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**VIA ELECTRONIC TRANSMISSION
AND HAND DELIVERY**

Yamhill County Board of Commissioners
c/o Mike Brandt
Yamhill County Planning Director
525 NE Fourth Street
McMinnville, Oregon 97128

RE: Docket No. SDR-16-14/FP-03-14 (Appeal Phase)
Applicant's Pre-Hearing Submittal

This firm represents Riverbend Landfill Co. ("Riverbend"), Applicant in this proceeding. This letter serves as the Applicant's Pre-Hearing Submittal to the Yamhill County ("County") Board of Commissioners ("Board") and should be included in the record.

This matter is before you on appeal from the Planning Commission, which approved Riverbend's expansion proposal with conditions. The task for this Board is to determine whether the Planning Commission erred. The appellant – Stop The Dump Coalition ("STDC") – offers 23 separate grounds for appeal. It should be noted, however, that the vast majority of the asserted grounds for appeal are simply statements of disagreement with the outcome of the Planning Commission's decision and STDC does not offer any explanation for how the Planning Commission erred in arriving at that outcome.

The Planning Commission had before it a very robust record addressing all aspects of the approval criteria. The Planning Commission weighed the evidence in that record, and it arrived at a conclusion based on the weight of that evidence. The Planning Commission's deliberative approach considering all evidence is demonstrated in part by the fact that it made major changes to Riverbend's original site plan proposal and imposed conditions of approval based on comments it received from the public and from Staff.

STDC and its members have on multiple occasions urged this Board to honor Planning Commission decisions since the Planning Commission is the body charged with being the land use expert for the County. Now that it disagrees with the outcome of the Planning Commission's expert decision, STDC asserts that the Planning Commission erred with respect to almost every

Mike Brandt
March 4, 2015
Page 2

applicable standard of approval. Riverbend urges this Board to recognize that inconsistency and to dismiss the assertion that there was any actual error in the Planning Commission's decision. The parts of the appeal that are mere disagreements with the outcome of the Planning Commission's decision are not errors and, therefore, should not be considered as part of this process.

This letter transmits to the Board a revised Site Development Plan ("Site Plan") to reflect changes to the Applicant's Preliminary Site Plan the Planning Commission mandated as part of its approval. It also includes new photo simulations and an interactive PDF document that allows three-dimensional viewing of the approved grading plans before, during, and after full build-out of the site.

Riverbend's Application, supplemental evidentiary submittals, oral testimony, and legal argument address in detail all of the approval criteria necessary to approve the revised Site Plan. Rather than restate each of the approval criteria and the substantial evidence on which the Planning Commission based its decision, this letter will focus on two issues mentioned during the Planning Commission's deliberations and that we expect the Board to receive further testimony on during the hearing: (1) potential water quality impacts and (2) the sufficiency of Riverbend's Farm Impacts Assessment. Riverbend will address other issues during any rebuttal period as necessary.

Background

The County has consistently recognized the need for the continued operation of a local disposal option within the County. In 2008, Riverbend sought an Exception to Statewide Planning Goal 3 ("Goal Exception") to allow a 98-acre expansion that would utilize much of Riverbend's property on the southeast side of Highway 18 for landfill disposal. As proposed at that time, the expanded landfill would also greatly increase in height. As part of that review process, the County had to determine whether the continued presence of the landfill was necessary, and the County concluded it was. Specifically, the County determined that waste disposal is a critical component of the County's economy and is important to industrial, commercial, and residential interests alike. Further, the County determined that capital investments like those required for a landfill have a positive economic impact that multiplies as it ripples through the local economy.

The County's determination was later reversed in the courts based on legal arguments that the County had not followed the correct process for allowing a landfill expansion into the farm zone. The courts did not reject the merits of the County's decision allowing the landfill to continue operating and, instead, described a specific legal path for the County to pursue in order to expand the landfill, which would require the County to amend its zoning code. As a result of that reversal and the courts' guidance, the County was then faced with making another decision to determine whether it wanted to allow landfills in the Exclusive Farm Use ("EFU") zone. The County once again determined that the continued operation of Riverbend Landfill was necessary

Mike Brandt
March 4, 2015
Page 3

and, in 2011, amended the Yamhill County Zoning Ordinance (“YCZO” or “Code”) to allow the maintenance, enhancement, or expansion of landfills within the EFU. The Land Use Board of Appeals (“LUBA”) upheld that decision.

More recently, the Planning Commission and Board reviewed Riverbend’s application to change the zoning of its existing parcel from Public Works Safety (“PWS”) to EFU (the “Zone Change”). Once again, the review of that application required the County to determine whether there is a need for the continued operation of Riverbend Landfill. In its findings approving the Zone Change (Ordinance No. 887), the Board unequivocally concluded “there is an existing need for the continued operation of a local disposal option generally and for Riverbend Landfill specifically.”

The County’s approval of the Zone Change was significant because it put to rest any question about whether the landfill should continue to exist and expand. The Zone Change ordinance expressly stated that Riverbend could return to the County for approval of a specific design for a future expansion. Ordinance 887 concluded with a statement that the Zone Change “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.”

Riverbend’s current application implements the County’s vision set forth in the Board’s prior decisions. The question before the County is no longer whether there should be a landfill. Rather, through this Site Design Review application the only question before the County is what the expanded landfill should look like. Riverbend’s proposed expansion design is starkly different than designs the County has previously reviewed. In 2008, Riverbend proposed nearly doubling the size of the existing landfill and sought approval to increase the permitted height of the landfill.

As a result of the limitations the Board imposed in the Goal Exception decision, its later decisions in the Zone Change proceedings, input gathered through years of public outreach since that time, and the most recent approval by the Planning Commission, Riverbend now proposes a much smaller expansion. The footprint will expand only onto one portion of Riverbend’s property. The proposed expansion will be no higher than the landfill’s current permitted height, does not impact the floodway, does not create a rise in the floodplain, and will not bring the existing facility any closer to the city of McMinnville. The proposal will allow Riverbend to continue pursuing a Green Tech facility at its site, while serving the existing waste disposal needs of the County.

Revised Site Development Plan

As part of its initial Site Design Review application, Riverbend provided the County with a Preliminary Site Development Plan. That Site Plan contained information required by YCZO

Mike Brandt
March 4, 2015
Page 4

Section 1100, including existing site conditions, a base grading plan, a final grading plan, figures showing vegetated screening buffers, and a landscaping and planting layout.

The Planning Commission approved Riverbend's expansion proposal, but did so in part by imposing conditions that require revisions to the Preliminary Site Development Plan. **Attachment 1** to this letter includes new and revised figures and drawings reflecting all of the changes necessitated by the Planning Commission's approval as described in more detail below.

The most significant modification necessitated by the Planning Commission's approval is the removal of Module 10 from the Site Plan. Riverbend proposed Module 10 as a small expansion area on the north side of the existing landfill that would provide at least one year of additional disposal capacity. The portion of Riverbend's property that would have accommodated Module 10 is one of only two areas where new landfill disposal of solid waste is permitted, the other area being where Riverbend has proposed Module 11. The County prevented the landfill disposal of solid waste on all other portions of Riverbend's property through imposition of a limited use overlay as part of the Zone Change decision last year.

Riverbend designed Module 10 to be lower profile and, therefore, less visible from the McMinnville side of the landfill. Nevertheless, Staff raised concerns about including Module 10 because it brought the landfill closer to adjacent farms and to the city. Riverbend maintains that Module 10 would not result in any increased impacts to nearby farms or to the city, but is agreeable to excluding Module 10 from its current expansion plans, and has updated the Site Plan to remove that major component of the expansion proposal.

Another modification to the Site Plan exists along Highway 18 to enhance visual screening. During the Planning Commission proceedings, Riverbend proposed, and Staff supported, a design that moves the perimeter berm of Module 11 farther from Highway 18. The original Site Plan contemplated a 35-foot setback from the roadway where a new vegetative buffer would be planted. Additionally, the perimeter berm in that area was designed to be approximately 90 feet wide with an outside slope that includes new vegetation to screen the landfill from the highway. The total buffer area between the road and the landfill for that original design was 125 feet. Although Riverbend intended to retain as much of the existing vegetation along the highway as possible when planting the new buffer, comments provided during the Community Meeting and to the Planning Commission made it clear that most commenters would prefer to have Riverbend retain the existing, mature vegetation along Highway 18 instead of supplementing that area with new plantings. Riverbend's proposed modification accommodates that preference by moving the perimeter berm farther from the road and slightly reducing the width of the berm's outside slope. This design modification creates a 50-foot setback from the roadway and a vegetated 75-foot outer berm, meaning the total buffer area remains 125 feet wide, but allowing the existing vegetation to remain in place.

The Planning Commission's conditions of approval also require Riverbend to modify its final Site Plan to include phasing that shows the design of the landfill in the event of the

Mike Brandt
March 4, 2015
Page 5

landfill's closure pursuant to the timeline set forth in Condition of Approval 7 of the County's Zone Change decision (the "Green Tech Condition"). That condition requires Riverbend to cease operations if Riverbend does not construct and operate a Green Tech facility. The basic timeline established in the Green Tech Condition requires Riverbend to commence construction of a Green Tech facility no later than seven years after Riverbend obtains its permit from DEQ for the proposed expansion. Drawing A-7 in Attachment 1 of this letter shows the final grading that would occur in the event Riverbend is forced to cease operations at that time.

Each of these changes – the removal of Module 10, the modified berm along Highway 18, and the final Site Plan showing early closure of the landfill – are reflected in the new figures and drawings. Other modifications to the Site Plan were necessitated by those changes and are also included. For example, the removal of Module 10 from the final Site Plan required changes to be made to the Demolition figure (revised Figure 4 in Attachment 1) because fewer trees and buildings will be removed. With the exception of these changes, other figures and drawings remain substantively the same, but Riverbend is providing new versions of the entire set in order to update the title blocks and other textual information to make clear that this set is the version approved by the Planning Commission.

Photo Simulations and Interactive PDF

During the Planning Commission proceedings, Riverbend provided photo simulations to depict how the landfill would look before, during, and after the expansion proposed in the application. Riverbend has updated those photo simulations to reflect the changes approved by the Planning Commission.

The new photo simulations, included in **Attachment 2** to this letter, also contain additional viewpoints. During the Planning Commission proceeding, Staff and others expressed an interest in seeing photo simulations from viewpoints closer to the landfill and where vehicles may be stopped along Highway 18. The additional viewpoints included here are from the Farmer John's produce stand, looking northeast, and from the intersection of Masonville Road with Highway 18, looking south.

Riverbend also understood from the Planning Commission proceedings that it would be useful for decision-makers to have some way to view the landfill from alternate perspectives both before and after the proposed expansion. The photo simulations are useful, but they are static images limited to certain viewpoints. In order to augment those simulations, included with this letter as **Attachment 3** is an electronic document that is an interactive PDF.¹ The viewer can rotate the image, zoom in and out, and change the visible layers in the document to view the grading plan for: (1) the currently-permitted landfill (i.e. the landfill if no expansion is approved); (2) the landfill approximately seven years into the expansion (which coincides with the Green Tech Condition); and (3) the landfill at full build-out.

¹ The 3D image is being provided in electronic format only and is included in the CD that accompanies the hard copy of this letter. Instructions for viewing the document in Adobe are included in Attachment 3 and on the CD.

Mike Brandt
March 4, 2015
Page 6

Potential Water Quality Impacts

The Planning Commission received testimony from individuals asserting that the County should not approve Riverbend's expansion application because of impacts to water quality. We anticipate the Board will receive similar testimony. Missing from the testimony presented to the Planning Commission, however, was any factual basis for concluding that Riverbend Landfill has negatively impacted water quality.

Before the Planning Commission, opponents of Riverbend's expansion application relied on isolated data points in an effort to paint Riverbend Landfill as a major source of pollution. For example, some testimony relied on the fact that *some* stormwater leaving the facility tested positive for *E. coli* to imply that everyone downstream of the landfill is endangered as a result. The veracity of that testimony is undermined, however, by a comprehensive review of Riverbend's water quality monitoring program and implementation.

The starting point for understanding water quality issues relating to landfills is the United States Environmental Protection Agency's ("EPA") rules implementing the Resource Conservation and Recovery Act ("RCRA"). In 1992, before Riverbend Landfill became a regional landfill, EPA promulgated rules commonly referred to as RCRA's "Subtitle D" rules, which established major new environmental protections for landfills. The Oregon Department of Environmental Quality ("DEQ") implements and enforces Subtitle D through its solid waste permitting system.

One of the primary Subtitle D requirements is that landfills must have a highly engineered liner system in place to prevent unacceptable levels of contaminants from escaping into the environment. Current EPA and DEQ regulations require a composite liner system made up of a geosynthetic membrane liner above a natural clay liner, or as an alternative, a geosynthetic clay liner. The liner system in the expansion area at Riverbend landfill has been designed to exceed these requirements by adding a second leak detection layer below the prescriptive primary liner. As leachate drains to the bottom of the landfill, it encounters the first liner, where it is then directed to a collection point for proper disposal. Should leachate pass through the primary liner for some reason, it would encounter the second liner or leak detection layer, where it would also be directed to a collection point. The natural or synthetic clay liner acts as an additional layer of protection in the extremely unlikely event leachate is able to pass through both synthetic liner systems.

The landfill liner system primarily protects against contamination of groundwater. Federal and state regulations also require Riverbend to collect and properly discharge or dispose of stormwater. Contrary to what the Board is likely to hear from STDC and others at the hearing, not all stormwater is contaminated simply because it is managed on the landfill site. The vast majority of Riverbend's property consists of non-landfill areas with clean soils and vegetation. Other portions of the property include landfill areas with daily, intermediate, and final covers. Stormwater runoff from these areas does not come into contact with waste and is

Mike Brandt
March 4, 2015
Page 7

therefore treated no differently than runoff from any other commercial property, which is still more stringent than stormwater generated from other uses in the farm zone. This runoff is managed as uncontaminated and is discharged into the unnamed tributaries on site. Some stormwater does come into contact with waste and is treated as if it were contaminated regardless of the actual quality of that water. That stormwater is directed away from uncontaminated stormwater and then collected through the use of swales, sumps, and other structural Best Management Practices ("BMP"). Once collected and separated, that water can be managed in two ways. The separated stormwater is primarily disposed off-site, but as an alternative it can be treated onsite and discharged if it meets certain water quality standards.

The physical protections built into the site are enhanced by comprehensive water quality protection monitoring and reporting systems. Riverbend's systems have been in place since the early 1980s and have been continuously enhanced since that time under DEQ's guidance. The monitoring network consists of groundwater elevation and groundwater quality monitoring wells. The monitoring wells provide an early warning system to detect potential landfill-related contaminants. Specific compliance wells approved by DEQ are located within 150 meters of the landfill and serve as the point where Riverbend must ensure that no contaminants are present in the groundwater. In the event landfill-related contaminants are detected in any of the compliance wells, Riverbend is required to evaluate the source and extent of the impacted groundwater and to implement corrective actions in close coordination with the DEQ.

Additionally, Riverbend has a comprehensive stormwater monitoring program. That program uses a combination of water sampling and operational measures to determine compliance with established benchmarks and effluent limits. The distinction between a "benchmark" and an "effluent limit" is a meaningful one, and one landfill opponents failed to recognize in their comments to the Planning Commission. An effluent limit establishes an upper limit for a particular contaminant and an exceedance of that limit is a permit violation. A benchmark, on the other hand, is a concentration guideline used to identify *potential* problems. If stormwater sampling exceeds a benchmark, an investigation is triggered and, if necessary, corrective action is taken. In other words, the mere exceedance of a benchmark does not result in a permit violation or even indicate water quality has been compromised by the landfill.

The effectiveness of the landfill liner system, the groundwater monitoring system, and the stormwater monitoring plan are borne out by the actual water quality in and around the Riverbend Landfill site. The analytical results for groundwater samples historically collected from the compliance monitoring wells indicate that no contaminant releases from the landfill have occurred. DEQ concurred with that conclusion in a recent review of Riverbend's Annual Environmental Monitoring Report ("AEMR"). The AEMR is an annual submittal to DEQ required by Riverbend's DEQ permit. Stormwater monitoring results similarly indicate that BMPs utilized on site are effective at minimizing or preventing impacts to on-site stormwater discharges.

Mike Brandt
March 4, 2015
Page 8

The ultimate demonstration of the absence of water quality impacts is the surface water quality of the South Yamhill River. Riverbend maintains voluntary monitoring points on the river upstream and downstream from the landfill. The surface water sample analytical results, including those for *E. coli*, show a general uniformity in the concentrations of water quality parameters between the upstream and downstream samples. In fact, *E. coli* has been shown to be at *higher* concentrations upstream, which is understandable because of the density of agricultural operations that exist upstream of the landfill. No incremental impacts from Riverbend Landfill are associated with any of the various pollutants which cause the South Yamhill River to be water-quality limited.

The Yamhill County Zoning Ordinance and state statutes allowing landfills in the farm zone expressly require landfills to obtain solid waste disposal permits from DEQ to protect the environmental quality around the landfill and to avoid the kinds of impacts that result from unregulated activities in the farm zone. The County should continue to rely on those requirements and accept DEQ's expertise in these areas.

Farm Impacts Assessment

Throughout the Planning Commission process, STDC asserted that Riverbend's Farm Impacts Assessment ("Farm Study") was inadequate because it did not analyze a large enough area. Those assertions argued that impacts from Riverbend Landfill are widespread and that the landfill has somehow limited agricultural production and activities throughout the County. One of the dissenting Planning Commissioners expressed concern that the Farm Study did not make use of readily-available data relating to farm productivity, and STDC moves that argument forward on appeal, asserting that Riverbend failed to address the economic impacts on the surrounding agricultural community. Each of these criticisms is unfounded and ignores the robust, data-driven analysis contained in the Farm Study.

The purpose of the Farm Study is to provide the County with evidence to determine whether the application satisfies the criteria set forth in ORS 215.296(1). Those criteria are referred to as the "Farm Impacts Standards" and require certain proposed uses, including landfills, to demonstrate: (1) that they will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and (2) that they will not significantly increase the cost of accepted farm or forest practices on those surrounding lands.

LUBA has a well-developed methodology for how the County should determine compliance with the Farm Impacts Standards. Under that methodology, the first step is to identify farming practices on surrounding lands, and LUBA has determined that is "entirely appropriate" for the applicant to begin by visually surveying surrounding lands. Other parties can then provide evidence to the record to refine those initial observations.

Riverbend's Farm Study went well beyond the minimum that LUBA expects or requires. The Farm Study included a survey of more than just the "surrounding area" and analyzed farm

Mike Brandt
March 4, 2015
Page 9

properties up to three miles from the landfill. The analysis also included more than just visual surveys. The Planning Commission received testimony during the open record period that identified farm uses and their associated practices within the Farm Study's analysis area that were not in the initial Farm Study. The hearing process is designed to elicit this information and Riverbend incorporated that additional information into an updated Farm Study that informed the Planning Commission's final decision.

The total area analyzed in the Farm Study is 34.5 square miles, or approximately 22,120 acres. The total harvested acreage in Yamhill County between 2008 and 2012 averaged approximately 98,600 acres; meaning the study area comprised more than 20% of the entire harvested acreage in Yamhill County. This broad area is more than sufficient for the County to rely on when determining what impacts, if any, exist on "surrounding lands" and provides an extremely conservative analysis for the County to use.

The Farm Study also relies on the best-available data. In addition to conducting photo surveys, the authors of the Farm Study reviewed information from aerial photos and the following sources:

- Environmental Working Group Farm Subsidies database
- Yamhill County Agri-Business Economic and Community Development Plan
- E.D. Hovee & Company, LLC and Spencer & Kupper
- USDA National Agricultural Statistics Service Research and Development Division
- USDA interactive CropScape – Cropland Data Layer Program

The best available farm use and crop inventory data available from government sources is aggregated and published at a county-wide scale. Information for individual farm units or parcels, however, is not available. Although farmers often provide that information to governmental agencies, that information is not publically available. In fact, many farmers would likely object to the release of such information because it could be used to determine a particular farmer's exact income.

County-wide data on crop values over time is of value. Because the analysis area comprises more than 20% of the County's harvested acreage, any impacts from Riverbend Landfill on crop yield or practices would be evident when comparing Yamhill County to other counties in the Willamette Valley. Yet, when such comparisons are made, Yamhill County is more productive than other counties. For example, Yamhill County generally has a higher annual yield of Perennial Rye Grass Seed, and commands a higher value per acre for that crop, than do other counties in the Willamette Valley. Further, upward and downward trends in yield and value for that crop in Yamhill County mirror the trends for other counties. In other words, Riverbend Landfill has no apparent impact on that crop when analyzed on that basis.

Mike Brandt
March 4, 2015
Page 10

The primary conclusion that can be drawn from the Farm Study is that the farm economy on lands within three miles of Riverbend Landfill has intensified over time. This conclusion is based on evidence such as: (1) the fact that the amount of land devoted to farm uses has remained stable over time; (2) the fact that new, capital-intensive uses such as filberts and vineyards continue to appear in the area; and (3) the fact that the make-up of the farmland in this area appears to be very similar to the farmland in the rest of the County. If the landfill had caused significant impacts to farming practices over time, one would expect the opposite for these trends to appear in the data. The Board should discount any testimony it receives that ignores these critical, quantitative facts.

Conclusion

Riverbend looks forward to presenting the details of its proposal to the Board during the hearing. We are confident that the Board will find that the existing record fully addresses all of the issues identified in the appeal and that it will be able to determine that the Planning Commission did not make any error when it approved Riverbend's expansion proposal.

Very truly yours,



James E. Benedict
Tommy A. Brooks