



## The Environmental Compliance Organization LLC

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January 2, 2026

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

**Re: 21855 Butteville Rd NE Aurora OR 97002 Marion County  
Applicant's Additional Comments – Administrative Review Case No. 25-026**

Dear Mr. Barnes,

Mrs. Burnham submits the following response to comments submitted by 1000 Friends of Oregon and by the Chambers family through counsel. These comments raise issues that go beyond the scope of the Administrative Review requested, conflate distinct regulatory regimes, and mischaracterize both the nature of the application and the relief sought. The purpose of this response is to clarify the limited and prospective scope of the application, to correct legal errors in the comments submitted, and to assist the Hearings Officer in confining the decision to the issues properly before her.

**Response to 1000 Friends of Oregon's and Chambers' Comments That The Activity is Not An "agricultural practice" Under ODA Rules and Cannot Therefore Be "farm use".**

The Oregon Department of Agriculture's Agricultural Water Quality Program regulates "agricultural practices" for purposes of water-quality protection under OAR chapter 603, divisions 090 and 095. ODA's jurisdiction under that program is limited to identifying and regulating practices that may contribute to water-quality impairment and does not determine whether a particular activity constitutes "farm use" for land-use or zoning purposes. Whether an activity is regulated as an "agricultural practice" under that program is not determinative of whether that activity constitutes "farm use" for land-use or zoning purposes. The last line of Mr. Fenn's email to Mr. Williams, which Mr. Howsley fails to mention, makes that clear:



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*Fill or placement of material could be considered agricultural depending on the situation.*

**Response to Chambers' Comment Regarding the "pit", "haul road" and asphalted "turnaround area".**

Mrs. Burnham did not apply for review of existing site features. She did not request review or approval of the berm (and any resultant "pit") located along the eastern portion of the property, nor of improvements to the existing farm roadway, nor of the asphalted turnaround or dumping area. Those features were not placed before the County for review and were not included in the scope of the application.

Rather, Mrs. Burnham applied solely for Administrative Review of her prospective request to fill and contour the property with hydraulically excavated soils for farm use, including erosion mitigation, filling low spots, expansion of arable areas, and improved farm access.

An Administrative Review of land-use compatibility is inherently prospective. It evaluates whether a described activity, if undertaken as proposed, is allowable under the zoning ordinance. It does not adjudicate alleged past violations, determine the legality of existing site features, or authorize abatement, removal, or restoration of improvements. Those matters fall, if at all, within the County's separate enforcement authority and must be pursued through the appropriate enforcement process with the attendant procedural protections.

Accordingly, findings in the Notice of Decision characterizing existing features as nonconforming or directing restoration or removal exceed the scope of the application and address matters not properly before the Hearings Officer in this Administrative Review. Any such findings should therefore be stricken.

**Response to Chambers' Comment Regarding "conditional use approval".**

Mr. Howsley argues that Mrs. Burnham would be required to submit a separate application to obtain conditional use approval of what he characterizes as a "vector truck dump site." Mrs. Burnham did not request, and does not seek in this proceeding, a determination regarding existing site features, including the berm and any resultant pit, improvements to the roadway, or the asphalted pad. Those features were not placed at issue by the application.

In her application, Mrs. Burnham stated only that **if** the acceptance and/or dewatering of Vector truck soils were determined not to constitute outright "farm use," the activity would nevertheless be allowable under MCC 17.136.060 as a commercial activity in conjunction with farm use. That alternative statement does not request conditional use approval, does not ask the Hearings Officer to apply conditional-use criteria, and does not require the Hearings Officer to



grant or deny conditional-use authorization in this decision. Nor does it concede that the proposed activity is not permitted farm use.

Nothing in the record obligates the Hearings Officer to resolve conditional-use eligibility in the context of this Administrative Review. If the County ultimately determines that a separate conditional-use application is required, that determination may be addressed through the appropriate application process without prejudice to the Applicant or to her primary position that the proposed activity constitutes permitted farm use.

### **Response to Chambers' Comments Regarding Erosion**

In her declaration, Mrs. Burnham states that "the area where the berm and pit are presently located was chronically washed out before the berm was constructed." The purpose of the berm and associated contouring was to interrupt that recurring erosive condition and stabilize the site consistent with accepted erosion-control practices. Preventing completion of that work does not mitigate erosion; it perpetuates it. To the extent opponents now complain of ongoing erosion, that condition reflects the consequence of halting a partially implemented erosion-control measure rather than evidence that the project itself causes turbidity in Ryan Creek.

### **Conclusion**

The record demonstrates that the issues raised by 1000 Friends of Oregon and the Chambers family rest on a series of legal and procedural conflations: between ODA's water-quality regulatory authority and land-use classification; between prospective land-use compatibility review and code enforcement; and between outright permitted farm use and alternative conditional-use frameworks not sought in this proceeding. Mrs. Burnham's application seeks a narrow, prospective determination regarding the placement of clean fill for farm use. It does not request review of existing site features, does not seek enforcement determinations, and does not ask the Hearings Officer to adjudicate conditional-use eligibility.

For these reasons, Mrs. Burnham respectfully requests that the Hearings Officer (1) confine the decision to the scope of the Administrative Review requested, (2) disregard or strike findings addressing matters not properly before the County in this proceeding, and (3) evaluate the proposed activity on its own merits under the applicable farm-use standards.

Sincerely,



Thomas R. Benke  
Attorney – Managing Member

cc: Denise Burnham