

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 an Order Correcting and )  
Re-adopting Board Order 15-115, and )  
Re-approving Planning Dockets SDR-16-14 ) Board Order 16-66  
and FP-03-14 (Riverbend Site Design and )  
Floodplain Permit) on Remand from LUBA )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 25, 2016 Commissioners Mary Starrett, Stan Primozych, and Allen Springer being present.

IT APPEARING TO THE BOARD as follows:

- A. By application dated November 5, 2014, Riverbend Landfill Company applied for Site Design Review and for a Floodplain Development Permit for limited expansion of the existing Riverbend Landfill;
- B. The Board approved Riverbend's application, with conditions, on April 23, 2015, by adopting Board Order 15-115;
- C. On November 10, 2015, LUBA remanded Board Order 15-115 to the county with instructions to reconsider portions of the decision;
- D. After considering new written argument and evidence regarding the previous decision and LUBA's Order, the Board voted unanimously on February 18, 2016, to re-approve Board Order 15-115, as revised and corrected on remand; and
- E. The attached findings and additional conditions represent the county's written decision to approve the applicant's November 5, 2014 application for Site Design Review and for a Floodplain Development Permit for limited expansion of the existing Riverbend Landfill; NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

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

Section 2. The conditions attached as Exhibit "B" and incorporated herein by reference are hereby adopted in support of this Order, inuring to the benefit of Yamhill County, and binding upon the applicant and the landowner and all successors in interest to the applicant and the landowner until modified or removed in accordance with law.

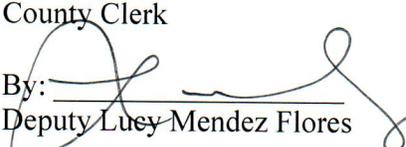
DONE this 25<sup>th</sup> day of February, 2016 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

By: 

Deputy Luey Mendez Flores

FORM APPROVED BY:



Timothy S. Sadlo

Senior Assistant County Counsel

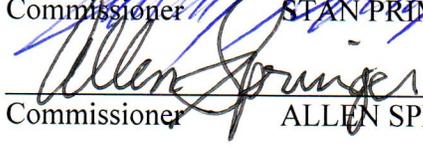
Chair

  
MARY STARRETT

Commissioner

  
STAN PRIMOZICH

Commissioner

  
ALLEN SPRINGER

Accepted by Yamhill County  
Board of Commissioners on  
2.25.16 by Board Order  
# 16-66

**Exhibit A - Board Order 16-66**  
**Findings in Support of Approval**

Docket No.: SDR-16-14 and FP-03-14 (Remand)

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

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

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

Location: 13469 SW Highway 18

Zone: Exclusive Farm Use District – EF-80

**I. Introduction and Background**

1. This matter comes before the County on remand from the Land Use Board of Appeals (“LUBA”). Riverbend Landfill Co. (“Applicant” or “Riverbend”), which owns and operates the Riverbend Landfill approximately three miles southwest of the city of McMinnville, previously submitted two applications for the enhancement and expansion of Riverbend Landfill. The first application was for Site Design Review (“SDR”) pursuant to Yamhill County Zoning Ordinance (“YCZO” or “Code”) Section 1101, and the second application was for a Floodplain Development Permit pursuant to YCZO Section 901. The stated purpose of the applications was to allow Riverbend Landfill to continue operating by reconfiguring portions of the existing landfill, and by expanding operations to adjacent land as other areas of the existing landfill go into final closure. The County processed both applications together.
2. The County approved both of Riverbend’s applications on April 23, 2015 through Board Order 15-115. Participants in that proceeding sought review of the County’s order by appealing to LUBA. LUBA issued its Final Order and Opinion on November 10, 2015 (LUBA No. 2015-036) (“LUBA’s Final Order”). As discussed in more detail in these findings, LUBA concluded that “the county’s general approach in determining compliance with ORS 215.296(1), with respect to nuisance birds and other impacts, suffers from several analytical or methodological flaws.” Based on that conclusion, LUBA remanded the decision back to the County “to conduct a new evaluation of the evidence” and to “make a new determination whether Riverbend has demonstrated that the cumulative impacts of the proposed use will not force a significant change in, or significantly increase the cost of, accepted farm practices on surrounding lands.” LUBA’s

Final Order did not prescribe any particular process the County must follow for its new evaluation of the evidence.

3. On December 3, 2015, the Applicant made a written request to the County to proceed with the applications on remand. The County then provided notice to everyone who participated in the original proceedings that it would take up the matter on remand. As part of that notice, the County opened the record for the following limited purposes:

A. To accept written argument only on the following issues:

(1) Whether existing evidence in the record demonstrates the presence or absence of significant impacts to farm practices (including the costs of those practices) in areas greater than one mile from the existing landfill and the proposed expansion area.

(2) Whether existing evidence in the record that does not quantify or describe a degree of impact demonstrates the presence or absence of significant impacts to farm practices (including the costs of those practices) from the existing landfill and the proposed expansion area.

(3) Whether the “Longitudinal Study” provided by the applicant as part of its initial Farm Impacts Assessment demonstrates the presence or absence of significant impacts to farm practices (including the costs of those practices) from the existing landfill and the proposed expansion area.

(4) Whether existing evidence in the record relating to litter generated by the existing landfill, or expected to be generated by the proposed expanded landfill, demonstrates the presence or absence of significant impacts to farm practices (including the costs of those practices) from the existing landfill and the proposed expansion area.

(5) Whether existing evidence in the record relating to a pheasantry located adjacent to the existing landfill demonstrates the presence or absence of significant impacts to pheasantry farm practices (including the costs of those practices).

B. To accept new evidence and written argument on the following issues:

(1) Whether the existing landfill or proposed expansion have caused or will cause significant impacts to accepted farm practices (including the costs of those practices) relating to the direct sales of cherries and berries on Tax Lot R5502-700.

(2) Whether the existing landfill or proposed expansion have caused or will cause significant impacts to accepted farm practices (including the costs of those practices) relating to the farm stand located on Tax Lot R5511-200.

(3) The feasibility and effectiveness of nuisance bird control measures available for use in rural areas.

4. The County accepted new evidence through the hearing on February 4, 2016, and then allowed all interested individuals to provide rebuttal evidence until February 11, 2016. The Board of Commissioners then convened on February 18, 2016 for the purpose of deliberation and to make a tentative decision. The Board of Commissioners at that time voted to re-approve the two applications. The Board reconvened on February 25, 2016 to adopt findings and to make a final decision.
5. During the remand proceedings the County received at least one comment expressing the belief that the County's remand proceeding was not consistent with LUBA's order. That comment, however, failed to recognize the distinction between the additional arguments and evidence the Board desired to receive, and the ultimate analysis the Board would conduct. Although the Board opened the record only for the limited purposes stated above, the findings below fully address the issues for which LUBA remanded Board Order 15-115.
6. Notwithstanding the limited scope for which the Board opened the record on remand, multiple participants provided new evidence outside that scope. The Board received a request by the Applicant to reject some of those submittals. The Board will not reject any submittal it received. However, neither will the Board consider new evidence in any submittal that is outside the scope for which the Board opened the record.

## **II. LUBA's Final Order and Scope of Remand**

7. Before LUBA, certain opponents of Riverbend's applications ("Petitioners") asserted five separate assignments of error: (1) that the County failed to follow the correct procedures in conducting site visits, and further that one commissioner failed to adequately disclose ex parte contacts; (2) that the County misconstrued the applicable law in concluding that the proposed landfill expansion is an allowed use in the Exclusive Farm Use ("EFU") zone; (3) that the record does not include any evidence that Riverbend has a current DEQ permit to authorize continued operation of the landfill; (4) that the County erred in several respects when it approved enhanced berms based on findings that proposed riparian area improvements will ensure equal or better protection for riparian resources; and (5) various challenges to the County's findings that the proposed expansion complies with ORS 215.296(1).
8. LUBA denied the first four assignments of error described above. Additionally, Petitioners did not make any assignments of error relating to the Floodplain Development permit. The County therefore re-adopts each of its original findings that related to the Floodplain Development Permit and to the first four assignments of error.
9. With respect to the fifth assignment of error, LUBA addressed and denied several sub-assignments of error. These include the following claims raised by Petitioners: (1) that the incorporation of the Farm Impacts Assessment ("FIA") was overbroad and must fail; (2) that the County erred in too narrowly circumscribing the scope of "accepted farm practices" to exclude some common farm practices, and to place on surrounding farmers the burden of demonstrating that their farm practices are "common and necessary"; (3) that the County failed to address impacts from odor, noise and visual impacts; (4) that the County erred when it found that background odors, rather than the landfill, is the source of the odors experienced at a specific stable operation; (5) that the County failed to adequately address testimony from Maysara

vineyards that visual impacts of the landfill negatively affect the vineyard's direct marketing efforts; (6) that the County erred when it declined to evaluate alleged impacts to a non-existent quinoa farm; and (7) that the County erred by not addressing the removal of the poplar plantation on Riverbend's own property.

10. As with the Floodplain Development Permit and the first four assignments of error, the County re-adopts each of its original findings relating to the sub-assignments of error in the fifth assignment of error that LUBA considered and denied, except where changes to those findings are necessitated by the portions of the fifth assignment of error LUBA remanded.

### **III. Re-adoption of Original Findings**

11. For the reasons set forth in these Findings, the Board approves the Final Site Development Plan and the Floodplain Development Permit subject to the conditions of approval set forth below. As noted above, the Board finds there is no need to revise any of the County's original findings relating to the Floodplain Development Permit or any of the County's original findings relating solely to the issues encompassed by the first four assignments of error Petitioners presented to LUBA. All of the original findings in Board Order 15-115 are therefore re-adopted by this reference as though fully stated herein, except as revised below.

### **IV. Revised Findings Relating to the Farm Impacts Assessment**

12. In order to address LUBA's remand, the additional argument received during the County's remand proceedings, and the additional evidence received during the County's remand proceeding, the Board finds that Findings #112 through #181 of Board Order 15-115 should be replaced with the findings that follow in this section IV.
13. The SDR process requires development applications to demonstrate compliance with the requirements of the underlying zone. The underlying zone for Riverbend's property is the EFU zone governed by YCZO 402. YCZO 402.02(V) specifically requires that the maintenance, enhancement, or expansion of a landfill in the EFU zone must satisfy the criteria set forth in ORS 215.296(1). That requirement implements ORS 215.183(2)(k), the state statute that allows solid waste disposal sites in the EFU. These findings refer to the standard set forth in ORS 215.296 as the "significant change/cost" standard and the criteria set forth in ORS 215.296(1) for meeting that standard as the "Farm Impacts" criteria.
14. The Farm Impacts criteria require certain proposed uses, including landfills, to demonstrate: (1) that they will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and (2) that they will not significantly increase the cost of accepted farm or forest practices on those surrounding lands. These findings will refer to accepted farm and forest practices, and the cost of accepted farm and forest practices, collectively as "Farm Practices." As described by LUBA, the significant change/cost standard ultimately requires the County to determine "whether Riverbend has demonstrated that the cumulative impacts of the proposed use will not force a significant change in, or significantly increase the cost of, accepted farm practices on surrounding lands."
15. The Applicant provided an initial Farm Impacts Assessment with its applications. The Applicant provided the following supplements to the Farm Impacts Assessment: (1) an updated Farm

Impacts Assessment prepared by CSA Planning Ltd., dated December 23, 2014; (2) a letter addressing "Allegations of Impacts to Farm Practices" dated December 31, 2014, prepared by Cable Huston and including Attachments 1-3 relating to the Farm Impacts Assessment; (3) a letter addressing "Farm Impacts Analysis" and "Economics" dated March 17, 2015, prepared by Cable Huston and including Attachments E and G relating to the Farm Impacts Assessment; and a memorandum prepared by CSA Planning Ltd., dated March 19, 2015, regarding "Riverbend's Response to Farm Impacts Assessment Testimony." The initial Farm Impacts Assessment and the supplements described in this Finding are collectively referred to as the "Farm Impacts Assessment" or "FIA." Having weighed all of the evidence in the record, the Board finds that the facts and analysis contained in the FIA are persuasive and adopts the FIA in its entirety into these findings here by this reference. The Board specifically adopts the methodology, facts, and conclusions stated in the FIA. In the event of a conflict between these Findings and the FIA, these Findings shall govern.

16. The FIA concludes that Riverbend's proposed development will have no impacts to the low intensity forest practices associated with the relatively few woodlots that exist near the subject property. Further, the Board finds that the record contains no persuasive testimony alleging any impacts to forest practices that have resulted or will result from the continued operation of Riverbend Landfill. The Board therefore finds that the proposed use satisfies the forest practices component of the Farm Impacts criteria and makes no further findings in that regard. The remainder of the Findings in this section focus on the farm practices component of the Farm Impacts criteria.
17. The Board finds that the Farm Impacts criteria do not prevent the County from approving development that may have some impacts on Farm Practices. Rather, a proposed use cannot force a "significant change" in Farm Practices or "significantly increase" the cost of those practices. The Board further finds that the County need only consider "accepted farm practices" and the Farm Impacts criteria do not require consideration of other uses of property such as domestic or commercial uses that are only farm-related. According to state statute, "accepted farming practices" are modes of operation, common to farms of a similar nature, and which are necessary for the operation of such farms to obtain a profit in money. Thus, where a potential farming practice is conducted as a hobby or other personal use, the Board finds that the Farm Impacts criteria do not apply. Further, the Board will not consider evidence of impacts to Farm Practices that are not shown to be common and necessary.
18. Our conclusion in Finding #15 above is identical to Finding #116 in Board Order 15-115. Petitioners challenged that finding before LUBA, and LUBA denied that portion of Petitioners' Fifth Assignment of Error. A new letter from Jeffrey Kleinman, attorney for the Stop the Dump Coalition ("STDC"), argues that LUBA did not affirm the County's finding, and that LUBA "merely" stated that Petitioners did not present a well-developed argument. Mr. Kleinman then incorporates by reference the arguments he presented to LUBA as the basis for challenging the County's definition of "accepted farm practices." Mr. Kleinman, however, did not present any new argument or evidence about the definition of "accepted farm practices," nor could he because to do so would be outside the scope of the remand proceedings. If the arguments Mr. Kleinman presented to LUBA on this issue were not well-developed the first time (according to LUBA), we do not see a basis for accepting those identical arguments now.

19. The Board has determined that it must adhere to LUBA's well-developed methodology for analyzing the Farm Impacts criteria. Under that methodology, these Findings will first describe the accepted farming practices existing on surrounding lands. The Findings will then determine whether the proposed use will force a significant change in, or significantly increase the cost of, those practices.
20. As a threshold matter, the Board must determine which lands constitute "surrounding lands" for purposes of Riverbend's proposal. The statutes and rules appear to be silent on this matter, and no party in the proceeding identified any authority for what constitutes surrounding lands. In its order, LUBA concluded that the county must evaluate all competent evidence. The Board therefore finds that surrounding lands for purposes of this application are those lands situated within one mile of the existing landfill and the area proposed for expansion, together with any more distant lands for which there is evidence or claims of Farm Impacts from the landfill.

**A. Accepted Farm Practices on Surrounding Lands**

21. The Board is required to identify accepted farming practices on surrounding lands. In order to do so, the Board must first determine what farm crops and other farm uses exist on those lands. The FIA identifies the crops that currently exist within a radius of up to three miles from the existing and proposed use (the "Study Area"). The record contains testimony criticizing the completeness of the Applicant's initial version of the FIA, but the Board finds those criticisms are unsupported. LUBA has concluded that it is "entirely appropriate" for an applicant to begin the process by visually surveying surrounding lands for purposes of identifying nearby farm and forest uses. Indeed, throughout the Planning Commission process and this Board's review, participants were able to identify areas in the Study Area that were either mis-identified or incomplete in the initial FIA. That testimony was then used to update the initial assessment and the result is that the FIA in the record contains a robust and thorough assessment of crops and other farm uses in the Study Area. To the extent the initial analysis had any deficiencies, those deficiencies were rectified by the remainder of the process.
22. Based on the FIA, in its final version that incorporates testimony presented to the Planning Commission and the Board, farm crops and other farm uses on surrounding lands include the following:
  1. Orchards (primarily hazelnuts and walnuts)
  2. Grass Seed (including similar uses such as hay production and clover seed)
  3. Pastures with Livestock
  4. Poultry, Pheasants, and Egg Production
  5. Field Crops (such as row crop vegetable production)
  6. Plant Nurseries
  7. Horse Breeding
  8. Direct Sales, including from farm stands
23. The record identifies the accepted farming practices associated with the above-listed farm crops and other farm uses. Those accepted farming practices include, but are not limited to, the following:

1. Orchards: orchard establishment, crop growth, chemical and nutrient applications, brush removal, pruning, irrigation, rodent control, bird control, sucker control, flailing and leveling orchard floor, harvest, and nut and cherry washing/drying.
  2. Grass Seed: chemical and nutrient applications, crop growth, bird control, rodent control, planting, weed control, slug and other pest control, tilling/disc, sheep grazing, swathing for harvest, combine/thresh, clean and bag seed, and straw bailing or flail.
  3. Pastures with Livestock: chemical and nutrient applications, pasture growth, animal growth, birthing, medication, milking, rodent control, livestock medical treatment, feeding and watering, and fence maintenance.
  4. Poultry, Pheasants, and Egg Production: feed production, animal growth, incubating/hatching, medication, egg collection, rodent control, feeding and watering, and pen construction/maintenance.
  5. Field Crops: chemical and nutrient applications, crop growth, bird control, rodent control, tilling and planting, tilling/disc, and harvest.
  6. Plant Nurseries: chemical and nutrient applications, bird control, rodent control, plant starts (in greenhouses), pruning, plant growth, irrigation, soil stockpiling, and on-site composting.
  7. Horse Breeding: feeding, cleaning stables, grooming, maintaining fencing, rodent control, providing medication and basic health treatment for resident horses, coordinating veterinary services when appropriate, and activities associated with breeding.
  8. Direct Sales/Farm Stands: selling products, developing structures to house that activity, providing safe ingress and egress for customers, and placing signs on the property.
24. Other accepted farming practices may also exist within the Study Area and are identified in the FIA. Specifically, Section 4.2 of the supplemental Farm Impacts Assessment dated December 23, 2014 includes a description of farm practices titled "Farm Practice Characterization. Rather than restate that portion of the FIA or all facts and conclusions in the FIA in their entirety, the Board adopts and incorporates the characterization of farm practices in the FIA into these Findings by this reference.

#### **B. Potential Impacts to Accepted Farming Practices**

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

1. Litter
2. Water quality
3. Air particulates
4. Traffic
5. Nuisance bird attraction
6. Rodent/pest attraction
7. Odor
8. Visual impacts
9. Noise

#### **1. Litter**

26. The record reveals that litter has the potential to escape from a landfill facility. Such litter, if allowed to escape in significant volumes, could impact Farm Practices if it interferes with combine operations, cleaning and bagging seed, or harvesting operations.
27. The Board finds that the actual litter impact (as opposed to the potential impact) that has resulted from Riverbend's current operations, or that could result from future operations, is not significant and is limited by several factors. Any impact from litter necessarily depends on the amount of litter generated. That is, if no litter escapes from the landfill, there could not possibly be any Farm Impacts caused by litter. On the other hand, if significant amounts of litter escape the landfill and fall on a grass seed field, Significant Impacts could exist. On the spectrum between no impacts and clearly significant impacts, there must be a level of litter that causes some impact, but not significant impacts.
28. The Board finds that if the landfill is a source of litter, it is primarily because of the working face, where waste is removed from containers and placed in an open area prior to being covered. Between the working face and any surrounding properties devoted to farm use are large "buffer" areas consisting either of property Riverbend owns or of non-farmed lands containing stands of trees or riparian habitat. Further, based on prevailing wind patterns described in the FIA, potential litter impacts will be limited in geography and escaping litter is likely to move only in a general direction from west to east. However, Riverbend has also installed litter fences on the east side of its property to intercept any such litter. Within this area, Riverbend conducts regular litter patrols that further reduces the amount of litter that could go beyond the buffer areas or the existing litter fences. The record reveals that the amount of litter collected as part of the litter patrols is quite small (approximately one to two trash bags collected twice per week, indicating that the actual amount of escaping litter is low). Riverbend is also required to conduct litter management as part of its obligations under its DEQ permit. Based on this evidence in the record, the Board finds that the amount of litter actually able to escape the landfill property does not impose significant impacts on surrounding properties devoted to farm use.
29. Notwithstanding the foregoing, there is evidence in the record relating to the McPhillips farm asserting that landfill litter has caused significant Farm Impacts to that property. For example, Mr. McPhillips testified that he spends a lot of time all year long picking up plastic bags and that he spends a great deal of time going over all of his fields before he bales to prevent litter from harming his baling machine. As LUBA concluded in its order, the County must directly address

this evidence and determine whether the asserted Farm Impacts are indeed significant. The Board finds that they are not.

30. The evidence relating to the alleged impacts at the McPhillips farm must be considered in conjunction with all of the evidence in the record. Although the Board did not open the record to take more evidence of Farm Impacts caused by litter, the County received multiple new letters from farmers addressing this issue. One of those letters, from Walster Farm, expressly notes that farmers occasionally find litter in a field and have to pick it up. The farmer appears to discount any impact, however, when the amount of litter that has to be picked up is small. That same letter also asserts, counter to the testimony of Mr. McPhillips, that patrolling fields prior to baling is not possible. The Board is therefore faced with conflicting evidence from farmers. For example, Mr. McPhillips' testimony implies that any litter from the landfill causes a significant impact, while the evidence from Walster Farm is that small amounts of litter are acceptable and can be expected. Similarly, Mr. McPhillips states that he spends time successfully patrolling his fields before baling, while the statement from Walster Farm is that no such litter control is possible.
31. Another new letter addressing litter impacts identified a hay field near the landfill as having trash spread throughout the field. That letter does not describe where that field is in relationship to the landfill (that is, upwind or downwind), but does note that the field is also along Highway 18. The record clearly demonstrates that the landfill is not the only source of litter that has the potential to reach farms and that areas along highways contain amounts of litter that are no less than those around the landfill, and may in fact be greater. The Board therefore concludes that the litter in that field is unlikely to have resulted from the landfill and instead results from its proximity to a highway. The McPhillips farm also borders Highway 18.
32. The Board further considers the persuasiveness of the evidence asserting Farm Impacts from litter based on the source of the evidence and the level of detail provided. As noted in other areas addressed in these Findings, the Board finds that the testimony from Mr. McPhillips tends to be overstated or internally inconsistent. This erodes the Board's confidence in the veracity of that testimony.
33. The Board has carefully weighed the evidence above, and all of the evidence in the record, and concludes that neither the existing landfill nor the proposed expansion will cause significant Farm Impacts as the result of litter escaping from the landfill. The record indicates that no significant impacts occur when only small amounts of litter make it to a farm field (regardless of the source) and that Riverbend's litter control measures are effective at preventing anything more than a small amount of litter from escaping. The Board is not persuaded that Mr. McPhillips spends a significant amount of time or costs patrolling his fields for a likely small amount of litter. To the extent Mr. McPhillips spends time and effort patrolling his fields at all for litter, the Board finds that effort is not significant under the significant change/cost standard.
34. To remove any doubt about the significance of litter impacts from Riverbend Landfill, the Board finds that it is appropriate for Riverbend to take additional precautionary and mitigation control measures, regarding the minor impacts that could occur on the McPhillips farm. Accordingly, the Board will impose a condition of approval requiring Riverbend to employ additional litter fencing at the working face of the landfill, and to pay the cost of litter patrol on the McPhillips

farm. Additionally, the Board will continue to impose a condition of approval preventing the development of Module 10, which moves most of the landfill expansion away from the McPhillips farm. While some future landfilling activity will take place on top of older cells, that activity will be limited in duration, and is in an area that the Board finds is not meaningfully closer to the McPhillips farm.

## 2. Water Quality

35. The record contains testimony asserting that an expanded landfill will degrade the quality of groundwater and surface water in the area. The majority of that testimony raises water quality issues as a general environmental concern rather than in relationship to Farm Practices. However, the record does contain some limited testimony that degraded water quality will impact some Farm Practices. For example, a December 4, 2014 letter from FOYC notes that irrigation is an accepted farm practice for many crops. The letter goes on to note that “impacts to either groundwater or surface water from the proposed expansion of the landfill could force significant change in or increase the cost of this accepted farm practice.”
36. The record demonstrates that the quality of the water on Riverbend’s property is one of the most regulated and intensely monitored site conditions. A map submitted with Riverbend’s First Post-Hearing Submittal, for example, identifies the location of multiple compliance and detection wells for monitoring groundwater quality. The record also contains several documents, provided by those opposing the application, containing the results of stormwater monitoring that has occurred on site. These monitoring programs are performed with stringent regulatory oversight by DEQ.
37. The Board finds that the existing landfill has not caused degradation in water quality. The Board further finds that this lack of impacts to water quality means that no impacts to Farm Practices have occurred from the existing facility or will occur from the proposed expansion. Notably absent in any of the testimony opposing the application is a credible assertion that any farmer has changed irrigation practices, incurred higher irrigation costs, or experienced crop losses due to water quality impacts from the landfill. As noted by FOYC, such impacts are only speculative. A more detailed analysis of actual water quality in the area reveals no such impacts.
38. The record reveals that the analytical results for groundwater samples from compliance monitoring wells indicate that no contaminant releases from the landfill have occurred at the permitted point-of-compliance boundary. The Board finds this evidence to be the most credible evidence in the record relating to groundwater quality because comprehensive groundwater monitoring results are provided to and reviewed by DEQ, which has stated its concurrence with the conclusions based on those results.
39. Stormwater monitoring at Riverbend Landfill has shown concentrations of a limited number of constituents to be over statewide benchmarks. Generally these constituents have been iron and E. coli. However, as the applicant noted, exceedance of a benchmark is not indicative of changes in surface water quality. Rather, when concentrations are found above a benchmark, Riverbend is required to take specific corrective actions to manage the facility’s stormwater discharges. Such corrective actions have included operational changes, placing additional erosion controls, and investigating potential sources of elevated constituent concentrations.

40. The Board finds that no impacts to surface water can be attributable to the existing landfill and, therefore, are not likely to be caused by the proposed expansion. Other sources of contaminants in the rural area are not regulated in the same rigorous manner as required for Riverbend and, as a result, water quality in the South Yamhill River watershed is already diminished from those activities. The Board finds that this fact is most evident from the figure Riverbend submitted showing the various pollutants which cause the river to be water-quality limited. That figure clearly shows no incremental impact to the quality of the water as it passes by the landfill.
41. Based on the foregoing and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of impacts to water quality.
42. Findings #33 to #39 are identical to Findings #132 through #138 of Board Order 15-115. On appeal to LUBA, no challenges were brought to those findings.

### **3. Air Particulates**

43. The Applicant initially identified a potential for impacts to Farm Practices resulting from air particulate emissions. Riverbend's existing landfill, and the proposed expansion, is governed by state regulations controlling air emissions, and Riverbend operates under a "Title V" permit for that purpose. However, the record does not contain persuasive evidence that any air particulate from the landfill has or will impact Farm Practices.
44. The lack of impacts from the landfill, as the Applicant notes, likely results from the fact that the overall background air quality in the area is determined by existing farm practices surrounding the landfill. Not only is Riverbend limited in what it can emit, many farm uses, especially ones that involve tilling and disc work common to this area, also produce air particulate emissions. Other farm practices, such as slash burning, similarly result in air particulates. The latter can be observed directly in some of the aerial photographs in the record.
45. The Board further finds that the lack of impacts from air particulate emissions is evidenced in part by the increase in farming activities that have taken place near the landfill. A nearby orchard, for example, has been expanding over the last 20 years, and the operator of that orchard indicated that he has not experienced any impacts to Farm Practices as a result of the landfill. The Board finds this evidence persuasive because that farmer operates in multiple locations at varying distances from the landfill and has the ability to compare those sites to determine if proximity to the landfill is a factor. That farmer is therefore making new investments in the absence of impacts from the landfill and not despite of impacts. Other new orchards downwind from the landfill have been planted in recent years. It is reasonable to conclude that those orchards, too, are able to make new investments because of favorable farming conditions and the lack of impacts from the landfill rather than being made despite impacts from the landfill.
46. Based on the foregoing and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of impacts from air particulate emissions.

#### **4. Traffic**

47. Riverbend initially analyzed potential Farm Impacts from traffic generated by the landfill. Uses that create significant changes in traffic volumes on roads used by farming operations could conceivably force significant changes in farm practices or the costs of those practices. The record does contain testimony raising concerns with truck traffic accessing the site, but that testimony is presented as a general concern about traffic patterns and is not presented in relationship to Farm Practices.
48. The Board finds that the lack of traffic impacts from Riverbend is due in part to its direct access to Highway 18. That transportation facility is a high-volume state highway, allowing landfill traffic to access the site from distant areas without having to use smaller, more rural roads that would conflict with farm uses. The Applicant submitted a Traffic Impacts Study confirming that the level of road use by the existing landfill and the proposed expansion accounts for a very minor portion of the total peak hour traffic volumes in the area.
49. Based on the foregoing and the record as a whole, the Board finds that Riverbend's operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of traffic impacts.
50. Findings #45 through #47 are identical to Findings #142 through #145 of Board Order 15-115. On appeal to LUBA, no challenges were brought to those findings.

#### **5. Nuisance Birds**

51. The record indicates that the existing landfill attracts some nuisance birds. The proposed expansion therefore also has the potential to attract nuisance birds. As explained in more detail in the findings below, the Board finds that the existing landfill and the proposed expansion has the potential to cause some impacts to Farm Practices. However, the Board finds that impacts to Farm Practices from birds has not been and will not be significant.
52. Birds attracted to the landfill are primarily corvids, gulls, and pigeons. Other testimony asserts that geese, while currently attracted to grass seed farms but not attracted to the landfill, may be attracted to the additional wetland habitat associated with the riparian enhancements proposed for the site. As described in the record, these birds are all mobile and gather where there are available food sources. The landfill is one potential food source because of the working face, an area of temporarily-exposed waste on which birds can feed. The Board does not find any persuasive evidence in the record that nuisance birds are attracted to the landfill for any reason other than the food that is sometimes available at the working face.
53. The landfill is not the only bird attractant in the surrounding area. Other crops, such as food crops, filberts, and grain, also attract large populations of nuisance birds in areas close to the existing landfill. Farther out, other attractive food sources exist, such as grapes at vineyards. Urbanized areas are also major attractants of nuisance birds. The record indicates that there is a documented increase in nuisance birds throughout the entire Willamette Valley in part because of increased urbanization.

54. The mere attraction of nuisance birds to the landfill does not indicate whether that attraction rises to a level significance enough to force changes in farm practices or to increase the costs of farm practices. To the contrary, it is undisputed in the record that bird control is an accepted farm practice regardless of the presence of a landfill. The Board must therefore determine if birds attracted to the landfill increase the burden on Farm Practices beyond the burden that would occur in the landfill's absence and, if so, determine whether that increase is significant.
55. It is undisputed in the record that Riverbend must implement bird control measures as part of its DEQ permit requirements. Riverbend has controlled birds using different methods over the years, and it currently relies on a falconry program that uses birds of prey to scare off nuisance birds and to keep them from making the landfill a long-term foraging area. DEQ inspects the site regularly and makes note of bird populations. According to DEQ's observations, large increases in bird populations are seasonal and, therefore, it is not a year-round phenomenon. The Board finds that evidence from DEQ to be credible because it comes from a neutral agency that has the opportunity to make year-round observations. DEQ's observation is also confirmed by other evidence in the record, such as a statement from the wildlife biologist that runs the falconry program at the landfill, who notes rises in nuisance bird populations are seasonal, for example because winter storms push birds off the coast and into the valley.
56. Other testimony in the record asserts that the number of birds in the area has increased as the size of the landfill has increased. The Board does not find that assertion to be persuasive, however, because it fails to recognize the operational realities of the landfill. As noted above, the food source for nuisance birds at the landfill is the working face. Although the mass of the landfill has increased over time, the working face of the landfill does not increase as the size of the landfill increases. Indeed, the record reflects that Riverbend has made operational changes to actually reduce the size of the working face over time. The Board therefore finds that if there has been an increase in nuisance birds in the area during the time the landfill has grown in size, that increase is best explained as a result of other, non-landfill factors. The Board further finds that the landfill will not become increasingly attractive to nuisance birds because its intensity of operations will remain the same.
57. Some testimony in the record criticizes the efficacy of Riverbend's falconry program, asserting that the program does not control bird populations and simply pushes the nuisance birds onto adjacent farms. The record contains evidence in the form of photographs and videos showing flocks of gulls near the landfill. The Board agrees that some of the narrative accompanying that evidence is overstated – for example a photo entitled "1000 seagulls" shows much fewer (less than 200) gulls. According to Riverbend's falconer, who maintains bird counts on days the falcons are active, his bird count taken the same day as that photo was consistent with that lower number. Other evidence does show that larger numbers of birds are sometimes present, but such larger numbers occur only a few days each winter before the birds are dispersed back to more normal concentrations because of the falconry program.
58. As described by the bird control company that manages the falconry program at Riverbend, the long-term impacts of the falconry program reduce bird populations in a broad area, and the short-term impacts are negligible. The conclusion regarding long-term impacts is based on the reduction in bird populations each year. The conclusion regarding short-term impacts is based in part on the observation that gulls displaced from the landfill by the falconry rarely venture more

than one-half mile from the landfill, and when they do, they seek flat, bare land where they have good visibility in all directions, but only for short periods of time. The Board finds that evidence to be more persuasive because it is offered by a wildlife biologist who has the opportunity to observe bird populations on a regular basis, over longer periods of time, and in different areas. The Board therefore finds that Riverbend successfully manages nuisance bird populations.

59. Notwithstanding the Board's finding that Riverbend successfully manages nuisance bird populations, there is evidence in the record asserting that the number of birds that continue to be attracted to the landfill impacts Farm Practices. As LUBA concluded in its order, the County must directly address all competent evidence in that regard and cannot discount that evidence. Rather, the Board must evaluate all competent evidence to determine whether the proposed landfill expansion will "significantly change or significantly increase the costs of accepted farming practices, considering the whole record, or that the proposed use complies with the significant change/cost test based on conditions of approval that reduce impacts below the significance threshold." This includes reviewing short-term impacts caused by the landfill's falconry program, which temporarily displaces nuisance birds onto nearby farms.

**a) Potential Bird Impacts to Grass Seed Farms**

60. One specific claim in the record is that farmers have experienced grass seed loss from gulls attracted to the landfill. That claim originally asserted that gulls leave the landfill to feed on the grass seed on the neighboring McPhillips farm. The claim was later refined to assert that gulls destroy the grass seed not by eating it, but by digging the seed up when looking for slugs, worms and grubs. During the remand proceedings, that same allegation was made with respect to the Kauer and Creekside Valley farms as well. Photos were provided purportedly showing bare spots in a grass seed field purportedly caused by gulls grubbing in that field.
61. Other evidence in the record, however, indicates that gulls do not eat grass seed plants as a significant food source, and that they do not actually dig up newly planted seeds in search of other food as suggested. Nor do gulls appear in a comprehensive list of grass seed pests published by Oregon State University. In fact, the record contains evidence in the form of a scientific paper that bird predation of worms in a grass seed field is beneficial because birds remove harmful pests, and that paper does not mention any corresponding detriment to the grass seed plants themselves. To the extent that nuisance birds do visit grass fields in search of slugs, there is other evidence in the record that the accepted farm practice is to employ slug bait to minimize slug damage to young plants, which necessarily reduces potential bird attraction. The record contains other statements from grass seed farmers near the landfill and in other areas of the County that do not believe gulls cause the kind of damage alleged. Nor does the Board find the photos of gulls and bare spots in a grass seed field persuasive. Those photos show birds, and they show bare spots, but they do not show birds causing those bare spots. Indeed, the close up of one bare spot lacks other evidence of birds such as dug up soil or excrement, which proponents of that evidence claim are common where the birds land. Finally, the record contains a statement from a biologist with the United States Department of Agriculture/APHIS, who has witnessed flocks of gulls around the Willamette Valley, that he was unaware of any grass seed farmers ever having issues with gulls damaging grass seed crops.

62. The Board has weighed the competing evidence regarding alleged gull damage to grass seed farms and finds that, with adequate control measures, neither the existing landfill nor the expansion proposal result in significant impacts to Farm Practices. In order to ensure that the adequate control measures will remain in place during the life of the landfill, the Board imposes a condition of approval requiring the Applicant to continue engaging in those activities and at an increased level.
63. Another specific claim in the record is that the proposed landfill expansion will attract geese, thereby causing impacts to nearby grass seed farms. The specific claim is that newly created wetlands associate with the riparian enhancement project will attract geese. While there are no claims in the record that the existing landfill attracts geese, the record is clear that geese cause damage to grass seed farms and that grass seed farmers already employ effective measures to reduce those impacts. There is no persuasive evidence in the record that these practices will have to change, and the allegation appears to be that grass seed farmers will have to employ more of these measures, thereby increasing their costs.
64. The record not only demonstrates that geese are naturally attracted to this area, it also shows the presence of a significant wetlands area adjacent to the landfill. That wet streamside area appears to be at least 75 acres in size. The record also reflects that the landfill is located adjacent to the Yamhill River. In the area of the landfill the Yamhill River meanders and affords many additional wetlands to attract geese. Riverbend's riparian enhancement project will result in the enhancement of just over three acres of wetlands. The Board finds that the enhanced wetlands do not meaningfully add to the total acreage of wetlands attracting geese and, therefore, will not impact nearby farms beyond what they currently experience. As noted above, those farms already employ measures to effectively control geese. The Board therefore concludes that the proposed landfill will not force significant changes to these Farm Practices.

**b) Potential Bird Impacts to Cherries, Berries, and Filbert Orchards**

65. Another specific claim in the record relates to a variety of bird-related impacts alleged to have been experienced at the Frease farm. Ms. Frease claims that she contracted amoebic dysentery, the source of which was excrement from landfill-attracted gulls. She further claims that, as a result, she is no longer able to engage in the direct sales of cherries and berries from her farm, although she does continue to consume that fruit personally. The alleged impact from this change in her farm practices is \$9,000.00 per year in lost income from cherry and berry sales.
66. The Board finds that the record contains counter evidence that seriously undermines this claim. First, the only clear evidence in the record of cherry trees on the Frease farm are the photos showing five cherry trees along a driveway that were planted around the same time as the filbert orchard, which is the vastly predominant agricultural crop on that parcel. Further, the only evidence in the record of berries are the photos showing a small vine to the north side of the house. Based on the production values of cherry trees and berry vines, and using the retail value of those plants, the Board finds that the Frease testimony grossly overstates the amount of revenue that could be derived from those sources. Neither the number of trees, the number of berry plants, their production values, nor their market value were rebutted by Ms. Frease. Second, the record contains evidence that when humans contract amoebic dysentery, the source

of that disease must be human, not bird, feces. Third, as noted above, gulls attracted by the landfill are either at the landfill, or they may temporarily be displaced and, when they are, tend to stay in close range of the landfill (within one-half mile). Further, the displaced gulls seek open, flat areas with lower vegetation, not filbert orchards.

67. The Board has weighed the testimony from Ms. Frease with the other competent evidence in the record and finds the counterevidence to be more persuasive. The Board specifically finds that it is not probable that gulls from the landfill have been dispersed in a significant number, more than one-mile away, past other open fields, to then fly over an orchard and, once to the other side, defecate to a significant extent on a small number of cherry trees and berry plants or in such a manner that passes along a human-borne illness. If Ms. Frease abandoned direct sales of her cherries and berries, the Board finds it was because of her own perception that she must do so and not because that change was forced by the operation of the landfill.
68. Ms. Frease also claims that birds “are the main cause of spreading funguses to hazelnut trees,” are a source of *E. coli*, and that she has incurred additional costs to protect her filbert orchard from funguses she fears are spread by gulls and crows attracted to the landfill. In addition to the evidence cited above that undermines her claim that large numbers of gulls are likely to be present in a filbert orchard, the record contains additional evidence that casts doubt on these bird-related impacts being caused by the landfill. For example, information provided by a nearby farmer who operates a filbert orchard adjacent to the landfill, another orchard approximately one mile from the landfill, and a third orchard approximately two miles from the landfill, indicates that he has not observed any greater impacts from birds at his orchard that is adjacent to the landfill. Considering the three orchards, the farmer’s experience is that impacts from birds are not related to a farm’s proximity to the landfill. The presence of nuisance birds at the orchard near the landfill is consistent with bird populations at the other orchards, and does not require the farmer to alter farming practices as a result. The Board finds this testimony to be more persuasive because it allows a comparison to be made of similar uses at different distances from the landfill. In contrast, the Frease testimony does not provide credible comparisons to other farms. The Board further considers the persuasiveness of the evidence asserting Farm Impacts to filbert orchards based on the source of the evidence. As noted above, the Board finds that the testimony from Ms. Frease was clearly overstated with respect to cherries and berries. This erodes the Board’s confidence in the veracity of that testimony with respect to impacts to her filbert orchard as well.
69. The Board also finds that the concern over *E. coli* from birds is unfounded. While the record indicates that gulls may carry *E. coli*, there is no evidence in the record that such contamination actually occurs at filbert orchards in the area as a result of gulls or any other bird species. To the contrary, the record relating to water quality shows that the operation of the landfill does not increase levels of *E. coli* already present in this area.
70. The Board also finds that the conditions of approval it will impose regarding bird control measures will remove any remaining doubt that the landfill expansion will satisfy the Farm Impacts criteria with respect to the Frease farm.

**c) Potential Bird Impacts to Livestock**

71. One specific bird-related claim in the record is encompassed in testimony asserting that nuisance birds have specifically caused increases in the occurrence of coccidiosis. That testimony goes on to claim that the increased occurrence of coccidiosis necessitates an increased use of antibiotics in livestock and more costly treatments from a veterinarian. These are presented as evidence that the Farm Impacts criteria cannot be met because of increased costs to Farm Practices. For the following reasons, the Board finds that this evidence does not compel the Board to conclude that either the existing landfill or the proposed expansion result in significant impacts to Farm Practices. The record also contains claims that the expanded landfill will increase *E. coli* outbreaks in livestock.
72. First, the evidence in the record indicates that coccidia, the protozoa that cause coccidiosis, are “host specific” and, therefore, the type of coccidia birds carry are not the same organisms that cause coccidiosis in various livestock. Second, the evidence in the record indicates that coccidia are prevalent in many species and that accepted farm practices include managing for coccidiosis even in the absence of nuisance birds. The mere occurrence of coccidiosis, or even an increase in the number of cases, may therefore be related to several environmental factors unrelated to the landfill. Third, there is evidence in the record indicating that coccidia have a complex lifecycle making it unlikely that birds that digest infected feces from other animals will spread the disease. That evidence was presented by a licensed veterinarian with experience treating various farm animals, including small ruminants. The Board finds that evidence to be the more credible evidence when compared to the evidence claiming nuisance birds have caused increased cases of coccidiosis.
73. While the record indicates that gulls may carry *E. coli*, there is no evidence in the record that livestock in the area have actually contracted *E. coli* from gulls or any other bird species. In contrast, the record relating to water quality shows that the operation of the landfill does not increase levels of *E. coli* already present in this area.
74. The record also contain allegations of impacts to livestock relating to a lambing operation on the Redmond Noble farm. The Redmond Noble farm is located approximately 1.6 miles north of the landfill. Ms. Redmond Noble testified that she witnessed four incidents of crows attacking lambs and, as a result, recently changed her Farm Practices with respect to lambing and grazing through additional penning of lambing ewes and newborn lambs. The result of those changes, she claims, are increased costs for hay and antibiotics. The Board further finds the decisions about when to pen livestock is a day-to-day decision for a livestock operation and depends on several factors, including weather. Given the potential for inclement weather during the lambing season (spring), added costs for hay or antibiotics are likely to occur as an accepted farm practice.
75. While the record reveals that corvids can and do harm young and sick livestock, that is a trait of those birds in general and is not a trait specific to landfill-attracted birds. It may be that birds visiting the Redmond Noble farm are growing in number and are becoming more aggressive, but the Board must still consider whether that is a result of the landfill or other factors, and, if a result of the landfill, whether the impacts are significant.

76. The record reveals that between the Redmond Noble farm and the landfill lie vineyards and other food sources for birds. That farm is also adjacent to the expanding urbanized areas of the city of McMinnville, which serves as a source of nuisance birds. The Board finds that proximity to the landfill is a relevant consideration and bears on the persuasiveness of the Redmond Noble testimony. Other food sources and intervening land uses decrease the likelihood that the birds observed on the Redmond Noble farm are “from the landfill,” especially in light of other evidence in the record indicating typical raven counts at the landfill to be only around 50. Further, as described above, the Board has already determined that Riverbend’s bird control measures are effective, and it is reasonable to conclude that the effectiveness of those control measures are even greater the further one travels from the landfill. Finally, the timing of incidents described in the Redmond Noble testimony is noteworthy. Specifically, the observed increase in bird populations is stated to have begun approximately ten years ago, although Riverbend Landfill has been in operation more than twice that long as a large, regional facility. As noted above, the attractiveness of the landfill to birds has remained consistent over that time period, or has decreased because of continuing reductions in the size of the landfill working face, making it more likely that the increases are the result of other, non-landfill factors. Moreover, the small number of total conflicts between birds and livestock (up to four incidents over several decades) does not warrant a change in farm practices.
77. Having weighed all of the evidence in the record relating to alleged impacts to livestock on the Redmond Noble farm, and considering the persuasiveness of that evidence, the Board finds that Riverbend Landfill has not forced significant impacts to Farm Practices on that farm’s livestock operations. Because the landfill will not be increasing its operations or moving closer to that farm in a significant way, the Board also finds that the proposed expansion will satisfy the Farm Impacts criteria in this regard. The Board also finds that the conditions of approval it will impose regarding bird control measures will remove any remaining doubt that nuisance birds will not impact those operations. For the same reasons, the Board finds that there are no impacts on livestock on other farms in the area.

**d) Summary of Potential Impacts from Nuisance Birds**

78. Based on the foregoing, and the record as a whole, the Board finds that Riverbend’s operations have not forced, and will not force, significant changes to farming practices or the cost of farming practices as a result of nuisance birds. The Board’s conclusion is based on the weight of all the evidence in the record, some of which does indicate that nuisance birds are capable of causing a potential impact to some Farm Practices. However, as explained above, the Board finds that any such impacts are either contradicted by other evidence in the record, or the impacts do not reflect a level of significance prohibited by the Farm Impacts criteria. To remove any doubt about the degree of those impacts, however, the Board supports the condition imposed by the Planning Commission denying the portion of Riverbend’s application that would have allowed the development of Module 10. By only allowing the expansion in the Module 11 area, any potential impacts from nuisance birds will be reduced with respect to the McPhillips farm, the farm for which most of the impacts from nuisance birds are alleged to have occurred. Further, the Board will impose additional conditions requiring the Applicant to engage in additional bird control measures.

## 6. Potential Impacts from Rodents

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

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

## **7. Potential Impacts to Farm Stands and Direct Sales**

88. The FIA identifies a farm stand as a particular farm use in the vicinity of Riverbend Landfill, specifically on tax lot 200 just west of the existing landfill. Direct sales of agricultural products can also constitute farm uses and the record contains two instances of farmers making direct sales – at the Redmond Noble farm and the Frease Farm. Some testimony asserts that the County should also consider wine sales at wineries as direct farm sales.

89. With respect to a farm stand farm use, the Board finds that the accepted farm practices associated with that use consist of selling products, developing structures to house that activity, providing safe ingress and egress for customers, and placing signs on the property.
90. No aspect of the landfill's operation would prevent the construction of buildings or signs used for farm stands. Nor would operation of a landfill have any impact on the ability of a farm stand to develop a parking lot.
91. The record contains a traffic study demonstrating that the transportation system is more than sufficient to safely accommodate traffic generated by the landfill use. Ingress and egress to a farm stand will therefore not be impacted. The record demonstrates specifically that the farm stand on tax lot 200 must maintain access on Oldsville Road rather than from Highway 18 where landfill traffic exists.
92. The record does contain some evidence asserting that some individuals no longer buy from or sell to the farm stand on tax lot 200 because of the presence of Riverbend Landfill. Even assuming that evidence indicates the presence of some impact to the farm stand, contrary evidence exists from the owner of the farm stand indicating that there has been no adverse impact at all to the farm stand as a result of the landfill and that he has not had to change any of his practices to account for the landfill.
93. Having weighed all of the evidence in the record, the Board finds that the continued operation of Riverbend Landfill will not force significant changes to farm stand farm practices or significantly increase the cost of those practices.
94. With respect to direct farm sales at the Redmond Noble farm, the Board finds that farm practice is not impacted by the continued operation of Riverbend Landfill. The allegation of impacts to direct farm sales on that farm is speculative and based only on the apparent inquiry of two customers who "wondered about" water quality and a concern by the farmer that if customers "lose faith in the wholesome goodness of products," she might lose sales and income. In other words, that testimony asserts impacts to a perception based on the presence of the landfill, and customer perception is not an accepted farm practice. Moreover, the concerns expressed by the customers were related to water quality, which the Board has determined is not negatively impacted by landfill operations. The Board also notes that there is no evidence that the Redmond Noble farm has actually lost a customer because of the existing landfill. Moreover, the proposed expansion will not move the landfill appreciably closer to the Redmond Noble farm in a manner that could be perceived from miles away, nor will the landfill increase in height, therefore limiting any perception that the landfill will loom larger near that farm.
95. The allegation of impacts to direct farm sales at the Redmond Noble farm also appear to be based on claims of odor impacts. With respect to odor, the Board finds that there is no credible evidence in the record to indicate that odors from the landfill are the odors causing the alleged impacts at this farm. The Redmond Noble farm is in a rural area that generates many offensive odors, and the record indicates the presence of other odor generators in the area, including non-farm odors like the composting facility in McMinnville. Even if an offensive odor in this area could be attributed to the landfill, this testimony does not assert that the farm lost the business of a customer as a result. The Board finds that the loss of no customers is not significant.

96. Having weighed all of the evidence in the record, the Board finds that the continued operation of Riverbend Landfill will not force significant changes to direct farm sales practices or significantly increase the cost of those practices at the Redmond Noble farm.
97. The Board addresses potential impacts to wineries in separate findings.
98. The Board addresses potential impacts to direct farm sales at the Frease farm in separate findings.

#### **8. Potential Impacts to Pheasant and Other Poultry Operations**

99. The record contains evidence of alleged impacts to a pheasant operation on the adjacent McPhillips Farm. The alleged impacts to the pheasantry stem primarily from the assertion that noise from the landfill is disruptive to the health of the pheasants. The record also contains allegations that the predatory birds brought to Riverbend Landfill through the falconry program impact pheasant rearing on this property.
100. According to the McPhillips testimony, pheasant rearing has occurred on his farm for decades. His testimony, however, also states that he has only recently started raising pheasants again, and did so after the denial of Riverbend's earlier expansion application when he thought the landfill would be closing. During the initial proceedings in this matter, the Applicant challenged whether or not a pheasantry actually existed on the McPhillips farm. During the Planning Commission proceedings, for example, the Applicant demonstrated that the McPhillips farm did not hold a license from the Oregon Department of Fish and Wildlife ("ODF&W"). Such a license is required for anyone who sells game birds or game mammals.
101. While this matter was under review by the Board, and in response to the Applicant's challenge to the existence of a pheasantry, Mr. McPhillips obtained a license from ODF&W for game birds. That license was issued on March 3, 2015, one week before the Board's initial hearing. As further evidence that he raised pheasants, Mr. McPhillips provided a receipt for pheasant meat he sold, dated March 10, 2015, two days before the Board's initial hearing.
102. The Board has considered the timing of these items and finds that they seriously undermine the claim that the pheasantry has existed for seventy years or that it exists at all. By his own admission, Mr. McPhillips has only recently constructed pens for pheasants, despite his other claims that his farm has been using elaborate pens for decades. The receipt for the sale of pheasant meat is also contradicted by other evidence Mr. McPhillips provided. For example, Mr. McPhillips provided an email in which he claimed that during the prior winter months he had already sold all of his pheasants because of impacts from the landfill, except for four hens that he had kept for laying. If Mr. McPhillips had sold all of his birds except laying hens as he stated, he would have had no birds to sell for meat. Alternatively, if Mr. McPhillips had kept some birds to sell for meat, then his claim that he had sold all of his birds due to landfill impacts was not accurate. The McPhillips testimony is internally inconsistent in other regards. For example, although he had claimed to only have four hens, the ODF&W license he obtained indicated he had 120 pheasants. Similarly, he stated that he has newly reconstructed, elaborate pens to contain the pheasants. At the same time, he alternately claims that he keeps his pheasants in a wild, free-range condition, but also that birds of prey are able to get into his pens and that to

prevent such invasions he will have to purchase netting for his pens. It is therefore unclear whether these elaborate pens exist, and if they do, whether they already have netting, which the record indicates is a common and necessary component of a pheasant pen.

103. Notwithstanding the foregoing, the Board will review potential impacts to Mr. McPhillips' alleged pheasantry. According to the McPhillips testimony, the pheasantry is located next to the farm manager's house on his property and only hundreds of yards from the portion of the site where the Applicant proposed to build Module 10. The primary impact alleged is that noise emanating from the landfill site scares the pheasants and causes them to do damage to themselves and to their young. Specifically, the McPhillips testimony asserts that the back-up alarms on machinery using the site sound like birds of prey and, that "[t]his is what causes the pheasant to peck at each other, destroy eggs and not reproduce in their runs." The McPhillips testimony also alleges that the predatory birds brought to Riverbend Landfill through the falconry program occasionally escape and attack his pheasants, and that in general their presence is alarming to the pheasants, causing them to act erratically. Additional testimony expresses concerns about prolonged agitation causing hormonal responses that are harmful to pheasants.
104. In addition to the inconsistencies in Mr. McPhillips' own testimony identified above, the record contains other evidence that bears on the overall persuasiveness of his claims. For example, predatory birds exist naturally in the area around the landfill and are not present solely as a result of Riverbend's falconry program. With respect to falcons attacking pheasants, this was not always Mr. McPhillips' testimony. For example, before the Planning Commission he asserted that he was concerned that falcons from the landfill would pose a threat to his pheasants if the landfill expanded, clearly implying that he had not yet experienced any problems. Only later after the Planning Commission approved the application did Mr. McPhillips relate that a falcon attack had actually occurred. Even so, the falconer operating at Riverbend also disputes that a falcon has ever escaped and attacked a pheasant at the McPhillips farm. Indeed, Mr. McPhillips' claim that a falcon attacked his pheasant acknowledges that he did not know if the falcon was from Riverbend. Additionally, if the pheasant pens are properly constructed, it is not persuasive that a falcon or hawk that has been professionally trained to haze nuisance birds would instead become distracted and focus on pheasants in an enclosed pen to which access is difficult. The record also contains evidence that pheasants do habituate to loud noises. That evidence is based on a study that tested sound levels that are well above the sound levels that reach the McPhillips farm. Even if sound habituation has some impact on pheasants used as game birds, it does not have an impact on pheasants raised for meat production.
105. Having weighed all of the evidence in the record regarding alleged impacts to pheasants, the Board finds that the evidence indicating there are not significant impacts to pheasant Farm Practices is more persuasive. Although pheasants may be easily startled, this is a trait common to all pheasants and the Board finds that noises and the presence of falcons from the landfill are not significantly different than similar factors affecting all pheasantries. Because of their nature, the accepted farm practice for raising pheasants is to keep them in enclosed pens with adequate cover in order to guard against these very impacts, regardless of the source. Moreover, while McPhillips describes pheasants as being raised as game birds, the only evidence in the record is that he sells pheasants for meat. The Board finds that he can continue that practice without being forced to change his Farm Practices or incur additional costs. The current and future operation of Riverbend Landfill therefore does not force significant changes in accepted farm practices or

the cost of those practices. The Board's conclusion in this regard is further influenced by Mr. McPhillips' own statement that his pheasants will be fine.

106. Although the Board has found that there are no significant impacts to pheasant Farm Practices, the Board is imposing multiple conditions of approval that will further guarantee operation of the landfill does not significantly impacts pheasants on the McPhillips farm. First, the Board has imposed a condition of review that will prevent Riverbend from constructing Module 10, the only area of the proposed expansion that would have been close to the McPhillips farm. By allowing only the construction of Module 11, this decision will ensure that any potential impacts to pheasants on the McPhillips farm will be reduced or eliminated. While small portions of the expansion will occur over areas of the existing landfill, the clear concern expressed in the McPhillips testimony was impacts related to the development of Module 10. Second, the Board is imposing a condition that requires Riverbend to implement "smart" back up alarms that will replace the current back up alarms Mr. McPhillips states sound like birds of prey and serve as the source of alleged noise impacts to his pheasants. Finally, because the Board is requiring Riverbend to conduct more intensive falconry activities, the Board will impose a condition requiring Riverbend to compensate Mr. McPhillips for the cost of placing a cover on his existing pheasant pens to protect pheasants from the increased presence of predatory birds.
107. The FIA identifies "poultry" as an additional farm use on surrounding lands devoted to farming. There is evidence in the record that one poultry operation exists on lands between one and three miles from the landfill, but there are no claims that the landfill has or will impact that operation. The only other clear location with non-pheasant poultry is Crescent Farms, which has an undefined number of laying hens. Poultry is also mentioned in Mr. McPhillips' testimony, but it is not always clear if that reference is to his pheasants or to poultry in addition to his pheasants. The primary allegation in that regard relates to claims that falcons are able to eat poultry, which is the same allegation made in regard to pheasants.
108. The Board finds that the accepted farm practices for poultry include animal growth, incubating and hatching, medication, egg laying and collection, rodent control, feeding and watering, and pen construction and maintenance. The Board finds that the continued operation of Riverbend Landfill will not force a significant change to these accepted farm practices or to the cost of these practices. Some of the potential externalities from the landfill, such as litter and traffic have no bearing on raising poultry or egg production. Other externalities, such as water and air quality impacts, are non-existent, as explained in other findings. Similarly, with respect to rodents, the Board has found that the landfill does not cause an increase in rodent populations in the area, and rodent control is already an accepted farm practice for poultry operations. The record does not contain any persuasive counter evidence that these externalities have caused impacts to poultry operations.
109. With respect to noise, the record demonstrates that birds common in poultry operations habituate to loud noises. The record also contains evidence that non-pheasant poultry is much more tolerable to loud noises and does not require an extra level of care to prevent such impacts from occurring. Based on the noise studies in the record, the Board also finds that there will be no noise impacts at Crescent Farm, which is just over one mile from the landfill. With respect to impacts from nuisance birds, the record does contain information in a scientific paper that gulls have the ability to eat eggs and young birds. However, there is no claim in the record that such

impacts have actually occurred in this area. Nor is there any claim in the record that a falcon has attacked non-pheasant poultry. The absence of such attacks is confirmed by a statement from Riverbend's falconer. The Board addresses potential impacts to the poultry on Crescent Farms in separate findings below.

110. Based on the foregoing, the Board finds that the continued operation of Riverbend Landfill will not force significant changes to poultry farm practices or to the costs of those practices.

### **9. Potential Impacts to Bank Loans**

111. The record contains testimony asserting that the presence of Riverbend Landfill has impacted one farmer's ability to get a loan for his farming operations.
112. The Board finds that the process of obtaining a bank loan to support farm activities is not an "accepted farming practice." As described above, "accepted farming practices" are modes of operation necessary for the operation of farms to obtain a profit in money. The proceeds of a loan may be used to fund accepted farming practices, but are not farm practices in and of themselves because they are not a mode of operation. Further, a loan is an economic practice that is unique to any debtor. That is, there is no discernible way based on this record for the Board to determine whether the proceeds of a loan are used directly in a farming operation, or used in a more ancillary manner such as by adding to the source of funds that pay for commercial operations on a farm. The Board therefore finds that although a farm loan may be common, there is no persuasive testimony in the record that farm loans are necessary for farms to make a profit.
113. Even if the process of obtaining a bank loan can be considered an accepted farming practice, the Board finds that such a practice has not been, and will not be, significantly impacted by the existing landfill or the proposed use. The evidence in the record offered as proof of impacts to bank financing relies in part on a property appraisal of the McPhillips Farms property adjacent to the landfill. The appraisal in question, however, was performed on the assumption that the property would be subdivided and developed with six homes on the subdivided parcels. The alleged reduction in property value was based on Mr. McPhillips' potential inability to actually develop the parcels with houses and the appraiser did not opine on any reduction to the property based solely on its use as farmland. Thus, even if the appraisal were valid, the Board finds that any discussion of the property for use as six home sites is not useful for determining what agricultural loans may be obtained for the property in its current state.
114. The Board further finds that the appraisal is not valid because it makes an "extraordinary assumption" that Mr. McPhillips' property has environmental contamination. As noted by additional documents submitted by STDC's attorney, however, no environmental investigation of Mr. McPhillips' property has occurred and any impacts on loan values are purely speculative at this point. The Board further finds that the statements Mr. McPhillips relies on from the bank did not address whether the landfill had reduced Mr. McPhillips' property value, but addressed whether the bank would value the loan based on the lower of two appraisals when two appraisals exist. The Board finds that the record does not indicate Mr. McPhillips ever actually applied for a loan or that he was offered a loan at a higher interest rate solely because of the presence of the landfill.

115. As an independent basis for rejecting this argument, the Board finds that any impacts to bank loans available to farmers, if they exist at all, are not likely to be significant. This conclusion is based on the fact that other farms in the Study Area are apparently able to finance capital-intensive investments such as the establishment of a filbert orchard. Those investments were either made without a loan, which indicates loans are not a necessary part of a farm's operations, or they were made with a loan, which indicates that loans are readily obtainable for farm operations in the Study Area.
116. Findings #97 through #100 are identical to Findings #172 through #175 of Board Order 15-115. On appeal to LUBA, no challenges were brought to those findings.

#### **10. Potential Impacts to Peavine Valley Stables and Double G Paints**

117. Testimony from Peavine Valley Stables asserts that the existing landfill has impacted its stable operations because of litter, odor, and rodents. The record indicates the stables are 1.75 north of the Riverbend site.
118. With respect to litter impacts, the Board adopts the same findings stated above to conclude that the actual impacts from litter are not significant enough to cause impacts to the stables. At that distance, and in light of prevailing wind patterns in conjunction with intervening factors, the small amount of litter that actually escapes the landfill will not reach this stable operation.
119. With respect to odor, the Board finds that there is no credible evidence in the record to indicate that odors from the landfill are the odors causing the alleged impacts at the stables. The stables are in a rural area that generates many offensive odors, and the record indicates the presence of other odor generators in the area, including non-farm odors like the composting facility in McMinnville. Even if an offensive odor in this area could be attributed to the landfill, this testimony asserts that the stables lost the business of a single customer as a result. The Board finds that the loss of one customer is not significant, especially in light of the absence of any testimony describing the number of customers that continue to do business with the stables.
120. With respect to rodents the Board adopts the same findings stated above to conclude that the actual impacts from rodents at this distance from the landfill are not significant.
121. Findings #117, #119, and #121 are identical to Finding #177 of Board Order 15-115. On appeal to LUBA, Petitioners challenged that portion of the order and LUBA affirmed the Board's earlier decision in that regard.
122. Testimony in the record asserts that noise from Riverbend Landfill impacts operations at Double G Paint & Quarter Horses. Based on the noise studies in the record, however, the Board finds that the noise levels at that operation are no different as a result of the landfill and that the ambient noise there is already increased because of its proximity to the highway.

#### **11. Potential Impacts to Crescent Farms**

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

124. The Board finds that the Crescent Farms testimony is based on future, undefined plans to expand the farms operations, specifically with respect to beef cattle, egg production, meat goats, and food crops. The Board finds that the County is required to review only potential impacts on current accepted farming practices and that plans for future farming practices that are not well-developed or only speculative in nature, such as those presented in the Crescent Farm testimony, need not be included.
125. The Board finds that the Crescent Farms testimony does not describe any Farm Impacts from the existing landfill and, in fact indicates the absence of such impacts. For example, cows are currently raised on that property without the use of any drugs. The development of Module 11 will move the operation of the existing landfill west, and no farther south than the existing landfill. Additionally, the Board finds that there is no credible evidence in the record to conclude that the number of nuisance birds attracted to the existing landfill will increase with the development of Module 11. The Board therefore finds that the expanded landfill will not increase the potential for any impacts to this property.
126. With respect to the apiary on this site, the Board finds that the Crescent Farms testimony does not allege any impacts to the apiary from the existing landfill. As with other testimony in the record relating to apiaries, the issue raised is couched in terms that beehives “could” be impacted by American Foulbrood. However, there is no persuasive evidence that any apiary has actually been impacted in this way. As with other potential impacts, the Board further finds that evidence in the record concerning this potential impact is not substantiated by scientific data. The Board agrees with the applicant that if this risk was a major threat to apiaries, one would expect it to be a topic studied by scientists in the field. To the contrary, a review of the Journal of Apicultural Science in the record indicates no such studies have been published. The Board further finds the evidence provided by opponents to the landfill is from Australia as part of a bulletin guide and does not include scientific data sources for its conclusions. Moreover, the bulletin recommends mitigations such as “cover” to minimize impact potential, and daily cover is a requirement for landfills in Oregon. Additionally, the only apiaries identified in the record are to the south, east, or north of the existing landfill, none of which are will be meaningfully closer to the landfill’s operations with the development of Module 11.
127. Findings #122 through #125 are identical to Finding #178 of Board Order 15-115. On appeal to LUBA, a challenge was raised regarding impacts to Crescent Farms and LUBA affirmed the County’s prior decision in that regard.
128. Testimony from Crescent Farms also asserts there is increased risk to poultry due to avian influenza from the landfill. This claim is based on the assertion that Riverbend Landfill is authorized to accept bird carcasses that died from that disease. The Board does not find this argument to be persuasive and finds that no such increased risk exists. First, the allegation is only that Riverbend Landfill is authorized to accept such carcasses and there is no evidence that such carcasses are actually disposed of at the landfill. Second, even if such carcasses are disposed of there in the future, there is a comprehensive set of statutes that govern that process, which are designed to prevent impacts to other agricultural operations. For example, ORS Chapter 601 addresses the burial of any animal carcass and the Oregon Department of Agriculture implements those statutes. Based on the foregoing, the Board finds that the continued operation of Riverbend Landfill will not cause and impacts to Farm Practices as a

result of avian influenza risk, much less any significant impacts, on poultry operations at Crescent Farms or any other poultry operation in the study area.

## 12. Potential Impacts to Wineries

129. The record contains testimony asserting that the landfill will have negative impacts on wineries in the area because of diminished views. The Board finds that the operation of a winery is not an accepted farm practice. Although directly tied to agriculture because of the connection to vineyards, wineries are commercial uses. Wineries are among the “non-farm uses” listed in ORS 215.283 and would not be allowed to operate in the EFU zone but for their being listed in that statute. The Board also finds it noteworthy that wineries, like landfills, cannot be permitted unless they also meet the Farm Impacts criteria because those standards are imposed on wineries by operation of ORS 215.452(11). That statute requires counties to apply certain standards to wineries “for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands.” Pursuant to ORS 215.456, wineries may also be permitted as a commercial use in conjunction with agriculture under ORS 215.283(2)(a), in which case the Farm Impacts criteria also apply. The Board finds that it makes little sense to refer to a use as a “farm practice” when that use itself is permissible only where it must avoid significant impacts to farm practices.
130. Even if the Board were to determine a winery is a farm practice – which it does not – the evidence in the record does not support a conclusion that impacts to wineries have resulted or will result from Riverbend’s development proposal. Despite the testimony from a representative from the Willamette Valley Wineries Association that there are 20 vineyards or wineries within a three mile radius of Riverbend, the actual number is five vineyards, three of which have wineries. Additionally, those wineries fall within the outer half of that three mile radius and are not within the Study Area the Board adopts for its Farm Impacts analysis. Among those wineries, only one – Youngberg Hill – has a direct view of the landfill. That winery is also approximately 2.5 miles from the landfill. Contrary to the testimony provided to the Planning Commission, and as documented in Riverbend’s rebuttal evidence, that winery receives stellar reviews from its customers who rave about the views from the winery, and since 2011 the winery has annually received an award as a best destination for weddings.
131. The record also reflects that the winery industry has increased significantly in recent decades and has grown in the presence of the existing landfill. The Board finds no credible evidence in the record that a winery has been forced to change any of its practices, or incurred additional costs because of the landfill. Based on the foregoing, the Board finds that Riverbend’s operations have not forced, and will not force, significant changes to wineries in the area.
132. Findings #94 through #96 are identical to Findings #179 through #181 of Board Order 15-115. On appeal to LUBA, no challenges were brought to those findings.
133. The record also contains a statement from Youngberg Hill winery alleging the landfill has caused a decrease in the price it sells its grapes. Based on the evidence in the record taken as a whole, the Board finds that the operation of the landfill has not forced a significant change in Farm Practices associated with Youngberg Hill’s vineyards. As noted in that testimony, the alleged impacts to grape prices result from customer perception, which is not a farm practice, rather than

from a change in farm practices or an increase in costs of farm practices. Even if a customer's perception were relevant, Youngberg Hill describes that perception as being impacted by environmental health factors. The Board has made other findings relating to environmental health, such as water and air quality, and the Applicant has demonstrated that there are no significant environmental health risks associated with the landfill.

134. The Board further finds that the sale of wine from a winery is not a direct sale of agricultural products constituting a farm use. State statute defines farm use in part as the direct sale "of the products or by-products raised on such land." While grapes may be a product raised on land, wine is not raised on land and, instead, is produced from the product raised on the land. As noted above, the sale of wine is a commercial activity. While it may be allowed in the farm zone under certain circumstances, that does not convert the sale of wine to a farm use.
135. Even assuming the sale of wine is a farm use, the same reasoning above applies and the Board finds that customer perceptions regarding the quality of wine are not farm practices. Even if a customer's perception were relevant, Youngberg Hill describes that perception as being impacted by environmental health factors. The Board has made other findings relating to environmental health, such as water and air quality, and the Applicant has demonstrated that there are no significant environmental health risks associated with the landfill.

### **C. Cumulative Impacts Analysis**

136. In addition to the Board's determination regarding alleged impacts to individual Farm Practices, the significant change/cost standard requires the Board to consider the cumulative effect of all impacts. The Board finds the Applicant has demonstrated that the cumulative effect of impacts from the proposed use will not force a significant change in, or significantly increase the cost of, accepted farm practices on surrounding lands.
137. First, the actual number of impacts associated with the landfill is much lower than the number of impacts alleged throughout the record. As noted above, the Applicant analyzed alleged impacts to Farm Practices from at least nine different sources: litter, water quality, air particulates, traffic, nuisance bird attraction, rodent/pest attraction, odor, visual impacts, and noise. For some of those potential sources, like water quality, air particulates, traffic, and visual impacts, the record is very clear that no Farm Impacts result from the operation of the landfill. For others, like litter, nuisance birds, rodents, odor, and noise, the record demonstrates that the actual impact of each is not significant, or that it is certain that there will be no or minimal impact through the imposition of conditions of approval. For example, while there is some evidence that a farm stand lost two or three customers because of odors in the area, the owner of that farm stand indicated that the landfill has not forced him to make any changes to his practices. Similarly, while there is evidence that litter or nuisance birds could cause significant impacts on Farm Practices if left unmanaged, the record also demonstrates that the Applicant controls its operations to manage these potential sources of impact, and the Board is imposing conditions of approval to increase that level of management.
138. Second, the Board has determined that each of the individual impacts are not significant, but has nevertheless imposed additional conditions of approval with a goal of reducing potential impacts to zero. For example, the Board is imposing a condition of approval requiring the Applicant to

put more litter fencing in place and to pay the cost for patrolling an adjacent farm for litter, even though the actual amount of litter to reach that farm is expected to be insignificant. Similarly, even though the Board found that it is not plausible that the landfill has forced a nearby farmer to abandon completely the direct sale of cherries and berries, the Board is requiring the Applicant to purchase all of the cherries and berries from that farm. Those conditions will remove any question about whether the landfill has impacted those sales. The Board finds that this approach – reducing insignificant impacts to a point of zero potential impact – helps prevent individual impacts from cumulatively forcing a significant change in accepted farm practices or the costs of those practices and must be included in evaluating the cumulative effect of all potential impacts.

139. Third, the Board finds that each of the alleged impacts from the landfill affects farms in different ways that are not necessarily additive. Contrary to the impression left by some of the testimony in opposition to the proposal, all alleged impacts do not radiate from the landfill in all directions affecting all farms in the area. For example, gulls are more likely to loiter in grass seed fields where there is bare soil compared to filbert orchards with tall vegetation. Similarly, potential litter impacts are limited by wind patterns and litter from the landfill has much less potential for escaping from the landfill in an upwind direction. Overall, there are very few parcels where multiple impacts are alleged to have occurred. Of those farmers who alleged specific impacts to their property, they constituted only about 6% of the ownerships and approximately 10% of the acreage in the study area. Considering that not all of those allegations are true, and that some of the alleged impacts have been mitigated to near zero, cumulatively they represent a relatively small portion of the landscape. The Board therefore finds that the cumulative effect of the actual impacts is insignificant in that context.
140. Fourth, for properties where multiple impacts are alleged, the Board has determined that some of those impacts are non-existent, or that they do not rise to a level of significance. For example, on the Frease farm, which expressed concerns about impacts relating to both direct sales and to increased costs for treating filbert orchards, the Board finds that there has been no impact to direct sales and that the cost of treating filbert orchards is no different in the presence of the nearby landfill. The record does contain claims that cumulative impacts from the landfill are significant to these properties, but those claims are also based on arguments asserting that single impacts viewed in isolation are significant, and they do not explain how multiple insignificant impacts become significant when viewed cumulatively.
141. Finally, the Board finds persuasive the fact that the landfill expansion will not alter the level of operations at the site. Specifically, the Board has found that the existing landfill has not forced significant changes in accepted farm practices and has not significantly increased the cost of farm practices, and that approval of the application will only continue an operation that has existed in this area for decades. The volume of waste disposal will remain constant at current levels through the useful life of the expansion, and the landfill is developed through the progressive development of individual disposal cells - as one cell reaches capacity, an adjacent cell is opened and the first cell eventually closes. The result is that the “expansion” of a landfill is actually a shift in the same level of operations from one location to another, and the effect of all the potential Farm Impacts associated with the landfill is that the status quo will be maintained.

#### **D. Summary of Findings Related to Farm Impacts**

142. To summarize the Farm Impacts criteria, the Board finds that neither the existing landfill nor the proposed use force significant changes to farm practices, or significantly increase the costs of those practices, on surrounding lands devoted to farm uses. The Board further finds that the existence of alleged significant impacts to Farm Practices is either not significant under the Farm Impacts criteria or undermined by countervailing and more credible or more persuasive evidence in the record. The Board makes the following additional findings as the basis for the other findings in this section:

143. Evidence in the record regarding diminished water quality and other environmental impacts is based only on perceived concerns, and there is no credible or persuasive evidence in the record that any farmer has changed accepted farming practices or incurred increased costs because of water quality or other environmental impacts from the landfill. In contrast, evidence regarding the actual water quality and other environmental impacts in the area around the landfill demonstrates that the existing landfill has not degraded the environment, that the environment is protected in part by regulations enforced by DEQ and the Oregon Department of Agriculture, and that Riverbend will have to continue adhering to those regulations with the development of Module 11.

#### **V. Other Revised Findings**

144. During the remand proceedings, the Board received a comment re-stating an earlier objection to the participation of Commissioner Springer based on a claim of bias. That objection did not include any new evidence or argument. Consequently, the Board's earlier findings in that regard do not require revision. However, Finding #251 in Board Order 15-115 did reflect that the Board's vote in favor of the applications was 2-1. On remand, the Board's vote was 3-0. The Board hereby revises Finding #251 in Board Order 15-115 to remove the following phrase: "(the one that voted against the application)". The remainder of that finding can remain as it appears in the original order.

#### **VI. Conditions of Approval**

145. Board Order 15-115 imposed 21 separate conditions of approval. The Board has not been asked to modify those conditions, nor does it find a basis in the record on remand to do so. The Board therefore finds that it should continue to impose those conditions on remand. As explained in some of the separate findings above, the Board has determined that it should impose additional conditions of approval. Those conditions of approval are set forth below, followed by a brief explanation of their purpose. During the remand proceeding, the attorney for STDC asserted that "LUBA did not hold that where there was persuasive testimony of potential significant impacts, those impacts could or would be reduced below a level of significance by means of conditions of approval." Although unclear, the Board treats this argument as asserting that the County cannot impose conditions of approval for the purpose of satisfying the significant change/cost standard – and the Board rejects that argument. Not only would that be counter to the language in LUBA's order, it would be counter to the express language in ORS 215.296.

Condition #22: Until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall continue its falconry program at an increased level. Specifically, the Applicant must increase falconry activities to no fewer than six days per week during the

time period beginning October 15<sup>th</sup> and concluding March 15<sup>th</sup> each year.

Condition #23: Until Riverbend Landfill no longer receives waste for landfilling, the Applicant must contract with the United States Department of Agriculture Animal and Plant Health Inspection Service for that agency to provide adaptive management bird control measures.

146. As noted above, Riverbend currently conducts its falconry program two to four days a week. Evidence in the record demonstrates that more persistent hazing of nuisance birds will have a greater effect on reducing their population. Other evidence in the record asserts that grass seed plants are most vulnerable during winter months following new plantings in the fall, and that the falconry program temporarily scares birds onto neighboring farms.
147. The record also demonstrates that multiple bird control methods are more effective than a single bird control method. The record further demonstrates that Riverbend's falconry program can be enhanced by adding other bird control measures, and that USDA/APHIS contracts to provide those kinds of measures. Although Board Order 15-115 relied in part on Riverbend's falconry program, it did not require Riverbend to continue that program. These conditions serve to impose such a requirement and to do so in a manner that will make the falconry program more effective, thereby preventing significant impacts to Farm Practices from nuisance birds.

Condition #24: Until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall provide additional litter fencing between the working face of the landfill and the McPhillips farm.

Condition #25: Until Riverbend Landfill no longer receives waste for landfilling, the Applicant must ensure that the grass and hay fields located on the McPhillips farm (Tax Lots 401 and 700) are patrolled for litter prior to when those fields are harvested through one of the three following methods, the choice of which shall be at the sole discretion of the owner/operator of the McPhillips farm:

- i. Applicant will provide litter patrolling services
- ii. The Owner/Operator and Applicant will jointly identify a third party to provide litter patrolling services at the Applicant's sole expense
- iii. The Owner/Operator will provide litter patrolling services and Applicant will reimburse that actual, reasonable costs for those services.

148. As noted above, the Board has determined that potential impacts to Farm Practices from litter escaping the landfill do not rise to a level of significance. As the Board further noted, if no litter escapes from the landfill, there can be no impact to Farm Practices from litter. One purpose of these conditions is to make it less likely that litter will escape at all. If litter does escape, it is

only likely to be carried downwind, and the Board finds that the McPhillips farm is the only location to demonstrate that potential impacts from litter are even plausible. Although the Board has determined that Riverbend Landfill has not caused significant impacts to Farm Practices as a result of litter, removal of litter from that farm prior to baling, regardless of the source of that litter, will further ensure that no such significant impacts exist. The Board recognizes that the owner or operator of that farm may not wish to allow the Applicant onto the property. These conditions are therefore structured in way to allow the owner or operator to choose among clear and objective alternatives for the precise implementation of litter patrol on that property.

Condition #26: Upon commencement of waste disposal in the expansion area, and until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall purchase all cherries produced and presented to the Applicant for sale by the Frease farm from the existing cherry trees (Tax Lot 5502-700) at the rate of \$4.50 per pound. Each year, Riverbend must provide documentation to the County establishing the average retail rate of cherries in the McMinnville area and adjust the above rate accordingly.

Condition #27: Upon commencement of waste disposal in the expansion area, and until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall purchase all berries produced and presented to the Applicant for sale by the Frease farm from the existing berry vines (Tax Lot 5502-700) at the rate of \$4.00 per pound. Each year, Riverbend must provide documentation to the County establishing the average retail rate of berries in the McMinnville area and adjust the above rate accordingly.

149. As noted above, testimony from the Frease farm asserts that direct sales of cherries and berries are no longer possible from that site due to impacts from Riverbend Landfill. The Board has determined that Riverbend Landfill has not forced that practice to cease. The total amount of fruit able to be produced from the few cherry trees and berry vines that exist on that property is relatively low. Consequently, the overall value of that fruit is also low, and the Board finds that if the Frease farm can be guaranteed to sell all of that fruit, there can be no significant impact to Farm Practices relating to the direct sale of those cherries and berries. The Board finds that these conditions are calculated to achieve the goal of guaranteeing such a sale in a manner that achieves the sole impact alleged to that farm use, which is that all sales were ceased.

Condition #28: The Applicant shall reimburse the actual, reasonable costs of providing and installing a cover on the existing pheasant pens located on the McPhillips farm to protect pheasants from the planned increase in avian predators.

150. As noted above, testimony in the record alleges impacts to a pheasantry operation. Although the Board has determined that Riverbend Landfill has not forced significant impacts to pheasantry Farm Practices, the Board has also imposed a condition of approval that will require Riverbend

to conduct more intensive falconry operations. Falconry is alleged to cause impacts to pheasant operations. The Board therefore imposes this condition to prevent the increased falconry from causing impacts to the pheasantry claimed to be on the McPhillips farm.

Condition #29: Until Riverbend Landfill no longer receives waste for landfilling, on an annual basis, the Applicant must give a presentation to the Board to provide an update on site operations, the expansion, and other activities, including the WM Stewardship Plan.

151. Throughout this proceeding, it has become clear to the Board that the information it receives regarding Riverbend Landfill is presented largely only during land use proceedings. As noted in the application, the Board has made prior land use decisions that contemplate the continued operation of Riverbend Landfill, but those decisions were also part of a larger conversation about what role the landfill and Riverbend-owned lands will play in the County in the longer-term. Although this condition is not required to satisfy any particular criterion, the Board finds that it is calculated to achieve a broader goal of keeping the County informed on Riverbend's current and long-term operations.

## **VII. Conclusion**

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

**Exhibit B - Board Order 16-66**  
**Additional Conditions of Approval**  
**Planning Dockets SDR-16-14 and FP-03-14**

The County hereby imposes the following additional conditions of approval:

22. Until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall continue its falconry program at an increased level. Specifically, the Applicant must increase falconry activities to no fewer than six days per week during the time period beginning October 15th and concluding March 15th each year.
23. Until Riverbend Landfill no longer receives waste for landfilling, the Applicant must contract with the United States Department of Agriculture Animal and Plant Health Inspection Service for that agency to provide adaptive management bird control measures.
24. Until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall provide additional litter fencing between the working face of the landfill and the McPhillips farm.
25. Until Riverbend Landfill no longer receives waste for landfilling, the Applicant must ensure that the grass and hay fields located on the McPhillips farm (Tax Lots 401 and 700) are patrolled for litter prior to when those fields are harvested through one of the three following methods, the choice of which shall be at the sole discretion of the owner/operator of the McPhillips farm:
  - i. Applicant will provide litter patrolling services
  - ii. The Owner/Operator and Applicant will jointly identify a third party to provide litter patrolling services at the Applicant's sole expense
  - iii. The Owner/Operator will provide litter patrolling services and Applicant will reimburse that actual, reasonable costs for those services.
26. Upon commencement of waste disposal in the expansion area, and until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall purchase all cherries produced and presented to the Applicant for sale by the Frease farm from the existing cherry trees (Tax Lot 5502-700) at the rate of \$4.50 per pound. Each year, Riverbend must provide documentation to the County establishing the average retail rate of cherries in the McMinnville area and adjust the above rate accordingly.
27. Upon commencement of waste disposal in the expansion area, and until Riverbend Landfill no longer receives waste for landfilling, the Applicant shall purchase all berries produced and presented to the Applicant for sale by the Frease farm from the existing berry vines (Tax Lot 5502-700) at the rate of \$4.00 per pound. Each year, Riverbend must provide documentation to the County establishing the average retail rate of berries in the McMinnville area and adjust the above rate accordingly.

28. The Applicant shall reimburse the actual, reasonable costs of providing and installing a cover on the existing pheasant pens located on the McPhillips farm to protect pheasants from the planned increase in avian predators.
29. Until Riverbend Landfill no longer receives waste for landfilling, on an annual basis, the Applicant must give a presentation to the Board to provide an update on site operations, the expansion, and other activities, including the WM Stewardship Plan.