

From: Ilsa Perse
To: [SENR Exhibits](#)
Cc: [Ilsa Perse](#)
Subject: SB 1036
Date: Wednesday, April 12, 2017 5:57:39 PM

Dear Senator Dembrow and Committee Members,

Last week many citizens from Yamhill County spoke and sent emails about Senate Bill 1036. All expressed concerns regarding safety issues and lack of oversight at Riverbend Landfill, the largest landfill west of the Cascades, located in a severe seismic hazard zone, in a floodplain/floodway of the South Yamhill River, a major tributary of the Willamette River.

Enormous quantities of soil are required to meet the daily and long term needs of this landfill. Should expansion of the landfill ever be permitted, Waste Management will undoubtedly mine all of the dirt on site, regardless of the impact to the course of the river and sensitive wetland areas.

At the hearing last week we were stunned to learn that DOGAMI does not have the staffing or the finances to oversee the mining of large quantities of soil at Riverbend Landfill. This came as a shock, as we had hoped that the agency that is charged with mining would in fact be involved in overseeing this precariously sited landfill in Yamhill County and would be requiring a reclamation plan.

In further discussion with Ian Madin of DOGAMI, we learned that DOGAMI does not regulate landfills, in part, because they are considered "structures." This flies in the face of Yamhill County's legal findings issued when they permitted the Site Design Review and Floodplain Development permit last year. *In these findings they explicitly deny that Riverbend Landfill is a structure.* I am attaching those findings to this email. The relevant ones are findings #81-90.

I am not sure how this discrepancy can be resolved, but either way, it has major impacts on permitting landfill expansion and on requiring DOGAMI oversight of this mining operation. I have informed Ian Madin at DOGAMI of this contradiction in hopes that there can be some resolution of this issue.

DEQ admitted in a conversation with us 7 years ago that if they knew then, what they know now they would never have permitted the siting of this landfill in this location. Our response was to say that it's never too late to put an end to an erroneous decision. We are disturbed that this many years later, Riverbend landfill can do what it wants with hundreds of thousands of cubic yards of valuable soil surrounding it.

We appreciate your help with this matter and thank you for the courteous reception of our presentations last week at your committee hearing. Your closing remarks were that your committee needed to do some more "homework." Please consider the attached legal findings as part of the assignment! I apologize for not getting it to you sooner.

Kind regards,

Ilsa Perse
Stop the Dump Coalition

Exhibit A - Board Order 15-115
Findings in Support of Approval

Docket No.: SDR-16-14 and FP-03-14

Request: Site Design Review for the enhancement and expansion of an existing solid waste disposal facility, together with a Floodplain Development Permit to accommodate those portions of the development within the 100-year floodplain.

Applicant: Riverbend Landfill Company
13469 SW Highway 18
McMinnville, OR 97128
Contact: Paul Burns, Director of Disposal Operations, Pacific Northwest

Tax Lots: Map 5501, Tax Lots 101, 200, 400, and 401

Location: 13469 SW Highway 18

Zone: Exclusive Farm Use District – EF-80

I. Introduction and Background

1. Riverbend Landfill Co. (“Applicant” or “Riverbend”) owns and operates the Riverbend Landfill approximately three miles southwest of the city of McMinnville. Riverbend submitted two applications for the enhancement and expansion of Riverbend Landfill. The first application is for Site Design Review pursuant to Yamhill County Zoning Ordinance (“YCZO” or “Code”) Section 1101, and the second application is for a Floodplain Development Permit pursuant to YCZO Section 901. The stated purpose of the applications is to allow Riverbend Landfill to continue operating by reconfiguring portions of the existing landfill, and by expanding operations to adjacent land as other areas of the existing landfill go into final closure. The County is processing both applications together.
2. As originally proposed, Riverbend’s applications sought approval for a total of 37 new acres of landfill area to be directly incorporated into the existing landfill. The proposed design included a perimeter berm with a traditional earth fill design containing shallow outside slopes. As proposed, the height of the landfill would not increase from the current permitted height of 286 feet above mean sea level. Other than the additional landfill area and a reconfiguration of portions of the existing berm, Riverbend proposed no other major changes to its current site plan.
3. The proposed expansion and enhancement areas are defined by the development of two new modules:
 1. Riverbend proposed Module 10 as an eight-acre disposal cell adjacent to the north slope of the existing landfill and just east of the existing Renewable Energy Facility.

2. Riverbend proposed Module 11 as a 29-acre group of disposal cells to be located west of the existing landfill and adjacent to Highway 18, including an enhancement of the existing berm on the south side of the existing landfill.
4. The Planning Commission reviewed and approved Riverbend's proposal with several conditions. Along with several other changes, one of the Planning Commission's conditions of approval required Riverbend to remove Module 10 from the site plan. Riverbend provided an updated site plan to reflect all of the changes approved by the Planning Commission, and those figures are now in the record.
5. Opponents of the application appealed the Planning Commission's decision to the County Board of Commissioners ("Board"). The Board held a *de novo* hearing in this matter and has reviewed both Riverbend's Preliminary Site Development Plan and the Final Site Development Plan reflecting the Planning Commission's approval. For the reasons set forth in these Findings, the Board approves the Final Site Development Plan and the Floodplain Development Permit subject to the conditions of approval set forth in these Findings.

A. History

6. The County initially approved the siting and development of Riverbend Landfill in 1980 as part of a Comprehensive Plan Amendment and Zone Change ("PA/ZC"). The result of the 1980 PA/ZC was to rezone Riverbend's property from the Exclusive Farm Use ("EFU") zone to the Public Works/Safety ("PWS") zone. 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 only in the PWS zoning district as an outright permitted use.
7. Riverbend began operating at its present location in 1982 in accordance with Oregon Department of Environmental Quality ("DEQ") Solid Waste Disposal Permit No. 345. In 2009, Riverbend anticipated that the landfill would reach capacity by 2014 and applied for land use approval to expand onto adjacent property. In granting that application, the County determined there was a demonstrated need for the continued presence of a landfill in the County and approved another PA/ZC through an "Exception" to Statewide Planning Goal ("Goal") 3. On appeal, the Land Use Board of Appeals ("LUBA") reversed the County's decision on the basis that an Exception to Goal 3 is not available to allow a use that is already authorized by the statutory EFU zone (Oregon Revised Statute [ORS] Chapter 215). In doing so, 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." The Court of Appeals upheld that decision based on the same reasoning.
8. The Board finds that implicit in the decisions from LUBA and the Court of Appeals was that the County should have originally approved development of Riverbend in 1980 through the normal zoning process on EFU land rather than through the Goal Exception process. In direct response to those decisions, the County amended the Code and adopted a text amendment to the EFU zone district in 2011 that mirrors the statutory use in ORS 215.283(2)(k) and allows solid waste disposal sites to be maintained, enhanced or expanded within the EFU zone in some, but not all, of the specific circumstances allowed by state law. These findings refer to that legislative amendment as the "2011 Code Change."

9. Following the 2011 Code Change, the County in 2014 approved a third PA/ZC and rezoned the PWS portions of Riverbend's property to EF-80 (part of the EFU zoning district) through County Ordinance 887 ("Ordinance 887" or the "2014 Zone Change"). In doing so, the County made a finding that, by changing the zoning on Riverbend's property back to the EFU zone, the County was "restoring the property's original zone designation and putting [Riverbend] in the same position it would have been if the County had permitted the landfill in the manner that LUBA and the Court of Appeals suggested it should have." Those findings also expressly stated that the 2014 Zone Change would "provide the property owner with flexibility to continue or expand the current" landfill use. The Board reconfirms the County's earlier position and finds that the intent of the 2011 Code change and the 2014 Zone Change, collectively, were to restore the original EFU zoning on Riverbend's property and to correct the error identified by LUBA and the Court of Appeals that resulted in rezoning the property to PWS in 1980.
10. Although the landfill and some of its existing equipment and facilities were previously in two separate zones – PWS and EFU – the property and the existing use is now wholly within a farm use zone as a result of the 2014 Zone Change. The enhancement and expansion of Riverbend is therefore permissible under the revised Code and is also consistent with the statutory farm zone. Under those Code and statutory provisions, Riverbend must nevertheless demonstrate that its development proposal satisfies the County's Site Design Review standards, as well as the farm impacts standards set forth in ORS 215.296.

B. County Proceedings

11. Riverbend submitted its applications on November 6, 2014. The County deemed the application complete for review purposes on November 7, 2014. Based on that date, the 150-day review period would have lapsed on or about April 6, 2015. The Applicant subsequently provided a limited waiver to the County extending that deadline to April 24, 2015.
12. A Site Design Review Application is processed as either a Type A or a Type B proceeding under YCZO Section 1301, as determined by the Planning Director. A Floodplain Development Permit is processed as a Type B proceeding. The Planning Director determined that both applications should be processed as a Type B proceeding. However, pursuant to YCZO 1301.01(B)(3), the Planning Director also determined that the applications should follow the Type C process with a hearing before the Planning Commission.
13. The Planning Commission held the initial evidentiary hearing in this matter on December 4, 2014 and was followed by open written record periods. The Applicant was provided with an opportunity to provide a final legal argument on January 8, 2015. No person objected to these timelines. On January 15, 2015, the Planning Commission approved the applications subject to several conditions of approval.
14. Opponents of the applications appealed the Planning Commission's decision to the Board. The Board chose to hold a de novo hearing in this matter to review the Planning Commission's decision and to allow interested parties to continue commenting on the applications. The Board held its hearing on March 12, 2015. The Board left the record open until March 17, 2015 for any interested person to provide new evidence or to provide rebuttal to evidence that was already in the record as of March 12, 2015. The Board then left the record open until March 20, 2015 for

the limited purpose of rebuttal to new evidence provided to the record after March 12, 2015 up until March 17, 2015. No person objected to these timelines.

15. On March 26, 2015, the Board re-opened the record for the limited purpose of allowing Board Commissioners to disclose ex parte contacts. The Board then left the record open until March 31, 2015 for the limited purpose of receiving evidence rebutting the information disclosed as part of the ex parte contacts. The rebuttal period was chosen because it was the same timeframe the Board allowed for rebutting all evidence in the record between March 12, 2015 and March 17, 2015. The record closed on March 31, 2015 and the Board reconvened to hear Staff's recommendation and to deliberate on April 2, 2015. By a vote of 2-1, the Board affirmed the Planning Commission's decision approving Riverbend's applications, with conditions. Commissioners Primozych and Starrett voted to approve. Commissioner Springer voted to deny the applications. The Board then met to adopt these Findings in support of that approval.

II. Permitted Uses in the EFU

16. As described above in Finding 8, the County amended its EFU Code provisions in 2011 for the express purpose of bringing the Code into closer alignment with state law and allowing solid waste disposal sites as a permitted use in the EFU zone. As a result of those amendments, YCZO 402.02(V) now reads as follows:

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 provisions of this ordinance:

* * *

V. The maintenance, enhancement or expansion 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, enhancement or expansion 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.

17. The Board finds that Riverbend's application seeks approval of a permitted use. Specifically, the application seeks to enhance and expand an existing solid waste disposal site. Riverbend Landfill has been in existence since 1982. Along the southwest portion of the existing landfill, Riverbend's proposal for Module 11 seeks to develop an enhanced berm that will increase the amount of waste that can be disposed of on top of the waste that already exists in those areas. To the west of the existing landfill, Riverbend seeks to expand by developing new waste disposal cells as part of Module 11.
18. The Board finds that the existing landfill has been granted a permit under ORS 459.245. The record contains testimony asserting that Riverbend's permit is expired. That testimony, based on the date appearing on the face of Riverbend's permit, is inaccurate. As the Applicant notes,

DEQ may administratively extend a solid waste disposal permit beyond the expiration date that appears on the face of the permit. The record contains a statement by DEQ that Riverbend's permit has been so extended.

19. Even if Riverbend's permit were not current, the Board finds in the alternative that there is no requirement in ORS 215.283(2)(k) that a DEQ permit be granted as a prerequisite to the County's land use approval for a solid waste disposal site in the EFU. The County Code uses identical permitting language and was intended to be aligned with the statutory use described in ORS 215.283(2)(k). The County therefore interprets its code to have the same meaning as the statute rather than in a manner that would impose an additional requirement to obtain a DEQ permit first. Additionally, the County is imposing a condition of approval requiring Riverbend to obtain a DEQ permit before it establishes any of its enhancement or expansion activities.
20. The Board finds that the proposed use satisfies the standards set forth in ORS 215.296(1)(a) and (b). The Board's discussion of the evidence relevant to those standards, and more detailed findings related to that evidence, are set forth below in Section IV.
21. The Board finds that the proposed use satisfies the standards set forth in Section 1101, Site Design Review. The Board's discussion of the evidence relevant to those standards, and more detailed findings related to that evidence, are set forth below in Section III.
22. The expansion portion of Riverbend's proposal will involve development on high-value farmland. Under state statute and the Code, therefore, the expansion is allowed only if it is on the same tract and only if the existing use is wholly within a farm zone. The Board finds that the expansion portion of Riverbend's proposal is on the same tract. For purposes of non-farm uses in the farm zone, state law defines "tract" as "one or more contiguous lots or parcels under the same ownership." Testimony in the record asserts that the expansion area is not part of the same tract because Riverbend's parcels are under different ownership. For example, a letter from Susan Watkins dated December 4, 2014 identifies Tax Lot 101 as being owned by Riverbend Landfill Company, Inc., whereas the other tax lots are owned by Riverbend Landfill Co. That testimony, however, relies on records from the tax assessor's office and does not reflect ownership of the actual legal lot at issue. To the contrary, Riverbend provided deed records clearly demonstrating that each of the tax lots at issue in the proceeding are part of the same legal lot, including Tax Lot 101, the entirety of which is owned by Riverbend Landfill Co. Even if the information from the tax lot records had some significance, which the Board finds it does not, Tax Lot 101 was the site proposed for Module 10. As explained elsewhere in these findings, the County is not approving the development of Module 10 and, therefore, the only tax lots subject to this approval are those listed by the tax assessor's records as belonging to Riverbend Landfill Co. The Board's decision thus applies to only one tract.
23. The Board finds that the existing use is wholly within a farm zone. The record clearly demonstrates that the entirety of Riverbend's property holdings in this area is zoned EF-80 as part of the EFU zone. The Board further finds that it was the stated purpose of the Zone Change to bring Riverbend's existing use wholly within a farm zone and to restore the original EFU

designation.¹ The Record does not contain any assertion that the existing use is not wholly within a farm zone.

24. The record does contain testimony on behalf of Friends of Yamhill County (“FOYC”) and the Stop the Dump Coalition (“STDC”) asserting that, although the existing landfill is wholly within a farm zone, landfills that were not wholly within a farm zone in 1996 are not eligible to expand onto high-value farmland. For the reasons stated below, the Board rejects FOYC’s and STDC’s assertion.
25. Notwithstanding the language of ORS 215.283(2)(k), which broadly allows solid waste disposal facilities in the EFU, OAR 660-033-0130(18) allows a solid waste disposal facility on high-value farmland only for the maintenance, enhancement, or expansion of an existing facility that is “wholly within a farm zone.” This administrative rule, promulgated by the Land Conservation and Development Commission (“LCDC”) and enforced by the Department of Land Conservation and Development (“DLCD”), serves as the basis for the County’s Code language. The FOYC and STDC testimony asserts that the intent of the rule, and therefore the Code language, is to limit the expansion of solid waste disposal facilities to those facilities that were wholly within a farm zone when that rule was adopted, and that it does not authorize expansions of facilities that later become wholly within a farm zone by virtue of the rezoning process.
26. The Board finds that the argument the expansion is not allowed under the LCDC rule is without legal merit. Of particular note, DLCD was provided with the opportunity to review Riverbend’s application and it did not indicate that the application would be in violation of the rules. Nor is the FOYC and STDC argument supported by the express language of OAR 660-033-0130(18). That rule allows the expansion of an “existing facility” and places only one restriction on such expansions – the “existing facility” must be “wholly within a farm zone.” Riverbend Landfill squarely meets those criteria because it is an “existing facility” and it is “wholly within a farm zone.” Under the FOYC and STDC argument, the rule would have to read that expansions are permissible for facilities “wholly within a farm zone that exists at the time of this rule’s adoption.” The underlined language is not in the rule and the County is not allowed to insert language into the rule that does not exist.²
27. The Board finds as an independent basis to reject the FOYC and STDC argument the fact that it is not supported by the context in which the rule exists. When interpreting an administrative rule, the County is directed to look to other provisions in the same rule for guidance. It is clear from other language in the rule that when LCDC intends to give relevance to the effective date of a rule, it knows how to craft language for that purpose. For example, OAR 660-033-0140 adopted provisions setting a time limit on the applicability of some permits. That rule applies only to discretionary decisions “made after the effective date of this division...” LCDC could have used similar language in OAR 660-033-0130(18) but chose not to.
28. Similarly, where OAR 660-033-0130 establishes a date that is relevant to the permissibility of a use in the farm zone, it unequivocally provides the relevant date. For example: (1) a dwelling is allowed on a lot of record that was owned continuously “since prior to January 1, 1985” and that

¹ Ordinance 887, p.5.

² See *Haskins v. Palmateer*, 186 Or App 159, 168 (2003) *rev den*, 335 Or 510 (2003) (principle that courts may not insert language into the text of a provision applies to the construction of administrative rules).

“was part of a tract on November 4, 1993” on which no other dwellings existed (OAR 660-033-0130(3)(a)); (2) personal-use airports “lawfully existing as of September 13, 1975” are allowed with fewer restrictions than those created after that date (OAR 660-033-0130(7)); (3) a community center can provide services to veterans “only in a facility that is in existence on January 1, 2006” (OAR 660-033-0130(36)); and (4) certain non-conforming uses may be expanded if “[t]he use was established on or before January 1, 2009” ((OAR 660-033-0130(18)(c)). LCDC again could have established a date in the rule for when the farm zone had to exist, but it chose not to.

29. The Board finds as an independent basis to reject the FOYC and STDC argument the fact that the rulemaking history cited by FOYC and STDC is not helpful for understanding the meaning of the rule language. It is clear from that rulemaking history that DLCD did not address the issue presented here where an existing use is later rezoned to become wholly within a farm zone. There is testimony in that rulemaking history from DLCD staff that included the word “currently” in a discussion about the purpose of allowing existing uses “wholly within a farm zone” to expand. There is no indication, however, that the word “currently” was being used to modify the timing of when the farm zone had to exist. To the contrary, the rulemaking record contains absolutely no discussion of a situation where the zoning might later change. The Board finds it more reasonable, therefore, to conclude that DLCD staff was using “currently” to refer to the time in which the rule would be applied, not the time that it was being adopted.
30. Whatever significance the staff might have intended with the word “currently,” that word was not included in the final version of the rule, which means it must not have carried any significance with the LCDC commissioners. The Board can presume that LCDC knew properties were capable of being rezoned. The FOYC and STDC testimony relies on one interpretation of an ambiguous term that does not even appear in the rule. The Board therefore finds that the rulemaking history cited by opponents to the applications creates an ambiguity rather than resolves one and, therefore, is not helpful for uncovering any meaning to the rule that is different than the meaning provided by the plain language of the rule.
31. The Board additionally finds that recent statements from individuals involved in the rulemaking process should be given no weight. LUBA has recently determined that “[p]ost-enactment recollections of persons participating in legislative proceedings are not probative legislative history.”³ The Board finds that the rules governing the review of legislative history are equally applicable to the review of rulemaking history.
32. The Board finds as an independent basis to reject this argument the fact that it would create an absurdity in light of earlier rulings by LUBA and the Court of Appeals. Those review bodies reversed the County’s approval of Riverbend’s earlier Goal 3 Exception for the precise reason that Goal 3 allowed the expansion without a Goal Exception if the County would only amend its Code to mirror state law. If the Board were to now determine that the Goal 3 implementing rules did not allow the expansion, a Goal 3 Exception would be necessary, but that Exception would be unavailable. The County already addressed this possibility as part of its Zone Change decision last year when FOYC raised this same issue. The County concluded that LUBA and the Court of Appeals could not have intended such an outcome. No party has offered the Board a

³ See *Squier v. Multnomah County*, LUBA 2014-074, Final Opinion and Order (Feb. 2, 2015).

reason that it must reconsider this argument that was already decided as part of the Zone Change and which was part of a decision that applied directly to the same parcels of land at issue in this proceeding.

33. The Board further finds that Riverbend Landfill, for all intents and purposes, was wholly within a farm zone in 1996. As the County found during the Zone Change proceeding, the effect of LUBA's and the Court of Appeals' decisions regarding the Goal 3 Exception was that the County should have originally approved development of the landfill in 1980 through the normal zoning process on EFU land rather than through the Goal Exception process. Had it done so, the landfill would have been in the EFU in 1996 when the "wholly within a farm zone" language was added to OAR 660-033-0130(18) rather than in the improperly applied PWS zone. In fact, as part of the Zone Change decision, the Board made an express finding that "[b]y changing the zoning on the applicant's property back to the EFU zone, the County is restoring the property's original zone designation and putting the applicant in the same position it would have been in if the County had originally permitted the landfill in the manner suggested by LUBA and the Court of Appeals." That finding was never challenged and remains applicable to Riverbend's property.
34. The record contains multiple submittals from Susan Watkins asserting that the expansion of a landfill in the EFU is not permitted under the Code and, instead, that Riverbend's proposal should be reviewed as the expansion of a non-conforming use. The Board rejects that assertion for the following reasons.
35. First, the Board finds the assertion that the County would treat the expansion of an existing landfill in the farm zone as a nonconforming use is directly contrary to the 2011 Code Change. That decision expressly acknowledged the effect of the 2011 amendment to the EFU Code provisions and stated "[t]he County's amended EFU zone now allows solid waste disposal sites as a permitted use."
36. Second, the Board finds the assertion that the County would treat the expansion of an existing landfill in the farm zone as a nonconforming use is directly contrary to Code provisions governing non-conforming uses. Specifically, YCZO Section 202 defines a nonconforming use as a use legally established prior to the adoption of a Code provision with which the use does not comply. LUBA has similarly held that a nonconforming use by definition applies where a use is contrary to provisions of local land use regulations. The Board finds that the existing landfill is not a nonconforming use because it is wholly consistent with all subsequently adopted Code provisions. The Board further finds that because Riverbend's applications meet all relevant approval standards, all bases for treating the existing landfill as non-conforming, if any exist, are extinguished.
37. In summary, the Board finds that Riverbend's proposed development is a permitted use in the EF-80 zone as long as it satisfies the County's Site Design Review standards and the standards set forth in ORS 215.296(1).

III. Site Design Review

38. Riverbend seeks approval to enhance and expand Riverbend Landfill through the County's Site Design Review process. YCZO Section 1100 establishes the standards for Site Design Review and provides a two-step process. The first step requires the applicant to submit a preliminary site

development plan for review. The second step requires a final site development plan submittal to reflect any changes to the site plan necessitated by the County's approval.

39. Most of the Site Design Review requirements are procedural in nature and ensure the applicant has provided the County with complete information on which to base its review. The record contains some testimony asserting that Riverbend did not provide the County with complete information on which to base its review. That testimony, however, is based on an assertion that the application must contain designs akin to final, construction-level drawings. The Board finds that the Code contains no such requirement.
40. The purpose of the Site Design Review process is to review the site as a whole, not the construction level detail of the eventual development. Construction-level drawings are typically reviewed by the building authority as part of the building permit process. Riverbend's development proposal, however, does not include any buildings or other structures for which a building permit is required. The construction-level detail of the proposal will be reviewed by DEQ, which has oversight of the actual development of municipal solid waste landfills and reviews the construction-level plans. The Board finds that an applicant is not required to spend large amounts of resources developing construction-level drawings for a proposal that has not yet been approved in concept by the County as part of a site plan. Instead, the Board interprets the Code to require the applicant to provide only that information necessary to allow the County to review the site plans that will then serve as the basis for detailed construction-level drawings.
41. The materials submitted with the application contain all of the elements of a Preliminary Site Development Plan, including existing site conditions, proposed changes and improvements to the site, and a written statement accompanying the site plan describing the present ownership and a schedule of development. The record contains testimony asserting that Riverbend has not demonstrated its ownership of the property within the proposed development area. As explained in Finding 22 above, however, Riverbend has provided deed records and other information demonstrating that the current landfill and the expansion area are comprised of a single legal lot wholly owned by Riverbend.
42. Beyond the procedural Site Design Review requirements, the actual evaluation of the site development plan is governed by YCZO 1101.02(A). Those criteria are addressed individually below.

A. YCZO 1101.02(A) – Site Design Review Factors for Consideration

43. When reviewing a Site Design Review application, YCZO 1101.02(A) requires consideration of the following factors: (1) characteristics of adjoining and surrounding uses; (2) economic factors relating to the proposed use; (3) traffic safety, internal circulation and parking; (4) provisions for adequate noise and/or visual buffering from noncompatible uses; (5) retention of existing natural features on site; (6) problems that may arise due to development within potential hazard areas; and (7) comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.
44. The Board interprets the Code such that the factors set forth in 1101.02(A) are not to be used as approval or denial criteria. As described in YCZO 1101.01, the factors are used by the County to

resolve potential conflicts that may arise “between proposed developments and adjacent uses.” By that express language, the factors are not intended to avoid all conflicts that may arise, nor are they intended to address uses that are not adjacent to the proposed use. Those factors, therefore, cannot be used as a basis for denying an application. Instead, the County’s obligation is to use those factors to potentially shape the development proposal by modifying it if necessary as a result of the consideration of those factors. The Board’s consideration of each of the factors listed in YCZO 1101.02(A) is set forth below.

1. YCZO 1101.02(A)(1) - Characteristics of Adjoining and Surrounding Uses

45. The subject property is in a rural setting with surrounding parcels generally used for agriculture. The record indicates that the surrounding parcels are relatively large in size, with few dwellings located adjacent to or in close proximity to the landfill.
46. Riverbend owns multiple parcels in the area totaling approximately 680 acres, allowing the opportunity for Riverbend to maintain extensive buffers between the active portions of the landfill and adjacent and surrounding uses. The areas where new landfill cells can be developed are constrained by the County’s prior imposition of a Limited Use Overlay that prevents landfill disposal in all but two areas of Riverbend’s property. The Board finds that the combination of the buffer areas and the Limited Use Overlay prevents Riverbend’s use of its property from disrupting the land use pattern created by adjoining and surrounding uses.
47. Riverbend’s proposed development will not increase the intensity of operations at the site. The record demonstrates that waste disposal volumes are projected to remain at current levels during the operational period of the expansion. The record further demonstrates that landfills are developed through the progressive filling of individual disposal cells. As one cell reaches capacity, an adjacent cell is opened. Once it reaches capacity, a disposal cell is closed. This progressive development results in landfill operational levels and equipment use that remain constant over time and the current level of operations simply relocates to a different portion of the site. The development proposal therefore does not result in any increase in potential conflicts with adjacent uses. Further, the County has previously concluded that the long history of landfill operations at this particular site has been compatible with adjoining and surrounding uses. As part of the Zone Change decision, for example, the County expressly found that the character and density of the surrounding area have remained consistent over the time period the current landfill has been developed.⁴ Because the application proposes only an expansion of the overall footprint of the landfill rather than an expansion of activities or operations, the Board finds that the proposal will continue to be compatible with adjacent and surrounding uses as it has been for decades.
48. The Board also finds that Riverbend’s proposed site plan has been modified in direct response to the County’s consideration of surrounding uses. For example, the perimeter berm along Highway 18 has been moved back to allow the retention of existing vegetation in that area. That vegetation serves to screen the landfill from travelers along Highway 18 as well as from more distant viewpoints. Similarly, the site plan will no longer include the development of Module 10.

⁴ Ordinance 887 at p.18.

That area of the proposed expansion would have brought landfilling activities closer to the adjacent farms to the north of the existing facility and had the potential for some impacts to those areas.

2. YCZO 1101.02(A)(2) - Economic Factors Relating to the Proposed Use

49. The Board finds that there are multiple economic factors relating to the proposed use reflected in the Preliminary Site Development Plan and the Final Site Development Plan being approved with this decision. From a site-design standpoint, Riverbend's development proposal is economically efficient. By enhancing the existing site and developing the expansion in a manner that ties into the existing facility, the proposal allows Riverbend to achieve the same disposal capacity utilizing a smaller footprint than would be required at a new site. The record also indicates that Riverbend has already reconfigured its entrance facilities, including initiating a major upgrade to its recycling and drop-off facilities, to create efficiencies, and that reconfiguration will not be altered with the new site plan.
50. Testimony from FOYC and others opposing Riverbend's application urge the County to review broader, non-site-specific economic factors, such as potential consequences of any landfill use, rather than the economics of the specific design being proposed. The Board finds that such a broader economic view is not required for purposes of Site Design Review. Broad economic factors are more appropriate when the County is reviewing amendments to the Comprehensive Plan or zoning designations, which was the focus of the County's earlier Zone Change decision for Riverbend. The Zone Change decision, for example, expressly weighed economic impacts to: (1) residential, commercial and industrial landfill customers; (2) other businesses that provide construction or operational services to the landfill; and (3) the citizenry of the entire County. No testimony in the record presents a compelling reason for why the County should reanalyze those broad economic factors as part of the Site Design review process.
51. Even if the Board were required to review broader economic impacts of the proposal, the record does not support FOYC's argument that there are negative economic consequences from a landfill use on the subject property. Riverbend Landfill is situated in an agricultural area where the farm uses are identical to the farm uses in other areas of the County with a similar topography, demonstrating that landfill operations are not hindering nearby farm uses. Further, investments in agriculture in this area have increased over time, as is evident by the increased number of vineyards and other capital-intensive crops like filbert orchards. Even one of the most vocal opponents submitted testimony stating that he has increased the level of farm activities on his farm that lies adjacent to the landfill property. To the extent there is any economic loss resulting from the removal of some of the subject property from agricultural production, the Board finds that loss to be outweighed by the economic gains associated with the landfill. Those gains are realized in the form of lower disposal costs for individuals and businesses, employment income from the development and operation of the landfill, and revenue to the County from license fees and taxes.

3. YCZO 1101.02(A)(3) - Traffic Safety, Internal Circulation and Parking

52. The Board finds that the Final Site Development Plan reflects a strong consideration of traffic safety and internal circulation. The record contains a recent traffic study demonstrating the proposed development will not negatively impact traffic safety. The County previously relied on this traffic study during the Zone Change proceedings because it demonstrated that the proposed expansion would be consistent with the County's Transportation System Plan. The traffic study concludes that trips associated with the landfill constitute a very small portion of overall traffic volumes, and there have been relatively few accidents in the broader area, none of which have been identified as being related to the landfill.
53. The record contains some testimony asserting that landfill-related traffic has the potential to track mud onto the highway, thereby reducing traffic safety. The record also indicates Riverbend actively clears the roadway of debris on a regular basis, and more frequently if necessary. Further, Riverbend works directly with DEQ to ensure that landfill activities do not negatively impact traffic safety along Highway 18.
54. The Final Site Development Plan has also been modified from the original plan in direct response to comments in the record regarding traffic safety. For example, one of the conditions of approval imposed by the Planning Commission, and which the Board is retaining, requires Riverbend to add additional screening along the roadway atop the perimeter berm. This screening will reduce the likelihood that lights from trucks using that roadway will impair the sight of drivers using Highway 18, thereby avoiding potential safety hazards.
55. The Board also finds that the development proposal does not make any changes to the internal circulation and parking plans that have already been approved by the County. Those plans remain sufficient for the proposed expansion, which will not result in any increase in traffic to the site or any need for additional parking. The Board also notes that no testimony in the record asserts that parking on the site is insufficient.

4. YCZO 1101.02(A)(4) - Provisions for Adequate Noise and/or Visual Buffering from Noncompatible Uses

56. The Board finds that the Final Site Development Plan provides adequate noise and visual buffering from non-compatible uses.
57. The County has previously acknowledged that the continued operation of Riverbend Landfill is compatible with development on other EFU parcels in the vicinity. That acknowledgement was made in findings supporting the Zone Change decision. Those findings were not challenged and remain applicable to Riverbend's property. The Board therefore finds that there are no non-compatible uses for which noise and visual buffering are required.
58. As an independent basis for concluding that noise and visual buffering have been considered, the Board finds that the Final Site Development Plan includes noise and visual buffering that is reasonable in light of surrounding uses. The Board specifically finds that landfill operations are very similar to agricultural operations and other nearby uses, and that those uses create similar conditions. For example, farming operations rely on the use of heavy machinery that generate noise and that are visible from distant areas. Similarly, traffic on Highway 18 also generates noise and is visible from distant areas.

59. Riverbend has proposed to develop a berm along Highway 18, planted with trees and shrubs to screen views of the landfill from travelers on Highway 18 and the surrounding area. In the Preliminary Site Development Plan, Riverbend proposed the addition of a 35-foot vegetated buffer between the toe of that berm and Highway 18. The stated intent of that proposal was to retain as much of the existing vegetation in that area as possible, and augment that vegetation with new plantings where needed.
60. In direct response to comments submitted to the Planning Commission, Riverbend then agreed to alter the initial design in a manner that will allow nearly all of the existing, mature vegetation in that area to remain. The revised plan moves the toe of the perimeter berm an additional 15 feet away from the highway right-of-way. The Board finds this modification increases the overall effectiveness of the screening because the buffer between the highway and berm will increase from 35 feet to 50 feet and retain existing vegetation that is already well established and effective.
61. The Board finds that the removal of Module 10 from the Preliminary Site Development Plan will also result in the reduction of potential visual and noise impacts. One result of that modification is that the working face of the landfill, where noise is generated, will move closer to Highway 18 where ambient noise levels are higher. The record contains a noise study that concludes the landfill operates within DEQ's noise standards and that potential noise impacts from the expansion area will also meet those standards. The removal of Module 10 from the site plan will also decrease the amount of active landfilling activities that are visible to travelers along Highway 18.

5. YCZO 1101.02(A)(5) - Retention of Existing Natural Features on Site

62. The Board finds that the Final Site Development Plan considers the retention of existing natural features on the site. The record reveals that the site contains natural features such as the river and tributaries with associated riparian vegetation, floodplains, stands of trees and other vegetation, and open space.
63. The Board finds that Riverbend's development proposal retains and enhances many of the natural features on the site. For example, Module 11 is designed to be set 105 feet back from the southern tributary on the property, which is a greater distance than the maximum amount the County could require under its riparian regulations. Additionally, the stream in that area, which has been degraded to facilitate agricultural practices unrelated to the current landfill use, will be enhanced to restore the natural characteristics of the stream and its floodplain by creating a more meandering stream with native riparian vegetation.
64. Riverbend will also retain existing vegetation on the site, except where removal of the vegetation is necessary to develop the expansion area or conduct the stream enhancements. That vegetation will also be enhanced by additional plantings along the Module 11 berm paralleling Highway 18 and within the buffer area between the berm and the highway.
65. The record contains testimony asserting that the removal of any natural feature (e.g. trees) would be a violation of the Site Design Review provisions concerning the retention of natural features. The Board rejects that interpretation of the Code. Under that interpretation of the Code, no new development would ever be possible because development will invariably disturb some natural

area. To the contrary, the Board finds that the purpose of the Site Design Review provisions is to guide development, not to prevent it.

66. In direct response to comments submitted to the record, the Preliminary Site Development Plan has been modified in a manner that will retain even more of the natural features on site than Riverbend originally proposed. For example, as explained in finding 60, the toe of the Module 11 berm along Highway 18 has been relocated to allow nearly all of the existing, mature vegetation in that area to remain. Similarly, the removal of Module 10 from the site plan will allow trees in that area originally slated for removal to remain.

6. YCZO 1101.02(A)(6) – Problems that May Arise Due to Development Within Potential Hazard Areas

67. The Board finds that the Final Site Development Plan adequately considers problems that may arise within potential hazard areas. The record indicates that Riverbend’s development proposal includes development within two potential hazard areas: (1) the 100-year floodplain and (2) a seismic zone.
68. The Board finds that the County imposes a specific mechanism for addressing problems that may otherwise arise due to development within the floodplain through imposition of YCZO Section 901. Pursuant to that Code section, before any development is permitted in the floodplain, it must satisfy the criteria for obtaining a Floodplain Development Permit. Riverbend has applied for, and the Board is approving, a Floodplain Development Permit. The Board discusses the criteria for obtaining the Floodplain Development Permit in section V of these findings. The Board adopts those findings here with this reference as support for its consideration of this Site Design Review factor.
69. In direct response to comments submitted to the record, the Preliminary Site Development Plan has been modified in a manner that will reduce potential floodplain impacts. Specifically, the removal of Module 10 from the site plan results in there being no new development in the floodplain of the northern tributary on the subject property.
70. The record contains testimony urging the County to consider more than what is required by the Floodplain Development Permit criteria. For example, one opponent of the application asked the County to look at impacts to the 500 year floodplain rather than the 100 year floodplain that is part of the County’s Floodplain Development permit criteria. The Board finds no basis for using the Site Design Review process as a basis for essentially imposing additional floodplain development criteria. The Board further finds that impacts to the 500 year floodplain are not normally considered when reviewing development. Having considered the request to review impacts to the 500 year floodplain, the Board finds that such a review is unwarranted and that its review of impacts within the 100 year floodplain is sufficient for this Site Design Review factor.
71. Unlike the County’s Floodplain Development Permit, the County does not impose its own seismic standards on development. However, the County does require solid waste disposal facilities to be permitted by DEQ, and the DEQ permitting process requires the landfill owner to address seismic issues. As the Applicant notes, seismic design for municipal solid waste landfills is governed in Oregon by the following: (1) DEQ’s Solid Waste Landfill Guidance Document; (2) Subtitle D of the Resource Conservation and Recovery Act (“RCRA”); and (3)

the U.S. Environmental Protection Agency’s (“EPA”) Seismic Design Guidance for Municipal Solid Waste Landfill Facilities. The Board finds that nothing in the site plan would allow Riverbend to avoid these seismic standards and, therefore, the very act of obtaining a DEQ permit ensures that seismicity is considered as part of the overall process. The Board relies on DEQ to ensure DEQ seismic standards will be met. By requiring Riverbend to obtain a DEQ permit as a condition of approval, the Board is ensuring that the County’s obligation to consider seismicity also is met.

72. The record contains testimony asserting that DEQ does not adequately address seismic issues as part of the permitting process. The Board has considered that assertion and finds that it is a complaint about DEQ’s regulatory process and unrelated to the County’s land use process. If a party disputes DEQ’s vigilance or seismic methodology, it can raise those concerns during DEQ’s permitting process. The Board also finds that assertion to be unsupported by the evidence in the record. Riverbend recently obtained a modification of its solid waste disposal permit for the development of a Mechanically Stabilized Earthen Berm (“MSE Berm”). As part of that process, DEQ considered the analyses from three different seismic experts – one retained by Riverbend, a second retained by landfill opponents, and the third retained by DEQ as an independent third party. The result of that analysis, as demonstrated by DEQ’s response to comments in that proceeding, which are in the record here, was a comprehensive review of not only the specific design of the MSE Berm, but also of the entire Riverbend site. Any assertion that DEQ is not vigilant when reviewing seismic issues is inaccurate.
73. In addition to regulatory seismic standards that will apply during the DEQ permitting process, the record indicates the existence of other guidelines that encourage developers to plan for a magnitude 9.0 earthquake. In direct response to comments submitted to the record regarding those guidelines, the County is imposing a condition to require Riverbend to design new perimeter berms to meet seismic design criteria for the magnitude 9.0 earthquake outlined in the Oregon Resilience Plan.

7. YCZO 1101.02(A)(7) – Comments and/or Recommendations of Adjacent and Vicinity Property Owners Whose Interests May Be Affected by the Proposed Use

74. The record in this matter includes significant comments and recommendation from adjacent and vicinity property owners. It also includes comments and recommendations from individuals who work or reside beyond the vicinity of Riverbend Landfill. The Board finds that the Final Site Development Plan reflects many of those comments and recommendations and that the County has sufficiently considered this factor of the Site Design Review process.
75. The Board finds that this Code provision does not require it to list and respond to each comment or recommendation in the record. Indeed, many comments in the record are unrelated to the specific approval standards or the factors to be considered as part of the Site Design Review process. While the Board does not find all relevant comments and recommendations in the record necessitate changes to the site plan, the Board finds some comments and recommendations warrant the changes that were made from the Preliminary Site Development Plan to the Final Site Development Plan, as well as some of the conditions of approval discussed in more detail in section VI. Such changes include those described in the findings relating to the other six Site Design Review factors such as (1) the modification of the perimeter berm to retain

more vegetation, (2) the removal of Module 10 from the site plan, (3) the requirement to include additional screening along the roadway on top of the perimeter berm, and (4) the requirement to design berms in a manner consistent with the seismic guidelines contained in the Oregon Resilience Plan.

B. YCZO 1101.02(B) – Development Standards of the Underlying Zoning District

76. YCZO 1101.02(B) ensures that development subject to Site Design Review satisfies the standards of the underlying zoning district. The Code provision states in full:

All development applications for site design review are subject to the development standards of the underlying zoning district and may be modified pursuant to satisfaction of the considerations provided in subsection 1101.02(A). The Director may waive submittal requirements consistent with the scale of the project being reviewed, upon determining that requirements requested to be waived are not necessary for an effective evaluation of the site development plan.

77. The underlying zoning district applicable to Riverbend Landfill is the EF-80 zone as part of the County's EFU district. Those development standards are set forth in YCZO 402.09. Pursuant to the conditions of approval associated with the Zone Change, other development standards apply as well, such as limits on development within riparian corridors. Additionally, the Zone Change applied a Limited Use Overlay to Riverbend's property that includes limits on some development. The standards in YCZO 402.09, the regulations relating to Riparian Corridors, and the Limited Use Overlay are addressed in this section.

1. EF-80 Development Standards

78. The Board finds that none of the limits on development stated in the development standards set forth in YCZO 402.09 are applicable to Riverbend's application.
79. YCZO 402.09(A) places limits on dwelling density. Riverbend's application, however, does not propose any dwellings. The Board therefore finds this Code provision to be inapplicable. For the same reason, the Board finds that the limit in YCZO 402.09(E) relating to site access does not apply. The record does not contain any testimony asserting that these Code provisions apply.
80. YCZO 402.09(B) places limits on parcel sizes and dimensions. However, the Board finds that this Code provision imposes new limits only where an application seeks (1) to create new parcels, (2) a lot line adjustment, or (3) a land division. For existing lots that will not change, YCZO 402.09(B)(3) provides that any permitted use is allowed. Riverbend's application does not propose changes to any existing lot. The record does not contain any testimony that the application does not satisfy this Code provision. The Board therefore finds that this Code provision places no limits on Riverbend's development proposal.

81. YCZO 402.09(C) establishes minimum setbacks for all yards. A setback, however, is a measure of distance between any property line and the nearest “structure.” YCZO 202.00 specifically defines “setback” as follows:

The horizontal distance measured perpendicularly from the property line to the nearest point of any structure on any parcel. Ordinary building projections such as eaves, bay windows, and chimneys, and unroofed decks or porches not more than 30 inches above ground level are not subject to setback requirements.

82. The Board finds that Riverbend’s application does not propose any structures and, therefore, the setback requirements do not apply. Even if the setback requirements did apply, Riverbend has not proposed any development within the 30-foot setback required by YCZO 402.09(C). The record shows that the closest new development to any property line is the toe of the perimeter berm along Highway 18, which will be set back 50 feet from the property line.

83. YCZO 402.09(D) places limits on parcel coverage. Those limits apply only for a parcel that is less than one acre in size. The Board finds Riverbend’s parcel is greater than one acre in size and, therefore, it is not subject to parcel coverage limits. The record does not contain any testimony asserting that this development standard applies.

84. YCZO 402.09(F) requires maintenance of clear-vision areas. The Board finds, however, that those requirements apply only at intersections of any two of the following: county roads, public roads, private roads serving four or more parcels, and railroads. The only “intersection” at issue in this application is the driveway that serves Riverbend Landfill, but that driveway serves only one parcel. The Board therefore finds this Code provision does not apply. The record does not contain any testimony asserting that this development standard applies to Riverbend’s proposal.

85. YCZO 402.09(G) places height limitations on dwellings and structures. The Board finds that Riverbend’s development proposal does not seek the development of any dwellings or structures.

86. The record contains testimony asserting the landfill is a “structure” that should be limited to 45 feet in height. The Board rejects that assertion for the following reasons. Section 202.00 of the Code defines a “structure” as “[s]omething constructed or built and having a fixed base on, or fixed construction to the ground or another structure.” The Code also defines “Height” as “[t]he vertical distance from the finished grade to the highest point of the structure.” “Grade” means “[t]he average elevation of the finished ground elevation at the centers of all walls of a building”

87. The Board finds that fill is not a “structure” under the Code. This finding applies to both the earthen fill used for the landfill’s perimeter berms and the waste fill that goes into the landfill. The fill in a landfill is not “fixed” or “attached” to the ground. Rather, as the Applicant has demonstrated, the fill rests on top of the ground. The only component between the fill and the underlying ground is the landfill liner system. The liner system, however, is an environmental protection measure and does not provide any support for the fill in a way that a foundation provides support for a building. Without the liner, the fill could still be placed on the ground. In contrast, a building requires a foundation for structural support. The Board further finds that the

fill eventually becomes indistinguishable from the original ground, especially when the landfill reaches capacity and soil and vegetation replace waste as the final surface of the fill.

88. As an independent basis for concluding that neither the landfill nor its berms are a “structure,” the Board notes that the method for calculating height does not apply to this type of development. For example, YCZO 402.09(G)(3) removes from height limitations “appurtenances” that are “usually required to be placed above the roof level . . . such as spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys and wind generators” The implication of that Code section is that a height measurement involves structures typical of actual buildings, such as ones that contain a roof, and which are capable of holding appurtenances like spires and belfries. Fill in a landfill does not include a roof or hold any appurtenances potentially rising above that roof.
89. The Board further finds that the Code’s definitions of “height” and “grade” demonstrate that the calculation of height does not apply to landfills. “Height” involves measuring elevation from a finished grade to the top of a structure. In the case of a landfill, the finished grade would be the top of the fill. There is no other object, therefore, the top of which can be measured from the height of that finished grade. Similarly, “grade” relates to the elevation of the finished ground at the center of all walls of a building. By using walls of a building as a reference for establishing the finished grade, the Code clearly contemplates height only in terms of an actual building rather than for all things capable of being placed on land.
90. As an independent basis for concluding the landfill is not a “structure,” the Board relies on the County’s prior consideration of the development of Riverbend Landfill that interpreted the Code in the same manner. As part of the County’s approval of the Goal 3 Exception in 2009, the County interpreted this Code provision and specifically indicated that the landfill involves only fill and is not a “building” or “structure.” Based on that interpretation, the County determined that Riverbend is not subject to the height limitation for buildings and structures, and the only height considerations were those imposed by the County to make the facility compatible with the surrounding area. Similarly, the County has on multiple occasions concluded that the original 1980 plan amendment and zone change for the landfill did not restrict the elevation of the landfill, even though the PWS zone had height limitations.
91. YCZO 402.09(H) places limits on occupancy of recreational vehicles. Those limits apply in conjunction with a dwelling or construction activities. The Board finds Riverbend’s proposal does not seek approval for a recreational vehicle, and any such vehicle needed for construction is allowed by right. The Board therefore finds this Code provision is not applicable. The record does not contain any testimony asserting that this development standard applies.
92. YCZO 402.09(I) places limits on off-street parking. The Board finds Riverbend’s proposal does not seek approval for any off-street parking and that this standard applies only to dwellings or to other uses which may generate traffic beyond what is normally expected in the EFU. The Board therefore finds this Code provision is not applicable. The record does not contain any testimony asserting that this development standard applies.

2. Riparian Corridor Development Standards

93. As part of the Zone Change decision in 2014, the County established specific Goal 5 riparian corridor regulations applicable only to Riverbend's property. Those regulations limit the permanent alteration of the "Riparian Area," which is an area defined as a corridor beginning at the top of bank of a fish-bearing stream and extending 100 feet from that top of bank. The County's regulations are based on the Land Conservation and Development's "safe harbor" method for protecting riparian areas set forth in Oregon Administrative Rule (OAR) 660-023-0090. Within that regulated corridor, specifically under subsection (5) of those regulations, Riverbend is permitted to make some permanent alterations of the Riparian Area, but only on a "demonstration that equal or better protection for identified resources will be ensured through restoration of Riparian Areas, enhanced buffer treatment, or similar measures." Such permanent alterations are not permitted, however, if they occupy more than 50% of the width of the Riparian Area. Some activities in the Riparian Area are exempt from these regulations.
94. The Board finds Riverbend's application meets the development standards set forth in the County's Goal 5 regulations applicable to the subject property. Riverbend's application relies primarily on subsection (5) of the County's Goal 5 regulations and presented evidence that its project will provide equal or better protection for the riparian area. The Final Site Development Plan also demonstrates that the permanent alterations do not occupy more than 50% of the width of the Riparian Area. The one exception to that limited encroachment is for the road that crosses the Riparian Area. Roads, however, are exempt from the County's Goal 5 regulations.
95. The Final Site Development Plan includes new berms associated with the development of Module 11 that are set back more than 100 feet from the South Yamhill River and from the two tributary creeks located on the subject property. The Board therefore finds those new berms meet the safe harbor provisions contained in the County's Goal 5 regulations.
96. The Final Site Development Plan includes enhancements to existing berms on the south side of the existing landfill as part of the development of Module 11. These enhancement areas are farther from the southern tributary than the existing berms, but they lie within the Riparian Area because they are closer than 100 feet from the top of the tributary's bank. This enhanced development, however, extends no more than 50 percent into the riparian corridor along that creek and is designed to be no closer than 50 feet at any one point. Such an encroachment is permissible if the development will provide equal or better protection of the resource.
97. The Board finds that Riverbend's development proposal provides equal or better protection of the riparian resource in this area. Riverbend will restore and enhance approximately 3.8 acres of riparian habitat of the southern tributary reach south of Module 11, as detailed in the Riverbend South Tributary Channel and Floodplain Enhancement Plan included with the Floodplain Development Permit Application Narrative.
98. The Final Site Development Plan also includes one access road that crosses a riparian area on the southwest side of Module 11. This road, which replaces two existing crossings, will allow Riverbend to access the existing leachate pond, as well as the future site to be used for an alternative technology for processing solid waste ("Green Technology Facility"). The Board finds that the road is exempt from the riparian vegetation removal limits in the County's Goal 5 riparian provisions. The Board finds that the road minimizes intrusion into the Riparian Area. The location of the road is constrained by the fact that it must tie in to the perimeter berm for

Module 11 and allow trucks to depart the berm to make the crossing. Because the road is located to the extreme west of the stream reach, it is located where the Riparian Area is narrower due to the poplar orchard on the southern side and altering the proposed straight alignment would cause greater riparian intrusion to accommodate more turns in the road. Similarly, departing the berm from a different location would require additional alterations of the riparian area. The proposed location also makes it possible to remove the two existing crossings and restore those areas to enhanced riparian zones, which will be part of the enhancement project. Finally, the location of the crossing allows for the continuation of plantings on the berm, which will improve screening and the overall environmental benefits in that location.

99. The final design of that crossing will not be developed until Riverbend consults further with the Oregon Department of State Lands (“DSL”) and the Army Corps of Engineers as part of the wetlands permitting process. The Board’s approval of the riparian crossing is therefore based on the figures that comprise the Final Site Development Plan. Although roads are exempt from the County’s Goal 5 riparian removal regulations applicable to the subject property, the Board finds that if DSL or the Army Corps of Engineers are unable to permit a crossing with the same or a smaller footprint, Riverbend will have to modify the Final Site Development Plan to allow the County to review any potential additional impacts to the Riparian Area. However, the Board finds that any approval of the riparian crossing that has the same or a smaller footprint than what appears on the Final Site Development Plan will not have to undergo further review by the County because, in that situation, there will be even less intrusion of the Riparian Area.
100. The record contains some testimony that identifies potential concerns related to development within the Riparian Area. However, the Board finds that testimony relies only on general concerns, or relies on subsections (2) and (3) of the County’s Goal 5 regulations, and does not assert that the application does not or cannot satisfy subsection (5) of the County’s Goal 5 standards applicable to the subject property. For example, a letter from FOYC dated December 4, 2014 requested the County to require Riverbend to modify the site plan so that no crossing of the southern tributary would be required. However, that letter does not state why such a modification would be required, and it was also presented to address YCZO 1101.02(A)(5) relating to the retention of natural features rather than as a requirement of the County’s Goal 5 riparian regulations. Similarly, a letter from STDC dated March 12, 2015, relies primarily on the fact that there will be development in the Riparian Area, but does not address subsection (5), which allows such development where equal or better protection of the resource is provided.
101. The letter from STDC does assert that the road across the Riparian Area does not satisfy the County’s Goal 5 standards. That assertion, however, is based on STDC’s claim that the encroachment has not been minimized. As stated above in Finding 98, the Board finds that the design does minimize disturbance of the Riparian Area because of the chosen location where the Riparian Area is narrower and because of the straight alignment. STDC’s letter only speculates that the design should be further minimized and does not present persuasive evidence that it is feasible to do so.

3. Limited Use Overlay Standards

102. In addition to the development standards in YCZO 402.09 and the County’s Goal 5 riparian regulations, the County imposed additional standards that apply specifically to the development

of Riverbend's property as conditions of approval for the Zone Change. The conditions of approval that relate to the development of the site are as follows:

Condition 3 – Areas Where Landfilling Prohibited. Condition of Approval 3 from Ordinance 887 prohibits the landfill disposal of solid waste on certain portions of RLC's property subject to the Zone Change. Those include Tax Lots 5501-300, 5501-401, 5501-500, 5511-100, 5511-600, 5512-100, 5512-200, 5512-400, 5512-500, the southern portion of 5501-400, the eastern portion of 5501-101, and any portion of 5501-200 that lies south of the Yamhill River.

Condition 4 – Area Reserved for Alternative Disposal Technology. In addition to preventing the landfill disposal of solid waste on the southern portion of Tax Lot 5501-400, Condition of Approval 4 from Ordinance 887 prohibits all solid waste disposal activities that would prevent the siting and construction of a Green Technology Facility on that portion of Riverbend's property.

Condition 7 – Alternative Disposal Technology. Condition of Approval 7 from Ordinance 887 requires Riverbend to establish a Green Technology Facility on site. Construction of the Green Technology Facility must commence no later than seven years after Riverbend obtains a DEQ permit for solid waste disposal outside of the former PWS zone. The facility must be operational within 18 months after the commencement of construction unless the County extends that timeline.

103. The Board finds that the Final Site Development Plan is consistent with Condition 3 of the Zone Change because it does not result in the landfill disposal of solid waste in any prohibited areas. The only landfill disposal of solid waste will occur on Tax Lot 5501-200 and the northern portion of Tax Lot 5501-400. Neither of those tax lots appears in the list of prohibited areas set forth in Condition 3.
104. The record contains some testimony asserting that the Final Site Development Plan allows landfilling on the southern portion of Tax Lot 5501-400. The Board finds that testimony to be inaccurate. The development that crosses from the north portion to the south portion of Tax Lot 5501-400 is a road that will be used to access the leachate pond and, eventually, the Green Technology facility. No landfill disposal of solid waste occurs in that area. Moreover, Condition 4 of the Zone Change expressly allows non-landfill disposal activities to take place on the southern portion of Tax Lot 5501-400 such as operational support or other activities that do not prevent the development of the Green Technology Facility. The Board finds that the road does not prevent the development of the Green Technology Facility and, instead, that it will promote the development of such a facility by creating an access way to that site.
105. The record contains additional testimony asserting Riverbend cannot meet the County's development guidelines because it is not proposing a specific Green Technology facility as part of this application. The Board finds that there is no such requirement. As Condition of Approval 7 acknowledges, the construction of any particular facility depends on many factors and will take time to develop. That condition imposes a specific timeframe for when the facility

must be built, but it does not prevent Riverbend from seeking approval of other development that does not include such a facility. The Board finds that Riverbend's development proposal preserves its ability to meet this condition within the applicable time period.

106. The record contains additional testimony asserting Riverbend's Site Design Review application is not consistent with YCZO 1101.01, which is the purpose statement for the Site Design Review Process. The Board finds that YCZO 1101.01 is not an approval standard. Rather, that Code provision describes the "purpose" of the approval standards that appear in other sections of the Site Design Review Code provisions. This provision also describes the types of applications to which the Site Design Review process applies. The Board was presented with no compelling reason to treat YCZO 1101.01 as a stand-alone approval standard and it declines to interpret the Code in that manner.

C. Site Design Review Procedural Requirements

107. YCZO Section 1101.03 contains several procedural requirements governing the Site Design Review Process. The Board finds that these requirements are not approval criteria and that Riverbend's application submittals, Riverbend's supplemental submittals, and the actions taken by the County Planning Department are consistent with these requirements. The Board finds that the record contains no compelling testimony that these requirements have not been met.
108. With respect to YCZO 1101.03(A), Riverbend attended a pre-application conference with County Planning Staff on October 1, 2014. The Board further finds that Riverbend submitted a Preliminary Site Development Plan sufficient for review by the County. As required by YCZO 1101.04, the Preliminary Site Development Plan included: (1) figures showing existing site conditions, including site topography, drainage and other water and soil features, existing structures, and adjacent uses; (2) proposed changes and improvements to the site; and (3) a written statement regarding the present ownership of the subject property, along with a schedule of expected development.
109. The record contains testimony asserting Riverbend's Preliminary Site Development Plan was insufficient for review by the County. However, the Board finds that testimony improperly asserts that Riverbend was required to submit construction-level drawings or include plans for a Green Technology Facility. As just noted, Riverbend's Preliminary Site Development Plan contained all of the elements required by YCZO 1101.03 and YCZO 1101.04. Riverbend also submitted additional information required by the Planning Director pursuant to YCZO 1101.04(B)(1)(e).
110. The Site Design Review provisions allow the Preliminary Site Development Plan to be deemed the Final Site Development Plan if no modifications to the plan are required. In this case, the Planning Commission required several modifications to the Preliminary Site Development Plan. Typically, those changes would be submitted to the County at a later date pursuant to YCZO 1101.05. Because Riverbend's applications were appealed, however, and the record re-opened for this Board's review, Riverbend was able to submit a new site plan to reflect the Planning Commission's required modifications. The Board is not requiring any additional modifications to the site plan and, therefore, finds that the revised site plan provided to the Board on March 4,

2015 as part of the Applicant's Pre-Hearing Submittal shall be deemed the Final Site Development Plan.

111. The Board finds the Final Site Development Plan, in conjunction with other information provided to the record, contains all of the elements required by YCZO 1101.05(A). Specifically, the Final Site Development Plan contains a site analysis (existing conditions), a site plan, a final grading plan, and a landscape plan. No cross sections, elevations or other drawings of proposed structures are necessary because no new structures are being proposed. However, documents in the record do show cross sections and elevations of the perimeter berm and the proposed landfill. Finally, the Board deems the proposed schedule of development to be the same as described in the Preliminary Site Development Plan, only that the schedule will begin with the development of Module 11 rather than Module 10. The record also contains figures depicting what the development will look like in approximately 7 years when the Green Technology condition has been triggered. The Board did not receive any testimony that the figures and information described in this Finding are insufficient for purposes of serving as the Final Site Development Plan.

IV. Farm Impacts Assessment

112. The SDR process requires development applications to demonstrate compliance with the requirements of the underlying zone. The underlying zone for Riverbend's property is the EFU zone governed by YCZO 402. YCZO 402.02(V) specifically requires that the maintenance, enhancement, or expansion of a landfill in the EFU zone must satisfy the criteria set forth in ORS 215.296(1). That requirement implements ORS 215.183(2)(k), the state statute that allows solid waste disposal sites in the EFU. These findings refer to the criteria set forth in ORS 215.296(1) as the "Farm Impacts" criteria.
113. The Farm Impacts criteria require certain proposed uses, including landfills, to demonstrate: (1) that they will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and (2) that they will not significantly increase the cost of accepted farm or forest practices on those surrounding lands. These findings will refer to accepted farm and forest practices, and the cost of accepted farm and forest practices, collectively as "Farm Practices."
114. The Applicant provided an initial Farm Impacts Assessment with its applications. The Applicant provided the following supplements to the Farm Impacts Assessment: (1) an updated Farm Impacts Assessment prepared by CSA Planning Ltd., dated December 23, 2014; (2) a letter addressing "Allegations of Impacts to Farm Practices" dated December 31, 2014, prepared by Cable Huston and including Attachments 1-3 relating to the Farm Impacts Assessment; (3) a letter addressing "Farm Impacts Analysis" and "Economics" dated March 17, 2015, prepared by Cable Huston and including Attachments E and G relating to the Farm Impacts Assessment; and a memorandum prepared by CSA Planning Ltd., dated March 19, 2015 regarding "Riverbend's Response to Farm Impacts Assessment Testimony." The initial Farm Impacts Assessment and the supplements described in this Finding are collectively referred to as the "Farm Impacts Assessment" or "FIA." Having weighed all of the evidence in the record, the Board finds that the facts and analysis contained in the FIA are more persuasive and adopts the FIA in its entirety into these findings here by this reference. The Board specifically adopts the methodology, facts,

and conclusions stated in the FIA. In the event of a conflict between these Findings and the FIA, the FIA shall govern.

115. The FIA concludes that Riverbend's proposed development will have no impacts to the low intensity forest practices associated with the relatively few woodlots that exist near the subject property. Further, the Board finds that the record contains no persuasive testimony alleging any impacts to forest practices that have resulted or will result from the continued operation of Riverbend Landfill. The Board therefore finds that the proposed use satisfies the forest practices component of the Farm Impacts criteria and makes no further findings in that regard. The remainder of the Findings in this section focus on the farm practices component of the Farm Impacts criteria.
116. The Board finds that the Farm Impacts criteria do not prevent the County from approving development that may have some impacts on Farm Practices. Rather, a proposed use cannot force a "significant change" in Farm Practices or "significantly increase" the cost of those practices. The Board further finds that the County need only consider "accepted farm practices" and the Farm Impacts criteria do not require consideration of other uses of property such as domestic or commercial uses that are only farm-related. According to state statute, "accepted farming practices" are modes of operation, common to farms of a similar nature, and which are necessary for the operation of such farms to obtain a profit in money. Thus, where a potential farming practice is conducted as a hobby or other personal use, the Board finds that the Farm Impacts criteria do not apply. Further, the Board will not consider evidence of impacts to Farm Practices that are not shown to be common and necessary.
117. The Board has determined that it should adhere to LUBA's well-developed methodology for analyzing the Farm Impacts criteria. Under that methodology, these Findings will first describe the accepted farming practices existing on surrounding lands. The Findings will then determine whether the proposed use will force a significant change in, or significantly increase the cost of, those practices.
118. As a threshold matter, the Board must determine which lands constitute "surrounding lands" for purposes of Riverbend's proposal. The statutes and rules appear to be silent on this matter, and no party in the proceeding identified any authority for what constitutes surrounding lands. The Board finds that surrounding lands for purposes of this application are those lands situated within one mile of the existing landfill and the area proposed for expansion. Beyond that area, potential impacts from the landfill are too difficult to quantify or to isolate from impacts caused by other farm and non-farm uses. For example, testimony in the record addresses potential impacts from litter that may escape the landfill site. However, the record is also clear that litter accumulates along roads that are extremely distant from the landfill, and no party disputed the fact that such litter comes from other sources. Even if landfill litter could travel beyond one mile (which is not supported in the record), it would commingle with litter from other sources and be indistinguishable for purposes of potential impacts.
119. Moving away from the landfill, the land use pattern is broken up by roads, natural features, farm uses, non-farm rural uses, residential uses, and more intense urban development. The Board finds that each of these characteristics limits the spread of potential impacts from the landfill, and some cause impacts of their own. In the absence of compelling evidence that a particular impact

beyond one mile from the landfill is substantially attributable to the landfill, the Board will not consider such distant lands in its primary analysis and findings. The Board will therefore limit its primary analysis and findings to those lands within one mile of the existing facility and the expansion area. However, and only in the alternative, the Board will address some potential impacts to Farm Practices in the broader area reviewed by the Applicant in its Farm Impacts Assessment where there is testimony that those impacts may exist.

120. The Board also finds that its analysis and findings relating to Farm Impacts must be based in large part on quantifiable or verifiable data. Because the Board must determine if a potential impact forces a “significant” change in farm practices or “significantly” increases the costs of farm practices, evidence asserting the proposed use does not meet the Farm Impacts criteria must describe both the alleged impact and the degree to which that impact might reasonably be expected to impact Farm Practices. Without some evidence of the degree of significance, the evidence cannot support a finding that the criteria are not met. And without evidence of the degree of an alleged impact, neither the Board nor the applicant can consider mitigation measures that could reduce a potentially significant impact to an acceptable level. This is especially important in the context of a quasi-judicial proceeding where the sponsor of the evidence may be the only one with access to that information and the procedures do not allow for cross-examination or other compelled discovery to verify the evidence.

A. Accepted Farm Practices on Surrounding Lands

121. The Board is required to identify accepted farming practices on surrounding lands. In order to do so, the Board must first determine what farm crops and other farm uses exist on those lands. The FIA identifies the crops that currently exist within a one-mile radius of the existing and proposed use (the “Study Area”). The record contains testimony criticizing the completeness of the Applicant’s initial version of the FIA, but the Board finds those criticisms are unsupported. LUBA has concluded that it is “entirely appropriate” for an applicant to begin the process by visually surveying surrounding lands for purposes of identifying nearby farm and forest uses. Indeed, throughout the Planning Commission process and this Board’s review, participants were able to identify areas in the Study Area that were either mis-identified or incomplete in the initial FIA. That testimony was then used to update the initial assessment and the result is that the FIA in the record contains a robust and thorough assessment of crops and other farm uses in the Study Area. To the extent the initial analysis had any deficiencies, those deficiencies were rectified by the remainder of the process.
122. Based on the FIA, in its final version that incorporates testimony presented to the Planning Commission and the Board, farm crops and other farm uses on surrounding lands include the following:
1. Orchards (primarily hazelnuts and walnuts)
 2. Grass Seed (including similar uses such as hay production and clover seed)
 3. Pastures with Livestock
 4. Poultry, Pheasants, and Egg Production
 5. Field Crops (such as row crop vegetable production)
 6. Plant Nurseries
 7. Horse Breeding

123. The record identifies the accepted farming practices associated with the above-listed farm crops and other farm uses. Those accepted farming practices include, but are not limited to, the following:
1. Orchards: orchard establishment, crop growth, chemical and nutrient applications, brush removal, pruning, irrigation, rodent control, bird control, sucker control, flailing and leveling orchard floor, harvest, and nut washing/drying.
 2. Grass Seed: chemical and nutrient applications, crop growth, bird control, rodent control, planting, weed control, tilling/disc, sheep grazing, swathing for harvest, combine/thresh, clean and bag seed, and straw bailing or flail.
 3. Pastures with Livestock: chemical and nutrient applications, pasture growth, animal growth, birthing, medication, milking, rodent control, livestock medical treatment, feeding and watering, and fence maintenance.
 4. Poultry, Pheasants, and Egg Production: feed production, animal growth, incubating/hatching, medication, egg collection, rodent control, feeding and watering, and pen construction/maintenance.
 5. Field Crops: chemical and nutrient applications, crop growth, bird control, rodent control, tilling and planting, tilling/disc, and harvest.
 6. Plant Nurseries: chemical and nutrient applications, bird control, rodent control, plant starts (in greenhouses), pruning, plant growth, irrigation, soil stockpiling, and on-site composting.
 7. Horse Breeding: feeding, cleaning stables, grooming, maintaining fencing, rodent control, providing medication and basic health treatment for resident horses, coordinating veterinary services when appropriate, and activities associated with breeding.
124. Other accepted farming practices may also exist within one mile of the proposed use and are identified in the FIA. Specifically, Section 4.2 of the supplemental Farm Impacts Assessment dated December 23, 2014 includes a full description of farm practices titled “Farm Practice Characterization. Rather than restate that portion of the FIA or all facts and conclusions in the FIA in their entirety, the Board adopts and incorporates the characterization of farm practices in the FIA into these Findings by this reference. The Board further finds that the record does not contain any persuasive evidence of other accepted farming practices not listed in the FIA.

B. Potential Impacts to Accepted Farming Practices

125. In order to complete the second and third steps of the analysis and make findings regarding Farm Impacts, the Board must first identify the source of potential impacts from the landfill use that could force significant changes in accepted farm practices or significantly increase the costs of those practices. The record identifies the following sources of potential impacts from the proposed use:

1. Litter
2. Water quality
3. Air particulates
4. Traffic
5. Nuisance bird attraction
6. Rodent/pest attraction

126. The Board analyzes each of these potential impact sources below. That analysis relies, in part, on the fact that the Board is adopting the Planning Commission's condition of approval denying the portion of Riverbend's original application that included the development of Module 10. Module 10 would have allowed Riverbend to expand the existing facility to the north. That expansion area would be closer to the immediately-adjacent farm to the north. Further, although Module 10 would not have been any closer than the existing landfill is to the farms to the northeast and east and south, it would have brought the working face of the landfill slightly closer to those areas. The record does not contain any testimony from the owner of the farm immediately adjacent to the north of the existing facility, but it does contain such testimony of alleged impacts from the owner of the farm to the northeast and property owners farther to the north. By removing Module 10 from the site plan, the expansion area will not be closer to those areas of alleged impacts and, instead, will move closer only to Highway 18 and the farms to the west and southwest, where there are fewer alleged impacts.

1. Litter

127. The record reveals that litter has the potential to escape from a landfill facility. Such litter in significant volumes could impact Farm Practices if it interferes with combine operations, cleaning and bagging seed, or harvesting operations.

128. The Board finds that the actual litter impact that has resulted from Riverbend's current operations, or that could result from future operations, is not significant and is limited by several factors. Litter is generated where the working face of the landfill is located. Module 11 is predominantly surrounded by a buffer of properties Riverbend owns and for which the record does not indicate there have been any litter impacts. It will be farther from farms to the northeast and east that have alleged litter impacts from the existing facility. The Board also finds that, based on prevailing wind patterns described in the FIA, potential litter impacts will be limited in geography and are not likely to have significant impacts on farms that generally lie to the west.

129. The record also indicates that Riverbend manages litter by the use of litter fences protecting farms to the northeast and east, and by regularly conducting litter patrols around the entire site and along Highway 18. Riverbend is required to conduct litter management as part of its obligations under its DEQ permit. The record reveals that the amount of litter collected as part of the litter patrols is quite small (approximately one to two trash bags collected twice per week, indicating that the actual amount of escaping litter is low). Based on the above facts, the Board finds that the amount of litter actually escaping the landfill is not significant and, therefore, has not and will not cause any impact to Farm Practices, much less significant impacts.

130. The record contains testimony from McPhillips Farms, located to the northeast, that it has a policy to refund customers any time a bale of hay it sells has plastics or other landfill litter in it.

However, that testimony does not indicate that McPhillips Farms has ever had to actually issue such a refund under that policy, which implies that litter has not been a problem for that particular farm. Further, even if such impacts have existed in the past, which the Board finds they have not, the working face of the landfill will be moving farther from that farm and, therefore, those impacts will decline or disappear altogether.

131. The record also demonstrates that the landfill is not the only source of litter that has the potential to reach farms. Other rural areas of the County, where there is no possible connection to the landfill, contain amounts of litter that are no less than those around the landfill, and may in fact be greater. The Board finds Riverbend's litter control measures are effective and create an environment with even less litter than would exist without the landfill. The Board therefore finds that the presence of litter on lands within the Study Area is similar in quantity to other lands in the County and therefore has no impacts on Farm Practices.

2. Water Quality

132. The record contains testimony asserting that an expanded landfill will degrade the quality of groundwater and surface water in the area. The majority of that testimony raises water quality issues as a general environmental concern rather than in relationship to Farm Practices. However, the record does contain some limited testimony that degraded water quality will impact some Farm Practices. For example, a December 4, 2014 letter from FOYC notes that irrigation is an accepted farm practice for many crops. The letter goes on to note that "impacts to either groundwater or surface water from the proposed expansion of the landfill could force significant change in or increase the cost of this accepted farm practice."
133. The record demonstrates that the quality of the water on Riverbend's property is one of the most regulated and intensely monitored site conditions. A map submitted with Riverbend's First Post-Hearing Submittal, for example, identifies the location of multiple compliance and detection wells for monitoring groundwater quality. The record also contains several documents, provided by those opposing the application, containing the results of stormwater monitoring that has occurred on site. These monitoring programs are performed with stringent regulatory oversight by DEQ.
134. The Board finds that the existing landfill has not caused degradation in water quality. The Board further finds that this lack of impacts to water quality means that no impacts to Farm Practices have occurred from the existing facility or will occur from the proposed expansion. Notably absent in any of the testimony opposing the application is a credible assertion that any farmer has changed irrigation practices, incurred higher irrigation costs, or experienced crop losses due to water quality impacts from the landfill. As noted by FOYC, such impacts are only speculative. A more detailed analysis of actual water quality in the area reveals no such impacts.
135. The record reveals that the analytical results for groundwater samples from compliance monitoring wells indicate that no contaminant releases from the landfill have occurred at the permitted point-of-compliance boundary. The Board finds this evidence to be the most credible evidence in the record relating to groundwater quality because comprehensive groundwater monitoring results are provided to and reviewed by DEQ, which has stated its concurrence with the conclusions based on those results.

136. Stormwater monitoring at Riverbend Landfill has shown concentrations of a limited number of constituents to be over statewide benchmarks. Generally these constituents have been iron and E. coli. However, as the applicant noted, exceedance of a benchmark is not indicative of changes in surface water quality. Rather, when concentrations are found above a benchmark, Riverbend is required to take specific corrective actions to manage the facility's stormwater discharges. Such corrective actions have included operational changes, placing additional erosion controls, and investigating potential sources of elevated constituent concentrations.
137. The Board finds that no impacts to surface water can be attributable to the existing landfill and, therefore, are not likely to be caused by the proposed expansion. Other sources of contaminants in the rural area are not regulated in the same rigorous manner as required for Riverbend and, as a result, water quality in the South Yamhill River watershed is already diminished from those activities. The Board finds that this fact is most evident from the figure Riverbend submitted showing the various pollutants which cause the river to be water-quality limited. That figure clearly shows no incremental impact to the quality of the water as it passes by the landfill.
138. Based on the foregoing and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of impacts to water quality.

3. Air Particulates

139. The Applicant initially identified a potential for impacts to Farm Practices resulting from air particulate emissions. Riverbend's existing landfill, and the proposed expansion, is governed by state regulations controlling air emissions, and Riverbend operates under a "Title V" permit for that purpose. However, the record does not contain compelling evidence that any air particulate from the landfill has or will impact Farm Practices.
140. The lack of impacts from the landfill, as the Applicant notes, likely results from the fact that the overall background air quality in the area is determined by existing farm practices surrounding the landfill. Not only is Riverbend limited in what it can emit, many farm uses, especially ones that involve tilling and disc work common to this area, also produce air particulate emissions. Other farm practices, such as slash burning, similarly result in air particulates. The latter can be observed directly in some of the aerial photographs in the record.
141. The Board further finds that the lack of impacts from air particulate emissions is evidenced in part by the increase in farming activities that have taken place near the landfill. A nearby orchard, for example, has been expanding over the last 20 years, clearly indicating that any impacts from air particulate emissions are too slight to significantly impact Farm Practices. Similarly, new orchards downwind from the landfill have been planted in recent years. Such crops require intensive front-end investments that likely would not be made in the face of any significant impacts from the nearby landfill.
142. Based on the foregoing and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of impacts from air particulate emissions.

4. Traffic

143. Riverbend initially analyzed potential Farm Impacts from traffic generated by the landfill. Uses that create significant changes in traffic volumes on roads used by farming operations could conceivably force significant changes in farm practices or the costs of those practices. The record does contain testimony raising concerns with truck traffic accessing the site, but that testimony is presented as a general concern about traffic patterns and is not presented in relationship to Farm Practices.
144. The Board finds that the lack of traffic impacts from Riverbend is due in part to its direct access to Highway 18. That transportation facility is a high-volume state highway, allowing landfill traffic to access the site from distant areas without having to use smaller, more rural roads that would conflict with farm uses. The Applicant submitted a Traffic Impacts Study confirming that the level of road use by the existing landfill and the proposed expansion accounts for a very minor portion of the total peak hour traffic volumes in the area.
145. Based on the foregoing and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of traffic impacts.

5. Nuisance Birds

146. The applicant acknowledges that the existing landfill attracts some nuisance birds. The proposed expansion is therefore likely to be an attractant as well. As explained in more detail in the findings below, the Board finds that the existing landfill and the proposed expansion may cause some impacts to Farm Practices. However, the Board finds that impacts from birds has not been and will not be significant.
147. Birds attracted to the landfill are primarily corvids, gulls, and pigeons. As described in the record, these birds are all mobile and gather where there are available food sources. The landfill is one of those potential food sources because of the working face, an area of temporarily-exposed waste on which birds can feed. There is no persuasive evidence in the record that nuisance birds are attracted to the landfill for any reason other than the food that is sometimes available at the working face.
148. The landfill is not the only bird attractant in the surrounding area. Other crops, such as food crops, filberts, and grain, also attract large populations of nuisance birds. Further out, other attractant food sources exist, such as grapes at vineyards. Urbanized areas are also major attractants of nuisance birds. In fact, the record indicates that there is a documented increase in nuisance birds throughout the entire Willamette Valley because of increased urbanization.
149. The mere attraction of nuisance birds to the landfill does not indicate whether that attraction rises to a level significant enough to force changes in farm practices or to increase the costs of farm practices. To the contrary, it is undisputed in the record that bird control is an accepted farm practice regardless of the presence of a landfill. The Board must therefore determine if birds attracted to the landfill increase the burden on Farm Practices beyond the burden that would occur in the landfill's absence and, if so, determine whether that increase is significant.
150. It is undisputed in the record that Riverbend must implement bird control measures as part of its DEQ permit requirements. Riverbend has apparently controlled birds using different methods

over the years, and it currently relies on a falconry program that uses birds of prey to scare off nuisance birds and to keep them from making the landfill a long-term foraging area.

151. No participant in this proceeding presented a detailed study of bird populations at the landfill throughout the year. DEQ, however, inspects the site regularly and makes note of bird populations. According to DEQ's observations, large increases in bird populations are seasonal and, therefore, it is not a year-round phenomenon. The Board finds that evidence from DEQ to be credible because it comes from a neutral agency that has the opportunity to make year-round observations. Some testimony in the record criticizes the efficacy of Riverbend's falconry program, asserting that the program simply pushes the nuisance birds onto adjacent farms. In contrast, the bird control company that manages the falconry program at Riverbend indicated that the long-term impacts of the falconry program reduce bird populations in a broad area. The Board finds that testimony more credible because it is offered by an individual who has the opportunity to observe bird populations on a regular basis and in different areas of the County.
152. Other testimony in the record asserts that the number of birds in the area has increased as the size of the landfill has increased. The Board gives that assertion little weight, however, because it fails to recognize the operational realities of the landfill. As noted above, the food source for nuisance birds at the landfill is the working face. Although the mass of the landfill has increased over time, the working face of the landfill does not increase as the size of the landfill increases. Indeed, the record reflects that Riverbend has made operational changes to actually reduce the size of the working face over time. The Board therefore finds that if there has been an increase in nuisance birds in the area, that increase is best explained as a result of other, non-landfill factors.
153. The record contains testimony that birds from the landfill have caused grass seed loss from gulls attracted to the landfill. That testimony asserts that gulls leave the landfill to feed on the grass seed on the neighboring McPhillips farm. Other evidence in the record, however, indicates that gulls do not eat grass seeds as a significant food source. That same evidence indicates that the presence of gulls may actually discourage flocks of geese, which may feed on grass seed as a primary food source. Additionally, the evidence asserting impacts from gulls does not attempt to describe the degree of the alleged impact. For example, there is no indication of the frequency the gulls fed on the seeds, if at all. Nor is there any indication that the farm practices for producing grass seed were forced to change as a result. The absence of such details, in conjunction with other evidence in the record that Riverbend must implement bird control measures and that some amount of bird control is a standard farm practice, does not allow the Board to conclude that significant impacts to Farm Practices have occurred, or will occur, as a result of the landfill's operations. The Board finds no persuasive testimony that other birds will be attracted to the landfill in the future that cannot also be controlled.
154. The record contains additional evidence that casts doubt on bird-related impacts caused by the landfill. For example, information provided by a nearby farmer who operates a filbert orchard adjacent to the landfill, another orchard approximately one mile from the landfill, and a third orchard approximately two miles from the landfill, indicates that he has not observed any greater impacts from birds at his orchard that is adjacent to the landfill. Considering the three orchards, the farmer's experience is that impacts from birds are not related to a farm's proximity to the landfill. The presence of nuisance birds at the orchard near the landfill is consistent with bird

populations at the other orchards, and does not require the farmer to alter farming practices as a result. The Board finds this testimony to be the most useful because it allows a comparison to be made of similar uses at different distances from the landfill. In contrast, testimony from other farmers with only one farm is incapable of providing credible comparisons to other farms.

155. The record contains testimony asserting that nuisance birds have specifically caused increases in the occurrence of coccidiosis. That testimony goes on to claim that the increased occurrence of coccidiosis necessitates an increased use of antibiotics in livestock and more costly treatments from a veterinarian. These are presented as evidence that the Farm Impacts criteria cannot be met because of increased costs to farm practices. For the following reasons, the Board finds that this evidence does not compel the Board to conclude that either the existing landfill or the proposed expansion result in significant impacts to Farm Practices.
156. First, the evidence in the record indicates that coccidia, the protozoa that cause coccidiosis, are “host specific” and, therefore, the type of coccidia birds carry are not the same organisms that cause coccidiosis in various livestock. Second, the evidence in the record indicates that coccidia are prevalent in many species and that accepted farm practices include managing for coccidiosis even in the absence of nuisance birds. The mere occurrence of coccidiosis, or even an increase in the number of cases, may therefore be related to several environmental factors unrelated to the landfill. Third, there is evidence in the record indicating that coccidia have a complex lifecycle making it unlikely that birds that digest infected feces from other animals will spread the disease. That evidence was presented by a licensed veterinarian with experience treating various farm animals, including small ruminants. The Board finds that evidence to be the more credible evidence when compared to the anecdotal evidence claiming nuisance birds have caused increased cases of coccidiosis. Fourth, the testimony claiming cases of coccidiosis have increased around the landfill is not supported by quantitative evidence that allows the Board to assess the degree of the alleged impact. For example, the testimony from McPhillips Farms alleges that operation has spent more on antibiotics, but that testimony does not state how much was actually spent, how much was spent before the landfill began its operations, or how much would be expected to be spent in the absence of the landfill.
157. Based on the foregoing, and the record as a whole, the Board finds that Riverbend’s operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of nuisance birds. The Board’s conclusion is based on the weight of all the evidence in the record, some of which does indicate that nuisance birds are capable of causing an impact to some Farm Practices. However, as explained above, the Board finds that any such impacts are either contradicted by other evidence in the record, or the impacts do not reflect a level of significance prohibited by the Farm Impacts criteria. To remove any doubt about the degree of those impacts, however, the Board supports the condition imposed by the Planning Commission denying the portion of Riverbend’s application that would have allowed the development of Module 10. By only allowing the expansion in the Module 11 area, any potential impacts from nuisance birds will be reduced with respect to the McPhillips farm, the farm for which most of the impacts from nuisance birds are alleged to have occurred.

6. Rodents

158. Riverbend initially analyzed potential Farm Impacts from rodents. As noted in the initial FIA, however, the presence of rodents is not unique to landfills and is common in rural farm areas. Rodent control, therefore, is an accepted farm practice even in the absence of a nearby landfill. Moreover, Riverbend is required by DEQ to implement rodent control measures as part of its permit obligations. As with other potential impacts, the mere potential for rodents, or even the presence of rodents, is not sufficient to determine whether the Farm Impacts criteria have been met. The Board must determine whether the actual presence of rodents has or will force significant changes in farm practices or increase the costs of those practices.
159. The record contains the results of trapping data collected as part of Riverbend's rodent control measures. Those data show a relatively small number of rodents existing on the site. The absence of rodents is further documented in the DEQ inspection reports included in the record. Specifically, DEQ did not discover rodent issues during any of its inspections over the prior year. The Board finds this testimony to be the most credible because it comes from a neutral agency that has the opportunity to make regular observations of the site.
160. The record contains some evidence alleging that farms near the landfill have been overrun with rats coming from the landfill and that these rats have impacted Farm Practices. For example, McPhillips claims that rats coming from the landfill have so overrun his farmhouse that he cannot employ a farm manager. The Board gives little weight to that evidence for the following reasons.
161. First, the Board finds that housing a farm manager is not an "accepted farm practice" required to be analyzed. A farm practice is a mode of operation employed by the person doing the labor, not the laborer itself. Even if hiring farm labor is a "farm practice," the allegation by the owner of McPhillips Farms is that he cannot house his farm manager, not that he cannot hire a farm manager. There is no evidence in the record that housing a farm manager is either common or necessary. No other farmer providing testimony indicated that he or she must house a farm manager. Moreover, McPhillips indicates that he has a farm manager and that his farm has continued to operate. Housing the farm manager is therefore not "necessary."
162. Second, the McPhillips testimony is not credible. Despite the claim that he cannot house a farm manager, other testimony from McPhillips indicates that he indeed has employed a farm manager who lives in the house. The testimony that there is a rodent problem on the McPhillips' side of the landfill appears to be overstated and is severely undermined by other evidence in the record. Specifically, statements by the owner of an RV park immediately adjacent to the landfill, and closer to the working face, indicate that there have been no rat problems. In fact, that testimony and testimony from individuals opposed to the application claim that the adjacent RV park is in an idyllic and pastoral setting.
163. The record contains an assertion that increased rodent populations caused by the landfill have impacted Double G Paints' horse breeding operation. That testimony specifically asserts that rodents dug holes in that farm's pastures and, as a result, caused a horse to be injured. As described in that testimony, however, the Board finds that there is no connection between the rodents and the landfill.

164. The stated connection between the horse injury and the landfill is not rodents from the landfill. Rather, Double G Paints claims that landfill birds caused kestrels and owls to leave their farm, that the kestrels and owls served to reduce rodent populations, and that the result was an increase in rodents that eventually caused the injury. The Board finds that the chain of connections described in this testimony (landfill, nuisance birds, owls/kestrels, rodents, horse injury) severely reduces the likelihood that the landfill caused the horse injury. As the applicant notes, the underlying ecological conditions associated with the landfill have not changed during the period Double G Paints has been in operation in a manner that would establish a causal connection between the landfill and the horse injury. Double G Paints' testimony indicates the owners moved to the area in 2000. The landfill had already been in operation for nearly twenty years at that point. According to scientific literature in the record, the American kestrel is not long-lived and has a lifespan of less than five years. Similarly, owls with the longest lifespan live for only approximately 13 years. Based on those facts, the owls and kestrels that were present when Double G Paints began operating had taken up residence while the landfill was in full operation and the ecological conditions associated with the landfill were already established. The Board finds that the arrival and departure of kestrels and owls on this property is more likely a result of their natural lifecycle and unrelated to the presence of the landfill. The record also indicates that the owners of Double G Paints were not implementing accepted farm practices necessary for rodent control (such as rodent proof food bins), and instead were relying on natural processes that were subject to change. The Board finds that a change in those natural processes (the departure of the kestrels or owls) is not a change in farm practices.
165. The record contains evidence that rodents from the landfill have caused damage to a nearby filbert orchard. However, the record contains additional evidence that a filbert orchard adjacent to the landfill has experienced no increase in rodent problems as a result of the landfill. That latter testimony is the result of an interview with a farmer that has filbert orchards adjacent to the landfill, one mile from the landfill, and approximately two miles from the landfill. The Board finds that evidence to be more credible because it allows a comparison to be made regarding rodent impacts with respect to proximity to the landfill. Given the relatively small range rodents have that is described in the record, the Board finds it reasonable to conclude that if there have been no impacts to an adjacent filbert orchard, there have not been rodent impacts from the landfill to orchards that are more distant. The Board further finds that the lack of impacts from rodents is evidenced in part by the increase in farming activities that have taken place near the landfill. A nearby orchard, for example, has been expanding over the last 20 years, clearly indicating that any impacts from rodents are too slight to significantly impact Farm Practices. Such crops require intensive front-end investments that likely would not be made in the face of any significant impacts from the nearby landfill.
166. The record does not contain any other credible evidence regarding potential impacts to Farm Practices from rodents caused by the landfill. Based on the foregoing, and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of rodents.

7. Other Alleged Impacts

167. In addition to the specific impacts discussed above, the record contains testimony describing other impacts to Farm Practices alleged to be caused by the landfill that either have occurred, or may occur in the future.

a) Impacts to Pheasant Operations

168. The record contains evidence of alleged impacts to a pheasant operation on the adjacent McPhillips Farm. The alleged impacts to the pheasantry stem from the assertion that noise from the landfill is disruptive to the health of the pheasants. For the following reasons, the Board gives limited weight to that testimony.

169. If a pheasantry on the McPhillips farm existed in the past, it has not been operated recently for profit and has been a hobby use of the McPhillips farm outside the scope of the Farm Impacts analysis. During the Planning Commission proceedings, it was demonstrated that the McPhillips farm did not hold a license from the Oregon Department of Fish and Wildlife (“ODF&W”). Such a license is required for anyone who sells game birds or game mammals. While this matter was under review by the Board, Mr. McPhillips provided a copy of a license from ODF&W for game birds. That license, however, was issued on March 3, 2015, one week before the Board’s hearing. Similarly, the only receipt for pheasant meat provided as evidence of the pheasantry is dated March 10, 2015, two days before the Board’s hearing. The Board finds that the timing of these items seriously undermines the claim that the pheasantry has existed for seventy years. By his own admission, Mr. McPhillips has only recently constructed pens for pheasants, despite his claim that his farm has been using elaborate pens for decades. Finally, even if the Board accepts that there has been a pheasantry on site, Mr. McPhillips’ oral testimony to the Board was that his pheasants will be fine as the landfill continues to operate.

170. Finally, the Board has imposed a condition of review that will prevent Riverbend from constructing Module 10, the only area of the proposed expansion that would have been close to the McPhillips farm. By allowing only the construction of Module 11, this decision will ensure that any potential impacts to pheasants on the McPhillips farm will be reduced or eliminated. Based on the foregoing, and the record as a whole, the Board finds that Riverbend’s operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of impacts to pheasants on Mr. McPhillips’ farm.

b) Bank Loans

171. The record contains testimony asserting that the presence of Riverbend Landfill has impacted one farmer’s ability to get a loan for his farming operations. For the following reasons, the Board finds that testimony does not support a conclusion that the existing or expanded landfill cause significant Farm Impacts.

172. The Board finds that the process of obtaining a bank loan to support farm activities is not an “accepted farming practice.” As described above in Finding 116, “accepted farming practices” are modes of operation necessary for the operation of farms to obtain a profit in money. The proceeds of a loan may be used to fund accepted farming practices, but are not farm practices in and of themselves because they are not a mode of operation. Further, a loan is an economic practice that is unique to any debtor. That is, there is no discernible way based on this record for

the Board to determine whether the proceeds of a loan are used directly in a farming operation, or used in a more ancillary manner such as by adding to the source of funds that pay for commercial operations on a farm. The Board therefore finds that although a farm loan may be common, there is no persuasive testimony in the record that farm loans are necessary for farms to make a profit.

173. Even if the process of obtaining a bank loan can be considered an accepted farming practice, the Board finds that such a practice has not been, and will not be, significantly impacted by the existing landfill or the proposed use. The evidence in the record offered as proof of impacts to bank financing relies in part on a property appraisal of the McPhillips Farms property adjacent to the landfill. The appraisal in question, however, was performed on the assumption that the property would be subdivided and developed with six homes on the subdivided parcels. The alleged reduction in property value was based on Mr. McPhillips' potential inability to actually develop the parcels with houses and the appraiser did not opine on any reduction to the property based solely on its use as farmland. Thus, even if the appraisal were valid, the Board finds that any discussion of the property for use as six home sites is not useful for determining what agricultural loans may be obtained for the property in its current state.
174. The Board further finds that the appraisal is not valid because it makes an "extraordinary assumption" that Mr. McPhillips' property has environmental contamination. As noted by additional documents submitted by STDC's attorney, however, no environmental investigation of Mr. McPhillips' property has occurred and any impacts on loan values are purely speculative at this point. The Board further finds that the statements Mr. McPhillips relies on from the bank did not address whether the landfill had reduced Mr. McPhillips' property value, but addressed whether the bank would value the loan based on the lower of two appraisals when two appraisals exist. The Board finds that the record does not indicate Mr. McPhillips ever actually applied for a loan or that he was offered a loan at a higher interest rate solely because of the presence of the landfill.
175. As an independent basis for rejecting this argument, the Board finds that any impacts to bank loans available to farmers, if they exist at all, are not likely to be significant. This conclusion is based on the fact that other farms in the Study Area are apparently able to finance capital-intensive investments such as the establishment of a filbert orchard. Those investments were either made without a loan, which indicates loans are not a necessary part of a farm's operations, or they were made with a loan, which indicates that loans are readily obtainable for farm operations in the Study Area.

c) Potential Impacts to Farms Beyond One Mile

176. As the Board stated in an earlier finding, its analysis of potential Farm Impacts is based on a review of farm uses in the Study Area, comprised of properties devoted to farm uses within one mile of the existing landfill and the expansion area. The record contains testimony asserting that some impacts from the landfill reach beyond that one-mile area. The Board finds that it is not required to review these impacts because there is no persuasive or compelling evidence that any such alleged impacts are a direct result of the landfill. Even so, and solely in the alternative, the Board makes the following findings as the basis to conclude that neither the existing landfill nor the proposed expansion result in Farm Impacts beyond the Study Area.

177. Testimony from Peavine Valley Stables asserts that the existing landfill has impacted its stable operations because of litter, odor, and rodents. The record indicates the stables are 1.75 north of the Riverbend site.

- With respect to litter impacts, the Board adopts the same findings stated above to conclude that the actual impacts from litter are not significant enough to cause impacts to the stables. At that distance, and in light of prevailing wind patterns in conjunction with intervening factors, the small amount of litter that actually escapes the landfill would not cause significant impacts to this stable operation.
- With respect to odor, the Board finds that there is no credible evidence in the record to indicate that odors from the landfill are the odors causing the alleged impacts at the stables. The stables are in a rural area that generates many offensive odors, and the record indicates the presence of other odor generators in the area, including non-farm odors like the composting facility in McMinnville. Even if an offensive odor in this area could be attributed to the landfill, this testimony asserts that the stables lost the business of a single customer as a result. The Board finds that the loss of one customer is not significant, especially in light of the absence of any testimony describing the number of customers that continue to do business with the stables.
- With respect to rodents the Board adopts the same findings stated above to conclude that the actual impacts from rodents at this distance from the landfill are not significant.

178. Testimony from Crescent Farms identified potential impacts to beef cattle, egg production, meat goats, honey production, and general crops. The record indicates Crescent Farms is just over one mile south of the existing landfill and expansion area.

- The Board finds that the Crescent Farms testimony is based on future, undefined plans to expand the farms operations, specifically with respect to beef cattle, egg production, meat goats, and food crops. The Board finds that the County is required to review only potential impacts on current accepted farming practices and that plans for future farming practices that are not well-developed or only speculative in nature, such as those presented in the Crescent Farm testimony, need not be included.
- The Board finds that the Crescent Farms testimony does not describe any Farm Impacts from the existing landfill and, in fact indicates the absence of such impacts. For example, cows are currently raised on that property without the use of any drugs. The development of Module 11 will move the operation of the existing landfill west, and no farther south than the existing landfill. Additionally, the Board finds that there is no credible evidence in the record to conclude that the number of nuisance birds attracted to the existing landfill will increase with the development of Module 11. The Board therefore finds that the expanded landfill will not increase the potential for any impacts to this property.

- With respect to the apiary on this site, the Board finds that the Crescent Farms testimony does not allege any impacts to the apiary from the existing landfill. As with other testimony in the record relating to apiaries, the issue raised is couched in terms that beehives “could” be impacted by American Foulbrood. However, there is no persuasive evidence that any apiary has actually been impacted in this way. As with other potential impacts, the Board further finds that evidence in the record concerning this potential impact is not substantiated by scientific data. The Board agrees with the applicant that if this risk was a major threat to apiaries, one would expect it to be a topic studied by scientists in the field. To the contrary, a review of the Journal of Apicultural Science in the record indicates no such studies have been published. The Board further finds the evidence provided by opponents to the landfill is from Australia as part of a bulletin guide and does not include scientific data sources for its conclusions. Moreover, the bulletin recommends mitigations such as “cover” to minimize impact potential, and daily cover is a requirement for landfills in Oregon. Additionally, the only apiaries identified in the record are to the south, east, or north of the existing landfill, none of which are will be meaningfully closer to the landfill’s operations with the development of Module 11.

179. The record contains testimony asserting that the landfill will have negative impacts on wineries in the area because of diminished views. The Board finds that the operation of a winery is not an accepted farm practice. Although directly tied to agriculture because of the connection to vineyards, wineries are commercial uses. Wineries are among the “non-farm uses” listed in ORS 215.283 and would not be allowed to operate in the EFU zone but for their being listed in that statute. The Board also finds it noteworthy that wineries, like landfills, cannot be permitted unless they also meet the Farm Impacts criteria because those standards are imposed on wineries by operation of ORS 215.452(11). That statute requires counties to apply certain standards to wineries “for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands.” Pursuant to ORS 215.456, wineries may also be permitted as a commercial use in conjunction with agriculture under ORS 215.283(2)(a), in which case the Farm Impacts criteria also apply. The Board finds that it makes little sense to refer to a use as a “farm practice” when that use itself is permissible only where it must avoid significant impacts to farm practices.

180. Even if the Board were to determine a winery is a farm practice – which it does not – the evidence in the record does not support a conclusion that impacts to wineries have resulted or will result from Riverbend’s development proposal. Despite the testimony from a representative from the Willamette Valley Wineries Association that there are 20 vineyards or wineries within a three mile radius of Riverbend, the actual number is five vineyards, three of which have wineries. Additionally, those wineries fall within the outer half of that three mile radius and are not within the Study Area the Board adopts for its Farm Impacts analysis. Among those wineries, only one – Youngberg Hill – has a direct view of the landfill. That winery is also approximately 2.5 miles from the landfill. Contrary to the testimony provided to the Planning Commission, and as documented in Riverbend’s rebuttal evidence, that winery receives stellar reviews from its customers who rave about the views from the winery, and since 2011 the winery has annually received an award as a best destination for weddings.

181. The record also reflects that the winery industry has increased significantly in recent decades and has grown in the presence of the existing landfill. The Board finds no credible evidence in the record that a winery has been forced to change any of its practices, or incurred additional costs because of the landfill. Based on the foregoing, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to wineries in the area.

C. Summary of Findings Related to Farm Impacts

182. To summarize the Farm Impacts criteria, the Board finds that neither the existing landfill nor the proposed use force significant changes to farm practices, or significantly increase the costs of those practices, on surrounding lands devoted to farm uses. The Board further finds that the existence of alleged significant impacts to Farm Practices is either not significant under the Farm Impacts criteria or undermined by countervailing and more credible or more persuasive evidence in the record. The Board makes the following additional findings as the basis for the other findings in this section:
183. Evidence in the record regarding diminished water quality is based only on perceived concerns, and there is no credible or persuasive evidence in the record that any farmer has changed accepted farming practices or incurred increased costs because of water quality impacts from the landfill. In contrast, evidence regarding the actual water quality in the area around the landfill demonstrates that the existing landfill has not degraded water quality, that water quality is protected in part by regulations enforced by DEQ, and that Riverbend will have to continue adhering to those regulations with the development of Module 11.
184. The Board finds that there is no cumulative effect to Farm Practices from the landfill. The landfill has been and will be developed in phases, and the level of operations will remain constant over time. As older cells are filled, they are closed and the operations move to newer cells. The size of the overall landfill, therefore, is unrelated to the degree of impacts that would be caused by the landfill at any given time. The Board finds in the alternative that if any cumulative impacts do exist, they have not forced significant changes in farm practices or the costs of those practices. The FIA in the record includes a longitudinal study that clearly shows that the level of farming activities adjacent to the landfill have increased over time. The Board finds that an increase in such activities undermines all claims that impacts from the landfill have increased as the size of the landfill has increased, especially in light of other factors that may also serve as the source of impacts. Further, if any cumulative effect did exist, the Board finds that such a cumulative impact would be mitigated to an acceptable (i.e. non-significant) level by the removal of Module 10 from the site plan. The removal of Module 10 from the site plan will reduce the overall life of the landfill. The remaining life of the landfill with the expansion will be less than the amount of time the landfill has already existed.
185. The Board gives great weight to the fact that the farm economy on lands within three miles of Riverbend has intensified over time. The Board specifically adopts and incorporates the longitudinal study contained in the FIA that documents this fact. The Board finds the facts and conclusion in the FIA to be the most compelling evidence that: (1) the amount of land devoted to farm uses has remained stable over time; (2) new, capital-intensive uses such as filberts have been expanded within one mile of the existing landfill and uses such as vineyards have been

added in the foothills farther out; and (3) no land in the Study Area has been taken out of production.

186. The Board also gives great weight to the fact that the landfill expansion will not alter the level of operations at the site. Specifically, the Board finds that the existing landfill has not forced significant changes in accepted farm practices and has not significantly increased the cost of farm practices. The Board therefore finds that the continued operation of the landfill will not significantly impact Farm Practices because: (1) the volume of waste disposal will remain constant at current levels through the useful life of the expansion; and (2) the landfill is developed through the progressive development of individual disposal cells - as one cell reaches capacity, an adjacent cell is opened and the first cell eventually closes. The result is that the “expansion” of a landfill is actually a shift in the same level of operations from one location to another

V. Floodplain Development Permit

187. Portions of Riverbend’s proposed development lie within the County’s Floodplain Overlay District. YCZO Section 901 governs development within that overlay and establishes the standards for issuing a Floodplain Development Permit.
188. As an initial matter, the Board finds that the floodplain and floodway maps to be used in the review of a Floodplain Development Permit are the most recent versions of any applicable map approved by the Federal Emergency Management Administration (“FEMA”) as part of the National Flood Insurance Program (“NFIP”). YCZO 901.15 expressly acknowledges that FEMA will revise those maps, and the Board finds that the Floodplain Development Permit approval standards can be applied in a meaningful manner only if they rely on the most up-to-date data. The Board makes this finding because much of the testimony in opposition to the Floodplain Development Permit focuses on the historic floodplain. The Board finds that testimony to be irrelevant to the current permit application. The record indicates that Riverbend’s prior activities in the floodplain were conducted through a previous Floodplain Development Permit. As the Applicant correctly notes, development in the floodplain is not prohibited, and the fact that there has been prior development in the floodplain in this area is irrelevant to Riverbend’s current application.
189. The approval standards for a Floodplain Development Permit are straightforward and technical in nature. These Findings address each of the applicable approval standards below. Some provisions in YCZO Section 901 that are procedural in nature are omitted. The Board finds that the record does not contain any relevant or persuasive testimony alleging noncompliance with the omitted provisions.

A. 901.05 - Floodplain Development Permit Application

190. YCZO 901.05 establishes the type of information that must be included with an application for a Floodplain Development Permit. The Board finds that subsections (A) through (C) of YCZO 901.05 are not applicable to Riverbend’s application and, therefore, that information required by those sections was not required to be submitted to the County. Those provisions apply to building structures and not to development consisting only of fill. YCZO Section 202 defines “structure” specifically as that term is used in YCZO Section 901 as “a walled and roofed

building including a gas or liquid storage tank that is principally above ground.” The Board finds that no such structures are proposed within any floodplain or waterway subject to Riverbend’s application. The record does not contain any testimony asserting that such information should have been provided.

191. The Board finds that Riverbend’s application provided the information required to be submitted by YCZO 901.05(D). That provision requires submittal of specific data regarding the extent to which any watercourse will be altered or relocated as a result of the proposed development. The record indicates that earthwork associated with Riverbend’s development proposal will occur within the 100-year floodplain of the South Yamhill River, and that the earthwork will result in a net removal of soils from the floodplain. The Applicant provided an Engineer’s Certification including data regarding the extent those watercourses will be altered as a result of the earthwork activities.

B. 901.06 - Floodplain Development Permit Criteria

192. YCZO 901.06 sets forth the specific approval criteria for obtaining a Floodplain Development Permit:

Prior to issuance of a floodplain development permit, the applicant must demonstrate that:

- A. The proposed development conforms with the permit requirements and conditions of this section and the use provisions, standards and limitations of the underlying zoning district and other overlay district.*
- B. The proposed development, if located within the floodway, satisfies the provisions of subsection 901.09.*
- C. The proposed development will not increase the water surface elevation of the base flood more than one (1) foot at any point.*
- 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.*
- E. The proposed development is consistent with policies j. and k. of the Comprehensive Plan, as amended by ordinance 471.*

Policies j. and k. of the Comprehensive Plan, as amended by Ordinance 471, read as follows:

j. 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 -U.S.D.A. - Soil Conservation Services), that are not regulated under the Forest Practices Act. (Ord 471)

k. It is county policy that land use management practices and nonstructural solutions to problems of erosion and flooding are preferred to structural solutions. Water erosion control structures, including riprap and fill, should be reviewed by the appropriate state permitting authority to insure that they are necessary, are designed to incorporate vegetation where possible, and designed to minimize adverse impacts on water currents, erosion, and accretion patterns.

193. The Board finds that Riverbend's development proposal satisfies YCZO 901.06(A). As stated in the discussion and Findings in Section II, the project is an allowed use in the EFU zoning district as part of a solid waste disposal facility under YCZO section 402.02(V). The Board adopts that discussion and those Findings here by this reference.
194. The Board finds that Riverbend's development proposal satisfies YCZO 901.06(B). The project is not located in the floodway. Further, as discussed in more detail below, the project complies with YCZO section 901.09. The Board adopts that discussion and its related Findings here by this reference.
195. The record contains some testimony questioning whether any portion of the proposed development is within the floodway. However, that testimony is based on outdated FEMA maps. For example, the analysis conducted by T.J. Bossard Engineering, sponsored by opponents to the application, relied on a Flood Insurance Rate Map ("FIRM") dated March 2, 2010. However, the record shows that FEMA has since issued new maps for this portion of the floodplain with an effective date of May 9, 2013, which the Applicant relied on. The Board finds that the evidence based on the more recent maps provides substantial evidence on which it should rely.
196. The Board finds that Riverbend's development proposal satisfies YCZO 901.06(C). As noted above, the Applicant provided multiple Engineer's Certifications. Those certifications indicate the proposed project will not increase the water surface elevation of the base flood more than one foot. In fact, those certifications demonstrate that there will be no rise in the BFE. That conclusion is based in part on the fact that the project involves a net removal of soil from the floodplain and that removal is adjacent to the proposed floodplain encroachment where fill will be added as part of the development.
197. Testimony in the record asserts that the Engineer's Certifications are insufficient. That testimony criticizes the first certification because it does not include the "input data" that led to the conclusions. The Board, however, does not find that such input data is required. The input data comes from FEMA and is publicly available. The Engineer's Certification identified the

source of that data, which was available to others. The certification by the engineer as to the data source and the results is sufficient to serve as substantial evidence for the conclusions that appear in the certifications.

198. Other testimony criticizes the second Engineer's Certification because it allegedly relies on an erroneous fact – a statement that Module 10 was not in the 100-year floodplain. The Board agrees that the statement in the certification that Module 10 is not in the floodplain is unclear. However, the Board finds that statement does not undermine the conclusion of the certification.
199. One reading of that statement in the second Engineer's Certification is that Module 10 was not assumed to be in the floodplain for purposes of the initial Engineer's Certification. If that is true, then the removal of Module 10 from the site plan would bring the site plan into alignment with that initial analysis and the conclusions would be the same. A different reading of the statement is that the second Engineer's Certification incorrectly determined that Module 10 was not in the floodplain and, therefore, did not correctly revise its analysis to reflect the removal of Module 10 from the site plan. However, the Board further finds, as a matter of pure logic, that the removal of Module 10 from the site plan would not result in an increase in the BFE. As shown on the figures provided with the applications, the encroachment into the floodplain in that area involves only fill and there are no excavation activities adjacent to that fill. The removal of Module 10 would result in less fill in the floodplain and any impact to the BFE would result in lesser rise. Because the overall impact with Module 10 was less than the one-foot maximum rise allowed by the Code, the smaller increase resulting from the removal of Module 10 would still be within that limit. The Board also notes that no evidence was submitted to the County indicating that the proposed development would cause any increase in the BFE, much less an increase that exceeds the one-foot maximum allowed by this Code provision.
200. The Board finds that Riverbend's development proposal satisfies YCZO 901.06(D). The Planning Commission imposed a condition, which the Board also includes in this decision, requiring Riverbend to obtain all applicable permits from federal, state, and local governmental agencies before the Floodplain Development Permit will issue. That condition also requires Riverbend to document that all NFIP requirements will be satisfied: Wetland permits for impacts to non-wetland waters will be obtained from the Oregon Department of State Lands ("DSL") and the U.S. Army Corps of Engineers; and additional hydrologic and hydraulic analysis of the proposed project will be conducted by a registered professional engineer to ensure all applicable NFIP requirements have been met. The Board finds that it is possible for Riverbend to obtain these permits and approvals because the record indicates it has done so in the past.
201. The Board finds that Riverbend's development proposal satisfies YCZO 901.06(E) because it complies with Policies j and k of the Comprehensive Plan. With regard to Policy j, the proposed project does require some temporary impacts to existing riparian vegetation in order to restore, enhance, and increase the size of the riparian zone and its vegetation. For example, non-native Himalayan blackberry will be removed and replaced with native species. The record indicates that native trees and shrubs that must be removed to facilitate restoration activities will be salvaged and used during site planting and stabilization where possible.
202. With regard to Policy k, the Board finds that the project has been designed to utilize only non-structural, natural materials to minimize adverse impacts from erosion and flooding. In

particular, the grading plan is designed to greatly attenuate flood velocities such that only planting with grasses and staking with shrubs will be needed to stabilize soils.

C. 901.07 - Floodplain Overlay District General Standards

F. Fills and Levees.

Except for approved relocation of a water course, no fill or levee shall extend into a floodway area. 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, rip-rap, bulkheading or similar provisions. No fill or levee shall cause additional flood waters on adjacent land.*

203. YCZO 901.07 sets forth general standards applicable to all development within the Floodplain Development Overlay. The Board finds that the Code provisions of subsections 901.07(A), (B), (C), (D) and (E) are not applicable to this project because they apply to manufactured homes, anchoring, construction of new structures or improvements to existing structures, municipal utilities and services, or subdivisions. Riverbend's development proposal does not propose these types of development, and such developments do not currently exist within the area for which the Floodplain Development Permit would apply. Riverbend indicated in its application that these provisions are inapplicable, and the record does not contain any compelling evidence to the contrary.
204. The Board finds that Riverbend's proposal meets the standard in YCZO 901.07(F). That provision prohibits most development within a floodway. As noted above, no fill is proposed to extend into the floodway area. YCZO 901.07(F) also limits the kinds of materials and protections that can be used for fills and levees. Riverbend's proposal is to use fill that will include only those natural materials listed in the Code. The record further indicates that all fill will be protected from erosion by vegetation, rip-rap, or similar erosion control measures per standard engineering practices. The Board finds that the engineer's hydraulic analysis provided by the Applicant demonstrates that the proposed fills will not cause additional floodwater on adjacent lands. The Board further finds that the record does not contain any compelling testimony specifically asserting that these portions of the standards in YCZO 901.07(F) have not or cannot be met.
205. YCZO 901.07(F) also requires a showing that fills or levees will have a beneficial purpose. The Board finds that Riverbend's proposed fill will have the beneficial purposes of allowing the enhancement and expansion of the existing landfill. The Board finds that the County has on multiple occasions determined that the continued operation of the landfill is important and

beneficial to the citizenry of the County, and that the fill activities Riverbend proposes are necessary for that purpose.

D. 901.08 - Specified Standards for Areas Where Base Flood Elevation Data are Available

206. The Board finds that YCZO 901.08 does not apply to the proposed project. That Code provision establishes standards in the FP Overlay District for the development of residential structures, manufactured homes, non-residential structures, or recreational vehicles. Riverbend's proposal does not include any such structures or vehicles. Riverbend indicated in its application that these provisions are inapplicable, and the Board finds that the record does not contain any compelling evidence to the contrary.

E. 901.09 - Floodway or Watercourse Development Provisions

207. YCZO 901.09 sets forth provisions further limiting development in the floodway and additional procedural requirements for the alteration of a watercourse. The Board finds that YCZO 901.09(A) is not applicable. That provision applies only where dwellings or other structures are proposed within the floodway, and Riverbend's proposal does not include either. Riverbend indicated in its application that these provisions are inapplicable, and the Board finds that the record does not contain any compelling evidence to the contrary.
208. The Board finds that YCZO 901.09(B) is not applicable. This provision applies only where development is proposed in the floodway. Although this provision is not applicable, Riverbend provided the County with a hydraulic analysis demonstrating that the proposed project will not result in any increase in flood levels during the occurrence of the base flood discharge.
209. The Board finds Riverbend's development proposal satisfies the approval standard in YCZO 901.09(C). The record indicates the proposed project will alter the un-named tributary in the stream reach south of Module 11 as a consequence of channel restoration and enhancement. Specifically, channel width and sinuosity will be increased. As noted above in Finding 196, however, the project will result in either no-rise or a slight reduction in the BFE.
210. Because of the alteration to that watercourse, YCZO 901.09(C) requires notice by the County to certain entities. Riverbend has indicated it will assist the County in notification of DLCD and all other applicable local, state, and federal agencies, including the Federal Insurance Administration. Further, as required by the conditions of approval, Riverbend must obtain all applicable state and federal permits. The record indicates that Riverbend will maintain the restored and enhanced watercourse such that the base flood elevation will not increase above the existing level.

F. 901.10 - Review of Permits in Generalized Floodplain Areas

211. The Board finds that YCZO 901.10 does not apply to the proposed project. That Code provision applies only where specific flood elevation data are not available. Specific and detailed flood elevation data are available and incorporated into the flood elevation modeling for Riverbend's development proposal. Riverbend indicated in its application that these provisions are

inapplicable, and the Board finds that the record does not contain any compelling evidence to the contrary.

G. 901.12 - General Requirements

212. YCZO 901.12 sets forth specific requirements that apply to a Floodplain Development Permit after it is issued.
213. The Board finds that YCZO 901.12(A) is not an approval standard. Rather, this Code provision states the legal effect of a Floodplain Development Permit.
214. The Board similarly finds that YCZO 901.12(B) is not an approval standard. Rather, this Code provision states the legal effect of a Floodplain Development Permit and states that a Floodplain Development Permit becomes null and void 180 days from the date it is granted unless substantial construction has taken place. Riverbend's proposal involves construction that is anticipated to occur over a period of time to accommodate a phased approach to the development of individual disposal cells. Riverbend has therefore requested that the permit be issued with the understanding that substantial construction of the first disposal cell will constitute substantial construction of the entire project as proposed. The record does not contain any testimony opposing this request or offering a reason why the County cannot approve this request. The Board finds that, given the magnitude of the project, it is likely that Riverbend will not complete all floodplain alterations within 180 days of permit issuance due to additional required permitting processes and the relatively short construction season that exists each year. The Board therefore finds that the floodplain development permit will be valid for 180 days from the time it issues and Riverbend's request to deem development of the first disposal cell as substantial construction of the entire project for purposes of this Code provision.
215. The Board finds that YCZO 901.12(C) and (D) are not applicable to this application. Those provisions apply only to new or substantially improved structures or new or substantially improved floodproofed structures. Riverbend's proposal, however, does not include the development of any structures as that term is defined for YCZO Section 901. Riverbend indicated in its application that these provisions are inapplicable, and the Board finds that the record does not contain any compelling evidence to the contrary.
216. The Board finds that YCZO 901.12(E) is an obligation of the County and not of the Applicant. This Code provision, therefore, is not an approval standard.

VI. Conditions of Approval

217. As part of its approval of Riverbend's applications, the Planning Commission imposed several conditions. The Board has reviewed those conditions in conjunction with the record in this matter. With some modifications, the Board finds that the Planning Commission's conditions of approval should continue to be part of the County's final decision approving Riverbend's applications. Those conditions of approval are set forth below, followed by a brief explanation of their purpose.

Condition #1: The development shall substantially conform to the revised site maps submitted with this application (see maps dated

March 2015 labeled Figure 1 through Figure 4 (Revised) and Drawing No. A-1 through A-7 (Revised)).

218. As noted above in Finding 110, the Code's Site Design Review provisions allow the County to deem the Preliminary Site Development Plan as the Final Site Development Plan. During these proceedings, the Applicant suggested some modifications to the Preliminary Site Development Plan, such as altering the location of the perimeter berm on Highway 18. Additionally, the Planning Commission imposed a condition of approval that prohibits the development of Module 10 and, therefore, necessitates a modification to the Preliminary Site Development Plan to remove Module 10.
219. Subsequent to the Planning Commission's decision, and before the Board's hearing in this matter, on March 4, 2015 Riverbend submitted a new site plan that reflects all of the changes to the Preliminary Site Development Plan that result from the Planning Commission's approval. Because the Board is approving the Planning Commission's decision without imposing additional conditions that necessitate further modifications to the site plan, the Board finds that the site plan as described in this condition is the Final Site Development Plan pursuant to YCZO 1101.03(B).

Condition #2: There shall be no disposal of solid waste into proposed Module 10.

220. Riverbend's Preliminary Site Development Plan proposed development of Module 10, a new landfill disposal area that would be developed to the north of the existing facility. As proposed, Module 10 would be closer to the immediately-adjacent farm to the north. Further, although Module 10 would not have been any closer than the existing landfill is to the farms to the northeast, east and south, the working face of the landfill would have been slightly closer to the north and northeast than it currently is.
221. The record does not contain any testimony from the owner of the farm immediately adjacent to the north of the existing facility, but it does contain testimony from the owner of the farm to the northeast and property owners farther to the north alleging impacts that would result from Module 10. Although the Board finds that Module 10 would not force significant changes in farm and forest practices, or significantly increase the cost of those practices, the Board finds that removing Module 10 from the site plan will remove any doubt about the existence or significance of such impacts. With this condition, the expansion area will move closer only to Highway 18 and the farms to the west and southwest, where there are fewer alleged impacts and in the direction where Riverbend owns lands that serve as "buffers" between the landfill and surrounding areas.

Condition #3: 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.

222. Riverbend's Preliminary Site Development Plan and the Final Site Development Plan incorporate a maximum landfill height of 286 feet above mean sea level. The public's comments on the site plans, and therefore the County's review of the site plans, are therefore based on that

height. The Board therefore imposes this condition to limit the height of the landfill to 286 feet above mean sea level.

Condition #4: No buildings or structures have been approved through this Site Design Review approval. Any future building or structures will be required to receive approval for a Site Design Review.

223. Neither the Preliminary Site Development Plan nor the Final Site Development Plan proposes new buildings or structures. Testimony in opposition to Riverbend's applications urges the County to require Riverbend to present plans for a Green Technology Facility as part of this process. As noted elsewhere in these findings, Riverbend is not required to develop or otherwise obtain approval for a Green Technology facility except as provided in Condition of Approval #7 of Ordinance 887. This condition clarifies that Riverbend will have to seek Site Design Review approval for any building or structure not shown on the Final Site Development Plan pursuant to YCZO Section 402 and Section 1101.

Condition #5: Prior to the development of Module 11, and prior to the enhancement of Modules 1, 2, 3, and 9, the applicant shall obtain approval from the Department of Environmental Quality (DEQ). In the event approval by DEQ or other agencies requires a revision or modification to the Final Site Development Plan approved by Yamhill County, the applicant must obtain approval from the County for the revision or modification as provided by Section 1101 of the Yamhill County Zoning Ordinance.

224. As stated elsewhere in these findings, this approval will result in the enhancement and expansion of the existing landfill, an allowed use pursuant to YCZO 402.02(V). The enhancement will occur on the south side of the existing facility where the perimeter berm will be modified to allow additional waste to be placed in the areas currently occupied by Modules 1, 2, 3, and 9. The expansion will occur on the west side of the existing facility where new disposal cells will be created.

225. As further stated in Findings 105, the development of Module 11 is a permitted use only where DEQ has issued a solid waste disposal permit. This condition clarifies that although the County is approving the use pursuant to its land use regulations, Riverbend must obtain a DEQ permit for the use prior to actual development of Module 11. This condition further clarifies that if the permitting process, by DEQ or any other agency, necessitates a change in the Final Site Development Plan, Riverbend will have to return to the County to seek Site Design Review approval for those changes utilizing the Site Design Review process set forth in YCZO Section 1101.

Condition #6: New Perimeter berms must be designed and constructed to meet the seismic design criteria for the magnitude 9.0 earthquake outlined in the Oregon Resilience Plan. Except as provided in condition 8.d, new perimeter berms must be developed

in phased segments as reflected in a site development plan approved by the Oregon Department of Environmental Quality.

226. As stated in Finding 71, the County does not have its own seismic design standards for the kind of development proposed in Riverbend's applications. However, the Site Design Review Code provisions do require the County to consider potential problems that result from development in hazard areas, including seismic zones. Having taken seismic issues into consideration, the Board finds that DEQ's enforcement of its own seismic regulations will limit potential problems that may result from development in a seismic zone. Further, in Finding 73, the Board concludes that the record indicates the existence of other guidelines, such as the Oregon Resilience Plan, that encourage developers to plan for a magnitude 9.0 earthquake. The Board is therefore imposing this condition to require Riverbend to design new perimeter berms to meet seismic design criteria for the magnitude 9.0 earthquake outlined in the Oregon Resilience Plan.

Condition #7: Roads, fences, lighting, and signage shall be designed and constructed to minimize their visual impact as set forth in this condition. All construction activities shall be screened to the maximum extent practicable from neighbors and travelers on State Highway 18. Prior to placing waste in Module 11, and prior to the enhancement of Modules 1, 2, 3, and 9, the owner shall establish or maintain, as applicable, vegetation and other screening that limits views of solid waste disposal operations in the following manner:

- a. The existing landscaping along Highway 18 shall be protected from damage and shall be maintained by the applicant.
- b. The existing trees on Tax Lot 5501-101 shall be retained as a visual buffer.
- c. To assure the minimum number of trees are removed, the stand of trees that are shown as subject to removal along Highway 18 (where the applicant plans to install a bridge over the creek) shall be marked, inspected and approved by the Planning Director, or his designee, prior to their removal.
- d. The 30-foot high Module 11 berm along Highway 18 shall be landscaped within a year of its construction and shall be constructed of material that allows the plants to thrive. The landscaping shall be substantially the same as shown on Revised Drawing No. A-6 of the application in a somewhat random manner to give a natural appearance. Tree species planted for screening shall be sized and selected to achieve an effective visual screen of at least 15 feet in height within 10 years of planting. Trees shall be native, 5 gallon or larger when planted, and spaced appropriately for a natural, filled-in appearance. Trees and landscape plants planted on the berm shall be enhanced with irrigation and regular

maintenance during the first four year establishment period, during which period dying trees or landscape plants shall be promptly replaced with material of like size.

e. Any lighting used for either temporary or permanent illumination shall be placed, shielded or deflected so as not to shine onto adjacent dwellings, or create excessive glare along adjacent roads.

f. The colors of fencing, tarps and other manmade screening materials shall be selected so they blend in with the natural environment.

g. A maintenance agreement shall be signed between the applicant and Yamhill County covering all landscaped areas for the first four year establishment period and subsequent years.

227. As discussed in the Findings in section III, the Code's Site Design Review provisions require the County to consider whether a site plan provides adequate visual buffering. As further discussed in those findings, the Board finds that the Final Site Development Plan provides adequate visual screening. Although these conditions are not necessary to meet any particular approval standard, this condition is imposed as part of the county's consideration of the public comments received to enhance the visual buffering originally proposed as part of the Preliminary Site Development Plan.

Condition #8: The roadway that is proposed to be constructed on the perimeter berm parallel to Highway 18 shall include elements to screen the lights of vehicles using this roadway from view by vehicles driving along Highway 18.

228. As discussed in the Findings in section III, the Code's Site Design Review provisions require the County to consider traffic safety when reviewing a site plan. As further discussed in those Findings, the Board finds that the Final Site Development Plan reflects a strong consideration of that factor. At the request of one commenter, the Planning Commission imposed this condition and the Applicant did not object. Although this condition is not necessary to meet any particular approval standard, it is imposed as part of the county's consideration of the public comments received and will enhance the level of traffic safety originally proposed as part of the Preliminary Site Development Plan.

Condition #9: Prior to use of the expansion area, the owner shall obtain confirmation from the McMinnville Rural Fire Chief that the water supply and site access satisfy minimum safety standards.

229. Although this condition is not necessary to meet any particular approval standard, it is imposed as part of the county's consideration of the internal circulation related to the site plan and will help maintain the adequacy of the internal circulation originally proposed as part of the Preliminary Site Development Plan.

Condition #10: Five years prior to the landfill reaching capacity, the applicant shall submit a post-closure plan to DEQ consistent with ORS 459.055. The final cover plan shall include contour grading of slopes to give a more natural appearance.

230. As stated in the Findings in section II, the development of Module 11 is a permitted use only where DEQ has issued a solid waste disposal permit. Part of the overall DEQ permitting process includes a requirement for submittal of an application for a closure permit at least five years before the anticipated closure of the landfill consistent with DEQ regulations, including a closure plan and the requirements of ORS 459.055. This condition clarifies that although the County is approving the use pursuant to its land use regulations, Riverbend must continue to obtain the appropriate DEQ permit after the actual development of Module 11.

Condition #11: The applicant shall comply with DEQ noise standards required in ORS Chapter 467 and administrative rules in OAR 340 Division 35. The applicant shall submit an annual noise report to the Planning Director showing compliance with these standards.

231. As discussed in the Findings in section III, the Code's Site Design Review provisions require the County to consider whether a site plan provides adequate noise buffering. As further discussed in those findings, the Board finds that the Final Site Development Plan provides adequate noise buffering. The applicant demonstrated the adequacy of noise buffering and the feasibility of complying with DEQ noise standards in part by submittal of a noise study that concludes that the noise impacts from the expansion area will meet those standards. Although this condition is not necessary to satisfy any particular approval standard, it will provide a mechanism for the County and the public to determine whether Riverbend is meeting DEQ noise standards.

Condition #12: The public hours of operation for the landfill shall continue to be limited to Monday through Friday from 6 am to 5 pm, 7 am to 4 pm on Saturday, and closed Sundays.

232. As part of its consideration of whether the Final Site Development Plan contains adequate noise buffers, the Board's findings in section III rely in part on Riverbend's current operating hours. The Board therefore finds that Riverbend should not change its current operating hours and imposes this condition for that purpose.

Condition #13: The operator shall provide "smart" back-up alarms on all loaders and dozers that operate at the site. ("Smart" back-up alarms are those that only emit backing alarm noises when they sense an object in their path, with the alarm increasing in volume as the distance to the object is reduced.)

233. As discussed in the Findings in section III, the Code's Site Design Review provisions require the County to consider whether a site plan provides adequate noise buffering. As further discussed in those findings, the Board finds that the Final Site Development Plan provides adequate noise buffering. These conditions are not necessary to meet any particular approval standard, but are

imposed to enhance the noise buffering and minimization originally proposed as part of the Preliminary Site Development Plan.

Condition #14: Prior to issuance of the floodplain develop permit, the applicant shall obtain any required permits from the Corps of Engineers and Oregon Department of State Lands. Copies of these permits shall be submitted to the Planning Director.

234. As discussed in the Findings in section V, the Code's Floodplain Development provisions require the developer to obtain all necessary federal, state, and local permits. Thus, while the Board is approving Riverbend's Floodplain Development Permit, that permit cannot issue until Riverbend obtains other required permits. The Board imposes this condition to ensure that the Floodplain Development Permit is not issued by the Planning Director until the Director has received confirmation that Riverbend has obtained all necessary permits.

Condition #15: Removal of existing riparian vegetation within the Riparian Corridor shall be the minimum necessary to allow for development of the berm and the enhancement projects. Any disturbed areas outside the footprint of the berm shall be restored with fill and native plants.

235. As discussed in the Findings in section III, the Final Site Development Plan allows Riverbend to develop within the Riparian Area. That development includes the actual footprint of the berms necessary for waste disposal or the access road, but also includes earthwork activities related to the floodplain enhancement project. The purpose of this condition is to clarify that the only removal of riparian vegetation allowed by this decision is where such removal is necessary to develop the berms or the enhancement projects. The Board finds that if any additional areas of riparian vegetation are disturbed from those activities, Riverbend must replace that vegetation to ensure the removal is not permanent.

Condition #16: All fill used for the construction of the berms proposed in the Floodplain Development Permit Application Narrative shall comply with the requirements of 901.07(F) (1)-(3) of the Yamhill County Zoning Ordinance.

236. As discussed in the Findings in section V, the Code's Floodplain Development Permit provisions allow only certain types of fill to be used in the floodplain. This condition is imposed to provide notice to the Applicant and to the public that only materials specified in the ordinance are allowed to be used as fill in the floodplain.

Condition #17: To supplement Condition #4 in the Limited Use Overlay applied by Ordinance 887, any activities that would occur on the property identified for future "Green Technology," such as temporary construction support or operational support, shall not prevent the use of that site for future alternative technology.

237. As part of Ordinance 887, the County's ordinance changing the zoning of the site, the County applied a Limited Use Overlay to Riverbend's properties that limits the activities that can occur

on the property that has been identified for the location of a Green Technology facility in the future. As part of the current development proposal, Riverbend will develop a road from the landfill portion of the property to the Green Technology portion of the property. While that road is intended to serve as the eventual access road to the Green Technology Facility, it will also be used to access existing facilities on the landfill portion. The Board imposes this condition to ensure Riverbend's planned use of that road and any portion of the Green Technology portion of the property do not prevent the eventual development of the Green Technology facility.

Condition #18: The applicant shall apply for site design review for construction of the Green Technology Facility no later than 150 days before the construction is required to begin under Condition of Approval 7 of Ordinance 887.

238. Condition of approval 7 of Ordinance 887 requires Riverbend to commence construction of a Green Technology Facility by a certain time period. The County's approval of Riverbend's application does not alter that condition of approval. In order to commence construction of the Green Technology Facility, Riverbend will have to seek Site Design Review approval, which the County has 150 days to process. This condition is not necessary to satisfy any approval standards, but is imposed to further promote the establishment of the Green Technology Facility by the applicant in a timely manner.

Condition #19: As part of its Title V air quality permit, the applicant is required to implement a Dust Control Plan and Final Odor Control Compendium. The applicant shall continue to implement those operating and control practices to reduce fugitive dust and odor from its operations as required by DEQ.

239. As discussed in the Findings in section IV, the record contains testimony asserting that odors from the existing landfill has impacted, or will impact, Farm Practices and other uses in the area. As further discussed in those Findings, the Board finds that the existing landfill has not forced significant changes in farm practices or significantly increased the costs of those practices as a result of odor impacts. The Board further finds that odor from the landfill is controlled in part by DEQ regulations. The Board therefore imposes this condition of approval to further ensure that odors from the site remain controlled and, therefore, reduce the likelihood of any impacts to Farm Practices or other uses in the area.

Condition #20: Upon the disposal of solid waste into Cell 11, the applicant shall take a downwind reading of odor using an olfactometer each weekday, excluding holidays. The readings shall include the location, weather conditions, precipitation, wind direction and wind speed. The readings shall be provided to the Planning Director on a monthly basis.

240. As discussed in the Findings in section IV, the record contains testimony asserting that odors from the existing landfill have impacted, or will impact, uses in the area and/or Farm Practices. As further discussed in those Findings, the Board finds that the existing landfill has not forced significant changes in farm practices or significantly increased the costs of those practices as a

result of odor impacts. The Board finds that the record indicates that odors detected in the McMinnville area may be caused by multiple sources. This condition is not necessary to satisfy any particular approval standard, but will provide a mechanism for the County and the public to evaluate sources of odors over time.

Condition #21: Modification of any of the above conditions requires approval under Section 1101.02 of the Yamhill County Zoning Ordinance. Violation of any of the above conditions may result in revocation of the site design review permit with the process detailed in Sections 1101.06 and 1101.07 of the Yamhill County Zoning Ordinance.

241. This condition is imposed to provide notice to the Applicant and to the public that the County must review and approve modifications not only to a Final Site Development Plan, but to all conditions of approval. Such modifications are processed through the normal Site Design Review procedures.

VII. Procedural issues.

242. Ex parte Contacts. Questions were raised during the proceedings regarding ex parte contacts, and potential bias arising from ex parte contacts. In response to those questions, at the public hearing on March 12, 2015, Board members placed in the record the substance of communications they had received or had engaged in with the applicant and/or opponents. At, and following the hearing, comments were received regarding the statements placed in the record, and the announcement of those statements made at the hearing. To address those comments, the Board reopened the record to place additional statements regarding the substance of their contacts with the parties or others and to allow an additional period of time for parties or others to rebut the substance of those communications. Opponents, especially Stop the Dump, continued to argue that the county has not followed applicable procedures regarding ex parte contacts.
243. The county has considered the arguments of the opponents regarding ex parte contacts, and rejects claims that the opponents have somehow suffered prejudice due to the process followed by the county. Riverbend Landfill is a high-profile land use topic in Yamhill County. The applicant has consistently promoted itself as a good corporate citizen, and has engaged in a dialogue with the community regarding Riverbend Landfill. Waste Management has most recently promoted a \$150,000 grant program, under which \$15,000 was offered to each of the ten cities in the county for economic development. While the grant program drew media attention and was characterized by opponents as akin to a bribe, it is not clear who opponents believe was being bribed, since county government received none of the money, and neither did any elected official. All of the money was offered to cities in the county that do not have a decision making role with regard to Riverbend Landfill.
244. The county rejects claims by opponents that the involvement of one of its commissioners with the grant program constituted an ex parte contact that prejudiced the substantial rights of opponents or resulted in bias. The commissioner who was eventually accused of bias, in response to a public records request, released all of his e-mail communications with an employee

of Waste Management, and those e-mails were placed in the record. Those e-mails demonstrate that almost no conversations or other communications of substance occurred between the commissioner and the applicant's employee regarding the application filed by Riverbend in November, 2014. The commissioner denied having had substantive conversations other than those outlined in the e-mails, and denied having substantive conversations with Waste Management executives at a social function attended by numerous public officials from Yamhill County. The opponents provided no substantial evidence that any substantive conversations took place that were capable of being rebutted, regarding the applications for Site Design Review and Floodplain Development.

245. As for claims regarding the other commissioners and their ex parte contacts: The record shows that the county was conscientious in attempting to limit ex parte contacts, and to place in the record the substance of the contacts that took place. In 2014, two of the commissioners who were responsible for reviewing Riverbend's applications ran for election. One received more than 50% of the vote in the primary, and was appointed early. The other commissioner was not elected until November, 2014, and took office in January, 2015. During the election, it would have been impossible for the commissioners to have avoided hearing opinions about Riverbend Landfill, one of the biggest topics of conversation in Yamhill County during 2014. All commissioners were warned to attempt to limit ex parte contacts and to be prepared to place them in the record and allow rebuttal. Some opponents also contacted the board directly, and those comments were placed in the record to allow rebuttal by opponents or the applicant. Newspaper articles were also written regarding the landfill and the applications, the process the Applicant has gone through in its efforts to obtain land use approvals, and the landfill's future. Those articles that may have been viewed by Board members were also placed in the record so that parties could rebut their substance. It should also be noted that no party has provided any evidence that any contact or the substance of any contact reported was not of information that is already in the very extensive record of this proceeding. No effort has been made to hide or exclude any information presented—it has all been placed before the board and the public to allow a full discussion of its substance.
246. Landfill Site Visits. At the March 12, 2015 hearing, Planning Director Mike Brandt described site visits to the landfill that each commissioner had made individually, with the Planning Director. He stated the following:

“Just for the record a couple more items that are of an ex parte nature. You can hear me, I'm sure, Right? Ok, great. A couple more items. One is, because of the attention that this has received in the newspapers and etcetera, we're entering into the record some newspaper articles and letters to the editor, from the News Register and that is in an abundance of caution in case the commissioners have seen these. Which there is a good chance they have because you walk down the street and you see them.

The second item has to do with site visits on land use applications. The Board of Commissioners always likes to go and view the site of the, of the subject property. In this case that was no distance, or no difference. For the record, on three separate dates, I accompanied an individual Board of Commissioner to Riverbend Landfill for the purpose of doing a site visit in preparation for this application and

this hearing today. On February 20th at 9:00 a.m., I visited the site with Commissioner Primozech. On March 6th at 10:00 a.m., I visited the site with Commissioner Starrett and on March 9th at 9:00 a.m. I visited the site with Commissioner Springer. This, I'm going to give you a brief outline of what took place at all of those visits for the record. What we did was, we met in the parking lot outside of the office at Riverbend Landfill. Jackie Lang was there. She handed out safety gear, a hard hat, a safety vest and then she just made a comment that she was not able or shouldn't talk to the commissioners and she left and went back in the office. In addition, there was a person there on all three occasions who had a falcon. They were standing there and I don't, I never got the person's name. I think, I don't even know if it was the same person each time. And in addition, Mr. Bill Carr from Riverbend was there. Mr. Carr escorted us on the site visit as a matter of safety. Primarily, he walked in front of us and warned us of oncoming trucks and things like that. Because we were walking out where Module 11 is proposed to be expanded into. Along the walk, I would point out the proposed perimeters of Module 11 and I would answer questions from the commissioners that would come up about where the perimeter berm was going to be, what was the height of the landfill going to be, what was the slope of the landfill going to be, etcetera. We ended up walking along the west side of the MSE berm on the gravel road that's already there and we ended up at the leachate pond. When we got to the leachate pond on all three occasions, the commissioners asked questions about the function and capacity and, of the leachate pond. In those instances Mr. Carr briefly explained what the leachate pond was for, its capacity, the number of trucks that were hauling leachate out of there. Nothing that he answered the Board was something that was not already in the record. We then, after those questions were answered, we walked back to the office, handed our safety gear to Bill Carr and then we left the site. So...

Allen Springer: Ok. At this point is there any other comment that the commissioners would like to make about the visit? Seeing none, we will move on to the, to the reading of the statement.

Todd Sadlo: Any other ex parte comments from anybody else?

Allen Springer: Ok. Is there any other ex parte contacts? Ok, alright, seeing none we will move on to item 3."

247. Due to ongoing objections from opponents and an additional, new claim of ex parte contact that apparently occurred between a commissioner and an appraiser hired by an opponent, the record was re-opened on March 26, 2015, at which time commissioners entered a second statement of communications and an acknowledgement that Mr. Brandt's description of the substance of contact that occurred with a representative of the applicant at the site visits was accurate. The record remained open to allow written rebuttal of the statements announced and placed in the record on March 26. At no time did any commissioner indicate his or her disagreement with any of the statements regarding the landfill made by the Planning Director.
248. YCZO section 1402.06, entitled "Ex Parte Contact," states:

“in any land use application subject to a quasi-judicial hearing process, the Board, Commission, or Hearings Officer shall not:

A. Communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and with opportunity for all parties to participate;

B. Take notice of any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless all parties are afforded an opportunity to contest the materials so noticed; or

C. Inspect the property with any party or his representative unless all parties are given such notice as the Board determines fair and just.”

249. It was noted on the record that an employee of Riverbend was present at the site visit of each of the commissioners. At the time, no notice was given to “all parties” because it was not anticipated that the commissioners would have any contact with Riverbend employees during their individual site visits. The contact that occurred was inadvertent and unplanned. The substance of the comments concerned the leachate pond, which is an existing facility at the landfill that is not being modified or affected by the expansion or any other aspect of the applications before the county. The landfill is currently in operation, and it was necessary to have an employee present for safety reasons. As described by Mr. Brandt on the record, (discussed above) for the most part, the employee walked ahead of the group, and questions were answered only by the Planning Director. At some point, near the leachate pond, each board member asked questions of the employee regarding the pond. As placed in the record, the employee “briefly explained what the leachate pond was for, its capacity, the number of trucks that were hauling leachate out of there. Nothing that he answered the Board was something that was not already in the record.”

250. The Board interprets YCZO section 1402.06 as generally reflecting state law regarding ex parte contacts in quasi-judicial land use proceedings. Subsection C prohibits decision makers from inspecting “the property with any party or his representative unless all parties are given such notice as the Board determines fair and just.” In this case, no notice was given, because there was no intent to inspect the property “with any party or his representative.” The contact was inadvertent and, under the circumstances, no notice was required because no substantive contact with the applicant was anticipated. The Board was, logistically, not in a position to give notice and presumably allow other members of the public to attend the tour of a privately owned and operated facility. The Board believes that the process it has always followed—of making a site visit with the Planning Director or his designee, with limited or no contact with the applicant or the applicant’s representative, and then placing the substance of the visit and of any contacts inadvertently made on the record—is fair, just, and in compliance with the intent of section 1402.06 as interpreted by the Board.

251. Bias. The opponents, and especially Stop the Dump, made repeated demands during the proceedings that one of the commissioners (the one that voted against the application) should recuse himself due to bias. The commissioner stated on the record his belief that he could fairly and impartially consider the application, and did not recuse himself. The Board has considered,

and rejects the claims of opponents that any of the commissioners are biased, had prejudged the application, or were incapable of considering the facts in the record and applying the applicable standards in a fair and impartial manner.

VIII. Conclusion

Based on these findings, the Board approves the applications in Planning Dockets SDR-16-14 and FP-03-14.