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Via Email

Benton County Board of Commissioners  
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Re: Reconsideration of Appeal – LU-24-027 Coffin Butte Expansion—Applicant’s Final Written Argument  
Chair Malone and Commissioners:

Our firm represents Valley Landfills, Inc. (Applicant), in this matter. Please add this letter to the record.

**Introduction**

While procedurally and substantively flawed, the County’s reconsideration process has nonetheless confirmed what the original record already demonstrated: the Coffin Butte Landfill expansion application is supported by substantial evidence, has undergone exhaustive technical review, and satisfies all applicable land use criteria. The Applicant has provided extensive, peer-reviewed technical analyses; has responded to multiple rounds of agency review; and has complied with repeated requests for additional information. The County’s own independent consultants confirmed the odor modeling relied on the best available data and that predicted impacts fell well below nuisance thresholds. Those conclusions have not been undermined by any new evidence submitted to the County.

Instead, the reopened record reflects a reversible departure from established land use procedures. The County has elevated an interim, non-final agency action above a complete evidentiary record that already accounted for the underlying inspection reports and resulted in detailed conditions of approval at the time of the Board’s original decision. At the same time, the Applicant has been required to defend against allegations still subject to an active state enforcement process, within a compressed 14-day record period, while continuing to work cooperatively with DEQ under that separate process. That approach is neither fair nor consistent with the typical land use review process.

Similarly, the surge in odor complaints submitted during this rehearing period does not constitute reliable new evidence for reconsideration. The complaints exhibit clear temporal clustering around procedural milestones, frequently lack supporting information regarding distance, wind conditions, or alternative odor sources, and are often based on assumption rather than site-specific analysis. When examined alongside the broader record—including historical complaint data, meteorological conditions, and the presence of multiple known odor-generating facilities in the region—the complaints do not support the conclusion that the landfill is the source of the reported odors.

Allegations that Republic Services is a “bad actor” are unsupported and should not be credited. When viewed accurately, the record shows a highly regulated operator with a substantial compliance history,

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subject to the same oversight and corrective processes as every major landfill operator nationwide. Characterizations grounded in selective statistics and misattributed facilities are not a lawful basis for a land use decision.

### **DEQ Pre-Enforcement Notice and Odor**

When the Board previously approved this application, it did so based on the law and a complete evidentiary record. Neither the governing criteria nor the substantive evidence has changed since that decision. Allowing unresolved allegations, political pressure, or selectively framed testimony to displace that record would undermine the integrity of the land use process. Reopening the record to include the DEQ Pre-enforcement Notice (PEN) is procedurally flawed, the information contained within the PEN should not be considered evidentiary, and thus, any related conclusions are also flawed. This is due to the simple fact that the PEN is a preliminary finding, not a final determination.

Notwithstanding the preliminary nature of the PEN, the County's third-party consultant, Maul Foster & Alongi (MFA) issued a supplemental memorandum dated January 27, in which it calls into question the validity of the previously reviewed odor study. MFA's assertions are based solely on *preliminary* findings contained within the PEN. In fact, no actual evidence exists within the PEN that would change odor study's underlying assumptions – a study that MFA previously affirmed within their "Third Party Review: Coffin Butte Landfill" submittal. That review, submitted with the expansion application, states:

"The revised Odor Study is based on actual data, including actual flow rates for the flare, current waste acceptance volumes for the landfill, onsite meteorological data, onsite terrain data, and actual operating hours for the tipper engines, as well as Oregon Department of Environmental Quality (ODEQ) approved emissions rates for the eight highest odor-causing pollutants potentially emitted by the landfill. This represents the best available data for conducting an odor dispersion modeling assessment." (Emphasis added).

MFA's most recent letter concludes with: "If the applicant had provided evidence that it corrected each violation cited within the PEN letter and demonstrated that the gas collection system does capture 75% of landfill gas emissions, then the results presented in the June 2025 Odor Study would be considered accurate and reliable." Again, the PEN is a "pre-enforcement" notice not a final determination. More importantly, the estimated efficiency used in the approved modeling was 75%, a conservative default used by the U.S. EPA and numerous other air agencies.

Annual Greenhouse Gas (GHG) Reports from 2022, 2023, and 2024, submitted to and accepted by DEQ, demonstrate the calculated collection efficiency at Coffin Butte Landfill to be 92%, 92%, and 90%, respectively. While the calculated collection efficiency rates from the GHG Reports show a much higher collection efficiency than what has been historically used as a default for modelling purposes, for conservative assumptions, Coffin Butte elected to use the lesser value. This approach is in direct agreement with the county's third party consultants review.

Additionally, items within the PEN do not specifically state that Coffin Butte has a collection efficiency below 75%. It instead states that destruction capacity of landfill gas is required to meet the maximum expected gas generation flow rate as per Subpart AAA and Division 239 regulations. This assertion is still

pending resolution between DEQ and Coffin Butte and is not relevant to the previously approved odor study.

Future gas destruction capacity is required at Coffin Butte and will be installed prior to being required by law. Current infrastructure, however, is adequately sized to destruct the current gas generation consistent with applicable law. The underlying assumptions within the odor study remain as valid now as they did when the Board deliberated in November. In addition, no new information has been introduced to warrant a change in prior staff or their third-party consultants previous determinations. Those determinations are outlined in the County's October 2025 staff report and noted below:

"Staff engineering consultants have reviewed and determined the Applicant's 2025 Odor Study follows reasonable assumptions and modeling protocols. The results of the updated study indicate typical odor levels of 1.4 D/T, well below 7, for everyone affected by odor from the landfill expansion. Notably, for the purpose of this application, the expansion model shows that the proposed expansion will ultimately produce lower odor levels than the existing landfill."

"Staff's conclusion that the landfill expansion will not seriously interfere with uses on adjacent properties or with the character of the area with regard to odor impacts is based on the Applicant's submitted odor study (Record ID. BC016 2025 Odor study (Exhibit E33), p. 1408 – 1522). The Applicant's odor study models annual waste acceptance of 930,373 tons or less from 2023 to 2052. Accordingly, a condition of approval is authorized by BCC 53.220 and is appropriate to ensure that the Applicant's modeled amount of waste acceptance is not exceeded on an annual basis."

As such, the County should remain confident that the odor study takes a very conservative approach to predicting odor impact due to the expansion and, after multiple rounds of expert review, the conclusions remain the same. The proposed expansion will produce lower odor levels than the existing operation and will not interfere with uses on adjacent properties or with the character of the area.

### **Substantive and Procedural Error**

In prior testimony, the Applicant objected to the Board's decision to reopen the evidentiary record. The Applicant reiterates those objections here. No party disputes the Board had the authority to withdraw its prior approval for reconsideration under ORS 197.830(13) and BDC 51.900. The Board, however, committed substantive error by restarting the evidentiary stage of review. The cases relied upon by County Counsel do not support the County's process because the propriety of reopening the evidentiary record was not raised as an issue before LUBA in any of the cited cases. Dictum—a "statement that [is] not necessary to the outcome of a case" has no precedential value. *State ex rel. Huddleston v. Sawyer*, 324 Or 597, 621 n 19 (1997); *Mastriano v. Board of Parole*, 342 Or 684, 692 n 8 (2007); *see also, Sundermier v. State*, 269 Or App 586, 594 (2015). The fact that a city or county may have reopened the record on reconsideration has no legal relevance if the issue was not raised as an assignment of error before LUBA. In the present case, if the Board wanted to reopen the evidentiary record, it should have pursued a stipulated remand "of the land use decision for further proceedings[.]" OAR 661-010-0071(2). That is the only procedural mechanism by which the County could reopen the evidentiary stage of review. Rather than

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seeking a stipulated remand, the County instead erroneously pursued a remand-like process under the guise of reconsideration.

The County's substantive error was compounded by the manner in which the open record process was conducted. Despite the County's characterization of the open record period as a 7-7-7 process, the County's submission of the DEQ PEN during the first seven days allowed opponents to withhold responsive evidentiary submissions until 3:59 p.m. on February 3, leaving the Applicant with no opportunity to respond with evidence. While the Applicant agrees that there is not an unlimited right to rebut evidence under *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973), the inability of the Applicant to rebut with evidence in this instance is clear error.

The County's flawed process resulted in the Applicant having to sift through testimony wholly untethered to the PEN, as well as negate testimony that did not rely on generally accepted methods of analysis used by the industry to assess gas collection. In one instance, a single individual submitted on Feb. 3 two separate, voluminous pieces of testimony, totaling more than 90 pages. This testimony included evidence and argument, including an erroneous assertion that the landfill's gas collection efficiency is 49 percent. Given the Board's flawed process, the Applicant was unable to meaningfully rebut this individual's assertions with additional substantiated evidence.

In another example, a resident used modeling software to allege that the Applicant is deliberately misrepresenting landfill emissions data. While the County's prejudicial process prevents the Applicant from submitting new evidence at this juncture, we will reiterate the following as it relates to the gas collection efficiency testimony: Carbon Mapper represents a snapshot in time and is not a valid method for analyzing the landfill's overall emissions. In the second instance cited above, the resident's testimony places undue reliance on the EPA LandGEM model, which has numerous limitations, most notably relying on default parameters that do not accurately reflect site-specific conditions.

While it may be used to estimate potential landfill gas generation rates, modeled generation does not equate to actual gas volumes, which are influenced by design, operational, and environmental factors. More importantly, the EPA's LandGEM model is widely recognized to have substantial uncertainty within the model's predictions, ranging from approximately 38 percent underestimation to as much as 492 percent overestimation. Accordingly, LandGEM results should not be interpreted as representative of actual landfill gas collection performance.

Finally, other testimony submitted at the 11<sup>th</sup> hour erroneously suggests that there are additional "underlying input errors" in the Applicant's Odor Study. Again, these assertions are based on presupposition and not quantifiable data. As an example, one opponent opines that DEQ will release updated emissions figures based on the inclusion of "inert" waste, and as such, the "emissions the Applicant used in the model will no longer be valid." This comment assumes future findings that, standing alone, hold no merit. These types of issues will not be resolved until a conclusion is reached between Coffin Butte and DEQ, yet through this flawed process opponents characterize the PEN as a final adjudication. Had the Applicant been able to respond with evidence, the Applicant would have submitted evidence demonstrating that it is industry practice to exclude inert wastes as they are comprised on non-putrescible material which does not decompose.

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It is clear that given the volume of testimony submitted at the end of the open record period and the Applicant's inability to adequately respond, the County's process is flawed by procedural errors that prejudice the substantial rights of the Applicant.

The Applicant requests an additional seven-day period to submit responsive evidence and final argument. The Applicant will not, however, agree to any extension of the 90-day reconsideration period. The procedurally and substantively defective reconsideration process is a Gordian Knot of the County's own making. The Applicant will not assist the County in unraveling this error by agreeing to further extend an already deeply flawed process.

### **Public Records Request**

Counsel for the Applicant submitted a public records request with the County on December 17, 2025, seeking records related to the landfill, the DEQ PEN, and the Board's knowledge of the PEN. The County's first substantive but materially incomplete, response was issued on February 5, 2026 – two days after the evidentiary record had closed. The Applicant understands that the Board received numerous written communications from opponents, legislators, and potentially other parties related to the PEN. The Applicant is entitled to review these messages and, depending upon when they were received by the Board, they should have been included in both the public records request response and the evidentiary record. It is in this area that both the Applicant and opponents agree.

For example, on Feb. 3, Mr. Joel Geier submitted testimony noting that the County had not made available or entered into the record information about its communications with its third-party consultant, Maul Foster Alongi (MFA). Mr. Geier, like the Applicant, notes that, "Presumably MFA's review of the DEQ PEN, as provided on January 27, 2026, was at the request of County staff and/or outside counsel. However, documentation of this request is not yet available, as part of this public record." Mr. Geier further requests that Commissioners "share the context of MFA's review, including any specific questions that they asked for MFA to address."

It is notable that Mr. Geier's testimony included a redacted email sent from Planning Director Petra Schuetz to County Attorney Vance Croney. As of this submittal (February 10, 2026) the county has not made any communications between Schuetz, Croney, MFA, and/or the Board of Commissioners available to the Applicant.

In separate testimony submitted on Feb. 3, 2026, resident Mark Yeager renewed his request for "any ex parte communications between Chair Malone and (Republic Services Municipal Manager Julie) Jackson and others." Mr. Yeager notes, "had those communications been disclosed, I and others could have rebutted their contents. Those communications might also have revealed prejudgment of the decision or actual bias, requiring recusal."

Indeed, Mr. Yeager raises an excellent point. Given the highly unusual nature of this process the Applicant also has the right to review communications between members of VNEQS, the Board and the public at large both for the purposes of rebuttal and for evidence of bias in these proceedings.

OAR 661-010-0025 provides that the record shall include "[a]ll written testimony and all exhibits, maps, documents or other materials . . . placed before, and not rejected by the final decision maker, during the course of the proceedings before the final decision maker." The Applicant is therefore legally entitled to

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know what information and communications were placed before the Board during the course of the proceedings and what materials, if any, the Board specifically rejected.

### **Evidence and Testimony Outside Parameters of Open Record Period**

When the Board elected to reopen the record, it adopted the recommendations set forth in the January 13, 2026, Community Development Memorandum. The first seven days allowed “new written evidence related to the DEQ Letter as it relates to the applicable approval criteria in the Benton County Code” and “written arguments related to the DEQ Letter as it relates to the applicable approval criteria in the Benton County Code.” During the second seven-day period “anyone may submit only evidence and argument that responds to evidence and argument submitted in the first 7 days.” The amount of non-responsive testimony and evidence submitted by landfill opponents far exceeded the scope of the Board’s open record order. For instance, Jon Champney provided written testimony on January 21, 2026. In his testimony Mr. Champney states, in part:

“The Coffin Butte Landfill has already placed a substantial burden on the surrounding environment. Expansion would intensify risks to groundwater and surface water through increased leachate production, threatening nearby agricultural lands, private wells, and local waterways. Once groundwater contamination occurs, it is often irreversible and places long-term costs on taxpayers and future generations. Protecting water resources must be a top priority for this county.”

This testimony has no bearing on the DEQ PEN or the applicable approval criteria addressed in the Board’s open record order. The next paragraph of Mr. Champney’s testimony touches on air quality and is therefore arguably within the Board’s open record order. His third paragraph, however, again addresses matters well outside the scope of the DEQ PEN and the Board’s open record order:

“The expansion also threatens wildlife habitat and the rural character of the surrounding area. Increased truck traffic, noise, and industrial activity will disrupt ecosystems and degrade farmland that supports the local economy. These impacts disproportionately affect rural residents, raising serious equity concerns about whose voices are prioritized in land-use decisions.”

Mr. Champney’s testimony is by no means unique—non-responsive testimony and evidence appear throughout the record. It is unreasonable for the Applicant to be required to review hundreds of pages of testimony, parse out what is within the Board’s order, and object to each statement that falls outside the scope of the Board’s open record order. This procedural defect results directly from the County’s decision to reopen the evidentiary record. The Applicant objects to the inclusion in the record of any testimony or evidence that falls outside the Board’s open record order. The Applicant requests that the Board identify then specifically reject evidence and testimony falling outside the Board’s open record order. OAR 661-010-0025(1)(b).

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## Conclusion

For the reasons set forth above, the Applicant respectfully requests that the Board reaffirm its prior approval of the Coffin Butte Landfill expansion. Specifically:

- **The application satisfies all applicable approval criteria** and is supported by substantial evidence, including extensive peer-reviewed technical studies and multiple rounds of agency review.
- **No new, adjudicated facts undermine the original approval.** The DEQ Pre-Enforcement Notice is an interim, non-final agency action and does not alter the evidentiary record or approval criteria governing this decision. Further, data submitted annually and accepted by DEQ clearly shows that the landfill's gas collection system is capturing emissions well above the 75 percent threshold used in the Odor Study, proving it remains valid.
- **The surge in odor complaints submitted during reconsideration does not constitute reliable new evidence,** lacks necessary contextual information, and does not establish the landfill as the source when evaluated alongside historical data, meteorological conditions, and other known odor sources.
- **Allegations that Republic Services is a "bad actor" are unsupported** and are not a lawful basis for a land use decision.
- **The reconsideration process introduced substantive and procedural error,** including reopening the evidentiary record without a stipulated remand and conducting an open record process that deprived the Applicant of a meaningful opportunity to respond.
- **The evidentiary record was further compromised by non-responsive testimony** submitted outside the scope of the Board's open record order, which should be identified and rejected pursuant to OAR 661-010-0025(1)(b).
- **Public records related to the DEQ PEN and communications received by the Board were not produced in a timely fashion,** raising additional concerns regarding record completeness and procedural fairness.

Because neither the governing standards nor the substantial evidence supporting approval have changed, the Board should set aside extraneous considerations, return to the full evidentiary record, and reaffirm its prior approval of the Coffin Butte Landfill expansion.

Sincerely,



Steven P. Hultberg

cc: County Counsel ([mryan@batemanseidel.com](mailto:mryan@batemanseidel.com))  
Client