

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

NOTICE OF DECISION

ADMINISTRATIVE REVIEW CASE NO. 25-026

APPLICATION: Application of Denise Burnham for an administrative review to determine whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use on a 129.45-acre property in an EFU (Exclusive Farm Use) zone located at 21875 Butteville Rd NE, Aurora (T4S; R1W; Section 8; Tax lot 200).

DECISION: The Planning Director for Marion County has determined that placement of fill from hydraulic vacuum exaction **is not a farm use** and is not permitted on the subject property.

PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions thereon. It is recommended that the agencies mentioned in the Findings and Conclusions section #6, be contacted to identify restrictions or necessary permits.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **October 10th, 2025**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 13th, 2025**, unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both the designation and zone is to provide areas for continued practice of commercial agriculture and to protect commercial agricultural operations.
2. The subject property is located on the western side of Butteville Rd NE, approximately 900 feet north of its intersection with Ehlen Rd NE. The property contains two stick built dwellings, one built in 1908 and the other in 1933. The parcel also contains multiple accessory farm structures. The parcel and dwellings are considered legal for land use purposes.
3. Surrounding properties are all zoned EFU and in active farming operations, with some containing dwellings.
4. Soil Survey of Marion County, Oregon indicates that the subject parcel consists of 97.1% high-value soils.
5. The applicant is requesting a determination as to whether operation of a site for placement of fill from hydraulic vacuum extraction is a farm use.
6. Various agencies were contacted and given an opportunity to comment.

Marion County Septic commented: "Per OAR 340-07-0130(12), "Initial and repair absorption areas must NOT be subject to activity that is likely to adversely affect the soil or functioning of the septic system. Including but not limited to: Vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil

modification.” Any existing drainfield and future repair area should not be filled and should be delineated from all other site manipulation..”

Marion County Code Enforcement provided comments requesting denial stating that they believe this to a commercial dumping operation rather than a farm use.

Marion County Building Inspection commented: No Building Inspection concerns. Permit(s) may be required to be obtained if development of structures and/or utilities installation is proposed over the proposed fill soil pit locations. A compaction report of the soils may be needed to prove the density of the fill material is sufficient to support a structure. It is advised to obtain this compaction report for future use if structures are to be developed in these locations.

1000 Friends of Oregon commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. Their comments can be found in full in the case file.

Friends of French Prairie commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. In their comments they submit pictures of the subject property with the dumping pit. Some of their pictures appear to show countertop waste being dumped into the pit. This would contradict the statements made by the applicants that only dirt and water have been dumped in their pit. The pictures show bright white material that appears to be ground up or in small chunks, similar to countertop waste that was dumped at a pit on another Marion County property associated with a disposal site. Their comments can be found in full in the case file.

Jamie Howsley of Jordan Ramis Law Firm represents a neighbor, the Chambers Family, and submitted a letter requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. They also submitted enforcement letters against the property from DEQ, Oregon Water Resources Department and Marion County Code Enforcement. The letters from DEQ detail numerous violations related to water quality and hydraulic oil spills. The letter from Oregon Water Resources Department states that they are in violation of ORS 537.130(1) and 537.130(2) for constructing a earthen dam and storing water without a water right. Additionally, they submitted two videos, one of the very muddy, turbid water of Ryan Creek due to the contamination by the pit and a second of a pump actively pumping water from the pit into the Ryan Creek wetlands area. Their comments can be found in full in the case file.

Michael McCauley commented requesting denial of the permit asserting that use is not a farm use and rather a commercial dumping operation. He also raises concerns about the construction of the berm and the damage it would cause if it were to fall and flow into Ryan Creek. Their comments can be found in full in the case file.

All contacted agencies either failed to comment or stated no objection/concern to the proposal.

7. The applicant is requesting a determination as to whether operation of a site for placement of fill from hydraulic vacuum exaction is a farm use. In 2023 the applicant excavated and constructed a large pit on their property, measuring approximately 200 feet long by 150 feet wide and built in a circular shape. The pit is approximately 20-30 feet deep and was made by substantially digging out a gully on the subject property’s filbert orchard western edge and extending the digging into the orchard and flat areas of the property. The pit and associated berm take up approximately 0.8-1.0 acres. An asphalt road was constructed to access the pit site. The road is approximately 3570 feet long and leads to 6 dumping bays marked by painted white lines on the ground and yellow safety railings to denote the edge of the pit. After completion, vector trucks employed by utility companies such as NW Natural, PGE, ProVac and Poltelco began dumping at the site. They dumped a slurry made of water and dirt which is the by-product of hydraulic excavation. High pressure water is used to loosen dirt and dig trenches/holes while an industrial vacuum sucks the slurry into a holding tank on the truck. The trucks then travel from the jobsite to the subject property and dump the slurry into the pit. Applicants were receiving compensation for each truck that dumped and based on evidence submitted in the record, were receiving \$300 per load and received 238 loads from November 2023 to January 2024.

Friends of French Prairie submitted photos of the above companies dumping at the site and included photos of what appears to be countertop waste (extra cuttings of countertops not big enough to be used in construction)

being dumped into the pit by Pacific Northwest Marble and Granite on December 12, 2023. The photos show white material leaving the truck and accumulating in the pit and around the edges of the truck where it sits on the asphalt above the pit. The operator of this pit also constructed and operated another pit without proper permits in Marion County which was subsequently closed after enforcement by DEQ and Marion County. This site also dug a pit with stalls for vector trucks to back up and dump in as well as receiving vast amounts of countertop waste. That site is no longer in operation.

Applicants state that the purpose of the operation is to fill in low lying portions of their property to improve drainage and expand the farmable area they have. They further state that after the pit fills they would farm on top of it.

MCC 17.110.223 provides the definition of farm use as taken from 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 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, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).

MCC 17.120.315 (A), (C), (D) and (E) defines "dispose" "solid waste" "solid waste disposal sites" and "waste":

A. "Dispose" or "disposal" includes accumulation, storage, collection, transportation, and disposal of solid wastes;

C. "Solid waste" means all putrescible and nonputrescible wastes, whether in a solid or in a liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, tires, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, dead animals and other discarded solid materials;

D. "Solid waste disposal site or sites" means any land used for disposal of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, incinerators, and composting plants, but not including a landfill site which is not used by the public either directly or through a disposal service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing;

E. "Waste" means useless, unwanted or discarded materials.

Applicants state that they began this operation to fill in low lying lands on their property so they could create more farmable area and mitigate erosion. They also state that they only receive clean fill from companies doing excavation work. Provided in the definition of farm use is the sentence: *"Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.* It is common practice for farmers to receive fill dirt. Often it is offered for free, or property owners pay for it, as a method for construction sites to get rid of extra dirt and keep it in the local area. What is less common are companies paying a property owner to dispose of their extra dirt. This functions like a solid waste facility, where the actual waste, or soil in this case, is useless or unwanted material and the value is in the disposal and storage of it. 238 loads were received in a three month period, averaging nearly 80 loads per month.

The primary purpose of this dump site appears to be obtaining a profit from the disposal of industrial and commercial vector truck waste. This does not constitute farm use, rather, this is a solid waste disposal site. New solid waste disposal sites are not permitted in Marion County. See MCC 17.136.050 (I):

I. Expansion of a lawfully established solid waste disposal site together with facilities and buildings for its operation (see specific conditional uses, MCC 17.120.310 through 17.120.380).

Only expansions of lawfully established sites can be permitted. This does not fall into a lawfully permitted site, as no prior land use permits were applied for and the site wasn't operating prior to county's comprehensive plan being acknowledged in 1983. The proposed use is not a farm use. Evidence in the record also shows more than soil and water were dumped in the pit, countertop material was dumped in this pit as well. Additionally, the area was deeply excavated in order to make room for the fill material to be received. This is not consistent with the applicant's stated need to fill in an existing low area on their property to make it suitable for farming. It appears the area was excavated in order to create capacity for accepting solid waste at the site.

There are additional concerns about the operation of this site to receive material that haven't been addressed by the applicant in their proposal:

1. Without testing each shipment as it arrives on site, it is impossible to determine if the fill is clean or not. There is not a process in place to ensure testing unless the site is established as a solid waste disposal site and permitted accordingly.
2. There are concerns about such a large berm being constructed near Ryan Creek, which flows directly to the Willamette River and serves as fish and wildlife habitat. If the berm were to fail, or contaminated soil be placed in it and drained to Ryan Creek, it could negatively affect downstream property owners and the wildlife. During the rainy months the pit fills up with water, leaving no capacity for soil and poses a threat of collapsing the berm. While the applicants have submitted a report to DEQ which shows the berm has a low chance of failure, this may not be adequate evidence the berm has been constructed to receive and store soil waste and water long term.
3. Evidence was submitted to the record showing a pump sitting on the berm that pumped turbid water directly from the pit into Ryan Creek, when the pit was filled with water. Letters in the record from DEQ demonstrate that they have concerns about this turbid water reaching streams and water of the state, which is in violation of ORS 468B.025(a) and in violation of OAR 340-012-0055(2)(b). It appears the applicants have been knowingly draining this water into Ryan Creek despite the notice of violations sent to them on January 11, 2024 and March 19, 2024 by DEQ.
4. Evidence was submitted to the record showing that on January 2, 2024, a hydraulic line on one of the trucks ruptured and spilled approximately 5 gallons of hydraulic fluid into the pit and surrounding area. Nothing has been submitted to the record to ensure that this will not happen again or that there are proper clean up procedures in place that would stop any hydraulic fluid from getting into the soil, groundwater or Ryan Creek.

There is not sufficient evidence in the record to show that the use is a farm use. Because a new solid waste disposal site cannot be approved in the EFU zone, the use of the land for this purpose is not allowed and the land must be restored to a state where it is able to be farmed. **The earthen berm must be removed along with the asphalt dumping stations, yellow guardrails, and other components of the disposal site.**

8. Additional information was submitted to the record on September 24, 2025, by Jamie Howsley who represents the Chambers family who live directly west of the subject property. Their property abuts the subject property and contains the area in which the turbid waters flow into Ryan Creek. Ryan creek does not pass through the subject property, it is wholly contained on other, adjacent properties, such as the Chambers.

A letter from Oregon Water Resources Department (OWRD) dated February 1, 2024, was sent to Denise Burnham detailing violations of ORS 537.130(1) and 537.130(2). These statutes state that:

1. “...any person intending to acquire the right to the beneficial use of any of the surface waters of this state shall, before beginning construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the Water Resources Department for a permit to make the appropriation.”
2. “...a person may not use, store or divert any waters until after the department issues a permit to appropriate the waters.”

The proposal does not qualify for any of the exemptions contained in ORS 537, as this type of storage requires a permit from OWRD. Based on this information and letters from DEQ, the property is in violation of multiple Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR). A phone call with OWRD on September 24, 2025, confirmed that the violations are still active and no permit applications have been received yet.

MCC 17.110.680 Administration of the title provides:

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, except federal laws related to marijuana, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit or land use approval would correct the violation.

If Marion County were to approve the use as a farm use, it would not correct the violations mentioned above and the property would still be in violation of multiple ORS, OAR and MCC 17.110.680. Due to this, the permit cannot be approved and must be denied.

9. Based on the above findings, it has been determined that placement of fill from hydraulic vacuum extraction **is not a farm use** and is not permitted on the subject property and approving such a use would not remedy the parcel of its violations of ORS and OAR.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 25th, 2025

If you have any questions regarding this decision, contact Austin Barnes at (503) 588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.



ZONING MAP

Input Taxlot(s): 041W080000200

Owner Name: BURNHAM LT BURNHAM, DENISE M

Situs Address: 21875 BUTTEVILLE RD NE

City/State/Zip: AURORA, OR, 97002

Land Use Zone: EFU

School District: NORTH MARION

Fire District: AURORA

Legend



Input Taxlots



Lakes & Rivers



Highways



Cities



scale: 1 in = 845 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.