



# Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

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## NOTICE OF ADOPTED AMENDMENT

02/25/2014

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Yamhill County Plan Amendment  
DLCD File Number 004-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, March 12, 2014

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Ken Friday, Yamhill County  
Jon Jinings, DLCD Community Services Specialist  
Angela Lazarean, DLCD Regional Representative  
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA



# NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE  
File No.: 004-13 (20020)  
[17771]  
Received: 2/19/2014

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation no more than 20 days after the adoption. (See OAR 660-018-0040). The rules require that the notice include a completed copy of this form. This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review. Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: Yamhill County

Local file no.: PAZ-02-13

Date of adoption: 2/13/2014

Date sent: 2/19/2014

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 9/30/2013

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes  No

If yes, describe how the adoption differs from the proposal:

Same as proposed. (Note, no goal exception was required).

Local contact (name and title): Ken Friday

Phone: 503-434-7516

E-mail: fridayk@co.yamhill.or.us

Street address: 525 NE Fourth Street

City: McMinnville

Zip: 97128-

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

**For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

**For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

Change from C Commercial to AFLH Ag/Forestry Large Holding 25 acres.

Change from P Public to AFLH Ag/Forestry Large Holding 227.5 acres.

Change from \_\_\_\_\_ to \_\_\_\_\_ acres. A goal exception was required for this change.

Change from \_\_\_\_\_ to \_\_\_\_\_ acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): 5501-101, 200, 401 13465 SW HWY 18, McMinnville

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary



If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from RC Rec. Commercial	to EF-80 Exclusive Farm	Acres: 25
Change from PWS Pub.Wks.Safety	to EF-80 Exclusive Farm	Acres: 227.5
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: LU Limited Use      Acres added: 705.7      Acres removed:

Location of affected property (T, R, Sec., TL and address): 5501-101, 200, 400, 401, 300, 500, 5511-100, 600, 5512-100,

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List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

The purpose of the Plan Amendment/Zone Change is to rezone exception land back to EF-80 Exclusive Farm in order to allow a solid waste disposal facility to apply for expansion, subject to ORS 219.296.

Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL  
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of a Comprehensive Plan Designation Amendment )  
From "Commercial" and "Public" to "Agriculture Forestry Large )  
Holding," a Zoning Map Amendment from "Recreation ) Ordinance 887  
Commercial" and "Public Works Safety" to "EF-80 Exclusive )  
Farm Use," and Imposition of a Limited Use Overlay, Planning )  
Docket PAZ-02-13, Applicant Riverbend Landfill, and )  
Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 13, 2014, Commissioners Mary P. Stern, Allen Springer and Kathy George being present.

IT APPEARING TO THE BOARD that Riverbend Landfill applied for a comprehensive plan map designation amendment from "Commercial" and "Public" to "Agriculture Forestry Large Holding" and for a zoning map amendment from "RC-Recreation Commercial" (approximately 25 acres) and "PWS-Public Works Safety" (approximately 227.5 acres) to "EF-80 Exclusive Farm Use," for Tax Lots 5501-101, 5501-200, and 5501-401; and

IT APPEARING TO THE BOARD that this matter came before the Planning Commission for public hearing on November 7, 2013 and that, following a period in which the record remained open for additional written evidence and testimony, on December 5, 2013, the Planning Commission, by a 5-3 vote, recommended denial of the application, but also unanimously recommended that, if the application is approved by the Board, it should be approved in conjunction with a Limited Use Overlay; and

IT APPEARING TO THE BOARD that this matter came before the Board on December 12, 2013 for public hearing and that, following a period in which the record remained open for additional written evidence and testimony, on January 16, 2014, the Board of Commissioners voted 2-0 (Commissioner Stern having recused herself), tentatively, to approve the application and to impose a Limited Use Overlay on the tax lots that were the subject of the application and on other surrounding tax lots owned by the applicant, to limit and condition expansion of the landfill; NOW, THEREFORE

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

B.O. 14-  
ORDINANCE 887

Section 2. The Comprehensive Plan and Zoning Maps of Yamhill County are hereby amended as specified in the attached Exhibit "B," incorporated herein by this reference, to reflect a plan designation of "Agriculture Forestry Large Holding," and a zoning designation of "EF-80, Exclusive Farm Use" for Tax Lots 5501-101, 5501-200 and 5501-401.

Section 3. A Limited Use Overlay is established for Tax Lots 5501-101, 5501-200, 501-400, 5501-401, 5501-300, 5501-500, 5511-100, 5511-600, 5512-100, 5512-200, 5512-400 and 5512-500, as specified in the attached Exhibit "B." Uses allowed are limited to substantially conform to the plans submitted by the applicant and by the Conditions of Approval in the attached Exhibit "C," incorporated by this reference.

Section 4. The Board adopts the provisions set forth in Exhibit "D" incorporated herein by this reference to implement Goal 5 protections for riparian corridors on the subject property.

Section 5. This Ordinance, being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 13<sup>th</sup> day of February, 2014, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

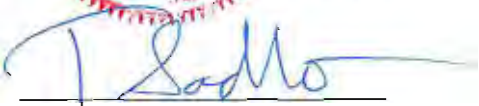
BRIAN VAN BERGEN

County Clerk

By:   
Deputy

CAROL ANN LONITE

APPROVED AS TO FORM:



Todd Sadlo

Assistant County Counsel

(recused)

Chair

MARY P. STERN

Commissioner

  
ALLEN SPRINGER

Commissioner

  
KATHY GEORGE



Exhibit A - Ordinance 887

Findings In Support of Approval

**I. Introduction, Background and Process**

**A. Background Information**

DOCKET NO.: PAZ-02-13

REQUEST: An application to change the comprehensive plan designation from Commercial and Public to Agriculture Forestry Large Holding. The request is also to change the existing zoning from RC Recreation Commercial (approximately 25 acres) and PWS Public Works, Safety (approximately 227.5 acres) to EF-80 Exclusive Farm Use.

APPLICANT/OWNER: Riverbend Landfill Company, Inc. (RLC)

TAX LOTS: 5501-101, -200, -400 and -401

LOCATION: 13465 SW Highway 18, McMinnville, Oregon  
13469 SW Highway 18, McMinnville, Oregon  
14325 SW Highway 18, McMinnville, Oregon

ZONE: PWS Public Works Safety and RC Recreation Commercial

CRITERIA: Sections 402, 601, 802 and 1208.02 of the Yamhill County Zoning Ordinance. Comprehensive plan policies may be applicable. Section 904, Limited Use Overlay may be applied. The request is also subject to the Transportation Planning Rule, OAR 660-012-0060.

1. Lot Size: The Yamhill County Assessor's office records show the following acreage for each tax lot: Tax Lot 5501-101 is 25.7 acres. Tax Lot 5501-200, the location of the existing Riverbend Landfill, is 220.4 acres. Tax Lot 5501-401 is 36 acres. Tax Lot 5501-400 is 57.5 acres.

2. Access: State Highway 18.

3. On-site Land Use and Zoning: Pages 15 and 16 of the application contains the existing land uses and zonings for the subject tax lots. These descriptions are incorporated here by reference with one minor correction. Tax Lot 5501-200 is 220.4 acres. Table 6 on page 15 lists

*Exhibit "A"  
Ordinance 887*

only 211.2 acres of this property as being zoned PWS and 9.2 acres as EF-80 (EFU). In actuality the entire 220.4 acres is zoned PWS and none of this tax lot is presently zoned EF-80. The discrepancy is due to the tax lot numbers being converted in the 1980's to a new numbering system. The new numbering system was adopted with maps that "cut off" approximately 9 acres of the 229 acres originally requested to be zoned PWS. This 9-acres is identified as Tax Lot 5512-200 and is already zoned EF-80.

4. Surrounding Land Use and Zoning: RLC owns and manages for farm use many of the adjacent properties. The predominant use within one mile of the existing Riverbend Landfill is agricultural use. The farm uses include grass, grain, hay, nut orchards and vegetable crops. South of the project site, across the South Yamhill River, is the closed Whiteson Landfill with approximately 35.8 acres zoned PWS Public Works, Safety. Uses in the area surrounding Riverbend Landfill also include a church, produce stand, cemetery and cell tower. As for the zoning, land to the south of the South Yamhill River contains approximately 6.2 acres zoned PRO, Parks, Recreation, and Open Space. The remainder of the area bordering the existing landfill and project site is zoned entirely EF-80 Exclusive Farm Use.

5. Water: Provided by an on-site well.

6. Sewage Disposal: Provided by on-site septic systems.

7. Fire Protection: McMinnville Rural Fire Department.

8. Previous Actions: (addressed below)

9. Soils: Because of the large area covered by this application, there are correspondingly, a large number of soil types. The majority of the subject property contains both Class I-IV soils and high-value farmland. The soils include Amity and Woodburn silt loam, and Chehalis silty clay loam, all rated as agricultural Class II, defined as high-value farmland. The nonhigh-value farmland includes Wapato and Cove silty clay loam, agricultural Class III and IV respectively.

10. Taxes: Tax Lot 5501-101 has 25.7 acres at market value. Tax Lot -200 has 220.4 acres at market value. Tax Lot -400 has one acre at market value and 56.5 acres on farm deferral. Tax Lot -401 has 18.5 acres at market value and 17.5 acres on farm deferral.

11. Overlay Districts: Flood Insurance Rate Maps 41071C0395D and 41071C0415D, effective March 2, 2010 and revised by a Letter of Map Revision (LOMR) effective May 9, 2013, shows property along the South Yamhill River and some nearby tributaries as being within the 100-year flood hazard area. It should be noted that the existing landfill and accessory



buildings are located outside of the flood hazard area. The property is not within the Willamette River Greenway or airport overlay district.

12. Fish and Wildlife: The South Yamhill River is identified as fish habitat. The river is shown on the 1979 Natural Resource Conservation Plan as resident trout spawning and rearing area and warm water game fish spawning and rearing as well as an anadromous fish migration route. The property is not located in the big game winter range.

13. Reason for the request: To apply a single zone to the applicant's property. As explained in more detail in other findings, the single zone will provide the applicant with flexibility to operate the existing landfill more efficiently and will also provide the applicant with the opportunity to expand the existing landfill onto adjacent parcels.

### **B. Applicant's Request**

The applicant owns and operates the Riverbend Landfill. The land on which Riverbend Landfill is located is comprised of several tax lots, within three different zones. The tax lots containing the landfill and its ancillary facilities (a portion of Tax Lot 5501-101 and Tax Lot 5501-200) are zoned Public Works/Safety (PWS). Another tax lot (Tax Lot 5501-401) is partially zoned Recreational Commercial (RC). The remaining tax lots on the applicant's property, and the remainder of Tax Lot 5501-101 and Tax Lot 5501-401, are zoned Exclusive Farm Use (EFU).

The applicant proposed to rezone all areas currently designated PWS and RC to the EFU zone, specifically EF-80. The resulting change is a net increase of approximately 245 acres zoned EFU, and the applicant's entire tract containing only one zoning designation – EF-80. Approval of the zone change requires changes to the County's Comprehensive Plan Map. With its application, the applicant did not request any alteration or expansion of the existing Riverbend Landfill. The County will review alterations or expansions of the existing landfill as part of a separate process in the future if the applicant makes an application for such a review.

### **C. Description of Existing Solid Waste System in Yamhill County**

The solid waste system in the County consists of collection, transfer, waste recovery, recycling, composting and disposal facilities and services. The system is operated by private companies that hold franchise agreements with the County and/or cities.

Two private companies provide collection of municipal solid waste from residences and commercial establishments in the County. These companies are franchised by the County to provide garbage and recycling collection throughout the County under authority granted by ORS 459.086 and the Yamhill County Solid Waste Collection and Disposal Ordinance 578.

Western Oregon Waste provides service to the western and northern area of the County, including the cities of Amity, Carlton, Dayton, Lafayette, McMinnville, Sheridan, Willamina, and Yamhill. Waste Management provides collection service to the east side of the County, including the cities of Newberg and Dundee. Solid waste collected by Western Oregon Waste is hauled directly to Riverbend Landfill. Waste Management collects solid waste and hauls it to its transfer station in Newberg where some sorting takes place. Both companies also collect recyclable materials within the boundaries of the 10 incorporated cities and unincorporated County areas where they are franchised.

The Newberg Transfer and Recycling Center is the only transfer station operating in the County. The facility operates under an exclusive franchise from the County. Municipal solid waste received at the transfer station is transferred in waste transfer trailers to Riverbend Landfill. Recyclables brought to the transfer station are separated and sent directly to market.

Landfill facilities are designed and permitted to handle different waste streams. The primary type of landfill is one that is designed to dispose of municipal solid waste (MSW). Riverbend Landfill is the only landfill disposal facility in the County permitted to accept MSW.

In addition to Riverbend Landfill and Newberg Transfer Station, other existing facilities in Yamhill County with DEQ Solid Waste facility permits include: 1) Valley Recovery Zone, a material recovery facility in McMinnville; 2) NW Greenlands yard debris/composting facility in McMinnville; 3) Buck Hollow Industrial/wood facility in Willamina; and 4) Four compost sites in EFU zoned areas registered under DEQ 2009 Rules.

It is within this context that the Board has reviewed RLC's request.

#### **D. Riverbend Landfill History and Future Operations**

In 1980, the County approved a plan amendment and zone change from the EFU zone to the PWS zone to allow development of Riverbend Landfill.<sup>1</sup> At the time, although solid waste disposal sites were permissible uses in an EFU zone under state law, the County's 1976 zoning ordinance allowed landfills as an outright permitted use only in the PWS zoning district. The County therefore approved the zone change through an "Exception" to Statewide Planning Goal 3, allowing the conversion of EFU land to PWS.

Riverbend Landfill has operated at this location since 1982 under County land use and license approvals and in accordance with Department of Environmental Quality (DEQ) Solid Waste

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<sup>1</sup> Ordinances 236 and 237, adopted May 14, 1980.

Disposal Permit 345. The current DEQ permit authorizes disposal of municipal solid waste on about 88 acres. Under that permit, as modified, the landfill is expected to reach capacity in 2017.

In 2009, the County determined that there was a demonstrated need for the continued presence of a landfill in the County. That determination was made as part of a plan amendment and zone change that authorized the expansion of Riverbend Landfill through another Goal 3 Exception. On appeal of that decision, LUBA reversed the County's decision on the basis that a Goal 3 Exception is not available to allow a use that is already authorized by the statutory EFU zone (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."<sup>2</sup> The Court of Appeals upheld that decision based on the same reasoning.<sup>3</sup> Implicit in those decisions is the determination that the County should have originally approved development of Riverbend Landfill in 1980 through the normal zoning process rather than through the Goal Exception process.

In 2011, following the decisions by LUBA and the Court of Appeals, the County amended the Yamhill County Zoning Ordinance (Zoning Ordinance or YCZO) to adopt a text amendment to the EFU zone that mirrors the statutory use in ORS 215.283(2)(k) and allows solid waste sites to be maintained, enhanced or expanded within the EFU zone in some, but not all, of the specific circumstances allowed by state law.

The County's amended EFU zone now allows solid waste disposal sites as a permitted use, consistent with state law. By 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.

Following the zone change, the existing landfill and all ancillary facilities will be maintained wholly within the farm zone. The applicant will then have the opportunity to continue its operations as a permitted use, or to submit an application for a future expansion onto other EFU parcels in the manner identified by LUBA and the Court of Appeals. An expansion onto the tax lots already zoned EFU is not possible prior to this Ordinance 887 because those lots are high-value farmland and, under the County's Zoning Ordinance and state law, such lands can be used for solid waste disposal facilities only to accommodate the maintenance, expansion or enhancement of an existing facility that is wholly within a farm zone. Such expansions and

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<sup>2</sup> *Waste Not of Yamhill County v. Yamhill County*, 61 Or LUBA 423 (2010).

<sup>3</sup> *Waste Not of Yamhill County v. Yamhill County*, 240 Or App 285 (2010).

enhancements may include new landfill disposal cells, new ancillary facilities, or even new non-landfill technologies. It is reasonable for RLC to request, and for the County to approve, a zone change that will apply a single zoning designation to RLC's property that will provide the property owner with flexibility to continue or expand the current use that is permitted in that zone.

## **II. Zone Change Criteria**

Approval criteria for a quasi-judicial zone change are set forth in Section 1208 of the Zoning Ordinance. The following findings address those criteria.

### **A. Section 1301 – Application and Review Procedures**

Section 1301 of the Zoning Ordinance outlines application and review procedures. The ordinance sets forth three separate types of procedures (A, B, and C). Because applicant's proposal involves a plan map amendment, the County processed the application under the highest Type C review procedure.

*Section 1301.C – The following procedures shall be used when county ordinance requires Type C review of an application.*

- 1. Prior to or at the time of filing an application, a pre-application conference shall be conducted in which the applicant or the applicant's authorized representative shall meet with the Director or an authorized member of the department to review requirements and concerns about the applicant's request;*
- 2. The applicant shall submit an application to the Department of Planning and Development on a form prescribed by the Director;*
- 3. Upon receipt of a complete application, a public hearing shall be scheduled and public notice mailed and published according to the public notice requirements contained in Section 1402;*
- 4. The appropriate planning advisory committee may hold a public meeting to review the application, and may make a recommendation to the commission or hearings officer;*
- 5. At the public hearing the county staff, planning advisory committee, the applicant, and other interested parties may present information relevant to the proposal, and may give reasons why the application should or should not be approved;*
- 6. Within 90 days of receipt of a completed application, or such longer period mutually agreed to by both the Director and the applicant, the application shall be approved or denied based on an evaluation of the proposal and applicable criteria as set forth in this ordinance;*
- 7. The applicant shall be notified in writing of the decision and of the reasons for the decision; and*



8. *All decisions of the Commission or hearings officer may be appealed to the Board, if the appeal is filed within 15 days from the date of the decision, pursuant to Section 1404 for appeals.*

The requirements of YCZO Section 1301.C have been satisfied.

RLC and its authorized representatives participated in a pre-application conference with the Planning Director and staff on July 8, 2013. At that meeting, the staff provided background information on applicable criteria, standards, and procedures, and highlighted key issues to address in the application.

RLC submitted its application in September, 2013, with the required fee and with the appropriate form for a plan map amendment and zone change.

Staff reviewed the application for completeness following submittal, determining the application was complete, and did not require additional materials or information for the application to be accepted as complete for processing.

The County held public hearings before the Planning Commission (November 7, 2013) and Board of Commissioners (December 12, 2013), following the notification requirements in Section 1402. Interested persons provided testimony in support of and in opposition to the application. Because the application involves a post-acknowledgement plan amendment (PAPA), the County also provided notice of the application to the Department of Land Conservation and Development (DLCD), prior to the first scheduled public hearing.

As a PAPA, this application is not subject to statutory requirements to make a final local decision within 150 days of receiving a complete application. Although this final decision is being made more than 90 days after receipt of the completed application, the Applicant agreed to an extended timeframe during the hearing before the Board on December 12, 2013.

The Applicant is being notified of this decision, including these findings that explain the basis for the decision.

Because approval of a plan amendment and zone change requires a public hearing and final decision by the Board pursuant to YCZO 1208.01.C, no appeal was required to elevate consideration of the application to the Board.

In summary, the applicant has met all of the requirements for the Type C procedure as set forth in Section 1301 of the Yamhill County Zoning Ordinance.

## B. Section 1208 – Quasi-Judicial Zone District Boundary Changes

Section 1208 of the Ordinance outlines general requirements and review criteria for quasi-judicial zone district boundary changes. RLC's application proposed two interrelated quasi-judicial map and zoning district boundary changes. The first change rezones 7.1 acres on Tax Lot 5501-101 and 220.4 acres on Tax Lot 5501-200 from the PWS zone to the EFU zone. The second change rezones 25 acres on Tax Lot 5501-401 from the RC zone to the EFU zone.

### 1. 1208.01 General Requirements

*A quasi-judicial zone map change is processed as follows:*

*(A) An amendment may be initiated by the Board, the Commission, or by application of an owner of land.*

The Board finds compliance with this subsection because RLC, as the owner of the land, initiated the amendment.

*(B) The application for such a change by an owner of land shall be made in accordance with the Type C application procedure.*

The Board finds compliance with this subsection. The County processed the application following the steps outlined for the Type C procedure, as summarized under Section 1300 above.

*(C) Such amendments shall be made only by the Board, after review and recommendation by the Commission. When the request includes a Comprehensive Plan map amendment, both the Commission and Board shall hold public hearings, pursuant to Section 1402 of this Ordinance, prior to the Board making a final decision. When the request does not include a Comprehensive Plan map amendment, the Commission shall hold a public hearing to review and make a decision on the proposed zone map amendment. The Board is not required to hold an additional public hearing, but may make a decision based upon the record of the Commission hearing. In either case, the zone map amendment shall not be final until the Board has adopted the amendment by ordinance.*

The Board finds compliance with this subsection. Because RLC's application proposed a consolidated amendment to the Comprehensive Plan Map and Zoning Map, public hearings before both the Planning Commission and Board of Commissioners were held before the Board made a final decision. The public hearings were held in accordance with the requirements of Section 1402 of the Zoning Ordinance.

*(D) Approval for a boundary change shall include findings satisfying the criteria in 1208.02 or 1208.03, as appropriate, and addressing applicable Comprehensive Plan goals and policies.*

The Board makes findings to address the review criteria in Section 1208.02 below. The review criteria in 1208.03 apply only to amendments from EFU to Agriculture/Forestry Zones and are therefore not applicable to RLC's request. The findings to address the zone change criteria also incorporate by reference the related findings addressing the Statewide Planning Goals and findings to address compliance with the Yamhill County Comprehensive Plan.

## 2. 1208.02 Review Procedures

*A quasi-judicial change to a zoning map may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria, except as provided in Subsection 1208.03:*

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

The Board makes specific findings to demonstrate that the proposed zone changes are consistent with the goals, policies, and other applicable provisions of the Yamhill County Comprehensive Plan. Those findings are made in subsequent sections of these findings and are incorporated herein by this reference. Based on those findings, the Board finds that this Zoning Code criterion is satisfied.

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

The Board finds that this Zoning Code criterion is satisfied. This criterion requires the County to determine whether there is an existing, demonstrable need for the particular use or uses allowed by the zone. In order to make that determination, the Board finds that the County is directed by this criterion to consider multiple need factors, including: (1) the importance of such uses to the citizenry or the economy of the area; (2) the existing market demand which such uses will satisfy; and (3) the availability and location of other lands so zoned and their suitability for the uses allowed by the zone (collectively, the "need factors"). Further, the Board finds that these considerations must be considered on balance and that the Board can weight each factor as it deems appropriate to make a final determination of an "existing, demonstrable" need.

### **a. The Record Demonstrates an Existing Need for a Local Solid Waste Disposal Option**

The record supports a conclusion that there is an existing need for the continued operation of a local disposal option generally and for Riverbend Landfill specifically – a particular use allowed

by the requested EFU zone. The Board bases this conclusion on a combination of all three need factors. As the applicant has indicated, the County has previously determined a market need for the continued operation of Riverbend Landfill. The County arrived at that conclusion as part of RLC's earlier request for a Goal 3 Exception and reconfirmed that conclusion when the County amended the Zoning Ordinance in 2011 to allow landfills in the farm zone through Ordinance 867. Those decisions were based on information similar to the information presented to the County in this proceeding, including an economic and market analysis referred to as the "Zia Report," an update to which appears in this record as the Yamhill County Waste Disposal/Management Alternatives Update 2014 (the "Zia Report Update"). Both the Zia Report and the Zia Report Update were undertaken by the County as independent analyses to augment other information being submitted to the record.

The record demonstrates that a local disposal option is of high importance to the citizenry of the County through the economic benefits that the landfill generates for the community. These benefits are realized through lower disposal costs for individuals and businesses; revenue to the County through the license fee; greater direct and indirect employment income from the construction and operation of the landfill; increased opportunities for local electricity generation; and through a reduction of fuel costs (and air emissions) that would otherwise result from trucking waste to distant sites.

The record also demonstrates that there is a market need for the continued operation of a local disposal option in the County. Specifically, residents and businesses in the County currently generate between 150,000 and 200,000 tons of municipal solid waste every year that require disposal.

Finally, the record demonstrates an existing need for the solid waste use allowed in the EFU zone based on the limited availability and suitability of other lands in the County to accommodate that use. There are only two zones in Yamhill County that allow a sanitary municipal solid waste landfill as a permitted or conditional use—the PWS zone and the EFU zone. The applicant included an inventory of existing tax lots zoned PWS showing the County has a total inventory of 422 acres currently zoned PWS, with more than half of that inventory associated with the PWS zoning at Riverbend Landfill. The balance of the PWS inventory is comprised of smaller sites (with an average size of just over 7 acres) and the majority of the PWS zoned tax lots are committed to existing uses such as cell towers, water storage tanks, and power substations.

The limited availability of lands in the County to accommodate a solid waste use is exacerbated by the fact that the County's EFU zone is more limited than ORS 215.283 allows. YCZO



402.02(V) only permits “the maintenance, expansion or enhancement of an existing site” on EFU land. Riverbend Landfill is the only existing solid waste site in the County that has been granted a permit by DEQ as a municipal solid waste (MSW) landfill. There are eight other sites in Yamhill County with solid waste permits issued by DEQ under ORS 459.245. However, those sites serve very different and specialized roles in the County’s solid waste management system, including waste recovery, waste transfer and recycling, yard debris composting and on-site composting associated with farm uses. Only Riverbend Landfill has the long history of operation as an MSW landfill and has in place the necessary infrastructure to continue such operations. Moreover, only Riverbend Landfill is designed to operate as a modern landfill in full compliance with Subtitle D regulations with sufficient area to meet existing and future County disposal needs.

**b. Response to Opposition Testimony**

The record contains testimony making several arguments that YCZO Section 1208.02(B) has not been satisfied. The Board finds that these arguments do not outweigh or undermine the Board’s finding above that there is an existing, demonstrable need for a local disposal option in the County.

- *Need for All Uses Allowed by the Zone*

The record contains comments asserting that YCZO Section 1208.02(B) requires an applicant to demonstrate a need for *all uses* allowed in the farm zone and that a need for just one particular use is insufficient. The Board does not interpret this Zoning Ordinance provision in that manner, and such an interpretation is inconsistent with the County’s prior interpretation of this provision. For example, in docket PAZ 05-06, the County approved a zone change from RC to EF-80 to allow for a hazelnut orchard on an abandoned golf course. The County expressly identified the need in that decision as the need for the hazelnut orchard, a very specific kind of agricultural use, and based that need specifically on the suitability of the land to support hazelnut orchards compared to other EF-80 lands in the County. The County did not require the applicant to demonstrate a need for other non-farm uses allowed in the EF-80 zone, or even a need for farm uses in general.

In another example, docket Z-01-98/SU-01-98, the County approved a zoning application changing the zoning of a parcel from the Mineral Resource District (MR-2) to the Heavy Industrial (HI) district. The purpose of that application was to allow aggregate processing and an asphalt batch plant. In approving that application, the County determined that the applicant had demonstrated a market need for an asphalt batch plant – again, a very specific type of industrial use. The HI district allows several other permitted uses such as grain elevators, auto wrecking

yards, slaughter houses, and oil processing facilities. In applying Section 1208.02(B), the County did not require that the applicant show a need for any of these other specific uses listed in the HI district, or even a need for industrial uses in general.

The Board did not receive substantial persuasive evidence or argument that it should abandon its prior interpretation of this Zoning Ordinance provision. This criterion is satisfied because the applicant has shown an existing, demonstrable need for at least one particular use allowed by the requested zone. Even if the Board is required to find that there is a demonstrated need for more than one use allowed by the requested zone, the record in this matter reflects an existing, demonstrable need for multiple particular uses allowed by the requested farm zone, as discussed in more detail below.

First, the record demonstrates an existing need for farm uses in the County – uses allowed by the requested zone. This conclusion is based in part on the importance of such uses to the citizenry and the economy of the area. Several commenters suggested, for example, that the application should be denied because it will eventually allow landfill operations on farm land and that the County needs more, not less farming. Many commenters similarly described the importance of the farming economy and the financial gains it has brought to the area. This finding is also based in part on the market demand that can be served by farm uses. For example, testimony in the record describes the increase in visitors that come to the County for farm-related uses and asserts that such visits will only increase in the future. The Board recognizes that other lands in the County already zoned EFU may be available for farm uses, but that fact relates to only one of the need factors and does not compel the Board to reach the opposite conclusion. The Board finds no substantial evidence or testimony in the record to support a conclusion that there is no need for more land zoned for farm uses in the County.

The County's Comprehensive Plan and the state's policy embedded in Goal 3 demonstrate an existing need for more farm uses. The Comprehensive Plan, for example includes specific policies that encourage more farm uses, including policies that the County should: (1) provide for the protection of farmland in large blocks (Agricultural Lands, Policy B); (2) provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations (Rural Area Development, Goal 1); (3) encourage economic development projects which do not conflict with the predominant timber and agricultural character of the county (Economic Development, Policy B); and (4) ensure the continuance of the open space character that has always existed in the County (Open Space, Goal 1).

Under Oregon's land use laws, agricultural lands are conserved for agricultural uses and certain non-farm uses that are compatible with farming through the application of EFU zones. The record reflects that approximately 15.5 million acres in the state (56% of private lands in Oregon) are included in EFU zones. In the County, about 40% of private lands are zoned EF-80. As the applicant correctly notes, EFU zoning has been instrumental in maintaining working farms in Oregon and the rate of loss of both large (500+ acres) and mid-sized (50-499 acres) farms in Oregon was less than one-third the rate of loss for the nation as a whole. According to an OSU study, what agricultural loss is occurring is primarily in non-EFU zoned areas that are planned for development.

The applicant's proposal to rezone a total of approximately 250 acres from PWS and RC to EF-80 will create a relatively large block of EFU land that, in the long run, offers more protections for farming than the existing "non-agricultural" zoning. The existing PWS and RC zoning, for example, can be developed more intensely and are not subject to ORS 459.055, which imposes certain reclamation standards for landfills in EFU zones. Development in those existing zones can also occur without any consideration of ORS 215.296 (impacts on accepted farm practices and costs) for approval of specific uses in those zones. In contrast, the landfill use in the EFU zone will essentially be an interim use until it reaches the closure stage. At that point, if the site is rezoned to EFU, under ORS 459.055, the site must be restored to a condition comparable to its original use. DEQ has confirmed that this will be a requirement of any future permit it grants to RLC.

Moreover, RLC has submitted evidence establishing that the land can be rehabilitated, at the termination of its use for solid waste disposal, to a condition comparable to its original use. The record reflects that the original use in 1980, when the county approved the first plan amendment and zone change for Riverbend Landfill, was grazing, turkey farming, and general farming. The final contours and cover of the landfill (current and future), and of PWS and RC zoned lands that do not contain landfill uses, will be suitable for those same types of uses.

The new EFU zone will also be more consistent with the established state policies that work in concert to produce large blocks of EFU land: (1) to protect EFU lands as key resources for multiple economic, environmental and open space benefits; and (2) to minimize encroachment of urban uses into agricultural areas. By rezoning the PWS and RC areas to EF-80, the pattern of zoning in this area will be more homogenous with, more consistent with, and more supportive of, the zoning and land use character of the surrounding area.

Second, the record demonstrates an existing need for agri-tourism uses in the County, which are also allowed in the EFU zone. This conclusion is based in part on the importance of agri-tourism

to the citizenry and economy, and in part on the market demand for this use. The importance of agri-tourism, and the fact that there is an agri-tourism market demand to serve, is a fact established by the County's recently-adopted Agri-Business Economic and Community Development Plan. The stated purpose of that plan is to look into the future for the County's agriculture and tourism industries and to identify tourism-related activities and businesses necessary to support local agriculture. The County's agri-tourism plan expressly identifies a need for outdoor adventures, educational opportunities, and "anything that enhances the visitor's experience" as opportunities for the future. Other lands in the County already zoned EFU may be available to serve some of the need for agri-tourism. However, that fact is only one of the need factors the Board has considered and does not compel the opposite conclusion that there is no need for agri-tourism. Further, the Board finds no substantial evidence in the record that there is no need for agri-tourism in the County.

The applicant's request for a zone change would create more land in the County suitable for serving the market demand for agri-tourism opportunities. The applicant's efforts with respect to its Stewardship Plan will utilize RLC property for uses related primarily to farming, outdoor recreation, outdoor environmental education, open space, and wildlife habitat. For example, the applicant's Community Agriculture project is envisioned to allow individuals and non-profit organizations the opportunity to farm on small plots, with some of the food crops to be delivered to local school lunch programs. Recreational opportunities are planned in the form of a trail system that would connect with other area trails for hikers, bicyclists and possibly equestrians. Some of those activities could take place on the portions of RLC's property already zoned EFU, but the zone change is necessary to allow some of those activities on other areas of the property currently zoned PWS or RC.

- *Necessity of the EFU Zone*

The record contains testimony asserting that, even if there is an existing need for a particular use, the proposed zone must be "necessary" to satisfy that need. However, the Board does not interpret YCZO Section 1208.02(B) in that manner, nor is that interpretation supported by the plain language of the Zoning Ordinance. The plain language of this criterion requires the County to determine if there is an existing need for uses allowed by the zone. The Board must still determine if the zone change is "appropriate" under YCZO section 1208(C), but no provision in the Zoning Ordinance, including YCZO Section 1208.02(B), requires that the proposed zone be the only way to satisfy a demonstrated need. That is an inquiry more appropriate for a Goal Exception process, not a zoning decision.



The Board also received comments during the hearing process that, because Riverbend Landfill is already zoned PWS and the PWS zone allows landfills, there is no need for a zone change to continue the existing use. This reasoning is not persuasive. First, the argument ignores the plain language of the criterion, which requires that the County consider, among other factors, whether “other lands” so zoned (in this case, already zoned EFU) are available. By its terms, that inquiry does not relate to the sufficiency of the current zoning of the property. Second, those comments fundamentally misunderstand the purpose of rezoning property, which is to guide future activities and development. If the County could not rezone property where an existing use on the property is already allowed, it would be unable to rezone any property other than property containing non-conforming uses. Third, the applicant has demonstrated that it can make more efficient use of the existing landfill by rezoning the entire legal lot to the EFU zone, for example, by using the RC tax parcel or portions of the EFU-zoned parcels for operations support ancillary to the existing landfill. The applicant has also demonstrated that the remaining undeveloped PWS land is not sufficient to allow the continued operation of Riverbend Landfill. Approximately 75 of the remaining acres extend south of the existing permitted landfill, to and across the South Yamhill River. This area is within the 100-year floodplain and floodway areas. While the existing PWS zoning would theoretically allow landfill operations in that area, natural site constraints and environmental regulations limit its suitability for that use. In general, it is reasonable in this case for the owner of property with split zoning to seek the application of a single zone on that property if doing so creates more flexibility to accommodate existing uses.

- *Critique of Economic Benefits*

The record contains evidence and accompanying arguments that the zone change will cause a negative economic impact or that the applicant has overstated the economic benefits of a local disposal option. In considering the economic benefits of a local disposal option, the Board reviewed economic studies submitted by the applicant, studies submitted by opponents to the application, and an independent study funded by the County (the Zia Report Update). The Board has weighed all of the evidence received, and finds that the economic study submitted by the applicant, and the Zia Report Update, include the more compelling evidence regarding the economic benefits of maintaining a local disposal option.

According to the economic analysis submitted by the applicant, costs of disposal are likely to rise when there is no local disposal option because hauling waste to alternative disposal sites would cause the per-ton cost of disposal to increase for Yamhill County residents and businesses. Specifically, the annual cost of disposal to the entire County would increase by \$3.5 to \$5.1 million (depending on the alternative site). Additionally, if Riverbend Landfill continues to

operate, RLC would continue to pay license fees to the County that would be greater than the license fees the County would collect from a transfer station that processes only in-county waste.

The economic analysis submitted by the applicant also demonstrates that RLC could invest \$25.5 million when it expands Riverbend Landfill in the future. That level of construction activity would generate 202 jobs directly associated with construction activities and \$6.1 million in associated personal income in addition to secondary jobs and income. Even before any potential expansion of the existing landfill, operating Riverbend currently requires 17 full-time equivalent jobs, generating \$1.6 million in associated personal income per year to operate the facility in addition to secondary jobs, as the Landfill and its employees purchase goods and services in the local economy. Operating Riverbend Landfill generates an estimated 19 secondary jobs and \$500,000 per year in personal income, for a total of 36 jobs and \$2.1 million per year in personal income. Hauling waste to alternative sites would create about half as many jobs – operating the transfer station and driving the waste to alternative sites would generate between 14 and 19 jobs and between \$900,000 and \$1.2 million in personal income (depending on the alternative site). Between 11 and 14 of those jobs would be directly employed in transfer station operations and in hauling the waste.

Hauling solid waste from the County to any of the three alternative disposal sites presented in the applicant’s economic study generates carbon dioxide (CO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide, and particulate matter. According to the applicant’s analysis, the economic cost of the CO<sub>2</sub> is between \$28,000 and \$297,000 per year; the cost of the NO<sub>x</sub> is between \$23,000 and \$200,000 per year; and the cost of particulate matter is between \$28,000 and \$242,000 per year.

The update to the Zia Report also included an economic analysis comparing disposal costs if Riverbend Landfill continues operations with costs of using out-of-County sites to meet the County’s disposal needs. That report similarly concludes that “[i]f the Riverbend Landfill is not successful in gaining approval for expanding the landfill Yamhill County residences and business will experience an increase in their garbage bill.”

In contrast, the economic analysis submitted to the County by opponents of the application concludes that there is an economic detriment to the County if Riverbend Landfill continues to operate. The opponents’ alternative analysis contains several flaws that diminish its value as evidence. For example, the analysis overstates the value of possible lost agricultural production by relying on crops that could hypothetically be grown on the site where the applicant plans to expand, but that are not actually grown on the site. The analysis also incorrectly states that 87 acres of farmland will be removed from potential agricultural production, but the correct figure is

37 acres (the size of the anticipated landfill expansion), and does not consider the present value of the economic impacts it identifies.

The record also contains arguments that disposal rates may actually increase if Riverbend Landfill continues to operate, or that there are other ways to reduce solid waste disposal rates in the County without the zone change. If that were true – which the Board finds it is not – the Board nevertheless concludes that reduced disposal rates is only one component of economic benefits, and the market demand for solid waste disposal exists independently of customers' costs of using that service. Even if disposal rates were to increase in the future, that fact alone would not lead to a conclusion that there is no existing need for solid waste disposal, especially in light of the other need factors the Board has considered. Moreover, the Board finds that the zone change will allow RLC to provide solid waste disposal at a lower cost than other available disposal options and that disposal rates are likely to stay lower when there is a local disposal option. The Board finds that these lower rates provide economic benefits important to the citizenry of the County, as evidenced by the testimony received during the hearings from residential, commercial and industrial users of Riverbend Landfill.

**c. Conclusion for YCZO Section 1208.02(B)**

In summary, YCZO Section 1208.02(B) is satisfied because there is a demonstrable, existing need for the continued operation of a local disposal option generally and Riverbend Landfill specifically, in addition to a need for more farm uses and agri-tourism in the County. Each of these three uses is a use permitted in the requested EFU zone. The solid waste disposal use in particular is important to the citizenry and the economy of the entire County because it provides a local, low cost, environmentally-sound option for solid waste disposal that keeps disposal costs low for all customers and helps businesses and industry to remain profitable. The only zones that permit a landfill are the PWS zone and the EFU zone (with limitations). However, properties in those zones are not available or not as well suited as the applicant's property.

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

This provision in the Zoning Ordinance requires the County to consider if the newly-applied zone is appropriate. To make a determination that the zone change is appropriate, this criterion requires the County to consider: (1) surrounding land uses; (2) the existing density and pattern of development in the area; (3) changes that may have occurred in the vicinity to support the proposed amendment; and (4) the availability of utilities and services needed by the anticipated

use (in this case, the landfill). These factors must be considered on balance, and the Board must weight each factor as it deems appropriate.

The requested zone is appropriate considering surrounding land uses and the existing density and pattern of development. Almost all of the land surrounding the properties being rezoned is already zoned EFU. The uses in those surrounding areas are uses permitted in the farm zone. Other than the parcels that are the subject of this zone change request, the only parcels in the immediate vicinity that are not zoned EFU are the closed Whiteson Landfill and the parcel that houses Munro Landing, a recreational facility. Rather than disrupt the zoning pattern in this area, the zone change will actually make the zoning pattern more homogenous.

The requested zone is appropriate in light of the very few changes that have occurred in the vicinity. In fact, the surrounding area has not changed significantly in the more than three decades that Riverbend Landfill has been in operation. This standard is more appropriately applied when a change in the vicinity is being used to “support” a zone change. The record contains testimony claiming that the area around Riverbend Landfill has changed over the years (for example because of an increase in tourism). That testimony, however, is misplaced, because the applicant is not relying on changes in the vicinity to support the zone change. Even if the County should consider changes in the vicinity to consider denying a request for a zone change, it is not appropriate to do so on this record. It may be true that, as the opposing testimony suggests, more tourists are seeing the benefit of visiting agricultural areas. However, that fact only reinforces a conclusion that the character (farms and open space) and density (large, undeveloped parcels) of the area have remained the same. Many of the changes described in the testimony have occurred in the County generally and not necessarily in the vicinity of RLC’s property. The record contains no substantial evidence that any of the identified “changes” have altered the character of the surrounding area or otherwise demonstrate that more EFU-zoned land is not appropriate in light of those changes.

In concluding that the zone change is appropriate, the Board has also considered the fact that additional utilities and services are not likely to be needed to support the anticipated use. Instead, Riverbend Landfill is largely self-sufficient and needed infrastructure such as transportation, electricity, water and sewer are already in place. The continued operation of Riverbend Landfill will therefore not require additional utilities or services, nor will any expansion of the landfill.

In addition to the above considerations, the proposed change is appropriate because it will allow the continuation and future development of uses for which there is an existing, demonstrable need. As explained in other findings, the record demonstrates that the zone change will allow



RLC to more efficiently use its property to operate the existing Riverbend Landfill (even without an expansion) because RLC will be able to make use of the RC-zoned tax parcel and portions of the EFU-zoned parcel for operational support. Similarly, the record demonstrates that the zone change will result in a net increase of land to accommodate farm uses because DEQ will require restoration of the existing landfill to a condition comparable to its original use. Agricultural uses, open space and other uses allowed outright in the EFU zone are anticipated end-uses of the site, and those types of uses are compatible with development on other EFU parcels in the vicinity.

The zone change will cause no change in how the applicant's property will actually be used. Only three uses have occurred on the tract of land owned by the applicant: (1) farm uses; (2) solid waste uses; and (3) recreational uses. These are the only three uses RLC anticipates will occur on its property. Because the zone change does not expand the types of uses that have occurred in the area for decades, the zone change is appropriate.

The record contains other testimony claiming that the *existing* landfill is not compatible with the surrounding area. That testimony, however, is not relevant to this criterion. The Board does not interpret this provision of the Zoning Ordinance to require the County to review development that already exists on the subject property or to consider the compatibility of specific developments that may exist in the future. Rather, the County must determine whether the new zone designation is appropriate in the area to which it is being applied.

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

In this case, other lands in the County zoned either EFU or PWS (the only zones designated for the proposed solid waste use) are either unavailable or not as well-suited for the anticipated use. The applicant provided a detailed analysis of all sites in those zoning districts. That analysis primarily concluded that no other EFU sites are available because the County's Zoning Ordinance does not authorize new solid waste disposal sites in EFU zones and, therefore, the only alternative sites are where there is an existing site. Of the existing sites in Yamhill County, only one – Riverbend Landfill – can accommodate the disposal of municipal solid waste.

The zoning analysis provided by the applicant and accepted by the County also concludes that no other PWS sites can accommodate municipal solid waste disposal. Other than the applicant's property, PWS sites in the County are smaller sites averaging just over 7 acres. None of those sites are large enough for a municipal solid waste landfill and a majority of those sites are committed to existing uses such as cell towers, water storage tanks, and power substations.

The record does contain testimony claiming that one other specific site in the County is better suited for the anticipated use. Specifically, that testimony claims that the applicant’s tax parcel that is already zoned PWS is the better suited site and, therefore, there is no reason to re-zone the remainder of that lot. This argument ignores the plain language of YCZO Section 1208.02(D). That criterion requires that the County analyze “other lands” in the County, which necessarily refers to lands other than the land that is the subject of the zoning request. Further, as discussed in more detail above, the Board has already found that the existing PWS tax parcel is no longer sufficient to accommodate the continued operation of Riverbend Landfill. Even if the Board concluded that the subject property should be considered under this criterion, the PWS site is therefore not “sufficient” as the opposing testimony claims it is.

Based on location, size, and other factors, the Board finds that no other lands in the County zoned EFU or PWS are as well suited to accommodate the full array of uses RLC anticipates, and that YCZO Section 1208.02(D) has been satisfied.

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

YCZO Section 1208.02(E) does not apply to RLC’s request for a zone change because that request does not involve a Goal Exception.

### **III. Comprehensive Plan Goals and Policies**

YCZO Section 1208.02(A) requires a proposed change to be consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.

The County’s Comprehensive Plan addresses seven broad areas: 1) Urban Growth and Change and Economic Development; 2) Land and Water; 3) Transportation, Communications, and Public Utilities; 4) Public Land, Facilities, and Services; 5) Environmental Quality; 6) Energy Conservation; and 7) Implementation, Evaluation, and Review. The Board finds that no Comprehensive Plan policy serves as an approval standard for RLC’s requested zone change. The Comprehensive Plan expressly acknowledges that certain goals and policies may conflict with others and that final decisions require the weighing of the merits in order to achieve a balanced decision. On balance, the Board finds that the requested zone change is consistent with the goals and policies of the Comprehensive Plan. That conclusion is based on the findings below addressing some of the relevant goals and policies in each of the seven areas of the Comprehensive Plan.

## A. Section I – Urban Growth and Change and Economic Development

### 1. Urban Area Development

*Goal 1: To encourage the containment of growth within existing urban centers, provide for the orderly, staged, diversified and compatible development of all of the cities of Yamhill County, and assure an efficient transition from rural to urban land use.*

*Policy C: Yamhill County will recognize the lands within established urban growth boundaries as the appropriate and desired location for urban development.*

Approval of the zone change request is consistent with this Comprehensive Plan goal and this policy. The existing Riverbend Landfill is a rural use and has operated under County and DEQ land use and permit approvals for more than 30 years in a rural area. Operation of the landfill does not require urban sewer or water facilities or other urban infrastructure. Landfills typically require large sites and are not dependent on urban infrastructure, such as public sewer and water. The use is more appropriately categorized as a rural use rather than an urban use. Therefore, a location outside of established urban growth boundaries is the more appropriate and desired location for MSW landfills. The record reflects that all of Oregon's larger, active landfills are located outside urban areas. That fact in part reflects the fact that Oregon statutes assign solid waste planning to counties rather than to cities, which is further cemented by ORS Chapter 215, which expressly allows solid waste disposal facilities in the Exclusive Farm Use zone.

Providing a local disposal option in a rural area increases the amount of space available in urban areas for urban uses, reducing the pressure to site those urban uses in rural areas outside urban growth boundaries (UGB) and, therefore, is consistent with Goal 1 and Policy C. The record contains no compelling evidence or testimony that the zone change is inconsistent with this Comprehensive Plan goal or policy.

*Goal 2: To encourage the containment of urban services and facilities and other public capital improvements within existing urbanizing areas in order to achieve an orderly pattern of urban growth.*

*Policy A: Yamhill County will continue to seek full cooperation and coordination among the cities, the school districts, other special-purpose districts of the county and the county itself in jointly planning and programming all land use, urban services and facilities and other public improvements having an impact on the rate and direction of urban growth.*

The existing landfill operates with rural services and facilities at a rural location about 2 miles from McMinnville's UGB. The extension of urban services and facilities and other public capital improvements will not be required or allowed to serve the existing facility or any contemplated future expansion. The County has cooperated with the 10 cities in the County and the franchised haulers in the preparation and adoption of the 2004 SWMP. Those cities have deferred the lead role in solid waste planning to the County, and the County has the lead role in the land use

permitting and license agreement for solid waste disposal and all of the urban areas in the County recognize the importance of a centrally located and cost-effective disposal site to accommodate long term disposal of waste. The County has undertaken multiple updates to its Solid Waste Management Plan (SWMP). Based in part on the information developed through the updates to the SWMP, the County found that continued operation of a local landfill was necessary to meet the County's solid waste disposal needs.

The zone change is consistent with Goal 2 and Policy A implementing that goal. The record contains no substantial evidence or testimony that the zone change is inconsistent with this Comprehensive Plan goal or policy.

## **2. Rural Area Development**

*Goal 1: To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.*

As noted in the discussion above, solid waste landfills are recognized under state and county policies and rules as a use that is appropriate and better suited to rural locations. Prior to the opening of Riverbend Landfill in the early 1980s, the Whiteson and Newberg Landfills in the County also operated in rural areas. Further, under Oregon's planning framework, a solid waste disposal facility is a use that is allowed by Goal 3 and the statutory EFU zone and is now also allowed in the County's EFU zone. The zone change does not compromise the basic goal relating to urban containment and orderly urban development embodied in this goal because the landfill is an established rural use at this location and recognized as a permitted nonfarm use in the EFU zone.

## **3. Economic Development**

*Goal 1: To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.*

*Policy A: Yamhill County will, in cooperation with the cities, the local chambers of commerce and affiliated industrial promotion groups, and State agencies concerned with State and regional economic development, encourage a diversified employment base, the strengthening of trade centers, and the attraction of both capital and labor-intensive enterprises, consistent with the needs of each community and the county as a whole.*

*Policy B: Yamhill County will encourage economic development projects which do not conflict with the predominant timber and agricultural character of the county.*

The discussion elsewhere in these findings relating to Goal 3 (Agricultural Land), Goal 6 (Air, Water and Land Resources Quality) and Goal 9 (Economic Development) are relevant to these Comprehensive Plan goal and policies relating to Economic Development. Those findings and discussion are incorporated here by this reference.

Continued operation of Riverbend Landfill as a regional landfill will provide economic benefits to residents, businesses, and public agencies within the County, as expressed by numerous persons who testified at the hearings. The zone change will provide the opportunity for RLC to submit a future application to expand Riverbend.

The existing landfill is an integral part of the overall solid waste management system in the County and the long-term availability of a centrally-located disposal site with competitive rates will help to maintain the stability and encourage the development of the local economy consistent with Goal 1. Specifically, costs of disposal are likely to rise when there is no local disposal option because hauling waste to alternative disposal sites would cause the per-ton cost of disposal to increase for Yamhill County residents and businesses. Lower disposal costs promote the economic vitality of the County.

If Riverbend Landfill continues to operate, RLC would continue to pay licensing and host fees to the County that would be higher than the host fees the County would collect from a transfer station that processes only in-county waste. If RLC expands Riverbend Landfill, RLC would invest \$25.5 million in capital improvements. That level of construction activity generates 202 jobs directly associated with construction activities and \$6.1 million in associated personal income in addition to secondary jobs and income. Even before any potential expansion of the existing landfill, operating Riverbend currently requires 17 full-time equivalent jobs, generating \$1.6 million in associated personal income per year to operate the facility in addition to secondary jobs, as the Landfill and its employees purchase goods and services in the local economy. It is estimated that operating Riverbend Landfill generates 19 secondary jobs and \$500,000 in personal income, for a total of 36 jobs and \$2.1 million in personal income. Hauling waste to alternative sites would create about half as many jobs – operating the transfer station and driving the waste to alternative sites would generate between 14 and 19 jobs and between \$900,000 and \$1.2 million in personal income (depending on the alternative site). Between 11 and 14 of those jobs would be directly employed in transfer station operations and hauling the waste.

Hauling solid waste from the County to alternative disposal sites generates carbon dioxide (CO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide, and particulate matter. The economic cost of

the CO2 is between \$28,000 and \$297,000 per year; the cost of the NOx is between \$23,000 and \$200,000 per year; and the cost of particulate matter is between \$28,000 and \$242,000 per year.

The predominant timber areas of the County are generally located at higher elevation areas in the westerly portion of the County toward the Coast Range. There are no parcels in the immediate vicinity (1-mile radius) of the existing landfill that are designated and zoned for Commercial Forestry. However, the landfill is located in a productive agricultural area of the County and many properties in the vicinity of the landfill are managed for commercial farm uses.

Riverbend Landfill and Yamhill County's vineyard industry have grown in parallel over the same time period. RLC has demonstrated that it is feasible to balance the economic development benefits associated with continued operation of the landfill while maintaining the predominant agricultural character of the vicinity. The record demonstrates that agricultural tourism has increased over time in the areas near Riverbend Landfill. That fact reinforces the idea that the character (farms and open space) and density (large, undeveloped parcels) of the area have remained the same, and that a landfill can exist without disrupting that agricultural character.

Based on the foregoing, the Board finds that the zone change is consistent with Goal 1 and Policies A and B implementing that goal.

#### **4. Housing**

The record contains testimony asserting that the zone change is not consistent with Comprehensive Plan goals and policies relating to housing. That testimony specifically asserts that the planned closure of the Mulkey RV is inconsistent with Goal 1 of the Housing section and Policy C implementing that goal, which provide that the County will assure safe, sanitary and decent housing and provide opportunities for a variety of housing types in different residential environments, including single-family structures, conventional and modular type construction, and mobile homes to serve the housing needs of all components of the county population.

As discussed in other findings, the RV Park is a recreational facility that is not legally allowed to accommodate permanent or even long-term residential use. Testimony was received by the Board that residential use is being made of the RV Park, but that does not make such use legal or desirable from the standpoint of County housing policy. Certainly, the County is not relying on Mulkey RV Park to satisfy its housing needs. To the extent that Mulkey RV Park currently provides recreational opportunities, other RV parks will continue to exist in the County to serve such a need.



Additionally, denial of the zone change would not result in the continued use of the RC-zoned property as an RV park. The record reflects that the use of that tax parcel for an RV park will likely conclude in April of this year, when the current lease terminates.

No testimony in the record asserts that the purpose of the RC-zoned tax parcel is to provide housing, or that any need for housing potentially provided by the park cannot be accommodated elsewhere in the County. Prior to its use as an RV park, this parcel was used as a motor cross facility, and it was zoned RC based on a built-and-committed Goal Exception because of that use. The Board finds that the central character of that tax parcel has been recreational, not residential, and, therefore, there are no housing implications as a result of the zone change that make this decision inconsistent with the County's Housing policies

## **B. Section II – The Land and Water**

### **1. Agricultural Lands**

The findings addressing compliance with Goal 3 are hereby incorporated by this reference to also address goals and policies in the County plan relating to agricultural lands.

*Goal 1: To conserve Yamhill County's farm lands for the production of crops and livestock and to ensure that conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economic manner.*

*Policy A: Yamhill County will provide for the preservation of farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various public financial incentives.*

*Policy B: Yamhill County shall provide for the protection of farmland in large blocks through minimum lot sizes of 20, 40, and 80 acres, as appropriate, on the Comprehensive Plan and official zoning maps. Any proposal to reduce the minimum lot size on a farm or farm/forest parcel shall be shown to be appropriate to maintain the existing commercial agricultural enterprise in the area.*

*Policy D: Yamhill County will provide for the conservation of farm lands through various plan implementation measures and the review of any public or private land use determinations subject to county jurisdiction, including urban development activity and the location and construction of highways and utility transmission lines which disturb the soil cover and natural drainage pattern, and increase storm runoff, erosion and sedimentation.*

*Policy H: No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.*

Approval of the zone change will create a net gain of land available for farm uses in the County. RLC is not proposing to convert farm land to urban use, but instead is proposing the PA/ZC to accommodate a use that, eventually, must be restored to a condition comparable to its original use.

While the Comprehensive Plan limits the amount of farmland conversion that takes place, it nevertheless contemplates that some non-farm rural development will occur. For example, the comprehensive plan has specific policies relating to urban expansion (Section I.D) as well as rural residential uses (Section I.B, policy 2.b). Additionally, because solid waste disposal sites are specifically authorized as a permitted use in the statutory EFU zone, and now the County's EFU zone, the state and local planning framework clearly contemplate that it is appropriate and feasible to balance the need for continued operation of an existing solid waste disposal facility with conservation of Yamhill County's farm lands for the production of crops and livestock. When the County amended its EFU zone to expressly allow solid waste facilities in that zone, it concluded, and LUBA affirmed, that allowing such uses is not inconsistent with the County's Comprehensive Plan provisions relating to agricultural land.

Yamhill County's amended EFU zone allows the maintenance and expansion of *existing* facilities, including Riverbend Landfill, thereby preventing solid waste disposal sites from being sited in all areas of the County's farmland. This fact served as the basis for the County's express finding that the County's Ordinance "minimizes the overall non-farm uses allowed in the EFU zone" as required by Goal 3. The continued use of Riverbend Landfill also makes use of the opportunity to utilize the nearby RC zone, decreasing the total amount of EFU land required for any expansion.

Testimony was received that the viability of commercial farm uses in the general vicinity of the landfill has been diminished by the presence and operation of the landfill. The more compelling testimony and evidence is to the effect that commercial farming in the area has not been significantly impacted by the presence or operation of the landfill. Moreover, changing the zoning back to EFU does not affect the county's policy to preserve farm lands through appropriate zoning, because solid waste disposal sites are listed as a permitted use under the statutory EFU zone and now the County's EFU zone. Nor does the zone change constitute approval of a future expansion. RLC will have to submit a subsequent application for Site Design Review approval, and will have to comply with the criteria in ORS 215.296 relating to impacts on farm practices and costs, and Site Design Review criteria that address compatibility with surrounding uses.

The zone change does not reduce the minimum lot size on a farm or farm/forest parcel. To the contrary, the zone change actually increases the size of the farm parcels located on RLC's property.

DEQ provides a substantial additional layer of regulatory review and oversight of specific operating conditions through its permitting process that protects soil and water quality.

Rezoning the existing landfill from PWS to EFU will not materially change the established patterns of land uses in the immediate vicinity. Solid waste disposal sites are clearly contemplated as an appropriate and permitted non-farm use in the EFU zone. Now that the County's EFU is consistent with the statutory EFU zone, it is appropriate to rezone the PWS and RC-zoned areas back to EFU and "vacate" the exceptions to Goal 3 that Yamhill County previously approved.

The record contains testimony, without explanation, that the zone change is inconsistent with Policy G. That policy states that the County will not permit a subdivision on lands designated by the Comprehensive Plan as EFU. The zone change permits no such subdivision and, therefore, this policy is not relevant to the zone change.

Based on the foregoing, the Board finds that the zone change, on balance, is consistent with Goal 1 and Policies A, B, D, G and H implementing that goal.

The Zoning Ordinance provides other tools for the County to use that will further balance the County's farm land preservation goals with other goals that promote non-farm uses in the farm zone. Specifically, YCZO Section 904.02 allows the Board to apply a Limited Use (LU) overlay to Plan Amendments and Zone Changes for the purpose of limiting specific activities in a specific location. Because RLC has not requested use of its entire landholdings for solid waste purposes, and because portions of RLC's property can continue to be farmed, the Board finds it is appropriate to impose the LU overlay to limit solid waste-related activities in a specific location. The specific limits of the LU overlay are listed in the Conditions of Approval.

The record contains testimony asserting that the LU Overlay cannot be applied in the manner listed in the Conditions of Approval because it identifies which uses cannot occur within the overlay as opposed to the uses that can occur. The Board concludes that YCZO Section 904 should not be interpreted in that manner and that the same purpose can be achieved whether the overlay lists uses that are permitted, or uses that are prohibited. Because there are a large number of uses that could occur in the overlay as proposed by Staff, and only some uses that would not be allowed, it is clearer and more efficient to identify the latter.

*Goal 2: To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.*

*Policy A: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

Riverbend Landfill is located in an area of high-value farm soils, where it was sited in 1980 to replace other landfills in the County that had reached capacity. Riverbend Landfill operates in compliance with an approved DEQ Solid Waste Disposal Permit, and all landfill cells developed since 1993 include a composite liner system which exceeds Subtitle D regulations. State statutes and regulations allow landfills to continue to operate in high-value farmland areas and allow existing facilities to expand into those areas. Because Goal 3 allows landfills as a non-farm use in the EFU zone, even on high-value farmland, the zone change to EFU is appropriate in this case to accommodate the established landfill use.

The zone change area includes a mix of developed areas (including the permitted landfill and ancillary facilities such as the office, gas-to-energy facility, entrance facilities, leachate storage pond, gas monitoring wells, RV park) and undeveloped areas (including floodplain/riparian areas, fields and remnant orchards). As explained in more detail elsewhere in these findings, RLC has not argued, and the County does not find, that the soils under the existing permitted and developed areas meet the definition of "agricultural land" and should be zoned EFU on that basis. However, soils in the undeveloped areas currently zoned PWS and RC exhibit Class I through IV soils and are appropriate to zone EFU on that basis, consistent with the zoning applied to surrounding lands. Policy A does not preclude zoning other areas that no longer exhibit Class I – IV soils to the EFU zone.

While the County's EFU zone now authorizes solid waste disposal sites on EFU land consistent with Goal 3, the County only allows the "maintenance, expansion or enhancement of an *existing* site on the same tract." By applying only to existing solid waste disposal sites, the County's EFU zone minimizes the overall non-farm uses allowed in the EFU Zone and continues to generally preserve areas with Class I – IV soils for farm use.

Based on the foregoing, the Board finds that the zone change is consistent with Goal 2 and Policy A implementing that goal. The record contains no compelling evidence or testimony that the zone change is inconsistent with this Comprehensive Plan goal or policy.

### 3. Water Resources

*Goal 1: To conserve and to manage efficiently our water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and non-consumptive uses and to abate flood, erosion and sedimentation problems.*

*Policy B: Yamhill County will continue participation in the FEMA National Flood Insurance Program to prevent flood-caused loss of life and property, by identifying and mapping the floodplains and floodways of the county, restricting land uses within the floodplains to those which are open and undeveloped, including forestry, agriculture, wildlife habitat and recreational areas and encouraging improved watershed management practices and the construction of watershed storage projects for flood control.*

*Policy I: Where conflicting uses are identified or intended, in specific proposals or programs, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and used as a basis for decision-making.*

*Policy 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 – USDA – Soil Conservation Services), that are not regulated under the Forest Practices Act.*

The record reflects that RLC has both a permit to withdraw surface water from the South Yamhill River and a domestic groundwater well that provides potable water to the landfill office and a well that serves the RV park. RLC also maintains an extensive system of groundwater monitoring wells around the perimeter of the landfill that are used for environmental monitoring purposes rather than water consumptive uses.

When compared with agricultural irrigation or municipal uses of groundwater and surface water, Riverbend Landfill does not place high volume demands on water resources. Riverbend Landfill also operates under the provisions of DEQ Solid Waste Permit 345. The permit includes operating conditions to address surface water, erosion, and sedimentation control. Additionally, Riverbend maintains existing stormwater outfalls under the provisions and conditions of a NPDES 1200-Z Stormwater Discharge Permit. The Board finds that RLC has documented a good record of compliance with conserving and managing water resources efficiently.

The existing Riverbend Landfill is located outside the floodway of the South Yamhill River. A portion of the landfill was originally constructed within the 100-year floodplain pursuant to a

floodplain development permit the County issued concurrently with the original land use approval for the landfill (Order No. 80-262). The landfill includes a permanent flood protection berm that lies outside the floodway. Future expansions of the landfill located in a floodplain must not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste to pose a hazard to human health and the environment. The County will rely on FEMA maps as a guide for such future development consistent with County and FEMA regulations.

This zone change approval does not, by itself, result in any conflicting uses because the existing use will remain and any modifications to that use will require additional review by the County. Because Goal 3 and the County's EFU zone expressly authorize a landfill as a permitted non-farm use in the EFU zone, the use is not inherently considered a "conflicting use." Even if future development of RLC's property could be considered a conflicting use, on balance, the positive economic, social, environmental and energy consequences of such a use outweigh any negative consequences.

The economic consequences of temporarily displacing some farmland is outweighed by the construction investment, jobs and payroll, and reduced disposal rates associated with the continued operation of the landfill.

The social consequences such as the removal of the RV Park, potential visual impacts along Highway 18, and temporary noise and odor impacts are outweighed by the social gains achieved by the increase in family-wage jobs, the programs the County can fund with revenue received from the host fee RLC will pay, and the other economic benefits of having a local disposal facility detailed elsewhere in these findings.

The environmental impacts associated with the continued operation of a landfill are only potential impacts, and are unlikely in light of the highly-regulated nature of modern landfills. To the extent that such impacts exist, those impacts are outweighed by environmental gains from reduced carbon emissions associated with maintaining a local disposal option.

The Board finds that the energy consequences of the zone change are a net benefit. The central location of Riverbend Landfill reduces energy needs to transport waste. Further, energy is captured from the disposal of that waste and used locally by McMinnville Water & Light, displacing energy from other resources that is transmitted from farther away.

The Goal 5 findings (below) are relevant to Policy J and are incorporated by this reference. The South Yamhill River is identified as Fish Habitat in the comprehensive plan inventory. Under the existing EFU zoning, farm practices adjacent to streams are not regulated through zoning.



However, several County, state, and federal resource agencies and watershed groups are working cooperatively with farmers to maintain and enhance riparian areas abutting streams for water quality and habitat values.

RLC's property will remain subject to Policy J. As described in the findings addressing Goal 5, the County is imposing Conditions of Approval implementing the "safe harbor" provisions of the Goal 5 rule for protection of riparian corridors. The conditions of approval also ensure that any future expansion will comply with the 100-foot setback specified in Policy J.

Based on the foregoing, the zone change is consistent with Goal 1 and Policies B, I and J implementing that goal.

#### **4. Fish and Wildlife**

*Goal 1: To conserve the fish and wildlife habitat of Yamhill County with a view to maintaining an optimum ecological balance, enhancing the sport fishing and hunting resource of the county, and protect endangered species.*

*Policy A: Yamhill County will cooperate with the Oregon Fish and Wildlife Department, the Yamhill County cities, the U.S. Agricultural Stabilization and Conservation Service, the Bureau of Reclamation, and the soil and water conservation districts of the region to identify, conserve, and protect fish and wildlife habitat; determine areas of critical imbalance and threats to particular species; and formulate and implement measures for the improvement of existing habitat and the creation of new habitat where needed.*

*Policy B: Yamhill County will recognize the need to conserve and protect fish and wildlife habitat in its plan implementation measures, and the following will be considered in any public or private land use determination subject to county review: the impact of harvesting forested areas where there is no forest management plan for regeneration of the forest lands; the filling or drainage of swamps or marshes; the damming of rivers and streams; the location and construction of highways and utility transmission lines; and any other land development activities which significantly interfere with the vegetation or soil cover or drainage patterns in critical habitat areas.*

The Board finds that the area of the County in the vicinity of Riverbend Landfill is not designated as a big game winter range area and is not actively managed for sport fishing or hunting. However, the South Yamhill River is identified as Fish Habitat and the open fields and wooded areas in the project vicinity support a wide variety of wildlife.

As discussed in above and in elsewhere in these findings relating to Goal 5, riparian corridors also promote the conservation of fish habitat.

The existing landfill has been, and any future landfill expansion will be, subject to multiple levels of review and permitting by several agencies, including DEQ, DSL, ODFW, and ODOT.

The County is the lead agency for land use and all of the other agencies would coordinate with the County during their permitting processes

Because Riverbend Landfill has operated at this location for many years, the Board finds that substantial landfill related infrastructure is already in place and can be leveraged to accommodate the continued operation and expansion, as opposed to constructing a new landfill in a greenfield setting. The land terrain, soil cover, and vegetation have already been modified with 30 years of landfill activity at this location. However, even with this long land use history, the County and resource agencies have had, and will continue to have, a substantial role in the review and permitting for any future expansion. The Yamhill County Site Design Review process and the state agency permitting would provide the opportunity to review and condition proposed expansion plans to ensure maintenance of adequate setbacks to protect riparian areas and other mitigation measures that might be needed to conserve and protect wildlife habitat as required by Policy B.

Based on the foregoing, the zone change is consistent with Goal 1 and Policies A and B implementing that goal.

## **5. Open Space**

*Goal 1: To insure the continuance of the open space character that has always existed in Yamhill County.*

The Comprehensive Plan's stated goal to ensure the continuance of the open space character does not imply that no uses or development would be allowed in the rural areas of the County. The Yamhill County Plan Map has reflected a substantial concentration of more than 200 acres of PWS zoning at this location for more than 30 years. The Yamhill County Zoning Ordinance includes 7 rural residential zones, 3 commercial zones, 3 industrial zones, and 3 public facility zones that are available in the unincorporated area. In addition, the resource zones (Farm & Forest) allow the opportunity for up to 50 different non-resource uses in the resource zones.

The County's Parks Master Plan recognizes the unique characteristics of landfills in that they allow the development of passive open space once closed. The County also uses the Site Design Review process as the primary implementation tool to assess the compatibility and character of proposed developments. The Site Design Review process does not apply to development associated with resource uses, but it would be required for any future expansion of Riverbend Landfill.

The Site Design Review process includes public notice and the opportunity for a public hearing. A final grading plan, landscape plan, and design cross sections and elevations are required as

part of the required plan set. In summary, the Riverbend Landfill has a long history of operation and the open space character of this area already includes the existing landfill. Additionally, the subsequent Site Design Review process would provide the opportunity for public and County review of more specific and detailed landscape and buffering proposals for the contemplated Future Expansion Area.

Based on the foregoing, the zone change is consistent with Goal 1.

## **6. Outstanding Scenic Views and Sites**

*Goal 1: To protect outstanding scenic views and sites for future generations.*

*Policy A: Yamhill County will allow uses that may impact scenic resources in the county, subject to the protection offered by the Statewide Land Use Planning Goals, Yamhill County Comprehensive Plan and zoning provisions, particularly site design review, solid waste enforcement, and any other measures as may be adopted to protect the scenic attractiveness of the county.*

Outstanding scenic views and sites exist throughout the County. Varied scenic vistas of wooded hillsides, vineyards, productive farm lands, and streams and rivers provide an important component of the livability, attractiveness, and economic health of the County for residents and visitors. Under Goal 5, local governments are not required to amend acknowledged comprehensive plans in order to identify scenic views and sites. Similar to most counties in Oregon, the County has not adopted comprehensive inventories or regulations for protection of scenic views and sites and no sites have been designated in the general vicinity of Riverbend Landfill.

The County approved the existing Riverbend Landfill without placing any limitations on the physical development of the landfill. However, any future development on RLC property will be subject to the County's Site Design Review process. The Site Design Review process provides a framework "to review commercial and industrial development proposals, to insure safe, functional, energy-efficient developments which are compatible with the natural and human-made environment, and to resolve potential conflicts that may arise between proposed developments and adjacent uses." The Site Design Review process will require RLC to take into account impacts to scenic views.

To date, no County strategy has been adopted for establishing a parkway along State Highways 99 and 18. Therefore, there are no plans or programs in place that relate to scenic corridor protection for Highway 18.

Based on the foregoing, the zone change is consistent with Goal 1 and Policy A implementing that goal.

## C. Section III – Transportation, Communications and Public Utilities

### 1. Transportation

*Goal 1: To provide and encourage an efficient, safe, convenient and economic transportation and communication system, including road, rail, waterways, public transit and air, to serve the needs of existing and projected urban and rural development within the county, as well as to accommodate the regional movement of people and goods and the transfer of energy, recognizing the economic, social and energy impacts of the various modes of transportation.*

The County has adopted a Transportation System Plan (TSP) that is coordinated with the transportation system plans of the cities and the State Transportation System Plan. Riverbend Landfill has an approved direct access point to the state highway system (Highway 18) that includes a left turn pocket for vehicles entering the landfill and a right turn acceleration lane for vehicles leaving the facility. This existing access meets ODOT standards for sight distance and safety.

According to the Traffic Study submitted by the applicant prepared in accordance with ODOT requirements and accepted by the Board, the existing primary access would be retained and can accommodate the PA/ZC area and contemplated future expansion area and maintain compliance with ODOT access, safety, and level of service standards for Highway 18.

As documented in the Traffic Study, the trips associated with the landfill constitute a very small portion of overall traffic volumes on the state highway. The PA/ZC and contemplated future expansion would not result in a significant change in the percentage of trips relative to the overall background traffic on Highway 18.

According to studies from the U.S. EPA, the transportation sector accounts for approximately 34% of our greenhouse gas and CO<sub>2</sub> emissions, followed by electricity consumption at 32%. Landfill release of methane accounts for 2% of the sources of greenhouse gas. Long haul trucking of waste to more distant landfills would require more energy and result in higher air emissions relative to the alternative of expanding Riverbend Landfill as a more centrally located disposal site for the existing service area.

ODOT has adopted access management standards for private accesses to state highways (OAR 734-051). These standards indicate that private accesses along Highway 18 in this area should be spaced 1,320 feet apart. As summarized in the Traffic Analysis, there are two existing private access connections to Highway 18 along the frontage of the parcels included in the PA/ZC or contemplated future expansion area. The existing primary entrance to the landfill would be retained at its existing location. The existing access to the RV park will be a used for a more

limited operations/maintenance access that would have significantly fewer trips than the RV park.

The PA/ZC will not preclude any future expansion of Riverbend Landfill from being set back at least 50 feet from the Highway 18 right-of-way. The zone change and contemplated future expansion would comply with the Comprehensive Plan's goals and policies relating to transportation because RLC would retain the existing approved access points to Highway 18 (a designated arterial) and would maintain more than the required 50 foot frontage setback from the edge of right-of-way.

Additionally, the zone change and contemplated future expansion area can be accommodated with existing transportation facilities and improvements. The primary access point to the landfill would be retained. With the direct access to Highway 18 that only serves the landfill, traffic is concentrated on the state highway (a designated arterial) rather than on the rural County road system, consistent with the functional classification of roadways in the Yamhill County Transportation System Plan. The designated arterials are designed and intended to accommodate higher traffic volumes and freight movement.

Because Highway 18 is under ODOT jurisdiction, a Traffic Impact Study is required for the proposed plan amendment. The Applicant provides an analysis demonstrating that the zone change would not have a significant effect on the state highway system. For these reasons, approval of the requested zone change is consistent with the County's policy to use existing transportation facilities to the full extent possible, consistent with the comprehensive plan and the functional classification of Highway 18.

Based on the foregoing, the zone change is consistent with Goal 1 and the policies implementing that goal.

#### **D. Section IV – Public Land, Facilities, and Services**

##### **1. Public Facilities and Services**

*Goal Statement: To develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development, including public lands and buildings, parks and recreation areas and facilities, schools, police and fire protection domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services.*

*Policy L: Yamhill County will encourage and cooperate with regional solid waste management programs in scale with the county's needs and subject to equitable cost-sharing arrangements for each of the services and facilities developed on a regional basis.*

*Policy O: Groundwater supplies will be protected from critical draw-downs or disrupted flows occasioned by surrounding land use development or activities, such as mining and logging where municipal watersheds exist; surface water supplies will be protected from unusual increases in turbidity and sedimentation caused by farming, logging, mining, excavation or grading; and both ground water and surface water supplies will be protected from contamination by subsurface sewage disposal systems, sewage lagoons, sanitary landfill sites and other sources of pollution.*

The Public Facilities and Services policies in the Comprehensive Plan underscore the County's long-standing commitment to a regional approach to solid waste management. ORS Chapter 459 instructs counties to establish a solid waste program and a second administrative rule (OAR 340-60-026) requires DEQ to issue solid waste permits only if the permitted facility is compatible with an adopted SWMP.

Ordinance 578 provides the legal authority and policy direction for managing solid waste in Yamhill County. It stipulates that the County will regulate the accumulation, collection and disposal of waste and solid waste, and the creation and operation of disposal sites to accomplish the following:

- Provide for safe and sanitary accumulation, storage, collection, transportation, and disposal of solid waste.
- Prohibit and provide for abatement of accumulation of waste, or solid waste, on private property in a manner that would create a public nuisance, a hazard to health, or a condition of unsightliness.
- Develop a regional long range plan to provide adequate disposal sites and disposal facilities to meet future demands.
- Provide a coordinated countywide program of control of solid waste in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and ground pollution.
- Provide for and encourage research, studies, surveys, and demonstration projects on developing more sanitary, efficient, and economical solid waste disposal systems and programs.
- Provide for a coordinated solid waste disposal programs with cities within the County and with other counties or cities, should regional programs be developed.
- Provide for cooperation and agreements between the County and other counties involving joint or regional franchising or licensing of solid waste collection or disposal.
- Provide minimum standards for location and operation of disposal sites to protect adjacent or nearby residents.

The SWMP adopted by the County in 2004 reinforces the County's endorsement of a regional approach for providing disposal services. Similarly, the County's updates to the SWMP in 2008 and 2009 through the JR Miller and Zia reports (the conclusions of which were recently supported in the Zia Report Update) acknowledge the many benefits of the continued operation of Riverbend Landfill.

The zone change and RLC's contemplated future expansion of Riverbend Landfill is consistent with Policy L and will provide the opportunity for the County to continue with the approach to solid waste management that has worked well for decades. The zone change will allow County residential, commercial, and industrial customers to retain access to a centrally located, convenient, and cost-effective disposal site for waste generated in the County. Continued operation of Riverbend Landfill as a regional disposal site will maintain economic benefits to the County with ongoing annual payments of licensing and host fees.

The record reflects that the Oregon Department of Water Resources has not identified the zone change area as a sensitive or critical groundwater area. The record also reflects that the existing landfill operates in compliance with DEQ Solid Waste Permit Number 345 and federal Subtitle D regulations. State and federal regulations include stringent requirements to monitor and protect groundwater and surface water supplies from contamination. Groundwater and leachate monitoring are included in the environmental monitoring plan for Riverbend Landfill.

The record contains testimony that the zone change is not consistent with the Comprehensive Plan because it is counter to Policy B of the Public Service and Facilities goal. That policy states that public facilities and services for rural areas will be provided and maintained at levels appropriate for rural use only. This policy does not apply to landfills, which are unique in that a landfill itself is a rural use that must serve all areas of the County. Even if this policy applies to landfills, Riverbend Landfill has been maintained at a level appropriate for rural use and any future development can also be maintained at the same level. Specifically, RLC has demonstrated that modern landfills are highly regulated and, therefore, are capital intensive facilities that must serve a broad customer base to remain financially viable. In other words, only by serving the entire County, and even areas outside the County, can Riverbend Landfill serve rural users as well. This policy is in tension with Policy L, which requires the County to cooperate with cities to provide regional solid waste programs in scale with the County's needs. The Board finds that the continued operation of a local disposal option located in the rural area is appropriate and strikes the right balance between these two policies.

Based on the foregoing, on balance, the zone change is consistent with the Goal statement and the policies implementing that goal.



Although the zone change itself is consistent with the express terms of the Public Facilities goals in the Comprehensive Plan, the summary introducing those goals states “Recycling of solid waste materials conserves natural resources and energy.” Conditions of approval attached to this approval require that RLC “add a Green Technology component to minimize landfill expansion,” or cease operation, within a specified time frame. Updates to the County’s Solid Waste Management Plan have identified the likelihood that other technologies may soon be available to process waste, thereby increasing the efficiency of a landfill. Based on the foregoing, it is appropriate to limit the amount of time RLC uses its property solely as a landfill. The Board is imposing a Condition of Approval that requires RLC to pursue an alternative technology.

## **2. Parks and Recreation**

*Goal Statement: To provide adequate recreational opportunities in both the rural and urban environments to meet existing and projected needs.*

There is evidence in the record to support a conclusion that recreational opportunities in the rural area will either stay the same or increase following the zone change. Although RLC intends to stop using the RC-zoned tax parcel for the RV Park, it also plans to use other portions of its property as part of Stewardship Lands. Recreational opportunities as part of that effort include a trail system that would connect with other area trails for hikers, bicyclists and possibly equestrians. Such a trail system would provide for recreational connectivity with a footbridge to allow hikers and cyclists to cross the South Fork of the Yamhill River and access an area recently approved for development of a County park. There would also be proximity between the trail system and a wildlife habitat area in development by Ducks Unlimited as part of an existing hunting club that draws participants from outside the County.

Based on the foregoing, the zone change is consistent with the Goal statement and the policies implementing that goal.

### **E. Section V – Environmental Quality**

#### **1. Air, Water and Land Resources Quality**

*Goal 1: To conserve and to protect natural resources, including air, water, soil and vegetation and wildlife, from pollution or deterioration which would dangerously alter the ecological balance, be detrimental to human health, or compromise the beauty and tranquility of the natural environment.*

*Policy A: Yamhill County will cooperate with the State Department of Environmental Quality in enforcing state and federal regulations designed to achieve high air quality.*

*Policy B: Yamhill County will, in making land use decisions relative to industrial or other uses likely to pose a threat to air quality, consider proximity of the proposed use to*

*residential areas and meteorological factors such as seasonal prevailing wind direction and velocity.*

*Policy C: Yamhill County will cooperate with the State Department of Environmental Quality in implementing noise control regulations.*

*Policy E: In order to maintain and improve the quality of the county's air, water and land resources, Yamhill County will seek to minimize irreversible and other long-term impacts in its development of energy resources; support efforts, where feasible, for the appropriate and efficient recovery of energy as a means to reduce waste problems; and encourage a program to recover and recycle used motor oil.*

The record demonstrates that Riverbend Landfill has operated at its present location for more than 30 years without 'dangerously altering' the ecological balance of the area. The existing landfill has been operated in compliance with rigorous state and federal environmental regulations that apply to MSW disposal sites. Based on that history, it is reasonable to conclude that the contemplated future expansion allowed by the zone change would also meet those operating standards. RCRA Subtitle D rules for MSW landfills require significant capital investments for providing a robust liner system below landfills, installing groundwater monitoring wells, providing leachate collection and treatment facilities, constructing gas collection and destruction systems, and providing sufficient funds to close and monitor landfills for 30 years after closure. The overall objective of the regulations is to protect environmental and human health.

As part of its application, RLC included information collected from public airports, which post prevailing wind directions by month. According to RLC, most recent reports for the McMinnville airport indicate that prevailing winds blow from the southwest from March through August, and from the north from September through February. In the vicinity of the landfill, wind generally blows to the east or south, and generally never to the west.

RLC owns approximately 700 acres in the vicinity of Riverbend Landfill which provides a substantial buffer between the landfill and most of the surrounding agricultural or other uses. With a location approximately 2 miles from existing urban areas, the existing landfill is surrounded by rural lands and is not near residential areas. Although some farm uses in the area include a residence, there are no established rural residential areas within a 1-mile radius of the landfill. With existing EFU-80 zoning in the general vicinity, the overall density of farm related dwellings is quite low.

Testimony in the record supports a conclusion that the landfill has in the past released odors detectable in the vicinity of the landfill and possibly elsewhere. Odor may be related to air quality, but odor is also subjective and is difficult to quantify and track. The record reflects that RLC has operated the existing landfill to comply with all state and federal standards (specifically

a Title V Air Quality Permit) and has modified facilities and operations to address odor concerns associated with landfill gas. As a result of citizen input and concerns during the last Title V permit renewal, the most recent Title V permit requires Riverbend to submit monthly reports concerning operational information, odor complaints, and odor surveys conducted around the landfill. RLC has made several landfill gas collection system and odor control modifications such as installing more than 120 vertical gas collection wells, adding horizontal landfill gas collectors, installing a new 100hp gas collection system blower, and installing a new enclosed flare and 6 landfill gas-to-energy engines. Under DEQ guidance, RLC will also be implementing new gas collection and odor control measures over the next year such as the addition of a carbon vent system on north leachate tanks, use of Pin Wells for odor mitigation, and application of compost intermediate cover on a 10-acre portion of the landfill.

The zone change is consistent with Policy B because DEQ has confirmed that the existing landfill is operated in compliance with the Title V air quality permit. Any future expansion would be subject to a modification of the Title V permit and on-going facility and operational improvements have enhanced RLC's capabilities to control odor.

The County has not adopted noise control regulations that apply to the landfill, and has received testimony and complaints regarding noise at the landfill affecting nearby residential uses. Riverbend Landfill is located in a rural area and next to a busy state highway. According to RLC, the noise characteristics associated with the contemplated future expansion are not expected to change relative to existing conditions. RLC owns several large surrounding parcels which provide a buffer around portions of the active landfill and proposed expansion area. Additionally, the density of houses within a 1-mile radius of the landfill is very low. Technologies are available to reduce noise production and to shield sensitive uses from noise. Therefore, it is reasonable to conclude that RLC can comply with DEQ noise regulations applicable to a future expansion.

RLC has constructed a gas-to-energy facility at Riverbend Landfill in partnership with McMinnville Water & Light. The landfill gas from Riverbend Landfill creates a generating capacity of 4.8 megawatts, generating about 36,500 megawatt-hours per year of electricity. This is enough capacity to power 2,500 Oregon homes. The electricity generating capacity displaces the need for new electrical turbines powered by natural gas, which generate additional greenhouse gas emissions and other air pollutants. The zone change and any landfill expansion will extend the landfill's ability to generate electricity.

Additionally, the zone change and any landfill expansion will extend the efficient recovery and development of the landfill gas energy resource and will also provide and support expansion of

the County's established solid waste recycling and recovery programs. Notably, the County has implemented a program to recycle motor oil. Several recycling depots in the County accept used motor oil, including the existing recycling depot at Riverbend Landfill.

The record contains testimony asserting that the zone change is not consistent with Policy D implementing Goal 1. That policy provides that the County will consider adopting an ordinance requiring environmental impact review of major development proposals. The Board finds that this policy does not apply to the zone change and is aimed at larger, policy efforts the County could undertake. The record also contains testimony that the zone change is not consistent with Goal 2 under the Air, Water and Land Resources Quality section. That goal is to preserve the charm and amenity values of the County. As described in other findings and testimony in the record, the major amenity value of the County is its rural character. The requested zone change will not, in itself detract from the County's rural character.

Based on the foregoing, the zone change is consistent with Goal 1 and the policies implementing that goal.

#### **F. Section VI – Energy Conservation**

*Goal 1: To reduce the per capita use of fossil fuels and other non-renewable sources of energy through the efficient and appropriate use of all energy.*

Riverbend Landfill currently serves as the only MSW disposal site for the northwest portion of the state, including all of Yamhill, Columbia, Clatsop, and portions of Tillamook and Washington County. Riverbend Landfill is centrally located in the County and is the closest regional landfill to the existing service area.

The record reflects that solid waste disposal in Oregon is increasingly managed by fewer and more widely spaced disposal facilities. Oregon has 27 operating municipal solid waste landfills and one municipal solid waste energy recovery facility. Over 90 landfills have been closed in the past two decades. More MSW is being hauled longer distances for disposal, which has implications for increased use of fossil fuels and related carbon emissions.

Hauling waste to alternative landfills would generate increased emissions of air pollutants as heavy trucks traveled longer distances to those sites. The zone change allows the County to reduce fossil fuel consumption and will minimize carbon impacts relative to the alternatives of hauling solid waste longer distances to out-of-County regional landfills. This approach is consistent with the County's stated goal for energy conservation.

*Goal 2: To promote the conservation of existing depletable energy resources and the development of local, renewable resources to ensure that an adequate supply will be available to Yamhill County citizens at a reasonable cost.*

*Policy C: Yamhill County will support efforts to investigate and establish appropriately scaled units of renewable energy production.*

*Policy K: Yamhill County will encourage programs for resource recovery and recycling of solid wastes.*

The continued availability of a centrally located landfill in the County will provide the opportunity for conserving fossil fuel resources relative to the likely alternative of hauling County solid waste longer distances for disposal at out-of-County landfills. Additionally, RLC has constructed a gas-to-energy facility in partnership with McMinnville Water & Light. That facility captures and combusts landfill gas to generate electricity and provides green energy for customers of the local public utility. The zone change will provide the opportunity for a potential future expansion which will extend the life and capacity of the local gas-to-energy facility.

RLC's application also reserves approximately 25 acres of its property to accommodate a different Green Technology in the future. Preserving the opportunity for a Green Technology at Riverbend Landfill is of paramount importance to the County's solid waste and renewable resource goals, as is the applicant's stated commitment to actually develop a technology or process at the landfill to divert municipal solid waste from landfilling into energy or a useful product or products. Conditions of approval imposed under the Limited Use Overlay will ensure that RLC will develop a Green Technology at the landfill within a specified period of time, or will be required to cease landfilling operations. The zone change will provide the opportunity for RLC to continue to explore its options and will develop additional Green Technology as an enhancement to Riverbend Landfill to conserve resources while developing a marketable energy product.

The County already has several programs in place to encourage resource recovery and recycling of solid waste and the County is exceeding waste recovery goals set by the Oregon Legislature in House Bill 3744. Oregon law requires local governments, or their legally contracted agents, to undertake waste reduction education programs. Solid waste service providers (particularly franchised haulers) must inform their residential and non-residential customers of available waste reduction/recycling options and opportunities.

The revenue the County receives from the host fee RLC pays supports about two-thirds of the County's Solid Waste Fund budgeted expenses, and pays for education and outreach programs, household hazardous waste collection events, and many other programs. If Riverbend Landfill

ceases to operate, continued support of solid waste education, recycling, and other programs would be more heavily dependent on the County general fund. The Board therefore finds that the continued operation of Riverbend Landfill promotes programs for resource recovery.

Based on the foregoing, the zone change is consistent with Goal 2 and the policies implementing that goal.

## **G. Section VII – Implementation, Evaluation, and Review**

### **1. Citizen Involvement**

*Policy A: Yamhill County will continue to implement an ongoing citizen involvement program that provides county residents opportunity to be involved in all phases of the planning process.*

County residents were involved in all phases of the planning process related to RLC's application. The Yamhill County Planning Commission functions as the County's committee for citizen involvement. County residents are provided with public notices and opportunities to be involved in Planning Commission meetings and public hearings that pertain to legislative and quasi-judicial amendments. The County held two public hearings on this matter, one before the Planning Commission and one before the Board. Between the two hearings, numerous individuals provided written testimony. After each hearing, the record remained open for an extended period for submittal of written testimony, evidence and rebuttal.

In addition to the standard public notice provision required by law, RLC hosted community meetings prior to submitting its application. RLC invited the public to every community meeting with newspaper ads and community calendar notices. Agenda topics at community meetings included groundwater monitoring, landfill gas management, floodplain issues, and other topics.

The review of RLC's application has gone beyond the basic citizen involvement efforts required by this Comprehensive Plan policy.

### **2. Review and Update**

*Policy A: Yamhill County will review any development concepts or proposals which conflict with the Plan Map, goals or policies in light of changing needs and conditions and in keeping with established procedures of Plan evaluation, amendment, and update.*

*Policy C: Yamhill County will encourage federal, state, and regional agencies and special districts to coordinate their planning efforts with those of the county.*

The County is not in the periodic review process for review and update of the Comprehensive Plan. However, the County reviewed the proposed plan map amendment for consistency based on established goals and policies in the acknowledged Yamhill County Comprehensive Plan in

light of the policy framework established in the 2004 SWMP and established procedures and criteria for evaluation of plan map amendments. The County also updated the SWMP through analyses of the financial impacts of maintaining a local disposal option and the information in those updates has informed this decision.

Municipal solid waste landfills are one of the most heavily regulated land uses in the state and in the nation. Riverbend Landfill has operated under County land use and franchise approval for more than 30 years and the design and operation of the landfill is heavily regulated and monitored by DEQ for compliance with state and federal environmental rules and regulations.

The Yamhill County SWMP (2004) was prepared under guidance and in coordination with DEQ's solid waste division. The County has the lead role in the land use decision for the proposed landfill expansion. However, other agencies would be involved in subsequent permitting steps and DEQ and other state agencies have established coordination programs in place to assure that state agency rules, programs, and permitting programs that affect land use comply with the statewide goals and are compatible with acknowledged city and County comprehensive plans. The County has and will continue to coordinate solid waste management and permitting decisions with relevant state and federal agencies in compliance with Policy C.

#### **IV. Statewide Planning Goals**

Because the zone change also requires an amendment to the Comprehensive Plan Map, the County must demonstrate compliance with applicable Statewide Planning Goals (Goal(s)). Because Oregon's planning framework is based on local comprehensive plans that implement the statewide planning goals, there is quite a bit of overlap between goals and policies articulated in the Yamhill County Comprehensive Plan and the more general statements in the statewide planning goals. The following findings describe why the proposed plan map amendment from PWS and RC to EFU complies with the statewide planning goals.

##### **A. Goal 1 - Citizen Involvement**

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

The County's regulations for comprehensive plan amendments include notice to surrounding property owners and to DLCD, and public hearings before the Yamhill County Planning



Commission and the Yamhill County Board of Commissioners (which makes final decisions on all plan amendments). Opportunities for citizen input and written and oral testimony on the PA/ZC will be provided at public hearings.

The County complied with Goal 1 in its review RLC's application. The County held two public hearings on this matter, one before the Planning Commission and one before the Board. Between the two hearings, numerous individuals provided live or written testimony. Following each hearing, the record remained open for an extended period.

In addition to the standard public notice required by law, RLC hosted community meetings prior to submitting its application. RLC invited the public to every community meeting with newspaper ads and community calendar notices.

The public process in this matter was consistent with the requirements of Goal 1.

#### **B. Goal 2 – Land Use Planning**

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

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

Goal 2, Part II addresses situations in which an exception to another Statewide Planning Goal is being sought. The zone change does not seek a Goal Exception.

Based on the foregoing, the proposed zone change is consistent with Goal 2.

#### **C. Goal 3 – Agricultural Lands**

The zone change is consistent with Goal 3. As LUBA stated when it affirmed the County's decision to amend the Zoning Ordinance to allow solid waste disposal activities in the farm zone, Goal 3 allows solid waste disposal facilities in an EFU zone. This authority is set forth in ORS 215.283(2)(k) as refined by OAR 660-033-0120 et seq. ORS 215.283(2) permits the following non-farm use in an EFU zone:

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

\* \* \*

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

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

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

In amending its EFU zone, Yamhill County took steps to minimize non-farm uses (solid waste disposal sites) to a greater extent than ORS 215.283(2)(k) or OAR 660-033-0130(18). The statute and Goal 3 rule would allow a "new" solid waste disposal site on non-high value farmland zoned EFU. Yamhill County's EFU zone, by contrast, only allows the "maintenance, expansion or enhancement of an existing site...(emphasis added).

RLC's request for a zone change includes other characteristics that serve to minimize non-farm uses:

1. The future expansion area includes a parcel (Tax Lot 401) that has historically been zoned RC.
2. The existing infrastructure and improvements that exist at this location can be leveraged to minimize the area needed for the future expansion and non-farm uses.

In this case, the zone change does not authorize the development of a specific solid waste disposal facility, but provides the opportunity to submit a subsequent application for future expansion. A specific expansion proposal would have to demonstrate that it does not force a significant change in or significantly increase the costs of accepted farm or forest practices on surrounding lands, and would be subject to approval through the county's Site Design Review process, which addresses the compatibility of a specific development with surrounding land uses.

Riverbend Landfill sits in the heart of the County's agricultural region. All of the uses adjacent to the current landfill are agricultural with the exception of the closed Whiteson Landfill and Monroe Landing Park. The Board finds that Riverbend Landfill has a 20-year track record of compatibility with uses adjacent to the existing landfill. Although some owners of agricultural property adjacent to the existing landfill have opposed the future expansion and have complained about impacts from current operations, very little to no real evidence was received to support a conclusion that the actual farming or agricultural operations on farms adjacent to the current landfill have been significantly impacted by the existing landfill. The zone change and contemplated future expansion will not increase existing impacts. Following the zone change, existing operations will continue without significant change. Any subsequent expansion will merely shift the operations to other areas as the existing disposal areas are closed.

#### **1. Authority to Rezone Non-Agricultural Land to the EFU**

The record contains testimony asserting that under Goal 3 the County cannot apply the EFU zone to any land other than "agricultural land" as that term is defined in statute and rule. The Board rejects that argument and finds the County is not precluded from re-zoning RLC's non-agricultural land parcels to accommodate a non-farm use.

ORS 215.203(1) establishes a County's ability to zone land for exclusive farm use:

Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993), 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) or 215.284 (Dwelling not in conjunction with farm use). Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

Under the express terms of this statute, there are few, but clear requirements for applying the EFU zone. First, a county can “zone designated areas of land.” That language does not otherwise refer to any existing uses already on the land being so zoned or the condition of that land. Second, the land, once zoned, can only be used for a “farm use” or for any use listed in ORS 215.213, ORS 215.283, or OES 215.284. Third, the establishment of the exclusive farm use zone on a designated area of land must be consistent with the comprehensive plan.

The County can approve RLC’s application consistent with ORS 215.203. The “designated areas of land” are the portions of RLC’s tract currently zoned PWS and RC. That land will be used for uses expressly allowed by ORS 215.283. Specifically, some of that land will be used for a solid waste disposal facility as allowed by ORS 215.283(2)(k). Finally, application of the EFU zone is consistent with the County’s acknowledged Comprehensive Plan, as discussed in more detail in the above Comprehensive Plan compliance findings.

The focus in opposing testimony that the EFU zone cannot be applied to non-agricultural land is misplaced. Rules promulgated by LCDC define “agricultural land” and require that all inventoried agricultural land must be zoned EFU:

Except as provided for in section (2) of this rule, counties shall apply zones that qualify as exclusive farm use zones under ORS chapter 215 to "agricultural land" as identified under OAR 660-033-0030, which includes land identified as high-value farmland and land not identified as high-value farmland.

OAR 660-033-0090(1). The rule appears to require that counties apply an EFU zone to agricultural land whenever land is inventoried as such. Individuals opposed to the zone change read the rule as a directive and as a limitation. However, the rule does not state that *only* agricultural land can be zoned EFU and, in fact, lands zoned for exclusive farm use contain at least some land that is not suitable for farming or being farmed. ORS 215.203 allows a county to designate any land as EFU, as consistent with its Comprehensive Plan, and ORS 215.213 and 215.283 limit and allow specific farm and non-farm uses on land zoned EFU.

It is with this understanding that the County has rezoned non-agricultural land to the EFU zone before. In docket PAZ-05-06, for example, the County rezoned two parcels totaling 85 acres from the RC zone to the EFU zone. At the time of the rezoning, those parcels were part of an acknowledged Goal 3 Exception area and were therefore not “agricultural lands” under the definition in OAR 660-033-0010(1)(a). The record also reflects that the County has applied the EFU zone to other non-agricultural lands such as rock quarries.

The only other case law presented to the County on this issue does not control RLC's request because it considered a "determination that a particular parcel of land is 'agricultural land.'" The Board's decision in this matter makes no such determination.

It would be bad policy to prevent counties from re-zoning non-agricultural land to the EFU zone. Applying the EFU zone creates the opportunity for more farm uses in the County, for which there is a demonstrated need. The decision to re-zone such land also adds a layer of protection for surrounding farms by requiring that new development on that land meet the compatibility standards of ORS 215.296.

## 2. Consistency with Rules Implementing Goal 3

The record contains testimony asserting that the County's decision to rezone RLC's property is not consistent with the intent of OAR 660-033-0130(18), the Goal 3 implementing rule that allows development of a solid waste disposal facility on high-value farmland only if it is related to an existing facility that is "wholly within a farm zone." The implied assertion in that testimony is that the intent of the rule 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 may later become wholly within a farm zone by virtue of the rezoning process. The Board rejects this argument; nothing in the rule language limits "existing facilities" to those facilities that were wholly within a farm zone at the time of the rule adoption.

This argument also assumes that the *only* purpose for rezoning RLC's property is to allow an expansion of the existing landfill. While that may be the primary driver behind RLC's request, the record demonstrates that the zone change is appropriate even if Riverbend Landfill never expands. RLC has demonstrated that it can make more efficient use of the property currently zoned PWS by using the RC tax parcel and portions of the EFU tax parcels for operational support. For the opposing testimony's position to prevail, RLC would be unable to rezone its property even if it had no plans to expand the existing landfill. There is nothing in the language of the rule or the testimony in the record that urges such an outcome.

Finally, the position of opponents, if followed, would create an absurdity. LUBA overturned the County's approval of a Goal 3 Exception for RLC in 2009 because Goal 3 and its implementing rules would have allowed the expansion and, therefore, a goal exception was not available. If the County were to now conclude that Goal 3 and its implementing rules did not allow an expansion, a Goal 3 Exception would be necessary, but that goal exception would be unavailable. LUBA and the Court of Appeals could not possibly have intended there to be *no* process available for considering the merits of RLC's proposal.

### 3. ORS 215.296 Criteria

The record contains testimony asserting that the County must apply the provisions of ORS 215.296 to this decision and that the provisions of that statute have not been satisfied. The Board disagrees and finds that the County is not required to apply the criteria in ORS 215.296 to the request for a zone change, which does not establish or otherwise authorize development of a landfill. However, even if that statute does apply at this stage, the standards in that statute have been satisfied.

As part of its application, RLC has not sought approval from the County to expand Riverbend Landfill. The existing landfill has already been approved and developed under its initial authorization in the early 1980s. Furthermore, before any landfill expansion occurs, RLC will have to come back to the County for additional approval. That approval process will consider whether a specific proposal is consistent with ORS 215.296 (and the identical County Zoning Ordinance provision that incorporates that statute), along with the County's Site Design Review criteria.

Testimony in opposition to the zone change asserts that the County's decision will "establish" a landfill because the landfill does not currently exist in the EFU zone. There can be no dispute that Riverbend Landfill has already been established. Testimony in opposition to the zone change also asserts that the County must review the existing development before applying any new zone to that development. Those arguments ignore the well-established concept that the zoning of property does not "approve" existing development on that property. State law provides that the "lawful use of any building, structure, or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued." ORS 215.130(5).

Even if the Board were to determine that consideration of the criteria in ORS 215.296 is warranted, the record demonstrates that the requested zone change will not cause a significant change to, or significantly increase the costs of, accepted farm practices in the area. With respect to the existing landfill, the requested zone change will not result in any changes in the nature or intensity of current operations. Therefore the zone change will affect no significant change to, or cost of, accepted farm practices. With respect to potential expansions of the landfill, the record includes a farm impacts analysis. That analysis identifies crops and other farm uses in an area within a radius of approximately one mile around Riverbend Landfill. That analysis also identifies accepted farm practices associated with the production of those crops and other uses. The record does not contain persuasive evidence that the type of farm practices around Riverbend Landfill have changed over the years. The application indicates that if the landfill is expanded in the future, waste disposal volumes will remain relatively constant at approximately current disposal rates. Any subsequent expansion will merely shift the operations to other areas

as the existing disposal areas are closed without significant effect on farm practices or costs. The record also reflects that the applicant investigated the farm practices on its own farm holdings and did not discover any impacts from the landfill on farm practices or costs on those sites adjacent to the landfill. Logically, if no such impacts exist immediately adjacent to the landfill, then they are also not likely to exist farther from the landfill.

Although the record contains some testimony regarding impacts to nearby properties, that evidence does not support a conclusion that “farm practices” have been significantly impacted or will be impacted by the zone change. Most of the impacts identified in that testimony relate to non-farm practices such as tourism or residential property values.

In this case the zone change itself will not allow any new conflicts with farm practices. RLC still must seek approval for a specific development proposal. Future uses that RLC contemplates are the same uses that already exist in this area – solid waste disposal – and those uses have existed in this area for more than three decades without substantially impacting farm practices or costs. The transportation system is more than adequate to accommodate the anticipated use and, therefore, any use of the transportation system for farm activities will not be impacted. To the extent there are potential conflicts between the landfill and nearby farm uses, RLC’s property is contained within natural and man-made boundaries that keep the solid waste use separate from surrounding farm uses. Finally, Riverbend Landfill is highly-regulated by DEQ, which imposes several restrictions on activities that prevent harm to air quality or to surface and ground water, thereby maintaining the quality of those resources for other farm uses.

#### **4. Compliance with ORS 459.055**

The record contains testimony asserting that the County cannot approve the zone change because RLC cannot comply with ORS 459.055. That statute relates to Goal 3 and requires certain reclamation standards for landfills in the EFU zone. Under ORS 459.055, as part of the ultimate closure of the landfill, RLC will have to work with DEQ to determine how the site will be rehabilitated to a condition comparable to its original use.

ORS 459.055 does not prevent the County from approving the zone change. The record contains a letter from DEQ indicating that DEQ will apply this statute as part of the normal permitting process for the solid waste disposal facility. Despite that letter, opponents argued that the County must determine now what post-closure farm activities will occur. That testimony, however, does not identify what County zone change criterion requires consideration of this statute. The Board finds that no such criterion exists. ORS 459.055 will become applicable only after the zone change to EFU. DEQ has indicated it will enforce the requirement when it applies. If RLC is unable to meet that standard, then it will not receive a solid waste permit from DEQ. It



is also uncertain at this time what specific farm uses DEQ will allow or even require as part of the post-closure process. The County, therefore, cannot require RLC to demonstrate specifically how those requirements will be met.

Even if the Board must consider RLC's ability to meet the standards in ORS 459.055, the record demonstrates that it is possible for RLC to meet DEQ's post-closure standards. DEQ's letter stating that the standards would be enforced suggests that DEQ believes that the standards can be met. The original application for land use approval of Riverbend Landfill identified the current uses as grazing, turkey farming, and other general farm uses. At the termination of the property's use as a landfill for solid waste disposal, ORS 459.055 does not require that the landfill be returned to the same use. Rather, ORS 459.055 requires that DEQ determine the site can and will be reclaimed to a condition comparable to its original use. RLC has developed a conceptual post-closure plan that describes some of the uses it intends to seek approval for from DEQ and those uses would return the site to a condition comparable to the site's original use. For example, the conceptual post-closure plan includes anticipated farm uses such as hay or seed production, pollinator gardens, apiculture, plantings for wildlife habitat, grazing, and the creation, restoration and enhancement of wetlands that are clearly among uses comparable to the original use of the landfill property.

## 5. Minimum Lot Sizes

One comment in the record asserts that the County cannot re-zone the parcel currently zoned Recreational Commercial (RC) because it is smaller than the 80-acre minimum associated with the County's EF-80 zone. That comment, however, misconstrues the applicable law and also ignores the full ownership of RLC's property.

ORS 215.780 provides that the minimum lot size for non-rangeland farm and forest zones is 80 acres. LUBA, however, has determined that ORS 215.780 applies only to the division of resource land and not to the rezoning of an existing parcel. *LCDC v. Coos County*, 39 Or LUBA 432, 437 (2001). The County's Zoning Ordinance similarly applies the 80-acre minimum size only to newly created lots. Section 402.09(B)(1) expressly states that "new farm parcels proposed to be created shall be a minimum of 80 acres in the EF-80 district." Section 402.09(B)(3) goes on to provide that "any permitted use" in the farm zone "may be established on an existing lot."

The minimum lot size requirement does not apply to this zone change decision. Even if the minimum lot sizes apply to a rezoned parcel instead of a newly-created lot, the record reflects that the legal lot underlying the RC parcel is larger than 80 acres. As RLC explained, several of RLC's tax parcels, including the RC parcel, have been consolidated into one single legal lot

totaling in the hundreds of acres. The minimum lot sizes will therefore not be violated by the County's approval of the zone change.

**D. Goal 4 – Forest Lands**

None of the parcels included in the zone change, or any contiguous parcels in the vicinity, are designated for Forestry or Agriculture/Forestry in the Yamhill County Comprehensive Plan. Therefore, Goal 4 is not relevant or applicable to the zone change area (from PWS and RC to EFU) or to the future expansion area.

Additionally, the zone change does not have direct or secondary effects on forest lands in the County. The zone change will allow solid waste disposal facilities in the EFU Zone and does not make any changes to forest land zones. The requested zone change is consistent with Goal 4.

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

Goal 5 requires that local governments adopt programs to protect significant natural resources and conserve significant scenic, historic, and open space resources for present and future generations. The procedures and requirements for complying with Goal 5 are outlined in OAR 660, Division 23.

The County has an acknowledged comprehensive plan and land use regulations. The zone change is therefore a “post-acknowledgement plan amendment” (PAPA) under the Goal 5 rule. OAR 660-023-0250 outlines the applicability of Goal 5 to PAPAs as follows:

- (1) *The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.*
- (2) *The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996.*
- (3) *Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*
  - (a) *The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource to address specific requirements of Goal 5;*
  - (b) *The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*

- (c) *The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*
- (4) *Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.*

The zone change does not create or amend the County's Goal 5 resource list, create or amend a land use regulation adopted to protect a significant Goal 5 resource, or amend an acknowledged urban growth boundary. Therefore, the only portion of the Goal 5 rule potentially applicable to the zone change is OAR 660-023-0250(3)(b), which requires the County to determine whether the PAPA will allow a new use that could be a conflicting use with a particular significant Goal 5 resource on the County's acknowledged resource list.

The Limited Use Overlay imposes limitations on use of the site and surrounding lands owned by RLC, but does not authorize any new or different uses than the underlying zones. The zone change to EFU applies only to Tax Lots 5501-101, 5501-200, and 5501-401. The record establishes that each of those tax lots is currently developed with a non-farm use, and two of those lots already contain solid waste disposal operations. Because the lots currently zoned PWS are being rezoned to EFU, the Board finds that Riverbend Landfill will be maintained on those existing lots (Tax Lots 101 and 200) and, therefore, the zone change will not have allowed any new use on those lots that does not already exist, and Goal 5 is not triggered for those lots. However, because the lot zoned RC would be rezoned to EFU and allow a new use that is not currently allowed on that lot, the Board finds that Goal 5 is triggered for that lot (Tax Lot 401).

The record contains a Goal 5 Report submitted by the Applicant. That report documents the significant Goal 5 resources that Yamhill County has identified within the areas currently zoned PWS and RC, as well as the areas currently zoned EFU that are within the area contemplated for eventual expansion of the landfill. As documented in the Goal 5 report, the County's acknowledged Goal 5 resource list does not designate any significant Goal 5 resources in the vicinity of RLC's property other than riparian corridors. Although the County's acknowledged Goal 5 resource list does not specifically identify "riparian corridors," it does include provisions for the protection of "riparian zones" of fish bearing streams, e.g., the South Yamhill River.

Because the zone change will provide the opportunity for RLC to apply for a future expansion in proximity to the riparian area around the South Yamhill River, the Board finds that a solid waste disposal site could be a conflicting use with such a resource. However, the County already has

Comprehensive Plan policies in place to guard against such conflicts and, therefore, there is no actual conflicting use allowed. Even so, if the zone change triggers the applicability of Goal 5 under OAR 660-023-0250(3)(b) with respect to riparian corridors because of a new conflicting use, RLC's proposal is sufficient to address that conflict.

Under OAR 660-023-0090 a riparian corridor is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary. During the PAPA process, the County may choose to adopt a safe harbor approach to identify and to protect Goal 5 resources. In the case of significant riparian corridors, the safe harbor approach for identifying significance resources is to adhere to a specific setback:

The significant riparian corridor area setback is 75 feet from the top of bank of a waterway with an annual average stream flow greater than 1,000 cubic feet per second [e.g., South Yamhill River], and 50 feet for other fish-bearing streams [e.g., unnamed tributaries].

As part of its application, RLC proposed to identify riparian corridors using the safe harbor approach (OAR 660-023-0090(8)), which results in a riparian corridor of 50 feet to either side (from top-of-bank) of each unnamed stream and 75 feet from the South Yamhill River.

The County's Water Resources Policy J addresses significant riparian areas by protecting vegetation within 100-feet of streams identified as "fish habitat" in the comprehensive plan inventory:

*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).*

RLC's application also proposes that the County continue to apply the County's Policy J to the identified riparian corridor associated with all three streams by applying the County's existing policy's 100-foot setback from the ordinary high water line to protect riparian vegetation. RLC also proposed that Yamhill County protect the riparian corridor by adopting provisions in conjunction with the PAPA to protect the significant riparian corridor on RLC's property

consistent with the safe harbor approach set forth in OAR 660-023-0090(8). The Board adopts that approach and has imposed a condition of approval in Ordinance 887 to implement the Goal 5 safe harbor provisions and to continue the application of Policy J to RLC's property (see specific language in Exhibits C and D to this Ordinance).

In summary, the Goal 5 requirements pertaining to significant riparian corridors are satisfied through adoption of the 100-foot setback condition in Exhibit C. No other significant Goal 5 resources exist in the area.

#### **F. Goal 6 – Air, Water and Land Resources Quality**

Goal 6 addresses the quality of air, water, and land resources. In the context of comprehensive plan amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment would be able to satisfy applicable federal and state environmental standards, including air and water quality standards. Although the record contains testimony from individuals who believe a solid waste disposal facility impacts air, water and land resource quality, no substantial evidence in the record indicates that the continued operation of Riverbend Landfill will not meet established standards. The record reflects that RLC has a long history of successful environmental compliance and the record contains no persuasive evidence that RLC is not meeting established environmental standards. Further, the Board finds that the zone change does not change what activities RLC will engage in and that RLC is therefore likely to be able to continue meeting established environmental standards.

With respect to water quality, RLC utilizes a liner system, leachate collection system and environmental monitoring program that DEQ requires of landfill operations. If Riverbend Landfill expands, the landfill expansion will be designed and operated with environmental control systems comparable, if not more effective, as employed at the existing landfill. The expansion area is in an area where potential impacts to water quality are very predictable and, therefore, more easily avoided or mitigated. Such predictability exists, in part, because of the long history of environmental monitoring that has occurred around the existing landfill and the information that has been gathered from that monitoring.

With respect to air quality, the record reflects that RLC is in compliance with its DEQ-issued air quality permit and DEQ will continue to enforce the same regulations on the expanded portion of the landfill.

Following any future County decision authorizing a solid waste disposal facility in the EFU Zone, DEQ will review and must approve as part of the permitting process the continued

operation, expansion or enhancement of a facility. As part of its permitting process, DEQ will have to review and approve site development plans, including technical information to address DEQ rules and design criteria.

Based on the foregoing, the zone change is consistent with Goal 6.

### **G. Goal 7 – Areas Subject to Natural Disasters and Hazards**

Goal 7 addresses hazards to development and limits development in known areas of natural hazards without appropriate safeguards. The zone change does not authorize development of specific facilities. Rather, the zone change will apply to the existing use on RLC's property and authorizes RLC to seek an expansion of that use in the future. Any specific development proposal after the zone change will require approval by the County and developments in a hazard area will have to demonstrate compliance with all federal, state and local standards that establish safeguards for development in those areas.

The record reflect that federal criteria for MSW landfills (RCRA Subtitle D) took effect beginning October 9, 1993 and that these criteria also restrict landfill siting in certain locations. Two of those criteria potentially apply to future development on RLC's property: floodplains and seismic impact zones.

#### **1. Floodplains**

The record demonstrates that Riverbend Landfill is located outside the floodway of the South Yamhill River. A portion of the landfill was originally constructed within the 100-year floodplain pursuant to a floodplain development permit the County issued concurrently with the original land use approval for the landfill (Order No. 80-262). The U.S. Army Corps of Engineers (Corps) assisted the County and RLC with siting the landfill by conducting hydraulic analyses that allowed the County to conclude that the landfill could safely operate in its current location, while also not encroaching on the floodway.

RLC recently worked with Yamhill County in obtaining a Letter of Map Revision from FEMA that resulted in a more accurate depiction of the 100-year floodplain and floodway in the reach of the South Yamhill River associated with Riverbend Landfill. The Map Revision was adopted by FEMA on May 9, 2013. The revision was based on more accurate topographic data than that used in the 1980s: the updated topography accounted for all changes since the 1980s, including the presence of Riverbend Landfill and Whiteson Landfill. The revision also required the use of the Corps' most modern hydraulic modeling methods and software. As a result, the current Flood Insurance Rate Maps now portray the correct locations of the 100-year floodplain and floodway

in the vicinity of the landfills. Those maps will be used to guide future development consistent with County and FEMA regulations.

The record contains testimony that the existing landfill is somehow in violation of the County's floodplain development standards. However, much of that testimony contains information and arguments that were developed prior to the time that FEMA approved the LOMR referenced above. As a result, that information and those arguments do not reflect the actual status of conditions on the ground or the regulatory scheme applicable to RLC's property. The evidence relied upon by the Board is to the effect that the existing landfill is not in violation of the County's floodplain development standards, and will not be in violation as a result of any proposed expansion. The zone change is therefore consistent with Goal 7 in this regard.

## **2. Seismic Impact Zones**

Landfills are allowed in a seismic impact zone if they are designed to withstand the maximum horizontal acceleration at the site. Riverbend Landfill is located in a seismic impact zone. The record reflects that, according to DEQ when Riverbend Landfill was developed, the landfill's slope stability analysis showed that the safety factors against slope failure are adequate for the excavation and final cover of the cells under the current permit. RLC is required to meet Subtitle D seismic resistance requirements for all future waste containment areas. This design standard is similar to seismic design standards (Uniform Building Code) for other facilities in the surrounding area.

DEQ recently completed an extensive review of Riverbend Landfill and approved a proposal for construction of a mechanically stabilized earthen berm (MSE berm) along the west side of Riverbend Landfill. The berm, which is 2,100 feet long and up to 40 feet high, would allow disposal capacity for an additional one million cubic yards of waste within the approved permit area. The DEQ review included a detailed summary of the geotechnical evaluation relying on geotechnical information obtained by drilling 14 borings and excavating seven test pits in the area of the proposed MSE berm. DEQ also required RLC to provide an updated evaluation that takes into account the most recent seismic data, including the recent earthquakes in Chile and Japan. DEQ additionally hired its own consultant to assist in independently reviewing the seismic characterization of RLC's site.

During the DEQ review process for the MSE berm, landfill opponents stated that DEQ should require a design based on a magnitude 9.0 earthquake, noting that other agencies require this. To address this concern, DEQ contacted the Oregon Department of Geology and Mineral Industries (DOGAMI) and requested a written opinion as to whether a 9.0 magnitude earthquake should be considered in the design of Riverbend Landfill. DOGAMI recommended that DEQ "consider in

designs for expansion to this landfill the magnitude 9.0 Cascadia Subduction Zone earthquake.” Following that recommendation, DEQ met with DOGAMI twice more to consider earthquakes of such magnitude. Based on those meetings, DOGAMI concluded that the probabilistic seismic-hazard analysis completed for the site used a reasonable approach and that the magnitude 9.0 earthquake was considered and integrated into the probabilistic seismic-hazard analysis.

The DEQ seismic review process is extremely thorough. The Board is satisfied that RLC would have to undergo a similarly rigorous analysis as part of any future permitting process. The zone change is therefore consistent with Goal 7 in this regard.

The record contains testimony expressing concern about the seismic stability of the existing landfill. Such testimony is not relevant to the decision before the County, which relates only to a zone change. The current land use application cannot be used to collaterally attack the approval of the existing facility, and the County is not, in this proceeding, approving permits for any future facility that may be proposed for development in the rezoned areas.

Even if the Board were to determine that the seismic stability of the existing landfill is relevant to the request for a zone change, the arguments presented in opposition to the zone change have been thoroughly addressed – and rejected – by DEQ, the regulatory body charged with actually approving the landfill design. According to DEQ, DEQ and its seismic consultant reviewed the seismic characterization and design thoroughly, considered many issues, including liquefaction, earthquake magnitude, source to site distance, and associated ground motions, and concluded that the design meets the regulations for municipal solid waste landfills. DEQ also noted that the seismic regulations it applied to the most recent permit are more stringent than those used for most other structures. DEQ also concluded that the design of the remainder of the landfill’s perimeter berm (i.e. the portions other than MSE Berm) were of sound design.

### **3. Goal 7 Summary**

Given the available information on floodplain and seismic risks and the recent characterization of site conditions through the FEMA Letter of Map Revision and DEQ’s review of the MSE berm, it is reasonable to conclude that any future development on RLC’s property could be designed to protect people and property from natural hazards and it would be feasible to obtain necessary permits. The zone change is therefore consistent with Goal 7.

### **H. Goal 8 – Recreational Needs**



The zone change does not have direct or secondary effects on recreation areas, facilities or opportunities designated by the County's acknowledged Comprehensive Plan to meet the County's recreational needs.

The Comprehensive Parks and Open Space Master Plan (2003) states that the County currently owns and maintains 17 parks and open space areas totaling 126.4 acres. Ten of the sites are developed, six are undeveloped, and one is leased. The Parks and Open Space Master Plan also describes the two county-owned and decommissioned landfills, one located near Monroe Boat Landing on the South Yamhill River (Whiteson Landfill) and one near Rogers Landing on the Willamette River (Newberg Landfill). The plan indicates that both former landfill sites have potential for passive recreation and open space once reclamation is complete. The zone change will not impact the designated Monroe Landing or new park site south of the river. The extensive floodplain and established riparian corridor along the South Yamhill River provides a substantial buffer between the active landfill and low-intensity park and recreational uses.

As the Board has indicated elsewhere in findings relating to the Comprehensive Plan's Parks and Recreation policies, recreational opportunities in the County will either stay the same or increase following the zone change. The current RC-zoned parcel is developed as a recreational vehicle (RV) park. The County took a "built and committed" exception for the RV Park when the Comprehensive Plan was adopted in 1979. Therefore, the RV Park was not established based on a public need for the use, but rather was grandfathered as an established use. Even so, the record reflects that there are other RV parks available in proximity to Highway 18 to accommodate tourists and visitors to the County, including the Wandering Spirit RV Park near the casino in Grand Ronde (129 spaces) and the Willamette Wine Country RV Park (191 spaces) adjacent to Highway 18 and the South Yamhill River near the City of Dayton. Neither the Yamhill County Plan nor the Parks and Open Space Master Plan have identified a specific "need" for land zoned Recreational Commercial or for overnight facilities, including RV Parks.

Based on the foregoing, the zone change is consistent with Goal 8.

#### **I. Goal 9 – Economic Development**

Although the zone change does not involve commercial or industrial lands typically subject to Goal 9, the zone change will contribute to a healthy economy in the County and the larger region. The discussion and findings in Section I.B.2.b and II.A relating to the economic benefits of a local disposal option and the Economic Development policies in the Comprehensive Plan are relevant to Goal 9 and are include here with this reference.

The Board relies on the evidence in the economic study submitted by RLC and the Zia Report Update, and concludes that such evidence is compelling regarding the economic benefits of maintaining a local disposal option. As discussed in more detail elsewhere in these findings, the critique of those economic impacts offered by the opponents is not persuasive. According to the economic analysis submitted by the applicant, costs of disposal are likely to rise when there is not local disposal option because hauling waste to alternative disposal sites would cause the per-ton cost of disposal to increase for Yamhill County residents and businesses. Specifically, the annual cost of disposal to the entire County would increase by \$3.5 to \$5.1 million (depending on the alternative site). If Riverbend Landfill continues to operate, RLC would continue to pay licensing and host fees to the County that would be higher than the host fees the County would collect from a transfer station that processes only in-county waste.

The economic analysis submitted by the applicant also demonstrates that RLC could invest \$25.5 million when it expands Riverbend Landfill in the future. That level of construction activity generates 202 jobs directly associated with construction activities and \$6.1 million in associated personal income in addition to secondary jobs and income. Even before any potential expansion of the existing landfill, operating Riverbend currently requires 17 full-time equivalent jobs, generating \$1.6 million in associated personal income per year to operate the facility in addition to secondary jobs, as the Landfill and its employees purchase goods and services in the local economy. It is estimated that operating Riverbend Landfill generates 19 secondary jobs and \$500,000 in personal income, for a total of 36 jobs and \$2.1 million in personal income. Hauling waste to alternative sites would create about half as many jobs – operating the transfer station and driving the waste to alternative sites would generate between 14 and 19 jobs and between \$900,000 and \$1.2 million in personal income (depending on the alternative site). Between 11 and 14 of those jobs would be directly employed in transfer station operations and hauling the waste.

Hauling solid waste from the County to any of the three alternative disposal sites presented in RLC's economic study generates carbon dioxide (CO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide, and particulate matter. According to that analysis, the economic cost of the CO<sub>2</sub> is between \$28,000 and \$297,000 per year; the cost of the NO<sub>x</sub> is between \$23,000 and \$200,000 per year; and the cost of particulate matter is between \$28,000 and \$242,000 per year.

The continued operation of Riverbend Landfill is compatible with other industries in the County. As described in the Economic Impact Report submitted by the Applicant, a review of prior studies on tourism in the County yielded no evidence suggesting Riverbend Landfill negatively impacts tourism in the County. The County is the leading production area for Oregon's wine industry, and several studies have identified wine-related tourism as the main driver of tourism

activities in Yamhill County. Those studies recognize several key factors that could affect the growth of wine-related tourism in Yamhill County, but neither points to Riverbend Landfill nor other waste disposal operations as deterrents of tourism growth. The record demonstrates that Riverbend Landfill has been in operation during the entire time that the wine and tourism industries have developed and continued to thrive in Yamhill County.

In summary, the zone change will support the local and regional economy with the continued availability of good local jobs to operate the landfill, and additional construction jobs associated with the future expansion and required new Green Technology facility. Further economic benefits would include secondary employment and income to local businesses associated with the expansion and operation of the landfill, and cost-effective disposal rates for local businesses and industries when compared with alternative disposal options. Riverbend Landfill is an important and vital part of the County economy and approval of the zone change is consistent with Goal 9.

#### **J. Goal 10 - Housing**

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

Buildable lands are defined in Goal 10 as lands *inside* urban growth boundaries that are suitable, available, and necessary for residential use. The Board therefore finds Goal 10 does not apply to the rural lands that are the subject of the zone change. The contemplated future expansion (which will require subsequent Site Design Review approval) would not affect any lands that are zoned for rural residential use or displace any existing housing units.

The record contains testimony asserting the zone change is not consistent with Goal 10. That testimony, however, is based specifically on RLI's plans to use the parcel currently designated RC for operations ancillary to the landfill in the future. The RC parcel is currently used by Mulkey RV Park and testimony in opposition to the zone change asserts there are "housing implications" related to the discontinued use of the RV Park.

An RV Park is a recreational facility that does not allow permanent or even long-term residential use. Pursuant to Section 1003 of the Zoning Ordinance, mobile homes are allowed in an RV park for no longer than a one-month period. The County does not rely on Mulkey RV Park to satisfy its housing needs.

The record also reflects that the continued use of the RC-zoned parcel as an RV park is unrelated to this decision. The record reflects that the use of that tax parcel for an RV park will likely conclude in April of this year, when the current lease terminates. Therefore, the County's denial of RLC's application on a Goal 10 basis would not result in any additional use of that site for residential use even if that use were allowed.

No testimony in the record asserts that the purpose of the RC-zoned tax parcel is to provide housing, or that any need for housing cannot be accommodated elsewhere in the County. Prior to its use as an RV park, this parcel was used as a motor cross facility, and it was zoned RC based on a built-and-committed Goal Exception because of that use. The approved use of that tax parcel has been recreational, not residential, and, therefore, there are no housing implications from the zone change.

#### **K. Goal 11 – Public Facilities and Services**

Goal 11 provides that urban and rural development should be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the urban and rural areas to be served. Goal 11 is implemented through the Public Facilities Planning Rule, OAR 660, and Division 11. Under Oregon's land use planning framework, cities have the lead role in preparing and adopting public facility plans for sanitary sewer and water facilities to support planned land uses within urban growth boundaries.

Solid waste disposal facilities serve both rural and urban uses, but that such facilities themselves are more appropriately located in rural areas. In support of this finding, the Board relies in part on the fact that Goal 3 expressly allows these non-farm uses in an EFU Zone and the fact that most regional solid waste disposal facilities in the state are located on rural lands. Neither the existing landfill nor the contemplated future expansion will require city water or sewer service or other urban public facilities.

ORS Chapter 459 gives counties the authority to establish a coordinated solid waste program. Because counties manage rural land uses and a solid waste landfill is identified as a use that may be allowed in rural resource zones, it is reasonable to categorize a landfill as a rural use. The record reflects that all of the regional landfills in Oregon are located in rural zones.

The County has adopted a Solid Waste Management Plan that addresses near and long term disposal requirements as contemplated by Goal 11 and state statutes. Continued operation and potential future expansion of Riverbend Landfill to meet long term disposal needs was clearly identified as an alternative in the adopted SWMP. Because sanitary landfills are identified as a permitted non-farm use in EFU zones – it is also clear that Oregon's land use planning

framework considers rural areas an appropriate location for a solid waste disposal site. The zone change is consistent with Goal 11 and would meet current and long range needs for continued availability of a solid waste disposal site to serve urban and rural development in the County.

#### **L. Goal 12 – Transportation**

Pursuant to Goal 12's implementing rules, an amendment to an acknowledged comprehensive plan must put into place measures required by the Transportation Planning Rule to assure that allowed uses are consistent with the identified function, capacity, and performance standards (*e.g.*, level of service, volume to capacity ratio etc.) of the facility.

The applicant submitted a Traffic Impact Study to analyze the potential transportation impacts associated with the zone change and to address the requirements of the Transportation Planning Rule (TPR). That analysis specifically addresses Highway 18, which is under the jurisdiction of the Oregon Department of Transportation (ODOT) and is classified as a Statewide Highway Route. The highway is also on the National Highway System, and it is designated as a State Freight Route, a Truck Route, as well as an expressway.

Riverbend Landfill has one access to Highway 18 located at milepost 41.56. Due to the largely rural location, no major street intersections are present near the zone change area that would require analysis of site impacts. The applicant's Traffic Impact Study includes an analysis of projected traffic impacts during the weekday morning and evening peak hours as well as the Saturday peak for the intersection of the site access and Highway 18.

The traffic impacts associated with the zone change will result in worst case projected traffic volumes in 2030 well below the capacity of Highway 18, and that is otherwise within the acceptable standards set by ODOT. Projected traffic volumes in 2030 (Background Traffic + Site Traffic) would result in a worst case volume-to-capacity ("v/c") ratio of 0.12 for the site peak hour, well below the acceptable V/C ratio of 0.70 set by ODOT.

The zone change does not change the functional classification of Highway 18. Using a 20-year planning period, the zone change does not allow land uses or levels of development that result in types or levels of travel or access that are inconsistent with the functional classification of Highway 18.

Based on the foregoing, the zone change does not "significantly affect" Highway 18. The record does contain testimony opposing the zone change based on transportation concerns, but that testimony is generalized and does not assert that the zone change will significantly affect Highway 18 or any other transportation facility based on the technical standards contained in the Goal 12 implementing rules. Because the zone change does not significantly affect

transportation facilities pursuant to the Goal 12 implementing rules, no special measures are required to assure that the allowed uses are consistent with identified function, capacity, and performance standards.

Based on the foregoing, the zone change is consistent with Goal 12 and the Transportation Planning Rule.

#### **M. Goal 13 – Energy Conservation**

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

*Planning Guideline 5: Plans directed toward energy conservation within the planning area should consider as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output. Renewable energy sources include water, sunshine, wind, geothermal heat and municipal, forest and farm waste. Whenever possible, land conservation and development actions provided for under such plans should utilize renewable energy sources.*

*Implementation Guideline: Land use plans should be based on utilization of techniques and implementation devices which can have a material impact on energy efficiency, including systems and incentives for the collection, reuse and recycling of metallic and nonmetallic wastes.*

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

A local disposal option maximizes energy conservation relative to the alternative of shipping waste to regional sites located outside of the County. Hauling waste to out-of-County landfill sites would require more fuel for transportation and generate increased air emissions as heavy trucks travel the longer distances. Furthermore, the energy potential contained in solid waste will exist no matter where the waste ultimately is disposed, but that potential is off-set in some measure by any energy used to transport the waste. Therefore, the most energy-efficient disposal scenario is the option that keeps the waste as close to its origin as possible.

The Board is also requiring that RLC establish additional “Green Technology” in the future, or cease operation. Potential Green Technologies can extract even more energy from waste than the energy that is captured today from the normal decomposition of waste.

Based on the foregoing, the zone change will provide the greatest opportunity to conserve energy associated with transporting solid waste. Riverbend Landfill is centrally located to sources of waste generation. RLC has already constructed the gas-to-energy facility and is required by conditions of approval to pursue development of a Green Technology facility that will convert waste to an energy product and reduce residual disposal volumes. This integrated approach to managing solid waste and energy resources is consistent with the objective of Goal 13 “to conserve energy.”

#### **N. Goal 14 – Urbanization**

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

Each of the 10 incorporated cities within the County has coordinated with the County to adopt and update urban growth boundaries to meet the requirements of Goal 14. The initial UGBs for the cities in the County were established in the early 1980s to meet population and employment needs to the year 2000. McMinnville and Newberg have pursued major planning projects to update land needs and proposed related UGB expansions.

No city in the County has planned for the location of a solid waste disposal site within its UGB and cities are not required to consider solid waste disposal facilities as part of their urban land needs. Because solid waste disposal sites are a permitted use under state law in the statutory EFU zone, it is clear that the use is considered “rural” instead of “urban.” Many components of the solid waste system, such as transfer stations, are appropriately located inside UGBs. However, the franchised haulers for the cities and rural areas of the County (Western Oregon Waste and Waste Management) take all of their residual solid waste to Riverbend Landfill for disposal.

The established solid waste collection, transfer, and disposal system in the County provides an efficient and cost-effective system for residents and businesses in both the urban and rural areas of the County. The zone change will maintain a needed land use at an appropriate location on a large site that can be adequately separated and buffered from surrounding rural and nearby urban uses.

Based on the foregoing, the zone change is consistent with Goal 14.

#### **O. Goal 15 – Willamette River Greenway**

The zone change area is not within the Willamette River Greenway boundary. Moreover, no persuasive oral testimony or written comment was presented to the Board indicating that the

legislative amendment itself is inconsistent with Goal 15. The zone change is consistent with Goal 15.

**P. Goal 16 through Goal 19**

Goal 16 applies to estuarine resources, Goal 17 applies to coastal shorelands, Goal 18 applies to beaches and dunes, and Goal 19 applies to ocean resources. The zone change does not have direct or secondary effects on any lands that are within the areas governed by those Goals. Moreover, the record does not contain any evidence that the zone change is inconsistent with those Goals. The zone change is consistent with Goal 16, Goal 17, Goal 18 and Goal 19.

**V. Imposition of a Limited Use Overlay**

The applicant has specified that it intends to use the subject property for disposal of municipal solid waste and ancillary facilities including recycling and waste recovery, and has provided the County with an explanation of the proposed use that is adequate to make findings of compliance with all applicable standards. The applicant's plans describe the approximate location and limits of future landfill expansion, and the location of operations support and future green technology areas. Concerns have been raised that uses might occur on the subject property or on surrounding parcels owned by the applicant that have not been described in the application, or that other uses promoted by the applicant and expected by the County to be developed on the site might not be developed. For these reasons, the County is imposing a Limited Use Overlay Zone on the subject property and on surrounding properties owned by the applicant, under YCZO section 904. Imposition of the Limited use Overlay Zone as specified herein, improves the compatibility of the proposed zone change with surrounding land uses and the overall appropriateness of the change, in conformance with the Yamhill County Zoning Ordinance and Comprehensive Plan.

The purpose of the Limited Use Overlay District is stated in YCZO section 904.01, as follows:

*“The purpose of the Limited use Overlay District is to limit permitted uses(s) and activities in a specific location to only those uses and activities which are justified and approved through Comprehensive Plan Amendments and/or zone changes.”*

It is appropriate in this instance to limit the permitted uses and activities on the subject property to only those uses and activities that the applicant has justified as meeting applicable standards, and to prevent landfill expansion onto portions of the site and other parcels owned by the applicant where such expansion is not anticipated in the application submitted by the applicant. It is also appropriate to limit or prohibit the operation of the site as a landfill if the applicant fails



to establish a new alternative disposal technology on the site as promoted by the applicant and anticipated by the County.

YCZO section 904.02 states as follows:

*“The LU Overlay District shall apply to that specific area for which a reasons exception has been taken or other area as deemed appropriate to protect Goal 5 resources. The required use of the Limited Use Overlay District is intended to carry out the administrative rule requirement for exceptions pursuant to OAR 660-04-018 and ORS 197.732 and for Goal 5 resource protection pursuant to OAR 660-16-010. The Limited Use Overlay District may also be applied by the Board of Commissioners or Planning Commission to Plan Amendments and/or zone changes.”*

The LU Overlay is more restrictive than the underlying zone. It is appropriate in this instance to apply the LU Overlay to promote the goals of the County in ensuring that the land that is subject to the approval and surrounding lands are developed in the manner proposed and as specified in the Conditions of Approval adopted through imposition of the Limited Use Overlay.

Following adoption of the plan amendment and zone change in Ordinance 887, all of the applicant’s property will be zoned Exclusive Farm Use, with an 80-acre minimum lot size (EF-80). Farm uses are allowed in the zone, along with numerous uses listed in ORS 215.283 and in the County Zoning Ordinance. YCZO section 904.03 states:

*“A. When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*

*B. The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.*

*C. Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.*

*D. Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.”*

In conformance with YCZO section 904.03, the County is applying a Limited Use Overlay to the subject property and surrounding properties owned by the applicant, as specified in the Conditions of Approval attached as Exhibit C to Ordinance 887. Under the Limited use Overlay, permitted uses are limited to farm uses and to those uses the applicant has described as being part of its proposal, and as further conditioned and limited by the Conditions of Approval in Exhibit C of Ordinance 887. The Conditions of approval are being adopted pursuant to YCZO section 904.03.C. The applicant has met the requirements for imposition of a Limited Use Overlay.

YCZO section 904.04, "Procedures" states:

*"A. The Limited use Overlay District is to be applied through a zone amendment application utilizing the Type C process at the time the underlying zone is being changed in the case of an exception.*

*B. It shall not be necessary to disclose in the public hearing notice of a zone change that a Limited use Overlay may be applied.*

*C. The ordinance adopting overlay zone shall, by section reference or by name, identify those permitted uses in the zone that will remain permitted uses or become conditional uses. The description of the permitted or conditional uses may be qualified as necessary to achieve the intent of the LU overlay zone."*

The Limited Use Overlay is being applied to the subject property and surrounding parcels owned by the applicant following a Type C process that included full evidentiary hearings before both the Planning Commission and Board of Commissioners. Staff reports issued during the review proceedings indicated that the Conditions of Approval would be applied by way of a Limited Use Overlay. In this case, the Limited Use Overlay is not employed for the purpose of changing permitted uses into conditional uses, but to provide community assurance that development of the site will proceed substantially in the manner proposed by the applicant, as limited by the Conditions of Approval.

YCZO section 904.05, entitled "Map Amendment," states:

*"The Official County Zoning Map shall be amended to show an LU on any parcel where the Limited Use Overlay District has been approved."*

The location of the Limited Use Overlay imposed through Ordinance 887 is identified on a map included in Exhibit B of Ordinance 887 and incorporated therein by reference.

YCZO section 904.06, entitled "Site Plan Review" states:

*“Uses approved in an LU District may be subject to Section 1101, Site Design Review. The LU Ordinance may indicate any special concerns or location requirements that must be addressed in the site plan. All other specifications and standards of the underlying zone remain in effect unless specifically altered by the site plan approval or adoption ordinance.”*

The applicant has provided sufficiently detailed information regarding the nature of its anticipated future uses to establish that it has carried its burden to demonstrate that it meets County standards for a plan amendment and zone change. To develop the site as anticipated, under YCZO section 402.02.V. (Ordinance 867), the applicant must first apply for site design review and meet the standards in YCZO section 1101.

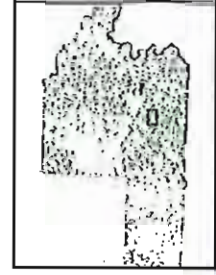
## **VI. Conclusion**

Having accepted and weighed all of the evidence submitted into the record, the Board concludes that all applicable standards have been met. The applicant’s request to rezone the existing landfill PWS parcel to Exclusive Farm Use satisfies the County’s zone change standards and is consistent with state law and the Yamhill County Zoning Ordinance. A solid waste disposal site is a permitted non-farm use under Oregon’s planning framework and the applicant has operated Riverbend Landfill in compliance with County land use and license approvals and DEQ permits. Rezoning approximately 25 acres from RC to Exclusive Farm Use also satisfies the County’s zone change criteria and is appropriate because the new zoning will allow the applicant to maintain its existing facility ownership within a single zone, and will provide the applicant with the opportunity to submit a subsequent Site Design Review application for a future expansion onto the same tract. Based upon the information provided in the application and as presented by the applicant and others during the proceedings, the County hereby approves the applicant’s request for a Post-Acknowledgement Plan Amendment and zone change.

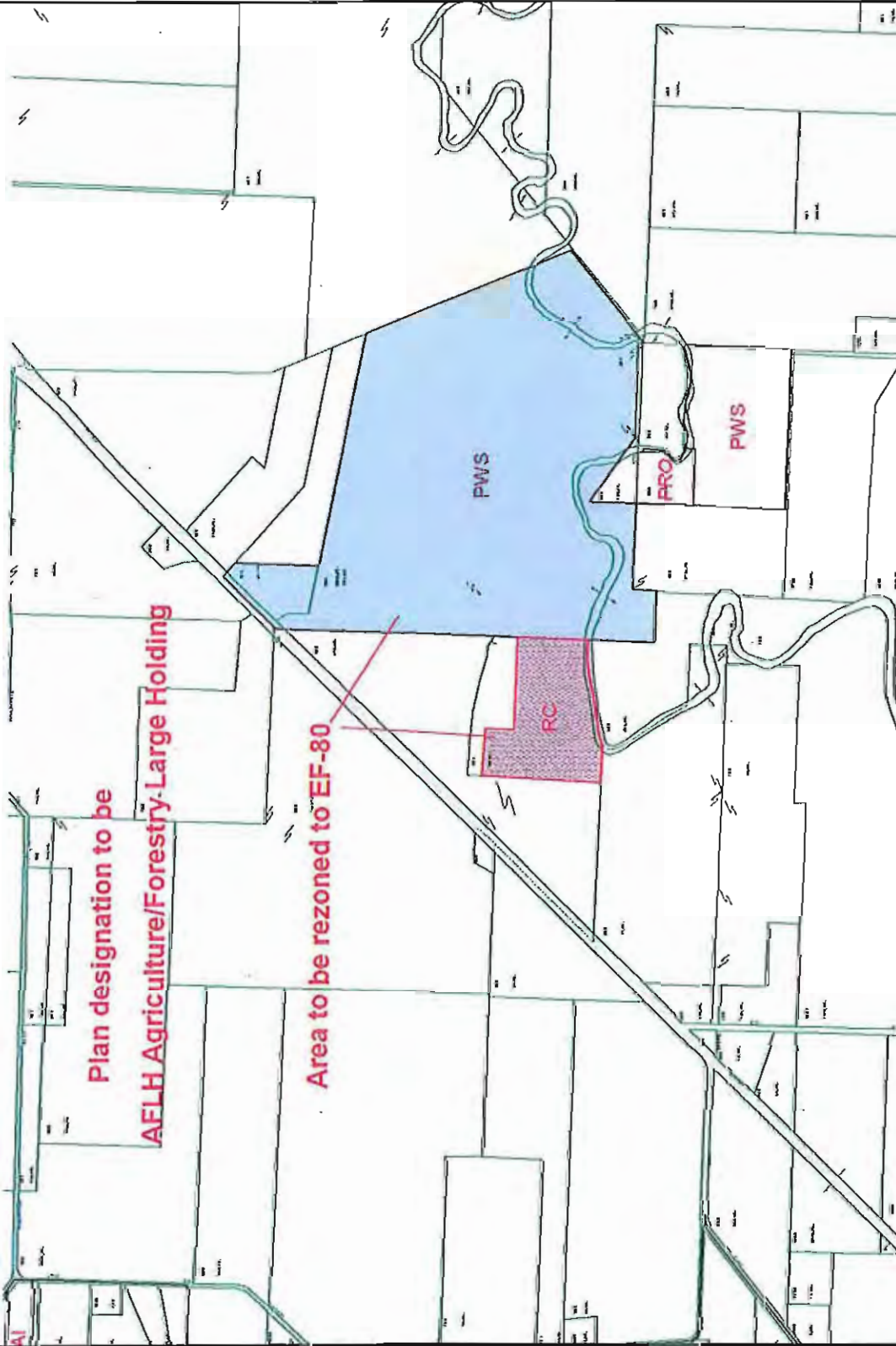
# Plan/Zone Change

- Taxlots
- Cartographic Arrows
- right of ways
- loten lines
- caslet polygons
- Zoning

## Exhibit B Maps - Ordinance 887 Plan Amendment/Zone Change Limited Use Overlay Zone



2/13/2014



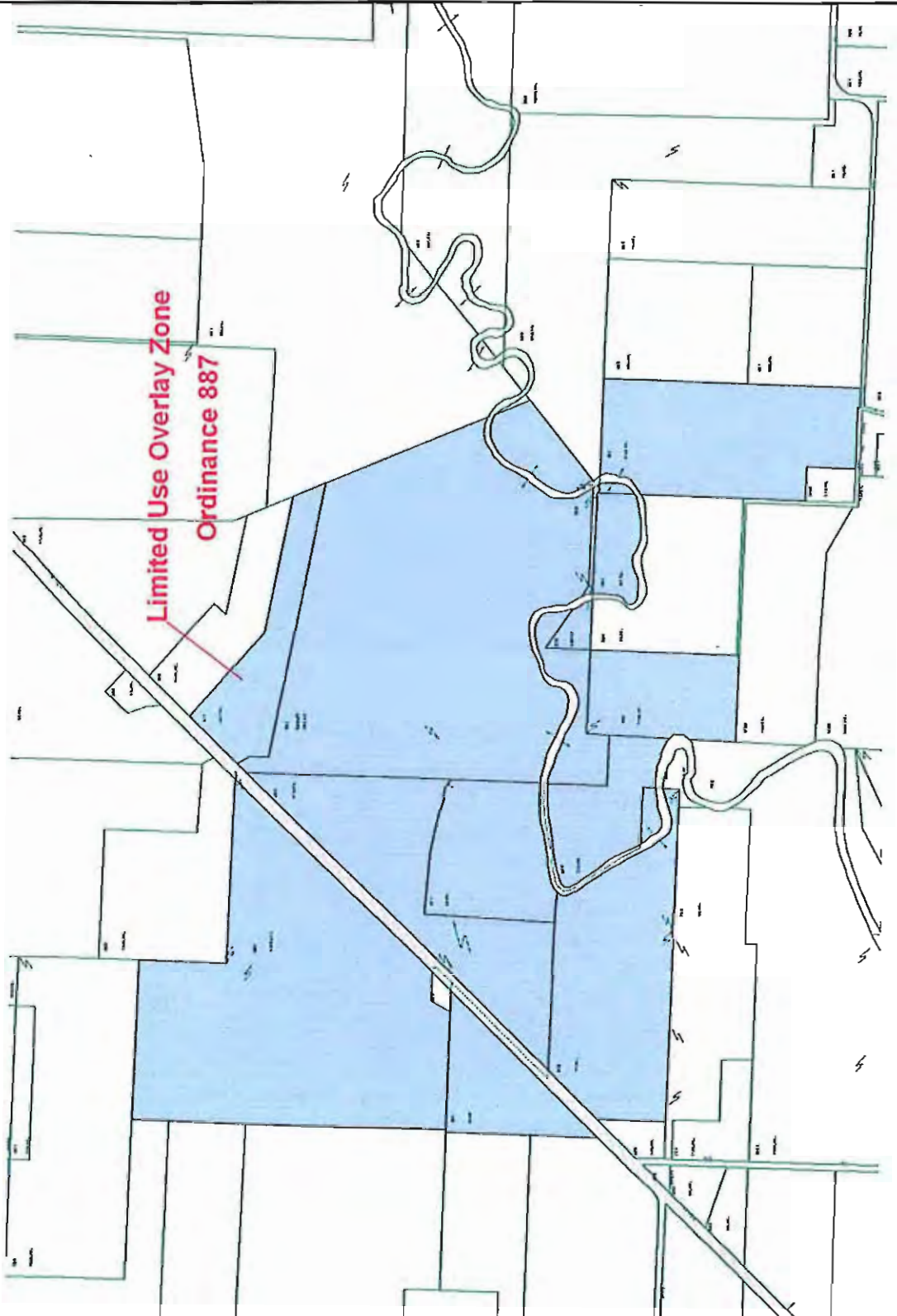
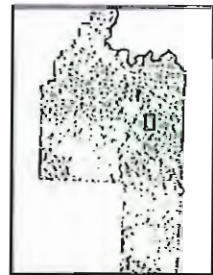
1 in. = 1500 ft.

This map was produced using the Yarnhill County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

# Exhibit B Map

- City UCB
- Exception Areas
- N
- Taxlots
- Cartographic Arrows
- right of ways
- lot/lot lines
- lot/lot polygons

## Exhibit B Maps - Ordinance 887 Plan Amendment/Zone Change Limited Use Overlay Zone



1 in. = 1500 ft.

This map was produced using the Yamhill County GIS data. The GIS data is maintained by the county to support its governmental activities. This county is not responsible for map errors, omissions, misuses or misinterpretation.

## Exhibit C – Ordinance 887

### Conditions of Approval Imposed Through Limited Use Overlay

1. Binding Nature of These Conditions. These conditions are binding on the applicant and the landowner, and shall inure to the benefit of, and are binding upon, all successors in interest to the applicant and the landowner.

2. Area Affected. The Limited Use Overlay Zone (“Overlay”), imposed by the County under Ordinance 887, includes all areas within the following Tax Lots: 5501-101, 5501-200, 5501-300, 5501-400, 5501-401, 5501-500, 5511-100, 5511-600, 5512-100, 5512-200, 5512-400 and 5512-500.

3. Areas Where Landfilling Prohibited. No landfill disposal of solid waste shall occur on the following Tax Lots: 5501-300, 5501-401, 5501-500, 5511-100, 5511-600, 5512-100, 5512-200, 5512-400 and 5512-500. Furthermore, no landfill disposal of solid waste shall occur on the southern portion of Tax Lot 5501-400 as further described below, the eastern portion of Tax Lot 5501-101 as further described below, or any portion of Tax Lot 5501-200 that lies south of the South Yamhill River.

(a) The southern portion of tax lot 5501-400 is described as follows:  
Beginning at an iron rod marking the northwest corner of that tract of land described in deed from JOHN G. BERNARDS and MARY BETH BERNARDS to RIVERBEND LANDFILL CO., recorded December 12, 2006 as Instrument No. 200629179, Deed Records of Yamhill County, Oregon; thence South 88°05'26" East 1441.51 feet to a point on the north line of said tract being the southwest corner of Parcel 6 of that tract of land described in deed from Riverbend Landfill CO., to Riverbend Landfill CO., recorded December 6, 1991 in Film Volume 262, Page 1269, Deed Records of Yamhill County, Oregon; thence North 02°32'11" East 1129.76 feet to a point on the west line of said Parcel 6; thence North 87°37'05" West 439.32 feet to an iron rod marking a point on the southeasterly margin of Oregon State Highway 18; thence South 43°38'33" West 1518.72 feet to the POINT OF BEGINNING.

(b) The eastern portion of tax lot 5501-101 is described as follows:  
Beginning at an iron rod marking the northeast corner of that tract of land described in deed from MICHAEL J. BERNARDS, et.al., to RIVERBEND LANDFILL COMPANY, INC., recorded April 16, 1999 as Instrument No. 199907961, Deed Records of Yamhill County, Oregon; thence South 22°27'46" East 345.15 feet to an iron rod marking the southeast corner of said RIVERBEND tract; thence North 79°26'19" West 1103.51 feet to a point on the south line of said tract; thence North 07°04'39" West 303.67 feet to a point on the north line of said tract; thence South 79°26'19" East 1007.42 feet to the POINT OF BEGINNING.

4. Area Reserved for Alternative Disposal Technology. Within the southern portion of Tax Lot 5501-400 as described above, no solid waste disposal activities shall occur that would prevent the siting and construction of an alternative solid waste disposal technology.

5. Riparian Corridor Protections. Within the Overlay, any future landfill disposal of solid waste must comply with the 100-foot setback from the Ordinary High Water Mark of the South Yamhill River specified in Section II. C, Goal 1, Policy J of the Yamhill County Comprehensive Plan and must comply with the provisions of Exhibit “D” to Ordinance 887.

6. Mandatory Community Meeting. Prior to final approval of an application for Site Design Review for landfill expansion within the Overlay, the applicant shall hold at least one community meeting to present the expansion plan, and to collect public comments. The community meeting shall be facilitated by the Yamhill County Planning Department or an independent facilitator approved by the Planning Director. The comments collected shall be submitted into the record of the Site Design Review proceedings for consideration by the County with the final design approval. Site Design Review shall be required for any new facility proposed within the Limited Use Overlay.

7. Alternative Disposal Technology. The applicant has stated its intent, to the extent feasible, to “add a Green Technology component to minimize landfill expansion” (an alternative solid waste disposal technology). The County recognizes, as stated in the application, that: “the construction of any particular facility depends on many factors including; proven commercialization of the technology, financial viability for the project, and ability to receive all necessary permits within the current regulatory structure.” As such, it will take time to develop a Green Technology facility, as follows, in accordance with this condition:

(a) The applicant shall establish, on-site, a process or procedure to divert municipal solid waste from Riverbend Landfill to a Green Technology Facility.

(b) The process to be employed in meeting this condition shall be at the discretion of the applicant, consistent with applicable law, and may include, but shall not be limited to, the following processes or general classes of processes:

- (1) Advanced Thermal Recycling (also referred to as Mass Burn or Waste - to Energy incineration)
- (2) Gasification (also referred to as Plasma Arc)
- (3) Anaerobic Digestion
- (4) Thermal Depolymerization
- (5) Pyrolysis
- (6) Refuse-Derived Fuel (also referred to as RDF)

(c) Construction of a DEQ-approved facility to satisfy this condition shall commence no later than seven (7) years after the earlier of:

- (1) The date a DEQ permit for solid waste disposal outside the former PWS zone becomes final (i.e., no further DEQ action is required and all appeals have been



exhausted or the time for filing an appeal has run with no appeal having been filed) and Riverbend has all DEQ authority necessary to commence disposal of waste on the site; or

(2) The date the 3.6 millionth ton of waste is deposited at the expansion site.

(d) The alternative disposal technology facility shall be operational within 18 months after commencement of construction and shall, when fully operational, significantly decrease the current deposit of 510,000 tons per year of municipal solid waste in the landfill. The facility must be designed to function for the duration of the life of the landfill. The 18 month construction window may be extended as a result of unforeseen weather or other natural events, upon written approval by the Planning Director.

(e) Failure to construct and/or operate an on-site alternative disposal technology facility consistent with this condition shall require the landfill to cease operations.



## Exhibit D – Ordinance 887

### Goal 5 Provisions to Protect Riparian Corridors

Section 1 – For purposes of this Exhibit “D” to Ordinance 887, the “Zone Change Area” consists of Tax Lots 101, 200, 400 and 401 on Tax Map 5501. “Riparian Area” shall mean the riparian corridor established through the safe harbor method currently set forth in OAR 660-023-0090(1)(b), except that the setback along all streams shall be 100 feet.

Section 2 – Within the Zone Change Area, no permanent alteration of the Riparian Area shall be allowed by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the Riparian Area:

- (A) Streets, roads, and paths;
- (B) Drainage facilities, utilities, and irrigation pumps;
- (C) Water-related and water-dependent uses; and
- (D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

Section 3 – Within the Zone Change Area, the removal of riparian vegetation within the Riparian Area is limited to the following activities:

- (A) Removal of non-native vegetation when replaced with native plant species; and
- (B) Removal of vegetation necessary for the development of water-related or water-dependent uses;

Section 4 – The property owner may seek reduction or removal of the restrictions in sections 2 and 3 upon demonstration of a hardship or map error, or upon a showing that a lot or parcel has been rendered not buildable by application of those restrictions.

- (A) An application for reduction or removal of the restrictions in sections 2 and 3 shall be made to the County following the Type B process set forth in YCZO Section 1301.
- (B) An application for reduction or removal of the restrictions in sections 2 and 3 shall be subject to the approval standards in YCZO Section 1200.

Section 5 – Notwithstanding the provisions in sections 2 through 4, permanent alteration of the Riparian Area within the Zone Change Area by placement of structures or impervious surfaces shall be allowed upon a demonstration that equal or better protection for identified resources will be ensured through restoration of Riparian Areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the Riparian Area measured from the upland edge of the area. Nothing in this section shall be interpreted as allowing new landfill related facilities or development within 100 feet of the Ordinary High Water Mark of the South Yamhill River.

*Exhibit "D"  
Ordinance 887*