

BCTT Key Findings and Recommendations
Draft #4 Revised
Post-WG Meeting Potential Revisions
(Ginny, Sam, and Mark)
(Mark did not have G&S Edits When He Reviewed)

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Legal Issues and Land Use Review Subcommittee

Introduction: [Describe the group’s charge and the dual roles of legal issues and land use practice; participants; the facilitator’s invitation/request to Jeff Kleinmann to participate and his decline to do so; Ginny Lucker’s role.]

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Key Findings:

LLU F-1. Unless a later land use approval expressly addresses whether conditions of a prior land use approval are superseded, the issue will be subject to interpretation by the local government (the Board of County Commissioners, in this case).

LLU F-2. Only the current franchise agreement has legal effect. The previous franchise agreement is superseded when a new agreement takes effect.

LLU F-3. Up-front and ongoing financial assurance to cover the cost of closure, post-closure, and corrective actions are required by DEQ. Where this preliminary line of defense fails, Oregon statute holds any person owning or controlling the disposal site liable for closure and post-closure maintenance.

Commented [YM1]: Financial assurance for required closure and post-closure costs have nothing to do with liability protection and remedial actions required to respond to environmental catastrophes such as groundwater and surface water contamination, air pollution, landfill fires, etc.

LLU F-4. What legally can and cannot be conditions of any land use approvals? Conditions of approval must relate to approval criteria. To be approved, an applicant must demonstrate compliance with all discretionary approval criteria. Conditions of approval cannot substitute for compliance with applicable criteria but may be imposed to ensure the criteria are met. The county may find compliance with approval criteria by establishing that compliance is feasible, subject to compliance with a specific condition(s) of approval. A preponderance of the evidence must support a finding that the condition is “likely and reasonably certain” to result in compliance. To lessen adverse impacts on surrounding uses, the county may

Commented [VGJ2]: SWAC member comment: Republic Services has created a separate, stand-alone corporate entity (Valley Landfills, Inc.) as the owner of the landfill. As has happened many times throughout corporate America, VLI could easily declare bankruptcy in the event of a major environmental situation wherein the resources available were not sufficient and VLI would simply walk away.

Commented [YM3]: Conditions of approval are meaningless words on paper unless they are monitored and enforced. The County readily admits that it has never monitored or enforced conditions of approval and has no resources available to monitor or enforce any future conditions of approval. See Land Use Subcommittee Findings.

“impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise ensure compliance with the purpose and provisions of this code.” (BCC 53.220)

LLU F-5. In reviewing a CUP for landfill expansion, the County has jurisdiction over only the proposed expansion. Existing and past operations are not within the County’s scope of review. Prior decisions are final and cannot be subjected to a new review or have additional/revised conditions of approval imposed as part of the CUP application for the expansion.

LLU F-6. Benton County may not prohibit a private landfill operator from accepting solid waste from outside Benton County.

LLU F-87. ~~Is DEQ prohibited from permitting another landfill west of the Cascades? No.~~

LLU F-8. ~~Is DEQ prohibited from permitting another landfill west of the Cascades? No.~~

LLU F-89. What does the “regional landfill” designation mean? Oregon Revised Statute (ORS) 459.005(23) defines a Regional Disposal Site as “a disposal site that receives ... more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located...” The immediate service area of Coffin Butte is Benton County. Coffin Butte Landfill has received more than 75,000 tons from outside its immediate service area every year since at least 1993. Coffin Butte thus meets the definition of a regional landfill per ORS. Coffin Butte Landfill is, by definition, a regional landfill.

LLU F-7. ~~Ambiguous terms.~~ **LLU F-97.** The review criteria for a landfill-expansion conditional use permit require subjective determinations that are based on the facts of the specific application. ~~Ambiguous terms.~~ The rules of statutory construction describe how ambiguous terms are to be interpreted: -text, context, and legislative history. However, LUBA’s standard of review is highly deferential to the local decisionmaker’s interpretations, so if the interpretation is plausible (does not conflict with the provision’s language), LUBA (and the courts) will uphold the local interpretation. This gives the decision-maker a lot of flexibility in interpreting their own code provisions. In response to a request by the Board of Commissioners, the following four findings provide staff-provided historical information, particularly over the past 25 years, on how the County decision-makers have Board has interpreted these terms across the full range of conditional use applications the County reviews. They are not recommendations on how the Planning Commission and Board should interpret future applications. Restated, each body fully retains its flexibility in interpreting those terms in the context of the specific application before it.

LLU F-8. ~~Is DEQ prohibited from permitting another landfill west of the Cascades? No.~~

Commented [VGJ4]: SWAC member comment: Existing and past performance of Benton County in monitoring and enforcement of any proposed conditions of approval must be considered. The County readily admits that it did not and does not actively monitor and enforce conditions of approval designed to mitigate adverse impacts on adjacent land uses.

Response:
Monitoring and enforcement are addressed in a new recommendation, LLU R-8.

Commented [YM5]: Prior conditions of approval (1983) required visual screening to shield the public view of the landfill. It was never implemented by the operator or enforced by the County. Is the County saying here that no future conditions of approval can be imposed to require that screening? The operator and the County are equally responsible for the lack of implementation and enforcement of many prior conditions of approval. That fact certainly can be considered as part of any future land use application. use application.

Commented [YM6]: The operator certainly could voluntarily limit the sources of waste accepted at the landfill.

Commented [YM7]: The fact is that DEQ is actively working to close landfills west of the Cascades and has not sited a new municipal landfill west of the Cascades in decades.

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Commented [VGJ8]: Edit requested by SWAC member.

Commented [VGJ9]: The historical information is from all levels of County land use decisions: Planning Official, Planning Commission and Board of Commissioners. There have been very few conditional use permits decided by the BOC.

Commented [VGJ10]: Vance: Presents two different ideas. The new, first sentence talks about subjective criteria, but the following, original text discusses ambiguous terms and how those are to be analyzed. These are two different concepts and the additions ...

Commented [YM11]: The fact is that DEQ is actively working to close landfills west of the Cascades and has not sited a new municipal landfill west of the Cascades in decades.

Field Code Changed

~~LLU F-9. What does the “regional landfill” designation mean? Oregon Revised Statute (ORS) 459.005(23) defines a Regional Disposal Site as “a disposal site that receives more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located.” The immediate service area of Coffin Butte is Benton County. Coffin Butte Landfill has received more than 75,000 tons from outside its immediate service area every year since at least 1993. Coffin Butte Landfill is, by definition, a regional landfill.~~

~~LLU F-10a. The review criteria for a landfill expansion conditional use permit require subjective determinations that are based on the context/facts of a specific application. In The first the criterion requires the Board to find that of “The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone” [BCC 53.215(1)]. In applying, in past applications, in interpreting, the term “seriously interfere” has generally been interpreted in Benton County land use decisions as: Staff reports that in past CUP applications the Planning Official, Planning Commission or Board has considered factors such as: does the proposed use make it difficult to continue uses on the adjacent property; would it create significant disruption to the character of the area; would it conflict, in a substantive way, with the purpose of the zone. As noted above, the county decision-makers have wide discretion in evaluating whether a use will “seriously interfere.” In the past, “seriously interfere” has generally been applied as meaning more than an inconvenience or irritation but is a lesser threshold than rendering the uses on adjacent property impossible. Speculated effect on property values has not been a primary consideration in determining serious interference.~~

~~LLU F-10b/110b. In the phrase “character of the area” in BCC 53.215(1), how narrow or broad has “the area” typically been?~~

~~In determining how broadly to define “the area” for purposes of evaluating the character of the area, how far are the effects of the proposed land use likely to extend? This~~

~~When the County Board is evaluating the “character of the area”, the “area” is based on the facts of each application and The phrase “the character of the area” must be interpreted and applied in each land use application review. This how far the effects of the proposed land use are likely to extend. The impacted area will be unique to each application and may differ by particular effect—for example, the impact of noise might extend farther than visual impact (or vice versa). In determining how broadly to define “the area” for purposes of evaluating the character of the area, how far are the effects of the proposed land use likely to extend?~~

~~The phrase “the character of the area” must be interpreted and applied in each land use application review. Because each review is unique, examining past cases for the specific distances utilized may not be illuminating. Staff reports that in past~~

Commented [YM12]: The CUP review criteria do not only apply to landfill expansion proposals. This effort to provide criteria guidance for a predicted new application is ill conceived and is an attempt to prejudice decision makers in advance of an upcoming land use proceeding.

Commented [YM13]: "difficult" in whose opinion? If a property owner can't be outside the home or work in the field because the noise or stench is disruptive or intolerable, does that qualify as "difficult?"

Commented [YM14]: How many times during the spring, summer and fall does a property owner have to limit outdoor activities such as working the fields, gardening, patio gatherings, biking, hiking, etc., because of noise, traffic, stench, etc., for it to exceed the threshold of "inconvenience or irritation?" It is clearly not an inconvenience for decision makers that do not live, work or recreate in the vicinity.

Commented [YM15]: The negative effective of landfill siting on property values has been studied and documented, and it is not "speculated." The fact that the County has failed to previously consider land use impacts on nearby property values is not relevant.

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Commented [YM16]: This is where the County and Republic argue that because a dump already exists, doubling or tripling the size of the dump is consistent with "the character of the area."

CUP applications the Planning Official, Planning Commission or Board has considered in past CUP applications these factors Key factors that are considered the Board has considered in determining the character of the area and its extent include:

- The particular attributes of the geographic setting (including the existing landfill operation in the case of Coffin Butte.)
- Is there a distinct change in the area's physical characteristics beyond a certain point (such as a change from flat land to hills or from one river basin across a ridgeline into another)?
- What features or elements give the area its character? Is it a homogenous or heterogeneous character (is there a high degree of similarity, or is it mixed)?
- How far are the effects of the proposed land use likely to extend? This may differ by particular effect—for example, the impact of noise might extend farther than visual impact (or vice versa).

[Language in this finding needs fine-tuning.]

LLU F-11121. In the conditional use review criterion of: “The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area” [BCC 53.215(2)], ~~a~~ what constitutes a “burden” is again based on the facts of the application. Staff reports that in past CUP applications the Planning Official, Planning Commission or Board has considered in past CUP applications a “burden” on public infrastructure and service is clearly likely “undue” if it overloads the system or causes significant degradation in terms of quality, effectiveness or timeliness of infrastructure or service. Lesser burdens may also be “undue” if the effect jeopardizes people's health, safety, or welfare. Burdens that have typically the Board County has typically not been considered “undue” include those that can be mitigated through planned improvements that are incremental service additions consistent with that generated by other uses in the area or that fall below an established threshold (such as road classification standards). Again, as noted in LLU F-7-9 above, so long as the interpretation is plausible, the decision makers have wide discretion in interpreting the term “undue burden.”

LLU F-12132. With regard to the conditional use review criterion of BCC 53.215(3) [“The proposed use complies with any additional criteria which may be required for the specific use by this code.”], if the county has adopted additional code criteria that apply to a proposed use, then those code provisions would apply. This does not allow the county to apply unadopted criteria that are not in the code at the time of application. In applying for expansion in the Landfill Site zone, the BCC Chapter 77 does not adopt any additional criteria and, therefore, no additional criteria apply.

Commented [VGJ17]: Suggest deleting. This discussion is general to all conditional uses, so inserting Coffin Butte seems out of place.

Commented [YM18]: And so goes the argument - the fact that there is already a massive industrial operation existing in the midst of forest conservation, agricultural, and rural residential zones and land uses makes it OK to expand it.

Commented [YM19]: A massive industrial operation, that began as a tiny burn dump in World War II, situated in the midst of wetlands, forests, agricultural and rural residential land uses does not justify the expansion of this incompatible use to bring it into even closer proximity to those other existing land uses.

Commented [YM20]: The visual impact is not limited by the number of nearby or adjacent properties but also includes the number of people impacted daily by the land use while traveling by or on nearby roadways.

Commented [YM21]: For example, the transportation and dumping of landfill leachate into the Willamette River does jeopardize people's health, safety and welfare.

Commented [YM22]: The timing of said “improvements” is critical, and “promises” to make improvements cannot be used as the basis for concluding that impacts have, in fact, been mitigated. The County's professed and demonstrated history of not monitoring or enforcing conditions of approval results in real life undue burdens.

LLU F-13143 SWAC's bylaws require it to "assist the Board of Commissioners (Board) in Planning and implementing solid waste management, pursuant to BCC Chapter 23, the Benton County Solid Waste Management Ordinance." BCC 77.305 directs the Solid Waste Advisory Council (SWAC) to review and make recommendations regarding the Site Development Plan and Narrative submitted on a landfill-expansion CUP; however, the code does not specify what criteria or considerations that recommendation should be based on. ~~SWAC's overall role, as articulated in its bylaws: "assist the Board of Commissioners (Board) in Planning and implementing solid waste management, pursuant to BCC Chapter 23, the Benton County Solid Waste Management Ordinance." As such, Based on SWAC's bylaws and role in planning and implementing solid waste management As such, it appears that the intent of the language in BCC 77.305 is that the Planning Commission rely on SWAC for guidance on the impacts of the Site Development Plan and Narrative on solid waste management. However, the language of BCC 77.305 does not limit the scope of SWAC's recommendations. SWAC should review the proposal and provide input from a solid waste management perspective. The Planning Commission's role is to review the proposal from a land use perspective relative to specific criteria listed in the Development Code and to make a decision.~~

LLU F-14; LLU F-154. Pursuant to BCC 77.310(1)(e), to what extent may the Planning Official require additional information from an applicant for a Landfill Site Zone Conditional Use Permit? Only "other information" that relates to the approval criteria for a conditional use permit may be required under BCC 77.310(1)(e), and the applicant may choose to provide some, all, or none of the requested information. The land use decision must be based on demonstrating compliance with the code criteria, not on whether the applicant provided the requested information.

LLU F-XX BCC 77.310(1) lists the information required in the applicant's narrative submitted with a conditional use application. The information required under BCC 77.310(1) includes the documents and information required to be part of the application. During the "completeness" process, the Planning Official will consider whether the applicant's documents and information are sufficient for purposes of review of the application. A determination that an application is complete does not mean that the information satisfies the approval criteria.

LLU F-xx In addition to the list of information listed in BCC 77.310(1)(a)-(d), BCC 77.310(1)(e) allows the Planning Official to request that the conditional use application narrative include "other information". This information must relate to the approval criteria. The applicant has the discretion whether to submit the requested information. The applicant's failure to submit any requested information is relevant to the decision on the application only to the extent that the decision

Commented [YM23]: This is an inappropriate effort to muzzle the SWAC and limit public involvement and input into the larger issue of solid waste management and the impacts of this massive industrial operation in rural Benton County.

Commented [VGJ24]: SWAC member:
This is an inappropriate attempt by the Legal Issues subcommittee to muzzle the SWAC. Chapter 77.305 states "The Benton County Environmental Health Division and the Solid Waste Advisory Council shall review and make recommendations through the Planning Official to the Planning Commission regarding the Site Development Plan Map and narrative." The Site Development Plan Map and narrative include all aspects of the proposed development.

Commented [VGJ25]: Vance:
Per BCC 51.405(3), the Planning Commission has exclusive decision-making authority on land use applications for which it is the initial decision maker. BCC 77.305 states SWAC "shall review and make recommendations *** regarding the Site Development Plan Map and narrative." BCC 77.310(2) describes the Site Development Plan. The second sentence of that section lists the elements to be included on the map. The third sentence says "[a] statement shall be placed on the map that the site plan map and narrative together are considered the Site Development Plan." The question then is does BCC 77.305 limit SWAC's review and recommendation to only the narrative on the site plan map? Or does the language of BCC 77.310(2) create sufficient ambiguity that "narrative" could include the entire land use application narrative.

That second option is doubtful when you consider the detail included in 77.310(2) to describe what constitutes a site plan map. It is more likely the phrase "Site Plan Map and narrative" used in 77.305 is intended to mean the elements of the map plan described in 77.310(2).

To infer "Site Plan Map and narrative" includes the entire application would draw in every element of 77.310(1), when subsection (2) deliberately only

Commented [YM26]: Chapter 23.005(15) - "Solid Waste Management" means the prevention or reduction of solid waste, management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste, recycling, reuse and material or energy recovery from solid waste and facilities necessary or convenient to such activities.

Commented [VGJ27]: Submitted by Sam 2/27

[maker determines that the information is necessary to comply with an approval criterion.](#)

LLU F-15165: Statements made by the applicant do not become conditions of approval unless those statements are specifically included or incorporated, directly or by reference, into the final decision.

Commented [VGJ28]: Submitted by Sam 2/27

LLU F-16176: How does the 2002 Memorandum of Understanding (MOU) fit into the Workgroup considerations? The 2002 MOU clarifies authorization for landfill activities within the Landfill Zone and establishes a point in time at which the landfill was operating in compliance with state and local requirements.

Commented [YM29]: Unless the governing body and decision makers specifically require staff to include in the final decision all documents submitted in support of an application (which has frequently not been done in the past), then the applicant is not held to anything that is included in the application, supporting documents and applicant commitments made during that review and consideration process and those items are excluded and not required to be completed.

- The MOU does not address whether the County’s determination of “compliance with local requirements” includes compliance with all conditions of past land use approvals.
- The MOU indicates that, as of 11/5/2002, there were no known land use ordinance violations involving the landfill. The MOU does not describe the extent to which Benton County investigated the compliance status of any conditions of past land use approvals in preparing the MOU.
- The MOU did not negate or supersede conditions of past land use approvals.

Commented [YM30]: Staff and Republic have asserted in multiple settings that this document exonerates both the County and Republic from all non-compliance instances prior to November 5, 2002. There is strong disagreement with this interpretation of the MOU and another opinion has been presented by the Land Use Subcommittee.

LLU F-17187: Is there an opportunity for public input to determine whether an application is complete? The public may submit comments on the completeness of an application. However, the completeness process is not a review of the application’s merits; only whether sufficient information has been submitted to the application’s merits can be evaluated through the public hearing process. And there are no statutory or code requirements for incorporating public input on the county’s [administrative](#) determination of whether an application is complete.

LLU F-18198: Section 2 of the June 7, 2022, collection franchise agreement between Benton County and Allied Waste Services of Corvallis (“Republic Services”) contains a limited reopener provision. Contract negotiations are not conducted in public. With that said, a process could be designed to allow public input, comment, and feedback on any provisions subject to Section 2 that may be negotiated between the parties to the agreement. The renegotiated collection franchise agreement must be agreed upon, in its entirety, by both Benton County and Republic Services.

Commented [YM31]: Republic is already on record regarding their position relative to this hauling franchise agreement. By signing the 10-year agreement over public objections, the County gave away all rights to make changes to the agreement. The wording in the agreement grants Republic veto power over any all possibility of improving this outdated approach to trash collection.

LLU F-2019: What options does the Planning Commission have if they determine that DEQ regulation of a particular parameter is inadequate or likely to be inadequate?

The County could not determine that DEQ regulation of a particular environmental parameter is inadequate to protect public health and deny the application on those grounds. The County also has no authority to interpret, apply or enforce DEQ regulations: (e) Except for regulatory programs that DEQ formally delegates to a local government, such as with on-site sewage disposal regulation.)

Commented [VGJ32]: Comment from BCTT Workgroup meeting:
Clarify for the public what is regulated and not, what is allowed and not.

Additionally, the County cannot assume that an activity will result in a violation of DEQ parameters when the activity hasn't happened.

The County could potentially determine that DEQ's regulation of a particular parameter is inadequate to prevent the proposed land use from seriously interfering with uses on surrounding properties. However, the County must articulate why DEQ's requirements are insufficient, and the County typically lacks the expertise or personnel to determine whether a particular environmental parameter is being exceeded. Alternatively, the County could require that specified mitigations be implemented, which is simpler to monitor than the level of certain emissions.

LLU F-20210 Could a new CUP approval be conditioned on cleaning up noncompliance with existing operations?

A new CUP cannot require as a condition of approval that an existing operation on a different property be modified or that noncompliance be rectified. Enforcement procedures (see Chapter 31 of the Benton County Code) would have to address the noncompliance.

Commented [YM33]: While this may be true from a strictly legal perspective and thus should not be cited in any decision, the CUP review criteria are discretionary and the history of noncompliance by the landfill operator and non-enforcement by Benton County clearly demonstrates that the imposition of conditions of approval to mitigate negative impacts cannot be relied on to ensure the resultant land use activity will not seriously interfere with surrounding land uses and the character of the area.

LLU F-21221 Is compliance/noncompliance with conditions of past land use approvals a topic that can be considered in any way during a new land use application?

Generally, the new proposal must be evaluated on its own merits relative to the approval criteria. However, the current non-compliance of an existing land use condition could provide information that the Planning Commission considers in rafting-developing a condition on a new application. If an application is made to expand an existing land use that is currently out of compliance with a condition of past approval of a previous decision, and that noncompliance is causing issues for surrounding land uses, noncompliance of the original land use decision is not in itself grounds to deny the new application. However, the decision-maker could potentially look at the fact of existing noncompliance in evaluating, consider whether that noncompliance is causing the existing land use to "seriously interfere" with uses on surrounding properties. That fact can then be used and consider that as evidence toward determining in evaluating whether the proposed land use complies with the review criteria because the same land use in a similar location was seriously interfering with surrounding uses even though it was subject to conditions of approval. Past conditions superseded by subsequent decisions or changes in the law could not form a basis for such analysis. [To Do: Need to address the relationship between this finding and R-7. Also, finding language needs fine-tuning.]

Commented [YM34]: The CUP review criteria are discretionary and the history of noncompliance by the landfill operator and non-enforcement by Benton County clearly demonstrates that the imposition of conditions of approval to mitigate negative impacts cannot be relied on to ensure the resultant land use activity will be compatible with adjacent land uses and the character of the area.

LLU F-XX [Were the site plan and narrative in PC-83-07 regulatory conditions of approval?]

Commented [VGJ35]: Comment from BCTT Workgroup meeting.

LLU F-XX [Clarify when formal approval of landfilling Cell 6 (current quarry) was granted.]

Key Recommendations:

[Recommendations will be connected to the relevant finding(s) and charge elements.]

LLU R-1. BCC 77.305 directs the Solid Waste Advisory Council (SWAC) to review and make recommendations regarding the Site Development Plan and Narrative submitted on a landfill-expansion CUP; however, the code does not specify what criteria or considerations that recommendation should be based on. Consistent with SWAC's bylaws and Chapter 23 of the County Code, which require SWAC to "assist the Board of Commissioners (Board) in Planning and implementing solid waste management, pursuant to BCC Chapter 23, the Benton County Solid Waste Management Ordinance", SWAC's role in reviewing a landfill expansion CUP should be from the perspective of solid waste management (see LLU F-13). The Board of Commissioners should more clearly define SWAC's role by articulating a scope of review. Examples of areas that may be appropriate for SWAC to comment on: Is the proposed expansion consistent with long term plans for the landfill site? Is the proposal consistent with the principles of responsible solid waste management? What (solid waste management) benefits do you see to the proposed expansion? What potential (solid waste management) negative effects do you see? Are there ways to minimize or mitigate those effects? (If/when SWAC's overall role shifts to sustainable materials management, instances of the term "solid waste management" above should be replaced with "sustainable materials management.")

LLU R-2. Amendments to the Development Code may be needed to create a clear and legally consistent process for SWAC's involvement in reviewing a CUP. Pursuant to the Development Code as written, the only criteria that a CUP decision can be based upon are those of BCC 53.215, and the Planning Commission is the decision-making body. Yet, the code states an ambiguous role for SWAC in that process and seems to imply that other considerations beyond those of BCC 53.215 should go into the decision-making process. This needs clarification.

LLU R-3. BCC 77.310 states that "The applicant for a conditional use permit shall provide a narrative which describes: * * * Other information as required by the Planning Official." [BCC 77.310(1)(e)] The workgroup could make recommendations regarding what "other information" would be helpful in a narrative. However, any committee recommendations would have to be limited to information related to the applicable criteria and could not expand that criteria.

LLU R-XX BCC 77.310(1) lists the information required for a conditional use application in the landfill site zone and permits the planning official to request that the applicant's narrative include "additional information." However, the

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Commented [VGJ36]: Comment from BCTT Workgroup meeting.

Commented [YM37]: Hopefully these recommendations are not in priority order. Limiting the role of SWAC should not be the County's highest priority in making improvements to the land use application review process. Clearly the history of lack of compliance monitoring and enforcement should be top of the list (not last).

Commented [YM38]: This is a conclusion and recommendation that is not supported by the language in the Code. This is simply an effort to limit public engagement in the critical process of developing a sustainable path forward for solid waste management in Oregon (since most of the waste coming to Coffin Butte is from outside Benton County).

Commented [VGJ39]: SWAC member comment: This is an inappropriate attempt by the Legal Issues subcommittee to muzzle the SWAC. Chapter 77.305 states "The Benton County Environmental Health Division and the Solid Waste Advisory Council shall review and make recommendations through the Planning Official to the Planning Commission regarding the Site Development Plan Map and narrative." The Site Development Plan Map and narrative include all aspects of the proposed development.

Another SWAC member comment: Where is the example language that actually reflects what the community is thinking, or what examples would be good to pass on to the citizens on SWAC? Until there actually is that sort of representation, I ask ...

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Commented [YM40]: This is simply an effort to limit public engagement in the critical process of developing a sustainable path forward for solid waste management in Oregon (since most of the waste coming to Coffin Butte is from outside Benton County).

Commented [VGJ41]: SWAC member comment: Until any role modifications are adopted in Code, the existing role for SWAC described in Chapter 73 stands.

Commented [VGJ42]: SWAC member comment: As written, it seems the Planning Official can require other information in the applicant's narrative, and this other information thus becomes part of the "applicable criteria." Therefore, the workgroup has wider latitude ...

development code does not specify how or when that information is to be requested. In the past, the Planning Official has used the statutory completeness review process to request additional information. However, in addition to the Planning Official's review of the information after the application has been submitted, the Board could amend the code to require that the Planning Official conduct a "preapplication conference" with the applicant to discuss the information that is required. It could also require a "neighborhood meeting" before the application is filed that requires the applicant to present its proposal to the public and allow the applicant to obtain more information about the proposal.

Commented [VGJ43]: Submitted by Sam 2/27

LLU R-4. BCC 77.405 states, "Copies of materials submitted to the Oregon Department of Environmental Quality as a part of any permit process shall be submitted to the Planning Official. If at any time the Planning Official determines that permit application materials or conditions of DEQ permit are judged to merit public review, a Public Hearing before the Planning Commission shall be scheduled." This provision is unclear. The subcommittee interprets this section as requiring a review if the use originally approved has been or will be modified due to the DEQ permit. The Planning Official could make such a determination using a formal "Interpretation" pursuant to BCC 51.205(1). Recommend code amendment to clarify this provision. A workgroup recommendation on how public review of DEQ permit requirements could most benefit the public would also be helpful.

Commented [YM44]: Historically, neither the Planning Official nor the Planning staff have taken the time to review any of the materials submitted by DEQ.

Commented [YM45]: This would only occur if the applicant said one thing during the land use proceeding and submitted something else to DEQ in the permit application process. But since these documents are not reviewed, not sure how any changes would be discovered. DEQ has a public review process for proposed permits and the County must engage actively in that process, which apparently doesn't happen.

LLU R-5. ~~If the County provides an opportunity for public input into the determination of application completeness, the information should provide to the public a description of the purpose of the statutory completeness review process, and the scope of the information the county planning official considers at the completeness stage. That description should clearly explain how the administrative "completeness" process fits into the review of a land use application. While the county should not discourage public involvement at all stages of the review process, provided to the public the public should be informed that the statutory completeness is a preliminary step that does not include any review of whether an application does or can satisfy the approval criteria; and that the public review and hearing process that follows after the application is complete provides the public an opportunity to provide evidence and arguments to the decision makers on the merits of the application. The information should clearly inform the public that any should include a caution that the County is not required to, and may not have the time to, address or incorporate the public input into the completeness determination, and that such public input is not considered public evidence or testimony submitted at the completeness stage is not part of the "record" that the decision makers will review, and that information would have to be re-submitted during the public hearing process in order for the decision makers to review it. testimony on the merits of the application.~~

Commented [VGJ46]: Comments from Workgroup meeting:
Provide more context to the recommendation.
Improve the wording to reflect providing public service.
Explain how people can get involved in the process.
Keep the perspective of how the average person will perceive these notifications.

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Commented [VGJ47]: Vance comment: This is an important point that hasn't been articulated previously. Is there case law or statutory reference to include in the report?

LLU R-6

A process to allow public input, comment, and feedback on any provisions subject to Section 2 of the collection franchise agreement between Benton County and Allied Waste Services of Corvallis (“Republic Services”) could be designed as follows:

After the parties have begun discussing what specific terms may be amended pursuant to Section 2, but no more than 60 days prior to any amendment being approved by the Board of Commissioners, the County will publish a notice that it is seeking suggestions from the public for negotiation topics generated from the “concepts from the consensus-seeking process.”

Any input received would be presented to the Board of Commissioners at a work session, at which time the Board would identify those ideas or suggestions that may be included as negotiation topics.

Following the work session and as part of the ongoing negotiations, Benton County Staff will discuss with Republic Services the topics and ideas the Board of Commissioners identified.

At such time as Benton County and Republic Services reach a tentative agreement on the renegotiated terms, Staff would bring the proposed franchise changes to the board meeting, where consideration of the amended franchise agreement would be conducted in a public hearing pursuant to BCC 23.235, which will include an opportunity for the public to present testimony. The Board could approve the agreement as presented or may direct staff to resume negotiations with Republic Services to include specific topics identified by the Board.

The renegotiated collection franchise agreement must be agreed upon, in its entirety, by both Benton County and Republic Services. At such time as the terms have been agreed upon, and the Board is satisfied that public input has been adequately included or addressed in the renewed agreement, the franchise agreement will be the subject of a public hearing and, ultimately, approval by the Board of Commissioners at a regular board meeting.

LLU R-7

Per LLU F-~~X5~~ and F-~~XX20b~~, because existing and past operations are not within the County’s scope of review of a new conditional use permit application south of Coffin Butte Road, the subcommittee recommends that, in preparing for the next landfill CUP application, it will be most beneficial for the County decision-makers to prioritize addressing topics that would be relevant to review of a new CUP application and de-prioritize in-depth evaluation of existing and past operating approvals.

LLU R-8

Benton County should evaluate its existing system regarding compliance monitoring and enforcement to determine if there are sufficient mechanisms in place to ensure compliance with conditions of approval that the County imposes

Commented [YM48]: This process and the executed agreement have been carefully worded to exclude any meaningful public input into improving the hauling and collection franchise agreement. The County signed an agreement that gives Republic total veto power over any changes to the agreement, thereby severely limiting any opportunity for meaningful change in an outdated practice.

Commented [VGJ49]: Comment from BCTT Workgroup meeting.

Commented [YM50]: While this may be true from a legal perspective, the CUP review criteria are discretionary and the history of noncompliance by the landfill operator and non-enforcement by Benton County clearly demonstrates that the imposition of conditions of approval to mitigate negative impacts cannot be relied on to ensure the resultant land use activity will not seriously interfere with surrounding land uses and the character of the area.

In this case, past performance and non-compliance as well as non-enforcement of conditions is a strong indicator of future non-compliance and needs to be carefully considered when reviewing any future expansion application and reliance on conditions of approval to make things right.

Commented [G51]: What is the purpose of this recommendation? What ‘topics’ are the focus here? Are we saying that in reviewing a new CUP the decision makers should prioritize consideration of “topics” relevant to the new CUP? Or is the subcommittee recommending that the workgroup recommend to the Board that it prioritize issues related to a new CUP – and not focus on enforcement issues?

Commented [S152R51]: Needs a rewrite with the context. My recollection is the recommendation is designed to say the PC and Board can't deny a new app for a new location simply because there are or may be a compliance failure from an existing CUP. Those need to go through the enforcement process. However, they may...

on land use approvals and, if not, recommend improvements. Elements of such an evaluation could include:

- What enforcement mechanisms exist within the County Code?
- Is there a mandamus option or a private right of action option?
- What is missing?
- What provisions and procedures do other counties have, particularly counties that host a privately operated landfill?

LLU R-XX In addition to the two criteria listed in BCC 53.215(1) and (2), BCC 53.215(3) requires the decision maker to consider whether the “proposed use complies with any additional criteria which may be required for the specific use by this code.” Currently Chapter 77 (Landfill Site zone) does not include any additional criteria that must be considered in the review of a conditional use application for the expansion of a landfill in the landfill zone. If there are additional criteria that the Board of Commissioners determines are necessary for the review of a conditional use application in the landfill zone, the Board of Commissioners could amend Chapter 77 to specify those additional approval criteria. The Board could also require that compliance with the site plan and reclamation plan (currently required by Chapter 77 to be submitted with the application) be adopted as conditions of approval of any approved conditional use permit.

Commented [YM53]: This is the most important recommendation. Per Benton County staff, conditions of approval have not been previously and are not now actively monitored or enforced. Therefore, conditions of approval designed to mitigate negative impacts cannot be relied on as a means of making an application suitable for approval by the governing bodies.

Commented [YM54]: Forcing the members of the public to use their own money to sue the County and the operator for the County's negligence and the operator's violations? That does not seem appropriate at all.

Commented [YM55]: It seems to me that the whole system is broken, is designed to aid the applicant, and needs to be rebuilt with an equal emphasis on protecting the public interests. Somebody just needs to care.

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Commented [VGJ56]: Submitted by Sam 2/27