



OREGON

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MARION COUNTY BOARD OF COMMISSIONERS

Wednesday, March 25, 2026
Board Session 9:00 a.m.

Senator Hearing Room
555 Court Street NE, Salem

PUBLIC COMMENT

PRESENTATION

1. Salem Foundation Presentation –Sherry Lintner and Terry Hancock, Salem Foundation Distribution Committee

CONSENT

ASSESSOR'S OFFICE

2. Approve a Sole Source Procurement for ongoing support and maintenance of the Oregon Counties Assessment and Taxation System (ORCATS).

BOARD OF COMMISSIONERS

Board Appointments – Justice of the Peace Pro Tempore

3. Approve orders appointing Rachael Federico and Jarrod Howard as a Justice of the Peace Pro Tempore for the Marion County Justice of the Peace District with terms beginning March 25, 2026, and ending March 25, 2027.

Board Committee Appointment – Materials Management Advisory Council

4. Approve an order appointing Mark Lowery to the Materials Management Advisory Council (MMAC) as a Community Organization Representative through March 25, 2030.

COMMUNITY AND ECONOMIC DEVELOPMENT

5. Approve a resolution to establish the Marion County Community and Economic Development Tourism Grant Program for the benefit of residents and the economic development of Marion County.

PUBLIC WORKS

6. Approve the Contract for Services with North Santiam Paving Company in the not-to-exceed amount of \$345,280 for the supply and delivery of aggregate for the 2026 Marion County Chip Seal Program through December 31, 2026.

ACTION

PUBLIC WORKS

7. Consider whether to accept or deny an appeal of the hearings officer's decision denying Administrative Review Case #25-026 / Denise Burnham –Austin Barnes

PUBLIC HEARINGS
Starting no earlier than 9:00 a.m.

PUBLIC WORKS

A. Public hearing to consider Comprehensive Plan Amendment / Zone Change Case #24-007 / Bruce Ernst. –Austin Barnes

Members of the public may submit written testimony by email to PublicHearings@co.marion.or.us For agenda items where in-person testimony is allowed, the public may sign up to provide testimony by telephone by emailing PublicHearings@co.marion.or.us at least 24 hours before the meeting. The email must specify the meeting date/time and agenda topic for which testimony is being submitted. For telephone testimony requests, the email must also include your name and the phone number that staff should use to call you at the appropriate time.

If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168 Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: www.co.marion.or.us



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 25, 2026

Department: Human Resources

Title: Salem Foundation Presentation

Management Update/Work Session Date: n/a Audio/Visual aids [checkbox]

Time Required: 5-10 minutes Contact: Sherry Lintner Phone: 503-588-7990

Requested Action: The Distribution Committee provides oversight of Salem Foundation's distributions. Mr. Hancock will share about his work as Marion County's appointee on the Salem Foundation's Distribution Committee.

Issue, Description & Background: The Salem Foundation is a charitable trust which is administered by Pioneer Trust Bank, N.A. Established in 1930, the Salem Foundation has a long history of serving the greater Salem community. As cited in the Foundation's 2024 Annual Report, over \$6M in grants, awards and scholarships were distributed to 109 organizations. The trust instrument provides that a member of the Distribution Committee is appointed by the Chair of the Marion County Commissioners. Terry Hancock has been serving in this capacity since January of 2017.

Financial Impacts: n/a

Impacts to Department & External Agencies: n/a

List of attachments:

Presenter: Terry Hancock, Salem Foundation Distribution Committee

Department Head Signature: Salvador Llerenas Digitally signed by Salvador Llerenas Date: 2026.03.10 15:44:41 -07'00'



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 3/25/2026

Department: Assessor's Office

Title: Sole Source Procurement of Ongoing ORCATS Maintenance

Management Update/Work Session Date: 3/10/2026 Audio/Visual aids

Time Required: 5 min Contact: Nate Combs Phone: (503) 588-3584

Requested Action: Approval of Sole Source procurement of Ongoing Support and Maintenance of the Oregon Counties Assessment & Taxation System (ORCATS) from Helion Software, Inc.

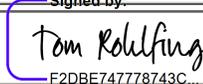
Issue, Description & Background: In December 2019, Marion County used a cooperative agreement between Helion Software, Inc. and Klamath County to establish an IT Agreement for ORCATS. The system is near fully-integrated and the Assessor's Office will require ongoing maintenance and support going forward. Helion Software is the sole owner and developer of ORCATS, resulting in the need for a sole source procurement to issue a new contract.

Financial Impacts: Current quotes estimate the cost to be \$1,719,820 through June 2031.

Impacts to Department & External Agencies: N/A

List of attachments: Sole Source Determination, Request for Information, Brand Name Specification

Presenter: Tom Rohlifing

Department Head Signature:  Signed by: F2DBE74778743C...



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 25, 2026

Department: Justice Court

Title: Justice of the Peace Pro Tempore Appointments

Management Update/Work Session Date: March 10, 2026 Audio/Visual aids

Time Required: 5 minutes Contact: Sherry Lintner Phone: 503-588-7880

Requested Action: Appoint Rachael Federico and Jarrod Howard as Justice of the Peace Pro Tempore for a one-year term starting March 25, 2026 and ending March 24, 2027.

Issue, Description & Background: Marion County Board of Commissioners have the authority to appoint a Justice of the Peace Pro Tempore to a one year term. The JOP Pro Tempore may preside over hearings when the elected JOP is unavailable or has a professional conflict.

Rachael Federico and Jarrod Howard are currently serving in this volunteer position, are qualified for reappointment and are interested in serving an additional term.

Financial Impacts: n/a

Impacts to Department & External Agencies: Volunteer Justice of the Peace pro tempore judges provide essential coverage that allows the Justice Court to continue operating when the elected judge is unavailable due to illness, scheduling conflicts, conflicts of interest, or other temporary absences.

List of attachments: Board Orders, Volunteer Applications

Presenter: Judge Justin Kidd

Department Head Signature: *Justin Kidd*

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of the appointment of)
Rachael Federico as a Justice of the)
Peace Pro Tempore for the Marion)
County Justice of the Peace District.)

ORDER No. _____

This matter came before the Board of Commissioners at its regularly scheduled meeting on Wednesday, March 25, 2026, to consider the appointment of a justice of the peace pro tempore for the Marion County Justice of the Peace District.

Pursuant to ORS 51.260(2), the board has the authority to designate a person or persons to serve as justices of the peace pro tempore; and

Rachael Federico is an Oregon attorney, a Marion County resident, and is qualified and willing to serve as a justice of the peace pro tempore for the Marion County Justice of the Peace District; now, therefore,

IT IS HEREBY ORDERED that Rachael Federico be appointed as a justice of the peace pro tem for the Marion County Justice of the Peace District.

IT IS FURTHER ORDERED that this appointment will be effective from March 25, 2026, through March 24, 2027.

DATED this _____ day of March 2026.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

cc: Clerk
Volunteer Services Coordinator

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of the appointment of)
Jarrod Howard as a Justice of the Peace)
Pro Tempore for the Marion County)
Justice of the Peace District.)

ORDER No. _____

This matter came before the Board of Commissioners at its regularly scheduled meeting on Wednesday, March 25, 2026, to consider the appointment of a justice of the peace pro tempore for the Marion County Justice of the Peace District.

Pursuant to ORS 51.260(2), the board has the authority to designate a person or persons to serve as justices of the peace pro tempore; and

Jarrod Howard is an Oregon attorney, a Marion County resident, and is qualified and willing to serve as a justice of the peace pro tempore for the Marion County Justice of the Peace District; now, therefore,

IT IS HEREBY ORDERED that Jarrod Howard be appointed as a justice of the peace pro tem for the Marion County Justice of the Peace District.

IT IS FURTHER ORDERED that this appointment will be effective from March 25, 2026, through March 24, 2027.

DATED this _____ day of March 2026.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

cc: Clerk
Volunteer Services Coordinator



Advisory Board Application

Applicant's Name: **Rachael Federico, J.D.**

Appointment: **Justice of the Peace Pro-Tempore**

City of Residence: **Salem** Zip Code: **97302**

Occupation: **Supervising Attorney, Legal Aid Services of Oregon**

Application Rcd: **01/26/2026**

The reason I am applying:

I am applying for reappointment as Justice of the Peace Pro Tempore. I have served in this role for the past two years and have learned and grown in that role. During my time volunteering for the court, I have assisted with general court functions, presided in FED (eviction) matters, presided in traffic violation matters, reviewed and signed court orders (including attorney fee petitions, fee waiver applications, and routine motions), officiated weddings, assisted with special events such as the Halloween and Love Day wedding events, and worked closely with Justice of the Peace Justin Kidd to ensure the public's ongoing access to the court. I am dedicated to continue supporting the Justice Court's work and filling in as needed. I am deeply committed to helping the court efficiently resolve cases and serve our Marion County community members.

More about my personal and professional interests:

I am a lawyer working in our community; for the past nine years, I have worked for Legal Aid Services of Oregon, and for the past two years, I have served as Justice of the Peace Pro Tempore for the Marion County Justice Court. I am strongly committed to the Justice Court's mission of ensuring cases are heard quickly and fairly and ensuring that the public has affordable access to our judicial system. I am honored to continue serving our Justice Court and providing access to our local judicial system.

Tell us more about your community involvement:

Willamette Valley Inns of Court (member); Marion County Bar Association (Board of Directors, past President); Oregon Appellate Section Executive Committee (current Chair of section); Marion County Justice Court (volunteer, Justice of the Peace Pro Tempore); Schirle Elementary School (parent volunteer); Temple Beth Shalom Hebrew Teacher; Campaign for Equal Justice (table captain) - please see attached resume for further information

Previous board service at Marion County:

Yes, I have served as Justice of the Peace Pro Tempore for the Marion County Justice Court since March 2024.

Qualifications and Skills:

I have a strong foundation in working with low-income clients, representing and advising in housing cases, and litigating civil matters. I am able to bring those skills and subject matter expertise to the position. I will also bring a strong working understanding of the rules of civil procedure and rules of evidence. I have insight into many resources and programs that may be available to help members of



Advisory Board Application

our community in need. Additionally, I have volunteered for the Marion County Justice Court for approximately two years. During that time, I have presided over FED, traffic, and small claims matters, attended a Justice Court/Municipal Court conference, participated in numerous special events on behalf of the Justice Court, performed dozens of out-of-court weddings in our community, and worked closely with Justice of the Peace Justin Kidd. I am deeply committed to fairly and efficiently applying the law and ensuring our community's access to our judicial system.

More about yourself and why you are applying:

I graduated with my Juris Doctor (J.D.) in 2013, with a special certificate in Public Interest Law. After graduating, I served as a judicial clerk to the Oregon Court of Appeals, as a clerk for the Honorable Joel DeVore. In January 2017, I began working as a staff attorney for Legal Aid Services of Oregon, representing in a wide array of low-income civil matters including housing, domestic relations, administrative, and appellate cases. I will be transitioning to full-time private practice in March 2026 and will continue representing clients in Marion County. I believe that the legal profession has a civic duty to engender trust in our judicial system and to ensure members of our community have meaningful access to local courts. I also believe that legal professionals have a duty to help in our local communities. Volunteering as a pro tem judge allows me the privilege of giving back to my community and upholding those values.

References:

Emily Rena-Dozier, Legal Aid Services of Oregon, colleague

Signature

Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

I Agree *



Advisory Board Application

Applicant's Name: **Jarrod Howard**

Appointment: **Justice of the Peace Pro-Tempore**

City of Residence: **Salem** Zip Code: **97302**

Occupation: **Managing Attorney, Howard Law Group, LLC**

Application Rcd: **01/26/2026**

The reason I am applying:

I have served as a Justice Pro Tem in prior years, and would like to continue to do so. It is a way for me to contribute time and energy to my community.

More about my personal and professional interests:

It is something that I have professional knowledge and practical experience in.

Tell us more about your community involvement:

Marion County Justice Pro Tem.

Previous board service at Marion County:

NA

Qualifications and Skills:

Member in good standing of the Oregon State Bar since 2009.

More about yourself and why you are applying:

I live in Marion County, as does my family. I want to make a positive difference in the community we live in.

References:

Judge Justin Kidd, colleague and current elected Justice of the Peace

Signature

Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

I Agree *



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 3/25/2026

Department: Public Works

Title: Appoint Mark Lowery to the Materials Management Advisory Council (MMAC)

Management Update/Work Session Date: 3/10/2026 Audio/Visual aids []

Time Required: 5 minutes Contact: Brian May Phone: 503-365-3147

Requested Action: Appoint Mark Lowery to represent the Marion County Community Organization position on the Materials Management Advisory Council (MMAC).

Issue, Description & Background: The Materials Management Advisory Council (MMAC) advises the Board of Commissioners on policies, programs, and initiatives related to waste reduction, recycling, and sustainable materials management. The council—consisting of 16 voting members and four non-voting members—provides community and industry perspectives to help guide decisions that promote resource conservation, environmental protection, and effective solid waste management practices within the county. Each member serves a term of four years. Mark Lowery serves as the Director of Strategic Initiatives for United Way of the Mid-Willamette Valley. As a resident of West Salem in Polk County, his appointment to MMAC is contingent upon his employment with a community organization.

Financial Impacts: N/A

Impacts to Department & External Agencies: N/A

List of attachments: Board Order, MMAC Roster, Application

Presenter: Brian May

Department Head Signature: Brian Nicholas Digitally signed by Brian Nicholas Date: 2026.03.11 10:00:54 -07'00'

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of)
Mark Lowery to the Materials) Department of Public Works
Management Advisory Council)

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on March 25, 2026, to appoint Mark Lowery to the Marion County Materials Management Advisory Council with a term beginning March 25, 2026, and ending on March 25, 2030.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizens and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Mark Lowery, representing the Community Organizations of Marion County, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning March 25, 2026 and ending on March 25, 2030. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 25th day of March, 2026.

MARION COUNTY
BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

MARION COUNTY
MATERIALS MANAGEMENT ADVISORY COUNCIL
Roster

Council Member	Position	Term End Date
Kevin Cameron	Marion County – Elected Official, Chair	12/31/2025
Daniel Kohler	City of Keizer – Elected Official	07/31/2029
Jenny Ammon	City of Keizer – Staff	07/31/2029
Linda Nishioka	City of Salem – Elected Official	07/31/2029
Ryan Zink	City of Salem – Staff	07/31/2029
Frank Lonergan	City of Woodburn – Elected Official, Vice-Chair	07/31/2029
Jim Row	City of Woodburn – Staff	07/31/2029
Walter Wick	City of Aumsville – Elected Official	07/31/2029
Marie Traeger	City of Silverton – Elected Official	08/31/2029
Jordan Ohrt	City of Stayton – Elected Official	07/31/2029
Brian Asher	City of Aurora – Elected Official	07/31/2029
Walter Perry	City of Jefferson – Elected Official	07/31/2029
Ken Hector	Marion County Citizen – Urban	10/29/2029
Michele Tesdal	Marion County Citizen – Rural	10/29/2029
Treva Gambs	Food Service/Grocery Industry	07/31/2029
Duane West	Home Builders Association	07/31/2029
Shane Kuenzi	Materials Management Industry	07/31/2029
Julie Jackson	Recycling Industry	07/31/2029
<i>Vacant</i>	Community Organization	

County Contacts			
Name	Title	Phone	Email
Brian May	ES Division Manager	(503) 365-3147	BMay@co.marion.or.us
Cory Swartwout	ES Program Supervisor	(503) 566-4160	CSwartwout@co.marion.or.us
Kevin Cameron	Marion County Commissioner	(503) 588-5212	KCameron@co.marion.or.us
Danielle Bethell	Marion County Commissioner	(503) 588-5212	DBethell@co.marion.or.us
Colm Willis	Marion County Commissioner	(503) 588-5212	CWillis@co.marion.or.us



Advisory Board Application

Applicant's Name: **Mark Lowery**

Adv. Board: **Materials Management Adv. Council**

City of Residence: **Salem** Zip Code: **97304**

Occupation: **Director of Strategic Initiatives, United Way of the Mid-Willamette Valley**

Completed application Rcd: **02/20/2026**

The reason I am applying:

Currently my position at UW is appointed waste management protocols for our CRC warehouse program Continuing to evolve with better solutions is a goal and being able to share information and work with others to advance those efforts is appealing.

More about my personal and professional interests:

Other waste management resources, environmental friendly practices, repurposing goods, recycling, reduction of pollutants, work with others, etc.

Tell us more about your community involvement:

Volunteer at Marion Polk Food Share, chaperone SKSD field trips, coached youth sports K-8th grade for over 20 yrs, partner with a variety of other community non-profits in Salem Keizer

Previous board service at Marion County:

No

Qualifications and Skills:

Been active with Marion County located on-profits for 30 years. Experience running events and working with groups and panels. Currently serve as the liaison with the good360 program and the waste management efforts with amazon.

More about yourself and why you are applying:

UW employee for 3 yrs and our Community Resource Program serves thousands of families by repurposing goods and eliminating waste. Want to move forward with education and better practices to make a difference in our community.

References:

Rhonda Wolf, CEO, United Way of the Mid-Willamette Valley

Signature

Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County. I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

I Agree *



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 3/25/2026

Department: Community and Economic Development

Title: Tourism Grant Program Establishment

Management Update/Work Session Date: 03/03/2026 Audio/Visual aids

Time Required: 10 minutes Contact: Tami Cirerol Phone: 503-589-3234

Requested Action: Approve the Resolution that establishes a new Tourism Grant Program for Marion County.

Issue, Description & Background: At the March 3, 2026 Management Update, the Board of Commissioners directed staff to bring forward the new Tourism Grant Program, which will be operationalized in the Community and Economic Development Department. The Board has reviewed and approved the proposed program.
Seeking formal approval by Board for the Tourism Grant Program Resolution.

Financial Impacts: Funding for the proposed Tourism Grant Program will be allocated in FY26-27. The proposed FY26-27 Economic Development Lottery Budget recommends \$200,000 be allocated toward the proposed grant program.

Impacts to Department & External Agencies: There will be minimal impact on the Economic Development Program, as the program previously coordinated the agreements with external agencies regarding tourism marketing in Marion County. Anticipated impacts to external agencies will be minimal and comprised mostly of writing an application and subsequent reports for awardees.

List of attachments: 1. Tourism Grant Program Resolution, 2. Tourism Grant Criteria and Instructions Document

Presenter: Tami Cirerol, Economic Development Specialist

Department Head Signature: *Kelli Wuse*

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

In the matter of establishing the)
Community and Economic Development)
Tourism Grant Program for the benefit of)
the residents and the economic)
development of Marion County)

RESOLUTION NO. _____

This matter came before the Marion County Board of Commissioners at a regular public meeting on March 18, 2026, concerning the formation of the Marion County Tourism Grant Program; and

WHEREAS, The Marion County Community and Economic Development Department’s Economic Development Program is charged with supporting Marion County’s Economic Development efforts including tourism; and

WHEREAS, The Marion County Economic Development program supports efforts that serve to create a healthy economic environment for residents and businesses to grow and thrive; and

WHEREAS, The Marion County Board of Commissioner’s recognize that unique issues effect tourism at the local level and are often best addressed with local expertise such as Destination Management Organizations, Chambers of Commerce, and Cities; and

WHEREAS, the Community and Economic Development Tourism Grant Program provides for a method and process for distributing funding where necessary to meet Marion County’s economic development and tourism priorities and needs.

BE IT RESOLVED that the Marion County Board of Commissioners establishes the Community and Economic Development Tourism Grant Program, as shown in the attached Community Services Grant Program Criteria and Instructions.

DATED this 18th day of March 2026.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner



Community and Economic Development Tourism Grants (TGs) Criteria and Instructions

03.11.2026

Section 1: Purpose

The Community and Economic Development Tourism Grants (TGs) provide grant funding to promote Marion County tourism priorities by funding Marion County Destination Management Organizations, Chambers, Cities, non-profit organizations, and for-profit businesses. Funds are available to organizations operating within Marion County implementing tourism related activities that benefit Marion County.

Section 2: Award Amounts

TGs are awarded pending funding availability. Awards will be made up to the following amounts:

- Salem Metro Area Grant
 - The Salem Metro Area Grant will primarily focus on the Salem Metro area, which must include the City of Salem and may include surrounding cities, such as Keizer or Turner.
 - This award will be granted to a single organization responsible for tourism marketing in the Salem Area through a three-year grant agreement with allocations of \$100,000 per year, for a total grant award of \$300,000 over 3 years.
- North Marion Region Grant
 - The North Marion Region Grant will primarily focus on the North Marion area, which includes the cities of Aurora, Brooks, Donald, Hubbard, Gervais, Mt. Angel, Silverton, St. Paul, and Woodburn.
 - This award will be granted to a single organization responsible for tourism marketing in the North Marion Region through a three-year grant agreement with allocations of \$50,000 per year, for a total grant award of \$150,000 over 3 years.
- Marion County Grant for Chambers, Cities, non-profit organizations, and businesses:
 - The Marion County Grant is open to any tourism marketing project that focuses on Marion County.
 - This award(s) will be distributed each year and may be divided among multiple recipients, with a total combined amount of up to \$50,000 available each year.

Note: Only 10% of a TG budget can be spent on administrative costs, if such costs are incurred solely to support the grant-funded activity. Administrative costs are defined as expenses related to the general management and oversight of the grant, such as accounting, reporting, recordkeeping, and other activities that support, but are not directly tied to, the program activity.

Section 3: Application Period

The following outlines the grant application timeline:

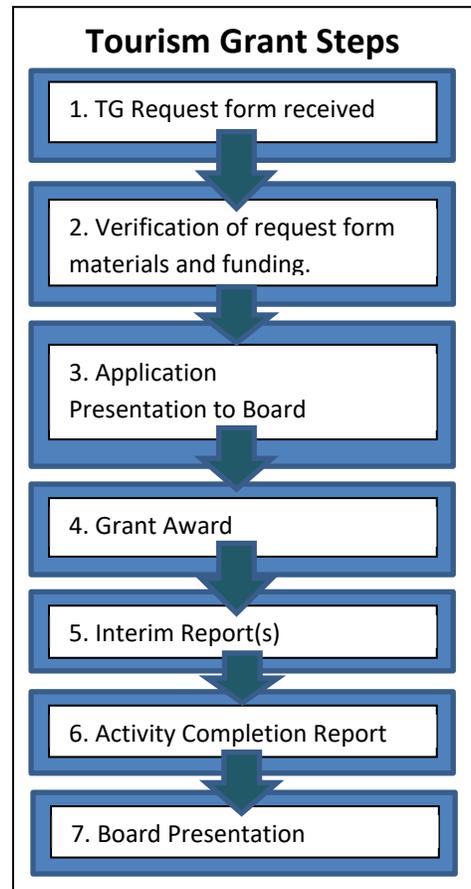
- April – Application period
- May-June – Review applications with the Board
- July – Notify awardees and begin contract development
- January – Funding begins

NOTE: The dates are intended as a general guide. Marion County reserves the right to adjust the timeline as needed to accommodate Board schedules, application volumes, or other administrative considerations. Funding and timeline are subject to availability of funds. Any significant changes will be communicated to applicants and the Board in a timely manner.

Section 4: Criteria

The following criteria shall be used to evaluate all applications:

1. The applicant must be an organization operating in Marion County and registered with the Secretary of State.
2. The activity must meet a tourism-related priority or need such as:
 - a. Attracting visitors and/or extending visitor stays.
 - b. Promoting the region as a destination.
 - c. Developing, supporting and/or improving access to tourism infrastructure.
 - d. Developing and/or promoting tourism attractions or events.
 - e. Strengthening the local tourism economy through measurable economic benefits for local businesses, attractions and communities.
3. The activity must further economic development through tourism in Marion County by meeting the requirements of ORS 461.540 through the following:
 - a. Creating jobs in Marion County.
 - b. Furthering economic development in Marion County by:
 - i. Providing services or financial assistance to community development activities or projects that benefit the Marion County economy as defined by ORS 285B.410.
 - ii. Providing services or financial assistance for facilities, physical environments or development activities, as defined in ORS 285B.410, that benefit the Marion County economy.
 - iii. Providing services or financial assistance to businesses or industry associations to promote, expand or prevent the decline of their businesses.
4. The activity must demonstrate community support through community partnerships, letters of support, other funding sources, or other methods.



5. The activity must have completed a TG Form submitted through the Marion County Community and Economic Development Department as outlined in Section 6.
6. Upon invitation, applicants will give a presentation to the Board of Commissioners.
7. The Marion County Board of Commissioners will select the award recipients.

Section 5: Award Reporting

Organizations awarded funds under TGs must complete reports as outlined below. Report templates will be provided to organizations awarded funds.

1. Interim Report(s): Required for activities lasting seven months or longer. The organization must submit a written report within six months of receipt of award and every six months thereafter until the end of the project grant agreement. This report must contain the following:
 - a. A budget narrative describing the use of the funds including income or revenues and expenditures which are specifically applicable to the activity.
 - b. Activity report detailing a high-level overview of progress to date, key achievements, main issues or challenges with implementation, and next steps.
 - c. Any proposed changes to use of funds.
 - d. If available, pictures, clips, quotes, or narratives from award participants of the activity.
 - e. If TG funds are being used as part of grant matching funds, describe the whole project and the part of the project the Tourism Grant is funding.
 - f. Geographic use of funds within Marion County (by zip code, city, or other method).
 - g. Metrics on the activity such as website traffic and/or social media engagement, changes in employment levels in tourism-related sectors, visitor spending data and economic impact reports, increase in lodging tax revenue, community sentiment and perception of tourism, etc.
2. Final Report / Annual Report: Required for all activities regardless of activity duration, to be completed annually for multi-year agreements, or prior to activity completion. The organization must prepare a written final / annual report and appear before the Marion County Board of Commissioners at a regularly scheduled meeting or work session to present a short oral report (no more than 10 minutes) on the results of the activity. The report and presentation shall include the information required for the Interim report (see section 5.1 above) as well as:
 - a. Narrative on the success of the activity including how the activity supported tourism in the community.
 - b. Picture(s) of completed activity or work to date.
 - c. Proof of acknowledgement of Marion County funding support such as inclusion of County logo on promotional materials.
3. Failure to Report/Inappropriate Use of Funds: Failure to comply with the reporting requirements as outlined may result in suspension or full revocation of funds. It is the responsibility of the awarded organization to monitor use of funds and ensure the funds are expended in compliance with the requirements as described herein. Should County identify incorrectly applied funds, County shall notify the awarded organization and awarded organization shall, within thirty (30) calendar days of receiving notice, make full repayment to Marion County. Should the awarded organization identify any incorrectly applied funds, the awarded organization must notify the County within ten (10) calendar days of the discovery and shall, within thirty (30) calendar days of notification, make full repayment to Marion County.

Section 6: Instructions

TGs must be submitted through the Marion County Community and Economic Development Services Department as follows:

1. Submit the information listed below to Marion County Community and Economic Development Services.
 - a. Completed TG Request Form
 - b. Metrics Document
 - c. Budget Narrative
 - d. Supplemental Materials
 - e. Current W-9
2. Email applications to Tami Cirerol:
 - a. To: TCirerol@co.marion.or.us
 - b. Cc: csreporting@co.marion.or.us
3. Once application and supplemental materials are received, staff will review the application materials. Upon funding availability, Marion County will either seek further information or begin an award process.

TG Form Instructions

1. **Organization Name** – The organization/business/entity requesting funding.
2. **Executive Officer Name** – The highest-ranking executive in the organization, with responsibility for making decisions and potentially signing award documents.
3. **Contact Person / Title** – The name and title of the person in overall charge of the planning and execution of the activity for which the funding is requested and main point of contact.
4. **Address** - Put the physical address for the contact person and the mailing address if different.
5. **Contact email** - Put the email for the contact person for the activity.
6. **Contact phone number** – Put the phone number for the contact person.
7. **Activity Name** – Name to distinguish the activity from other requests.
8. **Purpose of Funding Request** – Short narrative outlining the activity and use of funds including identified issue(s) being solved, and the general scope of work for the activity and how the organization will determine the success of the activity at the end.
9. **Indicate how the activity meets tourism related needs in Marion County** – Check all boxes applicable and explain why these activities meet these needs in the box below.
10. **Total Activity Cost** – Provide an estimate of the total activity cost. The funding award will be based on the actual activity costs. Payment may be made as either an upfront payment or on a reimbursement basis pending organizational needs and County decisions. It may include timelines or other deliverables.
11. **Amount Requested** – Provide a figure of the total amount of funds requested to complete the activity. If these funds are for grant matching funds, include a copy of the grant application and explain how the various funding streams are used in this activity.
12. **Geographic Area(s) Served** – Provide a list of all counties, cities, and/or unincorporated areas which will benefit from this investment.
13. **Other Partners** – Provide a list of other organizations participating in the activity.
14. **Activity or Start Date/End Date** – Provide an estimated timeline of when the activity will start and be completed.
15. **Additional Required Information**
 - a. **Metrics Worksheet**: include the Metrics Worksheet attachment that explains how the organization will track progress and/or impact of the work or project. For example, will the work or project impact lodging taxes, visitor spending, employment levels, community sentiments

- about the activity, or increase social media traffic? Check the box to indicate you have enclosed the Metrics Worksheet attachment to the application.
- b. Budget Narrative and Table: attach a budget narrative that provides a brief explanation about the proposed expense so that it is clear what is being purchased or paid and a budget table. The required Budget Table Template is provided.
 - c. Supplemental Information: include attachments for W9, maps, letters of support, or any other item that may help explain the activity.

Questions/Information

For questions or additional information, please contact Community and Economic Development Department via phone at 503-589-3234 or email Tami Cirerol at TCirerol@co.marion.or.us



Community and Economic Development Tourism Grant (TGs) Request Form

Organization Name:			
Executive Officer Name:		Contact Person and Title:	
Address:		Mailing Address:	
Contact Email:		Phone Number:	
Activity Name:			
Purpose of Funding Request:			
Total Activity Cost:		Amount Requested:	
Geographic Area(s) Served:			
Other Partners:			
Activity Start Date:		Activity End Date:	
Please indicate how the activity meets tourism-related needs in Marion County. Check all boxes that apply and explain briefly how they meet tourism needs.	<input type="checkbox"/> Attracting Visitors <input type="checkbox"/> Destination Promotion <input type="checkbox"/> Event Development <input type="checkbox"/> Strengthening Tourism Economy <input type="checkbox"/> Tourism Infrastructure Development	Briefly explain how the activity meets tourism-related needs:	
Please indicate how the activity supports economic development in Marion County (check all boxes that apply). <u>ORS 461.540</u>	<input type="checkbox"/> Supports the creation of new jobs in Oregon <input type="checkbox"/> Helps prevent the loss of existing jobs in Oregon <input type="checkbox"/> Assists with work transition and/or training of workers in Oregon <input type="checkbox"/> Provides services or financial assistance to support Oregon businesses	Briefly explain how the activity supports development in Marion County:	

Additional Information Required:		
<input type="checkbox"/> Metrics worksheet attached	<input type="checkbox"/> Budget Narrative attached - <i>The required 1) Budget Narrative and 2) Budget Table template is complete and attached to the application.</i>	<input type="checkbox"/> Supplemental Materials attached, with current W-9 - <i>Examples: Activity description, maps, etc.; Letter(s) of support; or other information that helps to describe the purpose and need of the funds.</i>

Name of Applicant:	
Signature and date:	

Tourism Grant Budget Table

Instructions: Complete the following budget table and include it with the budget narrative. Add more lines to the Project Expenses section as needed.

Description	Amount
Total grant amount request	\$
Project Expenses	
Expense 1	\$
Expense 2	\$
Expense 3	\$
Expense 4	\$
Expense 5	\$
TOTAL EXPENSES	\$

Metrics Worksheet

Instructions: How will you measure the success of the marketing activity? For each Economic Development category box checked in the application, list the measure(s) associated with each category.

Category	Metric
Attracting Visitors	
Destination Promotion	
Event Development	
Strengthening Tourism Economy	
Tourism Infrastructure Development	
Supports the creation of new jobs in Oregon	
Helps prevent the loss of existing jobs in Oregon	
Assists with work transition and/or training of workers in Oregon	
Provides services or financial assistance to support Oregon businesses	



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 3/18/2026

Department: Public Works

Title: Supply and Delivery of Aggregate Rock Products for 2026 MC Chip Seal Program

Management Update/Work Session Date: 03/10/2026 Audio/Visual aids []

Time Required: 5 minutes Contact: Scott Wilson Phone: 503 365-3129

Requested Action: Approve Contract PW-7015-26 with North Santiam Paving Co. in the amount of \$345,280.00 for the supply of Chip Seal Aggregate for the 2026 Marion County Chip Seal Program.

Issue, Description & Background: The chip seal pavement preservation process involves applying a layer of liquid asphalt to the road surface and covering it with aggregate. The aggregate used for chip seals must meet specific requirements for this application. The Contract for Services with North Santiam Paving Co. is for a one-year term and is expected to cover this summer's workload. North Santiam Paving Co. was selected through a competitive procurement process based on its ability to meet the required aggregate specifications, provide reliable supply within the project timeline, and offer the lowest responsive bid.

Financial Impacts: The Contract for Services payment amount for the aggregate is \$345,280.00, and was awarded through an Invitation to Bid. This is a budgeted expenditure for FY 26/27.

Impacts to Department & External Agencies: Chip seal treatments are an effective pavement maintenance method that provides a durable, waterproof surface and extends the life of existing pavements. Public Works plans to treat approximately 52 miles of roads this summer, focusing on the southwestern area of Marion County.

List of attachments: PW-7015-26 Contract, Appendix 1, Appendix 2

Presenter: Scott Wilson

Department Head Signature: Brian Nicholas Digitally signed by Brian Nicholas Date: 2026.02.22 14:36:53 -08'00'

Contract Review Sheet

Contract for Services

PW-7015-26

Title: Aggregate for Chip Seals for the 2026 Marion County Chip Seal Program

Contractor's Name: North Santiam Paving Co.

Department: Public Works Department

Contact: Janet Wilson

Analyst: Kathleen George

Phone #: (503) 566-4139

Term - Date From: Execution

Expires: December 31, 2026

Original Contract Amount: \$ 345,280.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 345,280.00 Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0255 Invitation to Bid

ITB# PW1753-26

Description of Services or Grant Award

Procurement of chip seal aggregate for the 2026 Marion County Chip Seal Program: supply and delivery to storage facility.

Desired BOC Session Date: 4/1/2026

Contract should be in DocuSign by: 3/11/2026

Agenda Planning Date: 3/19/2026

Printed packets due in Finance: 3/17/2026

Management Update: 3/17/2026

BOC upload / Board Session email: 3/18/2026

BOC Session Presenter(s) Scott Wilson

Code: y

REQUIRED APPROVALS

Finance - Contracts _____ Date

Contract Specialist _____ Date

Legal Counsel _____ Date

Chief Administrative Officer _____ Date

**MARION COUNTY
CONTRACT FOR SERVICES
PW-7015-26**

This Contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and North Santiam Paving Co., an Oregon S-Corporation hereinafter called Contractor.

RECITALS

WHEREAS, County issued Invitation to Bid PW1753-26 for Aggregate for Chip Seals for the 2026 Marion County Chip Seal Program on January 7, 2026.

WHEREAS, North Santiam Paving Co. submitted a bid in response to PW1753-26 on January 22, 2026, which was determined to be responsive and responsible.

WHEREAS, County wishes to engage Contractor to provide the services set forth in Exhibit A.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the "Work").

1. TERM

This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. This Contract expires on **December 31, 2026**.

2. DOCUMENTS / ORDER OF PRECEDENCE

This Contract consists of the following documents, each of which is attached and incorporated herein by reference:

- A. This Contract less exhibits
- B. Exhibit A – Statement of Work
- C. Appendix 1 – Special Provisions
- D. Appendix 2 – Stockpile map

3. CONSIDERATION

- A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$345,280.00**. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.

- C. If specified below, county’s payments to Contractor under this Contract will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Contractor certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government. If applicable, Contractor shall comply with [Appendix II to Title 2, Part 200](#) of the Code of Federal Regulations.

In accordance with 2 CFR 200.331, Contractor has been designated:

- Subrecipient
 Contractor/Vendor
 Not applicable – (there are no federal funds tied to the contract)

4. COMPLIANCE WITH STATUTES AND RULES

- A. County and Contractor agree to comply with the provisions of this Contract, its exhibits and attachments and all applicable federal, state, and local statutes and rules.
Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of Contractor. Failure of Contractor or County to comply with the provisions of this Contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this Contract as specified in sections concerning recovery of funds and termination.

County’s performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230, 279B.235 (if applicable to this Contract) and ORS 652, which are incorporated by reference herein.

- B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, “tax laws” includes all the provisions described in subsection 29. C. (i) through (iv) of this Contract.

Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty, in subsection 29.C of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or a replacement contractor.

- C. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

5. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT AND TITLE VI OF THE CIVIL RIGHTS ACT

Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

6. TIME IS OF THE ESSENCE

Contractor agrees that time is of the essence in the performance of this Contract.

7. FORCE MAJEURE

Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

8. FUNDING MODIFICATION

- A. County may reduce or terminate this Contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.
- B. In the event the Board of Commissioners of County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, Contractor agrees to abide by any such decision including termination of service.

9. RECOVERY OF FUNDS

Expenditures of Contractor may be charged to this Contract only if they (1) are in payment of services performed under this Contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the Contract period.

Any County funds spent for purposes not authorized by this Contract and payments by County in excess of authorized expenditures shall be deducted from future payments or refunded to County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and un-recovered advanced payments provided by County. Repayment of prior period obligations shall be made to County in a manner agreed on.

10. ACCESS TO RECORDS

- A. Contractor shall permit authorized representatives of County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of Contractor as they relate to the Contract

services in order to satisfy audit or program evaluation purposes deemed necessary by County and permitted by law.

- B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this Contract shall be retained for a minimum of three (3) years after the end of the Contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

11. REPORTING REQUIREMENTS

Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by Contractor shall be supported by documentation in Contractor's possession from third parties.

12. CONFIDENTIALITY OF RECORDS

- A. Contractor shall not use, release, or disclose any information concerning any employee, client, applicant or person doing business with County for any purpose not directly connected with the administration of County's or Contractor's responsibilities under this Contract except upon written consent of County, and if applicable, the employee, client, applicant or person.
- B. Contractor shall ensure that its agents, employees, officers, and subcontractors with access to County and Contractor records understand and comply with this confidential provision.
- C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.
- D. Client records shall be kept confidential in accordance with ORS 179.505, OAR 309-014-0036(3), 45 CFR 205.50 and 42 CFR Part 2 as applicable.

13. INDEMNIFICATION AND INSURANCE

- A. Contractor shall defend, save, indemnify, and hold harmless County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.
- B. Contractor shall obtain the insurance required under section 24 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

- C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

14. EARLY TERMINATION

This Contract may be terminated as follows:

- A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
- B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
- C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
- D. Notwithstanding section 14C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

15. PAYMENT ON EARLY TERMINATION

Upon termination pursuant to section 14, payment shall be made as follows:

- A. If terminated under 14A or 14B for the convenience of County, County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.
- B. If terminated under 14C by Contractor due to a breach by County, then County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
- C. If terminated under 14C or 14D by County due to a breach by Contractor, then County shall pay Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which County is entitled.

16. INDEPENDENT CONTRACTOR

- A. Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out Contractor's activities and responsibilities for the purpose of implementing the provisions of this Contract, and maintains the appropriate license/certifications, if required under Oregon Law. This Contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of County and accepts full responsibility for taxes or other obligations associated with payment for services under this Contract. As an "independent contractor", Contractor will not receive

any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the Contract.

- B. SUBCONTRACTING/NONASSIGNMENT. No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of County.

17. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of County according to law.

18. OWNERSHIP AND USE OF DOCUMENTS

All documents, or other material submitted to County by Contractor shall become the sole and exclusive property of County. All material prepared by Contractor under this Contract may be subject to Oregon's Public Records Laws.

19. NO THIRD-PARTY BENEFICIARIES

- A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
- B. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

20. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

21. MERGER CLAUSE

This Contract and the attached exhibits constitute the entire agreement between the parties.

- A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- C. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

22. WAIVER

The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

23. REMEDIES

In the event of breach of this Contract, the Parties shall have the following remedies:

- A. If terminated under 14C by County due to a breach by Contractor, County may complete the Work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to County the amount of the reasonable excess.
- B. In addition to the remedies in sections 14 and 15 for a breach by Contractor, County also shall be entitled to any other equitable and legal remedies that are available.
- C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

24. INSURANCE

A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

- i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.
- ii. **PROFESSIONAL LIABILITY.** Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by County:

- Required by County** **Not required by County.**
- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

iii. **CYBER LIABILITY.** Covering network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

- Required by County** **Not required by County.**
- \$2,000,000 Per occurrence limit for any single claimant; and
- \$5,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Information Technology Director and Risk Manager

- iv. **COMMERCIAL GENERAL LIABILITY.** Covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by County:

Required by County **Not required by County.**

Minimum Limits:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

- v. **AUTOMOBILE LIABILITY INSURANCE.** Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Contractor shall provide proof of insurance of not less than the following amounts as determined by County:

Required by County **Not required by County.**

Minimum Limits:

- Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

- B. **ADDITIONAL INSURED.** The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- C. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.
- D. **CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

25. NOTICE

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or email set forth below or to such other addresses or emails as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:

North Santiam Paving Co.
dylanb@nspor.com
41203 KINGSTON LYONS DR SE PO
BOX 516
Stayton, OR, 97383

To County

Marion County Public Works
PWContracts@co.marion.or.us
5155 Silverton Rd NE
Salem, Oregon 97305

26. SURVIVAL

All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 3, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 and 27.

27. SEVERABILITY

If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

28. AMENDMENTS

This Contract may be amended if mutually agreed to by both parties.

A. Anticipated Amendments

This Contract is anticipated to be amended for the following reasons:

- i. To extend the Contract term and increase the maximum not-to-exceed amount to cover those extension term.
- ii. To adjust the unit pricing or other rate(s) of compensation, set forth in Exhibit A.

B. Unanticipated Amendments

All other amendments for purposes not listed as Anticipated Amendments will be deemed Unanticipated Amendments.

29. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to County that:

A. Contractor has the power and authority to enter into and perform this Contract.

- B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.
- C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:
 - i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
 - iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
 - iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any Goods delivered to County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

30. CERTIFICATIONS AND SIGNATURE. THIS CONTRACT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

NORTH SANTIAM PAVING CO. SIGNATURE

Authorized Signature: _____
Date

Title: _____

**EXHIBIT A
STATEMENT OF WORK**

1. STATEMENT OF SERVICES

Contractor shall perform Services as described below.

A. GENERAL INFORMATION.

On an annual basis, the Marion County Public Works Department completes a chip sealing process, utilizing chip seal aggregate, to repair and maintain roadways within Marion County. The 2026 Marion County Chip Seal Program begins on July 1, 2026. The Contractor will supply and deliver chip seal aggregate in accordance with the set requirements specified within sections below.

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall supply and deliver chip seal aggregate for repair and maintenance of roadways. All material shall be supplied in accordance with the Appendix 1 – Special Conditions and the 2024 edition of the Oregon Standard Specifications for Construction, Section 00710.10.

https://www.oregon.gov/odot/Business/Specs/2024_STANDARD_SPECIFICATIONS.pdf

i. DELIVERY LOCATION

Contractor shall deliver the aggregate to designated stockpile locations, as specified in Appendix 2 – Stockpile Map, as follows:

Delivery Location	Chip Seal Aggregate	Quantity	Unit Price	Total Price
SW Corner of Jackson Hill Road SE and Sunnyside Road SE	3/8" – No. 4 Chip Seal Aggregate	4,900 Tons	\$34.00	\$166,600.00
Jory Hill Park 6627 Elmhurst Ave Salem OR 97306	3/8" – No. 4 Chip Seal Aggregate	2,600 Tons	\$34.30	\$89,180.00
Brown's Island 2895 Faragate St S Salem OR 97301	3/8" – No. 4 Chip Seal Aggregate	2,500 Tons	\$35.80	\$89,500.00

ii. DELIVERY DATE

Deliver chip seal aggregate as soon as possible but not later than June 30, 2026. The price quoted shall be the net price, Free on Board (FOB), from the Suppliers plant to the stockpile location.

iii. DELIVERY HOURS

- a. Monday through Friday, between 7:00 A.M. to 4:00 P.M.
- b. Must provide a minimum of 48-hour notice to provide the County with sufficient time to schedule personnel and equipment. Notice shall be provided to:

Scott Wilson, Road Operations Division Manager
503-365-3129 (desk)
Swwilson@co.marion.or.us (e-mail)
Office hours: Monday through Friday, between 7:00 A.M. to 4:00 P.M.

SPECIAL REQUIREMENTS.

In accordance with ORS 279B.020, chip seal aggregate delivery is not permitted Saturday, Sunday, or holidays, unless approved by the County.

Furnish enough trucking to ensure that the delivery of chip seal aggregate is a continuous operation and limited to no more than a few days.

Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences, and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors, and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional, and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

2. COMPENSATION

The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is **\$345,280.00**.

- A. **METHOD OF PAYMENT FOR SERVICES:** County shall pay Contractor \$345,280.00 for completing all Services and delivering all Goods required under this Contract.
- B. **BASIS OF PAYMENT FOR SERVICES.** County shall pay Contractor monthly progress payments upon County's approval of Contractor's invoice submitted to County for delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the delivered goods.
- C. **EXPENSE REIMBURSEMENT.** County will not reimburse Contractor for any expenses under this Contract.
- D. **GENERAL PAYMENT PROVISIONS.** Notwithstanding any other payment provision of this Contract, failure of Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this Contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by County to Contractor, and shall continue until Contractor submits required reports, performs required services or establishes, to County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of Contractor.
- E. **INVOICES.** Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

Marion County
Attn: Public Works Department, Scott Wilson
5155 Silverton Rd NE
Salem, OR 97305
PWAP@co.marion.or.us

Appendix 1
SPECIAL PROVISIONS

The Standard Specifications applicable to this ITB and resulting contract are located within the 2024 Oregon Standard Specifications for Construction, Parts 00200 through 03000, published by the Oregon Department of Transportation (ODOT) available at the following URL:
https://www.oregon.gov/odot/Business/Specs/2024_STANDARD_SPECIFICATIONS.pdf

PUBLIC CONTRACTS - ORS CHAPTER 279B

1. As required for public contracts subject to ORS Chapter 279B, the Successful Bidder must comply with the following:
 - a. Successful Bidder shall not employ any person performing work under this Price Agreement for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. Successful Bidder shall pay all individuals performing work under this Price Agreement at least time-and-a-half pay:
 - for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
 - for all overtime in excess of 10 hours a day or 40 hours in any one week when the work is four consecutive days, Monday through Friday; and
 - for all work performed on Saturday or Sunday and any legal holiday specified in ORS 279B.020.
 - b. Successful Bidder must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

SECTION 00710 – SINGLE APPLICATION EMULSIFIED ASPHALT CHIP SEAL

Comply with Section 00710 of the 2024 Standard specifications for Construction modified as follows:

00710.10 Aggregates – Furnish aggregates meeting the following size designation:

(a) Size Designations

Chip Seal Design

Size of Screenings

Single Size Medium

3/8" – No. 4

(b) Fractured Faces - Provide aggregates consisting of broken stone, crushed gravel, or a combination of both. Crush aggregates, such that at least 90% by weight of the total

Aggregate retained on the No. 8 and larger sieves is fractured on two faces, as determined according to the AASHTO T 335.

- (c) **Grading** - Perform Sieve analysis according to AASHTO T 27 and AASHTO T 11. Provide grading for the following:

Sieve Size	Graded Medium
	3/8" - #4 3/8" - No. 4
Percent Passing (by Weight)	
1/2"	100
3/8"	80 - 100
1/4"	10 - 40
No. 4	-
No. 8	0 - 6
No. 30	0 - 2
No. 200 (wet)	0.0 - 2.0
No. 200 (wet)*	0.0 - 1.0
* In gravels	

- (d) **Unit Weight of Aggregate** - Provide aggregate with a minimum unit weight of 90 pounds per cubic foot according to AASHTO T 19.
- (e) **Soundness** - Provide course and fine aggregate with a weighted loss not exceeding 12 percent when subjected to the five cycles of the soundness test using sodium sulfate solution according to AASHTO 104.
- (f) **Durability** - Provide aggregate meeting the following durability requirements:

Test	Test Method		Maximum Values
ODOT	ODOT	AASHTO	
Abrasion		T-96	30.00%
Degradation (Course Aggregate)	TM 208		30.00%
Passing No. 20 Sieve	TM 208		3.0"

- (g) **Harmful Substance** - Provide aggregates meeting the following harmful substances requirements:

Test	Test Method		Limits
	ODOT	AASHTO	Values
Lightweight Pieces		T 113	1.0% maximum
Wood Particles	TM 225		0.1% maximum
Elongated Pieces (Coarse Aggregate at a ratio of 5:1)	TM 229		10.0% maximum
Cleanness Value	TM 227		75 minimum

00710.15 Aggregate Production Quality Control – Add the following subsection:

(2) Cleanness - All aggregate chips must be as clean as possible to provide a good adhesive bond between the aggregate and asphalt binder. When dirt, dust, and clay are not completely removed during the dry screening, wash the aggregates with water until all harmful materials has been removed.

- (a) **Sand Screw Water Bath** - If a sand screw water bath is used, the sand screw water bath shall be recycled a minimum of three times per hour.
- (b) **Asphalt stripping** - Unless mineral aggregate furnished by the Supplier for use in the work has a record of satisfactory performance it may be subjected to the “Stripping Test for Bituminous Aggregate Mixtures, ODOT TM 209,” using a sample of the asphalt to be used in the major portion of the work, and when so tested, the retention of the asphalt shall by observation be above 95%.
- (c) **Contractor Quality Control:** A subplot equals 500 ton. Test chip seal aggregate as follows:
 - Grading (Section 200.4-2) 1 per subplot and ant the start of production.
 - Durability (Section 200.4-5) at the beginning of production.
 - Harmful Substances (Section 200.4-6) 1 per subplot and ant the start of production.
- (d) **Acceptance of Aggregate** - The suppliers quality control tests will be used for acceptance of aggregates if verified by the County’s quality assurance program. The County will perform quality assurance testing every 5,000 ton of chip seal aggregate produced.

Aggregate Stockpile - The County will furnish a stockpile area with a hard surface of asphalt, concrete, or 6” of compacted aggregate.

00710.80 Measurement – The quantities of aggregate will measured on the weight basis in the hauling vehicle.

00710.90 Payment – The accepted quantities of chip seal aggregate will be paid according to weigh tickets, per ton.

Payment will be made in full for furnishing chip seal aggregate, and for furnishing all equipment, labor, and incidentals necessary to complete the work specified.

No separate or additional payment will be made for trucking or furnishing the stockpile area(s).

The price quoted shall be the net price, Free on Board (FOB), from the Suppliers plant to the storage facility (stockpile).

Appendix 2 - Stockpile Map

Browns Island Landfill
2895 Faragate St S

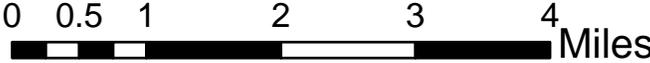
Joryville Park
6627 Elmhurst Av S

SW corner of
Jackson Hill Rd SE
& Sunnyside Rd SE

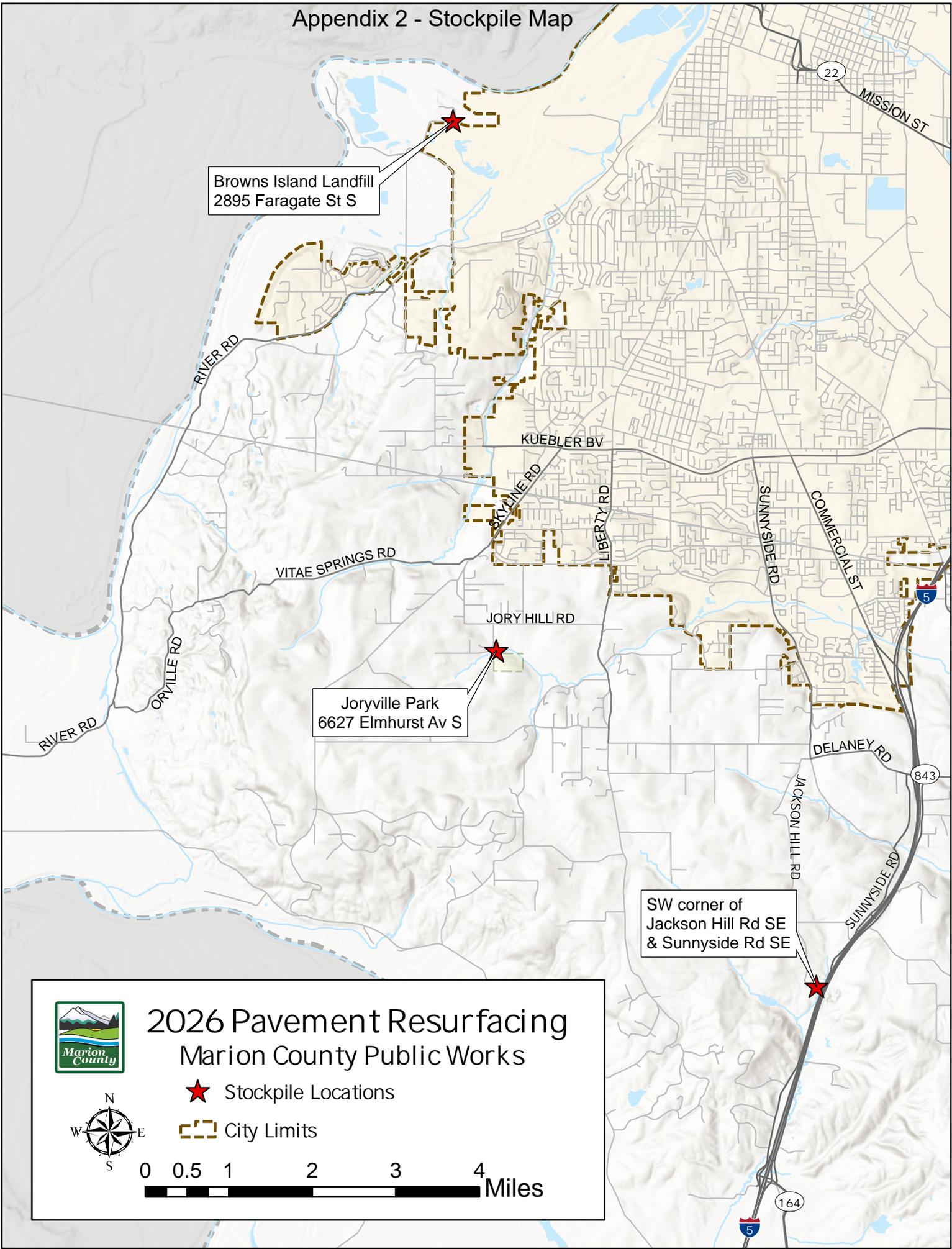


2026 Pavement Resurfacing Marion County Public Works

- ★ Stockpile Locations
- ▭ City Limits



0 0.5 1 2 3 4 Miles





MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 25, 2026

Department: Public Works

Title: Consider accepting appeal of the Hearings Officer decision denying Administrative Review 25-026/Denise Burnham

Management Update/Work Session Date: N/A Audio/Visual aids

Time Required: 5 min Contact: Austin Barnes Phone: 503-566-4174

Requested Action: Staff recommended motion: Accept the appeal of the Hearing Officer decision denying Administrative Review 25-026/Denise Burnham, and schedule a hearing for April 15, 2026. Other motion options for consideration are: 1. Deny the appeal and uphold the Hearings Officer decision. 2. Remand the matter back to the Hearing Officer.

Issue, Description & Background: Administrative Review 25-026 is an application to determine if the operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora. The Planning Director issued a decision denying the application on September 25, 2025. The applicant appealed the staff denial. The Marion County Hearings Officer held a duly noticed hearing on the application on December 18, 2025. The Hearings Officer, after an open record period, issued a decision on February 17, 2026, denying the application. Applicants appealed this decision. The appellants provide new arguments and request the board's interpretation of MCC 17.136.020 (A), farm use, and 17.110.223, farm use definition. Staff recommends the Board accept the appeal.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Appeal, Hearings Officer's Decision

Presenter: Austin Barnes

Department Head Signature: for Brandon Nish



Marion County
OREGON

**APPEAL OF PLANNING
DIVISION DECISION**

Applications will no longer be accepted by email or mail.
All applications must be submitted in person.

Planning Division
5155 Silverton Rd. NE
Salem OR 97305
Phone: (503) 588-5038 – Email: Planning@co.marion.or.us
<https://www.co.marion.or.us/PW/Planning>

Fee: \$250

NAME(S): Denise Burnham, c/o Garrett Stephenson, Schwabe, Williamson & Wyatt	ADDRESS, CITY, STATE, ZIP 1211 SW 5th, Ave, Ste. 1800, Portland, OR 97204
DATE SUBMITTED:	APPLICATION CASE NO: 25-026

Do not double-side or spiral bind any documents being submitted

Notice of Appeal: Every notice of appeal should contain:

1. How the decision is factually or legally incorrect; or
2. Present new facts material to the decision; or
3. The specific reasons for the appeal.

RECEIVED

MAR 03 2026

**MARION COUNTY
BOARD OF COMMISSIONERS**

I/we are filing this appeal because (attach additional pages if needed):

See attached notice of appeal.

Marion County Clerk: Bill Burgess
Phone: (503) 588-5038

FOR OFFICE USE ONLY:	
Appeal accepted by: _____	Date: _____
Case Number:	
<input type="checkbox"/> Filing fee	
<input type="checkbox"/> File attached	

BEFORE THE MARION COUNTY BOARD OF COMMISSIONERS

An Appeal of an Administrative Decision of the Marion County Hearings Officer (County Case no. 25-026).

APPLICANT'S NOTICE OF APPEAL PURSUANT TO MARION COUNTY CODE SECTION 17.122.120

I. SUMMARY

This firm represents Denise Burham (the "Applicant"). The Applicant is the applicant for an administrative determination concerning whether Applicant's agricultural fill operation is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Road NE, Aurora, Oregon (the "Property"). Marion County planning staff denied the Applicant's administrative review application which the Applicant appealed to the County Hearings Officer who upheld the denial via her February 17, 2026, Decision (the challenged "Decision"). The Hearings Officer's Decision is attached as **Exhibit 1**. This is an appeal of the Decision pursuant to Marion County Code ("MCC") section 17.122.120.

II. APPEAL TO THE COUNTY BOARD OF COMMISSIONERS

MCC 17.115.110 Determinations and Administrative Reviews

G. MCC 17.122.070 through 17.122.130 shall apply to any appeals from the decision of the hearings officer.

RESPONSE: The applicable provisions of MCC 17.122.070 through 17.122.130 are addressed below. The only applicable provision is MCC 17.122.120, because the other MCC provisions concern variance applications, decisions, call-up actions by the County Commissioners, and vesting of variance decisions among other provisions that are not applicable to an appeal of a Hearings Officer's denial of an administrative determination to determine whether a use is a farm use.

MCC 17.122.120 Appeal to the board

A. An appeal may be taken to the board by any person, firm, or corporation, or by an officer, department, board or commission of any public corporation or political subdivision of the state of Oregon, aggrieved or affected by the decision of the planning commission or hearings officer on an application for a variance. An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer.

B. The appeal shall be filed in duplicate and one copy thereof shall be forwarded immediately by the clerk to the board. The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

RESPONSE: The Applicant is the Property owner who was aggrieved by the Hearings Officer's denial because the Hearings Officer misconstrued the applicable law and the Decision is not supported by substantial evidence. This appeal is timely filed within 15 days of the date of the

mailing of notice of the Decision of the Hearings Officer on February 17, 2026. The Applicant is filing this notice of appeal in duplicate as required by the MCC.

The Hearings Officer failed to conform to the provisions of this title by basing her denial on several erroneous findings.

- The Hearings Officer decision was not responsive to the request by Applicant to determine whether deposition of soil constitutes an accepted farm practice. Instead, the Hearings Officer incorrectly places a burden of proof on the Applicant related to “applicable criteria” as if the Applicant was applying for a permit. The Applicant was not applying for a permit, and as such, the Hearings Officer incorrectly weighed the evidence before her. The Hearings Officer also incorrectly placed a burden upon the Applicant to prove that her activities were an accepted farm practice.
- The Hearings Officer incorrectly concluded that the use was a solid waste disposal activity because of a single incidence of countertop material being mixed in with a single soil load. Rather, the evidence demonstrates that the soil being deposited was being dewatered and used for farming. Regardless of the soil being applied to the farm use has incidental debris (as most soil does), the Applicant is not permanently disposing of solid waste. The Hearings Officer also wrongly considers whether there are contaminants in the soil, which question is irrelevant to whether or not the soil can, in fact, be used for farming.
- The Hearings Officer incorrectly concluded that the “principle use” of the farm soil deposition is not an accepted farm use, despite the uncontested evidence that the soil, once dewatered, is in fact used for farming. In so doing, the Hearings Officer wrongly relied on the fact that the agricultural fill activity is supported by appropriate infrastructure to ensure that the fill activity can be conducted safely. The Hearings Officer also incorrectly focused on the means by which soil is delivered and accepted instead of the fact that the principle goal of the Applicant is land leveling and agricultural fill (which purpose the Hearings Officer acknowledges).
- The Hearings Officer incorrectly concludes that the Applicant must prove that the use of a dewatering pit to accept farm fill a use separate from the agricultural fill activity that must be proved to be “customarily practiced.” The definition of accepted farm practice has never been that narrowly drawn.
- The Hearings Officer incorrectly concluded that the use of soil for mitigation of erosion, expanding arable farmland, land leveling, improving access across farmland is “secondary” to the acceptance and dewatering of the soils ultimately used for those purposes.
- The Hearings Officer correctly found that depositing soil on farmland to mitigate erosion, level and expand arable farmland, and improve access across the farmland is an accepted farming practice, but incorrectly concluded that the soil’s transportation by Vector trucks affects whether the agricultural fill is an accepted farm practice. She reaches this conclusion because “there is no evidence in the record demonstrating that receipt of

hydraulic vacuum extraction slurry is a customary agricultural practice.” How the soil is transported to a farm is an arbitrary distinction and utterly unrelated to the question of whether that soil can and will be used for farming. Stated simply, the means and methods of conveyance of soil to a farm is irrelevant to the question of whether its deposition constitutes an accepted farm practice.

- The Hearings Officer incorrectly determined that is if a farmer receives compensation for the deposition of soil, the agricultural fill activity no longer constitutes an accepted farm use. The fact that the Applicant was paid by those depositing the soil is irrelevant. Whether farmers pay for soil, get it for free, or are compensated for receiving it is not relevant if the purpose for depositing the soil on a property is to support farming activities.
- The Hearings Officer incorrectly invented the category of “trench slurry,” which is not a separate category of soil. Regardless, the Hearings Officer also erred in opining that the character of the soil matters to the question of whether its deposition is an accepted farm practice; the record demonstrates that this soil is being used in a farming activity.
- The Hearings Officer incorrectly considered potential impacts to Ryan Creek. While this may be an environmental concern, environmental impacts to creeks are not a factor in whether an activity constitutes an “accepted farm activity.”

III. CONCLUSION

The Board of County Commissioners can find that this Appeal is properly made, as explained above. Additional argument and evidence shall be provided in writing prior to the Hearing on this Appeal.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. 25-026
Denise Burnham)
ADMINISTRATIVE REVIEW

ORDER

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the Application of Denise Burnham for an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora (T4S; RIW; Section 8; Tax lot 200).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Marion County Code (MCC), Title 17, especially MCC 17.136 (Exclusive Use Zone) and MCC 17.110.223 (Definition of Farm Use).

III. Hearing

A public hearing was held on this matter on December 18, 2025. At the hearing, the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- | | | |
|----|-----------------|---|
| 1. | Austin Barnes | Marion County Planning Division |
| 2. | Thomas Benke | Attorney for Applicant |
| 3. | Denise Burnham | Applicant |
| 4. | Cheyne Fobert | Witness in Favor of Application |
| 5. | Joseph Schaffer | Jordan Ramis / Witness in Opposition to Application |
| 6. | Jamie Howsley | Attorney for Opponents Judy and Scott Chambers |
| 7. | Ben Williams | Witness in Opposition to Application |
| 8. | Jim Johnson | Witness in Opposition to Application |

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No documents were entered into the record as exhibits.

An open record period was requested and permitted. The following documents were received during the first open record period:

December 22, 2025: Submission from Jim Johnson, Working Lands Policy Director, 1000 Friends of Oregon

December 23, 2025: Statement by Deanna Nibler

December 23, 2025: Submission from Jamie Howsley, Attorney for Scott and Judy Chambers, including email from Kevin Fenn, Oregon Department of Agriculture and article from Salem Statesman Journal

The following document was received during the second open record period:

January 2, 2026: Submission from Thomas R. Benke, Attorney for Applicant

IV. Executive Summary

Applicant requests an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora.

Marion County Planning denied the application based on the determination that the primary purpose of the use was to obtain profit from the disposal of industrial and commercial Vactor truck waste, as opposed to farm use. Marion County Planning determined Applicant has created a new solid waste disposal site, which is not permitted in Marion County.

Applicant argues that she did not apply for review of existing site features. Applicant argues that she applied for Administrative Review for her prospective request to fill and contour the property with hydraulically excavated soils for farm use, including erosion mitigation, filling low spots, expansion of arable areas, and improved farm access.

Applicant and opponents dispute the primary purpose of filling farmland with material, including soils that have been hydraulically excavated. The determinative issue is whether the current and proposed employment of the land constitutes "farm use" under ORS 215.203 and MCC 17.110.223.

The record demonstrates that the dominant use of the site during the relevant period was the compensated receipt and deposition of off-site trench slurry rather than agricultural production. Even if the primary purpose of the operation can be considered the construction and maintenance of equipment and facilities for raising, harvesting, and selling crops, the receipt of hydraulic vacuum extraction is not a reasonable and accepted farm practice such that it is considered a farm use.

The proposal therefore does not qualify as farm use and is not permitted in the EFU zone. Applicant's application for administrative review for placement of fill from hydraulic vacuum extraction as a farm use is **DENIED**

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

AR 25-026 - ORDER
Burnham
Page 2

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both the designation and zone is to provide areas for continued practice of commercial agriculture and to protect commercial agricultural operations.
2. The subject property is located on the western side of Butteville Rd NE, approximately 900 feet north of its intersection with Ehlen Rd NE. The property contains two stick-built dwellings, one built in 1908 and the other in 1933. The parcel also contains multiple accessory farm structures. The parcel and dwellings are considered legal for land use purposes.
3. Surrounding properties are all zoned EFU and in active farming operations, with some containing dwellings.
4. The Soil Survey of Marion County, Oregon indicates that the subject parcel consists of 97.1% high-value soils.
5. Applicant requests a determination whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use. The Application is for specifically for an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use. Applicant also argues in the alternative that the fill from hydraulic vacuum extraction, a "dewatering activity" is a conditional use which may be permitted in an EFU zone.
6. Various agencies were contacted and given an opportunity to comment. The following comments were received from various governmental agencies, non-profit organizations, and individuals:

Marion County Septic commented: "Per OAR 340-07-0130(12), "Initial and repair absorption areas must NOT be subject to activity that is likely to adversely affect the soil or functioning of the septic system. Including but not limited to: Vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil modification." Any existing drainfield and future repair area should not be filled and should be delineated from all other site manipulation."

Marion County Code Enforcement provided comments requesting denial stating that they believe this to a commercial dumping operation rather than a farm use.

Marion County Building Inspection commented: No Building Inspection concerns. Permit(s) may be required to be obtained if development of structures and/or utilities installation is proposed over the proposed fill soil pit locations. A compaction report of the soils may be needed to prove the density of the fill material is sufficient to support a structure. It is advised to obtain this compaction report for future use if structures are to be developed in these locations.

1000 Friends of Oregon commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. The comments from 1000 Friends of Oregon can be found in full in the case file.

Friends of French Prairie commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. In the comments, Friends of French Prairie submit pictures of the subject property with the dumping pit. Some pictures appear to show countertop waste being dumped into the pit. This would contradict the statements made by the applicants that only dirt and water have been dumped in their pit. The pictures show bright white material that appears to be ground up or in small chunks, similar to countertop waste that was dumped at a pit on another Marion County property associated with a disposal site. Friends of French Prairie's comments can be found in full in the case file.

Jamie Howsley of Jordan Ramis Law Firm represents a neighbor, the Chambers Family, and submitted a letter requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. They also submitted enforcement letters against the property from DEQ, Oregon Water Resources Department and Marion County Code Enforcement. The letters from DEQ detail numerous violations related to water quality and hydraulic oil spills. The letter from Oregon Water Resources Department states that they are in violation of ORS 537.130(1) and 537.130(2) for constructing a earthen dam and storing water without a water right.

Additionally, Mr. Howsley submitted two videos, one of the muddy, turbid water of Ryan Creek due to the contamination by the pit and a second of a pump actively pumping water from the pit into the Ryan Creek wetlands area. Their comments can be found in full in the case file.

Michael McCauley commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. He also raises concerns about the construction of the berm and the damage it would cause if it were to fall and flow into Ryan Creek. The comments can be found in full in the case file.

All other contacted agencies either failed to comment or stated no objection/concern to the proposal.

7. Applicant is requesting a determination as to whether operation of a site for placement of fill from hydraulic vacuum exaction is a farm use.
8. In 2023, Applicant excavated and constructed a large pit on her property, measuring approximately 200 feet long by 150 feet wide and built in a circular shape. The pit is approximately 20-30 feet deep and was made by substantially digging out a gully on the subject property's filbert orchard's western edge and extending the digging into the orchard and flat areas of the property. The pit and associated berm take up approximately 0.8-1.0 acres.

9. An asphalt access road was constructed to access the pit site. The access road is approximately 3,570 feet long and leads to 6 dumping bays marked by painted white lines on the ground and yellow safety railings to denote the edge of the pit. After completion, Vactor trucks employed by utility companies such as NW Natural, PGE, ProVac and Poltelco began dumping at the site.

The Vactor trucks dump a slurry made of water and dirt which is the by-product of hydraulic excavation. High pressure water is used to loosen dirt and dig trenches/holes while an industrial vacuum sucks the slurry into a holding tank on the truck. The trucks then travel from the jobsite to the subject property and dump the slurry into the pit.

Applicant received compensation for each truck that was dumped and based on evidence submitted in the record, receiving \$300 per load and receiving 238 loads from November 2023 to January 2024.

10. Evidence in the record includes photographs suggesting that materials other than soil and water may have been deposited. The pit was excavated before the fill was received. Applicant states that “the sources of clean fill placed at the property will be hydraulically excavated soil collected regionally (most commonly from utility trenches) and transported to the farm by Vactor trucks.

Applicant states that because Vactor trucks soils are inherently watery, the soils may be placed initially in the gully or “pit” created by prior construction of the berm at the northwest corner of the property, which the soils will be possibly dewatered before being moved elsewhere across the site as needed to achieve the stormwater control objectives of the clean fill activity.

11. DEQ and OWRD issued notices of violation concerning water discharge and dam construction. However, on September 3, 2025, the DEQ withdrew the Order directing Ms. Burnham to stabilize or decommission the berm and pit on the property.
12. Friends of French Prairie submitted photos of the above companies dumping at the site enough to be used in construction) being dumped into the pit by Pacific Northwest Marble and Granite on December 12, 2023. The photos show white material leaving the truck and accumulating in the pit and around the edges of the truck where it sits on the asphalt above the pit.
13. Applicant argues that the “pit” (resultant of the berm), the “haul road,” and the asphalted “turnaround area” should not be considered in her application for administrative review of a prospective request to fill and contour the property with hydraulically excavated soils for farm use. Applicant suggests that an Administrative Review of land-use compatibility is inherently prospective, and evaluates whether a described activity, if undertaken as proposed, is allowable under the zoning ordinance. Applicant states that these features, specifically, the pit, haul road, and turnaround area are not before the County for review and are not included in the scope of the application.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicants must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely Applicants have not met their burden, and the application must be denied. If the evidence for every criterion is in Applicants’ favor, then the burden of proof is met.

2. The subject property is zoned Exclusive Farm Use. Applicant states that the purpose of the operation is to fill in low lying portions of their property to improve drainage and expand the property’s farmable area. Applicant proposes to fill parts of the farmland with topsoil that has been hydraulically excavated from utility trances and similar shallow excavations to mitigate erosion, fill low spots, and improve access across her farm. Applicant further states that after the pit area fills; she will farm on top of it. Applicant argues that the operations is a “farm use” as the term is defined in MCC 17.110.223 and ORS 215.203(2)(a).
3. MCC 17.110.223 provides the definition of farm use as taken from ORS 215.203(2)(a):

As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).

MCC 17.110.223 defines farm use to include the use of land for the primary purpose of obtaining profit in money by harvesting and selling crops, and to include the on-site construction and maintenance of the facilities.

4. Marion County Planning determined that because the operation's primary purpose was in obtaining profit from waste disposal, Applicant had created a new solid waste disposal site, which is not permitted in Marion County. New solid waste disposal sites are not permitted in Marion County pursuant to MCC 17.136.050 (I).

Only expansions of lawfully established sites can be permitted. Marion County determined that the proposed operation does not fall into a lawfully permitted site, as no prior land use permits were applied for and the site was not operating prior to county's comprehensive plan being acknowledged in 1983. On that basis, the County determined that the proposed use is not a farm use.

MCC 17.120.315 (A), (C), (D) and (E) defines "dispose" "solid waste" "solid waste disposal sites" and "waste":

A. "Dispose" or "disposal" includes accumulation, storage, collection, transportation, and disposal of solid wastes;

C. "Solid waste" means all putrescible and nonputrescible wastes, whether in a solid or in a liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, tires, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, dead animals and other discarded solid materials;

D. "Solid waste disposal site or sites" means any land used for disposal of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, incinerators, and composting plants, but not including a landfill site which is not used by the public either directly or through a disposal service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing;

E. "Waste" means useless, unwanted or discarded materials.

In support of the determination, Marion County noted that the evidence in the record also shows more than soil and water were dumped in the pit. Evidence indicates that countertop material was dumped in this pit, and that the material was not used just to level and fill existing low areas on the property to make it suitable for farming, the "pit" was deeply excavated in order to make room for the fill material to be received.

Applicant argues that the "countertop material" was actually granite that is similar to rock or clean fill, which would be used to fill low areas as part of land leveling.

5. Applicant states that she began this operation to fill in low lying lands on their property so they could create more farmable areas and mitigate erosion. Applicant also states that they only receive clean fill from companies doing excavation work. Provided in the definition of farm use is the sentence: *"Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.* "

It is common practice for farmers to receive fill dirt. Fill dirt is often offered for free, or property owners pay for it. What is less common are companies paying a property owner to dispose of their extra dirt. The evidence indicates that 238 loads were received in a three-month period, averaging nearly 80 loads per month.

Applicant argues that the receipt of compensation does not negate the "farm use." Applicant argues that it does not matter if "disposal" is a purpose because the primary purpose is farming.

Comments in support of the application argue that Applicant has a right to farm and use good farming practices, and that maintaining tillable soil and leveling the fields is a part of good farming practices. Comments in support of the Application acknowledge that there has been "considerable investment to create a safe environment for trucks to dump their fill" and that compensation "for that investment is only fair." (Statement of F. John Rissberger, John Rissberger Nursery).

Applicant argues that she is essentially improving the land for future farming. Applicant actively farms the property and argues that the fill is being placed for the express purpose of expanding arable area and mitigating erosion in service of orchard productivity.

Applicant's request addresses four "uses" in her request: Mitigating erosion, filling low spots in arable areas, expanding arable areas, and improving access across the farm. Applicant argues that these are "textbook examples of 'farm use' under ORS 215.203 and MCC 17.110.680."

6. ORS 215.203(2)(c) defines "farm use." Under ORS 215.203(2)(a), "farm use" requires current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or other listed agricultural activities. The statute does not independently define "accepted farming practices," but Oregon case law requires that the activity be directly and functionally related to agricultural production.

The analysis requires consideration of two issues: First: What is the primary purpose in filling the farmland with material, including soil, that has been hydraulically excavated from utility trances and similar shallow excavations? Is the primary purpose to mitigate erosion, level the farmland, improve farm access and increase tillable acreage for enhanced profit from farming? Or, is the primary purpose to obtain profit from the disposal of industrial and commercial Vector truck waste. Second: Even if the primary purpose of the operation can be considered the construction and maintenance of equipment and facilities for raising, harvesting, and selling crops, is receipt of hydraulic

vacuum extraction a reasonable and accepted farm practice such that it is considered a farm use.

7. Marion County Planning characterized the operation as functioning similarly to a disposal or materials handling site. The Hearings Officer does not sit in review of a solid waste permit application and does not base this decision on whether the site meets the technical definition of a “solid waste disposal site.”

However, the definitions contained in MCC 17.120.315 provide context for understanding the functional nature of the activity. The record demonstrates that materials generated as by-products of off-site construction activity were transported to the subject property for unloading and deposition. The infrastructure constructed—paved haul road, marked dumping bays, and a large, excavated pit—facilitated repeated receipt of truckloads of material.

These characteristics inform the land use characterization analysis. The activity more closely resembles a materials receiving and deposition operation serving off-site construction activity than agricultural production or soil redistribution incidental to farming.

This characterization is relevant solely to determining whether the activity qualifies as farm use under ORS 215.203. It is not a determination that Applicant is operating a regulated solid waste facility.

MCC17.120.315 (A), (C), (D) and (E) defines “dispose,” “solid waste,” “solid waste disposal sites,” and “waste”:

A. “Dispose” or “disposal” includes accumulation, storage, collection, transportation, and disposal of solid wastes;

C. Solid waste” means all nonputrescible wastes, whether in a solid or in a liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street thereof, tires, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, dead animals and other discarded solid materials;

D. “Solid waste disposal site or sites” means any land used for disposal of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, incinerators, and composting plants, but not including a landfill site which is not used by the public either directly or through a disposal service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing;

E. “Waste” means useless, unwanted or discarded materials.

Applicants state that they began this operation to fill in low lying lands on their property so they could create more farmable areas and mitigate erosion. They also state that they only receive clean fill from companies doing excavation work. Provided in the definition of farm use is the sentence: "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection." It is common practice for farmers to receive fill dirt. Often it is offered for free, or property owners pay for it, as a method for construction sites to get rid of extra dirt and keep it in the local area.

However, the evidence tends to indicate that the Applicant's facility functions like a solid waste facility, where the actual waste, or soil in this case, is useless or unwanted material and the value is in the disposal and storage of it.

Marion County Planning's determination is factually supported: the pit was excavated, Applicant built paved dumping bays, there was regular truck traffic, and fees were paid by waste generators. These facts tend to demonstrate that the site was likely developed for waste receipt on an industrial scale, and that the economic purpose of the operation is disposal. Marion County determined that the Applicant's property functions like a solid waste facility, where the actual waste, or soil, is useless or unwanted material, and the value is in the disposal and storage of the waste material. Marion County determined that the primary purpose of the property appeared to be obtaining a profit from the disposal of industrial and commercial Vector truck waste, and that this use does not constitute farm site, which is not permitted in Marion County under MCC 17.136.050(I).

The cumulative picture appears to support the determination that the Applicant's primary purpose in constructing the facility is to obtain value in the disposal and storage of waste material. The functional characteristics of the activity resemble those of a disposal or materials handling operation rather than agricultural production.

8. Comments submitted by Applicant's neighbors posit that the proposed "land leveling" is farm use. Applicant also correctly notes that the economic structure of the transaction is not dispositive. However, the primary functional use of the site during operations is the receipt of off-site excavated materials, dewatering operations, and infrastructure to allow truck access and staging.

The importation, treatment, and placement of off-site materials is not itself the raising or harvesting of crops, nor is it a facility subordinate and customarily provided in conjunction with farm use. Rather, it is a waste handling and fill activity serving off-site development.

LUBA has consistently held that activities must be directly and primarily related to agricultural production to qualify as farm use. Where the dominant purpose of the activity is non-farm in nature, incidental agricultural benefit is insufficient.

The creation of additional arable land is secondary and contingent. The record does not quantify acreage gained or demonstrate that the activity is necessary for farm viability.

The determinative question is not whether land leveling can constitute farm use. It often can. The question is whether the current employment of this land, as demonstrated by the record, is primarily agricultural production or the compensated receipt and deposition of off-site trench slurry. The evidence of infrastructure, scale, compensation, and third-party waste generation demonstrates that the dominant use during the relevant period was materials handling rather than crop production. Accordingly, the proposal does not constitute "farm use" under ORS 215.203.

9. The Hearings Officer recognizes the applicant's argument that the primary purpose of the proposal is agricultural land leveling and increased arable acreage. Applicant asserts that grading and soil placement are routine agricultural activities and that the dewatering and placement of hydraulically excavated soils is merely the chosen method of achieving that land improvement.

In deference to the Applicant and for purposes of this section only, the Hearings Officer assumes *arguendo* that Applicant's primary objective is land leveling for agricultural production. Even under that assumption, the proposal does not qualify as a permitted farming practice.

Even if the primary purpose of the operation can be considered the construction and maintenance of equipment and facilities for raising, harvesting, and selling crops, the Applicant must also establish that the receipt of hydraulic vacuum extraction a reasonable and accepted farm practice such that it is considered a farm use.

10. Applicant bears the burden of establishing that importing and dumping off-site Vector truck trench spoils as the means of achieving land leveling is generally accepted, customary, reasonable and typical of farms of similar size and type.
11. Jim Johnson, Working Lands Policy Director for 1000 Friends of Oregon testified that the Vector truck dump is not a farm use. Mr. Johnson testified that an activity that is not a customary farm practice cannot constitute a farm use as defined in ORS 215.203(2)(a).

Kevin Fenn, Water Quality and SWCD Program Manager, Oregon Department of Agriculture writes that in regard to regulation under the Agricultural Water Quality program, the ODA makes decisions on what agricultural activities are and what constitutes agricultural fill. For either, the activity must be a normal and accustomed practice. The put site would not be considered an agricultural activity. Fill or placement of material could be considered agricultural depending on the situation.

Mr. Fenn's statement is consistent with Mr. Johnson's testimony.

Mr. Johnson also stated that elements of the Agricultural Water Quality statute administered by the Oregon Department of Agriculture (ODA), which defines "farming practices" and Oregon's Right to Farm statute is instructive as to what should be considered a farming practice. ORS 561.191(1) instructs the ODA to development and implement a water quality program that directly regulates "farming practices as defined

in ORS 30.930. ORS 30.930-.947 is commonly referred to as Oregon's Right to Farm law. The definition of "farming practice" in the Right to Farm law, established that a farming practice, amount other things (1) is or may be used on a farm of similar nature; (2) is a generally accepted, reasonable and prudent method for the operation of a farm to obtain a profit in money; (3) Is or may become a generally accepted, reasonable and prudent method for the operation of a farm to obtain a profit in money; and (4) Is done in a reasonable and prudent manner.

The record does not demonstrate that construction of asphalt dumping bays are customary or typical agricultural practices. The record reflects that the infrastructure was constructed to accommodate repeated dumping. The scale, infrastructure, and compensation structure are not characteristic of ordinary land leveling or soil redistribution incidental to farming.

Applicant states in the Application and supporting presentation that the material dumped by the Vector truck operators is "clean fill." However, the record does not provide sufficient evidence to determine that the Vector trucks are depositing "clean fill."

The record supports that the hydraulic vacuum extraction is a slurry of soil, water, subsurface material from trenching, and has the potential for underground contaminates. The record supports that the material is generated off-site (and from metropolitan and/or industrial areas), mechanically removed, and transported for disposal.

Without testing each shipment as it arrives on site, it is impossible to determine if the fill is clean or not. There is not a process in place to ensure testing (unless the site is established as a solid waste disposal site and permitted accordingly). Because of the risk of potential contaminants, depositing the sludge into the high value soils of EFU land cannot be said to be a reasonable or an accepted farm practice.

There is no evidence in the record demonstrating that receipt of hydraulic vacuum extraction slurry is a customary agricultural practice. The record contains no substantial evidence that the excavation of a pit and acceptance of vacuum-extracted waste from third-party commercial generators is a practice customarily used by commercial farmers; is recognized by agricultural authorities as a soil preparation or crop production method; or is commonly undertaken in the ordinary course of agricultural production.

The fact that soil is ultimately spread on farmland does not transform the importation and dumping into an accepted farming practice.

Accordingly, the placement of vacuum-extracted fill does not constitute farm use under ORS 215.203.

12. MCC 17.110.223 defines "farm use" consistent with ORS 215.203(2)(a), requiring the current employment of land; for the primary purpose of obtaining a profit in money; through raising, harvesting, and selling crops or other agricultural activities; and activities that are agricultural in nature and consistent with accepted farming practices.

13. In determining whether an activity qualifies as farm use, Oregon case law requires that the activity be directly and functionally related to agricultural production rather than merely incidental or economically beneficial to the landowner. The record does not demonstrate that compensated receipt and deposition of off-site trench slurry is directly related to crop production or typical of agricultural land management MCC 17.110.223 incorporates the concept of accepted farming practices. An accepted farming practice must be customary in the agricultural community; commonly or typically employed in farm operations; reasonably necessary to agricultural production.

Applicant has not demonstrated that commercial farmers customarily construct deep disposal pits with paved dumping stations to accept compensated truckloads of trench slurry; that agricultural authorities recognize hydraulic vacuum trench slurry deposition as a customary farm soil management technique; or that the practice is typical or reasonably necessary to farm operations.

14. Opponents also raise concerns about the proximity of the facility to Ryan Creek.

The Hearings Officer is not reviewing enforcement matters or determining compliance with environmental regulations. However, there are concerns about such a large berm being constructed near Ryan Creek, which flows directly to the Willamette River and serves as fish and wildlife habitat. If the berm were to fail, or contaminated soil be placed in it and drained to Ryan Creek, it could negatively affect downstream property owners and the wildlife. During the rainy months the pit fills up with water, leaving no capacity for soil and poses a threat of collapsing the berm. While the Applicants have submitted a report to DEQ which shows the berm has a low chance of failure, this may not be adequate evidence the berm has been constructed to receive and store soil waste and water long term.

15. Evidence was submitted to the record showing a pump sitting on the berm that pumped turbid water directly from the pit into Ryan Creek, when the pit was filled with water. Letters in the record from DEQ demonstrate that they have concerns about this turbid violation of OAR 340-012-0055(2)(b). It appears the applicants have been knowingly draining this water into Ryan Creek despite the notice of violations sent to them on January 11, 2024 and March 19, 2024 by DEQ.

16. Evidence was submitted to the record showing that on January 2, 2024, a hydraulic line on one of the trucks ruptured and spilled approximately 5 gallons of hydraulic fluid into the pit and surrounding area. Nothing has been submitted to the record to ensure that this will not happen again or that there are proper clean up procedures in place that would stop any hydraulic fluid from getting into the soil, groundwater or Ryan Creek.

However, Applicant correctly states that the Hearings Officer is not sitting in review of any enforcement order or investigating environmental compliance. The matter before the Hearings Officer is narrowly focused specifically on whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use. This environmental

context is considered solely for purposes of land use characterization under ORS 215.203 and not as an independent basis for denial.

17. ORS 215.283 provides an exclusive list of uses permitted outright or conditionally in the EFU zone. Uses not listed are prohibited. The applicant has not identified, and the record does not establish, that operation of a compensated trench slurry receiving and deposition site is listed as a permitted or conditional use under ORS 215.283. Because the activity does not qualify as farm use and is not otherwise listed, it cannot be approved.
18. Based on the above findings, it has been determined that placement of fill from hydraulic vacuum extraction is not a farm use and is not permitted on the subject property

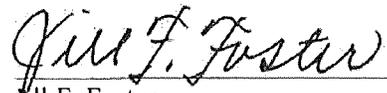
VII. Order

It is hereby found that Applicant has not met her burden of proving the applicable standards and criteria for approval of an administrative review application to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora (T4S; R1W; Section 8; Tax lot 200). Therefore, the Administrative Review application is DENIED.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Str. NE, Suite 2130, Salem, Oregon) by 5:00 p.m. on the 4th day of March, 2026. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon this 17th day of February, 2026.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Denise Burnham
21855 Butteville Rd.
Aurora, OR 97002

Pudding River Watershed Council (via email)
anna@puddingriverwatershed.org
cleanpuddingriver@gmail.com

Charles Burman
21855 Butteville Rd.
Aurora, OR 97002

County Agencies Notified:

Thomas Benke
PO Box 80458
Portland, OR 97280

Assessor's Office (via email)
assessor@co.marion.or.us

Ben Williams
23013 Yearly Lane
Aurora, OR 97002

Tax Collector (via email)
NMcVey@co.marion.or.us

Jim Johnson
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Portland, OR 97214

Surveyor's Office (via email)
KInman@co.marion.or.us

City: Aurora:
21420 Main St.
Aurora, Or. 97002

Fire District: Aurora (via email)
jwilliams@aurorafire.org

Area Advisory Committee #6: (via email)
Ben Williams
fofp99@gmail.com

Planning Division (via email)
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abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us

Roger and Aileen Kaye (via email)
Arkaye2@gmail.com (Aileen)
10095 Parrish Gap Rd. SE
Turner, OR. 97392

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
CTate@co.marion.or.us

1000 Friends of Oregon (via email)
340 SE 6th Ave
Portland, OR 97214

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

School District: (via email)
Ginger.redlinger@nmarion.k12.or.us

Code Enforcement (via email)

CGoffin@co.marion.or.us

State Agencies Notified:

Oregon DEQ

Attn: Mary Camarata

Fairview Industrial Dr. S

Salem, OR 97302

Division of State Lands

775 Summer St. NE

Salem, OR 97310

Department of Fish and Wildlife

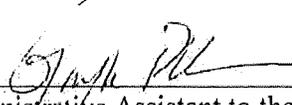
4034 Fairview Industrial Dr. SE

Salem, OR 97302

DLCD (via email)

Hilary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 17th day of February, 2026 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 86301

Receipt Date: 03/03/2026 02:48 PM

Station: 34

Cashier: SKM

Receipt Name: DENISE BURNHAM

Comments: C/O GARRETT STEPHENSON, SCHWABE, WILLIAMSON & WYATT - CASE 25-026

Thank You!

BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

Documents are recorded as submitted. The Marion County Clerk's Office
assumes no liability for sufficiency, validity, or accuracy.

Miscellaneous Fees		
Appeal Fee	YES	\$500.00

Receipt Total

\$500.00

CHECK

257669

\$500.00

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. 25-026
Denise Burnham)
ADMINISTRATIVE REVIEW

ORDER

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the Application of Denise Burnham for an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora (T4S; RIW; Section 8; Tax lot 200).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Marion County Code (MCC), Title 17, especially MCC 17.136 (Exclusive Use Zone) and MCC 17.110.223 (Definition of Farm Use).

III. Hearing

A public hearing was held on this matter on December 18, 2025. At the hearing, the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- | | | |
|----|-----------------|---|
| 1. | Austin Barnes | Marion County Planning Division |
| 2. | Thomas Benke | Attorney for Applicant |
| 3. | Denise Burnham | Applicant |
| 4. | Cheyne Fobert | Witness in Favor of Application |
| 5. | Joseph Schaffer | Jordan Ramis / Witness in Opposition to Application |
| 6. | Jamie Howsley | Attorney for Opponents Judy and Scott Chambers |
| 7. | Ben Williams | Witness in Opposition to Application |
| 8. | Jim Johnson | Witness in Opposition to Application |

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No documents were entered into the record as exhibits.

An open record period was requested and permitted. The following documents were received during the first open record period:

December 22, 2025: Submission from Jim Johnson, Working Lands Policy Director, 1000 Friends of Oregon

December 23, 2025: Statement by Deanna Nibler

December 23, 2025: Submission from Jamie Howsley, Attorney for Scott and Judy Chambers, including email from Kevin Fenn, Oregon Department of Agriculture and article from Salem Statesman Journal

The following document was received during the second open record period:

January 2, 2026: Submission from Thomas R. Benke, Attorney for Applicant

IV. Executive Summary

Applicant requests an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora.

Marion County Planning denied the application based on the determination that the primary purpose of the use was to obtain profit from the disposal of industrial and commercial Vactor truck waste, as opposed to farm use. Marion County Planning determined Applicant has created a new solid waste disposal site, which is not permitted in Marion County.

Applicant argues that she did not apply for review of existing site features. Applicant argues that she applied for Administrative Review for her prospective request to fill and contour the property with hydraulically excavated soils for farm use, including erosion mitigation, filling low spots, expansion of arable areas, and improved farm access.

Applicant and opponents dispute the primary purpose of filling farmland with material, including soils that have been hydraulically excavated. The determinative issue is whether the current and proposed employment of the land constitutes "farm use" under ORS 215.203 and MCC 17.110.223.

The record demonstrates that the dominant use of the site during the relevant period was the compensated receipt and deposition of off-site trench slurry rather than agricultural production. Even if the primary purpose of the operation can be considered the construction and maintenance of equipment and facilities for raising, harvesting, and selling crops, the receipt of hydraulic vacuum extraction is not a reasonable and accepted farm practice such that it is considered a farm use.

The proposal therefore does not qualify as farm use and is not permitted in the EFU zone. Applicant's application for administrative review for placement of fill from hydraulic vacuum extraction as a farm use is DENIED

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

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Burnham
Page 2

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both the designation and zone is to provide areas for continued practice of commercial agriculture and to protect commercial agricultural operations.
2. The subject property is located on the western side of Butteville Rd NE, approximately 900 feet north of its intersection with Ehlen Rd NE. The property contains two stick-built dwellings, one built in 1908 and the other in 1933. The parcel also contains multiple accessory farm structures. The parcel and dwellings are considered legal for land use purposes.
3. Surrounding properties are all zoned EFU and in active farming operations, with some containing dwellings.
4. The Soil Survey of Marion County, Oregon indicates that the subject parcel consists of 97.1% high-value soils.
5. Applicant requests a determination whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use. The Application is for specifically for an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use. Applicant also argues in the alternative that the fill from hydraulic vacuum extraction, a “dewatering activity” is a conditional use which may be permitted in an EFU zone.
6. Various agencies were contacted and given an opportunity to comment. The following comments were received from various governmental agencies, non-profit organizations, and individuals:

Marion County Septic commented: "Per OAR 340-07-0130(12), "Initial and repair absorption areas must NOT be subject to activity that is likely to adversely affect the soil or functioning of the septic system. Including but not limited to: Vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil modification." Any existing drainfield and future repair area should not be filled and should be delineated from all other site manipulation."

Marion County Code Enforcement provided comments requesting denial stating that they believe this to a commercial dumping operation rather than a farm use.

Marion County Building Inspection commented: No Building Inspection concerns. Permit(s) may be required to be obtained if development of structures and/or utilities installation is proposed over the proposed fill soil pit locations. A compaction report of the soils may be needed to prove the density of the fill material is sufficient to support a structure. It is advised to obtain this compaction report for future use if structures are to be developed in these locations.

1000 Friends of Oregon commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. The comments from 1000 Friends of Oregon can be found in full in the case file.

Friends of French Prairie commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. In the comments. Friends of French Prairie submit pictures of the subject property with the dumping pit. Some pictures appear to show countertop waste being dumped into the pit. This would contradict the statements made by the applicants that only dirt and water have been dumped in their pit. The pictures show bright white material that appears to be ground up or in small chunks, similar to countertop waste that was dumped at a pit on another Marion County property associated with a disposal site. Friends of French Prairie's comments can be found in full in the case file.

Jamie Howsley of Jordan Ramis Law Firm represents a neighbor, the Chambers Family, and submitted a letter requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. They also submitted enforcement letters against the property from DEQ, Oregon Water Resources Department and Marion County Code Enforcement. The letters from DEQ detail numerous violations related to water quality and hydraulic oil spills. The letter from Oregon Water Resources Department states that they are in violation of ORS 537.130(1) and 537.130(2) for constructing a earthen dam and storing water without a water right.

Additionally, Mr. Howsley submitted two videos, one of the muddy, turbid water of Ryan Creek due to the contamination by the pit and a second of a pump actively pumping water from the pit into the Ryan Creek wetlands area. Their comments can be found in full in the case file.

Michael McCauley commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. He also raises concerns about the construction of the berm and the damage it would cause if it were to fall and flow into Ryan Creek. The comments can be found in full in the case file.

All other contacted agencies either failed to comment or stated no objection/concern to the proposal.

7. Applicant is requesting a determination as to whether operation of a site for placement of fill from hydraulic vacuum exaction is a farm use.
8. In 2023, Applicant excavated and constructed a large pit on her property, measuring approximately 200 feet long by 150 feet wide and built in a circular shape. The pit is approximately 20-30 feet deep and was made by substantially digging out a gully on the subject property's filbert orchard's western edge and extending the digging into the orchard and flat areas of the property. The pit and associated berm take up approximately 0.8-1.0 acres.

9. An asphalt access road was constructed to access the pit site. The access road is approximately 3,570 feet long and leads to 6 dumping bays marked by painted white lines on the ground and yellow safety railings to denote the edge of the pit. After completion, Vactor trucks employed by utility companies such as NW Natural, PGE, ProVac and Poltelco began dumping at the site.

The Vactor trucks dump a slurry made of water and dirt which is the by-product of hydraulic excavation. High pressure water is used to loosen dirt and dig trenches/holes while an industrial vacuum sucks the slurry into a holding tank on the truck. The trucks then travel from the jobsite to the subject property and dump the slurry into the pit.

Applicant received compensation for each truck that was dumped and based on evidence submitted in the record, receiving \$300 per load and receiving 238 loads from November 2023 to January 2024.

10. Evidence in the record includes photographs suggesting that materials other than soil and water may have been deposited. The pit was excavated before the fill was received. Applicant states that “the sources of clean fill placed at the property will be hydraulically excavated soil collected regionally (most commonly from utility trenches) and transported to the farm by Vactor trucks.

Applicant states that because Vactor trucks soils are inherently watery, the soils may be placed initially in the gully or “pit” created by prior construction of the berm at the northwest corner of the property, which the soils will be possibly dewatered before being moved elsewhere across the site as needed to achieve the stormwater control objectives of the clean fill activity.

11. DEQ and OWRD issued notices of violation concerning water discharge and dam construction. However, on September 3, 2025, the DEQ withdrew the Order directing Ms. Burnham to stabilize or decommission the berm and pit on the property.
12. Friends of French Prairie submitted photos of the above companies dumping at the site enough to be used in construction) being dumped into the pit by Pacific Northwest Marble and Granite on December 12, 2023. The photos show white material leaving the truck and accumulating in the pit and around the edges of the truck where it sits on the asphalt above the pit.
13. Applicant argues that the “pit” (resultant of the berm), the “haul road,” and the asphalted “turnaround area” should not be considered in her application for administrative review of a prospective request to fill and contour the property with hydraulically excavated soils for farm use. Applicant suggests that an Administrative Review of land-use compatibility is inherently prospective, and evaluates whether a described activity, if undertaken as proposed, is allowable under the zoning ordinance. Applicant states that these features, specifically, the pit, haul road, and turnaround area are not before the County for review and are not included in the scope of the application.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicants must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely Applicants have not met their burden, and the application must be denied. If the evidence for every criterion is in Applicants’ favor, then the burden of proof is met.

2. The subject property is zoned Exclusive Farm Use. Applicant states that the purpose of the operation is to fill in low lying portions of their property to improve drainage and expand the property’s farmable area. Applicant proposes to fill parts of the farmland with topsoil that has been hydraulically excavated from utility trances and similar shallow excavations to mitigate erosion, fill low spots, and improve access across her farm. Applicant further states that after the pit area fills; she will farm on top of it. Applicant argues that the operations is a “farm use” as the term is defined in MCC 17.110.223 and ORS 215.203(2)(a).
3. MCC 17.110.223 provides the definition of farm use as taken from ORS 215.203(2)(a):

As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).

MCC 17.110.223 defines farm use to include the use of land for the primary purpose of obtaining profit in money by harvesting and selling crops, and to include the on-site construction and maintenance of the facilities.

4. Marion County Planning determined that because the operation's primary purpose was in obtaining profit from waste disposal, Applicant had created a new solid waste disposal site, which is not permitted in Marion County. New solid waste disposal sites are not permitted in Marion County pursuant to MCC 17.136.050 (I).

Only expansions of lawfully established sites can be permitted. Marion County determined that the proposed operation does not fall into a lawfully permitted site, as no prior land use permits were applied for and the site was not operating prior to county's comprehensive plan being acknowledged in 1983. On that basis, the County determined that the proposed use is not a farm use.

MCC 17.120.315 (A), (C), (D) and (E) defines "dispose" "solid waste" "solid waste disposal sites" and "waste":

A. "Dispose" or "disposal" includes accumulation, storage, collection, transportation, and disposal of solid wastes;

C. "Solid waste" means all putrescible and nonputrescible wastes, whether in a solid or in a liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, tires, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, dead animals and other discarded solid materials;

D. "Solid waste disposal site or sites" means any land used for disposal of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, incinerators, and composting plants, but not including a landfill site which is not used by the public either directly or through a disposal service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing;

E. "Waste" means useless, unwanted or discarded materials.

In support of the determination, Marion County noted that the evidence in the record also shows more than soil and water were dumped in the pit. Evidence indicates that countertop material was dumped in this pit, and that the material was not used just to level and fill existing low areas on the property to make it suitable for farming, the "pit" was deeply excavated in order to make room for the fill material to be received.

Applicant argues that the "countertop material" was actually granite that is similar to rock or clean fill, which would be used to fill low areas as part of land leveling.

5. Applicant states that she began this operation to fill in low lying lands on their property so they could create more farmable areas and mitigate erosion. Applicant also states that they only receive clean fill from companies doing excavation work. Provided in the definition of farm use is the sentence: *"Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "*

It is common practice for farmers to receive fill dirt. Fill dirt is often offered for free, or property owners pay for it. What is less common are companies paying a property owner to dispose of their extra dirt. The evidence indicates that 238 loads were received in a three-month period, averaging nearly 80 loads per month.

Applicant argues that the receipt of compensation does not negate the "farm use." Applicant argues that it does not matter if "disposal" is a purpose because the primary purpose is farming.

Comments in support of the application argue that Applicant has a right to farm and use good farming practices, and that maintaining tillable soil and leveling the fields is a part of good farming practices. Comments in support of the Application acknowledge that there has been "considerable investment to create a safe environment for trucks to dump their fill" and that compensation "for that investment is only fair." (Statement of F. John Rissberger, John Rissberger Nursery).

Applicant argues that she is essentially improving the land for future farming. Applicant actively farms the property and argues that the fill is being placed for the express purpose of expanding arable area and mitigating erosion in service of orchard productivity.

Applicant's request addresses four "uses" in her request: Mitigating erosion, filling low spots in arable areas, expanding arable areas, and improving access across the farm. Applicant argues that these are "textbook examples of 'farm use' under ORS 215.203 and MCC 17.110.680."

6. ORS 215.203(2)(c) defines "farm use." Under ORS 215.203(2)(a), "farm use" requires current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or other listed agricultural activities. The statute does not independently define "accepted farming practices," but Oregon case law requires that the activity be directly and functionally related to agricultural production.

The analysis requires consideration of two issues: First: What is the primary purpose in filling the farmland with material, including soil, that has been hydraulically excavated from utility trances and similar shallow excavations? Is the primary purpose to mitigate erosion, level the farmland, improve farm access and increase tillable acreage for enhanced profit from farming? Or, is the primary purpose to obtain profit from the disposal of industrial and commercial Vactor truck waste. Second: Even if the primary purpose of the operation can be considered the construction and maintenance of equipment and facilities for raising, harvesting, and selling crops, is receipt of hydraulic

vacuum extraction a reasonable and accepted farm practice such that it is considered a farm use.

7. Marion County Planning characterized the operation as functioning similarly to a disposal or materials handling site. The Hearings Officer does not sit in review of a solid waste permit application and does not base this decision on whether the site meets the technical definition of a “solid waste disposal site.”

However, the definitions contained in MCC 17.120.315 provide context for understanding the functional nature of the activity. The record demonstrates that materials generated as by-products of off-site construction activity were transported to the subject property for unloading and deposition. The infrastructure constructed—paved haul road, marked dumping bays, and a large, excavated pit—facilitated repeated receipt of truckloads of material.

These characteristics inform the land use characterization analysis. The activity more closely resembles a materials receiving and deposition operation serving off-site construction activity than agricultural production or soil redistribution incidental to farming.

This characterization is relevant solely to determining whether the activity qualifies as farm use under ORS 215.203. It is not a determination that Applicant is operating a regulated solid waste facility.

MCC17.120.315 (A), (C), (D) and (E) defines “dispose,” “solid waste,” “solid waste disposal sites,” and “waste”:

A. “Dispose” or “disposal” includes accumulation, storage, collection, transportation, and disposal of solid wastes;

C. Solid waste” means all nonputrescible wastes, whether in a solid or in a liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street thereof, tires, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, dead animals and other discarded solid materials;

D. “Solid waste disposal site or sites” means any land used for disposal of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, incinerators, and composting plants, but not including a landfill site which is not used by the public either directly or through a disposal service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing;

E. “Waste” means useless, unwanted or discarded materials.

Applicants state that they began this operation to fill in low lying lands on their property so they could create more farmable areas and mitigate erosion. They also state that they only receive clean fill from companies doing excavation work. Provided in the definition of farm use is the sentence: "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection." It is common practice for farmers to receive fill dirt. Often it is offered for free, or property owners pay for it, as a method for construction sites to get rid of extra dirt and keep it in the local area.

However, the evidence tends to indicate that the Applicant's facility functions like a solid waste facility, where the actual waste, or soil in this case, is useless or unwanted material and the value is in the disposal and storage of it.

Marion County Planning's determination is factually supported: the pit was excavated, Applicant built paved dumping bays, there was regular truck traffic, and fees were paid by waste generators. These facts tend to demonstrate that the site was likely developed for waste receipt on an industrial scale, and that the economic purpose of the operation is disposal. Marion County determined that the Applicant's property functions like a solid waste facility, where the actual waste, or soil, is useless or unwanted material, and the value is in the disposal and storage of the waste material. Marion County determined that the primary purpose of the property appeared to be obtaining a profit from the disposal of industrial and commercial Vactor truck waste, and that this use does not constitute farm site, which is not permitted in Marion County under MCC 17.136.050(I).

The cumulative picture appears to support the determination that the Applicant's primary purpose in constructing the facility is to obtain value in the disposal and storage of waste material. The functional characteristics of the activity resemble those of a disposal or materials handling operation rather than agricultural production.

8. Comments submitted by Applicant's neighbors posit that the proposed "land leveling" is farm use. Applicant also correctly notes that the economic structure of the transaction is not dispositive. However, the primary functional use of the site during operations is the receipt of off-site excavated materials, dewatering operations, and infrastructure to allow truck access and staging.

The importation, treatment, and placement of off-site materials is not itself the raising or harvesting of crops, nor is it a facility subordinate and customarily provided in conjunction with farm use. Rather, it is a waste handling and fill activity serving off-site development.

LUBA has consistently held that activities must be directly and primarily related to agricultural production to qualify as farm use. Where the dominant purpose of the activity is non-farm in nature, incidental agricultural benefit is insufficient.

The creation of additional arable land is secondary and contingent. The record does not quantify acreage gained or demonstrate that the activity is necessary for farm viability.

The determinative question is not whether land leveling can constitute farm use. It often can. The question is whether the current employment of this land, as demonstrated by the record, is primarily agricultural production or the compensated receipt and deposition of off-site trench slurry. The evidence of infrastructure, scale, compensation, and third-party waste generation demonstrates that the dominant use during the relevant period was materials handling rather than crop production. Accordingly, the proposal does not constitute “farm use” under ORS 215.203.

9. The Hearings Officer recognizes the applicant’s argument that the primary purpose of the proposal is agricultural land leveling and increased arable acreage. Applicant asserts that grading and soil placement are routine agricultural activities and that the dewatering and placement of hydraulically excavated soils is merely the chosen method of achieving that land improvement.

In deference to the Applicant and for purposes of this section only, the Hearings Officer assumes *arguendo* that Applicant’s primary objective is land leveling for agricultural production. Even under that assumption, the proposal does not qualify as a permitted farming practice.

Even if the primary purpose of the operation can be considered the construction and maintenance of equipment and facilities for raising, harvesting, and selling crops, the Applicant must also establish that the receipt of hydraulic vacuum extraction a reasonable and accepted farm practice such that it is considered a farm use.

10. Applicant bears the burden of establishing that importing and dumping off-site Vactor truck trench spoils as the means of achieving land leveling is generally accepted, customary, reasonable and typical of farms of similar size and type.
11. Jim Johnson, Working Lands Policy Director for 1000 Friends of Oregon testified that the Vactor truck dump is not a farm use. Mr. Johnson testified that an activity that is not a customary farm practice cannot constitute a farm use as defined in ORS 215.203(2)(a).

Kevin Fenn, Water Quality and SWCD Program Manager, Oregon Department of Agriculture writes that in regard to regulation under the Agricultural Water Quality program, the ODA makes decisions on what agricultural activities are and what constitutes agricultural fill. For either, the activity must be a normal and accustomed practice. The put site would not be considered an agricultural activity. Fill or placement of material could be considered agricultural depending on the situation.

Mr. Fenn’s statement is consistent with Mr. Johnson’s testimony.

Mr. Johnson also stated that elements of the Agricultural Water Quality statute administered by the Oregon Department of Agriculture (ODA), which defines “farming practices” and Oregon’s Right to Farm statute is instructive as to what should be considered a farming practice. ORS 561.191(1) instructs the ODA to development and implement a water quality program that directly regulates “farming practices as defined

in ORS 30.930. ORS 30.930-.947 is commonly referred to as Oregon's Right to Farm law. The definition of "farming practice" in the Right to Farm law, established that a farming practice, amount other things (1) is or may be used on a farm of similar nature; (2) is a generally accepted, reasonable and prudent method for the operation of a farm to obtain a profit in money; (3) Is or may become a generally accepted, reasonable and prudent method for the operation of a farm to obtain a profit in money; and (4) Is done in a reasonable and prudent manner.

The record does not demonstrate that construction of asphalt dumping bays are customary or typical agricultural practices. The record reflects that the infrastructure was constructed to accommodate repeated dumping. The scale, infrastructure, and compensation structure are not characteristic of ordinary land leveling or soil redistribution incidental to farming.

Applicant states in the Application and supporting presentation that the material dumped by the Vactor truck operators is "clean fill." However, the record does not provide sufficient evidence to determine that the Vactor trucks are depositing "clean fill."

The record supports that the hydraulic vacuum extraction is a slurry of soil, water, subsurface material from trenching, and has the potential for underground contaminates. The record supports that the material is generated off-site (and from metropolitan and/or industrial areas), mechanically removed, and transported for disposal.

Without testing each shipment as it arrives on site, it is impossible to determine if the fill is clean or not. There is not a process in place to ensure testing (unless the site is established as a solid waste disposal site and permitted accordingly). Because of the risk of potential contaminants, depositing the sludge into the high value soils of EFU land cannot be said to be a reasonable or an accepted farm practice.

There is no evidence in the record demonstrating that receipt of hydraulic vacuum extraction slurry is a customary agricultural practice. The record contains no substantial evidence that the excavation of a pit and acceptance of vacuum-extracted waste from third-party commercial generators is a practice customarily used by commercial farmers; is recognized by agricultural authorities as a soil preparation or crop production method; or is commonly undertaken in the ordinary course of agricultural production.

The fact that soil is ultimately spread on farmland does not transform the importation and dumping into an accepted farming practice.

Accordingly, the placement of vacuum-extracted fill does not constitute farm use under ORS 215.203.

12. MCC 17.110.223 defines "farm use" consistent with ORS 215.203(2)(a), requiring the current employment of land; for the primary purpose of obtaining a profit in money; through raising, harvesting, and selling crops or other agricultural activities; and activities that are agricultural in nature and consistent with accepted farming practices.

13. In determining whether an activity qualifies as farm use, Oregon case law requires that the activity be directly and functionally related to agricultural production rather than merely incidental or economically beneficial to the landowner. The record does not demonstrate that compensated receipt and deposition of off-site trench slurry is directly related to crop production or typical of agricultural land management MCC 17.110.223 incorporates the concept of accepted farming practices. An accepted farming practice must be customary in the agricultural community; commonly or typically employed in farm operations; reasonably necessary to agricultural production.

Applicant has not demonstrated that commercial farmers customarily construct deep disposal pits with paved dumping stations to accept compensated truckloads of trench slurry; that agricultural authorities recognize hydraulic vacuum trench slurry deposition as a customary farm soil management technique; or that the practice is typical or reasonably necessary to farm operations.

14. Opponents also raise concerns about the proximity of the facility to Ryan Creek.

The Hearings Officer is not reviewing enforcement matters or determining compliance with environmental regulations. However, there are concerns about such a large berm being constructed near Ryan Creek, which flows directly to the Willamette River and serves as fish and wildlife habitat. If the berm were to fail, or contaminated soil be placed in it and drained to Ryan Creek, it could negatively affect downstream property owners and the wildlife. During the rainy months the pit fills up with water, leaving no capacity for soil and poses a threat of collapsing the berm. While the Applicants have submitted a report to DEQ which shows the berm has a low chance of failure, this may not be adequate evidence the berm has been constructed to receive and store soil waste and water long term.

15. Evidence was submitted to the record showing a pump sitting on the berm that pumped turbid water directly from the pit into Ryan Creek, when the pit was filled with water. Letters in the record from DEQ demonstrate that they have concerns about this turbid violation of OAR 340-012-0055(2)(b). It appears the applicants have been knowingly draining this water into Ryan Creek despite the notice of violations sent to them on January 11, 2024 and March 19, 2024 by DEQ.

16. Evidence was submitted to the record showing that on January 2, 2024, a hydraulic line on one of the trucks ruptured and spilled approximately 5 gallons of hydraulic fluid into the pit and surrounding area. Nothing has been submitted to the record to ensure that this will not happen again or that there are proper clean up procedures in place that would stop any hydraulic fluid from getting into the soil, groundwater or Ryan Creek.

However, Applicant correctly states that the Hearings Officer is not sitting in review of any enforcement order or investigating environmental compliance. The matter before the Hearings Officer is narrowly focused specifically on whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use. This environmental

context is considered solely for purposes of land use characterization under ORS 215.203 and not as an independent basis for denial.

17. ORS 215.283 provides an exclusive list of uses permitted outright or conditionally in the EFU zone. Uses not listed are prohibited. The applicant has not identified, and the record does not establish, that operation of a compensated trench slurry receiving and deposition site is listed as a permitted or conditional use under ORS 215.283. Because the activity does not qualify as farm use and is not otherwise listed, it cannot be approved.
18. Based on the above findings, it has been determined that placement of fill from hydraulic vacuum extraction is not a farm use and is not permitted on the subject property

VII. Order

It is hereby found that Applicant has not met her burden of proving the applicable standards and criteria for approval of an administrative review application to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora (T4S; RIW; Section 8; Tax lot 200). Therefore, the Administrative Review application is DENIED.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Str. NE, Suite 2130, Salem, Oregon) by 5:00 p.m. on the 4th day of March, 2026. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon this 17th day of February, 2026.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Denise Burnham
21855 Butteville Rd.
Aurora, OR 97002

Charles Burman
21855 Butteville Rd.
Aurora, OR 97002

Thomas Benke
PO Box 80458
Portland, OR 97280

Ben Williams
23013 Yearly Lane
Aurora, OR 97002

Jim Johnson
340 SE 6th Ave.
Portland, OR 97214

City: Aurora:
21420 Main St.
Aurora, Or. 97002

Area Advisory Committee #6: (via email)
Ben Williams
fofp99@gmail.com

Roger and Aileen Kaye (via email)
Arkaye2@gmail.com (Aileen)
10095 Parrish Gap Rd. SE
Turner, OR. 97392

1000 Friends of Oregon (via email)
340 SE 6th Ave
Portland, OR 97214

Pudding River Watershed Council (via email)
anna@puddingriverwatershed.org
cleanpuddingriver@gmail.com

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: Aurora (via email)
jwilliams@aurorafire.org

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us

Building Inspection (via email)
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Kaldrich@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

School District: (via email)
Ginger.redlinger@nmarion.k12.or.us

Code Enforcement (via email)

CGoffin@co.marion.or.us

State Agencies Notified:

Oregon DEQ

Attn: Mary Camarata

Fairview Industrial Dr. S

Salem, OR 97302

Division of State Lands

775 Summer St. NE

Salem, OR 97310

Department of Fish and Wildlife

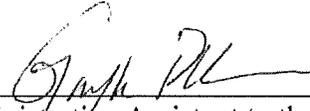
4034 Fairview Industrial Dr. SE

Salem, OR 97302

DLCD (via email)

Hilary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 17th day of February, 2026 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 25, 2026

Department: Public Works

Title: Public Hearing for Comprehensive Plan Amendment/Zone Change 24-007/Bruce Ernst

Management Update/Work Session Date: N/A Audio/Visual aids []

Time Required: 15 min Contact: Austin Barnes Phone: 503-566-4174

Requested Action: Staff recommends the application be approved. Other options for consideration are: 1. Continue the public hearing. 2. Close the public hearing and leave the record open, to deliberate at a later date. 3. Close the public hearing and approve, or modify the request. 4. Remand the matter back to the Hearings Officer.

Issue, Description & Background: Bruce Ernst submitted an application to change the zone from EFU (Exclusive Farm Use) to C (Commercial) and to change the comprehensive plan designation from Primary Agriculture to Commercial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 1.6-acre section of a 13.85-acre parcel located at 19937 Highway 99E, Aurora. The Marion County Hearings Officer held a duly noticed hearing on the application on February 5, 2026. On February 24, the Hearings Officer issued a recommendation to approve Comprehensive Plan Amendment/Zone Change 24-007/Bruce Ernst. As a part of the land use process, the Marion County Board of Commissioners must hold a public hearing on the matter and issue a decision.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Hearings Officer's Recommendation

Presenter: Austin Barnes

Department Head Signature: for Brandon Beck

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. 24-007
)
BRUCE ERNST) **COMPREHENSIVE PLAN AMENDMENT**
) **AND ZONE CHANGE**

RECOMMENDATION

I. Nature of the Application

This matter is before the Marion County Hearings Officer on the Application of Bruce Ernst to change the zone from EFU (Exclusive Farm Use) to C (Commercial) and to change the comprehensive plan designation from Primary Agriculture to Commercial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 1.6-acre section of a 13.85-acre parcel located at 19937 Highway 99E, Aurora (T4S; R1W; Section 23C; Tax lot 200).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Marion County Comprehensive Plan (Rural Development Policies), and the Marion County Code (MCC) Title 17, especially MCC 17.123, MCC 17.136, and MCC 17.145. Policies relevant to this Application are also found in the State of Oregon Statewide Planning Goals, and Oregon Administrative Rules (OAR 660-004-018 and OAR 660-004-028).

III. Public Hearing

A public hearing was held on this matter on February 5, 2026. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

- | | | |
|----|---------------|---------------------------------|
| 1. | Austin Barnes | Marion County Planning Division |
| 2. | Chris Fowler | Attorney for Applicant |

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

IV. Executive Summary

Applicant seeks approval of a zone change from EFU (Exclusive Farm Use) to C (Commercial) and to change the comprehensive plan designation from Primary Agriculture to Commercial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 1.6-acre section of a 13.85-acre parcel located at 19937 Highway 99E, Aurora.

The 1.6 subject parcel is very small, oddly shaped, and of extremely limited use because of a railroad right-of-way, and the absence of water rights or an on-site water source. Adjacent properties have all been trending to commercial, agricultural processing, and limited residential

use for 40 years. The parcel has not been farmed, and the existing development pattern limits the ability to conduct any normal farm practices on the parcel.

Based on the totality of the evidence and the cumulative effect of existing conditions and surrounding development, the Hearings Officer finds that the Applicant has satisfied the relevant standards and criteria, and that the Subject Property is irrevocably committed to non-resource use and is not reasonably expected to be used for farm use.

The Hearings Officer recommends that the Marion County Board of Commissioners GRANT the Application to change the zone from EFU (Exclusive Farm Use) to C (Commercial) and to change the comprehensive plan designation from Primary Agriculture to Commercial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 1.6-acre section of a 13.85-acre parcel located at 19937 Highway 99E, Aurora (T4S; R1W; Section 23C; Tax lot 200).

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following finding of fact:

1. The property is located on the west side of HWY 99E, directly south of its intersection with Fobert Rd NE. The property is currently vacant and covered with various species of trees and shrubs. The property has been the subject of various land use cases, including three Farm Dwelling cases from the 1990's, FD91-013, FD95-003 and FD95-150. It was also the subject of an Administrative Review in 2023, AR23-036 and is considered legal for land use purposes.
2. Properties in all directions except south are zoned EFU and are in various levels of farm production. The area is characterized by filbert orchards and some of the properties have dwellings or packing facilities. To the south is a mobile home park zoned EFU and a parcel zoned C (Commercial) that appears to be used as a personal storage business.
3. Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Public Works Land Development and Engineering Permits (MCPW) provided the following comments:

ENGINEERING ADVISORIES

- A. PW Engineering has no action items for the proposed Zone Change itself.
- B. The following are PW Engineering guidelines for future development:
 - Applicant will need to meet ODOT, Railroad and Marion County requirements for stormwater discharge
 - Applicant will need to coordinate access and utility extensions to Hwy 99E with ODOT.

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- Transportation System Development Charges (SDCs) will be assessed at the time of application for building permits.

Oregon Department of Transportation (ODOT) commented:

“We do not have any comments from the access management perspective, this segment of highway is not access controlled and the existing access to the site is presumed to be permitted.”

Marion County Building Department commented:

“No Building Inspection concerns. Permit(s) are required to be obtained prior to development and/or utilities installation on private property.”

The Department of Land Conservation and Development (DLCD) provided a letter regarding the original submission from the applicant. The letter indicated that the application was not sufficient in their eyes. The applicant has since provided additional submissions to address their concerns.

All other contacted agencies contacted either failed to respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusion of Law

1. This is a recommendation to the Marion County Board of Commissioners (BOC). The BOC is the final decision-making authority.
2. Applicant has the burden of proving compliance with all applicable criteria as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicant has not met his burden and the application must be denied. If the evidence for every criterion is even slightly in Applicant’s favor, the burden of proof is met and the application is approved.

GOAL EXCEPTION

3. Land use applications of this nature must be consistent with Statewide Planning Goals. The subject parcel is covered by Statewide Goal 3 (Agriculture Land). However, ORS

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197.732 and OAR 660-004 provide a mechanism for a Goal exception process that requires specific findings justifying why such lands are not available for resource use. There are three types of exceptions to Statewide Goals that may be granted. The first two are based on the concept that the subject property is “physically developed” or “irrevocably committed” to a certain use. The third is a “reasons” exception where there is a demonstrated need for the proposed use or activity. Applicant states that the proposal qualifies for an irrevocably committed exception.

STATEWIDE PLANNING GOALS

4. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals:

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement. The goal is satisfied.

Goal 2: Land use Planning. The subject application would change the zoning. The Hearings Officer makes a recommendation to the Marion County Board of Commissioners who will make the decision on behalf of the County. Marion County Planning division requested comments from various governmental agencies, and their comments are included. The goal is satisfied.

Goal 3: Agricultural Lands. Applicant seeks an exception, which is addressed in detail herein.

Goal 4: Forest Lands. The subject property has not been determined to be forest land. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property.

Goal 6: Air, Water and Land Resources Quality. The subject property is not within an identified air quality area. The property is not located in the Sensitive Groundwater Overlay Zone. No activities have been proposed on the property that would use significant amounts of groundwater. Any single commercial use of water using less than 5,000 gallons per day is exempt from water right permitting requirements of the Oregon Department of Water Resources, as long as the water is used for a “beneficial purpose without waste” and may be subject to regulation in times of water shortage.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.

Goal 8: Recreation Needs. No Goal 8 resources are identified on the property. This goal does not apply.

Goal 9: Economic Development. Because the proposal is a rural commercial designation supported by a Goal 3 exception and does not involve urbanization or expansion of urban services, it is consistent with Goal 9.

Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.

Goal 11: Public Facilities and Services. The subject parcels do not require an extension of services with a C (Commercial) zone use, this goal is satisfied.

Goal 12: Transportation. If the zone is changed to Commercial, the existing development will not have a significant impact on the roadway system in this area because of the minimal number of trips associated with the existing uses and the adequacy of the roadway to accommodate the probable level of additional traffic. ODOT did not identify any concerns with this proposal either.

Goal 13: Energy Conservation. There is no indication of energy use increase or decrease based on the proposed zone change and comprehensive plan change. This goal does not apply.

Goal 14: Urbanization. Applicant proposes to rezone rural residential land to Commercial outside of the urban growth boundary. The Commercial (C) zone as applied here is a rural commercial designation acknowledged as consistent with Goal 14. The proposal does not extend urban services or create urban densities, Therefore, no Goal 14 exception is required.

Goals 15-19 are not applicable because the subject property is not within the Willamette River Greenway, or near any ocean or coastal-related resources.

COMPREHENSIVE PLAN AMENDMENT

5. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). DLCD was notified as required by State Law.

DLCD provided a letter in response to the notification, and requested additional findings.

Applicant submitted a response with additional information in support of the Application. Planning Staff found that the additional submission by Applicant sufficiently addressed the concerns raised by DLCD in their letter. DLCD did not provide further comment or otherwise indicated that additional findings were required.

6. An exception based upon land that is irrevocably committed must demonstrate compliance with OAR 660-004-0018(2), which addresses planning and zoning for exception areas. Specifically, the applicant must demonstrate that approval of the exception meets the following requirements: The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and the rural uses,

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density, and public facilities and services are compatible with adjacent or nearby resource uses.

7. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer property owners will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 17.123 of the MCRZO. The subject property is comprised of one tax lot with one owner, all having an existing use, the proposal can therefore be considered under the quasi-judicial amendment process.
8. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The goals and policies that apply in this case are located in the Rural Development Chapter and include policies for areas designated Commercial:
 - A. *“Strip-type” commercial or residential development along roads in rural areas shall be discouraged.*
 - B. *Rural industrial, commercial, and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.*

No strip-type development is proposed. The majority of the parcels in the area are currently developed with commercial uses or farm uses and any additional development would not be expected to have any additional impact on surrounding agricultural and rural residential lands. This zone change would extend the commercial zoning to the extent possible allowed by vacant lands in the area, this would make the land more compatible with existing uses as there is already commercial zoning to the south. The area already sees commercial traffic on 99E along with the commercial farm businesses. Applicant did not show any proposed development on the site plan but indicated that the proposal will expand an existing commercial node rather than create a “strip type” development. This proposal would be compatible with existing uses in the area.

9. OAR 660-004-0018 (2) requires that “physically developed” and “irrevocably committed” exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
 - A. *That are the same as the existing land uses on the exception site;*
 - B. *That meet the following requirements:*

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- i. *The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and*
 - ii. *The rural uses, density, and public facilities and services will not commit adjacent or nearby resource uses to nonresource use as defined in OAR 660-004-0028; and*
 - iii. *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;*
- C. *For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, 'Planning and Zoning of Unincorporated Communities', if applicable, or*
- D. *That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.*

Because the subject property is not within an unincorporated community and is not in industrial use, C and D do not apply. Marion County has adopted a rural commercial zone which has been acknowledged as complying with Goal 14, Urbanization. The Commercial (C) zone as applied in Marion County is acknowledged to comply with Goal 14 and does not authorize urban levels of development or public facilities. The zone ensures that rural uses will not exceed density limitations on rural land and will not commit rural uses to requiring an urban level of public facilities. The commercial uses which would be allowed under the county's Commercial zone would be able to be supported on solely a rural level of public services, including rural septic service, and would be similar to the types of uses found in the surrounding land to the south, which is zoned Commercial. The property cannot be farmed in conjunction with any other parcels in the area. No urban public services will be needed to serve the site. The parcels in the area already consist of properties in commercial or residential use. Based on the evidence and findings provided by the applicant and summarized here, the proposal appears to meet the criteria for a goal three exception.

10. OAR 660-004-028 specifies that a local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make the uses allowed by the applicable goal impracticable. It further stipulates that whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent. The findings for a committed exception, therefore, must address the following:

A. The characteristics of the exception area;

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- B. The characteristics of the adjacent area and the lands adjacent to it; and*
- C. The relationship between the exception area and the lands adjacent to it; and*
- D. The other relevant factors set forth in OAR 660-04-028(6).*

OAR 660-004-028(6) referenced above indicates that findings of fact for a committed exception shall address the following factors:

- A. Existing adjacent uses;*
- B. Existing public facilities and services (water and sewer lines, etc.);*
- C. Parcel size and ownership patterns of the exception area and adjacent lands:*
 - (i) Consideration of parcel size and ownership patterns shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground utilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for non-farm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.*
 - (ii) Existing parcel sizes and contiguous ownership shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.*
- D. Neighborhood and regional characteristics;*
- E. Natural or manmade features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*
- F. Physical Development according to OAR 660-004-025; and*
- G. Other relevant factors.*

Applicant has addressed the characteristics and relationship of the exception area and the lands adjacent to it, consistent with OAR 660-004-028, as shown in 12 (A), (B), (C) and

(D) above. The land is segmented and broken off from the lands around it, due to the existence of a railroad right-of-way to the west and Highway 99E to the east. To the north is a narrow strip of EFU land, too small to be used for anything other than a buffer strip between the railroad and highway. This small strip of land gradually grows slimmer until the two rights-of-way combine. To the south are lands zoned Commercial and developed with storage buildings.

If this zone change were to be approved, the subject property would be consistent with this zoning and create a harmonious area of Commercially zoned land, appropriately buffered and separated from EFU lands in the area such that, no adverse impacts would be expected. The surrounding pattern of development, regardless of zoning designation, constrains the subject property's ability to be used for farm use.

The subject property is physically separated from surrounding farm operations by Highway 99E and a railroad right-of-way, which materially limit its integration into adjacent farm units. It is a small, strangely shaped parcel that has no relationship with other lands in the area. Due to its separation and characteristics, it has been left as wasteland, overgrown with trees and shrubs.

As stated herein, the rural C zone permits uses that do not require public facilities such as sewer or water.

Highway 99E and the railroad have split off this sliver of EFU land from its larger, farmable parent parcel. It is now an island constrained on all sides and too small for practicable farm use. These physical and functional constraints render farm use impracticable under existing conditions and prevent the parcel from operating as part of a viable farm unit. (i) above explains how roads may be used to demonstrate that a parcel is irrevocably committed to a non-resource use, this applies here.

Additionally, Applicant submitted an analysis showing how tractors and other farm equipment are too large to be used on the subject property. The owner of the property is a local farmer with many acres of farmland in active production. He provides a statement to the record demonstrating how the irregular and small size of the parcel, coupled with the busy highway, make it nearly impossible to get equipment on the site to be used for planting and harvesting. The Property is a small trapezoidal shape, and the southern end is too narrow for large vehicles or logging trucks to turn around. If the northern or middle portions of the Property were left clear for roads and turn-around space for logging trucks or other vehicles, there would be no space for logging.

Because the parcel is so small, the equipment would have to be driven to the parcel each time a farming practice needed to be done. There is no room on the parcel to build storage barns as this would take much of the land out of any theoretical crop production. Applicant states that with one access and the size and turning radius of farm equipment, he has never been able to farm that portion of the property. The angles of the turns are highly reflexive, for example it would likely be impossible for even regular equipment, let alone articulated vehicles, to physically make the left-hand turn

from 551/Hubbard Cutoff Road south to 99E north at the light without intruding on the opposite lane of the road, as well as navigating on the subject property itself. Finally, the property has no water rights, making small scale agricultural production nearly impossible on the land. No evidence was presented identifying a specific dryland farm use that could reasonably operate on the subject property under its existing constraints. The record contains no evidence of any economically viable farm use, including dryland farming, that could practically occur on the subject property given its size, configuration, and access limitations.

While no minimum parcel size applies, the size and configuration of the subject property affect its practical operability for farm use. The evidence demonstrates that farm use is not reasonably practicable on the subject property given existing conditions.

To address (ii) above, Applicant does own farmlands adjacent to this parcel that are in active farm production as filbert orchards. Applicant has never been able to farm the subject property due to the factors described above and as stated in the application and submitted materials. The physical factors, roads, shape of parcel and inability to locate farm equipment on it, irrevocably commit this parcel to a non-farm use. The criterion is met.

Based on the totality of the evidence and the cumulative effect of existing conditions and surrounding development, the Hearings Officer concludes that the subject property is irrevocably committed to non-resource use within the meaning of OAR 660-004-0028 and is not reasonably expected to be used for farm use in the future, notwithstanding its EFU zoning designation.

ZONE CHANGE

11. Applicant seeks a zone change from EFU (Exclusive Farm Use) to C (Commercial). The criteria for a zone change are found in the Marion County Code Chapter 17.123.060 and include:
 - A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
 - B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
 - C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*

- D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
- E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The Commercial zone is the only zone that implements the rural Commercial designation in the Marion County Comprehensive Plan (MCCP). The MCCP policies that address designating property as Commercial were addressed herein. The proposal is in compliance based on the evidence presented in the goal exception section of this recommendation. There is a small amount of land zoned C in Marion County. Applicant was unable to find any such lands vacant and available. This proposal makes the best use of the vacant land.

The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area. The property to the south of the Easterly Portion of the Subject Property is zoned Commercial and is approximately 3.89 acres in size. It is currently utilized as a U-haul transportation rental and self-storage facility. It occupies all of the land to the east of the railroad right-of-way between the right-of-way and Highway 99E. It is highly developed, with 11 large buildings and dozens of vehicles on the property at any given time. This parcel's use is similar to the likely proposed use of the Easterly Portion of the Subject Property, or more likely more intense than the eventual use of the Easterly Portion of the Subject Property if it is rezoned to Commercial.

The Commercial (C) zone implements the Commercial Comprehensive Plan designation and is appropriate given the characteristics of the site and surrounding development. The proposed zone change satisfies the criteria of MCC 17.123.060, and adequate public facilities and services can be provided at a rural level without committing surrounding resource lands to non-resource use.

The criteria for a zone change from EFU (Exclusive Farm Use) to C (Commercial) are satisfied.

VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval to change the zone from EFU (Exclusive Farm Use) to C (Commercial) and to change the comprehensive plan designation from Primary Agriculture to Commercial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 1.6-acre section of a 13.85-acre parcel located at 19937 Highway 99E, Aurora (T4S; R1W; Section 23C; Tax lot 200).

Therefore, the Hearing Officer recommends that the Marion County Board of Commissioners GRANT the Application subject to the following conditions that are necessary for the public health, safety, and welfare:

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. All future development on the property must satisfy the specific development standards in the C zone, chapter 17.145 and the general development standards found in chapter 17.112, 17.113 and 17.118 of the Marion County Code.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this Application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 24th day of February, 2026.



Jill F. Foster

Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

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ODOT

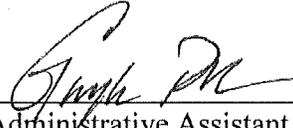
Odotr2planmgr@odot.state.or.us

Special Agencies Notified: *(via email)*

Marion County Farm Bureau

info@marioncofarm.com

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 24th day of February, 2026 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer