

From: [Joel Geier](#)
To: [Benton Public Comment](#)
Subject: Oppose/Deny LU-24-027: Resubmittal of 2021 testimony on heron impact
Date: Thursday, May 8, 2025 12:43:14 PM
Attachments: [Comments on LU-21-047 from Debbie and Norm Johnson herons.pdf](#)
[JoelGeier2021Herons.pdf](#)

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Dear Chair Fowler and Members of the Planning Commission:

As additional testimony on the issue of sensitive Great Blue Heron rookeries (Development Code Sections 87.200 through 87.230), I'm herewith resubmitting my testimony from a very similar application by the same applicant in 2021 (LU-21-047). I am also attaching related testimony by Debbie and Norm Johnson for that same proposal, which includes facts that are still relevant regarding heron rookeries and the applicable state forestry rules and county development code.

My 2021 testimony applies in its entirety to the current application, except regarding the details of the changes in topography.

The main difference is that LU-21-047 proposed a 270 ft tall ridge constructed of waste that would completely block the existing flyway through existing, broad topographic saddle between Coffin Butte and Tampico Ridge. In 2021 I noted that this would cut off access to one or more foraging areas that are used by the herons during nesting season.

The current proposal, if taken at face value, would not entirely block this flyway, but it would severely constrict it by building another huge hill of garbage out from the north end of Tampico Ridge. Only a narrow "valley" would be left along the road running between the new and old landfills. Herons using that valley to fly to foraging areas to the west and then to carry food back to their nests would be vulnerable to harassment by Bald Eagles which (as the applicant has documented) congregate around the dump site.

Again, **that's only if the current proposal is taken at face value.**

As noted by the VNEQS attorney, Jeffrey Kleinman, during his oral testimony on May 6th, if you approve LU-24-027, there is no real impediment to the applicant reverting to the original plan set forth in LU-21-047. All that would be needed is a vacation of the section of Coffin Butte Road between the new and old landfills, which would not require approval of the Planning Commission. Indeed, the Applicant's submissions to Oregon Department of Environmental Quality (DEQ) for the current application are essentially unchanged from their submissions for LU-21-047. In particular these two exhibits in the Applicant's Burden of Proof are the same as were submitted to Oregon DEQ for LU-21-047:

Exhibit 24. Oregon DEQ Permit Work Plan.

Exhibit 25. Oregon DEQ Approval of Work Plan

The field investigations described in Exhibit 5 (geotechnical engineering explorations of the Development Site) were all carried out under the same 2021 work plan. Thus the Applicant would not need to change any of its filings with DEQ, to go ahead with the original plan.

If the Applicant reverts to their original 2021 design after securing your assent to LU-24-027, then the impacts on the herons in their current nesting location, just east of Lot 1200, will be the same as for the original design put forward in LU-21-047.

Please note this applies to all aspects of LU-24-027. Denial of LU-24-027 is your only way to assure that the Applicant doesn't implement by stealth what you rejected unanimously in 2021.

Yours sincerely,
Joel Geier, Ph.D.
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Corvallis OR 97330

File Number LU-21-047

Comments on the application for a Conditional Use Permit for the Coffin Butte Landfill to place a new disposal cell south of Coffin Butte Road, relocate the leachate ponds south of Coffin Butte Road, vacate Coffin Butte [presumably this means Coffin Butte Road] and relocate the roadway around the area of the new disposal cell.

Debbie and Norm Johnson
28831 Tampico Road
Corvallis, OR 97330

We oppose this conditional use permit for the following reasons:

1. Habitat for the Great-blue Heron Rookery Must be Protected and Enhanced

The project location hosts a great-blue heron rookery which was documented by the Oregon Department of Forestry in a Notification of Operations (NOAP) under NOAP ID: 2019-551-05885. Great-blue herons are colonial nesters, and as many as 20 heron nests have been observed in the rookery. Under the Oregon Forest Practices Act heron rookeries are protected. Between February 15th and July 31st no forest operations (including truck traffic) are allowed within one-quarter mile of active nest trees and trees cannot be harvested within 300 feet of heron nests.

Heron rookeries are also protected under the Benton County Development Code as a “Goal 5” resource. According to 87.210 (Sensitive fish and Wildlife Habitat Overlay) a 600-foot area around the great-blue heron rookery must be protected and a site-specific management plan is needed to ensure that “proposed uses and activities will not destroy or result in the abandonment of these areas. [Ord 91-0080, Ord 93-0098]”

Although anecdotal information suggests that the rookery, or portions of the rookery have moved since the 2019 ODF NOAP was filed, a site-specific management plan is needed before the Coffin Butte conditional use permit can be considered. The management plan should evaluate the quality of heron nesting habitat at the location documented in the ODF NOAP as well as any other locations that are currently in use or have been used in the past. If a previous heron rookery location offers better nest tree structure, then that location should be preserved so that the rookery has an opportunity to move back (Figure 1).

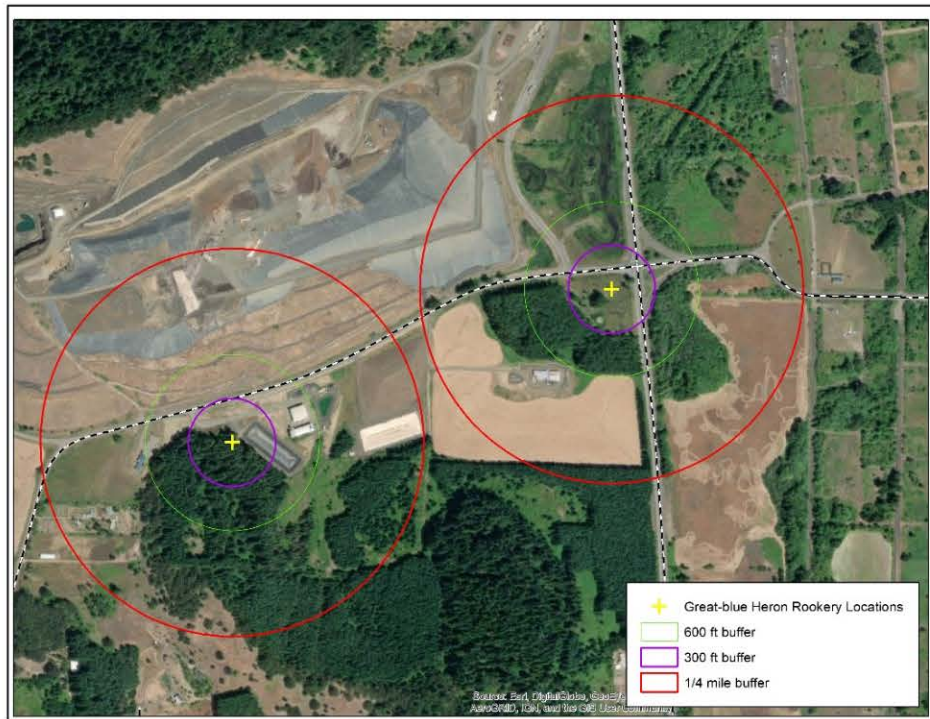


Figure1. Location of known great-blue heron rookeries and buffers associated with the Oregon Forest Practices Act and the Benton County Development Code.

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November 1, 2021

RE: LU-21-047 Coffin Butte Conditional Use Permit

Dear Ken Kenaston, Chair, and Members of the Benton County Planning Commission:

Thank you for this opportunity to comment on this Conditional Use Permit (CUP) application. I am submitting additional comments based on documents from county staff and others that were not made available to the public until after my previous comments on October 22nd. My supplemental comments here are to note the insufficiency of county staff recommendations regarding a specific topic:

Great Blue Heron rookeries in the path of this development will be disturbed (BCDC Sections 87.200 through 87.230)

Summary: The conditions of approval recommended by staff are insufficient to prevent disturbance and likely permanent loss of at least one significant rookery known to be active in 2021:

- The recommended conditions of approval only address disruptions by preliminary construction activities at ground level.
- They do not address impacts of constructing a high ridge that will obstruct flyways between the rookery and important feeding areas.
- They do not address impacts of future garbage tipping activity including heavy equipment, noise, and bright lights on an adjacent slope above the trees that host the rookery.
- There is no provision for independent monitoring and assessment of disturbance.
- There is no provision for mitigation in the likely event that this landfill expansion causes the rookery to be abandoned.

In the absence of a plan to ensure that disturbance can be avoided and in the absence of a mitigation plan to compensate if and when the rookeries are abandoned, **Section 87.230 requires you to reject this application.**

Background: Two Great Blue Heron rookeries active within the past decade are known to exist in the immediate vicinity, one just east and one on the west edge of the proposed new landfill disposal area (Figure 1). The **eastern rookery**, in hybrid poplars south of Coffin Butte Road, was still active during the 2021 nesting season, with counts of up to 24 occupied nests. The **western rookery**, in dense

conifers west of the existing leachate pond, may still be active but is difficult to observe from the public right-of-way along Coffin Butte Road. Applicant acknowledges that their staff have seen herons using both areas.

The western rookery site will mostly be *buried under* the proposed new disposal area. Portions on an adjacent lot to the west are directly in the path of the proposed new haul road for quarry and landfill traffic. Applicant has already bulldozed a route through this area (observable from Soap Creek Road), apparently without waiting for biologist surveys to check for evidence of recent use.

The eastern rookery is on a lot zoned as FC (Forest Conservation, Lot 1200). The proposed new haul road will run close the the west edge of the poplars that host the eastern rookery. Applicant also proposes to excavate the hillside to the south, to build two large new leachate ponds.

Thus future landfill operations will be on three sides of the rookery, rather than mainly just the northern side. With a state highway and truck merging lanes to the east, there will be disturbance to this rookery from all four sides.

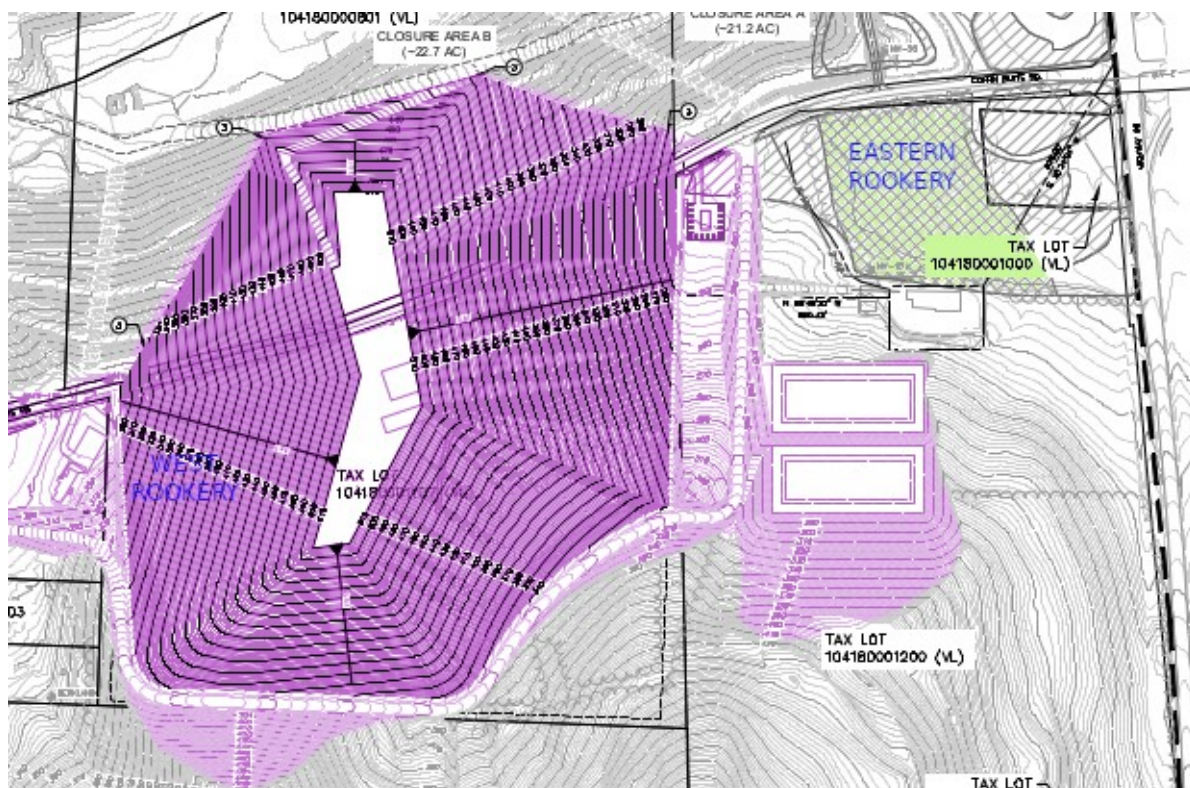


Figure 1. Location of eastern and western Great Blue Heron rookeries in relation to proposed new landfill disposal area and related roads and leachate ponds. Purple shading shows the extent of areas that are directly impacted by construction plans, including a new haul road, new employee building, new ponds, and areas to be regraded. The new ridge line to be created by garbage disposal is shaded in darker purple. Numbered contours are at 10-ft intervals.

Applicant proposes to build the new disposal cell to a height 270 ft above the east end of Coffin Butte Rd. This means that active tipping areas will be on a slope high above the tops of the nesting trees, increasing exposure of the colony to predators such as ravens and eagles.

Persistence and reproductive success of Great Blue Heron rookeries depend on multiple factors. From personal communication with wildlife biologist and noted heron expert Ann Eissinger, key factors include:

- Proximity to multiple nearby foraging areas as food sources;
- Undisturbed flyways between the rookery and foraging areas;
- Buffers around nesting trees to protect from disturbance by human activity including pedestrian access, equipment noise and bright lights.

While some heron rookeries may tolerate some degree of disturbance by acclimation to regular human activity nearby, increases in the level of disturbance, the proximity, or types of disturbance could lead to colony abandonment.

The conservation status and population trends for the Willamette Valley nesting population are not understood, due in part to a chronic dearth of resources for non-game species monitoring by the responsible state wildlife agency, ODFW. Thus the consequences of disrupting a rookery of this size (20+ pairs) for the regional population are unknown.

Site-specific conditions and impacts:

Observations of this particular nesting site by skilled local observers, over the past two decades, indicate that herons nesting here utilize foraging areas both to the east (prairie restorations and wetlands on E.E. Wilson Wildlife Area) and west (pastures in the Soap Creek Valley), as well as fields to the north near Wiles Rd. and Robison Rd. Thus there are multiple nearby foraging areas, all of which may be necessary for reproductive success of this rookery.

The natural, gentle topographical saddle between Coffin Butte to the north and Tampico Ridge to the south currently provides flyways for herons to travel easily to all of these foraging areas, either by flying west through the saddle and then north or south along Soap Creek, or flying east toward E.E. Wilson Wildlife Area.

If the development proceeds as proposed, a 270 ft tall ridge constructed of waste will completely block the existing flyway through this saddle, cutting off access to one or more foraging areas.

Heavy equipment operating on this rising mountain of garbage will, within just a few years (based on the disposal rates implied by Applicant's projected capacity of just 12 years) be operating at tree-top level or higher, relative to the adjacent rookeries. This will be a *new type and new direction* of disturbance, different from what has not existed for these rookeries in the past.

Code requirements: Benton County, in Development Code Sections 87.200 through 87.230, has recognized the sensitivity of heron rookeries. ODFW biologists have submitted comments noting that this development has a significant chance of impact. Section 87.230 specifically states:

*(i) The County shall impose conditions on the proposed use in order to **ensure that it will not destroy the sensitive habitat or result in abandonment of the area.***

(ii) The County **shall deny the application if such impacts of the proposed use can not be mitigated** and that the development **may** lead to destruction or abandonment of the sensitive habitat.

The conditions of approval suggested in the Benton County staff report **do not ensure** that the proposed use will not result in abandonment of the area. They only provide for guidelines to reduce disruptions during preliminary construction activities at ground level, and then subsequent monitoring to see if the herons stay or abandon the site.

These conditions **do not address** impacts of constructing a 270 ft high ridge that will obstruct flyways between the rookery and important feeding areas.

They **do not address** impacts of future garbage tipping, trash compaction, daily cover application, and other activities that will result in heavy equipment activity, noise, and bright lights on an adjacent slope above the trees that host the rookery.

The conditions call only for monitoring by a biologist under contract to the Applicant. Applicant has very strong financial motivation for this multi-million dollar expansion to proceed without impediment, and no financial incentive to ensure that the heron rookeries persist. **Independent monitoring is needed to avoid this clear conflict of interest.**

The mitigation measures suggested by county staff are very weak, suggesting only that “*the applicant’s biologist shall consult with ODFW on improvements that can be made to the site, and the applicant shall incorporate those improvements, that will enhance nesting productivity, mitigate disturbance, and enhance nearby foraging habitat.*”

Note that these proposed conditions contain **no provision nor requirement** for off-site mitigation or enhancements. The applicant’s land does not contain enough open foraging habitat to sustain this rookery. Open foraging habitat on Applicant’s land could only be expanded by logging of trees on adjoining parcels, which are required to buffer neighboring residences, and furthermore restricted by FC zoning.

The proposed conditions make no requirement for Applicant to fund or post bond for habitat mitigation on nearby lands not owned by Applicant, in the very likely event that this landfill expansion causes the rookery to be abandoned.

Thus the proposed conditions are not adequate, as required by Section 87.230, to ensure that the proposed use will not result in abandonment of the area. The development may – and very likely *will* – lead to abandonment of the sensitive habitat.

In these circumstances, Section 87.230 of the Benton County Development Code clearly states that the County **shall deny the application.**

Thank you for considering these comments. I reserve the right to give further written and oral testimony on this and other issues according to the time frame allowed by statute.

Yours sincerely,

Joel E. Geier, Ph.D.

cc: Ann Eissinger

cc: Audubon Society of Corvallis, Portland Audubon Society, Salem Audubon Society, and Lane County Audubon, Defenders of Wildlife – Northwest Region