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May 5, 2025

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

TO: Benton County Planning Commission
FROM: Jeffrey L. Kleinman
RE: File No. LU-24-027 (Republic Services/Valley Landfills Inc.)

I. INTRODUCTION

I represent Valley Neighbors for Environmental Quality and Safety ("Valley Neighbors") in this proceeding. Valley Neighbors comprises a large group of property owners and residents in the area surrounding the proposed landfill expansion site, including but not limited to the Soap Creek Valley and Tampico community. The members of Valley Neighbors will be directly and adversely affected by the proposed expansion.

The comments presented here summarize some of the legal obstacles to approval of this application which the applicant has failed to overcome. A number of the members of the affected community who will testify orally, in writing, or both, have the professional and personal expertise to flesh out the issues in detail. Some will be filing (or attempting to file)

media which we strongly encourage you to view, as county rules apparently do not allow them to be played or displayed during hearings.¹

For all the reasons set out below and those to be adduced on the record of this proceeding, the applicant has not come close to meeting its burden of proof under the county's approval criteria. Simply stated, this application must be denied.

II. GENERAL COMMENTS REGARDING STAFF REPORT; ADDITIONAL CONSIDERATIONS

Valley Neighbors offer the following comments:

1. What is the applicant's rush? It has just converted the Knife River quarry site on its property to the west of its existing operation to landfill use. The applicant has 12-14 years of capacity at that location.

2. The staff report reflects a diligent effort, with excellent graphics, and a clear understanding of the issues facing the county. Valley Neighbors agree with its ultimate conclusion that this application must be denied.

3. At the same time, staff did not have the benefit of the written and oral testimony of Valley Neighbors and others, which reinforces the grounds for denial and adds others with a similar degree of importance.

¹Media containing video and audio are essential to forming an understanding of the impacts of this proposal. Staff has indicated then any media submissions such as thumb drives will be discarded. For the record, Valley Neighbors object to this "rule" and procedure, as they interfere with the substantial rights of parties to present their case. Such materials are necessary to understand the impacts of the proposal before you.

4. It is not just the southward movement of Republic's operation that will cause the increased, adverse impacts in question. Rather, that movement will serve to sustain a dump operation which would otherwise be greatly constrained in scope. Thus, this proposal cannot be characterized as one for a preexisting use, inherently accepted as part of the character of the area. The character of the area entails a large operating landfill north of Coffin Butte Road that is close to shutting down. Its past role in establishing the character of the area cannot be "grandfathered" into the present time, much less the future. To the extent that you may be advised to the contrary, we strongly (but respectfully) disagree. The application must be treated as one for a brand new landfill, because that is precisely what it is.

5. The county can impose as many conditions of approval as it wishes. Unfortunately, the applicant's existing operation has a solid track record of noncompliance with conditions, and the county has a solid track record of failing to enforce conditions.

6. Valley Neighbors have two initial comments concerning the work product of Benton County Talks Trash (BCTT):

(a) Just to be clear, BCTT's report was "accepted"—deemed received—by the county's board of commissioners. It was not *adopted*, much less in a manner which would make BCTT's proposed interpretations of the Benton County Development Code binding upon you, or upon the board itself in any appeal hearing.

(b) The legal subcommittee of BCTT, which recommended certain of those interpretations, included four attorneys. Three of those attorneys were not neutral participants, but have consistently favored landfill expansion. Two work for Republic, its in-house attorney, Holly Doyle, and its local counsel, Mr. Condit. The other is the county counsel, Mr. Croney.

7. If you are inclined to be persuaded that approval of this application would not result in “serious interference,” please picture yourselves as homeowners or farmers at or near the expansion site. We can nearly guarantee that you would find that the proposed operation seriously interferes with your use and enjoyment of your property, as well as with the character of the area. Under no circumstances would you move to or wish to live anywhere near it, regardless of depressed property prices. You will hear testimony that the prospect of an expansion causes potential buyers to back out of home and farm purchases in the area. Being unable to sell your property comprises “serious interference.”

III. CONDITIONAL USE APPROVAL STANDARDS-BCC 53.215

The general Conditional Use approval criteria provide:

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

(3) The proposed use complies with any additional criteria which may be required for the specific use by this code.

**A. WHAT IS THE MEANING OF “SERIOUSLY INTERFERE”
UNDER BCC 53.215(1)?**

This is discussed at pages 18-19 of the staff report. Valley Neighbors agree at least in part with the interpretation propounded there, especially that the proposed use causes “more than an inconvenience or irritation but is a lesser threshold than rendering the uses on adjacent property impossible.” *Id.* at 19. Of course, little short of an armed attack would render such uses impossible, so it is important to find a way to draw the line.

The following discussion is a bit lengthy, but reflects our best effort to get there.

For words not otherwise defined in the Code, LUBA and the Oregon courts look to their plain meaning, quite specifically as set out in *Webster’s Third New International Dictionary* (unabridged ed 2002). Webster’s defines “seriously” as “in a serious manner or vein : to a serious extent * *.” *Webster’s Third New Int’l Dictionary*, 2073. In turn, “serious” has several definitions depending upon the context in which it is used. The applicable ones are these:

4a : IMPORTANT, SIGNIFICANT * * *

c. : **such as to cause considerable distress, anxiety, or inconvenience**
* * *

Id. (Emphasis added.)

LUBA has discussed the meaning of “significant” in the related context of statutory conditional uses in farm and forest zones. Those uses are subject to the requirements of the “significant impacts” test set out in ORS 215.296(1):

(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a **significant** change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) **Significantly** increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(Emphasis added.)

In *Stop the Dump Coalition v. Yamhill County* (“SDC”), 72 Or LUBA 341, 359

(2015), another case dealing with the proposed expansion of a landfill, LUBA examined the meaning of “significant”:

Because the term “significant” is undefined, and of common usage, it is permissible to consult dictionary definitions. The most pertinent definition of “significant” in Webster’s Third New International Dictionary (2002), 2116, appears to be “3 a : **having or likely to have influence or effect : deserving to be considered**[.]” Because ORS 215.296(1) is framed in the negative (the applicant must demonstrate that the proposed use “will not” force a significant change, etc.), it seems appropriate to consider related antonyms such as the term “**insignificant**,” which Webster’s defines in relevant part as “e : **of little size or importance**[.]” *Id.* at 1169.

(Emphasis added.)

The above discussion sets out the most accurate and appropriate definition for the Planning Commission to apply. In summary, “SERIOUSLY”=TO A SERIOUS EXTENT. “SERIOUS”=SIGNIFICANT=LIKELY TO HAVE INFLUENCE OR EFFECT : DESERVING TO BE CONSIDERED=NOT OF LITTLE SIZE OR IMPORTANCE.

Regardless of the definition or interpretation of “seriously interfere with,” the evidence will be replete with sufficient evidence to show that the applicant has not met its burden of proving the absence of serious interference with “uses on adjacent property, with the character of the area, or with the purpose of the zone.” At the same time, it would be a disservice to both the community and the Development Code to artificially constrain the effect of this approval standard.

B. INTERFERENCE WITH USES ON ADJACENT PROPERTY

One can assume for the sake of argument that, as staff states, “adjacent property” includes the adjacent and nearby properties mapped on page 20 of the staff report. 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.

The staff report discusses adjacent properties in the Exclusive Farm Use zoning district. Blowing waste, especially plastics, and the attraction of gulls to the landfill who then

root around in and uproot newly planted crops, were found to be a significant impact in SDC. As just one example of such impact, if every speck of plastic is not assiduously removed by a hay farmer, and any amount of it is picked up by their harvesting equipment and thus mixed into the harvested hay, it will render the crop unsaleable. It also takes very little plastic to knock the farmer's equipment out of commission.²

Further, owners and residents of adjacent properties will provide evidence of the impacts they would endure under this proposal, especially as the landfill comes ever closer to them and gets much larger—and the more methane is emitted and the more leachate is generated. The impacts include truly intrusive and disruptive noise and odor impacts, and wind-blown garbage which will require constant clean up by property owners. These are impacts which neither the members of the Planning Commission nor attorneys, consultants,

²Note that BCC 60.220, discussed later in the staff report, addresses this issue directly:

“60.220 Conditional Use Criteria.

(1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use:

(a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands * * *.”

LUBA's holding in SDC is directly applicable to the Planning Commission's analysis under this provision.

county staffers, or BCTT participants would abide for even a single day. When you get right down to it, this is the reality of “talking trash.”

Noise

Dump operations are proposed to be conducted from 5:00 AM to 5:00 PM, Monday through Saturday and noon to 5:00 PM on Sunday. (However, movement of heavy equipment regularly starts by 4:00 A.M., to prepare the fill for the arrival of trash.) It would be difficult to overstate the extent to which landfill-related noises will “seriously interfere with uses on adjacent property.” Hundreds of heavy diesel trucks hauling waste to the site, climbing the working face of the fill, traveling over the fill itself, and braking down the slope and departing from the site will produce a nearly constant heavy roar and squeal, most intrusive during the warmer months when residents are trying to enjoy being outdoors on their property. The dumping operation itself will produce the regular sounds of vehicle hydraulics and clanging tailgates as loads are dumped. Perhaps worst of all will be the high-intensity chirping of back up beepers (whether or not outfitted to be triggered only by proximity to obstacles³), on both the haul trucks and landfill equipment such as bulldozers. Noise impacts alone will render adjacent properties nearly unlivable.

With respect to noise, staff found as follows:

³The applicant proposes to require proximity-generated buzzers for their own equipment. These devices produce an alarm-clock-like buzzing which is louder than the traditional beeping.

The applicant identified the closest noise-sensitive properties (residential uses) and evaluated potential noise impacts on these uses. The applicant did not evaluate noise impacts on other adjacent properties at greater distances. Staff concurs with the applicant's reasoning that if noise does not seriously interfere with close noise-sensitive uses, it will not seriously interfere with noise-sensitive uses farther away, as noise diminishes over distance.

As noted by the applicant, the cited DEQ Noise Rule does not appear to be directly and entirely applicable to the proposed application. However, staff concurs with the applicant's use of that DEQ regulation to set a threshold for noise increase to "seriously interfere" with noise-sensitive uses.

However, as noted in MFA findings above, the proposal appears to exceed the DEQ regulatory noise threshold proposed for use by the applicant to evaluate consistency with this standard.

In the absence of a proposed solution to meet identified noise impacts, staff recommends denial of the application due to noise impacts on adjacent noise-sensitive uses.

Valley Neighbors generally agree with staff's findings. However, we would reinforce them with the following modifications:

(1) Even hypothetical compliance with DEQ noise standards, which are effectively unenforceable in any event⁴, may seriously interfere with uses on adjacent property. The proposed conditional use and the disturbing sounds it will generate are simply incompatible with adjacent residential uses, and even with the outdoor activities of small farm operators who have placed comments into the record.

⁴Sadly, this is putting it very mildly. The applicant's representative testified on May 1 that DEQ no longer conducts enforcement. DEQ in fact stopped updating noise regulations in 1991, which is when it ceased noise enforcement. The applicant is not constrained by DEQ regulations.

(2) The science of acoustics does not lend itself to straight-line calculations. For example, based upon the height of the fill at any given time, varying atmospheric conditions, and the occasionally sheltering effect of the fill itself, properties further away may suffer greater impacts than “the closest noise-sensitive properties.” Thus, the applicant did not meet its burden of proof when it only evaluated potential noise impacts on those properties and their uses, and not on other properties within the as-defined adjacent area.

(3) The applicant is only able to exercise some semblance of control over its own vehicles. The vehicles of other haulers and private customers will be entirely out of their control. Assurance of compliance with any relevant or agreed noise standards will be impossible.

Odor

With specific regard to odor impacts, staff found as follows:

* * * Staff has two general concerns with the applicant’s analysis:

1. Odor-sensitive uses. The analysis does not appear to identify adjacent uses that are likely to be more sensitive to odor impacts. For example, a residential use is likely to be more sensitive to odor impacts than a farmed field. Locations of odor-sensitive uses are not clearly defined in the odor analysis or mapping, and the potential impact on these uses is not specifically evaluated. Of special note, there may be odor-sensitive uses within the boundary area identified in the applicant’s odor analysis.

2. As identified in the MFA engineering response, several technical elements of the analysis appear to be inadequately supported.

Due to these concerns, and the lack of options for conditions to mitigate these concerns, staff recommends denial of the application.

Staff Report at 33. The evidence placed in the record will strongly support your staff's determination.

In addition, commissioners should not assume that some community members would be unaffected by or benefit from this proposal because the landfill and its working face would be further away than before. If the current fill (and the expansion into the quarry to its west) reach full capacity and this application is not approved, then the impacts other than residual fumes and odors (which are supposed to be controlled in the first place) would for the most part disappear. That is the baseline condition you must measure against, not the supposed baseline of an operating dump.

You have been presented with testimony that the applicant and county promised and planned that the landfill use would be temporary ever since the first CUP for a landfill in the Forest Conservation zone was granted in 1973. Afterward, it was to have been capped, and revegetated, so as to return the parcels on which it was located to the original pastoral character of the area. There has never been a provision for the landfill to be an ever-growing, permanent operation. The commitment to fully and permanently cap and close the landfill and restore the site to its original condition reflecting the pastoral character of the area, is part of the county's only duly adopted Solid Waste Management Plan (the 1977 Plan, a copy of which is attached as Exhibit A). This commitment has been made repeatedly but never fulfilled. It was contained in the 1983 zone adoption and change, and revalidated in every single land use decision since that time that addressed landfill operations, in 1994, in

2001, in 2003, and most recently in the 2021 CUP proposals.

One characteristic that can be drawn from the preexisting operation, though, is the applicant's manner of operating a landfill. In this regard, please be aware that the voluminous application materials on file do not disclose that Republic's Pollyannaish description of its methane emissions overlooks an ongoing action by the US Environmental Protection Agency. (Please see the recap attached as Exhibit B.) Simply stated, the EPA does not believe Republic's numbers and has the dump under investigation.

This reflects the way this operator operates. Leaking malodorous, unhealthy methane (that also contains airborne PFAS and many other air pollutants as described by the applicant during its May 1 testimony) onto adjacent properties will interfere with all uses on those properties, and with the character of the area (however "area" is defined).

Visual Impacts

While perhaps not as impactful on its adjacent properties as would have been the applicant's 2021 proposal on its affected properties to the north, the new mountain of garbage will nonetheless have a dramatic visual impact on the nearby properties to the south. . The applicant proposes to plant trees to screen the visual impacts. The main problem with this is that screening the landfill is already a Condition of Development for the zone (as well as a requirement of the 1967 Highway Beautification Act). But the current landfill operator has never been able to adequately screen a 500-foot tall artificial landform with "proposed trees" that might reach 15 feet in height by the time the expansion is full. There is no indication

that this will change. The operator has not capped and revegetated a closed cell since the mid-1990's. Instead, it covers cells with unsightly, deteriorating tarps which can be seen for miles. This conduct too will never change. The applicant acknowledges that even if the proposed vegetative screening is installed and maintained, the new landform made of trash "may be visible." The applicant also states that expanding the landfill will "reduce * * * visual impacts * * * caused by the current operation" which, under prior Conditions of Development, are already required. What are we to make of the applicant's suggestion that it will now belatedly, voluntarily comply, after the passage of 50 years?

Note also that the "artist's rendering" of "visual impacts" depicts the landfill mass in a green color. The landfill mass is in fact the colors of a patchwork of decaying tarps. Thus, the new topology of trash should be depicted in its current unnatural colors.

C. INTERFERENCE WITH THE "CHARACTER OF THE AREA"

The "area" in question covers considerably more territory than "adjacent properties." In spite of alternative characterizations offered by the applicant, the character of the area surrounding the proposed fill site is pastoral and considerably more quiet and free of industrial noises and landfill debris and odors than it would be if this application were approved. There is even a nearby wildlife refuge, the E. E. Wilson Wildlife Area, to the east, and a public hiking trail to the north which will have direct views of the 59-acre parcel. The use and enjoyment of both will suffer interference due to landfill noise and odors. The applicant's tree-planting proposal, even if implemented and duly maintained over time, will not mitigate

these impacts. By definition, moving the fill operation south of Coffin Butte Road will seriously interfere with the character of the area to the south.

You will receive direct first-person testimony and evidence with respect to the proposal's serious interference with the character of the area. The discussion of noise and odor impacts above applies to the surrounding area as well, as those witnesses will explain. Valley Neighbors propose that you rely upon the actual testimony placed in the record to determine the boundaries of the relevant "area" under the Development Code.

Visual Impacts

The applicant first proposes to strip the 59-acre parcel of all its vegetation and topsoil, then dig a 155-foot hole in the side of the geographic feature that is the ridge, fill the hole (below the water table) with garbage, and then pile more garbage atop what previously were the natural contours of the hillside. It is possible that preparing the site to accept trash will actually have more of a visual impact than filling it with trash will (the applicant has not provided Benton County with a timeline for site preparation), so it is appropriate to consider the visual impacts of site preparation in addition to the impacts of the operating fill as well as its impacts after final closure.

The area south of Coffin Butte Road currently lacks the view of the giant trash pile the applicant proposes to erect. Even if the height of that pile is lower than would have been the height of the one proposed for the area north of Coffin Butte Road in 2021, its visual impacts

will nonetheless seriously interfere with the character of the newly affected area. Under your code, this impact cannot be glossed over.

D. FINDINGS OF THE PLANNING COMMISSION IN DENYING THE 2021 APPLICATION (LU-21-047)

The applicant's 2021 conditional use application was different in scope from this one, especially in seeking to close and fill over Coffin Butte Road.⁵ However, many of the other impacts would be quite similar and are directly applicable to this application. There are other ways to say the same thing and reach the same result, but the Planning Commission took a great deal of time and care in crafting its findings of denial. We do not feel a need to reinvent the wheel, and thus set out the most relevant ones here:

Uses on adjacent property:

Many residents of the area testified that the odor and noise has continually gotten worse over the years. Some testified that they have to seek shelter inside to avoid the noise and smell. They warn that the levels expected in the future will affect their rural residential uses. Some farmers have testified that getting workers to work in the stench has been an issue.

Odor: Methane emission rules do not capture the impacts to the character and use of the area because many people testified that the smell inhibits them from going outside and enjoying the use of their property. Property owners within miles of the site stated they could smell the landfill. The current mitigation of an earthen cap over cells does not mitigate smell and smell reflects emissions of other gases such as Volatile Organic Compounds (VOCs) and hydrogen sulfide. The same mitigation is proposed for the

⁵Valley Neighbors believe that may still be the plan. If the proposed expansion is approved, it is not at all inconceivable that the county would apply (to itself) to vacate the road so that Republic would own and could fill over the right-of-way. It is not impossible that this could be carried out without significant public scrutiny or review. Thus, this application could well be a Trojan horse.

expansion and if it currently does not mitigate the odor then it cannot be used as a mitigation for the future and be expected to minimize the concern.

Bad air quality: People living in areas with poor air quality does pose serious interference with livability. Risk of health concerns is likely with the landfill expansion; enough so nearby residents speak out about it. Some residents point to increasing cancer clusters in their neighborhood and suggest that poor air quality may be responsible. One nearby resident pointed to studies in Europe that tied poor air quality in the proximity of landfills to bad health issues. The applicant noted they cannot control all of the releases of VOCs or hydrogen sulfide and these gases are understood to be potent carcinogens. The applicant did not address the long-term effects of those gases in varying concentrations in different weather situations but the Planning Commission certainly heard from people that they can smell these.

Noise: The noise study contracted by the applicant has been criticized as faulty and inadequate. Proposed mitigations do not seem feasible and such conditions couched as "whenever feasible" or "if permitted by safety conditions" are not stringent enough. Further concern of noise from banging truck gates, loud noises from unloading, was not addressed. Point noises are often the most debilitating and background noise is easier to live with. * * *

Much of the applicant's response to these issues is to rely on subsequent review and approval by Oregon Dept. of Environmental Quality (DEQ); however, there is no ability for the Planning Commission to review the situation after DEQ's approval to ensure that DEQ's standards were adequate to prevent the proposed use from seriously interfering with uses on adjacent property.

Conclusion: The proposed use does seriously interfere with uses on adjacent property.

The character of the area:

[We cite only the relevant portion of the findings here, which would be directly related to the southward march of the fill. The evidence presented to you will demonstrate those impacts upon such properties.]

* * * Residents of the area point to the change in the character of the area. * * *

* * * The livability of the area because of noise, odors, and the visibility of the garbage pile will continue to degrade.

Benton County File No. LU-21-047, Planning Commission Findings at 2-3.

D. SERIOUS INTERFERENCE WITH THE PURPOSE OF THE FC ZONE

The purpose of the Forest Conservation zone is set out in BCC 60.005. The relevant subsection is set out below, with the most directly relevant language italicized:

Forest Conservation Zone.

60.005 Forest Conservation Zone.

(1) The Forest Conservation Zone shall conserve forest lands, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, and *protect the air, water, and wildlife resources in the zone. Resources important to Benton County and protected by this chapter include watersheds, wildlife and fisheries habitat, maintenance of clean air and water,* support activities related to forest management, opportunities for outdoor recreational activities, and grazing land for livestock. Except for activities permitted or allowed as a conditional use, non-forest uses shall be prohibited in order to minimize conflicts with forest uses, reduce the potential for wildfire, and protect this area as the primary timber producing area of the County.

As staff points out:

The FC zone conditional use criterion BCC 60.220(1)(c) requires consistency with BCC 53.215. As discussed above, staff does not consider BCC 53.215 criteria to be met with respect to noise and odor impacts; therefore, the proposal also is not consistent with the purpose of the FC zone.

Staff Report at 46.

We concur with that portion of staff's findings. We would also point out that the LS classification was created so that landfills would not be located in FC zones. Hence, the

proposed siting on FC parcels of accessory uses which would be part of the landfill operation would subvert the intent of the county's zoning scheme. Note also that landfill "buffers" are not a by-right use in the FC zone, and are not allowed at all in the RR zoning district.

The only parcel in the applicant's ownership that is currently permitted for landfill "buffer" is the 59-acre parcel that the applicant proposes to put a new landfill on. This is the buffer between existing landfill operations, which are slated to continue for the next 12 years, and the RR-10 and FC parcels with residences on them to the east, west, and south. A landfill cannot "buffer" itself. The 59-acre parcel was zoned LS in 1983 to provide visual/noise/odor screening from adjacent parcels, and that is its current function. Without rezoning existing rural residential parcels to LS, or obtaining Conditional Use Permits on FC parcels for landfill "buffering," this use is not compatible with surrounding existing uses.

IV. BCC 53.215(2) AND OTHER CRITERIA RELATING TO TRAFFIC AND THE APPLICANT'S TRAFFIC IMPACT ANALYSIS; DRAINAGE AND LEACHATE MANAGEMENT

Returning to the Conditional Use criteria of BCC 53.215, subsection (2) requires the applicant to prove:

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

In this regard, the staff report discusses both traffic impacts and drainage and leachate management issues.

The applicant's TIA seems to have withstood staff and consultant scrutiny thus far. However, it is not clear that the TIA and its reviewers understood that the Knife River quarry operation on land leased from Republic had ceased. Republic has now prepared that portion of its property for landfill use, and commenced to fill it. That use will have traffic impacts which are substantially different from and more intense than those generated by Knife River. The defects in the applicant's TIA are separately addressed in a submittal from Mark Yeager.

Considerable testimony will be placed in the record with respect to drainage and leachate management. The record will show that the applicant has not demonstrated that it can or will construct and operate a compliant landfill. Additionally, none of the applicant's studies—not traffic, nor noise, nor odor—takes into account the impact of removal of 3,500,000 tons of material from a topographic feature, the relocation of that material to the stockpile across the road, and the eventual removal of the material from the stockpile to some remote location to be determined in the future. (The applicant has not shared the details of this operation with county staff.) The impacts of site preparation and operation must be weighed and considered when the process will be as extensive as is the case here.

V. CONDITIONAL USE CRITERIA UNDER BCC 60.220

BCC 60.220 applies in this case and provides in material part:

60.220 Conditional Use Criteria.

(1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use:

(a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; * * *

This is essentially the language of ORS 215.296(1), which sets out the “significant impacts” test and was interpreted by the Oregon Supreme Court in SDC. Again, the Supreme Court interpreted “significant” in this context as follows:

Because the term "significant" is undefined, and of common usage, it is permissible to consult dictionary definitions. The most pertinent definition of "significant" in *Webster's Third New International Dictionary* (2002), 2116, appears to be "3 a : **having or likely to have influence or effect : deserving to be considered[.]**" Because ORS 215.296(1) is framed in the negative (the applicant must demonstrate that the proposed use "will not" force a significant change, etc.), it seems appropriate to consider related antonyms such as the term "**insignificant,**" which *Webster's* defines in relevant part as "**e : of little size or importance[.]**" *Id.* at 1169.

(Emphasis added.) This provides the definition and interpretation which are binding upon the county here.

The staff report concurs with the applicant's characterization:

The new or relocated elements that are proposed on the FC-zoned lands are an 1,800-square-foot employee building and parking, access road modifications, the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area to support the landfill. These elements will slightly reduce the amount of land that is available for farm and forest uses * * *.

Staff Report, 52-53.

Staff then concludes:

Staff concurs with the applicant that farm and forest uses have operated on and adjacent to an active landfill use on this site for decades. In the absence of contradictory information, as of the writing of this staff report staff sees no evidence the proposal will force a significant change in, or significantly increase the cost of, accepted farm and forest practices.

Id. at 53.

This conclusion fails to take into account the movement of the applicant’s operation toward the south, and the farm impacts which will occur there. In fairness, staff did not have “contradictory information” at the time the staff report was prepared. However, farmers will submit contradictory evidence into this record. That evidence is also likely to be highly relevant to your consideration under the general Conditional Use criteria of BCC 53.215. As we have discussed, this would be a new landfill. While it will be closer to some farms than is the fill north of Coffin Butte Road, the Commission must also take into account impacts on other affected farms in light of the fact that the existing northerly site will shrink and then close, which would otherwise eliminate its impacts but for the opening of this new, proposed fill.

VI. BCC 99.225-DEVELOPMENT ACTIVITIES IN WETLANDS

With respect to these criteria, staff states:

On-site are a Freshwater Emergent Wetland, a Freshwater Pond, and Freshwater Forested/Shrub Wetland. Benton County notified DSL of the complete application on March 20, 2025, following the 58-day extension requested by the applicant (Exhibit BC4). The County did not receive a response from DSL.

Staff Report at 66.

DSL's failure to respond is not the fault of the applicant or staff. Nonetheless, receipt of a response should be required before this application can be approved. Then, if there is somehow an otherwise approvable application, it may (or may not) be possible to craft appropriate conditions based upon DSL's comments.

VI. CONCLUSION

For all the reasons set out above and in the staff report, and adduced in the written and oral testimony before you, the applicant has not met its burden of proof to show compliance with Benton County's approval standards. Accordingly, this application must be denied.

Respectfully submitted,

Jeffrey L. Kleinman

Jeffrey L. Kleinman
Attorney for Valley Neighbors for
Environmental Quality and Safety