

ENCLOSURE 2

Proposed Ordinance

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

An Ordinance Amending the Morrow County Comprehensive Plan to Change the Plan and Zone Designation of a 274-acre Parcel from Exclusive Farm Use to General Industrial and Adopt a Limited Use Overlay Zone to Limit Use to a Data Center and Adopt Exceptions to Statewide Planning Goals 3, 11 and 14 to Allow the Establishment and Operation of a Data Center Use – County File Numbers AC-145-23, AC(Z)-146-22 and AZM-147-23.

Ordinance ORD-2023-_____

WHEREAS, ORS 203.035 authorizes Morrow County’s duly elected Board of Commissioners to exercise authority within the County over matters of County concern; and

WHEREAS, Morrow County exercises exclusive land use planning and permitting authority over all unincorporated areas within its boundaries pursuant to ORS Chapters 197 and 215 and the County’s Comprehensive Land Use Plan (acknowledged by LCDC on January 15, 1986) as amended; and

WHEREAS, Rowan Percheron LLC, as applicant and on behalf of the property owner Threemile Canyon Farms, submitted a development application on May 24, 2023 to Morrow County seeking approval for Comprehensive Plan Amendment and Zone Change with corresponding Exception to Statewide Planning Goals 3, 11 and 14 to construct and operate a data center campus on ~274 acres currently zoned Exclusive Farm Use (the “Application”) and more particularly described as Parcel 2 of Partition Plat No. 2023-3, also described as TL 100, Twp 3 North, Range 24 East, Sections 28 & 29 (the “Property”); and

WHEREAS, Morrow County deemed the Application complete on July 7, 2023; and

WHEREAS, after issuing notice required by Article 9 of the Morrow County Zoning Ordinance (“MCZO”) to the public and notice to DLCD pursuant to ORS 197.610, the Morrow County Planning Commission held an initial public hearing on June 27, 2023, took public testimony on the proposal, kept the record open, and continued the hearing to July 25, 2023; and

WHEREAS, at the July 25, 2023 continued hearing, the Planning Commission accepted additional public testimony on the proposal, deliberated and voted 5:2 to recommend approval to the Board of Commissioners; and

WHEREAS, based upon the entire record compiled through the Planning Commission proceeding, including the Planning Commission’s favorable recommendation, the Morrow County Board of Commissioners convened a duly noticed public hearing on August 16, 2023, at which time it accepted all manner of public testimony on the proposal, closed public testimony

and continued the hearing to September 6, 2023, at 9 am or after, leaving the record open for Applicant to submit written responses to issues raised by the Oregon Department of Land Conservation and Development and 1000 Friends of Oregon at the August 16, 2023 hearing;

WHEREAS, the Board reopened the continued hearing on September 6, 2023, accepted Applicant's supplemental evidence into the record, and deliberated.

NOW THEREFORE based on the foregoing recitals, which are incorporated herein by this reference, the Morrow County Board of Commissioners Ordains as follows:

Section 1. Decision and Conditions. The application by Rowan Percheron LLC is approved as proposed, subject to the satisfactory completion of the following conditions of approval. The Applicant's failure either to fulfill a condition of this approval or cause the condition to be met, shall invalidate this approval:

1. Prior to construction, Applicant shall enter into a Road Use Agreement with the Morrow County Public Works department to fund \$267,000 to pay for chip seal on the first nine (9) miles of Tower Road.
2. Prior to construction, Applicant shall provide notice to Threemile Canyon Farms, the area farming operator, of its construction traffic schedule and coordinate with Threemile Canyon Farms to minimize any potential impacts to farm traffic during harvest.
3. Applicant shall obtain all local, state and federal permits and approvals for the data center campus construction and operation, including but not limited to:
 - a. Oregon Department of Environmental Quality (DEQ), National Pollutant Discharge Elimination System (NPDES) 1200-C Permit
 - b. DEQ, Onsite Septic Permit
 - c. DEQ, Basic Air Contaminant Discharge Permit (ACDP)
4. The project will require delivery of electricity and water from third-party providers, as described in the application record. Such services shall be delivered substantially as described in the record and the County shall require that all third-party infrastructure serving the project will receive all necessary local, state, and federal permits and approvals.

Section 2. Incorporation of Findings. In support of the decision, the Board of Commissioners adopts as its own and incorporates herein by this reference the Final Findings of Fact and Conclusions of Law, to be prepared by applicant in coordination with staff and County legal counsel.

Section 3. Procedural Issue. In a July 25, 2023 letter, 1000 Friends of Oregon requested that the Planning Commission hearing be continued a second time and that the record be left open until August 22, 2023 to allow further review of, and rebuttal to, the applicant's submissions following the first Planning Commission hearing. The Planning Commission denied the request for two primary reasons. First, the Planning Commission's decision in this matter was merely a recommendation to the Board of Commissioners, who would then hold at least one more public hearing and would accept all manner of public testimony and evidence.

Second, the information submitted by the applicant following the Planning Commission's June 27, 2023 hearing was 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. Absent these evidentiary pieces, the record already contained a significant amount of evidence in the application materials and documents submitted prior to the June 27th hearing, sufficient to support the applicant's assertions and conclusions about the project.

Finally, the applicant's submissions were submitted July 18, 2023, a full week before the Planning Commission's continuance hearing on July 25, 2023. 1000 Friends offers no cogent or convincing argument as to why one week was not sufficient time to review and rebut these exhibits at or before the continued hearing. For all of these reasons, the Planning Commission denied the request to continue the hearing and keep open the record, and we affirm that decision.

Section 4. The Record. The record in this matter consists of all of the application materials and supplemental exhibits provided by the applicant, all public and agency comments, the County's notices to the public, media outlets and DLCD about the application, public hearings and decisions, staff reports and the applicant's revisions thereto. The record also includes audio recordings of all public hearings before the Planning Commission and the Board of Commissioners and other over-sized exhibits submitted into the record. Attached hereto is a preliminary listing of the exhibits in the Record.

Section 5. Effective Date. This Ordinance is a statutory land use decision and shall be effective upon expiration of the 21-day appeal period following the second reading.

ADOPTED and read for the first time by title only September 6, 2023. Read for the second time by title only and finally adopted September 20, 2023.

**BOARD OF COMMISSIONERS FOR
MORROW COUNTY, OREGON**

David Sykes, Chair

Jeff Wenholz, Vice Chair

Approved as to Form:

Morrow County Counsel

Roy Drago Jr., Commissioner