



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>

RECEIVED

OCT 01 2025

Marion County
Planning

Fee: \$250

NAME(S): <i>ECOLLC</i>	ADDRESS, CITY, STATE, ZIP <i>PO Box 80458, Portland OR 97280</i>
DATE SUBMITTED: <i>October 1, 2025</i>	APPLICATION CASE NO: <i>25-026</i>

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.

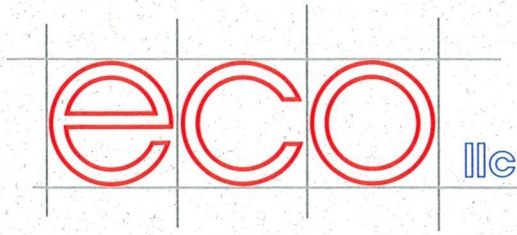
I/we are filing this appeal because (attach additional pages if needed):

October 1, 2025

See Letter of

FOR OFFICE USE ONLY:

Appeal accepted by: *JSS* Date: *10/1/2025*
Case Number: *AR 25-026*
☒ Filing fee
☐ File attached



The Environmental Compliance Organization LLC

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~~PO Box 83706~~ PO Box 80458
~~Portland, Oregon 97283~~ Portland, Oregon 97280
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Thomas R. Benke
Managing Member
trbenke@env-compliance.com

October 1, 2025

Austin Barnes
Principal Planner
Marion County Planning Division
5155 Silverton Rd NE
Salem, OR 97305
planning@co.marion.or.us

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Marion County
Planning

**Re: 21855 Butteville Rd NE Aurora OR 97002 Marion County
Appeal of Decision – Administrative Review Case No. 25-026**

Dear Mr. Barnes,

I am writing on behalf of my client, Denise Burnham, whose property is the subject of the above referenced administrative decision. Mrs. Burnham appeals the County's determination that "the placement of fill from hydraulic vacuum extraction is not a farm use..." and requests a public hearing in accordance with MCC 17.115.110 and MCC 17.111.010 through 17.111.070. The \$250.00 fee is being delivered to the County with this letter.

A Land Use Compatibility Statement ("LUCS") is intended to be a consistency check for state agency permitting programs. Nothing that Mrs. Burnham has done to date requires permitting from DEQ or any other state agency. On this point, it appears, the Marion County Planning Division has been grossly misled. (See Statesman Journal article of September 21, 2025, in which DEQ representative Dylan Darling is quoted as saying "there are no known DEQ environmental regulations being violated at the site".) Mrs. Burnham submitted her application for two reasons, one of which was to provide an opportunity to review the fill activity proposed by Mrs. Burnham in advance of (or in lieu of) a judicial hearing on the citation issued to Mrs. Burnham. The second reason was that Mrs. Burnham anticipates the requirement of a 1200-C stormwater permit if and when she expands the fill operation beyond one acre, which permit would require a LUCS from Marion County.

The proposed activity, or “use”, as stated in Mrs. Burnham’s Administrative Review Application is as follows:

Fill and contour the property with clean fill (soil from hydraulic vacuum excavation of utility lines and similar sources) for farm use, specifically to mitigate erosion, to fill low spots in arable areas, to expand arable area, and to improve access across the farm.

The placement of “countertop waste”, irrespective of whether it may be “farm use”, is not included in the application, nor is the storage or impoundment of surface waters included. For the record, neither DEQ nor the Oregon Water Resources Department has concluded that either “use” violated Oregon law. The countertop material is clean fill and the one time, temporary, holding of stormwater runoff occurred as an unintended result of Oregon Department of Agriculture (“ODA”) directed erosion controls. Respectfully, by basing its determination in part on these and other regulatory concerns (all of which have been satisfactorily addressed with each investigating agency), the Marion County Planning Division has overreached.

The Planning Director’s use of the terms “waste” and “dump” to describe the clean fill activity described in Mrs. Burnham’s application presupposes the question *petitio principii*. DEQ often misapplies the term “waste” to unwanted fill dirt even as it recognizes that no permit is required for the placement of uncontaminated dirt as “clean fill”. Friends of French Prairie (Ben Williams) continually missuses the word “waste” in his statements to the press, where the term with its negative connotations resounds in a way that is wholly misrepresentative of the clean fill used by Mrs. Burnham to improve agricultural production at her property. I urge the County to take greater care with its language as we proceed with the appeal.

Mrs. Burnham expects that the only issue presented to the hearings officer will be whether the “placement of fill from hydraulic vacuum extraction” as described in Mrs. Burnham’s application is “farm use”. All other issues or concerns that the County may have with past grading and fill activity on Mrs. Burnham’s farm can be resolved in the course of adjudicating the citation issued to Mrs. Burnham (summons #235819).

Finally, the Planning Director’s references to companies “paying a property owner to dispose of their extra dirt” and “obtaining a profit” disregards the caselaw cited by Mrs. Burnham in her application. The Planning Director’s determination that the fill activity is not “farm use” on that basis strongly suggests that while Marion County may be pro-farm, it is definitely *not* pro-farmer. Mrs. Burnham is not paid by anyone to dispose of their extra dirt but nevertheless questions why the County would find profitability to be a disqualifying condition of farming in any event.

You will, please, pursuant to ORS 192.311 to 192.478, send to me a complete copy of the case file for this matter, along with any other public records relating to this matter, including

Marion County Planning Department
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The Environmental Compliance Organization LLC

without limitation any records of communications with any commenters or of communications among Marion County personnel. Please let me know if any fees will apply before processing. I would prefer to receive the records in electronic format.

Sincerely,



Thomas R. Benke
Attorney – Managing Member

cc: Denise Burnham