



## Valley Neighbors for Environmental Quality and Safety (VNEQS)

To: **Chair Fowler** and Benton County **Planning Commission members**

CC: Anne Thwaits, Benton County Public Information Officer  
Petra Schuetz, Benton County Community Development Department  
Winterbrook Planning (incl. Maul Foster Alongi, Kellar Engineering)

From: Valley Neighbors for Environmental Quality and Safety (VNEQS)  
<https://coffinbuttefacts.org>  
North Benton County  
Oregon, 97330

Date: July 16, 2025

Re: LU-24-027 CUP application – FINAL ARGUMENTS Part 1 OF 2 **NOISE**

Chair Fowler, Planning Commissioners,

THIS DOCUMENT RESPONDS TO THE FOLLOWING EVIDENCE PRESENTED JULY 8 & 9 on **NOISE**:

**RESPONSE:** Benton County STAFF REPORT PRESENTATION titled “Staff Slides to Planning Comm LU24027 July 8” (Munidocs, 9. New Evidence from July 8-9 Hearings, Item #32, “Staff Slides to Planning Comm LU24027 July 8”);

**RESPONSE:** Republic Services slide deck titled “25RS1067 Coffin Butte Deck FINAL” (Munidocs, 9. New Evidence from July 8-9 Hearings, Item #31, “25RS1067 Coffin Butte Deck\_FINAL”);

**RESPONSE:** PAWLOWSKI\_Brent titled “07092025\_PAWLOWSKI\_Brent” (Munidocs, 9. New Evidence from July 8-9 Hearings, Item #15, “07092025\_PAWLOWSKI\_Brent”)

First, we would like to thank County staff and consultants at Winterbrook Planning who have actually read and attempted to respond to prior criticisms submitted by VNEQS with regard to the errors in the Applicant’s submittals.

We applaud the County’s attempt to require actual noise impacts resulting from landfill operations to reflect Applicant’s noise studies as a valiant (and ingenious!) effort to respond to

discrepancies VNEQS (and perhaps others) have pointed out between what the Applicant says it will be doing and what the Applicant's consultants say Applicant will be doing.

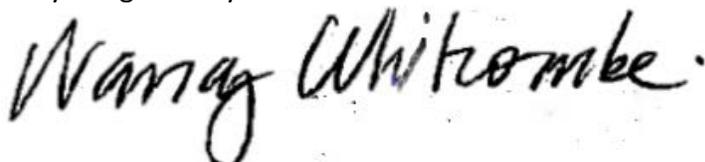
However, this effort will fail, in conditions of approval relating to noise as in conditions of approval of other areas of this application. 1) Conditions of approval require a diminution of noise produced by only a small subset of noise-producing equipment at the landfill, and will do little to reduce the contribution to adverse noise impacts of 97% of equipment used in landfill; and 2) The study does not regulate the extremely disruptive impacts of operations to ready the cell to accept waste; and 3) Furthermore, there is no clear enforcement mechanism. To be effective and **ensure compliance** (a Benton County code requirement), non-compliance must be clearly defined, enforcement mechanisms must be easily understood, and enforcement must be **prompt** and **verifiable**. But here, we are told, enforcement staff has not yet been hired; enforcement regulations have yet to be written. A dream of future enforcement is not enforcement.

Finally, 4) approval of this application will trigger the removal of the volume cap in landfill operations which are not subject to regulation imposed herein, nor, legally can they be. This pertains to the landfill expansion to the north (the "dark blue" quarry expansion). Nothing the County says about this application can have any impact on ongoing landfill operations north of Coffin Butte Road, but approval of this application will result in serious adverse noise impacts as a result of the agreement between the County and the Applicant to remove the intake cap if approval of disposal is granted in this application (2020 Franchise agreement).

**This is a fatal flaw.**

It is an unquantifiable increase in waste volume in the quarry which cannot be mitigated. First of all, the County is not allowed to place conditions on operations not subject to this application. Second of all, without knowing what the increase is, impacts cannot be quantified, and mitigation is not possible. If this application is approved, and waste intake volumes increase from 1,100,000 tons/year to 1,500,000 tons/year in the quarry expansion (as the Applicant projects to DEQ) or 1,860,000 tons/year (as the Applicant projects in this application), what will noise impacts even be? If the County believes that it is important for the Applicant to dispose of waste within the 1,100,000 tons/year current intake limit, Applicant needs to apply for a permit to dispose of waste on some of Applicants other "many acres".

Thank you again for your hours and hours and hours of hard work,

A handwritten signature in black ink that reads "Nancy Whitcombe". The signature is written in a cursive, flowing style.

Nancy Whitcombe, LEED AP Architect (on behalf of VNEQS)



### NOISE: SUMMARY OF THE ARGUMENTS, NEW EVIDENCE

#### Part 1, Conditions of Approval are easily gamed and regulate less than 3% of equipment

This Condition of Approval regulates only so-called “on-site” equipment, which, per Applicant’s September Noise study comprises only 3% of noise-producing equipment at landfill operations.

It also does not regulate the noise impacts of site preparation. Testimony submitted by Joel Geier will show cell preparation and excavation is treated in Oregon statute as part of landfill operations, not a distinct construction phase regulated by DOGAMI.

When construction is ongoing, it will be lengthy and disruptive (see testimony submitted by Erin Bradley). Ms. Bradley, who has provided testimony, operates “Bit-By-Bit” a non-profit 501(c)3 recognized as a “service” by the State of Oregon wherein she provides equine therapy to patients. Ms. Bradley has testified that the site preparation operations impacts are so disruptive to her animals and her clients that she may have to sell her property. Nothing in Benton County Code precludes Commissioners from taking site preparation impacts into consideration in their deliberations, especially in a use such as this where the use is unusual and defined by the State of Oregon statute as integral to the use itself, not preparation for the use.

#### Part 2. OP-5 does not limit the height of the new south landfill at all beyond the height that already received the “deny” staff recommendation.

This condition does not reduce the landfill height. The maximum height of the landfill as shown on the Applicant’s topo drawings has consistently shown the landfill topping out at 450’.

#### Part 3. There is no enforcement mechanism if Applicant does not comply

Proposed Conditions of Approval for **NOISE** do not ensure compliance. CoA’s will have no impact on mitigating noise absent Applicant’s voluntary compliance. Requiring Applicant to **measure** noise on **3% of noise-producing equipment** to demonstrate that a small number of pieces of equipment are quieter than they were eight years previously does not **ensure compliance**, with the requirement that the proposed use will not seriously impact adjacent uses which is the BCC 53.220 requirement.

*53.220 Conditions of Approval. The County **may impose** conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise **ensure compliance** with the purpose and provisions of this code -- BCC 53.215 Criteria*

#### Part 4. Approval of this application triggers removal of the intake cap, which will to apply to areas the County cannot condition as part of this process.

The Applicant has “many acres” upon which it could apply for a CUP to expand disposal operations. This is the **only parcel** upon which the County has previously committed that there would be no waste disposal. This is **also the only parcel** upon which, if waste disposal is permitted, intake limits are removed on parcels NOT included in this permit application, and which this body has no remit to condition to limit adverse noise impacts when waste volume intakes increase, as the Applicant has projected. Ample testimony has been provided that impacts will be serious and they will be adverse.



VNEQS, Valley Neighbors for Environmental Quality and Safety  
North Benton County  
Oregon, 97330  
<https://www.coffinbuttefacts.org>

**SUMMARY: 07162025 FINAL ARGUMENTS – NEW EVIDENCE**

**NOISE, DETAIL**

**RESPONSE:** Benton County STAFF REPORT PRESENTATION titled “Staff Slides to Planning Comm LU24027 July 8” (Munidocs, 9. New Evidence from July 8-9 Hearings, Item #32, “Staff Slides to Planning Comm LU24027 July 8”);

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**VNEQS OBJECTIONS TO PROPOSED MITIGATIONS**

Part 1, Conditions of Approval are easily gamed and, in any case, regulate less than 3% of adverse-noise-producing landfill equipment

BC STAFF, SLIDE #16:

<b>KEY FINDINGS</b>	<b>BCC 53 - General Review Criteria and Procedures</b> BCC 53.215 (1)
Noise impacts vs. uses on adjacent properties and character of the area	
<b>Can be mitigated through COAs</b> COAs <b>OP-2(A-B)</b> monitors equipment noise and <b>OP-5</b> limits the maximum landfill height to 450 feet	

**OP-2 (A)** Requires Applicant to measure “equipment sound levels,” with much detail about how the applicant goes about this.

1. It refers with specificity (i.e. CAT 330 Excavator) to some 10 pieces of landfill equipment that were in use on the working face on October 15, 2021, almost four years ago. Applicant is required to verify that “sound levels of on-site equipment have been reduced by at least 10dB compared to levels in Table 5.3 of the Noise Study dated September 25, 2003 (data was actually collected two years before, on October 15, 2021)”. But sound levels of operating equipment vary greatly depending on what the equipment is doing (i.e. moving heavy loads/moving light loads). It would be easy to “game” this condition.

2. This conditions only applies to on-site vehicles.

*“This condition is limited to **on-site** vehicles”*

*(pp. 145-146, Coffin Butte Landfill CUP Supplemental Staff Report)*

But the lion’s share of noise-producing vehicles at the landfill are not so-called “on-site vehicles”, they are the enormous, heavily loaded semi-truck trailers that grind up the steep grades of the access roads to the top of the mountain of trash, then loudly dump **up to 15 tons of trash** at one go, using gravity (i.e. raising the back of containers 30’-50’ into the air until the trash falls onto the ground far below), and then returning down the steep hillside.

This is actually referred to in the September 25, 2023 Noise report (Exhibit 11, for those of us keeping track, and included in Part 8 of the October 30, 2024 tranche of Applicant documents – here is a link because we at VNEQS are trying not to torture you:

[https://library.municode.com/or/benton\\_county/munidocs/munidocs?nodeld=7627e7dcea11b](https://library.municode.com/or/benton_county/munidocs/munidocs?nodeld=7627e7dcea11b)

The noise study starts on page 62). Here is the table from that report:

Equipment types and quantities included in the noise models are shown in Table 6.1.

**Table 6.1** Modeled Equipment

Equipment	Quantity	Usage Factor (%) <sup>1</sup>
CAT D9 Dozer	1	40
CAT D6 Dozer	1	40
CAT 836G Compactor	2	50
Columbia Industries Tipper	1	50
CAT 330 Excavator	1	40
Idling Trucks	4	100
Landfill Trucks <sup>2</sup>	47/hour	100

1. Based on information in the FHWA Construction Noise Control Specification 721.560 and operating times noted during on-site measurements.

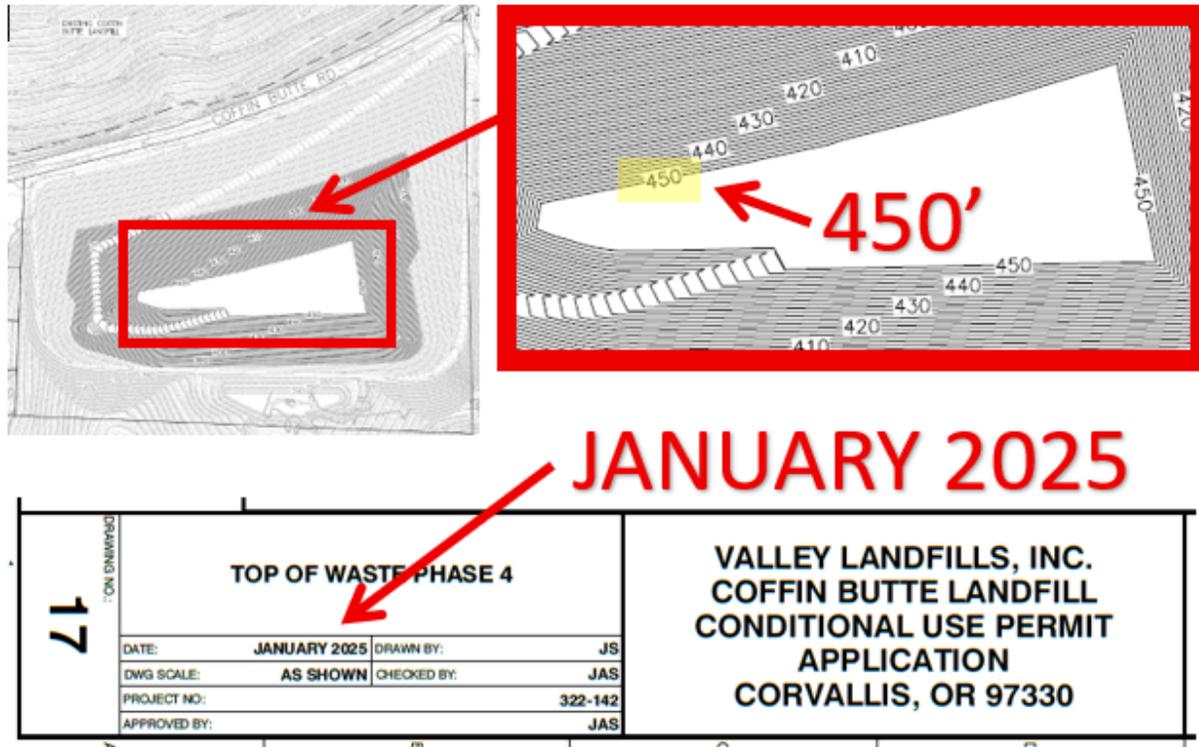
2. Sound levels from trucks traveling uphill were used in the models.

As you can see, there are 10 pieces of on-site equipment listed that produce adverse noise impacts throughout the day. A landfill employee has disputed these numbers as significantly understating the actual vehicles employed in this massive operation; but even if quantities stated in this table are correct, in addition to “on-site” noise-producing equipment, the landfill sees 47 “Landfill Trucks” – trash trucks -- PER HOUR. Operating hours cited by Applicant are all over the map, but let’s stipulate to an 8-hour day. 47 enormous, heavily loaded semi-trucks per hour is about 375 vehicles, grinding up Applicant’s maximum allowable grades, loudly dumping trash, then returning down the garbage mountain.

This Condition regulates only 10 out of 385 individual pieces of noise-producing equipment (and unless we’re mistaken, it does not regulate the actual tipping of garbage, which can unbelievably loud, especially when it’s C&D debris – concrete and metal).

**That’s less than 3%.** The County is requiring measurement and mitigation of less than 3% of noise-producing equipment.

Part 2. OP-5 does not limit the height of the new south landfill at all beyond the height that already received the “deny” staff recommendation.

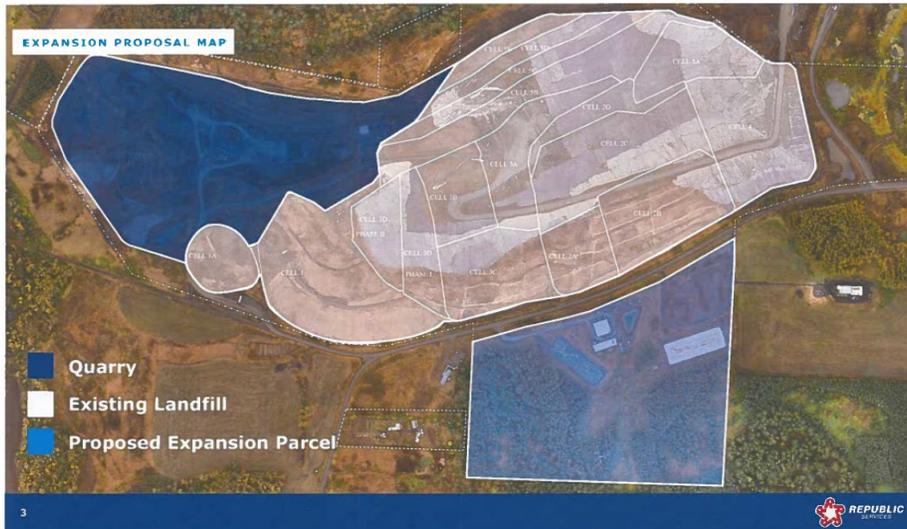


Part 3. There is no enforcement mechanism if Applicant does not comply with this condition of approval

The County promises to implement more stringent enforcement mechanisms in the future, but to gauge the effectiveness of a potential enforcement mechanism, you have to know what it is, and how likely it is to be carried out. That information is unknowable. The County asserts that at some point in the future staff which the County does not currently employ will be hired to enforce land use regulations which the County plans to rewrite, also at some point in the future. But this is not useful information. Will there be the budget for new staff and rewriting enforcement codes? What will the new code say? What would the enforcement process look like? How long would it take? Would the circuit courts be involved (“adjudication”)? Would there be an appeal process? These are all questions germane to whether promised enforcement would be effective, would be prompt, would **ensure compliance**. These are all questions which are not answered.

Part 4. Approval of this application triggers removal of the intake cap, which will to apply to operations the County cannot condition as part of this process.

The following argument is reiterated in the “Odor” comments, submitted under separate cover. See snip below from Applicant’s slide presentation submitted on May 1, 2025 (diagram presented for reference only, in order to clarify the argument developed below):



There are three landfill areas:

- There is the (largely full) area rendered in white, the NORTH LANDFILL which has produced all of the landfill noise impacts modeled by the Applicant’s consultants, and which forms the basis for Applicant’s projections of future impacts.
- We will be referring to the area rendered in dark blue, called the “Quarry” on the above diagram as the “dark blue area” or the “NORTH LANDFILL WESTWARD QUARRY EXPANSION (WITH 14,000,000 CU YD AIRSPACE)” The “dark blue” area operates under a permit the County says was issued in the eighties (but cannot produce). This airspace is mostly empty.
- We will be referring to the area rendered in light blue as the “light blue area” or the “NEW SOUTH LANDFILL (WITH 10,000,000 CU YD AIRSPACE)” This is the current application.

Staff has said that this quasi-judicial procedure can impose conditions of approval only on uses subject to this application, i.e. only landfill operations on the subject parcels applied for, specifically the “light blue area,” the NEW SOUTH LANDFILL (WITH 10,000,000 CU YD AIRSPACE). This of course is the application before you. Staff has directed Commissioners that no decisions by this body can constrain prior approvals for parcels not subject to this Application.

But this is a very unusual land use application, in that approval of it will triggers consequences in parcels that are not subject to this application, due to extraneous agreements between the Applicant and the County prior to your deliberations. We refer here to the 2020 Franchise Agreement, which has been submitted into testimony in its entirety.

Per the 2020 Franchise Agreement, approval of “expansion” onto the “light blue” subject parcel of this application **ELIMINATES THE INTAKE CAP** not only on the subject parcel, **BUT ALSO** on the (“dark blue”) NORTH LANDFILL **WESTWARD QUARRY EXPANSION WITH 14,000,000 CU YD AIRSPACE**.

The 2020 Franchise Agreement, states the following, in “THE PARTIES AGREE:”, Paragraph 5. Impact of Solid Waste Volume; Limit on Solid Waste; Tonnage Cap., subparagraph (b), contains the following language:

*The parties agree that until Franchisee’s governmental applications to expand the Landfill onto the Expansion Parcel are granted...the total tonnage of Solid Waste deposited by Franchisee at the Landfill during any calendar year shall not exceed One Million One Hundred Thousand (1,100,000) tons...”*

ANY APPROVAL FOR DISPOSAL ON light blue parcel (this application) WILL TRIGGER REMOVAL OF THE CURRENT INTAKE CAP on the dark blue parcel (not this application).

So, approval of this application will IMMEDIATELY free Applicant from the existing 1,100,000 intake cap that currently constrains waste disposal amounts on the “dark blue” **NORTH LANDFILL WESTWARD QUARRY EXPANSION** (WITH 14,000,000 CUYD AIRSPACE). There will be **no limit** to the amount of waste applicant can haul in and dump in the quarry. At the current intake cap of 1,100,000 tons/year, the Applicant projects about 12.5 remaining years of life for the “dark blue” quarry area, but if waste volumes increase by amounts Applicant has projected to DEQ (1,500,000 CUYD/y), and indicated on drawings on this application (1,500,000 – 1,860,000 CUYD/y), the “dark blue” quarry area would run out of space much more rapidly, from 7.5 to 9.3 years of capacity.

So, approval of this application could result in reducing the life of the existing landfill (and as such would be a public burden).

Additionally, of course, noise could be expected to increase proportionate with volume increases. The Applicant’s noise study lists garbage truck trips as a significant contributor to adverse noise impacts, and there is no way to increase waste volume without increasing the number of trucks hauling waste.

**APPROVAL OF THIS APPLICATION WILL TRIGGER UNQUANTIFIABLE NOISE IMPACTS ON THE WESTWARD QUARRY EXPANSION (dark blue) THAT THIS APPLICATION CAN NOT CONDITION AND THUS CAN NOT MITIGATE**

And VNEQS will be stressing the following tautology OVER AND OVER (and we apologize ahead of time for the capital letters and the boldface):

WITH APPROVAL OF LU 24-027, THE **EXISTING INTAKE CAP** THAT **CURRENTLY CONSTRAINS** APPLICANT’S MAXIMUM YEARLY VOLUMES **IS REMOVED**. THE APPLICANT IS THEN FREE TO INCREASE YEARLY VOLUMES IN THE 14,000,000 CUYD OF EXISTING PERMITTED LANDFILL SPACE WITH **NO CONSTRAINTS**.

AN **UNCONSTRAINED INCREASE** IN WASTE VOLUME CANNOT BE **MEASURED**. IT CAUSES **UNQUANTIFIABLE IMPACTS**.

**UNQUANTIFIABLE IMPACTS CANNOT BE MITIGATED**



## Valley Neighbors for Environmental Quality and Safety (VNEQS)

To: **Chair Fowler** and Benton County **Planning Commission members**

CC: Anne Thwaites, Benton County Public Information Officer  
Petra Schuetz, Benton County Community Development Department  
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Oregon, 97330

Date: July 16, 2025

Re: LU-24-027 CUP application – FINAL ARGUMENTS Part 2 of 2 **ODOR**

Chair Fowler, Planning Commissioners,

THIS DOCUMENT RESPONDS TO THE FOLLOWING EVIDENCE PRESENTED JULY 8 & 9 on **ODOR**:

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The following document begins with an introductory letter similar to that submitted for “NOISE” So we will try to restate those arguments with brevity (but we have been informed that we do so in order to preserve grounds for appeal). First, we would like to thank County staff and consultants at Winterbrook Planning who have actually read and attempted to respond to prior criticisms submitted by VNEQS with regard to the errors in the Applicant’s submittals.

We applaud the County's attempt to require odor impacts to reflect Applicant's odor studies as valiant (and ingenious!) efforts to respond to discrepancies VNEQS (and perhaps others) have pointed out between what the Applicant says it will be doing and what the Applicant's consultants say Applicant will be doing.

However, this effort will fail, in conditions of approval relating to odor as in conditions of approval of other areas of this application. 1) Benton County Code requires that Conditions of Approval are imposed to **ensure compliance**. Future enforcement by staff the County has not yet hired to enforce code that is not yet written is a dream of enforcement, not reliable, prompt, and dependable enforcement; 2) The County's odor consultant has testified that multiple iterations of the odor study were run until they produced a result that predicted odors at the landfill perimeter that rose to the level that the County's odor consultant believed reflected "reality". But that is not the reality that has been submitted as testimony. Real reality is that odor impacts are detectible far beyond the landfill perimeter, and have serious adverse impacts on surrounding uses. Adding more trash to the pile will create more odors.

Finally, 3) approval of this application will trigger the removal of the volume cap in landfill operations which are not subject to regulation imposed herein, nor, legally can they be. This pertains to the landfill expansion to the north (the "dark blue" quarry expansion). Nothing the County says about this application can have any impact on ongoing landfill operations north of Coffin Butte Road, but approval of this application will result in serious adverse odor impacts as a result of the agreement between the County and the Applicant to remove the intake cap if approval of disposal is granted in this application (2020 Franchise agreement).

**This is a fatal flaw.**

It is an unquantifiable increase in waste volume in the quarry which cannot be mitigated. First of all, the County is not allowed to place conditions on operations not subject to this application. Second of all, without knowing what the increase is, impacts cannot be quantified, and mitigation is not possible. If this application is approved, and waste intake volumes increase from 1,100,000 tons/year to 1,500,000 tons/year in the quarry expansion (as the Applicant projects to DEQ) or 1,860,000 tons/year (as the Applicant projects in this application), what will odor impacts even be? If the County believes that it is important for the Applicant to dispose of waste within the 1,100,000 tons/year current intake limit, Applicant needs to apply for a permit to dispose of waste on some of Applicants other "many acres".

Thank you again for your hard work,

Nancy Whitcombe, LEED AP Architect (on behalf of VNEQS)



### SUMMARY OF THE ARGUMENTS - ODOR:

1. Proposed Conditions of Approval for **ODOR** do not ensure compliance. CoA's will have no impact on mitigating odors absent Applicant's voluntary compliance. Requiring Applicant to **measure odor** does not **mitigate odor**. **It does not ensure compliance**, which is the BCC 53.220 requirement.

*53.220 Conditions of Approval. The County **may impose** conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise **ensure compliance** with the purpose and provisions of this code. BCC 53.215 Criteria*

Do staff Conditions of Approval **ensure compliance**? Is there a reliable enforcement mechanism? The County and the Applicant would not have proposed mitigatory conditions of approval if they did not both agree that unmitigated, the Applicant's proposal will result in negative impacts to adjacent property which are both **serious** and **adverse**. But to work, the conditions would have to be both sufficient and complied with. Historically, zoning has been insufficient and/or not complied with, with the result that incompatibility has been so extreme that on 500 surrounding acres, the uses on those acres have been abandoned by their prior owners, the landfill has purchased that acreage, and what used to be small farms, forest dwellings, and logging acreage now await future land use actions so that that acreage can be utilized for landfill use, just as are the FC parcels considered in the application before you.

What has happened in the past will continue in the future (refer to testimony from Erin Bradley, who, if this application is approved, will have to consider selling her property to preserve her ability to run her 501(c)3 business of providing equine therapy to patients).

2. The County chooses to weigh Applicant's consultant's odor model more heavily than the ample testimony this body has heard about nuisance odors (and odors that rise substantially above that low bar). Benton County itself has submitted Odor complaints to DEQ for the years 2021, 2022, and 2023, but apparently Benton County chooses not to credit even Benton County's own testimony. Benton County similarly discounts reports in the press detailing a terminated vineyard sale due to landfill odors that sickened the potential buyer. Oughtn't the County and County's as a part of this process be required to explain the following:

- how 725 odor complaints submitted to this body could all be wrong (erroneous or falsified), or
- how 141 odor complaints submitted by BENTON COUNTY ITSELF to DEQ could be wrong (erroneous or falsified), or
- how reports in the local press are wrong, in an article that describes how landfill odors were the cause of the termination of a contract to buy a small vineyard 3.84 miles to the northwest of the landfill boundary, sickening the potential buyer and causing that buyer to lose what appears to have been a substantial earnest money deposit.

Applicant has gone through two odor consultants, and numerous iterations of odor studies. This is how County's consultants described this process:

*"We had the applicant go back and add a significant amount of **realism** to the model, including actual emissions and throughputs and the biggest evidence we have that the model is...is...tracking appropriately at this point is ...the model now shows that there are, **at times, um, levels of odor** that would be **above detectable levels**...previous iterations of the model showed significantly below 1 D/T, we didn't feel that that, um, reflected reality."*

**Chad Darby**, video: "Day 6, Republic Services Conditional Use Permit" timestamp: **19:20**

Let's consider this extraordinary statement. The County's consultants require the Applicant to run iteration after iteration of the "model" until the "model" shows something that County's consultants have already pre-determined will "reflect reality". But why not just use actual reality, instead of a model of reality? Especially when there is so much evidence of real reality?

Here is a good question to ask Applicant's odor consultants, "Does this model predict landfill odor travelling 3.84 miles to the northwest and sickening the potential buyer of a small vineyard?" If so, it's a good model, the landfill currently generates odors that constitute a serious adverse impact, and a good reason to deny the application. If not, it's a bad model, and Commissioners should disregard its predictions as "unrealistic."

Finally, approval of this application triggers removal of the intake cap, not only on the NEW SOUTH LANDFILL, but, per the 2020 Franchise Agreement, on the WESTWARD QUARRY EXPANSION Applicant has currently started filling. As part of this application, the County is not permitted to place constraints on any uses that have received land use approval in the past. Staff has been very clear on that.

WITH APPROVAL OF LU 24-027, THE **EXISTING INTAKE CAP THAT CURRENTLY CONSTRAINS APPLICANT'S MAXIMUM YEARLY VOLUMES IS REMOVED**. THE APPLICANT IS THEN FREE TO INCREASE YEARLY VOLUMES IN THE 14,000,000 CUYD OF EXISTING PERMITTED LANDFILL SPACE WITH NO CONSTRAINTS.

AN **UNCONSTRAINED INCREASE CANNOT BE MEASURED**. IT CAUSES **UNQUANTIFIABLE IMPACTS**.

**UNQUANTIFIABLE IMPACTS CANNOT BE MITIGATED**.

**ERGO**, this application **CANNOT BE MITIGATED**.



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**ODOR, DETAIL**

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**VNEQS OBJECTIONS TO PROPOSED MITIGATIONS**

Part 1, Conditions of Approval with no mechanism for ensuring compliance (BCC requirement)  
Staff Report dated April 22, 2025 recommended denial based on Odor and Noise deficiencies in Applicant’s consultant reports (and certain other deficiencies).

BC STAFF, SLIDE #18:

<p>KEY FINDINGS</p>	<p>BCC 53 - General Review Criteria and Procedures BCC 53.215 (1)</p>
<p>Odor impacts vs. uses on adjacent properties and character of the area</p> <p><b>Can be mitigated through COAs</b></p> <ul style="list-style-type: none"> <li><b>OP-5</b> limits the maximum landfill height to 450 feet</li> <li><b>OP-7(A-B)</b> monitoring and logging odors</li> <li><b>OP-7(C-D)</b> third-party monitoring and limitation to amount of landfill trash intake consistent with applicant model</li> <li><b>OP-11(A-F)</b> limits working face area and daily cover requirements</li> </ul>	

**OP-5** OP-5 does not limit the height of the new south landfill at all beyond the height that already received the “deny” staff recommendation (see diagram provided in “NOISE”)

**OP-7 (A-B)** Even if the Applicant miraculously developed the ability to detect nuisance landfill odors, “monitoring” and “logging” odors does nothing to mitigate them.

**OP-7 (C-D)** (C) See above, having a third party “monitor” and “log” odors does not mitigate them either. Odors have been “logged” and “monitored” by DEQ and by Benton County itself for years, and odors have increased during that time.

**That current odor mitigations DO NOT WORK was a FINDING IN LU 21-047**

(D) “Limitation to amount of landfill trash intake consistent with applicant model” -- this proposed condition of approval has so many problems that it is unsalvageable.

OP-7 D would work under **all of** the following circumstances:

1. It assumes the applicant’s model was correct, i.e. it correctly reflected reality.

Unfortunately, it does not. **Reality is reality:**

- landfill odors wake people up at night,
- landfill odors cause people to be unable to enjoy their own property,
- landfill odors cause people to be unable to retain employees on properties near the landfill, and
- landfill odors prevented the sale of Emerson Vineyard, 3.84 miles away from the landfill, inflicting great economic harm on both the seller and the contractually-obligated buyer of that property.

**Reality is that the landfill produces a noxious stench that impacts surrounding uses**

2. It assumes that only “organic” waste caused odors (it is embarrassing that the County’s consultants characterized C&D waste as non-odor-producing)
3. It assumes that the county could reliably track odor-causing waste
4. It assumes that there is a reliable audit mechanism
5. It assumes that the county would be promptly and reliably informed if more odor-causing waste than was allowed to be deposited was deposited (“prompt” is not an adjective that describes Applicant’s responses to regulatory requirements)
6. It assumes that there is a mechanism to enforce compliance, which there isn’t
7. It assumes that the County would promptly and reliably employ that mechanism, which it never has (testimony has been provided that in the past, the County has demonstrated reluctance to enforce waste intake limits -- in 2017, 2018, and 2019, when overages were more than 150,000 tons/year).

**For OP-7 (D) to be effective, ALL of these 1-7 would have to be true, when in fact NONE of them are true.**

We are going to digress here and talk about how you actually get to “adjudicate” a Condition of approval, as referred to by Applicant’s attorney, Mr. Condit, at the end of the July 9, 2025 meeting. We are thankful to Mr. Condit for mentioning this case, **Mingo v. Morrow County**, which he argued to LUBA on behalf of out-of-state corporation INVENERGY. This pertained to a Condition of Approval requiring the Applicant for a wind farm to comply with DEQ noise standards, and as such -- we agree with Mr. Condit – it is pertinent here. This was a condition of approval granted with an initial construction completion date of 2008, with noise violations occurring almost immediately thereafter, and residents quickly applying to Morrow County to revoke the CUP issued for the facility on that basis.

This was in litigation until at least 2012, and probably for many years afterward.

Here of some quotes from contemporaneous reporting:

*“Project developer Invenergy acknowledges the project violates noise standards, but insists the violations are minimal and infrequent”<sup>1</sup>*

*“The county commission...voted 2-1 that although noise from the Willow Creek wind project exceeds state standards at a few homes, the violations did not warrant enforcement action.”<sup>2</sup>*

*“We don’t have the funds to force compliance,” Talman [County Judge Terry Tallman] said. “The State of Oregon says it doesn’t have to do it, because it doesn’t have the funds. Why are we being forced to live by a higher standard than the state of Oregon.”<sup>3</sup>*

In 2013, with the “Chicago-based company’s proposed solutions” “inadequate and...untested” and with the local county commission having “done nothing to curb the project’s operations” one of the affected residents filed a civil lawsuit alleging \$10,000,000 in damages.<sup>4</sup>

This occurs after FIVE YEARS of a resident trying to get a Condition of Approval enforced -- one the Applicant **acknowledged** violates noise standards. Kudos to Mr. Condit for helpfully providing Commissioners with a roadmap on the “adjudication” process (one that he cites as “successful”).

**OP-7 (C-D)** (C) County staff may not be aware, and Applicant is certainly not aware, that the operative site development plan from 1983 regulating the quarry expansion constrains applicant to a working face of 2 acres from October 15 to June 1, and ¾ of an acre during all other periods. Condition OP-7 (C) thus actually relaxes current requirements. (D) Daily cover is already required by DEQ and does not work, was proposed as a mitigation in LU-21-047, and the ineffectiveness of daily cover as a mitigation was stated in LU-21-047 as a reason for denial.

Part 2, The County has no explanation for the discrepancy between the Applicant’s Consultant’s odor model, and testimony provided by the public, by Benton County itself (to DEQ), and included in press reports about odor caused by the landfill

Applicant has stated that Applicant’s odor consultant tested the odor model using actual emissions from 2023 and found that odors did not rise to a level of “nuisance” at the landfill perimeter. If the model is correct, either there should be no odor reports from 2023, or years when waste volumes were similar to those in 2023.

But overwhelming evidence has been presented about odors that clearly rise to the level of “nuisance” far beyond the boundary of the Applicant’s property, including the following:

*“The third odor complaint I mentioned woke us up at 3 AM because the stench was so pervasive.”*

*Munidocs, New Evidence from July 8-9 Hearings, 07082025\_Yialouris\_Nancy (in OPPOSITION to landfill expansion)*

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<sup>1</sup> “Morrow County decides against enforcing state noise requirements”, The Oregonian, Aug 27, 2011

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> “Eastern Oregon resident sues over Willow Creek wind project noise level,” National Wind Watch, Aug 9, 2013

Even a rare **supporter** of the Applicant acknowledges that odors are offensive beyond the landfill's border:

*"Shift in wind direction can make a landfill a bad experience to nearby neighbors..."  
Munidocs, New Evidence from July 8-9 Hearings, 07092025\_Pawlowski\_Brent*

Testimony in opposition on July 8-9 included an objective report, reported in the local press, and subject to fact-checking, of an impact reported in 2023, the year of the Applicant's model. This report describes an odor impact that rises significantly above the low bar of "nuisance" that took place 3.84 miles as the crow flies from the landfill boundary. This odor impact resulted in the inability of a small farmer to sell his property in 2023:

*"The day [the potential buyers of the Emerson Vineyard] decided to quit was the day a south wind blew up from the dump. **He was allergic to it and got violent migraines.**"  
"Ill Wind sours plans to sell Emerson Vineyards" Polk County Itemizer-Observer: March 2, 2023  
Munidocs, New Evidence from July 8-9 Hearings, 07092025\_WHITCOMBE\_Nancy (in OPPOSITION to landfill expansion)*

Beyond Toxics testimony submitted 7/9/2025 summarizes this aptly:

*"You have seen and heard numerous testimonies that clearly demonstrate folks smell levels of landfill gas that constitutes a nuisance much farther away than just the fence line at the facility. This means that the applicant's model is still not an adequate reflection of reality and does not meet the burden of proof to demonstrate that a significant burden is not occurring on adjacent properties. **Remember, it is their burden of proof**, and if they cannot prove that then the application should be rejected."  
Munidocs, New Evidence from July 8-9 Hearings, 07092025\_BEYOND TOXICS (in OPPOSITION to landfill expansion)*

Per County's staff report, 37% of public comments cited air quality (13%), odor (7%), or methane (17%). The Staff report cites 1,961 records submitted via written comments. 37% of 1,961 is 725 complaints about the air emissions). It is disappointing that County Staff does not attempt to reconcile the Applicant's consultant's odor model with the 725 complaints received **during this process** that directly contradict that model.

We urge Commissioners to ask County Staff directly: "What is the Applicant's explanation for the 725 odor complaints? Is the Applicant's explanation convincing?"

- In 2021, BENTON COUNTY in the "Coffin Butte Landfill Community Concerns Annual Report" (submitted into testimony) reported to DEQ that there were 60 air quality complaints
- In 2022, BENTON COUNTY in the "Coffin Butte Landfill Community Concerns Annual Report" (submitted into testimony) reported to DEQ that there were 32 air quality complaints
- In 2023, BENTON COUNTY in the "Coffin Butte Landfill Community Concerns Annual Report" (submitted into testimony) reported to DEQ that there were 49 air quality complaints

Surely Benton County would not have submitted to DEQ records of complaints that Benton County itself believed to be false. “What is the explanation by Benton County for Benton County’s reports to DEQ of odor complaints? Does Benton County believe its own reports?”

We urge Commissioners to ask County Staff directly: “What is the Applicant’s explanation of odor complaints that Benton County itself submitted to DEQ (141 complaints)?”

We urge Commissioners to ask County Staff directly: “What is the Applicant’s explanation for the inability of a small farmer to sell his vineyard because of landfill odors sickening the potential buyer?”

It is the **Applicant’s burden** to prove these **725 reports** by the public **false**.

It is the **Applicant’s burden** to prove that **Benton County’s 141 reports** to DEQ are **false**

It is the **Applicant’s burden** to prove that the **report of the small farmer 3.84 miles away** being **unable to sell his farm** is **false**

Part 3, Approval of the application will remove the intake cap from the (dark blue) quarry expansion. The property the quarry expansion is on is not part of this application, so the County cannot impose any conditions on the Applicant regarding that use

The following argument is reiterated in the “Noise” comments, submitted under separate cover. See snip below from Applicant’s slide presentation submitted on May 1, 2025 (diagram presented for reference only, in order to clarify the argument developed below):



There are three landfill areas:

- There is the (largely full) area rendered in white, which has produced all of the landfill odors modeled by the Applicant’s consultants, and which forms the basis for Applicant’s projections of future odor impacts.
- We will be referring to the area rendered in dark blue, called the “Quarry” on the above diagram as the “dark blue area” or the “NORTH LANDFILL WESTWARD QUARRY EXPANSION (WITH 14,000,000 CUYD AIRSPACE)” This airspace is mostly empty.

- We will be referring to the area rendered in light blue as the “light blue area” or the “NEW SOUTH LANDFILL (WITH 10,000,000 CUYD AIRSPACE)” This is the current application.

Staff has said that this quasi-judicial procedure can impose conditions of approval only on uses subject to this application, i.e. only landfill operations on the subject parcels applied for, specifically the “light blue area,” the NEW SOUTH LANDFILL (WITH 10,000,000 CUYD AIRSPACE). This of course is the application before you. Staff has directed Commissioners that no decisions by this body can constrain prior approvals for parcels not subject to this Application.

But this is a very unusual land use application, in that approval of it triggers effects in other parcels that are not subject to this application, due to extraneous agreements between the Applicant and the County prior to your deliberations. We refer here to the 2020 Franchise Agreement, which has been submitted into testimony in its entirety.

Per the 2020 Franchise Agreement, approval of “expansion” onto this parcel **ELIMINATES THE INTAKE CAP** on the (“dark blue”) NORTH LANDFILL **WESTWARD QUARRY EXPANSION WITH 14,000,000 CUYD AIRSPACE, AS WELL AS** on the (“light blue”) **NEW SOUTH LANDFILL WITH 10,000,000 CUYD AIRSPACE** (the application before you).

The 2020 Franchise Agreement, states the following, in “THE PARTIES AGREE:”, Paragraph 5. Impact of Solid Waste Volume; Limit on Solid Waste; Tonnage Cap., subparagraph (b), contains the following language:

*The parties agree that until Franchisee’s governmental applications to expand the Landfill onto the Expansion Parcel are granted...the total tonnage of Solid Waste deposited by Franchisee at the Landfill during any calendar year shall not exceed One Million One Hundred Thousand (1,100,000) tons...”*

ANY APPROVAL FOR DISPOSAL ON light blue parcel (this application) WILL TRIGGER REMOVAL OF THE CURRENT INTAKE CAP on the dark blue parcel (not this application).

So, approval of this application will IMMEDIATELY free Applicant from the existing 1,100,000 intake cap that currently constrains waste disposal amounts on the “dark blue” **NORTH LANDFILL WESTWARD QUARRY EXPANSION (WITH 14,000,000 CUYD AIRSPACE)**. There will be **no limit** to the amount of waste applicant can haul in and dump in the quarry. At the current intake cap of 1,100,000 tons/year, the Applicant projects about 12.5 remaining years of life for the “dark blue” quarry area, but if waste volumes increase by amounts Applicant has projected to DEQ (1,500,000 CUYD/y), and indicated on drawings on this application (1,500,000 – 1,860,000 CUYD/y), the “dark blue” quarry area would run out of space much more rapidly, from 7.5 to 9.3 years of capacity.

So approval of this application could result in reducing the life of the existing landfill (and as such would be a public burden).

Additionally, of course, odors could be expected to increase proportionately. There is no way as part of this application, to in any way restrict waste composition on the “dark blue” quarry expansion.

**APPROVAL OF THIS APPLICATION WILL TRIGGER UNQUANTIFIABLE ODOR IMPACTS ON THE WESTWARD QUARRY EXPANSION (dark blue) THAT THIS APPLICATION CAN NOT MITIGATE**

And VNEQS will be stressing the following tautology OVER AND OVER (and we apologize ahead of time for the capital letters and the boldface):

WITH APPROVAL OF LU 24-027, THE **EXISTING INTAKE CAP THAT CURRENTLY CONSTRAINS** APPLICANT'S MAXIMUM YEARLY VOLUMES **IS REMOVED**. THE APPLICANT IS THEN FREE TO INCREASE YEARLY VOLUMES IN THE 14,000,000 CUYD OF EXISTING PERMITTED LANDFILL SPACE WITH **NO CONSTRAINTS**.

AN **UNCONSTRAINED INCREASE** IN WASTE VOLUME CANNOT BE **MEASURED**. IT CAUSES **UNQUANTIFIABLE IMPACTS**.

**UNQUANTIFIABLE IMPACTS CANNOT BE MITIGATED**