



Marion County
OREGON

ADMINISTRATIVE REVIEW APPLICATION

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

Fee: Please check the appropriate box:

- ☒ Administrative Review - \$770
- ☐ Primary Farm Dwelling - \$1000
- ☐ Secondary Farm Dwelling - \$1250
- ☐ Replacement Dwelling - \$450
- ☐ Lot of Record - \$1250 (staff); \$1990 (hearing)
- ☐ Forest Dwelling - \$1250

RECEIVED

AUG 28 2025

**Marion County
Planning**

PROPERTY OWNER(S): Denise Burnham	ADDRESS, CITY, STATE, AND ZIP: 21855 Butteville Rd NE Aurora OR 97002
PROPERTY OWNER(S) (if more than one):	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Thomas Benke, Attorney	ADDRESS, CITY, STATE, ZIP PO Box 80458, Portland, OR 97280
DAYTIME PHONE (if staff has questions about this application): 503-890-4030	E-MAIL (if any): trbenke@env-compliance.com
ADDRESS OF SUBJECT PROPERTY: 21875 Butteville Rd NE, Aurora OR 972002	SIZE OF SUBJECT PROPERTY: 129.45 acres
THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO (summarize here; provide detailed information on the attached "Applicant Statement" page): 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.	
WILL A RAILROAD HIGHWAY CROSSING PROVIDE THE ONLY ACCESS TO THE SUBJECT PROPERTY? () YES (X) NO IF YES, WHICH RAILROAD:	

FOR OFFICE USE ONLY:

Township <u>4S</u>	Range <u>1W</u>	Section <u>8</u>	Application elements submitted:
Tax lot number(s) <u>200</u>			☒ Title transfer instrument
Zone: <u>EFU</u>			☒ Site plan
Zone map number: <u>4</u>			☒ Applicant statement
			☐ GeoHazard Peer Review (if applicable)
Case Number: <u>AR25-026</u>			☒ Filing fee
☐ Urban ☒ Rural			Application accepted by: <u>JSS</u> Set up by: <u>JSS</u>
Date determined complete:			Date: <u>8-28-2025</u>

THE APPLICANT(S) SHALL CERTIFY THAT:

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

PRINTED NAME AND SIGNATURE of each owner of the subject property.

Denise Burnham Chris S. Bann
Print Name Signature

Print Name Signature

Print Name Signature

Print Name Signature

DATED this 28th day of August, 20 25



The Environmental Compliance Organization LLC

~~7133 N Lombard St~~ 7830 SW 40th Ave, Ste 2
~~PO Box 83706~~ PO Box 80458
~~Portland, Oregon 97283~~ Portland, Oregon 97280
Telephone 503/246-1514
environmental-compliance.com



Thomas R. Benke
Managing Member
trbenke@env-compliance.com

August 28, 2025

For Hand Delivery Only

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

**Re: 21855 Butteville Rd NE Aurora OR 97002 Marion County
Administrative Review Application – Fill Activity on EFU-Zoned Property**

To whom it may concern:

I am writing on behalf of my client, Denise Burnham, who owns property located at 21855 Butteville Rd NE Aurora OR 97002, in Marion County, which is zoned Exclusive Farm Use (EFU) under the Marion County zoning ordinance.

Enclosed please find an Administrative Review Application signed by Denise Burnham, including:

Most recently recorded title transfer instrument

Site Plan consisting of

- Figure 1 – Farm Grading Plan
- Figure 2 – Pre-Existing Conditions Topographic Map
- Figure 3 – Existing Conditions Topographic Map
- Figure 4 – Existing Conditions Topographic Map (enlarged)

Applicant Statement

Declaration of Denise Burnham dated July 20, 2025, with aerial photograph

Marion County Planning Department
August 28, 2025
Page 2

The Environmental Compliance Organization LLC

EVREN NW Geotechnical Memorandum for Existing Berm Evaluation

Assessor's Property Identification

Supporting Case Law

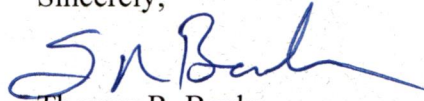
Friends of the Creek v. Jackson County, LUBA No. 98-158

Swenson v. DEQ, LUBA No. 83-032

Ehler v. Washington County, LUBA No. 2006-094

Payment in the amount of \$770.00 has been made to Marion County with submission of this Application. If you require additional information or would like to conduct a site visit, please do not hesitate to contact me directly.

Sincerely,



Thomas R. Benke

Attorney – Managing Member

Applicant Statement (required)

It is up to the applicant to fully explain your proposal and how it conforms to Marion County land use regulations. This is your opportunity to provide detailed information on the "who, what, where, when and why" that is specific to your proposal.

There are specific criteria and regulations for each zone; these are available from the Planning Division. We strongly encourage you to obtain a copy of this information, review it, and then prepare your "applicant's statement".

These are a few items you should consider including (where applicable):

- Describe the property as it exists now and after implementation of the proposal: topography, existing structures and their use, new or alteration of structures, etc.
- Describe surrounding properties: type of land use, scale of development, etc. and any impact your proposed use might have on these properties such as dust, noise, fumes or odors, traffic, etc. And, if so, what measures will you take to mitigate these impacts?

See Declaration of Denise Burnham dated July 20, 2025, and attached Applicant Statement

(use additional paper if needed)

DB

**APPLICANT STATEMENT
BURNHAM FARM ADMINISTRATIVE REVIEW APPLICATION**

The subject real property is zoned for Exclusive Farm Use in accordance with Marion County Code Chapter 17.136. The use that is the subject of this Administrative Review Application is a permitted use in accordance with MCC Ch. 17.136.020A in that it is a "farm use" as that term "farm use" is defined at MCC 17.110.223 and ORS 215.203(2)(a).

The subject property is dedicated to farm use, mainly the cultivation and harvesting of food crops, with some uncultivated woodland. At present, most of the farm is planted with hazelnut (filbert) trees and the rest with wheat. In previous years, row crops and ornamental nursery plants have also been cultivated on the farm. Applicant proposes to fill some parts of her farmland with top soil that has been hydraulically excavated from utility trenches and similar shallow excavations in order to mitigate erosion, to fill low spots and to improve access across her farm. Only arable soils will be used as clean fill and all of the filled area will continue to be used for raising, harvesting and selling crops.

Description of the property as it exists now

The attached Site Plan Figures 3 and 4 show present topography. An engineered berm (the area highlighted in red contours) has been constructed across the head of the gully located at the northwest corner of the property. Figure 2 shows topographic contours prior to construction of the berm. The berm provides access to the northwest corner of the property and mitigates a longstanding erosion problem at the farmland-woodland interface. As stated in Mrs. Burnham's Declaration, the gully there was vulnerable to chronic wash-out before the berm was constructed. The berm was constructed with load bearing clay deposits excavated on-site and compacted in lifts to ensure long term structural stability of the berm. See attached Geotechnical Memorandum of EVREN NW for construction details and stability evaluation.

Contours associated with the berm and immediate upland areas (including the part of the preexisting gully that is sometimes described as a "pit") on Figures 3 and 4 are highlighted because they represent interim elevations existing presently only because the clean fill activity temporarily ceased due to neighbor concerns that Applicant was "dumping" solid waste and/or wastewater into a "pit" at the back of her property and then to subsequent government investigation. Applicant has successfully addressed those concerns by demonstrating that only clean fill is being accepted at the site and that there is no discharge of pollutants to waters of the state associated with the fill activity. Most recently, Applicant demonstrated to the Department of Environmental Quality that the berm is at low risk of failure in both the short and long term and that there is therefore no threat of imminent harmful pollution to the waters of the state.

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Description of the property after implementation of the proposal

Figure 1 shows proposed contours after the fill activity is completed. Mrs. Burnham proposes to import and place clean fill (arable soil only) as necessary to bring her farm to a more uniform grade (e.g., to fill low spots across the farm to reduce the incidence of farm equipment getting bogged down and to aid in planting, irrigation and spraying) and to contour the western boundary of the farm as necessary to reroute stormwater drainage across a wider reach of the farmland-woodland interface (e.g. to promote sheet flow of stormwater rather than the gullying that persists now.) These improvements will have the secondary but not insignificant effect of increasing the cultivatable area of the farm. See the Site Plan attached to Mrs. Burnham's Declaration for additional information.

Sources of clean fill

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. A Vactor (or vac-) truck uses high-pressure potable water to dislodge soil and a powerful vacuum to remove it from the excavated area without damaging vulnerable infrastructure such as utility lines. Because the clean fill excavated and transported to the property by Vactor trucks will be used to modify surface contours across the farm only arable soils will be accepted as clean fill from vetted Vactor truck operators.

Proposed clean fill activity

Because Vactor truck 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, where the soils will be passively dewatered before being moved elsewhere across the site as needed to achieve the stormwater control objectives of the clean fill activity. No processing other than this passive dewatering will occur.

Applicant plans to first fill the areas directly upland and adjacent to the berm, then to fill low spots around the farm, then finally to fill the gully to complete the contouring as necessary to prevent further gullying and to mitigate erosion from ongoing agricultural operations.

Applicant may construct a second berm across the gully at the southwest corner of the farm and conduct similar clean fill operations for similar purposes.

All fill area is, and will remain, "farmland" as referenced at MCC 17.110.223.

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Description of surrounding properties

The Burnham property is bounded on the north and south by similarly agricultural intensive farmland, by Butteville Rd to the east, and by woodlands draining to Ryan Creek to the west. The property east of Butteville Rd is similarly agriculture intensive farmland. The property west of Ryan Creek is mixed agricultural and industrial uses. A private airfield, McGee Airport, is approximately 1,600 feet from the Burnham property bounds. The nearest large industrial facility is the Oregon Hazelnut Growers processing facility, approximately 1,800 feet from the Burnham property bounds.

Impacts on neighboring property

The impact of the proposed clean fill activity on surrounding properties is expected to be negligible.

Access to the fill area will be from Butteville Road at the southeast corner of the Burnham property. Ingress to and egress from the fill site will be gated and limited to Vactor truck operators preapproved by Applicant.

The on-property access road has been topped with gravel, and the area where Vactor trucks will off-load clean fill has been asphalted, to minimize dust generation from vehicles accessing the site. No Vactor trucks will be parked or maintained on Applicants property other than as necessary to deliver hydraulically excavated soil.

The clean fill activity, including the passive dewatering of Vactor truck soils, is "farm use".

"Farm use" is a permitted use in an Exclusive Farm Use ("EFU") zone. ORS 215.203(1). Friends of the Creek v. Jackson County, LUBA No. 98-158 (Or. LUBA 1999).

As defined at ORS 215.203(2)(a) and MCC 17.110.223:

*"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, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use of animal husbandry of any combination thereof. * * * "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. * * **

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As defined at ORS 30.930(2):

"Farming practice" means a mode of operation on a farm that:

- (a) Is or may be used on a farm of a similar nature;*
- (b) Is a generally accepted, reasonable and prudent method for the operation of a farm to obtain a profit in money;*
- (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;*
- (d) Complies with applicable laws; and*
- (e) Is done in a reasonable and prudent manner.*

ORS 215.203(2)(b)(F) provides:

... "current employment" of land for farm use includes...land under buildings supporting accepted farm practices...

ORS 215.203(2)(c) provides that...

... "accepted farm practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

In her Declaration, Applicant landowner Mrs. Burnham's stated four reasons why she wants to fill her property with hydraulically excavated top soil:

- a. The berm and (eventually) filled pit will improve access to the backside of my farm;
- b. Filling the gullies on the backside of my farm will mitigate erosion to the Ryan Creek watershed by rerouting stormwater drainage across a wider area (meaning as sheet flow rather than by channeling);
- c. The arable area of the farm will be increased; and
- d. Filling low spots across the farm will reduce the incidence of farm equipment getting bogged down and will aid in planting, irrigation and spraying.

Grading and fill can be, but is not necessarily, a customarily accepted agricultural activity, depending on such factors as the prior use of the property and prospects for future agricultural use. Ehler v. Washington County, LUBA Opinion No. 2006-094. As the Ehler court noted, "a proposal to place fill at volumes or in a manner that exceeds agronomic necessity would tend to suggest that the proposal is something other than a customarily accepted agricultural activity." The Ehler court upheld a hearing officer's determination that the fill activity was not allowed of right as "farm use" under Oregon's Right to Farm law based on prior use of the site as a

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"landfill" (including rocks, asphalt, chunks of cement, and large boulders) and only the "mere promise of farm use to follow and without ongoing farm use of the land." By contrast, Applicant Denise Burnham establishes in her Declaration the fact of "agronomic necessity" when she describes the primary purpose of the activity as preventing chronic wash-out of the gullies at the edge of her filbert orchard, the mitigation of erosion generally, and the filling of low spots to aid in cultivation of row crops.

Notably, the statutory definition of "current employment" of land for farm use promulgated at ORS 215.203(2)(b) also includes at subsection 2(b)(E)...

Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use.

That definition of "wasteland" fairly describes the two gullies that Applicant proposes to fill with arable top soil. Applicant's proposal is literally to increase the arable area of her farm by filling wasteland at the western edge of her property.

It does not matter whether the parties responsible for generating, transporting, and placing the Vactor truck soils on Applicant's property have any other purpose. See Friends of the Creek v. Jackson County, LUBA No. 98-158 (OR LUBA 8/31/1999). In that case, the City of Ashland purchased property near its wastewater treatment plant and proposed to pipe both the effluent and sludge to land in an EFU zone in order to avoid the cost that would otherwise be incurred to dispose of that effluent and sludge in other ways. The LUBA Court found that irrigation with the City's effluent, and fertilization with the City's sludge, constituted the "current employment of land for farm use". Likewise, the LUBA Court found that pipes needed to transfer the effluent and sludge, the effluent reservoir, the sewage lagoon, and the onsite storage, maintenance and office structure all fell within the express provisions at ORS 215.203(2)(a) for "onsite...equipment and facilities used for [farm use]."

The Friends of the Creek court relied on the case Swenson v. DEQ, LUBA No. 83-032 (9/6/83) in which the LUBA court found that onsite treatment of wastewater from a nearby commercial cannery in a 20-acre pond and disposal by spray irrigation was "farm use". In Swenson, the LUBA court ruled that "the fact that the project will serve another governmental purpose, that of disposal of wastewater, is not relevant to the analysis" in that the property would still be used for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops. LUBA took it as "common knowledge" that some crops require irrigation and so took notice of that fact pursuant to ORS 40.065, and so concluded that construction of the 20-acre treatment pond and the spray irrigation of treated effluent was an "accepted farm practice" as that term appears at ORS 215.203(2)(b)(F).

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Neither is the charging of a tipping fee determinative of whether the fill activity is a customarily accepted agricultural activity. Ehler. Applicant Mrs. Burnham states in her Declaration as follows:

Fees paid to All-Ways Excavating USA LLC by the vac-truck operators would cover the cost of these improvements as necessary to transport, dewater and place the hydraulically excavated soil as clean fill.

In other words, Mrs. Burnham is not proposing to operate a landfill for profit.

Alternatively, if the dewatering activity is not "farm use", then the dewatering activity is a Conditional Use (e.g. commercial activities in conjunction with farm use) which may be permitted in an EFU zone.

If the acceptance and/or dewatering of Vac-truck soils is not itself "farm use" as described above, the activity is a "commercial activity in conjunction with farm use" as referenced in ORS 215.283(2)(a) and MCC 17.136.050.

"Commercial activities in conjunction with farm use" refers to business activities that are directly related to, and supportive of, farm uses occurring in the area. In Craven v. Jackson County, 308 Or 281 (1989) the Oregon Supreme Court defined "commercial activities in conjunction with farm use" broadly as activities "which are auxiliary to and supportive of agriculture." Here, Applicant is proposing to condition native soil (by passive dewatering) to make it suitable for placement onsite as clean fill without escapement offsite. The dewatered soils are arable soils. Fill areas will be planted with filbert trees or row crops by Applicant. The dewatering and fill activity will therefore have a close, functional relationship to farming.

As required at MCC 17.136.060 (D), the dewatering activity:

1. Is primarily a supplier of farm uses, the provision of arable soil;
2. Enhances the farming enterprises of the local agricultural community, specifically that of Applicant's farming enterprise;
3. Occurs together with the Applicant's farming enterprise; and
4. Is essential to the practice of agriculture in that the dewatered top soil is necessary for agricultural production and provides a bulwark against gullyng and continued loss of arable soil at the farmland-woodland interface.

The proposed dewatering activity satisfies the Conditional Use Criteria of MCC 17.136.060 and the Farm Impacts Test of ORS § 215.296 in that the activity:

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- A) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- B) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The Marion County No. 1 Fire District provides the subject parcel with fire protection services. All other rural services are, or will be, available when the use is established. The Marion County Fire Safety Code may be referenced as a condition of approval.

The proposed dewatering activity will not have a significant impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality. Applicant has included herein a geotechnical report concluding that the berm constructed across the gully at the western edge of the property is at low risk of failure both short term and long term when the "pit" is filled to maximum capacity. The dewatering activity is purposely proposed to avoid the types of offsite impacts that could occur from direct placement of Vactor truck soils as fill. Contouring of the farmland-woodland interface to promote sheet flow will ensure that Ryan Creek is not negatively impacted by traditional farming practices upland.

There will be no discernable noise impacts on neighboring properties in that no active processing of Vactor truck soils is proposed and the closest neighboring residences are no less than 1,400 feet from the dewatering activity and screened by thick woodlands.

There are no nearby water impoundments or mineral and aggregate sites identified in the Comprehensive Plan which would conflict or be adversely impacted by the proposed use.

DRAWN BY H. POMER	CHECKED BY D. THORNE	APPROVED BY GREEN	DRAWING NUMBER 1906 2400 (V096)
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LEGEND:

- SUBJECT PROPERTY BOUNDARY
- GULLY
- GRAVEL ACCESS ROAD
- STREAM
- 2-FOOT LIDAR BASED CONTOUR (USGS, 2024)

NOTES:

1. BASE MAP DEVELOPED FROM AN AERIAL PHOTOGRAPH MAP DATED 2023 AND ENW FIELD NOTES
2. ALL BUILDING, STREET, AND FEATURE LOCATIONS ARE APPROXIMATE
3. SYMBOLS REPRESENT LOCATION AND DO NOT ALWAYS REPRESENT EXACT SHAPE, SIZE, OR ORIENTATION

0 235 470 940

Feet

(APPROXIMATE 1" = 350 FEET WHEN PRINTED 11X17)

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FIGURE 1

FARM GRADING PLAN
(BASED ON LAND SURVEY
AND 2024 LIDAR IMAGE)

FARM PROPERTY
21875 BUTTEVILLE RD NE
AURORA, OREGON

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Declaration of Denise M. Burnham

I, Denise M. Burnham, declare and depose:

1. I am over the age of 18 and competent to make this declaration.
2. I make this declaration voluntarily and based on my personal knowledge unless otherwise stated.
3. I own, personally and as beneficiary of the Burnham Living Trust, an approximately 130 acre farm located at 21855 Butteville Rd, NE, Aurora, Oregon 97002, tax lot 041W080000200.
4. Except for the residence, all the property is dedicated to farm use, mainly the cultivation and harvesting of food crops, with some uncultivated woodland. At present, most of the farm is planted with hazelnut (filbert) trees and the rest with wheat. In previous years, row crops and ornamental nursery plants have also been cultivated on the farm.
5. I don't run any business out of my residence except for farming.
6. I have attached to this declaration a map of the property showing the location of my residence and various other locations referenced in this declaration.
7. The area where the berm and pit are presently, located on the west or backside of my property, chronically washed out before the berm was constructed. Arable upland was repeatedly lost to erosion and access to the northwest corner of my property was often difficult or impossible. The unimproved route along the northern boundary of my property is not a good option because the gully there impedes movement of large trucks and farm equipment.
8. Greg Wing suggested to me and to my son-in-law Cheyne Fobert, who manages the farm, that he could build a berm across the washed out area on the backside of my property using material excavated from the gully. The overburden would be set aside and the good clay beneath excavated to build the berm. The remaining pit would be used to dewater hydraulically excavated soil collected and transported to the farm by vacuum trucks (or "vac-trucks"). Dewatered soil would be moved to fill the area upland of the pit, and to other low spots across the farm, before the pit is ultimately filled to the top of the berm. We have discussed, but have not decided upon, doing something similar in the vicinity of the gully to the south, the "future fill

DECLARATION OF DENISE M. BURNHAM

Page 1 of 2

area" shown on the attached map.

9. Because of the number of trucks accessing the farm, to avoid having the trucks tear up the asphalt drive where I live, I asked that All-Ways Excavating USA LLC improve the roadway running along the southern boundary of my property and then extend the road northward to the primary fill area. It's always important to have good roads in and around your croplands to facilitate cultivation, irrigation, spraying and harvesting of cash crops.

10. Fees paid to All-Ways Excavating USA LLC by the vac-truck operators would cover the cost of these improvements as necessary to transport, dewater and place the hydraulically excavated soil as clean fill.

11. There are at least four reasons why the dewatering and placement of the hydraulically excavated soil is beneficial to my farm:

- a. The berm and (eventually) filled pit will improve access to the backside of my farm;
- b. Filling the gullies on the backside of my farm will mitigate erosion to the Ryan Creek watershed by rerouting stormwater drainage across a wider area (meaning as sheet flow rather than by channeling);
- c. The arable area of the farm will be increased; and
- d. Filling low spots across the farm will reduce the incidence of farm equipment getting bogged down and will aid in planting, irrigation and spraying.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Denise M. Burnham 7/20/25
Denise M. Burnham (date)

DECLARATION OF DENISE M. BURNHAM

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The Environmental Compliance Organization LLC
PO Box 80458, Portland OR 97280
503-890-4030 / trbenke@env-compliance.com



PERSONAL AND CONFIDENTIAL

Main Office: PO BOX 14488, Portland, Oregon 97293
Main Tel: (503) 452-5561 / E-Mail: ENW@EVREN-NW.com
Satellite Offices: Bend, Oregon / San Rafael, California

June 26, 2025

All-Ways Excavating USA, LLC
PO Box 235
Hubbard, Oregon 97032
Attn: Greg Wing

Email: Greg@allwaysx.com
Phone: 503-969-9005

Site Location

21875 Butteville Road NE, Aurora, Oregon
• Taxlot Number: 041W080000200

Re: GEOTECHNICAL MEMORANDUM FOR EXISTING BERM EVALUATION

EVREN Northwest, Inc. (ENW) is pleased to present our geotechnical memorandum for the referenced project. Our memorandum summarizes our understanding of the berm construction, document review, geotechnical engineering field and laboratory data, engineering analyses of the short and long-term stability of the berm, and our conclusion and recommendations for the berm. Our work was completed in general accordance with our January 2024 General Services Agreement.

INTRODUCTION

The subject fill site is a low area on the western portion of the 129.45-acre Burnham farm property (Tax Lot No. 041W080000200) at 21875 Butteville Road, in Aurora, Oregon, which is a Century farm that includes five residences, and nine farm buildings located on the eastern side of the property distally from the fill area (Figure 1). The farm grows and harvests primarily hazelnuts from its orchards. ENW understands that All-Ways Excavating, USA (All-Ways) constructed a berm around the low area on the property in the fall of 2023 in agreement with the property owner. The tallest part of the berm was on the downgradient (west) side of the low area near the top of a natural ravine and is referred to as the west berm (see Figure 2). A low perimeter berm was constructed around the remainder of the fill area and joined the north and south ends of the west berm. The purpose of the bermed fill area was to receive and dewater clean soil from Vactor trucks, which soil was sourced from vacuum-excavated dry utility trenches. During the vacuum excavation process, clean potable water was used to loosen the soil so that the resulting clean wet soil could be vacuum extracted. The clean wet soil was then transported to the site and deposited into the bermed area. ENW understands that the plan was to fill the low area to the top of the berm to create a flat area to increase arable land for cultivating hazelnut orchards.

Historical photos from Google Earth show that berm was constructed around a low area of farmland that was adjacent to a heavily vegetated ravine. The western portion of the berm was heavily vegetated with trees and understory, and the eastern portion of the berm an open area surrounded by hazelnut orchards.

BERM FILL AREA CONFIGURATION

The west berm is north-south trending and approximately 140 feet long, 10 feet wide at the crest, has 2(H):1(V) side slopes on both the upstream and downstream sides (see Figures 2, 3 and 3A). The downstream slope is approximately 34 feet long and the upstream slope is 24 feet long (see Figure 3). The fill area upstream of the western

GEOTECHNICAL MEMORANDUM – EXISTING BERM EVALUATION

21875 Butteville Road NE, Aurora, Oregon

berm is approximately 190 feet long and 140 feet wide (see Figure 2 and 3). The bottom of the fill area slopes gently to the southwest and is surrounded with a perimeter berm that is up to 5 feet high with respect to the surrounding farmland and 5 feet wide at the top (see Figure 3).

On April 28, 2025, a survey was completed of the bermed fill site, and surrounding area by Axis Mapping and Surveying Company (see Figure 2). The survey shows topographic one-foot contour lines to describe overall surface geometry of the berm and the water level of the pond enclosed by berm on the day of the survey (see Figure 2). The elevations of the west berm crest range from 174 feet above mean sea level (NAVD88) at the north end and 179 feet NAVD88 on the south end (see Figure 2). The toe of the berm on the downstream side is approximately 142 feet NAVD88 and the upstream side approximately 151 feet NAVD88 (see Figure 2). The elevation of the top of the perimeter berm is approximately 171 feet NAVD88.

BERM CONSTRUCTION

Based on conversations with All-Ways Excavation, the berm around the fill area was constructed as follows: All-Ways started the project by stripping the vegetation and removing the topsoil from the footprint of proposed fill area. Once the area was cleared, All-Ways excavated a 10-foot-wide key trench close to the centerline of the west berm until they intercepted an existing drain tile that was used to drain the agricultural fields. The estimated depth of the drain tile was about 13 feet below the existing ground surface (bgs). The key trench was backfilled with native clay that was scraped from the fill area, placed in 12-inch-thick lifts, and compacted with a sheepsfoot roller (see Figures 3 and 3A). Once the key trench was backfilled, All-Ways built up the core of the west berm by spreading the clayey soil out to create a 20-foot-wide base for the berm (see Figure 3A). The height of the compacted core, including the key trench, was approximately 25 feet above the bottom of the fill area (see Figures 3 and 3A). Once the core of the west berm was graded, a layer of loose soil was cast on the downstream and upstream sides of the berm. Because of the steepness of the slopes and the difficulties of getting equipment on the slope, the soil on the downstream face of the berm remained loose and not compacted compared to the core of the berm. All-Ways used similar materials to construct the perimeter berm to a height of approximately 5 feet, which joined the north and south ends of the west berm.

DEQ LETTER

On March 13, 2025, Oregon Department of Environmental Quality (DEQ) issued a Department Order to abate the threat to water quality presented by the existing berm constructed on the property. DEQ issued the order because “the berm and pit are not designed and constructed in a manner to ensure the berm’s stability. Due to the current condition of the berm, DEQ had determined that the berm is at risk of failing and causing pollution to Ryan Creek through the uncontrolled discharge of soil and sediment”.¹

GEOTECHNICAL FIELD INVESTIGATION

On March 19 and April 21 and 22, 2025, ENW conducted two geotechnical field investigations for the referenced project. During the March 2025 fieldwork, ENW advanced two (2) hand auger borings (designated HA-1 and HA-2, see Figure 2 and Appendix A) along the top of the west berm to depths between 7 and 9 feet below the ground surface (bgs). Grab samples were collected from the hand augers for field identification. Photographs were taken during the field investigation (see Appendix B).

During the April 2025 fieldwork, ENW observed Dan J Fischer Excavating, Inc., of Forest Grove, Oregon, advance four (4) drilled borings at the center (B-1 and B-1A), north end (B-2), and south end (B-3) of the west berm to depths of up to 50 feet bgs (see Figure 2 and Appendix A). In borings B-1, B-2, and B-3, soil samples were collected continuously

¹ Oregon Department of Environmental Quality (DEQ). March 13, 2025. Department Order – Case No. WQ/I- WR-2024-100

GEOTECHNICAL MEMORANDUM – EXISTING BERM EVALUATION

21875 Butteville Road NE, Aurora, Oregon

from ground surface to native material and at 5-foot intervals from native soil to the total depth of the borings (see Appendix A). No samples were taken in B-1A, which was advanced next to B-1 for installation of a vibrating wire piezometer.

Standard Penetration Test (SPT) method (ASTM D 1586) was used to collect continuous soil samples with an 18-inch-long split-spoon sampler driven with a 140-pound hammer. The number of blows required to drive the sampler 18 inches were recorded in three (3) 6-inch intervals. The number of blows for the last two intervals were added together to determine the blow count (N) or blows per foot (bpf), which are used to estimate the in-place consistency or density of the soil. Relatively undisturbed samples were collected using a Shelby tube (ASTM D1587). The soil types, sampling method, and blow counts were documented on boring logs (see Appendix A). An ENW field geologist logged the borings and collected soil samples. The soil samples were taken to a soil laboratory for testing.

SURFACE AND SUBSURFACE CONDITIONS

The following surface and subsurface conditions observed during our field investigations are presented below (see boring logs in Appendix A and photographs in Appendix B).

SURFACE CONDITIONS

The bermed fill area is at the east end of an existing ravine that drains west into Ryan Creek. To the north and east of the fill area is a hazelnut orchard and to the south is a newly constructed asphalt pad for Vactor trucks to deposit their clean wet soil into the fill area (see Appendix B). To the west of the west berm, the existing ravine and creek are vegetated with evergreen and deciduous trees and thick understory of ferns, vine maple, and blackberries. Water intermittently flows through the ravine to Ryan Creek.

The west berm is approximately 25 feet above the bottom of the fill area with side-slopes that are approximately 2(H):1(V) on both the upstream and downstream of the berm. The native clay soil from which the west berm was constructed was scraped from the fill area and placed in lifts into an excavated keyway parallel to the footprint of the west berm. The lifts of clay soil were compacted with a sheepsfoot roller up to the height of the west berm. All-Ways was unable to compact the soil on the side slopes of the west berm, and as a result, the downstream face of the berm has a shallow slough, resulting in a 3- to 4-foot-high scarp along the top of the berm (see Appendix B). ENW observed ground water seepage and soil eroding from the toe of the west berm. The erosion at the toe of the berm resulted in a scarp that was up to 4 feet high, and eroded soil that was saturated and very soft (see Appendix B).

SUBSURFACE CONDITIONS

Field data indicate that there are up to six inches of Topsoil and 30 feet of Fill overlying the native Missoula Flood Deposits (see Figure 3). The Fill comprises up to 13 feet of the Compacted West Berm Fill overlying up to 17.5 feet of an Undocumented Fill. The materials are described below.

Topsoil. Approximately six inches of sandy Silt Topsoil was encountered in the borings. The sandy Silt was soft to medium stiff, moist, with trace roots and plant debris (see Appendix A).

Compacted Berm Fill. The Compacted Berm Fill was encountered from the top of the berm to 13 feet bgs in Boring B-1, to 12 feet bgs in Boring B-2, to 11 feet bgs in Boring B-3, and the total depths of HA-1 and HA-2 (see Appendix A). The material was sandy CLAY (CL) gray to brown, moist, medium plasticity, some fine sand and silt, trace mica (see Appendix A). Measured blow counts ranged from 5 bpf to 7 bpf in the upper 5 feet and 11 bpf to 15 bpf in the lower 6 to 12 feet, indicating that the soils in the upper 5 feet were medium stiff, and the remainder of the compacted in-place soil ranged from medium stiff to very stiff sandy CLAY (CL) to SILT (ML).

GEOTECHNICAL MEMORANDUM – EXISTING BERM EVALUATION

21875 Butteville Road NE, Aurora, Oregon

Undocumented Fill. Undocumented Fill was encountered below the Compacted Berm Fill from about 13 feet bgs to 30.5 feet bgs in Boring B-1. Undocumented Fill was only observed in boring B-1 and corresponds to the alignment of the existing ravine. The material was sandy CLAY (CL) gray to brown, moist, medium plasticity, some fine sand, trace mica (see Appendix A). Layers of highly organic soil material were encountered at 13.5 feet bgs and 26.5 bgs. At 26.5 feet bgs, the layer was 4.5 feet thick, black, and had a strong organic odor. Measured blow counts ranged from 8 bpf at 13 feet bgs to 17 bpf at 20 feet bgs, indicating that the Undocumented Fill was medium stiff to very stiff sandy CLAY (CL).

Missoula Flood Deposits. Native Missoula Flood Deposits were encountered below the Undocumented Fill in B-1 and below the Compacted Berm Fill in borings B-2 and B-3, to the total depth of the borings (see Appendix A). The native soil was a sandy Silt that was gray to blue, moist to wet, low plasticity, fine-grained sand, and little clay (see Appendix A). Measured blow counts in native soil ranged from 2 bpf at 20 feet bgs to 24 bpf, indicating that the native soil was soft at 20 feet bgs to very stiff sandy SILT deeper in the boring.

SHALLOW GROUND WATER LEVELS

During drilling, shallow ground water was encountered in borings B-1 and B-2, and B-3 (see Appendix A). In boring B-1, shallow ground water was observed during drilling at 19 feet bgs and at 31 feet bgs. In B-2, the shallow ground water was first encountered at 19 feet bgs and then rose to 15.5 feet bgs. In B-3, shallow ground water was encountered at 19 feet bgs. In all the borings shallow ground water was below the bottom of the Compacted Berm Fill.

LABORATORY TESTING

Representative soil samples from the April 2025 fieldwork were transported to ACS Testing, Inc., of Tigard, Oregon, for laboratory testing. The testing includes Atterberg Limits (ASTM D-4318), Moisture Content (ASTM D2216), Passing No 200 (ASTM D1140), and a Direct Shear Test under Consolidated Drained Conditions (ASTM D3080) (see Table 1 and Appendix C).

Table 1 – Summary of Laboratory Testing

Sample	Depth (ft)	Material	USCS	Atterberg Limits LL/PL/PI	Moisture Content (%)	Passing No 200 (%)	Unit Weight (pcf)	Shear Strength PHI/Cohesion (degree/psf)
B-1-8	10.5 – 12	Compacted Fill	CL	37/16/21	20.6	91.6	-	-
B-1-12	16.5-17.5	Undocumented Fill	-	-	-	-	118	30/638
B-1-16	22-23.5	Undocumented Fill	CL	32/22/10	24.3	91.6	-	-
B-1-24	40-41.5	Missoula Flood	ML	30/25/5	34.3	97.5	-	-
B-2-6	7.5-9	Compacted Fill	CL	34/23/11	25.0	91.6	-	-
B-2-13	18-19.5	Missoula Flood	ML	29/27/2	36.2	96.3	-	-
B-3-2	1.5-3.0	Compacted Fill	ML	34/26/8	27.1	88.3	-	-
B-3-10	13.5-15.0	Missoula Flood	ML	27/24/3	28.7	91.4	-	-
Notes: LL = Liquid Limit, PL = Plastic Limit, PI = Plasticity Index, Psf = Pounds per square foot, Pcf = Pounds per cubic foot								

INSTRUMENTATION INSTALLATION

ENW and Dan Fischer Excavating installed a vibrating wire piezometer and inclinometer in borings B-1A and B-1, respectively. The vibrating wire piezometer and inclinometer were installed to measure shallow ground water levels and slope movement, respectively.

VIBRATING WIRE PIEZOMETER

On April 21, 2025, a vibrating wire piezometer with a continuous data logger was installed in boring B-1A at 25 feet bgs. The purpose of the piezometer and data logger was to measure the fluctuation of the water levels within the berm. During the drilling of B-1A, no ground water was encountered. Data recorded between April 21 and June 5, 2025, indicates that the shallow ground water level has stabilized at 17.5 feet bgs or between elevations 176.45 feet and 159.00 feet (see Appendix D). This water level is about 4.5 feet below the bottom of the Compacted Berm Fill (see Figure 3 and Appendix D).

INCLINOMETER

On April 21, 2025, an inclinometer was installed in boring B-1 to measure the depth and direction of potential slope movement. The inclinometer was installed to 50 feet bgs, which is approximately 20 feet into the native soil (see Appendix A). The inclinometer casings are 2.75 inches in diameter and have two sets of grooves oriented 90 degrees apart. The casings were grouted into place so that one set of grooves is aligned with the anticipated movement. Boring B-1 was finished with a monument housing flush to the ground surface.

The potential movement was measured with a Durham Geo Slope Indicator (DGSI) Digitilt Inclinometer Probe. The probe consists of a stainless-steel body with a connector for a control cable and two pivoting wheel assemblies. Within the steel body are two force-balanced servo-accelerometers that measure tilt. One accelerometer measures the “A-axis, which is in the direction of the anticipated landslide movement, and the second accelerometer measures the “B-axis”, which is oriented 90 degrees from the anticipated. As slope movement occurs, the casing distorts with the soil movement.

On April 28, 2025, ENW took the baseline inclinometer reading and the second and third readings were taken May 6 and June 5, 2025. Changes in the profiles indicate that no measurable movement has occurred since the inclinometer was installed (see Appendix E).

GLOBAL STABILITY ANALYSIS

ENW evaluated the global stability of the existing berm using the GSTABL7 computer program (see Appendix F). The purpose of the analysis was to evaluate the short-term (0 to 2 years) and long-term (2 to 20 years) global stability risk level of the berm. ENW modeled the existing condition of the berm using field investigation data, inclinometer and piezometer monitoring data, and the April 2025 land survey (see Appendices A, C, and D).

SLOPE STABILITY MODEL

The surface condition of the berm was based on the April 2025 topographic survey (see Figures 2 and 3). The subsurface conditions were based on the soils encountered in boring B-1 and ground water levels measured in B-1A. The berm comprises the 13 feet of Compacted Berm Fill and 17.5 feet of Undocumented Fill overlying the native Missoula Flood Deposits (see Figure 3A).

Laboratory tests were completed on the Compacted Berm Fill, Undocumented Fill, and the underlying Missoula Flood Deposits (see Appendix C). The laboratory indicates that the Compacted Berm Fill was medium stiff to stiff sandy Clay (CL) to Silt (ML), that the Undocumented Fill was a sandy Clay (CL) with isolated layers of organics, and the Missoula Flood Deposits were a Silt (ML).

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The ground water and pond water levels were based on field data collected on June 5, 2025. The ground water was measured at 17.5 feet bgs, and the pond water level was based on a measured elevation of 167 feet NAVD88, or 9 feet below the top of the berm (see Figures 3 and 3A).

LABORATORY SHEAR STRENGTH – COMPACTED BERM AND UNDOCUMENTED FILL

A Direct Shear under consolidated drained conditions (ASTM D3080) was conducted on sample B-1-12 collected 16.5 to 17.5 feet bgs (see Appendix A). The soil sample was identified as the Undocumented Fill that was situated 3 feet below the Compacted Berm Fill. The results of the direct shear test indicate that the Undocumented Fill had a friction angle of 30 degrees and a cohesion of 638 psf (see Tables 1 and 2). Blow counts from boring B-1 were similar for the Compacted Berm Fill and the Undocumented Fill, thus indicating the in-place densities are similar (see Appendix A).

BACK CALCULATED ENGINEERING LOOSE SOIL PROPERTIES FOR THE BERM FACE

ENW used the Back Calculation Method to estimate the engineering properties of the loose soil on the berm face. The method assumes that the Factor of Safety (FS) for slope stability is equal to 1.0.² The FS is defined as the ratio between the forces resisting slope movement (soil strength) and the forces driving the slope movement. If the FS is less than 1.0, then the slope is moving; if FS = 1.0, then the slope is on the verge of moving; and if the FS 1.25 or higher, then the slope is stable.

The Back Calculated Method was used along the face of the berm where a FS equal to 1.0 was acceptable. The resulting shear strengths were found to be reasonable for the existing conditions measured in the field (see Table 2). Field data indicated that the downstream face of the berm had failed, creating a 4-foot-high scarp along the top of the berm and that ground water was seeping through the toe berm, thus causing an isolated shallow failure of the berm toe. Drilling data indicated that the core of the berm was medium stiff to stiff with no indication of soft soils within the berm. The inclinometer data, collected between April and June 2025, has not measured movement within the bermed fill (see Appendix E).

Table 2 – Summary of Soil Shear Strength

Material	Unit Weight (pcf)	Cohesion (psf)	Friction Angle (degrees)
Compacted Berm Fill (CBFL)	118*	638*	30*
Undocumented Fill (UFL)	118*	638*	30*
Missoula Flood Deposit (Native)	110**	200	35
Loose Soil for Berm Face (LSBF)	100**	20	28
Imported Clean Soil (ICS)	100	0	28
*Laboratory Data – Direct Shear Test Result			
** Back Calculated Engineering Parameters			

² Cornforth, D.K. 2005. Landslide in Practice – Investigation, Analysis, and Remedial Prevention Options in Soils. John Wiley and Sons, Inc.

GLOBAL STABILITY ANALYSES

ENW evaluated the global short-term and long-term slope stability of the west berm. As noted above, the field data, laboratory data, and April 2025 land survey were used to model both the subsurface and surface conditions of the berm. The global short-term conditions were modeled on the existing condition and the global long-term condition was modeled with assumed future conditions.

Short-term Global Stability. ENW evaluated the short-term global stability of the berm based on the existing conditions of the berm (see Appendix F). The results of the analysis show that the short-term global stability of the berm has an FS of 1.87 (see Appendix F). These results are consistent with the field observations and data collected at the site.

Long-term Global Stability. ENW evaluated the long-term global stability of the berm by increasing the level of ground water and pond water to the maximum levels possible. The pond water level is dependent on the elevation of the perimeter berm of the pond, which is 171 feet NAVD88 or approximately 5 feet below the top-center of the west berm (see Figures 2 and 3). The ground water level evaluated for long-term stability-would be approximately 7 feet below the top-center of the west berm (see Appendix F). The long-term global stability analysis resulted in a FS of 1.68. (see Appendix F). This indicates that the long-term stability of the berm is acceptable.

CONCLUSIONS

CONCLUSIONS

Based on our review of the information provided by our client, the results of our field data, soils laboratory data, our piezometer and inclinometer monitoring data, and results of our slope stability analyses of the west berm, it is ENW's opinion that the short-term and long-term risk of the berm failing is low. ENW does acknowledge that the downslope face of the berm and the toe of the berm shows signs of slumping and erosion. It is our opinion, however, that the observed erosion is localized and that it does not affect the short-term or long-term global slope stability of the berm.

GEOTECHNICAL MEMORANDUM – EXISTING BERM EVALUATION

21875 Butteville Road NE, Aurora, Oregon

LIMITATIONS

Geotechnical engineering is characterized by a certain degree of uncertainty. Professional judgments presented are based partly on our understanding of the project and partly on our general experience. Our engineering work and judgments rendered meet current professional standards; no other warranties, either expressed or implied are made.

It has been a pleasure providing you with the geotechnical services for this project. If you have any questions, please call 503.452.5561.

Sincerely,

EVREN Northwest, Inc.

Paul M. Trone

Paul M. Trone, RG

Registered Geologist, OR-G1178



Cynthia L. Hovind, P.E., G.E.

Professional Geotechnical Engineer, OR-17857PE

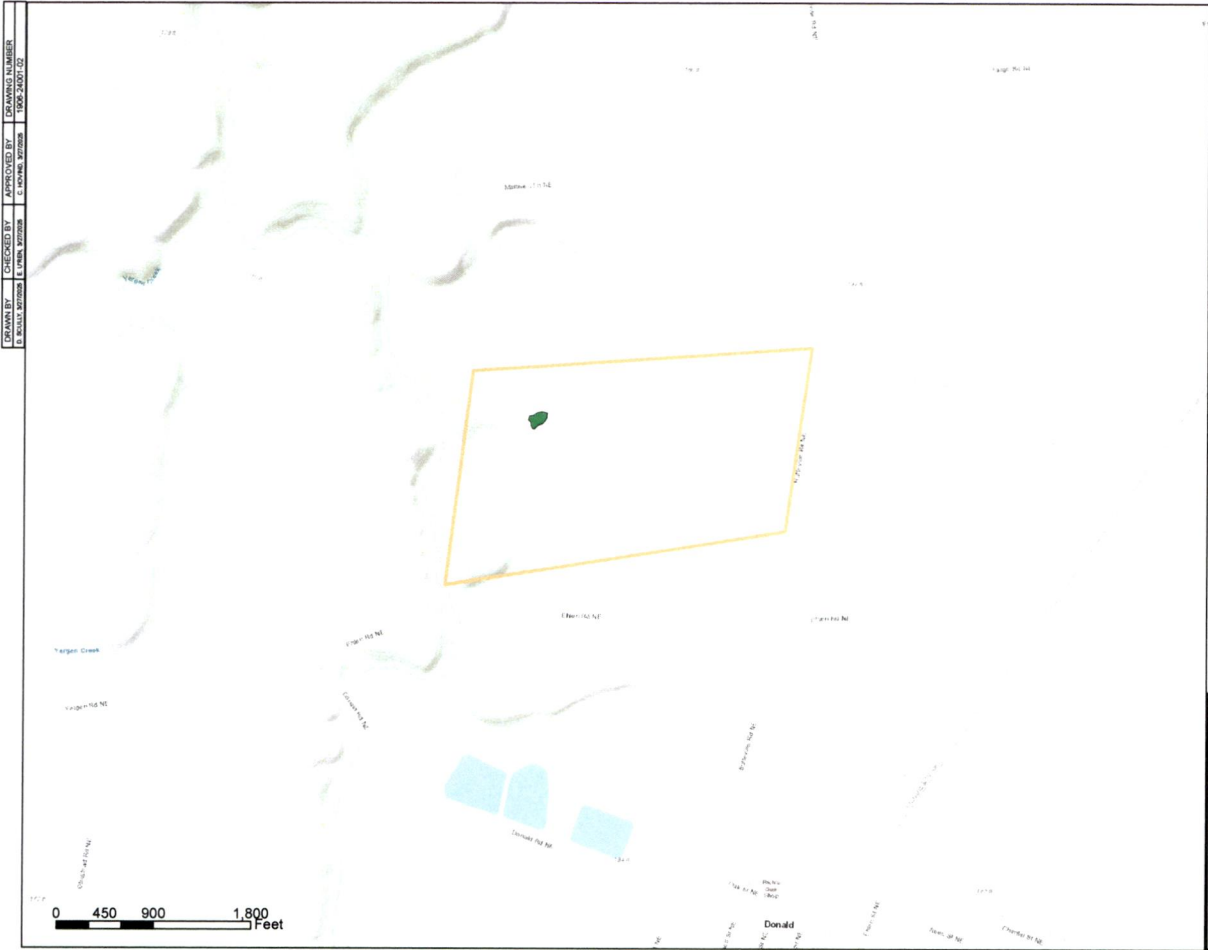
FIGURES

Figure 1	Vicinity Map
Figure 2	Existing Conditions
Figure 3	Bermed Fill Area Cross Section A
Figure 3A	Detailed Bermed Fill Area Cross section

APPENDICES:

Appendix A	Hand Auger and Boring Logs
Appendix B	Photo Log
Appendix C	Laboratory Testing
Appendix D	Vibrating Wire Piezometer Data
Appendix E	Inclinometer Data
Appendix F	Slope Stability Analyses

Figures



LEGEND

REFERENCED PROPERTY

PIT



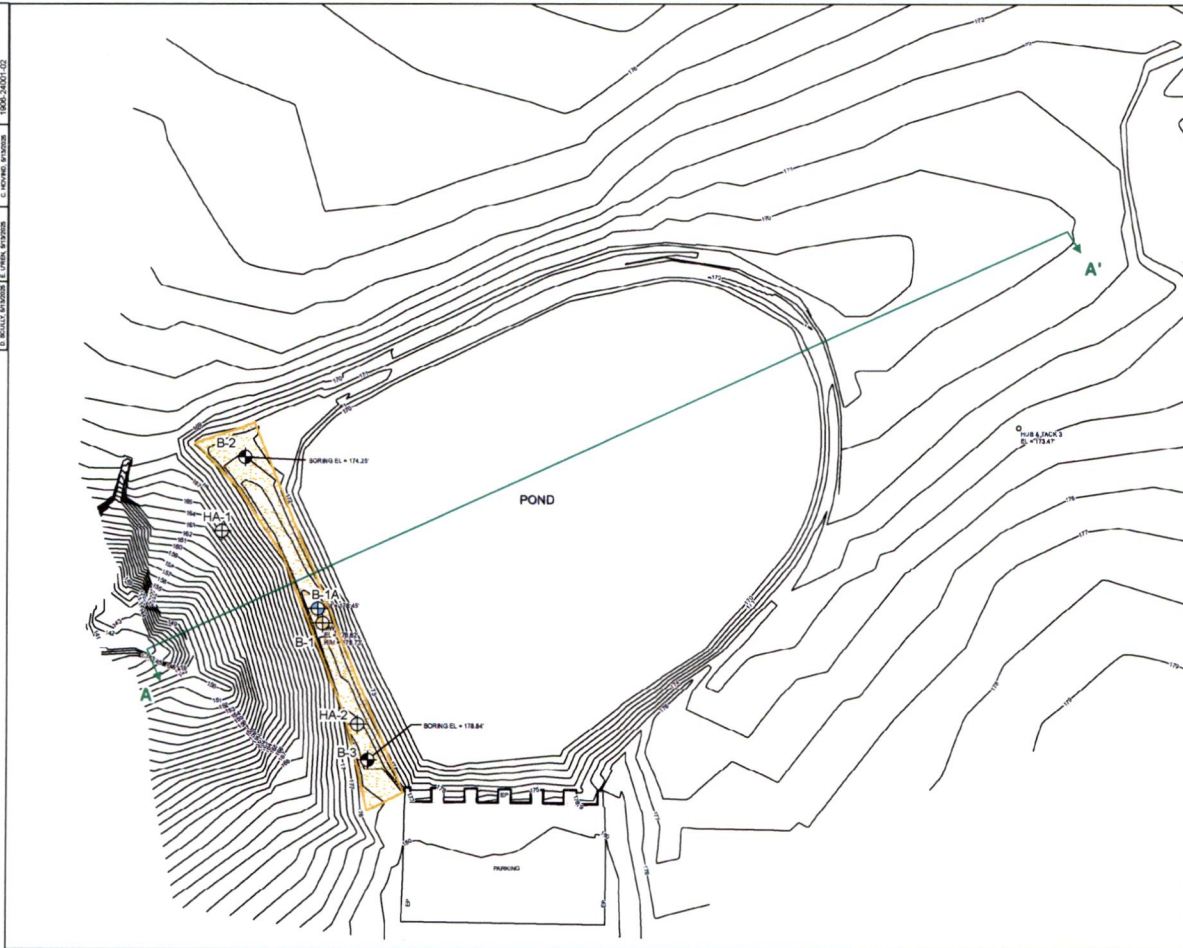
- NOTES:**
1. BASE MAP IMAGERY FROM ESRI.
 2. MAP FEATURES FROM MARION COUNTY AND ENW FIELD NOTES DATED 3/19/2025.
 3. CONTOUR LAYER MODELED FROM DOGAMI LIDAR (2009).




environmental · natural resource consultants

FIGURE 1
SITE VICINITY MAP
ALL-WAYS EXCAVATING
21595 BUTTEVILLE ROAD NE
AURORA, OREGON

DRAWN BY: C. BULL, W10000
CHECKED BY: E. JONES, W10000
APPROVED BY: C. JONES, W10000
DRAWING NUMBER: 1800-2007-02



LEGEND

- BERM
- CROSS SECTION
- 147' CONTOUR, 1-FOOT
- BORING, ENW 4/22/2025
- BORING, INCLINOMETER, ENW 4/21/2025
- BORING, PIEZOMETER, ENW 4/21/2025
- HAND AUGER, ENW 3/19/2025

NOTES:

1. SURVEY MAP BY AXIS MAPPING AND SURVEYING COMPANY (4/28/2025)
2. MAP FEATURES FROM ENW FIELD NOTES DATED 3/19/2025, 4/21/2025, AND 4/22/2025.

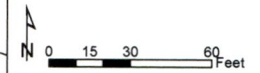
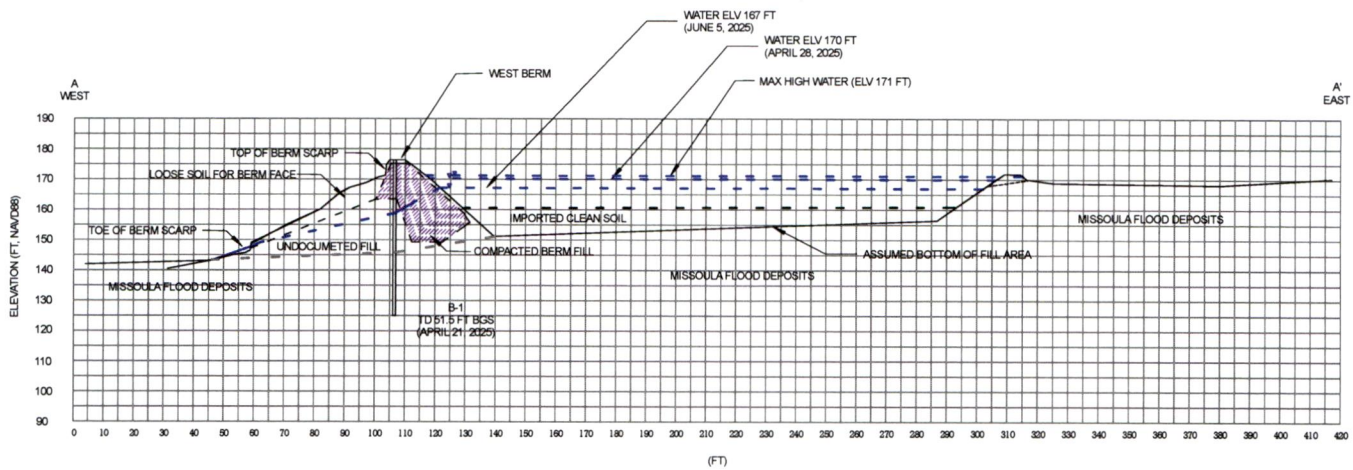


FIGURE 2
EXISTING SITE CONDITIONS

ALL-WAYS EXCAVATING
21595 BUTTEVILLE RD.
AURORA, OREGON

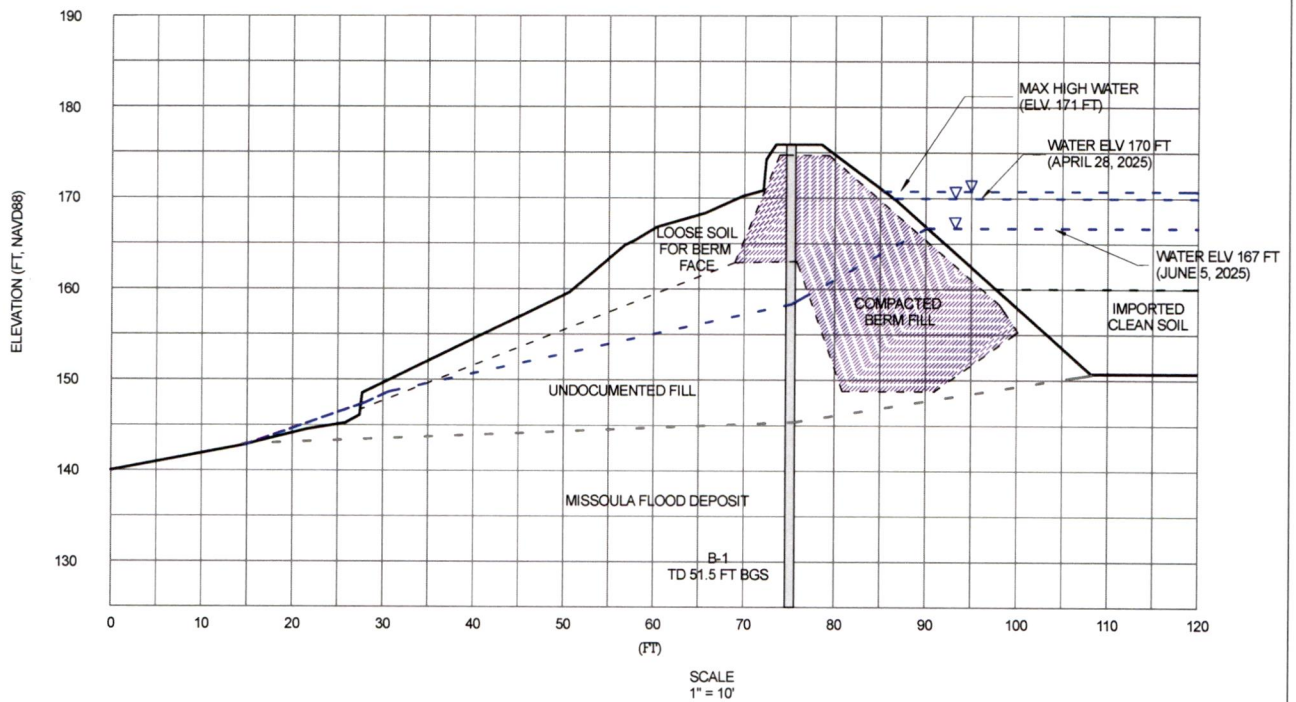
**BERMED FILL AREA
CROSS SECTION A - A''**



0' 1" = 30' 30'

	EVREN Northwest, Inc PO Box 14488 Portland, Oregon Project No. 1906-24001-02	All-Ways Excavation 21595 Butteville Rd NE Aurora, OR	FIGURE 3
	Cross Section A-A'		

BERMED FILL AREA CROSS SECTION A-A'



	EVREN Northwest, Inc PO Box 14488 Portland, Oregon	All-Ways Excavation 21595 Butteville Rd NE Aurora, OR	
	Project No. 1906-24001-02	CROSS SECTION A-A'	Figure 3A

Appendix A

Hand Auger and Boring Logs

EVREN Northwest, Inc.

Boring Log No. B-1 All-Ways Excavation

Location: 21875 Butteville Road NE, Aurora, Oregon

WO#: 1906-24001-02

Method: Solid Stem Auger

Ground EL:

Hammer: Safety

Hammer weight (lb): 140

Hole depth (ft): 51.5

Sampler: Split Spoon/Shelby

Drop (in): 30

G.W.T. @ Drilling (ft): 31

Sampled by: DMS

Driller: Dan J Fischer Excavating, Inc.

Drill Date: 04/21/25

Logged by: DMS

File: T:\ENWA\Projects\1906 (All-Ways Excavating)\24001 (21875 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Boring Logs\1906-24001-02 Boring Logs (V04).log Date: 6/20/2025

Depth	Strata	GWT	No.	Type	Blows Per 6"	USCS	Soil Description	SPT. blow/ft Moisture %	Notes
0			1	5-2-2		CL	6 inches of Sandy Silt TOPSOIL (TP), 10YR(3/2), soft to medium stiff, moist, some roots and plant debris, few gravel.		
			2	2-2-3			CLAY (CL), 7.5YR(3/2) Dark brown, 7.5YR(N4) dark gray, 7.5YR (5/6) strong brown, 7.5Y(5/3) light olive brown, medium stiff, moist, medium plasticity, few fine sand, mixed inclusions of light and dark clay, trace mica (COMPACTED BERM FILL).		
			3	2-3-3			Trace 7.5YR(5/8) soils at 3 feet.		
5			4	3-3-4			Trace 2.5YR(6/8) weathered fine gravel at 4.5 feet.		
			5	5-6-9			Stiff to very stiff at 6 feet.		
			6	2-5-5			Stiff at 7.5 feet.		
10			7	3-5-5					P200 - 91.6%, LL - 37, PI - 16, PI - 21
			8	3-5-6					
			9	3-4-4		ML	Medium stiff to stiff at 12 feet.		
15			10	6-6-7			SILT (ML), 7.5YR(3/2) Dark brown, 7.5YR(N4) dark gray, 7.5YR (5/6) brown, 7.5Y(5/3) light olive brown, very stiff, moist, medium plasticity, few fine sand, mixed inclusions clay, trace mica and organics (roots) (UNDOCUMENTED FILL).		
			11	0-3-3			Stiff with wood debris in shoe at 13.5 feet.		
			12				Medium stiff, possible water seep, with woody debris in bottom 6 inches of sample at 15 feet.		Pushed Shelby Tube, 8 inches Recovery
			13	6-7-10			Inclusion of roots in different colored soil 7.5YR(N5) gray, stiff at 19 feet.		
20			14	6-7-10			Medium stiff at 20.5 feet.		
			15	4-3-4			Stiff at 22 feet.		
			16	2-4-7			Very stiff at 23.5 feet.		P200 - 91.6%, LL - 32, PL - 22, PI - 10
25		3:30	17	5-7-9			Medium stiff to stiff, no organics at 25 feet.		
			18	4-3-5			5Y(2.5/2) black, medium stiff, some organics (roots) at 26.5 feet.		
			19	2-3-4			Decrease in organics, strong organic smell at 28 feet.		
30		3:00	20	2-3-4					
			21	2-4-8		ML	SILT (ML), 2.5Y(N4) dark gray to 2.5Y(N3) very dark gray, stiff, wet, low plasticity, fine trace sand and plant material (Missoula Flood Deposits).		
			22	3-7-12			Very stiff, no organics at 31 feet.		

Remarks:

EVREN Northwest, Inc.

Boring Log No. B-1 All-Ways Excavation

Location: 21875 Butteville Road NE, Aurora, Oregon

WO#: 1906-24001-02

Method: Solid Stem Auger

Ground EL:

Hammer: Safety

Hammer weight (lb): 140

Hole depth (ft): 51.5

Sampler: Split Spoon/Shelby

Drop (in): 30

G.W.T. @ Drilling (ft): 31

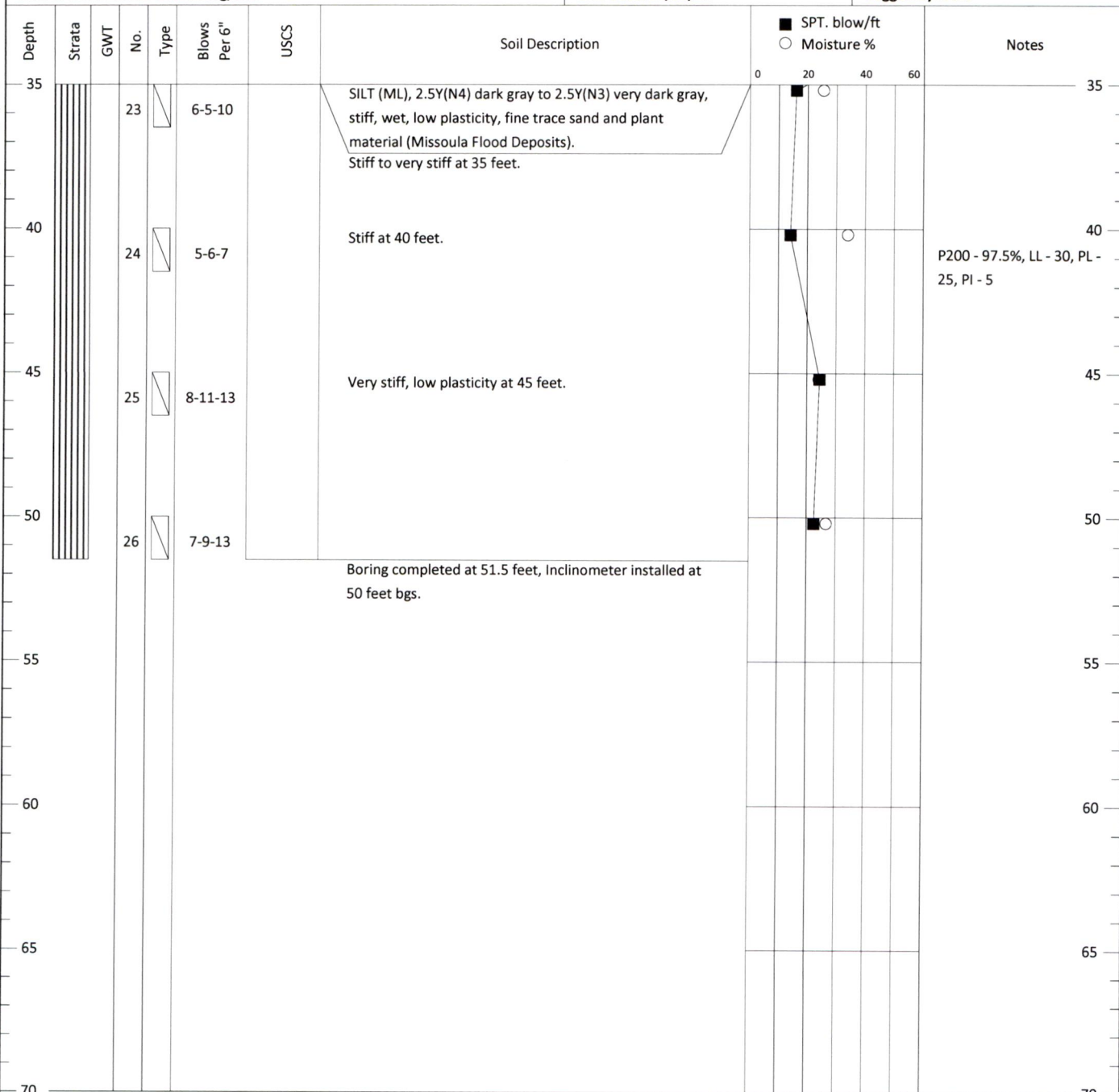
Sampled by: DMS

Driller: Dan J Fischer Excavating, Inc.

Drill Date: 04/21/25

Logged by: DMS

File: T:\ENWA\Projects\1906 (All-Ways Excavating)\24001 (21595 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Boring Logs\1906-24001-02 Boring Log (V04).log Date: 6/20/2025



Remarks:

File: T:\ENWA\Projects\1906 (All-Ways Excavating)\24001 (21595 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Boring Logs\1906-24001-02 Boring Logs (V04).log Date: 6/20/2025

EVREN Northwest, Inc.				Boring Log No. B-1A All-Ways Excavation											
Location: 21875 Butteville Road NE, Aurora, Oregon												WO#: 1906-24001-02			
Method: Solid Stem Auger												Ground EL:			
Hammer: Safety						Hammer weight (lb):				Hole depth (ft): 25					
Sampler:						Drop (in):		G.W.T. @ Drilling (ft):				Sampled by: DMS			
Driller: Dan J Fischer Excavating, Inc.						Drill Date: 04/21/25				Logged by: DMS					

Depth	Strata	GWT	No.	Type	Blows Per 6"	USCS	Soil Description	SPT. blow/ft				Moisture %	Notes
								0	20	40	60		
0	GWT not encountered					CL	6 inches of Sandy Silt TOPSOIL (TP), 10YR(3/2), soft to medium stiff, moist, some roots and plant debris, few gravel.						0
5							CLAY (CL), 7.5YR(3/2) Dark brown, 7.5YR(N4) dark gray, 7.5YR (5/6) strong brown, 7.5Y(5/3) light olive brown, medium stiff, moist, medium plasticity, few fine sand, mixed inclusions of light and dark clay, trace mica (COMAPCTED BERM FILL).						5
10													
15						ML	SILT (ML), 7.5YR(3/2) Dark brown, 7.5YR(N4) dark gray, 7.5YR (5/6) brown, 7.5Y(5/3) light olive brown, very stiff, moist, medium plasticity, few fine sand, mixed inclusions clay, trace mica and organics (roots) (UNDOCUMENTED FILL).						15
20													20
25							Boring completed at 25 feet. Piezometer SN 2400797 installed at 25 feet. Soil descriptions based on boring B-1. No sampling was completed in B-1A.						25
30													30
35													35

Remarks:

EVREN Northwest, Inc.

Boring Log No. B-2 All-Ways Excavation

Location: 21875 Butteville Road NE, Aurora, Oregon

WO#: 1906-24001-02

Method: Solid Stem Auger

Ground EL:

Hammer: Safety

Hammer weight (lb): 140

Hole depth (ft): 26.5

Sampler: Split Spoon

Drop (in): 30

G.W.T. @ Drilling (ft): 19

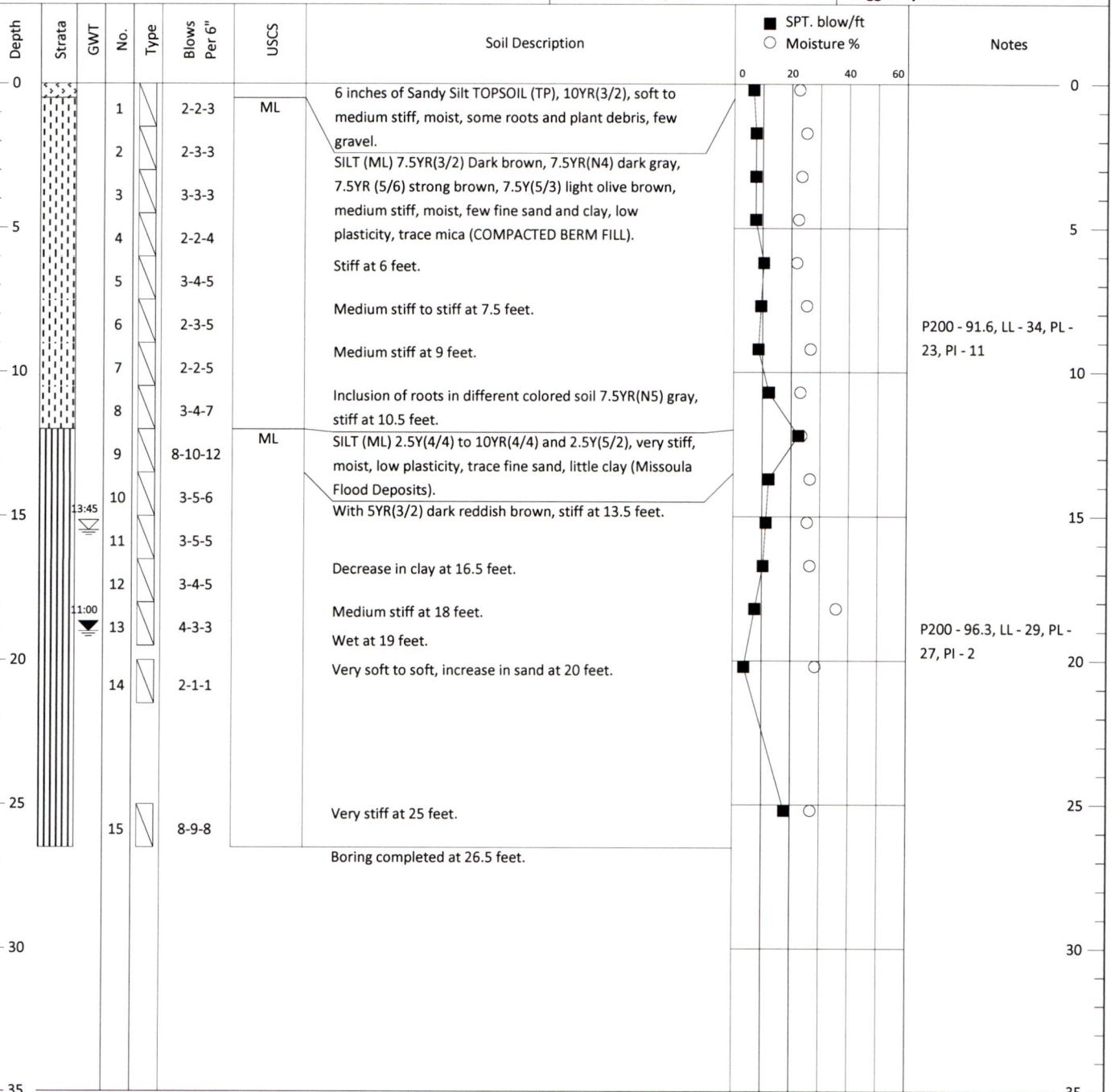
Sampled by: DMS

Driller: Dan J Fischer Excavating, Inc.

Drill Date: 4/22/2025

Logged by: DMS

File: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21875 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Boring Logs\1906-24001-02 Boring Logs [V04].log Date: 6/20/2025



Remarks:

EVREN Northwest, Inc.

Boring Log No. B-3 All-Ways Excavation

Location: 21875 Butteville Road NE, Aurora, Oregon

WO#: 1906-24001-02

Method: Solid Stem Auger

Ground EL:

Hammer: Safety

Hammer weight (lb): 140

Hole depth (ft):

Sampler: Split Spoon

Drop (in): 30

G.W.T. @ Drilling (ft): 19.1

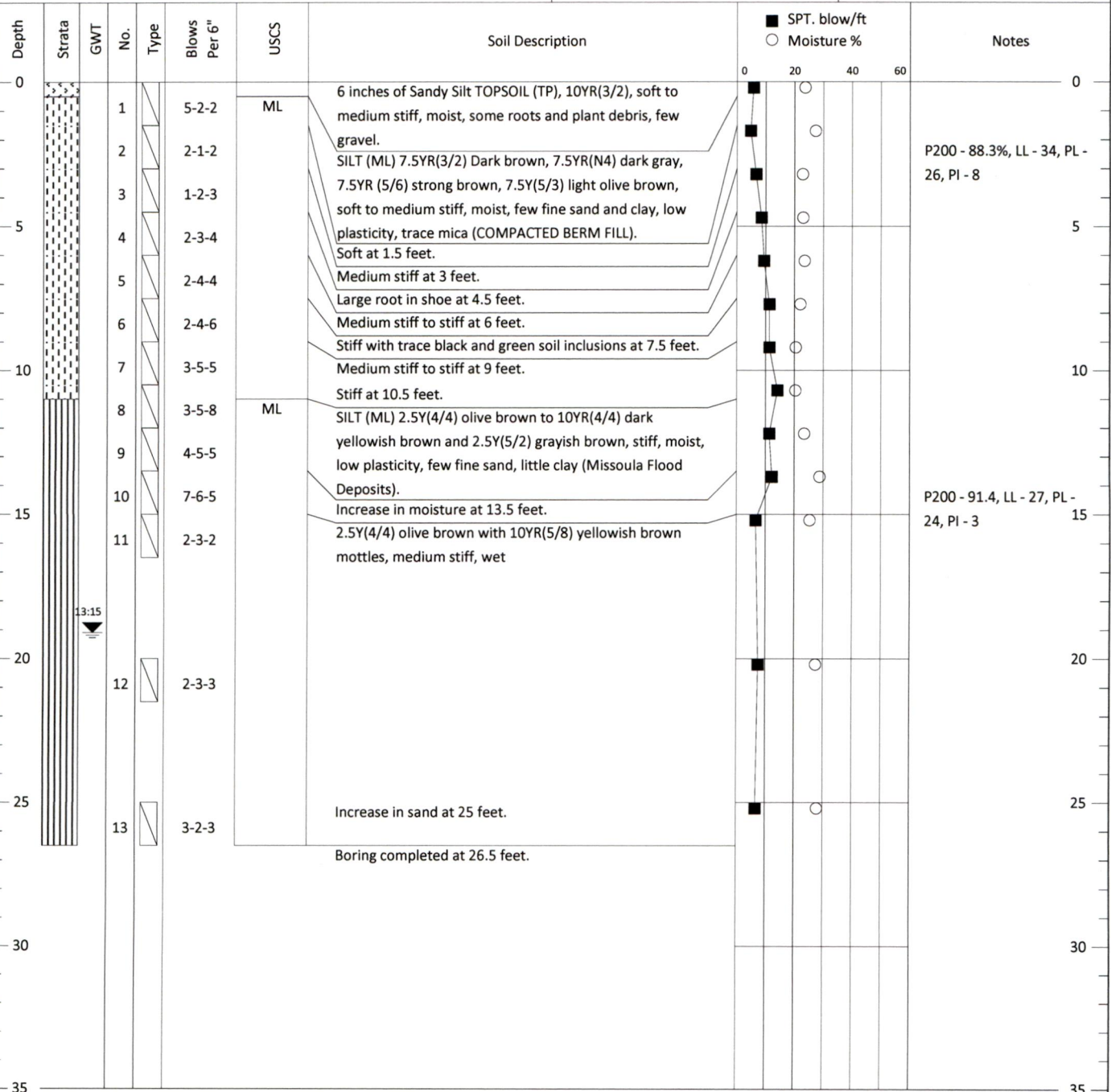
Sampled by: DMS

Driller: Dan J Fischer Excavating, Inc.

Drill Date: 4/22/2025

Logged by: DMS

File: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Boring Logs\1906-24001-02 Boring Logs (V04).log Date: 6/20/2025



Remarks:

File: T:\ENWA\Projects\1906 (All-Ways Excavating)\24001 (21595 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Hand Auger Logs\1906-24001-02 Butteville-HALogs-log Date: 6/16/2025

EVREN Northwest, Inc.				Boring Log No. HA-1 All-Ways Excavation			
Location: 21595 Butteville Road, Aurora, OR						WO#: 1906-24001-02	
Method: Hand Auger						Ground EL:	
Hammer:			Hammer weight (lb):			Hole depth (ft): 25	
Sampler:		Drop (in):		G.W.T. @ Drilling (ft):		Sampled by: EMU and DMS	
Driller:				Drill Date: 3/19/2025		Logged by: EMU and DMS	

Depth	Strata	GWT	No.	Type	Blows Per 6"	USCS	Soil Description	SPT. blow/ft Moisture %				Notes
								0	20	40	60	
0	GWT not encountered						6 inches of Sandy Silt TOPSOIL (TP) 10YR(3/2), soft to medium stiff, moist, some roots and plant debris, few gravel (TOPSOIL).					0
2						CL	Sandy CLAY Fill (CL), 7.5YR(3/2) Dark brown, 7.5YR(N4) dark gray, 7.5YR (5/6) strong brown, 7.5Y(5/3) light olive brown, medium stiff, moist, medium plasticity, some fine sand, mixed inclusions of light and dark sandy clay, trace mica (COMPACTED BERM FILL)					2
4		1										
		2										
		3										
		4										
6											6	
8											8	
10							Boring completed at depth of 9 feet.					10
12											12	
14											14	

Remarks:

File: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butteville Road-Aurora)\02 (Geotech Invest)\Logs\Hand Auger Logs\1906-24001-02 Butteville-HALogs-log Date: 6/16/2025

EVREN Northwest, Inc.				Boring Log No. HA-2 All-Ways Excavation									
Location: 21595 Butteville Road, Aurora, OR				WO#: 1906-24001-02									
Method: Hand Auger				Ground EL:									
Hammer:		Hammer weight (lb):		Hole depth (ft): 7									
Sampler:		Drop (in):		G.W.T. @ Drilling (ft):		Sampled by: EMU and DMS							
Driller:		Drill Date: 3/19/2025		Logged by: EMU and DMS									
Depth	Strata	GWT	No.	Type	Blows Per 6"	USCS	Soil Description	SPT. blow/ft Moisture %				Notes	
0	GWT not encountered						6 inches of Sandy Silt TOPSOIL (TP) 10YR(3/2), soft to medium stiff, moist, some roots and plant debris, few gravel (TOPSOIL).	0	20	40	60	0	
2		1				CL	Sandy CLAY Fill (CL), 7.5YR(3/2) Dark brown, 7.5YR(N4) dark gray, 7.5YR (5/6) strong brown, 7.5Y(5/3) light olive brown, medium stiff, moist, medium plasticity, some fine sand, mixed inclusions of light and dark sandy clay, trace mica (COMPACTED BERM FILL					2	
4		2											4
6			3										6
8							Boring completed at depth of 7 feet.						8
10													10
12													12
14													14

Remarks:

Appendix B

Photo Logs



Looking west at berm 3/19/2025.



Looking east at middle of berm 3/19/2025.

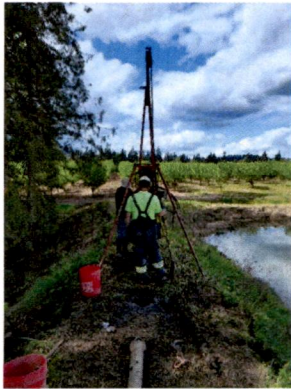


Looking south from northwest corner of berm 3/19/2025.



Looking east across pit from northwest corner of berm 3/19/2025.

	All-Ways Excavating 21595 Butteville Road NE Aurora, Oregon	Photo Log	Project No. 1906-24001-02
			Appendix B



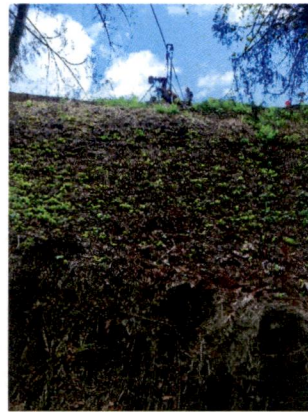
Looking north on top of berm drilling B-1a (4/21/2025).



Looking from northside of downstream side of berm (3/19/2025).



Looking south along top of berm (3/19/2025).



Looking from toe of berm up to Boring B-1A. (4/21/2025)

	All-Ways Excavating 21595 Butteville Road NE Aurora, Oregon	Photo Log	Project No. 1906-24001-02
			Appendix B



Looking at toe of berm from the ravine up the berm (5/6/2025).



Split Spoon Sample, B-1-5, Depth = 6 feet NEW BERM FILL
(4/21/2025)



Split Spoon Sample, B-1-16, Depth = 22 feet, OLD FIELD FILL
(4/21/2025)



Split Spoon Sample, B-1-19, Depth = 26.5 feet, OLD FIELD FILL

	All-Ways Excavating 21595 Butteville Road NE Aurora, Oregon	Photo Log	Project No. 1906-24001-02
			Appendix B



Split Spoon Sample, B-1-22, Depth = 31 feet, Missoula Flood Deposit
(4/21/2025)

	All-Ways Excavating 21595 Butteville Road NE Aurora, Oregon	Photo Log	Project No. 1906-24001-02
			Appendix B

Appendix C
Laboratory Testing



5/17/2025

Client Evren Northwest

Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-1-8 @ 10.5' - 12'

Material Description Gray/Brown CL

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/14/2025

Sample Rec. Date 4/29/2025

Date Sampled 4/29/2025

Sampled By Client

Sample Id 79H

LL = 37

PL = 16

PI = 21

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/ACBE469D-B38D-4B30-6B56-9F759525685D>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-1



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79H

Pit/Plant B-1-8 @ 10.5' - 12'

Material Description Gray/Brown CL

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/15/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-1-8 @ 10.5' - 12'

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/DBA1FAFA-01C6-48AF-ED91-35C7D28422E3>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-7

5/17/2025 8:06:11 AM



6/23/2025

Client Evren Northwest
Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-1-16 @ 22' - 23.5'

Material Description Brown ML

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/14/2025

Sample Rec. Date 4/29/2025

Date Sampled 4/29/2025

Sampled By Client

Sample Id 79J

LL = 32

PL = 22

PI = 10

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/F0E45B42-70C3-413F-FBFA-FDD8F790FB50>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-2



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79J

Pit/Plant B-1-16 @ 22' - 23.5'

Material Description Brown CL - ML

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/15/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-1-16 @ 22' - 23.5'

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/1ECF887D-B048-4231-05DC-83C15CFEB61E>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-6

5/17/2025 8:06:11 AM



6/23/2025

Client Evren Northwest
Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-1-24 @ 40' - 41.5'

Material Description Brown ML

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/14/2025

Sample Rec. Date 4/29/2025

Date Sampled 4/29/2025

Sampled By Client

Sample Id 79K

LL = 30

PL = 25

PI = 5

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/BA414ED8-69EA-46D2-8114-565033CDD6AD>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-3



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79K

Pit/Plant B-1-24 @ 40' - 41.5'

Material Description Brown CL - ML

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/15/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-1-24 @ 40' - 41.5'

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/AE917EA0-7A44-4555-694B-BE581CC43AC0>
System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-5

5/17/2025 8:06:10 AM



5/17/2025

Client Evren Northwest

Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-2-6 @ 7.5'-9'

Material Description Brown ML

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/14/2025

Sample Rec. Date 4/29/2025

Date Sampled 4/29/2025

Sampled By Client

Sample Id 79L

LL = 34

PL = 23

PI = 11

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/D3955F7F-8F47-44EA-F1D1-25841CA6C907>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-4



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79L

Pit/Plant B-2-6 @ 7.5'-9'

Material Description Brown ML

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/15/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-2-6 @ 7.5'-9'

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/2BBBB21D-1298-4891-50D4-0243DB7684CE>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-4

5/17/2025 8:06:10 AM



5/17/2025

Client Evren Northwest

Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-2-13 @ 18'-19.5'

Material Description Brown ML

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/14/2025

Sample Rec. Date 4/29/2025

Date Sampled 4/29/2025

Sampled By Client

Sample Id 79M

LL = 29

PL = 27

PI = 2

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/500700E1-3B64-47B4-C305-79F207873D8D>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-5



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79M

Pit/Plant B-2-13 @ 18'-19.5'

Material Description Brown ML

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/14/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-2-13 @ 18'-19.5'

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/BBF9BA51-189A-42CA-7475-BC5048F540F3>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-3

5/17/2025 8:06:10 AM



6/23/2025

Client Evren Northwest
Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-3-2 @ 1.5'-3.0'

Material Description Brown ML

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/15/2025

Sample Rec. Date

Date Sampled 4/29/2025

Sampled By Client

Sample Id 79N

LL = 34

PL = 26

PI = 8

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/AAD3CC48-2E7D-4660-1611-CE3B54587C7C>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-6



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79N

Pit/Plant B-3-2 @ 1.5'-3.0'

Material Description Brown CL-ML

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/15/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-3-2 @ 1.5'-3.0'

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/BE41A1C7-822F-4D4C-520D-F352FABF8E49>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-2

5/17/2025 8:06:10 AM



5/17/2025

Client Evren Northwest

Address Evren Northwest
PO Box 14488
Portland Oregon, 97293

Client Reference No 19062400102

Project No 25-5265

Project Berm and Pit 25-5265

Project Location 21595 Butteville Road, Aurora, Oregon 97002

Sample Location

Material Source B-3-10 @ 13.5'-15'

Material Description Brown ML

Comment of Deviations

Atterberg Limits 1 Pt.

ASTM: D-4318 AASHTO: T-89, T-90

Date Tested 5/15/2025

Sample Rec. Date 4/29/2025

Date Sampled 4/29/2025

Sampled By

Sample Id 79P

LL = 27

PL = 24

PI = 3

Comments

Tested By Dan Hamilton
Digital Signature By User Login

Manager Dan Hamilton
Digital Signature By User Login

Lab Equipment Scale2 - Oven1 - Atterberg Cup1 - Atterberg Plate1

Test results relate only to the sample tested. This test report shall not reproduced, except in full, without the prior written approval of ACS Testing, Inc.

Lab Address

System Link <http://acstesting.vahalo.com/assignments/B5D8A282-11BF-4AE0-BDD8-726EDAAE0E83>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 LLPlasticLimit1pt DH250516-7



Client Evren Northwest
Address Evren Northwest
PO Box 14488

Portland Oregon, 97293

Sample No 79P

Pit/Plant B-3-10 @ 13.5'-15'

Material Description Brown ML

Project Berm and Pit 25-5265

Pay Item

Location

Moisture Content (%)

Minus #200 (%)

Comments

Inspector Dan Hamilton
Digital Signature By User Login

Moisture Content and Minus #200

ASTM: D2216, D1140 AASHTO: T-255, T-265, T11

Report Date 5/17/2025

Date Tested 5/16/2025

Project No 25-5265

Client Reference No 19062400102

Date Sampled 4/29/2025

Sampled By

Supplier B-3-10 @ 13.5'-15'

Manager Dan Hamilton
Digital Signature By User Login

System Link <http://acstesting.vahalo.com/assignments/231036CE-50C7-4349-FDB6-E089B7513D67>

System Path Berm and Pit 25-5265 / SOILS / AGGREGATE LAB / 25-5265 MoistAndFines DH250516-1

5/17/2025 8:06:10 AM

**DIRECT SHEAR TEST OF SOILS UNDER CONSOLIDATED
DRAINED CONDITIONS ASTM D3080**



PROJECT:	ACS Testing (OR) Annual Materials Testing	JOB NO:	65151183
LOCATION:	ACS Project# 1906-24001-02	WORK ORDER NO:	0
MATERIAL:	Clay	LAB NO:	8169
SAMPLE SOURCE:	B-1-12@16.5'	DATE SAMPLED:	06/16/25

Sample Preparation: Insitu material, moisture and density. Specimens Consolidated @ Normal Load 30 minutes prior to shear. Specimen not inundated.

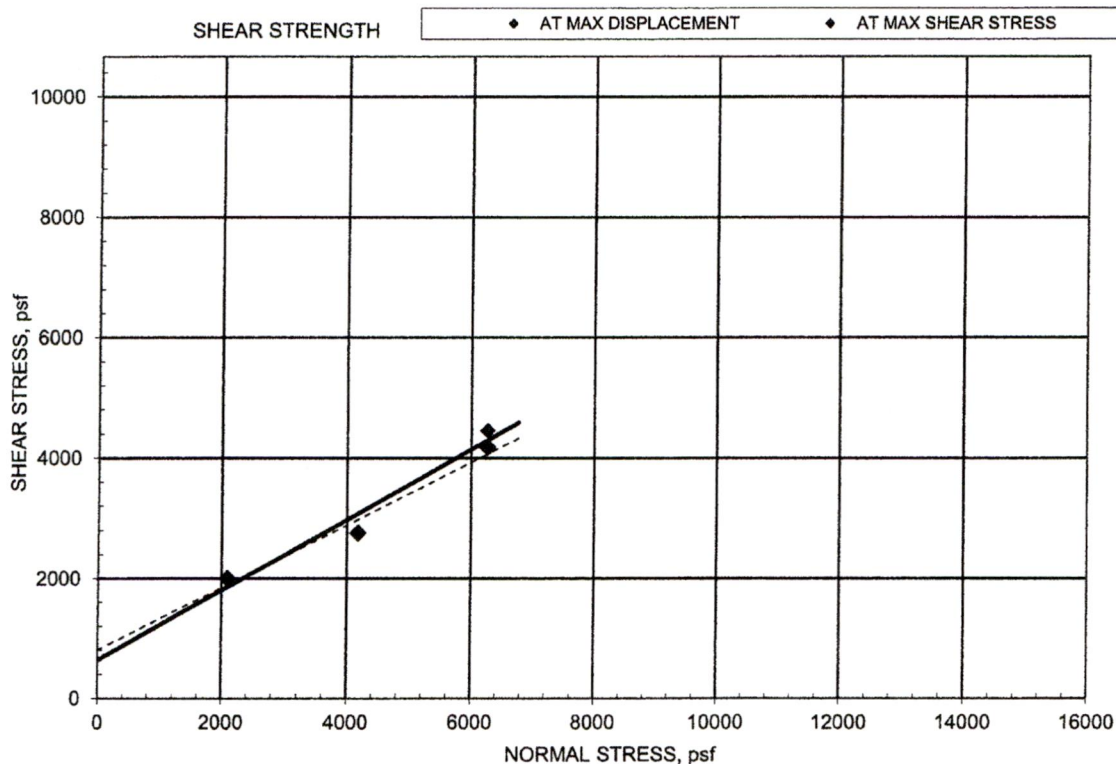
Initial Parameters of specimen:				
	Point 1	Point 2	Point 3	
Normal Stress (psf):	2089	4177	6266	
Dry mass (g):	111.18	108.01	110.55	
Height (in):	1.0000	1.0000	1.0000	
Diameter (in):	2.42	2.42	2.42	
Moisture, %:	28.4	30.9	28.0	
Dry Density (pcf):	92.1	89.5	91.6	
Saturation, %:	95	97	92	
Void Ratio:	0.80	0.85	0.81	

Pre- Shear Parameters of specimen:				
	Point 1	Point 2	Point 3	
Normal Stress (psf):	2089	4177	6266	
Dry mass (g):	111.18	108.01	110.55	
Height (in):	0.99068	0.98273	0.98172	
Diameter (in):	2.42	2.42	2.42	
Moisture, %:	25.2	30.7	26.9	
Dry Density (pcf):	93.0	91.0	93.3	
Saturation, %:	86	100	92	
Void Ratio:	0.78	0.82	0.77	

Normal Stress (psf):	2089	4177	6266
Maximum Shear Stress, (psf):	2013	2760	4450
Displacement at Maximum Shear, (in):	0.454	0.428	0.305
Shear Stress at Max Displacement, (psf)	1999	2756	4176
Maximum Displacement, (in):	0.452	0.452	0.457
Rate of Deformation, in/min	0.000157	0.000157	0.000157

SHEAR DEVICE: Geomatic model 8914, Dead Weight load force
SPECIFIC GRAVITY: Specific gravity assumed: 2.651

	FRICTION	
	ANGLE	COHESION
AT MAX SHEAR STRESS	30	638
Specs:		
AT MAX DISPLACEMENT	28	800
Specs:		



Note: The friction angle presented is applicable only to the load ranges and sample conditions tested. Friction angle and cohesion values are based on the trend line shown in the above plot and may or may not be representative of actual soil conditions. Therefore, adequate engineering judgment should be implemented if used for design.

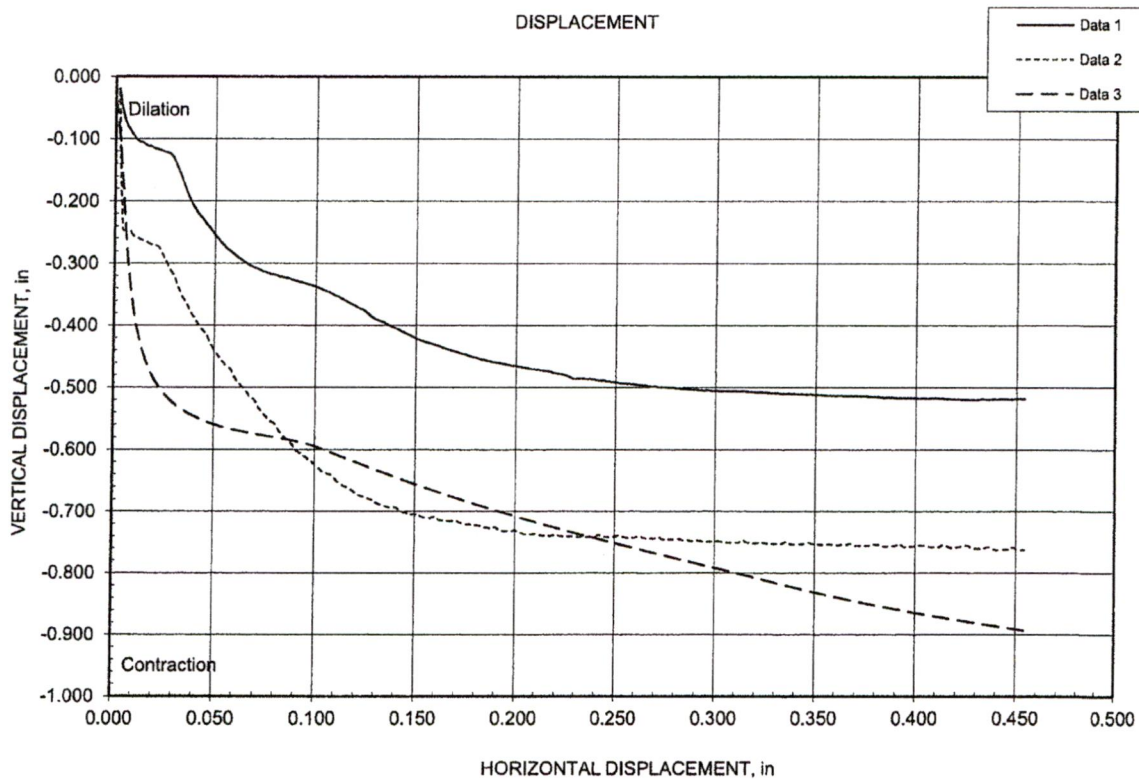
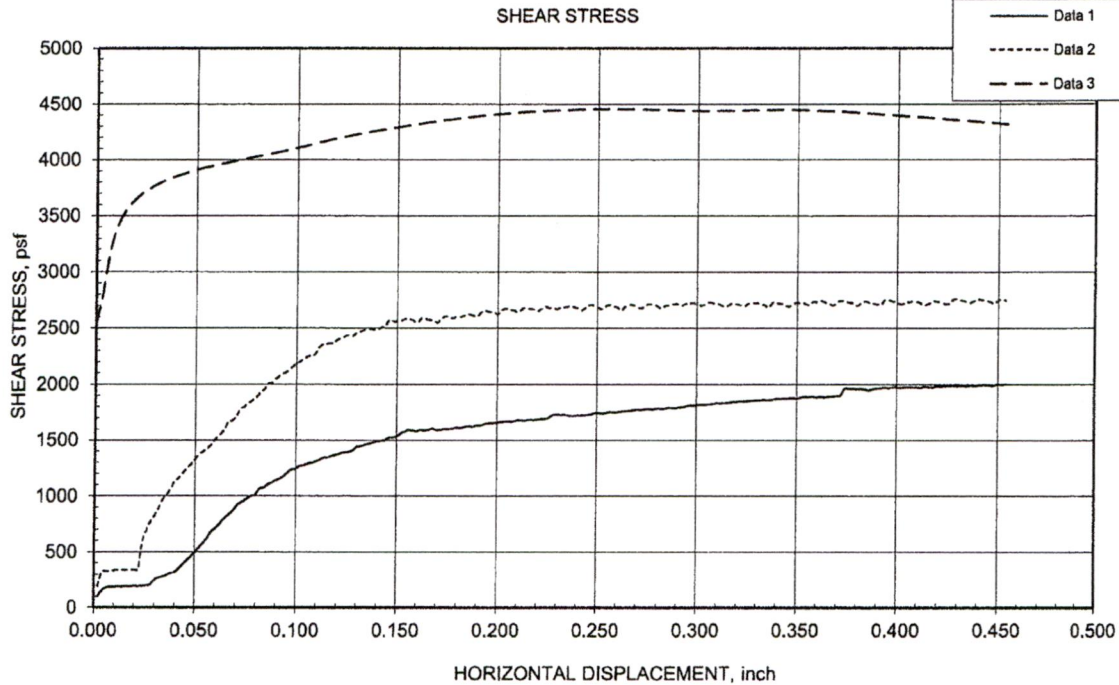
Reviewed By: Joseph A. Phillips

DIRECT SHEAR TEST OF SOILS UNDER CONSOLIDATED
DRAINED CONDITIONS ASTM D3080



PROJECT: ACS Testing (OR) Annual Materials Testing
LOCATION: ACS Project# 1906-24001-02
MATERIAL: Clay
SAMPLE SOURCE: B-1-12@16.5'

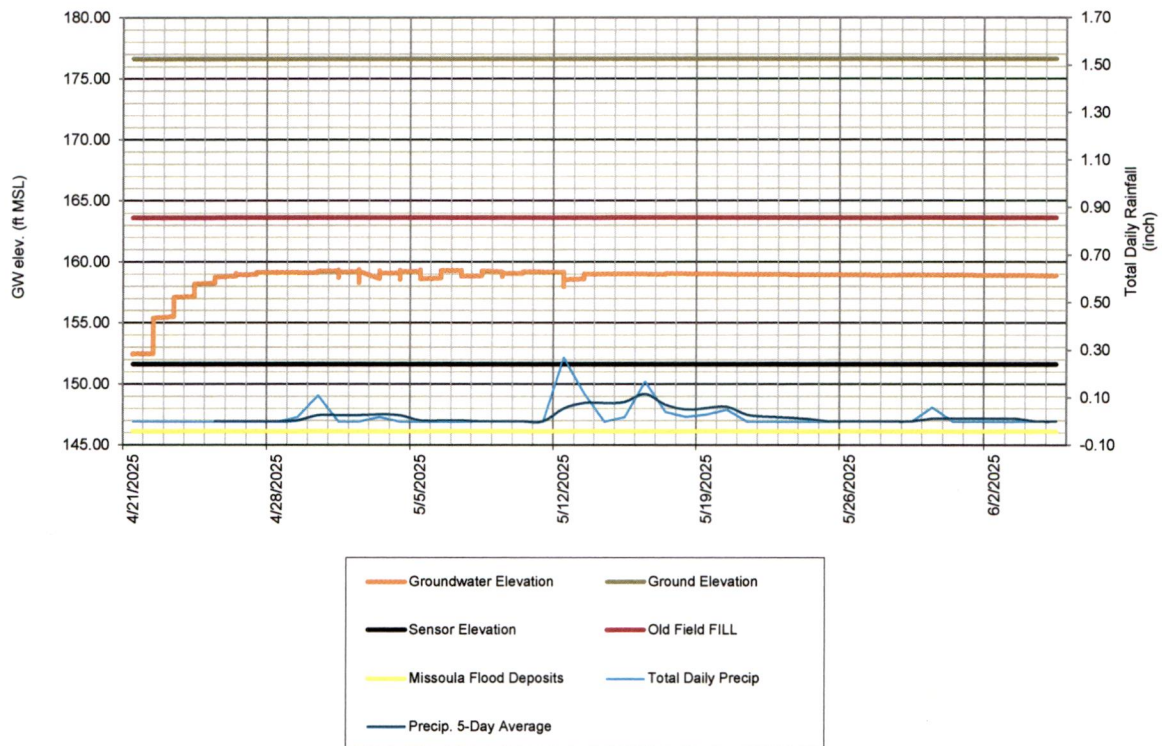
JOB NO: 65151183
WORK ORDER NO:
LAB NO: 8169
DATE SAMPLED: 6/16/25



Appendix D

Vibrating Wire Piezometer Data

21595 Butteville Road, Aurora, Oregon
B-1A VWP Readings
Ground Surface Elev. 176.62 ft
Sensor Elev. 151.62 ft (Depth 25 ft)

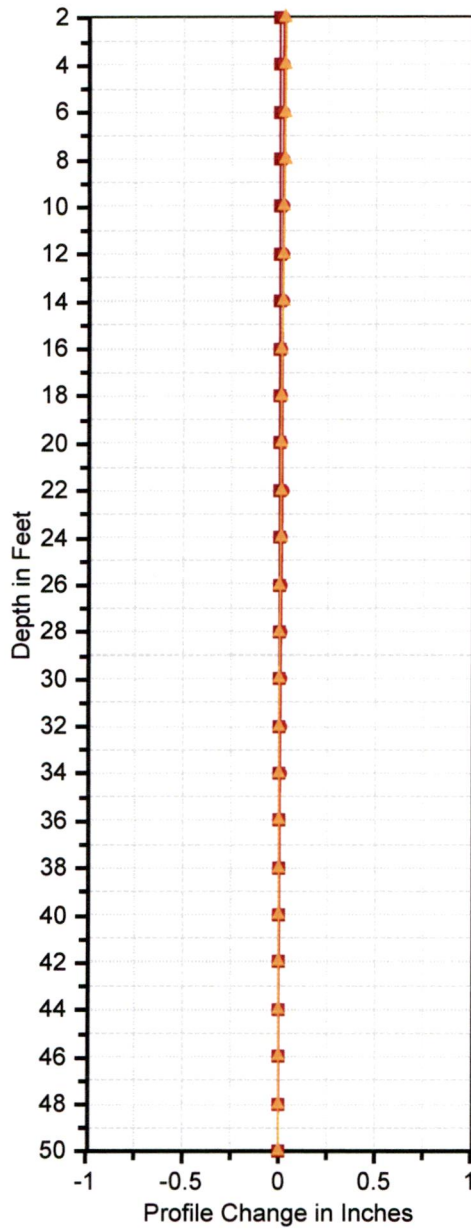


Appendix E

Inclinometer Data

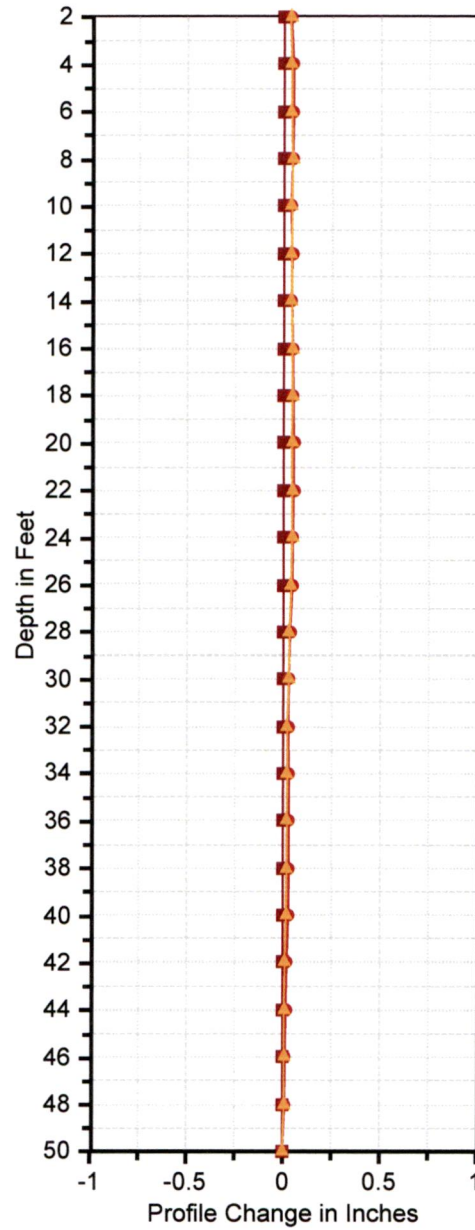
1906B1 A

4/28/2025 5/6/2025 6/5/2025



1906B1 B

4/28/2025 5/6/2025 6/5/2025



EVREN Northwest, Inc.
40 SE 24th Ave
Portland, Oregon 97214
PH: 503.452.5561

Project No. 1906-24001-02



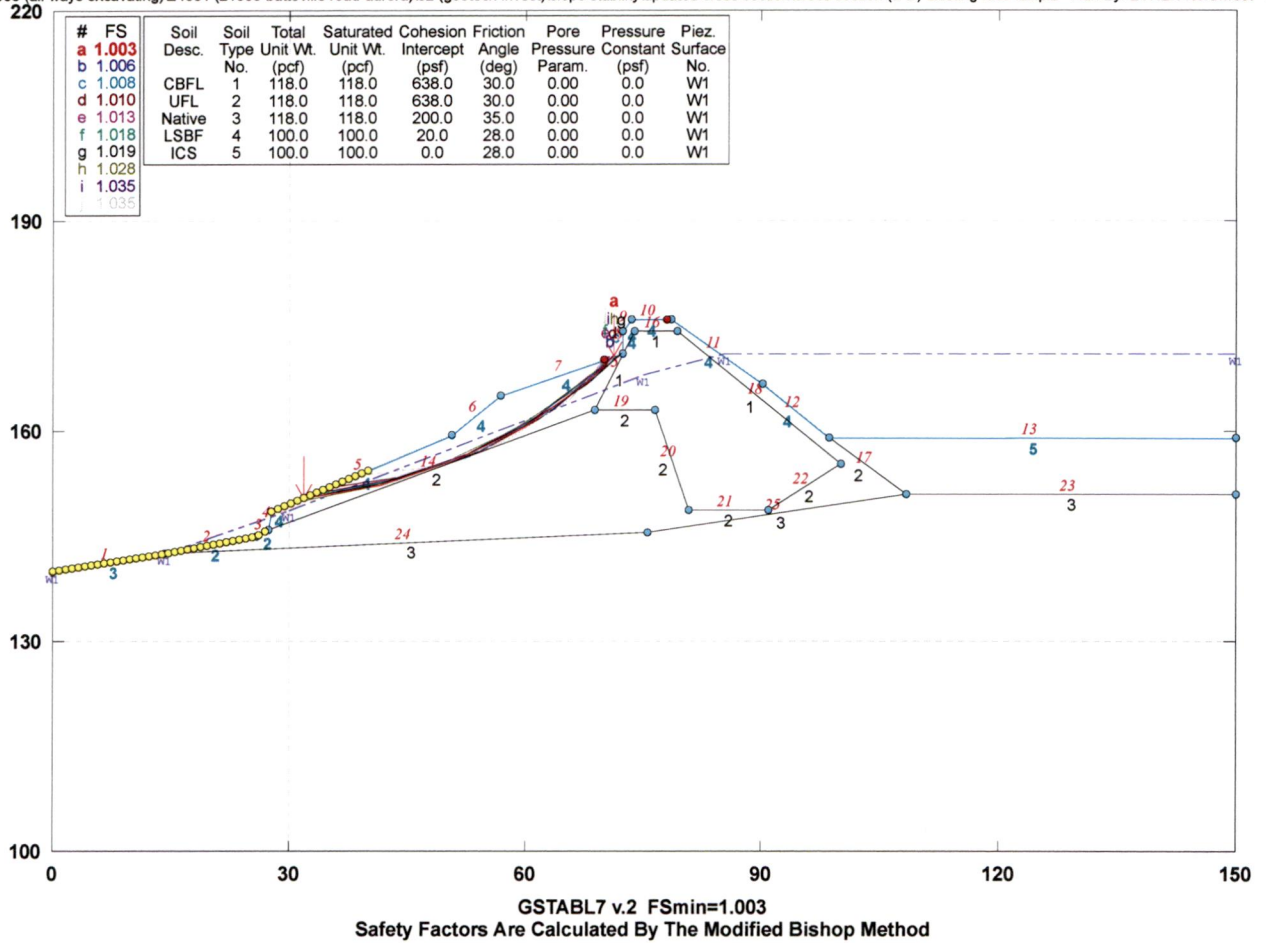
EVREN NORTHWEST
INC.
environmental natural resource consultants

All-Ways Excavating
21595 Butteville Road
Aurora, Oregon

Appendix F
Slope Stability Analyses

Slope Stability Existing Static - Downstream Face Back Calculation

t:\enw\projects\1906 (all-ways excavating)\24001 (21595 butteville road-aurora)\02 (geotech invest)\slope stability\updated cross section\cross section (a-a') existing face fail.pl2 Run By: EVREN Northwest 6/20/2025 0:



*** GSTABL7 ***

** GSTABL7 by Dr. Garry H. Gregory, Ph.D., P.E., D.GE **

** Original Version 1.0, January 1996; Current Ver. 2.005.2, Jan. 2011 **
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SLOPE STABILITY ANALYSIS SYSTEM

Modified Bishop, Simplified Janbu, or GLE Method of Slices.

(Includes Spencer & Morgenstern-Price Type Analysis)

Including Pier/Pile, Reinforcement, Soil Nail, Tieback,

Nonlinear Undrained Shear Strength, Curved Phi Envelope,

Anisotropic Soil, Fiber-Reinforced Soil, Boundary Loads, Water

Surfaces, Pseudo-Static & Newmark Earthquake, and Applied Forces.

Analysis Run Date: 6/20/2025
 Time of Run: 08:46AM
 Run By: EVREN Northwest
 Input Data Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
 eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e
 Output Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
 eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e
 Unit System: English
 Plotted Output Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
 eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e
 PROBLEM DESCRIPTION: Slope Stability
 Existing Static - Downstream Face

BOUNDARY COORDINATES

13 Top Boundaries

25 Total Boundaries

Boundary No.	X-Left (ft)	Y-Left (ft)	X-Right (ft)	Y-Right (ft)	Soil Type Below Bnd
1	0.00	140.00	14.20	142.50	3
2	14.20	142.50	25.90	145.00	2
3	25.90	145.00	27.40	146.00	2
4	27.40	146.00	27.70	148.50	4
5	27.70	148.50	50.60	159.40	4
6	50.60	159.40	56.75	165.00	4
7	56.75	165.00	72.30	171.10	4
8	72.30	171.10	72.40	174.25	4
9	72.40	174.25	73.50	175.90	4
10	73.50	175.90	78.50	175.90	4
11	78.50	175.90	90.10	166.70	4
12	90.10	166.70	98.70	159.00	4
13	98.70	159.00	150.00	159.00	5
14	27.40	146.00	68.90	163.00	2
15	68.90	163.00	73.90	174.30	1
16	73.90	174.30	79.30	174.30	1
17	98.70	159.00	108.29	151.00	2
18	79.30	174.30	100.20	155.25	1
19	68.90	163.00	76.50	163.00	2
20	76.50	163.00	80.90	148.75	2
21	80.90	148.75	91.00	148.75	2
22	91.00	148.75	100.20	155.25	2
23	108.29	151.00	150.00	151.00	3
24	14.20	142.50	75.60	145.50	3
25	75.60	145.50	108.29	151.00	3

User Specified Y-Origin = 100.00(ft)

Default X-Plus Value = 0.00(ft)

Default Y-Plus Value = 0.00(ft)

ISOTROPIC SOIL PARAMETERS

5 Type(s) of Soil

Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion Intercept (psf)	Friction Angle (deg)	Pore Pressure Param. (psf)	Pressure Constant (psf)	Piez. Surface No.
1	118.0	118.0	638.0	30.0	0.00	0.0	1
2	118.0	118.0	638.0	30.0	0.00	0.0	1
3	118.0	118.0	200.0	35.0	0.00	0.0	1
4	100.0	100.0	20.0	28.0	0.00	0.0	1
5	100.0	100.0	0.0	28.0	0.00	0.0	1

1 PIEZOMETRIC SURFACE(S) SPECIFIED

Unit Weight of Water = 62.40 (pcf)

Piezometric Surface No. 1 Specified by 6 Coordinate Points

Pore Pressure Inclination Factor = 0.50

Point No.	X-Water (ft)	Y-Water (ft)
1	0.00	140.00
2	14.20	142.50
3	30.00	148.75
4	75.00	168.00
5	85.30	171.00
6	150.00	171.00

Specified Peak Ground Acceleration Coefficient (A) = 0.300(g)

Specified Horizontal Earthquake Coefficient (kh) = 0.150(g)

Specified Vertical Earthquake Coefficient (kv) = 0.000(g)

Specified Seismic Pore-Pressure Factor = 0.000

EARTHQUAKE DATA HAS BEEN SUPPRESSED

A Critical Failure Surface Searching Method, Using A Random Technique For Generating Circular Surfaces, Has Been Specified.
5000 Trial Surfaces Have Been Generated.

100 Surface(s) Initiate(s) From Each Of 50 Points Equally Spaced

Along The Ground Surface Between X = 0.00(ft)

and X = 40.00(ft)

Each Surface Terminates Between X = 70.00(ft)

and X = 78.00(ft)

Unless Further Limitations Were Imposed, The Minimum Elevation

At Which A Surface Extends Is Y = 0.00(ft)

10.00(ft) Line Segments Define Each Trial Failure Surface.

Following Are Displayed The Ten Most Critical Of The Trial

Failure Surfaces Evaluated. They Are

Ordered - Most Critical First.

* * Safety Factors Are Calculated By The Modified Bishop Method * *

Total Number of Trial Surfaces Attempted = 5000

Number of Trial Surfaces With Valid FS = 5000

Statistical Data On All Valid FS Values:

FS Max = 3.499 FS Min = 1.003 FS Ave = 2.295

Standard Deviation = 0.537 Coefficient of Variation = 23.41 %

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	31.837	150.469
2	41.655	152.365
3	51.051	155.789
4	59.787	160.655
5	67.646	166.839
6	71.168	170.656

Circle Center At X = 25.191 ; Y = 211.827 ; and Radius = 61.717

Factor of Safety

*** 1.003 ***

Individual data on the 9 slices

Slice No.	Width (ft)	Weight (lbs)	Water Force		Tie Force Norm (lbs)	Tie Force Tan (lbs)	Earthquake Force		Surcharge Load (lbs)
			Top (lbs)	Bot (lbs)			Hor (lbs)	Ver (lbs)	
1	4.0	223.8	0.0	0.0	0.	0.	0.0	0.0	0.0
2	5.8	1139.6	0.0	234.7	0.	0.	0.0	0.0	0.0
3	8.9	2930.3	0.0	906.5	0.	0.	0.0	0.0	0.0
4	0.5	175.7	0.0	53.9	0.	0.	0.0	0.0	0.0
5	5.7	2866.1	0.0	600.1	0.	0.	0.0	0.0	0.0
6	3.0	1757.7	0.0	206.9	0.	0.	0.0	0.0	0.0
7	2.3	1183.7	0.0	71.6	0.	0.	0.0	0.0	0.0
8	5.5	1948.4	0.0	0.0	0.	0.	0.0	0.0	0.0
9	3.5	428.8	0.0	0.0	0.	0.	0.0	0.0	0.0

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	35.102	152.023
2	44.976	153.606
3	54.329	157.146
4	62.776	162.497
5	69.973	169.440
6	70.673	170.462

Circle Center At X = 32.422 ; Y = 200.723 ; and Radius = 48.773
 Factor of Safety
 *** 1.006 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	33.469	151.246
2	43.307	153.042
3	52.692	156.495
4	61.349	161.501
5	69.021	167.914
6	71.431	170.759

Circle Center At X = 28.310 ; Y = 207.966 ; and Radius = 56.954
 Factor of Safety
 *** 1.008 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	35.102	152.023
2	44.970	153.646
3	54.330	157.164
4	62.824	162.442
5	70.123	169.277
6	71.089	170.625

Circle Center At X = 32.014 ; Y = 202.109 ; and Radius = 50.181
 Factor of Safety
 *** 1.010 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	33.469	151.246
2	43.301	153.073
3	52.649	156.625
4	61.213	161.788
5	68.717	168.397
6	70.205	170.278

Circle Center At X = 28.528 ; Y = 205.754 ; and Radius = 54.731
 Factor of Safety
 *** 1.013 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	32.653	150.858
2	42.465	152.789
3	51.812	156.342
4	60.429	161.417
5	68.069	167.869
6	70.048	170.217

Circle Center At X = 26.511 ; Y = 208.519 ; and Radius = 57.988
 Factor of Safety
 *** 1.018 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	31.837	150.469
2	41.632	152.482
3	51.027	155.907
4	59.820	160.670
5	67.822	166.667
6	72.158	171.044

Circle Center At X = 23.415 ; Y = 216.770 ; and Radius = 66.834
 Factor of Safety
 *** 1.019 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	30.204	149.692
2	39.965	151.863
3	49.344	155.334
4	58.167	160.042

5 66.272 165.898
 6 71.333 170.720
 Circle Center At X = 19.445 ; Y = 221.470 ; and Radius = 72.580
 Factor of Safety
 *** 1.028 ***

Failure Surface Specified By 6 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	33.469	151.246
2	43.272	153.225
3	52.602	156.824
4	61.193	161.941
5	68.803	168.429
6	70.416	170.361

Circle Center At X = 27.014 ; Y = 208.987 ; and Radius = 58.100
 Factor of Safety
 *** 1.035 ***

Failure Surface Specified By 5 Coordinate Points

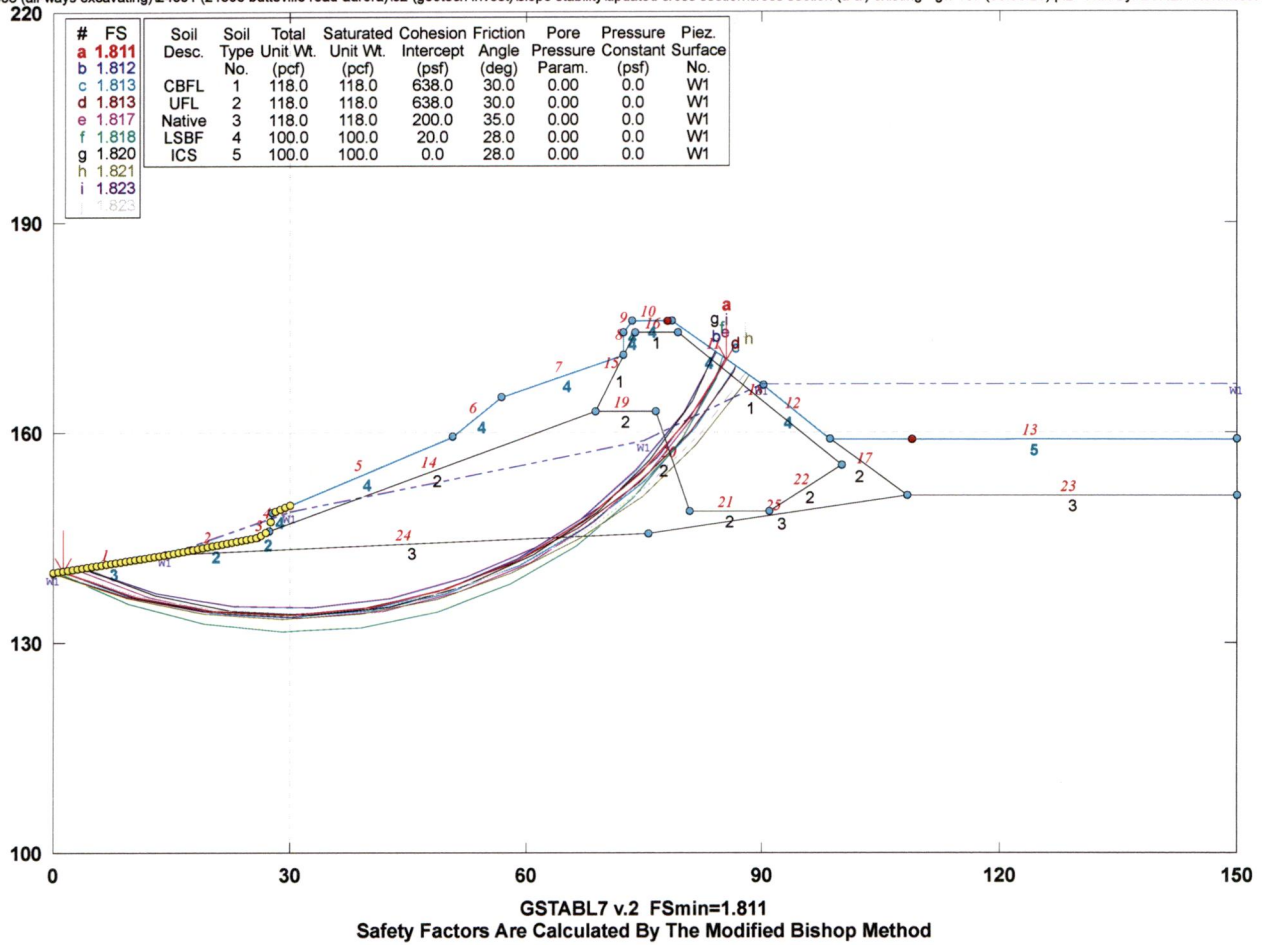
Point No.	X-Surf (ft)	Y-Surf (ft)
1	38.367	153.577
2	48.286	154.853
3	57.559	158.595
4	65.585	164.561
5	70.153	170.258

Circle Center At X = 38.364 ; Y = 192.800 ; and Radius = 39.222
 Factor of Safety
 *** 1.035 ***

**** END OF GSTABL7 OUTPUT ****

Slope Stability Existing Static - GW 167 Feet (Short-Term)

t:\enw\projects\1906 (all-ways excavating)\24001 (21595 butteville road-aurora)\02 (geotech invest)\slope stability\updated cross section\cross section (a-a') existing - gw 167 (06.05.25).pl2 Run By: EVREN Northwest 6/20/2025 0f



*** GSTABL7 ***

** GSTABL7 by Dr. Garry H. Gregory, Ph.D., P.E., D.GE **

** Original Version 1.0, January 1996; Current Ver. 2.005.2, Jan. 2011 **

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SLOPE STABILITY ANALYSIS SYSTEM

Modified Bishop, Simplified Janbu, or GLE Method of Slices.

(Includes Spencer & Morgenstern-Price Type Analysis)

Including Pier/Pile, Reinforcement, Soil Nail, Tieback,

Nonlinear Undrained Shear Strength, Curved Phi Envelope,

Anisotropic Soil, Fiber-Reinforced Soil, Boundary Loads, Water

Surfaces, Pseudo-Static & Newmark Earthquake, and Applied Forces.

Analysis Run Date: 6/20/2025

Time of Run: 09:36AM

Run By: EVREN Northwest

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eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') eOutput Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e

Unit System: English

Plotted Output Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e

PROBLEM DESCRIPTION: Slope Stability

Existing Static - GW 167 Feet

BOUNDARY COORDINATES

13 Top Boundaries

25 Total Boundaries

Boundary No.	X-Left (ft)	Y-Left (ft)	X-Right (ft)	Y-Right (ft)	Soil Type Below Bnd
1	0.00	140.00	14.20	142.50	3
2	14.20	142.50	25.90	145.00	2
3	25.90	145.00	27.40	146.00	2
4	27.40	146.00	27.70	148.50	4
5	27.70	148.50	50.60	159.40	4
6	50.60	159.40	56.75	165.00	4
7	56.75	165.00	72.30	171.10	4
8	72.30	171.10	72.40	174.25	4
9	72.40	174.25	73.50	175.90	4
10	73.50	175.90	78.50	175.90	4
11	78.50	175.90	90.10	166.70	4
12	90.10	166.70	98.70	159.00	4
13	98.70	159.00	150.00	159.00	5
14	27.40	146.00	68.90	163.00	2
15	68.90	163.00	73.90	174.30	1
16	73.90	174.30	79.30	174.30	1
17	98.70	159.00	108.29	151.00	2
18	79.30	174.30	100.20	155.25	1
19	68.90	163.00	76.50	163.00	2
20	76.50	163.00	80.90	148.75	2
21	80.90	148.75	91.00	148.75	2
22	91.00	148.75	100.20	155.25	2
23	108.29	151.00	150.00	151.00	3
24	14.20	142.50	75.60	145.50	3
25	75.60	145.50	108.29	151.00	3

User Specified Y-Origin = 100.00(ft)

Default X-Plus Value = 0.00(ft)

Default Y-Plus Value = 0.00(ft)

ISOTROPIC SOIL PARAMETERS

5 Type(s) of Soil

Soil Type	Total Unit Wt.	Saturated Unit Wt.	Cohesion Intercept	Friction Angle	Pore Pressure	Pressure Constant	Piez. Surface
No.	(pcf)	(pcf)	(psf)	(deg)	Param.	(psf)	No.
1	118.0	118.0	638.0	30.0	0.00	0.0	1
2	118.0	118.0	638.0	30.0	0.00	0.0	1
3	118.0	118.0	200.0	35.0	0.00	0.0	1
4	100.0	100.0	20.0	28.0	0.00	0.0	1
5	100.0	100.0	0.0	28.0	0.00	0.0	1

1 PIEZOMETRIC SURFACE(S) SPECIFIED

Unit Weight of Water = 62.40 (pcf)

Piezometric Surface No. 1 Specified by 6 Coordinate Points
Pore Pressure Inclination Factor = 0.50

Point No.	X-Water (ft)	Y-Water (ft)
1	0.00	140.00
2	14.20	142.50
3	30.00	148.75
4	75.00	158.89
5	90.00	167.00
6	150.00	167.00

Specified Peak Ground Acceleration Coefficient (A) = 0.300(g)

Specified Horizontal Earthquake Coefficient (kh) = 0.150(g)

Specified Vertical Earthquake Coefficient (kv) = 0.000(g)

Specified Seismic Pore-Pressure Factor = 0.000

EARTHQUAKE DATA HAS BEEN SUPPRESSED

A Critical Failure Surface Searching Method, Using A Random Technique For Generating Circular Surfaces, Has Been Specified.
5000 Trial Surfaces Have Been Generated.

100 Surface(s) Initiate(s) From Each Of 50 Points Equally Spaced

Along The Ground Surface Between X = 0.00(ft)

and X = 30.00(ft)

Each Surface Terminates Between X = 78.00(ft)

and X = 109.00(ft)

Unless Further Limitations Were Imposed, The Minimum Elevation

At Which A Surface Extends Is Y = 0.00(ft)

10.00(ft) Line Segments Define Each Trial Failure Surface.

Following Are Displayed The Ten Most Critical Of The Trial

Failure Surfaces Evaluated. They Are

Ordered - Most Critical First.

* * Safety Factors Are Calculated By The Modified Bishop Method * *

Total Number of Trial Surfaces Attempted = 5000

Number of Trial Surfaces With Valid FS = 5000

Statistical Data On All Valid FS Values:

FS Max = 5.743 FS Min = 1.811 FS Ave = 2.698

Standard Deviation = 0.587 Coefficient of Variation = 21.75 %

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.546	136.595
3	20.324	134.500
4	30.311	133.983
5	40.253	135.058
6	49.898	137.697
7	59.003	141.833
8	67.335	147.363
9	74.684	154.144
10	80.864	162.006
11	85.496	170.351

Circle Center At X = 28.553 ; Y = 196.763 ; and Radius = 62.805

Factor of Safety

*** 1.811 ***

Individual data on the 32 slices

Slice No.	Width (ft)	Weight (lbs)	Water Force		Tie Force		Earthquake Force		Surcharge Load (lbs)
			Top (lbs)	Bot (lbs)	Norm (lbs)	Tan (lbs)	Hor (lbs)	Ver (lbs)	
1	9.3	2893.8	0.0	1617.0	0.	0.	0.0	0.0	0.0
2	3.7	2576.2	0.0	1372.3	0.	0.	0.0	0.0	0.0
3	6.1	5780.0	0.0	3117.4	0.	0.	0.0	0.0	0.0
4	5.6	6611.9	295.9	3790.8	0.	0.	0.0	0.0	0.0
5	1.5	2005.0	115.7	1158.1	0.	0.	0.0	0.0	0.0
6	0.3	458.2	0.0	238.7	0.	0.	0.0	0.0	0.0
7	2.3	3966.4	0.0	1907.6	0.	0.	0.0	0.0	0.0
8	0.3	560.5	0.0	280.2	0.	0.	0.0	0.0	0.0
9	8.8	17664.3	0.0	8305.5	0.	0.	0.0	0.0	0.0
10	1.1	2454.5	0.0	1084.1	0.	0.	0.0	0.0	0.0
11	9.6	22598.0	0.0	9602.6	0.	0.	0.0	0.0	0.0
12	0.7	1721.3	0.0	725.5	0.	0.	0.0	0.0	0.0
13	6.2	15934.8	0.0	6035.0	0.	0.	0.0	0.0	0.0

14	2.3	6129.0	0.0	2065.4	0.	0.	0.0	0.0	0.0
15	4.6	12261.4	0.0	4221.2	0.	0.	0.0	0.0	0.0
16	3.7	9244.2	0.0	2858.2	0.	0.	0.0	0.0	0.0
17	1.6	3756.6	0.0	1200.1	0.	0.	0.0	0.0	0.0
18	3.4	7827.3	0.0	2119.3	0.	0.	0.0	0.0	0.0
19	0.1	240.7	0.0	52.2	0.	0.	0.0	0.0	0.0
20	1.1	2866.7	0.0	536.3	0.	0.	0.0	0.0	0.0
21	0.4	1055.0	0.0	177.7	0.	0.	0.0	0.0	0.0
22	0.8	2023.6	0.0	321.4	0.	0.	0.0	0.0	0.0
23	0.3	794.6	0.0	140.4	0.	0.	0.0	0.0	0.0
24	1.5	3567.5	0.0	509.8	0.	0.	0.0	0.0	0.0
25	0.9	1920.6	0.0	228.8	0.	0.	0.0	0.0	0.0
26	0.6	1209.1	0.0	124.1	0.	0.	0.0	0.0	0.0
27	0.5	1101.6	0.0	97.5	0.	0.	0.0	0.0	0.0
28	0.8	1499.0	0.0	106.8	0.	0.	0.0	0.0	0.0
29	1.6	2485.9	0.0	87.7	0.	0.	0.0	0.0	0.0
30	0.0	59.7	0.0	0.1	0.	0.	0.0	0.0	0.0
31	4.0	3065.3	0.0	0.0	0.	0.	0.0	0.0	0.0
32	0.6	50.9	0.0	0.0	0.	0.	0.0	0.0	0.0

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.488	136.449
3	20.247	134.268
4	30.233	133.733
5	40.169	134.858
6	49.782	137.614
7	58.806	141.922
8	66.993	147.666
9	74.115	154.685
10	79.977	162.787
11	84.225	171.360

Circle Center At X = 28.450 ; Y = 193.897 ; and Radius = 60.190

Factor of Safety

*** 1.812 ***

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.531	136.557
3	20.293	134.390
4	30.274	133.768
5	40.230	134.705
6	49.919	137.180
7	59.105	141.132
8	67.565	146.464
9	75.092	153.047
10	81.504	160.721
11	86.645	169.298
12	86.688	169.406

Circle Center At X = 29.259 ; Y = 197.843 ; and Radius = 64.084

Factor of Safety

*** 1.813 ***

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	0.000	140.000
2	9.378	136.529
3	19.170	134.498
4	29.155	133.952
5	39.110	134.903
6	48.810	137.331
7	58.040	141.181
8	66.591	146.365
9	74.271	152.769
10	80.909	160.248
11	86.356	168.635
12	86.701	169.396

Circle Center At X = 27.791 ; Y = 200.589 ; and Radius = 66.659

Factor of Safety
 *** 1.813 ***
 Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	3.061	140.539
2	12.235	136.558
3	21.951	134.192
4	31.928	133.512
5	41.875	134.536
6	51.504	137.235
7	60.534	141.530
8	68.704	147.297
9	75.776	154.368
10	81.543	162.537
11	85.325	170.487

Circle Center At X = 30.916 ; Y = 192.160 ; and Radius = 58.657

Factor of Safety
 *** 1.817 ***
 Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	0.612	140.108
2	9.553	135.629
3	19.135	132.768
4	29.068	131.610
5	39.051	132.191
6	48.783	134.492
7	57.968	138.445
8	66.330	143.930
9	73.614	150.781
10	79.602	158.790
11	84.111	167.716
12	85.022	170.728

Circle Center At X = 30.703 ; Y = 188.813 ; and Radius = 57.251

Factor of Safety
 *** 1.818 ***
 Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	3.673	140.647
2	12.862	136.701
3	22.600	134.425
4	32.585	133.886
5	42.511	135.103
6	52.071	138.037
7	60.970	142.598
8	68.934	148.646
9	75.717	155.994
10	81.110	164.415
11	84.052	171.497

Circle Center At X = 30.647 ; Y = 190.796 ; and Radius = 56.943

Factor of Safety
 *** 1.820 ***
 Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	0.000	140.000
2	9.320	136.377
3	19.072	134.161
4	29.043	133.400
5	39.018	134.111
6	48.780	136.279
7	58.118	139.857
8	66.830	144.766
9	74.727	150.901
10	81.637	158.129
11	87.412	166.293
12	88.329	168.105

Circle Center At X = 29.193 ; Y = 201.106 ; and Radius = 67.721

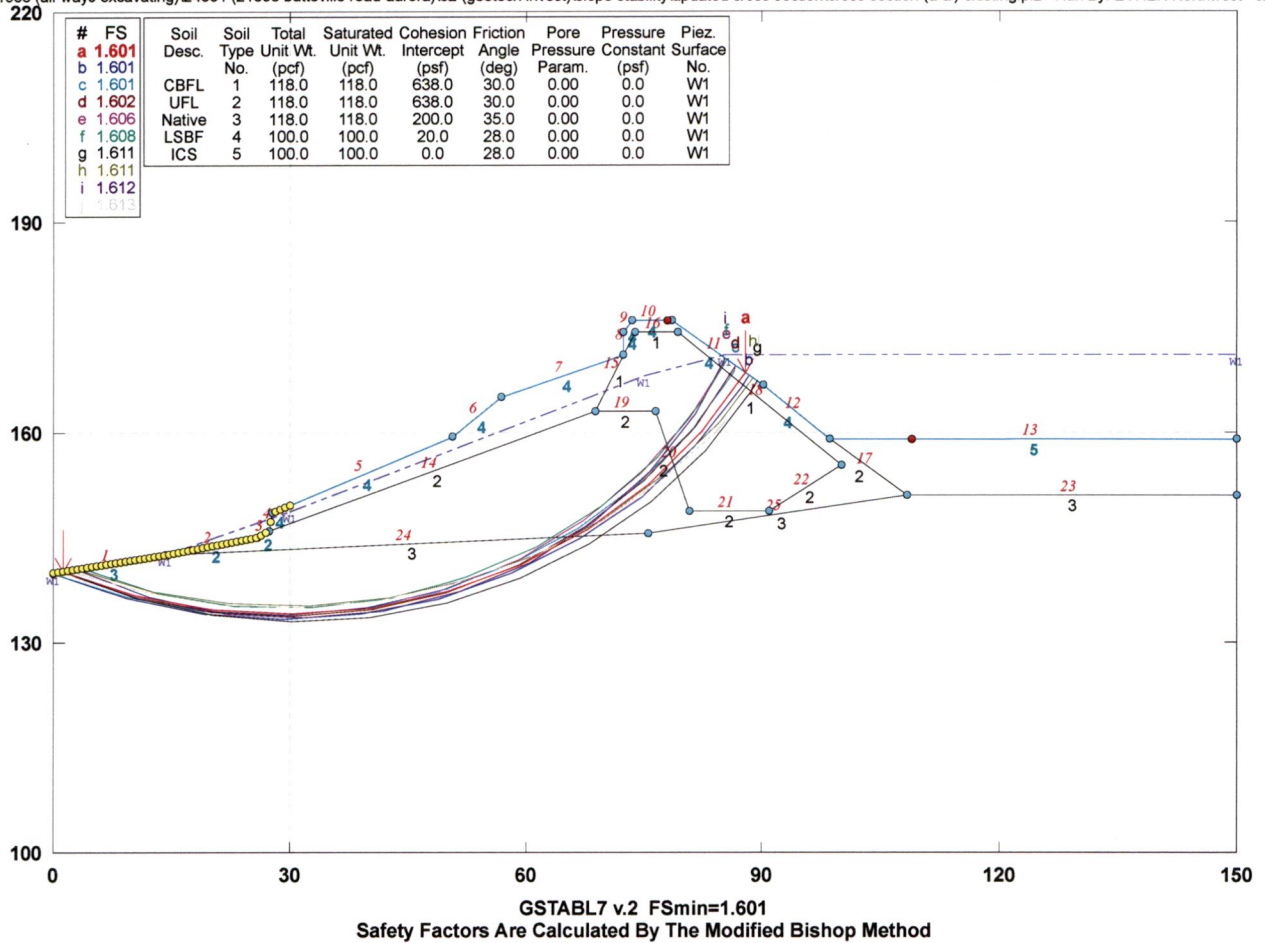
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      Factor of Safety
    *** 1.821 ***
Failure Surface Specified By 11 Coordinate Points
Point   X-Surf   Y-Surf
No.      (ft)      (ft)
  1         3.673    140.647
  2        13.066    137.215
  3        22.888    135.337
  4        32.884    135.061
  5        42.795    136.394
  6        52.363    139.302
  7        61.340    143.709
  8        69.492    149.500
  9        76.608    156.526
 10        82.503    164.604
 11        85.439    170.397
Circle Center At X = 29.594 ; Y = 197.027 ; and Radius = 62.053
      Factor of Safety
    *** 1.823 ***
Failure Surface Specified By 12 Coordinate Points
Point   X-Surf   Y-Surf
No.      (ft)      (ft)
  1         1.224    140.216
  2        10.588    136.705
  3        20.370    134.629
  4        30.352    134.032
  5        40.312    134.928
  6        50.027    137.297
  7        59.282    141.086
  8        67.868    146.212
  9        75.596    152.558
 10        82.293    159.985
 11        87.809    168.326
 12        87.874    168.465
Circle Center At X = 29.347 ; Y = 200.971 ; and Radius = 66.948
      Factor of Safety
    *** 1.823 ***
    **** END OF GSTABL7 OUTPUT ****

```

Slope Stability Existing Static - GW 171 Feet (Long Term)

t:\enw\projects\1906 (all-ways excavating)\24001 (21595 butteville road-aurora)\02 (geotech invest)\slope stability\updated cross section\cross section (a-a') existing.pl2 Run By: EVREN Northwest 6/20/2025 08



*** GSTABL7 ***

** GSTABL7 by Dr. Garry H. Gregory, Ph.D., P.E., D.GE **

** Original Version 1.0, January 1996; Current Ver. 2.005.2, Jan. 2011 **

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SLOPE STABILITY ANALYSIS SYSTEM

Modified Bishop, Simplified Janbu, or GLE Method of Slices.

(Includes Spencer & Morgenstern-Price Type Analysis)

Including Pier/Pile, Reinforcement, Soil Nail, Tieback,

Nonlinear Undrained Shear Strength, Curved Phi Envelope,

Anisotropic Soil, Fiber-Reinforced Soil, Boundary Loads, Water

Surfaces, Pseudo-Static & Newmark Earthquake, and Applied Forces.

Analysis Run Date: 6/20/2025

Time of Run: 08:47AM

Run By: EVREN Northwest

Input Data Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') eOutput Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e

Unit System: English

Plotted Output Filename: T:\ENW\Projects\1906 (All-Ways Excavating)\24001 (21595 Butt
eville Road-Aurora)\02 (Geotech Invest)\Slope Stability\Updated Cross Section\cross section (a-a') e

PROBLEM DESCRIPTION: Slope Stability

Existing Static - GW 171 Feet

BOUNDARY COORDINATES

13 Top Boundaries

25 Total Boundaries

Boundary No.	X-Left (ft)	Y-Left (ft)	X-Right (ft)	Y-Right (ft)	Soil Type Below Bnd
1	0.00	140.00	14.20	142.50	3
2	14.20	142.50	25.90	145.00	2
3	25.90	145.00	27.40	146.00	2
4	27.40	146.00	27.70	148.50	4
5	27.70	148.50	50.60	159.40	4
6	50.60	159.40	56.75	165.00	4
7	56.75	165.00	72.30	171.10	4
8	72.30	171.10	72.40	174.25	4
9	72.40	174.25	73.50	175.90	4
10	73.50	175.90	78.50	175.90	4
11	78.50	175.90	90.10	166.70	4
12	90.10	166.70	98.70	159.00	4
13	98.70	159.00	150.00	159.00	5
14	27.40	146.00	68.90	163.00	2
15	68.90	163.00	73.90	174.30	1
16	73.90	174.30	79.30	174.30	1
17	98.70	159.00	108.29	151.00	2
18	79.30	174.30	100.20	155.25	1
19	68.90	163.00	76.50	163.00	2
20	76.50	163.00	80.90	148.75	2
21	80.90	148.75	91.00	148.75	2
22	91.00	148.75	100.20	155.25	2
23	108.29	151.00	150.00	151.00	3
24	14.20	142.50	75.60	145.50	3
25	75.60	145.50	108.29	151.00	3

User Specified Y-Origin = 100.00(ft)

Default X-Plus Value = 0.00(ft)

Default Y-Plus Value = 0.00(ft)

ISOTROPIC SOIL PARAMETERS

5 Type(s) of Soil

Soil Type	Total Unit Wt.	Saturated Unit Wt.	Cohesion Intercept	Friction Angle	Pore Pressure Param.	Pressure Constant	Piez. Surface No.
No.	(pcf)	(pcf)	(psf)	(deg)		(psf)	
1	118.0	118.0	638.0	30.0	0.00	0.0	1
2	118.0	118.0	638.0	30.0	0.00	0.0	1
3	118.0	118.0	200.0	35.0	0.00	0.0	1
4	100.0	100.0	20.0	28.0	0.00	0.0	1
5	100.0	100.0	0.0	28.0	0.00	0.0	1

1 PIEZOMETRIC SURFACE(S) SPECIFIED

Unit Weight of Water = 62.40 (pcf)

Piezometric Surface No. 1 Specified by 6 Coordinate Points
Pore Pressure Inclination Factor = 0.50

Point No.	X-Water (ft)	Y-Water (ft)
1	0.00	140.00
2	14.20	142.50
3	30.00	148.75
4	75.00	168.00
5	85.30	171.00
6	150.00	171.00

Specified Peak Ground Acceleration Coefficient (A) = 0.300(g)

Specified Horizontal Earthquake Coefficient (kh) = 0.150(g)

Specified Vertical Earthquake Coefficient (kv) = 0.000(g)

Specified Seismic Pore-Pressure Factor = 0.000

EARTHQUAKE DATA HAS BEEN SUPPRESSED

A Critical Failure Surface Searching Method, Using A Random Technique For Generating Circular Surfaces, Has Been Specified.
5000 Trial Surfaces Have Been Generated.

100 Surface(s) Initiate(s) From Each Of 50 Points Equally Spaced
Along The Ground Surface Between X = 0.00(ft)
and X = 30.00(ft)

Each Surface Terminates Between X = 78.00(ft)
and X = 109.00(ft)

Unless Further Limitations Were Imposed, The Minimum Elevation
At Which A Surface Extends Is Y = 0.00(ft)

10.00(ft) Line Segments Define Each Trial Failure Surface.

Following Are Displayed The Ten Most Critical Of The Trial

Failure Surfaces Evaluated. They Are
Ordered - Most Critical First.

* * Safety Factors Are Calculated By The Modified Bishop Method * *

Total Number of Trial Surfaces Attempted = 5000

Number of Trial Surfaces With Valid FS = 5000

Statistical Data On All Valid FS Values:

FS Max = 4.033 FS Min = 1.601 FS Ave = 2.272

Standard Deviation = 0.425 Coefficient of Variation = 18.68 %

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.588	136.705
3	20.370	134.629
4	30.352	134.032
5	40.312	134.928
6	50.027	137.297
7	59.282	141.086
8	67.868	146.212
9	75.596	152.558
10	82.293	159.985
11	87.809	168.326
12	87.874	168.465

Circle Center At X = 29.347 ; Y = 200.971 ; and Radius = 66.948

Factor of Safety

*** 1.601 ***

Individual data on the 33 slices

Slice No.	Width (ft)	Weight (lbs)	Water Force		Tie Force		Earthquake Force		Surcharge Load (lbs)
			Top (lbs)	Bot (lbs)	Norm (lbs)	Tan (lbs)	Hor (lbs)	Ver (lbs)	
1	9.4	2850.0	0.0	1585.3	0.	0.	0.0	0.0	0.0
2	3.6	2497.5	0.0	1329.8	0.	0.	0.0	0.0	0.0
3	6.2	5734.0	0.0	3096.0	0.	0.	0.0	0.0	0.0
4	5.5	6489.8	297.3	3729.2	0.	0.	0.0	0.0	0.0
5	1.5	1990.7	116.3	1151.5	0.	0.	0.0	0.0	0.0
6	0.3	455.6	0.0	237.5	0.	0.	0.0	0.0	0.0
7	2.3	3949.3	0.0	1899.9	0.	0.	0.0	0.0	0.0
8	0.4	634.0	0.0	300.4	0.	0.	0.0	0.0	0.0
9	10.0	20229.8	0.0	9529.1	0.	0.	0.0	0.0	0.0
10	9.7	23115.4	0.0	11012.0	0.	0.	0.0	0.0	0.0
11	0.6	1436.3	0.0	713.3	0.	0.	0.0	0.0	0.0
12	6.2	16386.3	0.0	7685.5	0.	0.	0.0	0.0	0.0

13	2.5	7130.0	0.0	3176.3	0.	0.	0.0	0.0	0.0
14	6.6	18051.7	0.0	8686.1	0.	0.	0.0	0.0	0.0
15	2.0	5234.6	0.0	2519.9	0.	0.	0.0	0.0	0.0
16	1.0	2665.2	0.0	1424.5	0.	0.	0.0	0.0	0.0
17	1.3	3322.6	0.0	1757.0	0.	0.	0.0	0.0	0.0
18	2.1	5275.2	0.0	2717.1	0.	0.	0.0	0.0	0.0
19	0.1	265.5	0.0	126.5	0.	0.	0.0	0.0	0.0
20	1.1	3146.9	0.0	1371.7	0.	0.	0.0	0.0	0.0
21	0.4	1160.5	0.0	490.0	0.	0.	0.0	0.0	0.0
22	1.1	3120.3	0.0	1323.3	0.	0.	0.0	0.0	0.0
23	0.6	1642.5	0.0	729.8	0.	0.	0.0	0.0	0.0
24	0.9	2409.6	0.0	1233.6	0.	0.	0.0	0.0	0.0
25	2.0	4952.8	0.0	2517.6	0.	0.	0.0	0.0	0.0
26	0.2	398.5	0.0	201.9	0.	0.	0.0	0.0	0.0
27	0.6	1410.7	0.0	723.1	0.	0.	0.0	0.0	0.0
28	3.0	5502.2	0.0	3045.1	0.	0.	0.0	0.0	0.0
29	1.2	1606.0	0.0	1230.5	0.	0.	0.0	0.0	0.0
30	1.8	1662.8	0.0	1483.7	0.	0.	0.0	0.0	0.0
31	1.8	765.9	169.1	1028.9	0.	0.	0.0	0.0	0.0
32	0.7	76.3	128.3	268.6	0.	0.	0.0	0.0	0.0
33	0.1	0.6	13.0	25.0	0.	0.	0.0	0.0	0.0

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	0.000	140.000
2	9.320	136.377
3	19.072	134.161
4	29.043	133.400
5	39.018	134.111
6	48.780	136.279
7	58.118	139.857
8	66.830	144.766
9	74.727	150.901
10	81.637	158.129
11	87.412	166.293
12	88.329	168.105

Circle Center At X = 29.193 ; Y = 201.106 ; and Radius = 67.721

Factor of Safety

*** 1.601 ***

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	0.000	140.000
2	9.378	136.529
3	19.170	134.498
4	29.155	133.952
5	39.110	134.903
6	48.810	137.331
7	58.040	141.181
8	66.591	146.365
9	74.271	152.769
10	80.909	160.248
11	86.356	168.635
12	86.701	169.396

Circle Center At X = 27.791 ; Y = 200.589 ; and Radius = 66.659

Factor of Safety

*** 1.601 ***

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.531	136.557
3	20.293	134.390
4	30.274	133.768
5	40.230	134.705
6	49.919	137.180
7	59.105	141.132
8	67.565	146.464
9	75.092	153.047
10	81.504	160.721

11 86.645 169.298
 12 86.688 169.406
 Circle Center At X = 29.259 ; Y = 197.843 ; and Radius = 64.084
 Factor of Safety
 *** 1.602 ***

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.546	136.595
3	20.324	134.500
4	30.311	133.983
5	40.253	135.058
6	49.898	137.697
7	59.003	141.833
8	67.335	147.363
9	74.684	154.144
10	80.864	162.006
11	85.496	170.351

Circle Center At X = 28.553 ; Y = 196.763 ; and Radius = 62.805
 Factor of Safety
 *** 1.606 ***

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	3.673	140.647
2	13.066	137.215
3	22.888	135.337
4	32.884	135.061
5	42.795	136.394
6	52.363	139.302
7	61.340	143.709
8	69.492	149.500
9	76.608	156.526
10	82.503	164.604
11	85.439	170.397

Circle Center At X = 29.594 ; Y = 197.027 ; and Radius = 62.053
 Factor of Safety
 *** 1.608 ***

Failure Surface Specified By 12 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.224	140.216
2	10.456	136.372
3	20.160	133.955
4	30.116	133.019
5	40.100	133.586
6	49.886	135.642
7	59.254	139.142
8	67.992	144.005
9	75.902	150.123
10	82.806	157.357
11	88.549	165.543
12	89.400	167.255

Circle Center At X = 31.327 ; Y = 199.341 ; and Radius = 66.347
 Factor of Safety
 *** 1.611 ***

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	3.061	140.539
2	12.549	137.379
3	22.389	135.599
4	32.382	135.235
5	42.326	136.294
6	52.018	138.756
7	61.263	142.570
8	69.871	147.658
9	77.669	153.918
10	84.499	161.223

11 88.955 167.608
 Circle Center At X = 29.934 ; Y = 205.395 ; and Radius = 70.203
 Factor of Safety
 *** 1.611 ***

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	3.061	140.539
2	12.235	136.558
3	21.951	134.192
4	31.928	133.512
5	41.875	134.536
6	51.504	137.235
7	60.534	141.530
8	68.704	147.297
9	75.776	154.368
10	81.543	162.537
11	85.325	170.487

Circle Center At X = 30.916 ; Y = 192.160 ; and Radius = 58.657
 Factor of Safety
 *** 1.612 ***

Failure Surface Specified By 11 Coordinate Points

Point No.	X-Surf (ft)	Y-Surf (ft)
1	1.837	140.323
2	11.351	137.243
3	21.195	135.489
4	31.188	135.093
5	41.140	136.062
6	50.868	138.380
7	60.189	142.001
8	68.930	146.860
9	76.926	152.865
10	84.030	159.903
11	89.559	167.129

Circle Center At X = 29.084 ; Y = 208.250 ; and Radius = 73.188
 Factor of Safety
 *** 1.613 ***

**** END OF GSTABL7 OUTPUT ****

Page 1

FRIENDS OF THE CREEK, Petitioner,
v.
JACKSON COUNTY, Respondent, and
CITY OF ASHLAND, Intervenor-Respondent.
LUBA No. 98-158.
Oregon Land Use Board of Appeals.
August 31, 1999.

Appeal from Jackson County.

E. Michael Connors, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief was Davis Wright Tremaine.

No appearance by Jackson County.

Edward J. Sullivan, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Preston Gates and Ellis.

HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member, participated in the decision.

REMANDED.

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

FINAL OPINION AND ORDER

Page 2

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner challenges a county decision concerning the City of Ashland's proposal to apply effluent and sludge from its waste water treatment plant (WWTP) onto land zoned exclusive farm use (EFU).

MOTION TO INTERVENE

The City of Ashland (city) moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The city operates a WWTP located inside the city's urban growth boundary next to Interstate Highway 5 (I-5). The WWTP discharges treated effluent into Ashland Creek which drains into Bear Creek. The Oregon Department of Environmental Quality (DEQ) determined that Bear Creek is water-quality limited and determined that the city may no longer discharge effluent into Ashland and Bear Creeks during certain times of the year without advanced treatment. As an alternative to advanced treatment of effluent, the city purchased approximately 846 acres of EFU-zoned land located across I-5 from the WWTP. The subject property has historically been used as pasture. The city proposes to pipe both liquid effluent and sludge from the WWTP to the subject property for disposal by land application.

The effluent from the WWTP would be pumped to two effluent storage reservoirs— one with 5 day storage capacity and one with 30 day storage capacity. The effluent storage reservoirs will store effluent during times when discharge to Ashland Creek is not allowed and effluent flows from the WWTP exceed the amount of effluent that can be immediately applied to the land to irrigate crops. The two effluent storage reservoirs would occupy approximately 21 acres of the subject property.

The sludge from the WWTP would be piped to two storage lagoons. The sludge

Page 3

would be stored, thickened, and dried in the lagoons. Once the drying process is complete, the dried sludge (or biosolids) will be stockpiled and then spread and worked into the soil on the subject property.¹ The sludge drying bed would occupy approximately six acres; the sludge

stockpiling area would occupy approximately one acre.

The city's proposal includes an approximately 1,200 square foot structure for use as an office, maintenance and storage building. Other support facilities include the necessary pipelines, an access road, fencing and irrigation canal crossings. The final details of the proposed farming operation are not yet complete. The city has not yet selected a farm operator, nor has it identified the specific crops that would be raised on the subject property. The city plans to select crops that meet the city's effluent and biosolid disposal needs and that comply with various federal and state regulations. Record 41.

The city submitted an application for a conditional use permit for the disputed facility on June 9, 1998. The city and county received letters opposing the application. Thereafter, on July 24, 1998, the city withdrew its conditional use permit application and requested that the county approve DEQ's Land Use Compatibility Statement. On August 4, 1998, petitioner's representative sent a letter to the board of county commissioners (1) requesting that the land use compatibility statement not be signed, (2) stating that the proposed facility was not a permitted use in the EFU zone, and (3) objecting to any county decision approving the facility without providing "a reasonable forum to discuss their concerns." Supplemental Record 1.

In an August 25, 1998 letter to the city, the county acknowledged the city's withdrawal of its conditional use permit application. The letter and the DEQ Land Use Compatibility Statement signed by the county on August 25, 1998, both take the position that the proposed facility is both a "public utility facility necessary for public service" and a

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"farm use," and that both uses are allowed as permitted uses in the county's EFU zone. The land use compatibility statement states "[n]o review required."² Record 7. A copy of the August

25, 1998 letter was sent to petitioner's representative, and petitioner filed its notice of intent to appeal 21 days later, on September 15, 1998. This appeal followed.

JURISDICTION

As defined by ORS 197.015(10)(a), a final county decision that "concerns the * * * application" of "[a] land use regulation" is a "land use decision," unless one or more of the statutory exceptions listed in ORS 197.015(10)(b) apply. The challenged decision applies the county's land use regulations.³ However, the city argues that the challenged decision qualifies for the exception to the statutory definition of land use decision that is provided by ORS 197.015(10)(b)(A) for decisions "made under land use standards which do not require interpretation or the exercise of policy or legal judgment." See Knapp v. City of Jacksonville, 33 Or LUBA 457 (1997) (city decision to award a contract to improve a street); Fechtig v. City of Albany, 31 Or LUBA 441 (1996) (fill permit issued under clear and objective standards). The city argues that the exception provided by ORS 197.015(10)(b)(A) applies here, and the appeal therefore must be dismissed.

We agree with petitioner that the standards under which the challenged decision was made (whether the proposed facility is a "farm use," as defined by ORS 215.203 and a "utility facility necessary for public service," within the meaning of ORS 215.283(1)(d)), require "interpretation" and the exercise of "policy or legal judgment." There can be no serious question that in considering whether the challenged facility qualifies as a "utility

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facility necessary for public service" the county was required to exercise significant judgment. Applicable law requires that the county find that it is necessary to site such utility facilities on EFU-zoned land. McCaw Communications, Inc. v. Marion County, 96 Or App 552, 555-56, 773 P2d 779 (1989); Clackamas Co. Svc. Dist. No. 1 v. Clackamas County, ____ Or LUBA ____ (LUBA

No. 98-047, December 17, 1998), slip op 5-7. Such a finding involves the exercise of "policy or legal judgment." For that reason alone, the challenged decision does not qualify for the exception provided by ORS 197.015(10)(b)(A).

The county was also required to exercise "policy or legal judgment" in concluding that the proposed use qualifies as a "farm use," within the meaning of ORS 215.203. In Knee Deep Cattle Company v. Lane County, 28 Or LUBA 288, 302-03 (1994), aff'd 133 Or App 120, 890 P2d 449 (1995), we reviewed a determination in a land use compatibility statement that a wastewater treatment facility is properly viewed as incidental to the permitted use it serves, rather than as a separately regulated use. We concluded that decision involved enough discretion that the exception provided by ORS 197.015(10)(b)(A) did not apply. The decision in this case that the proposed facility constitutes farm use involves the exercise of similar policy or legal judgment. See also Flowers v. Klamath County, 98 Or App 384, 780 P2d 227 (1989) (whether medical waste incinerator is allowed as a "scrap operation"); Hollywood Neigh. Assoc. v. City of Portland, 22 Or LUBA 789 (1991) (decision that methadone dispensing facility qualifies as a "medical clinic"); Kunkel v. Washington County, 16 Or LUBA 407, 413 (1988) (decision that emergency disposal site for dead animals is a farm use).

Before turning to petitioner's assignments of error we note that the city includes the following arguments in contending that LUBA lacks jurisdiction over this matter:

"If petitioner is correct, every farm use decision will require notice and hearing. If that be the case, the definition of 'residential' or 'single family' or 'six feet in height' are inexact and ambiguous, because they are subject to differing views of policy or judgment or interpretation. If that be so, every decision at the planning counter is a 'land use decision' which requires notice

and an opportunity to be heard. The exclusion in ORS [197.015(10)(b)] would then be so narrow as to be meaningless. * * *" Intervenor-Respondent's Brief 10-11.

The city repeats and elaborates on this theme in its arguments responding to the second assignment of error.

The frequency with which the jurisdictional issue presented in this appeal is repeated in other appeals filed with LUBA confirms that some local governments believe the exception to the statutory definition of land use decision for ministerial decisions under ORS 197.015(10)(b)(A) is broader than it actually is. See e.g. Thompson v. City of St. Helens, 30 Or LUBA 339, 343 (1996) (lot line adjustment); Warren v. City of Aurora, 23 Or LUBA 507, 510 (1992) (final subdivision plat approval); Von Lubken v. Hood River County, 20 Or LUBA 208, 212 (1990) (county administrator's determination concerning the availability of an appeal to the board of county commissioners); Komning v. Grant County, 20 Or LUBA 481, 491 (1990) (determination whether dwelling is permitted outright in the EFU zone and "accessory" to an underlying nonconforming use). LUBA observed some time ago that there are certain inherent problems in determining the scope of the exception created by ORS 197.015(10)(b)(A). See Kirpal Light Satsang v. Douglas County, 18 Or LUBA 651, 664 n 15 (1990) (discussing the problems involved in having jurisdictional and procedural questions turn on post-decision review to determine whether particular decisions involve the exercise of discretion).

However, the city somewhat overstates the consequence of our conclusion here that the decision challenged in this appeal does not qualify for the ministerial decision exception in ORS 197.015(10)(b)(A). In many cases it will be obvious that a proposed use is or is not a farm use, and no exercise of "policy or legal judgment" will be required to make that determination.⁴ Similarly, whether a proposed use is "residential" or "single family" or

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whether a height limit is met will generally not involve the exercise of legal or policy judgment and can be made administratively and without notice and an opportunity for a hearing. More fundamentally, unless a local government issues a written decision that approves an activity regulated by a comprehensive plan or land use regulation, there likely is no land use decision subject to LUBA review. OAR 661-010-0010(3); Friends of Clean Living v. Polk County, ___ Or LUBA ___ (LUBA Nos. 98-150, 98-162, and 98-177, August 31, 1999), slip op 12. We seriously doubt that many of the activities noted in the city's brief, if any (see n 4), require written approval from the county. However, in cases such as this one, where there is a final written decision and the proposal is such that the county is required to exercise "policy or legal judgment" in determining whether the proposal qualifies as a "farm use," the challenged decision is a land use decision subject to our review. Further, as we explain later in this decision, discretionary decisions such as the one challenged in this appeal may constitute a "permit," as that term is defined by ORS 215.402(4), with attendant requirements for notice and an opportunity for a local hearing.⁵ Kirpal Light Satsang, 18 Or LUBA at 664 n 15.

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The challenged decision is a land use decision subject to our review jurisdiction.

STANDING

The city challenges petitioner's standing. The city contends that petitioner's August 4, 1998 letter was inadequate to constitute a local appearance challenging the land use compatibility statement approval.⁶ The letter filed on behalf of petitioner by its representative, makes it clear that petitioner does not agree that the proposal may be allowed as a permitted use in the EFU zone and opposes approval of the land use compatibility statement without providing a local hearing to consider the matter. The letter also

states that if the land use compatibility statement is approved "it may result in yet another legal challenge to this particular project * * *." Supp Rec 1. The letter is clearly adequate to constitute a local appearance and, for that reason alone, petitioner has standing to bring this appeal.

Finally, to the extent the city argues we may not find that petitioner has standing in this appeal based on the August 4, 1998 letter, because the portion of the petition for review addressing standing fails to allege that petitioner appeared below or that the August 4, 1998 letter constitutes an appearance, we reject the argument. Our rules simply require that the petition for review "[s]tate the facts that establish petitioner's standing." OAR 661-010-0030(4)(a).

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Our rules do not require that such allegations of fact appear in any particular form or any particular portion of the petition for review. Freels v. Wallowa County, 17 Or LUBA 137, 140 (1988); cf. Schatz v. City of Jacksonville, 21 Or LUBA 214 (1991) (allegations of standing in reply to motion to dismiss). As petitioner points out, the statement of facts that establishes that petitioner appeared below and therefore has standing appear on page 8 of the petition for review.

FIRST ASSIGNMENT OF ERROR

Petitioner argues the county erred by failing to provide notice and an opportunity for a hearing in making its decision that the proposed WWTP expansion is a permitted use in the EFU zone.

A. Preliminary Issue

The city points out that the only legal requirement expressly cited under the first assignment of error as support for petitioner's argument that the county was required to provide notice and an opportunity for a hearing in this matter is OAR 660-033-0120(1). That administrative rule identifies uses that are "allowed" and uses that "may be approved, after

required review" in EFU zones. With regard to "allowed" uses, the rule explains:

"Authorization of some [allowed] uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. * * *"

The above-quoted language from the rule at least suggests that the criterion that determines whether authorization of particular uses in the EFU zone requires notice and the opportunity for a hearing is whether the decision authorizing the use is a "land use decision."

The city argues that OAR 660-033-0120(1) does not itself require notice and a hearing when particular permitted uses are allowed in the EFU zone. Rather, according to the city, the rule simply points out that notice and hearing may be required for some uses because they are land use decisions. As the city correctly notes, there is nothing in the definition of "land use decision" at ORS 197.015(10), or elsewhere as far as we know, that

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requires that all land use decisions require notice and an opportunity for a hearing. The relevant statutory requirement that counties provide notice and an opportunity for a hearing appears at ORS 215.402 to 215.428 and applies to "permits," as that term is defined and limited by ORS 215.402(4). The city argues that because petitioner neither cites these statutory provisions nor alleges that the challenged decision is a "permit," within the meaning of ORS 215.402(4), we should deny the first assignment of error.

We decline to read the first assignment of error as narrowly as the city argues we should. Petitioner's failure to cite ORS 215.402 to 215.428 as authority for its position that the challenged decision required notice and an opportunity for a hearing does not require that we reject the assignment of error. It is clear from its brief that the city is aware that ORS 215.402 to 215.428 require notice and an opportunity for a

hearing for land use decisions that constitute "permits" under ORS 215.402(4). Indeed, the city argues in its brief that the challenged decision does not constitute a "permit" decision, within the meaning of ORS 215.402(4). Intervenor-Respondent's Brief 14. Petitioner and the city presented additional argument on the question of whether the challenged decision constitutes a "permit" at oral argument in this matter. In this circumstance, although the question is a close one, we believe it is appropriate to consider whether the city was required by ORS 215.402 to 215.428 to provide notice and an opportunity for a hearing in this matter. See Hilliard v. Lane County Commrs., 51 Or App 587, 595, 626 P2d 905 (1981) (LUBA may not invoke "technical requirements of pleading having no statutory basis").

B. The Challenged Decision is a Permit that Requires Notice and an Opportunity for a Hearing

The statutory definition of "permit" is set forth above at n 5. The challenged decision is a permit if it involves "discretionary approval of a proposed development of land" under the statutes authorizing county land use planning or under county regulations adopted to implement those statutes. The proposal includes the construction of effluent and sludge lagoons, an office/maintenance/storage structure, pipes and certain other improvements

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necessary to irrigate crops with effluent and add biosolids to the land. The proposal clearly is a "proposed development of land," within the meaning of ORS 215.402(4). For the reasons set forth in our discussion of jurisdiction above, the challenged decision also is "discretionary." Therefore, the challenged decision is a "permit," as ORS 215.402(4) defines that term, and notice and an opportunity for a hearing are required under ORS 215.416. The county's failure to do so constitutes procedural error. Under ORS 197.835(9)(a)(B) LUBA will reverse or remand a land use decision where a local government "[f]ailed to follow the procedures applicable to the

matter before it in a manner that prejudiced the substantial rights of the petitioner." As we explained in Muller v. Polk County, 16 Or LUBA 771, 775 (1988):

"Under ORS 197.835[(9)(a)(B)] * * * the 'substantial rights' of parties that may be prejudiced by failure to observe applicable procedures are the rights to an adequate opportunity to prepare and submit their case and a full and fair hearing."

Petitioner argues the county's failure to provide notice and an opportunity for a hearing prejudiced its substantial rights because the petitioner was thereby cut out of the decision making process entirely and prevented from presenting its views concerning a number of factual issues that it argues have a bearing on whether the proposal qualifies as a "farm use." We agree with petitioner. Friends of Clean Living, slip op at 13.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

The challenged decision includes the following discussion concerning the disputed facility:

"Jackson County Land Development Ordinance Chapter 218.030(12) and ORS 215.283(1)(d) allow for utility facilities necessary for public service in the Exclusive Farm Use zoning district as a permitted use. Statewide Planning Goal 3, and OAR 660-033-0120 state that farm uses are also allowed in an Exclusive Farm Use zoning district.

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"Your statement of intent on the Land Use Compatibility Statement clarifies that this utility facility is necessary for public service and will provide for agricultural use of the Exclusive Farm Use zoned land. Pasture grasses, hay, alfalfa and other crops are to be irrigated with treated effluent from the WWTP, and soil will be

enhanced through application of biosolids. All water and biosolids transported to or stored on the site will be applied for the purposes of enhancing agricultural production. The effluent will be stored in ponds on the site and then sprayed on the site. The biosolids will be stored in lagoons, air dried then land applied through tilling practices. The property will be farmed to ensure effective use of the effluent as irrigation water and efficient use of biosolids as fertilizer and soil amendment.

"We find this proposal to be in compliance with State Law and Jackson County land use regulations." Record 5.

Petitioner concedes that "farm use" and "utility facilities necessary for public service" are permitted uses in the EFU zone. ORS 215.203(1); 215.283(1)(d). However, petitioner argues that the facility that is proposed by the city in this case is neither a "farm use" nor a "utility facility necessary for public service," as a matter of law. Accordingly, petitioner argues we should reverse the county's decision rather than simply remand the decision to the county to provide the opportunity for a local hearing that is required by statute. OAR 661-010-0071(1)(c); Younger v. Jackson County, 32 Or LUBA 177, 181 (1996); McKay Creek Valley Assoc. v. Washington County, 23 Or LUBA 85, 90, aff'd 114 Or App 95, 834 P2d 482, adhered to as modified 116 Or App 299, 841 P2d 651 (1992), rev den 317 Or 396 (1993).

A. Farm Use

Petitioner argues the proposed facility does not constitute a farm use for three reasons. First, petitioner argues the primary purpose of the proposed facility is to serve urban needs, not to obtain "a profit in money" by engaging in farming activities.⁷ Second,

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petitioner argues the storage and processing facilities need not be located on the subject EFU-zoned property and do not themselves increase

agricultural productivity. Third, petitioner argues that because the effluent and sludge is produced off-site, storage and processing of the effluent and sludge cannot constitute a farm use under our decision in J and D Fertilizers v. Clackamas County, 20 Or LUBA 44, aff'd 105 Or App 11, 803 P2d 280 (1990). We address each of petitioner's points separately below.

1. Primary Purpose is to Serve Urban Needs

It is undisputed that the city's primary motivation in proposing to pipe both the effluent and the sludge to the subject property and then applying that effluent and sludge to the land is to avoid the cost that would otherwise be incurred to dispose of that effluent and sludge in other ways. The production of crops on the subject property is a means to that end, rather than the end itself. The question then is whether the primary motivation of a particular land owner, in and of itself, necessarily makes a use that would otherwise qualify as a "farm use," as that term is defined by ORS 215.203(2)(a), something other than a farm use.

Petitioner's argument is based entirely on the following language in 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 * * *."

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Petitioner argues we must treat the city's undisputed primary motivation in this matter as being the "primary purpose" for the use of the subject property, with the result that the proposed use of the subject property is not a "farm use."

There are at least two problems with petitioner's argument. First, we do not believe the legislature intended, by requiring that the land be currently employed "for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops" to require an inquiry into the primary actual motivation of particular land

owners. Such an inquiry could easily have the anomalous result of having a farm that is indistinguishable from its neighbor fall outside the ORS 215.203(2)(a) definition of farm use, simply because its owner happened to be primarily motivated by something other than the monetary return that is realized from selling the crops that are raised on the property.⁸ Although we need not and do not attempt to determine here the precise meaning of that statutory language, we reject petitioner's interpretation.

The second problem with petitioner's argument is that it does not consider subsection (b) of ORS 215.203(2). As relevant, ORS 215.203(2)(b) provides:

"'Current employment' of land for farm use includes:

"* * * * *

"(F) [L]and under buildings supporting accepted farm practices * * * [.]"

In a case with many similarities to the present case, LUBA relied on the language in ORS 215.203(2)(b)(F) to conclude that a proposal to apply effluent on EFU-zoned land constituted a farm use. Swenson v. DEQ, 9 Or LUBA 10 (1983).

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In Swenson, the applicant proposed to (1) pipe effluent from a cannery to a 20 acre holding pond on EFU-zoned property, (2) treat the effluent at the holding pond, and (3) spray irrigate that treated effluent on a 9.87 acre farm. We pointed out that the purpose of the project in Swenson was to dispose of wastewater rather than to make a profit on the irrigated crops. Id. at 17. Nevertheless we concluded the proposal constituted a farm use, because "[t]he land occupied by the irrigation equipment can be considered land in current employment for farm use in the same way that 'land under buildings supporting accepted farm practices' is land in farm use." Id. at 17-18. In reaching that conclusion we stated that irrigation was an

accepted farming practice and the source of the irrigation water is irrelevant.

The only apparent significant factual difference between Swenson and the present appeal is the part of the current proposal to dry and apply sludge to the land. However, just as irrigation is indisputably an accepted farming practice, it seems equally obvious that fertilizing and taking other appropriate actions to improve the productivity of the soil is also an accepted farming practice.⁹

We reject petitioner's argument that the city's primary motive in this case for applying effluent and biosolids to the subject property is such that, as a matter of law, the proposal cannot be viewed as a farm use.

2. Storage, Distribution and Processing Facilities

We next turn to the question of whether the facilities that will be used to irrigate the crops and add biosolids to the soil cannot properly be considered farm uses.

The disputed facilities include the pipes needed to transfer the effluent and sludge, the effluent reservoir, the sewage lagoon, and the on-site storage, maintenance and office structure. It is certainly possible that all of these facilities fall within the express provisions

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ORS 215.203(2)(a) for "on-site * * * equipment and facilities used for [farm use]." See n 7. Moreover, the facilities in this appeal do not appear to be materially different than the facilities that we found to qualify as a farm use in Swenson, based on ORS 215.203(2)(b)(F).

Petitioner makes two additional arguments that we address briefly. First, petitioner argues that some of the proposed facilities such as the sludge lagoon need not be located on the subject property. The fact that it might be possible to locate some of the facilities off the subject

property and outside the EFU zone is not determinative. ORS 215.203(2)(a) expressly permits "on-site * * * equipment and facilities" used for "farm use." Even if that statute implicitly requires that such equipment and facilities have some minimal connection with farm use, the facilities proposed by the city certainly appear to be closely connected with the proposed irrigation and crop growing activities. Finally, we note that petitioner points out that the reservoirs are sized more to accommodate the needs of the WWTP to dispose of effluent than the needs of the agricultural operation on the subject property for effluent for irrigation purposes. However, we see no reason why the particular requirements of a provider of water or effluent for irrigation cannot be considered in sizing irrigation storage facilities on farm property.¹⁰ Swenson, 9 Or LUBA at 18-19.

We reject petitioner's argument that the proposed storage, distribution and processing facilities cannot, as a matter of law, qualify as a farm use.

3. Effluent and Sludge Produced Off-Site

Petitioner argues that because all of the effluent and sludge is produced off-site, the disputed proposal cannot constitute a farm use under the reasoning in our decision in J and D Fertilizers. In J and D Fertilizers, we considered whether a facility that received chicken

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manure from off-site and stockpiled that material on the subject property until it could be transferred to a fertilizer facility on another site for processing was a farm use under ORS 215.203(2)(a). The language of ORS 215.203(2)(a) (1989) that was at issue in that case provided "[f]arm use includes the preparation and storage of products raised on such land for * * * disposal by marketing or otherwise." None of the chicken manure was produced on the subject property in J and D Fertilizers, and none of the processed fertilizer was used on the subject property.

J and D Fertilizers is inapposite for at least two reasons. First, because the effluent and sludge will be processed on-site and used on-site, the facts in this case are materially different. Second, here the county is not relying on the same statutory language that was at issue in J and D Fertilizers. There is nothing in our opinion in J and D Fertilizers that would require the county to conclude, as a matter of law, that the proposed facility is not a farm use.

B. Utility Facility Necessary for Public Service

Under McCaw Communications, Inc., 96 Or App at 556, applicants for "utility facilities necessary for public service" in EFU zones, under ORS 215.283(1)(d),

"must establish and the county must find that it is necessary to situate the facility in the agricultural zone in order for the service to be provided."

OAR 660-033-0130(16) codifies the Court of Appeals holding in McCaw Communications, Inc.¹¹ We recently discussed the requirements for citing utility facilities necessary for public service on EFU zones in Clackamas Co. Svc. Dist. No. 1 v. Clackamas County.¹²

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The challenged decision simply concludes the proposed facility constitutes a utility facility necessary for public service, but does not include findings addressing considerations that must be addressed under ORS 215.283(1)(d), as that statute has been interpreted in McCaw Communications, Inc. and OAR 660-033-0130(16). We do not agree with the city that we can determine on this record that these considerations are satisfied in this case. However, neither do we agree with petitioner that we can determine from the challenged decision and record, as a matter of law, that the proposal could not be approved as a utility facility necessary for public service in an EFU zone. The parties dispute the relevant facts that would be necessary to determine whether the proposed facility could be

approved as a utility facility necessary for public service.

The second assignment of error is denied.

CONCLUSION

Because we conclude that the challenged decision constitutes a "permit," as that term is defined by ORS 215.402(4), and the county failed to provide the notice and opportunity for hearing that is required by ORS 215.416, the challenged decision must be remanded so that the county can provide the required notice and opportunity for hearing. However, we reject petitioners arguments under the second assignment of error that the proposed facility cannot, as a matter of law, be approved as a "farm use" or a "utility facility necessary for public service."

The county's decision is remanded.

Notes:

1. Biosolids are sewage solids that have been processed to meet U.S. Environmental Protection Agency standards.

2. We understand this statement to mean that the county takes the position that no hearing or right to request a local hearing is provided under the county's land use regulations.

3. Although the county has adopted land use regulations that parallel the statutory EFU requirements, we cite the statutory provisions in this opinion rather than the county land use regulation provisions. See Kenagy v. Benton County, 112 Or App 17, 20 n 2, 826 P2d 1047 (1992)(county may not apply ordinance criteria that are inconsistent with the statutory EFU zone criteria).

4. The examples given in the city's brief are illustrative:

"The practice in Oregon is not to require notice and hearing each time a farmer wishes to

build a barn, fertilize a field, construct an animal waste lagoon or put cattle on the back forty acres. These practices sufficiently fall within the definition of 'farm use' to avoid notice and hearing requirements." Intervenor-Respondent's Brief 19-20 (footnote omitted).

5. ORS 215.402(4) defines "permit" as follows:

"'Permit' means discretionary approval of a proposed development of land under ORS 215.010 to 215.293, 215.317 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto. 'Permit' does not include:

"(a) A limited land use decision as defined in ORS 197.015;

"(b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;

"(c) A decision which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

"(d) An action under ORS 197.360(1)."

We consider whether the challenged decision constitutes a "permit," as that term is defined by ORS 215.402(4) below in our discussion of the first assignment of error.

6. Under ORS 197.830(2):

"[A] person may petition [LUBA] for review of a land use decision or limited land use decision if the person:

"(a) Filed a notice of intent to appeal the decision * * *; and

"(b) Appeared before the local government, special district or state agency orally or in writing."

7. The statutory definition of farm use begins with the following:

"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 lessons, training clinics and schooling shows. 'Farm use' also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. 'Farm use' includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. * * *" (Emphasis added.) ORS 215.203(2)(a).

This lengthy definition of "farm use" is followed by ORS 215.203(2)(b) which sets out a number of examples of "'current employment' of land for farm use * * *." We discuss one of those examples later in this opinion.

8. An example of such a farm would include a farm operation that is marginally profitable, where the farmer continues the farming operation primarily because the farmer is dedicated to continuing the family farm. Such a farmer's primary reason for continuing the farm might have little to do with the profit realized from the farm. Under petitioner's argument, such a farm would not constitute farm use while the next door

neighbor's identical farm would constitute a farm use, if the next door neighbor was primarily motivated by the profit derived from the farm.

9. The record includes two studies discussing the use of biosolids and effluent on crops. Record 116-47.

10. For example, we do not understand petitioner to argue that a farmer who needs irrigation water in the summer months could not construct a reservoir on the farm to receive water when it is more abundant in the winter. By analogy, in this case, the effluent that may be used for irrigation is simply more abundant at particular times of the year. We need not consider here whether a reservoir that is significantly out of scale with and bears no reasonable relationship to the needs of the farm where it is located could be considered "facilities used for" "farm use," within the meaning of ORS 215.203(2)(a).

11. OAR 660-033-0130(16) provides:

"A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided."

12. We note that Oregon Laws 1999, chapter 816, sections 1-3 adopt new statutory requirements for siting utility facilities necessary for public service in EFU zones. These new statutory requirements become effective October 23, 1999.

1 BEFORE THE LAND USE BOARD OF APPEALS.

2 OF THE STATE OF OREGON

3 CHESTER A. SWENSON and)
4 DELLA I. SWENSON, husband)
5 and wife,)

6 Petitioners,)

7 v.)

8 DEPARTMENT OF ENVIRONMENTAL)
9 QUALITY OF THE STATE OF)
10 OREGON, an Agency of the)
11 State of Oregon,)

12 Respondent.)

LUBA NO. 83-032

FINAL OPINION
AND ORDER

13 Appeal from Department of Environmental Quality.

14 Michael E. Farthing, Eugene, filed a petition for review
15 and argued the cause for Petitioners. With him on the brief
16 were Husk, Gleaves, Swearingen, Larsen & Potter.

17 John I. Mehringer, Eugene, filed a petition for Review and
18 argued the cause for Participants Barnes, Bohanon, Bowder,
19 Donaldson, Elliott, Gray, Humphrey, Jaquenod, Lund, Marker,
20 Neely and Simmons.

21 Timothy J. Sercombe, Eugene, filed a brief and argued the
22 cause for Participant City of Eugene. With him on the brief
23 were Harrang, Swanson, Long & Watkinson.

24 Michael B. Huston, Salem, filed an brief and argued the
25 cause for Respondent DEQ.

26 Bagg, Board Member.

 Affirmed. 9/6/83

 You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioners appeal issuance of a water pollution control
4 facilities permit by the Department of Environmental Quality,
5 State of Oregon. Petitioners ask the Board to remand the
6 permit.

7 FACTS

8 In November, 1982, the Metropolitan Wastewater Management
9 Commission (hereinafter MWMC), and the cities of Eugene and
10 Springfield applied to the Department of Environmental Quality
11 (hereinafter DEQ) for a water pollution control facilities
12 permit. The permit allows the construction and operation of a
13 facility to dispose of wastewater from a commercial cannery,
14 Agripac, in the City of Eugene. The system will transport
15 effluent from the Agripac cannery to the project site where the
16 effluent will be treated (aireated) in a 20 acre holding pond
17 and disposed of through spray irrigation.

18 Notice of public hearing was mailed by DEQ on December 22,
19 1982 for a hearing to be held at the Lane County Conference
20 Center on January 25, 1983. Petitioners appeared at the
21 hearing and testified. Petitioners also submitted written
22 comments on February 8, 1983.

23 On March 4, 1983, DEQ issued the requested permit. This
24 appeal followed.

25 ASSIGNMENT OF ERROR NO. 1

26 "DEQ failed to follow the procedure applicable to the

1 matter before it and thereby prejudiced the
substantial rights of the petitioners in that:

2 "(1) DEQ ignored objections to Lane County's bias and
3 interest.

4 In this first subassignment of error, petitioners allege
5 Lane County was an interested party and wanted, as much as
6 MWMC, to have the Agripac project completed. Lane County could
7 not conduct an impartial review of the land use issues,
8 according to petitioners. The findings of fact made by Lane
9 County and relied upon by the Department of Environmental
10 Quality are, therefore, suspect. Petitioners conclude DEQ
11 should not rely on a county determination of LCDC goal
12 compliance or a county determination that the proposed use was
13 indeed a farm use when the processes used to arrive at such
14 conclusions were flawed.

15 Petitioners also allege DEQ failed to seek a "compatibility
16 determination" from LCDC. According to petitioners, under a
17 DEQ agreement with LCDC made in November, 1982, DEQ is allowed
18 to petition LCDC for a determination of compatibility with
19 statewide land use planning goals where it appears the proposal
20 will have "a major impact requiring a state determination of
21 compatibility in addition to the local statement." Swenson
22 Petition for Review at 16. The Board understands this
23 contractual provision to be entirely within the discretion of
24 DEQ. Ibid.

25 In the second part of this assignment of error, petitioners
26 allege:

1 "(2) DEQ relied on and adopted for its own, Lane
2 County's compatibility statement, including Lane
3 County's findings and conclusions, and therefore DEQ
 is responsible for the procedural errors of Lane
 County."

4 Petitioners claim DEQ's reliance on Lane County's findings
5 and conclusions of statewide goal compliance suffered from
6 "serious procedural errors" and, therefore, should not be used
7 by DEQ. Petitioners allege they were deprived of fair notice
8 and a public hearing in the Lane County process producing the
9 findings, and petitioners further allege that Lane County
10 violated its own zoning code in review of the Agripac
11 application. Of particular interest to petitioners was a Lane
12 County Board of Commissioners interlocutory interpretation of
13 its zoning code. In that interpretation, the commissioners
14 found that the proposed project was a "farm use" under
15 applicable county criteria. ORS 215.203(2) and LCDC Goal 3,
16 Agricultural Lands.

17 Included in petitioners' complaints about the interlocutory
18 order is the complaint that there was no hearing to consider
19 argument upon the issue, inadequate notice to interested
20 persons and no notice of the final determination that the use
21 was indeed a farm use. Petitioners close with the following
22 charge:

23 "To the extent that Lane County short-circuited
24 Petitioners' right to a fair hearing on the ultimate
25 question of the Agripac Project's compatibility with
26 State land use requirements, DEQ is responsible for
 the procedural errors of its agent Lane County.
 Consequently, the WPCF Permit No. 3653, which was
 issued thereon, is tainted in that Petitioners' rights

1 were substantially prejudiced in the very process that
2 resulted in the subject land use decision." Petition
for Review at 25-26.

3 Respondent DEQ makes two alternative arguments. First, DEQ
4 argues that under the state permit consistency rule, OAR ch
5 660, Div. 31, DEQ was correct in relying on Lane County's
6 determination of compliance with statewide planning goals.
7 Specifically, OAR 660-31-020(1) permits DEQ to rely on Lane
8 County's findings of goal compliance when DEQ issues a Class B
9 permit. The permit at issue here is a Class B permit. See OAR
10 660-31-010 and 660-31-020.¹

11 DEQ denies that by adopting Lane County's findings about
12 project compliance with the goals, it became responsible for
13 procedural errors committed by the county. DEQ is allowed by
14 law to rely on the local government for findings of goal
15 compliance and that reliance does not mean local procedural
16 errors became DEQ errors, according to DEQ.

17 Respondent concludes its reliance on Lane County's findings
18 fulfilled the requirement under ORS 197.180(1) that state
19 agencies take actions affecting land use in compliance with
20 statewide goals.

21 In the alternative, DEQ argues the procedural errors
22 alleged by petitioners are no longer extant because DEQ
23 conducted its own hearing and made its own determination that
24 the Agripac project complied with statewide planning goals.
25 DEQ says any errors that may have occurred in Lane County are
26 cured. DEQ points out that petitioners had an opportunity for

1 a full hearing before DEQ and took advantage of that
2 opportunity by appearing and presenting evidence. Record 53-38
3 through 53-58.

4 The Board does not believe it need reach the question of
5 whether reliance on findings of fact produced in a potentially
6 flawed proceeding below is fatal to the issuance of this
7 permit. The record in this case shows DEQ to have conducted
8 its own proceeding to determine whether or not the use complied
9 with statewide planning goals. In doing so, the issuer of the
10 permit, Bill Young, Director of DEQ, stated in a memo to MWMC
11 permit files that he reviewed testimony, considered the
12 evidence and found as follows:

13 "In this case, to avoid any possible delay which may
14 result from statutory changes, rule changes or
15 litigation of the validity of this rule [state permit
16 consistency rule], the Department has determined that
17 the Lane County Board of Commissioners' findings are
18 persuasive and adopt them as a determination of the
19 land use compatibility of the proposed project." Record
20 9.

21 The Board recognizes this statement is included in a memo
22 to the permit file and is not part of the permit itself.
23 However, on the face of the permit the following statement
24 appears:

25 "The determination to issue this permit is based on
26 findings and technical information included in the
27 permit record." Record 3.

28 The permit is signed by Mr. Young, Director of DEQ, and dated
29 March 4. The memo to the file is also dated March 4. The
30 Board believes these references are sufficiently clear to

1 announce to any reader that the memo in the file entitled "Land
2 Use Compatibility of Proposed MPMC Seasonal Industrial Waste
3 Facility" represents at least a part of the "findings and
4 technical information" upon which the permit issuance was based.

5 As to the matter of alleged procedural errors in
6 proceedings before Lane County, the Board believes where
7 petitioners had full opportunity to discuss the merits of
8 statewide goal compliance in a hearing before DEQ, any error
9 that may have occurred in Lane County's procedure no longer has
10 any effect in this proceeding and does not result in any
11 deprivation of petitioners' rights. See Casey v. Dayton, 5 Or
12 LUBA 96 (1982). The Board notes there is no allegation the
13 petitioners were not afforded due process of law in the
14 proceedings before DEQ.

15 Assignment of error no. 1 is denied.

16 ASSIGNMENT OF ERROR NO. 2

17 "DEQ improperly construed the applicable law in that
18 the Agripac project does not qualify as a 'farm use'."

19 Petitioner alleges Goal 3 requires specific compliance with
20 ORS Ch 215 in that the goal requires agricultural lands be
21 preserved and maintained for farm use; and, "farm use" means:

22 "* * * the current employment of land for the primary
23 purpose of obtaining a profit in money by raising,
24 harvesting, and selling crops or * * * 'Farm use'
25 includes the preparation and storage of the products
26 raised on such land for human use and animal use and
disposal by marketing or otherwise." ORS
215.203(2)(a).

1 Petitioners argue Lane County's characterization of the project
2 as compatible with the above definition of farm use is wrong
3 because there is nothing in the record to show the primary
4 purpose of the project is to make a profit at farming.
5 Petitioners concede the disposal facility may be an incidental
6 farming activity in that it provides irrigation for a grass
7 crop. However, petitioners assert this incidental activity
8 does not amount to the "primary purpose" requirement in ORS
9 215.203(2)(a).

10 The Board understands the petitioners to argue that MWMC is
11 an intergovernmental commission with a purpose to design,
12 construct, operate and maintain a regional sewage system. The
13 purpose of such a commission is not to engage in farm use for
14 profit. The method of achieving its purpose may be compatible
15 with and beneficial to farm uses; but, there is a difference,
16 according to petitioners, between a method and a purpose.

17 Respondent DEQ and Respondent City of Eugene argue the
18 facility falls within the definition of "farm use" in ORS
19 215.203. Respondent City, the owner of the tract, states the
20 property will remain in farm use for the purpose of growing
21 crops. Water from the facility will be used to irrigate
22 crops. The fact that the project will serve another
23 governmental purpose, that of disposal of wastewater, is not
24 relevant to the analysis. The whole of the parcel will be
25 farmed or used for an agricultural purpose, according to the
26 city.

1 The county's findings on this issue, adopted by the
2 Department of Environmental Quality, say the project is within
3 the meaning of farm use as defined in ORS 215.203(2)(c) as an
4 "accepted farm practice." Record 26. The holding pond
5 provides irrigation water and provision of irrigation water is
6 an accepted farm practice. The county found the property would
7 still be used for the primary purpose of obtaining a profit in
8 money by raising, harvesting and selling crops. The county
9 found:

10 "The proposed system is not for the purpose of
11 controlling natural drainage and/or storm runoff, nor
12 is it designed to provide a source of irrigation for a
13 large number of farms. In addition, the proposed
14 system is not for the provision of alternative
15 recreational uses or the creation of a large multi-use
16 reservoir. There will be no large scale impoundment
17 of water. The proposed system will provide irrigation
18 water to one farm only, situated on one parcel, with a
19 total acreage not exceeding 287 acres." Record 27.

20 The issue, of course, is whether the county, and then DEQ,
21 were correct in this analysis. LCDC Goal 3 requires that
22 agricultural land "be preserved and maintained for farm use * *
23 * *" The goal defines farm use by reference to ORS 215.203.
24 ORS 215.203 defines farm use as "the current employment of land
25 for the primary purpose of obtaining a profit in money by
26 raising, harvesting, and selling crops * * * *" The term also
includes "the preparation and storage of the products raised *
* * for human use and animal use and disposal by marketing or
otherwise." The current employment of land means, among other
things,

1 "(E) Wasteland, in an exclusive farm use zone, dry or
2 covered with water, lying in or adjacent to and in
3 common ownership with a farm use land and which is not
4 currently being used for any economic farm use, (F)
5 land under dwellings customarily provided in
6 conjunction with the farm use in an exclusive farm use
7 zone; and (G) land under buildings supporting accepted
8 farm practices."

9 The statute defines "accepted farming practice" as a "mode of
10 operation that is common to farms of a similar nature,
11 necessary for the operation of such farms to obtain a profit in
12 money, and customarily utilized in conjunction with farm use."
13 ORS 215.203(2)(c).

14 The project is for the purpose of disposing of wastewater.
15 The project is not a use of land for the "primary purpose of
16 obtaining a profit in money."² However, the land upon which
17 the facility is to exist is being and is to be used for the
18 growing of crops. There will be a pumping station which will
19 be used to pump the Agripac effluent into the holding pond and,
20 as the Board understands it, to aireate the water. The Board
21 sees the issue to be whether this use, with its holding pond
22 and its pump station, can be considered the current employment
23 of land for farm use.

24 The Board believes it is common knowledge and may take
25 notice that some crops require irrigation. ORS 40.065. The
26 Board has not seen a case in which the issue of where a farmer
obtains water for irrigation has been a question. Irrigation
pipe and the building to house irrigation equipment, if there
is one, is part of the equipment necessary to irrigate.

1 Irrigation is an "accepted farming practice." The land
2 occupied by the irrigation equipment can be considered land in
3 current employment for farm use in the same way that "land
4 under buildings supporting accepted farm practices" is land in
5 farm use. See ORS 215.203(2)(b)(G). In this case, the farmer
6 will irrigate the crop with water from Agripac which has been
7 held in a pond in an exclusive farm use zone. The Board
8 concludes the pond and equipment can be considered in farm
9 use. The only remaining question is whether the scale of the
10 use is commensurate with accepted farming practices.

11 In this case, the Board notes the county found

12 "Two canneries in the Willamette Valley have used the
13 proposed disposal method for growing crops for 15 and
14 30 years, respectively, without observable detrimental
effects." Record 28.

15 Apparently, this method of irrigation is not unknown. The
16 county findings refer to expert testimony to support the view
17 that this proposed system is an "accepted farming practice."
18 One exhibit is a letter from James A. Vomocil, Extension Soil
19 Scientist for Oregon State University. In that letter, Mr.
20 Vomocil states, in part, that the amount of water used in the
21 proposed operation is similar to the amount that would be used
22 on a typical irrigated farm in the southern Willamette Valley.
23 He also finds that the nitrogen application rate is typical of
24 farms in the Willamette Valley. He makes the following finding
25 on the matter of the reservoir:

26

1 "The inclusion of a relatively large reservoir with
2 this proposed irrigation project provides the
3 necessary flexibility so that the timing of the
4 beginning and the ending of the irrigation season can
5 be flexible depending on the weather and the kind of
6 year it is with respect to water supply, water demand,
7 soil temperature, etc. The size of the reservoir is
8 adequate to provide the flexibility to begin and end
9 the season at variable dates, depending on climatic
10 circumstances. This is an ideal arrangement which in
11 fact is somewhat better than that available to many
12 commercial farming operations. This should help to
13 insure a higher efficiency in the utilization of water
14 and plant nutrients.

8 "The planned reservoir capacity also provides the
9 advantage of being able to continue to accept flow
10 during periods when the irrigation system is down in
11 order to allow the drying of a crop of hay. This
12 drying may be 8 to 10 days. I note that the reservoir
13 system, along with the continuing irrigation of other
14 tracts, is sufficient to provide for that kind of
15 down-time tolerance. This increases the flexibility
16 of the various alternatives available for the handling
17 of the product. It could be harvested in a variety of
18 forms and still be within the scope of the physical
19 arrangements provided.

15 "The physical arrangements proposed, the filtration,
16 pounding, and subsequent separation use of solid and
17 liquid fraction is very similar to the manure
18 arrangement program used at the Gibson Dairy a few
19 miles north of Junction City." Record Exhibit 22.

18 In addition, in a letter from Michael Stoltz, Oregon State
19 Extension Service, of January 18, 1983, the storage pond is
20 discussed.

21 "The utilization of a system involving a storage pond,
22 settling and screening of solids for separate use, and
23 irrigated application of effluent consisting of water
24 and organic nutrients has been successfully used
25 elsewhere in the state and Lane County. For example,
26 similar systems are used on farms and farm land at the
27 Gibson and Hemmingway Dairies in Lane County, Stayton
28 Canning in Marion and Yamhill Counties and National
29 Fruit in Linn County." Record Exhibit 23.

26 We do not find petitioners to have challenged this

1 evidence. The county's finding that the use of a pond for
2 irrigation purposes is an accepted farming practice is well
3 supported in the record.

4 The Board views the source of the water to be unimportant.
5 What is important is the employment of the land for the growing
6 of crops. The fact that a holding pond is to be used and has
7 the added benefit of disposing of wastewater does not mean the
8 wastewater will not be put to farming the property for a profit
9 in money.

10 The Board concludes that the county was correct in finding
11 that the proposal was within the definition of an accepted
12 farming practice and in compliance with Goal 3.³

13 Assignment of error no. 2 is denied.

14 ASSIGNMENT OF ERROR NO. 3⁴

15 "DEQ erred:

16 "(1) By failing to adopt reviewable findings;

17 "(2) By failing to address applicable criteria; and

18 "(3) By adopting findings not supported by substantial
evidence."

19

20 1. DEQ's findings are not sufficient to allow judicial review.

21 In this subassignment of error, petitioners claim DEQ
22 failed to reference or incorporate any findings regarding land
23 use or compliance with statewide planning goals. This alleged
24 error violates ORS 197.180 and OAR 660-31-035 according to
25 petitioners.

26 The Board has already discussed the incorporation of the

1 county's findings by reference. The Board believes the
2 statement on the face of the permit that findings in support of
3 the decision are to be found in the file is sufficient. That
4 DEQ may not adopt findings in the same style as cities and
5 counties is not determinative of whether or not DEQ did in fact
6 adopt findings in support of its decision. So. of Sunnyside
7 Neighborhood League v. Clackamas County, 280 Or 3, 569 P2d 1063
8 (1977); Goose Hollow Foothills League v. Portland, 3 Or LUBA
9 256 (1981); Lane County vs. R. A. Heintz Construction, 228 Or
10 152, 364 P2d 676 (1961).

11 2. DEQ failed to address relevant criteria.

12 In this subassignment of error petitioners allege DEQ's
13 "findings and technical information" are not legally sufficient
14 because they fail to address relevant criteria and are not
15 supported by substantial evidence. Petitioners argue that
16 while the county's findings may create an arguable basis for
17 claiming Agripac's disposal facility is compatible with farm
18 use, they do not explain how this proposal is a farm use. The
19 primary use of the facility is, according to petitioners, the
20 treatment of industrial wastewater. Further, there is no
21 evidence to show that a prudent farmer would take 20 acres out
22 of crop reduction to irrigate the remainder of his property,
23 according to petitioners.

24 The Board disagrees with petitioners. In deciding that the
25 proposed use does meet Goal 3, Lane County and DEQ found the
26 use to be a "farm use" as the term is defined in ORS 215.203.

1 As the Board has already discussed, there is substantial
2 evidence in the record to support the county's finding that
3 this particular kind of irrigation facility constitutes an
4 acceptable farming practice. Since it constitutes an
5 acceptable farming practice, it complies with Goal 3. The fact
6 that the water for irrigation comes from an industrial source
7 does not, the Board believes, turn the irrigation system into a
8 nonfarm use. The use may, however, be a farm use and another
9 kind of use. Here, the use serves industry and acts as a
10 public utility. The Board is not aware of any prohibition on
11 an activity being both a farm use and some other sort of use.

12 3. DEQ failed to support its findings with substantial
13 evidence.

14 In this subassignment of error the petitioners urge
15 exhibits 22-28 (two of which have been discussed above) do not
16 constitute substantial evidence for the county's finding that
17 the proposed system is within the meaning of accepted farming
18 practices. Petitioners quote finding 17, Record 26, where the
19 county concludes the proposed use "involves the employment of
20 land for the primary purpose of obtaining a profit in money"
21 and argue that this statement is in direct conflict with the
22 application which makes no reference to farming at all but
23 rather states that the purpose of the permit is a

24 "Seasonal industrial waste (Agripac) facility with
25 storage facility and spray irrigation of canning
wastewater." Record 119.

26 Petitioners argue if it were not for DEQ's insistence that

1 Agripac find another means of disposing its wastewater, MPMC
2 would not be interested in acquiring land simply to irrigate a
3 farm. Petitioners appear to accept that certain county
4 exhibits support a finding that once the wastewater arrives on
5 the site, the method of spraying the wastewater is similar to
6 that used on other farms. However, petitioners argue there is
7 no discussion as to whether other farmers acquire large blocks
8 of land for the purpose of discharging animal and food
9 wastewater. Again, petitioners' point is that the primary
10 purpose of this proposal is not farm use.⁵

11 The Board has not been cited to evidence in the record to
12 contradict the evidence furnished to the county in the exhibits
13 cited above that this proposal, with the holding pond,
14 constitutes an accepted farming practice. The Board believes
15 the county was entitled to rely on the information and opinion
16 of the extension service personnel. The county's obligation to
17 weigh and balance the exhibits depends at least in part on
18 whether there is conflicting evidence. See Universal Camera
19 Corp. v. NLRB, 340 US 474, 71 S Ct 456, 95 L Ed 456 (1951);
20 Filter v. Columbia Co., 3 Or LUBA 345 (1981). The testimony of
21 one individual is substantial evidence if a reasonable mind can
22 accept it "to support a conclusion." Braidwood v. City of
23 Portland, 24 Or App 477, 480, 546 P2d 777 (1976).

24 The Board concludes the county's findings are supported by
25 substantial evidence.

26 Other Goals

1 Petitioners claim that Goals 1, 5 and 14 have not been
2 addressed.⁶ Petitioners' argument on Goal 1 is that they
3 were never contacted during the course of the Lane County
4 proceeding. The Board has already discussed this issue. Any
5 error before Lane County that goes to how the proceeding was
6 conducted and who participated was mooted by the new proceeding
7 before DEQ. There is no claim DEQ violated Goal 1.

8 Petitioners allege Goal 5 has not been adequately addressed
9 because there is no explanation of why Eugene and Springfield
10 were required to go beyond the urban growth boundaries of the
11 cities of Eugene and Springfield to locate this use.

12 The Board does not understand this allegation. If the use
13 is an acceptable farm use in compliance with Goal 3, whether or
14 not Eugene and Springfield ventured beyond the urban growth
15 boundaries of Eugene and Springfield is not important.

16 Petitioners also argue that a Goal 14 analysis should have
17 been made. Petitioners allege no analysis has been provided as
18 to why this use is not an urban use or at least one that is
19 more appropriately placed inside an urban growth boundary.

20 Because the county found the use to be a farm use, the
21 Board does not believe a Goal 14 analysis is necessary. It may
22 be that this use not only qualifies as an accepted farming
23 practice but may also be considered in the nature of an urban
24 use. The Board is not aware of a prohibition in the goals that
25 a use must be exclusively a farm use or an urban use. To make
26 such a holding, the Board and LCDC might preclude any number of

1 mechanical uses or structures that serve farming purposes but
2 also serve other purposes. For example, chemical storage
3 facilities might support a farm use if containing farm
4 chemicals. The same storage facility might well be considered
5 an urban use were it to hold solvents. In this case, the
6 proposed use constitutes an accepted farm practice and as such
7 is in conformity with Goal 3. The use may also serve other
8 purposes announced elsewhere in the goals, but such service
9 does not mean the use no longer qualifies as an accepted
10 farming practice.

11 Assignment of Error No. 3 is denied.

12 The decision of DEQ is affirmed.

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FOOTNOTES

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3 1
4 There are two kinds of permits. Class A permits, for which
5 the agency is required to make its own findings of compliance
6 with statewide planning goals, and Class B permits, such as the
one at issue here, where the agency may rely on local
government determinations of goal compliance or proceed on its
own to find compliance with the goals.

7 2
8 The parties have not argued whether or not the Agripac
9 facility is itself a farm use or a "commercial activity" in
conjunction with farm use. See ORS 215.213(2)(a).

10 3
11 In an abundance of caution, the county included findings
12 supporting an exception to Goal 3 for the proposed facility.
13 The record does not reveal that DEQ published notices that
14 would comply with Goal 2's requirement for a specific notice
15 that an exception is to be taken. The Board will not,
16 therefore, test this proposal against Goal 2 exception
17 criteria. The Board has, however, noted the findings in
18 support of the exception where those findings also support the
19 county's conclusion that the use is part of an accepted farm
20 use.

16
17 4
18 The issues in this assignment of error and Assignment of
19 Error No. 2 are also raised by Participants Barnes, Bohanon,
20 Bowder, Donaldson, Elliott, Gray, Humphrey, Jaquenod, Lund,
Marker, Neely and Simmons. The discussion here and under
Assignment of Error No. 2 is in answer to petitioners and
participants' arguments.

21 5
22 Petitioners also argue the findings supporting the
23 exception are not supported by substantial evidence. The basis
24 for petitioners' argument appears to be that the proper notice
of an exceptions process was not taken. The Board has already
discussed this issue, supra.

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Page 20

Respondent DEQ does not defend the decision against a Goal 1, 5 and 14 attack but rather argues the petitioners should have raised these issues below. As the only issues raised in the proceedings below were about Goal 3, petitioners should be precluded from raising other goal issues on appeal here, claims DEQ. The Board does not agree. The Board has held that a petitioner is obliged to raise procedural errors that are capable of correction below. Dobaj v. City of Beaverton, 1 or LUBA 237 (1980). There is no obligation on petitioners to raise all issues on the merits below what it might hope to raise on appeal. Twin Rocks Water Dist. v. Rockaway, 2 Or LUBA 36 (1980).

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

LAND USE
BOARD OF APPEALS

SEP 6 12 02 PM '83

CHESTER A. SWENSON AND
DELLA I. SWENSON, HUSBAND
AND WIFE,

Petitioners,

v.

DEPARTMENT OF ENVIRONMENTAL
QUALITY OF THE STATE OF
OREGON, AND AGENCY OF THE
STATE OF OREGON,

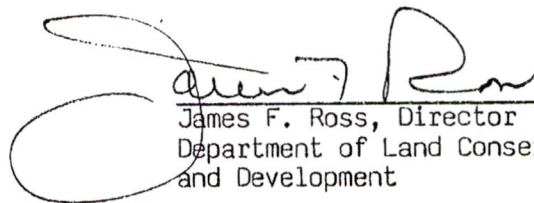
Respondent.

LUBA No. 83-032
LCDC DETERMINATION

The Land Conservation and Development Commission hereby approves the
recommendation of the Land Use Board of Appeals in LUBA 83-032.

DATED THIS 31st DAY OF AUGUST, 1983.

FOR THE COMMISSION:


James F. Ross, Director
Department of Land Conservation
and Development

JFR:RE:jj
5506B/76C

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3 CHESTER A. SWENSON and)
4 DELLA I. SWENSON, husband)
5 and wife,)

6 Petitioners,)

7 v.)

8 DEPARTMENT OF ENVIRONMENTAL)
9 QUALITY OF THE STATE OF)
10 OREGON, an Agency of the)
11 State of Oregon,)

12 Respondent.)

LUBA NO. 83-032

PROPOSED OPINION
AND ORDER

13 Appeal from Department of Environmental Quality.

14 Michael E. Farthing, Eugene, filed a petition for review
15 and argued the cause for Petitioners. With him on the brief
16 were Husk, Gleaves, Swearingen, Larsen & Potter.

17 John I. Mehringer, Eugene, filed a petition for Review and
18 argued the cause for Participants Barnes, Bohanon, Bowder,
19 Donaldson, Elliott, Gray, Humphrey, Jaquenod, Lund, Marker,
20 Neely and Simmons.

21 Timothy J. Sercombe, Eugene, filed a brief and argued the
22 cause for Participant City of Eugene. With him on the brief
23 were Harrang, Swanson, Long & Watkinson.

24 Michael B. Huston, Salem, filed an brief and argued the
25 cause for Respondent DEQ.

26 Bagg, Board Member.

Affirmed. 8/8/83

27 You are entitled to judicial review of this Order.
28 Judicial review is governed by the provisions of Oregon Laws
29 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JOHN EHLE, YVONNE EHLE
5 and BROKEN ARROW FARM,
6 *Petitioners,*

7
8 vs.

9
10 WASHINGTON COUNTY,
11 *Respondent,*

12
13 and

14
15 CHARLES PRENTICE, NADINE PRENTICE,
16 STEVEN HAUGEN and ELIZABETH LUX HAUGEN,
17 *Intervenors-Respondent.*

18
19 LUBA No. 2006-094

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from Washington County.

25
26 Jeff N. Evans, Portland, filed the petition for review and argued on behalf of
27 petitioners. With him on the brief were Gregory S. Hathaway, Christopher P. Koback and
28 Davis Wright Tremaine LLP.

29
30 Christopher A. Gilmore, Assistant County Counsel, Hillsboro, filed a response brief
31 and argued on behalf of respondent.

32
33 Caroline E.K. MacLaren, Portland, filed a response brief and argued on behalf of
34 intervenors-respondent. With her on the brief were Stark Ackerman, Margaret Schroeder
35 and Black Helterline LLP.

36
37 BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

38
39 AFFIRMED

10/06/2006

40
41 You are entitled to judicial review of this Order. Judicial review is governed by the
42 provisions of ORS 197.850.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a hearings officer's determination that petitioners need a
4 development permit to place 100,000 cubic yards of fill on approximately 13 acres zoned for
5 exclusive farm use (EFU).

6 **FACTS**

7 The subject property is a narrow, rectangular 19-acre parcel with predominantly high-
8 value farm soils. The parcel is developed with a dwelling and outbuildings in the northern
9 end. An unnamed stream crosses the parcel from east to west, dividing the northern third of
10 the parcel from the southern two thirds. Approximately 13 acres lie south of the creek.

11 The subject property was farmed up until the 1990s. In 1995, the petitioners or their
12 lessees or agents applied to Washington County for a grading and fill permit, which was
13 approved. Two years later, Washington County prohibited further filling on the site because
14 the petitioners and/or their agents had allowed the quantity and height of fill to exceed the
15 amount and fill height allowed under the permit. In 2003, the county granted petitioners a
16 second permit to place fill on their property. In 2005, the county issued an order prohibiting
17 petitioner from adding more fill to site, after determining that petitioners had violated at least
18 two conditions of approval in the 2003 permit.

19 Since 1995, when the property was first used as a landfill, at least 61,000 cubic yards
20 of debris were placed on the property, including rocks, asphalt, chunks of cement, and large
21 boulders from a large construction project. The debris was randomly placed on most of the
22 13-acre area south of the unnamed stream. Subsequently, petitioners bulldozed the rock and
23 debris into two large piles, stripping much of the topsoil in the process and mixing it in with
24 the rock piles. At present, most of the 13-acre area south of the stream has no topsoil. A
25 portion at the southern end of the parcel has topsoil remaining.

1 In 2005, petitioners applied to the county for a grading permit to place approximately
2 150,000 cubic yards of fill on the 13-acre portion of the subject parcel south of the stream.
3 The requested amount was later reduced to 100,000 cubic yards. The stated purpose of the
4 fill is to restore the parcel to a farmable condition. The application proposes that the rock
5 piles will be graded to reduce their height, and then fill would be placed on the 13 acres to a
6 uniform height of about four feet above the existing grade, in three annual phases starting
7 from the south end of the property. The application does not identify the source of the
8 proposed fill, but petitioners represented that the fill would include topsoil, clay and organic
9 subsoil. Petitioners propose to charge a fee to allow people to dump fill on the property.

10 There is no dispute that the proposed filling and grading constitutes "development" as
11 defined by Washington County Community Development Code (CDC) 106.¹ CDC 201-1
12 requires a permit for all development unless that development is excluded from permit
13 requirements pursuant to CDC 201-2. Petitioners asserted to the county that the proposed
14 filling and grading is exempt from the requirement to obtain a development permit under
15 CDC 201-2.12(G), which exempts "[c]ustomarily accepted agricultural activities, including
16 preparation of land for cultivation[.]"²

¹ CDC 106-57 defines "development" as "[a]ny man-made change to improved or unimproved real estate, including but not limited to * * * site alteration such as that due to land surface mining, dredging, grading construction of earthen berms, paving, improvements for use as parking, excavation or clearing."

² CDC 201-1 prohibits any person from engaging in "development" without a development permit, unless CDC 201-2 excludes that activity from the requirement to obtain a development permit. CDC 201-2.12(G) excludes the following activities from the requirement for a development permit:

*"Customarily accepted agricultural activities, including preparation of land for cultivation, other than grading for roadwork or pads for structures. Unless waived by the Building Official * * *, these activities are subject to all of the following:*

- "(1) No piping of drainages serving off-site properties;
- "(2) If fill is proposed, finished grade is no higher than adjacent property at the property line, or fill or excavation area is outside the district setbacks;
- "(3) Preserves existing drainage pattern, including direction and flow capacity and velocity of an existing drainage swale or channel. A drainage swale is

1 The hearings officer conducted a hearing, and on May 8, 2006 issued a decision
2 concluding that petitioners had not carried their burden of proof that the proposed grading
3 and fill is a "customarily accepted agricultural activity" for purposes of CDC 201-2.12(G),
4 and therefore the proposed activity required a development permit. The hearings officer also
5 concluded that, even if the proposed activity constituted a "customarily accepted agricultural
6 activity," a development permit would be required because the proposal to grade and place
7 fill in three annual phases failed to comply with the requirements of CDC 201-2.12(G)(7),
8 which requires that the "grading area" be returned to farm use within one year of
9 commencing site grading.

10 This appeal followed.

11 **FIRST ASSIGNMENT OF ERROR**

12 Under this assignment of error, petitioners contend that the hearings officer
13 misconstrued CDC 201-2.12(G) and adopted findings not supported by substantial evidence.

14 **A. Interpretation of CDC 201-2.12(G)**

15 Petitioners first argue that the hearings officer misconstrued CDC 201-2.12(G) in
16 concluding that the proposed grading and fill is not a customarily accepted agricultural
17 activity exempt from the requirement to obtain a development permit. According to
18 petitioners, CDC 201-2.12(G) is unambiguous in providing that "customarily accepted

a local depression, which conveys water to or from an adjoining property.
All ponds shall be located outside drainage channels;

"(4) Except for ponds, surface material is either topsoil or if utilized for nursery
purposes, the material is commonly used to grow nursery crops;

"(5) Fill material does not contain hazardous or contaminated substances,
putrescibles or material such as asphalt, concrete or tires;

"(6) Compliance with Oregon Administrative Rule Chapter 603, Division 95
(Agricultural Water Quality Management Program);

"(7) Grading area is returned to farm use within one calendar year of
commencing site grading." (Emphasis added).

1 agricultural activity” includes “preparation of land for cultivation.” Because the proposed
2 grading and fill activity is intended to restore the land to farming use, petitioners argue, it
3 constitutes “preparation of land for cultivation,” and therefore is, without further inquiry, a
4 “customarily accepted agricultural activity.” Petitioners contend that the hearings officer
5 erred in viewing CDC 201-2.12(G) to be ambiguous and requiring interpretation. Further,
6 petitioners argue that in interpreting CDC 201-2.12(G) the hearings officer essentially
7 created additional criteria that do not exist in that code provision.

8 The hearings officer found that the phrase “preparation of land for cultivation” is an
9 example of a “customarily accepted agricultural activity,” and that both phrases are
10 ambiguous, capable of more than one reasonable meaning and requiring interpretation under
11 the present circumstances. Specifically, the hearings officer found that given the nature and
12 extent of the proposed grading and fill activities, in order to determine whether those
13 activities constituted the “preparation of land for cultivation,” it was necessary to determine
14 whether the proposed activities are “customarily accepted agricultural activit[ies].”³ The
15 hearings officer concluded that petitioners had failed to demonstrate that the proposed
16 activities are customarily accepted agricultural practices, noting the lack of evidence that it is

³ The hearings officer’s decision states, in relevant part:

“The hearings officer finds that the phrase ‘preparation of land for cultivation’ is ambiguous, because it is capable of more than one reasonable meaning. Any land clearing, filling, grading or development could ultimately allow farming to occur in the future. However, the hearings officer finds that it would be inconsistent with the legislative policies reflected in the purpose and use regulations of the EFU zone and the rules and statutes that zone implements to construe the phrase ‘preparation of land for cultivation’ in CDC 201-2.12(G) to allow any development, with the mere promise of farm use to follow and without ongoing farm use of the land. The hearings officer finds that it is unreasonable to construe that phrase to prevent the County from reviewing the nature, scope, duration and other characteristics of the preparation in question, because it renders the term meaningless in CDC 201-2.12(G), contrary to the rules of statutory construction. Therefore, the hearings officer concludes that the County can review the nature, scope and other characteristics of the proposed preparatory activities to determine whether they qualify as customarily accepted agricultural activities.” Record 20-21 (footnote omitted).

1 customary for farms of a similar size to import 100,000 cubic yards of fill, or to charge a fee
2 to place fill on the site.

3 Petitioners disagree that CDC 201-2.12(G) is ambiguous, arguing that the phrase
4 “preparation of land for cultivation” should be read in isolation and should be understood to
5 encompass any grading or fill activity intended to prepare land for cultivation, whether that
6 activity is a “customarily accepted agricultural activity” or not. We disagree. The phrase
7 “preparation of land for cultivation” is clearly a listed example of the broader class of
8 “customarily accepted agricultural activity.” Not all activities that can be described as
9 “preparation of land for cultivation” necessarily fall within the class of “customarily accepted
10 agricultural activit[ies].” In many cases it may be obvious that a proposed preparation of
11 land for cultivation falls within the class of “customarily accepted agricultural activity,” so
12 that no further inquiry is necessary, but the present circumstance is not one of them. As the
13 hearings officer recognized, given the past history of the subject property as a landfill, the
14 scale and nature of the proposed fill, and the proposal to charge fees to allow soil to be
15 deposited on the site, it was reasonable for the county to inquire into whether the proposed
16 grading and fill activity is the “preparation of land for cultivation” that is a “customarily
17 accepted agricultural activity” and exempt from permit requirements, or something else that
18 may require a development permit. The hearings officer did not err in concluding that
19 interpretation of CDC 201-2.12(G) is necessary, and further in evaluating whether the
20 proposed grading and fill activity is a “customarily accepted agricultural activity.”

21 Petitioners argue next that the hearings officer erred in interpreting CDC 201-2.12(G)
22 to include an implicit requirement that there be an “ongoing farming operation” in order to
23 qualify as a “preparation of land for cultivation” as a “customarily accepted agricultural
24 activity.” According to petitioners, the hearings officer impermissibly added an eighth
25 requirement to the seven requirements listed in CDC 201-2.12(G).

1 Again, we disagree. The question before the hearings officer is how to categorize the
2 proposed use. Is it the “preparation of land for cultivation” that is a “customarily accepted
3 agricultural activity” and therefore exempt from the requirement to obtain a development
4 permit? Or is it a different use (perhaps a hybrid use) that under the county’s code would
5 require a development permit? To answer that question, the hearings officer had to evaluate
6 evidence and argument regarding what is a “customarily accepted agricultural activity.” Any
7 such inquiry is necessarily fact-specific. Among the facts the hearings officer considered
8 was whether there is any ongoing agricultural activity on the property. If there were, that
9 would lend (some) evidentiary support to petitioners’ claim that the proposed grading and fill
10 activity was indeed the preparation of land for cultivation and an agricultural activity, as
11 opposed to something else, such as a landfill. Petitioners are correct that the absence of
12 ongoing agricultural activity does not necessarily mean that grading and fill activity cannot
13 constitute the “preparation of land” for *future* cultivation of lands currently not in agricultural
14 use. However, the absence of ongoing agricultural activity, combined with the lack of
15 specificity regarding petitioners’ proposed future agricultural activity, has at least some
16 bearing on the question before the hearings officer. In any case, it is clear that the hearings
17 officer did not treat the existence of ongoing agricultural activity as a *requirement* to qualify
18 under CDC 201-2.12(G); rather, he evaluated it only as a relevant fact in answering the
19 question posed to him. Petitioners have not demonstrated that the hearings officer erred in
20 doing so.

21 **B. Evidence Regarding Whether the Proposed Activity is a Customarily**
22 **Accepted Agricultural Activity**

23 Petitioners next challenge the hearings officer’s treatment of evidence petitioners
24 submitted to support their claim that the proposed activity is a “customarily accepted
25 agricultural activity.” Further, petitioners dispute the hearings officer’s reliance on the
26 absence of evidence that other, similar farms have (1) applied 100,000 cubic yards of fill, and
27 (2) charged people a fee to place fill on agricultural land.

1 Petitioners argue that the hearings officer overlooked portions of letters submitted by
2 the Oregon Department of Agriculture and the Tualatin Soil and Water Conservation
3 District. The hearings officer concluded that the letters provide little support for petitioners'
4 claim that the proposed grading and fill is a customarily accepted agricultural activity.⁴
5 According to petitioners, fairly read, those two letters in fact provide significant support for
6 petitioners' claim that the proposed grading and fill is a customarily accepted agricultural
7 activity.

8 From our review of the two letters, the hearings officer's characterization of their
9 contents seems more accurate to us than petitioners'. In any case, even if petitioners'
10 characterization of the letters is more accurate, the relevant question is whether the hearings
11 officer erred in concluding that the record as a whole does not support petitioners' claim that
12 the proposed grading and fill is a customarily accepted agricultural activity. In the present
13 posture, petitioners can prevail in an evidentiary challenge to the hearings officer's findings
14 only if they demonstrate that no reasonable person could reach the conclusion the hearings
15 officer did, considering the evidence in the whole record.⁵ Petitioners make no attempt to do

⁴ The hearings officer's findings state, in relevant part:

"The hearings officer finds that the written testimony from the Oregon Department of Agriculture and Tualatin Soil and Water Conservation District do not say that the proposed filling and grading is a customarily accepted agricultural activity. Each is phrased in terms of *if the County approves the permit, here is what you should do to promote farm use of the filled area...* While the letters acknowledge that fill could be placed on the property, they are hardly a ringing endorsement of that approach to remedying existing conditions on the site. Both characterize the site as in need of remediation. The Soil and Water Conservation District letter expressly raises the issue of excavation of the poor soils as an alternative to filling. Thus the only substantial evidence in support of the conclusion that the proposed filling and grading is a customarily accepted agricultural activity is from [petitioners' consultants]. The hearings officer finds that neither [letter] supports [the consultants'] testimony that the proposed filling and grading is a customarily accepted agricultural activity with corroborating evidence, and the substantial evidence in the record to the contrary—even from them—is far more persuasive." Record 20 (italics in original).

⁵ As a review body, we are authorized to reverse or remand the challenged decision if it is "not supported by substantial evidence in the whole record." ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely on in reaching a decision. *City of Portland v. Bureau of Labor and Ind.*, 298 Or 104, 119, 690 P2d 475 (1984). In reviewing the evidence, we may not substitute our judgment for that of the

1 so. The hearings officer evaluated a great deal of testimony, including the two letters, and
2 concluded that the evidence in the whole record contrary to petitioners' position was "far
3 more persuasive." In arguing that the hearings officer failed to give the proper weight to the
4 two letters, petitioners are in effect asking us to reweigh the evidence before the hearings
5 officer. That we cannot do.

6 In a similar vein, petitioners argue that the hearings officer erred in basing his
7 decision, in part, on petitioners' failure to identify any other farms that have applied such a
8 large volume of fill to such a small area to prepare land for cultivation and farm use.⁶
9 According to petitioners, there is no dispute that adding fill dirt to land to prepare the land
10 for cultivation is a customary farm practice; the fact that the subject property is unique and
11 requires a relatively large volume of fill over a small area to restore it to agricultural use does
12 not mean that the proposed fill is not a customarily accepted agricultural practice.

local decision maker. Rather, we must consider and weigh all the evidence in the record to which we are directed, and determine whether, based on that evidence, the local decision maker's conclusion is supported by substantial evidence. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988). If there is substantial evidence in the whole record to support the county's decision, LUBA will defer to it, notwithstanding that reasonable people could draw different conclusions from the evidence. *Adler v. City of Portland*, 25 Or LUBA 546, 554 (1993). Where the evidence is conflicting, if a reasonable person could reach the decision the county made, in view of all the evidence in the record, LUBA will defer to the county's choice between conflicting evidence. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995).

⁶ Petitioners cited to the following finding:

"The hearings officer finds that the substantial evidence that the applicant provided to respond to the 'customarily accepted agricultural practice' issue does not respond precisely to the applicable standard. The written and oral testimony is that no one has filled or has knowledge of others who have filled 13 acres of their 19-acre farm property with 100,000 cubic yards of material over a three-year period. There is no testimony or evidence that farm use of the site after proposed filling will produce a profit in money. Therefore there is not substantial evidence in the record that the applicant intends to use a mode of operation that is common to farms of a similar nature; there is no analysis of farms of a similar nature; no 19-acre farms are identified where a profit in money from farming has resulted from the application of 100,000 cubic yards of fill. What the evidence supports is a conclusion that the site is unique. But the 'customarily accepted agricultural activity' rule does not have a corollary for property where non-customary means have to be used to make the property capable for cultivation. What the applicant proposes is not customary, because it is not common to farms of a similar nature and is not commonly used in conjunction with farm use. It would be an uncommon activity to place 100,000 cubic yards of fill on a 19-acre farm. That the site is uncommon does not change the law." Record 21 (footnote omitted).

1 We disagree with petitioners that the hearings officer erred in considering evidence or
2 the lack of evidence that other farms have placed similar volumes of fill on such a limited
3 area in order to produce a profit in money from farming. Any inquiry into what is a
4 customarily accepted agricultural activity necessarily requires evaluating what practices
5 other similar farms have engaged in. The fact that no other farms have engaged in grading
6 and fill at the scale and manner proposed here is some indication that the proposed grading
7 and fill is not a "customarily accepted agricultural activity." Although CDC 201-2.12(G)
8 does not impose an explicit limit on the volume or depth of fill, it seems obvious that
9 evaluation of volume or depth is a legitimate consideration in answering the question posed
10 to the hearings officer. For example, a proposal to place fill at volumes or in a manner that
11 exceeds agronomic necessity would tend to suggest that the proposal is something other than
12 a customarily accepted agricultural activity.⁷ The hearings officer did not err in taking into
13 account the lack of evidence that other farms have placed similar volumes of fill on such a
14 limited area.

15 Finally, petitioners argue that the hearings officer erred in considering whether it is
16 customary for farmers to charge a fee to allow people to place good-quality soil on their
17 farm.⁸ According to petitioners, it is irrelevant whether petitioners must pay for topsoil or

⁷ In this respect, we note that the hearings officer found that petitioners proposed to place four feet of soil on a three to five acre portion of the property south of the creek where filling did not occur in the past and where soils currently exist to a depth that has supported agricultural uses in the past. Record 23. Petitioners' consultant testified that at least part of this southern portion is currently farmable. Record 12. That portion presumably retains the high-value farm soils that once predominated on the subject property. Petitioners do not explain why it is a customarily acceptable farming practice to cover high-value farm soils with four feet of soil of indeterminate quality.

⁸ The hearings officer's findings state, in relevant part:

"The hearings officer also finds that there is no substantial evidence in the record that it is a customary practice for farmers to charge people to place good-quality fill on their farm. On the contrary, what is more common is for farmers to pay for good quality soil. * * * Therefore charging people to place fill on the site contributes to the conclusion that what is proposed is not a customarily accepted agricultural activity. It contributes to the conclusion that the applicant proposes a landfill for soil and subsoil if not for demolition debris generally. That conclusion is certainly not rebutted by the past use of the site by the applicant and his lessees

1 whether they charge a fee to those who need a place dispose of such soil. Petitioners contend
2 that as long as the proposed fill complies with CDC 201-2.12(G)(4) and (5), that is, includes
3 only topsoil and does not include hazardous or contaminated substances, putrescibles, or
4 material such as asphalt, concrete or tires, the county has no authority to consider or regulate
5 private financial arrangements such as how fill is procured.

6 Again, the question before the hearings officer was whether the proposed fill is a
7 customarily accepted agricultural activity that is allowed in the EFU zone without a
8 development permit, or something else that may require a development permit. Whether it is
9 customary for farmers to charge a fee to persons seeking to deposit soil of unspecified
10 agricultural quality on their farm land is a relevant consideration in answering that question,
11 particularly given the history of the subject property as a landfill, the lack of ongoing
12 agricultural activity, and the unspecified nature of future agricultural activities. The hearings
13 officer did not err in considering evidence or the lack of evidence regarding fees, among
14 other considerations, in answering the question posed to him.

15 In sum, petitioners have not demonstrated that the hearings officer misconstrued the
16 applicable law or made a decision unsupported by substantial evidence. The first assignment
17 of error is denied.

and agents. The failure of the applicant to identify the source for the fill material contributes to the conclusion that the proposed filling is not a customarily accepted agricultural activity, because there is no certainty about the quality of the fill, which would be an important to a farmer who plans to cultivate that land for a profit.

“* * * The hearings officer finds that charging a fee to place fill on the site affects the nature of the use. It becomes a profit-making enterprise other than a farm use. The applicant has no motivation to use the property for farming when he can profit from its use for other purposes. The applicant did not show that the fee would be the minimum necessary to pay for proposed filling and grading, assuming that was a legitimate purpose. The applicant did not proposed any limit to the fees charged. He did not show that it is feasible to get people to pay to place 100,000 cubic yards of suitable fill material, or what the applicant will do if that does not happen. It is not apparent how much money will be made from the landfilling process as compared to the farm use of the property, but given the very limited agricultural use envisioned, it appears the tail will wag the dog. It makes the proposal appear as a Trojan Horse at the gates of the County’s high value farmland.” Record 21-22.

1 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

2 In the second assignment of error, petitioners challenge the hearings officer's
3 alternative conclusion that the proposed grading and fill does not comply with CDC 201-
4 2.12(G)(7), which requires that the "grading area [be] returned to farm use within one
5 calendar year of commencing site grading." In the third assignment of error, petitioners
6 challenge the hearings officer's alternative conclusion that the proposed grading and fill
7 activity does not comply with CDC 410-3.1, which is a code provision applicable to grading
8 permits requiring that the proposed activity not create a site disturbance greater than
9 required.

10 Because we have affirmed the hearings officer's determination that petitioner's
11 proposed grading and fill activities is not a customarily accepted agricultural activity, we
12 need not address the hearings officer's alternative conclusion that the proposal fails to satisfy
13 one of the seven requirements that would apply if it were a customarily acceptable
14 agricultural activity.

15 Similarly, any error the hearings officer may have made in addressing CDC 410-1.3
16 does not provide a basis for reversal or remand. Petitioners' only argument under the third
17 assignment of error is that they do not need a grading permit, because the proposed activity
18 qualifies as a customarily accepted agricultural activity that is exempt from the requirement
19 to obtain a permit of any kind under CDC 201-2.12. That argument fails, given our rejection
20 of petitioners' arguments under the first assignment of error that the proposed activity is
21 exempt from permit requirements under CDC 201-2.12. Accordingly, we do not reach the
22 second assignment of error, and we deny the third assignment of error.

23 The county's decision is affirmed.