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To: [Coffin Butte Landfill Appeals](#)
Subject: Coffin Butte Landfill--LU-24-027
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Attachments: [REBUTTAL MEMORANDUM OF VALLEY NEIGHBORS FOR ENVIRONMENTAL QUALITY AND SAFETY 2-3-26.pdf](#)

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Good afternoon,

Attached please find Rebuttal Memorandum of Valley Neighbors for Environmental Quality and Safety for the record in the above matter. Please confirm receipt. Also, please let me know if there is a problem with the download, and I will retransmit.

Thank you kindly.

Jeffrey L. Kleinman
Attorney at Law
The Ambassador
1207 SW Sixth Avenue
Portland, OR 97204
Tel: (503) 248-0808
Fax (503) 228-4529
[Email: KleinmanJL@aol.com](mailto:KleinmanJL@aol.com)

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JEFFREY L. KLEINMAN
ATTORNEY AT LAW
THE AMBASSADOR
1207 S.W. SIXTH AVENUE
PORTLAND, OREGON 97204

TELEPHONE (503) 248-0808
FAX (503) 228-4529
EMAIL KleinmanJL@aol.com

February 3, 2026

**REBUTTAL MEMORANDUM OF VALLEY NEIGHBORS
FOR ENVIRONMENTAL QUALITY AND SAFETY**

TO: Benton County Board of Commissioners
FROM: Jeffrey L. Kleinman
RE: RECONSIDERATION IN FILE No. LU-24-027
(Republic Services/Valley Landfills Inc.)

This memorandum is submitted to rebut and respond to the very limited materials filed on behalf of the applicant on January 27, 2026.

VLI's Procedural/Jurisdictional Objections

The Board of Commissioners reopened the record in this case for the specific purpose of allowing everyone, including the applicant, to address DEQ's Pre-Enforcement Notice (PEN) of November 6, 2025. This was the right thing to do, and satisfied any procedural obligations the Board may have had.

Instead of providing very much of a substantive response, the applicant's attorney has now resubmitted an *ex parte* letter sent to individual Board members

on January 16, along with a new cover letter reiterating much the same point. On behalf of his client, he takes great umbrage that the county somehow unearthed the PEN (a public record), and with it the reality of the applicant's operation of the subject landfill. It seems that the level of emotion expressed in these proceedings depends upon whose ox is being gored at any given time.

We agree with Ms. Ryan's February 2 response to Mr. Hultberg's complaints about the Board's ability to conduct this proceeding. With respect to the timeliness of his concerns regarding *ex parte* communications, these had to be raised at the outset of the initial hearing. VLI's representatives were apparently present when the matter of reconsideration was discussed by the Board on November 17, and did not query when given the opportunity. We would add that Mark Yeager, a layperson, did his best to raise questions regarding *ex parte* communications at the first substantive hearing on reconsideration (and the first BOCC discussion of it of which he had advance knowledge), on January 20.¹ After being barred from inquiring further, he submitted his remaining inquiries into the written record. VLI had ample opportunity to raise its own concerns relating to *ex parte* communications on January 20, as well.

¹On page 10 of our January 27 memorandum, we referred to a "November 20," not January 20, proceeding. That was a typographical error. We apologize for any confusion it may have caused.

Response on the Merits

DEQ's PEN has mooted the assumptions propounded by the applicant's team. It has turned the applicant's assurances of compliance with conditions into a mirage fading rapidly in the rearview. With its hard numbers, the PEN has demonstrated that your citizens have not been imagining things. *Their* credibility—and that of Adair Rural Fire & Rescue Chief Aaron Harris—is intact. Moreover, their concerns about serious health hazards have been confirmed by DEQ.

The January 27, 2026 letter filed by the county's independent environmental consulting firm, Maul Foster Alongi (MFA), acknowledges the effects of the PEN. MFA had previously relied upon the assumptions contained in the applicant's reports to you. Now, MFA makes clear that those assumptions are no longer valid, and its earlier conclusions have necessarily been withdrawn.

As we have explained, evidence regarding the ongoing operation of an existing landfill is relevant to an application for its expansion. *Stop the Dump Coalition v. Yamhill County*, LUBA No. 2015-036 (Final Opinion and Order, November 10, 2015) slip op 46-47. There is no better means of predicting future performance. As the old saying goes, "fool me once, shame on you; fool me twice, shame on me." Fool me regularly? One would have to be a glutton for

punishment. Further, you have evidence in the record before you confirming the great extent to which the existing elements of the landfill are attributable to VLI and *not* its predecessor as it has contended. VLI cannot pass the landfill's impacts off on someone else.

Neither the county nor the public should have to suffer through the effects of a "catch us if you can" operation, followed by endless state, local or federal enforcement litigation while the violations continue. The evidentiary record is not in dispute. An ounce of prevention is worth incalculable tons of cure, the need for which will always be hotly contested by VLI.

Landfill advocates are likely to launch a flotilla (shadow fleet?) of potential conditions of approval intended to create the illusion that, in spite of recent past and ongoing performance, VLI will behave next time and comply with the county's approval standards. You already have your answer as to what those conditions would be worth. And as we have stated, determining the fulfillment of any such conditions would likely entail the future exercise of discretion, and thus require processes allowing for public participation.

The true character of VLI's operation stands revealed. On reconsideration, its application for expansion must be denied.

Ex Parte Communications

We continue to respectfully disagree with Ms. Ryan's approach to Valley Neighbors' inquiries as to Chair Malone's *ex parte* communications regarding the subject matter of this reconsideration. As we explained in our January 27 memorandum, the subject of both the legislative task force and the matter before you is one and the same—the future of Coffin Butte.

ORS 215.422(3) provides:

(3) No decision or action of a planning commission or county governing body shall be invalid due to *ex parte* contact or bias resulting from *ex parte* contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral *ex parte* communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(Emphasis added.)

At the Board's hearing on January 20, Chair Malone disclosed only that the subject matter of the legislative task force he chairs is the future of the Coffin Butte landfill. That is also the question now before this Board. Julie Jackson, an employee of Republic Services, is a member of the task force. So are other persons

with a vested interest in the landfill.

Mr. Malone's "disclosure" did not relate to the substance of his *ex parte* communications with Ms. Jackson or other persons connected to the landfill in the course of his participation in the task force. Mr. Yeager and others had the right to learn the substance of any *ex parte* communications between Chair Malone on the one hand and Ms. Jackson and similarly situated persons on the other, regarding the subject matter of the expansion proposal before the county. Had those communications been disclosed, Mr. Yeager and others could have rebutted their contents. Those communications might also have revealed prejudgment of the decision on reconsideration or actual bias, requiring Chair Malone's recusal herein.

Most recently, at a January 30 meeting of the task force, Chair Malone requested that all communications among members be conducted privately prior to March 30. Apparently, he is concerned about Mr. Yeager's efforts to inquire.

For the record, Valley Neighbors request that Mr. Malone disclose and be instructed to disclose the substance of his communications with Ms. Jackson or other representatives of Republic Services, regarding the future of the Coffin Butte landfill, commencing with the appointment of task force members and continuing through the time of this Board's decision on reconsideration. Valley Neighbors

request the opportunity to rebut the substance of those communications before a decision is reached on reconsideration.

Dated: February 3, 2026.

Respectfully submitted,

Jeffrey L. Kleinman

Jeffrey L. Kleinman, OSB No. 74372
Attorney for Valley Neighbors
for Environmental Quality