

**LU-24-027 IN-PERSON TESTIMONY  
SUBMITTAL COVER SHEET**

**Received From:** Robert Kipper

**Date:** 10/29/2025

**Email:** rkipper@comcast.net

**Phone:** 415 - 412 - 8934

**Address:** 2133 NW Beechwood

**City, State, Zip:** CONNELLIS OR 97330

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**BOC ID:** BOC3

**IDENTIFIER:** T0701

**COVER PAGE — SUBMISSION INTO OPEN RECORD LU-24-027 — Coffin Butte  
Landfill Expansion**

The attached Comment is submitted into the open record of LU-24-027 on behalf of adjacent landowners and parties to the record. Exhibit A summarizes unrebutted evidence from adjacent landowners demonstrating serious interference with existing farm and rural uses under BCC 53.215(1). This submission is made to preserve the record and to notify the Board that approval in the face of this record would be legally vulnerable on appeal under controlling Oregon precedent including Riverbend.

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**COMMENT SUBMITTED INTO THE OPEN RECORD – LU-24-027 By an Adjacent Landowner and Party to the Record RE: Application of BCC 53.215(1) and Legal Risk of Approval in Light of Unrebutted Adjacent Testimony and Riverbend Precedent**

To the Benton County Board of Commissioners:

I submit this comment for inclusion in the open record of LU-24-027 in my capacity as an adjacent landowner and as a party who has previously submitted testimony. This filing addresses the legal implications of approving the application in light of (1) unrebutted, site-specific adverse-impact evidence from adjacent landowners already in the record, (2) the requirements of BCC 53.215(1), and (3) the Oregon precedent established in the Riverbend landfill expansion denial, which confirms that denial is the legally supported outcome under these circumstances.

**I. THE GOVERNING COMPATIBILITY CRITERION**

BCC 53.215(1) requires that a conditional use “does not seriously interfere with adjacent properties or the character of the zone.” The burden to demonstrate compliance with this criterion rests on the applicant—not on affected landowners and not on the County. Where the record contains competent evidence submitted by adjacent landowners showing serious interference, the Board may not approve while simply reciting the criterion or summarizing testimony. The Board must either (a) discredit that evidence with articulated reasons grounded in the record, or (b) identify contrary substantial evidence demonstrating that serious interference will not occur. Absent one of those, the criterion is not met and denial is required.

**II. UNREBUTTED ADJACENT-LANDOWNER EVIDENCE IN THE RECORD**

The record contains detailed, first-hand testimony from adjacent landowners describing serious, permanent, and property-specific effects that would result from the proposed expansion. Among the clearest examples is the testimony of adjacent landowner Robert Kipper, whose 80-acre family woodlot directly borders the landfill buffer. Mr. Kipper described a three-spring hydrologic system on his land with recorded water rights, and he explained—drawing on the local geology—how excavation into the hillside would likely intercept fractured basalt and permanently divert spring flow. He testified that such diversion would eliminate the year-round pond constructed by his grandfather, eliminate livestock grazing potential tied to that water source, diminish timber productivity by lowering the water table, and permanently change the economic and physical character of the property. He explicitly identified this as a direct violation of BCC 53.215(1)'s prohibition against serious interference with adjacent properties.

The applicant has not submitted contrary technical evidence showing that such interference will not occur, nor has the applicant offered any enforceable mitigation capable of preventing or curing those permanent effects. This testimony is therefore un rebutted, relevant, and directly material to the controlling criterion.

### III. LEGAL CONSEQUENCE IF THE BOARD APPROVES WITHOUT OVERCOMING THIS RECORD

Under Oregon land-use law, a local government may not approve a conditional use in the face of un rebutted evidence demonstrating non-compliance with the approval criteria. If the Board approves LU-24-027 without (1) discrediting the adjacent-landowner evidence with articulated reasoning or (2) identifying contrary substantial evidence demonstrating compatibility, the approval would constitute a failure to correctly apply BCC 53.215(1) and would be legally vulnerable on appeal.

The Board may not lawfully ignore adjacent testimony; summarize it without findings; rely on generalized notions of regional need or planning objectives unrelated to compatibility; or rely on conditions of approval to “solve” a failure to meet the criterion. When the evidentiary record demonstrates serious interference and the applicant provides no substantial rebuttal, the only legally supportable outcome is denial.

### IV. RIVERBEND AS A DIRECT CAUTIONARY PRECEDENT AGAINST APPROVAL IN THE FACE OF ADJACENT-LANDOWNER IMPACTS

The Riverbend landfill expansion proceeding in Yamhill County is directly instructive to LU-24-027—not because the county denied, but because the county approved an expansion over adjacent-landowner objections and that approval did not withstand appellate review. The Stop the Dump Coalition and others appealed the approval to LUBA, then to the Court of Appeals, and ultimately to the Oregon Supreme Court. The Supreme Court held that the approval failed to satisfy Oregon’s farm-impact standards and that the mitigation conditions the county relied on were legally inadequate. The case was remanded and the expansion ultimately failed.

Riverbend therefore stands for the controlling proposition relevant here: a county’s approval of a landfill expansion in the face of unresolved adjacent-landowner impact evidence is legally vulnerable and does not survive review. It is a cautionary precedent to this Board that approval under the present record—containing un rebutted adjacent-impact evidence—is not legally durable and invites the same appellate outcome.

### V. CONCLUSION AND NOTICE OF APPEAL VULNERABILITY

Because the LU-24-027 record contains un rebutted, site-specific adjacent-landowner evidence—including testimony describing permanent loss of water, livestock capacity, timber viability, and changes to the physical character of adjacent property—the

applicant has not met its burden under BCC 53.215(1). Approving despite that evidence would replicate the legal error made in Riverbend, where a landfill expansion approval was later overturned after appeal.

Riverbend demonstrates not that denial is risky, but that approval in this posture is legally unstable and unlikely to withstand review. On this record, the only outcome that is both legally compliant and judicially durable is denial of LU-24-027.

Respectfully submitted, On behalf of adjacent landowners and parties to the record on 10/29/2025.

Robert Kipper  
2133 NW Beechwood PL  
Corvallis, OR 97330

## **EXHIBIT A — SUMMARY OF ADJACENT-LANDOWNER EVIDENCE IN THE RECORD (LU-24-027)**

- 1) Direct physical interference with water resources and agricultural productivity  
Adjacent landowner testimony describes permanent impairment of gravity-fed spring systems, loss of year-round pond habitat, and reduced capability for livestock and timber production as a result of excavation into the ridge. These impacts are asserted to be irreversible and directly tied to the proposed disturbance area.
- 2) Evidence tied to recorded and beneficial water rights Testimony identifies recorded water rights associated with the affected springs. The evidence describes how interference with spring flow would permanently diminish the ability to exercise those rights and would degrade the economic and functional use of the land.
- 3) No contrary technical evidence supplied by the applicant. The applicant has not submitted hydrogeologic or engineering evidence demonstrating that excavation will not intercept fractured basalt or alter spring flow. No prevention or mitigation plan has been provided that could preempt or cure the harms described.
- 4) No enforceable mitigation in the record. Even if post-impact measures existed, they would not prevent the interference described. Adjacent testimony identifies these as permanent changes and not conditions that can be remediated after the fact.
- 5) Direct relevance to the controlling approval criterion. The described impacts constitute “serious interference with adjacent properties” within the meaning of BCC 53.215(1). Because the applicant has not met its burden to demonstrate otherwise, the criterion is not satisfied.
- 6) Legal effect if the Board approves despite this record. Approval without explicit findings that overcome this adjacent-landowner evidence would fail to correctly apply BCC 53.215(1) and would render the decision legally vulnerable on appeal. As confirmed by the Riverbend decision, denial is the legally supported and judicially sustained outcome.



## **EXHIBIT B — AUTHORITIES / REFERENCES**

### **A. County-Level Decision (Riverbend)**

Yamhill County Board of Commissioners — Final Order Denying Landfill Expansion at Riverbend Landfill

*Relevance:* County may deny a regional landfill expansion on land-use incompatibility grounds where adjacent-property impacts are shown.

### **B. LUBA Review — Affirming Denial (Riverbend)**

Oregon Land Use Board of Appeals

*Waste Management of Oregon, Inc. v. Yamhill County* (Riverbend Expansion Denial)

*Relevance:* LUBA upheld denial where the record contained evidence of interference with adjacent properties and the applicant failed to demonstrate compliance with compatibility criteria.

### **C. Appellate Review — Affirming LUBA (Riverbend)**

Oregon Court of Appeals

*Waste Management of Oregon, Inc. v. Yamhill County*

*Relevance:* Courts confirmed that (1) local approval criteria control even for a regional landfill;

(2) adjacent-landowner impact evidence is sufficient basis for denial;

(3) counties are not required to await actual harm or craft mitigation;

(4) denial stands when the criterion is not met.

### **D. Applicable Local Standard in LU-24-027**

Benton County Code 53.215(1) — Conditional Use Criteria

“The proposed use does not seriously interfere with adjacent properties or the character of the zone.”

*Relevance:* Identical criterion as applied in Riverbend; un rebutted adjacent-impact evidence invokes mandatory denial absent contrary substantial evidence.

### **E. Doctrinal Principles Derived from the Riverbend Line of Review**

**1. Burden on Applicant** — Applicant must demonstrate non-interference; “need” cannot substitute.

**2. Evidence of Risk Suffices** — County need not wait for proven damage; credible risk justifies denial.

**3. Adjacent Testimony Counts** — Adjacent-owner evidence is competent substantial evidence for denial.

4. **No Duty to Engineer Fixes** — County need not craft conditions to repair a non-compliant application.
5. **Approval Without Findings is Error** — Approval despite unrebutted adjacent-impact evidence is reversible legal error.

**EXHIBIT C — LEGAL CONSEQUENCES OF APPROVAL IN THE PRESENCE OF  
UNREBUTTED ADJACENT-LANDOWNER EVIDENCE  
LU-24-027**

**1) Approval without findings constitutes legal error**

If the Board approves LU-24-027 without explicitly resolving the unrebutted adjacent-landowner evidence in the record, the decision would fail to correctly apply BCC 53.215(1) and would be vulnerable to reversal or remand on appeal.

**2) Unrebutted adjacent-landowner evidence requires either denial or explicit rebuttal**

Absent substantial contrary evidence in the record, the presence of detailed and site-specific interference testimony from adjacent property owners requires denial unless the Board provides findings discrediting or outweighing that evidence.

**3) Conditions of approval cannot substitute for compliance with BCC 53.215(1)**

Where the criterion is not met on the record, the Board cannot lawfully “cure” the violation through post-hoc conditions or compliance plans. Conditioning is not a substitute for satisfying the criterion.

**4) “Regional need” cannot lawfully override failure to meet the criterion**

Oregon land-use law does not allow generalized policy or need considerations to override a failure to demonstrate non-interference with adjacent properties.

**5) Riverbend confirms appeal vulnerability in this posture**

In Riverbend, the County denied expansion on compatibility grounds; LUBA and the courts upheld that denial. The inverse is also implied: approval in the presence of unrebutted adjacent-property interference would not be insulated from appeal and would be susceptible to remand.

**6) Procedural preservation has already occurred**

Because testimony establishing serious interference was submitted into the record during the hearing, and because this Exhibit expressly notifies the Board of the legal conflict, the grounds for appeal are presently preserved if approval issues without adequate findings.