

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Comprehensive Plan Amendments and Zone Changes,)
a Floodplain Development Permit and Site Design Review of a Proposed)
Landfill Expansion, Tax Lots 5501-101, -200, -400, -401 and 5511-600,) Ordinance 849
PAZ-05-08/FP-04-08/SDR-16-08, Applicant Riverbend Landfill, and)
Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 16, 2009, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Riverbend Landfill applied for a comprehensive plan amendment for an approximately 82.7 acre portion of Tax Lot 5501-200 to be changed from Public to Agriculture/Forestry Large Holding; a zone change from PWS Public Works/Safety to EF-80 Exclusive Farm Use; a comprehensive plan amendment for approximately 74 acres made up of Tax Lot 5501-400 and a portion of Tax Lot 5501-401 to be changed from Agriculture/Forestry Large Holding to Public; a zone change from EF-80 Exclusive Farm Use to PWS Public Works/Safety; a comprehensive plan amendment for approximately 25 acres, made up of the southern portion of Tax Lot 5501-401, to be changed from Commercial to Public; a zone change from RC Recreation Commercial to PWS Public Works/Safety; a comprehensive plan amendment for approximately 19.3 acres, made up of a portion of Tax Lot 5501-101, to be changed from Agriculture/Forestry Large Holding to Public; a zone change from EF-80 Exclusive Farm Use to PWS Public Works/Safety, taking an exception to Goal 3; a comprehensive plan amendment for approximately 10 acres made up of a portion of Tax Lot 5511-600 to be changed from Agriculture/Forestry Large Holding to Public; a zone change from EF-80 Exclusive Farm Use to PWS Public Works/Safety, taking an exception to Goal 3. The applicant also applied for a floodplain development permit to allow for the relocation of a small, unnamed tributary of the South Yamhill River that currently bisects the proposed landfill expansion area. The applicant also applied for site design review for the development of the 98 acres proposed for landfill expansion and ancillary facilities. The tax lots of the subject parcel are 5501-101, -200, -400, -401 and 5511-600.

IT APPEARING TO THE BOARD that the Yamhill County Planning Commission heard this matter at duly noticed public hearings on November 6 and 20, 2008, and January 8, 2009, and voted to recommend denial to the Board; and the Board of Commissioners held duly noticed public hearings on March 19, 2009, April 1, 2009, October 14, 2009, and voted 2-0 (Commissioner Stern having recused herself) to tentatively approve the application on November 9, 2009, NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the three applications (PAZ-05-08/FP-04-08/SDR-16-08) are approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is

B.O. 09-848

effective upon passage. A map is appended as Exhibit "B".

DONE this 16th day of December, 2009, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DOLL

County Clerk

Leslie A. Lewis
Chair

LESLIE LEWIS

By: Anne Britt
Deputy Anne Britt

Kathy George
Commissioner

KATHY GEORGE

APPROVED AS TO FORM:

(recused)

Rick Sanai
Commissioner

MARY P. STERN

Rick Sanai, Assistant County Counsel

B.O. 09-848

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I. INTRODUCTION AND BACKGROUND

Riverbend Landfill is located approximately three miles southwest of the city of McMinnville in Yamhill County. The landfill has been an approved use at the site since 1980, after the County initiated a public process for the development of a new landfill to

replace two existing landfills in the County that were near capacity. Since 1992, Riverbend Landfill Company, Inc. (“RLI”), a subsidiary of Waste Management, has owned and operated Riverbend Landfill.

In 1994, RLI entered into a twenty-year license agreement with the County, as required by the County’s Solid Waste Ordinance (Ordinance 578). By entering into that agreement, RLI guaranteed disposal capacity for County-generated solid waste until the year 2014. At the same time, the County acknowledged that RLI would operate Riverbend Landfill as a regional landfill, serving neighboring counties and utilizing out-of-county waste as a means to reduce and stabilize solid waste disposal rates for the County’s residential, commercial and industrial generators of solid waste. This arrangement became the central component of the County’s Solid Waste Management Plan, which was updated most recently in 2004.

The license agreement between the County and RLI will expire in less than five years, at which time Riverbend Landfill will also reach its maximum permitted capacity. In anticipation of reaching that capacity, and in order to continue operating a landfill at the current site to meet the County’s solid waste disposal needs, RLI submitted a package of land use applications that, if approved, will allow the expansion of Riverbend Landfill to accommodate the County’s solid waste disposal needs for an additional twenty years. Specifically, RLI submitted applications for: 1) a plan amendment and zone change to RLI’s property (PAZ -05-08) (“PA/ZC”); 2) Site Design Review of the expanded landfill and its ancillary facilities (SDR-16-08) (“SDR”); and 3) a permit to develop within a floodplain (FP-04-08) (“FDP”). Pursuant to Yamhill County Zoning Ordinance (“YCZO”) 1201.03, these three applications have been consolidated for review, and the findings below address the relevant approval criteria for all three applications.

With respect to the requested plan amendment and zone change, the findings below address the relevant criteria and standards in the Yamhill County Comprehensive Plan and Yamhill County Zoning Ordinance. Because portions of the landfill expansion area are currently zoned Exclusive Farm Use (“EFU”) and are proposed to be zoned Public Works/Safety (“PWS”), the findings also address relevant criteria and standards required for an exception to Statewide Planning Goal 3 (Agricultural Lands).

Based on the record and as set out in the findings below, the County’s Board of Commissioners (“Board”) finds that RLI has satisfied all of the relevant criteria and standards, and the Board approves all three of RLI’s land use applications. After an exhaustive review of the need for and alternatives to the continued operation of a landfill, the Board finds that continued operation of Riverbend Landfill is necessary to meet the County’s solid waste disposal needs.

In general, many of the factors supporting the Board’s decision can be traced to the fact that RLI’s proposal is for the expansion of an existing facility. The expansion of existing facilities leverages existing investment and developed land for a more efficient and more economical use of lands. Such an approach has the added benefit of removing development pressures elsewhere in the County, which in the long term helps preserve

resource lands or maximize the use of urban lands for truly urban uses. Moreover, RLI's proposal for expansion is to continue at the same level of operations as the existing use, increasing operations only as necessary to keep pace with population and economic growth. This has allowed the Board to better evaluate the proposal for the expansion by comparison to activities and impacts associated with the existing operations.

Another factor common throughout the Board's findings is the acknowledgment that, by continuing to allow the operation of a solid waste disposal facility in the County, the County is taking responsibility for the solid waste produced by its own residents, businesses and industry.

A. Riverbend Landfill History

The following is a brief history of Riverbend Landfill.

In 1979, the Board determined that the two municipal solid waste landfills operating within the County would soon reach capacity. The Whiteson Landfill, owned by the County, received waste from south central Yamhill County. The Newberg Landfill received waste from the County and southern Washington County.

The County issued a request for proposals from the private sector for a disposal franchise to develop and operate a new landfill. On December 19, 1979, RLI's predecessor submitted a proposal for development of a new landfill in the County in anticipation of the closure of Whiteson and Newberg Landfills.

On January 23, 1980, the Yamhill County Solid Waste Advisory Committee ("SWAC") held a hearing to consider applications for solid waste disposal franchises and a new landfill. A proposal for the development of Riverbend Landfill was reviewed, including the need for a comprehensive plan amendment and zone change from EFU to PWS. Following the public hearing, the SWAC recommended that the Board approve the plan amendment and zone change for the proposed landfill and grant a disposal franchise to RLI's predecessor.

In 1980, the County approved a land use application to allow development of Riverbend Landfill. Following public hearings, the Board adopted Ordinances 236 and 237 on May 14, 1980 to:

1. Amend the Comprehensive Plan Map designation for Tax Lot 200, Map 5501 (described as about 229 acres) from Agriculture/Forestry Large Holding ("AFLH") to PWS ; and
2. Amend the zoning for the same parcel from EFU/Agriculture-Forestry (EF-40/AF-20) to PWS.

Concurrent with that plan amendment and zone change approval, the Board approved a separate conditional use floodplain permit to allow the deposit of fill within the 100-year floodplain of the South Yamhill River. These approvals were all granted under the provisions of the 1976 Yamhill County Zoning Ordinance (Ordinance 82).

At the time, although solid waste disposal sites were permissible uses on EFU-zoned land under state law, the County's 1976 Zoning Ordinance allowed landfills as an outright permitted use only in the PWS zoning district. The 1976 ordinance did not require Site Design Review for the development of any permitted uses within the zone, including a landfill. The 1976 ordinance did not impose any height or grade restrictions on landfill development.

Because it was approved under the provisions of the 1976 Zoning Ordinance, the landfill's operation and design plan has never been subject to County Site Design Review; only approval from the Oregon Department of Environmental Quality ("DEQ") was required. Issues relative to the engineering, environmental safety or appropriateness of the landfill design and operation have been deferred to DEQ in its review and renewal of the landfill's operating permit since the original land use approval was granted by the County in 1980. The County's current Zoning Ordinance requires Site Design Review approval for any improvements in areas that were not zoned PWS as part of the 1980 plan amendment and zone change approval.

RLI's predecessor also obtained a solid waste disposal franchise from the County in 1980. That franchise included no restrictions on the size, height, or capacity of the landfill and did not limit out-of-County waste. By letter dated October 15, 1981, DEQ approved the proposed geotechnical study, design plans, and operational plans prepared for the first cells of Riverbend Landfill. At that time DEQ did not require operation or design plans for the full development of the facility, only a 5-year plan. On November 6, 1981, RLI's predecessor received DEQ approval for a solid waste disposal permit (Permit No. 345).

Rates for disposal were set initially in 1982 (Board Order 82-15), and the landfill commenced operations at that time.

In 2002, RLI received approval of a plan amendment and zone change to expand the PWS zoning boundary by about 5 acres adjacent to the entry driveway to the landfill (described as a portion of Tax Lot 101, Map 5501). The plan amendment/zone change to PWS was approved with adoption of Ordinance 718 on August 22, 2002. The ordinance included conditions to preclude expansion of the landfill footprint onto this parcel and to limit additional access points to Highway 18.

Due to a mapping error made at the time of the 1980 plan amendment and zone change for Tax Lot 200, the entire 229-acre site was not rezoned to PWS as intended. With the minor expansion of PWS zoning that was approved by Ordinance 718 in 2002, the existing boundaries of PWS zoning encompass a total of about 212 acres. It is on this configuration that RLI has been operating Riverbend Landfill.

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B. Description of the Proposed Expansion

According to RLI's application, the expansion of Riverbend Landfill entails the following:

RLI owns 10 separate tax lots totaling approximately 680 acres, including the existing landfill and contiguous parcels on both sides of Highway 18. Only five of those ten parcels are included in this consolidated land use application. The remaining parcels will retain the existing EFU zoning and RLI has indicated that it will continue to manage and/or lease those parcels for permitted farm uses.

The key elements of the interrelated land use application are summarized below.

- Approximately 73 acres southeast of the current landfill (Map 5501, portion of Tax Lot 200) will be rezoned from PWS to EFU. The current PWS zoning extends to both sides of the South Yamhill River and includes land within the floodplain and floodway. The modified PWS zoning boundary will generally follow the toe of the landfill berm and include a buffer for a linear surface water facility and natural vegetation.
- RLI is seeking public agency approvals to establish a wetland mitigation bank in the area re-zoned as EFU, which will enhance and restore wetland functions. Wetland mitigation and enhancement activities are a permitted use in the EFU zone. No landfill disposal activities are proposed or will be allowed in this area due to the zoning change from PWS to EFU.
- Approximately 99 acres west of the existing landfill (Map 5501, Tax Lots 400 & 401) will be rezoned from Recreational Commercial/RC ("RC") and EFU to PWS. This area will serve as the area for landfill disposal operations. Tax Lot 400 (63 acres) is currently zoned EFU and the majority of this property supports a poplar tree farm that is irrigated with leachate from the existing landfill and eventually harvested for dimensional lumber or pulp. Tax Lot 401 is currently zoned RC (25 acres) and EFU (11 acres). The majority of this land is developed as a recreational vehicle park and operated under a lease with RLI.
- Approximately 10 acres southwest of the landfill (Map 5511, portion of Tax Lot 600) will be rezoned from EFU to PWS for ancillary facilities (including a storage yard and leachate treatment facilities). No landfill disposal activities are proposed or will be allowed in this area due to the zoning change from EFU to PWS.
- Approximately 19 acres to the north of the landfill (Map 5501, portion of Tax Lot 101) will be rezoned from EFU to PWS for ancillary facilities (including a public drop-off/recycling area and surface water facilities). No landfill disposal activities are proposed or will be allowed in this area due to the zoning change from EFU to PWS.

In summary, as depicted on the zoning map in Figure 1, approval of the package of interrelated zone changes will result in the following net changes in zoning for the five affected tax lots in the project area:

1. Net increase of approximately 46 acres zoned PWS relative to existing conditions

2. Net decrease of approximately 20 acres zoned EFU relative to existing conditions
3. Net decrease of approximately 25 acres zoned RC relative to existing conditions

C. Landfill Liner System

Landfills are subject to federal regulation by the Resource Conservation and Recovery Act ("RCRA"). Subtitle D of RCRA ("Subtitle D"), promulgated in 1993, has two primary focuses: (1) it specifically excludes a large array of hazardous wastes from being landfilled at municipal solid waste disposal sites such as Riverbend Landfill; and (2) it requires sophisticated, highly-engineered liner and cover systems for landfills. States such as Oregon adopted these federal rules, and many states (including Oregon) made the rules even more stringent.

Prior to these regulations, local governments did not give much consideration to the requirements of land-based waste containment. As impacts of poorly-managed municipal and industrial waste practices on the environment became apparent, the regulations became more and more protective of the natural environment and human health. Because of the increased costs to meet these regulations, it became necessary for local governments to close local landfills and rely on regional landfills with access to larger amounts of waste that generates sufficient revenue.

The hallmark of Subtitle D regulations is the liner system, which includes a bottom liner constructed prior to waste disposal and a top liner constructed at closure. The bottom liner system is comprised of several layers and the entire system is actually several feet thick. The liner system begins at the bottom with a finished subgrade that allows the upper layers to be constructed in a manner to direct leachate in a specified direction for collection. On top of the subgrade is an impervious geomembrane layer called the Secondary Geomembrane. On top of the Secondary Geomembrane is a drainage layer comprised of a geocomposite strip drain and a blanket drain geotextile. On top of these layers is a two-foot layer of compacted clay or its equivalent. On top of the clay is the impervious Primary Geomembrane, which is again topped with drainage layers consisting of cushion geotextile, gravel and more geotextile fabric. On top of this primary drainage system is the operations layer, which is a soil layer one-foot thick that acts as a protective physical buffer between the waste and the liner system.

After waste is placed on top of the liner, leachate will begin to form. The leachate is allowed to drain through the drainage layers consisting of cushion geotextile, gravel and geotextile fabric where it is collected in drain pipes. The Primary Geomembrane is designed to prevent the leachate from going any further. If the leachate were somehow to make it through the Primary Geomembrane layer, the clay layer serves as another barrier. In the event the leachate were to make it past the clay, it would then collect on top of the Secondary Geomembrane. If any leachate collects there, it is drained to a monitoring point that alerts the landfill operator of a leak in the Primary Geomembrane.

The double-composite liner system, which includes the leak detection and leachate collection layers, allows management of leachate and long-term monitoring capability of primary leachate generation and leakage. By designing the leak detection and leachate collection systems with effective liquid collection efficiency and a large factor of safety

against clogging and degradation, the modern liner system as proposed by RLI will provide a redundant design with a very high degree of long-term reliability. The reliability of this type of liner system goes beyond the minimum requirements of Subtitle D, which requires only a single composite liner for long-term waste containment.

Following placement of waste within the lined system, Subtitle D also requires placement of a long-term closure cap on top of the final waste grades. That cap includes soil and geosynthetic barrier layers, drainage layers, and topsoil. The cover provides a containment barrier that will preclude further leachate generation and effectively directs landfill gas to be collected by the gas-collection wells.

The liner and cover systems are designed to provide long-term durability against chemical and biological degradation, cracking, seismic events, meteoric weather events, flora and fauna, and aging. The life of these systems is expected to be on the order of centuries, and designed in a manner that allows them to be monitorable, and the cover system maintainable. The long life span ensures that the liner system is in place long after it is needed.

RLI is mandatorily required to build up funding during landfill operations to allow full post-closure monitoring and maintenance to be performed for a minimum of 30 years past the point that the last ton of waste is received at the landfill. DEQ can in fact require post-closure maintenance and monitoring to extend beyond 30 years if it deems that the landfill still requires that type of care.

The landfill cap that is installed is directly available for inspection and maintenance, and it is a regulatory requirement to ensure that the cover system continues to function as designed throughout the post-closure period. The leachate collection, leak detection, gas collection, and groundwater monitoring systems will all be positive indicators of exactly how the landfill will be performing during the post-closure period.

The quality of leachate recovered from the bottom of the modern-day landfills (including RLI) is relatively benign compared to the hazardous character of leachates that may have existed in pre-Subtitle D landfills and is a testament to the effectiveness of the liners. Groundwater impacts due to leachate contamination at modern lined landfills are zero-to-insignificant compared with those created by pre-Subtitle D facilities. This is true for Riverbend Landfill, which has a long history of meeting groundwater quality standards imposed by DEQ as a result of liner systems that are already in place.

D. Summary of Proceedings

RLI submitted its package of land use applications in June and August, 2008. Pursuant to YCZO 1204.00, RLI's application for a plan amendment and zone change was processed through the Type C procedure contained in YCZO 1301 because it involves an exception to a Statewide Planning Goal (Goal 3). Because all three applications were processed together, the SDR and Floodplain Development applications were also processed through the Type C procedure contained in YCZO 1301. In addition to the requirements of YCZO 1301, YCZO 1204.00 requires both the Planning Commission and the Board to hold public hearings.

The Planning Commission held a public hearing on November 6, 2008 to consider all three applications. On that date, RLI gave its primary presentation and then the record was open for public comment. At that time, nine individuals spoke either in favor or in opposition of to the application. That evening, the Planning Commission closed the record except for written comments and continued the hearing until November 20, 2008.

At the November 20 Planning Commission hearing, the record was re-opened, continuing with public comment, and 28 individuals testified. In light of the late hour in which the public testimony concluded, RLI did not have the opportunity to make a formal rebuttal presentation and asked that the record remain open for additional comment. The Planning Commission kept the record open only for written comment until December 19, 2008. In addition to the live testimony at the hearings, the Planning Commission received approximately 100 written comments in the form of letters and emails to the County, plus an additional 57 cards providing comment that were submitted at the hearings.

Following the close of the record on December 19, all parties that had participated during the public comment period were provided seven days to submit rebuttal evidence. RLI and two other individuals provided rebuttal comments. RLI was then given an additional seven days to provide a final argument, which it submitted to the County on January 2, 2009.

Prior to the close of the evidentiary record on December 19, and as part of its anticipated update to the Solid Waste Management Plan, the County hired a consultant, JR Miller and Associates, to analyze various disposal options in the event Riverbend Landfill ceased operating in 2014. The report, Yamhill County Financial Analysis of Disposal Options (“JR Miller Report”), is part of the record in this matter.

The Planning Commission re-convened on January 8, 2009. At that time, staff from the County Planning Department (“Staff”) recommended approval of the PA/ZC application and the FDP application, but recommended denial of the SDR application. Staff’s recommendation for the former was based on the fact that RLI had met all of the relevant criteria and that, specifically, expansion of the landfill was necessary to meet the County’s goals established in the Solid Waste Management Plan. Staff’s recommendation of denial of the SDR application was based on a concern over the level of screening of the landfill compared to the proposed height of the expansion.

Over the recommendation of Staff, the Planning Commission recommended denial of all three applications. Based on a reading of the transcript of the Planning Commission’s deliberation, it is not clear to the Board on what specific basis the Planning Commission made its recommendation. The motion on which the Planning Commission voted was based on all the discussion during the deliberation. That discussion, in turn included very little mention of the approval criteria on which the decision is to be based. When the approval criteria were mentioned, there appears to have been disagreement on whether those criteria were satisfied. The vote of the Planning Commission is a recommendation

only, however, and pursuant to YCZO 1403.04 this body reviewed the application *de novo*.

The entire record from the Planning Commission proceeding was entered into the record for the Board's review. On March 19, 2009 at 1:00 p.m., the Board held a public hearing to take written and oral testimony on the application. At that hearing, approximately 45 individuals testified both in support of and in opposition to the application. The Board imposed no time limit on individual testimony. By the time all individuals testified as part of the public comment period, some of whom spoke for more than 30 minutes, the hearing did not conclude until nearly 4:00 a.m. the following morning. Earlier in the evening, the Board informed everyone who signed up to testify that, if they were unable to remain late into the evening, they could submit written comments that would be entered into the record. All individuals who signed up to testify either testified or left written comments, except two people who did not appear. In addition to written comments submitted during the hearing, the Board received written comments from more than 1,200 individuals before the record closed.

On April 1, the Board re-opened the hearing at the point of RLI's rebuttal. At that time, the Board also heard comments from public agencies. Specifically, staff from DEQ's solid waste and air quality divisions spoke at length and answered questions from Board members.

At the conclusion of the April 1 hearing, the Board suspended the proceedings for the purpose of providing the County time to commission a study of the feasibility of various alternatives to landfill technology. As discussed in more detail below, part of the process for taking an exception requires the County to make a determination of need for the proposed use. Because the County heard extensive and detailed testimony on the status of new technologies, and because that testimony sometimes conflicted, the Board desired to commission an independent study to provide more definitive evidence with respect to those technologies.

The Board held the record open for the limited purpose of commissioning the independent study, for accepting written comments on that study, and for accepting written comments on a diagram relied on by DEQ during testimony by DEQ staff. The study, titled *Analysis of Waste Disposal / Management Alternatives for Yamhill County, Oregon* ("Zia Report"), was completed on October 1, 2009 and accepted by the Board into the record on October 14, 2009. The Board then allowed all participants in the proceeding to comment on the content of the study. The Board then allowed all participants to rebut those comments and gave RLI an opportunity to make a final argument based on those comments.

The record was closed on November 4, 2009. The Board re-convened on November 9, 2009 at the point of staff recommendation. Staff recommended approval of all three applications. Staff's changed recommendation on the SDR application was a result of the fact that the proposed height of the landfill had been decreased to match the permitted height of the current landfill.

Based on the evidence in the record, including but not limited to RLI's application, RLI's supplemental submissions and presentations, many hours of public testimony, hundreds of written comments, and two independent studies commissioned by the Board, the Board finds that there is sufficient evidence in the record to support approval of all three of RLI's applications. The findings below address each of the approval criteria on which this decision is based. RLI's set of applications is highly complex and all three decisions must be based on criteria that are similar or which overlap. The Board has attempted to order these findings to correspond with the relevant criteria for each decision. Because of the overlapping nature of the criteria, the fact that the Board has not listed a finding under a particular heading should not be construed as evidence that the Board has not made a finding with respect to the criteria listed under that heading. Instead, where the Board makes a finding related to a specific subject matter, that finding is applicable to all criteria relating to that subject matter unless the finding expressly indicates that it does not apply to a specific criterion.

II. PLAN AMENDMENT AND ZONE CHANGE

The proposed expansion of Riverbend Landfill requires a Plan Amendment and Zone Change to accommodate the expansion onto land that is currently zoned as EFU. State statutes and rules generally allow the expansion of landfills onto EFU lands, even where high-value farmland is involved. ORS 215.283(2)(k); OAR OAR 660-033-0120. The YCZO, however, is more restrictive than state law, and the only zone in Yamhill County which allows a landfill in the PWS zone. Thus, despite a state policy that allows landfills on EFU land, the PA/ZC is necessary to convert the EFU zone to PWS.

An amendment to an acknowledged Comprehensive Plan requires conformance with all of the Statewide Planning Goals. ORS 197.175(2)(a). The Board finds that the evidence in the record supports the conclusion that RLI's applications conform to the Statewide Planning Goals and the Board approves the requested Plan Amendment and Zone Change. Each of the applicable Statewide Planning Goals is addressed below, as are the criteria for plan amendments and zone changes contained in the YCZO. Relevant language for each criterion is italicized, followed by the Board's analysis and findings.

A. GOAL 1 – Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Goal 1 requires that local governments provide citizens with opportunities to participate in several phases of land use planning, ranging from broad scale public involvement in the development of comprehensive plans and implementing ordinances to more site-specific review of plan and development proposals. Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in its acknowledged comprehensive plan and land use regulations.

By definition, a goal exception is an amendment to a comprehensive plan. The County's regulations for comprehensive plan amendments include notice to surrounding property owners and to the Department of Land Conservation and Development ("DLCD"). The regulations also call for public hearings before the Yamhill County Planning Commission (which makes a recommendation to the Board of Commissioners), and public hearings before the Yamhill County Board of Commissioners. Opportunities for citizen input and testimony are provided at all of the public hearings.

The Board finds that citizen involvement throughout this process has been extremely thorough and well beyond the minimum requirement of Goal 1. In addition to standard procedures for public notice, RLI worked for more than 2 years to share information about the proposed landfill expansion with neighbors and interest groups to address issues of concern. Those efforts included:

- Holding one-on-one meetings with immediate neighbors of the landfill
- Holding an open house at the landfill and specifically inviting property owners within approximately 1 mile of the site
- Holding an onsite meeting with the County's Solid Waste Advisory Committee
- Holding a meeting with the director of the Yamhill County Soil & Water Conservation District
- Holding meeting with a representative of Friends of Yamhill County
- Making presentations regarding the proposed landfill expansion to most of the city councils for County jurisdictions served by Riverbend Landfill, including: Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan, and Willamina
- Making presentations regarding the proposed landfill expansion to several local service clubs and organizations
- Providing the County with electronic versions of all submittals so that the County could post the information on its website
- Preparing project newsletters and posting information about the proposed expansion to the Riverbend Landfill web site

In addition to RLI's efforts, the Board finds that the County's process not only provided the opportunity for citizen participation, but that high levels of citizen participation actually occurred. As already noted, the hearings before the Planning Commission and the Board included public testimony, and neither the Planning Commission nor the Board limited the amount of time that each individual was permitted to speak. Additionally, the County received hundreds of written comments from individuals and interest groups. The groups that commented included, but are not limited to: the Yamhill County Soil and Water Conservation District, Friends of Yamhill County, the Yamhill County Farm Bureau, and Willamette Riverkeeper, among many others.

Public agencies that represent other public interests were also provided the opportunity to participate. DLCD was provided with notice of the application. DLCD did not intervene in this proceeding, even though it has the right to do so, and communications with County staff indicate that DLCD believes the land use criteria relating to goal exceptions have been satisfied. Other public agencies that provided comment were the County's Solid Waste Advisory Committee, the McMinnville Fire Department, and the County surveyor. Finally, staff from the DEQ appeared during both the Planning Commission proceedings and the Board proceedings. In each instance, DEQ staff answered direct questions from the reviewing body and for members of the public.

In addition to the opportunities for citizen involvement that occurred specifically as part of the proceedings in this matter, RLI's proposal was in the unique position of being subject to a ballot initiative. On November 4, 2008, two days before the Planning Commission hearing, voters in Yamhill County voted on Measure 36-119, which proposed to place limits on the County's ability to site new landfills or allow landfill expansions. Although that measure failed 58% to 42%, thereby initiating no changes in the land use process, the election allowed citizens throughout the County who did not participate in this proceeding the opportunity to express an opinion regarding the County's decision to allow this landfill expansion.

B. GOAL 2 – Land Use Planning and Exceptions

Goal 2, Part I – Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2, Part I requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. Consistency of the proposed plan amendment and zone change with goals and policies in the acknowledged Yamhill County Comprehensive Plan is addressed in Section II.Q(1) of these findings. The Board incorporates the discussion and findings in that section here by this reference.

Riverbend Landfill is located in the rural area and the County has land use jurisdiction over the proposed plan amendment and zone change. Additionally, under state law counties are assigned the lead role in coordinating planning for solid waste management and each city generally defers to the County's role. While the comprehensive plans of the ten incorporated cities in the County are not directly applicable to the proposed plan amendment/zone change application, the comprehensive plans of the cities generally include a reference or policy supporting coordination with the County on matters related to solid waste.

Each city in the County has a franchise agreement in place with Western Oregon Waste or Newberg Garbage Service to collect solid waste and recyclables within defined service areas. The Board finds that the solid waste collection system for the urban areas is

integrally tied with and dependent on the availability of Riverbend Landfill for disposal of residual wastes.

Goal 2, Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base. The Board finds that RLI, in developing the proposal to expand the Riverbend Landfill, engaged in significant coordination efforts over an approximately two-year period to provide background information on the proposed landfill expansion to officials. Specifically, RLI coordinated with the staff of: (1) the County, (2) the Federal Emergency Management Agency (“FEMA”); (3) the ten incorporated cities in the County, (4) the DEQ, (5) the Oregon Department of Transportation (“ODOT”), and (6) the Oregon Division of State Lands (“DSL”).

Moreover, the County sent referrals to the following agencies to obtain comment from those agencies: Surveyor, Yamhill County Public Works, ODOT, Oregon Department of Fish and Wildlife, Department of Environmental Quality, NOAA Fisheries, Department of Land Conservation and Development, Soil and Water Conservation District, McMinnville Rural Fire Department, Department of State Lands, Department of Agriculture, Watermaster, Solid Waste Advisory Committee, Federal Emergency Management Administration, METRO Solid Waste Division, Marion County Solid Waste Division, Army Corp of Engineers, City of McMinnville, City of Newberg, City of Amity, City of Lafayette, City of Sheridan, City of Dundee, City of Dayton, City of Yamhill, City of Carlton, City of Willamina, City of Gaston, Clatsop County Solid Waste Division.

The goal exception analysis described below includes consideration of alternatives as required by Goal 2, including consideration of (1) expanding Riverbend Landfill, (2) building a transfer station in the McMinnville area and shipping waste to alternative landfill sites located outside of the County, and 3) pursuing alternative non-landfill technologies. Moreover, the record contains documents and factual evidence in support of the goal exception, including but not limited to economic, traffic, and environmental studies prepared by firms with specialized technical expertise.

Based on the foregoing, the Board finds that Goal 2, Part I is met.

Goal 2, Part II – Exceptions

As already noted, expansion of the Riverbend Landfill will, in part, be located on agricultural lands that are currently zoned EFU, requiring that the land be zoned PWS. RLI’s application, therefore, requested an exception to Goal 3 to accommodate that change. The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. OAR 660-004-0000. When approving an exception, the County must adopt as part of its comprehensive plan findings of fact and a statement of reasons demonstrating that the standards for an exception have been met. *Id.* These findings serve that purpose.

As stated in OAR 660-004-0015(1), the standards applicable to a goal exception are those in OAR 660-004-0020(2) and OAR 660-004-0022. The express language of OAR 660-004-0020(2) states that certain factors must be addressed *if* the County “determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal.” The Board therefore addresses first whether there are reasons consistent with OAR 660-004-0022 to use the resource lands as proposed before addressing the factors required by OAR 660-004-0020, because if such reasons do not exist, there is no reason to address those factors. As set out below, the Board finds that such reasons do exist.

The Board makes findings with respect to OAR 660-004-0022 and OAR 660-004-0020 below. The relevant language of each rule is quoted in italics, followed by the Board’s analysis and findings.

(1) OAR 660-004-0022

OAR 660-004-0022 sets forth the types of reasons that may be used to justify certain types of uses not allowed on resource lands. OAR 660-004-0022 contains a “catch-all” provision, OAR 660-004-0022(1), that applies to all uses not specifically listed in subsections (2) through (11) of the rule. Because Goal 3 exceptions for landfills are not listed in subsections (2) through (11), only the OAR 660-004-0022(1) applies to RLI’s application.

For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0010 or chapter 660, division 14, the reasons shall justify why the policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

- (a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either*
- (b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. ***; or*
- (c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*

The Board finds substantial evidence in the record to demonstrate that OAR 660-004-0022(1)(a) and OAR 660-004-0022(1)(c) are satisfied.¹ Market demand alone cannot establish “need” for purposes of a goal exception. *1000 Friends of Oregon v. Marion County*, 18 Or LUBA 408, 411 (1989). However, the “need” requirement in a Goal exception “may be met based upon a showing of (1) market demand for the proposed use, and (2) that the county cannot satisfy its obligations under one or more of Goals 3-19, or the requirements of its acknowledged comprehensive plan.” *Id.*

¹ Because the Board bases its findings in part on OAR 660-004-0022(1)(c), it is not necessary to address OAR 660-004-0022(1)(b).

(a) Need Based on Market Demand

The Board finds that there is a demonstrated market demand for landfill disposal to accommodate the solid waste disposal needs of Yamhill County. Disposal volumes generated within the County continue to rise along with the County's population despite increased recycling rates. Although per capita recycling in Yamhill County has increased 128% since 1997, per capita waste disposal has increased 68% over the same time period.

Moreover, industrial and commercial businesses in the County rely on a low-cost, local disposal option to accept the non-hazardous waste they produce in order to keep costs low and to stay in business. For example, the Board received comments from a local contractor that "[k]eeping Riverbend open is about more than how much money I make. . . . When costs go up, it becomes more difficult for me to be competitive without cutting hours or crew members." A. Wallace, Letter, February 23, 2009. Similarly, a representative from one of the County's largest employers stated that "[a]n integral part of [SP Newsprint's business] is managing the cost of disposal." D. Walsh, Letter, March 17, 2009. That same individual testified in person, stating that the key to success with SP Newsprint's programs is having a lower-cost means of disposal for its residuals. Specifically, he stated "Riverbend Landfill provides a lower-cost outlet for our waste materials. . . . We estimate that if the landfill were to close, and not be available to us that our disposal costs would increase by 100 percent" from \$3.5 million per year to \$7 million per year. D. Walsh, Hearing Testimony, March 19, 2009.

Of the hundreds of comments the County received in opposition to the expansion, none of those comments can reasonably be understood to stand for the proposition that there is *no* market demand for landfill disposal in Yamhill County. Indeed, many of the comments the County received presuppose that there is such a demand, and those comments focus instead on whether there is another method for meeting that demand, such as through new technologies or by shipping the County's waste to some other landfill. For example, a written comment from the President of Waste Not Of Yamhill County, a primary opponent to the expansion, stated the County "must decide how to handle the County's waste for the next twenty-five years." S. Watkins, Letter, March 19, 2009. That same letter, however, goes on to encourage the County to pursue viable alternatives to landfilling waste. *Id.* The letter does not conclude that there is not a market demand for a landfill or that solid waste disposal in general is not necessary.

Based in part on the increasing volumes of solid waste generated within Yamhill County, on the need to dispose of that waste for the benefit of industrial, commercial and residential entities, the availability of a landfill as an immediate and low-cost option, and the entirety of the record, the Board finds that there is a market demand for solid waste disposal in general and landfill disposal specifically. The choice between a landfill and other uses that may serve this demand is discussed more fully below as it pertains to the County's ability to meet its other Statewide Planning Goals.

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(b) Need Based on Other Statewide Planning Goals

The record demonstrates that there is also a need under OAR 660-004-0022(1), specifically for a landfill, based on the County's need to meet other Statewide Planning Goals. Specifically, the record shows that a local landfill is necessary for the County to meet Goals 9, 11, and 13 and the requirements of the County's acknowledged comprehensive plan.

(i) County's Obligations under Goal 9

The Board finds first that a local landfill is necessary for the County to meet its Goal 9 obligations to provide "adequate opportunities . . . for a variety of economic activities." Utilizing out-of-county landfills, or any non-landfill alternatives, based on cost alone provides fewer overall economic benefits to the County, and in most cases the requirements of using or building such facilities are patently unreasonable. When other factors such as the loss of revenue from host fees and the inability to subsidize rates with out-of-County waste are taken into account, it is even clearer to the Board that continued operation of Riverbend Landfill is not just preferable, but is necessary for meeting the County's economic development goals and obligations. The record does not contain any evidence that there exist viable options for replacing the employment and economic development benefits associated with Riverbend Landfill prior to the time Riverbend Landfill is scheduled to close or for the foreseeable future after that time.

In support of this finding, the Board relies on the entire record, and more specifically on three in-depth economic studies in the record – one conducted by RLI and two by the County. Collectively, these studies assessed the economic impacts of the continued operation of Riverbend Landfill and the feasibility of various alternatives in the event Riverbend Landfill closes.

The first economic study, conducted for RLI by ECONorthwest and titled *Economic Impacts of Expanding Riverbend Landfill* ("ECONorthwest Report"), was submitted as Attachment E to the PA/ZC application narrative. The ECONorthwest Report, which compares the continued operation of Riverbend Landfill only to other landfill alternatives located outside the County, concludes that households and businesses currently served by Riverbend will see their disposal costs rise if the solid waste had to be shipped out of the County. Specifically, the report concludes that residential garbage rates will rise by at least 12% and that commercial businesses will see an even greater increase. Overall, the report predicts that the cost of disposal for the entire County will increase by at least \$3.2 million per year without the continued operation of Riverbend Landfill.

The ECONorthwest Report notes that the County receives approximately \$740,000 per year in licensing and host fees from Riverbend Landfill. That revenue is used for critical programs such as solid waste enforcement and planning activities. If Riverbend Landfill closes, the County will collect license fees only from a new transfer station that amounts to only approximately \$59,000 per year. The ECONorthwest Report also identifies the employment and income impacts that will result from the landfill expansion. Specifically, over the proposed life of the expansion, expanding Riverbend Landfill

creates 565 more jobs and generates over \$22 million more personal income in the County than does shipping waste to other landfills. RLI will spend \$66 million over approximately the next 25 years to continually expand the landfill. This construction activity will generate 600 jobs over that time period (24 jobs per year) and \$23.5 million in associated income (\$940,000 per year). Day-to-day operation of Riverbend Landfill will also require 23.5 full-time equivalent jobs, generating \$1.1 million in associated personal income each year. Of the \$5.3 million per year in goods and services RLI purchases from local and regional vendors to operate the landfill, about \$1.3 million will be spent with local vendors in the County.

The second economic study, the JR Miller Report noted above, was commissioned by the Board as part of an ongoing update to the County's Solid Waste Management Plan. The JR Miller Report, which primarily compares the continued operation of Riverbend Landfill to other landfill alternatives located outside the County, predicts an even greater disposal cost increase to County ratepayers if Riverbend Landfill closes. Specifically, that report states that the total cost difference to dispose at an out of County landfill could range from \$58 million to over \$220 million over a 20 year period based on the total cost over that period. On a yearly basis, this increase translates to a County-wide increase for disposal costs of between \$2.9 million and \$11 million per year more than continued operation of Riverbend Landfill. The JR Miller Report also addresses briefly the cost of alternative technologies, finding that such alternatives are largely considered emerging technologies since they have limited success of handling mixed municipal solid waste. With respect to those technologies that have had some limited success processing municipal solid waste, the JR Miller Report estimates that the cost to build such a facility would increase the County's overall disposal costs by up to \$22 million per year.

The final study, the Zia Report noted above, was commissioned by the Board for the express purpose of clarifying the potentially conflicting testimony already submitted to the record with respect to the cost- and technological-feasibility of potential landfill and non-landfill alternatives to the continued operation of Riverbend Landfill. The Zia Report analyzed two broad categories of alternatives to Riverbend Landfill. The first broad category of alternatives involved the export of waste to another local or regional landfill in Oregon and Washington, and four landfills were analyzed. The second broad set of alternatives involved non-landfill biological, chemical, or thermal waste conversion technologies, and six technologies were analyzed.

With respect to landfill alternatives, the Zia Report concludes that long-haul trucking of the County's waste to another landfill has varying cost impacts and other landfills would all be more expensive than using Riverbend Landfill given the necessity of developing transfer capacity and the distance of transport involved. These increased costs inevitably are reflected in rates charged residential, commercial and industrial customers. For example, the Zia Report states that the cost to residential and commercial customers of Western Oregon Waste for disposing of waste at Columbia Ridge Landfill will increase from approximately \$27.00 per ton to \$100.32 per ton – a 271% increase. This is even more than the cost increase estimated by the ECONorthwest Report.

With respect to non-landfill alternatives, the Zia Report concludes that only one, waste-to-energy, is operating at a fully-commercial level and is capable of handling the broad municipal solid waste stream. However, the Zia Report states that the only existing waste-to-energy facility in Oregon does not have the capacity to process the County's waste and that it would take several years, at least seven or eight, well beyond the time the existing Riverbend Landfill is expected to close. In addition to the long time period necessary to permit and to build such a facility, the Zia Report identifies the tipping fee associated with waste-to-energy facilities as being in the range of \$150 to \$200 per ton. This amount is anywhere between five and seven times greater than the average disposal cost at Riverbend Landfill as calculated by the Zia Report.

The Board finds that the clear conclusion in each of the three economic studies is that the continued operation of Riverbend Landfill is currently the only economically- or technologically-feasible alternative for processing solid waste generated in the County.

The record also demonstrates that Riverbend Landfill provides immense benefits to the County by playing a regional role in solid waste management. County-generated waste currently makes up approximately 35% of the total waste disposed of at Riverbend Landfill. If the amount of out-of-county waste accepted by RLI was reduced such that the landfill accepted equal amounts of in-County and out-of-County waste, disposal costs at the landfill would increase by nearly 50%. If no out-of-County waste was accepted, disposal costs at the landfill would increase by approximately 100%. As explained below in Section II.B(1)(b)(ii), the County's Solid Waste Management Plan and the license agreement with RLI recognize the economic benefit that accrues to the County's rate payers by acquiring waste from around the region. The Board incorporates the discussion and findings in that section here by this reference. The Board finds that the continued operation of Riverbend Landfill and the proposed size of the expansion are necessary to maintain that benefit and that such a benefit is necessary for the County to meet its goals and obligations under Goal 9.

The Board heard comments from individual residents that they would be willing to pay an increase in their garbage rates if it means that Riverbend Landfill will be closed or that only in-County waste would be accepted. Other individuals commented that increases in residential rates were unacceptable. While the Board admires the willingness of some individuals to shoulder a larger burden to create a different outcome, the Board finds that the closure of Riverbend Landfill will have a significant impact on the County's residents. Moreover, the Board finds that the impact to residential customers is not the only consideration that the Board must take to determine whether it can meet its Goal 9 obligations. As discussed in more detail below, the Board finds that without a local disposal option, the impact to residential customers in addition to the impact to commercial and industrial customers prevents the County from meeting its Goal 9 obligations.

The three economic analyses focus primarily on overall disposal costs or impacts only to residential and commercial customers. The Board finds that the landfill's importance to the County's industrial sector should also be considered for purposes of need under Goal 9. The importance to such customers was made evident by the testimony of industry

leaders during the Board's March 19th hearing and in other comments the Board received.

The presence of Riverbend Landfill is within a reasonable distance from SP Newsprint, one of the County's largest employers employing 264 people. SP Newsprint spent roughly \$3.4 million on solid waste disposal in 2008, a number it expects to double in the absence of Riverbend Landfill. SP Newsprint considers the lower cost at Riverbend Landfill to be a critical element to running its business efficiently. Similarly, the president of Cascade Steel, which employs more than 500 people, testified that safe, cost-effective, long-term waste disposal is a critical part of that company's business. Without Riverbend Landfill, Cascade Steel estimates that its disposal costs will triple.

The County's industries require economic certainty and low costs to remain in business. According to all three economic analyses, a local landfill provides that certainty and keeps costs low for the industries' solid waste needs. The Board finds that the lower relative disposal cost for waste going to Riverbend Landfill, made even lower by accepting waste from outside the County, significantly impacts overall costs for the employers in the area and helps them remain competitive, maintain family wage jobs, and provides a key economic advantage to the County in the form of revenue derived from host fees. Based on the uncertainty of the technology for non-landfill alternatives, the high-cost of landfill alternatives and waste-to-energy, and the benefits achieved by operating as a regional landfill, the Board finds that only Riverbend Landfill provides a stable, low-cost disposal option for residential, commercial and industrial customers alike. Without the continued operation of Riverbend Landfill, the increased disposal costs would have a devastating impact on industrial customers that comprise a large part of the County's job base. The Board finds that the economic benefits that will result from the continued operation of Riverbend Landfill are necessary to maintain for the County to continue to meet its Goal 9 obligations and that no other option provides those benefits.

The Board acknowledges the extensive testimony in opposition to the expansion highlighting emerging technologies that, one day, may provide more economically-beneficial alternatives to a landfill. Moreover, the Board appreciated that individuals in the County were willing not just to express their opposition to the landfill, but have dedicated significant time and effort to identify other potential alternatives. That passion, however, does not change the status or feasibility of the various technological alternatives as thoroughly analyzed in the Zia Report.

The Board finds that, with one exception, all of the non-landfill alternatives identified during this process have been shown to not yet be proven to operate on the scale required by the County to process its entire waste stream. The one non-landfill alternative that is technologically feasible, waste-to-energy, is too expensive, produces residual waste that requires landfill disposal, and cannot be employed in the County in a reasonable amount of time. Other landfill alternatives are similarly too expensive, may not be able to process the entire waste stream, and undermine the County's ability to meet its other goals and obligations relating to economic development, including but not limited to job

retention. Without another immediate, feasible solution for meeting these goals and obligations, the expansion of Riverbend Landfill remains the only option for doing so.

The Board also received testimony that Riverbend Landfill, instead of helping the County economically, actually hurts the County's economy. Specifically, the Board heard from a number of individuals in the wine industry who expressed a concern that a local landfill harms the wine industry. As just one example, one comment stated that wineries "strongly believe that such expansion would limit the economic growth potential and prestige of the Willamette Valley as a whole and to winegrowers in particular." Willamette Valley Wineries Association, Letter, March 2, 2009. In support of that conclusion, the letter described the importance of tourism to the County's wine industry and a belief that the proposed expansion will hurt tourism because of the high-visibility of the landfill along tourist routes – especially if the landfill were allowed to be 410 feet above mean sea level and higher than the existing landfill as RLI originally proposed.

Comments of concern from the wine industry first arose during the Planning Commission's proceedings. In response to those comments, RLI provided more detail and actual data about the growth of the wine industry and tourism in Yamhill County. The record demonstrates that Riverbend Landfill has been in operation during the entire time that the wine and tourism industries have developed and continued to thrive in Yamhill County.

With respect to tourism, tourism in the County over the past ten years has outpaced the state average. On average, travel-related spending has grown 8.1% annually in the County, compared to 5.3% in Oregon. Expenditures in the County also outpaced those in Polk County, a neighboring and similar county. Moreover, travel-related spending in the County has increased every year since 1991. Riverbend Landfill has been in operation during this period of growth and there is no evidence that its presence has had any negative impact on such growth. This conclusion is bolstered by the fact that the growth of tourism in the County has outpaced other counties that do not have regional landfills.

The robust growth in tourism in the County also outpaces the growth in other counties that have a strong wine industry. For example, from 1992 to 2006, the average annual growth rate in travel expenditures in the County was 7.0%, compared to Washington County's 6.2%, Napa County, California's 6.6% and Walla Walla County, Washington's 5.2%.

The Board finds that the evidence in the record supports the conclusion that the current Riverbend Landfill has had no actual negative impacts on the wine and tourism industries in Yamhill County. Many of the comments about impacts to the wine industry and tourism expressed a concern over the height and visibility of the expanded landfill. The Board finds that, in light of RLI's proposal to decrease the allowed height of the expanded landfill, and the level of screening of the expanded portion of the landfill that the current landfill does not have, the expansion has been proposed in a manner that will not negatively impact tourism in general or the wine industry specifically.

In summary with respect to Goal 9, the Board finds that the County has a history of hosting a landfill that serves a regional role, and that the landfill has always served every economic sector within the County. Not only does nearly every industrial, commercial and residential entity in the County (other than those that produce hazardous wastes) currently send waste to Riverbend Landfill, the lower relative disposal cost for waste going to Riverbend Landfill significantly impacts overall costs for the major employers in the area and helps them remain competitive, helps maintain family wage jobs, and provides a key economic advantage to the County in the form of revenue derived from host fees. In light of a lack of economically-reasonable or technologically-feasible alternatives, the economic advantages associated with the continued operation of Riverbend Landfill are necessary for the County to continue to meet its obligations under Goal 9.

(ii) County's Obligations under Goal 11

The Board next finds that a local landfill is necessary for the County to meet its Goal 11 obligations to develop a timely, orderly and efficient arrangement of public facilities and services. Goal 11 expressly references solid waste facilities. As part of the County's Comprehensive Plan implementing Goal 11, the County adopted a policy stating "Yamhill County will encourage and cooperate with regional solid waste management programs in scale with the county's needs and subject to equitable cost-sharing arrangements for each of the services and facilities developed on a regional basis." Revised Goals and Policies, Section IV.A.1.1.

The Board finds that landfill disposal has been and should continue to be a key component of the solid waste management system and that the County has a long-standing commitment to providing a regional approach to solid waste management in conformance with Goal 11 and the County's Comprehensive Plan. The regional role of Riverbend Landfill is an express part of the County's Solid Waste Ordinance and the license agreement with RLI that has been in place for the last fifteen years.

The Board further finds that this regional role remains significant, because the acceptance of waste from out-of-county allows the County to more economically meet its own solid waste disposal needs. Specifically, the balance between in-County and out-of-County waste allows disposal rates to remain low, as discussed above in Section II.B(1)(b)(i). The Board incorporates the discussion and findings in that section here by this reference. The record does not contain substantial evidence that the County has other identifiable or feasible means for complying with its Comprehensive Plan policies and meeting its own needs as those policies and needs relate to solid waste management.

The Board bases these findings on the entire record generally, and the Zia Report specifically. The Zia Report confirms that the County has no other reasonable, identifiable means for complying with its solid waste management policies. The Zia Report concludes that non-landfill alternatives simply are not economically reasonable or technologically feasible at this time to process the County's full waste stream. Further, by choosing a landfill alternative, the County would lose some measure of control or influence over solid waste management. Landfill alternatives outside the County would

also undermine the County's ability to meet its economic development goals and obligations described above in Section II.B(1)(b)(i).

Additionally, the Board finds that non-landfill alternatives, even if they were technologically feasible, are unworkable under the County's current solid waste system. Specifically, as identified in the Zia Report, the County would have to implement flow control to ensure that a non-landfill alternative would have access to a guaranteed amount of waste. However, flow control would provide the County access only to waste generated in the County, and as the Zia Report notes, that amount of waste would not be sufficient to support a non-landfill alternative. Even if flow control could guarantee a sufficient amount of waste to make a non-landfill alternative more feasible, the Board finds that that approach would fundamentally change the County's role, essentially requiring the County to "own" the entire waste stream. It would also likely require the County to literally own the facility to which the waste stream would be delivered. These changes are not necessary or reasonable. Moreover, the Board finds that the County's ability to exercise flow control without express authority from the state legislature is questionable.

The Board finds that the potential for non-landfill alternatives in the future does not help the County meet its Goal 11 obligations in the present. As the Zia Report bluntly states, it is precisely the continued landfill operation that will produce the revenue, and provide the raw material for pursuing other means of meeting the County's solid waste policies in the future if and when those other means become more economically reasonable or technologically feasible. Further, the size of the proposed expansion helps ensure waste disposal for a period of time that allows such technologies to emerge and become commercially viable.

As noted above, the Board was very interested in the testimony it received concerning the potential for non-landfill alternatives in the future. In light of the current status of such technology, however, the Board finds that the expansion of Riverbend Landfill is necessary to meet current and future disposal needs and that only the continued operation of the landfill will provide a platform for pursuing other alternatives in the future. Expansion of Riverbend Landfill offers the County a flexible solution that makes use of the landfill now, without precluding the ability of the landfill's role to change in the future. In other words, the Board finds that the County cannot continue to develop a timely, orderly and efficient arrangement of public facilities if it does not adequately utilize its current facilities and if it does not position those facilities in a way that adequately plans for the future. The Board therefore finds that the expansion of Riverbend Landfill is necessary for the County to meet its Goal 11 obligations.

The Board received very few comments in opposition to the expansion that specifically address the County's ability to meet Goal 11. The comments that do address the subject are unpersuasive. For example, one comment addressing Goal 11 states that "RLI can continue to satisfy Yamhill County's waste disposal needs for another 20 years without this zone change" by limiting the landfill to County waste only. S. Watkins, Letter, March 19, 2009; S. Watkins, Testimony, March 19, 2009. First, the Board finds that, due to Constitutional restrictions, it is unable to prevent a privately-owned landfill from

accepting out-of-county waste. Second, this comment, and others like it, ignores the role of a regional facility established in the County's Comprehensive Plan, the County's Solid Waste Management Plan and Solid Waste Ordinance, and the current license agreement with RLI. Those documents and policies highlight the importance of accepting out-of-County waste to stabilize disposal rates for County ratepayers as described above.

In summary with respect to Goal 11, the County finds that continued availability of landfill disposal in the County is necessary for the County to continue to meet its goals and obligations.

(iii) County's Obligations under Goal 13

Finally, the Board finds that expansion of Riverbend Landfill is necessary for the County to meet its Goal 13 obligations to conserve energy, specifically by managing and controlling land so as to maximize the conservation of all forms of energy, based upon sound economic principles. Goal 13, among other things, requires the County to give priority consideration to land use that maximizes energy efficiency, minimizes the depletion of non-renewable energy, increases density along high-capacity transportation corridors, and utilizes renewable energy sources.

Continued operation of Riverbend Landfill is the most energy efficient use of land because hauling and disposal of local waste to a site other than Riverbend Landfill will increase the amount of energy required to transport that waste. Riverbend Landfill is close to many of the County's urban areas, where much of the County's waste is generated, and it is centrally-located with respect to the County's more rural areas where self-haul customers are more likely to exist. This location allows the County's waste to be delivered to its ultimate disposal location using as little energy in the form of fossil fuels as possible. Additionally, potential alternative landfill sites outside the County are located anywhere from 40 miles to almost 200 miles from Riverbend Landfill. Transport of waste to any of those locations will therefore require more energy. The same factor exists for out-of-County waste, most of which is generated in areas closer to Riverbend Landfill than to other landfills and, therefore, requires less energy to be transported to Riverbend Landfill.

Continued operation of Riverbend Landfill is the most energy efficient use of land for the additional reason that RLI's proposal is an expansion of an existing facility rather than the development of an entirely new facility. RLI is able to take advantage of economies of scale and existing infrastructure, which will allow the expansion area to require less energy in its construction than would other options.

The Board finds that RLI's proposed expansion minimizes the depletion of non-renewable energy. First, as noted above, the close proximity of the landfill prevents long-haul trucking of the County's waste to more distant locations, which necessarily requires an increased use non-renewable fossil fuel. Moreover, RLI has committed to install a landfill gas-to-energy facility that will convert methane to electricity. By converting methane to electricity, the facility will displace fossil fuel-derived power elsewhere and minimize the depletion of non-renewable energy. The currently planned

facility will produce four megawatts of electricity, and an expanded Riverbend Landfill can produce nearly eight megawatts of electricity, enough to power more than 5,000 McMinnville-area households.

The Board finds that RLI's proposed expansion increases density along high capacity transportation corridors. Riverbend Landfill is located adjacent to Highway 18, a high-capacity transportation corridor. By expanding in that location rather than developing a new facility somewhere else in the County, RLI's proposal takes advantage of economies of scale and existing infrastructure to build a facility on a smaller footprint than would otherwise be needed at a new site. A new landfill would require at least 200 acres of land, whereas the expansion of Riverbend Landfill will require less than 130 acres and the approximate conversion of only 20 acres of land zoned EFU. This efficiency has the effect of increasing the density of the use.

The Board finds that RLI's proposed expansion utilizes renewable energy sources. As noted above, methane from the expanded landfill will be used to create renewable power through a landfill gas-to-energy facility. RLI has already undertaken the effort to build such a facility for the existing landfill. Under Oregon's Renewable Portfolio Standard, landfill gas-to-energy facilities are considered renewable sources of energy. In contrast, energy derived from the direct combustion of municipal solid waste, which includes waste-to-energy facilities, and which may include other alternative technologies that burn solid waste, is not considered renewable. Municipal solid waste will decompose and produce methane regardless of where it is disposed. If Riverbend Landfill ceases operating, there is no guarantee that the waste it currently collects will go to a landfill that has a landfill gas-to-energy facility. Thus, the only way to guarantee the conversion of the methane to a renewable energy is to ensure that the waste goes to Riverbend Landfill.

The Board received comments that non-landfill technologies have the potential to capture even more energy from solid waste than landfill gas-to-energy facilities. As noted above in Section II.B(1)(b)(i), the Board commissioned a study, the Zia Report, to assess the technological feasibility of non-landfill alternatives. The Board incorporates the discussion and findings in that section here by this reference. The Zia Report concludes that only one non-landfill alternative, waste-to-energy, is operating at a fully-commercial level and is capable of handling the broad municipal solid waste stream. The potential for other technologies to capture more energy from the County's waste stream is too speculative or remote. Further, Oregon's Renewable Portfolio Standard specifically excludes electricity from waste-to-energy facilities from the definition of "renewable." To the extent that the total amount of energy captured from a waste-to-energy facility exceeds the total amount of energy captured from a landfill gas-to-energy facility, which the record does not reflect, the Board finds that such an increase is offset for purposes of Goal 13 by the non-renewable characteristics of that energy.

The Board finds that, as evidenced by the record, no other feasible option for disposal of the County's solid waste is more energy efficient or uses less fuel for hauling and disposal of waste than the continued operation of Riverbend Landfill. Moreover, the Board finds that expansion of Riverbend Landfill specifically intensifies the use at its current location, effectively increasing the density of that use along Highway 18, a high-

capacity transportation corridor. Those characteristics of the expansion, along with the opportunity to partner with McMinnville Water & Light for the production of renewable electricity, exist only for the proposed expansion of Riverbend Landfill and illustrate why expansion of the landfill is necessary for the County to manage and control land so as to maximize the conservation of all forms of energy, based upon sound economic principles. The expansion and continued operation of Riverbend Landfill, therefore, are necessary for the County to meet its goals and obligations under Goal 13.

(c) Conclusion for OAR 660-004-0022

Based on the foregoing, the Board finds that the proposed expansion of Riverbend Landfill has special features and qualities that necessitate its location on or near the proposed site. The Board specifically finds that the location of the proposed use, if constructed at another site, would lack many of the qualities that make the proposal the most economical, most orderly, most energy efficient, and that the continued operation of Riverbend Landfill is necessary for the County to meet its goals and obligations under Goals 9, 11 and 13, including the County's existing policies implementing those Goals.

The Board also finds that landfills are appropriate rural uses and that landfills more specifically are appropriate on land designated as EFU. This conclusion is evidenced in part by the fact that the state legislature has adopted a policy allowing landfills on EFU land. Indeed, the criteria for the expansion of a landfill on EFU lands under state law are less restrictive than the criteria governing this application, because state law allows landfills in the EFU as a conditional use. As such, allowing a landfill on EFU land in Yamhill County under a reasons exception is consistent with the state's policies carried out by Goal 3 and the legislative policy embedded in Goal 3 will be little offended by allowing this exception.

(2) OAR 660-004-0020

(a) OAR 660-004-0020(1)

If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

The Board finds that there are reasons consistent with OAR 660-004-0022 to use resource land for expansion of Riverbend Landfill. Those reasons are spelled out in the findings in Section II.B(1)(b) above. Expansion of the Riverbend Landfill is otherwise not allowed by the applicable Goals, because Goal 3, *as implemented by the County*, does not allow landfills on EFU land. The Board therefore is granting an exception to Goal 3, as requested in RLI's application and will set forth the justification for that exception in the County's comprehensive plan as required by this rule.

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(b) OAR 660-004-0020(2)

ORS 197.732(1)(c) establishes four standards for adopting an exception based on “reasons”:

A) Reasons justify why the state policy embodied in the goal should not apply;

B) Areas that do not require a new exception cannot reasonably accommodate the use;

C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

OAR 660-004-0020(2) implements ORS 197.732(1)(c):

The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

(a) Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;

(b) Areas which do not require a new exception cannot reasonably accommodate the use":

** * **

(c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the

typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts". The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

The Board finds that there is substantial evidence in the record to support RLI's proposed expansion at the proposed site based on the four factors for an exception that must be considered.

(i) Reasons justify why the state policy embodied in the goal should not apply (OAR 660-004-0020(2)(a))

First, for purposes of OAR 660-004-0020(2)(a), the Board has already set out findings in Section II.B(1) above which show that "Reasons justify why the state policy embodied in the applicable goals should not apply." The Board incorporates the discussion and findings in that section here by this reference. In addition to those findings, the Board finds that RLI has undertaken great effort to decrease the amount of resource land that is required for the extension. By utilizing economies of scale inherent in an expansion (which would not exist where a new facility is constructed), by utilizing property that is zoned PWS or RC, and by converting some existing PWS land back to EFU, RLI is able to expand the existing facility by 103 acres while converting only 20 acres of EFU land to PWS. The Board finds that this specific situation is not available anywhere else in the County, and that the efficient use of resource lands in this manner helps promote the policies embedded in Goal 3 to conserve resource lands.

(ii) Areas which do not require a new exception cannot reasonably accommodate the use (OAR 660-004-0020(2)(b))

OAR 660-004-0020(2)(b) requires a determination that areas in the vicinity of the proposed use which do not require an exception cannot reasonably accommodate the use.

OAR 660-004-0020(2)(b) requires a three-step process. First, under OAR 660-004-0020(2)(b)(A), a decision to allow an exception must include a map that indicates possible alternative areas considered for the use. Second, under OAR 660-004-0020(2)(b)(B), the decision must then include a discussion of why the alternative areas identified on the map cannot “reasonably accommodate” the proposed use. Finally, OAR 660-004-0020(2)(b)(C) describes the process for comparing alternatives to meet the requirements identified in the second step: 1) initially, only a broad review of similar types of areas in the vicinity is required; 2) if, however, a party to the local proceeding describes specific sites and offers facts that those sites are more reasonable than the proposed site, the decision to allow an exception must include a detailed evaluation of those specific sites.

During the proceedings before the Planning Commission, RLI submitted a broad review of similar types of areas in the vicinity of the proposed areas as required by the rule. M. Dorman, Memorandum, December 19, 2008 (“First Dorman Memo”). The First Dorman Memo included maps and analysis to address the following areas in Yamhill County that would not require a goal exception to accommodate the proposed use: 1) sites zoned PWS; 2) sites inside Urban Growth Boundaries; and 3) all other Non-Resource Zones in the County. During the proceedings before the Planning Commission and before the Board, individual testimony in opposition to the expansion described specific sites that potentially serve as alternative areas for the proposed use. S. Friedman and I. Perse, Letter, November 18, 2008; S. Friedman, Testimony, November 20, 2008; S. Friedman and I. Perse, Letter, March 19, 2009; S. Friedman, Testimony, March 19, 2009 (collectively, the “Friedman Testimony”). RLI submitted a subsequent review of specific sites that were identified by the Friedman Testimony. M. Dorman, Memorandum, December 23, 2008; M. Dorman, Memorandum, March 9, 2009 (collectively “Second Dorman Memo”).

As required by OAR 660-004-0020(2)(b)(B), the First Dorman Memo and the Second Dorman Memo included a discussion of why the identified general alternative areas that do not require a goal exception cannot reasonably accommodate the proposed use. The memos included evidence that RLI’s proposed expansion has certain essential or common and necessary characteristics that must be taken into consideration when considering alternative areas that can accommodate the use. Among those characteristics are: 1) a minimum parcel size of 200 acres (assuming topography is relatively flat); 2) reasonable proximity to the highway system and ancillary roads that can safely accommodate heavy trucks; 3) reasonable proximity to the area being served; 4) at least two miles from urban level development; 5) parcels free from state or federal prohibitions against landfills; and 6) parcels free of complex ownership such that the parcel can actually be acquired. The Board finds that these essential characteristics apply to RLI’s

proposed use. The Board further finds that any viable alternative is reasonable only if it does not undermine the County's ability to meet its goals and obligations that serve as the basis of the need for the proposed use.

Testimony in opposition to the proposed expansion stated that some of the characteristics RLI developed for comparison to alternative sites are overly narrow or are not necessary to the proposed use. For example, the Friedman Testimony took issue with RLI's assertion that alternative sites should be more than two miles from urban level residential development. The Board finds that, based on the record, each of the proposal's characteristics identified in the First and Second Dorman Memos are essential or common and necessary to modern-day landfills, and that each are reasonably pertinent to the other statewide goals that drive the need for the proposed use as identified in Section II.B(1)(b).

The above finding is based on the Board's thorough review of the evidence in the record. Some of the characteristics of the landfill identified by RLI, such as the minimum footprint, were developed by a well-qualified engineer who is an expert in designing landfills. Other characteristics, although they appear in dispute, are actually supported by the testimony challenging them. For example, even though the Friedman Testimony challenged the need for a two-mile distance from urban level residential development, the same testimony suggested that an alternative site in Gilliam County be considered because, in part, it is "not located next to lots of residences." Thus, the testimony in opposition to the expansion acknowledged that proximity to residential areas is a valid factor to consider. Based on the location of Oregon's other regional landfills and the fact that no regional municipal solid waste landfills are closer than two miles to urban level residential development, the Board finds that factor is an essential characteristic to the proposed use.

Using the County's Geographic Information System ("GIS") data, the First Dorman Memo considered only the first two characteristics (minimum site of 200 acres and within two miles of a state highway) to complete a general analysis of alternatives that would not require an exception.

To provide a starting point for the general alternative sites analysis, an expert landfill design engineer calculated the minimum area requirements to accommodate the proposed disposal area footprint and associated ancillary facilities at an alternative location. The amount of land required for the proposed use and other essential characteristics of the use are described in the First Dorman Memo and are summarized below.

- **Minimum Area:** a minimum area requirement of 200 acres is necessary to accommodate the disposal area footprint (approximately 25 years of capacity) and associated ancillary facilities. This is a conservative area requirement that was used to assure that the consideration of alternative sites was not unreasonably constrained. Additionally, RLI included multiple parcels in the analysis that could be aggregated and did not constrain the GIS analysis by considering only individual tax lots with a minimum of 200 acres. Additionally, there is evidence

in the record that all of the landfills categorized as regional landfills by DEQ (including Riverbend Landfill) are located on sites larger than 200 acres.

- **Minimum Accessibility:** Riverbend Landfill is located adjacent to State Highway 18 and has an approved access permit and left-turn refuge at the entrance to the landfill. While the consideration of general alternatives was not constrained to sites with frontage on a state highway, RLI set a minimum distance of 2 miles on each side of all state highways in Yamhill County for the GIS analysis of alternative sites that would not require an exception. The Board finds that this was an appropriate distance to assure safe and convenient accessibility to a landfill site for large trucks, which is an essential characteristic for modern landfills.

The First Dorman Memo and testimony included detailed maps and analysis to describe why areas which do not require a new exception cannot reasonably accommodate the use. Key points are summarized below.

Sites that are zoned PWS. The PWS zone is the only zoning district in Yamhill County that lists a sanitary landfill as a permitted or conditional use. Based on the GIS analysis, a total of 418 acres (comprised of 60 individual tax lots) are currently zoned PWS and must be considered as alternative sites for the proposed use. However, none of the zoned PWS sites can reasonably accommodate the proposed use.

The vast majority of the existing sites zoned PWS are very small. Out of the 60 tax lots that are currently zoned PWS, only nine are larger than ten acres. Additionally, existing PWS zoning is typically confined to tax lots that are already developed with a public facility/utility use. This includes Riverbend Landfill (about 200 acres), the closed Whiteson Landfill (34 acres), the BPA bulk power substation (22 acres), and the City of McMinnville water treatment facility (17 acres).

Yamhill County has not proactively zoned sites PWS to accommodate future needs for public facility/utility uses. Based on the GIS analysis and evidence in the record, the Board concludes that there are no sites zoned PWS that can reasonably accommodate the proposed use based on identified essential characteristics of a minimum of 200 acres and location within two miles of a state highway.

Sites inside Urban Growth Boundaries (UGB). Landfills are generally considered a rural use as evidenced by being listed in ORS 215 as a potential use in farm and forest zones. Additionally, there is evidence in the record that all of the existing landfills in Oregon categorized as regional landfills by DEQ, including Riverbend Landfill, are located outside UGBs. Modern municipal solid waste landfills require large sites (at least 200 acres), do not require urban water or sewer infrastructure, and are not generally considered a compatible use in densely populated areas. None of the ten cities in Yamhill County have planned for a landfill within their respective UGBs and no specific sites were identified that could reasonably accommodate the essential characteristics of the proposed use. Based on the evidence in the record, the

Board concludes that locating the proposed use inside a UGB is not a reasonable alternative.

Other Sites that would not require a Goal Exception. The Yamhill County Comprehensive Plan Map identifies specific sites where exceptions have already been taken to Goal 3 (Agricultural Lands) or Goal 4 (Forest Lands) to apply the following plan designations and zones:

- Rural Residential Districts (AF-10 & VLDR)
- Commercial Districts (RC, NC & HC)
- Industrial District (RI, LI & HI)
- Public Facilities Districts (PAI, PWS & PALF)
- Resource Districts

Figure 1 in the First Dorman Memo identifies the location of all of the Rural Residential, Commercial, Industrial, Public Facilities and PRO resource zones that would not require a new goal exception and are located within two miles of a state highway. Similar to the PWS zoned sites already described, most of these sites were acknowledged with “built & committed” exceptions to Goals 3 & 4 when the Yamhill County Comprehensive Plan was adopted in 1979.

The analysis in the First Dorman Memo provided the evidence to document that none of the sites that would not require a goal exception can reasonably accommodate the proposed use. Key findings are summarized below.

1. The GIS analysis identified a total of 22,747 acres within unincorporated Yamhill County zoned for rural residential uses. While there are a few contiguous blocks of at least 200 acres located within two miles of state highways, these blocks consist of multiple small parcels (2-½ - ten acres) in different ownership that are committed to existing rural residential uses and require complex land assembly to aggregate a single site of 200 acres. Existing dwellings would have to be removed and established rural residential areas would be disrupted. Based on the evidence in the record, the Board agrees that it is not reasonable to assume that so many rural residential parcels could be acquired on a voluntary basis and consolidated into a 200-acre site appropriate for a landfill.

2. The GIS analysis identified a total of 352 acres within unincorporated Yamhill County zoned for commercial uses. There are no sites within two miles of a state highway that include a contiguous block of at least 200 acres zoned RC, NC or HC. The largest commercially zoned sites (80 acres each) are currently developed and in use as the Bayou and Riverwood golf courses. NC and HC sites are typically smaller than five acres and committed to existing commercial uses. Based on the evidence in the record, the Board agrees that there are no sites in Commercial zones that can reasonably

accommodate the proposed use. Additionally, the Board notes that the proposed expansion at Riverbend includes a 25 acre site zoned RC (RV park) for which Yamhill County has already taken a “built and committed” exception and thereby minimized the acres of high-value EFU land included in the landfill expansion proposal.

3. The GIS analysis identified a total of 900 acres within unincorporated Yamhill County zoned for industrial uses. There are no sites within two miles of a state highway that include a contiguous block of at least 200 acres zoned RI, LI or HI. The two largest industrially zoned sites are located south of Newberg and near Willamina (about 80 acres each). The Newberg-area site is in use by SP Newsprint and Hampton Industries owns the Willamina mill site. Zoned RI sites are typically smaller than 15 acres and the majority of the zoned sites are committed to wineries that are located in proximity to vineyards. Zoned LI sites are typically smaller than 50 acres, with one of the largest sites (45 acres) located south of McMinnville developed with a range of uses, including mini-storage facilities. Based on the evidence in the record, the Board agrees that there are no sites currently zoned for industrial use that can reasonably accommodate the proposed use.

4. The GIS analysis identified a total of 1,150 acres within unincorporated Yamhill County zoned for Public Facilities uses. Zoned PAI sites are typically smaller than 20 acres and the sites are developed and committed to uses such as cemeteries (23 sites), churches (ten sites), community halls (six sites), and schools (three sites). As discussed earlier, a total of 418 sites are zoned PWS and only nine sites are larger than ten acres, none of which are larger than the minimum 200 acres required for a new landfill. The majority of the sites are already committed to public utility uses. The total amount of PALF zoning in the entire county is less than the 200 acres required to accommodate the proposed landfill use. Existing airstrips zoned PALF (7 sites) typically range from five acres to no more than 20 acres.

5. The GIS analysis identified a total of 1,770 acres or resource lands within unincorporated Yamhill County zoned for Mineral Resource (MR) or Parks, Recreation & Open Space (PRO) uses. While there are two Goal 5 MR-zoned sites in proximity to state highways in the Amity Hills that approach the minimum of 200 acres needed for the landfill use, both of the sites are actively mined and still contain significant mineral aggregate reserves. The Board agrees that it would not be reasonable to convert a Goal 5 MR-zoned site with significant aggregate reserves to landfill use. Additionally, Oregon DEQ has historically not allowed establishment of MSW landfills in reclaimed aggregate pits because of problems associated with monitoring landfills on complex hydro geological conditions (fractured rock), and the typical lack of natural barrier soils to groundwater. There are no zoned PRO sites that include a minimum of 200 acres. Additionally, PRO zoning has only been applied to sites that are publicly owned and protected for park and open space uses. Where state and federal funds have been used to purchase park sites, conversion to a non-park use is typically prohibited.

In summary, based on the general analysis required by OAR 660-004-0020(2)(b), there are no sites within the County that would not require a goal exception and could reasonably accommodate the proposed landfill use. After conducting a general analysis

of all sites in the County which would not require a goal exception, no sites have been identified that include the minimum of 200 acres or that could reasonably be aggregated to comprise the minimum 200 acres required for the proposed landfill use that are not already committed to other uses allowed under the approved non-resource zoning.

The Board adopts the findings in the First Dorman Memo with respect to the conclusions that the identified general alternative areas which do not require a goal exception cannot reasonably accommodate the proposed use. Therefore, the Board finds that the requirements of OAR 660-004-0020(2)(b)(A) and (B) have been satisfied.

The Second Dorman Memo goes beyond the general analysis and addresses the specific alternative sites identified in the Friedman Testimony.

The Board finds that it is not necessary to analyze all of the specific sites identified in the Friedman Testimony for purposes of OAR 660-004-0020(2)(b). The express language of that rule requires the County, when granting an exception, to consider alternative sites that are “in the vicinity” of the proposed site. Nothing in the subsequent language of the rule requires the review of specific alternative sites to look beyond the vicinity of the proposed site. Of the alternative sites identified in the Friedman Testimony, seven would not require an exception, but all seven are outside of the County. In light of Riverbend Landfill’s central location in the County, none of the four sites not requiring an exception are “in the vicinity” of the proposed site. Moreover, the Board is not required to consider alternatives sites outside its geographic boundaries. To do so would unreasonably force the County to rely on the planning decisions of other counties to dictate the development policies of this County and to unreasonably rely on the comparison of sites that are not in the vicinity of the proposed site.

The Friedman Testimony asserted that the County has “set precedent” by looking at alternative sites outside of the County in other land use applications. Specifically, the Friedman Testimony cited the Newberg-Dundee Bypass decision and PAZ -04-00 as examples where the County has considered alternatives outside of the County. Those land use applications, however, do not alter the requirement that alternatives need be only “in the vicinity” of the proposed use, nor do they establish any precedent that the County *must* look outside the County.

With respect to the Bypass decision, the County considered one alternative location outside of the County because the applicant in that case, ODOT considered multiple road alignments that included that alternative as part of the federal National Environmental Policy Act process that governed the eventual alignment of that project. The Board finds that nothing in that land use proceeding dictated that the County was required to look at alternatives outside of the County’s geographic boundaries as part of the exceptions process.

Similarly, the County considered an alternative location outside the County in PAZ-04-00 because the applicant in that matter made the out-of-county alternative part of its application and because, in that case, the out-of-county site was “in the vicinity” of the proposed use. In the Board’s findings in that matter, the Board specifically noted that

“[t]here is a lack of available alternative sites located within the City of Gaston UGB *and other areas in the vicinity* of Gaston which would not require a new exception and which could reasonably accommodate the planned use.” County Ordinance 690 at p.8 (emphasis added). The Board, therefore, quite expressly looked only at alternatives in the vicinity of the proposed use when assessing sites that would not require an exception.

Even if the County were required to look at alternative sites outside its geographic boundaries, the Board finds that the four specific sites outside of the County not requiring a goal exception identified in the Friedman Testimony cannot reasonably accommodate the proposed use. The sites are identified in the Friedman Testimony as: 1) the Evergreen Road industrial site near Hillsboro (Washington County); 2) the Green Mountain Road site north of Banks (Washington County); 3) the Mill Creek industrial site near Cordon Road and Highway 22 (Marion County); 4) Columbia Ridge landfill in Gilliam County; 5) Coffin Butte landfill in Benton County; 6) Wasco Landfill in Wasco County; and 7) Finley Buttes Landfill in Morrow County. The Second Dorman Memo establishes that these sites do not contain the essential characteristics required by the proposed use. Key facts are summarized below:

1. The 345-acre Evergreen Road site was included in the Regional UGB to help provide a 20-year industrial land supply within the Portland region as required by state law. There are 61 landowners in the Evergreen Road site. No single tax lot is larger than 50 acres and the largest landowner (Port of Portland) owns about 70 acres within the Hillsboro Airport runway protection zone. Under the Airport Planning Rule (OAR, Division 13) establishment of new landfills is prohibited near public use airports, consistent with DEQ rules. Based on these facts, the Board finds that the identified Evergreen Road site cannot reasonably accommodate the proposed landfill use.

2. The Green Mountain Road site is located about 3-4 miles north of Highway 26 in the forested foothills in the northwesterly portion of Washington County. The County approved a Measure 37 claim, a preliminary subdivision plat for a 23-lot subdivision and a vested right determination for the final approval of the subdivision. While the site includes 205 acres, the topography in this area is relatively steep and the minimum area requirement of 200 acres for a new landfill assumes relatively flat topography, meaning a larger site would be required for steeper terrain.

The Board finds that the Green Mountain Road site does not meet the essential characteristics for the landfill use because the property owner has obtained approval of a vested right for a 23-lot subdivision and construction of single family dwellings on the individual lots. Additionally, the site is located at least three miles from State Highway 26. The Washington County Plan identifies Green Mountain Road as a gravel or unimproved road. Safe and reasonable access for large solid waste disposal vehicles is a necessary requirement for the use and is not reasonably available at this time. Based on these facts, the Board finds that the Green Mountain Road site cannot reasonably accommodate the proposed landfill use.

4. The Mill Creek Industrial site is inside the Salem UGB/city limits and within an urban renewal area. This site is planned for a joint development by the Oregon

Department of Administrative Services and the City of Salem. Full urban infrastructure is in place with plans for ultimate build out of a +5000 job employment center. Existing CC&R's prohibit waste related uses. Additionally, the site is located in close proximity to schools and urban neighborhoods. Based on these facts, the Board finds that the Mill Creek Industrial site cannot reasonably accommodate the proposed landfill use.

Furthermore, the Board finds that any sites located outside the County are unreasonable because utilizing such sites would undermine the County's ability to meet Goals 9, 11, and 13, which serve as the basis for the need for the proposed use in the first place as described above in Section II.B(1)(b).

The Board also finds that existing landfills throughout the state (Columbia Ridge, Coffin Butte, Wasco and Finley Buttes) should not be considered as alternatives for purposes of the alternatives analysis required by OAR 660-004-0020(2)(b). Existing landfills located outside of the County are not appropriate alternative sites for comparison, because they do not allow for a comparison of the proposed use (expansion of the Riverbend Landfill) at a proposed site with that same proposed use at an alternative site as required by the rule. Rather, such a comparison would result in comparing a different use in lieu of the proposed use, which is not what the rule requires. Alternative ways to satisfy the established need, such as using existing landfills or pursuing new technologies, would necessarily have essential characteristics different from the essential characteristics of the proposed use. For example, new infrastructure would have to be built such as a transfer station in the County, or different facilities at the receiving site may be needed to accommodate increased tonnage. The rule does not contemplate a comparison of different sets of essential characteristics.

The existing regional landfills throughout the state also fail as alternative sites for the proposed expansion because they are not in the vicinity of the proposed site. As explained above, the County does not have to consider any alternative sites that do not require an exception if those sites are not in the vicinity of the proposed site.

Even if the other existing landfills identified by the Friedman Testimony and others must be considered, the Board finds that they fail as alternatives because they cannot reasonably accommodate the use. Shipping the County's waste to existing landfills that are located outside of the County would not reasonably accommodate the identified County need that is the basis of the proposed expansion of Riverbend Landfill. For example, because the County needs a local landfill option to meet its obligations under Goal 13 to maximize the conservation of energy, utilization of any landfill outside of the County, which requires the use of more fossil fuels and precludes the generation of local renewable energy, would prevent Goal 13 from being met by the County. The Board finds that the fact that there are existing regional landfills outside of the County does not help the County meet its economic development obligations under Goal 9, its public facility obligations under Goal 11 or its energy conservation obligations under Goal 13. The Board incorporates the discussion and findings in Section II.B(1)(b) regarding need here with this reference as support for these findings.

Finally, the Board finds that accepting the argument that other landfills must be taken into consideration would have the practical result that no county in the state could approve a goal exception for a landfill expansion or a new landfill as long as any landfill anywhere in the state had remaining capacity. Clearly, the goal exception process, while challenging and complex, is intended to provide individual counties with the flexibility and discretion to decide if a goal exception is warranted based on local needs.

In summary with respect to alternative sites under OAR 660-004-0022(2)(b), no sites in the vicinity of the proposed site, which do not require an exception, can reasonably accommodate the proposed use. Even if the Board were to consider the specific sites that are outside of the vicinity, which it should not, those sites have also been shown not to be able to reasonably accommodate the proposed use.

(iii) ESEE impacts at the proposed site are not significantly more adverse than in areas which would also require a goal exception (OAR 660-004-0020(2)(c))

OAR 660-004-0020(2)(c) requires an assessment and comparison between the proposed site and other areas that would also require an exception. Unlike OAR 660-004-0020(2)(b), which requires a determination that other sites cannot “reasonably accommodate” the use, OAR 660-004-0020(2)(c) requires a determination that the long-term environmental, social, economic and energy (“ESEE”) impacts resulting from the use at the proposed site, with measures that will reduce those impacts, will not be “significantly more adverse” than the ESEE impacts that would result from the use at alternative sites.

Under this rule, the proposed site does not have to be the best alternative site. Rather, the Board must make a finding only that the expansion site is not significantly more adverse than if the expansion was developed at other sites that would also require an exception. As part of that determination, the Board may consider mitigation measures that reduce any impacts at the proposed site.

Under this rule, initially only a broad review of areas requiring an exception must be considered. If, however, a party to the local proceeding describes other sites requiring an exception that would have significantly fewer adverse impacts, a more detailed comparison of those specific sites must occur.

As already noted, the First Dorman Memo contained a broad review of potential alternative sites. That review included alternative sites that also require an exception. The Board therefore finds that the First Dorman Memo satisfies the portion of OAR 660-004-0020(2)(c) that requires an initial broad review of alternative areas requiring an exception. That analysis is summarized below.

General Analysis of Areas that also require an Exception. The First Dorman Memo included a general analysis and comparison of the proposed expansion at Riverbend with alternative areas for which an exception might be taken as required by OAR 660-004-

0020(2)(c). Under the YCZO, establishing a landfill on any land zoned for farm or forest use would require an exception to Goal 3 (Agricultural Lands) or Goal 4 (Forest Lands). The exceptions process does not require that the applicant evaluate the long-term consequences that would typically result from the proposed landfill being located in all areas within Yamhill County which would require a Goal exception (more than 75% of the county's land base).

The First Dorman Memo focused on a broader analysis of general areas within the County that would require a goal exception and share the following characteristics:

- Currently zoned AF-20, AF-40 or AF-80 (generally encompass areas with lower-value agricultural soils)
- Minimum contiguous block of at least 200 acres
- Located within 2 miles of improved state highway

Figure 7 of the First Dorman Memo identifies Agriculture/Forestry and Exclusive Farm Use areas that are located within 2 miles of a state highway. Figure 8 illustrates the location of high value soils. In general, areas of lower value soils are more typical in the southwesterly portion of the county (along Highway 22) and are correlated with areas of Agriculture/Forestry zoning.

Using GIS mapping, the First Dorman Memo identified three general areas within Yamhill County where there are blocks of designated Agriculture/Forestry zoning that include at least 200 acres within proximity to existing state highways. The characteristics of each alternative area are summarized in the First Dorman Memo, along with the typical advantages and disadvantages of using each area for the proposed landfill use.

As summarized in the broad evaluation of the three alternative areas in Yamhill County where a landfill could potentially be located (with a goal exception), the long-term consequences associated with the proposed landfill expansion at Riverbend would exist at those locations as well. No matter where a landfill is located in Yamhill County, it would have to comply with all Subtitle D regulations and would require a robust liner system as described in Section I.C. Further, appropriate screening, leachate management, and gas collection for odor control would be required.

Moreover, rather than have more negative impacts, the proposed expansion at Riverbend Landfill would have a significant comparative advantage to other sites that would also require an exception. Compared to other sites, the proposed sites contains the following characteristics:

1. Less acreage would be required for the proposed expansion of Riverbend and ancillary facilities (103 acres) relative to establishing a landfill at a new location in Yamhill County (minimum of 200 acres).

2. Substantial infrastructure is already in place at Riverbend and can be leveraged for the expansion (monitoring wells, gas collection, leachate management system, state highway improvements, etc.) which results in economic and energy savings.
3. To establish a landfill at a new location in Yamhill County, all of the infrastructure that already exists at Riverbend would have to be replicated with substantially higher costs, including duplicating the infrastructure that is already in place at Riverbend Landfill to prevent impacts to the natural and built environment.
4. It is reasonable to anticipate that establishing a landfill at a new location in the County would generate equivalent issues relating to odors, impacts on views, displacement of resource land and compatibility with surrounding resource and other rural uses.
5. No other area of the County has the long history of landfill operation and commitment to PWS zoning that is in place at Riverbend Landfill.

The Board finds that the essential characteristics of an expansion of an existing landfill necessarily are narrower than the characteristics required for establishing a new landfill. A broader evaluation of alternative sites is appropriate when the initial land use decision is made to site major infrastructure projects such as landfills, airports, reservoirs, power plants, or prisons. After that initial land use decision is made for such facilities (which are typically limited in number and difficult to site), subsequent expansion of existing facilities is common and it is reasonable to leverage existing investments and infrastructure associated with the initial siting decision.

For example, similar to the proposed expansion of Riverbend Landfill, it is reasonable to conclude that other major facilities in Yamhill County such as the McMinnville Airport, McMinnville Water & Light Reservoirs and the Federal Prison in Sheridan would be likely to focus on expansion of their existing facilities to meet projected needs rather than considering alternative sites in Yamhill County for a new public use airport, water reservoir or prison, even if goal exceptions were required. To look at the expansion of such facilities in the same manner as building a new facility ignores the reality on the ground that those facilities already exist.

Based on the evidence in the record and testimony regarding alternatives that would not require an exception and a comparison of the consequences of alternative areas that would require an exception, the Board finds that the requirements of OAR 660-004-0020(2)(c) with respect to a general analysis of alternatives have been met.

With respect to that broad review, the Board finds that the ESEE impacts of the proposed use at the proposed site would not be significantly more adverse than the impacts of the proposed use at alternative sites. To the contrary, the Board finds that many of the long term impacts are more adverse at the alternative sites than they are at the proposed site because of the leveraging opportunity that exists by expanding an existing landfill rather than building a completely new landfill of the same capacity. For example, the proposed site will allow RLI to access infrastructure already in place such as the gas collection

system, landfill gas-to-energy facility, portions of the leachate management and stormwater systems, and the office buildings. These are capital-intensive projects that would have to be replicated in full at any other site.

The Board finds that the environmental mitigation measures that will be put in place for the proposed use also help assure that the long-term ESEE impacts at the proposed site will not be significantly more adverse than at other sites. Specifically, the Board finds that no matter where a landfill is located in Yamhill County, the landfill will have to comply with federal and state environmental regulations, which requires a robust liner system, appropriate screening, leachate collection and management, and gas collection for odor control. The result of such measures is that the environmental impacts, if any, will be the same at any site. The Board finds it compelling that, as described in Section I.C, groundwater impacts from Subtitle D landfills are zero-to-negligible. The Board incorporates the discussion and findings in that Section here with this reference.

As already noted, the Friedman Testimony described specific sites that potentially serve as alternative areas for the proposed use. The Friedman Testimony identified ten sites that would also require an exception and which are therefore relevant to this rule. The Second Dorman Memo contains a detailed evaluation of those specific sites as required by OAR 660-004-0020(2)(c).

The Friedman Testimony identified four specific sites in Yamhill County that would also require a goal exception: 1) Highway 18 site near Riverbend, 2) Highway 219 site near Newberg, 3) Ballston Road site near Sheridan, and 4) Gopher Valley Road site near Sheridan. Key facts for the four sites within Yamhill County are summarized below, with more detailed information included in the Second Dorman Memo.

1. The Highway 18 site near Riverbend Landfill is located to the north side of Highway 18. Less high-value farmland would be required for the proposed expansion of Riverbend and ancillary facilities to the south side of Highway 18 (103 acres) relative to establishing a new disposal area to the north side of Highway 18 (minimum of 190 acres).² The long-term economic impacts at this alternative site are more adverse than at the proposed site. To establish a new landfill disposal area north of Highway 18, most of the infrastructure that already exists at Riverbend would have to be replicated with substantially higher economic consequences. The expansion at Riverbend landfill will not hinder the ability of surrounding areas to sustain agricultural uses. By contrast, the alternative site to the north of Highway 18 only includes the hard edge of the state highway, with less defined boundaries to surrounding parcels devoted to agricultural uses, which would fail to fully separate the landfill from the neighboring agricultural operations. Based on these facts, the Board has concluded that the proposed expansion of Riverbend Landfill, with mitigation measures, are not significantly more adverse than the consequences associated with the alternative site north of Highway 18.

² For this alternative site only, RLI assumed that the proposed use would not require the full 200 acres generally necessary to site a new landfill because this site could make use of some of the existing Riverbend Landfill's current site, such as the office buildings.

2. Based on a review of Yamhill County Assessor Maps, the identified Highway 219 site includes a combined area of about 125 acres. The site is included in the adopted Newberg Urban Reserve Area (“URA”), but the EFU zoning has not been changed and a goal exception would be required to site a landfill at this location. This site was specifically included in Newberg’s URA, with County concurrence, to meet Newberg’s projected needs for large industrial sites through the year 2040. Establishing a new landfill on this site would pre-empt the intended large site industrial uses envisioned for this area, and the City of Newberg would have to look for alternative locations to replace the needed industrial land. By contrast, the Riverbend Landfill expansion area has not been included within a URA for the City of McMinnville and therefore does not displace valuable industrial land. Based on these facts, the Board finds that the proposed expansion at Riverbend Landfill, with mitigation measures, are not significantly more adverse than the consequences associated with the alternative site adjacent to Highway 219 near Newberg.

3. The tax lots identified in the Friedman Testimony for the Ballston Road site describe a 181.5 acre site that is owned by the Federal Bureau of Prisons and developed with the Sheridan Federal Correctional Institution. The identified tax lot that is not part of the federal prison complex (Tax Lot 300) includes only 98 acres. The Board finds that the long-term economic consequences at this alternative site are more adverse than at the proposed site. All of the infrastructure that already exists at Riverbend would have to be replicated with substantially higher economic consequences. Further, because Tax Lot 300 does not contain at least 200 acres, it is likely that Riverbend would face considerable costs aggregating various properties under different ownership. The Board also finds that it is not reasonable to assume that the undeveloped portion of Tax Lot 101 that is under control of the Federal Bureau of Prisons would be available for development of a landfill.

4. The address provided at the hearing for the Gopher Valley Road site is linked to Tax Lot 5530-00700 on the Yamhill County Assessor Maps. This tax lot is identified as about 127 acres, with the larger portion located to the east side of Gopher Valley Road. In addition to being divided by the road, the parcel is also divided by the alignment of Deer Creek. According to Yamhill County soils data, the majority of the parcel is categorized as having prime soils. The Board finds that the long-term consequences associated with the proposed expansion at Riverbend, with mitigation measures, would not be significantly more adverse than establishing a landfill disposal site adjacent to Gopher Valley Road in part because less high-value farmland would be required for the proposed expansion of Riverbend (103 acres) relative to establishing a new disposal area and ancillary facilities (minimum of 200 acres). Additionally, the identified site is 127 acres and is fragmented by the alignment of Gopher Valley Road and Deer Creek and could not reasonably accommodate the landfill use.

The Board adopts the reasoning in the Second Dorman Memo and finds that the long-term ESEE impacts of the expansion at the proposed site will not be significantly more adverse than at the ten specific sites (four within Yamhill County) identified by the Friedman Testimony. Specifically, the Board finds that the landfill, no matter where it is constructed, will have to comply with federal and state regulations and would require a

robust liner system, appropriate screening, a system to manage leachate, and a system to control landfill gas, which provides control for odor. The ESEE impacts related to these characteristics of the landfill are therefore the same at any site.

Additionally, the Board finds that the proposed site of the expansion has fewer negative ESEE impacts than the proposed use would at the alternative sites because of the opportunities that arise from the expansion of an existing facility. For example, the expanded landfill will require fewer acres of farmland because some of the disposal area will be on top of the existing landfill. Similarly, relying on the existing infrastructure, such as the office building and portions of the gas collection, leachate management and stormwater systems, means that less total acreage and fewer capital investments will have to be made in the expansion. This in turn results in lower disposal rates at the proposed site than would be possible if the landfill were constructed on a “greenfield” site.

With respect to long-term ESEE impacts, the Board received comments and testimony from many individuals addressing nuisance issues such as odor, noise, dust and traffic impacts. That testimony, however, did not claim that such impacts would be absent at other sites, or that those impacts at the proposed site are significantly more adverse than they would be at other sites. The one exception was testimony asserting that the proposed use at other sites would have fewer water quality impacts because the landfill would not be in a floodplain at those sites. However, in light of the mitigation measure contemplated in the proposal, and as described above, the Board finds that any landfill which meets the regulatory siting and environmental protection requirements, including the requirement that the landfill have in place a robust liner system and a system to manage leachate under Subtitle D, will protect water quality to a great extent and have identical impacts. The Board therefore finds with respect to water quality specifically that the proposed use will not have ESEE impacts that are significantly more adverse than they would be at other sites.

Similar to the alternative sites that *would not* require a goal exception discussed in Section II.B(2)(b)(ii) above, two of the alternative sites identified in the Friedman Testimony which also require an exception are outside of the County. For the same reasons already discussed, the Board finds that it is not required to consider these sites as alternatives. Even if the County were required to look at alternative sites outside its geographic boundaries, the Board finds that the impacts of the proposed use at the existing site are not significantly more adverse than those impacts would be at the out-of-county alternative sites.

The Board adopts the findings in the Second Dorman memo and bases the above finding on a comparison similar to the comparison made for alternative sites requiring an exception within the County - all sites would require a robust liner system, appropriate screening, a system to manage leachate, and a system to control landfill gas, which provides control for odor. The impacts related to these characteristics of the landfill are therefore the same. Moreover, the expansion site would require less conversion of farmland and fewer capital investments, meaning the proposed site has fewer long-term ESEE impacts than the alternatives. Compared to the alternative sites located outside the County, the proposed site has the added benefit that it will have a smaller carbon

footprint than the alternative sites outside the County because of the necessity for long-haul trucking waste to those sites.

In summary with respect to alternative sites that would require an exception, the Board finds that the long-term ESEE impacts of the proposed site are not significantly more adverse than other sites in the County that would also require an exception. In general, areas that would require an exception would require the same mitigation measures as the proposed area. Specifically, any landfill would include a robust liner system, appropriate screening, a system to manage leachate, and a system to control landfill gas, which provides control for odor. The Board also finds that the proposed site actually has fewer long-term ESEE impacts than alternative sites requiring an exception. This conclusion is based on the fact that the proposed site will result in the conversion of less farmland, and the fact that the existing infrastructure at the proposed site will require less acreage and fewer capital investments. The requirements of OAR 660-004-0020(2)(c) have therefore been satisfied.

(iv) The proposed use is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts (OAR 660-004-0020(2)(d))

The final factor in determining whether an exception to a statewide planning goal is appropriate requires a finding relating to compatibility of the proposed use with “other adjacent uses.”

OAR 660-004-0020(2)(d) has two parts. First, the proposed use must be compatible with adjacent land uses. Second, if the proposed use is not initially compatible with adjacent land uses, the rule asks if the use is compatible with the addition of measures to render it compatible. Even if impacts from the use have some interference on adjacent uses, that fact alone does not mean OAR 660-004-0020(2)(d) cannot be met. The express language of the rule is clear that “‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type.”

Riverbend Landfill sits in the heart of the County’s agricultural region. All of the uses adjacent to the current landfill are agricultural with the exception of the closed Whiteson Landfill and Monroe Landing Park. The Board finds that Riverbend Landfill has a 20-year track record of compatibility with uses adjacent to the existing landfill. Although some owners of the agricultural property adjacent to the existing landfill oppose the expansion, the Board finds no evidence in the record that the actual farming or agricultural operations on farms adjacent to the current landfill have been negatively impacted by the existing landfill. Even if such impacts from the operation of the current landfill do exist, the Board finds that such impacts already exist and that the proposed landfill expansion will not increase those impacts, because the expansion will merely shift the operations to other areas as the existing disposal areas are closed.

Much of the testimony the Board received relating to compatibility addressed the compatibility of the landfill operations with rural residential uses beyond the properties

adjacent to the proposed site. The issues identified by that testimony in opposition to the expansion included odor, noise, large equipment use, increased traffic, decreased property values and the potential presence of vectors. These issues are addressed at length in Section III.A(7) below. The Board incorporates the discussion and findings in that section here by this reference.

In general, the kinds of impacts to surrounding areas identified by testimony to the Board are to be expected in rural areas. The County even has a publication, titled *So... You Think You Want to Live in the Country?*, warning people who want to move to rural areas of the County that they should expect to encounter noise, dust and offensive odors. Landfill operations are very similar to other agricultural operations and create similar conditions. The externalities from a landfill such as noise, dust and odor, however, are more-highly regulated than farm practices in the same area and individuals in the surrounding areas have a broad array of mechanisms for ensuring that such externalities do not violate health or other standards. For example, as described at the Planning Commission and Board hearings by DEQ staff, landfills must adhere to certain DEQ regulations relating to noise. Stormwater runoff is similarly regulated, whereas run-off from agricultural lands is not. Landfill operators are also subject to nuisance suits and have an incentive to limit impacts to surrounding uses. Farm operations, however, are not subject to similar nuisance suits by virtue of “right to farm” laws. Specifically, ORS 30.930 *et seq.* exempt most farm practices from tort suits and limit local governments from passing ordinances that have an adverse impact on those practices. Rural residential uses therefore enjoy more protection against the externalities created by Riverbend Landfill than they do against the other farming operations in the same setting.

The Board finds that Riverbend Landfill is compatible with the wine and tourism industries in the County, which are also in the broader area surrounding the landfill. As noted above in Section II.B(2)(b)(i), an analysis of the wine and tourism industries shows that Riverbend Landfill has been in operation during the entire time that the wine and tourism industries have developed and continued to thrive in Yamhill County. The Board incorporates the discussion and findings in that section here by this reference. The Board finds that RLI’s proposal calls for a lateral expansion of an existing landfill – it will not introduce any new land use or changed activities in the area that affect its compatibility with the wine or tourism industries.

In summary, with respect to compatibility, the Board finds that that Riverbend Landfill is compatible with other adjacent uses and will continue to be compatible through measures designed to reduce adverse impacts. This conclusion finds support in the record based on Riverbend Landfill’s more than twenty-year history in a predominantly agricultural region that has continued to thrive, combined with the fact that RLI’s proposal is for a lateral expansion that does not introduce any new activities into the area. Further, the record contains no evidence that the farming operations adjacent to the existing landfill have been negatively impacted by the presence of the landfill. The Board also finds that an expanded Riverbend Landfill is compatible with other non-adjacent uses such as those related to rural residential, wine tourism and tourism in general.

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(c) OAR 660-004-0020(3)

If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

The proposed exception involves only one area of land, but that area consists of multiple tax lots. To the extent that these different tax lots are deemed to be different “areas” for purposes of this rule, the Board finds that the entire expansion proposal, as identified on the maps submitted by RLI, should be considered as a group, and the Board’s findings apply equally to the entire group.

C. GOAL 3 – Agriculture

To preserve and maintain agricultural lands.

Goal 3 requires that counties preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting EFU zones consistent with ORS Chapter 215.

As discussed thoroughly in Sections I and II above, RLI’s proposal is to expand the existing Riverbend Landfill onto contiguous parcels that are categorized as high-value farmland and zoned for EFU by the County. The County’s EFU District (Section 402) largely parallels the list of permitted uses and conditional uses authorized by state law under ORS 215 and OAR 660, Division 33 (Agricultural Land), with one important distinction: under ORS 215.283(2), a site for the disposal of solid waste may be established, subject to the approval of the governing body or its designee, in any area zoned for EFU subject to ORS 215.296.

Because the County, unlike the state, does not provide the opportunity for expansion of the landfill as a conditional use in the EFU district, the only option available to RLI is to proceed through the process of obtaining a goal exception to change the comprehensive plan and zoning designations for the landfill expansion area from EFU to PWS.

The Board finds that the criteria for a goal exception set a much higher bar than the criteria of ORS 215.296 which would otherwise require only that the local governing body or its designee find that the use would not: 1) force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or 2) significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The Board finds above in Section II.B that the record contains substantial evidence supporting an exception to Goal 3 and incorporates those findings here. The Board finds further that RLI, by pursuing the expansion of an existing facility instead of the development of a new facility, and by returning land zoned PWS back to EFU, has

minimized the impacts to agricultural lands that would otherwise exist, keeping with the policy embedded in Goal 3.

In summary with respect to Goal 3, the Board finds that based in part on the decision to allow an exception to Goal 3 and RLI's overall efforts to reduce impacts to agricultural land, the requested zone change and plan amendment conform to Goal 3.

D. GOAL 4 – Forest Lands

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

RLI's proposal does not include or affect lands preserved as forest lands under the County's acknowledged comprehensive plan. Therefore, the Board finds that Goal 4 is not relevant to the proposed plan amendment and zone change. In the alternative, if RLI's proposal is found to include or affect lands preserved as forest lands under the County's acknowledged comprehensive plan, the Board finds that RLI's proposal satisfies the criteria for an exception to that Goal. Such criteria are identical to the criteria for an exception to Goal 3 contained in OAR 660-023-0000 *et seq.* and RLI's proposal satisfies those criteria as described in Section II.B above. The Board incorporates the discussion and findings in that section here with this reference.

E. GOAL 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources

To protect natural resources and conserve scenic and historic areas and open spaces.

Goal 5 requires local governments to adopt programs to protect significant natural resources and to conserve significant scenic, historic, and open space resources for present and future generations. The procedures and requirements for complying with Goal 5 are outlined in OAR 660, Division 23. This administrative rule includes safe harbors that local governments may follow rather than addressing certain requirements in the standard Goal 5 process.

Under the County's acknowledged Comprehensive Plan, only the South Yamhill River is designated as a significant Goal 5 resource near the area of the proposed expansion. Other natural resources exist in the area, but the County does not maintain an inventory of those resources and has not designated them as significant Goal 5 resources. Although not designated in the Comprehensive Plan's inventory of Goal 5 resources, other natural resources in the expansion area fall under the protection of the County's Comprehensive Plan policies, addressed below and in more detail in Section IV.A(5). Those resources may also be subject to federal or state protections. For example, RLI will need to obtain

permits from the U.S. Army Corp of Engineers (“USACOE”) or the DSL to allow impacts to any jurisdictional wetlands or other waters on the project site. The Board will impose a condition of approval requiring RLI to obtain applicable permits from those agencies, in part to ensure that the County’s Goal 5 obligations are met.

Because only the South Yamhill River is designated as a significant Goal 5 resource near the area of the proposed expansion, only the riparian corridor provisions of Goal 5 apply. Under OAR 660-023-0090(8), once a riparian corridor has been identified as a significant natural resource, and as a safe harbor in lieu of performing the ESEE process requirements of OAR 660-023-0040 and OAR 660-023-0050, a local government may adopt an ordinance to protect that resource.

To satisfy those requirements of Goal 5, the County’s acknowledged Comprehensive Plan protects riparian resources consistent with Goal 5. Specifically, Section II C (Water Resources), Policy j. includes the following language to address protection of riparian areas:

It is the policy of Yamhill County to protect riparian vegetation from damage that may result from land use applications for development that is otherwise permitted outright or conditionally under county zoning regulations. To achieve this goal, Yamhill County will review land use applications for development in riparian areas in an effort to mitigate or prevent damage to riparian vegetation that might result from the development. For purposes of this policy, “riparian areas” refers to areas within 100 feet measured horizontally from the ordinary high water line of streams identified as “Fish Habitat” in the comprehensive plan inventory (Natural Resource Conservation Plan, Yamhill County, Oregon, May 1979 – USDA Soil Conservation Services), that are not regulated under the Forest Practices Act.

Policy j. remains applicable and is designed to allow the County to review conflicting uses in a riparian corridor such as the development of a landfill. Section IV.A(5) below addresses RLI’s ability to meet this policy. The Board incorporates the discussion and findings in that section here with this reference. The Board finds that, based on the condition of approval set out in Section IV.A(5) below and based on the fact that RLI will pursue expansion and enhancement of the riparian area on property abutting the South Yamhill River that is equal or better protection of the identified resource as outlined in Section IV.A(5), the Goal 5 requirements pertaining to riparian corridors have been satisfied.

F. GOAL 6 – Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 addresses the quality of air, water, and land resources. In the context of comprehensive plan amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan

amendment would be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

Landfills are required to comply with Oregon statutes and DEQ rules and standards for air quality and water quality. Based on the evidence in the record, the Board finds that RLI will be able to satisfy these environmental standards.

During the public hearings before the Planning Commission and the Board, staff from DEQ testified at length regarding RLI's environmental compliance. T. Spencer, Testimony, November 20, 2008; T. Spencer, Testimony, March 19, 2009; T. Spencer, Testimony, April 1, 2009; G. Andes, Testimony, April 1, 2009 (collectively, "DEQ Testimony").

With respect to water quality, the DEQ Testimony addressed specifically the robust liner system, leachate collection system and environmental monitoring that DEQ requires of landfill operations. The DEQ Testimony was clear that RLI is in compliance with all of its permits, which protect water quality, and that DEQ would continue to enforce the same regulations on the expanded portion of the landfill. With respect to the future expansion areas, the DEQ Testimony stated that site characterization is an important aspect of controlling potential environmental impacts and that the landfill expansion site is in an area where potential impacts to water quality are very predictable and, therefore, more easily avoided or mitigated. That aspect of the proposed site exists, in part, because of the long history of environmental monitoring that has occurred due to the presence of the existing landfill. Such a benefit would not exist in other areas that do not have a long history of landfill operation.

With respect to air quality, the DEQ Testimony stated that RLI is in compliance with its DEQ-issued air quality permit and that DEQ would continue to enforce the same regulations on the expanded portion of the landfill. Because odor is caused by landfill gas and landfill gas is regulated as part of DEQ's air quality oversight, the DEQ Testimony also addressed odor in great detail. The DEQ Testimony stated that it is possible to keep odors to a manageable level even as landfill gas quantities increase.

Following the County land use process, DEQ will review and approve a modification of the existing Solid Waste Disposal Permit before RLI can expand the lateral footprint of the landfill outside the boundaries of the existing waste disposal permit area. As part of that permitting, DEQ will have to review and approve an updated Site Development Plan for the landfill expansion, including technical information to address DEQ rules and design criteria for (1) leachate management, (2) surface water management, (3) landfill gas management, and (4) environmental monitoring.

The Board received several comments and testimony expressing concern over RLI's ability to meet water quality standards. Specifically, the comments addressed either the adequacy of the landfill site and existing soils with regards to proximity to groundwater or the reliability of the proposed liner system with respect to construction, operations, and long-term performance. After a review of the record, the Board finds that the liner system required by federal and state agencies is designed to meet these very concerns,

primarily through the implementation of multiple layers that provide redundancy and the ability to monitor for discharges before they make it, if they ever do, to the natural environment. The Board further finds that the soils at the proposed site create preferred conditions for siting landfills because they create physical barriers to potential contaminants and result in more predictable groundwater flow that increase the effectiveness of groundwater monitoring.

In addition to the liner system design, the Board finds that the integrity of the liner system is enhanced by observing strict construction practices during the installation process. The Board also finds that the use of a geophysical electric leak location technology provides further protection before waste is ever placed in the landfill.

Finally, the Board finds that design features incorporated upfront during initial cell construction to provide additional gas collection infrastructure as part of the bottom liner system guard against potential air quality contamination. The additional collection pipes, laterals, and headers allow a long-term, stable platform for collection of landfill gas.

Based on the foregoing, the Board finds that RLI's proposed expansion will be able to satisfy applicable federal and state environmental standards, including air and water quality standards. The Board further finds that RLI will be able to obtain wetland and fill permits as discussed in more detail in Section IV. below. The Board incorporates the discussion and findings in that section here with this reference. This conclusion is largely supported by the fact that the proposal is an expansion of an existing facility that has demonstrated a good record of compliance with DEQ environmental regulations and standards that apply to landfills.

In summary with respect to Goal 6, the record supports a conclusion that it is reasonable to expect that RLI will continue to be able to satisfy state and federal environmental standards as required by Goal 6.

G. GOAL 7 – Areas Subject to Natural Disasters and Hazards

To protect people and property from natural hazards.

Goal 7, which the Land Conservation and Development Commission amended on June 1, 2002, addresses hazards to development. As amended, the goal requires DLCDC to review new hazard inventory information provided by federal or state agencies in consultation with affected local government representatives. Thereafter, DLCDC would notify the local governments if new hazard information requires a local response. Since the amendments to Goal 7 took effect, DLCDC has taken no action to require that the County update inventories or regulations for natural hazards.

Federal criteria for municipal solid waste landfills took effect beginning October 9, 1993. These criteria address location, operation, and design of landfills, groundwater monitoring, closure and post-closure care, financial assurance, and remedial action if problems occur.

Federal criteria restrict landfill siting in certain locations. Two of these criteria apply to Riverbend's location: floodplains and seismic impact zones.

A landfill located in a floodplain must not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste to pose a hazard to human health and the environment. Riverbend Landfill is located outside the 100-year floodway boundary, but a portion of the landfill is within the floodplain of the South Yamhill River. The Corps concluded in the early 1980s that Riverbend could safely operate where it is without causing adverse impacts to the passage of the 100-year flow of the South Yamhill River. Riverbend has constructed a permanent flood protection berm outside the floodway limits. RLI has received a Conditional Letter of Map Revision from FEMA. That process resulted in several products important to RLI and the County:

- A more accurate map of the current floodplain. The current map of the 100-year floodplain would be revised to reflect newer data than was available when the map was last revised in 1983 (likely based on topography mapped in the 1970s).
- A new floodplain map and hydraulic model describing how the proposed landfill and its various ancillary facilities, including the proposed stream realignment, would affect the height and the associated extent of the 100-year floodplain.

FEMA has confirmed the accuracy of the modeling done by RLI via a rigorous review process. FEMA's confirmation assures the County that the above products correctly reflect the effects of the proposed project.

The findings of the Conditional Letter of Map Revision ("CLOMR") process are that (1) the expected rise in the 100-year floodplain would be less than 1 inch and (2) the rise would occur between the proposed and existing mouths of the unnamed tributary, which lies entirely on RLI lands and well away from neighboring ownership.

Finally, separate from this land use process, RLI is proposing a wetland mitigation bank in the lowland portion of Tax Lot 200 adjacent to the South Yamhill River. The bank project proposes to enhance many riverine and wetland functions, including additional flood storage in the amount of hundreds of acre-feet (likely about 300 to 600 acre-feet when completed).

A landfill in a seismic impact zone must be designed to withstand the maximum anticipated horizontal acceleration at the site. Riverbend is located in a seismic impact zone. According to DEQ, Riverbend's slope stability analysis showed that the safety factors against slope failure are adequate for the excavation and final cover of the cells under the current permit. In addition, RLI must meet Subtitle D seismic resistance requirements for all containments and can meet those requirements based on the conservative slopes and other design features described in the PA/ZC application narrative. This design standard is similar to seismic design standards (Uniform Building Code) for other facilities in the surrounding area.

The Board received several comments and testimony expressing concern over potential impacts to the floodplain that could result from development close to or in the floodplain. Those comments are addressed more fully below in Section IV.A relating to RLI's Floodplain Development application. The Board incorporates the discussion and findings in that section here by this reference.

The Board also received comments expressing concern over stability of the slopes of the expanded landfill. Based on the evidence in the record, the Board finds that RLI is required to construct the landfill in conformance with state and federal standards that govern slope stability, and that RLI has designed the expanded landfill to exceed those standards as cited in RLI's application materials and testimony.

Based on the foregoing, the Board finds that RLI's proposal demonstrates compliance with Goal 7.

H. GOAL 8 – Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The County does not have an established parks and recreation department or special park district and the County has not identified areas that are suitable for destination resorts. In general, most improved park and recreational facilities in the County are located inside the urban growth boundaries of the cities. However, the County does own and maintain a few rural park and river access sites. In particular, the Comprehensive Plan Map identifies a Parks, Recreation, and Open Space site, Monroe Landing, on the south side of the South Yamhill River in proximity to Riverbend Landfill.

The County received a grant from the State Marine Board to develop a small park and boat launch on the south side of the South Yamhill River on County-owned land adjacent to the closed Whiteson Landfill. However, the access road into the park site is currently gated and vehicle access is restricted. Individuals must call the County and obtain permission to access the park site on a day use basis.

The Board finds that the proposed expansion of Riverbend Landfill would not impact the designated Monroe Landing park site south of the river. As part of this consolidated land use application, RLI is proposing to change the zoning of the portion of Tax Lot 200 that is contiguous with the PRO site from PWS to EFU. The active landfill area would not expand toward the designated park site. Additionally, RLI intends to proceed with wetland and habitat enhancement activities in the floodway adjacent to the north side of the river that would complement existing or future enjoyment of the County-owned park site south of the river.

A portion of the landfill expansion area (Tax Lot 401) is currently zoned Recreation Commercial and is developed as a recreational vehicle (RV) park. The Mulkey RV Park property is owned by RLI and operated under a lease. The County Commissioners took a

“built and committed” exception for the RV Park when the Yamhill County Comprehensive Plan was adopted in 1979. Therefore, the RV Park was not established based on a public need for the use, but rather was grandfathered as an established use. Additionally, there are other RV parks available in proximity to Highway 18 to accommodate tourists and visitors to the County, including the Wandering Spirit RV Park near the casino in Grand Ronde and a large RV Park adjacent to Highway 18 and the South Yamhill River near the City of Dayton.

The State of Oregon scenic byways program makes money available for projects along roadways designated as National Scenic Byways, All-American Roads, or State Scenic Byways. The State of Oregon designates Scenic Byways according to prescribed criteria in OAR 734 Division 32. Designations are approved jointly by the Oregon Transportation Commission and the Oregon Tourism Commission. Oregon currently has four All American Roads, five National Scenic Byways, and 15 State Scenic Byways. Highway 18 is not designated as a scenic byway under the State of Oregon program.

Even though Highway 18 is not designated as a scenic byway, the highway provides an important transportation corridor to access tourist and recreational destinations such as the Oregon coast, wineries, and the Spirit Mountain Casino. Because RLI is proposing to expand the landfill footprint toward Highway 18, RLI’s proposal includes early construction of the perimeter berm with plantings of trees along the highway frontage and on the berm to screen the visibility of the landfill from travelers on the highway. The Board will impose a condition of approval that assures such screening mechanisms are put into place early in the construction process. The Board will also impose a condition of approval that limits the height of the landfill to the maximum permitted height of the existing landfill. These conditions are set out in Section V. below. The conditions will limit impacts of views of the landfill by travelers on the highway.

The Board did not receive testimony that the proposed expansion is inconsistent with Goal 8.

Based on the foregoing, the Board finds that the proposed expansion demonstrates compliance with Goal 8.

I. GOAL 9 – Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

The Board finds that the proposed expansion of Riverbend Landfill will contribute to a healthy economy in the County and the larger region for the reasons stated in Section II.B(2)(b) above. The Board incorporates the discussion and findings in that section here by this reference. These findings are based in part on the detailed analysis contained in the ECONorthwest Report. Among the conclusions in that report are:

- Riverbend Landfill provides a good and stable source of family-wage jobs in the County. RLI’s operations currently support 21 full time equivalent employees with an associated

payroll of about \$1.1 million (including the value of benefits), which will remain during the expansion.

- In addition to payroll, Riverbend brings substantial procurement expenditure to the local and regional economy. The expenditures encompass goods and services used to operate the landfill, and include such expenses as engineering, shipping, food service, and donations to organizations. Of the \$5.3 million currently paid to vendors in the region, \$1.3 million is spent on local vendors in the County – expenditures RLI will continue to make as part of the operation of the expanded landfill.
- RLI has estimated the total cost of expanding the landfill to be \$66.2 million (in 2007 dollars). In addition to operations jobs cited above, the expenditures would be made over the life of the landfill expansion. The anticipated effects of the expansion include the creation of 16 construction jobs and indirectly an additional eight jobs, for a total of 24 jobs every year associated with phased construction. The landfill expansion would generate millions of dollars in personal income over the life of the expansion by workers directly involved in the construction process.
- If Riverbend Landfill is not expanded and County waste is hauled to existing disposal sites located outside of the County, the cost per ton of waste disposal would increase for County residents and businesses and the other direct and indirect economic benefits to the County will not accrue.

The Board finds that expansion of the landfill will provide the opportunity to retain and expand the jobs identified above within the County. The Board finds further that expansion of the landfill will provide the opportunity for the County to retain and expand the expenditures made on local goods and services related to operation of the landfill. The Board also incorporates here by reference the findings above in Section II.B(2)(b)(i) relating to Goal 9 and the County's need for a landfill to meet its obligations under that goal.

The Board also notes that the County's Solid Waste Management Plan includes the following discussion of the importance of Riverbend Landfill to County businesses and industries:

Having a modern landfill facility to serve the County is a valuable resource. Locating a new landfill in the County is not an easy task, if that approach was selected. Therefore one consideration is to evaluate how to maximize the resource that is currently in place. The primary advantage of maximizing the capacity of Riverbend Landfill includes maintaining a convenient disposal site for less than \$30 per ton. Providing this low cost disposal capacity significantly impacts costs for several major industrial customers in the area and helps these businesses remain competitive in the market place. Many other communities pay in excess of \$60 per ton to transport and dispose of waste at distant landfills. As such there is no additional transfer station or long-haul costs. Another key

advantage is the revenue derived from the host fees as a result of operating a regional disposal site.

Based on the foregoing the Board finds that the proposed expansion of Riverbend Landfill will support the local and regional economy with the continued availability of good local jobs to operate the landfill, and additional construction jobs associated with the expansion. The Board therefore finds Riverbend Landfill is an important and vital part of the County economy and the goal exception and proposed expansion of the landfill is consistent with the intent of Goal 9.

J. GOAL 10 – Housing

To provide for the housing needs of citizens of the state.

Goal 10 requires that local governments do their fair share to provide for the housing needs of people of all income levels. Under Goal 10, cities must inventory buildable lands for residential use and encourage the availability of adequate numbers of needed housing units at price ranges and rent levels that are commensurate with the financial capabilities of Oregon households.

Buildable lands are defined in Goal 10 as lands *inside* urban growth boundaries that are suitable, available, and necessary for residential use. Therefore, Goal 10 does not apply to the rural lands that are the subject of this goal exception. Further, the Board finds that the proposed expansion of the landfill will not affect any lands that are zoned for rural residential use or displace any year-round housing units.

RLI's proposal does change the zoning of about 25 acres (portion of Tax Lot 401) from RC to PWS. RLI purchased the Mulkey RV Park in 1991, and the existing use operates under terms of a lease. RLI intends to continue that arrangement until the RV park area is needed for landfill expansion. Under County regulations, the term of stay at an RV park is limited to a maximum of no more than four months. RLI proposes to provide at least one year advance notice to the RV park manager prior to closing the park. The County does not recognize the Recreation Commercial zone as a Residential zone.

The Board did not receive any comments or testimony that the proposed expansion is inconsistent with Goal 10.

Based on the foregoing, the Board finds that the proposed plan amendment and zone change complies with Goal 10 and would not displace buildable lands that have been designated for housing.

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K. GOAL 11 – Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Goal 11 provides that urban and rural development should be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the urban and rural areas to be served. Goal 11 is implemented through the Public Facilities Planning Rule, OAR 660, and Division 11.

Goal 11 also includes a specific reference to planning for landfills, and as already noted, the existence of a local landfill is a key component to the County's Solid Waste Management Plan which implements Goal 11.

The Board finds that landfills serve rural and urban uses, but that landfills themselves are appropriate rural uses. Neither the existing landfill nor the proposed expansion requires city water or sewer service or other urban public facilities. The discussion and findings in Section II.B(2)(b)(ii) above are relevant to this criterion. The Board incorporates the discussion and findings in that section here by this reference.

The Board finds that planning for a solid waste management system is similar to planning for other large infrastructure projects that are more limited in number such as wastewater treatment plants, water storage reservoirs, freeways, or power plants. The Board finds that such projects are critical elements of an integrated infrastructure system. Localized impacts of larger facilities must be mitigated and balanced with broader county needs and benefits.

To balance localized impacts with the larger need for such facilities, the County has imposed surcharges and host fees associated with operation of Riverbend Landfill as a regional landfill. These fees have generated substantial annual revenue (more than \$500,000 per year) to the County. The revenue supports about half of the County's Solid Waste Fund budgeted expenses, including post-closure costs associated with monitoring the two closed, County-owned landfills, Countywide education programs to support recycling and waste reduction, and special events such as household hazardous waste collection.

The Board finds that the broader service area that benefits by access to a regional landfill in the County contributes additional financial resources to the County's solid waste management program – including recycling and waste recovery programs – that would otherwise be dependent on the Yamhill County general fund.

The County's Solid Waste Management Plan specifically identifies expansion of Riverbend Landfill as a viable alternative to meet the County's long term disposal requirements. Based on the conclusions of the Zia Report, discussed in more detail above in Section II.B(2)(b), expansion of Riverbend Landfill is not just a viable alternative, it is

the only viable alternative for the County to meet its goals and obligations under Goal 11. The Board incorporates the discussion and findings in that section here by this reference.

In summary, the County has adopted a Solid Waste Management Plan that addresses near and long term disposal requirements as required by Goal 11 and state statutes. The Board finds that expansion of Riverbend Landfill to meet long term disposal needs was clearly identified as an alternative in the adopted Solid Waste Management Plan and that the proposed plan amendment and zone change from EFU to PWS is consistent with Goal 11 and would meet current and long range needs for continued availability of a solid waste disposal site to serve urban and rural development in the County.

L. GOAL 12 – Transportation

To provide and encourage a safe, convenient and economic transportation system.

An amendment to an acknowledged comprehensive plan must put into place measures required by the Transportation Planning Rule to “assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g., level of service, volume to capacity ratio, etc.) of the facility.” OAR 660-012-0060.

RLI submitted evidence into the record that it coordinated with the ODOT and prepared a Traffic Impact Analysis to analyze the potential transportation impacts associated with the landfill expansion project. That analysis is in the record as Attachment A to the RLI’s PA/ZC application narrative.

Highway 18 is a rural, two-lane highway adjacent to the landfill. It has 8-foot paved shoulders bordered by 4- to 6-foot gravel shoulders. Highway 18 is under the jurisdiction of ODOT and is classified as a Statewide Roadway, it is on the National Highway System, and it is a designated Freight Route. The posted speed limit in the project area is 55 miles per hour.

The existing access to the landfill will be maintained, including a left turn lane and a right turn acceleration lane. There is adequate sight distance for entering and exiting vehicles at the landfill entrance to meet current ODOT standards. Additionally, as part of the expansion, RLI will convert the existing access to the RV park to more limited access for landfill maintenance vehicles.

RLI’s analysis, approved by ODOT, shows that impacts associated with the proposed plan amendment and landfill expansion would result in worst case projected traffic volumes in 2026 well below the capacity of Highway 18, and otherwise within the acceptable standards set by ODOT. Projected traffic volumes in 2026 would result in a worst case volume-to-capacity (“V/C”) ratio of 0.29 for the site peak hour, well below the acceptable V/C ratio of 0.70 set by ODOT. The Board therefore finds that the proposed plan map amendment does not significantly affect Highway 18 for the following reasons:

- It does not change the functional classification of Highway 18;
- At the end of the 20-year planning period, the plan amendment does not allow land uses or levels of development that result in types or levels of travel or access that are inconsistent with the functional classification of Highway 18;
- The plan amendment does not reduce the performance of Highway 18 and is within the minimum acceptable performance standard (V/C ratio of 0.70) identified by ODOT for this facility.

No comments or testimony received by the Board questioned the validity of the traffic analysis or ODOT's approval of that analysis. Several comments did address concerns over truck traffic generated by continued operation of the landfill, but those comments focused on impacts to surrounding property owners rather than on the ability of the transportation system to accommodate that traffic.

Based on the foregoing, the Board finds that RLI's proposal complies with Statewide Planning Goal 12 and the Transportation Planning Rule. Specifically, the analysis approved by ODOT demonstrates that the proposal is consistent with the function, capacity, and performance standards of the highway facility (Highway 18). Because Highway 18 is under state jurisdiction, the Board places substantial weight on ODOT's approval of the Traffic Impact Analysis for the proposed plan amendment and associated landfill expansion.

M. GOAL 13 – Energy Conservation

To conserve energy.

Goal 13 directs cities and counties to manage and control land uses to maximize the conservation of all forms of energy, based on sound economic principles. Goal 13 planning and implementation guidelines include two references to solid waste systems:

- Planning Guideline 5: Plans directed toward energy conservation within the planning area should consider as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output. Renewable energy sources include water, sunshine, wind, geothermal heat and municipal, forest and farm waste. Whenever possible, land conservation and development actions provided for under such plans should utilize renewable energy sources.
- Implementation Guideline: Land use plans should be based on utilization of techniques and implementation devices which can have a material impact on energy efficiency, including systems and incentives for the collection, reuse and recycling of metallic and nonmetallic wastes.

The record clearly demonstrates that waste in landfills generates methane gas which is increasingly recognized as a valuable renewable energy source that can be converted to useful energy output. RLI has traditionally used a gas flare to combust methane gas

generated at Riverbend Landfill. However, RLI has begun a process with McMinnville Water & Light to develop facilities at the landfill to instead use and convert this methane gas to electricity. RLI estimates that the expansion of Riverbend Landfill would provide enough renewable capacity to generate about up to or beyond 8 megawatts, enough to power more than 5000 homes.

The Board finds that expansion and continued operation of Riverbend Landfill maximizes energy conservation relative to the alternative of shipping waste to regional landfills located outside of the County. Riverbend Landfill is centrally located to serve urban and rural residents and businesses located throughout the County. By contrast, potential alternative disposal sites are located from about 40 miles (Coffin Butte) to almost 200 miles (Columbia Ridge) from McMinnville.

The Board finds that hauling waste to alternative landfill sites would require more fuel for transportation and generate increased air emissions as heavy trucks travel the longer distances. The Board finds further that the energy potential contained in solid waste will exist no matter where the waste ultimately is disposed, but that that potential is off-set in some measure by any energy used to transport the waste. Therefore, the most energy-efficient disposal scenario is the option that keeps the waste as close to its origin as possible.

The Board received several comments and testimony relating to the potential to extract more energy from solid waste by pursuing non-landfill alternatives. That issue is discussed in more detail above in Section II.B(2)(b). The Board incorporates the discussion and findings in that section here by this reference.

Based on the foregoing, the Board finds that the proposed plan amendment and zone change to accommodate expansion of Riverbend Landfill would provide the greatest opportunity to conserve energy associated with transporting solid waste and develop a renewable energy resource for beneficial use as a new source of green electricity in the County, consistent with the intent of Goal 13. The Board finds further that the expansion is necessary to achieve its goals and obligations under Goal 13.

N. GOAL 14 – Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Goal 14 is a key statewide planning goal in Oregon's overall land use planning framework. Goal 14 requires that each city coordinate with the respective County to adopt an urban growth boundary ("UGB") to meet 20-year land needs for housing, employment, and livability.

Each of the ten incorporated cities within the County has coordinated with the County to adopt and update urban growth boundaries to meet the requirements of Goal 14. The initial UGBs for the cities in the County were established in the early 1980s to meet

population and employment needs to the year 2000. McMinnville and Newberg have completed major planning projects to update land needs and expand their respective urban growth boundaries to the year 2030.

Riverbend Landfill is outside any UGB and does not require urban water or sewer service.

None of the cities in the County have planned for the location of a solid waste disposal site within their UGB. The franchised haulers for the cities and rural areas of the County (Western Oregon Waste and Newberg Garbage Service) take all of their residual solid waste to Riverbend Landfill for disposal.

The Board received no comments or testimony that the proposed expansion is inconsistent with Goal 14.

The Board finds that the established solid waste collection, transfer, and disposal system in the County provides an efficient and cost-effective system for residents and businesses in both the urban and rural areas of the County. Approval of the requested plan amendment and zone change to accommodate expansion of Riverbend Landfill will maintain a needed land use at an appropriate location on a large site that can be adequately separated and buffered from surrounding rural and nearby urban uses, consistent with the intent of Goal 14.

O. GOAL 15 – Willamette River Greenway

To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The Board finds that the proposed expansion of Riverbend Landfill does not directly affect any lands that are within the Willamette River Greenway boundary. Therefore, Goal 15 is not applicable to the goal exception for the plan amendment and zone change.

P. GOAL 16 through GOAL 19

Goal 16 applies to estuarine resources, Goal 17 applies to coastal shorelands, Goal 18 applies to beaches and dunes, and Goal 19 applies to ocean resources. The Board finds that the expansion of Riverbend Landfill does not directly affect any lands to which these goals apply.

Q. YCZO Criteria Relating to Zone Changes

Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO Section 1208.02.

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(1) YCZO 1208.02(A)

The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.

The County's Comprehensive Plan addresses seven broad areas: 1) Urban Growth and Change and Economic Development; 2) Land and Water; 3) Transportation, Communications, and Public Utilities; 4) Public Land, Facilities, and Services; 5) Environmental Quality; 6) Energy Conservation; and 7) Implementation, Evaluation, and Review.

(a) Urban Growth and Change and Economic Development

The Board finds that the proposed expansion is consistent with the Urban Growth and Economic Development components of the County's Comprehensive plan based on the findings below.

The discussion and findings in this Section II. relating to Goal 2, Goal 9, Goal 11 and Goal 14 are relevant to this criterion. The Board incorporates that discussion and those findings here by this reference.

The Board finds that the plan amendment and zone change will ensure the continued availability of an efficient and cost-effective disposal site with the least energy and environmental impacts to serve the cities of the County, consistent with the County's Comprehensive Plan goal for Urban Area Development. The Board finds further that the location of the landfill outside of established urban growth boundaries is the most appropriate and desirable location for solid waste landfills, and that it is common throughout Oregon to site modern landfills only in rural areas.

The record demonstrates that urban areas in the County expect and depend on regular and convenient pickup of solid waste and recyclables. The Board therefore finds that a centrally located and cost-effective disposal site is necessary to accommodate long term disposal needs of all sources of solid waste in the County.

The record demonstrates that RLI has undertaken great effort to minimize the overall net increase in PWS zoning to approximately 55 acres, which the Board finds does not compromise the basic goal relating to urban containment and orderly urban development.

The record demonstrates that the existing landfill is an integral part of the overall solid waste management system in the County and the long term availability of a centrally located disposal site with competitive rates will maintain the stability and encourage the development of the local economy. The Board therefore finds that continued operation of Riverbend Landfill through the expansion as a regional landfill provides economic development benefits to the County.

The Board also finds that the landfill has operated at the current location for more than 25 years in compliance with all of its DEQ permits with no apparent conflicts with farm

practices and the expanded landfill will operate in a similar manner without increasing the potential for such conflicts.

(b) Land and Water

The Board finds that the proposed expansion is consistent with the Land and Water component of the County's Comprehensive plan based on the findings below.

The discussion in this Section II relating to Goal 5, Goal 6 and Goal 9 and the discussion in Sections II.B(2)(b)(iv) and III.A(7) relating to compatibility are relevant to this criterion. The Board incorporates the discussion and findings in those sections here by this reference.

The Board received comments from owners of agricultural land surrounding Riverbend Landfill and other agricultural interests who oppose the expansion based on concerns over land and water impacts. For example, the Yamhill County Farm Bureau submitted a letter stating its opposition based on the non-agricultural use of high-value farmland, concerns over water quality impacts for irrigators, and the potential for vectors. J. Mann, Letter, Nov. 20, 2008.

The Board finds that the proposed boundaries for the PWS zoning will ensure that expansion of the landfill occurs in an orderly, efficient, and economic manner within defined natural and human-made boundaries to minimize impacts on the conservation and viability of farm lands for the production of crops and livestock. The Board finds it compelling that RLI's proposal will expand the existing facility by approximately 130 acres but require the net conversion of approximately only 20 acres of EFU land.

The Record demonstrates that the viability of commercial farm uses in the general vicinity of the landfill, including farmland employed by the wine industry, has not been diminished by the presence or operation of Riverbend Landfill. The Board finds that continued operation of the landfill will not have additional impacts to nearby farm uses and that the County will realize long term benefits to balance the minimal loss of farm lands.

The Record also demonstrates that, compared with agricultural irrigation or municipal uses of groundwater and surface water, Riverbend Landfill does not place high volume demands on water resources. The Board therefore finds that the proposed expansion will be able to continue to conserve and manage water resources efficiently and will be subject to federal and state standards to abate any risk of potential flood, erosion, or sedimentation issues.

The Board finds that RLI's proposal results in an overall increase in fish and wildlife habitat within the larger project area and that the riparian area associated with the South Yamhill River will be enhanced beyond what currently exists.

RLI submitted a series of technical reports as part of the PA/ZC application that quantitatively characterize the various fish and wildlife habitats within RLI ownership. These reports show the likely impacts of the proposed development, and illustrate the

various associated habitat creation, restoration, and enhancement activities proposed as either compensatory mitigation or as voluntary activities. Overall, between three and five times more fish and wildlife habitat will be created, and the quality of that habitat will be greater than what currently exists. The bulk of the habitat improvement will result from wetland and riparian mitigation associated with the proposed stream realignment.

The Board also finds that the landscaping and screening that will be required as a condition of approval for this use is more extensive than typically provided for commercial, industrial, or public facility uses adjacent to Highway 18. These measures help maintain the aesthetics and rural character of the area.

(c) Transportation, Communications, and Public Utilities

The Board finds that the proposed expansion is consistent with the Transportation, Communications, and Public Utilities component of the County's Comprehensive Plan based on the findings below.

The discussion and findings in this Section II relating to Goal 2, Goal 11 and Goal 12 is relevant to this criterion. The Board incorporates that discussion and those findings in here by this reference.

The record demonstrates that the phased expansion of the landfill will not result in a significant change in the percentage of trips relative to the overall background traffic on Highway 18, as confirmed by ODOT.

The Board finds that the proposed expansion complies with County transportation policies and reduces and consolidates the number of existing direct access points to Highway 18.

(d) Public Land, Facilities, and Services

The Board finds that the proposed expansion is consistent with the Public Land, Facilities, and Services component of the County's Comprehensive plan based on the findings below.

The discussion in this Section II relating to Goal 2, Goal 6, Goal 9 and Goal 11 is relevant to this criterion. The Board incorporates that discussion and those findings in here by this reference.

As already noted, the Board finds that expansion of Riverbend Landfill is consistent with the County's solid waste management policy contained in the Comprehensive Plan and would provide the opportunity for the County to continue with the approach to solid waste management that has worked well for decades.

The record demonstrates that the County receives many benefits from operation of Riverbend Landfill as a regional disposal site. The Board finds that Riverbend Landfill's continued operation will provide economic benefits to the County with ongoing annual

payments of licensing and host fees, as well as employment, procurement and associated economic benefits.

The Board finds that the attainment of federal and state environmental permits will assure that ongoing environmental monitoring is performed and reported to verify the effectiveness of the environmental controls that will be put into place as part of the expansion.

(e) Environmental Quality

The Board finds that the proposed expansion is consistent with the Environmental Quality component of the County's Comprehensive plan based on the findings below. The discussion in this Section II. relating to Goal 5, Goal 6 and Goal 7 is relevant to this criterion. The Board incorporates that discussion and those findings here by this reference.

The record demonstrates that RLI, operating under DEQ permits, actively monitors for environmental impacts (including those to air, groundwater, surface water, and soil), submits regular monitoring reports to DEQ to document compliance with established standards and regulations for significant emissions, and is in compliance with all regulatory permits.

The Board finds that RLI's ownership and management of multiple contiguous parcels in the vicinity of the landfill ensures a very substantial buffer between the landfill use and surrounding agricultural uses. This configuration will be enhanced by the proposed zoning boundaries, which contain the landfill within natural and manmade boundaries that clearly differentiate the areas between landfill operation and agricultural lands. As already noted, the Board finds that the expanded landfill will be able to operate in compliance with state and federal air quality standards.

The Board finds that the proposed expansion and ancillary facilities will provide the opportunity for efficient recovery and development of the landfill gas energy resource and will also provide and support expansion of the County's established solid waste recycling and recovery programs, consistent with County policies.

The Board finds that RLI's proposal results in an overall increase in fish and wildlife habitat within the larger project area and that the riparian area associated with the South Yamhill River will be enhanced beyond what currently exists.

RLI submitted a series of technical reports as part of the PA/ZC application that quantitatively characterize the various fish and wildlife habitats within RLI ownership. These reports show the likely impacts of the proposed development, and illustrate the various associated habitat creation, restoration, and enhancement activities proposed as either compensatory mitigation or as voluntary activities. Overall, between three and five times more fish and wildlife habitat, and the quality of that habitat, will be greater than what currently exists. The bulk of the habitat improvement will result from wetland and riparian mitigation associated with the proposed stream realignment.

(f) Energy Conservation

The Board finds that the proposed expansion is consistent with the Energy Conservation component of the County's Comprehensive plan based on the findings below.

The discussion in this Section II. relating to Goal 2 and Goal 13 is relevant to this criterion. The Board incorporates that discussion and those findings here by this reference.

The Board finds that the proposed expansion will allow the County to reduce fossil fuel consumption and will minimize carbon impacts compared to the alternatives of hauling solid waste longer distances to out-of-County regional landfills.

The Board finds that RLI's construction of a landfill gas-to-energy facility supports compliance with the adopted energy conservation goal and demonstrates an integrated approach to managing and combusting landfill gas to supply a portion of the renewable electricity needs of the local public utility.

The Board finds that the County has already demonstrated a good record of achieving goals for recycling and recovery, and that the expansion of Riverbend Landfill will continue to provide financial support for expanded recycling and recovery programs within the County.

(g) Implementation, Evaluation, and Review

The Board finds that the proposed expansion is consistent with the Implementation, Evaluation, and Review component of the County's Comprehensive plan based on the findings below.

The discussion in Section II.A above relating to Goal 1 is relevant to this criterion and the Board incorporates the discussion and findings in that section here by this reference.

The record demonstrates that, beyond the standard public notice provision required by law, RLI has conducted a broad public outreach effort regarding the land use application and proposed landfill expansion.

The Board finds that the County has provided opportunities for citizens to be involved in all phases of the land use planning process associated with solid waste management planning and site-specific land use decisions. In addition to citizen participation at the hearings, the Board also involved the County's Solid Waste Advisory Committee throughout this land use proceeding.

The Board finds that the County has and will continue to coordinate solid waste management and permitting decisions with relevant state and federal agencies in compliance with County policies.

Based on the foregoing, the Board finds that the zone changes proposed in RLI's application are consistent with the goals, policies and other applicable provisions of the County's Comprehensive Plan and that the requirements in YCZO 1208.02(A) have been satisfied.

(2) YCZO 1208.02(B)

There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

The Board finds that YCZO 1208.02(B) requires demonstration of a market need for the proposed use. Section II.B(2)(a) above describes in detail the market need for the proposed expansion. The Board incorporates the discussion and findings in that section here by this reference.

As noted above, the record contains three in-depth economic analyses of the County's waste disposal options. The Board finds that all three analyses conclude that there is a need for the landfill disposal of solid wastes and that Riverbend Landfill is the most economical option for meeting that need.

The record also demonstrates the importance of the expansion to the citizenry of the County through the economic benefits that flow to the County. Specifically, the evidence in the record shows that the County has the ability to collect a host fee for any waste delivered to the landfill in addition to the license fee it collects from RLI. These amounts result in direct revenue to the County of approximately \$740,000 per year. In contrast, sending the County's waste to sites outside the County will force the County to forego those monetary benefits while at the same time increasing disposal costs by anywhere from \$2.3 million to 22 million per year.

The zone that permits a landfill in the County is the PWS zone. The County does not maintain reserves of land zoned PWS and existing PWS zones are too small to accommodate a new landfill.

The Board finds that expansion of the landfill is important to the citizenry and economy of the area. This finding is based, in part, on comments and testimony during the public comment period of this proceeding demonstrating that the County's businesses and largest employers rely on disposal at Riverbend Landfill in order to maintain the profitability of their businesses. The record also contains testimony from local vendors that provide goods or services to RLI. That testimony described the role RLI plays in creating family-wage jobs related to the provision of those goods and services.

Based on the foregoing, the Board finds that there is a demonstrable need for the continued existence of Riverbend Landfill. The Board finds further that continued operation of Riverbend Landfill is important to the citizenry and the economy of the entire County because it provides a local, low cost, environmentally-sound option for

solid waste disposal that keeps disposal costs low for all customers and helps businesses and industry to remain profitable.

(3) YCZO 1208.02(C)

The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.

The Board finds that the discussion and findings in Section II.B above are relevant to this criterion. The Board incorporates the discussion and findings in that section here by this reference.

The Board finds that the character and density of development in the surrounding area have not changed substantially since the early 1980s when the Yamhill County Comprehensive Plan was acknowledged by LCDC. With high-value agricultural soils, relatively large farm operations and minimum lot size restrictions associated with EFU zoning, the surrounding area has largely been maintained in agricultural uses and relatively large parcels. As confirmed by testimony from owners of farms and vineyards during the public hearing, notable changes, such as the growth of the wine industry, maintain this character and density.

The record demonstrates that there is a long history of PWS zoning and landfill-related uses around the proposed site of the expansion during this same time period. Riverbend Landfill has been operating at the present location with a DEQ solid waste disposal permit and by approval from the County through its zoning and license processes for more than 25 years. Operation of a solid waste landfill at this location is not a new use, and uses in the surrounding area have coexisted with the landfill operation for many years.

The record demonstrates that the proposed zone change to PWS to allow expansion of Riverbend Landfill will not require any utilities or services beyond what is already provided for the existing landfill. The landfill does not require public water or sanitary sewer service and the use is appropriately characterized as a rural use.

The Board finds that RLI has taken steps to minimize the net reduction of EFU –utilizing areas that are already built and committed to a non-farm use, rezoning some property from PWS back to EFU, and expanding onto an area adjacent to the existing landfill to leverage the existing infrastructure and construct the expanded landfill on a smaller footprint.

Based on the foregoing, the Board finds that the proposal to expand the PWS zone to incorporate the parcels between the existing waste disposal area and Highway 18 is appropriate in the context of surrounding uses and the density and pattern of development in the area.

(4) YCZO 1208.02(D)

Other lands in the County already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors.

The Board finds that the discussion and findings in Section II.B(2)(b)(ii) above are relevant to this criterion. The Board incorporates the discussion and findings in that section here by this reference.

The record makes clear that the only zone in Yamhill County that permits a landfill is the PWS zone and that the County has relatively few and wholly inadequate parcels already designated PWS. Specifically, the record demonstrates that a total of approximately 418 acres (comprised of 60 individual tax lots) are currently zoned PWS, and that most of these are smaller than ten acres.

Based on the foregoing, the Board finds that other lands in the County zoned PWS are unavailable and not well-suited to accommodate the proposed use.

(5) YCZO 1208.02(E)

The amendment is consistent with the current Oregon Administrative Rules (OARs) for exceptions, if applicable.

Section II.B above fully addresses the applicable OAR requirements for exceptions. The Board incorporates the discussion and findings in that section here by this reference.

The Board finds that reasons justify why the state policy embodied in Goal 3 should not apply. Among these is that landfills are appropriate on rural lands, including EFU land as evidenced by the state's policy allowing the expansion of landfills on high-value farmland. Furthermore, the Board finds that the expansion of Riverbend Landfill is necessary for the County to meet its obligations under Statewide Planning Goals 9, 11 and 13.

The Board finds further that: 1) areas that do not require a new exception cannot reasonably accommodate the use; 2) the long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; 3) the proposed use is compatible with other adjacent uses and will continue to be so rendered through measures designed to reduce adverse impacts.

Based on the foregoing, the Board finds that the plan amendment is consistent with the OARs for exceptions.

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III. SITE DESIGN REVIEW

YCZO Section 1100 outlines the SDR process and standards. The SDR process focuses on “how” a site is developed, not “whether” it should be developed for a particular use. RLI’s SDR application is contingent on County approval of the requested plan amendment and zone change to PWS. Many of the considerations for SDR (such as natural resources and hazards, traffic and environmental, social, and economic consequences) are also relevant and have been addressed in the findings and conclusions for the PA/ZC and the FDP. The relevant evidence, findings and conclusions for the PA/ZC and FDP are incorporated here by this reference to address SDR considerations.

Most of the SDR provisions are procedural requirements that determine if the applicant has provided the County with complete information on which to base the SDR. The Board finds that those procedural requirements have been satisfied. The actual evaluation of the site development plan is governed by YCZO 1101.02(A).

A. YCZO 1101.02(A) – Evaluation of Site Development Plans

(1) YCZO 1101.02(A)(1)

Characteristics of adjoining and surrounding uses

The discussion and findings in Section II.Q(3) above relating to YCZO 1208.02(C) is relevant to this criterion. The Board incorporates the discussion and findings in that section here by this reference.

As noted above, the record demonstrates a long history of landfill operation at the expansion location. In addition to Riverbend Landfill, the County-owned Whiteson Landfill is located immediately south of the South Yamhill River and operated until it reached capacity and closed in the early 1980s. Riverbend Landfill opened in 1982 and has operated continuously since that time.

Riverbend Landfill is in a rural setting with surrounding parcels generally zoned and used for agriculture. The record demonstrates that there are relatively few dwellings located within a 1-mile radius of the landfill. RLI’s substantial property ownership around the expansion site provides the opportunity for RLI to maintain buffers between the active landfill and surrounding uses. Additionally, RLI leases many of the parcels for ongoing agricultural production to maintain the largely agricultural character of the area.

The Board finds that the character and density of development in the surrounding area have not changed substantially since the early 1980s when the Yamhill County Comprehensive Plan was acknowledged by LCDC. With high-value agricultural soils, relatively large farm operations and minimum lot size restrictions associated with EFU zoning, the surrounding area has largely been maintained in agricultural uses and relatively large parcels. As confirmed by testimony from owners of farms and vineyards during the public hearing, notable changes, such as the growth of the wine industry, maintain this character and density. The record also demonstrates that designated URAs for the City of McMinnville do not extend toward the landfill.

The Board finds that RLI took the following steps to operate as a good neighbor to the surrounding agricultural community and strive to be compatible with the characteristics of adjoining and surrounding uses:

- Used natural and man made boundaries (including the South Yamhill River, riparian corridors and Highway 18) to define a clear edge and buffer for the landfill expansion and ancillary facilities
- Minimized the net reduction of EFU land by including the RV park in the expansion, and rezoning areas in the floodway from PWS back to EFU
- Provided locations for ancillary facilities (office, gas-to-energy facility, public drop facility, stormwater management facilities and storage/shop area) near the outer edge of the PWS zone to maintain a separation and buffer between the active disposal area and the surrounding agricultural areas
- Proposed berms and extensive plantings along exposed edges of the expanded landfill to enhance visual screening, which will be incorporated into conditions of approval
- Developed a closure plan that vegetation that enhances the facility aesthetics long-term and is consistent with the natural landforms in the vicinity
- Reduced the original proposed height by 124 feet so that the new proposed height is no more than the current landfill's maximum permitted height of 286 feet above mean sea level

The Board received comments and testimony arguing that the characteristics of the adjoining and surrounding uses have changed since Riverbend Landfill was established. This testimony included comments from adjacent property owners, area farmers, and individuals living in the surrounding area.

The Board recognizes and appreciates the outpouring of public comments and concerns regarding the proposed landfill expansion. Because of the volume of comments and level of understanding opponents of the expansion brought to the discussion, the Board spent more time on this decision than is typically required. Based on the evidence and testimony in the record, the Board finds that the applicant has considered the characteristics of adjoining and surrounding uses in developing the site development plan for the expansion. Additionally, the Board finds that the location and characteristics of the proposed expansion are unique for the following reasons:

- A municipal solid waste landfill has operated at this location of Yamhill County for more than 25 years;
- The County's Comprehensive Plan Map and Zoning Map have reflected about 220 acres of PWS zoning at this location since 1980;

- The landfill has not operated as a conditional use in the EFU zone with a “sunset date” of 2014. Rather, the established landfill use is recognized and reflected on the plan map and the zoning map and can easily be confirmed by prospective property owners who move into the vicinity; and
- As shown on the Comprehensive Plan and Zoning Map, the established landfill and PWS zoning are surrounded by EF-80 zoning with a 1-mile radius of the site. Newly created parcels in the EF-80 zone are limited to a size of 80 acres and new farm dwellings on high-value farm land are subject to an income test from the sale of farm products. These zoning regulations have been very effective in minimizing the degree of land use change in the vicinity of Riverbend Landfill.

Based on the foregoing, the Board finds that the site development plan has appropriately considered the characteristics of adjoining and surrounding uses and the plan is appropriate in the context of surrounding uses and the density and pattern of development in the area.

(2)YCZO 1101.02 (A)(2)

Economic factors relating to the proposed use

RLI’s SDR application included a specific cross-reference to the ECONorthwest Report. The record also contains substantial additional information on economic factors relating to the proposed use, including but not limited to the JR Miller Report and the Zia Report. The Board’s findings with respect to that report, economic factors in the Goal 2 discussion, economic factors in the Goal 9 discussion and all economic factors in Section II. above, as well as the Board’s discussion and findings relative to economic consequences and compliance with the goals and policies in the Yamhill County Comprehensive Plan in Section II.Q(1), are incorporated here by this reference.

The Board finds that the economic factors supporting approval of the proposed use include:

- The proposed expansion will ensure the continued availability of an efficient, cost-effective and environmentally-safe disposal site to serve the cities of the County, consistent with Goal 1 for Urban Area Development
- All urban areas in the County expect and depend on regular and convenient pickup of solid waste and recyclables, increasing the importance of a centrally-located, cost-effective disposal site to accommodate long term disposal of the County’s solid waste
- The existing landfill is an integral part of the overall solid waste management system in the County and the long term availability of a centrally-located disposal site with competitive rates will help to maintain the stability and encourage the development of the local economy
- Continued operation of Riverbend Landfill as a regional landfill provides economic development benefits to the County

Based on the foregoing, the Board finds that the site development plan for the landfill expansion has appropriately considered economic factors relating to the proposed use.

(3)YCZO 1101.02 (A)(3)

Traffic safety, internal circulation and parking

RLI's SDR application included a traffic impact analysis based on the requirements and guidance provided by ODOT. ODOT reviewed the traffic impact analysis and concurred that the proposed landfill expansion complies with ODOT access, safety and level of service standards for Highway 18. The Board's findings with respect to that report, transportation factors in the Goal 12 discussion, and all transportation factors in Section II. above, as well as the Board's discussion and findings relative to transportation and compliance with the goals and policies in the Yamhill County Comprehensive Plan in Section II.Q(1) are incorporated here by this reference.

As shown on Drawing 4 of the SDR application, the primary access to the landfill will be retained at the existing location. At the entrance, a left turn pocket is provided on Highway 18 for vehicles entering the facility, and a right turn acceleration lane is provided for vehicles leaving the facility. The record demonstrates that RLI made on-site improvements in 2006 which increased the available on-site storage length for vehicles and trucks and reduced the potential of queuing vehicles on Highway 18 waiting to make a left turn into the site.

RLI has proposed additional improvements to enhance the overall safety and efficiency of on-site circulation and parking, including a new location for the scale house which will provide on-site queuing length to accommodate up to 33 truck-length vehicles. Additionally, by locating the public drop off and recycling center near the scale house and paved entry road, public customers will have a clean, safe area to drop off recyclables and other materials without having to drive onto the active landfill face or mix with heavier trucks and equipment.

RLI has proposed to convert the existing approved access from Highway 18 to the RV park to a more limited access to the maintenance yard and leachate management facilities when the landfill is expanded. Maintenance vehicles will also be able to use internal access roadways to access ancillary facilities located north of the landfill and will not have to travel on Highway 18.

Relative to parking, the YCZO does not specify parking requirements for the PWS zone or uses such as a landfill, public drop facility or recycling center. Drawing 4 of the SDR application illustrates the location and number of parking spaces existing or proposed for the landfill related facilities, including the office, public drop facility, recycle center and maintenance yard.

The Board received comments and testimony addressing broader traffic impacts, but not that addressed site-specific access, internal circulation and parking relevant to the SDR.

The broader traffic consequences are addressed in the findings and conclusions for the plan amendment and zone change.

Based on the evidence in the record and the findings and conclusions for the plan amendment and zone change that relate to traffic, the Board finds that the site development plan for the landfill expansion has appropriately considered traffic safety, internal circulation and parking related to the proposed use. Additionally, because ODOT has jurisdiction over Highway 18, the Board gives substantial weight to ODOT's review of the traffic impact analysis and finding that the proposed landfill expansion complies with ODOT access, safety and level of service standards for Highway 18.

(4)YCZO 1101.02 (A)(4)

Provisions for adequate noise and/or visual buffering from noncompatible uses

The record contains substantial information on how the site development plan addresses each consideration required by YCZO 1101.02(A). The Board's findings relevant to the plan amendment and zone change, including compliance with the goals and policies in the Yamhill County Comprehensive Plan, are relevant to this criterion and are incorporated here by this reference.

The record demonstrates that RLI will employ the following measure relating to noise or visual buffering:

- RLI will construct a substantial berm along Highway 18 planted with trees and shrubs to screen views of the landfill from travelers on Highway 18 and the surrounding area
- RLI will install plantings for a 100-foot wide buffer parallel to the southerly parcel boundary of Tax Lot 600, south of the SDR project boundary to provide additional visual screening for existing residences to the south and for travelers on Highway 18 heading from the Oregon coast toward McMinnville
- RLI will install a litter fence on the landfill side of the berm to contain wind-blown trash on the RLI site
- RLI will retain existing wooded and riparian areas located to the north side of Tax Lot 101 and along the South Yamhill River to, in addition to other things, provide visual and noise buffers

The narrative portion of RLI's initial SDR application noted that "RLI expects substantial public interest in screening and buffering plans for the landfill expansion and is more than willing to consider modifications or additional details for the preliminary plans to address visual impacts and concerns of vicinity property owners, agencies, and interest groups." Indeed, the Board received comments and testimony pertaining to Riverbend Landfill's potential impacts on views.

Prior to the Planning Commission's deliberation on January 8, 2009, Staff recommended approval of the Plan Amendment and Zone Change application, as well as of the

Floodplain Development application. However, Staff recommended denial of the SDR application as proposed based on concerns that the screening did not go far enough to reduce the visual impact of the landfill on surrounding properties. At that time, Staff stated: "We're not saying that these factors cannot be addressed, but at this point we do not believe that the visual impacts of the proposed landfill expansion have been adequately addressed."

In response to Staff's concern regarding visual impacts of the proposed expansion, RLI modified the height of the expanded landfill and proposed additional screening measures to mitigate visual impacts on surrounding properties. Specifically, RLI created a new design for the expanded landfill that is 124 feet lower than the original proposal, resulting in a landfill that will be approximately 286 feet above mean sea level instead of 410 above mean sea level. Furthermore, RLI stated that it has begun the process of purchasing tarps that incorporate colors that exist in the surrounding landscape to use in place of the black tarps that are currently part of RLI's operations.

An explanation of the above modifications follows, and the design documents and visual simulations illustrating some of these modifications were submitted to the record as supplemental exhibits (dated March 11, 2009) relating to the modified height and screening proposal.

(a) Modified Landfill Height

The record demonstrates that three primary factors drive the design of the proposed expansion at the existing site: 1) maximum efficiency of the use of agricultural land on the existing site to conserve agricultural land in particular and environmental resources in general; 2) adherence to a planning horizon that is at least 20 years pursuant to the accepted industry and planning standards of 20 to 30 years; and 3) retention of the technical, logistical, and economic feasibility of the landfill.

RLI's original proposal met all of the above-stated goals and RLI sought to provide the most capacity for waste disposal at the current site for approximately 25 years. By proposing the new 286-foot height (AMSL) of the landfill, RLI will still be able to stay within the industry-accepted 20 to 30 year planning horizon, but the actual life of the expanded landfill will be closer to 20 years. Even with the lower height and shorter life of the expanded landfill, RLI's modified proposal will allow it to generate the necessary capital to construct the landfill to meet or exceed federal and state regulations, while maintaining disposal rates that are significantly more affordable than any alternative to disposing the County's waste at Riverbend Landfill. Any further reductions in height would either force the landfill footprint to greatly expand onto more agricultural land, which may not even be possible given some of the natural and man-made barriers around the site, or would increase costs enough to significantly impact disposal rates to the County.

RLI provided supplemental photo simulations and a figure comparing a modified height proposal to the height of other hills in the vicinity of the landfill. From these figures, the Board finds two things that are apparent. First, the reduced height of the landfill has a

dramatic impact on views of the landfill because it allows an observer to see beyond the landfill to other hills and ridges that were otherwise obscured under RLI's original proposal. Second, the modified height of the landfill is lower than many of the hills and ridges in the vicinity. The Board finds that the landfill will not be the tallest landform appearing in the landscape, especially after the height proposal was reduced to match the maximum permitted height of the current landfill. RLI has adequately addressed the visual impacts of the landfill.

(b) Visual Simulations

The Board received a number of visual depictions of the proposed landfill from a source other than RLI. RLI responded that those depictions were inaccurate – not just because they are based on a height of the landfill that is no longer being proposed, but because they lack technical merit. In support of that, RLI submitted a document from a visual simulation expert. That document states that the purpose of visual simulations is to demonstrate the future visual impact of a proposed project as accurately as possible and that accuracy requires that certain principles must be followed as strictly as possible, including scale, color and texture, depth of field, and, most importantly, context.

RLI's visual simulation expert stated that, unlike the visual simulations submitted by RLI, the other depictions do not adhere to the technical requirements that make for an accurate visual simulation. For example, the depiction of the proposed landfill at night is void of any scale, because not a single object in the underlying photo is identifiable or measurable. Without such identifiable objects, it is impossible to affix a scale that can then be used to draw an accurate version of the proposed landfill. Similarly, RLI's expert claims that the other depictions lack any color or texture for the landfill, relying instead on an opaque, black form, which creates an unrealistic and misleading sense of how the proposed landfill would actually appear.

Despite testimony to the contrary, the Board finds that accuracy of the landfill photo simulations submitted by RLI are the most accurate depictions in the record and that, based in part on those depictions, the modified height of the landfill and the proposed screening create adequate visual buffers.

(c) Noise associated with landfill operations

According to RLI, the landfill is open from 5:00 a.m. to 5:00 p.m., Monday through Friday, and 6:00 a.m. to 4:00 p.m. on Saturday, with occasional operations on Sunday to manage waste from the SP Newsprint paper mill. Solid waste is delivered to the site by private vehicles, commercial vehicles, refuse collection trucks, and transfer trailers.

As demonstrated throughout the record, Riverbend Landfill is located in a rural area and next to a busy state highway, Highway 18. Background (ambient) noise is dominated by highway traffic. The noise characteristics associated with the phased landfill expansion are not expected to change relative to existing conditions.

The Board received comments and testimony regarding the noise impacts associated with landfill related operations (beepers on equipment, compacter, heavy trucks), with particular emphasis on noise in early morning hours that potentially affects nearby neighbors.

Testimony was presented concerning noise levels associated with Riverbend, including three study reports by acoustic professionals dating from 1995, 1999, and 2006. The substantive part of that testimony refers to a graph that purports to show that RLI has exceeded allowed noise levels in the past and would therefore exceed them in the future.

In response to that testimony, RLI stated that it treats noise regulations seriously, as it does any other regulatory requirements. RLI stated that through an ongoing program, it continually assesses and improves operations and equipment to reduce noise levels. For example, RLI has made two significant changes to the way waste is off-loaded, placed, and compacted at the working face, the area of the landfill most susceptible to noise issues. Individual trailers are now offloaded one at a time using a hydraulic tipper powered by one engine that runs for a short duration for each tip. In the past, each trailer contained its own “walking floor” that would move the waste out. Prior to adding the new tipper, many trucks could pull up to offload simultaneously, each running a separate engine at high speeds for a longer duration than the tipper’s engine. RLI stated that noise levels have been reduced by greatly reducing engine noise and duration as a result of these improvements.

RLI stated also that it continually maintains and upgrades the equipment used to manage the working face of the landfill. These efforts consist of a dozer and a compactor. Each replacement of these pieces of equipment is accompanied by technological changes that reduce noise levels. Riverbend’s procedures ensure efficient operation and noise reduction.

After review of the record relating to noise, the Board finds that there are two key issues in the testimony in opposition to the expansion that should be noted. First, the most current report submitted to the record finds in part that Riverbend’s “percentile noise levels do not currently exceed DEQ’s daytime noise levels.” That report explores some additional possible exceedances but is generally inconclusive in that regard.

Second, the report assumes that the ambient noise levels against which all other levels are compared are the same as those taken as part of the 1995 study. Ambient noise levels change over time, even in rural settings, and the Board finds it likely that ambient levels have increased along Highway 18 as a result of local and regional growth and development.

Finally, the record demonstrates that RLI has shown an ongoing willingness to address noise issues, whether or not they exceed DEQ standards. To the extent that such noise regulations apply to Riverbend Landfill, RLI will continue to assess additional measures to further reduce noise levels and input from those possibly affected by landfill noise as its operations change. Moreover, RLI will be required by DEQ to demonstrate its ability to comply with noise regulations as a requirement for obtaining its solid waste disposal

permit, and the Board will condition this approval on RLI obtaining such permits as set out in Section V.

Based on the foregoing and the record as a whole, the Board finds that RLI has adequately considered provisions for adequate noise and visual buffering of the landfill expansion through the SDR process. In particular, the Board finds it compelling that RLI has reduced the initial height proposal in response to public input and that the expansion will not exceed the landfill height that is currently authorized by the DEQ solid waste disposal permit. The Board finds that the evidence in the record submitted by the applicant pertaining to screening and buffering is compelling, particularly the visual simulations that accurately depict the context for the proposed expansion.

Additionally, the Board takes note that the YCZO did not include a requirement for SDR when the initial zoning for Riverbend Landfill was authorized in 1980. The County now has clear authority to review and attach conditions to this SDR application to address landfill height, screening and buffering. The Board will impose such conditions as set out in Section V. below.

(5) YCZO 1101.02 (A)(5)

Retention of existing natural features on site

The record demonstrates that RLI has taken the following steps to retain existing natural features on site:

- The dense wooded area to the north of the security fence on Tax Lot 5501-101 will be retained to protect visual screening and wildlife habitat, and extensive wooded/riparian buffers along the South Yamhill River will not be disturbed
- The lowland/floodway area to the southeast of the existing disposal area (Tax Lot 5501-200) will be rezoned from PWS back to EFU and enhanced as a wetland mitigation bank
- The stream realignment project is being designed with meanders and variable topography to allow the development of wetlands and will be planted with native species to create a scrub-shrub and forest community that will connect to the riparian corridor of the South Yamhill River
- RLI has developed a relationship with the Confederated Tribes of the Grande Ronde to explore opportunities for further developing natural areas for cultural resources use (e.g., traditional food plants and craft materials)

The Yamhill County Soil and Water Conservation District (“SWCD”) submitted numerous comments related to natural resources. LeTourneux, Letter, October 27, 2008. RLI rebutted those comments, with a few key rebuttal points summarized below that are most relevant to natural features of the site.

SWCD first contended that RLI did not acknowledge that the un-named tributary proposed for realignment was likely salmon bearing. However, RLI did address these species to acknowledge their general presence in the vicinity. Moreover, the design of

the stream realignment is predicated on providing enhanced fish passage and habitat for salmonids, listed or otherwise. Thus, contrary to the SWCD testimony, the Board finds that RLI has acknowledged that the un-named tributary might be salmon bearing. The Board anticipates that listed species will be addressed in greater detail during the wetland permitting phase of the expansion that is under the jurisdiction of state and federal natural resource agencies.

SWCS next contended that the dynamic nature of the South Yamhill River in both flow and development of sinuosity threatens the landfill's position in the floodplain. RLI responded that a long-term study of the South Yamhill River's flow volumes and flood hydrograph shows that maximum flows are generally higher over time, and that the rates at which river heights rise and fall are faster, largely as a function of clearing land for agriculture and other development that removes vegetation and other elements from the landscape that would otherwise help to absorb and to slow run-off into streams. The Board finds that RLI has consulted several fluvial geomorphologists and hydraulic engineers to ensure that the landfill is in an area where it has a low probability of causing detrimental effects to the river. These experts have found that the river is most likely to move southeast away from the landfill, leaving that area closest to the expansion as a relic oxbow.

The Board also received comments and testimony regarding excavation in the bank area. RLI responded that this work will be part of a larger excavation to restore wetlands to a state similar to what existed prior to conversion of this area to agricultural uses via drain tiling. Wetland and riparian habitat restoration is an outright permitted use in agricultural areas. Moreover, Oregon has acknowledged the value of these lands for performing important ecosystem functions, including many that help protect water quality, valuable farmland and other property. The Board finds that restoring wetlands and bottomlands and their lost riparian functions on agricultural lands is a direct way to compensate for water quality and flood impacts due to agricultural activities. The Board finds further that the planned overall reduction of topographic elevation in that part of the floodplain will help to attenuate flooding by increasing flood storage and floodplain functions, while also providing a valuable bottomland habitat type, now rare and due mainly to agricultural activities.

The Board finds that the record does not support claims that the South Yamhill River threatens the stability of the landfill. The Board finds it compelling that RLI has worked with FEMA and other federal and state agencies to properly vet the proposed projects regarding river stability and floodplain-related issues.

The Board finds that RLI's proposal results in an overall increase in fish and wildlife habitat within the larger project area and that the riparian area associated with the South Yamhill River will be enhanced beyond what currently exists.

RLI submitted a series of technical reports as part of the PA/ZC application that quantitatively characterize the various fish and wildlife habitats within RLI ownership. These reports show the likely impacts of the proposed development, and illustrate the various associated habitat creation, restoration, and enhancement activities proposed as

either compensatory mitigation or as voluntary activities. Overall, between three and five times more fish and wildlife habitat will be created, and the quality of that habitat will be greater than what currently exists. The bulk of the habitat improvement will result from wetland and riparian mitigation associated with the proposed stream realignment.

Based on the foregoing, the Board finds that RLI has adequately considered the retention of existing natural features on the site of the proposed expansion subject to SDR. The Board finds that the most substantial natural features include the South Yamhill River and the creek and riparian area to the north of the landfill. Both of these areas will be protected through the implementation of a "limited use overlay" and other conditions requiring the maintenance of riparian vegetation as set out in Section V. below.

(6) YCZO 1101.02 (A)(6)

Problems that may arise due to development within potential hazard areas

The discussion and findings in Section II.G above are relevant to this criterion. The Board incorporates the discussion and findings in that section here by this reference.

The record demonstrates that RLI has taken the following steps to address potential natural hazard areas on site:

- RLI has proposed to rezone the floodway area adjacent to the river from PWS back to EFU and to implement wetland and habitat improvements in that area
- Ancillary facilities proposed to the north of the landfill will not encroach into the 100-year floodplain
- The proposed stream realignment will enhance stream habitat and provide improved flood storage and detention, along with many other environmental functions
- A minimum setback of 100 feet will be maintained between the expanded landfill and the South Yamhill River

The record demonstrates that federal and state regulations govern all aspects of the landfill from construction, to operation, to environmental protection, to closure design and construction, to post-closure care and long-term responsibility. In particular, DEQ regulates RLI through three permits that protect the quality of surface water, ground water, and air. As demonstrated by the DEQ Testimony, RLI is in compliance with all of its DEQ-administered permits, contrary to other testimony presented at the public hearing, which demonstrates RLI's ability to obtain and comply with the permits required to construct and operate the proposed expansion.

Also contrary to much of the testimony presented during the public hearings, the record demonstrates that the physical setting of the landfill and the design of the landfill liner system increase the landfill's ability to prevent significant environmental impacts. The Board finds that the soil type at the expansion site is not unsuitable for the construction of a landfill. Because the types of soils in the landfill's subgrade provide very favorable and

predictable natural attenuation for the transport of potential contaminants, the soils act as a supplemental natural liner system that adds an additional level of protection to the engineered synthetic liner system.

Based on the foregoing and the evidence in the record as a whole, the Board finds that RLI has adequately considered problems that may arise due to development within potential hazard areas as part of the SDR plans. The Board hereby incorporates by this reference, all of the findings and conclusions for the FDP application in Section IV. The Board gives substantial weight to the FEMA approval of the CLOMR. With approval of the CLOMR and the FDP, the Board finds that the landfill expansion will not include any landfill development within the floodway; the only identified potential hazard area within the SDR boundary. Additionally, a minimum setback of 100 feet from the South Yamhill River will be maintained as required by the limited use overlay and other conditions set out in Section V. below.

(7) YCZO 1101.02 (A)(7)

Comments and/or recommendations of adjacent and vicinity property owners whose interest may be affected by the proposed use

As described in the SDR narrative and in Section II.A above, RLI has been working since 2006 to share information about the proposed landfill expansion with neighbors and interest groups to address issues of concern. The record demonstrates that this outreach effort has included: 1) one-on-one meetings with immediate neighbors of Riverbend Landfill; 2) an open house at the landfill, with invitations mailed to property owners within 1 mile of the site; 3) an on-site meeting with the County Solid Waste Advisory Committee; 4) presentations to the Yamhill Soil and Water Conservation District and Farm Bureau; 5) presentations to City Councils for most Yamhill County jurisdictions served by Riverbend Landfill (Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan, and Willamina); and 6) presentations regarding the proposed landfill expansion to several local service clubs and organizations.

As shown on the plans included with the SDR application and supplemental submittals, the Board finds that the reduced height proposal for the expansion illustrates that RLI has taken steps to address and minimize impacts on adjacent and vicinity property owners whose interests may be affected by the proposed expansion.

The transcripts of all public hearings are included in the record and document the range and volume of testimony that the Board considered to balance specific neighborhood issues with the overall need for the project and to impose appropriate conditions to mitigate impacts.

Some adjacent property owners and numerous property owners in the vicinity have submitted comments and testimony to the record. Many of the neighbors' comments and concerns have been addressed in other sections. Those discussions and findings are incorporated by this reference, particularly those relating the plan amendment and zone

change, the Floodplain Development application, and the landfill height, screening, traffic, noise, and natural resource impacts.

To the extent they are not already addressed in other findings, testimony from neighbors relating to odor, litter, birds, and property values, and RLI's rebuttal to those issues, is summarized below.

(a) Odor

At least 30 comments were received by the Planning Commission and again by the Board pertaining to odors caused by the landfill.

Landfill gas is created from the decomposition of organic matter contained in garbage. This process, under anaerobic conditions, generates mostly methane and carbon dioxide, but other gases are generated in small quantities. Methane and carbon dioxide are both colorless and odorless, so the other gases contain the odor-causing compounds.

To reduce the escape of gas into the environment, landfill operators typically implement systems to limit gas emissions to the atmosphere, collect the gas for destruction, and monitor for gas emissions or migration. RLI states that its operational procedures and engineered systems are utilized to collect and manage landfill gas and odors. The effectiveness of these procedures and systems is measured through gas monitoring.

Operational Procedures

According to RLI and the DEQ Testimony, operational procedures target reducing gas emissions before release to the atmosphere. These include placement of daily cover over waste, installation of intermediate and final landfill covers or caps, and minimization of the extent of the active disposal area. Daily cover is a six-inch soil layer or tarps placed over the garbage at the end of every work day. Intermediate cover is a one-foot layer of soil placed on garbage fill areas away from the active disposal areas which will eventually be receiving more garbage. The soil layers reduce gas emissions and contain bacteria that oxidize the gas as it contacts the soil. Final caps are engineered systems composed of soil and synthetic materials that mitigate surface gas emissions. Finally, RLI minimizes the size of the active disposal area as much as possible to reduce the area where garbage is exposed to the atmosphere.

Engineering Controls

According to RLI and the DEQ Testimony, RLI collects and manages landfill gas through an engineered gas collection and control system ("GCCS"). This GCCS is a series of perforated pipes placed in the garbage, both vertically and horizontally, that are connected to header pipes around the perimeter of the landfill. The GCCS is kept under a vacuum to maximize gas collection. Finally, the GCCS pushes the gas into an enclosed flare that provides gas destruction.

RLI currently operates over 100 gas collection wells at the existing landfill. Wells are installed on a regular basis as disposal phases or areas are completed. According to RLI

and DEQ Testimony, during 2008 RLI constructed an additional 11 vertical and 3 horizontal wells. Each wellhead contains a valve to adjust the vacuum applied to the well, which affects gas flow from the well. Each well is systematically monitored for gas composition, temperature, and flow on a monthly basis. This information allows for the well vacuum to be adjusted to maximize collection efficiency. Additionally, as many new wells have recently been installed and come "online," RLI upgrades the vacuum provided to the well field to further enhance collection, which also controls the frequency and intensity of odor incidents.

According to RLI and the DEQ Testimony, construction of new gas wells, which requires drilling or excavation into garbage and adjustments to the vacuum field, can cause a short-term increase in gas emissions while the well is being constructed, but is necessary in order to collect gas for the long term. A gas collection system similar to the described for the existing facility will be designed and implemented for the proposed landfill expansion.

The record demonstrates that RLI will also begin construction of a landfill gas-to-energy project. Rather than destroying the gas in a flare, the gas will be burned in internal combustion engines that will turn turbines and produce electricity. Because RLI will be selling the electricity to McMinnville Water & Light, RLI has the additional economic incentive to collect as much gas as possible.

Gas Monitoring

According to RLI and the DEQ Testimony, RLI monitors the landfill surface for gas emissions and the landfill perimeter for subsurface gas migration to verify that landfill gas and associated odors are not escaping to the environment. Surface emission monitoring is conducted on landfill covers or caps on a quarterly basis. A gas detector is used to measure gas leaking from the covers or cap. When emission concentrations are measured in excess of allowed limits, RLI responds to take control of those emissions. These responses may include placement of additional soil cover, adjustment of the active well field, modifying the operations of the well field in the area of concern, and installation of additional collection wells. Gas probes are used to monitor gas migration in the subsurface, and are also monitored on a monthly basis. Gas probes are wells that contain perforated pipes in the unsaturated zones below the surface surrounding the landfill. The record demonstrates that there has not been a significant detection of landfill gas at the perimeter gas probes in the past. The Board finds that RLI's operations with respect to the current landfill are relevant to the operations that will occur with the expansion and that gas monitoring will be an important component of the expansion that addresses potential odor issues.

Odor Complaints

According to RLI, its practice is to investigate any odor complaint received by RLI, the county, or DEQ. RLI acknowledged that, on occasion, it will receive waste that is particularly odiferous, in which case that load is covered as quickly as possible. RLI stated that at other times the operation of the landfill may result in a temporary release of

landfill gas, such as when new gas collection wells are installed. By investigating an odor complaint, RLI suggested it can respond appropriately to the cause of an odor. The record demonstrates that it is also the case that the source of odors in the vicinity of RLI is not always the landfill. This is because the landfill is in the agricultural heart of Yamhill County, where farm practices commonly rely on the use of manure, composting, and other activities that may cause wide-spread odors. By investigating an odor complaint, RLI attempts to determine if the landfill is the actual source of the odor.

RLI has demonstrated that the gas collection system can be adapted to address new odor sources as they are identified. Although odor may occasionally be emitted, the Board finds that RLI's proposal demonstrates the ability to control odors so as not to unreasonably impact adjacent property owners or others in the vicinity. The Board also finds that, considering the agricultural nature of the area and the potential for agricultural-based odors to occur, that the proposed expansion will not cause odors out of character with the surrounding area.

The Board notes that, despite testimony presented during the public hearings, the County has received very few odor complaints over the past ten years, and prior to the public hearing on November 6, 2008, DEQ had not received any written complaints other than formal comments received during a 2004 permitting process. The record demonstrates that of the 19 odor complaints the County received as of December 10, 2008, only one of those occurred prior to September 2008. The timing of those 18 other complaints must be taken into account in light of the fact that RLI's application was pending before the County when the complaints were generated, and almost half of those complaints were submitted to the county on the day of the public hearing or shortly thereafter. Because the expansion is a continuation of the existing operations, the Board finds that it is reasonable to review RLI's existing operations to determine the extent of the impact that will result from future operations. Based on RLI's operational procedures, engineering controls and responses to odor complaints, the Board finds that RLI's proposal for the expansion adequately addresses potential odor issues.

(b) Litter

The Board received several comments and testimony pertaining to litter either associated with the transport of waste to the landfill or associated with operation of the landfill.

RLI monitors litter along Highway 18, particularly between McMinnville and the landfill where 80 to 90 percent (based on landfill traffic volumes) of the litter is likely to occur. If RLI notes significant litter, it is picked up immediately by the person monitoring, or a crew is tasked with pickup as soon as possible. Beyond responding to litter noted by the monitoring operations, RLI conducts regular litter clean up operations if members of the public or landfill staff observe litter.

The record also demonstrates that RLI's operations are conducted in a manner to limit litter discharges from the landfill. First, RLI limits the size of the active disposal area to limit the amount of potential litter exposed, and that area is covered at night to ensure that high winds do not spread litter. RLI also utilizes modular, mobile fences around the

disposal area to capture blown litter. RLI has recently implemented an additional system of much larger and higher fences to capture litter that escapes the disposal area.

RLI stated that litter does occasionally escape the landfill property and that it makes every effort to collect such litter on adjacent lands where RLI is allowed to collect litter. However, as noted by the DEQ Testimony, property owners do not always allow RLI to come onto their property to pick up the blown litter. Because the expansion is a continuation of the existing operations, the Board finds that it is reasonable to review RLI's existing operations to determine the extent of the impact that will result from future operations. Based on RLI's efforts to monitor litter and to limit litter discharges from the landfill, and the fact that RLI will continue to utilize these tools for the expansion, the Board finds that RLI's proposal adequately addresses potential litter issues.

(c) Birds

The Board received comments and testimony pertaining to possible detrimental effects to surrounding agricultural uses and water quality due to birds attracted by Riverbend Landfill. Landfills tend to attract birds and other wildlife, particularly those that are scavengers; mainly seagulls, starlings, crows, and ravens. The strength of that attraction is based mainly on (1) weather-related and/or seasonal issues and (2) the availability of food in the landfill vicinity.

RLI responded that it has contracted with the U.S. Department of Agriculture Wildlife Services ("USDAWS") to aid in the control of birds to augment RLI's ongoing bird control program. RLI has a current bird control permit and uses a number of techniques to control the bird population. According to RLI, this permit will be more fully utilized with the help of USDAWS during those times of the year when birds are more likely to frequent the landfill. The Board finds that, by taking this additional action, RLI will be performing a valuable service to the local agricultural community by eliminating birds that might otherwise contribute to agricultural problems regardless of the landfill.

The Board finds that many agricultural uses attract birds. This is evidenced in part by the use of bird cannons that is a common practice for vineyards and other farming operations.

Testimony was also presented suggesting that the landfill attracts birds that could spread agricultural disease, and that bird populations seem to have increased over the last few years. RLI responded that the latter observation is confirmed by The Audubon Society, which has documented a regional cyclical rise in the population of many bird species over the last decade, including various gulls, American crows, and European starlings. Based on that documented observation, the Board finds that an increase in bird populations cannot be attributed solely to the presence of a landfill. Because the expansion is a continuation of the existing operations, the Board finds that it is reasonable to review RLI's existing operations to determine the extent of the impact that will result from future operations. The Board finds that RLI's proposal adequately addresses potential issues related to bird populations.

(d) Potential impact to property values

The Board received comments and testimony asserting that property values near the landfill have been reduced.

The only evidence in support of the conclusion that the landfill has caused the reduction in property values is the claim that the sale of a nearby residential property fell through because the prospective purchasers allegedly did not want to live near a landfill. The Board finds that one sale is not an indicator of actual property value. The record also contains evidence in the form of a property analysis that the impact landfills may have on property values is essentially nonexistent in predominantly rural areas. Finally, the Board finds that RLI's proposal calls for a lateral expansion of an existing facility – current activities will not increase in intensity and any decrease in property values associated with the presence of a landfill will have already occurred independently of the approval for the expansion.

Another comment relating to reduced property values asserted that properties within 3,000 feet of the expanded landfill will be ineligible for financing due to HUD/FHA requirements. Other comments cited the loss of a home sale allegedly because of the home's proximity to Riverbend Landfill. The record demonstrates that neither the U.S. Department of Housing and Urban Development ("HUD") nor the Federal Housing Administration ("FHA") prohibits financing properties within 3,000 feet of a landfill. HUD regulates the housing industry and oversees the FHA, which in turn provides mortgage insurance on loans made by FHA-approved lenders. The proximity of a landfill relative to the subject property is only one component of the environmental analysis for multifamily and non-residential properties that determines whether or not the developer of those types of properties must *submit additional* documentation for HUD financing approval. Proximity to a landfill therefore does not prohibit HUD financing. Other conditions requiring additional documentation include, but are not limited to the location of the property relative to floodplains, coastal barriers, airports, highways, and transmission towers.

The Board finds no similar requirement for additional documentation exists for FHA financing of single family residences near landfills. Prior to 2005, HUD/FHA lending requirements mandated automatic testing or inspection of private wells if the property was within ¼ of a mile of any of the following: intensive agriculture use, coal mining, landfill, junkyard, factory, gas station or dry cleaning operations. This requirement was eliminated in 2005 pursuant to HUD Mortgage Letter 2005-ML-48. Therefore, the presence of a landfill does not limit residential or other properties in the vicinity of that landfill from obtaining financing from HUD or other lenders. Because the expansion is a continuation of the existing operations, the Board finds that it is reasonable to review RLI's impact from existing operations to determine the extent of the impact that will result from future operations. The Board finds that RLI's proposed expansion adequately addresses potential impacts to property values.

Based on the foregoing and the evidence in the record as a whole, the Board and RLI have adequately considered comments and recommendations of adjacent and vicinity

property owners whose interest may be affected by the landfill expansion. The Board hereby incorporates by this reference, all of the findings and conclusions adopted for the PA/ZC and the FDP. Based on approval of those applications, the Board has made the threshold decision that there is a need for the landfill expansion to meet statewide and county planning goals relating to the Economy (Goal 9), Public Facilities (Goal 11) and Energy Conservation (Goal 13).

After making that threshold conclusion, the Board finds that the SDR process is focused more specifically on “how” the landfill expansion occurs, not “whether” the use should be allowed. The Board finds that the current and on-going role and responsibility of DEQ is critical to the SDR approval. DEQ is the agency responsible for assuring compliance with federal and state environmental statutes and administrative rules for landfills and associated facilities. In particular, the Board finds the DEQ Testimony compelling relative to RLI’s compliance with all existing DEQ permits and the level of review and redundancy for protection of human health and the environment associated with EPA and DEQ regulations and permit requirements.

Accordingly, the Board finds that RLI’s proposal demonstrates that ability to obtain and to comply with the permits and regulatory requirements. The record also demonstrates that RLI’s proposal adequately addresses RLI’s ability to control or mitigate potential impacts from the expansion relating to odor, noise, litter and other compatibility issues identified in testimony to the Board.

The proposed landfill expansion associated with the SDR will require DEQ approval of a modified Solid Waste Disposal Permit. This review will require extensive and detailed technical plans and information to address allowable activities, operations and design, environmental monitoring, and site closure and financial assurances in accordance with ORS Chapter 459 and OAR Chapter 340.

DEQ’s participation in the County’s public hearing process provides the Board with a level of assurance that the proposed expansion is feasible in light of adopted statutes and administrative rules for mixed solid waste landfills and the operating history for Riverbend Landfill under existing permits.

IV. FLOODPLAIN DEVELOPMENT PERMIT

As part of the expansion proposed in RLI’s consolidated application, RLI plans to relocate a small, unnamed stream (*i.e.*, a small tributary of the South Yamhill River) that currently roughly bisects the proposed expansion area (portion of Tax Lots 5501-400 and -401). The stream, including its riparian area and floodplain, has been highly degraded by farming activities and now functions mostly as agricultural drainage. RLI must obtain a FDP that will facilitate placement of earthen berms in two locations: one near the mouth of the stream but outside the floodway of the South Yamhill River and one just east of Highway 18 where the stream emerges from its culvert under the highway. YCZO Section 901 contains the relevant criteria for a FDP.

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A. YCZO 901.06

(1) YCZO 901.06(A)

The proposed development conforms with the use provisions, standards and limitations of the underlying zoning district and other overlay district.

RLI's FDP is necessary only to implement RLI's expansion plans, which in turn rely on RLI's PA/ZC application. As discussed above in Section II., the Board has made findings to approve the PA/ZC application, and the underlying zoning district for the expansion area, including Tax Lots 400 and 401, will be PWS. The proposed development, the expansion of Riverbend Landfill, is permitted in the PWS zone pursuant to YCZO Section 802. There are no existing or proposed overlay districts, other than the limited use overlay, which will allow the proposed use. No evidence in the record asserts or otherwise indicates that the proposed expansion does not conform to the PWS zone.

The Board finds that RLI's proposed development conforms to the use provisions, standards and limitations of the PWS zone because that zone allows landfills as a permitted use, and approval of the FDP is contingent upon approval of the PA/ZC to PWS.

(2) YCZO 901.06(B)

The proposed development, if located within the floodway, satisfies the provisions of subsection 901.09.

The record contains substantial evidence demonstrating that the proposed landfill expansion associated with the FDP is not within the floodway, including a letter from FEMA confirming that conclusion.

The Board received comments and testimony, including statements from a neighboring property owner that the existing landfill is located within the 100-year floodplain. However, the testimony does not contend that the proposed expansion included in the FDP application is located within the floodway. Even if the record contains such comments, the Board finds that, based on data confirmed by FEMA, the proposed development is not within the floodway and that YCZO 901.06(B) is not applicable to this FDP application.

(3) YCZO 901.06(C)

The proposed development will not increase the water surface elevation of the base flood more than one (1) foot at any point.

The record contains substantial evidence that the proposed landfill expansion will not increase the water surface elevation of the base flood more than one (1) foot at any point, including a letter from FEMA that draws that conclusion.

The record demonstrates that the proposed development will result in a maximum rise of less than 0.5 inch, or about 4% of the allowed maximum rise of 1 foot. As described in RLI's application, the rise mainly occurs within RLI property, although a rise of less than 0.25 inch may occur on County-owned property along the northwestern edge of Whiteson Landfill and the adjacent County park. Documents submitted by RLI describe in great detail the process used by RLI and FEMA to determine the estimated rise in the floodplain and the Board finds this information compelling.

The Board received comments and testimony from a neighboring property owner stating that the existing landfill has already raised the base flood elevation by 1.4 feet. That testimony is accompanied by correspondence from the USACOE dated May 12, 1981 which states, "...for the alternative plan 'A' fill which encroaches on the floodway, flood heights are expected to be increased 1.4 feet for a 100-year flood condition." That testimony goes on to argue that because the landfill already exceeded the 1-foot limitation, RLI cannot again ask for and receive an additional approval to raise the base flood height. The USACOE letter referencing "plan 'A'" does not appear to be a plan that was actually implemented, and the record contains no evidence that it was. Instead, that plan appears to be an option that existed in 1981. The COLMR, on the other hand, is based on the changes in the floodplain that have actually occurred.

Contrary to this testimony, the Board finds that a CLOMR approved by FEMA on July 14, 2008 is the most comprehensive and up-to-date description of the hydraulic characteristics of the reach of the South Yamhill River potentially affected by Riverbend Landfill, Whiteson Landfill, and any additional activities or natural changes within study boundaries. RLI, Yamhill County, and FEMA have each participated in that process as prescribed by the National Flood Insurance Program. The results of that process are as follows:

- The existing Riverbend Landfill currently occupies a portion of the 100-year floodplain as mapped in the current Flood Insurance Rate Maps and has likely increased the 100-year flood elevation by up to 0.2 foot in areas adjacent to the landfill
- The existing Riverbend Landfill was constructed outside of the regulatory floodway
- The proposed expansion of Riverbend Landfill will cause only a minor, permissible rise (approximately 0.05 foot or about 0.5 inch) in the 100-year flood elevation, which occurs mainly between the existing and proposed channels of the unnamed tributary creek that will be realigned
- Issues raised in testimony presented with respect to floodplain regulatory compliance are moot, based on outdated data, and without sufficient technical foundation

The Board finds that, based on the evidence in the record and data and modeling confirmed by FEMA, the proposed development will not increase the surface elevation of

the base flood more than one foot at any one point. FEMA is the federal agency responsible for flood maps and the national flood insurance program. The Board finds that FEMA is the best agency to determine whether past development has encroached on the floodplain or floodway and to confirm that the proposed expansion will result in only a very minor and permissible rise in the 100-year flood elevation of less than 0.05 foot (about 0.6 inch), well within regulatory limits.

(4) YCZO 901.06(D)

All applicable permits have been obtained from federal, state or local governmental agencies, and all applicable National Flood Insurance Program requirements have been satisfied.

As noted in the FDP application, RLI requested a condition of approval requiring that all federal and state permits, as well as any other permits that are applicable, be obtained prior to placement of fill within the areas specified in the FDP application. As noted earlier, RLI received a CLOMR from FEMA (July 14, 2008) and continues to work with appropriate agencies to complete the permit process.

Additional evidence in the record includes the presentation on natural resources and the status of related permitting with state and federal resource agencies by RLI.

The Board finds that RLI has demonstrated that it is capable of obtaining the necessary wetland permits. RLI has already completed discussions with the applicable agencies. Those discussions did not identify any issues that would potentially prevent the agencies from issuing the permits. In fact, ODOT has determined that the stream realignment is not only feasible, it is also environmentally beneficial. That determination was made after ODOT consulted with the other applicable federal and state permitting and advisory agencies.

The Board finds that RLI cannot obtain permits from other state and federal agencies such as the DSL, the USACOE, DEQ and the FEMA that are required for the proposed expansion until Yamhill County has approved the PA/ZC and issued a Land Use Compatibility Statement. However, the Board finds that RLI has demonstrated that it is feasible to obtain all applicable permits from relevant local, state and federal agencies and the FDP can comply with YCZO 901.06(D). The Board will impose a condition of approval requiring RLI to obtain those permits prior to the placement of fill as set out below in Section V.

(5) YCZO 901.06(E)

The proposed development is consistent with policies j. and k. of the Comprehensive Plan, as amended by ordinance 471.

Policy j. of the Comprehensive Plan relates to protection of riparian vegetation along streams identified as Fish Habitat in the Comprehensive Plan inventory. Policy k. of the Comprehensive Plan provides that land use management practices and nonstructural solutions to problems of erosion and flooding are preferred to structural solutions.

The record contains substantial evidence demonstrating that the proposed development is consistent with the identified policies of the Comprehensive Plan.

As noted earlier, RLI's FDP application acknowledges that the South Yamhill River is identified as Fish Habitat in the Comprehensive Plan inventory and that RLI will maintain a minimum 100-foot setback from the South Yamhill River as depicted in Drawing No. 2 in the SDR application. RLI will also maintain the existing riparian vegetation between the perimeter berm of the landfill and the riparian area of the South Yamhill River. RLI will also expand and enhance riparian areas in conjunction with the proposed stream realignment and a wetland mitigation bank. The setback and riparian enhancements will ensure that Policy j. of the Comprehensive Plan is met.

The Board also finds that RLI's proposal results in an overall increase in fish and wildlife habitat within the larger project area and that the riparian area associated with the South Yamhill River will be enhanced beyond what currently exists. RLI submitted a series of technical reports as part of the PA/ZC application that quantitatively characterize the various fish and wildlife habitats within RLI ownership. These reports show the likely impacts of the proposed development and illustrate the various associated habitat creation, restoration, and enhancement activities proposed as either compensatory mitigation or as voluntary activities. Overall, between three and five times more fish and wildlife habitat will exist following the expansion, and the quality of that habitat will be greater than what currently exists in the riparian areas surrounding the project. The bulk of the habitat improvement will result from wetland and riparian mitigation associated with the proposed stream realignment. RLI will also enhance the riparian area of the South Yamhill River through the creation of wetlands as part of the proposed wetland mitigation bank.

RLI's FDP application also describes the berm that will be constructed as part of the landfill expansion and how the berm will be vegetated to conform to Policy k. The fill will also be designed to minimize adverse impacts on water currents, erosion, and accretion patterns, all of which must be approved by DEQ through the Surface Water Management Plan and 1200-Z permit for the proposed expansion.

The Board received several comments and testimony addressing issues of protection of the South Yamhill River, the riparian corridor, fish and wildlife habitat, and stormwater quality and erosion control that relate to Policies j. and k. of the Comprehensive Plan.

A letter from Willamette Riverkeeper noted that the landfill is directly adjacent to the South Yamhill River, which is currently listed as water quality limited on the state's 303(d) list. The letter also alleges that RLI has repeatedly violated the terms of its 1200-Z National Pollutant Discharge Elimination System permit, has failed to implement best management practices for stormwater and has consistently exceeded benchmarks. Contrary to that testimony, the DEQ Testimony states that RLI is in compliance with all of its permits. Moreover, RLI submitted a map demonstrating the full extent of the Yamhill River's listing as a water quality limited river on the state's 303(d) list. That map makes it clear that there are several areas leading to the deterioration of the river's

water quality, including upstream from the landfill, and that it is not possible to conclude that the landfill is a source of that poor water quality.

A letter from Yamhill SWCD stated that current practices are negatively impacting water quality. Groundwater is identified as an additional concern by the SWCD. The letter notes that the setback from the South Yamhill River is a step in the right direction, but terrace escarpment soils are unstable and prone to landslides during wet weather. The SWCD letter also describes the variety of wildlife uses in the South Yamhill River corridor, and notes that several aquatic species associated with the river and its tributaries are listed as threatened or endangered. The DEQ Testimony states that RLI is in compliance with all of its permits, including its water quality permit. As noted above, RLI's proposal contains several elements that will greatly enhance fish and wildlife habitat surrounding the landfill.

Another comment to the Board stated that, with respect to protecting the South Yamhill River, the Staff report and RLI rely too much on rezoning and the setback for the proposed berm and that these measures are not enough to protect the river. Contrary to that testimony, the re-zoning and setback are only part of the mitigation and enhancement efforts that RLI will undertake. Specifically, as described above, the realigned stream and the wetland mitigation bank projects will greatly enhance the riparian areas and water quality. Moreover, the DEQ Testimony demonstrates the great lengths the state goes to in order to ensure water quality is maintained, including requiring water quality permits for landfills. RLI is in compliance with all of its permits, which protect water quality, and the Board has made findings that it is reasonable to believe that RLI will continue to be able to meet those requirements. Thus, the Board relies on the rezoning, the setback, the riparian mitigation and enhancements, and DEQ regulations as evidence that RLI's application is consistent with Policy j.

Another comment the Board received emphasized that the expansion would be located within the floodplain of, and in close proximity to, the South Yamhill River, which contains federally listed salmon and steelhead populations. Additionally, this letter argues that the rerouting of the stream will reduce its overall length by 400 feet, significantly reducing riparian habitat in apparent conflict with County Comprehensive Plan goals and policies that commit the county to "conserve water resources" and "protect riparian vegetation." Contrary to that testimony, the record demonstrates that RLI's proposal contains efforts to enhance fish habitat, including realigning the stream with meanders. RLI's proposal will result in an overall increase in fish and wildlife habitat within the larger project area and the riparian area associated with the South Yamhill River will be significantly enhanced beyond the area that currently exists.

Other comments and testimony concerned possible impacts to "Turley Creek," a small creek that crosses Highway 18 approximately 350 feet south of the current entrance to the Mulkey RV Park. That testimony generally hypothesized that the hydrology of Turley Creek would be negatively impacted by RLI's proposed realignment of a different, unnamed tributary due to that tributary's size, depth, and proximity to Turley Creek. The testimony raised concerns that the realigned tributary would either draw water from or contribute additional water to Turley Creek.

Turley Creek is a relatively short creek that runs for approximately one-third of a mile on each side of Highway 18 (approximately two-thirds of a mile in total length) prior to its confluence with other small drainages. The creek passes beneath Highway 18 through a culvert approximately 36 inches wide. A portion of the creek runs across land owned by RLI. The creek is highly degraded as a result of straightening and channeling to accommodate adjacent intensive agricultural uses. No significant riparian vegetation or riparian buffer is currently present. Thus, the Board finds that the creek's water quality is likely poor due to agricultural run-off and high water temperatures that result from a lack of shading.

RLI submitted evidence that it has had several geologists and hydraulic engineers who specialize in these types of issues review the design of the proposed stream realignment and current conditions. The consensus of these engineers is that because the soils underlying Turley Creek there is little likelihood of significant subsurface water moving in or out of the Turley creek channel as a result of the new stream alignment of the unnamed tributary, which would lie at least 100 feet to the northwest of Turley Creek at its closest point. Indirect impacts to downstream wetlands, waters, or properties in the Turley Creek drainage are similarly unlikely. In contrast, many opportunities do exist to restore riparian functions and improve water quality for Turley Creek within the reach that RLI owns.

The Board has considered and weighed the conflicting evidence in the record and finds that Policy j. and Policy k. of the Comprehensive Plan are met by RLI's proposed expansion. The Board recognizes that Riverbend Landfill is located near the bottom of the Lower South Yamhill-Deer Creek Watershed. Waters passing Riverbend Landfill have been collected from an area nearly 250,000 acres in size. Land uses through which that water passes are generally forestry and farming, in addition to several cities. All of these watersheds have water quality challenges, including high temperatures, fecal coliform, and phosphorus. According to DEQ, about 70 to 80 percent of pollution enters the river via nonpoint sources, particularly from agricultural activity.

Riverbend Landfill's surface water discharges are regulated as point sources governed by a set of compliance standards and are regularly monitored against a set of benchmarks. Thus, unlike numerous non-point sources impacting the South Yamhill River, Riverbend must take an active role in monitoring and controlling such discharges. Moreover, Riverbend currently manages and plans to enhance riparian areas to restore ecosystem functions that will improve water quality. The Board finds that the expansion of Riverbend will facilitate the construction of a larger stormwater retention system and other facilities that will improve the water quality associated with stormwater discharges.

The Board understands that as part of the wetland-fill permitting process, RLI will be required to assist the USACOE (in coordination with the National Marine Fisheries Service) in assessing the possible effects of the project on listed salmonids. Because the proposed stream realignment and replacement of the existing Highway 18 culvert will greatly enhance the extent and quality of fish and wildlife habitat, including that of listed

salmonids, the Board finds that the assessment will show a net beneficial effect for the riparian area and fish and wildlife habitat in the vicinity.

In conclusion, the Board finds that the proposed development and FDP are consistent with Policies j. and k. of the Comprehensive Plan as evidenced by RLI's plans to maintain a minimum 100-foot setback from the South Yamhill River, maintain and enhance riparian vegetation, vegetate the landfill berm and design fill to minimize adverse impact on water currents, erosion and accretion patterns. Overall, the riparian area and other natural areas will be better protected through restoration of riparian areas and enhanced buffer treatments. This conclusion is supported by substantial evidence in the record and will be implemented through the conditions of approval set out in Section V. below.

B. YCZO 901.07(F)

The Board finds that no structures exist or are being proposed within the area for which the FDP will apply. Therefore, only subsection (F) of YCZO 901.07 applies.

Fills or levees in a flood fringe area shall be subject to the following:

- 1. Fills shall consist only of natural materials such as earth or soil aggregate and including sand, gravel and rock, concrete and metal.*
- 2. Any fill or levee must be shown to have a beneficial purpose and therefore to be no greater than is necessary to achieve that purpose, as demonstrated by a plan submitted by the owner showing the uses to which the filled or diked land will be put and the final dimensions of the proposed fill.*
- 3. Such fill or levee shall be protected against erosion by vegetative cover, riprap, bulkheading or similar provisions.*

RLI will restrict the construction of berms to only the materials allowed by YCZO 901.07(F). The FDP application also demonstrates that the berm is a beneficial use because it will allow construction of a landfill, which is itself a beneficial use. The berm is also the minimum necessary to serve the beneficial use and will be protected from erosion with a combination of vegetation, engineered surfaces, and integrated stormwater management.

No other evidence was submitted which specifically addressed the YCZO provisions relating to fills or levees.

The Board finds that RLI's proposal in the FDP application can satisfy YCZO 901.07(F). This conclusion is evidenced by RLI's commitment to use appropriate fill, construct berms that are no greater than necessary to provide for the eventual construction of the expanded landfill, and assure that the berms will be protected from erosion. Additionally, the County will impose a condition of approval related to fill as set out in Section V.

C. YCZO 901.09

RLI's proposal does not include plans for a dwelling or any development in a floodway. The Board therefore finds that only YCZO 901.09(C) applies to RLI's FDP application as it relates to the stream relocation.

Pursuant to YCZO 901.09(C), approval of a FDP that proposes alteration or relocation of a floodway or watercourse is subject to the following:

- 1. Adjacent communities and the State Department of Land Conservation and Development [DLCDC] shall be notified by the Director of any proposed alteration or relocation of a watercourse, and evidence of such notification shall be submitted to the Federal Insurance Administration*
- 2. All appropriate state and federal permits shall be obtained*
- 3. It shall be the applicant's responsibility to maintain the altered or relocated portion of said watercourse so that its flood carrying capacity is not diminished*

As described in the FDP application, RLI will assist the County in notification of DLCDC and the Federal Insurance Administration. Because federal and state wetland permits, as well as any other permits that are applicable, will be obtained at a later point in the permitting process, RLI has requested a condition of approval requiring RLI to obtain those permits prior to relocating the stream. The Board has already made findings with respect to RLI's ability to obtain those permits and incorporates those findings here with this reference. RLI's FDP application also describes how the flood carrying capacity of the rerouted stream watercourse will be equal to and likely greater than the current conditions related to the existing stream.

As part of state and federal wetland removal-fill permitting processes, RLI will be required to assess direct and indirect effects to wetlands, and avoid, minimize, and mitigate for any impacts, in that order. This applies to neighboring lands including land RLI owns. The Board finds that all such impacts, should they exist, can be avoided through that process and that RLI will be able to obtain such permits.

In summary, the Board finds that the proposed landfill expansion and FDP meets most applicable requirements of YCZO 901.09(C), and for those that occur later in the permitting sequence, the Board will impose the conditions of approval as set out in Section V. below.

V. CONDITIONS OF APPROVAL

Based on the findings above, the Board imposes the following conditions of approval:

1. All plans and submittals entered into the record by the applicant are considered to be the final site plan. Any substantial modification of these shall be approved by the Planning Director and subject to 1101.03 of the Yamhill County Zoning Ordinance. In the event any plans or submittals are in conflict with each other,

later-created plans or submittals created will control earlier-created plans or submittals as applicable.

2. The maximum allowed height of the landfill expansion shall not be greater than 286 feet AMSL. This is the permitted height of the existing landfill.
3. Perimeter berms must be constructed in phased segments as reflected in a site development/phasing plan approved by the Oregon Department of Environmental Quality. Prior to placing waste in the west landfill expansion area (Tax Lots 5501-400 and 5501-401), the owner shall establish or maintain, as applicable, vegetation and other screening that limits views of solid waste disposal operations.
4. Prior to the placement of fill as shown on Figure 2 of the Floodplain Development Permit Application Narrative, the owner shall obtain all permit approvals from applicable local, state and federal agencies.
5. All fill used for the construction of the two berms proposed on Figure 2 of the Floodplain Development Permit Application Narrative shall comply with the requirements of 901.07 (1)-(3) of the Yamhill County Zoning Ordinance.
6. The berms constructed to divert the stream that crosses Tax Lots 5501-400 and 5501-401, shown on Figure 2 of the Floodplain Development Permit Application Narrative, shall be maintained by the owner. The relocated waterway will be maintained by the owner to ensure that flood carrying capacity is not diminished. A perpetual maintenance agreement, in a form approved by Yamhill County Counsel, shall be signed and recorded prior to establishment of the berms constructed to divert the stream.
7. All permit approvals required by the Department of Environmental Quality shall be obtained prior to expansion of the landfill onto Tax Lots 5501-400 and 5501-401. The toe of the perimeter berm shown on Drawing No. 2 in the Site Design Review application shall be a minimum of 100 feet from the South Yamhill River when constructed as depicted in that Drawing No. 2. Said berm shall be planted with plants or grasses. Following placement of fill used for the construction of the berms constructed to divert the stream that crosses Tax Lots 5501-400 and 5501-401, shown on Figure 2 of the Floodplain Development Permit Application Narrative, the owner shall survey and mark the 100 foot distance from the ordinary high water mark of the South Yamhill River. Riparian vegetation shall be established and maintained in all areas outside the perimeter berm that are between the South Yamhill River and the 100 foot mark beyond the surveyed ordinary high water mark.
8. All permits required by Yamhill County for building construction, septic, and electrical installation shall be obtained for construction of the landfill expansion or any buildings on-site.

9. The owner shall comply with the conditions outlined in the October 12, 2008, letter from the McMinnville Fire Department. Prior to use of the expansion area, the water supply, access and public buildings will be required to be inspected by the McMinnville Rural Fire Chief to assure that they satisfy minimum safety standards.

10. Limited Use Overlay Zones

- a. The property outside the perimeter berm that is between the South Yamhill River and the 100 foot mark beyond the surveyed ordinary high water mark, as determined by Condition of Approval 7, shall include a limited use overlay zone which does not allow waste disposal and which limits the property to uses accessory to the landfill. Such limited uses include, but are not limited to: agriculture; environmental monitoring activities; subsurface investigations; general access to the area; installation and maintenance of a litter fence or other litter control activities; berm construction and maintenance; utility line easements; and other landfill activities that may be required and which are approved by applicable regulatory agencies.
- b. For the approximately 99 acres that is proposed for a comprehensive plan and zone change from EF-80 Exclusive Farm Use and RC Recreation Commercial to PWS Public Works/Safety, (Tax Lots 5501-400 and 5501-401), a limited use overlay zone will be placed on this portion of the property which limits uses allowed on the property to landfill operations and other accessory uses that are necessary for or which maximize the operations of the landfill.
- c. For the approximately 19.3 acre portion of Tax Lot 5501-101 proposed for a comprehensive plan change from AFLH Ag/Forestry Large Holding to P Public, and proposed for a zone change from EF-80 Exclusive Farm Use to PWS Public Works/Safety, a limited use overlay zone will be placed on this portion of the property which limits uses allowed on the property to prohibit landfill operation and to allow only other accessory uses that are necessary for or which maximize the operations of the landfill.
- d. For the approximately 10 acre portion of Tax Lot 5511-600, proposed for a comprehensive plan change from AFLH Ag/Forestry Large Holding to P Public, and proposed for a zone change from EF-80 Exclusive Farm Use to PWS Public Works/Safety, a limited use overlay zone will be placed on this portion of the property which limits uses allowed on the property to prohibit landfill operation and to allow only other accessory uses that are necessary for or which maximize the operations of the landfill.

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VI. CONCLUSION

As reflected in the foregoing findings, and the conditions of approval in Section V., there is substantial evidence in the record to support approval of RLI's land use applications. The Board therefore approves the requested plan amendment and zone change in docket PAZ -05-08, the Site Design Review of the proposed expanded landfill and its ancillary facilities in docket SDR-16-08, and a permit to develop within a floodplain as requested in docket number FP-04-08.

