

## Facilitator’s Proposal for Introductory Statement – Land Use Compliance Subcommittee

Mark – Ed – Catherine 12/1/22 Version Without Track Changes

This document contains a historical summary of land use actions<sup>1</sup> including adopted conditions of approval for past land use applications and Conditional Use Permits (CUPs) relevant to the Coffin Butte Landfill. It provides the context needed to better understand how we got to where we are now. Our goals for this section included:

- 1) Identify and organize the relevant documents;
- 2) Explain the key points clearly;
- 3) Identify areas of agreement on whether the various conditions of approval remain applicable or inapplicable today; and
- 4) Identify areas of agreement on the current status of compliance, monitoring, and enforcement.

For context, Benton County’s Development Code (BCC) describes conditional uses as “land uses which may have an adverse effect on surrounding uses in a zone.” (BCC 53.205). To lessen the adverse impacts, the county may “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).

Implementation of the land use decision conditions of approval are required to ensure that the proposed land use complies with the Development Code and the resultant land use activity, assuming compliance with the conditions of approval, is compatible with adjacent land uses. However, to be effective, the conditions of approval must be monitored and enforced.

~~Implementation of the land use decision conditions of approval are required to ensure that the proposed land use complies with the Development Code. Uses allowed in a given zone have already been deemed to have a sufficient level of compatibility. Therefore, a finding of “compatibility with adjacent land uses” is not required, per se. However, a land use must be found to “not seriously interfere with uses on adjacent property” and conditions of approval may be imposed “to mitigate negative impacts to adjacent property.” However, the application of the Development Code provides the specific criteria for general compatibility. Those conditions must be complied with, monitored and enforced to be effective.~~

Compliance with the required conditions of approval is the responsibility of the applicant. The County, along with DEQ, etc., is responsible for monitoring and enforcement. In Benton County, monitoring, and enforcement are ~~resident~~ complaint-driven (~~by residents, businesses, the traveling public, other governmental entities, or others~~) because Benton County has acknowledged it did not and does not have the resources to actively monitor or enforce the landfill conditions of approval. This is also true for other land use decisions in Benton County.

<sup>1</sup> Findings of Fact, notices of decision, conditions of approval, zone changes, code adoptions, code amendments, etc.

**Commented [VGJ1]:** Code doesn't require "compatibility" per se. Code talks about "seriously interferes with" and "imposes an undue burden". Suggest dealing with this term/concept more directly/explicitly.  
BCC 53.205 - Purpose of conditional uses" is relevant: land uses that may have an adverse impact on adjacent land uses.

**Commented [VGJ2]:** This is an arguable point; not that the subcommittee shouldn't put it forward, but it is not indisputably factual.

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**Commented [VGJ3]:** This is an arguable point; not that the subcommittee shouldn't put it forward, but it is not indisputably factual.

**Commented [VGJ4]:** Recommend deleting this term because others (businesses, traveling public, other governmental entities, etc.) may be the impetus.

## **Facilitator's Proposal for Introductory Statement – Land Use Compliance Subcommittee**

The Benton County Talks Trash Workgroup (BCTT) was not charged with deciding the actual legal status of the factual and legal issues raised herein. The "common understandings" noted identify the BCTT's consensus agreements. Where there was no consensus, the differing points of views have been documented for consideration by the Benton County Board of Commissioners and others. Additionally, each workgroup member was given the opportunity to share their views, be they supportive or oppositional, as noted in Appendix X.

## Facilitator's Proposal for Introductory Statement – Land Use Compliance Subcommittee

Facilitator's 11/20/22 "Merged" Proposal  
(Inga / Condit Concurrence with her / Pitera / Yeager / Sam Comments  
(Written for the final report versus the present moment)

This section document contains a historical summary of the relevant landfill documents and use applications and adopted conditions of approval<sup>2</sup> for each Conditional Use Permit (CUP) relevant to the Coffin Butte Landfill (e.g., Findings of Fact, Notices of Decision, Conditional Use Permits, Conditions of Approval, zone changes, code adoptions, and code amendments, etc.) It provides the context needed to better understand how we got to where we are now. Our goals for this section included:

- 5) Identify and organize and make readily accessible the relevant documents;
- 6) Explain the key points clearly;
- 7) Identify areas of agreement on whether the various decisions and conditions of approval remains applicable or inapplicable today; and
- 8) Identify areas of agreement on the current status of compliance, monitoring, and enforcement.

For context, Benton County's Development Code (BCC) describes conditional uses as "land uses which may have an adverse effect on surrounding uses in a zone." BCC 53.205. To lessen the adverse impacts, the county may "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.

Implementation of the Conditions of Approval are required to ensure that the proposed land use complies with the Development Code and the resultant land use activity, assuming compliance with the Conditions of Approval, is compatible with adjacent land uses. However, to be effective, the Conditions of Approval must be monitored and enforced.

Compliance with the required conditions of approval is the responsibility of the applicant. The County, along with DEQ, etc., is responsible for monitoring and enforcement. As a practical matter in Benton County, monitoring, and enforcement are citizen complaint-driven because Benton County has acknowledged it did not and does not have neither has the resources currently available to actively monitor or enforce the landfill conditions of approval. This is also true for its other land use decisions in Benton County.

The Workgroup was not charged with deciding the actual legal status of the factual and legal issues raised herein. The "common understandings" noted identify the Workgroup's consensus agreements.

<sup>2</sup> Conditions of Approval have two purposes. One purpose is to place a condition that the applicant must complete in order to gain final approval of the use from the County. These are usually identified as preliminary conditions of approval because the County issues a preliminary approval of the use and the applicant must complete the conditions of approval in order to get final, or operating, approval. Some of these conditions may also be intended to last the lifespan of the use, such as a vegetative buffering condition that, once planted, is intended to be maintained by the applicant. The other conditions are those that are intended to carry through the lifespan of the use, and those are classified as operating conditions. The intent is based on available procedures and context at the time of approval so the relevance of the operating conditions can change as new technology and operating procedures are put in place.

**Commented [S15]:** This "document" will be a "section" in the Final Report; thus, "section."

**Commented [YM6]:** While the footnoted description of how Benton County uses Conditions of Approval is instructive, the characterization of the preliminary conditions of approval is misleading. Using preliminary conditions of approval to fix problems with an application or to receive information necessary to appropriately assess the impacts of a proposed land use, as Benton County does, effectively removes any further public involvement in the process. Once a decision has been issued with "preliminary" conditions of approval, the public can no longer participate in the land use decision process.

**Commented [S17R6]:** Here is one way to look at this. 1) Is the footnote factually/legally accurate? If, no, fix. 2) If yes, then the question is whether it is good policy. That issue should not be part of an introductory statement. It could go in the "Lessons Learned/Recommendations" section.

Ed: Please include the Conditions of Approval footnote from Inga's draft.

**Commented [S18]:** I thought folks wanted these topics considered - not just the CUP stuff... what am I missing?

**Commented [S19]:** Ed's version, "This section contains a historical summary of relevant landfill documents (e.g., Findings of Fact, Notices of Decision, Conditional Use Permits, Conditions of Approval, zoning changes, code adoptions, and code amendments, Board Orders, etc.)"

Keeping the definition of what's included broad is essential so compliance requirements are not lost. County decisions need to be kept in the scope of common understandings. For example the 1988 Order to Vacate a portion of Tampico Ridge Subdivision demonstrates that RSI may be meeting one of the conditions of DEQ in the 2005 Record of Decision.

**Commented [WI10]:** I struck this out because there is no current way to make the documents accessible to the public other than the ftp site, and, after the workgroup stops meeting, staff will not be monitoring that folder to ensure its perpetual continuance.

**Commented [S11R10]:** We need to solve this tech problem so folks don't have to do this heavy lifting in the future.

**Commented [YM12]:** I am not sure that this section is helpful and it adds to the wordiness of the intro. Is this something that will be added to each of the Subcommittee reports? If it is going to be retained, then I need to know.

**Commented [S113R12]:** Yes, something like this will appear in the other sections of the Report. Explain clearly means, lay person language - not land use nerd language.

**Commented [S114]:** Ed's addition

## Facilitator's Proposal for Introductory Statement – Land Use Compliance Subcommittee

Where there was no consensus, the differing points of views have been documented for consideration by the Benton County Board of Commissioners and others. Additionally, each workgroup member was given the opportunity to share their views, be they supportive or oppositional, as noted in Appendix X.

The Legal Subcommittee explored the relationships between the conditions of approval described below and the operative franchise agreements. This information is in the form of a summary table can be found at \_\_\_\_\_ . The Legal Subcommittee members reached a consensus that the franchise agreements do not carry their provisions forward unless they are specifically include in the subsequent agreement. ~~As to carrying forward the CUP conditions, they concluded...~~

**Commented [YM15]:** I do not find this discussion of the relationship between franchise agreements and land use decisions particularly helpful. I think it distracts from the land use compliance review and it adds to the wordiness of the intro making it less useful.

**Commented [SI16R15]:** Ed's comment: "[Sam, The rest of this paragraph is very helpful to a reader but consider leaving it out so if you revise that section of the final document, you don't have to change this section too.]"

**Commented [SI17]:** Ed: "THIS CONCLUSION IS ESSENTIAL. PLEASE INCLUDE IT IN THE FINAL VERSION"

## Facilitator's Proposal for Introductory Statement – Land Use Compliance Subcommittee

### Prior Drafts Follow

#### Clean Version of Facilitator's 11/20/22

This section contains a historical summary of the relevant landfill documents (e.g., Findings of Fact, Notices of Decision, Conditional Use Permits, Conditions of Approval, zone changes, code adoptions, and code amendments, etc.) It provides the context needed to better understand how we got to where we are now. Our goals for this section included:

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The Workgroup was not charged with deciding the actual legal status of the factual and legal issues raised herein. The "common understandings" noted identify the Workgroup's consensus agreements. Where there was no consensus, the differing points of views have been documented for consideration by the Benton County Board of Commissioners and others. Additionally, each workgroup member was given the opportunity to share their views, be they supportive or oppositional, as noted in Appendix X.

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## Facilitator's Proposal for Introductory Statement – Land Use Compliance Subcommittee

### CUP Subcommittee Text

Review of prior land use actions (e.g., zone changes, conditional use permits, etc.) provides important context regarding the history of the landfill properties as well as documentation of compliance or noncompliance with previous land use Conditions of Approval imposed by Benton County. Review of the background documents, including Findings of Fact and Notices of Decision associated with these land use proceedings, provides an important historical throughline for the landfill properties.

As a Common Understandings document it is important that it be understood that when Conditions of Approval are imposed as part of a land use proceeding, it has been determined that those conditions are necessary to mitigate the impacts of inherently incompatible land uses.

Implementation of the Conditions of Approval are required to ensure that the proposed land use complies with the Development Code and the resultant land use activity, assuming compliance with the Conditions of Approval, is compatible with adjacent land uses.

However, to be effective, the Conditions of Approval must be monitored and enforced. Benton County has acknowledged that it does have the resources to actively monitor and/or enforce the requirements articulated by the imposed Conditions of Approval. In Benton County, compliance with required Conditions of Approval is dependent on residents complaining about a particular land use activity.

### Legal Subcommittee Track Changes

Review of prior land use actions (e.g., [Findings of Fact and Notices of Decision](#) for zone changes, conditional use permits, etc.) provides important context regarding the history of the landfill properties as well as documentation of compliance or noncompliance ([if it can be determined](#)) with previous land use Conditions of Approval imposed by Benton County. [Review of the background documents, including Findings of Fact and Notices of Decision associated with these land use proceedings, provides an important historical throughline for the landfill properties. Whether a given land use decision or condition of approval remains applicable today has yet to be determined.](#)

As a Common Understandings document it is important that it be understood that when Conditions of Approval are imposed as part of a land use proceeding, it has been determined that those conditions are necessary to [demonstrate compliance with applicable criteria mitigate the impacts of inherently incompatible land uses.](#)

Implementation of the Conditions of Approval are required to ensure that the proposed land use complies with the Development Code and the resultant land use activity, assuming compliance with the [Conditions of Approval](#), is compatible with adjacent land uses.

However, to be effective, the Conditions of Approval must be [complied with](#), monitored, and enforced [when necessary. In Benton County, compliance with the required conditions of approval is the responsibility of the applicant.](#)

Benton County has acknowledged that it does [not](#) have the resources to actively monitor and/or enforce [the requirements articulated by the imposed](#) Conditions of Approval. [Typically enforcement is complaint-driven. This is true with all land use decisions.](#)

[In Benton County, compliance with required Conditions of Approval is dependent on residents complaining about a particular land use activity.](#)

## Facilitator's Proposal for Introductory Statement – Land Use Compliance Subcommittee

### Sam's Notes during 11/17/22 Joint Meeting

Review of legal documents and background documents prior land use actions (e.g., Findings of Fact and Notices of Decision, Conditions of Approval for zone changes, conditional use permits, code adoptions and amendments, etc.) provides important context regarding the history of the landfill properties as well as documentation of compliance or noncompliance (if it can be determined) with previous land use Conditions of Approval imposed by Benton County. ~~Review of the background documents, including Findings of Fact and Notices of Decision associated with these land use proceedings, provides an important historical throughline for the landfill properties. Whether a given land use decision or condition of approval remains applicable today has yet to be determined.~~

As a Common Understandings document it is important that it be understood that when Conditions of Approval are imposed as part of a land use proceeding, it has been determined that those conditions are necessary to demonstrate compliance with applicable criteria mitigate the impacts of inherently incompatible land uses. ... the applicable laws designed to meet the County's land use goals including compatibility with adjacent land uses.

Implementation of the Conditions of Approval are required to ensure that the proposed land use complies with the Development Code and the resultant land use activity, assuming compliance with the Conditions of Approval, is compatible with adjacent land uses.

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However, to be effective, the Conditions of Approval must be complied with, monitored, and enforced when necessary. In Benton County, compliance with the required conditions of approval is primarily the responsibility of the applicant. County resp to monitor and enforce

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As a practical matter, Benton County has acknowledged that it does not have the resources to actively monitor and/or enforce the requirements articulated by the imposed Conditions of Approval. As a practice matter in Benton County, Typically enforcement is complaint-driven as –This is true with all its land use decisions. Addressing it is complaint driven  
~~In Benton County, compliance with required Conditions of Approval is dependent on residents complaining about a particular land use activity.~~

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The legal sub is currently exploring

Franchise vs CUP

BCTT not determining body.... Effort to get common understandings

Whether it can be determined from the record is a work in progress, which could also include review of DEQ info