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3 April 2017

Senator Michael Dembrow, Chair
Oregon Senate Committee on Environment and Natural Resources
Honorable Chair Dembrow and Members of the Committee:
Salem, Oregon

Re: Senate Bill 1036

Dear Senator Dembrow and Committee Members,

Thank you for giving me the opportunity to speak today.

I am against this bill and urge you to deny it to protect the environment, farm lands and citizens of the State of Oregon. I urge you to do so as a practicing Civil Engineer licensed in the State of Oregon that is quite familiar with the impacts of this law if passed, and would like to provide a case example based on my experience.

At present, a DOGAMI permit requires a reclamation plan. You just can't dig a big hole in the ground, then walk away from it. You have to reclaim the property, and one of the DOGAMI requirements is to cover the site with 12-inches of topsoil. Obviously, if you mine topsoil, then you have to replace it with topsoil from somewhere else.

Nobody is asking where that "somewhere else" is, and if you pass this law, nobody will ever ask.

A case example is Riverbend Landfill in Yamhill County, Oregon. I have professional experience with Riverbend as I provided engineering and surveying services for Riverbend Landfill Company starting in 1982. I laid out the original coordinate system, calculated the perimeter berm location and for a period of time, was the Engineer of Record.

Originally, Riverbend Landfill was to be covered with four feet of dirt and returned to farming. Four feet of dirt over 87 acres is 561,440 cubic yards.

By 2014, the four feet was reduced by the DEQ to three feet, a savings of 140,360 cubic yards.

In 2016, the three feet was reduced to 2-1/2 feet, an additional savings of 70, 180 cubic yards, leaving the final cover requirement of 350,900 cubic yards.

The proposed expansion will add 27 acres, and the final cover alone will require an additional 108,900 cubic yards.

**PLANNED DEVELOPMENTS • RESIDENTIAL SUBDIVISIONS
WATER, SANITARY SEWER AND DRAINAGE SYSTEMS
LAND SURVEYS • WATER RIGHTS**

As an Engineer, I enjoy “doing the math”. Just for final cover of 12-inches of topsoil alone at \$20 per cubic yard delivered and spread for 87 acres of the existing landfill plus 29 acres of the proposed expansion, the estimated cost is 187,147 cubic yards at a total cost of approximately \$3.7 million dollars. Of course, that actual dirt requirements are several times that amount because of the additional 1.5 feet of final cover, new berm construction and daily cover.

I first learned that the Oregon Department of Environmental Quality does not regulate mining was in about 2012 at the beginning of my renewed involvement with Riverbend Landfill when I noted that Waste Management’s Riverbend Landfill was mining outside of the permitted landfill boundary in the flood plain and flood way of the South Yamhill River (**Exhibit A**). It appears, from Google Earth Historical Images, that this mining started in about 2004. In 2012, I did not realize that Riverbend needed a DOGAMI permit even on their own property, so I pointed out to the DEQ that the DEQ’s 1200-C permit plans for the landfill were inconsistent between two versions, and did not reflect actual excavation. I requested that they require a more accurate plan.

The DEQ’s response? They deleted the 1200-C permit requirement.

Mining continued in the flood plain and floodway of the South Yamhill River with some in wetlands until the Confederated Tribes of the Grand Ronde Community stopped work because of the discovery of cultural resources. As far as I observed, the DEQ did not require adequate erosion control in the excavations, and the remain so today as you can note from Google Earth.

While the landfill permit contains the same requirements of the 1200-C permit, enforcement is non-existent. Two examples:

You are not supposed to track mud onto a state highway. The Oregon Board of Engineering Examiners put on a workshop for Engineers on Erosion Control, and one presentation slide of prohibited behavior was a truck flushing dirt into the storm drains. I have a whole series of photos at Riverbend of their water truck flushing sediment off of the highway. On one case, I called the DEQ. They offered to get back to me in a week, so I e-mailed ODOT, and they had it cleaned in a day. It was a safety hazard. I am impressed with the staff at ODOT.

On a second occasion, I voiced a complaint of a violation, and was told that, “The DEQ does not see a violation at this time.”

Is this the state agency that you want in charge of unregulated mining and restoration?

It should be noted that Yamhill County does not regulate mining unless it is for aggregate, i.e. quarry rock or river rock. Consequently, when it comes to regulating landfills, the issue

of where the necessary dirt will come from for daily and final cover is not discussed. Our entire land use regulation system is geared towards “protecting farmland”, but our land use system isn’t working.

Therefore, regulation by DOGAMI is necessary.

My third experience with Riverbend was in December 2012 when I discovered that Waste Management was mining dirt outside of its permitted boundary. I called the DEQ, and they were aware of it, but had no objection to the work. However, I reported it to DOGAMI, and they initially determined that it was a permit violation, but then waived enforcement as their web page was not updated to reflect changed regulations several years ago. A newspaper article outlining the events is attached (**Exhibit B**).

It was pointed out to me at that time that a member of DOGAMI’s board of directors day job was as an attorney working for the firm that is representing Riverbend Landfill Company in their land use application.

Subsequently, Riverbend Landfill Company has gotten a DOGAMI permit that covers their entire ownership, but there are no proposed excavations noted in the existing permit. Permit information showing the Riverbend Site is attached.

Riverbend Landfill has applied for and received approval for a 29 acre expansion, and as part of that expansion, they want to build a road across a wetland to their adjoining property. The reason for the road in the application documents to Yamhill County and the Division of State Lands is vague, but for some reason, they closed the Mulkey RV Park on the property that provided 77 affordable housing opportunities in Yamhill County. A map of Riverbend Landfill is attached (**Exhibit C**).

Riverbend Landfill needs dirt for daily cover, final cover, and construction of walls around the landfill perimeter. These walls are being placed in and adjoining the 100 year flood plain and portions are in the original flood way boundary. 52% of the original landfill area is in the original flood plain of the South Yamhill River and 10% of the original landfill is in the original flood way of the South Yamhill River, a situation that existed from 1982 when I started until 2012 when I pointed out that the official mapping was not changed.

In other words, for 30 years, the Oregon Department of Environmental Quality approved and allowed a mountain of garbage to be placed in the flood way and flood plain of the South Yamhill River. Is this the state agency that you want to regulate dirt mining for landfills? A map of Waste Management’s 588 acres around Riverbend Landfill shows you the properties that may be the source of millions of cubic yards of dirt and topsoil that may be affected (**Exhibit D**).

The third case of excavations at Riverbend were noted in February 2017 (**Exhibit E**). Apparently, the DEQ is aware of it. Since it is outside of the permitted landfill boundary,

I have asked Yamhill County if they approved it or issued a Site Design Review. It is now over two weeks later and I have not received a response. I have also asked the DEQ if they got a Land Use Compatibility Statement, but they too have not provided a response. Since the DEQ is aware of, and have approved the work, you can see that they do not have concerns about excavations on unpermitted property next to the flood plain of the South Yamhill River. Note also the evidence of dirt eroding from the site into the flood plain and adjoining fields.

The bottom line is that If you approve the law, Riverbend Landfill will be able to mine dirt and topsoil from 588 acres of property that they own at Riverbend to cover the existing landfill and expansion. They save millions of dollars, avoid meaningful regulation, and we Oregonians will get a mountain of garbage next to Highway 18 lose about prime Willamette Valley farm land.

I urge you to not approve this bill.

I will be happy to answer any questions by text, e-mail or phone.

Thank you.

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Sincerely yours,



Leonard A. Rydell, P.E., P.L.S., W.R.E.
LAR/lar
encl: as stated



DOGAMI ID#: 36-0062

Permittee: Riverbend Landfill Co.
 Site Name: Old River
 Photo Source: Aerial Photo 7/7/2014
 Prepared By: E. Buchner 9/2/2015

Acres
 Surveied Permit Area: 311.8
 Disturbed: 10.1
 Limited Exemption: ---
 Dist. out of LE: ---
 Reclaimed: ---

Latitude: 45.1628
 Longitude: -123.2549



Oregon Dept. of Geology and Mineral Industries
 Mineral Land Regulation and Reclamation Program
 229 Broadalbin St. SW
 Albany, OR 97321

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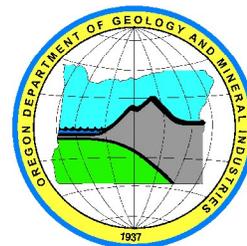


DOGAMI ID#: 36-0062

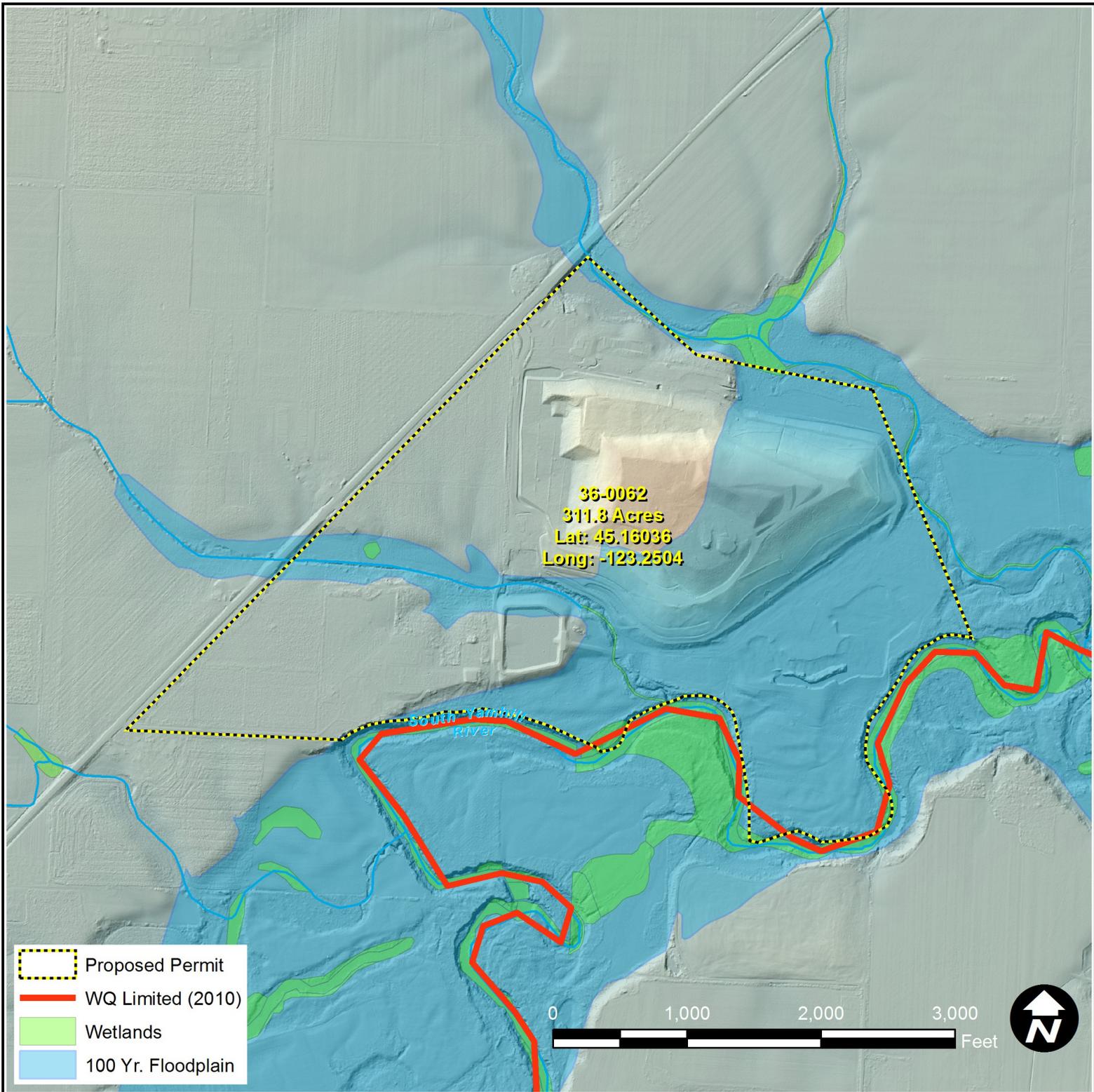
Permittee: Riverbend Landfill Co.
 Site Name: Riverbend Landfill
 Photo Source: Eagle Digital Imaging 5/4/2011
 Prepared By: E. Buchner 4/22/2015

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the suitability of the information.

ArcGIS v10.2
 Oregon Lambert Projection, NAD 1983 HARN (EPSG# 2994)
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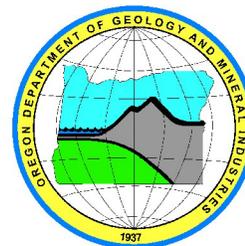


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 229 Broadalbin St. SW
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Google Earth

feet
km



EXHIBIT A

SPORTS

GRIZZ FALL
TO SAXONS A9CONNECTIONS
THEATER
UNLEASHES
"SLYVIA" B1C011 1069
1**** P84

Yamhill Valley
News-Register

TUESDAY January 13, 2015 • \$1

Keeping you connected since 1866

McMinville, Oregon 150th year, No. 4

RIVERBEND LANDFILL

Failure to update website thwarts enforcement

Riverbend says it was merely going by what state had posted

By **NICOLE MONTESANO**
Of the News-Register

Because its website failed to reflect a change in mining rules added six years ago, the state Department of Geology and Mineral Industries finds itself unable to impose sanctions for a violation involving McMinnville's Riverbend Landfill.

DOGAMI hydrogeologist Bob Brinkman informed the party bringing the complaint, and confirmed to the News-Register, that Riverbend Landfill had violated a 2009 state law by removing three feet of topsoil from "a multi-acre area" without first obtaining a permit.

'They were under the belief, based on information from our website, that they were still under exemption.'

Bob Brinkman
Hydrogeologist with Dept. of Geology and Mineral Industries

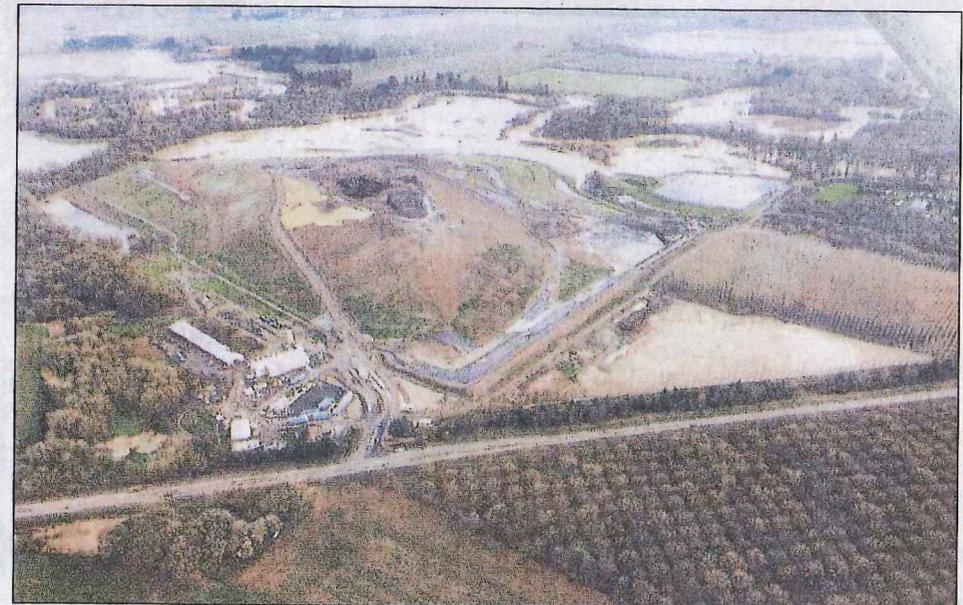
He said the agency would be issuing a notice of violation and barring further excavation until Riverbend obtained a proper permit. The landfill would have to submit a reclamation plan to secure such a permit.

But Brinkman backed off on that Friday, after Riverbend's attorney indicated that company officials had been following information posted on the department's website, having no idea it was outdated.

"They were under the

belief, based on information from our website, that they were still under exemption," Brinkman said. "The decision between our Department of Justice attorney and our assistant director is that, due to the information on our website that apparently was not updated, or modified, at this time, we will not be issuing the notice of violation for the Riverbend Landfill

See **RIVERBEND**, A5



Submitted photo

An aerial photograph of flooding around the landfill during December 2014.

Riverbend

Continued from A1

site.”

Brinkman said the website is maintained by a different DOGAMI office.

The site now appears to be current, but the updating occurs too late to support enforcement in the case at hand.

Brinkman said Riverbend had begun removing the top three feet from a 37-acre site bordering Highway 18, where it is proposing to expand, subject to county approval. He said it had agreed to seek a permit before continuing, now that it understands on what DOGAMI requires.

Riverbend spokeswoman Jackie Lang on Monday said there was little excavation, and it was unrelated to the planned expansion.

“We have been using this area to prepare clay – to spread out and dry clay – before using it for berm construction,” she told the News-Register. “The clay came from either under the berm or from off site. We are also using this area to stockpile top soil that will be reclaimed and reused in this area or elsewhere at the site.

“The primary work was

not excavation. ... Some of the clay came from this area.” She said that “no additional excavation is planned for this area in the near term.”

The county planning commission is scheduled to open deliberations on the landfill’s expansion application Jan. 15. However, whatever decision it makes is virtually certain to be appealed to the county commissioners, and whatever decision they make to the state Land Use Board of Appeals.

In addition, after obtaining county approval, the landfill would have to obtain permits from the state Department of Environmental Quality.

The excavation was brought to the state’s attention by longtime landfill opponent Leonard Rydell, a private pilot who observed the excavation in the course of an overflight. He estimated eight acres had been excavated at that point, and submitted photographs to DOGAMI to substantiate his complaint.

Brinkman said the decision to forgo enforcement had been made by the state Department of Justice, in consultation with DOGAMI’s assistant director, Gary Lynch.

Brinkman said the state feels that, “If they’re not going to excavate any more, because it becomes part of the landfill, it kind of becomes a moot issue, as far as that area is concerned. Once the excavation is completed, there has to be a secondary, beneficial use, and in this case, that’s the landfill.”

Should Waste Management fail to obtain an expansion permit, Brinkman said, “We would have to have a conversation with them about what that secondary use was going to be. ... It looked like trees had been planted in there, so to fulfill the county’s requirement, they would need to go back in and put trees back in there.”

Lang said Riverbend is “working closely with DOGAMI to submit applications consistent with agency requirements, and we expect a positive resolution within 60 days.”

She said the company “will initiate the DEQ permitting process once we have the county’s approval of the application that is now under consideration at the county level. We would anticipate securing the DEQ permit in late 2015 or early 2016. We would anticipate beginning to place waste in

the expansion area in late 2016, beginning to build some type of green technology in 2022, and then closing the landfill in 2029 or 2030.”

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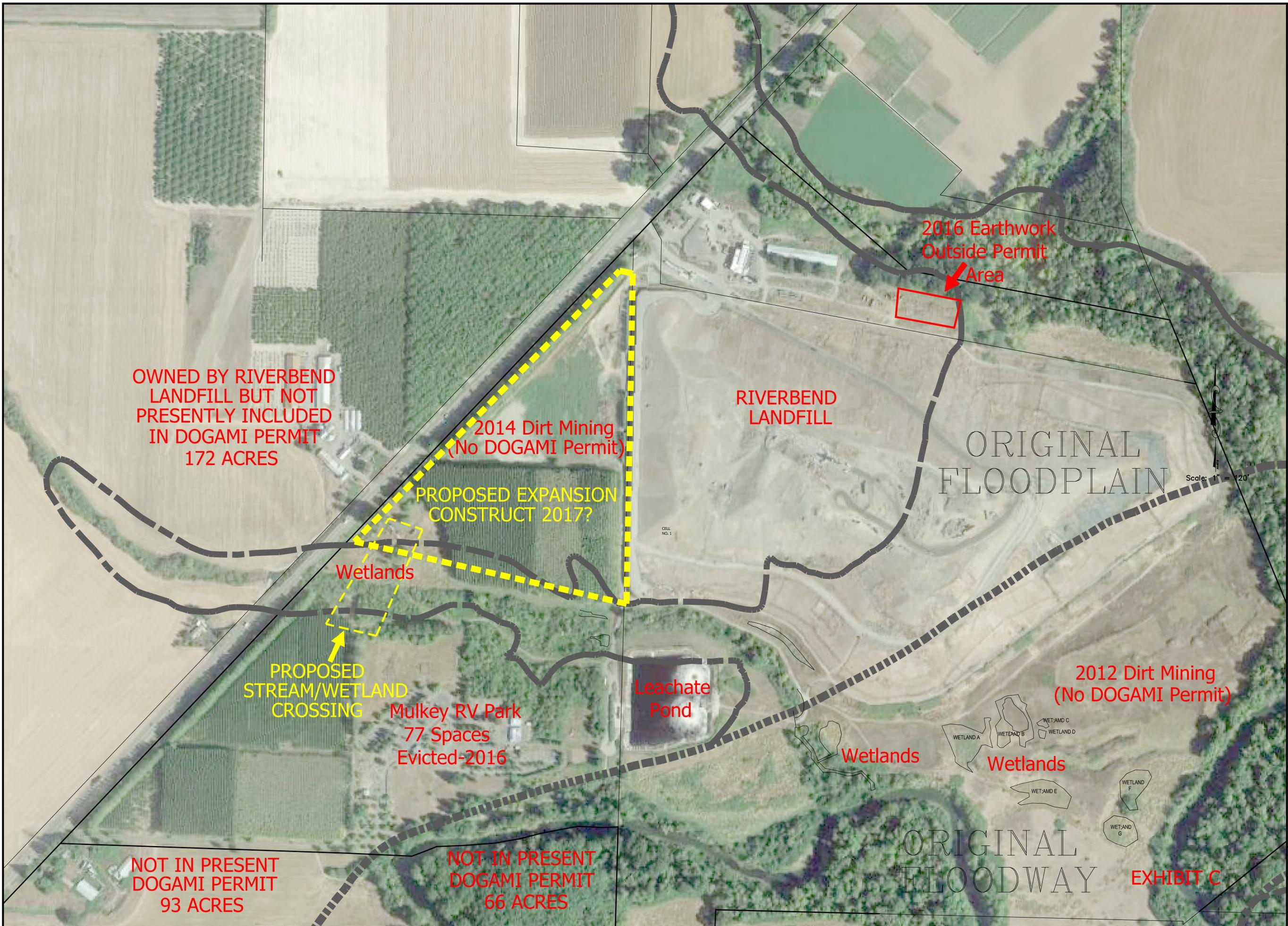
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Call 1-877-



OWNED BY RIVERBEND
LANDFILL BUT NOT
PRESENTLY INCLUDED
IN DOGAMI PERMIT
172 ACRES

2014 Dirt Mining
(No DOGAMI Permit)

PROPOSED EXPANSION
CONSTRUCT 2017?

Wetlands

PROPOSED
STREAM/WETLAND
CROSSING

Mulkey RV Park
77 Spaces
Evicted-2016

Leachate
Pond

2012 Dirt Mining
(No DOGAMI Permit)

Wetlands

Wetlands

NOT IN PRESENT
DOGAMI PERMIT
93 ACRES

NOT IN PRESENT
DOGAMI PERMIT
66 ACRES

ORIGINAL
FLOODWAY

EXHIBIT C

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**EXISTING CONDITIONS MAP - 2016
RIVERBEND LANDFILL**
Located in Sections 1 and 12
Township 5 South, Range 5 West of the Willamette Meridian
Yamhill County, Oregon

Prepared for:
Senate Bill 1036 Testimony
Oregon Senate Committee
Environment and Natural
Resources

W.O. No. 8233
Design
Drawn
Date 3 April 2017
Dwg DOGAMI Exhibit.DWG

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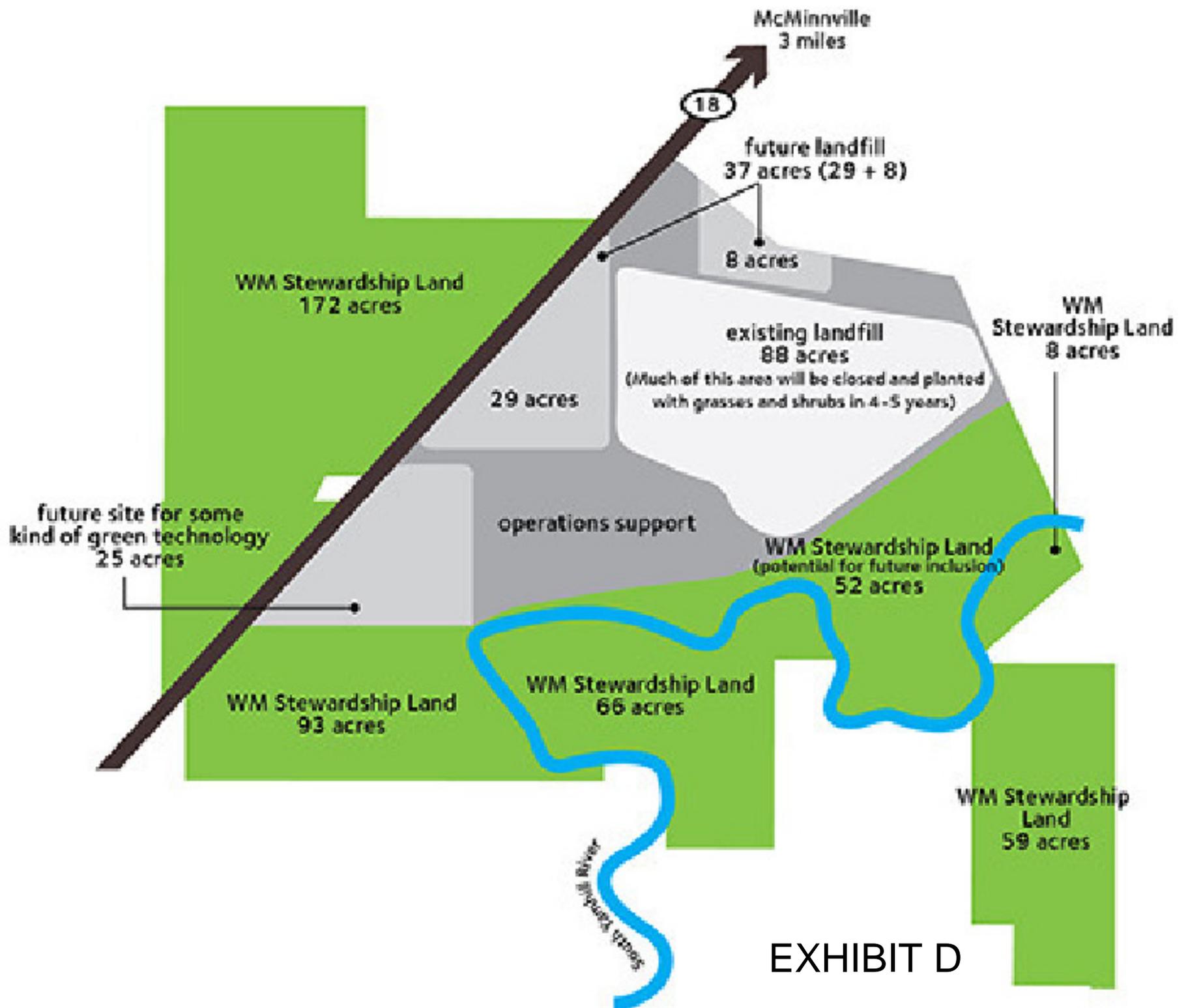


EXHIBIT D

Mined 2014

Erosion?

Erosion?

EXHIBIT E

Erosion?

