


## Memorandum

**To:** Benton County Planning Commission

**From:** Jeffrey G. Condit 

**Client:** Valley Landfills, Inc.

**Matter:** Conditional Use Permit (CUP) to Expand Coffin Butte Landfill (LU-24-027)

**Subject:** Applicant's Final Written Rebuttal

**Date:** July 21, 2025

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We represent Valley Landfills, Inc. (a subsidiary of Republic Services), the applicant for the above-noted CUP (the "Applicant"). Please accept this testimony into the record as the Applicant's final written rebuttal.

### **I. REPONSE TO THE ARGUMENTS THAT CONDITONS OF APPROVAL WILL NOT BE EFFECTIVE**

The gist of the argument from those in opposition is that the conditions of approval will not ensure that the expansion complies with the applicable criteria because the Applicant has a history of failing to comply with the conditions of approval and the County will not enforce compliance.

**A. The Applicant is in compliance with current conditions of approval.** As part of its July 16, 2025, response to new evidence submitted at the July 8 and 9, 2025, hearings, the Applicant submitted Exhibit 64, a portion of the final Benton County Talks Trash ("BCTT") report assessing past and existing conditions of approval. It discusses, in detail, the 99 conditions of approval imposed on the landfill since 1974. As noted in the report, BCTT concluded that the Applicant was not in compliance with only 3 or 4 conditions of approval (depending on how one counts subconditions), and those conditions are 20 to 40 years old, predating the Applicant's acquisition of Valley Landfills in 2008. With many of the earlier conditions, the written record was incomplete so there was never any conclusive evidence to support or refute the fact the conditions were met. There are also legitimate issues about whether older conditions had been

superseded by subsequent decisions or changes to the landfill operations over time. In his July 9, 2025, submittal, Mark Yeager cites only two conditions for the proposition that the Applicant does not comply: a condition imposed in 1983 relating to screening (PC-83-07, condition 10) and a condition imposed in 2002 relating to limiting landfilling activities (PC-02-07, condition 8). As the BCTT report indicates, there was legitimate debate about whether the screening was installed but was modified over time as the operation changed and about whether the 600-foot contour limitation applied to anything other than the 1.43-acre parcel that was the subject of that particular CUP.

The argument that the Applicant is in violation of every condition of approval is not supported by the record.

**B. The County has the power to enforce compliance, and the Applicant has proposed an additional condition giving it the means to do so.** The County has powerful enforcement tools up to and including revocation of the CUP if the Applicant fails to comply with the conditions of approval. As Planning Director Petra Schuetz testified, the County currently relies on a complaint-based enforcement mechanism and is planning to hire a code enforcement officer. But, as she noted, enforcement is always an allocation-of-resources issue. As part of its July 16, 2025, Response to Evidence, the Applicant proposed a new condition OP-17 which will require the Applicant to reimburse the County up to \$80,000 per year for the cost of consultants to monitor compliance with the CUP approval. See Applicant's Exhibit 65 at 17. This proposed condition is powerful evidence of the Applicant's commitment to comply with the conditions of approval and will give the County the resources and access to the expertise it needs to ensure compliance.

For these reasons, the conditions will ensure compliance with the applicable criteria, as concluded by the County's third-party experts.

**II. RESPONSE TO ARGUMENTS THAT THE COUNTY CANNOT RELY ON THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE UNITED STATES DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENFORCE ENVIRONMENTAL REGULATIONS**

**A. The Oregon Department of Environmental Quality (DEQ) and the United States Environmental Protection Agency (EPA) have the jurisdiction and the expertise over their spheres of regulation and the County must rely on these agencies.** As cited in the Applicant's Burden of Proof, DEQ has exclusive jurisdiction over the areas it regulates, and the statute preempts local authority to apply standards inconsistent with its rules. As noted in Applicant's Exhibit 7, a letter from Civil & Environmental Consultants, Inc., the Applicant faces a significant state permitting process following approval of this CUP before it can begin depositing solid waste in the expansion area. Exhibit 7 details the permit modifications that will be required for the Applicant to move into the expansion area and the requirements for compliance and ongoing monitoring. DEQ regulates air quality requirements (methane, hydrogen sulfide, odor), leachate regulation and disposal, and protection of both ground and surface water, as well as protection for floodplains, wetlands, geotechnical/seismic considerations, and critical habitat. The Applicant will have to demonstrate compliance with all of these criteria in these areas to obtain modifications to the required permits. The permitting process is a public process and the Applicant is confident based on its experience at the County level that each and every permitting requirement will be highly scrutinized.

Any argument that DEQ or EPA will not do their jobs is speculation and is not supported by the current regulatory actions taking place. It does not provide a valid basis to deny the CUP. Many land use decisions rely on partner agencies; if the County starts second-guessing those agencies, the validity of many land use decisions could be impacted.

**B. The County has no adopted environmental standards and cannot just create them out of thin air.** As noted in the staff report, the County does not have the expertise or the regulatory framework in place to second-guess or supersede the state and federal regulatory process. The County's decision on the CUP has to be based upon the criteria contained in its land use regulations. ORS 215.416(8). The County cannot amend its land use regulations under the guise of interpretation. *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992); *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993); *Murphy Citizens*

*Advisory Comm. v. Josephine Cnty.*, 26 Or LUBA 181 (1993). State and federal environmental regulations are evolving and will continue to evolve (witness SB 726 (2025)), even if not as quickly or in the manner that some might wish. The Applicant must comply with any applicable regulation as it is adopted. The County must rely on that process.

### **III. RESPONSE TO ARGUMENT THAT THE REMOVAL OF THE TONNAGE CAP WILL SUBSTANTIALLY INCREASE LANDFILL'S IMPACTS (TRAFFIC, NOISE, ODOR)**

As noted in the record, the current solid waste disposal tonnage cap contained in the Solid Waste Disposal Franchise agreement expires on the date an expansion of the landfill is approved. Many testifying have expressed concern that this will open the door for vast quantities of new solid waste deposited at the landfill with the associated negative impacts. The Applicant has repeatedly responded that this will not occur given the projected growth in the region. (The only exception would be an extraordinary circumstance such as the wildfires several years ago, which temporarily increased the solid waste volumes going into the landfill.) Because the Applicant is confident in its projections, the Applicant has proposed amending OP-7(C) to include a tonnage cap. See Exhibit 65 at 16. The Applicant is willing to agree to abide by this tonnage cap with regard to the current operation beginning on the date of approval of the CUP, which is when the franchise tonnage cap otherwise expires. The Applicant is willing to abide by this condition even though imposition of conditions on the existing operation is outside the scope of the CUP.

Approval of the CUP will not have a significant impact on the annual waste stream coming into the landfill.

### **IV. RESPONSE TO ARGUMENT REGARDING NOISE**

The Applicant responded in detail to the testimony in opposition regarding noise in Exhibit 65 on pages 13 and 14, and Applicant incorporates that response here.

**A. The proposed expansion will comply with the DEQ noise rule.** As shown by the Applicant's analyses, modifying its on-site equipment to reduce noise by 10 dBA over 2023 levels will cause the noise from the expansion area to be well under the DEQ maximum noise

level for the quietest hour at surrounding noise-sensitive uses. This will be true even though the 10 dBA reduction will not apply to truck and other traffic accessing the landfill.

**B. The DEQ Noise Rule is a generally accepted standard for determining noise impacts.** Although DEQ does not enforce the Noise Rule, it continues to update it in response to the Noise Control Act and federal guidance. The original staff report and supplemental staff report concur with application of the DEQ Noise Rule with regard to this application. Again, the County has not adopted its own noise regulations and, as noted above, cannot apply unadopted standards. The Noise Rule provides a generally accepted engineering basis for determining whether noise generated by a particular use—whether it is from a wind farm or a landfill—will substantially interfere with uses on adjacent property.

**C. The County will be able to enforce compliance with the noise conditions.** Proposed condition OP-17 will enable the County to directly monitor ongoing compliance requirements.

## **V. RESPONSE TO ARGUMENTS ABOUT ODOR AND AIR QUALITY**

The Applicant responded in detail to the testimony in opposition regarding odor and air quality in Exhibit 65 on pages 5 to 7, and the Applicant incorporates that response here.

**A. AERMOD is the preferred model for determining odor impacts.** The AERMOD model used by the Applicant is the generally accepted model for determining odor impacts as noted by the Applicant's and the County's consultants. The Applicant modified how it applied the model in response to the concerns expressed by the County's consultants in the initial staff report. The supplemental staff report concurred with the Applicant's revised analysis. The revised modeling shows no nuisance level odor at the Valley Landfills property boundary.

**B. Certain activities can temporarily increase odor but improve longer-term performance.** The Applicant's odor analysis acknowledges the certain activities can temporarily increase odors. Construction of new gas wells causes more gases to release during short-term construction as the ground is disturbed. However, the addition of more gas wells ultimately results in more efficient gas collection, reducing emissions and odor.

**C. The proposed odor conditions will be effective.** The revised tonnage cap, daily cover conditions, and substantially increased monitoring and response requirements in proposed condition OP-7 will minimize odor impacts.

**D. The County will be able to enforce compliance with the odor conditions** Proposed condition OP-17 will enable the County to directly monitor ongoing compliance requirements.

## **VI. RESPONSE TO ARGUMENTS ABOUT GROUNDWATER AND WATER QUALITY**

The Applicant responded in detail to the testimony in opposition regarding groundwater and water quality in Exhibit 65 on pages 3 to 4, pages 8 and 9 (Blasting), and page 9 (Liner Life), and the Applicant incorporates that response here.

**A. Excavation, including blasting, for the expansion area will not dewater wells or increase arsenic levels.**

1. The Applicant's assessment of groundwater and stormwater impacts is based on conservative assumptions, relevant site-specific data, and years of experience and data at the existing landfill.

2. The proposed sentinel wells will alert the Applicant to any unexpected adverse conditions and the condition will require corrective action if a problem is documented.

3. The Applicant's seismic study was conducted in compliance with EPA and DEQ standards.

**B. The landfill liners will not leak.** Concerns about liner failures and similar issues are based on outdated technology. The expansion will use high-density polyethylene ("HDPE") geomembranes and geosynthetic clay liners ("GCLs"), which are each expected to last several hundred to over a thousand years without failure. (See citations to authorities in Exhibit 5 page 9.)

**C. The County will be able to enforce compliance with the groundwater and water quality conditions.** Proposed condition OP-17 will enable the County to directly monitor ongoing compliance requirements.

## **VII. RESPONSE TO ARGUMENTS REGARDING LITTER**

The Applicant responded in detail to the testimony in opposition regarding litter control in Exhibit 65 on page 2, and the Applicant incorporates that response here.

**A. Litter control will be substantially more robust.** Proposed Condition OP-15 requiring additional fencing and other operation modifications will be substantially more robust than current litter control efforts, adding additional layers of different fencing and additional litter patrol and control measures. These measures will substantially reduce off-site litter dispersion.

**B. The Applicant has proposed a new condition requiring the Applicant to clean up litter on the adjacent properties at the request of the property owner.** In its July 16, 2025, Submittal in Response to New Testimony, the Applicant has proposed modification to the OP-15(F) (Off-Site Litter Management) to require Applicant to clean up litter on any adjacent property at the request, and subject to the consent, of the property owner. Exhibit 65 at 16. If any litter makes it past the multiple protections and measures required by condition OP-15, the property owner will have direct recourse to the Applicant to remedy the issue.

**C. The County will be able to enforce compliance with the litter control conditions.** Proposed condition OP-17 will enable the County to directly monitor ongoing compliance requirements.

## **VIII. RESPONSE TO ARGUMENTS THAT THE LANDFILL IS A FIRE RISK**

The Applicant responded in detail to the testimony in opposition regarding fire risk in Exhibit 65 on pages 11-13, and the Applicant incorporates that response here.

**A. The fire history at the landfill does not support the argument that the expansion presents a significant fire risk.** With the exception of the 1999 landfill fire that occurred under the prior operator, no fire has risen to a level of significance, nor has it ever run

the risk of migrating off site. As noted by the Applicant's fire expert, Jim Walsh, that type of fire is not possible given current operations, including the smaller size of the working face and the daily cover requirement.

**B. The expansion will have no impact on the Adair Fire Protection District's tax base.** The Adair fire chief's concern about the property-value impact of the landfill reducing the Fire District's tax base is unsupported by citation to the fire chief's authority, making it difficult for the Applicant to address or substantiate the argument. The Applicant notes that there is a 70-year history of a landfill at this location and expansion will not change that situation.

The Applicant has always had a good working relationship with Adair Fire and hopes to continue that relationship.

**C. A second water truck will be required.** In response to concerns about the availability of the water truck to fight fires if it is off site refilling or involved in dust control, the Applicant has proposed an amendment to OP-12(A) that will require the Applicant to maintain two water trucks at the site and impose a requirement that at least one of the trucks be on the landfill property at all times. Exhibit 65 at 16. The Applicant notes that soil cover is the primary method of fighting landfill fires as outlined in the Applicant's fire studies, but the second truck will provide an added layer of protection.

**D. The County will be able to enforce compliance with the fire protection conditions.** Proposed condition OP-17 will enable the County to directly monitor ongoing compliance requirements.

## **IX. RESPONSE TO OTHER TESTIMONY**

**A. Approval of this CUP is not a "slippery slope" to approval of the vacation of Coffin Butte Road and a revival of the 2021 application.**

1. Any future expansion would require a new CUP. Any future expansion beyond the approved site plan for this expansion would require a new CUP subject to all of the applicable criteria in effect at the time and would also require modifications to the Applicant's



DEQ permits. Both would be subject to the applicable notice and hearing processes at the time. Any future application would stand or fall on its own merits.

2. Vacation of Coffin Butte Road would still require a public decision even under the expedited process. The Applicant owned all of the property abutting Coffin Butte Road in 2021, and so qualified for the expedited process for vacation of right-of-way at that time. This obviously did not avail the Applicant in 2021. The expedited process is still subject to a public decision and a vote by the Board of Commissioners and a determination by the County that it is in the public interest. A decision to vacate is discretionary on the part of the Board, and there is no method by which the Applicant can force approval or sneak it through.

**B. Other Issues Raised in Testimony in Opposition.** The above rebuttal responds to arguments on the major issues relating to the landfill raised in testimony in opposition. The Applicant refers to the Applicant's June 20, July 7, and July 16, 2025, submittals for more detailed responses on these and other issues.

## **X. CONCLUSION**

The evidence demonstrates that the proposed expansion will not seriously interfere with surrounding uses or the character of the area will not unduly burden public facilities and will be consistent with the purposes of the forest conservation zone. The Applicant deeply appreciates the time and careful consideration that the Planning Commission and staff have put in on this application. The Applicant respectfully requests that the Planning Commission approve the application, subject to the conditions of approval in the staff report, subject to the modifications requested by the Applicant at the July 8, 2025, hearing and its July 16, 2025, submittal.