

August 30, 2023

VIA EMAIL

Morrow County Board of Commissioners
110 N. Court Street, Room 201
Heppner, Oregon 97836

**Re: Rowan Percheron, LLC – Final Rebuttal Submittal
(Docket AC-145-23, AC(Z)-146-22, AZM-147-23)**

Dear Chair Sykes and Fellow Commissioners:

On behalf of Rowan Percheron, LLC (“Applicant”), thank you for the opportunity to provide additional evidence in response to comments received from the Oregon Department of Land Conservation and Development (“DLCD”) and 1000 Friends of Oregon (“Friends”) at the August 16th Board hearing on the above-referenced matter. This is Applicant’s final rebuttal evidence package for your consideration.

Response to DLCD Comments

DLCD raised questions concerning the adequacy of Applicant’s alternatives analysis for purposes of the requested Goal 3, 11, and 14 exception requests. Applicant provides a supplemental technical memo to address DLCD’s comments and the particulate sites identified in its letter. See Enclosure 1. With this additional evidence in the record, Applicant respectfully requests that the Board find that Applicant has appropriately applied the alternative analysis rules [OAR 660-004-0020(2)(b) and OAR 660-014-0040(3)(a)] to conclude that there are no reasonable alternatives available and the goal exceptions for the Project Parcel are warranted.

Response to Friends Comments

Friends appear to raise two concerns in their comment letter: procedural concerns and water related concerns. With respect to procedural concerns, Friends have had a full and fair opportunity to participate in the public hearings before the County and have demonstrated in no way how they may have been prejudiced by the Planning Commission’s decision not to continue the July 25th hearing. Friends again participated before the Board in writing. Friends chose to not appear in person or virtually at any Planning Commission meetings nor at the Board meeting. No further consideration is needed for Friends’ procedural arguments. With respect to concerns related to water provision, Friends challenge Applicant’s ability to comply with MCZO 8.040B requiring that “public services and facilities are sufficient to support a change in designation, including but not limited to, water availability to both quantity and quality.” Friends also raises OAR 660-014-0040(3)(d) requiring that an “appropriate level of public facilities and services are likely to be provided in a timely and efficient manner.” Applicant has provided a letter of intent

and a memorandum of understanding with the Port of Morrow into the record to support affirmative findings under both these criteria. These documents evidence that potable water can be delivered to the Project Parcel to serve the proposed data center development, in quantity and quality by the Applicant. Friends asserts that these documents only provide for one third of the project needs. However, as evidenced by the record (Exhibit 65) and as clarified by Applicant during public hearings before the County, Applicant's water demand is currently estimated at 22,050,000 gallons per year, consistent with the letter of intent and memorandum of understanding with the Port of Morrow. Applicant will use on-site storage to meet peak demand. Further, there is evidence in the record regarding the construction of the water delivery system within the Tower Road right of way and evidence of consultation with County Public Works. Applicant has accounted for the timing of the water delivery system and is coordinating construction accordingly, similar to how Applicant is coordinating timing for delivery of power. For these reasons, Applicant maintains that there is substantial evidence in the record for the Board to conclude that MCZO 8.040(B) and OAR 660-014-0040(3)(d) can be met.

Proposed Ordinance

Applicant provides a proposed ordinance for the Board's consideration, incorporating Applicant's requested condition language from the April 16 hearing. The project will require water service from the Port of Morrow and power from Pacific Power, both of whom will be responsible for permitting and constructing the systems. See Enclosure 2.

Proposed Findings

Applicant requests the opportunity to work with staff and County legal counsel to prepare final findings and conclusions of law following the Board's decision. In anticipation of preparing findings, Applicant provides a draft written transcript of August 16, 2023 hearing as an attachment to this submittal. See Enclosure 3.

Thank you for your consideration.

Very truly yours,

Davis Wright Tremaine LLP



Elaine R. Albrich

cc: Rowan Team

Enclosures