

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

Received From: VNEQS part 1 via Ken Eklund

Date: 10-29-2025

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FOR BOC OFFICE STAFF USE ONLY

BOC ID: BOC3

IDENTIFIER: T0703

To: Chair Wyse, Commissioners Malone and Shepherd
From: VNEQS
October 29, 2025

VNEQS
PO Box 175
Corvallis, OR
97339-0175

Reasons you should deny LU-24-027

Response to the Staff Report, Part 1

Valley Neighbors for Environmental Quality and Safety (VNEQS) submits this response to matters raised on the record of the Board's hearing of October 22 and 23, 2025.

- ▶ **Specifically, we respond to the first half of the Staff Report presentation regarding discretionary language, applicable criteria, findings overview**

Commissioners, we're going to focus on specific questions that the code charges you to answer in this decision. To recap what the code says about the process:

- ▶ **The code asks you to interpret for yourselves what key words and terms mean in the context of this application.**
 - An example: **"What should 'character of the area' mean in context of this proposed land use?"**
- ▶ **The Applicant has made assertions about these questions.**
 - These assertions are self-serving, many extremely so
 - "Client-led process": If the Applicant asserts an arbitrary or risky position regarding these questions, Staff must allow them to do so
- ▶ **You're solely responsible for answering these questions.**
 - Staff has not decided these questions for you
 - Staff does not have the power to decide them for you
 - Staff's charge is for completeness only, not viability or any other metric
- ▶ **The code has assigned you the power of discretion for the purpose of answering these questions**
 - Code asks you to use your best judgment...
 - ...in the context of this proposed use.

INTERPRETATION OF AMBIGUOUS LANGUAGE



INTERPRETATION

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;*
- (2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and*

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- ▶ **“Ambiguous language” is how Staff must regard the language, i.e., for them, it could be interpreted various ways**
- ▶ **“Ambiguous language” does not accurately describe how you as decisionmakers should view the language**
- ▶ **For you, this is “discretionary language,” words and terms which you must define, and which the code deliberately leaves undefined to give you room to exercise your discretionary authority.**

INTERPRETATION

BCC 53.215 (1) - character of the area

- 90 square miles
- Rural and urban development
- Resource land
- Varying topography and natural habitats
- “[O]ccasional odors, sounds, noises, and trips from the existing landfill operation and surrounding resource-extraction uses”

(Record ID: BCD16 Burden of Proof, p. 22)



The Applicant is asserting a misrepresentative interpretation of “area.”

Question: is this how you would define the “area around the landfill”?

Is this true to the context of this proposed land use?

- ▶ **“Contrived”:** No other entity would ever independently reproduce this map, if asked to define “the area around the landfill”
 - ▶ Staff is silent about the viability or applicability of this interpretation of “character of the area.” **It's an interpretation, but is it a good one?**
- ▶ **“Characterless”:** Self-serving interpretation of “the area around the landfill”
 - Uninvolved areas added to dilute the landfill’s negative effect
 - Uninvolved areas added to distract from the area’s actual character
- ▶ **So many questions!**
 - **Why a rectangle, and not a radius?**
 - **Why off-center, and not centered on the landfill?**
 - **Why 90 square miles? (Why not 20?) Dilutes the actual character**
 - **Why not show notable features?**
- ▶ **More authoritative, objective definition is available from the EPA**
 - ▶ **Let’s look at EPA guidance about “the area around the landfill”...**

Demographic Profile of Surrounding Area (5-Mile Radius)

Select Demographic Profile Option:

5-Mile Radius

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2022 American Community Survey (ACS) 5-year Summary and are accurate to the extent that the facility latitude and longitude listed below are correct. Census boundaries and demographic data for U.S. Territories are based on the "2020 Island Areas Demographic Profiles" from the U.S. Census Bureau. EPA's spatial processing methodology considers the overlap between the selected radii and ACS census block groups in determining the demographics surrounding the facility. For more detail about this methodology, see the [QER Data Dictionary](#).

General Statistics (ACS)

Total Persons	8,386
Population Density	108/sq.mi.
Housing Units in Area	3,028
Percent People of Color	15%
Households in Area	2,983
Households on Public Assistance	52
Persons With Low Income	1,068
Percent With Low Income	13%

Geography

Radius of Selected Area	5 mi.
Center Latitude	44.69876
Center Longitude	-123.22595
Total Area	78.533 sq.mi.
Land Area	99%
Water Area	1%

Income Breakdown (ACS) - Households (%)

Less than \$15,000	86 (2.88%)
\$15,000 - \$25,000	111 (3.72%)
\$25,000 - \$50,000	340 (11.38%)
\$50,000 - \$75,000	282 (9.44%)
Greater than \$75,000	2,168 (72.58%)

Age Breakdown (ACS) - Persons (%)

Children 5 years and younger	478 (6%)
Minors 17 years and younger	1,935 (23%)
Adults 18 years and older	6,452 (77%)
Seniors 65 years and older	1,677 (20%)

Race Breakdown (ACS) - Persons (%)

White	7,315 (87%)
African-American	14 (0%)
Hispanic-Origin	661 (8%)
Asian	282 (3%)
Hawaiian/Pacific Islander	4 (0%)
American Indian	55 (1%)
Other/Multiracial	436 (5%)

Education Level (Persons 25 & older) (ACS) - Persons (%)

Less than 9th Grade	130 (2.17%)
9th through 12th Grade	100 (1.67%)
High School Diploma	937 (15.61%)
Some College/2-year	1,162 (19.36%)
B.S./B.A. or More	3,203 (53.37%)

Demographic Profile of Surrounding Area (3-Mile Radius)

Select Demographic Profile Option.

3-Mile Radius

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2022 American Community Survey (ACS) 5-year Summary and are accurate to the extent that the facility latitude and longitude listed below are correct. Census boundaries and demographic data for U.S. Territories are based on the "2020 Island Areas Demographic Profiles" from the U.S. Census Bureau. EPA's spatial processing methodology considers the overlap between the selected radii and ACS census block groups in determining the demographics surrounding the facility. For more detail about this methodology, see the [QPR Data Dictionary](#).

General Statistics (ACS)

Total Persons	1,766
Population Density	63/sq.mi.
Housing Units in Area	667
Percent People of Color	18%
Households in Area	650
Households on Public Assistance	8
Persons With Low Income	248
Percent With Low Income	14%

Geography

Radius of Selected Area	3 mi.
Center Latitude	44.69876
Center Longitude	-123.22595
Total Area	28.27 sq.mi.
Land Area	100%
Water Area	0%

Income Breakdown (ACS) - Households (%)

Less than \$15,000	17 (2.62%)
\$15,000 - \$25,000	34 (5.23%)
\$25,000 - \$50,000	103 (15.85%)
\$50,000 - \$75,000	57 (8.77%)
Greater than \$75,000	439 (67.54%)

Age Breakdown (ACS) - Persons (%)

Children 5 years and younger	63 (4%)
Minors 17 years and younger	381 (22%)
Adults 18 years and older	1,384 (78%)
Seniors 65 years and older	345 (20%)

Race Breakdown (ACS) - Persons (%)

White	1,478 (84%)
African-American	2 (0%)
Hispanic-Origin	195 (11%)
Asian	45 (3%)
Hawaiian/Pacific Islander	0 (0%)
American Indian	19 (1%)
Other/Multiracial	115 (7%)

Education Level (Persons 25 & older) (ACS) - Persons (%)

Less than 9th Grade	37 (2.9%)
9th through 12th Grade	12 (0.94%)
High School Diploma	150 (11.74%)
Some College/2-year	240 (18.78%)
B.S./B.A. or More	725 (56.73%)

Demographic Profile of Surrounding Area (1-Mile Radius)

Select Demographic Profile Option:

1-Mile Radius

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2022 American Community Survey (ACS) 5-year Summary and are accurate to the extent that the facility latitude and longitude listed below are correct. Census boundaries and demographic data for U.S. Territories are based on the "2020 Island Areas Demographic Profiles" from the U.S. Census Bureau. EPA's spatial processing methodology considers the overlap between the selected radii and ACS census block groups in determining the demographics surrounding the facility. For more detail about this methodology, see the [DFR Data Dictionary](#).

General Statistics (ACS)

Total Persons	192
Population Density	62/sq. mi.
Housing Units in Area	73
Percent People of Color	19%
Households in Area	71
Households on Public Assistance	1
Persons With Low Income	28
Percent With Low Income	15%

Geography

Radius of Selected Area	1 mi.
Center Latitude	44.69876
Center Longitude	-123.22595
Total Area	3.121 sq. mi.
Land Area	100%
Water Area	0%

Income Breakdown (ACS) - Households (%)

Less than \$15,000	1 (1.43%)
\$15,000 - \$25,000	4 (5.71%)
\$25,000 - \$50,000	13 (18.57%)
\$50,000 - \$75,000	7 (10%)
Greater than \$75,000	45 (64.29%)

Age Breakdown (ACS) - Persons (%)

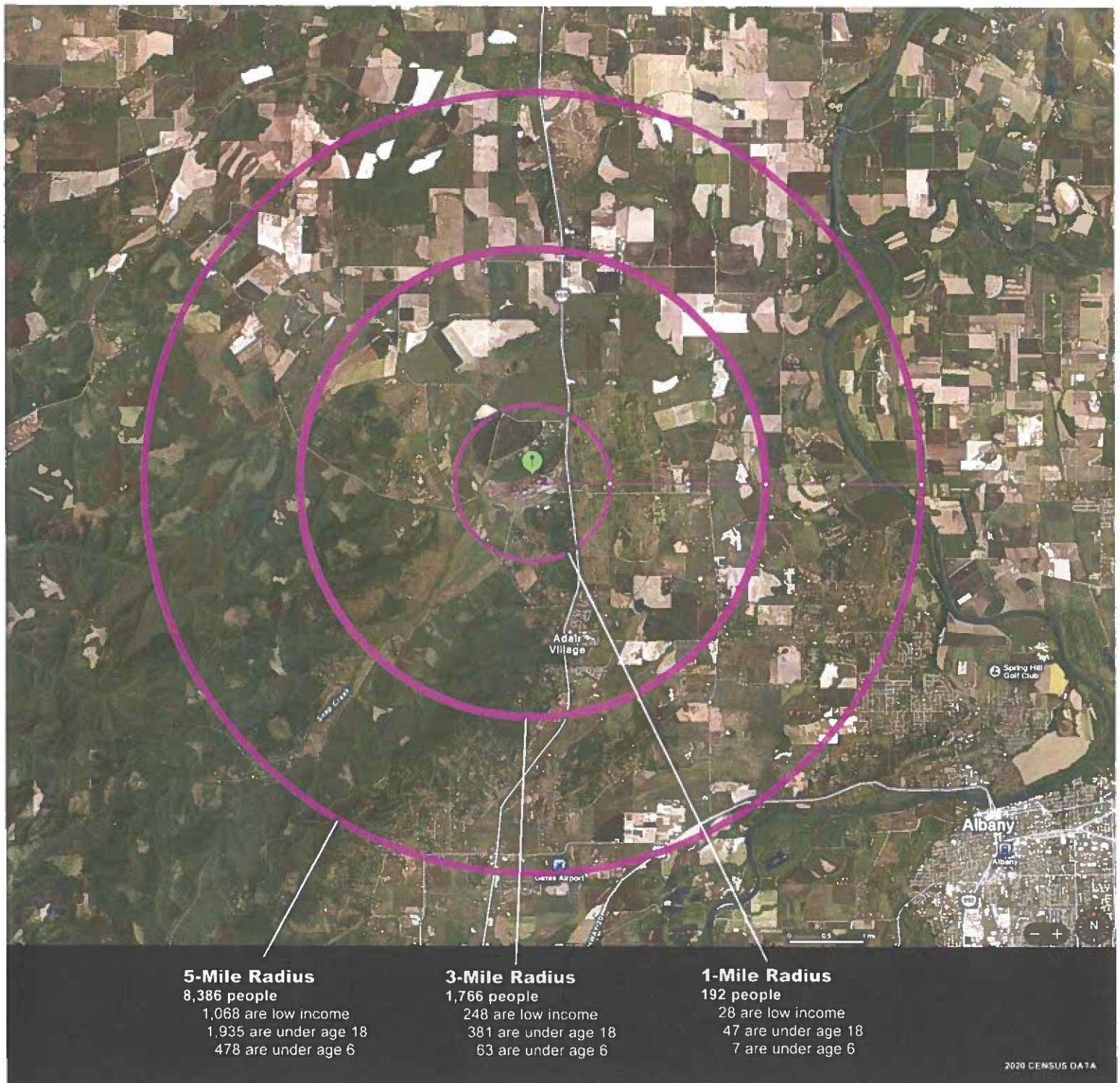
Children 5 years and younger	7 (4%)
Minors 17 years and younger	47 (24%)
Adults 18 years and older	146 (76%)
Seniors 65 years and older	32 (17%)

Race Breakdown (ACS) - Persons (%)

White	157 (82%)
African American	0 (0%)
Hispanic Origin	22 (11%)
Asian	5 (3%)
Hawaiian/Pacific Islander	0 (0%)
American Indian	3 (2%)
Other/Multiracial	15 (8%)

Education Level (Persons 25 & older) (ACS) - Persons (%)

Less than 9th Grade	3 (2.27%)
9th through 12th Grade	2 (1.52%)
High School Diploma	14 (10.61%)
Some College/2-year	23 (17.42%)
B.S./B.A. or More	78 (59.09%)



The EPA shows how it defines “area” around a landfill.

- Commonsense: use radius (not “square miles”)
- Commonsense: use proximity (various radiuses) to differentiate the subareas of different character caused by the landfill
- Five, three and one-mile radiuses are appropriate for landfills
- Is this a better, more commonsense way to define “area” in the context of this landfill?

The EPA is saying “proximity plays a key role in the area around a landfill.”

- Commonsense: “baseline vs. anomaly”
 - There is a baseline character to the larger area, which is not landfill
 - Due to their inherent nature, a landfill can be assumed to be an anomaly to the baseline character of the larger area it’s in
 - Commonsense: character changes from “baseline” to “anomaly” as you get closer to the landfill
 - The rate and depth of change depends on how intrusive the landfill is.

This is an alternate map of the area based upon the EPA’s characterization of landfill areas.

- Proximity-based sub-areas
- Five-mile radius, then three, then one-mile radius, reflecting proximity
- The EPA establishes that people are an important component of the area around a landfill.

Definition of the word “character”, in the context of an area

- “main or essential nature especially as strongly marked and serving to distinguish” – *Merriam-Webster Law Dictionary*
- In land use, “character” refers to the unique qualities and features of a specific area, including its physical attributes, featured locations, cultural significance, and the types of activities that occur there.
- The Applicant’s interpretation does not “serve to distinguish” the area’s character

- Portrays the area in terms that make it indistinguishable from other rural areas
- Ignores the obvious distinguishing characteristics of the area – E.E. Wilson Wildlife Area, Peavy Arboretum, etc.
- It’s pretending that the area has no character, for self-serving reasons
- Downplays the area’s environmental character

- In land use, “character” is linked with “care” – do people take care of the area, or not? Do people care about the area, or not?

INTERPRETATION

BCC 53.215 (1) - character of the area

- 90 square miles
- Rural and urban development
- Resource land
- Varying topography and natural habitats
- “[O]ccasional odors, sounds, noises, and trips from the existing landfill operation and surrounding resource-extraction uses”

- ▶ In land use, “character” is linked to “appropriateness” – is the land use “in character” or “out of character” for the area as a whole?

Commissioners, we urge you to define “the character of the area” for yourselves, and not to accept the Applicant’s mischaracterization.

- ▶ **What should ‘character of the area’ mean in context of this proposed land use in this area of Benton County?**
 - ▶ The proposed land use is a new landfill.
 - ▶ This area of Benton County includes the E.E. Wilson Wildlife Area, the MacDonald-Dunn Research Forests and Peavy Arboretum, the town of Adair Village, farms and livestock on EFU land, forests on FC land, and thousands of homes on rural residential land.

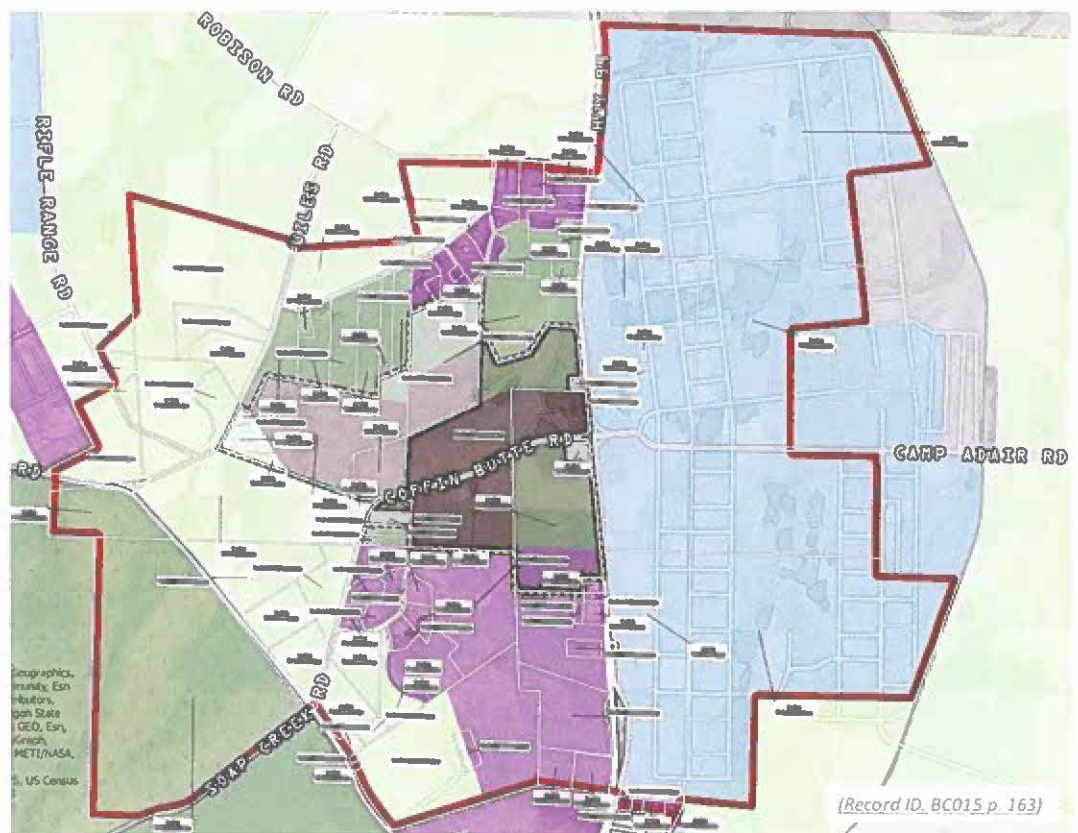
It’s important that you answer this question for yourself.

Next, let’s look at the Applicant’s interpretation of the word “adjacent”...

INTERPRETATION

BCC 53.215 (1) -

uses on adjacent property



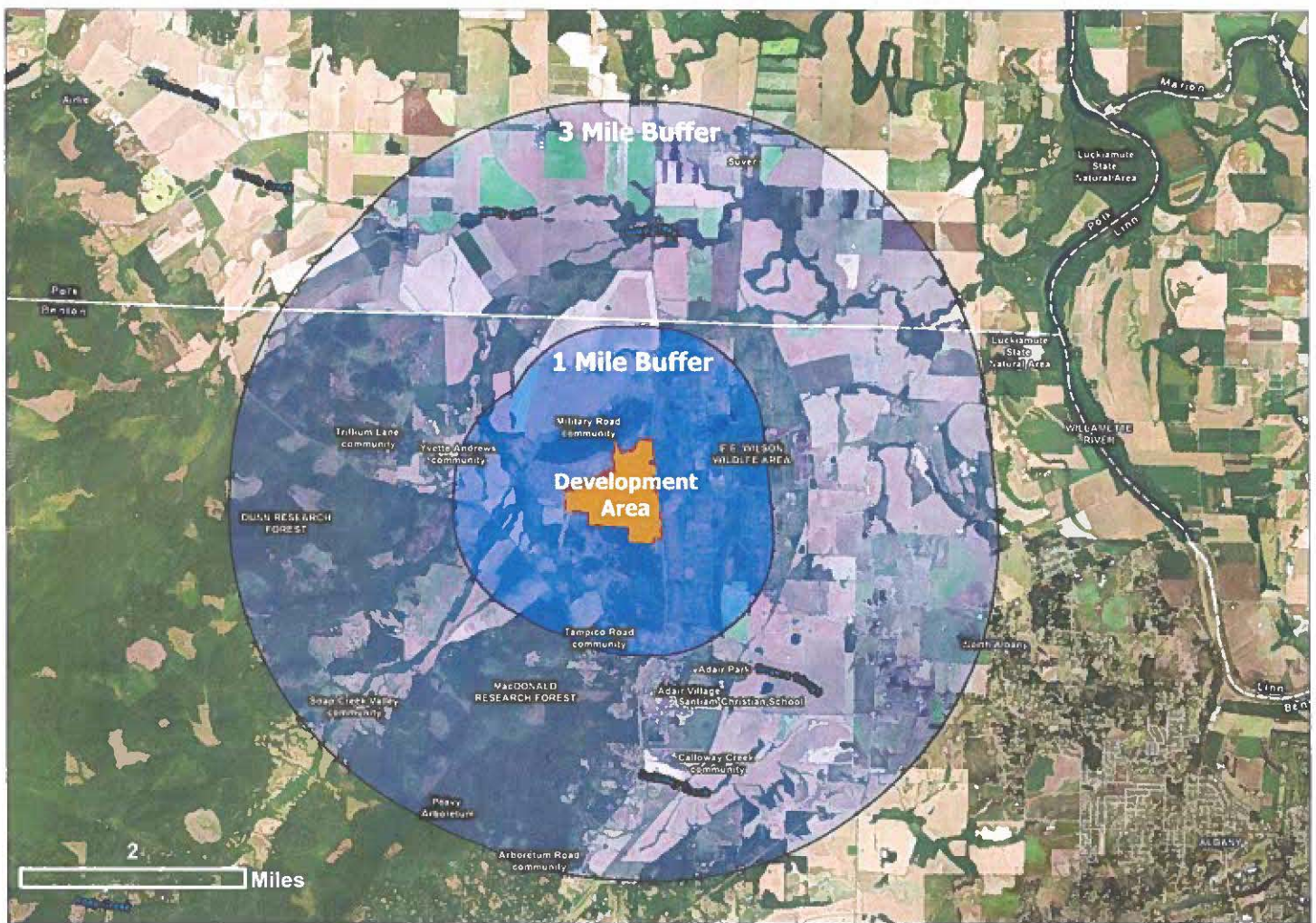
The Applicant is asserting an arbitrary, narrow interpretation of “adjacent.”

Question: why would you choose to define the word so narrowly in the context of a regional industrial operation?

- ▶ **“Contrived”:** defining “adjacent” as “adjoining what’s adjoining” was invented by the Applicant
 - ▶ The Applicant said they came up with this definition after Staff rejected their Application over its initial assertion, which was that “adjacent” meant “adjoining.” Established law already says that’s not viable
 - ▶ By extension, “adjoining what’s adjoining” is also not supported: if that is what the law intended, it would be so stated
 - ▶ Staff is silent about the viability or applicability of this interpretation of “adjacent.” To avoid overstepping, Staff explicitly left it to you to determine its viability and applicability in this context.
- ▶ **Actual meanings of “adjacent” in a land use context**
 - ▶ Applicant admits “adjacent” is defined 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.” – *Webster’s Third New International Dictionary*

- ▶ Code does not define the word “adjacent,” and refuses to define it, in order to preserve its value for decisionmakers as a word to be interpreted appropriately for the context

- ▶ **What is Applicant's self-serving interpretation of “adjacent” attempting to exclude from consideration by you Commissioners?**
 - ▶ –Many nearby land uses. These include
 - ▶ Dozens of farms under Exclusive Farm Use protection.
 - ▶ MacDonald-Dunn Research Forests, which attract 155,000 individual visits for recreational uses annually.
 - ▶ Peavy Arboretum.
 - ▶ The town of Adair Village and Calloway Creek.
 - ▶ The rural neighborhoods of Tampico Road, Military Road, Robison Road and Wiles Road, Trillium Lane, Yvette Road, Arboretum, Emily Way, Soap Creek Valley, Independence Highway, Springhill Road and Northwest Albany, Pettibone Road.
 - ▶ Santiam Christian School.
 - ▶ The Letitia Carson Legacy Homestead site.
 - ▶ Land uses in Polk County.
 - ▶ All of these are adjacent, using its more mainstream meaning of “not distant or far off; nearby; relatively near; close”
 - ▶ –Hundreds of testimonies about impacts on people's land uses that are definitely “nearby” the landfill:
 - ▶ Hundreds of testimonies mention the E.E. Wilson Wildlife Area
 - ▶ Hundreds of testimonies mention “odor” or “smell” or “stench” or “stink”
 - ▶ Hundreds mention litter, noise, etc.
 - ▶ All of these uses are adjacent, in the sense of “being close enough to be affected by” the landfill's operations, which is a commonsense use of “adjacent” in land use proceedings
 - ▶ The Planning Commission found the Applicant's interpretation unacceptably narrow, for this reason among others
 - ▶ –A history of complaints. DSAC's Community Concerns Annual Reports list hundreds of them about landfill impacts in the last four years.

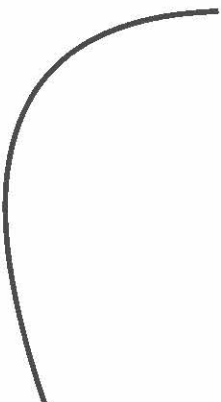


- ▶ A more reasonable map of “adjacent” might look like the above – as the word itself suggests, based on proximity.
 - ▶ It’s hard to argue that, given the size of the landfill’s operational footprint, properties less than three miles away are not “nearby” or “close enough to be affected by” the landfill
- ▶ Commissioners: the Applicant’s definition of “adjacent” is contrived, but Staff legally could not disallow it, so it has been kicked upstairs for your adjudication.
 - ▶ Given its definition in Webster’s, how do you define “adjacent” in the context of a new landfill?
 - ▶ Is it fair to use the Applicant’s interpretation of “adjacent” to arbitrarily limit consideration of reports of people’s lived experience?

Next, let’s look at some cautions the Staff gave you, about what to consider and what not to consider in your review...

LIMITATIONS OF REVIEW

Conditional use permit decisions must be grounded in the applicable approval criteria—nothing more, nothing less

- 
- Future or Speculative Adjacent Uses
 - Property Values or Tax Revenue Impacts
 - Franchise or Haulers Agreement
 - Public Opposition or Popularity
 - Moral or Religious Objections
 - Generalized Traffic Concerns Without Evidence
 - Non-Applicable Plan Policies or Aspirational Goals
 - Alternative Sites or Preferred Locations
 - Economic Competition or Market Saturation

What Staff said: “Public sentiment alone is not a valid basis for denial unless it is tied to specific applicable approval criteria. The legal principle is that decisions must be based on findings supported by substantial evidence in the record, not on the number of opponents at a hearing, or proponents.”

- ▶ **This is an accurate caution: you Commissioners should not cite “public sentiment” alone as a basis for denial.**
- ▶ **In the case of the opposition, public sentiment is tied to specific applicable approval criteria.**
 - ▶ **Hundreds of public testimonies in opposition specifically cite or otherwise refer to criteria**
 - ▶ **Concerned people organized community meetings large and small, formal and informal, to develop appropriate testimonies**
 - ▶ **These meetings educated concerned community members about relating testimony to the criteria**
 - ▶ **These meetings enabled concerned community members to bring forward substantial evidence to place in the record**
 - ▶ **Dozens of organizations joined the opposition and educated their members about the criteria**
 - ▶ **Some of these organizations asked the opposition to present about criteria at their meetings**
 - ▶ **Many organizations educated their membership about criteria and testimony in newsletters and bulletins**

- ▶ **A partial list of these organizations (with memberships):**
 - Benton County Democrats (25,735);
 - Benton County Republicans (12,242);
 - Green Party (288);
 - Mid-Willamette Bird Alliance (300);
 - Marys Peak – Oregon Chapter, Sierra Club (58,000);
 - League of Women Voters – Corvallis (143);
 - Willamette Broadband – Great Old Broads (300);
 - ORCA (Our Revolution Corvallis Allies) (914);
 - Benton Soil and Water Conservation District;
 - Luckiamute Watershed Council;
 - 1000 Friends of Oregon (13,000);
 - Willamette Riverkeeper;
 - Mid-Valley Bicycle Club (425);
 - Mary's River Grange;
 - Willamette River Grange;
 - Beyond Toxics;
 - Friends of Polk County
 - ▶ **The People's Testimony letter specifically addresses the criteria. Current number of signers: over 1,200**
 - ▶ **Over a thousand public testimonies have brought forward substantial evidence to place in the record**
 - ▶ **This evidence is related to the criteria**
 - ▶ **The public opposition to the landfill expansion is a shining example of public involvement in government.**
- ▶ **In the case of the proponents, public sentiment is not tied to specific applicable approval criteria**
 - ▶ **A review shows that no proponent testimonies mention criteria**
 - ▶ **A review shows that no proponent testimonies have brought forward substantial new evidence related to the criteria**
 - ▶ **This includes a survey, which does not address the criteria**
 - ▶ **You have heard for yourselves that proponents believe that “without an expansion, the landfill will close!” and other points of disinformation**

LIMITATIONS OF REVIEW

Conditional use permit decisions must be grounded in the applicable approval criteria—nothing more, nothing less

- Future or Speculative Adjacent Uses
- Property Values or Tax Revenue Impacts
- Franchise or Haulers Agreement
- Public Opposition or Popularity
- Moral or Religious Objections
- Generalized Traffic Concerns Without Evidence
- Non-Applicable Plan Policies or Aspirational Goals
- Alternative Sites or Preferred Locations
- Economic Competition or Market Saturation

What Staff said: “Only mandatory approval criteria, general policy statements or goals in the comprehensive plan can be used to deny a conditional use permit unless codified as criteria. LUBA has ruled that aspirational language like ‘encourage compact development’ is not enforceable unless it’s adopted as an actual standard.”

- ▶ **What the code says: (BCC 51.720 (4)) “At the commencement of a quasi-judicial or limited land use decision action hearing, a presentation shall be made to those in attendance that... states that testimony and evidence must be directed toward the applicable substantive criteria or other criteria in the plan or Development Code which the person believes to apply to the decision”**
- ▶ **What the code also says: (63.005) “Rural Residential (RR) – Purpose. The Rural Residential Zone shall provide areas within Benton County where rural residential lifestyles can occur outside recognized urban areas without conflicting with agriculture and forestry uses.”**
- ▶ **A large number of testimonies in the Record cite serious interference with their rural residential lifestyles from dump operations. Some examples:**
 - ▶ **Priya Thakkar, Trillium Lane - [Record ID T0133](#), [Record ID T0379](#) (video)**
 - ▶ **Jeffrey Morrell, Highway 99W - [Record ID T0146](#)**
 - ▶ **McKenna Bradley, Highway 99W - [Record ID T0774](#), [Record ID T0591](#) (video)**
 - ▶ **Grant Pease, Lewisburg - [Record ID T0355](#)**
 - ▶ **Carol McClellan-Fields, Soap Creek Road - [Record ID T0596](#)**
 - ▶ **Susan Maxwell, Scenic Drive - [Record ID T0340](#)**
 - ▶ **Andrea Seavers - [Record ID T0282](#)**

KEY FINDINGS

Overview



Commissioners, a quick recap: the Applicant has asserted self-serving (and unreasonable) interpretations of key terms, and by law Staff have to let them bring them forward to you as the decisionmakers.

It's worth noting at this point that the entire Application is like this, because the Applicant self-declared it to be complete. From their Burden of Proof letter on January 15:

With the submittal of the above information, it is the Applicant's position that the application is complete for purposes of review within the meaning of ORS 215.427. Please consider this letter Applicant's written notice under ORS 215.427(2)(b) that no additional completeness information will be submitted. – p. 3

(Applicants are allowed to do this by law, so that counties cannot tie up a land use application in review forever.)

With this action, completeness be damn'd, the Applicant effectively kicked their Application out of Staff's purview and into yours.

Let's move on to Staff comment on how various issues relate to the criteria.

ISSUES OVERVIEW

- Reliance on DEQ/ EPA Regulations, Monitoring, Enforcement
- Adequacy and Number of Conditions of Approval
- Context of Existing Use vs Proposed Expansion
- Construction Impacts
- Weighing of Evidence

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What Staff's consultant said: "As part of the established regulatory framework, DEQ and EPA are the sole authorities for regulating, monitoring, and enforcing state and federal environmental standards related to air and water quality."

- DEQ and EPA regulate, monitor, and enforce when an entity is created by someone else that must be regulated, monitored and enforced for the protection of the public.
- In this case, it would be the Benton County Board of Commissioners that is creating the obligation for DEQ and EPA to regulate, monitor, and enforce what is essentially a new landfill.
- It's quite possible in this case, Commissioners, that you would be creating something that will be very difficult for DEQ and EPA to adequately protect the public from.
- Staff's position has created an impossible situation for you: they don't want you to look at the landfill's many problems with its regulatory agencies, yet you will be creating something that depends on regulatory agencies to protect the Benton County public from harm.
- Further, Staff's position is that Benton County will become a regulatory agency itself through Conditions of Approval – without looking at the many problems that other regulatory agencies are having. This is foolhardy.

Commissioners, the applicable code directs that you must find that the landfill will have "no serious interference," "no undue burden" etc. – period. The code does not exempt *regulated* interferences and burdens. You must consider all interferences and burdens as your discretionary power allows.

- Reliance on DEQ/ EPA Regulations, Monitoring, Enforcement
- Adequacy and Number of Conditions of Approval
- Context of Existing Use vs Proposed Expansion
- Construction Impacts
- Weighing of Evidence

What Staff's consultant said: "There was a lot of conversation on the [high] number of Conditions of Approval and whether they were enforceable" in the Planning Commission's unanimous decision to deny. "I think I will state that Conditions of Approval are very normal for conditional use applications and large applications often have a large number of conditions."

- ▶ **These statements do not address the Planning Commission's many questions seeking proof that the CoAs would be "reasonably certain to succeed."**
 - ▶ **The Planning Commissioners' concerns were specific to this case and to these CoAs, and consultant's remarks are not.**
 - ▶ **The Planning Commissioners heard no evidence to support the idea that County Staff would succeed at monitoring and enforcing the proposed 85 CoAs.**
 - ▶ **County staff could not point to anyone who would actually do the work**
 - ▶ **Under questioning, County staff admitted there was no one with the necessary experience on staff, nor plans to hire any**
 - ▶ **The Planning Commission heard considerable evidence that County Staff do not have any monitoring or enforcement experience or history**
 - ▶ **The Planning Commission heard considerable evidence that the Applicant actively resists such monitoring and enforcement.**
 - ▶ **The Applicant is currently being audited by EPA Enforcement, after a failed routine inspection in 2002 began an escalating series of EPA actions (see Explainer, [Record ID T0634](#); Part 1 begins on page 55 of the multi-document PDF)**
 - ▶ **The EPA may have already served one or many Notices of Violations on the Applicant; without a FOIA result, we have no way of knowing**

- In late 2024 DEQ finally successfully concluded a marathon multi-year effort to get the Applicant to performance-test its methane flare
 - DEQ had to force compliance by issuing a Class 1 Notice of Violation (see Explainer, [Record ID T0582](#))
 - The Applicant's enclosed flare was apparently still malfunctioning in February 2025 ([Record ID T0384](#) video)
 - See photo taken by a passerby. Enclosed = flame is supposed to be *inside* (and no smoke)



- The passerby reported this malfunction to Landfill Manager Broc Kienholz of Republic Services
- The Applicant did not inform DEQ of this malfunctioning flare as required in its monthly operations report for February 2025:

Operational Problems
VLI Flare

Flare	Operational Problems	Down Time (hrs)
ENCLOSEDFL	No operational problems	N/A

- Under questioning by the Planning Commissioners, the Applicant admitted that they do not notify DEQ about fire incidents (such as the one above), although DEQ's Operating Permit requires them to do so
 - This became a Condition of Approval
 - There is no mechanism to monitor or enforce this Condition of Approval
- In the Planning Commission Hearing, members of the public testified that the Applicant's operations included setting off pyrotechnics (noisemaking rockets) to ward off trash birds.
 - The Applicant said this was untrue, and added a statement to that effect to its Application.
 - The public produced video showing the rockets being used ([Record ID T0381](#) video)
 - A close neighbor, Ian Finn, testified about hearing fireworks in his oral presentation to you
 - Commissioners, there are numerous examples like this. We won't burden this document with any more
- In its Application, the Applicant claimed that it limited the landfill's working face to half an acre in size, which had effects such as emissions reduction and reduced fire risk. They were forced to officially recant this during the Planning Commission Hearings
 - The pro-environment nonprofit Beyond Toxics proved otherwise using satellite photos ([Record ID PC 1715](#))
 - Working face size was actually between 1.0 to 2.5 acres

- A new limit – 2 acres – became a Condition of Approval
 - There is no mechanism to monitor or enforce this Condition of Approval
- DEQ is currently investigating the Applicant for abusing a provision allowing self-exemption from monitoring
 - In September 2024 the EPA issued an Enforcement Alert to landfills about improperly exempting landfill areas from self-monitoring
 - As documented by Beyond Toxics, the Applicant proceeded to declare as much as 93% of its landfill area to be exempt from monitoring ([Record ID T0645](#))
 - DEQ requires the Applicant to file a rationale for self-exemptions. The Applicant did not do so
 - DEQ announced its investigation in September 2025
- Each CoA has been added specifically because the Applicant currently has an ongoing environmental impact or non-compliance issue that violates the criteria.
 - Shortfalls in the Applicant's ability to prove no serious interference were not fixed with evidence, but with Conditions of Approval.
 - Holes poked into the Applicant's various studies were not fixed with evidence, but with Conditions of Approval.
 - That's why there are so many Conditions of Approval.
 - Adding a \$38-an-hour outside worker has no effect on the fundamental structural deficiencies of CoAs.
 - The "\$80,000-a-year worker" is a distraction, not a solution
- The Conditions of Approval have not been established through a cooperative or collaborative process.
 - The Conditions of Approval are complaint-driven, and therefore depend on public cooperation
 - To maximize chances of success, a process involving the public should be developed with public input and buy-in
 - The CoA rulemaking process was done in secret, with no public participation or even information

- The Conditions of Approval have been developed in order to let the Application go forward, not for actually functioning in the real world to protect the public from harms
 - This was what the Planning Commissioners concluded, after considerable study and inquiry
 - Because the process was driven by the Applicant, there are no real enforcement provisions
 - The effect would be an extraordinary level of public disenfranchisement
 - This is what the Planning Commissioners concluded
 - The Planning Commissioners cited this as clearly an “undue burden” on the public and on Benton County government itself
- The approval standards for CoAs are the commonsense ones you’d expect – it must be proved that they are “possible, likely and reasonably certain to succeed.” ([Record ID Kleinman T0664 p. 12-13](#))
 - There is no proof in the record that establishes this
 - This is what the Planning Commissioners concluded, after considerable study and inquiry
- Benton County Code specifies that a deciding body is under no obligation to accede to Conditions of Approval.
 - They may be accepted or declined, at the body’s discretion.
 - Having any necessary Conditions of Approval is therefore sufficient to deny a Conditional Use Permit under Benton County Code
- LUBA has upheld that a deciding body is under no obligation to accede to Conditions of Approval. ([LUBA No. 2019-066 p. 17](#))
 - They may be accepted or declined, at the body’s discretion.
 - Having any necessary Conditions of Approval is therefore sufficient to deny a Conditional Use Permit under Benton County Code
- If enacted, to whatever extent the Conditions of Approval fall short, the public will hold Benton County Government responsible for every instance of its “failure to protect”

- The Applicant may see every failure as a win, as it releases them from actually upholding the Conditions
- Commissioners: Do you think that the Conditions of Approval were developed in a manner that is fair and equitable for everyone concerned?
 - Do you think that the people that depend on them to prevent serious interference with the use of their land should have been a party to their creation?
- Do you find any proof in the record that the Conditions of Approval are “reasonably certain to succeed”? Is that an untested theory?
- Do you think the way the Conditions of Approval are structured make them “reasonably certain to succeed” if the Applicant resists them?
 - Given their ongoing resistance to regulation, how likely is it that the Applicant will be less than diligent regarding the Conditions of Approval?
- Do you think the way the Conditions of Approval are structured will make it likely that they just bog down in endless fighting over monitoring results?
 - Is this “success” according to the CoAs?
 - Will this mean endless public frustration with the County?
- Approving with Conditions would mean that Benton County government would take on the burdens of an environmental regulatory agency.
 - How long do you think it will take the County to become good at it?
 - Do you think it’s a good idea for the County to commit to this burden for the next two decades?
 - It seems like, if Republic commits an infraction, Benton County will take the heat for it. Does it seem that way to you?
- By the terms of the Conditions of Approval, to enforce any of them the County may have to litigate against Republic Services, or let constituents suffer. This will likely unfold in many small infractions occurring over time.
 - Do you see any problems in making that choice?
 - Do you think the County will prevail in such litigation?
 - Are there any risks to the County’s reputation? To your legacy?

Certain conditions of approval now proposed by staff and the applicant are intended to address—or at least dress up or whitewash—major issues identified by your Planning Commission based upon the evidence in the record before it. We see more words than before, but the proposed conditions do not come close to meeting the legal requirements for such conditions.

In order to rely upon conditions of approval, the applicant (and hence the decisionmaker) must demonstrate that compliance with all discretionary approval standards is “feasible.” *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), *aff’d*, 67 Or App 274, 678 P2d 741, *rev den*, 297 Or 82, 679 P2d 1367 (1984). The Court of Appeals has held that “feasibility” means that “substantial evidence supports a finding that solutions to certain problems * * * are possible, likely and reasonably certain to succeed.” 67 Or App at 280 n 5. (Emphasis added.) *See also Gould v. Deschutes*

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County, 227 Or App 601, 606-607 (2009) to the same point. As explained below and in the testimony of many others, the showing of feasibility simply has not been made on this record.

Conditions must not defer the demonstration of compliance with the applicable approval standards to a future point in time where there are no opportunities for public participation. This would violate the requirements in *Fasano v. Washington Co.* Comm., 264 Or 574, 507 P2d 23 (1973), that quasi-judicial land use hearings include an opportunity to be heard, to make a record, and to have adequate findings. *Meyer v.*

Attachment 1: [Record ID T0664 p. 12-13](#)

1 The hearings officer's decision approving petitioner's application imposed
2 a condition of approval requiring that petitioner expand the access aisle to 24 feet
3 in width. However, the board of commissioners chose to deny the application
4 rather than conditionally approve it.

5 DCC 18.124.050(A) provides: "The Planning Director or Hearings Body
6 *may* deny the site plan *or* approve it with such modifications and conditions as
7 may be consistent with the Comprehensive Plan or the criteria and standards
8 listed in DCC Title 18." (Emphases added.) Similarly, DCC 18.128.015(C)
9 provides that the county *may* impose conditions to ensure that CUP criteria are
10 met. They do not require the county impose a condition. We have held that "[a
11 local government] is not required to condition an approval, rather than deny an
12 application, when the applicant has not established compliance with the code
13 requirements." *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA
14 229, 241–42, *aff'd*, 129 Or App 433, 879 P2d 1313 (1994); *see also Holland v.*
15 *City of Cannon Beach*, 35 Or LUBA 482, 488–89, *aff'd*, 161 Or App 128, 984
16 P2d 957, *rev den*, 329 Or 553 (1999); *Decuman v. Clackamas County*, 25 Or
17 LUBA 152, 155 (1993); *Simonson v. Marion County*, 21 Or LUBA 313, 325
18 (1991).

19 The DCC does not require the county to impose a condition to obtain
20 compliance but rather affords the county the discretion to do so. Given that the

drive aisle. Response 10; Record 299–300, 310. Although the 2015 food truck
use operated on the site, the access aisle was never paved to 24 feet.

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Attachment 2: [LUBA No. 2019-066 p. 17](#)

Relevant BCC language is the same as DCC language

This testimony has not been assigned a Record ID