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April 14, 2025

VIA HAND DELIVERY:

Marion County Board of Commissioners
c/o Marion County Clerk
555 Court St NE, 2nd floor
Salem, OR 97301

RE: Appeal of Hearing Officer's Decision (CU 24-028)
Our File No: 44510-00001

Dear Honorable Commissioners:

My office represents Marin W. Klopfenstein, the property owner and applicant (the "**Applicant**") in the matter regarding Conditional Use 24-028 to operate a mulching service as a commercial activity in conjunction with farm use (the "**Application**") at 5711 Brooklake Rd NE, Salem (the "**Subject Property**"). Applicant's primary business is Mountain View Tree Service LLC. However, the proposed commercial activity on the Subject Property is the mulching operation. Applicant brings wood by-products obtained from Mountain View Tree Service to the Subject Property to be turned into mulch. The mulch is then delivered to local farm operations, including but not limited to cattle operations.

We submit this appeal of the Marion County Hearings Officer Order dated March 28, 2025, denying the Application (the "**Decision**"). This appeal is also supported by Mr. L.G. Billy Dalto, Applicant's corporate counsel. This appeal is timely as it is submitted prior to 5 p.m. on April 14, 2025. Applicant was the Applicant below and therefore has standing to appeal. Applicant respectfully requests that the Marion County Board of Commissioners accept this appeal for the reasons set forth below and hold a hearing pursuant to MCC 17.119.160.

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- 1) The Hearings Officer applied the incorrect standard and therefore erred as a matter of law in finding that the mulching operation is not essential to the practice of agriculture under MCC 17.136.060(D)(4).**

The Hearings Officer stated that the relevant question of law was “whether the commercial activity is something *particularly unique* to farm users and farm use practices.” This standard is inconsistent with Oregon law. The *City of Sandy v. Clackamas County*, LUBA No. 94-10 (1994) cited several examples to show that there must be a close relationship to the proposed commercial activity with farm uses. However, the *City of Sandy* did not create a bright line rule that an activity used in an industry other than farming cannot qualify as a commercial activity in conjunction with farm use as a matter of law. Applicant does not need to establish that farmers do not have any alternatives or that there are not any non-farm uses for the mulch. Unlike in *City of Sandy*, there is substantial evidence in this Application, including affidavits from local farmers to support that the mulch is essential to their farm operations and testimony from the Applicant that there are no nonfarm customers. Applicant has more control over the distribution of the mulch because it is delivered to local farmers free of charge rather than sold to the public. Continued compliance could be ensured with a condition of approval limiting the amount of mulch delivered to nonfarm operations. The Hearings Officer’s finding under MCC 17.136.060(D)(4) is inconsistent with Oregon law.

- 2) The Hearings Officer applied the incorrect standard and therefore erred as a matter of law in finding that Applicant was not primarily a supplier of farm uses under MCC 17.136.060(D)(1).**

The Hearings Officer found this criterion was not met because that the mulching operation is not the true commercial activity and mulching “occur[s] only because of the Applicant’s need to store and destroy debris related to Applicant’s tree trimming business.” The source of the wood-by products and lack of consideration is irrelevant. The relevant question is whether the mulch is primarily supplied to farm uses. As stated above, Applicant has provided substantial evidence in this Application, including testimony by Applicant that the mulch is not supplied to nonfarm operations. Applicant could dispose of the wood by-products from Mountain View Tree Service in a landfill. However, because of Applicant’s ingenuity and value of community service, Applicant uses the by-products to create mulch that is essential to the practice of agriculture and then provides the mulch free of charge to local farm operations. As stated on page 5 of the Decision, 9% of the total area is used for storing logs, and the remaining 91% of the total area is used for the mulching operation. The Hearings Officer found that a significant area is used for the storage of vehicles for the tree trimming service. Applicant provided a vehicle inventory showing that of the 17 vehicles and equipment stored, only 5 are solely related to the storage of logs. Mulch is only produced four times a year, but the mulching operation occurs year-round. The mulching operation is the proposed commercial activity and the fact that Applicant receives the wood by-products from another facet of his business is irrelevant to whether Applicant is primarily a supplier of farm uses.

- 3) The Hearings Officer erred in finding that the Applicant did not satisfy the criterion under MCC 17.136.060(A)(4).**

Applicant provided substantial evidence to demonstrate that pursuant to MCC 17.136.060(A)(4), any noise associated with the proposed use will not have a significant adverse impact on nearby land uses. Applicant intends to provide a noise study to further demonstrate that the proposed use will not have a significant adverse impact on surrounding land uses. Applicant also intends to provide a traffic

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memorandum from a licensed traffic engineer to demonstrate that the traffic impacts from the proposed use will not produce significant adverse impacts but rather will be consistent with or less than the traffic impacts from surrounding uses.

For the reasons set forth above, Applicant respectfully requests that the Board accept this appeal and hold a hearing pursuant to MCC 17.119.160 in order to correct the errors of law and fact in the Decision.

Sincerely,



MARK D. SHIPMAN
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Voice Message #310



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MDS/EAR:hst
cc: Client

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Receipt #: 55118

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Comments: MARIN W KLOPFENSTEIN 5711 BROOKLAKE RD NE SALEM OR

Thank You!

BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

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

Miscellaneous Fees		
Appeal Fee	YES	\$500.00

Receipt Total		\$500.00
CREDIT CARD	19985510	\$500.00