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**SUPPLEMENTAL 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.)

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**I. INTRODUCTION**

Sometimes, as the saying goes, the more things change, the more they remain the same. This is certainly true of post-hearing efforts of the applicant in this case. If Republic is to be believed, then the entire community surrounding its landfill must be suffering from a years-long mass hallucination. Wouldst that were true. It is not.

This Supplemental Memorandum is submitted on behalf of Valley Neighbors for Environmental Quality and Safety ("Valley Neighbors"). As previously stated, Valley Neighbors comprises a large group of property owners, farmers and residents in the area surrounding the proposed landfill expansion site, including but not limited to the Soap Creek Valley and Tampico communities. Its members will be directly and adversely affected by the proposed expansion. They have explained the impacts and will continue to do so in light of the supplemental staff report and further submissions by the applicant.

The applicant and various consultants have now burned through truckloads of money and time, and have employed (1) strained interpretations of the law and (2) unjustifiable applications of those strained interpretations, to try to fit the overwhelming evidence in this case into a tiny box of trash, easily covered by one of the applicant's tattered tarps. That effort fails nonetheless. You have received truckloads of paper, but it is not difficult to cut to the chase.

All other criteria aside, the applicant has not demonstrated compliance with BCC 53.215(1), which requires findings that the proposed use will not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone. The record will not support such a finding. In particular, staff's initial findings regarding noise and odor impacts remain correct. The application must be denied.

## **II. GENERAL COMMENTS REGARDING SUPPLEMENTAL STAFF REPORT; ADDITIONAL CONSIDERATIONS**

In light of the contents of the supplemental staff report, Valley Neighbors will reiterate certain of the major issues highlighted in their initial memorandum, and then add one more. (Please note that this memorandum is not intended to cover every relevant issue or to summarize all the relevant evidence. Other qualified witnesses complete the full picture.)

(1) 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 major 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 has shut down or 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 disagree. The application must be treated as one for a brand new landfill, because that is precisely what it is. The applicant's semantic acrobatics do not change that.

(2) This Commission 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 an unimpeachable record of failing to enforce conditions. There will be no compliance this time, and the county concedes that it does not enforce conditions. For all practical purposes, the county may as well adopt a condition requiring the applicant to move its operation to Mars within 60 days of approval.

(3) Valley Neighbors reiterates its initial comments concerning the work product which flowed from Benton County Talks Trash (BCTT), in a process we believe to have been paid for by the applicant:

(a) 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 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. Croncy.

(4) The applicant now argues that we have attempted to apply the “farm impacts test” of ORS 215.296(1) (for conditional uses proposed on EFU properties) to this application. That is incorrect. However, the reasoning of LUBA and the appellate courts in the *Stop the Dump Coalition v. Yamhill County* series of cases is instructive here for several reasons. As set out in Valley Neighbors’ May 5, 2025 memorandum, that reasoning includes useful guidance for interpreting non-legal terms. We explained in detail the relevance of such terms here.

In *Stop the Dump*, LUBA No. 2015-036 (Final Opinion and Order, November 10, 2015), LUBA also made clear how to address the impacts of an existing landfill operation moving to an adjacent area. In that case, Riverbend Landfill applied to expand its fill because parts of its existing site were filling up, just as is the case with Republic here. LUBA addressed the issue squarely, and held:

Initially, we note that in most cases where the significant change/cost test is applied to a proposed use, the nature and severity of the actual impacts are somewhat speculative, because the use does not yet exist. In the present case, the nature and severity of the future impacts of the expanded landfill are relatively well-known, because those impacts will likely be very similar to the impacts of the existing landfill. That is because, as the county explains, the volume of garbage processed at any one time and the operational aspects of the proposed expansion will be very similar to the existing landfill operation that the proposed expansion will effectively allow to continue.

As we understand it, a major difference between the existing and expanded landfill is the location of the “working face” of the landfill, the portion that is currently uncovered and accepting waste. Under the approved expansion, which approves a new module at the southwest corner of the property, the working face of the landfill will be located in module 11 much of the time, although some existing modules within the footprint of the existing landfill will be added to. Thus, at times, the working face will

be closer to farms south and west of the landfill than it has typically been in the past, and further from farms north and east of the landfill.

(Emphasis added.) Thus LUBA reviewed the expected impacts upon properties nearer to the new working face. The preexisting or prior use did not have the effect of exempting the new portion of the operation from having to comply with the relevant approval standards.

### **III. CONDITIONAL USE APPROVAL STANDARDS-BCC 53.215**

The county's 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.

### **IDENTIFIED IMPACTS**

The supplemental staff report cites the applicant as identifying effects of the dump's move to the south of Coffin Butte Road which could seriously interfere with uses on adjacent property, or with the character of the area:

[T]he following off-site impacts from the Project may potentially affect the Adjacent Properties: (a) noise; (b) odor; (c) traffic; (d) water (well capacity/groundwater impacts); and (e) visual impacts. These impacts are primarily generated by the working face, which will move from north of Coffin Butte Road to the Project area south of Coffin Butte Road. \* \* \*

Supp Rept 30.

The report then details the gymnastics carried out by the applicant and its consultants to justify findings of compliance with BCC 53.215(1). In each instance, those efforts are inadequate to support any such finding.

## **NOISE**

The supplemental report relies heavily upon purported compliance with DEQ's outdated and unenforced noise standards. However as staff pointed out in its initial staff report:

As noted by the applicant, the cited DEQ Noise Rule does not appear to be directly and entirely applicable to the proposed application.

Staff Rept 26.

Moreover, based upon its clear and unambiguous language, the county code is not keyed to real or imagined DEQ compliance. It requires an applicant to prove that the proposed conditional use "does not seriously interfere with uses on adjacent property, [or] with the character of the area \* \* \*." Regardless of what DEQ once determined, if the applicant has not proven that the dump's southward migration will not cause such interference, the application must fail. This is necessarily an evidence-based determination. All the actual evidence before you shows that serious interference exists, and will move southward along with the fill. Further, the applicant is not entitled to a free pass or "credit" for past interference to the north. (This is true not just as to noise, but as to other impacts as well.)

Referring to applicant's noise consultants, the supplemental report states that they "determined that the predicted sound levels from the Project will "comply with the applicable [DEQ] regulatory criteria without the inclusion of noise mitigation." Supp Rept 30. Compare

that conclusion to the evidence provided by owners of adjacent properties. Existing noise impacts disrupt and interfere with their lives and livelihoods. The further encroachment of the fill will seriously interfere with their use of their respective properties, no matter what the unenforced and unenforceable DEQ standards say, and no matter how they are interpreted and applied by Republic's paid consultants.

The supplemental report also accepts Republic's inappropriate reference to "character":

As noted by Greenbusch, the Project will not change the character of operations at the landfill. Accordingly, noise impacts from the Project will be similar in kind to current conditions \* \* \*."

Supp Rept 30.

The code is not concerned with the "character of operations." It is concerned with the "character of the area," and the area in question will now lie to the south. No turn of a phrase can change this.

At pages 35-36, the supplemental report addresses compliance with the outdated DEQ noise regulations by means of conditions of approval, including "installing ambient-sensing broadband back-up alarms that use white noise that adjusts based upon ambient sound levels." We again point out that even if Republic were to suddenly "shape up" and comply with this condition, it has no control over the equipment of the numerous other haulers who make up its customers. Thus, taking at face value the matters set out in the supplemental report, Republic has not met its burden of proof in this case. This will be further addressed by the owners of "adjacent properties," supplementing their prior testimony before the Planning Commission.



As a final note, staff's finding of compliance is based upon its Conditions OP-2(A) and (B). Supp Rpt 145-46. These are listed under the following heading:

**Operational Conditions of Approval.**

**Monitoring of operating COAs will be subject to BCC Title 31. Enforcement.**

Of course, as has been readily acknowledged on the record, such county enforcement does not exist and has apparently never existed.

Regardless, we reiterate that on the face of these conditions, they apply only to the applicant's own "on-site equipment." With no applicant control whatsoever over incoming and outgoing garbage hauling trucks with their diesel engines and gears grinding upslope and jake brakes coming back down, back-up alarms, and clanging tailgates, the conditions utterly fail to demonstrate compliance (or the feasibility of future compliance ) with BCC 53.215(1).

***Proposed Finding: The applicant has not met the required burden of proof with respect to serious interference with uses on adjacent property, or serious interference with the character of the area with respect to the impacts of noise. It has not been demonstrated that noise impacts can or will be mitigated through conditions of approval to not "seriously interfere" with adjacent properties, or with the character of the area.***

## **ODOR**

The applicant submitted a new odor report and supplement for staff review. Among other things, the applicant's consultant states: "Landfill gas generation from the landfill is expected to significantly increase from 2023 to 2052, increasing odor pollutants, however the landfill will be higher in elevation at that time which helps with dispersion." Supp Rept 39 (Emphasis added.) The odor consultant is not able to accurately calibrate very much, but Valley Neighbors has precisely measured the level of reassurance provided. It totals -0-.



The consultant also states:

In addition, the odor detection thresholds for each pollutant are highly varied depending on the person. In general, these odor thresholds are based on a concentration where half of the general public is able to detect the smell at a specific time and location. Certain odorous chemicals can also have an additive effect \* \* \*.

These limitations have the potential to underpredict odor concentrations. It is possible for odors to be detectable by people that are sensitive to particular odors, especially in low wind or thermal inversion conditions. Uncertainty is also present in the odor complaint review. \* \* \*

Supp Rept 41.

The above provisos serve to reinforce the fact evidence on the record before you. Very few witnesses have the time or choose to take the time to communicate with you, or to wait their turn in a crowded hearing room, unless they have a very sound basis for complaints or expressions of concern. As stated, they are not living through a mass hallucination. The pontifications of consultants will not wash away the impacts of the expansion of this dump.

Your record is replete with evidence regarding the flow of serious odor-causing pollutants, including those carried frequently to the south. You will hear and read more on this subject from those most affected. The interference with use of "adjacent property" as defined by the county is profound, and will be dramatically increased if this application is approved.

MFA's comments regarding the applicant's handiwork (Supp Rept 45-47) beat around the bush; MFA is more gung ho about the applicant's work product than is the applicant. It is clear from the experts that no regulatory standards for odor exist. Republic can construct as elaborate an odor model as it wishes but, as folks used to say, the nose knows.

Frankly, all concerned should be embarrassed by their efforts to dispute or explain away landfill odors which seriously interfere with uses on adjacent property and with the character of the area, and which would now move southward. The failure by DEQ to act on complaints is irrelevant in this regard. (Of course, EPA is investigating methane leakage at this operation, which is both a health issue and an odor issue.)

Planning staff takes a far more sober view of the matter:

Staff notes that the updated odor study (Applicant Ex. 36) still does not provide an analysis of odor impacts on adjacent odor-sensitive uses. At the writing of this Supplemental Staff Report, expected D/T values were not provided for adjacent properties, and odor impacts from the proposed landfill expansion on those properties are not specifically addressed in the application materials.

Supp Rept 48. (Emphasis in original.)

Then, acknowledging “interference” with uses on adjacent properties, staff truly stretches in order to kind of, sort of conclude that this will not be “serious interference.” The members of the Planning Commission will have the evidentiary record before them. We believe that based upon that unambiguous, evidence-based record, you will draw the opposite conclusion.

Staff identifies certain “Operational Conditions” which will supposedly resolve odor conflicts, OP-7(A)-(D) and OP-5. (The latter only addresses fill height.) The conditions set out in OP-7, especially (C) and (D), are extraordinary. This is not because they are in any way likely to be effective, but in the ornateness of the window dressing. What they boil down to is the employment of ‘sniffers,’ human and electronic, to snort around for odor problems. If they find any, then what? Apparently, Republic would then mess around and figure out how to do

better. Of course, they've had years of practice at this in Benton County, and success always seems to elude them.

To put this in legal terms, the applicant has not demonstrated compliance with the relevant approval standards, or that such compliance would be "feasible" by means of an imposed condition. *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), *aff'd*, 67 Or App 274, 678 P2d 741 (1984). In its review of LUBA's decision in *Meyer*, the Court of Appeals explained 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. That is certainly not the case here.

***Proposed Finding: The applicant has not met the required burden of proof with respect to serious interference with uses on adjacent property, or serious interference with the character of the area with respect to the impacts of odor. It has not been demonstrated that odor impacts can or will be mitigated through conditions of approval to not "seriously interfere" with adjacent properties, or with the character of the area.***

## **GROUNDWATER IMPACTS**

There has been a substantial amount of testimony regarding the impacts of the proposed expansion upon the groundwater resource upon which the community relies. The supplemental report includes several pages in which staff attempts to get a handle on this issue. Supp Rept 52-61. Ultimately, staff concludes:

Staff understands that groundwater impacts have been and continue to be a controversial topic in landfill expansion applications in Benton County. This supplemental staff report includes neighbor, opponent, and ENRAC testimony above relating to water quality concerns. However, the county is limited in its ability to evaluate and regulate groundwater impacts beyond the multiple levels of state and

federal regulation applicable to the proposed landfill expansion. Those regulatory agencies provide a more appropriate venue to address groundwater impacts. \* \* \*

Supp Rept. 60.

The key question here is, where are the evaluations of those regulators? Are excavation, dumping, and generation and transmission of leachate, to proceed in the hope that someone with expertise will look things over some time in the future? It was the applicant's obligation to carry out or procure the necessary research and studies and report the results as part of the burden of proof they have failed to meet here. They have been working on Tampico Ridge for the past four years and have had ample opportunity to get the job done.

Instead, we now have staff proffering "Conditions P1-5(B), P2-1(F), OP-8, OP-10, OP-11(A)-(G), and OP-13(A) and (B) to monitor and ensure compliance with local, state, and federal water quality requirements." Supp Rept. 61. We have reviewed those conditions. There is no evidence that they would in fact ensure compliance with all water quality standards. There is also no evidence that they can or will be truly enforceable, or would be effective even if enforced. A particularly remarkable example is Condition OP-13(A)(iv):

(iv) VLI will remain open to discussion with interested residents about their wells and water levels and will promptly respond to any concerns or complaints.

"Open to discussion" compels nothing, and the discussion itself, should there be any, would come far too late to help the affected property owner.

***Proposed Finding: The applicant has not met the required burden of proof with respect to serious interference with uses on adjacent property, or serious interference with the character of the area with respect to the impacts on groundwater wells and natural springs, either in terms of quantity (availability) or quality of water. The applicant's consultants propose future studies to evaluate the possibility of significant***

*uncertainties on this issue, but only after granting of this application, and with no clear, legally binding process for evaluation of results or mitigation in the event of impacts that “seriously interfere” with adjacent properties, or with the character of the area. County staff acknowledge their lack of expertise to evaluate groundwater issues, and have not demonstrated the capacity for assessing or enforcing the applicant’s proposed conditions of approval to address potential impacts to groundwater. Thus, it has not been demonstrated that impacts upon groundwater wells and natural springs can or will be mitigated through conditions of approval to not “seriously interfere” with adjacent properties, or with the character of the area.*

### **UNCONTROLLED LITTER (GARBAGE)**

Affected farmers have testified and will testify as to serious interference with farm use of their property. Erin Bradley’s property is adjacent to the expansion site. At your prior hearing, she testified in part:

My daughter has to walk the pastures multiple times daily for plastic bags and debris her calf or our livestock could ingest. I have seen trash out of Republics trucks fly on 99 and into our pasture. This can be fatal to livestock. The proposed expansion can cause additional stress and health issues which can result in death of our animals. The landfill has already effected the enjoyment and use of our land. If the land use application is approved, this would make our land unusable \* \* \*.

Planning Commission Recording, 5/8/25, at 2:02.

R. Wilson has provided the following evidence:

Due to our proximity to the landfill where we grass a herd of cattle for local food production, we have been finding a staggering increase of air blown trash coming from the dump. We get styrofoam, plastic bags, and metallic chip bag that become air born from the landfill and litter the pastures we use to raise livestock. This poses a significant risk to the animals. If a cow or calf were to eat a plastic bag or Styrofoam this would certainly mean their death. With an expansion to the landfill it can only be expected to intake more trash that will lead to more airborne plastics reaching susceptible animals, both wildlife and nearby associated livestock. \* \* \*

Supp Rept 65.

The eight control measures already implemented by Republic (*Id.*, 67) have not mitigated this serious interference with the economic use of the Wilson property. The resulting economic harm is discussed at page 68 of the supplemental report, and includes the fact that cattle ingesting plastic may be killed by it. Now, the fill is proposed to commence operations closer to the Wilson farm.

In response, staff states that Mr. Wilson's problems in particular will be resolved by Conditions OP-5, OP-11(A)-(F), and OP-15(A-I). Condition OP-5 sets the maximum elevation of the expanded fill but does not purport to resolve the litter issues. Condition 11 would leave open a full two acres of the working face during working hours, generating windborne trash as daily dumping takes place. Condition 15 memorializes the existing litter control measures that do not work. It also calls for fencing around the working face, but there is not and has never been evidence that lightweight blowing trash like that described by Mr. Wilson can or will be contained by fences.

***Proposed Finding: The applicant has not met the required burden of proof with respect to serious interference with uses on adjacent property, or serious interference with the character of the area with respect to the impacts of trash. It has not been demonstrated that impacts from uncontrolled or uncontained trash can or will be mitigated through conditions of approval to not "seriously interfere" with adjacent properties, or with the character of the area.***

## **FIRE RISK**

The discussion of fire risk and fire history on the site appears at pages 68-73 of the supplemental report. The history is quite astonishing. Nonetheless, it is suggested that the application can be approved with a condition requiring the applicant to "monitor and log, and

provide records relating to fires.” Supp Rept 73. This supposedly new requirement is largely in place already under the landfill’s existing permitting, and has been for many years. The proposed condition will not solve a problem with historic roots planted by the applicant at this fill.

***Proposed Finding: The applicant has not met the required burden of proof with respect to serious interference with uses on adjacent property, or serious interference with the character of the area with respect to the impacts of fire. It has not been demonstrated that impacts of fire and the risks of fire can or will be mitigated through conditions of approval to not “seriously interfere” with adjacent properties, or with the character of the area.***

### **CHARACTER OF THE AREA**

Most if not all of the issues addressed above are equally directed at the “character of the area” under BCC 53.215(1). Thus, our proposed findings cover that element of the approval standard as well; the “adjacent property” lies within the affected “area.”

Please note that the drafters of the Code were careful to draw a distinction among the three components of this provision in ascending geographic scope, requiring a finding 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.

Determining the effect on area character thus draws one out beyond the confines of adjacent properties. Staff agrees that this is the case. Supp Rept 78. The applicant states that “the Analysis Area does not have a uniform character; it consists of almost 90 square miles and includes farm and forest lands, rural residential lands, the City of Adair Village, and small portions of Corvallis and North Albany.” *Id.*, 80. That area must also include the E.E. Wilson Wildlife Area, across Highway 99W to the east. The Wildlife Area comprises 1788 acres and,



per ODFW, is inhabited by “bald eagle, osprey, red-tailed hawk, great horned owl, turkey vulture, great blue heron, egret, bobcat, coyote, mink, beaver, river otter, black-tailed deer, Roosevelt elk, western pond turtle, pacific tree frog, western gray squirrel, dusky-footed woodrat, ring-necked pheasant, quail, mourning dove, band-tailed pigeon, snipe, killdeer, kingfisher, dunlin, sandpiper, hummingbirds, woodpecker, flycatcher, crow, nuthatch, wren, thrush, warbler, sparrow, red-winged blackbird, finch, and waterfowl.”

The supplemental report presents a multitude of words to address what should be a straightforward issue. We addressed that issue in our memorandum of May 5, 2025. With respect to interpretations propounded by Republic or staff which defy common sense, we would note two considerations:

(1) The conclusions of the BCTT do not have the force of law or serve as binding precedent.

(2) The projects that were subject to prior county Conditional Use applications were much more narrow in scope and effect than this one, affecting far fewer properties or members of the community. The difference is analogous to that between a small firecracker and an air-launched stink-missile with an exceedingly noisy motor.

The “area” and the “character of the area” are to be determined by the Planning Commission without blinders, based upon the evidence in the record and the commissioners’ common sense understanding of it. “Everything else is just commentary.”

The area is the site of Republic’s now-closed or closing fill along the highway, north of Coffin Butte Road. The character of the area is of one being restored to relative peace and

quiet, with considerably less odor and wind-blown trash, waiting patiently for Republic's characteristically lacking efforts at site restoration. Now, to the south along the highway, the applicant proposes to recreate that use, restoring those impacts and moving them significantly closer to properties to the south within unincorporated Benton County and Adair Village.

The character of the area includes not just the physical characteristics of the land but the human uses of the area and human experiences while in the area. These include agricultural uses adversely affected by blowing garbage and dump odors; the many recreational uses of the E.E. Wilson Wildlife Area; and Erin Bradley's public service equine operation directly adjacent to the expansion area, which would be devastated by the odors, noise and trash generated by the southbound fill.

### **Noise**

With respect to noise, staff states:

Staff concurs with the applicant's reasoning that if the proposed change in noise does not seriously interfere with the closest noise-sensitive uses, it will not seriously interfere with the character of the area. As discussed under adjacent land uses, applicant's revised noise management proposal and recommended Conditions OP-2(A-B) and OP-5 reduce expected noise volumes sufficiently to not "seriously interfere" with adjacent uses. Therefore, staff also concludes that noise produced by the proposed expansion can be conditioned to not "seriously interfere" with the character of the area.

Supp Rept 83.

For the reasons explained by Valley Neighbors above with respect to serious interference with use of adjacent properties (whether or not especially noise-sensitive), staff's conclusion is not supported by the evidence or by a correct reading of the law. Based upon the

record before you, the character of the area will also suffer serious interference as a result of the fill's jump to the south.

Before moving on, we should take a moment to address the big picture here. As touched upon above, implicit in the proffered interpretation is the notion that since the fill has already seriously interfered with the character of the area north of Coffin Butte Road, Republic is entitled to a standing credit for that—a trump card or wild card—allowing it to carry out an equal measure of such interference further to the south. No such handy permission slip is contained in the language of the Code.

By Republic's reasoning, it could march relentlessly southward toward the Corvallis line, claiming that each mess it leaves behind has already ruined the character of the area, so it should be permitted to go further. This is precisely the argument you are faced with here.

### **Odor**

Rather than recognizing the evidence of odors seriously interfering with life and work adduced by 140 witnesses (Supp Rept 83), staff chose to buy off on Republic's characterizations of the use and the conditions of approval regarding odor discussed above. For the reasons we have set out, the applicant has not met the requisite burden of proof regarding serious interference by odor with the character of the area.

***Proposed Finding: The applicant has not met the required burden of proof with respect to serious interference with the character of the area with respect to the impacts of noise and odor. It has not been demonstrated that impacts of noise and odor can or will be mitigated through conditions of approval to not "seriously interfere" with the character of the area.***

#### **IV. FAILURE TO COMPLY WITH THE CONDITIONAL USE CRITERIA FOR THE FOREST CONSERVATION (FC) ZONE–BCC 60.220**

The applicant proposes to site the following on its FC-zoned parcel: “leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area.” Approval of those uses is subject to the provisions of BCC 60.220(1):

##### **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;

(b) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(c) Complies with criteria set forth in BCC 53.215 and 53.220.

As the use proposed for the FC property is part and parcel of the landfill use, it fails for all the reasons set out above to comply with the county’s general conditional use criteria contained in BCC 53.215 and .220. Further, the evidence will show that leachate loading and storage facilities moving to this property will serve as a new odor source seriously interfering with the use of adjacent properties (as defined above). The proposed use of the FC site would thus violate BCC 60.220(1)(c).

***Proposed Finding: The applicant has not met the required burden of proof with respect to the Forest Conservation Zone Conditional Use Criteria of BCC 60.220(1)(c). It has not been demonstrated that leachate odor impacts of leachate operations in the FC Zone can or will be mitigated through conditions of approval.***

## **VI. SUPPLEMENTAL STAFF REPORT CONCLUSION–BCC 53.215(1)**

Staff's conclusion regarding compliance with this critical approval standard appears at page 91 of its supplemental report. For all the reasons set out above, that conclusion misinterprets and misconstrues the applicable law, and is based upon inadequate findings unsupported by substantial evidence in the whole record.

## **VII. BCC 53.215(2)**

BCC 53.215(2) sets out the following general Conditional Use approval standard:

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

We incorporate by reference here the matters set out in Valley Neighbors' May 5 memorandum. The landfill's truck traffic has been proven to impose an undue burden upon the area's road system, and upon fire services from Adair Village as well. Opening this fill after the one north of Coffin Butte Road has closed will serve to impose such burdens when they would otherwise have lessened greatly or disappeared.

Conditions OP-6, OP-11(F), and OP-12(A)-(C) are not enforceable and, in the absence of a county enforcement mechanism, will not be enforced. These conditions fail to resolve the impacts of haul truck traffic upon the county's road system.

***Proposed Finding: The applicant has not met the required burden of proof under BCC 53.215(2). It has not been demonstrated that the proposed use will not impose an undue burden on any public improvements, facilities, utilities, or services available to the area, or that such burden can or will be mitigated through conditions of approval.***

## **VIII. CONDITIONS OF APPROVAL–BCC 53.220**

We have addressed individual conditions of approval above. As specified, the conditions in question have not been proven to be “possible, likely and reasonably certain to succeed” in bringing about compliance with the county’s approval standards. This is true even without taking into account Republic’s history of noncompliance and the county’s history of nonenforcement.

***Proposed Finding: The applicant has not met the required burden of proving that conditions of approval proposed for adoption under BCC 53.220 can or will achieve compliance with the relevant approval standards.***

## **IX. FOREST CONSERVATION ZONE**

We have addressed issues relating to the proposed development within the FC Zoning District above, as well as in our earlier memorandum. As explained, this application is not in compliance with the provisions of BCC Chapter 60 relating to the FC Zone, and will not achieve compliance through the proposed conditions of approval.

## **X. THE PLANNING COMMISSION’S 2021 FINDINGS**

With the exception of those relating to the proposed closure of Coffin Butte Road, the findings the Planning Commission drafted and adopted in File No. LU-21-047 are directly relevant here. A complete copy is attached for your reference.

## **XI. CONCLUSION**

All the king's horses and all the king's men cannot meet the applicant's burden of proof for the southward expansion of this landfill. For all the reasons set out above, in our May 5 memorandum, and in the written, oral and photographic evidence submitted by those with direct knowledge of the facts, this application must be denied.

Respectfully submitted,

*Jeffrey L. Kleinman*

Jeffrey L. Kleinman, OSB No. 74372

Attorney for Valley Neighbors  
for Environmental Quality





**PLANNING COMMISSION FINDINGS**

<b>NATURE OF REQUEST:</b>	<b>Conditional Use Permit to expand Coffin Butte Landfill.</b> Republic Services is proposing: to create a new disposal cell for the Coffin Butte Landfill which will extend from the current cell south of Coffin Butte Road; close Coffin Butte Road to public traffic (vacate the right-of-way) so the new cell can cover the road; relocate a replacement roadway (for landfill and quarry traffic only) around the area of the new disposal cell; relocate the leachate ponds south of Coffin Butte Road, and move some other structures.
<b>APPLICABLE CODE CRITERIA:</b>	Benton County Code (BCC) Section 51.505, Sections 51.705 through 51.840, Sections 53.205 through 53.235, Section 60.215, Section 60.220, Chapter 77, Chapter 99. The Benton County Code can be found at this link: <a href="https://www.co.benton.or.us/planning/page/development-code">https://www.co.benton.or.us/planning/page/development-code</a>
<b>PROJECT LOCATION:</b>	<ul style="list-style-type: none"><li>• 29000 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 1107</li><li>• 29160 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 1200</li><li>• 28972 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 1101</li><li>• Township 10 S, Range 4 W, Section 18, Tax Lot 1104</li><li>• Township 10 S, Range 4 W, Section 18, Tax Lot 1108</li><li>• 29175 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 801</li></ul>
<b>APPLICANT:</b>	<b>Republic Services</b>
<b>PROPERTY OWNER:</b>	<b>Valley Landfills Inc.</b>
<b>ZONE DESIGNATION:</b>	Landfill Site (LS), and Forest Conservation (FC)
<b>COMPREHENSIVE PLAN DESIGNATION:</b>	Landfill Site, Forestry
<b>CAC PLANNING AREA:</b>	North Benton (not active)
<b>STAFF CONTACT:</b>	Inga Williams, <a href="mailto:inga.williams@co.benton.or.us">inga.williams@co.benton.or.us</a>
<b>FILE NUMBER:</b>	LU-21-047

This matter came before the Planning Commission in public hearings held November 2 and November 16, 2021. At the November 16 meeting:

- the applicant was provided the opportunity to submit additional written evidence up to 5 PM on November 19<sup>th</sup>;
- per statute, the record was held open so that the public could to submit further written testimony until 5 PM on the 29<sup>th</sup>; and
- per statute, the applicant was allowed one additional week, until 5 PM on December 6, to submit final written argument.

On December 7, 2021, the Planning Commission returned to deliberate on the application. At the meeting on the 7<sup>th</sup>, the Planning Commission considered the record as a whole, then deliberated and reached a decision. The decision of the Planning Commission is to **DENY** the Applicant's request for a Conditional Use authorization to expand Coffin Butte Landfill based upon the following findings of fact.

## **FINDINGS**

### **General Conditional Use Criteria - Chapter 53**

*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;*

#### **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 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. The proposed Condition of Approval PA-7 (A) is inadequate to address this concern. To base approval on the applicant's assurance that future studies will ensure compliance would be inappropriate.

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:**

##### **Increase in landfill area**

Residents of the area point to the change in the character of the area. The minimal footprint of the landfill in previous years has and will be changed to a dominant footprint. The proposed expansion

will increase that interference in a number of ways. A whole valley will be filled with garbage. Modification of the fundamental topography at this scale, turning a valley into a ridgeline and burying the valley under 100 feet of garbage seriously interferes with the character of the area. This level of impact could not have been reasonably anticipated by any existing resident or past prospective purchaser. No condition could mitigate this level of change to the character of the area; therefore, the application fails to meet this criterion.

Open space and views of the cascades will disappear. The agricultural production from fields have gone away. The livability of the area because of noise, odors, and the visibility of the garbage pile will continue to degrade. One resident testified that their view of the dump has steadily increased to the point that it is now noticed and commented on by her children, and it is expected to increase more if the expansion is allowed.

#### Closure of Coffin Butte Road

The closure of Coffin Butte Road seriously affects those that use this road and the proposed Conditions of Approval do not lower the impact below the level of serious. The proposed mitigations for a closure may not be feasible or, if implemented, may seriously interfere with uses on adjacent property or seriously interfere with the character of the area. Improvement to Tampico Road would drastically alter the character of the area. Traffic will increase on Tampico Rd, and no amount of leveling and grading will be sufficient to make Tampico Road a better egress route without substantially altering the character of the area. These improvements will also increase certain dangers on Tampico Road by enabling traffic to travel it faster and increase risks to non-motorized users.

Staff and the applicant conclude that the Tampico Rd corridor would be heavily impacted by the increased passenger traffic and changes to the nature of every day traffic to include freight, agriculture, and forestry heavy equipment. Increasing truck traffic on Tampico will negatively affect the area. It may be widened, but sight issues will remain. This will increase risks to non-motorized users of the road from increased traffic. No amount of widening will change the underlying topography and hazards inherent in it; yet widening would further damage the local community character with no guarantee of success.

**Conclusion: The proposed use does seriously interfere with the character of the area.**

#### **The purpose of the zone:**

##### Purpose of Conservation Zone

The applicant has not met the burden of proof that the proposal will not interfere with the purpose of the Forest Conservation zone for protection of the wildlife resources. The Conditions of Approval requiring further study of Great Blue Heron (GBH) rookeries do not provide us with timely information to determine if the criteria is met nor if mitigation is possible. Further, testimony regarding threatened Streaked Horn Lark populations, Oregon Vesper Sparrow populations, and wildlife movements in the area of the landfill expansion point to the need for more wildlife investigations before action is taken in this area.

Proposed Condition of Approval PA-4 only addresses GBH concerns. Either that condition should be expanded to include other wildlife or additional conditions should be added. There is also concern that the applicant has limited ability to hire qualified consultants. The inventory of GBH nesting activity by their hired consultant has been challenged by residents with compelling photographic evidence.

##### Buffering and Zoning

The proposed landfill expansion relies heavily on the buffering of noise, odor, sight, and other nuisances by adjacent property owned by the applicant. Some of this buffering is provided by properly zoned land. However, some of the adjacent land is zoned Rural Residential (tax lots 10419001600 and 104180001200). Rural Residential zoning has no provisions for landfill buffering or for the extension of the landfill's grading footprint. The buffering of the landfill site and proposed grading plan for the new haul road under this CUP shows the new haul road positioned on the lot boundary of tax lot 104180001107 (zoned LS) and tax lot 10419001600 (zoned RR-10) and the land graded in the RR-10 zone. If the landfill requires a buffer to operate and extend grading, that buffer becomes part of the landfill use. As such, it should require appropriate zoning; a zone change or Conditional Use Permit if necessary. If the landfill cannot operate without establishing an illegal use on residentially-zoned lands, then reconsideration of this expansion location is necessary.

**Conclusion: The proposed use does seriously interfere 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;*

#### Closure of Coffin Butte Road

This is an undue burden because Coffin Butte Road is used as a bicycle and walking route, log truck and freight haul road, an emergency egress by the neighborhoods to the south and west, and is used by Adair Rural Fire Protection District for public safety and fire access. The closure of Coffin Butte Road seriously affects facilities and services.

Closure of Coffin Butte Road results in the loss of the most direct, safe evacuation route in case of inclement weather or wildfire; it eliminates the best (paved, flat, one curve) and shortest egress from the Soap Creek Valley. Closure of Coffin Butte Road results in the permanent loss of one of only three routes out of the Valley. In addition, the Coffin Butte Road closure results in the loss of the only locally available, direct east/west crossing of Hwy 99W, creating additional traffic conflicts on Hwy 99W at Camp Adair Road, Tampico Road, and Robison Road.

Based on community testimony, during the February 2021 ice storm Coffin Butte road was the only egress for several days. There is testimony dated November 23, 2021, from Chief Aaron Harris to Joe Bessmen and email from County Emergency Manager Bryan Lee dated Nov. 23, 2021, to Julie Jackson, and later that day forwarded to County staff, indicating that they both felt that the loss of Coffin Butte Road would be an impact on public safety.

The Adair Rural Fire Protection District Board advises, "this route should not be closed" and "closure of Coffin Butte Road would be detrimental to public safety". Proposed Conditions of Approval to mitigate this road's loss through improvement to the northern route will not be "superior to Coffin Butte Road with regards to evacuation routes and public safety".

Closing Coffin Butte Road for this conditional use would remove an important route, replacing it with a lesser, compromised route or routes.

#### Leachate

Leachate from the proposed expansion is planned to be hauled off-site and disposed at the Corvallis Wastewater Treatment Facility (CWTF). The increased volume of leachate hauled will increase tanker truck loads to Corvallis and burden the transportation corridor and create an undue burden on the CWTF. The treated leachate from CWTF is released into the Willamette River and poses water quality concerns. The applicant has presented no leachate plan to account for this increased volume and continued maintenance and disposal for the future.

**Conclusion:** The proposed use does impose an undue burden on public improvements, facilities, or services available to the area:

***Conditional Use Criteria for the Forest Conservation Zone - Chapter 60***

*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; (b) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and (c) Complies with criteria set forth in BCC 53.215 and 53.220.*

There will be increased transportation costs to local farm and forestry operations from the closure of Coffin Butte Road. One commercial forester commented that their harvesting operations use Coffin Butte Road as a major haul route and that closure of the road would affect their forestry operation. "Closing Coffin Butte Road and replacing it with an alternative will add time and cost." Another commercial forester commented that closing Coffin Butte Road would create problems for them in increased costs and safety issues.

Adair Rural Fire and Rescue uses Coffin Butte Road for public safety and fire access. Alternative routes take more time for fire response and are narrower. "The closure of Coffin Butte Road will negatively impact the response time from the Substation to the northern/northeastern areas of our fire district and North Albany automatic aid response areas." It will also create an increase in fire suppression costs and increase risk to fire suppression personnel because of the increase in transportation time to reach a fire.

**Conclusion:** The proposed use will force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands, and will significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

***Conditional Use Criteria for the Landfill Site Zone - Chapter 77***

*77.310 Conditional Use Review. (1) The applicant for a conditional use permit shall provide a narrative which describes:*

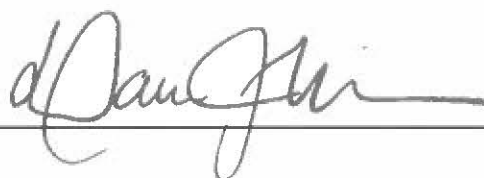
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*(c) Provisions for screening of the site from public roads and adjacent property;*

The staff discussion in the staff memorandum of November 29, 2021, concluded that screening is appropriate for this application. Pages 2-5 propose screening mitigation activities (tree planting), but even those would not be sufficient. Proposed condition of approval OA-6 and OA-7 for screening are not adequate to address screening of the site from public roads or adjacent property. It will be impossible to adequately screen the view of this mountain of garbage. Since no mitigation is possible, we must deny the application for non-compliance to the criteria.

**Conclusion:** Provisions for screening of the site from public roads and adjacent property is inadequate.

PLANNING OFFICIAL:



Date of Decision: December 7, 2021