant energy inputs or result in offsite impacts. With respect to (d), Applicant provided a new Letter of Intent with Port of Morrow into the record that addresses the timely and efficient manner requirement. Finally, with respect to (e), Applicant maintains that this standard was addressed by the very fact that the County is undertaking a coordinated comprehensive plan amendment for the urban development on rural land; regardless, Applicant provides supplemental findings to respond to DLCD's comment. See page 27 of Supplemental Findings (Attachment 1).

The alternative analysis pursuant to OAR 660-004-0020(b) and OAR 660-014-0040(3)(a) needs to recognize that:

1. There are large amounts of lands nearby the subject property that are not protected for resource use. These areas include lands zoned for General industrial and Space Age Industrial, lands at the former Umatilla Chemical Depot, as well as lands at, or owned by, the Ports of Morrow and Umatilla.

2. There are large amounts of vacant lands inside existing Urban Growth Boundaries, Hermiston and Umatilla in particular.

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3. *The application doesn't appear to consider the expansion of an existing UGB as contemplated by OAR 660-014-0040(3)(a).*

All of these areas listed above would seem to be able to meet the identified siting criteria. The application must explain the other possible areas are not suitable to accommodate the use.

Applicant's Response: It is unclear whether DLCD was able to review Applicant's Alternatives Analysis provided as Appendix D to the application. Applicant sought to confirm with DLCD that it had received the Appendices and to date has yet to receive confirmation. Applicant maintains that these comments concerning the alternatives analysis are addressed in the supplemental and revised supplemental findings along with the email from the City of Hermiston in the record. See page 25 of the Supplemental Findings ([Attachment 1](#)).

Goal 11 exception case law:

Per Foland v. Jackson County, an exception to Goal 11 is needed when proposing to provide water service to serve an urban use on rural land. However, the consideration of alternative sites is not sufficiently detailed to demonstrate that the proposed site makes the most sense for this data center, especially when considering that the source of necessary water to this site has not been clearly established (there is a reference to potential service from the Port of Morrow, but no firm commitment as far as we can tell)

Applicant's Response: Applicant confirmed its water source for the Project Parcel. Applicant will provide further information to address this comment if requested.