

VIA EMAIL ONLY

July 15, 2026

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Re: Board of Commissioners Hearing on Administrative Review 25-026

Dear Mr. Barnes:

Thank you for your ongoing assistance regarding this application. Again, we represent Scott and Judy Chambers and submit this letter and the attachments for the record. Please send a copy of the Board of Commissioners decision when it is published.

The applicant's goal is to have the county classify this commercial vector truck dump site as an accepted farm practice, which is a farm use for which no land use permit is required to construct or operate. More specifically, the original application form described the proposed use as using "soil from hydraulic vacuum excavation of utility lines and similar sources." The public notice indicated the application was an "administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use." That is what the staff and Hearings Officer decided on. The issue is not merely whether miscellaneous soils and wastes from vacuum extraction can be used for fill; rather, is a commercial solid waste disposal and dewatering facility an allowed use on EFU land. The answer depends on whether dumping and dewatering the miscellaneous soils and wastes is an "accepted farm practice".

ORS 215.203(2)(c) defines "accepted farm practice" as "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." There is no evidence in the record or any case law indicating that commercial vector truck dump facility with six dumping bays which accepts waste from an urban area is common to farms growing filberts. There is no evidence in the record or any case law indicating that commercial vector truck dumping is necessary for farms growing filberts to obtain a profit in money. There is no evidence in the record or any case law indicating that commercial vector truck dumping is customarily utilized in conjunction with farm use generally or growing filberts in particular. As the Department of Agriculture concluded, "The pit site would not be considered an agricultural activity."

The applicant's new attorney first summarizes this appeal as "an administrative determination concerning whether Applicant's agricultural fill operation is a farm use[.]" The staff and Hearings Officer both correctly decided the answer is no, because that fill operation includes a large facility for dumping the waste from up to six vector trucks at a time.

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Later on, the appeal asserts the Hearings Officer adopted erroneous findings, and complains “The Hearings Officer decision was not responsive to the request by applicant to determine whether deposition of soil constitutes an accepted farm practice.” Notice the difference between the summary statement “whether Applicant’s agricultural fill operation is a farm use” and this new question “whether deposition of soil constitutes an accepted farm practice.” The original question stands and encompasses the entire fill operation, including the dumping of miscellaneous soils and wastes, and the dewatering of the dumped material, including the documented overflow of the dewatering pit into the tributary to Ryan Creek. If the applicant desires to avoid that specificity regarding the constructed disposal facility, and obtain an answer of the new and narrower question “whether deposition of soil constitutes an accepted farm practice” then the applicant must submit a new application, and start over. The applicant does not get to change the question during the appeal. And the applicant does not get to compel the county to ignore the constructed waste disposal facility and the dewatering operation which are essential components of the fill operation.

This is not news. LUBA has repeatedly held that a county “is not obligated to accept the characterization or scope of the use” that an applicant proposes. *Bend Research, Inc. v. Deschutes County*, LUBA No. 2022-049, December 1, 2022 *slip op* at 10; citing *Bishop v. Deschutes County*, 72 Or LUBA 103, 115 (2015). Here, the staff and Hearings Officer correctly determined, based on the evidence in the record, that the fill operation use was a commercial vector truck dump site which is classified in the zoning code as solid waste disposal, and that a new solid waste disposal site is expressly prohibited in the EFU zone. MCC 17.136.050(I).

The record evidence shows that the purported agricultural fill operation is actually a commercial vector truck dump site, classified as a solid waste disposal site in the EFU zoning code. The staff decision and Hearings Officer both correctly cited that evidence to conclude the commercial vector truck dump site is not merely an agricultural fill.

The appeal argues that the “definition of accepted farm practice has never been that narrowly drawn.” That argument was rejected by LUBA in *Ehler v. Washington County*. In that case, LUBA found the applicants “propose to charge a fee to allow people to dump fill on the property” and assert the filling and grading are “customarily accepted agricultural activities, including preparation of land for cultivation” and thus exempt from needing a development permit. 52 Or LUBA 663, 666. The county had decided that it was not customary for similar farms to charge a fee to place fill on the site. LUBA affirmed the county, holding:

“Not all activities that can be described as ‘preparation of land for cultivation’ necessarily fall within the class of ‘customarily accepted agricultural activit[ies].’ In many cases it may be obvious that a proposed preparation of land for cultivation falls within the class of ‘customarily accepted agricultural activity,’ so that no further inquiry is necessary, but the present circumstance is not one of them. As the hearings officer recognized, given the past history of the subject property as a landfill, the scale and nature of the proposed fill, and the proposal to charge fees to allow soil to be deposited on the site, it was reasonable for the county to inquire into whether the proposed grading and fill activity is the ‘preparation of land for cultivation’ that is a ‘customarily accepted agricultural activity’ and exempt from permit requirements, or something else[.]”

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Id., at 669.

Therefore, the applicant's argument that the "definition of accepted farm practice has never been that narrowly drawn" is simply wrong.

Conspicuously omitted from this appeal is any citation to evidence that a large scale commercial vector truck dump site with six dumping bays is an accepted farm practice in the Willamette Valley. The applicant's lack of evidence is crucial and telling. That is because vector truck waste needs to be managed carefully, at licensed disposal facilities, which are commonly located inside urban growth boundaries.

The applicant has had more than a year and a half since the operation was first cited by Marion County Code Enforcement to provide evidence this is an accepted farm practice. It cannot provide such evidence because there is none. Again, the Oregon Department of Agriculture stated: "The pit site would not be considered an agricultural activity." That is expert evidence and the Board of Commissioners should cite it in the final findings.

The appeal also alleges that the Hearings Officer "erred in opining that the character of the soil matters to the to the question of whether its deposition is an accepted farm practice." The placement of marble and granite countertop waste under the guise of "soil" is not an accepted farm practice. The argument that the character of soil is irrelevant to whether fill is an accepted farm practice demonstrates that the fill is unrelated to farming. No reasonable farmer would ever deposit poor quality soil on farm land. The argument attempts to evade the Hearings Officer's point that dumping poor quality wastes and miscellaneous soils on top of high value agricultural soils in the verdant Willamette Valley is not an accepted farm practice. The applicant makes no attempt to show that it is.

The appeal then alleges that "environmental impacts are not a factor in whether an activity constitutes an 'accepted farm activity.'" Why not? The applicant has the burden to demonstrate that the fill operation—including the dewatering pit and its repeated overflow—is an accepted farm practice. The record evidence demonstrates that the fill operation repeatedly discharges overflowing wastewater into the tributary of Ryan Creek, which leads directly to the Willamette River, as shown in these before and after photos taken just below the pit during the last rainy season.

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The pit is not containing the wastewater, and the turbidity is obvious. The applicant has failed to provide any evidence that a large dewatering pit which overflows untreated wastewater into a creek is an accepted farm practice.

Kevin Fenn at the Oregon Dept. of Agriculture explained the water quality issue.

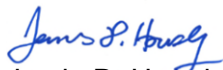
“In regard to regulation under the Agricultural Water Quality program we make decisions on what are agricultural activities and what constitutes agricultural fill. For either the activity must be a normal and accustomed practice. The pit site would not be considered an agricultural activity.”

The pit where the vector truck waste is dumped is not an agricultural activity or an accepted farm practice. There is no evidence in the record of other vector truck dump sites on Exclusive Farm Use land. The paved haul road and turnaround area for the vector trucks is not an accepted farm practice. The commercial dumping of waste from up to six vector trucks at a time is not an accepted farm practice. The commercial scale dewatering of vector truck waste is not an accepted farm practice. Therefore, the combined dumping and dewatering of vector truck waste is neither a farm use under ORS 215.203(2)(a), nor an accepted farm practice under ORS 215.203(2)(c). Finally, attached are before and after aerial photos which clearly illustrate that the dumping operation has displaced previously planted filbert trees. The operation reduces the area available for growing crops. This fact demonstrates the commercial vector dump operation is unrelated to farming.

This appeal lacks merit. We urge the county to continue with the code enforcement action for removal of the constructed dump site and the expeditious restoration of the Burnham property. Thank you for your courtesies and assistance with our participation.

Sincerely,

JORDAN RAMIS PC



Jamie D. Howsley
Admitted in Oregon and Washington

cc: Scott and Judy Chambers



Historical Imagery < Jun 18, 2021 >



2016

2017

2018

2019

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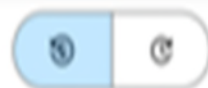
2021

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Historical Imagery < Sep 26, 2025 >



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