

Burden of Proof

2024 Conditional Use Application

January 15, 2025, Submittal

Submitted by:

Valley Landfills, Inc.

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Burden of Proof Narrative

Conditional Use Permit – Landfill Development South of Coffin Butte Road

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I. INTRODUCTION

A. Applicant's Request. Applicant requests approval of a conditional use permit (CUP) review to expand the area on which landfill activities will be conducted to the south side of Coffin Butte Road (the "Development Site").¹ The landfill itself is proposed to be situated within the Landfill Site (LS) zone. In addition to using the Development Site for the landfill, the proposal includes an 1,800-square-foot employee building and parking on land to the west of the landfill that is zoned Forest Conservation (FC), access road modifications on lands to the north that are zoned LS and FC, and the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, the shop/maintenance area, cut activities for landfill, and leachate ponds to support the landfill onto the property to the east, which is zoned FC (collectively, the "Project").²

B. Background and Overview of the Project. Valley Landfills, Inc. (a wholly owned subsidiary of Republic Services, Inc.) ("VLI" or "Applicant"), is submitting this CUP application to expand Coffin Butte Landfill to an area south of Coffin Butte Road. This application takes into account the concerns and issues raised during the 2021 CUP application³ and the subsequent Oregon Consensus process entitled "Benton County Talks Trash" ("BCTT"), in which VLI and multiple other stakeholders participated. As a result, the 2024 application is substantially different from the 2021 application.

The chief difference is that the current proposal does not include the closure of Coffin Butte Road. Instead, Coffin Butte Road will be retained and widened in the area adjacent to the Development Site to allow for ease of use for both landfill users and through traffic. During proceedings on the 2021 application, various stakeholders expressed concern about the effect of closing Coffin Butte Road on emergency ingress and egress, notwithstanding the multiple improvements to alternative routes proposed as part of VLI's 2021 application.

¹ See Application, attached as Exhibit 1.

² See Civil & Environmental Consultants, Inc. ("CEC") engineer plans and drawings, attached as Exhibit 2.

³ The Benton County Planning Commission (the "Planning Commission") denied the 2021 CUP application in December of that year. VLI appealed that decision to the Benton County Board of Commissioners (the "County Commissioners") but withdrew that appeal in order to participate in BCTT.

VLI originally proposed the closure of Coffin Butte Road to be able to utilize the airspace over the roadway for landfilling.⁴ The retention of Coffin Butte Road means that the life span of the landfill where waste will be deposited will be approximately six years, as opposed to twelve,⁵ and the volume of waste to be disposed of in the landfill will be reduced by approximately half. The long-term visual impact will also be reduced as a result.

When the Development Site is ready for waste disposal operations, the working face⁶ of the landfill will move from north of Coffin Butte Road to the Development Site. Disposal of waste will not be occurring north of Coffin Butte Road during the operation of the Development Site. The size of the working face at the Development Site will be roughly the same as the existing operation, and there will be only one working face operating at a time.

The area where disposal will take place will be entirely located on the LS-zoned area south of Coffin Butte Road. Some of the supporting infrastructure (the access road, the relocated leachate ponds, the employee building, and the shop/maintenance area) will be located on FC-zoned adjacent tax lots. (See detailed discussion and maps below.) In contrast to the 2021 application, no portion of the working face or supporting infrastructure will be located on any properties zoned for other uses. All of the Development Site properties are owned by VLI.

A landfill is an outright permitted use in the LS zone, although any project south of Coffin Butte Road requires CUP approval from Benton County (the “County”) under Benton County Code (“BCC” or the “Code”) Chapter 53. A landfill is allowed as a conditional use in the FC zone, subject to CUP approval under BCC Chapter 53 and some additional criteria related to impacts on farm and forest use in BCC Chapter 60.

A conditional use is a use that is allowed in the zone, but one which may have adverse impacts on surrounding properties or on public infrastructure that may require mitigation. Applicant must demonstrate that the proposed expansion will not “seriously interfere” with uses on adjacent property, the character of the area, or the purpose of the zone. Applicant must also demonstrate that the proposed expansion will not impose an “undue burden” on public facilities and services in the area. The entire focus of the County’s review is thus on the potential impacts of the expansion and mitigation of any significant impacts. This review must take into

⁴ “Airspace” is essentially the measure of the volume of solid waste that can be disposed on a site.

⁵ As the BCTT Site Life Subcommittee discovered, it is difficult to predict site life because it is based on a large number of factors out of VLI’s control. This is VLI’s estimate based upon its current model.

⁶ The “working face” of the landfill is the area of active disposal of solid waste. At Coffin Butte, it is approximately half an acre in size.

account the existing conditions, which include the fact that a landfill has been operating on this site for over 50 years, and that the current landfill operation is fully approved and permitted by both the County and the State of Oregon.

During the BCTT process, several participants argued that the landfill should be closed and that all expansions should be denied. A landfill is an allowed use in the LS and FC zones. These were either expressly created for landfill uses (LS zone) or allowed for landfill use in order to permit the Coffin Butte Landfill to continue and to expand (FC zone). Applicant is entitled to have the expansion approved as long as it demonstrates compliance with the criteria in those zones. The need to continue or expand the landfill is not relevant to the approval criteria.

The evidence will show that the proposed expansion will not have significant adverse impacts on the uses of adjacent properties, the character of the area, or the purpose of the zone as compared to existing conditions. It will also show that the proposed expansion will not place an undue burden on infrastructure or services as compared to existing conditions.

Approval of a CUP by the County is only the initial step in the process to expand the landfill. VLI must also obtain permits from the Oregon Department of Environmental Quality (DEQ). DEQ regulates the environmental aspects of the landfill and has exclusive jurisdiction over those issues. (See further discussion below.) As a result of the state coordination requirement in ORS 197.180, DEQ will not accept a permit application from VLI until the expansion has received land use approval from the County. Many of the environmental concerns raised during the 2021 application and the BCTT process (groundwater protection, methane/air quality, seismic resiliency, leachate disposal, wildlife impacts, and archeological issues) are regulated by DEQ or other state agencies. VLI will continue to work with all regulators to comply with the applicable laws and will further comply with any future changes to the applicable regulations as they are implemented.

Although the environmental issues listed in the previous paragraph are not within the jurisdiction of the County under its land use regulations, Applicant responds to these issues as part of this application so the County and other interested parties can see how they will be addressed by DEQ or other applicable agencies.

C. Applicable Benton County Code Provisions.

1. Chapter 53 (General Review Criteria and Procedures)
2. Chapter 60; Forest Conservation (FC)
3. Chapter 77; Landfill Site (LS)

-
4. Chapter 87; Goal 5 Resources
 5. Chapter 99; General Development Standards

D. Other Issues Addressed.

1. Wildlife Impacts
2. Archeological Resources
3. Leachate
4. Methane
5. Arsenic
6. Seismic Resilience
7. Wetlands

II. FACTUAL BACKGROUND

A. Location of Development Site.

The Development Site is located approximately 6.5 miles north of Corvallis on the west side of Highway 99W. The proposed improvements are situated on five tax lots of the Benton County Tax Assessor's Map 10-41-80 and the abutting Coffin Butte Road right-of-way.⁷

B. Description of the Project.

The Project relocates the working face to the Development Site on the south side of Coffin Butte Road. The working face and all of the waste disposal area will be situated entirely within the Landfill Site (LS) zone. In addition to the working face, the Project includes an 1,800-square-foot employee building and parking on land to the west that is zoned Forest Conservation (FC), access road modifications on lands to the north that are zoned LS and FC, and the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, a shop/maintenance area, cut activities for landfill, and a shop/maintenance area supporting the landfill to the area east of the working face on land that is zoned FC.

C. The Development Site/Zoning.

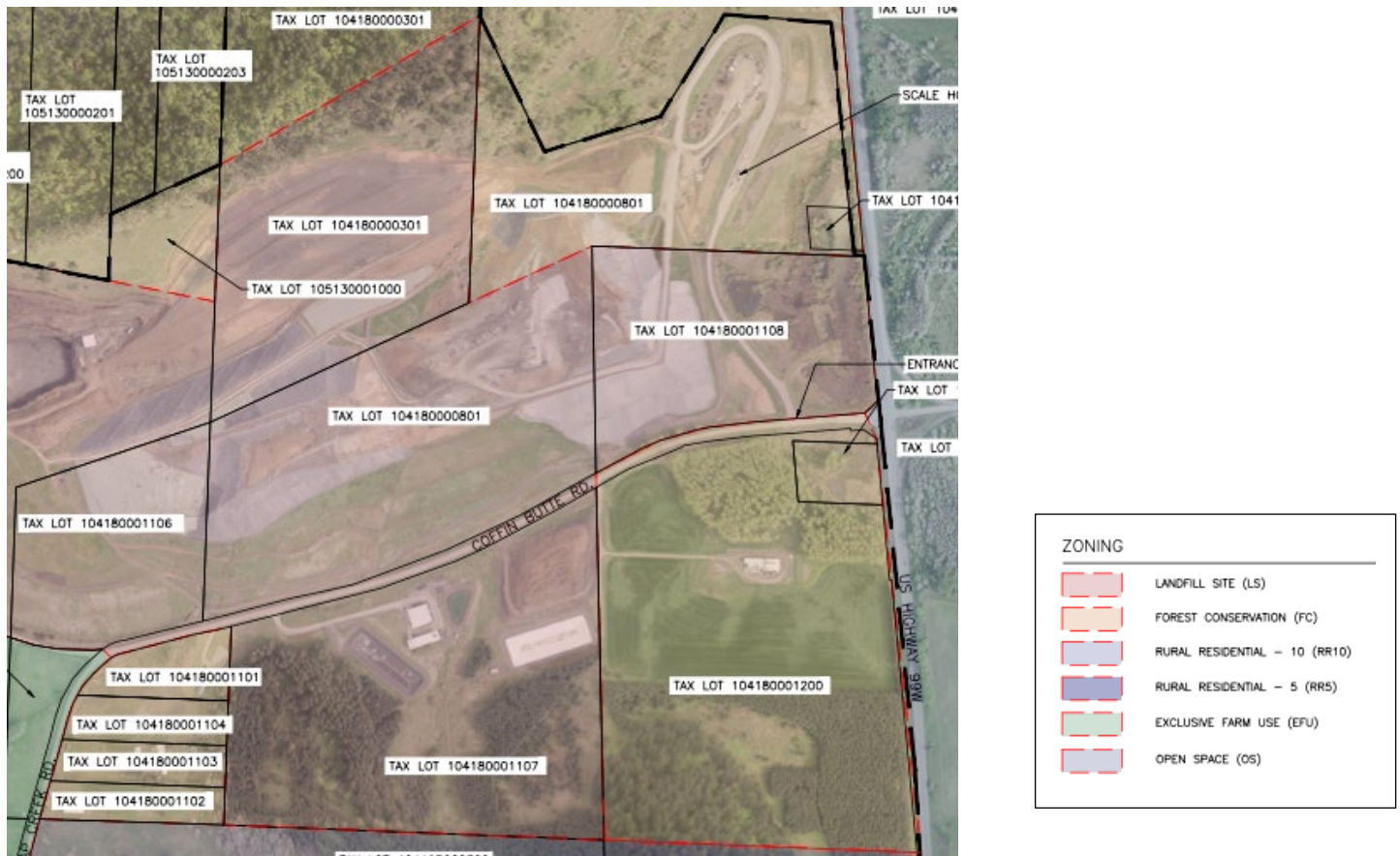
The Development Site on which the Project is located includes the following tax lots:

- Tax Lot 1107 (29000 Coffin Butte Road)—landfill area. This tax lot is zoned LS.
- Tax Lot 801 (29175 Coffin Butte Road)—access road modifications on part of the landfill area. This tax lot is zoned LS and FC; the access road improvements are on the portions zoned FC.
- Tax Lot 1101 (28972 Coffin Butte Road)—employee building and parking. This tax lot is zoned FC.
- Tax Lot 1108 (no address)—access road modifications are also located on this tax lot, which is part of the existing landfill. This tax lot is zoned LS.
- Tax Lot 1200 (29160 Coffin Butte Road)—relocated leachate ponds, leachate loadout, leachate sump, outbound scale, portions of the perimeter

⁷ The deeds to the properties are attached as Exhibit 3.

landfill road, cut activities for landfill, and the shop/maintenance area. This tax lot is zoned FC.

[Note: the tax lot numbers are the last four numbers shown on the Assessor's Map below.]



D. Development Site Description by Tax Lot.

- Tax Lot 1107.** The area of the proposed landfill development is located on the south side of Coffin Butte Road. It is 59 acres and currently developed with an access drive, leachate pretreatment and treatment buildings, parking and maneuvering areas, leachate ponds, and a permeate pond. Aside from the leachate ponds, the improvements on this tax lot are obsolete infrastructure that has not been used since the early 2000s.

The existing improvements on Tax Lot 1107 are situated on the northern portion of the Development Site, which is relatively level. From the currently developed area, the site

slopes upward to the south, with an elevation change of 60-160 feet (to different points along Tampico Ridge). The undeveloped portions of the site are vegetated with grasses and trees. This tax lot contains a likely abandoned⁸ but mapped Great Blue Heron rookery (#2683) in the northwest quadrant, along with a small area of Palustrine Emergent Wetland in the northeast corner.

2. **Tax Lots 1108 and 801.** The area north of Coffin Butte Road, which will include minor access-road improvements, is already in use for the existing landfill area. The area of proposed improvement contains access roads, a scale house, and scales. These tax lots also contain Palustrine Emergent Wetland on the eastern portion.
3. **Tax Lot 1101.** The western tax lot, which is planned to accommodate the employee building and parking adjacent to the existing landfill office, is gently sloping (except for a steep eastern edge). The majority of this property is grass, while the eastern edge is treed. This tax lot is currently developed with VLI offices. This tax lot also contains Palustrine Emergent Wetland on the western and northwestern edge.
4. **Tax Lot 1200.** The eastern parcel, which will accommodate the relocated leachate ponds, leachate loadout, leachate sump, a shop/maintenance area, outbound scale, portions of the perimeter landfill road, and cut activities for landfill is relatively level in the northeast corner and slopes upward to the southwest. The northeast portion of the site contains native vegetation and trees. There is also a buffer of trees along the eastern property line, abutting Hwy 99W. The center portion of the site is currently developed with a gas-to-energy plant, gas blowers and flares, parking areas, and drive aisles. The approximately 20-acre center area that surrounds the gas-to-energy plant is leased by VLI to Agri-Industries, Inc., and has historically been farmed for grass. The lands south of the fields is steep, sloping topography that is vegetated with Douglas fir surrounded by native trees. This tax lot also contains a mapped but likely abandoned Great Blue Heron rookery #2716 in the north central area

⁸ See Wildlife Habitat Assessment and Surveys, attached as Exhibit 4.

quadrant,⁹ along with Palustrine Emergent Wetland and Palustrine Forested Wetlands.

With the exception of the 20-acre section location on Tax Lot 1200, none of the property that makes up the Development Site is in commercial farm or forest use.

E. Geotechnical Suitability of the Development Site for Landfill Use.

The Wallace Group, Inc., of Bend, Oregon, completed geotechnical engineering explorations of the Development Site for the proposed expansion, attached as Exhibit 5. The subsurface exploration generally encountered 6 to 25 feet of fine-grained alluvium (Willamette Silt) underlain by weathered basalt and basalt in the lower elevations. Competent basalt was encountered in the lower elevations at depths ranging between 22 and 65 feet below ground surface (bgs). The higher elevations of the site are underlain by fine-grained to coarse-grained colluvium and volcanic saprolites, which are generally coarser with increasing elevation. These soils are underlain by brecciated and altered basalt bedrock, with the depth to rock generally decreasing with increased elevation. On the western hillside of Tampico Ridge, basalt was encountered at depths ranging between 10 and 25 feet bgs. On the eastern hillside, surface soil was generally weaker than the western hillside, and basalt was encountered at depths ranging between 19 and 45 feet bgs. In the valley formed between the two hillsides, the depth to basalt ranged from 21 to 23 feet bgs. Based on this exploration, the Wallace Group concludes that the Development Site is suitable for the expected development from a geotechnical perspective.

F. Description of the Area Surrounding the Development Site.

Coffin Butte Landfill is bordered by Highway 99W to the east. The area east of the highway is zoned Open Space (OS) and owned by the Oregon Department of Fish and Wildlife; it is part of the E.E. Wilson Wildlife Area, and it is managed for wildlife habitat.

Land to the south of Coffin Butte Landfill is zoned Forest Conservation (FC), Rural Residential (RR-10), and/or Exclusive Farm Use (EFU). The Rural Residential lands are separated from the landfill operations by Tampico Ridge, which is approximately 250 feet higher than the surrounding area. VLI owns the RR-10-zoned lands between the landfill and residential uses to the south, and with the exception of one property to the west¹⁰, VLI owns all of the LS-zoned land in the area and all of the properties surrounding the LS-zoned land. The adjoining FC- and EFU-zoned lands are also owned by VLI and managed for

⁹ See Ex. 4.

¹⁰ 38691 Soap Creek Road (104180001103). This property appears to be used for residential and storage use only and not in commercial farm or forest use. See Ex. 32, pages 2-3.

farm and forest uses. VLI leases approximately 80 acres of land to Agri-Industries, Inc., which farms the lands for grass seed and row crops. Lease attached as Exhibit 31.¹¹ These lands were acquired by VLI to provide resource/open space buffers between the landfill and nearby lands that are owned by others.

Lands to the west of Coffin Butte Landfill west of the lands owned by VLI are zoned EFU and being used for commercial agriculture, primarily grass seed farming. The lands that are owned by VLI to the west of the landfill are farmed and managed to provide a buffer between the landfill and lands that are owned by others.¹²

Properties to the north are zoned FC, and with the exception of four properties situated northwest of the landfill, the LS-zoned lands are buffered by FC-zoned lands that are owned by VLI. The land to the northeast is owned by the State of Oregon; this land is separated from LS-zoned land by over 100 feet of FC-zoned land that is owned by VLI. Properties to the north are buffered by the forested northern slope of Coffin Butte.

There was concern expressed during BCTT that the acquisition of buffer areas by VLI was taking the land out of farm and forest use. This is not the case; these lands are being actively managed for farm and forest use by others under leases from VLI.

G. Public Facilities and Services.

1. Sewer.

The landfill is not currently served by sewer service. Sewerage is not needed for the proposed landfill development. The existing VLI offices on Tax Lot 1101 are served by a septic system. The planned new employee building/locker room is proposed to be served by a holding tank and will not connect to the existing septic system.

2. Water.

The new landfill development area is not currently served by a domestic water service, and domestic water is not needed to accommodate the proposed landfill development. The existing building and planned employee building are, and will

¹¹ Most of these leased lands are located west of the Development Site and west of Soap Creek Road, but as noted above, approximately 20 acres of these leased lands are located on Tax Lot 1200.

¹² There was some question during the BCTT process about whether DEQ had mandated that VLI acquire lands to buffer the landfill. With the exception of one parcel to the west of the current landfill, where DEQ required VLI to decommission a well as part of a remediation plan, VLI purchased surrounding lots of its own volition in order to provide a buffer.

continue to be, served by a well. There are two wells that are currently used for water production at the landfill: the Berkland well, which is used for the office plumbing, irrigation, and drinking water, and the PW-2 well, which was located north of Coffin Butte Road and used for the scale house plumbing, but not for drinking. The well logs are attached as Exhibit 6.

3. Streets; Access; Transportation.

Coffin Butte Landfill is currently accessed from Coffin Butte Road, which connects to Hwy 99W to the east and Soap Creek Road to the west.

4. Fire Protection.

The Project is within the Adair Fire Protection District.

5. Police Protection.

The Project is within the Benton County Sheriff Service Area.

H. History of Coffin Butte Landfill.

The Coffin Butte landfill site was established as a disposal site in 1948 (as an open burning dump) that was formerly part of the Camp Adair U.S. Army post. In 1973-74, the site was designated as a regional solid-waste disposal site in the Chemeketa Region Solid Waste Management Plan, a coordinated, multi-agency planning effort for waste disposal in Linn, Benton, Polk, Marion, and Yamhill counties. In 1983, the County amended its comprehensive plan and zoning map to apply an LS zone to the area. The LS zone was a recognition by the County Commissioners that the site had been developed as a disposal site for nearly 40 years and the County was committed to the continued use of the site as a solid-waste disposal site. With the adoption of the LS zone, the County established that LS-zoned lands are required to operate under an approved Site Development Plan, which requires approval by the Planning Commission, after receiving a recommendation from the Benton County Solid Waste Advisory Committee (SWAC). Coffin Butte Landfill is currently operating under a Site Development Plan that was last updated in 2003, via Benton County Decision PC-03-11. The property owners were granted conditional use approvals in

1994,¹³ 1997,¹⁴ 2011,¹⁵ 2013,¹⁶ and 2015¹⁷ for areas that were not approved for landfilling or uses other than a landfill site.

The landfill is considered a “regional landfill” under ORS 459.005(23), and it is the primary solid-waste disposal facility for Benton County. The landfill was acquired by VLI in 1974. In 2000, Allied Waste Transportation, Inc., a wholly owned subsidiary of Allied Waste Industries, Inc., purchased the stock of Waste Control Systems, Inc., which included its wholly owned subsidiary VLI.¹⁸

Over time, the landfill site has undergone periodic modifications and upgrades; the facilities have been subject to continual improvement and modernization in order to maintain high standards of technical design, operational efficiency, environmental quality, regulatory compliance, and safety. Improvements that have occurred over time include disposal of refuse in engineered cells, installation of bottom liners to protect groundwater, leachate collection and treatment systems, landfill gas collection and treatment systems, monitoring wells, and stormwater conveyance and detention.

Coffin Butte operations include more than just a landfill. The site contains recycling operations, processing, a recovery center offering commercial and public recycling for wood waste, and a nearby composting facility for yard debris. A rock-quarrying operation produces aggregate for community needs. Adjacent to Coffin Butte Landfill operations is the Coffin Butte Resource Project, a landfill gas-to-energy plant that is owned by a consortium of 12 Northwest Cooperative electric utilities. Landfill gas is harvested from decaying organic matter in the landfill and used to power generators that produce enough energy to serve an estimated 4,000 households annually. As required by the disposal franchise between Applicant and the County, Applicant maintains an environmental trust fund currently valued at \$16.1 million to safeguard long-term environmental health at the site and surrounding area. Under ORS 459.272, Applicant is also responsible for providing financial assurance for the cost of closure, post-closure, and any needed corrective action. Applicant posts a bond to cover this cost,

¹³ S-94-3, approval of a 2.2-megawatt power-generation facility on T10S, R4W, Section 18, Tax Lot 1100.

¹⁴ S-97-58, approval to expand the generating capacity of the power-generation facility.

¹⁵ LU-11-016, approval for the construction of a recycling and refuse transfer facility on T10S, R4W, Section 18, Tax Lot 801.

¹⁶ LU-13-061, approval to use [T10S, R4W, Section 18] Tax lots 1101 and 1104 as a stockpile and staging area.

¹⁷ LU-15-001, approval to enhance a stormwater-treatment facility on T10S, R6W, Section 13, Tax Lot 800.

¹⁸ In 2008, Republic Services, Inc., merged with Allied Waste Industries, Inc.

which must be recertified annually with DEQ under OAR 340-094-0140(6) to ensure that the bond is sufficient to cover the estimated costs of closure.

I. The Role and Authority of DEQ.

Applicant needs approval of the County land use permit and approval of the necessary DEQ permits before it may begin construction on the Project. As a result of the state coordination requirement in ORS 197.180, DEQ will not accept a permit application from Applicant until the expansion has received land use approval from the County.

DEQ regulates the environmental impacts of landfills, including air quality requirements (methane, hydrogen sulfide, odor), leachate production and disposal, protection of both ground and surface water, as well as protection for floodplains, wetlands, geotechnical/seismic considerations, and critical habitat. DEQ also regulates closure and reclamation of landfills. Applicant will have to demonstrate compliance with all of these criteria to obtain modifications to the required permits. See Feb. 26, 2024, letter from Jeffery Shepherd and Paul Burns of CEC, Applicant's engineering consultants, attached as Exhibit 7, for the specific permitting standards and requirements.

DEQ has exclusive jurisdiction over the areas that it regulates. ORS 459.095 provides that "[n]o ordinance, order, regulation or contract affecting solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with rules adopted by the Environmental Quality Commission under ORS 459.045 or 459A.025 * * *."

J. List of Exhibits.

This application relies on the following exhibits:

1. Application form and fees.
2. Engineer Plans, CEC, dated December 2023.
 - Cover Sheet (Sheet 1)
 - Benton County Tax Lots and Zoning (Sheets 2 and 2A).
 - Existing Conditions (Sheet 3)
 - Demolition Plan (Sheet 4)
 - Overall Development Plan (Sheet 5)
 - Development Area Layout (Sheet 6)

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- Left Turn Traffic Plan (Sheet 7)
 - North Road Plan (Sheet 8)
 - Parking Infrastructure Plan (Sheet 9)
 - Development Area Top of Waste Grades (Sheet 10)
 - Development Area Phase 1 (Sheet 11)
 - Development Area Phase 2 (Sheet 12)
 - Top of Waste Phase 1 (Sheet 13)
 - Top of Waste Phase 2 (Sheet 14)
 - Top of Waste Phase 3 (Sheet 15)
 - Top of Waste Phase 4 (Sheet 16)
 - Wetpond-Detention Pond Combination Plan (Sheet 17)
 - Landscape Plan (Sheet 18)
 - Stockpile Plan (Sheet 19)
 - Wetpond-Detention Pond Combination Profiles (Cross-Sections AA and BB) (Sheet 20)
 - Wetpond-Detention Pond Combination Profiles (Cross-Sections CC and DD) (Sheet 11)
 - Cross-Sections (Sheets 22 and 23)
 - Traffic Details (Sheet 24)
3. Vesting deeds to the tax lots contained in the Development Site.
 4. Wildlife Habitat Assessment and Surveys, Turnstone Environmental Consultants, Inc., dated February 27, 2024, and Addendum to the Final 2024 Report dated August 6, 2024.
 5. Phase II Geotechnical Exploration Report, Coffin Butte Landfill South Expansion Area, The Wallace Group, dated July 2024.
 6. Well logs for PW-2 and Berkland wells.

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7. Letter from Jeffery Shepherd and Paul Burns of CEC regarding the applicable Oregon DEQ permits and regulations, dated February 26, 2024.
 8. Map and List of Adjacent and Nearby Properties.
 9. Map defining the Analysis Area, showing odor complaints.
 10. Aerial Image of topography and roads surrounding the landfill area.
 11. Noise Study, The Greenbusch Group, dated September 25, 2023.
 12. Weaver Consulting Group Findings on Odor, dated March 8, 2024.
 13. November 19, 2021, memorandum from Ian Macnab regarding odor, methane, and hydrogen sulfide control at Coffin Butte Landfill.
 14. Coffin Butte Landfill Expansion Odor Dispersion Modeling Study, SCS Engineers, dated October 8, 2024.
 15. Traffic Report, Transight Consulting, LLC, dated February 26, 2024.
 16. Environmental and Operational Considerations, Tuppan Consultants, dated February 22, 2024.
 17. CEC Preliminary Drainage Report dated January 2024.
 18. Aerial Renderings of Coffin Butte Landfill showing proposed expansion area view corridors.
 19. Site Lighting Summary, CEC, dated July 2024.
 20. Fire Risk Assessment of Coffin Butte Landfill, SCS Engineers, dated November 29, 2023, and updated September 24, 2024, and the addendum to the Fire Risk Assessment Report dated January 14, 2025.
 21. Applicant Proposed Conditions of Approval.
 22. Reclamation Plan for Expansion Area, CEC, dated April 2022.
 23. Oregon DEQ Permit #306 Materials.
 24. Oregon DEQ Permit Work Plan.
 25. Oregon DEQ Approval of Work Plan.

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26. Archaeological Report, Archaeological Investigations Northwest, Inc., dated December 19, 2023.
 27. Leachate Management Summary, CEC, dated January 15, 2025.
 28. Republic Services letter to the Benton County Board of Commissioners regarding methane emissions at Coffin Butte Landfill, dated 2/23/2024, and Addendum dated January 15, 2025.
 29. Republic Services letter to the Benton County Board of Commissioners relating to arsenic, dated February 15, 2024, and Addendum dated January 15, 2025.
 30. Proposed Coffin Butte Landfill Seismic Design, CEC, dated July 9, 2024.
 31. Farm lease between Valley Landfills and Agri-Industries, Inc., dated January 15, 2020.
 32. Photos of Farm and Forest Uses on Adjacent Properties.

III. COMPLIANCE WITH BENTON COUNTY CODE 53.205 TO 53.235 (CONDITIONAL USES)

As noted above, any landfill project south of Coffin Butte Road on land zoned LS or FC requires approval of a conditional use permit under BCC 53.205 to 53.235 approved by the Planning Commission.

A. BCC 53.205 (Purpose). This section states:

Conditional uses are land uses which may have an adverse effect on surrounding permitted uses in a zone.

Applicant Response: This section provides a general statement; it does not contain any measurable development standards or approval criteria. Compliance with the applicable provisions of this section will ensure conformance with the purpose stated in this section.

B. 53.210 (Permit Required). This section states:

A person shall obtain a conditional use permit from the County in order to establish a conditional use. The decision to issue a conditional use permit is discretionary.

Applicant Response: The proposal includes the expansion of a landfill and associated site improvements. As detailed in sections 60.215 and 77.305, the proposed use (including the associated site improvements) requires a CUP, along with review by the Planning Commission. Applicant understands that the decision whether to issue the CUP is discretionary, depending on whether Applicant can demonstrate compliance with the applicable criteria.

C. 53.215 (1) (Criteria) (The proposed use “does not seriously interfere”). This criterion states:

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[.]

Applicant Response: In order to address this criterion, it is necessary to interpret the components of this criterion and then apply them to the facts.

1. Meaning of “Seriously Interfere.”

The Benton County Code does not define “seriously interfere.” The use of the modifier “seriously” indicates that at least some level of interference is acceptable. During BCTT, staff indicated that “seriously interfere” has generally been applied to mean more than an inconvenience or irritation, but less than rendering the uses on adjacent property impossible. Staff reported that county decision-makers have considered factors such as whether the proposed use makes it difficult to continue uses on the adjacent property; whether the proposed use creates significant disruption to the character of the area; and whether the proposed use conflicts, in a substantive way, with the purpose of the zone.

There has been an approved landfill in this area for over 50 years. This analysis has to be conducted in the context of the existing approved landfill operation: whether the proposed expansion creates additional, different, or increased impacts as compared to the existing operation, and whether these impacts, if any, when viewed through the lens of the existing operation, “seriously interfere” with adjacent properties.

2. Definition of “Adjacent Properties.”

The Benton County Code does not define the term “adjacent.” Absent a special definition, the courts ordinarily resort to the dictionary definitions, assuming that the legislature (or, in this case, the County Commissioners) meant to use a word of common usage in its ordinary sense.

Webster’s Third New International Dictionary defines “adjacent” as “not distant or far off * * *: nearby but not touching * * *relatively near and having nothing of the same kind intervening: having a common border: ABUTTING, TOUCHING; living nearby or sitting or standing close relatively near or close together: immediately preceding or following with nothing of the same kind intervening.” (Capitalized emphasis in the original.)¹⁹

Because the application is to expand the existing landfill operation, Applicant started with a base site that includes all tax lots on which existing landfill operations and accessory uses are located, plus all tax lots constituting the Development Site on which the Project will be located (the “Landfill Boundary”). Applicant then identified properties abutting the Landfill Boundary (the “Adjacent Properties”) and the properties abutting the Adjacent Properties (the “Nearby Properties”). See Figure 1, below.

¹⁹ Webster’s Third New International Dictionary of the English Language Unabridged, Merriam-Webster Inc., Publishers, Springfield Massachusetts, USA, Copyright 2002.

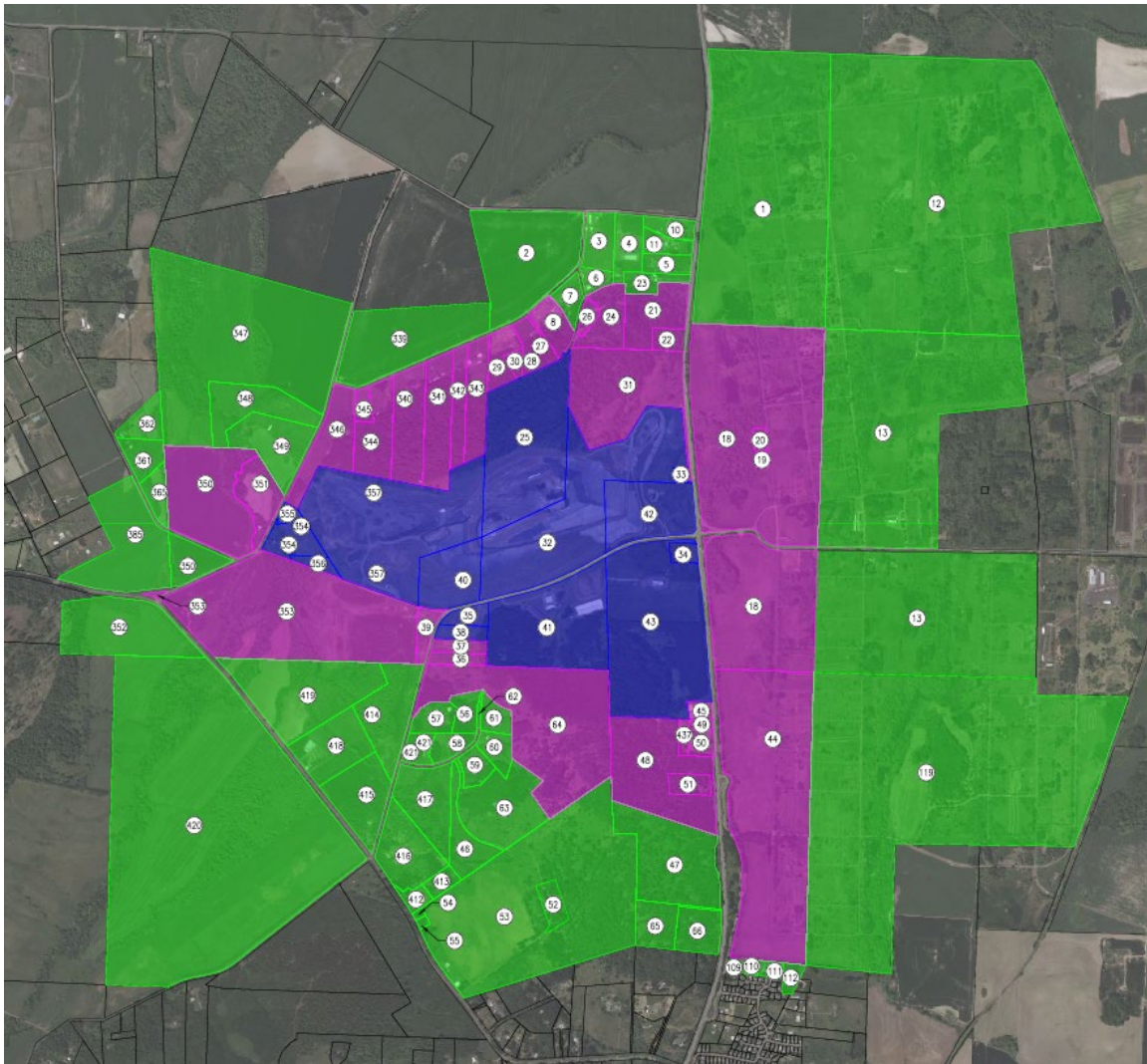


Figure 1 (Adjacent and Nearby Properties). Full-size version and tax lot list attached as Exhibit 8.

This analysis covers both the Adjacent Properties and the Nearby Properties. Although Applicant does not believe that the text of the criterion requires it to look beyond the Adjacent Properties, the Nearby Properties are included to demonstrate compliance with the criteria even in the context of a broader scope of review.

3. Uses on Adjacent and Nearby Properties.

The 16 tax lots that consist of the existing and proposed landfill areas and accessory uses are owned by VLI.²⁰ These properties are zoned LS and FC.

²⁰ Tax lots labeled 25, 32, 33, 34, 35, 38, 40, 41, 42, 43, 354, 355, 356, and 357 on Exhibit 8.

The Adjacent and Nearby Properties east of Highway 99W are predominately in public ownership, are zoned OS, and are managed as the E.E. Wilson Wildlife Area.²¹ The Wildlife Area is open to the public year-round for birding, hiking, limited hunting, and fishing. There are four small rural residential (RR-5) Nearby Properties owned by individual property owners at the very south end of the adjacent property.²² These properties are occupied by dwellings and some outbuildings.

The Adjacent and Nearby Properties north of the landfill and east of Wiles Road are generally on the north side of Coffin Butte and are shielded from the landfill by the ridge. The Adjacent Properties to the landfill are zoned FC and are generally owned by individuals and trusts and appear to be in small woodlot management or small-scale farming or livestock operations.²³ Ex. 32, pages 12-20. Several of these properties have residences and farm outbuildings, but it is unclear from observation whether they are being operated for commercial farm or forest operations within the meaning of BCC 51.020 (15) or (24). Ex. 32, pages 12-20. The large parcel northwest of the landfill is owned by the Oregon Department of Fish and Wildlife and is operated as a part of the E.E. Wilson Wildlife Area.²⁴ Ex. 32, pages 34-35. The FC-zoned properties north of the Wildlife Area appear to be vacant or used for small-scale farming operations.²⁵ Ex. 32, pages 21-23. These are owned by individuals, except for Tax Lot 0300, which is owned by Peltier Real Estate Company, a wholly owned subsidiary of Republic Services, Inc.²⁶ The Peltier property is vacant and is not being used or proposed for use by VLI for the existing landfill or the proposed Project. The Nearby Properties to the north of these Adjacent Properties are zoned RR-5 and owned by individuals²⁷ or are zoned EFU and owned by an LLC and appear to be in commercial farm use (grass seed, row crops).²⁸

The Adjacent and Nearby Properties east of the landfill and west of Wiles Road are zoned EFU and owned by individuals and trusts and appear to be in commercial farm use within the meaning of BCC 51.020.²⁹

²¹ Tax lots labeled 1, 12, 13, 18, 19, 20, 44 and 119 on Exhibit 8.

²² Tax lots labeled 109, 110, 111, and 112 on Exhibit 8.

²³ Tax lots labeled 8, 27, 28, 29, 30, 340, 341, 342, 343, 344, 345, and 346 on Exhibit 8.

²⁴ Tax lot labeled 31 on Exhibit 8.

²⁵ Tax lots labeled 21, 22, 24, and 26 on Exhibit 8.

²⁶ Tax lot labeled 21 on Exhibit 8.

²⁷ Tax lots labeled 3, 4, 5, 6, 7, 10, 11, and 23 on Exhibit 8.

²⁸ Tax lots labeled 2 and 339 on Exhibit 8.

²⁹ Tax lots labeled 347, 348, 349, 350, 351, 361, 362, 365, and 385 on Exhibit 8.

The Adjacent and Nearby Properties to the southwest of the landfill between Wiles Road and Soap Creek Road are zoned EFU and owned by individuals³⁰ or are owned by VLI or Peltier Real Estate Company, a wholly owned subsidiary of Republic Services, Inc., and leased to Agri-Industries, Inc., for farm use.³¹ See Ex. 31, page 8. The Nearby Properties southwest of Tampico Road are zoned EFU and are owned or controlled by Oregon State University and are used for research farm use.³²

The Adjacent Properties to the south of the landfill are zoned FC or RR-10 and are owned by individuals,³³ Peltier Real Estate Company, a wholly owned subsidiary of Republic Services Inc.,³⁴ or VLI.³⁵ These parcels are vacant or are in residential use. The Nearby Properties to the south of these Adjacent Properties are zoned EFU³⁶ or RR-10³⁷ and are owned by individuals or VLI.³⁸ These lots appear to be vacant, in residential use, or in farm use.

4. Establishing the “Area” for Impact Assessment.

The Benton County Code also does not define the term “area” for CUP purposes. During BCTT, staff reported that the County has considered the following factors in determining the extent and character of the “area”:

- a. The particular attributes of the geographic setting (including existing operations in the vicinity).
- b. Whether there is a distinct change in the area’s physical characteristics beyond a certain point.
- c. The features or elements give the area its character, i.e., homogenous or heterogeneous characteristics and the degree of similarity.

³⁰ Tax lots labeled 39, 415, and 418 on Exhibit 8.

³¹ Tax lots labeled 39, 353, 414, and 419 on Exhibit 8. Peltier Real Estate Company owns the tax lot labeled 39 on Exhibit 8.

³² Tax lots labeled 352, 411, and 420 on Exhibit 8.

³³ Tax lots labeled 37, 45, 48, 49, 50, 51 and 437 on Exhibit 8.

³⁴ Tax lot labeled 56 on Exhibit 8.

³⁵ Tax lots labeled 36, 38 and 64 on Exhibit 8.

³⁶ Tax lots labeled 46, 52, 53, 54, 55, 412, 413, 416, and 417 on Exhibit 8. (A portion of Tax Lot 52 is zoned RR-10.)

³⁷ Tax lots labeled 47, 56, 57, 58, 59, 60, 61, 62, 63, and 421 on Exhibit 8.

³⁸ Tax lot labeled 62 is owned by VLI.

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- d. The likely extent of the effects of the proposed land use. This may differ by particular effect—for example, the impact of noise might extend farther than visual impact (or vice versa).

Based upon the prior application and discussion, Applicant has identified five potential off-site impacts of the landfill: Noise, odor, water/groundwater, traffic, and visual impacts. Each of these off-site impacts has a differential effect on the surrounding area based upon proximity. As discussed in more detail below, the potential impact of odor extends farther from the landfill than the other potential impacts and thus has been used to identify the area of analysis under this criterion (the “Analysis Area”).

In order to establish the Analysis Area for purposes of BCC 53.215(1), VLI compiled all the odor complaints from June 2021 to August 2024 for which it had an address or location, plotted those locations on a map, and then drew a box around them. See Figure 2, below.

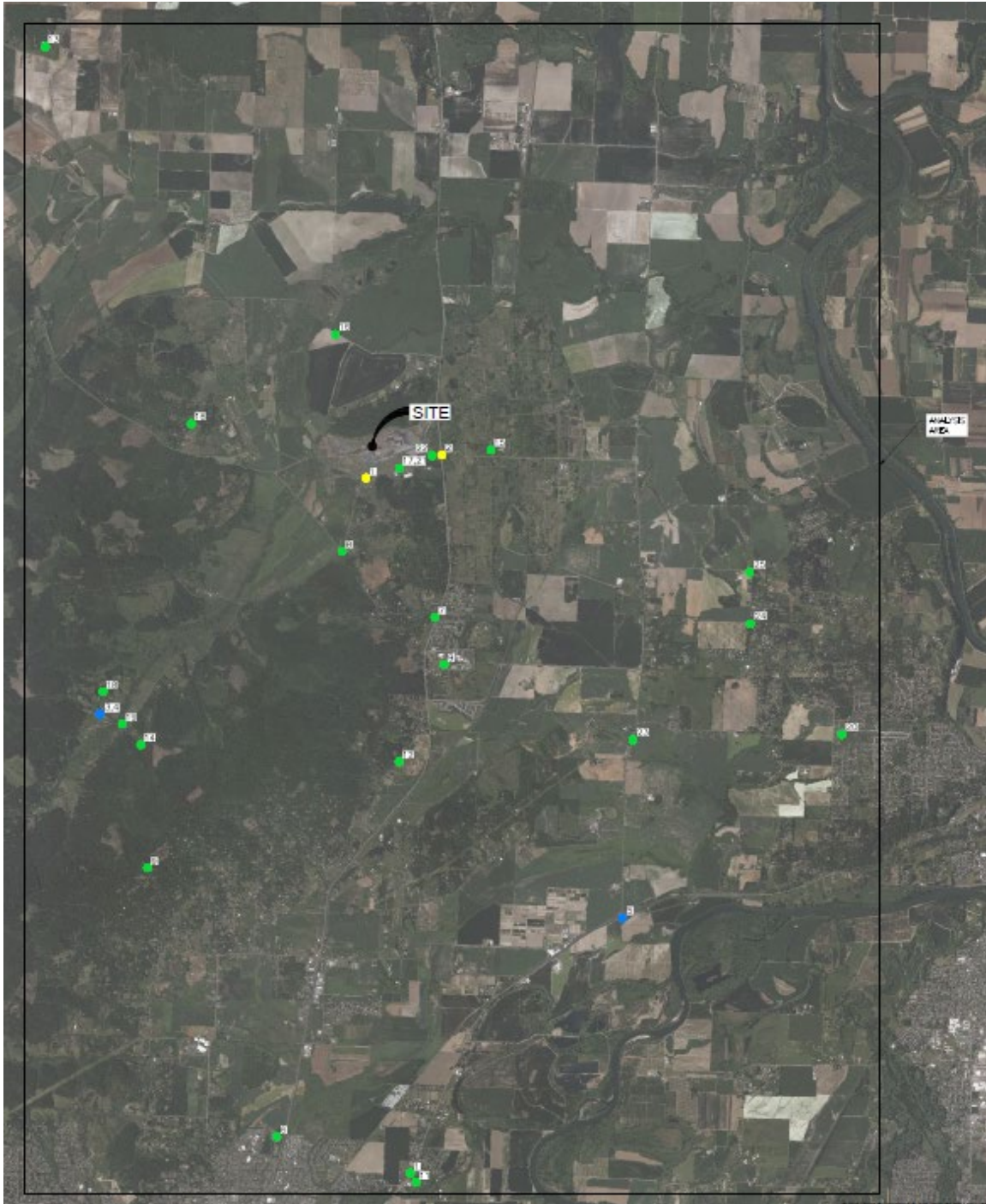


Figure 2 (The Analysis Area showing locations of odor complaints). (Full-size version and odor complaint list attached as Exhibit 9.)

VLI sometimes receives odor complaints that do not identify an address or location and notes that it did not consider these unlocated complaints to establish the Analysis Area. For these purposes, Applicant has also assumed that all the complaints were caused by odor from Coffin Butte Landfill without confirming the

actual source of the odor. Although these odor complaints are therefore over-inclusive in terms of establishing the outer limits of the potential odor impact and not required by the text of the criterion, for the purposes of the application VLI will consider this area for determining the outer limits of odor impact. Further, because odor is the impact with the farthest reach, the outer limits of odor impact provide an over-inclusive analysis area for the assessment of all other off-site impacts.

The land within the Analysis Area is not a distinct geographic setting, does not have unified physical characteristics, and is heterogenous and not homogenous. In this sense, it reflects a much larger “area” than would be determined using the other characteristics considered by the County in past applications, but Applicant is considering this “area” to demonstrate compliance with the criteria beyond what is arguably required under the code.

5. Establishing the Character of the Analysis Area.

As noted, 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.

The portion of the Analysis Area in the vicinity of the landfill is defined by two prominent topographic features: Coffin Butte and Tampico Ridge. These two topographic features are primarily surrounded and intersected by the roadways of Highway 99W on the east boundary, Robison Road to the north, Wiles and Tampico roads to the west, and Coffin Butte Road between the features. The interior flanks of Coffin Butte and Tampico Ridge are defined by Coffin Butte Landfill, while outer flanks are established with buffer areas and scattered rural residences, along with small-scale farming and forest operations. The higher elevations within the Analysis Area are well treed, while many of the lower/flatter elevations have been cleared. See Figure 3.



Figure 3 (Character, uses, and topography of the Analysis Area). (Full-size version attached as Exhibit 10.)

The portion of the Analysis Area beyond the immediate vicinity includes the City of Adair Village to the southeast. Adair Village is a small city in Benton County, with a population of approximately 1,005. To the east is the E.E. Wilson Wildlife Area, which is a 1,788-acre preserve that provides hunting, fishing, hiking,

wildlife viewing, shooting, and archery amenities; and to the west/southwest is Soap Creek Valley, which contains a number of rural residences.

The portion of the Analysis Area even farther afield includes larger-scale farm and forest operations, including the Starker Forest to the west, which is used for logging operations and recreation opportunities.

Current conditions in the Analysis Area include impacts from the current landfill operations, commercial farm and forest uses, urban development, and a major transportation corridor (Highway 99W).

6. Establishing the Purpose of the Applicable Zone(s).

The purpose of the LS zone is set forth in the Code as follows:

77.005 Purpose. The Landfill Site Zone shall establish a specific landfill area in Benton County.

The purpose of the FC zone is established in the Code as follows:

PURPOSE

60.005 Forest Conservation Zone.

- 1. The Forest Conservation Zone shall conserve forest lands, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, and protect the air, water, and wildlife resources in the zone. Resources important to Benton County and protected by this chapter include watersheds, wildlife and fisheries habitat, maintenance of clean air and water, support activities related to forest management, opportunities for outdoor recreational activities, and grazing land for livestock. Except for activities permitted or allowed as a conditional use³⁹, non-forest uses shall be prohibited in order to minimize conflicts with forest uses, reduce the potential for wildfire, and protect this area as the primary timber producing area of the County.*
- 2. The provisions of this Chapter are not intended to regulate activities governed by the Forest Practices Act and Rules.*
- 3. The provisions of this Chapter are based on the mandatory standards related to land use activities on forest land specified*

³⁹ Landfill uses are specifically allowed as a conditional use under BCC 60.205(11).

under Oregon state statutes, and Goal 4 of the Oregon Land Use Planning Program and the implementation requirements adopted by the Land Conservation and Development Commission pursuant to Chapter 660, Division 6 of the Oregon Administrative Rules.

The purpose of the LS zone is to host a landfill. The purpose of the FC zone is to conserve forest lands, promote forestry and timber uses, and protect natural resources. The specific provisions of the FC zone recognize that landfill uses are consistent with these purposes and expressly permit a landfill use as a conditional use. BCC 60.205(11).

7. Assessment of Impacts of the Proposed Project on the Adjacent Properties.

As noted above, the 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. Once moved, the landfill area to the north of Coffin Butte Road will not be used for disposal operations. There will be only one working face in operation at any time.

Current conditions on the Adjacent and Nearby Properties include the off-site impacts from the existing Coffin Butte Landfill. The question is thus whether the anticipated off-site impacts resulting from the Project differ from the current off-site impacts in a way that will “seriously interfere” with the uses of the Adjacent and Nearby Properties.

a. Noise. Greenbusch Group, Inc. (“Greenbusch”) assessed the noise impacts from the proposed expansion (Ex. 11). Greenbusch applied OAR 340-035-0035, which regulates sound emissions from commercial and industrial uses (the “DEQ Noise Rule”).⁴⁰ As explained below and in Exhibit 11, Greenbusch determined that the predicted sound levels from the Project will “comply with the applicable regulatory criteria without the inclusion of noise mitigation.”⁴¹

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, where noise is produced by equipment such as dozers, excavators, compactors, tipping machines,

⁴⁰ DEQ has adopted noise standards but does not enforce them itself.

⁴¹ In its 2021 study, Greenbusch concluded that the prior application would require mitigation measures in order to comply with the DEQ Noise Rule. The updated study, attached as Exhibit 11, concludes that no such measures are required by the 2024 proposal.

and truck traffic. When the Development Site is opened, active landfill operations will move from north of Coffin Butte Road to the Development Site, so overall noise impacts will not appreciably change as compared to the current conditions (and could even diminish).

The DEQ Noise Rule establishes sound-level limits as measured from “noise sensitive property.” Noise sensitive property, in turn, means property “normally used for sleeping, or normally used as schools, churches, hospitals or public libraries.” OAR 340-035-0015(38). The closest noise-sensitive uses to the Project are shown on Exhibit 11, Figure 5.1.⁴²

Applying the DEQ Noise Rule, noise impacts would be measured 25 feet toward the landfill from the point of noise-sensitive building closest to the landfill or the point on the noise-sensitive property line closest to the landfill (whichever is farthest from the landfill).

Greenbusch applied stricter standards than those required by the DEQ Noise Rule as follows:

(i) The DEQ Noise Rule imposes different limits for commercial and industrial sound sources depending on whether the site has been previously used as a commercial or industrial site. Limits are stricter for sites that have not been previously used as a commercial or industrial site. The Project would be considered a new sound source located on a previously used site, and thus subject to the less-stringent limit. Nonetheless, Greenbusch evaluated the anticipated increase over existing sound levels using the limits that apply to previously unused sites.

(ii) Motor vehicle sound emissions are measured within 1,000 feet of the noise-sensitive use. OAR 340-035-0030. As explained by Greenbusch, the type of motor vehicle use at the Project is exempt from the sound limits in OAR 340-035-0030. Nonetheless, Greenbusch evaluated the sound levels from anticipated motor vehicle use at the Project and determined that they would fall under the sound-level limits imposed by OAR 340-035-0030

(iii) Operating hours at the landfill extend into both daytime and nighttime hours for purposes of the DEQ Noise Rule. Greenbusch assessed compliance using the more stringent nighttime sound-level limits.

⁴² The closest noise-sensitive use is the residential home on Tax Lot 1104.

Greenbusch took a number of measurements of existing sound levels and used those measurements to model two different scenarios to analyze anticipated noise impacts from the Project. Based on these models, Greenbusch concluded that “[p]redicted sound levels from trucks using the landfill and on-site equipment comply with OAR sound limits at all nearby noise sensitive properties under both modeling scenarios.” Because Greenbusch analyzed the noise-sensitive properties closest to the Development Site and because sound dissipates over distance, these conclusions necessarily apply to all noise-sensitive properties that are Adjacent or Nearby Properties to the Landfill Boundary.

In addition, although not required by the DEQ regulations, Applicant has replaced back-up alarms on its on-site equipment with ambient sensing broadband back-up alarms as a voluntary noise-mitigation measure.⁴³

Finally, the Greenbush analysis demonstrates that anticipated off-site noise impacts from the Project will not be materially different from existing conditions.

Given that the proposal does not materially change the off-site noise impacts from current conditions and complies with all regulatory criteria even without mitigation, and further given that Applicant has engaged in additional mitigation measures, the off-site noise impacts of the Project will not “seriously interfere” with the use of Adjacent and Nearby Properties.

b. Odor. Weaver Consultants Group (“Weaver”) assessed the odor impacts from the proposed expansion (Ex. 12) and the comprehensive set of infrastructure and practices already in place to control and manage odors is outlined in Exhibit 13. As explained below and in Exhibit 12, Weaver determined that “there has not been a significant impact to human health and environment related to [landfill gas] or odors.”

The Adjacent and Nearby Properties have been in proximity to an active landfill for over 50 years. And, although the Project is a proposed “expansion,” the nature of landfill operations means the Project will not result in a material expansion of odor-producing uses.

As explained in Exhibit 12, the two primary sources of odor from a landfill are the solid waste in the active landfill area (with odors similar to household waste) and the biogas produced as the solid waste begins to decompose (“landfill gas” or “LFG”). Also, as explained in Exhibit 12, the working face of a landfill is much smaller than its overall size. At Coffin

⁴³ Hauling trucks and other trucks coming to the site will still use standard back-up alarms.

Butte Landfill, the day-to-day active area is less than one-half acre under current conditions and will continue to be a similar size when the Development Site is opened and prior active landfill area north of Coffin Butte Road is no longer used for disposal. Consistent with best industry practice, VLI covers the active area at the end of each day with a six-inch layer of soil or alternative daily cover, which is a proven method for effective odor mitigation in all climatic regions (as noted in Exhibit 12).

As described in Exhibits 12 and 13, VLI currently employs aggressive methods for control of landfill gas, including an extensive system of landfill gas collection and control, surface emissions monitoring (“SEM”), and daily odor monitoring.

Weaver also noted that VLI employs several odor-mitigation measures in excess of what is required by applicable regulations, including: (i) the use of a plastic liner in addition to soil cover; (ii) the installation of “final cover” over nearly 40 percent of the landfill surface (when final cover is not required until the landfill is no longer accepting waste); and (iii) the installation of LFG extraction wells for waste that has been in place for only one year (when LFG extraction wells are not required until waste has been in place for five years).

A review of odor complaints over the past 20 years demonstrates that VLI’s odor-control methods have been effective. Odor issues are regulated by DEQ, and the complaints to DEQ, the landfill, and local authorities have been minimal (see Findings on Odor, Ex. 12).⁴⁴

Because the perception of odor is subjective and has been the subject of questions during the prior application and the BCTT process, the County asked Applicant to provide further analysis related to landfill odor. Applicant retained Greg Hauser, CIEC, of SCS Engineers to conduct an odor analysis. (See Coffin Butte Landfill Expansion Odor Dispersion Model Study, attached as Exhibit 14). SCS employed the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) methodology accepted by the EPA and DEQ. SCS examined wind patterns (direction and speed) over time, odor-causing landfill activities, and topography.

As noted in the report, per ASTM standards, odor concentration is defined as the dilution of an odor sample with odor-free air, at which point only 50 percent of an odor panel (or population) will detect or recognize the odor. This point is expressed in units of “dilutions-to-threshold” or “D/T”.

⁴⁴ The uptick in 2021-22 occurred during the time of the contested CUP application and appears to be anomalous. Nonetheless, VLI investigates each of the complaints and takes action accordingly.

By definition, odor threshold is equal to 1 D/T. Typically, odors are considered a nuisance at or above 7 D/T.

SCS examined odor dispersion at both the current landfill operation and the proposed Project. The report concludes:

- Peak, off-site, one-hour odor concentrations were below 7 D/T (the numeric threshold of significance for nuisance odors) for all scenarios modeled.
- For existing operations (Source #1), the modeled peak, off-site, one-hour odor concentration was north of the landfill (in two different locations depending upon the meteorological data used) and ranged from 0.42 to 1.21 D/T. Impacts above 1 D/T (the point at which only 50 percent of the population is expected to smell any odor) extended only a small distance off site. None of the complaint locations from Figure 10 were within the 1 D/T contour.
- For proposed operations (Source #2), the modeled peak, off-site, one-hour odor concentration was either along Coffin Butte Road or south of the landfill (in two different locations depending upon the meteorological data used) and ranged from 0.64 to 2.04 D/T. Impacts above 1 D/T (the point at which only 50 percent of the population is expected to smell any odor) were either along Coffin Butte Road or extended only a small distance off site. Only one complaint location from Figure 10 was within the 1 D/T contour.
- Moving operations to the proposed expansion area will move the predicted peak, off-site, one-hour impact location, but impacts would remain well below the 7 D/T threshold.
- While off-site odors can occur as a result of the current and future landfill operations, these potential impacts are less than significant and expected to be short lived (i.e., only occur under weather conditions with poor atmospheric dispersion).

The SCS Study thus corroborates the Weaver assessment. Based upon the above evidence, the Project will not materially increase off-site odor impacts over the current operation, and certainly not in a way that would “seriously interfere with uses on adjacent properties.”

Because certain temporary landfill operations and weather conditions can temporarily increase odor and given the complaints and concerns about odor expressed during the prior application and during BCTT, Applicant is proposing a condition of approval to provide a more structured and objective process for monitoring odor. Applicant proposes an ongoing

odor-monitoring condition in the proposed conditions of approval. Ex. 21, Condition OA-10.

c. Traffic. Transight Consulting, LLC (“Transight”) prepared a Transportation Impact Analysis (“TIA”) for the proposed expansion (Ex. 15). Similar to the other off-site impacts, although the Project is a proposed “expansion,” the nature of landfill operations means the Project will not result in a material increase in traffic impacts.

Coffin Butte Landfill and the proposed improvements are served from Coffin Butte Road. Coffin Butte Road is a Major Collector Street and is identified as a Freight Route on the County TSP.

As discussed in the TIA, the anticipated changes to traffic are limited and consist of the following:

“Private passenger vehicles using the landfill will continue to use the scales and services on the north side of Coffin Butte Road, with these consolidated materials then hauled by commercial truck to the expansion site for disposal. Commercial account users will also be required to use the current scales to weigh in, then will be directed to the expansion area to dispose of materials. These private and commercial vehicles will use a new outbound scale near the expansion site exit, will pay the appropriate fees, and will then exit onto Coffin Butte Road.

* * * *

“As a result of retaining the scales on the north side of Coffin Butte Road for the expansion there will be internal trips between the north and south sides of Coffin Butte Road.”

As further discussed in the TIA, trip generation for landfill uses is not determined by landfill size, but rather by the population of the areas served.

VLI is expanding Coffin Butte Road to include bicycle lanes and shoulders and a westbound left-turn lane to avoid impacts to through traffic on Coffin Butte Road.⁴⁵

The TIA is based on four sets of traffic counts taken from 2021 to 2023. These counts all reflect very low traffic volumes in the vicinity of the landfill. In addition, future traffic increases attributable to the landfill are based on projected population growth, which is minimal (approximately

⁴⁵ The preliminary turn-lane design includes enough queue storage for four semitrucks.

1 percent annually in the Linn-Benton area, 1 percent or lower in Linn County, and approximately 1.7 percent statewide in Oregon).

The TIA concludes as follows:

“This report shows that the proposed landfill expansion provides minimal impacts to Benton County and ODOT transportation facilities. The proposed expansion site will not alter public trip routing, emergency ingress or egress, and it will retain the current landfill access routes. This layout maintains current functional designations identified in the County’s Transportation System Plan and the design optimizes travel safety for patrons and employees.”

The TIA analyzes the expected traffic impacts from the Project as far as those impacts extend from the Landfill Boundary (which is not far) and found that transportation facilities in the area will continue to function well within applicable County standards. Thus, the additional trips generated from the expansion, if any, and the minor changes in traffic patterns will not “seriously interfere” with the use of Adjacent Properties or Nearby Properties.

d. Water—Well Capacity and/or Groundwater

Impacts. Tuppen Consultants, LLC (“Tuppen”) assessed environmental and operational considerations related to the Project (Ex. 16), and Civil & Environmental Consultants, Inc. (“CEC”) prepared a preliminary drainage report for the proposed expansion (Ex. 17). These documents outline the natural dynamics of groundwater flow in the area, the groundwater use associated with the Coffin Butte Landfill, and the existing and proposed drainage systems serving the landfill. As explained below and in Exhibits 16 and 17, the proposed expansion will have no effect on the landfill’s use of groundwater in the area and will not materially change off-site impacts on groundwater quality.

As described by Tuppen, current surface-water drainage from the operations areas of the landfill drain through a number of systems designed to remove site-related compounds from stormwater before it discharges to creeks that flow off site. These systems include a settlement pond and a bioswale that was recently upgraded to include a subsurface flow wetland (SSFW) that discharges at a sampling point.

As further described by Tuppen, groundwater supply in the area is limited and disconnected in nature.

(i) Impact on groundwater supply (well capacity). As noted by Tuppen, landfill construction and the bulk of landfill operations use water supplied by Adair Village, not groundwater

from wells. The only groundwater used from wells is for the existing office and the scale house, and the volume of groundwater consumed at these two locations will not change. The Project will thus have no impact on groundwater supply in the area (as compared to current conditions).

(ii) Impact on groundwater quality. Tuppan and CEC describe a number of features and systems that protect groundwater resources, including the groundwater divide created by Tampico Ridge, the existing combined detention and wetpond facility, the requirement to install a “state-of-the-art” landfill liner system at the Development Site, stormwater diversion facilities, and a comprehensive water-quality monitoring program. Monitoring of stormwater is required by both the site’s solid waste permit and its NPDES industrial stormwater discharge permit. The systems outlined above meet or exceed all regulatory requirements for groundwater protection, and to the extent they fail to function as designed, the monitoring programs will ensure that potential contamination is identified and mitigated before entering the off-site groundwater supply. The new landfill liner system planned for the Development Site is state of the art and will provide even more protection than the current system. Given that comprehensive mitigation and monitoring occurs on site, the potential impacts of the proposed expansion on the off-site groundwater supply will not “seriously interfere” with the use of Adjacent Properties or Nearby Properties.

e. Visual Impacts. Exhibit 18 is a collection of renderings showing the view corridors west along Highway 99W and east along Coffin Butte Road as they currently exist and would appear after development of the Project and the opening of the Development Site.

Figures 1, 2, and 3 show the northwest and southwest view from Highway 99W toward the landfill. As shown in Figure 1, the Project will retain the trees and vegetation at the southwest corner of the intersection of Coffin Butte Road and Highway 99W and will retain the buffer trees along the eastern property line. The Project will modify the topography of the area behind the trees shown in Figure 1; however, with the line of sight from this location, the visual impacts will be mostly unnoticeable (the top of Tampico Ridge is not visible).

Moving to a slightly higher elevation (north on Highway 99W) as shown in Figure 2, the top of Tampico Ridge is visible; thus, from this line of sight the Project may be visible.

Figure 4 shows the southwest view from the intersection of Coffin Butte and Soap Creek Road, demonstrating that the Development Site will be screened by vegetation along that corridor.

Applicant proposes installing additional screening vegetation consistent with the County's proposed condition in the 2021 Staff Report, plus additional screening. See Ex. 2, sheet 18. While the proposed landfill improvements on the Development Site may be visible at buildout along Coffin Butte Road within the landfill area owned by VLI and traffic traveling south on Highway 99W, the improvements will not be visible from the nearby streets, other rights-of-way, and properties that are not at higher elevations.

Overall, while the expansion may be visible from some locations around the area, it will not be highly visible, and a westerly visual corridor will be retained. In the future and in compliance with closure/post-closure plans, the current landfill area will be covered and reclaimed, reducing the off-site visual impacts that exist under current conditions. The overall effect of relocating disposal operations to the Development Site will be to reduce off-site visual impacts from those caused by the current operation.

One of the Planning Commission's reasons for denying the 2021 application was that the proposal would essentially create a new hill by filling up the gap between Tampico Ridge and Coffin Butte and therefore substantially interfere with the character of the area in a negative way. The 2024 application preserves Coffin Butte Road and the valley between Tampico Ridge and Coffin Butte. The Development Site, when completed, will change the topography on the north slope of Tampico Ridge, but will be substantially lower than the ridgeline and will be 175 feet lower in height and similar in character to the closed and to-be-closed areas north of Coffin Butte Road. See topographical cross-section attached as part of Exhibit 2, Sheets 22 and 23; Exhibit 18, Build-out of Coffin Butte Landfill, with approved expansion. As noted above, the LS zone contemplates landfill use, so some elevation changes are to be expected.

Applicant's lighting plan for the overall site will minimize additional light and glare. See Sight Lighting Summary, attached as Exhibit 19.

For these reasons, the off-site visual impacts of the Project will not "seriously interfere" with the use of Adjacent or Nearby Properties.

8. Assessment of Whether the Potential Impacts Constitute "Serious Interference" with the Character of the Area.

As established above, the character of the Analysis Area is heterogenous, but in the immediate vicinity of the landfill, it consists primarily of higher-intensity resource land that provides farm, forest, resource extraction, landfill operations,

and open spaces surrounded by scattered rural residences and small-scale farm and forest operations. The Analysis Area is currently impacted by occasional odors, sounds, noises, and trips from the existing landfill operation and surrounding resource-extraction uses.

a. Noise. The Analysis Area includes the Adjacent and Nearby Properties addressed in Section III.C.7 above, as well as a large area beyond those properties. As established above, the projected off-site noise impacts will not seriously interfere with the use of the Adjacent and Nearby Properties. It follows that any noise impacts on the Analysis Area beyond those properties will only be more attenuated and will not “seriously interfere” with the character of the Analysis Area.

b. Odor. The Analysis Area includes the Adjacent and Nearby Properties addressed in Section III.C.7 above, as well as a large area beyond those properties. As established above, the projected off-site odor impacts will not seriously interfere with the use of the Adjacent and Nearby Properties. It follows that any odor impacts on the Analysis Area beyond those properties will only be more attenuated and will not “seriously interfere” with the character of the Analysis Area.

c. Traffic. The Analysis Area includes the Adjacent and Nearby Properties addressed in Section III.C.7 above, as well as a large area beyond those properties. As established above, the projected off-site traffic impacts will not seriously interfere with the use of the Adjacent and Nearby Properties. It follows that any traffic impacts on the Analysis Area beyond those properties will only be more attenuated and will not “seriously interfere” with the character of the Analysis Area.

d. Water—Well Capacity and/or Groundwater Impacts. The Analysis Area includes the Adjacent and Nearby Properties addressed in Section III.C.7 above, as well as a large area beyond those properties. As established above, the projected off-site water impacts will not seriously interfere with the use of the Adjacent and Nearby Properties. It follows that any water impacts on the Analysis area beyond those properties will only be more attenuated and will not “seriously interfere” with the character of the Analysis Area.

e. Visual Impacts. The Analysis Area includes the Adjacent and Nearby Properties addressed in Section III.C.7 above, as well as a large area beyond those properties. As established above, the projected off-site visual impacts will not seriously interfere with the use of the Adjacent and Nearby Properties. It follows that any visual impacts on the area beyond those properties will only be less noticeable and will not “seriously interfere” with the character of the Analysis Area.

9. Assessment of Impacts on the Purpose of the Zone(s).

The Development Site is located across two zones: the LS zone and the FC zone.

As established in Section III.C.6 above, the purpose of the LS zone is to host a landfill. Allowing for landfill expansion in the Landfill Site Zone will *fulfill* rather than “seriously interfere” with the stated purpose of the zone.

The purpose of the FC zone is to conserve forest lands, promote forestry and timber uses, and protect natural resources. The specific provisions of the FC zone recognize that landfill uses are consistent with these purposes and expressly permit a landfill use as a conditional use. BCC 60.205(11).

No solid-waste disposal is proposed for the FC-zoned land. Instead, the proposed improvements on the FC-zoned land include an 1,800-square-foot employee building, parking, access road modifications, and the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area. All uses proposed as part of the Project (i.e., disposal site for solid waste approved by the County Commissioners and DEQ, together with equipment, facilities, or buildings necessary for its operation) are permitted in the FC zone, so long as Applicant demonstrates compliance with all applicable CUP approval criteria. The elements of the Project that are proposed on the FC-zoned land are associated with the existing, approved Coffin Butte Landfill. These uses are explicitly allowed and therefore consistent with the stated purpose of the zone, and CUP review will minimize conflicts with forest uses, reduce the potential for wildfire, and protect this area as the primary timber-producing area of the County. Thus, the elements of the Project that are proposed on the FC-zoned land will not “seriously interfere” with the purpose of the FC zone.

As detailed above, the proposal satisfies this approval criterion.

D. BCC 53.215 (2) (Criteria) (The proposed use “does not imposed an undue burden” on public facilities and services).

This criterion states:

The decision to approve a conditional use permit shall be based on findings that:

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

Applicant Response: Coffin Butte Landfill serves the public. The development is proposed so that the landfill can continue to accommodate public needs for an additional six years beyond the life of the current approved landfill. As noted above, when the Development Site is opened, the working face will move from north of Coffin Butte Road to the Development Site. As detailed in the traffic report (Ex. 15), trip growth (transportation impacts) will grow with overall population, but not because of the relocation of the working face to the Development Site. As noted in Exhibit 15, trips generated to and from the working face will remain substantially the same and well within the capacity of the existing road system. Because the 2024 CUP application does not include closure of Coffin Butte Road, none of the surrounding road systems will be impacted, and the new turn lanes and bike paths will improve safety and access along Coffin Butte Road. The Project does not necessitate any additional water or sewer services, so will not affect public water or sewer service. The property is served by the Adair Fire District and the Benton County Sheriff's Department. The Fire District expressed concern about the impact of closure of Coffin Butte Road on emergency ingress and egress during prior 2021 application; the 2024 CUP application does not change that access. Applicant's Fire Risk Assessment Report, attached as Exhibit 20, details how Applicant's fire mitigation plan prevents or addresses fires, and concludes that operations at Coffin Butte Landfill do not present a significant fire risk. There is no evidence or history that suggests that the landfill creates significant law enforcement issues. The proposed development is not projected to increase impacts to these providers.

For the above-noted reasons, the proposed expansion does impose an undue burden on any public facilities or services.

E. BCC 53.215 (3) (Criteria) (The proposed use “complies with any additional criteria”). This criterion states:

The decision to approve a conditional use permit shall be based on findings that:

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

Applicant Response: Additional criteria are included in BCC chapters 60 and 77. This narrative addresses how the proposal complies with the additional criteria of those sections; the proposal therefore complies with this referenced provision.

F. BCC 53.220 (Conditions of Approval). This section states:

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. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.925 to ensure compliance with a condition of approval. Conditions may address, but are not limited to:

1. Size and location of site.
2. Road capacities in the area.
3. Number and location of road access points.
4. Location and amount of off-street parking.
5. Internal traffic circulation.
6. Fencing, screening and landscape separations.
7. Height and square footage of a building.
8. Signs.
9. Exterior lighting.
10. Noise, vibration, air pollution, and other environmental influences.
11. Water supply and sewage disposal.
12. Law enforcement and fire protection.

Applicant Response: Applicant understands that this section of the Code allows for the imposition of conditions of approval to address compliance with the applicable criteria, if warranted. This Code section does not add any additional substantive review criteria for approval.

Applicant expects the County to impose conditions of approval. Applicant has prepared draft conditions of approval for the County's consideration. See Draft Conditions, attached as Exhibit 21. The draft conditions of approval are based upon the evidence and recommendations contained in Applicant's exhibits and the analysis in this burden of proof, as well as the County's relevant recommended conditions in 2021.

One condition that was at issue in the 2021 application and was an area of disagreement during BCTT is a limitation on the hours of operation. Applicant requests a condition that would allow it to continue the current hours of operation. Prior to opening, Applicant currently must begin internal operations to prepare for opening. The landfill opens to commercial hauling traffic at 5 a.m. and opens to the general public at 8:00 a.m., except on Sundays, when it opens at 12:00 p.m. The site closes to both commercial and public traffic at 5:00 p.m. all days, with internal operations continuing thereafter to properly close the landfill for the day. The landfill has been observing these hours since 2002. This is in accordance with PC-02-07 2002, in which the County imposed the following condition regarding hours of operation:

“The landfill operation hours shall occur between 8:00 a.m. and 5:00 p.m. Monday through Saturday, and 12:00 p.m. through 5:00 p.m. on Sunday, with 24-hour access for commercial customers.”

The question during BCTT was whether Applicant was violating this section by having staff on site before 8:00 a.m. and after 5:00 p.m. Applicant had always interpreted “landfill operation hours” to mean hours that it is open to the public. Applicant noted that since the condition allows 24-hour access for commercial customers⁴⁶, the County must have contemplated that at least some staff would be on site outside the hours that it was open to the public.

From an off-site impact standpoint, having staff on site to prepare for opening and closing of the landfill has no impact on the Adjacent or Nearby Properties or the Analysis Area. In contrast, limiting the hours of operation would concentrate landfill traffic into the peak hours, resulting in increased congestion and the potential for more user conflicts. See Ex. 15, pages 22-23.

For these reasons, Applicant respectfully requests that any condition of approval relating to hours of operation permit Applicant to continue its long-standing practice. Exhibit 21 contains a draft condition of approval (OA-1) addressing hours of operation. The impacts to Adjacent or Nearby Properties or to the Analysis Area will not increase as compared to the existing operation, and it will avoid the unintended consequences of limiting those hours.

G. BCC 53.225 (Modification of a Conditional Use Permit). This section states:

An original applicant or successor in interest may request that a conditional use permit be modified if a change in circumstance has occurred since approval which would justify a change in the permit. Such application shall be processed as a new request for a conditional use permit.

Applicant Response: The landfill site was previously granted approval, and the current proposal is a modification of the prior approval. However, whether a modification of a CUP or a new CUP, this section establishes that the application shall be processed as a new request for a CUP. Applicant anticipates that the application will be processed accordingly.

⁴⁶ Historically, the site did operate 24 hours a day for commercial customers. At its own discretion, Applicant limited hours in the early 2000s to 5:00 a.m. to 5:00 p.m. for commercial customers.

H. **BCC 53.230 (Period of Validity).** This section states:

Unless otherwise specified at the time of approval, a conditional use permit for a single-family dwelling shall be valid for ten (10) years from the date of decision and other conditional use permits shall be valid for a period of two (2) years from the date of decision.

Applicant Response: This section establishes a time limit within which a new CUP must be initiated unless otherwise specified at the time of approval. Applicant notes that the County's final decision may be appealed, and Applicant must also obtain DEQ permits prior to constructing the landfill, which cannot begin until the County has approved the CUP. For these reasons, Applicant has proposed a longer period in its draft conditions of approval attached as Exhibit 21 to account for these exigencies.

I. **BCC 53.235 (Extension of Permit).** This section states:

A conditional use permit may be extended for good cause at the discretion of the approving authority responsible for the original decision. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the original permit.

Applicant Response: Applicant intends to initiate the development as provided in the draft conditions of approval. However, in the event of unexpected circumstances, Applicant recognizes that an extension may be granted under this section.

IV. COMPLIANCE WITH BENTON COUNTY CODE CHAPTER 77 (LANDFILL SITE)

A. BCC 77.005 Purpose. This section states:

The Landfill Site Zone shall establish a specific landfill area in Benton County.

Applicant Response: This section establishes a purpose but does not provide any development standards or approval criteria. Compliance with the standards of this section and the criteria of the Code will ensure that this purpose is implemented.

B. BCC 77.010 Application. This section states:

The Landfill Site Zone recognizes the existing site in the Coffin Butte area, and allows for its continued use pursuant to Oregon Department of Environmental Quality (DEQ) permits, Benton County Code Chapter 23, and an approved Site Development Plan.

Applicant Response: The current development area that is located within the LS zone is operating under Oregon DEQ Permit # 306. Upon approval, Applicant will seek to modify the existing DEQ permit to include the Development Site. The LS zone was expressly created to accommodate and permit the continued use of the landfill that had existed in this area since the 1940s.

C. BCC 77.105 Permitted Uses. This section states:

The following uses are allowed in the Landfill Site Zone:

(1) Municipal solid waste disposal, in accordance with a Solid Waste Disposal Franchise and an approved Site Development Plan.

(2) Recycling facilities.

(3) Forestry and agricultural use as a conversion factor leading to reclamation of the site in the future.

(4) Aggregate and mineral resource use in accordance with Oregon Department of Geology and Mineral Industry Permits.

(5) Structures normally associated with the operation of a landfill.

(6) Operation of equipment in conjunction with landfill operations.

(7) Installation and operation of monitoring devices as required by DEQ such as leachate sample equipment, leachate treatment facilities, and vector control systems.

(8) Landfill gas monitoring and recovery systems.

Applicant Response: This section establishes that solid waste disposal is a permitted use. The Project is a permitted use in the zone.

D. BCC 77.205 Prohibited Uses. This section states:

The following uses are prohibited in the Landfill Site Zone:

(1) Hazardous waste disposal.

(2) Disposal of materials prohibited by the Solid Waste Disposal Franchise.

Applicant Response: The Project does not include any of these prohibited uses.

E. BCC 77.305 Conditional Uses Approved by the Planning Commission. This section states:

Any proposal to expand the area approved for a landfill within the Landfill Site Zone is allowed by conditional use permit approved by the Planning Commission. The Benton County Environmental Health Division and the Solid Waste Advisory Council shall review and make recommendations through the Planning Official to the Planning Commission regarding the Site Development Plan Map and narrative. The Oregon Department of Environmental Quality shall be given an opportunity to review and comment on any proposal which may affect this site.

Applicant Response: The application includes a proposal to expand the area approved for a landfill within the LS zone to the Development Site located south of Coffin Butte Road; this section therefore requires review and approval by the Planning Commission. This section further establishes that the Planning

Commission will review comments from the Benton County Environmental Health Division, the Solid Waste Advisory Council, and DEQ. Applicant anticipates that the application will be processed accordingly.

F. BCC 77.310 Conditional Use Review. This section states:

(1) The applicant for a conditional use permit shall provide a narrative which describes:

(a) Adjacent land use and impacts upon adjacent uses[.]

Applicant Response: A comprehensive review of lands that are Adjacent or Nearby to the LS-zoned properties and impacts thereupon was included above. The findings from the above-noted sections are incorporated herein.

(b) Future use of site as reclaimed, and impacts of that reclamation on adjacent uses[.]

Applicant Response: The post-closure future use of the LS-zoned development area will be consistent with the rest of Coffin Butte Landfill. As documented in Exhibit 22 (Reclamation Plan), page 5:

The final closed surface of the completed landfill will appear to be a sloped grassy savanna that blends with, and appears to be part of, the adjacent butte. Planned land use for the property will be open space grassland. Any development over filled areas of the CBLF should not include permanent enclosed structures where differential settlement and/or methane gas may cause risk.

Like the rest of Coffin Butte Landfill, the future (post-closure) use of the Development Site is not anticipated to have any impacts on Adjacent or Nearby uses.

(c) Provisions for screening of the site from public roads and adjacent property[.]

Applicant Response: This section does not require screening or provide a specific standard for screening. This section requires only that an applicant describe “provisions for screening the site from public roads and adjacent properties.” Applicant owns and manages the majority of the surrounding properties, and the eastern portion of Tax Lot 1200 is and will continue to be well treed and will provide a substantial buffer from the planned improvements. Furthermore, the 83.7-acre parcel south of the landfill development area is maintained as an open-space area, along with areas to the north and west. The

areas owned by Applicant that are maintained as open spaces and/or engaged in commercial farming operations will continue to provide sufficient buffers from public roads and the majority of the Adjacent Properties. The closest Adjacent Property to screen is Tax Lot 1103 at 38691 Soap Creek Road. This nearby residence is and will continue to be buffered from the disposal site development area by a sloped and treed grade. Additionally, Applicant is proposing installation of additional screening consistent with the County's proposed condition in 2021. See Ex. 2, sheet 18. Overall, the planned improvements will be screened by the existing grades and vegetation existing and to be installed on the property and surrounding area.

(d) Egress and ingress[.]

Applicant Response: The proposal modifies the access points on the south side of Coffin Butte Road; it closes the access point to the existing leachate pond and relocates the access point to the gas-to-energy plant, making it the main access point to the southern area. The new access design will be served by an improved Coffin Butte Road, which includes a new left-turn lane and bike lanes. The existing and new access points, along with the overall functionality of the proposed access design, has been studied by the traffic engineer. As detailed in Exhibit 15, the access design and proposed configuration are safe and efficient and can accommodate the proposed development.

(e) Other information as required by the Planning Official.

Applicant Response: To date, the Planning Official has not requested any additional information.

(2) A site plan map shall accompany a conditional use permit application. The map shall contain at least a scale, north arrow, assessor map numbers, location of existing landfill, access, proposed alteration, leachate treatment or monitoring areas surface water systems, and existing and proposed screening (location and types of materials). A statement shall be placed on the map that the site plan map and narrative together are considered as the Site Development Plan. A signature block shall be included for the date the approval is given and the signature of the Planning Official indicating approval.

Applicant Response: The application packet is supported by a site plan that contains all of the elements noted in this section. See Ex. 2, sheets 5-9.

(3) A conditional use permit application shall contain a reclamation plan describing present efforts and future reclamation plans related to the site.

Applicant Response: The application packet is supported by a reclamation plan that contains all of the elements noted in this section. See Ex. 22.

(4) The following environmental and operational considerations shall be reviewed prior to changes in the documents referenced above:

- (a) Geology;**
- (b) Groundwater and surface water;**
- (c) Soil depth and classification, and erosion control factors;**
- (d) Slope; and**
- (e) Cover material availability, transportation, and use.**

Applicant Response: The application packet is supported by Exs. 9, 10, and 22. These engineering documents contain, address, and review all of the elements noted in this section.

G. BCC 77.405 Review of DEQ Permits. This section states:

Copies of materials submitted to the Oregon Department of Environmental Quality as a part of any permit process shall be submitted to the Planning Official. If at any time the Planning Official determines that permit application materials or conditions of DEQ permit are judged to merit public review, a Public Hearing before the Planning Commission shall be scheduled.

Applicant Response: A copy of the existing DEQ Permit #306 is included with the submittal items, along with correspondence related to the expansion work plan). Upon approval by the County, Applicant will apply to DEQ for the currently proposed development (to ensure conformance with all DEQ requirements) and will provide the DEQ submittal materials to the Planning Official (to determine whether the materials merit additional public review). If the future DEQ permit changes are judged by the Planning Official to merit additional public review, Applicant understands that an additional Public Hearing before the Planning Commission may be scheduled at that time.

V. COMPLIANCE WITH BENTON COUNTY CODE CHAPTER 60—FOREST CONSERVATION

A. BCC 60.005 (Purpose). This section states:

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

(2) The provisions of this Chapter are not intended to regulate activities governed by the Forest Practices Act and Rules.

(3) The provisions of this Chapter are based on the mandatory standards related to land use activities on forest land specified under Oregon state statutes, and Goal 4 of the Oregon Land Use Planning Program and the implementation requirements adopted by the Land Conservation and Development Commission pursuant to Chapter 660, Division 6 of the Oregon Administrative Rules.

Applicant Response: The provisions of this section establish the purpose of the FC zone. This section does not establish any measurable development standard or approval criteria. Conformance with the established standards of this chapter and the conditional use approval criteria will implement the purposes stated in this section.

B. BCC 60.020 (Standards for Application for the Forest Conservation Zone). This section states:

The Forest Conservation Zone is applied to areas designated Forestry on the adopted Comprehensive Plan Map in compliance with Statewide Planning Goal 4 and OAR 660. This zone consists of areas containing forest soils which are not otherwise subject to an exception of the statewide planning goals. The Forest Conservation Zone is also applied to other lands necessary to preserve and maintain forest uses consistent with existing and future needs for forest management. Forest land capability is indicated by the nature and type of soil, slope, size and location of the property, the suitability of the terrain, and other similar factors. The Forest Conservation Zone is also applied to intervening lands which are suitable for forest management related uses or needed to protect forest land.

Applicant Response: This section establishes how the FC zone is to be implemented; it does not establish any measurable development standard or approval criteria.

C. BCC 60.030 Definitions. This section states:

As used in this chapter * * * [.]

Applicant Response: It is understood that the definitions of this section will be used in the review of this application.

D. BCC 60.050 Notice of Pending Action. This section states:

Notice of all land use applications for new permanent dwellings and land divisions in the Forest Conservation Zone shall be mailed to the Department of Land Conservation and Development and the Department of Forestry at their Salem office at least ten (10) days prior to the date of decision or permit issuance. The information shall contain the information set forth in BCC 51.615.

Applicant Response: The proposal does not include any new dwellings or a land division; this provision is therefore not applicable.

E. BCC 60.075 Period of Validity of Discretionary Decisions. This section states:

(1) When a discretionary decision under ORS 215.416 approves a dwelling pursuant to BCC 60.105(14) or (17), 60.108, or 60.109, the approval shall be void four years from the date of final decision if the development action is not initiated in that period. “Development action” typically means the property owner has submitted a complete application for a building permit for the dwelling or manufactured dwelling placement permit.

(a) One extension may be granted for two additional years.

(b) Five additional one-year extensions may be granted. Extensions shall only be granted if:

(A) The applicant makes a written request for the extension prior the expiration of the final approval or a previous extension, whichever is applicable;

(B) The applicable residential development statute has not been amended following the issued land use decision, except the amendments to ORS 215.750 Forest Dwelling Template Test by section 1, chapter 433, Oregon Laws 2019 (Enrolled House Bill 2225); and

(C) An applicable rule or land use regulation has not been amended following the issuance of the land use decision, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.

(c) Approval of an extension is not a land use decision and is not subject to appeal as a land use decision.

(2) A discretionary decision, other than a dwelling identified in subsection (1) of this section or a land division, approving a proposed development on Forest Conservation land outside an urban growth boundary is void two years from the date of final decision if the development action is not initiated in that period.

Applicant Response: This section establishes a time limit within which a new CUP must be initiated. Applicant understands the period of validity that is established in this section and plans to develop the site as provided in the draft conditions of approval, attached as Exhibit 21.

F. BCC 60.080 Soils Designations. This section states:

(1) For purposes of determining the “cubic feet per acre per year” in the review of an application for a dwelling pursuant to BCC 60.108(2), the county shall use the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Soil Conservation Service/Natural Resources Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry’s Technical Bulletin entitled “Land Use Planning Notes Number 3 dated April 1998” or successor document and be approved by the Oregon Department of Forestry.

(2) For purposes other than those described in subsection (1), the County shall use the soil designation most recently published by the Natural Resources Conservation Service, except that the County may use more detailed soils data provided it is related to the NRCS land capability classification and is prepared by a soils scientist certified for changing soil designations by the Oregon Department of Agriculture.

Applicant Response: In the event that soil designation is necessary, Applicant understands that the County shall use the soil designation most recently published by the NRCS, except that the County may use more detailed soils data, provided it is related to the NRCS land capability classification and is prepared by a soils scientist certified for changing soil designations by the Oregon Department of Agriculture.

G. BCC 60.105 Permitted Uses Allowed in the Forest Conservation Zone.

Applicant Response: The Project is not a permitted use in the zone and so this section does not apply.

H. BCC 60.106 to 60.109 Dwellings In Forest Conservation Zone.

Applicant Response: The Project does not include a dwelling and so these sections do not apply.

I. BCC 60.205 Conditional Uses Subject to Approval by the Planning Official.

Applicant Response: As detailed below, the proposed uses on the FC-zoned properties require review and approval by the Planning Commission, not the Planning Official; therefore, this section does not apply.

J. BCC 60.215 Conditional Uses Subject to Review by the Planning Commission. This section states:

The following uses may be allowed in the Forest Conservation Zone by a conditional use permit approved by the Planning Commission in conformance with the criteria set forth in BCC 60.220, 53.215, and 53.220.

(11) Disposal site for solid waste approved by the Benton County Board of Commissioners and the Oregon Department of Environmental Quality together with equipment, facilities, or buildings necessary for its operation.

Applicant Response: Whether serving the existing or proposed disposal site, the proposed Project elements on the FC-zoned land fall into the category of equipment, facilities, or buildings necessary for the landfill operation. Coffin Butte Landfill has been approved by the County Commissioners and is operating under DEQ Permit #306 (Exs. 23-25). For the above-noted reasons, a CUP can be approved by the Planning Commission for the FC-zoned portions of the property.

K. BCC 60.220 Conditional Use Criteria. This section states:

(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[.]

Applicant Response: Applicant notes that this section by its terms only applies to the development on the FC-zoned property. As noted above, however, the existing farm and forest uses on the Adjacent Properties and in the area have developed over the years while operating adjacent to Coffin Butte Landfill and its subsidiary operations. Based upon the above findings, the relocation of the working face south of Coffin Butte Road will not materially affect or increase negative impacts on surrounding properties, whether in farm or forest or residential use. Most of the FC-zoned property that is part of the Project is currently being used for equipment, facilities, or buildings accessory to the landfill use; they are simply being relocated to accommodate the new working face.

The new or relocated elements that are proposed on the FC-zoned lands are an 1,800-square-foot employee building and parking, access road modifications, the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area to support the landfill. These elements will slightly reduce the amount of land that is available for farm and forest uses; however, except as noted below the farm use on Tax Lot 1200, the area of these improvements is not actively engaged in commercial farm or forest activities within the meaning of BCC 51.020(15) and (24)(a) and is currently used for landfill operations or other non-forest or non-agricultural use. The majority of the surrounding properties are owned by Applicant and are engaged in commercial farming operations and/or open space/buffer uses.⁴⁷ For reasons stated previously, the proposal will not substantially impact public roads that serve the area or substantially interfere with uses on Adjacent and Nearby Properties. Furthermore, the primary access to the site will continue to be from Coffin Butte Road. Other than slightly reducing the amount of land that can be used for farming or forest practices, the proposal will not impact farming or forestry activities in the area; thus, it will not force a change or increase the cost of these activities. The proposal therefore conforms to this approval criterion.

⁴⁷ Applicant notes that use of forest land for buffer areas or visual separation of conflicting uses is a “forest use” within the mean of BCC 51.020 (24) (b).

(b) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel[.]

Applicant Response: The elements that are proposed on the FC-zoned lands include an 1,800-square-foot employee building and parking, access road modifications, the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area to support the landfill. Furthermore, the roadway system will not be significantly altered by the design (a left-turn lane and bike lanes will be added, as well as stormwater management facilities).

The Fire Risk Assessment Report, attached as Exhibit 20, details the lack of fire risks and describes Applicant's Fire Mitigation Plan and protocols for the entire landfill operation. The conclusion of the report is that "operations at Coffin Butte Landfill do not present a significant fire risk."

For the above-noted reasons, the proposed improvements on the FC-zoned land will not significantly increase fire hazard or suppression costs or significantly increase risks to fire-suppression personnel.

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

Applicant Response: A comprehensive review of the referenced sections was included above. The above-noted findings are incorporated herein.

(2) As a condition of approval of a conditional use permit, the owner shall sign the following declaratory statement to be recorded into the County Deed Records for the subject property on which the conditional use is located that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules, and that recognizes the hazards associated with the area:

The property herein described is situated in the Forest Conservation Zone in Benton County, Oregon. The purpose of such zone is to conserve forest land, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, minimize conflicts with forest and farm uses, and protect the air, water, and wildlife resources in the zone. Residents may be subjected to customary forest or farm management practices

which produce noise, dust, fumes, smoke, and other impacts. The resource nature of surrounding properties can result in herbicide and pesticide spraying, slash burning, timber cutting, farm operations, crown fires, hunting, use by big-game, bears, and cougar, and other accepted resource management practices. (Crown fires are fast-moving, high-intensity forest fires in which the fire spreads from one tree crown to the next rather than only along the ground.) Resource uses are the preferred uses in this zone. Activities by residents can create management difficulties or increased costs for nearby farm or forest operations. Grantee acknowledges the need to avoid activities that negatively impact nearby farm or forest uses.

In consideration for the approval by Benton County of the following use: _____, the grantee, including heirs, assigns and lessees, recognizes that such impacts are likely to occur, and agrees therefore that no action shall be brought at law or before any governmental body or agency involving the non-negligent utilization or continuation of accepted resource-management practices such as, but not limited to, the examples noted above. As used in this section, “accepted resource management practices” means a mode of operation that is authorized under the Forest Practices Act or necessary to a farm or forest operation to obtain a profit in money.

Applicant Response: Upon approval and as required by this section, Applicant will execute the above-noted declaratory statement and have it recorded in the Benton County deed records. This requirement is included as a condition of approval in Exhibit 21.

L. BCC 60.305 to 60.330 (Creation of New Parcels or Lots; Property Line Adjustments).

Applicant Response: The proposal does not include the creation of new lots or parcels, or a property line adjustment; therefore, these sections do not apply.

M. BCC 60.405 Siting Standards and Requirements. This section states:

All new structures allowed in the Forest Conservation Zone shall be sited in compliance with BCC Chapter 99 and the following standards designed to make such uses compatible

with forest operations and agriculture, to minimize wildfire hazards and risks, and to conserve values found on forest lands:

(1) The owner of any new structure shall maintain a primary and secondary fuel-free fire-break surrounding the structure on land that is owned or controlled by the owner, in accordance with the provisions in “Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991, and published by the Oregon Department of Forestry.

Applicant Response: The only proposed new structures are the employee building on Tax Lot 1101 and the proposed shop on Tax Lot 1200. Applicant owns the property upon which these structures are proposed, along with all surrounding properties. Applicant proposes structures that conform to the provisions of this section. See Ex. 2, sheets 5, 11, and 12. The final design of the shop building has not been determined, but it can be sited in the designated area in compliance with the requirements of this section. See Ex. 2, sheet 5.

(2) Non-residential structures shall be located at least twenty (20) feet from a parcel or lot line, except no setback is required for a structure of 120 square feet or less. A required side or rear setback for a non- residential structure may be reduced to three (3) feet if the structure:

- (a) Is detached from other buildings by five (5) feet or more;**
- (b) Does not exceed a height of twenty (20) feet; and**
- (c) Does not exceed an area of 500 square feet.**

Applicant Response: As detailed on the site plan, the new employee building and shop proposed to be located at least 20 feet from all property lines, which conforms to the provisions of this section. See Ex. 2, sheets 5 and 6.

(3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.

Applicant Response: The structures are not water-dependent and there is not a river or major stream in the vicinity of the proposed buildings; the buildings therefore conform to this standard.

(4) All new development approved by Benton County shall have a site specific development plan addressing emergency water supplies for fire protection which is approved by the local fire protection agency[.]

Applicant Response: Coffin Butte Landfill is currently served by the Adair Fire Protection District and therefore has access to water in emergency circumstances. In addition, as noted in the Fire Risk Assessment Report (Ex. 20), the landfill has a site-specific fire mitigation plan. As noted in the report, Applicant maintains a 4,000-gallon water truck with spray bar and hose attachment on site that is used routinely in dry weather for dust control and can be used as an emergency water supply for firefighting. Applicant is in compliance with this requirement.

(5) All buildings shall have roofs constructed of materials defined under the Uniform Building Code as either Class A or Class B (such as but not limited to composite mineral shingles or sheets, exposed concrete slab, ferrous or copper sheets, slate shingles, clay tiles or cement tiles).

Applicant Response: Upon approval, Applicant will finalize the building plans and will ensure that roof design conforms to the requirements of this section.

(6) All new structures shall be sited on the lot or parcel so that:

(a) They have the least impact on forest operations and accepted farming practices on nearby or adjoining lands[.]

Applicant Response: While the employee building and the shop/maintenance area are the only new structures, the proposal also includes access roads, a scale, and leachate ponds to which this section may apply. The new employee building is located near the existing office building and surrounded by the disposal site and/or buffer lands. The proposed location will not impact farming or forest activities on any nearby or adjoining lands. The employee building is designed to add supporting facilities for the current employees, so will not materially increase traffic or parking on the site. The leachate ponds and shop/maintenance area are proposed to be located in an area of Tax Lot 1200 that is currently farmed under lease; however, the property also contains a gas-to-energy plant and the properties to the west and north are zoned LS, to the east is Highway 99W, and to the south is additional land that is owned by

Applicant and maintained as open space. As noted above, the lessee leases other farmland from VLI west of Soap Creek Road, so the loss of some of the lands on Tax Lot 1200 for farming could have some impact on the lessee's farming operations on those lands in terms of economies of scale. That impact is mitigated by the fact that the other leased properties are located over three quarters of a mile away. Also, the lease specifically provides for termination if VLI needs any of the lands for landfill operations. See Ex. 31. Finally, the improvements are located on the western side of the farmed portion of Tax Lot 1200, leaving approximately 40 percent of the farmed portion of the property available for farming. The leachate ponds and the shop/maintenance area on the subject property will not significantly impact farming or forest operations on any nearby or adjoining lands.

Overall, the proposed design will not significantly impact forest operations and accepted farming practices on nearby or adjoining lands and will be sited to have the least impact. The proposal complies with this criterion.

(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

As noted above, the new structures are clustered on the western boundary of Tax Lot 1200, minimizing the loss of farmed property to the degree practicable. The lease provides for termination by VLI upon 30 days' notice if VLI determines that it needs the property for use or development of the landfill. The lease further provides, however, that the tenant is not required to surrender the property until the harvesting of any crops planted prior to the date of the notice of termination. This mitigates the impact of the termination on the farming operation.

(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized[.]

Applicant Response: These provisions generally require that the Project be sited to minimize the impacts on forest lands. The relocated leachate ponds have been sized to accommodate the needs of the site and are not oversized. Furthermore, rather than utilizing the majority of the flatter land, these have been designed into the existing slope, which will lessen the amount of grading needed and lessen the amount of currently farmed land that will be impacted. Regarding the employee building, this is proposed to be as small as needed and clustered near the existing office and nearest to the existing road and access drive, so that additional driveways and parking areas are not needed. Lastly, the access-road modifications are not located in any area where farm or forest operations are occurring.

Overall, the building, access drives, and leachate pond locations have been designed and proposed to sizes and in locations that will minimize their impacts or farm and forest operation on the subject property in conformance with these approval criteria.

(d) The risks associated with wildfire are minimized.

Applicant Response: The elements that are proposed on the FC-zoned lands are an 1,800-square-foot employee building and parking, access road modifications, the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area to support the landfill. Although this criterion applies only to land in the FC zone, Applicant conducted a fire risk assessment for the entire landfill operation, attached as Exhibit 20. After assessing Applicant's Fire Mitigation Plan and the types of fires that could occur, the report concludes that "operations at the Coffin Butte Landfill do not present a significant fire risk." The Project is in conformance with this approval criterion.

(7) To satisfy the criteria in BCC 60.405(6), the Planning Official may require that new structures be sited close to existing roads, clustered near existing structures, and sited on that portion of the parcel least suited for growing trees.

Applicant Response: As documented on the site plan, the new employee building is proposed in close proximity to the current Coffin Butte Road and office building. Furthermore, it is served by the existing drive. As proposed, the application conforms to this criterion.

N. BCC 60.410 Additional Siting Standards and Conditions for Dwellings.

Applicant Response: The Project does not include a dwelling; therefore, this section does not apply.

VI. COMPLIANCE WITH BCC CHAPTER 87—GOAL 5 RESOURCES.

A. BCC 87.010 Application (Wetland Overlay Zone). This section states:

The Wetland Overlay Zone shall apply to the Jackson-Frazier Wetland as inventoried in the February 1991 ESEE Analysis adopted into the Natural Resources and Hazards Background Report of the Benton County Comprehensive Plan.

Applicant Response: While the landfill site contains wetlands, it is not part of the Jackson-Frazier Wetland and is not located within the Wetland Overlay zone, and there are no other Goal 5-designated wetlands on the Development Site. For these reasons, this section does not apply.

B. BCC 87.200 Purpose (Sensitive Fish and Wildlife Habitat Zone).

This section states:

The Sensitive Fish and Wildlife Habitat Overlay Zone shall protect sensitive habitats not protected by other programs such as the Willamette River Greenway Program, the Oregon Forest Practices Act or the “Cooperative Agreement between the Board of Forestry and the Fish and Wildlife Commission.” The zone shall protect areas that have been identified by Oregon Department of Fish and Wildlife or Oregon Department of Forestry as containing a significant nesting, or roosting site or watering habitat for species that are classified as threatened or endangered and areas designated as sensitive bird nesting, roosting, or watering sites. Habitat protection shall be achieved through the use of site specific management plans that ensure that proposed uses and activities will not destroy or result in the abandonment of these areas.

Applicant Response: The subject property is not located in the labeled Sensitive Fish and Wildlife Habitat Overlay on the Benton County Zoning Map. This section does not apply to the Project.

VII. COMPLIANCE WITH BCC CHAPTER 99—GENERAL DEVELOPMENT STANDARDS

A. BCC 99.005 Scope. This section states:

All development within Benton County, including land partitions, subdivisions and associated land development, and the construction of residential dwellings, industrial, commercial, or public buildings and other accessory structures shall conform to applicable standards of this chapter.

Applicant Response: The proposal includes development within Benton County; this chapter therefore applies. The applicable sections of this chapter are noted below.

B. BCC 99.105 to 99.115. These sections state:

BCC 99.105 Description of Sensitive Land.

Certain land characteristics may render a site "sensitive" to development. Sensitive land includes, but is not limited to:

(1) Land having geologic hazard potential or identified by the Oregon Department of Geology and Mineral Industries in Geologic Hazards of Eastern Benton County or Preliminary Earthquake Hazard and Risk Assessment and Water-Induced Landslide Hazard in Benton County, Oregon, hereby incorporated by reference.

(2) Land containing soils subject to high erosion hazard when disturbed, or lands containing soils subject to high shrink-swell potential as identified by the USDA Soil Conservation Service in the Soil Survey of Benton County Area, Oregon, or the Soil Survey of Alsea Area, Oregon, hereby incorporated by reference, or by a successor document produced by the USDA Soil Conservation Service or a successor agency.

Applicant Response: There appear to be sensitive lands located in areas of the development site.

BCC 99.110 Consideration.

An applicant for a land division or building permit shall consider the geology, topography, soils, vegetation and hydrology of the land when designing a parcel or lot, or siting improvements. The Planning Official or Building Official may impose conditions or modifications necessary to mitigate potential hazards or otherwise provide for compliance with adopted Comprehensive Plan policies, and may require an erosion and sediment control permit. The Planning Official or Building Official shall consider the recommendation of the County Engineer, municipal officials within urban growth boundaries, and other technical sources in the determination of sensitive land conditions and mitigating measures.

Applicant Response: The Application does not include any land divisions but does include structures that will require building permits. As noted previously in this Burden of Proof, Applicant has submitted significant geotechnical, groundwater, and drainage analyses that demonstrate that the Project may be safely sited as designed on the development. See Exs. 5, 16, and 17. Applicant expects to be required to obtain an erosion control permit at the time of any ground disturbance to construct site improvements.

BCC 99.115 Mitigating Sensitive Land Conditions.

The following guidelines shall be considered in the establishment of conditions and mitigating measures:

- (1) Roads should be located in upland areas on benches, ridge tops and gentle slopes as opposed to steep hillsides and narrow canyon bottoms.**
- (2) Native vegetation removal or soil disturbance should be minimized on moderate and steep slopes and hillsides. If possible, avoid such activities during winter months.**
- (3) Surface water runoff should be minimized or provide appropriate means for handling surface water runoff.**
- (4) Techniques should be utilized that minimize erosion, such as protective groundcover.**
- (5) Engineering assessment of hazard potential should be required for land development.**

(6) Geotechnical investigations should be required for roads and foundations in slide-prone areas.

Applicant Response: Again, Applicant has submitted significant geotechnical, groundwater, and drainage analyses that demonstrate that the Project may be safely sited as designed on the development. See Exs. 5, 16, and 17.

BCC 99.225 Development Activities in Wetlands. This section states:

(1) If the subject property is situated wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory on file in the office of the Benton County Community Development Department, and if a permit from the Department of State Lands has not been issued for the proposed activity, the Planning Official shall provide notice to the Division of State Lands, the applicant, and the owner of record within five days of receipt of the following types of applications:

(a) Subdivisions planned unit developments.

(b) Building permits for new structures.

(c) Conditional use permits and variances that involve physical alterations to the land or construction of new structures.

(d) Other development permits and approvals that allow physical alteration of the land, including development in the floodplain.

(2) Benton County shall process the land use application and respond to comments from the Department of State Lands consistent with the policies and procedures of that Department.

Applicant Response: The subject property contains wetlands; therefore, Applicant understands that notice may be sent to DSL. Applicant will conduct a wetlands delineation, and if a wetland is impacted, it will be mitigated through coordination with DSL. There is a mitigation wetland located on site that was protected by covenants in 2017 as result of a prior fill/removal permit approved by DSL, which required mitigation. The proposed expansion does not impact this mitigation wetland. The draft conditions of approval require Applicant to complete a wetland delineation in compliance with DSL requirements. See Ex. 21.

D. BCC 99.405 General Rule of Frontage. This section states:

(1) Every new dwelling and new structure designed for commercial, industrial, or public occupancy which is not part of an existing use on a parcel or lot shall be sited on a parcel or lot which has a minimum of twenty-five (25) feet of frontage along an improved public road.

Applicant Response: The only new structures is the employee building which will be located on property with frontage on Coffin Butte and Soap Creek roads. There will be over 25 feet of frontage on both roads. The proposal therefore complies with this standard.

E. BCC 99.505 Dedication of Right-of-Way. This section states:

(1) An applicant for a partition within an urban growth boundary may be required to dedicate right-of-way as a condition of approval to provide for the future development or improvement of existing and planned transportation facilities in accordance with adopted Comprehensive Plan policies and requirements.

(2) Where an existing road right-of-way does not comply with the minimum County standard for the applicable road classification, an applicant for a partition located in a non-resource zone shall dedicate to the County sufficient right-of-way to meet the minimum County road standard along the frontage of the parcel or lot being divided. Such dedication shall occur prior to final approval of the partition. Such dedication will not be required:

(a) Where the applicant signs a covenant to be recorded in County Deed Records waiving building rights until such time as sufficient right-of-way is dedicated or otherwise acquired; or

(b) Where the partition does not result in the creation of one or more developable parcels or lots. A newly created parcel or lot shall not be considered developable if no new dwelling or use can be located on the parcel or lot without further partitioning or without first obtaining a conditional use permit.

(3) Property acquired for public road purposes shall be surveyed and monumented by the County.

Applicant Response: The provisions of this section apply to partitions. The proposal is not for a partition; the majority of this section is therefore not applicable. In the event that survey work or monumentation for the Coffin Butte Road improvements are needed, Applicant will complete such survey and monumenting work.

F. BCC 99.510 Road Approach Permits. This section states:

(1) If a new road approach is proposed, the applicant shall obtain a road approach permit prior to construction of the road approach. If the proposed road approach would connect to a State highway, the permit shall be obtained from the State Highway Division. If the proposed road approach would connect to any other public road, the permit shall be acquired from Benton County. A road approach permit is not required for the construction of an approach connecting with a private road or street.

(2) A new road approach shall be constructed in accordance with the specifications prescribed by the County Engineer or the State Highway Division. The specifications shall be related to the use of the driveway, the nature of the adjoining public road, and the characteristics of drainage structure at the selected location.

(3) An occupancy permit or final inspection approval required in accordance with the State Building Code shall not be issued for any structure on a parcel or lot with a road approach which was installed in violation of permit requirements, specifications, or conditions. [Ord 90-0069]

Applicant Response: The proposal will modify the access point on the south side of Coffin Butte Road, removing the access point serving the existing leachate ponds and relocating the access point serving the power facility (to serve the southern development area). Applicant will obtain all permits needed for these modifications prior to initiating the use.

G. BCC 99.515 Road Design and Construction Standards. This section states:

(1) Schematic layout of proposed public and private roads or streets shall adhere to the following general guidelines:

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- (a) Streets should be aligned to join with planned collector and arterial streets and/or existing streets.
 - (b) Streets should be designed to respect topography and meet all applicable engineering standards.
 - (c) Intersections shall be approximate or actual right angles.
 - (d) Surface drainage shall be toward the intersecting street or through a drainage easement on abutting parcels or lots.
 - (e) Cul-de-sacs shall end with a minimum turning radius of 45 feet; however, for cul-de-sacs less than 200 feet in length within areas zoned for single-family residential use, an alternative design (“T”, “Y”, or other) or location may be approved by the County Engineer.
 - (f) Cul-de-sacs in excess of 900 feet in length within commercial or industrial areas or which serve more than 20 residential parcels or lots shall provide a secondary means of access for emergency use (fire lane).
 - (g) Dead-end streets shall be designed to connect with future streets on adjacent property. A temporary turn-around may be required.
 - (h) The County may reserve a one foot wide strip of public road right-of-way adjoining private land for the purpose of controlling access.
 - (i) Development containing more than twenty (20) parcels or lots shall contain multiple points of access into the development.
 - (j) Geometric design will follow AASHTO: A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS & STREETS, 1984 ED., standards, except when the County Engineer finds terrain or other conditions making it impossible or unfeasible to do so.

Applicant Response: The proposal includes improvements to Coffin Butte Road. As documented on the site plans, the design includes adding bike lanes and a left-turn lane, and related storm-drainage improvements. The proposed improvements conform to County standards and the provisions of this section.

No dead-end streets or cul-de-sacs are proposed. The proposed improvements conform to the standards of this section. See Ex. 2, sheets 5, 7, 8, and 24.

(2) All roads within existing or proposed public right-of-way located outside of an Urban Growth Boundary shall be designed and constructed pursuant to the Rural Design Criteria identified in Table I and Figure II. Plans and construction shall be approved by the County Engineer.

TABLE I. RURAL DESIGN STANDARDS

Local road standards are designated as RL-1, RL-2 and RL-3. Collector standards are designated as RC-1 and RC-2. Arterial standards are designated as RA-1 and RA-2.

<u>Standard</u>	<u>Zones</u>	<u>Projected ADT</u>	<u>Projected DHV</u>	<u>Minimum ROW</u>	<u>Surface Width</u>	<u>Paving Material</u>	<u>Crushed Base Equivalent</u>
RL-1	Resource	0-100	<30/hr	50 ft	18 ft	AC,PCC, APM	18 inches
RL-2	Dead end RR	0-200	<30/hr	50 ft	18 ft	AC,PCC APM	18 inches
RL-3	Resource, RR <1,000ft	100-750	<100/hr	60 ft	20 ft	4 inch AC,PCC	18 inches
RC-1	Resource	100-750	<100/hr	60 ft	20 ft	4 inch AC,PCC	18 inches
RC-2	Resource, RR	750-2000	<300/hr	60-70ft	24 ft	4 inch AC,PCC	20 inches
RA-1	All zones	1000-5000	<900/hr	80 ft	24-34ft	6 inch AC,PCC	20 inches
RA-2	All zones	>5000	>900/hr	100 ft	50-70ft	6 inch AC,PCC	24 inches

<u>Standard</u>	<u>Shoulder</u>	<u>Maximum Grade</u>	<u>Bike Path</u>	<u>Min. Curve Radius</u>	<u>Design Speed</u>	<u>Parking</u>	<u>Road Approach</u>
RL-1	4 ft gravel	17%	None	200 ft	30 mph	Limited Emergency	Shared 400ft gap
RL-2	4 ft gravel	15%	None	200 ft	30 mph	Parking Allowed	Shared 250ft gap
RL-3	5 ft paved	15%	RR Zone Class III	250 ft	30 mph	Limited Emergency	Shared 450ft gap
RC-1	5 ft paved	12%	RR Zone Class III	500 ft	45 mph	Emergency Only	Shared 400ft gap
RC-2	5 ft paved	10%	RR Zone Class III	760 ft	45 mph	Emergency Only	Shared 400ft gap
RA-1	6 ft paved	5%-8%	All zones Class III	800 ft	50 mph	Emergency Only	None
RA-2	6ft-12ft paved	4%-6%	All zones Class III	800 ft	50 mph	Emergency Only	None

Applicant Response: The improvements to Coffin Butte Road include only a left-turn lane and bike lanes. The proposed improvements conform to the requirements of this section and the County TSP. See Exs. 2 and 15.

The standards of this section are consistent with the cross-section of the County TSP; therefore, the proposed design and planned improvements are consistent with this section.

(3) All roads within existing or proposed public right-of-way located within an Urban Growth Boundary shall be designed and constructed pursuant to Urban Design Criteria identified in Table II and Figure III. Plans shall be reviewed and approved by the County Engineer in consultation with public works staff of the appropriate city.

Applicant Response: The property is not located within a UGB; therefore, this section does not apply.

(4) A private road or street created by partition, or an existing private or public road which provides for access to parcels or lots created by partition shall be improved to the following County Secondary Road Standards. Required plans and construction of improvements shall be inspected and approved by the County Engineer, and the applicant shall pay an engineering review fee[.]

Applicant Response: No partitions are proposed; therefore, this section does not apply.

(5) For the protection of the public interest, the County Engineer may require improvements in excess of adopted standards, if terrain or other conditions warrant such a change.

Applicant Response: The proposed roadway improvements have been designed by an engineering firm licensed in the State of Oregon, along with a traffic engineer licensed in the State of Oregon. The qualified professionals working on the Project have designed roadway improvements that conform to County standards and engineering best practices. Applicant understands that this section allows the County Engineer to require additional improvements, if warranted.

(6) Additional off-site improvements may be required as a conditions of land division if it is found by the Planning Official, County Engineer, Planning Commission or Board of Commissioners that the land division will have a significant impact on the level of service or maintenance costs for existing roads, drainage, or other public facilities.

Applicant Response: The proposal does not include a land division; therefore, this section does not apply.

H. BCC 99.520 Improvements in a Public Right-of-Way. This section states:

An applicant intending to construct or upgrade a roadway within a public right-of-way shall be responsible for design and installation of all improvements within the public road right-of-way. Such improvements shall commence from an existing improved public roadway and continue to the subject property and twenty-five (25) feet along the frontage of the proposed parcel or lot, or to the private driveway serving the building site, whichever is greater. Required plans and construction of improvements shall be inspected and approved by the County Engineer.

Applicant Response: The proposal includes improvements in Coffin Butte Road (left-turn lane, bike lanes, and related stormwater improvements). Applicant understands that it will be responsible for design and installation of all improvements and plans to do so in accordance with the provisions of this section. See Ex. 2, sheets 5, 7, and 8.

I. BCC 99.605 Annexation to Fire District Required. This section states:

If a proposed parcel or lot in a non-resource zone abuts a rural fire protection district, the applicant shall petition for and obtain annexation to the district prior to final approval of a land division.

Applicant Response: The application does not propose creating a new parcel or lot, and the entire Project is currently within the Adair Fire District, so annexation is not necessary.

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- J. BCC 99.650 Definitions.** As used in BCC 99.650 through 99.680 (Stormwater Management).

Applicant Response: The definitions of this section are used through this narrative, and Applicant understands that the definitions will be used through the review of this application.

- K. BCC 99.660 Erosion and Sediment Control.** This section states:

(1) Purpose: The purpose of this section is to:

(a) Preserve and enhance the health, safety, welfare, financial investment in public and private infrastructure, private property value, and the quality of life of the inhabitants of Benton County by minimizing the risk of flooding, erosion, sedimentation, and other stormwater impacts; and

(b) Maintain or improve water quality within Benton County as required under State and Federal National Pollution Discharge Elimination System law.

Applicant Response: This section establishes a purpose; however, it does not contain any measurable development standards or approval criteria. Applicant understands that conformance with the standards of this section will ensure consistency with the purpose stated in this section.

(2) Applicability. The provisions of this section shall apply to all unincorporated areas of Benton County.

Applicant Response: The subject property is within an unincorporated area of Benton County; this section therefore applies. Upon approval of this CUP and prior to construction activities, Applicant plans to apply for all required additional development permits, including those related to erosion and sediment control, described in this section.

- L. BCC 99.670 Long-Term Stormwater Management.** This section states:

99.670 Post-Construction Stormwater Management

(1) Purpose. Establish stormwater management requirements and controls to protect and safeguard the health, safety, welfare, financial investment in public and private

infrastructure, and private property value, and minimize flooding and sedimentation in areas where structural and non-structural stormwater management is required to improve water quality and manage post construction runoff from new development and redevelopment projects that result in the creation or replacement (re-development) of 0.25 acres (10,890 square feet) or more of impervious surface.

(2) Applicability. Land development within unincorporated Benton County shall comply with the requirements of this section.

(3) Permit Required. A property owner increasing or replacing the impervious surface on a property shall comply with this section and the technical standards outlined in the Stormwater Support Documents. An individual construction that does not exceed the 0.25-acre threshold on its own shall nonetheless contribute to the cumulative threshold as described in subsection (a)(B) of this section.

(a) An approved Post-Construction Stormwater Permit shall be obtained prior to initiation of ground-disturbing activities if both (A) and (B) are met (exceptions are listed in subsection (b)):

(A) The plan of development or redevelopment is associated with:

(i) Construction or land uses that require a permit or other review by Benton County; and

(ii) Any of the following:

(1) Construction of a public or private road, driveway, or structure; or

(2) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, clearing vegetation and other ground-disturbing activities related to new development or redevelopment construction.

(B) The total area of proposed new and replaced impervious surface combined with the cumulative total of all impervious surface established since March 1, 2023, will be 0.25 acre (10,890 square feet) or more. For subdivisions

and partitions, impervious surface area that will be established through construction on resulting lots/parcels shall be addressed through a Post-Construction Stormwater Permit approved prior to final plat approval, as described in subsection (4)(b).

(b) Exempt Activities. The following activities are exempt from the permit requirement in subsection 3(a):

(A) Accepted farm practices;

(B) Construction of buildings used exclusively for agricultural purposes and located outside the MS4. The applicant shall demonstrate to the satisfaction of the Planning Official that the structure will be used only for agricultural purposes. The Planning Official may require a deed restriction acknowledging and notifying future property owners of the limitation on use of the structure;

(C) Forest practices performed pursuant to the Oregon Forest Practices Rules. Upon completion of such forest practices or expiration of Forest Practices authorization, a Benton County Post-Construction Stormwater Permit is required unless the land has been replanted at stocking levels consistent with Oregon Department of Forestry standards;

(D) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR § 122.26;

(E) Emergency measures to protect life, property, public infrastructure, or essential services, in which case a Stormwater Site Plan approval shall be obtained as soon as possible after-the-fact;

(F) Fish passage, stream enhancement, and wildlife habitat projects that comply with local, state and federal standards and permit requirements, provided that evidence of such compliance is submitted to Benton County Public Works prior to initiation of the activity;

(G) Repairs to any stormwater facility as deemed necessary by Benton County;

(H) Mining activities performed pursuant to applicable state permit requirements;

(l) Activities, conducted by public agencies, that meet or exceed state or federal standards for post-construction stormwater management.

(4) Permit Procedures and Requirements.

(a) The property owner shall submit all of the following:

(A) Post-Construction Stormwater Permit Application form.

(B) Post-Construction Stormwater site plan and additional documentation deemed appropriate by the County Engineer and/or Planning Official to demonstrate compliance with this section. Stormwater detention and treatment shall be:

- (i) Designed in accordance with the Stormwater Support Documents, as interpreted by the County Engineer. Within the urban growth boundary of an incorporated city, structural and non-structural requirements will be consistent with the current standards of the pertinent city; and**
- (ii) Designed to accommodate the cumulative total of all impervious surface established since March 1, 2023, including the proposed additional impervious surface.**

(C) Fee(s) established by the Board of County Commissioners.

(D) The Post-Construction Stormwater Management Plan shall be designed, stamped and signed by a engineering geologist or engineer licensed in the State of Oregon.

(b) Subdivision or Partitions. The Post-Construction Stormwater site plan and permit application shall address all impervious surface that will be established by the subdivision or partition, including but not limited to roads and other infrastructure, dwellings, accessory structures and driveways. Maximum impervious surface area that may be established on each lot or parcel shall be specified and shall be memorialized in a deed restriction running with the lot or parcel or on the plat. Stormwater treatment and detention for the entire buildout of impervious surfaces shall be designed and constructed prior to final plat approval.

(c) A Post-Construction Stormwater Permit may be issued upon determination by the County Engineer that the submitted materials demonstrate compliance with the requirements of this section and the property owner has entered into a Stormwater Management Facilities Long-Term Maintenance Agreement pursuant to subsection (6) of this section. To address specific conditions of a given site, the County Engineer may require modification to the proposed Site Plan and/or to the standard requirements of this section.

(d) Issuance or denial of a Post-Construction Stormwater Permit is not a land use decision and is not subject to the requirements of a land use decision including but not limited to BCC 51.535, BCC 51.605 through 51.625, and BCC 51.805 through 51.840.

(e) The County Engineer may, pursuant to the Stormwater Support Documents and in response to mitigating actions proposed by the applicant, determine that stormwater detention and treatment that would otherwise be indicated pursuant to subsection (3) of this section is not required. The County Engineer shall take such actions as necessary to ensure the long-term viability of such mitigations, including but not limited to requiring a long-term maintenance agreement or similar document.

(5) Improvements Agreement. Required stormwater infrastructure shall be subject to the Improvements Agreement provisions of BCC 99.905 through 99.925.

(6) Long-term Maintenance and Repair of Stormwater Facilities.

(a) Required stormwater facilities shall be constructed and maintained by the property owner.

(b) Stormwater facilities shall be maintained to current Benton County stormwater facility maintenance standards.

(c) The property owner shall enter into a Stormwater Management Facilities Long-Term Maintenance Agreement as required by the County Engineer. The Maintenance Agreement may, at the discretion of the County Engineer, include any or all of the following:

(A) Require the property owner to maintain and repair the stormwater facilities serving the property and located on the property or other private property;

(B) Require proper disposal of accumulated sediment;

(C) Authorize Benton County to enter the property to inspect and to effect emergency repairs or maintenance;

(D) Authorize the County Engineer to require that the property owner effect necessary repairs and maintenance;

(E) Authorize Benton County to bill the property owner for any costs incurred by the County to repair or maintain the facilities;

(F) Authorize the County to record a lien against the property to secure the County's costs in making corrections, plus interest and penalties;

(G) Run with the land as a covenant binding on current and future interest holders; and

(H) Establish other terms or provisions deemed necessary by the County Engineer to ensure the long-term functioning of the facility.

(d) For a stormwater facility serving a single property:

The stormwater facility shall be located on the property that is being served. As an alternative, the applicant may propose an off-site location but shall, through submitted design materials, easements, maintenance agreements and other mechanisms, demonstrate to the satisfaction of the County Engineer that the long-term viability of the facility will be preserved at the alternate location. The County Engineer's determination will be documented in issued Post-Construction Stormwater Permit.

Applicant Response: Stormwater controls have been designed to address the additional impervious areas as a result of the improvements to Coffin Butte Road, the new cell on the Development Site, and the new access roadway. See Ex. 2. See *also* Ex. 17 (CEC Preliminary Drainage Report). Applicant acknowledges that these improvements are subject to the Post-Construction Stormwater regulations under BCC 99.670 (1) to (3) and will be required to obtain a post-construction stormwater permit under subsections (3) and (4), and

Applicant will be required to enter into an infrastructure improvement agreement under subsection (5) and a Stormwater Management Long-Term maintenance agreement, if required by the County engineer, under subsection (6). Applicant understands that issuance of a post-construction stormwater permit is not a land use decision under subsection (4)(d) and therefore is not a criterion for approval of the CUP. However, in recognition that the requirement will be applicable to the stormwater improvements, Applicant has included in the draft Conditions of Approval a condition of approval requiring it to obtain the permit at the time of ground disturbance as required by subsection (3)(a).

M. BCC 99.705 to 99.850 Sewage Disposal and Water Supply.

Applicant Response: Water and sewer is not proposed to be extended to the development area. In the event that the employee building needs water and sewer accommodations, it will be served by the same well and subsurface facilities that serve the existing office building. These sections do not apply

N. BCC 99.905 to 99.925 Improvements Agreement. These sections provide:

99.905 Improvements Agreement. When required as a condition of development for a conditional use, partition, subdivision, planned unit development, or stormwater management permit, the applicant shall execute a standard improvements agreement provided by the County Engineer guaranteeing the construction of any required public improvements. The Agreement shall be recorded to put all purchasers and interested parties on notice. The agreement shall provide that:

(1) If at any time there is a breach in the agreement, the Building Official shall withhold issuance of all building permits within the subdivision or partition until such breaches have been satisfactorily corrected.

(2) The applicant shall be responsible for installing all required improvements, including, but not limited to, streets, storm drainage, pedestrian ways, water system, sewage system, etc., to the standards and specifications approved by the County Engineer and/or Board of Commissioners. All work shall be completed to the County Engineer's approval within 18 months of final plat approval, or when building permits have been issued on fifty percent (50%) of the parcels or lots, whichever comes first.

99.910 Review and Inspections. Plans for public improvements required as a condition of development shall be submitted for review and approval by the County Engineer. During the installation of improvements, the County Engineer shall conduct periodic inspections of work-in-progress. The County Engineer shall charge a fee for plans review and inspection services as established by Order of the Board of Commissioners.

99.915 Performance Guarantee.

(1) The applicant shall file with the County Engineer a performance guarantee to assure full and faithful performance. The guarantee shall be made in one of the following forms:

(a) An escrow of funds, irrevocable sight draft, letter of credit, franchised guarantee or other certification by a reputable lending institution. Such lending institution shall not be directly owned or controlled by the applicant. The amount of funds shall be released only upon authorization of the County Engineer.

(b) A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the County Counsel. The bond shall guarantee to the County that the financial backing is available so that all improvements will be completed and paid for within the time specified in BCC 99.905.

(2) The guarantee shall ensure that the applicant has funds committed in the amount determined by the County Engineer for the purpose of covering the cost of the improvements and repairs, including related engineering and incidental expenses. In the event of default by the applicant, the guarantee shall ensure that the County shall have, upon demand, funds to construct, complete or pay for all improvements or incidental expenses, including improvements full or partially constructed by the County, and bills which are outstanding for work done thereon by any party. [Ord 90-0069]

99.920 Calling the Guarantee. If the applicant fails to carry out provisions of the agreement and the County has unreimbursed costs or expenses resulting from such failure, the County shall call on the guarantee for reimbursement. If the amount of the bond or cash deposit exceeds the cost and expense incurred, the remainder shall be released. If the amount of the bond or

cash deposit is less than the costs and expense incurred, the applicant shall be liable to the County for the difference.

99.925 Warranty. Upon completion of roadways and other public facilities to County standards and specifications, there shall be a minimum of three year warranty period prior to County consideration of acceptance of maintenance. Before this acceptance, maintenance and repair of public facilities shall be the duty of the applicant, developer, property owner, or of the homeowners association.

Applicant Response: The proposal includes public and private improvements. In the event that the County requires an improvement agreement, Applicant understands that the provisions of this section will apply.

VIII. OTHER ISSUES

Some who participated in the prior CUP request or BCTT raised issues on topics that are outside the jurisdiction of the County under the CUP criteria and/or are governed by DEQ or other state agency rules. In keeping with the spirit of the BCTT process, Applicant addresses those issues in this section.

A. Wildlife Habitat.

As noted above, the subject property is not within an environmental overlay zone as a designated Goal 5 resource and so is not subject to regulation by the County. Applicant does have to address wildlife habitat under state law as part of the DEQ permitting process. Applicant therefore engaged Turnstone to conduct Wildlife Habitat Assessment and Surveys (Ex. 4). Turnstone has assessed the wildlife needs/uses of the site. The report surveyed two historic blue heron rookeries (the “Western Rookery” and the “Eastern Rookery”) on the property from 2022 to 2024. No nesting pairs were observed in the Western Rookery, and so Turnstone determined that it is an abandoned Great Blue Heron Resource Site. Turnstone concluded that the Eastern Rookery is likely abandoned but recommends continuing surveys in 2025 to determine if the Eastern Rookery is inactive for a third consecutive year. If the Eastern Rookery is inactive in 2025, it will be deemed officially abandoned. See Ex. 4, Addendum. The draft conditions of approval provide for a survey in 2025 and require protection of the Eastern Rookery unless and until it is determined to be officially abandoned. The Turnstone Report documents that no other critical habitat exists on the site for bald eagles, deer and elk, or any other animal. The proposed expansion therefore does not impact any significant wildlife features of the site. Applicant’s lighting plan for the overall site will minimize additional light and glare in a way that will not negatively affect habitat. See Sight Lighting Summary, attached as Exhibit 19.

B. Archeological/cultural resources.

The subject property does not contain any County-designated historic or cultural resources under Goal 5 and is thus not subject to regulation by the County as part of the CUP process. Applicant is required to survey for such resources under state and federal law as part of the DEQ permitting process. Applicant has therefore contracted with Archeological Investigators Northwest Incorporated (“AINW”) to conduct an archeological assessment of the property and coordinate with the State Historic Preservation Office (attached as Exhibit 26). AINW did discover artifacts on site but recommends a finding that the landfill expansion will have “No Adverse Effect on Historic Properties,” subject to compliance with certain conditions. See Ex. 26. The draft conditions of approval require Applicant to comply with these requirements.

C. Leachate Management.

The Planning Commission denied the 2021 application in part based upon a finding that the increase in tanker-truck loads will burden the transportation corridor and place an undue burden on the Corvallis wastewater treatment plant. In addition, it was suggested that treated leachate creates water quality problems. There is no evidentiary basis for these conclusions. As outlined in the Leachate Management Summary, attached as Exhibit 27, leachate collection, transport, and treatment is regulated by DEQ under the Clean Water Act. Leachate is not “hazardous waste” within the meaning of the law, and testing at the landfill indicates that the level of regulated contaminants in leachate generated by Coffin Butte Landfill are either nondetectable or well under the EPA thresholds. See Ex. 27. As noted in the traffic study attached as Exhibit 15, the traffic generated by the landfill is well within the capacity of the street system, and leachate tankers have to comply with the same weight limits and taxation requirements as any other commercial truck. The leachate generated by the expansion will therefore put no “undue” burden on the transportation system. There are many other commercial trucks with heavier or more hazardous loads that regularly traverse the corridor (e.g., fuel tankers). The Project will initially generate more leachate from the landfill overall, but volumes will decrease over time as older cells are closed and will be minimized by Coffin Butte Landfill’s state-of-the-art leachate management system. See Ex. 27. Leachate is currently transported for treatment to the City of Corvallis and City of Salem wastewater-treatment plants, although Applicant is exploring a transition to a different facility to improve overall efficiencies. The City of Corvallis treatment permit expires December 31, 2025, and the City of Salem treatment permit expires on December 31, 2027.

Applicant recognizes that leachate regulation by the EPA and DEQ is likely to change during the lifetime of the Project. Applicant will be required to comply with any such regulations or Applicant will not be able to continue to operate. Approval of the Project will not materially change that obligation because it will apply equally to the leachate generated by current and future landfill operations. Environmental and other regulations applicable to landfill operations evolve over time, and Applicant will remain in compliance.

Leachate collection and disposal resulting from the Project will have no measurable impact on Adjacent Properties or Nearby Properties or the Analysis Area, and do not place an undue burden on any public facility or service.

D. Methane.

As noted, methane regulation is under the jurisdiction of DEQ. See CEC Report (Ex. 7). The CEC report details the permit modifications that will be required to move into the new cell and the requirements for compliance and ongoing monitoring. The CEC report also attaches DEQ’s guidance document. DEQ

regulates air quality requirements (methane, hydrogen sulfide, odor), leachate regulation, and protection of both ground and surface water, as well as protection for floodplains, wetlands, geotechnical/seismic considerations, and critical habitat. Applicant will have to demonstrate compliance with DEQ's air quality requirements to obtain modifications to the required permits to relocate the working face to the Development Site. These regulations and ongoing monitoring will ensure that the Development Site will not have off-site environmental impacts that will seriously interfere with surrounding uses or unduly burden public facilities or services. A report from Ian Macnab, Environmental Manager at Coffin Butte Landfill, attached as Exhibit 13, details the regulatory requirements and Applicant's practices to ensure that landfill gas is collected. These practices are also covered in Weaver Consulting Group Findings, attached as Exhibit 12. Attached to Exhibit 13 is the current Coffin Butte DEQ Title V Permit that includes emission limits, how emissions are monitored, methane-collection requirements, and the extensive reporting requirements to ensure ongoing compliance. Also attached to Exhibit 13 is a 2019 Hydrogen Sulfide Test Report that shows very low to nondetectable levels of hydrogen sulfide in Coffin Butte's landfill gas.

In February 2024, the Benton County Board of Commissioners raised some questions with regard to methane emissions and recent inspections by EPA of Coffin Butte Landfill. EPA is focusing on landfills across the country as a part of EPA's Strategic Plan to mitigate climate change by reducing methane emissions. As part of this enhanced focus on landfill emissions, Coffin Butte was inspected in June 2022 and again in June of 2024. The 2022 inspection has been the subject of numerous news stories, and Applicant worked with the EPA to take corrective measures. Applicant provided a comprehensive memorandum to the County about the 2022 inspection and Applicant's response. See Ex. 28. A final report from the 2024 EPA inspection is not yet available, but Applicant is aware that the inspectors found exceedances while conducting surface emissions monitoring. Applicant is addressing each exceedance as allowed in the regulations. Applicant will continue to work closely with regulators to demonstrate compliance and implement solutions, including, potentially, final capping on portions of the landfill.

The takeaways are that future operations at the Development Site must comply with all laws regulating methane and that it is Applicant's priority and practice to do, and the appropriate regulatory authorities have and will ensure that Applicant remains in compliance.

E. Arsenic.

Some stakeholders have expressed concern over arsenic in the drinking water. VLI had a seepage event in 1994 that resulted in elevated arsenic readings. VLI took various and appropriate corrective measures to correct the issue. Readings taken from compliance wells installed in 2011 have been stable with averages consistent with the background concentrations of arsenic in the Willamette

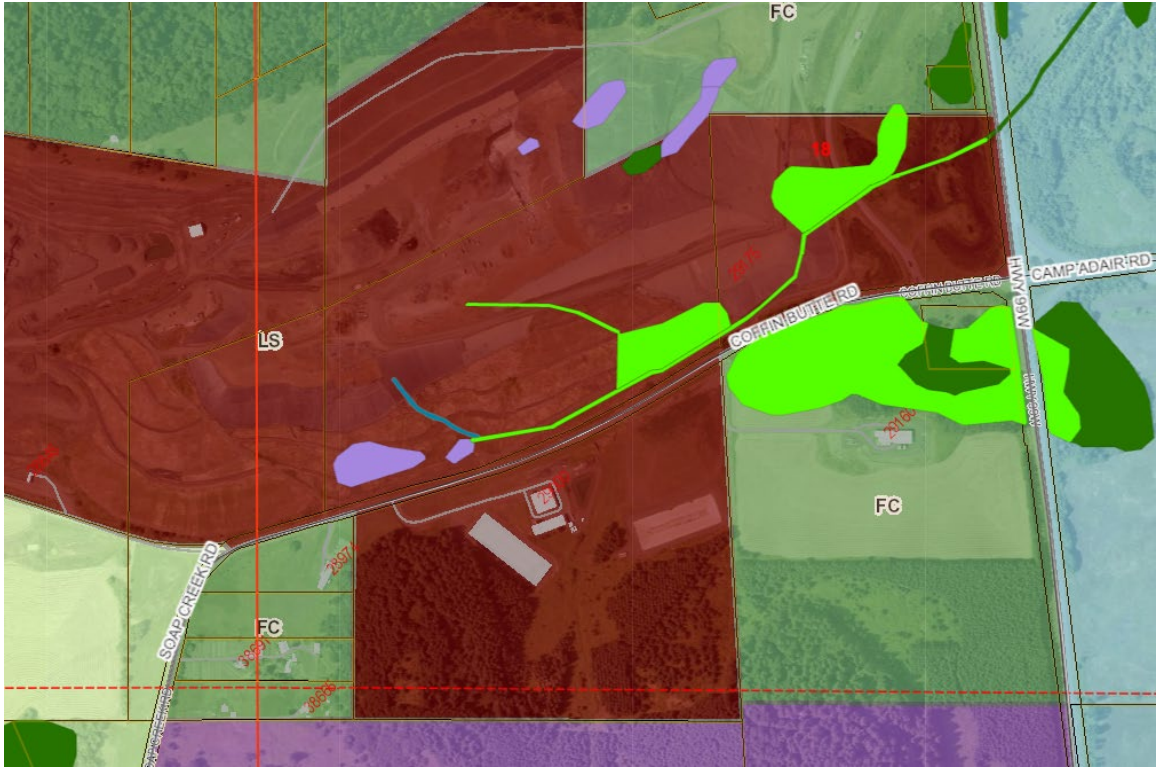
Valley. These steady readings indicate that there have been no leachate releases or impacts on groundwater. See Ex. 29.

F. Seismic Resiliency.

Some stakeholders have expressed a concern about the impact of a significant seismic event on the landfill. As noted in the CEC report on seismic design (Ex. 30), the proposed expansion must address seismic design requirements under both state and federal law as part of the DEQ permitting process. Thus, as part of the application submission to DEQ, additional engineering analyses will be submitted to demonstrate that landfill containment structures (i.e., including base liner and final cover systems), leachate-collection systems, and surface-water-control-systems structures are designed to resist the maximum horizontal acceleration anticipated at the site. As noted in Exhibit 30, the Seismic Hazard Analysis considers a range of previously recorded earthquakes, both near and far from the facility, and calculates parameters to use in the seismic stability models that represent the worst-case seismic loadings for the site. In 2021, a seismic analysis for Cell 6 derived a design moment magnitude of 8.48 for that site. The proposed expansion will be designed consistent with all applicable regulations to withstand a significant earthquake.

G. Wetlands.

USFWS National Wetlands Inventory Maps (attached below) indicate that the wetlands exist on tax lots 1200, 1108, and 801. None of these are designated as County Goal 5 resources, so the County has no authority to regulate the wetlands on site. At least some of the wetlands would be subject to the jurisdiction of the Oregon Department of State Lands (DSL), and so Applicant will be required to conduct a wetlands delineation prior to construction and mitigate for any disturbance to those wetlands due to the proposed expansion. The proposed conditions of approval so provide.



IX. CONCLUSION

As documented throughout this narrative, the proposed relocation of the working face to the Development Site complies with the applicable development standards.

- The impacts from the proposed development will not “seriously interfere” with uses on Adjacent or Nearby Properties.
- The proposed development will not “seriously interfere” with the character of the Analysis Area or the purposes of the zones. Both the LS and the FC zones provide for and contemplate landfill uses in the zones, and a landfill has operated in this Analysis Area for over 50 years. The substantially reduced size of the proposed development as compared to the 2021 application, in combination with the proposed screening and mitigation measures, limits the impact of the proposed development on the Analysis Area.
- The proposed development will not impose an “undue burden” on any public improvements, facilities, utilities, or services available to the Analysis Area. The retention of and improvements to Coffin Butte Road will eliminate any transportation or emergency access impacts to the surrounding area and will improve access and safety along Coffin Butte Road. Applicant’s fire prevention and mitigation plan will continue to provide protection to the site and not create a burden for the Adair Fire District. Hauling of leachate is well within the capacity of the roadway system, and leachate will continue to be disposed of per DEQ/EPA regulations. The proposed development has no other impact on public facilities and services.
- Development of the FC-zoned properties will not significantly impact forest or farm uses on Adjacent Properties.
- General environmental impacts, such as groundwater protection, leachate transport and disposal, and methane generation, will continue to be managed and regulated under the permits required by DEQ.

For these reasons, Applicant respectfully requests that the Planning Commission approve the CUP.