

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 Amending the Yamhill County Zoning Ordinance)
to Add Language Regarding Solid Waste Disposal Facilities in) Ordinance 867
the Exclusive Farm Use Zone, Planning Docket G-01-10, and)
Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on September 22, 2011, Commissioners Leslie Lewis and Kathy George being present, and Mary P. Stern being excused.

IT APPEARING TO THE BOARD that the Board initiated a legislative land use process to amend the Yamhill County Zoning Ordinance to add language regarding solid waste disposal facilities in an Exclusive Farm Use District, and

IT APPEARING TO THE BOARD that a joint session of the Yamhill County Planning Commission and Board of Commissioners heard this matter at a duly noticed public hearing on July 21, 2011, then both bodies continued their respective hearings, allowing additional written submissions through July 29, 2011. The Planning Commission reconvened on September 1, 2011 and voted 5 to 3 to recommend denial of the legislative amendment. The Board reconvened at a duly noticed public hearing on September 8, 2011, and then voted 2-0 to approve the legislative amendment (Commissioner Stern being recused). NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that Section 402.02 the Yamhill County Zoning Ordinance is hereby amended to read (text in italics to be added) :

402.02 Permitted Uses.

In the Exclusive Farm Use District, the following uses shall be permitted subject to the standards and limitations set forth in subsection 402.09 and any other applicable provision of this ordinance:

/////

V. The maintenance, expansion or enhancement of an existing site on the same tract for the disposal of solid waste for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment, facilities or buildings necessary for its operation. The use must satisfy the standards set forth in ORS 215.296(1)(a) and (b) and the standards set forth in Section 1101, Site Design Review. The maintenance, expansion or enhancement of an existing use on the same tract on

B.O. 11-591

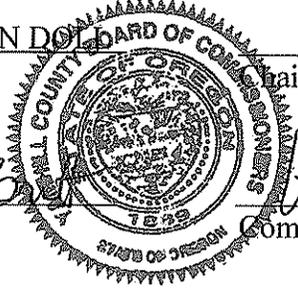
high-value farmland is permissible only if the existing use is wholly within a farm use zone. No other Yamhill County Zoning Ordinance criteria or Comprehensive Plan goal or policy shall apply as an approval standard for this use.

This amendment is further explained as detailed in Exhibit "A," the Findings for Approval, hereby incorporated into this ordinance by this reference. 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 effective immediately.

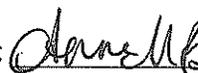
DONE this 22nd day of September, 2011, at McMinnville, Oregon.

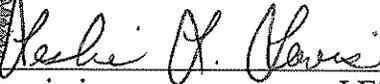
ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

(recused)

REBEKAH STERN DOT  Chair
County Clerk

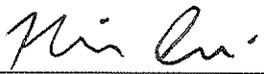
MARY P. STERN

By: 
Deputy Anne Britt


Commissioner

LESLIE LEWIS

APPROVED AS TO FORM:


Rick Sanai, County Counsel


Commissioner

KATHY GEORGE

ORDINANCE 867 EXHIBIT "A" FINDINGS FOR APPROVAL

INTRODUCTION AND BACKGROUND

In 1979, Yamhill County's Board of Commissioners ("Board") determined that the two municipal solid waste landfills operating within the County at that time would soon reach capacity. The Whiteson Landfill, owned by the County, was receiving waste from south central Yamhill County. The Newberg Landfill was receiving waste from the County and southern Washington County.

The County issued a request for proposals from the private sector to enter into a disposal franchise to develop and to operate a new landfill. On December 19, 1979, the predecessor of Riverbend Landfill Company, Inc. ("RLI"), which now owns and operates Riverbend Landfill in Yamhill County, 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 the applications received for solid waste disposal franchises and the siting of 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 the Exclusive Farm Use ("EFU") Zone to the Public Works/Safety ("PWS") Zone. Following the public hearing, the SWAC recommended that the Board approve the plan amendment and zone change for the proposed Riverbend Landfill and grant a disposal license to RLI's predecessor.

In 1980, the County approved a Comprehensive Plan amendment and zone change from EFU to PWS to allow development of Riverbend Landfill (Ordinances 236 and 237, May 14, 1980). At the time, although solid waste disposal sites were permissible uses in an EFU zone under state law, the County's 1976 zoning ordinance allowed landfills as an outright permitted use only in the PWS zoning district, necessitating the zone change.

In 1994, RLI entered into a twenty-year license agreement with the County, as required by County 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 to stabilize solid waste disposal rates for the County's residential, commercial and industrial generators of solid waste. This arrangement became a central component of the County's Solid Waste Management Plan, which was updated in 2004 and more recently in 2008.

The license agreement between the County and RLI will expire in less than three years, at which time Riverbend Landfill is also expected to reach its maximum, permitted capacity.

As demonstrated by the above historical account, and as reflected in the County's Solid Waste Management Plan, local disposal options for municipal solid waste have been a long-standing and important component of the County's infrastructure. The County has always been able to provide for the continued presence of such facilities through the Yamhill County Zoning Ordinance ("Zoning Ordinance" or "YCZO"), either as a permitted use in the existing PWS Zone, or by converting EFU land to PWS through the rigorous Goal Exception¹ process that allows the conversion of farmland for non-farm uses where sufficient reasons exist to justify such a use.

In 2008, in anticipation of reaching full capacity and approaching the end of its license agreement, RLI submitted a land use application that, if approved, would have allowed the expansion of Riverbend Landfill to accommodate the County's solid waste disposal needs for an additional twenty to thirty years. At the time of that land use application, solid waste disposal facilities remained an allowable use in an EFU zone pursuant to ORS 215.283(2)(k). The Zoning Ordinance, however, continued to allow municipal solid waste disposal by right only in the PWS Zone. Part of RLI's application, therefore, included a request under Statewide Planning Goal ("Goal") 2 to grant a Goal Exception that would allow the net conversion of 25 acres of EFU-zoned land to the PWS Zone.

During the course of the County's review of RLI's 2008 application, the County updated its Solid Waste Management Plan. That update included the County's hiring of a consultant to analyze various disposal options in the event Riverbend Landfill ceased operating in the County in 2014 ("JR Miller Report"). The update to the Solid Waste Management Plan primarily compared the continued operation of Riverbend Landfill to other landfill alternatives located outside the County, and predicted a county-wide increase to ratepayers if Riverbend Landfill closed.

The JR Miller Report also addressed briefly the cost of alternative technologies, finding that such alternatives are largely considered emerging technologies because 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 estimated that the cost to build such a facility would greatly increase the County's overall disposal costs.

Because the JR Miller Report only briefly addressed the availability of alternative technologies, and due to conflicting testimony regarding landfill alternatives in areas outside the County, the Board commissioned a second report to address in greater detail all alternatives to a local landfill ("Zia Report"). The Zia Report first analyzed alternatives involving the export of waste to an out-of-County local or regional landfill in Oregon and Washington. The Zia Report then analyzed alternative technologies including non-landfill biological, chemical, or thermal waste conversion technologies.

With respect to landfill alternatives, the Zia Report confirmed the findings in the JR Miller Report and concluded 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

¹ ORS 197.732

using a local landfill considering the need to develop transfer capacity and the distance of transport involved.

With respect to non-landfill alternatives, the Zia Report concluded that only one technology, 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 stated 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, before a new waste-to-energy facility could be permitted and built.

Based in part on the information developed through the update of the Solid Waste Management Plan and the record in RLI's 2008 application, the Board found that continued operation of a local landfill was necessary to meet the County's solid waste disposal needs and approved RLI's expansion application, including the requested Goal Exception.

The County's decision approving the Goal Exception and expansion of Riverbend Landfill was appealed to the Land Use Board of Appeals ("LUBA"). LUBA reversed the County's decision through its Final Order in LUBA No. 2010-002 ("LUBA Order"). In doing so, LUBA confirmed that the County had allowed a Goal Exception to rezone property for use as a landfill, a use that is allowed by Goal 3 pursuant to ORS 215.283(2)(k). According to LUBA, reversal was necessary because a county cannot approve a Goal 3 Exception to allow a use that is allowed by Goal 3 and the statutory EFU zone. Instead, LUBA stated, "[i]f the county wishes to allow landfills on agricultural land, it must amend its EFU zone to allow them under the standards set forth in the statutory EFU zone, with any supplementary regulation that the county wishes to adopt." On review, the Oregon Court of Appeals affirmed LUBA's decision.²

The result of LUBA's reversal of the County's decision is that the County cannot use the Goal Exception process to review on a case-by-case basis the siting or expansion of a landfill and converting EFU land to PWS as it did in 1980, 1994 and 2009. Instead, if it wishes to consider future applications relating to solid waste facilities in the EFU Zone, the County must amend its EFU Zone to allow solid waste facilities and then consider any specific applications made under the amended language based on the standards set forth in the statutory EFU Zone and any supplementary regulation that the County imposes now or in the future.

On June 2, 2011, the Board initiated a textual change to the County's EFU zone that will allow solid waste facilities to be maintained, enhanced or expanded within the EFU in some circumstances (the "legislative amendment"). The language of the legislative amendment proposed by County Planning Staff makes the following addition to YCZO 402.09:

- V. The maintenance, expansion or enhancement of an existing site on the same tract for the disposal of

² 240 Or App 285 (2010)

solid waste for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment facilities or buildings necessary for its operation. The use must satisfy the standards set forth in ORS 215.296(1)(a) and (b) and the standards set forth in Section 1101, Site Design Review. The maintenance, expansion or enhancement of an existing use on the same tract on high-value farmland is permissible only if the existing use is wholly within a farm use zone. No other Yamhill County Zoning Ordinance criteria or Comprehensive Plan goal or policy shall apply as an approval standard for this use.

After a public hearing and review by the Planning Commission, and upon reviewing the record in this matter, the Board has determined that it is in the best interest of the citizens of Yamhill County to adopt the legislative amendment. These findings support the Board's decision.

I. CRITERIA FOR LEGISLATIVE AMENDMENTS

Legislative amendments to the Yamhill County Zoning Ordinance are governed by YCZO 1207. Relevant language for each criterion of that section is italicized below, followed by the Board's analysis and findings.

1207.01 General Requirements

Legislative Ordinance amendments are processed as follows:

A. An amendment may be initiated by the Board, the Commission, or the Director.

This legislative amendment was initiated by the Board. On June 2, 2011, following a recommendation by the Planning Director, the Board instructed the Planning Director to develop language, consistent with the LUBA Order, that would amend the County's EFU Zone to allow solid waste disposal facilities as a permitted use. At that time, however, and as discussed in more detail below in Section II.1.b., the Board expressed an interest in considering new language that is not as fully permissive as the language contained in state law and state administrative rules.

Pursuant to the Board's direction, the Planning Director proposed the language of the legislative amendment.

Based upon the recommendation of the Planning Director and on the Board's initiation of the legislative amendment, the Board finds that YCZO 1207.01(A) is satisfied.

B. An owner of land may petition the Board, the Commission, or Director to initiate such an amendment, but may not initiate the amendment by making such an application.

Following the LUBA Order, the Board did receive a request from RLI to initiate a code amendment to allow solid waste facilities in the EFU Zone to the extent allowed by state law. On July 14, 2010, the Planning Director responded to that request and developed language for consideration by the Board. Although the Board set a hearing for consideration of that language, the Board did not pursue that process any further.

Following a final determination by the Court of Appeals upholding the LUBA Order, and as noted above, the Board took up the issue again on June 2, 2011 directing the Planning Director to develop new language for amending the EFU Zone. That second proposal resulted in the legislative amendment at issue in this proceeding. The Board finds that YCZO 1207.01(B) is not directly relevant to this proceeding, but to the extent RLI's request to the Board to initiate an amendment is related to the current proceeding, that request is consistent with YCZO 1207.01(B). The Board also finds that the legislative amendment is not being initiated through a land use application.

C. Such amendments shall be made only by the Board after review and recommendation by the Commission, and after public hearings have been held by both the Commission and the Board, pursuant to Section 1402 of this ordinance.

The Board makes this final decision after review and recommendation by the Planning Commission. The Planning Commission and the Board both held a public hearing on July 21, 2011, at which time the Planning Commission and the Board jointly took public testimony on the legislative amendment. The Planning Commission and Board then held the record open until July 29, 2011 for any interested party to submit additional written comments. The Planning Commission reconvened on September 1, 2011 for deliberation. Following its deliberation, by a vote of five to three, the Planning Commission recommended that the Board not adopt the legislative amendment. On September 8, 2011, following the Planning Commission's recommendation, the Board reconvened to review the Planning Commission's recommendation and to deliberate prior to making a final decision.

The Board finds that the Planning Commission and the Board's hearings are consistent with Section 1402 of the Zoning Ordinance.

YCZO 1402.01 relates to the notice of a quasi-judicial public hearing, which does not apply to the legislative amendment.

YCZO 1402.02 requires that notice of any legislative public hearing shall be published in a newspaper of general circulation in the county at least ten days prior to the hearing date. The County published notice of the joint hearing by publishing the full language of the legislative amendment as follows:

- June 27, 2011, in the Newberg Graphic
- June 29, 2011, in the McMinnville News Register
- June 29, 2011, in the Sheridan Sun
- July 2, 2011, again in the McMinnville News Register

The Board finds that publications of the hearing and legislative amendment identified above satisfy and go well beyond the minimum requirements of YCZO 1402.02.

YCZO 1402.03 expressly allows for the continuance of a public hearing as the Planning Commission or Board deems necessary. The Planning Commission and Board therefore acted properly by continuing their deliberations until September 1 and September 8, respectively.

YCZO 1402.04 relates to initial evidentiary hearings. The Board finds that this provision applies only to quasi-judicial hearings and, therefore, is not relevant to this proceeding. Additionally, although not required, the County provided many of the procedural safeguards required in a quasi-judicial hearing. For example, at the July 21st hearing, County Counsel read the statement required by ORS 197.763(5), including listing the substantive criteria for the legislative change. The County also mailed additional notices of the hearing to property owners within 750 feet of the outside boundaries of the Riverbend Landfill/Waste Management-owned parcel, because many of those property owners were active participants during the consideration of RLI's prior expansion application. The County provided that extra notice to have as much input as possible during this proceeding and to continue involving those who participated in the earlier deliberations.

YCZO 1402.05 allows the Board to appoint a hearings officer to conduct a hearing. The Board did not choose to appoint a hearings officer.

YCZO 1402.06 governs *ex parte* contacts in a quasi-judicial hearing process, which does not apply to the proposed legislative amendment.

YCZO 1402.07 governs testimony presented at the hearing. Such testimony shall be pertinent and based on sound reasoning, submitted only by those parties with standing, and included in the record (unless, based on objection or otherwise, it is excluded by the chair at the hearing). This section of the Zoning Ordinance also allows the chair of the hearing to impose reasonable and fair time limits for the oral presentation of testimony. The Board finds that there is no basis to exclude any of the evidence submitted prior to

the close of the record, and the Board notes that it has received no objections to the inclusion of any such evidence. The Board also finds that it was fair and reasonable for the chair of the joint hearing to impose time limits on oral presentations that limited individual oral presentations to three minutes, but which also allowed individuals with similar points of view to pool their time and have those views expressed by organized groups that presented for up to thirty minutes. The Board finds that the additional time the record remained open for written comments supports the fairness of any of the limits imposed on oral presentations at the hearings and that all interested individuals in the County had ample time and opportunity to comment on this issue.

Based on the foregoing, the Board finds that the requirements of YCZO 1207.01(B) have been satisfied.

D. Approval of a legislative ordinance amendment shall include findings showing the amendment is consistent with any applicable federal, state and local government rules and statutes, and comprehensive plan goals and policies.

1. The legislative ordinance is consistent with applicable federal, state and local government rules and statutes

a. Federal rules and statutes

The Board finds that there are no federal rules or statutes directly applicable to the approval of this legislative amendment. However, once authorized, there are several federal rules or statutes that govern the development and operation of solid waste disposal facilities (which the legislative amendment allows in the EFU Zone) and the approval of this legislative amendment is consistent with those laws. For example, solid waste disposal facilities must comply with applicable provisions of the Federal Resource Conservation and Recovery Act (“RCRA”). Those federal rules are in turn implemented through state regulations administered by the Oregon Department of Environmental Quality (“DEQ”). The legislative amendment expressly requires that the maintenance, expansion or enhancement of a solid waste disposal facility under the amendment must qualify for a permit from DEQ pursuant to ORS 459.245.

Other federal statutes and rules may be triggered at some point for a specific solid waste disposal facility once that facility is authorized under the proposed amendment, depending on the nature of the actual facility. For example, federal law may require a specific facility to obtain an air discharge permit or a stormwater management permit. Nothing in the proposed amendment prevents the application of any such federal rule or statute.

During the hearings in this matter, some testimony expressed specific concern about potential air and water quality impacts from landfills. However, no persuasive oral testimony or written comment was presented to the Board indicating that the legislative amendment itself is inconsistent with any federal rule or statute regulating air and water

quality. The Board finds that such potential site-specific impacts can be addressed through the consideration of a specific development application if one is made following enactment of the legislative amendment.

Based on the foregoing, the Board finds that that legislative amendment is consistent with applicable federal rules and statutes.

b. State rules and statutes

The legislative amendment is consistent with state rules and statutes. These rules and statutes can be divided into three general areas: 1) environmental regulations; 2) procedural regulations; and 3) substantive land use regulations.

The Board finds that the legislative amendment is consistent with the state's environmental regulations. Similar to the discussion of federal regulations above, DEQ administers environmental regulations applicable to solid waste disposal facilities. By requiring any facility authorized under the legislative amendment to obtain a solid waste permit from DEQ pursuant to ORS 459.245, the legislative amendment remains consistent with the state's environmental regulations. Moreover, nothing in the proposed amendment prevents or alters the application of any such state rule or statute. The Board finds no persuasive oral testimony or written comment in the record indicating that the legislative amendment itself is inconsistent with the state's environmental regulations.

The Board finds that adoption of the legislative amendment is consistent with the state's procedural regulations. ORS 197.610 requires local jurisdictions to forward the proposed amendment to the Director of the Department of Land Conservation and Development ("DLCD") at least 45 days before the hearing on adoption. The proposal forwarded to DLCD must contain the text and any supplemental information necessary to inform the director as to the effect of the proposal, and the notice must include the date set for the first hearing. The County forwarded the proposed legislative amendment and the necessary information required by ORS 197.610 to the DLCD director on June 3, 2011, more than 45 days prior to the July 21st hearing.

The Board finds that the legislative amendment is consistent with the state's substantive land use regulations. Pursuant to ORS 197.835(7), an amendment to a land use regulation must be in compliance with an acknowledged comprehensive plan or, if the comprehensive plan does not contain specific policies or provisions that serve as the basis for the regulation, must be in compliance with the Statewide Planning Goals. As discussed in more detail below in Section II.2., the Board finds that the legislative amendment is consistent with the County's acknowledged Comprehensive Plan, which contains specific policies that serve as the basis for the amendment. Even if the County's Comprehensive Plan did not contain such policies, the Board finds that the amendment is consistent with Statewide Planning Goals as set forth in more detail below.

Goal 3 – Agricultural Lands

The legislative amendment is consistent with Goal 3. As stated in the LUBA Order, Goal 3 allows solid waste disposal facilities in an EFU zone. This authority is set forth in ORS 215.283(2)(k) as refined by OAR 660-033-0120 *et seq.* ORS 215.283(2) permits the following non-farm use in an EFU zone:

The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

* * *

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

OAR 660-033-0120 and OAR 660-033-0130(18) recognize that solid waste disposal facilities are a permissible non-farm use, but limit such facilities by allowing new facilities only on low-value farmland, and by allowing only the maintenance, expansion, or enhancement of existing facilities on high-value farmland. DLCD's Guidelines for Goal 3 also state that "Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) and 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity."

The Board finds that the express language of the legislative amendment is consistent with the statutory language that allows solid waste facilities in the farm zone, the rule language that limits such facilities where high-value farmland is involved, and the policy implementation guidelines that such uses should be minimized. It does so by allowing solid waste facilities in the EFU Zone, but only the maintenance, expansion or enhancement of existing solid waste disposal facilities.³

Because LUBA and the Court of Appeals determined that the County cannot grant an exception to Goal 3 to approve a solid waste disposal facility on farmland for the precise reason that such uses are allowed by Goal 3, and because the legislative amendment language is consistent with the associated statute and rules that establish that use under Goal 3, the Board finds that the legislative amendment is consistent with and implements Goal 3.

³ Evidence in the record indicates there are at least seven existing permitted solid waste disposal facilities in the County.

During the public hearing in this matter, the Board received testimony in opposition to the legislative amendment based on the concern that the amendment potentially applies to too few properties because it addresses only existing solid waste disposal facilities. However, the Board also received testimony encouraging the Board not to allow new facilities on low-value farmland in the same way that Goal 3 allows such new facilities. The Board finds that the legislative amendment strikes the appropriate balance between creating the potential for the continued existence of disposal facilities in the County and continuing to protect farmland by preventing development of new solid waste disposal facilities throughout the EFU Zone.⁴

The Board finds that, because the legislative amendment is specifically allowed by Goal 3, it is consistent with all other Statewide Planning Goals. The Board also finds that a use expressly allowed by Goal 3 cannot be inconsistent with any other Statewide Planning Goal.

Goal 1 – Citizen Involvement

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.

As noted in the discussion in Section II relating to YCZO 1207.01(C), the Planning Commission and Board followed the County's public involvement procedures for considering the legislative amendment. Those procedures called for public hearings, during which opportunities for citizen input and testimony were provided and in which many citizens actually participated.

In addition to public comment, state and county public agencies that represent other public interests were also provided the opportunity to participate. For example, DLCD was provided with notice of the proposed amendment pursuant to ORS 197.610. DLCD did not intervene in this proceeding, even though it has the right to do so. Members of the County's SWAC and a representative of the Yamhill County Soil and Water Conservation District also testified.

The legislative amendment does not seek to alter the County's citizen involvement procedures in the future. Specific land use applications will be processed utilizing the

⁴ However, the Board notes that, even with the legislative amendment, the Zoning Ordinance may not offer sufficient opportunity for alternative technologies to develop in the future. For example, the legislative amendment would allow the enhancement of an existing facility like Riverbend by adding an alternative technology to its current facility, but would prohibit another property owner that does not already have a solid waste disposal permit from developing the same alternative technology. The Board has therefore instructed Planning Staff to develop recommendations that would allow some new facilities on low-value farmland as part of a future planning effort. That decision is not currently before the Board.

County's procedures in its acknowledged comprehensive plan, and additional citizen participation will take place at that time.

Goal 2 – Land Use Planning and Exceptions

Goal 2, Part I requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. Consistency of the legislative amendment with goals and policies in the acknowledged Yamhill County Comprehensive Plan is addressed in Section II.2. of these findings.

Goal 2, Part I also requires the County to have an adequate factual base to support an amendment to the Zoning Ordinance. The Board finds that this component of Goal 2 is satisfied based on the large amount of information submitted to the record during this process, which serves as the basis for these findings.

Goal 2, Part II addresses situations in which an exception to another Statewide Planning Goal is being sought. The legislative amendment is purely legislative in nature and does not seek a Goal Exception.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 2.

GOAL 4 – Forest Lands

The Board finds that the legislative amendment does not have direct or secondary effects on forest lands in the County. The legislative amendment will allow solid waste disposal facilities in the EFU Zone and does not make any changes to forest land zones.

The legislative amendment also expressly incorporates the language in ORS 215.283(2) that the authorized use must satisfy the standards of ORS 215.296(1)(a) and (b). ORS 215.296(1)(a) prevents a local government from allowing a solid waste disposal facility in the EFU Zone without first finding that the use will not “[f]orce a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

The Board does not find any persuasive evidence in the record indicating that the legislative amendment is inconsistent with Goal 4. Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 4.

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

The Board finds that the legislative amendment does not have direct or secondary effects on open space, scenic and historic areas, or natural resources in the County. The County's acknowledged Comprehensive Plan and the Zoning Ordinance contain specific policies and regulations relating to the protection of these resources which the legislative amendment does not alter in any way. Any future application under the legislative amendment will be required to adhere to those regulations.

The Board received some testimony that solid waste disposal facilities might interfere with the scenic nature of the County or with the County's natural resources. The Board finds that the legislative amendment maintains the County's ability to protect scenic areas where necessary, including in part through the use of the Site Design Review process, which is an express component of the legislative amendment. The Board does not find any persuasive oral testimony or written comment in the record indicating that the legislative amendment itself will impact any of the County's natural or other Goal 5 resources. Rather, the Board finds that such potential site-specific impacts can be addressed through the consideration of a specific development application if one is made following enactment of the legislative amendment.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 5.

GOAL 6 – Air, Water and Land Resources Quality

Goal 6 addresses the quality of air, water, and land resources. In the context of amendments to a land use regulation, a local government is obligated to consider whether the amendment implicates Goal 6 obligations only if there is some factual basis for suspecting that the amendment will have impacts on air, water and land resource quality that would threaten to violate established standards. Although the record contains testimony from individuals who believe a solid waste disposal facility will have some impact to air, water and land resource quality, no persuasive evidence in the record indicates that such facilities allowed in the EFU Zone will actually violate established standards. To the contrary, by allowing only those facilities that are permitted by DEQ pursuant to ORS 495.245, the legislative amendment subjects potential impacts on air, water and land resource quality to established standards.

In support of this finding, the Board relies in part on evidence in the record which was also submitted as part of the Board's prior consideration of the expansion of Riverbend Landfill.⁵ During the public hearings before the Planning Commission and the Board during that earlier process, staff from DEQ testified at length regarding the environmental compliance required of a solid waste landfill. With respect to water quality, for example, the DEQ testimony specifically addressed the robust liner system, leachate collection system and environmental monitoring that DEQ requires of all landfill operations. The DEQ testimony demonstrates that solid waste disposal facilities are highly-monitored to protect air and water quality and that DEQ will continue to enforce its regulations in that area.

The Board finds that, following any future County decision authorizing a solid waste disposal facility in the EFU Zone, DEQ will review and must approve as part of the permitting process the continued operation, expansion or enhancement of a facility. As part of its permitting process, DEQ will have to review and approve site development plans, including technical information to address DEQ rules and design criteria.

⁵ In addition to oral presentations and written comments, the entire record of the previous Riverbend Landfill expansion application was submitted into the record for the County's consideration of the legislative amendment.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 6.

GOAL 7 – Areas Subject to Natural Disasters and Hazards

Goal 7 addresses hazards to development and limits development in known areas of natural hazards without appropriate safeguards. The legislative amendment does not authorize specific facilities. Rather, the amendment only authorizes a new category of uses in the EFU Zone. Any specific development under the legislative amendment in the future will require approval by the County and developments in a hazard area will have to demonstrate compliance with all federal, state and local standards that establish safeguards for development in those areas.

Federal criteria for municipal solid waste landfills, for example, took effect beginning October 9, 1993. These criteria address location, operation, and design criteria of landfills, groundwater monitoring, closure and post-closure care, financial assurance, and remedial action if problems occur. Federal criteria restrict landfill siting in certain hazard areas such as floodplains and seismic impact zones.

The Board received several comments and testimony expressing concern over potential impacts to the floodplain that could result from development of solid waste disposal facilities close to or in the floodplain. The Board finds that such comments relate to specific developments and are not relevant to the legislative policy at issue here, and that the concerns identified in those comments can be addressed as part of a specific application.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 7.

GOAL 8 – Recreational Needs

The Board finds that the legislative amendment does not have direct or secondary effects on recreation areas, facilities or opportunities designated by the County's acknowledged Comprehensive Plan to meet the County's recreational needs. Moreover, no persuasive oral testimony or written comment was presented to the Board indicating that the legislative amendment itself is inconsistent with Goal 8.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 8.

GOAL 9 – Economic Development

The Board finds that the legislative amendment will contribute to a healthy economy in the County. The County's Solid Waste Management Plan expressly acknowledges that "[h]aving a modern landfill facility to serve the County is a valuable resource." Additionally, the record contains multiple studies demonstrating the economic benefits of a local disposal option. The legislative amendment will provide lands for the

maintenance, enhancement or expansion of existing facilities in furtherance of those benefits.

The JR Miller Report, discussed 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 a specific facility - Riverbend Landfill - to other landfill alternatives located outside the County, predicts an increased disposal cost to County ratepayers in the absence of a local disposal option.

The Zia Report, also noted above, was commissioned by the Board for the express purpose of clarifying the cost- and technological-feasibility of potential landfill and non-landfill alternatives to the continued operation of a local disposal option. With respect to landfill alternatives, the Zia Report concludes that long-haul trucking of County-generated waste to an out-of-County landfill has varying cost impacts and those landfills would all be more expensive than a local disposal option.

With respect to non-landfill alternatives, the Zia Report concludes that only one alternative, 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, before such a new facility could be permitted and built. Despite the nascent state of most alternative technologies, the Board finds that the legislative amendment will create a greater opportunity for the eventual development of those technologies.

Based on the foregoing the Board finds that the legislative amendment is consistent with Goal 9.

GOAL 10 – Housing

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 the legislative amendment.

The Board finds that the legislative amendment does not have direct or secondary effects on inventoried buildable lands or the provisions of the County's acknowledged Comprehensive Plan aimed at meeting the County's housing needs. Moreover, the Board does not find any persuasive oral testimony or written comment in the record indicating that the legislative amendment itself will impact inventoried buildable lands or will in any way be inconsistent with Goal 10.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 10.

GOAL 11 – Public Facilities and Services

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 includes a specific reference to planning for landfills – a specific type of solid waste disposal facility – and as already noted, the existence of a local disposal option is a key component to the County’s Solid Waste Management Plan implementing Goal 11.

The Board finds that solid waste disposal facilities serve both rural and urban uses, but that such facilities themselves are more appropriately located in rural areas. In support of this finding, the Board relies on the fact that Goal 3 expressly allows these non-farm uses in an EFU Zone and the fact that most regional solid waste disposal facilities in the state are located on rural lands.

The Board finds that the legislative amendment is consistent with the County’s Solid Waste Management Plan, which implements Goal 11. Specifically, Recommendation 5.2 of that plan encourages the County to review its current land use and zoning code to identify the proper zones where disposal sites should be located. The legislative amendment and the process leading up to its adoption identify the appropriate land for zoning to allow solid waste disposal facilities.

Based on the forgoing, the Board finds that the legislative amendment is consistent with Goal 11.

GOAL 12 – Transportation

The Board finds that the legislative amendment does not have direct or secondary effects on the County’s transportation system identified by the County’s acknowledged Comprehensive Plan to meet the County’s transportation needs. Moreover, the record does not contain any persuasive evidence that the legislative amendment is inconsistent with Goal 12. To the extent a specific application for a solid waste disposal facility at a specific site may have an impact on the County’s transportation system, that impact can be addressed by the County’s existing transportation policies and regulations, including potentially through the Site Design Review Process.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 12.

GOAL 13 – Energy Conservation

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 Board finds that solid waste has the potential to be converted into valuable renewable energy that can be both produced and consumed locally.

The Board finds that a local disposal option maximizes energy conservation relative to the alternative of shipping waste to regional sites located outside of the County. This finding is specifically supported by the conclusions in the Zia Report.

The Board finds that hauling waste to out-of-County 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.

Based on the foregoing, the Board finds that the proposed legislative amendment is consistent with Goal 13.

GOAL 14 – Urbanization

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 10 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. Though still in the appeals process, the cities of McMinnville and Newberg have completed major portions of planning projects that update land needs to potentially expand their respective urban growth boundaries.

The legislative amendment is consistent with state law that recognizes that solid waste disposal facilities may be located outside of a UGB on farm lands. The record also indicates that no city in the County has planned for the location of a solid waste disposal site within a UGB.

The Board finds that the established solid waste collection, transfer, and disposal system in the County, which includes solid waste disposal sites in rural areas, provides an

efficient and cost-effective system for residents and businesses in both the urban and rural areas of the County. Moreover, the Board does not find any persuasive comment or testimony indicating that the legislative amendment is inconsistent with Goal 14. Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 14.

GOAL 15 – Willamette River Greenway

The Board finds that the legislative amendment does not have direct or secondary effects on lands within the Willamette River Greenway boundary. Moreover, no persuasive oral testimony or written comment was presented to the Board indicating that the legislative amendment itself is inconsistent with Goal 15. To the extent a specific application is made relating to a solid waste disposal facility at a specific site within the Willamette River Greenway boundary, Section 902 of the Zoning Ordinance governs how activities in that boundary may be permitted or prohibited. The legislative amendment does not make any changes to those provisions.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 15.

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 legislative amendment does not have direct or secondary effects on any lands that are within the areas governed by those Goals. Moreover, the record does not contain any evidence that the legislative amendment is inconsistent with those Goals.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Goal 16, Goal 17, Goal 18 and Goal 19.

c. Local rules and statutes

Each of the local rules and statutes applicable to the adoption of the legislative amendment are addressed throughout these findings. The Board finds that the adoption of the legislative amendment is consistent with each of those rules and statutes and demonstrated in those findings.

The Board finds that the legislative amendment is consistent with the County's Solid Waste Management Plan. Specifically, Recommendation 5.2 of that plan encourages the County to review its current land use and zoning code to identify the proper zones where disposal sites should be located. The legislative amendment and the process leading up to its adoption serves as that review.

YCZO 1005 contains provisions applicable to "applications to site a solid waste disposal facility." In the past, the County has interpreted this provision to apply only to new facilities and not to existing facilities. Moreover, this provision appears to be an outdated

one that applied during a brief time when the Zoning Ordinance allowed new solid waste disposal sites. The Board finds that the legislative amendment is consistent with YCZO 1005 because the legislative amendment applies only to existing solids waste disposal facilities. Moreover, the Board finds that the express language of the legislative amendment supersedes this provision.

The Board does not find any persuasive evidence in the record demonstrating that the legislative amendment is inconsistent with local rules and statutes.

Based on the foregoing, the Board finds that the legislative amendment is consistent with local rules and statutes.

2. The legislative ordinance is consistent with the County's Comprehensive Plan Goals and Policies

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. The Comprehensive Plan expressly acknowledges that certain goals and policies may conflict with others and that final decisions require the weighing of the merits in order to achieve a balanced decision. On balance, the Board finds that the Comprehensive Plan contains existing policies that will be implemented by the legislative amendment.

a. Section I - Urban Growth and Change and Economic Development

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

The discussion in Section II.1.b. above relating to Goal 9, Goal 11 and Goal 14 is relevant to this criterion and the Board incorporates the discussion and findings in that section here by this reference.

Goal 1 under Section I.B of the Comprehensive Plan encourages the County to provide an adequate amount of land to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations. The Board finds that it has become customary in Oregon to locate solid waste disposal facilities in rural areas. The inclusion of solid waste disposal facilities as a permitted use in the EFU zone under Goal 3 supports this finding. The legislative amendment therefore directly implements this Comprehensive Plan goal.

The Board finds that the legislative amendment will increase the opportunity for the development of efficient and cost-effective local disposal sites with the least energy and environmental impacts to serve the cities of the County, consistent with Comprehensive

Plan Goal 1 for Urban Area Development. The Board finds further that the location of solid waste disposal facilities outside of established urban growth boundaries is the most appropriate and desirable location for solid waste disposal facilities, and that it is common throughout Oregon to site such facilities only in rural areas.

Policies a. and b. under Goal 1 of Comprehensive Plan Section I.F. compel the County to provide a diversified employment base while limiting conflicts with the County's timber and agricultural character. The Board finds that the legislative amendment will implement these policies. Specifically, the legislative amendment provides more opportunity for the long-term presence of local disposal options, and those options in turn support the viability of all of the County's businesses. For the same reasons, the Board finds that the legislative amendment is consistent with Goal 1 under Section 1.G of the Comprehensive Plan. That goal encourages the County to create an environment for commercial development which will preserve and enhance the vitality of the central business districts. Moreover, the legislative amendment requires any development authorized under the new language to demonstrate that it does not force significant changes on nearby farm and forest practices, thereby preserving the County's timber and agricultural character.

The Board finds that, by applying only to existing solid waste disposal sites, the legislative amendment minimizes the overall non-farm uses allowed in the EFU Zone, which the Board finds does not compromise the basic goal in the Comprehensive Plan relating to urban containment and orderly urban development.

The Board also finds that the legislative amendment will minimize conflict between farm and non-farm uses by requiring any development under the amendment to demonstrate it does not force significant changes to farm and forest practices on surrounding lands devoted to farm and forest use.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Section I of the County's Comprehensive Plan.

b. Section II - Land and Water

The Board finds that the legislative amendment is consistent with the Land and Water component of the County's Comprehensive plan based on the findings below. The discussion in Section II.1.b. above relating to Goal 5 and Goal 6 is relevant to this criterion and the Board incorporates the discussion and findings in that section here by this reference.

The Board finds that the limitation of the legislative amendment to existing solid waste disposal facilities and the requirement that any facility operating under the amendment undergo Site Design Review will ensure that development occurs in an orderly, efficient, and economic manner within defined boundaries consistent with Policy a. under Goal 1 of Comprehensive Plan Section II.A. Such an approach minimizes impacts on the conservation and viability of farm lands for the production of crops and livestock.

The Board finds that the viability of commercial farm uses in the general vicinity of existing solid waste disposal facilities, including farmland employed by the wine industry, has not been diminished by the presence or operation of existing facilities. The Board finds that enacting the legislative amendment to potentially allow the continued operation of solid waste disposal facilities 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 to non-farm uses.

The Board finds that, compared with agricultural irrigation or municipal uses of groundwater and surface water, solid waste disposal facilities do not place high volume demands on water resources. The Board therefore finds that the legislative amendment does not inhibit the efficient conservation and management of water resources and that facilities developed under the amendment will be subject to federal and state standards to abate any risk of potential flood or erosion.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Section II of the County's Comprehensive Plan.

c. Section III - Transportation, Communications, and Public Utilities

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

The discussion in Section II.1.b. above relating to Goal 11, Goal 12 and Goal 13 is relevant to this criterion and the Board incorporates the discussion and findings in those sections here by this reference.

The Board received some testimony indicating a concern with the amount of traffic that can be generated by deliveries to a solid waste disposal facility. The legislative amendment does not authorize specific facilities or attempt to control potential transportation impacts of a specific facility. Rather, the amendment only authorizes a new category of uses in the EFU Zone. Any specific development under the legislative amendment in the future will require approval by the County and specific developments will have to demonstrate compliance with all applicable transportation standards.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Section III of the County's Comprehensive Plan.

d. Section IV - Public Land, Facilities, and Services

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

The discussion in Section II.1.b. above relating to Goal 6, Goal 9, Goal 11 and Goal 13 is relevant to this criterion and the Board incorporates the discussion and findings in that section here by this reference.

As already noted, the Board finds that the legislative amendment 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 – specifically by supporting opportunities for a local disposal option that serves all of the County's residents, commercial businesses, and industries.

The Board finds that the County receives many benefits from operation of a local disposal facility. The Board finds that the continued presence of a local disposal site 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 above findings demonstrate that the legislative amendment will specifically implement Goal 1 under Section IV.A of the County's Comprehensive Plan which encourages the County to develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development.

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 any facility authorized under the legislative amendment.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Section IV of the County's Comprehensive Plan.

e. V - 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 Section II.1.b. above relating to Goal 5, Goal 6 and Goal 7 is relevant to this criterion and the Board incorporates the discussion and findings in that section here by this reference.

The Board finds that DEQ actively monitors for potential environmental impacts (including those to air, groundwater, surface water, and soil) associated with solid waste disposal facilities, and requires regular monitoring reports from facility operators to document compliance with established standards and regulations for significant emissions.

The Board finds that solid waste disposal facilities authorized under the legislative amendment will have to operate in compliance with state and federal air and water quality standards, as well as solid waste management requirements.

The Board finds that the legislative amendment will provide more opportunity for the development of facilities that will provide for the efficient recovery and development of energy from waste.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Section V of the County's Comprehensive Plan.

f. VI - Energy Conservation

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

The discussion in Section II.1.b. above relating to Goal 13 is relevant to this criterion and the Board incorporates the discussion and findings in that section here by this reference.

The Board finds that the legislative amendment will allow the County greater opportunity to reduce fossil fuel consumption in the County and to minimize carbon impacts compared to the alternatives of hauling solid waste longer distances to out-of-County disposal sites.

The Board finds that the legislative amendment will provide greater opportunity for the County to pursue alternative technologies that will recover valuable energy from solid waste.

Based on the foregoing, the Board finds that the legislative amendment is consistent with Section VI of the County's Comprehensive Plan.

g. VII - 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.1.b. 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 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.

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 legislative amendment is consistent with Section VII of the County's Comprehensive Plan.

- E. Changes to the County zoning map which result from legislative ordinance amendments shall be made and become effective upon filing said ordinance with the County Clerk.*

The legislative amendment makes only a textual change to the EFU Zone and does not change the County zoning map or alter the zoning of any specific property. This provision of the YCZO, therefore, does not apply to the adoption of the legislative amendment.

II. CONCLUSION

Based on the foregoing, the Board finds that the legislative amendment is in the County's best interest and that all criteria for enacting amendments to the Zoning Ordinance have been satisfied.