From:	Ken Eklund
To:	Coffin Butte Landfill Appeals
Subject:	Deny LU-24-027 – testimony in response to DEQ Pre-Enforcement Notice
Date:	Tuesday, January 27, 2026 3:27:24 PM
Attachments:	Eklund - DEQ PEN reconsideration of criteria.pdf writerguy-cube2.png

Dear Benton County Board of Commissioners:

I am submitting testimony in response to Oregon DEQ's Pre-Enforcement Notice (PEN) 2025-PEN-10025 to Republic Services subsidiary, Valley Landfills Inc., on November 6, 2025, which has been placed into the Record for LU-24-027. There is a "Eklund – DEQ PEN" PDF that is attached to this email.

Placing the DEQ Pre-Enforcement Notice into the Record has had a seismic impact, rippling out to touch just about every document in this Record, because it establishes compelling evidence about an issue that has featured prominently in this land use application: what is the appropriate stance to take regarding assertions made by Republic Services about its operations?

The DEQ Pre-Enforcement Notice is the latest result from a multi-year, constantly escalating investigation of Republic's assertions about its operations and the validity of the environmental records it has kept about those operations. This investigation began in June 2022 with an EPA inspection of the dump and progressed through an unannounced inspection by an EPA Air Enforcement team in June 2024, two general Enforcement Alerts issued by EPA in September 2024, and the Section 114 Information Request served on Republic Services by the EPA in January 2025. At that point the EPA's investigation dovetailed with Oregon DEQ's own investigations, after numerous complaints and at least one Notice of Violation. DEQ's Pre-Enforcement Notice and DEQ's Information Request soon followed. As you know, the DEQ Notice announces significant enforcement measures for sweeping violations of air quality regulations and their harms to public health, and they may be just the beginning.

The DEQ Pre-Enforcement Notice is evidence of, and explicates, the concept of "predatory delay." That term may be unfamiliar to those outside of future studies circles but its concept is familiar to just about everyone. "Predatory delay" is defined as "the blocking or slowing of needed change, in order to make money off unsustainable, unjust systems in the meantime." It is not delay from the absence of action, but delay as a plan of action. It is predatory in that it deliberately extends known harms into the future; it is "extracting value from future generations for immediate gain."

That is the context through which Republic Services' assertions should be viewed.

Thank you for your attention and diligence,

Ken Eklund

Ken Eklund, writerguy

37340 Moss Rock Dr
Corvallis OR 97330
408.623.8372

Creator of
World Without Oil
Ed Zed Omega
FutureCoast
and other storymaking games

DEQ's Pre-Enforcement Notice: Recalibrating criteria assumptions in response to its evidence of regulation evasion and higher interference effects

Ken Eklund
January 27, 2026

Chair Malone, Commissioners Wyse and Shepherd:

I am submitting this testimony in response to DEQ's Pre-Enforcement Notice being admitted into evidence in the matter of LU-24-027, the application to expand Coffin Butte Landfill.

DEQ's Pre-Enforcement Notice announces that a multi-year investigation of the landfill has now resulted in an initial substantial enforcement action, with citations for seven Class 1 categories of violations occurring over multiple years. In addition, DEQ has laid out requirements and information requests that may lead to further enforcement actions. The Environmental Protection Agency has led the investigation so far and reserves its right to conduct further enforcement.

The current slate of violations focus on excessive releases of landfill gas. Per DEQ's Notice, Republic Services has: failed to create a effective and functional landfill gas collection system, leading to excessive leakage; failed to operate their existing system properly, leading to more leakage; failed to maintain the landfill cover, leading to even more leakage; failed to monitor the entire landfill area for leaks, allowing leaks to continue undetected and uncorrected; failed to implement corrective action to eliminate leaks discovered by the EPA; purposely avoided methane monitoring for much of the landfill surface area. These determinations of violations by EPA and DEQ invalidate the Applicant's modeling of interference effects of landfill gas, because those models *assume* compliant operations; they don't have a "scofflaw" mode.

> As described above, VLI violated multiple important state and federal requirements aimed at controlling landfill gas emissions. One of the major constituents of landfill gas is methane—a potent greenhouse gas that contributes to climate change. Landfill gas also includes nonmethane organic compounds, some of which are known or suspected carcinogens and may cause other serious health effects. Landfill gas emissions also affect human welfare due to odor. Therefore, failure to control landfill gas emissions from the Coffin Butte landfill as required has significant environmental and public health impacts.
>
> from DEQ's Pre-Enforcement Notice, November 6, 2025

DEQ's Pre-Enforcement Notice has a similar seismic effect in many areas of the Application, because they also were based on a presumption of compliant behavior. Of most concern to you Commissioners are the Notice's effects on interpretations of the land use criteria themselves, which should be re-examined in light of the Notice. As decisionmakers, you are charged to interpret certain words in the land use criteria in ways that are appropriate and reasonable for the context, and you are given wide discretionary authority to do so. As you know, the context for LU-24-027 has been significantly changed by the DEQ Notice; that may have been a factor in why you have recalled your earlier decision for reconsideration.

The 53.215 criteria use the term "character of the area" in Section 1: the Applicant must establish that the proposed land use will not seriously interfere with it. Expressions of "character of the area" are widely used in land use planning throughout the world to refer to the "look and feel" of a place, as a value that has been established over time by the people who live and visit there and the "place identity" they have created. The DEQ Notice seriously undermines Applicant's representations that the proposed new landfill will not seriously interfere with the 'look and feel' of the area around it, because the Notice has changed what we know of the "character" of the entity operating the landfill. Needless to say, "environmental scofflaw" is not in keeping with the place identity of the area, no matter how that area be drawn. Therefore, you must find there is serious interference with the area's character, and deny the Application.

Atop Coffin Butte Landfill, Saturday, May 18, 2024, 7:39 pm. Firefighters from Adair Rural and Corvallis Fire have responded to a citizen smoke report and extinguished a trash fire that re-emerged after landfill employees covered it with dirt and then went home. The fire spread into and damaged the dump's tipper (yellow arrow) but had not yet spread far into the uncovered waste on the working face (red arrows).

As you Commissioners know, a basic tenet of "being a good neighbor" in the wildland-urban interface is caution with fire. A neighbor who disregards fire precautions has very bad character indeed. The DEQ Notice reopens scrutiny of the Applicant's fire precaution history and attitude, both for its effect on the character of the area and the "undue burden" it can impose on public services available to the area (Criteria 52.215(2)), namely, volunteer firefighting.

For the duration of my time on Benton County's Disposal Site Advisory Committee, its various Applicant representatives have cited certain operational practices when asked about precautions against a dump fire. Foremost, they cite employee training. Then, they cite a strict policy of limiting working face size to only half an acre. Then, they claim that garbage is covered with at least six inches of soil every night as a fire barrier. Evidence shows, however, that these narratives are false. In testimony, Beyond Toxics established through satellite photography that for years the landfill's working face has never been smaller than an acre, and is typically closer to two acres in size. A May 2024 fire incident established that dump employees covered a fire with dirt and then left the scene unmonitored – contrary to even basic safety training. The working face then was not covered with soil, and in fact was barely covered with anything at all (photo). This regs-be-damned attitude toward public safety aligns with the violations spelled out in the DEQ Pre-Enforcement Notice.

So, turning back to the working face as I described, usually the source of a fire that develops this, and this is the most common location of a landfill fire. If it actually does occur so it needs the most attention. Number one. We limit the types of waste as received to make sure we don't have any ignited, ignitable or reactive waste that might be received. Number 2. As I've said before, we keep the size of the "working face" – that's the acreage of the exposed refuse to the atmosphere – as confined as humanly possible. Number 3. We apply daily cover to the working face at the close of each business day. So that's in accord with U.S. EPA and Oregon regulations to make sure that the waste is covered over. That starves off the oxygen supply that might be going into the landfill, and reduces the opportunity for smoldering waste at the, for a waste fire at the working face to develop after the daily cover has been applied.

– James Walsh, Applicant's Fire Consultant, Hearings May 1, 2025, 1:39:04

The concepts of "interfering with character" and "imposing an undue burden" walk hand in hand, because it is one thing to engage with a neighbor who tries to be a good neighbor and another thing entirely when they do not. The latter case is a nightmare. The DEQ Notice has established that Applicant has not demonstrated its proposed new landfill will not continue to interfere with the character of the area, or continue to be an undue burden in terms of risk and obligations to respond. Therefore you must deny this Application per those criteria.

As you know, you are receiving new arguments and evidence as per state statute: *when a local governing body reopens a record to admit new evidence, any person may raise new issues which relate to the decisionmaking criteria applicable to the matter at issue* (per ORS 197.797(7)). We will now go back to criteria 53.215(1), specifically to its use of the word "adjacent."

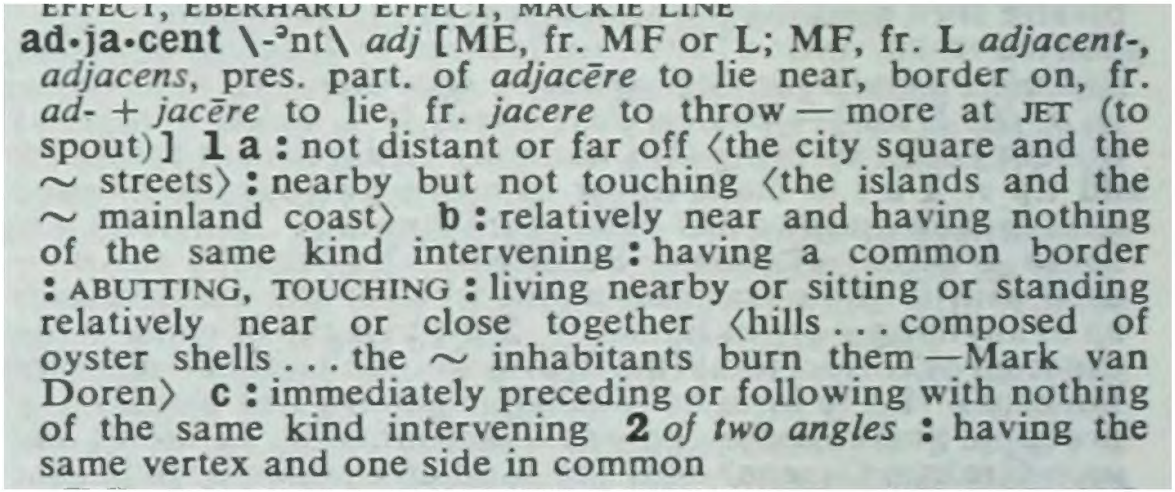
This re-examination of that word is also an effect of the DEQ Notice, because that Notice is evidence that the way Applicant has asserted "adjacent" be defined is insufficient for the new context of the proposed land use. In simple terms, the DEQ Notice has (1) significantly expanded the context of likely interference emanating from the proposed new landfill, and (2) established that emanations from the existing landfill are also much greater than Applicant has asserted, and this is significant because the seriousness of any interference is the total of the two.

53.215 Criteria. *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;

By way of background, as you may recall, the Planning Commission rejected the Applicant's definition of "adjacent" because that definition relies on the idea of "abutting," and the Planning Commissioners judged that "abutting" is an inappropriately constricted yardstick for a land use which has documented effects ten miles away. During deliberations, Commissioner Shepherd expressed misgivings about how "adjacent" was defined, but the Board did not follow up with discussion at that time. Commissioner Shepherd then expressed that, should the Board's first decision come back before the Board, the Applicant's asserted definition of the word "adjacent" should be reopened, and the DEQ Notice has provided that opportunity.

As is well established in findings, the word "adjacent" is used intentionally so that decisionmakers can use their discretionary power to include all the relevant meanings of that word, to adapt the scope of inquiry to be reasonable and appropriate to the matter at issue. The DEQ Pre-Enforcement Notice has established a new, larger context, and so a larger scope for "adjacent" is more reasonable and appropriate in this new context.



EFFECT, EBERHARD EFFECT, MACKIE LINE

ad·ja·cent \-ˈnt\ *adj* [ME, fr. MF or L; MF, fr. L *adjacent-*, *adjacens*, pres. part. of *adjacēre* to lie near, border on, fr. *ad-* + *jacēre* to lie, fr. *jacere* to throw — more at JET (to spout)] **1 a** : not distant or far off ⟨the city square and the ~ streets⟩ : nearby but not touching ⟨the islands and the ~ mainland coast⟩ **b** : relatively near and having nothing of the same kind intervening : having a common border : ABUTTING, TOUCHING : living nearby or sitting or standing relatively near or close together ⟨hills . . . composed of oyster shells . . . the ~ inhabitants burn them —Mark van Doren⟩ **c** : immediately preceding or following with nothing of the same kind intervening **2** *of two angles* : having the same vertex and one side in common

from Webster's Third International Dictionary, via archive.org

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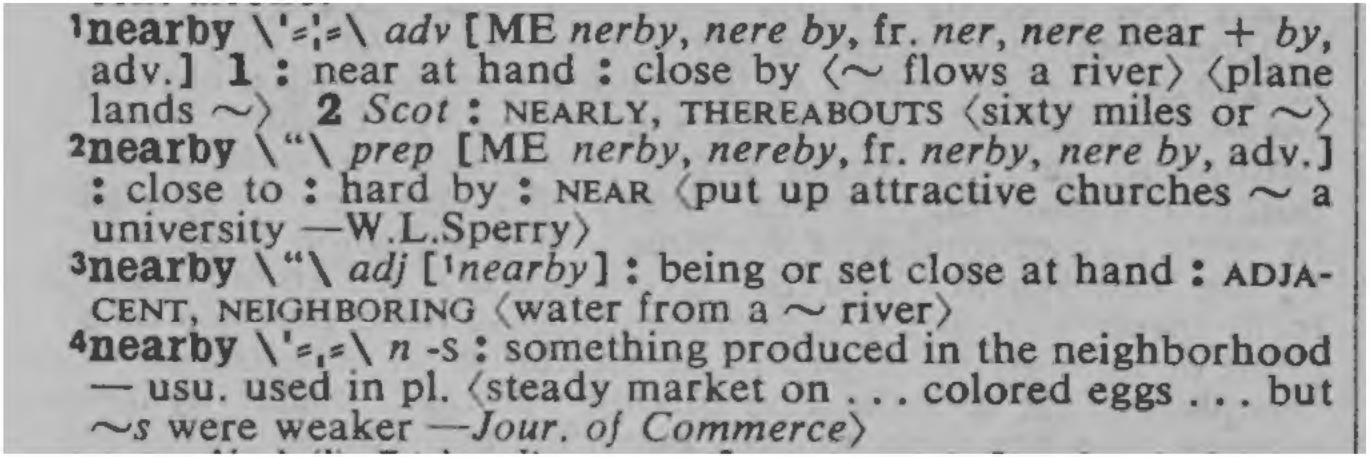
In their first Application, the Applicant proposed that "adjacent" be synonymous with "abutting," but Winterbrook, the consultants serving as County's Special Staff, rejected that, with good cause. In plain terms, if lawmakers intended the criteria to mean "abutting" and only "abutting," they would have used "abutting." To put it simply, "abutting" emphasizes property boundaries, and "adjacent" emphasizes proximity; proximity is appropriate for interferences, which typically diminish with distance, and boundaries are inappropriate for interferences, which are unaffected by the existence or not of a boundary.

In their second Application, Applicant came back with a new proposal: "adjacent" would still be synonymous with "abutting," but "nearby" properties are also included, with "nearby" *also* being defined as "abutting." The combined effect is to limit "adjacent" to those properties that "abut that which is abutting" the landfill area (Exhibit A To Order No. D2025-071). The Applicant proposes that "adjacent property" means *those properties abutting the proposed new land use, and then the properties abutting those properties*. The County's consultants accepted this definition and that is how "adjacent property" has been identified throughout this Application's studies.

Commissioner Shepherd was right to question whether accepting this definition would be a correct decision for the Board. To do so would be to accept a bias that unreasonably benefits the Applicant and disenfranchises the public.

Commissioners, let me unpack that for you.



1nearby \'=,=\ *adv* [ME *nerby, nere by*, fr. *ner, nere* near + *by*, adv.] **1** : near at hand : close by ⟨~ flows a river⟩ ⟨plane lands ~⟩ **2** *Scot* : NEARLY, THEREABOUTS ⟨sixty miles or ~⟩
2nearby \"\ *prep* [ME *nerby, nereby*, fr. *nerby, nere by*, adv.] : close to : hard by : NEAR ⟨put up attractive churches ~ a university —W.L.Sperry⟩
3nearby \"\ *adj* [1*nearby*] : being or set close at hand : ADJACENT, NEIGHBORING ⟨water from a ~ river⟩
4nearby \'=,=\ *n* -S : something produced in the neighborhood — usu. used in pl. ⟨steady market on . . . colored eggs . . . but ~*s* were weaker —*Jour. of Commerce*⟩

from Webster's Third International Dictionary, via archive.org

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The first argument against Applicant's definition, and the most plain, is that for findings, when a word does not have a prescribed meaning (and "adjacent" does not), Oregon courts look to their plain meaning, specifically as set out in Webster's Third New International Dictionary.

As your consultants already established, it's inappropriate to restrict the meaning of "adjacent" to "abutting" in a land use context, for reasons we will detail later. It was an error for the County's consultants to reject this usage the first time and then accept it the second time.

The Applicant also proposed that the word "nearby" (found in Webster's definition of "adjacent") also be restricted to "abutting." Applicant offered no rationale for this use and indeed, none is available: Webster's Third International Dictionary has no entry defining "nearby" as "abutting." (The closest entry is… you guessed it… "adjacent.")

(Not to wax pedantic, but as Webster's demonstrates, the plain meaning of "nearby" is not "abutting." If you ask me if my house is near a fire station, and I say "one is nearby," it would be understood that the fire station is not next door. If it were, I would have used a different word.)

The County's consultants erred when they (a) accepted a definition for "adjacent" they had earlier rejected, and (b) rationalized that defining "adjacent" as "abutting" was no longer inappropriate because (c) "nearby" now *also* means "abutting" which is (d) an unsupported and contrary definition of that word.

If you find all this confusing, let me be clear: I do too. Let me try to summarize it more succinctly.

> It would be nothing short of bizarre for conditional use criteria to be concerned only with directly abutting properties, especially in light of the size, scale, and diverse intense impacts of the use proposed here. At the same time, properties as to which serious interference can be demonstrated should be included within the definition of adjacent property, in order to give effect to the purpose and intent of the conditional use criteria.
>
> *– Jeff Kleinman, VNEQS attorney, 1704_05062025, p. 7*

As Winterbrook established, "abutting" is a faulty yardstick to use when assessing land use interferences. *There's no logical reason to accept that using a faulty yardstick twice somehow produces a non-faulty result.*

Air pollution, noise, odors, litter, visual pollution – none of these interferences stop at a property line. Similarly, none stop when they cross a second property line. *They diminish with distance, not with property lines crossed.*

At smaller interference levels, an "abutting" map and a "proximity-based" map may look similar. But at large interference levels, which is where the DEQ Notice has placed us, the two maps will have significant disparities. This disparity is what the Planning Commission was referring to when they rejected the Applicant's definition of "adjacent."

The intent of the 53.215(1) criteria is to lay out a reasonable framework to assess which properties are subject to potential interference from the proposed land use. It provides specific language to express that intent, and relies on fair judgment by decisionmakers to prevent manipulations of language that subvert the intent. The Planning Commissioners used their fair judgment to prevent such manipulation.

"...first we drew a boundary of... at staff's request, we drew a boundary around the entire active site, plus the expansion area, which arguably isn't required by your code. Then we looked at the abutting property owners, and added those in. And then, because in the definition, in Webster's could include nearby properties, we added the properties abutting to that. And that produced, the map that's in, that's in your, you, record. And we think that is adequate to deal with the immediate abutting impacts, in part because of what Mr. Winterowd mentioned, is many of those, such as odor and noise, diminish the further away you get from that."

Republic to Board of Commissioners, Appeal, Day 1, transcript 2:20:22. Emphasis mine.

The second argument against Applicant's definition: *No dictionary defines "adjacent" as "abuts the abutting" or in any similar way.*

As we've established, land use law regularly presumes that undefined words in code retain their ordinary meanings. The ordinary meaning of "adjacent" is "nearby; close to, or lying near" or otherwise keyed to proximity. Applicant's definition seeks to reassign the key attribute of "adjacent" away from "proximity" to "number of parcels" – an attribute that land use law has established is not relevant to the interference effects of proposed land uses. Applicant acknowledges that interferences are proximity effects (see above), which do not magically end at a property line. The County's consultants were in error to accept a definition that cannot be found in a dictionary.

The third argument against Applicant's definition is summarized well by the Applicant in the quote above. The Applicant is not deriving a map from where the impacts of its proposed land use can reasonably be expected to fall; it has come up with a method of defining "adjacent" that, even in their own estimation, is only "adequate to deal with the *immediate abutting* impacts".

By Applicant's manipulated definition, I can stand on land a little over half a mile from the proposed new landfill and not be "adjacent" to it. Yet I can stand on other land 2 miles away, and now I am "adjacent" to it. No reasonable trier of fact would derive a map with such disparity in it to assess effects that decrease according to distance; *a reasonable trier of fact would draw a map based on distance.*

from the summary of Planning Commission findings; testimony by Planning Commission member Catherine Biscoe, October 23, 2025, p. 25.

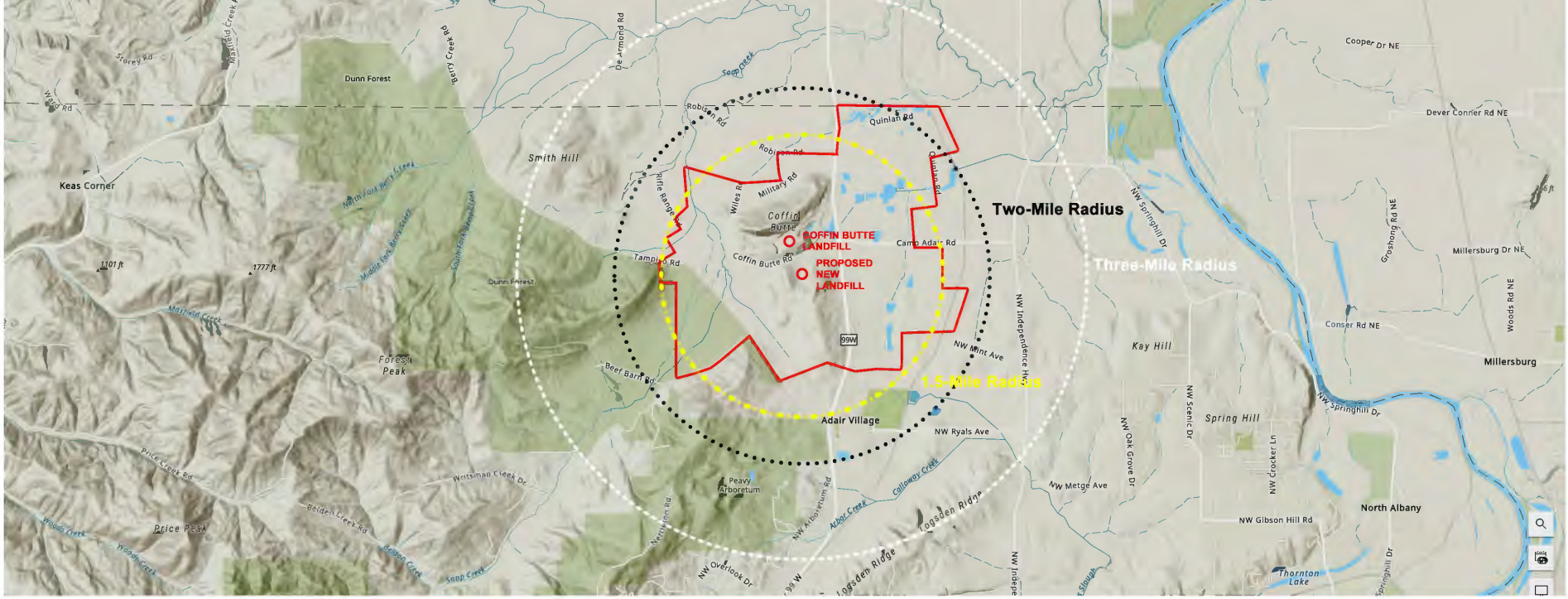
"Adjacent properties" for the purpose of this hearing related to criteria found in BCC 53.215, has been determined to far exceed the immediately adjacent by "shared property lines" property owners, with documented risks and impacts as far as North Albany, Airlie, Independence in Polk County , South Corvallis, Lewisburg, Philomath, and rural unincorporated areas of Benton County.

Again, the flexible word "adjacent" appears in the Code's criteria so that decisionmakers have discretionary power to decide what is appropriate and reasonable to include in the context of the specific land use proposal at hand. In their deliberations, the Planning Commission discussed whether or not the Applicant's definition of "adjacent" was appropriate and reasonable. Noting that the Applicant cited current landfill impacts up to 10 miles away (to define the area for "character of the area"), and that testimony confirmed this multi-mile reach for possible interference (see above), they rejected the Applicant's definition as implausible given the similar scale of the proposed land use.

Although I think that County consultants erred in accepting the Applicant's definition of "adjacent," I can appreciate the dilemma they were in. If the Applicant chooses to press forward with a dubious interpretation, the County consultants must let them. It's up to the actual decisionmakers – the Planning Commission, the Board of Commissioners, the Land Use Board of Appeals – to ultimately determine the viability of Applicant's interpretation.

Which brings us to our fourth argument against accepting the Applicant's tortured definition of "adjacent" – why would you? Since interference levels relate to proximity, a reasonable trier of fact would simply provide evidence to establish a reasonable radius for possible effects, and go from there. It's the obvious approach – why didn't the Applicant use it?

More to the point, *why would a decisionmaker adopt Applicant's (convoluted, unspecified, self-serving) reasons as their own?*



By design, the effect of the Applicant's interpretation of "adjacent" is disparity and exclusion. It *gestures* toward being a radius roughly 1.5 to 2 miles from the proposed land use, *except when there are more people present*. Then the radius falls short by design, because the number of property lines crossed goes hand in hand with the population density.

The Applicant has stated that most complaints from the existing landfill come from the south, so the effect of Applicant's definition is to disenfranchise the area which is currently generating the most complaints. A true "adjacent" area drawn to a distance of around 1.5 miles from the proposed land use would include most of Adair Village, including Santiam Christian School. To include this school using the Applicant's definition, they would have to include properties that abut the abutting of the abutting of the abutting of the abutting… and so on *twelve more times*.

Again, we don't need to speculate on why Applicant has manipulated its definition of "adjacent" in this way. Our question is why the Benton County Board of Commissioners would adopt that definition as its own in findings sent to the Land Use Board of Appeals.

The Board concurs with Staff's recommendation that evaluation of impacts on "adjacent" properties be limited to properties identified as abutting the landfill site, as well as properties abutting those properties. This provides an area sufficiently inclusive to address the code standard consistent with what the Board would consider a reasonable interpretation of "adjacent".

Exhibit A To Order, No. D2025-071, p. 28. Now withdrawn for reconsideration

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As noted before, the Planning Commission could not find a plausible reason why they should adopt the Applicant's rationale and voted to deny the Application. In your decision to approve, you Commissioners did adopt Applicant's interpretation of "adjacent" as your own (see above) – but you have unanimously withdrawn that decision for reconsideration, and so re-opened an opportunity to discuss and deliberate on whether you should adopt the Applicant's interpretation or deem it insufficient. By case law you have wide discretionary authority to define "adjacent" as your conscience dictates. The Land Use Board of Appeals is likely to uphold what you decide, if it finds your rationale for the decision to be reasonable.

I look forward to hearing your deliberations on this point, which is a vitally important matter to hundreds of people. Having looked at the issue of "adjacent" for some time now, I am confident that you will be more comfortable articulating why the Applicant should have used a radius-based approach (the intuitively correct approach for interferences) than you will be justifying the Applicant's convoluted rationale for restricting the definitions of "adjacent" and especially "nearby" to "abutting" for a landfill receiving over a million tons of waste per year. Your guiding light will be fairness and inclusivity regarding the people who may be impacted by the proposed new landfill, especially now that the major enforcement actions announced by Oregon DEQ have established a reason to believe those impacts are actually greater than previously indicated.

With respect to Subsection (I), the applicant contends in its appeal narrative that the "Planning Commission decision improperly redefined the terms in the standard in a manner inconsistent with the County's historic interpretation and inconsistent with the plain meaning of the terms." The Planning Commission's findings are absolutely consistent with the plain meaning of the Code's terms. To the extent that the Commission considered a broader impact area than has been its custom, it is because the impacts of the applicant's use far exceed those addressed in its previous conditional use cases, and affect a much broader impact area. That is just the nature of the beast.

As staff and the applicant have pointed out:

> Webster's Third New International Dictionary defines "adjacent" as **"not distant or far off* * *: nearby but not touching** * * *relatively near and having nothing of the same kind intervening: having a common border: ABUTTING, TOUCHING; living nearby or sitting or standing close relatively near or close together: immediately preceding or following with nothing of the same kind intervening." (Underscoring and bold added.)

Thus, the definition expressly grants this Board the authority and the ability to consider a wider area than that mapped and espoused by the applicant, based upon the evidence placed before it.

– Jeff Kleinman, VNEQS attorney, BOC2_T0664_10232025, p. 7-8

For the Applicant to meet its Burden of Proof relating to the land use criteria, they must supply evidence and narratives that are sufficient to cover the reasonable and appropriate definitions of the words in those criteria. If they cannot do that, their proof fails, and with good cause. A proof should be reality-based, and not dependent on some cherry-picked subset of reality. The reasonable and appropriate definitions of the words are determined by decisionmakers, not by staff.

The DEQ Pre-Enforcement Notice has made the reality of the landfill's operations more plain, and you Commissioners are charged as decisionmakers to account for that plain reality in your interpretation of the criteria.

I request that you find that a large-scale operation that has enforcement proceedings against it for multiple serious violations poses serious interference to the character of the area.

I request that you find that a large-scale operation that has little regard for public health and safety, such as has been shown by the enforcement proceedings and many other testimonies, is both a serious interference to the character of the area, and an undue burden upon the public services that must clean up after it.

I request that you find that, in light of the greater impacts that are the basis for the DEQ Notice, the

Coffin Butte Landfill working face on a Sunday

Applicant's asserted definition of "adjacent" is not correct; that "abutting" is an inherently unreasonable and inappropriate yardstick to determine which properties may suffer interference from large-scale landfill operations; that proximity is the reasonable, appropriate and inclusive measure for the interference effects of large-scale landfilling, and the one that Applicant should have used.

Any and all of these findings lead to a Board decision to deny LU-24-027.

Thank you for your time, attention, and diligence in this decision.

– Ken Eklund

Ken Eklund's credentials

I am a professional writer, futurist, game designer and narrative designer. I have led teams that have created educational and artistic work honored with a Legacy Peabody Award, two Webby nominations for Best of the Internet, a top award at SXSW, and others. I have worked with educational teams at Columbia University, Montana State University, the Open University at Oxford University, and Arizona State University, where I was a Resident Artist in Game Design at the School for the Future of Innovation in Society, part of ASU's Center for Global Futures. I work with museums such as The Exploratorium and the San Diego museums in Balboa Park. I connect at a deep level with the forests and other natural places around my home north of Corvallis, Oregon.

37340 Moss Rock Drive
Corvallis, Oregon