

Steven P. Hultberg
shultberg@radlerwhite.com
541-585-3697

January 27, 2026

Via Email

Benton County Board of Commissioners
4500 SW Research Way
Corvallis, OR 97333
c/o landfillappeals@bentoncountyor.gov

Re: Reconsideration of Appeal – LU-24-027 Coffin Butte Expansion

Chair Malone and Commissioners:

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

Over the Applicant's objections, the Board of Commissioners re-opened the public hearing and the written record in this matter. Although local governments have some discretion in how they handle reconsideration, that discretion is not unlimited. The reconsideration process does not include the reopening of the record and establishing an additional evidentiary hearing process over the Applicant's objections. Similarly, the whole point of the 150-day deadline imposed by ORS 215.427 is to ensure that local governments make a timely decision. If the Board can pull back a decision under the guise of "reconsideration" then continue the public hearing process, the County has improperly avoided the requirements of ORS 215.427.

Based on the Board's discussion during the January 20, 2026 hearing and messages from county counsel, we understand that our January 16, 2026 letter objecting to the re-opening of the hearing and record was not entered into the record. A copy of our objection letter is attached as Exhibit A and the Applicant requests that it too be added to the record in this matter. In addition, counsel for the Applicant emailed county counsel on January 20, 2026 prior to the Board's meeting requesting specific information related to *ex parte* contacts. A copy of that email is attached as Exhibit B and should be entered into the record.

The Board ignored the Applicant's request that the Board explain how and when it received the DEQ notice. "[A]n *ex parte* communication is a communication between a party and a decision-maker, made outside the hearing process, concerning a decision or action before the decision-maker." *Oregon Shores Conservation Coalition v. Coos County*, 81 Or LUBA 839, 846 (2020). At some point after the record closed, the Board became aware of the DEQ notice through some type of communication. Commissioner Shephard confirmed this understanding during the January 6, 2026 work session, explaining that the purpose of the reconsideration process was to evaluate "items that . . . came to light . . . after the public record was closed last time." (January 6, 2026 Board Hearing at 32:40). Upon information and belief, the Applicant understands that the DEQ notice was the reason that Commissioner Wyse moved to reconsider the application in December and that she had knowledge of the DEQ notice prior to issuance of the Board's written decision in November. The Applicant is entitled to understand how the Board

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obtained knowledge of the DEQ notice. Accordingly, the Board should have made those disclosures at the November 17, 2025 hearing or, at the latest, the January 20, 2026 hearing.

During the January 20 hearing county counsel stressed that objections to the board's *ex parte* disclosures were limited solely to rebutting the substance of the board's *ex parte* disclosures made at the January 20 meeting. ("This is not the time to engage in a deposition or other questioning of the commissioners beyond the substance or to make a speech." (Hearing video at 1:30:35)). Because the Board failed to disclose any *ex parte* contacts related to the DEQ notice and ignored the Applicant's written requests for DEQ-related information, the Applicant was unable to challenge the Board's lack of disclosure. The Applicant is entitled to know how the Board received communications related to the DEQ notice, when those communications were received and whether, based on such communications, each Board member remained able to make an unbiased decision. ORS 215.422(3). Counsel for the Applicant filed a public records request with the county in December seeking public records relating to the Board's knowledge of the DEQ notice. To date, the county has not provided any responsive public records. Should the Board ultimately deny the application, the Applicant will move to have LUBA admit additional evidence under OAR 661-010-0045(1) and will seek to depose and subpoena county staff and the Board related to the circumstances related to and the timing of receipt of the DEQ notice.

Sincerely,



Steven P. Hultberg

cc: County Counsel (mryan@batemanseidel.com)
Planning Director Schuetz (petra.schuetz@bentoncountyor.gov)

EXHIBIT A

Steven P. Hultberg
shultberg@radlerwhite.com
541-585-3697

January 16, 2026

Via Email

Benton County Board of Commissioners
4500 SW Research Way
Corvallis, OR 97333
pat.malone@bentoncountyor.gov
nancy.wyse@bentoncountyor.gov
gabe.shepherd@bentoncountyor.gov

Re: Reconsideration of Appeal – LU-24-027 Coffin Butte Expansion

Chair Malone and Commissioners:

Our firm represents the applicant, Valley Landfills, Inc. (Applicant), in this matter.¹

We understand that the Board of Commissioners will hold a public hearing on January 20 regarding the Applicant's proposal to expand the Coffin Butte Landfill. According to the county's Coffin Butte Landfill status page and the January 13, 2026 staff report from Planning Director Schuetz, the purpose of the hearing is to allow the planning director to introduce into the record the November 6, 2026 Pre-Enforcement Notice (PEN) issued by the Oregon Department of Environmental Quality (DEQ). We understand that the Board is likely to open the record, allow the introduction of the PEN and then establish an open record period for the Applicant and interested parties to respond to the PEN with evidence and argument.

The PEN has no bearing on the County's decision. The County's conditional use criteria are focused on the operation of the "proposed use" not "existing operations." By its own terms the PEN relates to the monitoring of existing surface emissions, the legacy gas collection and control system inherited by (and improved by) the Applicant, and sufficiency of cover at the existing landfill. Conditions at and operations on the existing landfill site simply have no logical connection to the "proposed use." BCC 53.215 provides:

The decision to approve a conditional use permit shall be based on findings that:

- (1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone;*
- (2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and*

¹ The Applicant's former counsel, Jeff Condit of Miller Nash, retired at the end of 2025.

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(3) The proposed use complies with any additional criteria which may be required for the specific use by this code.

Each of the above standards question whether the “proposed use” will have the impacts identified under BDC 53.215. It would be clear error for the County to consider backward looking PEN when the approval criteria require a forward-looking analysis of the “proposed use.” To put it succinctly: The issues identified in the PEN exist regardless of whether the County approves the landfill. Accordingly, the issues included in the PEN cannot factor into the County’s decision moving forward. As a practical matter the Applicant has already taken significant steps to resolve the issues identified in the PEN and which first arose after a 2022 during a U. S. Environmental Protection Agency (EPA) inspection. For example, since 2022 the Applicant:

- Immediately addressed EPA concerns by adding soil cover over working cells to reduce methane emissions;
- Added tarps and additional soil cover to reduce methane emissions;
- Strengthened seals around gas collection piping;
- Expanded the landfill’s gas collection and control system;
- Added six new vertical and nine horizontal well collectors;
- Replaced prior gas flare system with a regulatory approved enclosed flare system.

As the record in this matter conclusively demonstrates, the Applicant has taken significant strides to ensure that the landfill meets or exceeds regulatory standards. In addition, the Board’s November approval included 20 pages of detailed conditions of approval that closely regulate the Applicant’s operation of the landfill. The Applicant continues to work cooperatively with DEQ to resolve the issues identified in the PEN.

The Applicant objects to the Board’s reopening of the record because neither ORS 197.830(13)(b) nor BDC 51.900 allow the Board to reopen the record and restart the hearing process. Moreover, by retaking jurisdiction of the application, the Board will not have taken “final action” within the 150-day deadline established by ORS 215.427 – which expired on November 26, 2025. Additionally, it is clear error for a decision maker to rely on evidence outside of the record. Here the county acknowledges that the Board reviewed the PEN *after the record closed*, and based its decision to reopen the record solely on the PEN. Given that the Board had knowledge of the PEN after the record closed, but before the county’s written decision was issued, the Board could have reopened the record in November to address the PEN. It did not do so because reopening the record would have prevented the county from making a final decision within 150 days. It is clear that the Board’s decision to use the reconsideration process to address the PEN is solely for the purpose of avoiding the requirements of ORS 215.427.

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We urge the Board of Commissioners to decline to reopen the record and ask that the Board affirm its original decision.

Sincerely,



Steven P. Hultberg

cc: County Counsel (mryan@batemanseidel.com)
Planning Director Schuetz (petra.schuetz@bentoncountyor.gov)

EXHIBIT B

Steven Hultberg

From: Steven Hultberg
Sent: Tuesday, January 20, 2026 9:33 AM
To: 'Melissa Ryan'
Cc: CRONEY Vance M
Subject: RE: Coffin Butte Landfill Expansion--LU-24-027

Ms. Ryan,

I wanted to confirm receipt of your email on Saturday. I wish to stress that my communication was not intended to be a substantive *ex parte* contact, but rather an objection to the reconsideration process. My email was intended to avoid any suggestion that the applicant waived its rights by not timely objecting. In light of your direction, I am sending this email to you prior to the scheduled hearing. Given that no public testimony will be allowed, and there appears to be no way to sign up to speak for this portion of the hearing, the applicant has the following questions for each of the board members regarding *ex parte* contacts and bias:

1. How and when did you learn of the DEQ notice?
2. To whom have you spoken about the DEQ notice?
3. Please describe the substance of all discussions you have had since November 6 regarding the DEQ notice.

As an aside, we have filed a public records request with the county, but to date, the county has not provided any requested documents. Presumably the requested documents would have shed light on this issue and our above requests.

Regards,

Steve

RADLER WHITE PARKS ALEXANDER LLP
ATTORNEYS AT LAW

Steven P. Hultberg
PO Box 2007
Bend, Oregon 97709
P 541.585.3697 C 541.420.1024
E shultberg@radlerwhite.com

From: Melissa Ryan <mryan@batemanseidel.com>
Sent: Saturday, January 17, 2026 7:48 AM
To: Steven Hultberg <shultberg@radlerwhite.com>
Cc: petra.schuetz@bentoncountyor.gov; CRONEY Vance M <vance.m.croney@bentoncountyor.gov>
Subject: RE: Coffin Butte Landfill Expansion--LU-24-027

Dear Mr. Hultberg,

EXHIBIT B

Please do not engage in *ex parte* communications with the final decision makers in this matter. If the Board votes to reopen the record at the January 20 hearing, and you would like to resubmit this letter for the record, you may submit it to the email address included in the Notice of Hearing, or by letter mailed or hand delivered to the county's offices.

Missy Ryan

Bateman◊Seidel

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.

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Portland, OR 97205

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From: Steven Hultberg <shultberg@radlerwhite.com>

Sent: Friday, January 16, 2026 3:42 PM

To: pat.malone@bentoncountyor.gov; nancy.wyse@bentoncountyor.gov; gabe.shepherd@bentoncountyor.gov

Cc: Melissa Ryan <mryan@batemanseidel.com>; petra.schuetz@bentoncountyor.gov

Subject: Coffin Butte Landfill Expansion--LU-24-027

Commissioners Malone, Wyse and Shepherd,

Please see the attached correspondence related to the Coffin Butte Landfill.

Regards,

Steve

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