



By electronic mail

August 15, 2023

Morrow County Board of Commissioners
c/o Tamra Mabbott
Planning Director
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Re: AC-145-23; ACM-146-23; AZM-147-23 Comprehensive Plan and Map Amendment.
Rowan Percheron, LLC, Applicant.

On behalf of 1000 Friends of Oregon, please accept the following statement for the record in the proceedings before the board of commissioners to consider applicant Rowan Percheron, LLC's application for a Comprehensive Plan and Map Amendment, including exceptions to Goals 3, 11, and 14.

Please include 1000 Friends in any subsequent notice related to proceedings in this matter and any notice of decision.

In July 25 comments submitted to the planning commission, included in the BOC Packet at pages 167–88, 1000 Friends raised several grounds for denial and/or requiring further evaluation of the applicant's proposal. We urge the Board to consider these points as they were not substantively addressed by the planning commission's decision or the applicant's proposed findings. We also add the following supplementary comments addressing some additional concerns raised by the applicant's latest proposed findings.

Procedural issues.

Included in 1000 Friends' previous comments was a request to continue the hearing to allow additional time to respond to the applicant's many supplementary materials submitted in advance of this hearing. *See Fasano v. Washington Co. Comm.*, 264 Or 574, 588, 507 P2d 23 (1973). This request was denied for several reasons stated in the Board Packet that are not entirely accurate or justified.

First, the draft ordinance provided in the BOC packet alleges that the applicant's supplementary materials were "largely responsive to questions raised by the Planning Commission at its June 27th hearing and merely bolstered the substantive evidence already in the record. In this light, the applicant's post-hearing submissions were largely argumentative and not particularly evidentiary."

This is not an entirely accurate assessment of the materials submitted, nor is it sufficient justification to not provide adequate time to review the supplemental materials. For example, the proposed Port of Morrow water supply route was new evidence on which there were no prior



details. The supplemental materials also include new evidence related to big game habitat, soils, and traffic.

Additionally, for any components of the applicant’s submissions that can be considered “argumentative,” this is not a valid justification to disregard the need to review the materials closely in advance of a planning commission vote. Many of the submissions were included in response to *concerns* raised by planning commission members and DLCD, and the commission had a duty to evaluate whether the supplemental materials adequately addressed those concerns and the relevant criteria.

Second, the draft ordinance alleges that “the applicant’s submissions were submitted July 18, 2023, a full week before the Planning Commission’s continuance hearing on July 25.” We note that the applicant submitted the proposed Port of Morrow water supply route on July 24. This document outlines the location of the proposed pipeline to the site, which is relevant evidence to whether the proposal satisfies criteria. *See, e.g.*, MCZO 8.040.B; OAR 660-014-0040(3)(d). It is unclear to what extent the planning commission considered this additional evidence in making its decision.

The planning commission failed to continue the hearing to properly address this new evidence and unaddressed concerns, relying in part on the fact that they were only making a recommendation to this Board. The Board now has the opportunity to consider and address these concerns and should not approve this application without doing so.

Additional concerns related to water provision.

In 1000 Friends’ July 27 letter, we raised several concerns related to water provision. One such concern was that the uncertainty of how water will be provided to the property undermines the county’s ability to assess whether the proposal meets applicable criteria. This uncertainty still exists and requires more concrete evidence to truly understand the impacts of the proposal and whether it complies with applicable criteria.

To date, the applicant and the POM have procured a simple Letter of Intent indicating an intent to negotiate for provision of 22 million gallons of water for the project (compared to the estimated 20-60 million gallons needed). The applicant’s August 7 version of proposed findings included in the Board Packet indicate that the “[a]pplicant and the POM are continuing to negotiate the proposed water delivery route and Applicant provided evidence into the record before the Planning Commission related to the proposed route within the public right of way along Tower Road.” BOC Packet at 12, 41.



The provision of water is a critical, existential component to this project and the board should not approve it until the applicant has *proven* that it can procure the water needed from the Port. MCZO 8.040.B requires that “[t]he 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[.]” Similarly, OAR 660-014-0040(3)(d) requires that “an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner.” The applicant’s plan for water provision is still being negotiated with the POM, would involve construction of a new wastewater processing facility and new pipelines requiring additional permitting, and only covers 1/3 of the total water potentially needed for the project. The LOI does not include any specific timeline for provision of water. This evidence is not sufficient to demonstrate that there are sufficient public services to support the project.

To attempt to account for this uncertainty, the applicant indicates that it is “prepared to truck in potable water to be stored onsite to serve the facility operations until such time as the POM completes construction of the water delivery infrastructure.” Packet at 15. This raises more questions than it answers. Where will the applicant store 20 to 60 million gallons of water on site? If not all stored on site, how will transportation in such high quantities of water impact the applicant’s traffic analyses? What if construction of the water delivery infrastructure takes 10, 20 years?

Conclusion

Many questions and issues remain unresolved by the applicant’s analyses. The Board should not approve this application until these issues are addressed and the applicant has demonstrated that all criteria can be met.

Sincerely,

A handwritten signature in cursive script that reads "Devin Kesner".

Devin Kesner
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1000 Friends of Oregon is a non-profit organization founded by Governor Tom McCall shortly after the Legislature passed Senate Bill 100, which created the land use planning rules that shape Oregon’s communities. Since its founding in 1975, 1000 Friends has served Oregon by



defending Oregon’s land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.