

# BCTT Key Findings and Recommendations – Draft #4

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### **FACILITATOR NOTES:**

*This document represents the state of the subcommittee’s draft findings and recommendations as of 2/22/23 at 9:00 PM. I ran the document through Grammarly to improve its clarity and voice with no intent to change the substance. Each subcommittee has not finalized the contents, there are areas of disagreement, and frankly, some have not yet been vetted. They are works in progress. The next draft will be reorganized by priority and include further responses to the Planning Commission and SWAC feedback. It will also include active links to the supporting information.*

*We are now sharing this document with the entire workgroup to solicit your general feedback at the 2/23/23 BCTT Workgroup meeting. Each subcommittee will use your input to finalize their work for your formal polling at our last meeting on 3/16/23.*

*We will provide a “crosswalk” document to serve as our agenda.*

*Thanks, Sam*

# Sustainable Materials Management Plan (SMMP)

## Key Findings:

[SMMP F-1](#): Many SMMPs and related RFPs exist in Oregon and beyond.

[SMMP F-2](#): The charges of the SMMP Subcommittee are intimately related and should be included within the RFP.

[SMMP F-3](#): Contracting out processes often include a Technical Advisory Committee (TAC), which vet technical information from a consultant and get to a place of consensus, and a Community Advisory Committee (CAC), which provide a review in the technical experts' areas of disagreement.

[SMMP F-4](#): The length of the overall project can be heavily impacted and defined by the level of public interaction/engagement included in the project.

[SMMP F-5](#): The research and development aspects of the planning process can occur concurrently with public engagement.

[SMMP F-6](#) – The SMMP is about the landfill, but it is also bigger than that. While Benton County's waste contribution to the landfill is relatively small, the SMMP aims to reduce the full lifecycle impacts of materials management practices in Benton County and where other jurisdictions' practices overlap with Benton County. Addressing only materials from Benton County would have limited impacts compared to all materials from neighboring counties.

[SMMP F-7](#) - Benton County has limited control over what counties do and how much material they haul to Coffin Butte Landfill. However, the county is impacted by other counties' waste stream contributions to facilities within Benton County (via Coffin Butte Landfill, Pacific Region Compost, and transportation methods through the county).

## Key Recommendations:

[SMMP R-1](#): Benton County Sustainable Materials Management Plan should be developed within a Sustainable Materials Management framework, reflecting full lifecycle impacts. The development of a Sustainable Materials Management Plan should consider 1) the 2040 Thriving Communities Initiative and our communities' Core Values, 2) national, State, and local goals, vision documents, plans, policies, ordinances, etc., relating to materials management and climate change, 3) examples of values and goals expressed in state and local jurisdiction materials management plans, and 4) long-term strategies (to 2040) with short-term action items (5 years or less).

[SMMP R-2](#): The SMMP should not just be about how Benton County can better manage materials, but it should also address how to approach inter-county collaboration from a regional perspective.

[SMMP R-3](#): Counties impacting Benton County through their materials management practices (including by contributing materials to Coffin Butte Landfill) should have an SMMP in place. We need more statewide resources to plan for the needed regional planning process.

[SMMP R-4](#): SMMP content should incorporate the sustainability of materials management strategies/tactics. The result of the process should give us a method of measuring cost-benefits that can be measured and evaluated. An aspirational goal should include how materials in Benton County can fit within a Circular economy framework.

[SMMP R-5](#): The SMMP should clarify Benefit-Cost perspectives being addressed through an equity analysis, including 1) financial cost impacts associated with materials management and outcomes, 2) the equity of circular economy, how it engages and impacts consumers, 3) a perspective that goes beyond landfilling, and 4) a “who’s at the table” list of stakeholder perspectives.

[SMMP R-6](#): Bring “lessons learned” into the process from other sources, including feedback from other counties, lessons from past Benton County experiences, examples from California, Washington, and international examples. See the full report for more sources.

[SMMP R-7](#): Beyond those in the County, a wide assortment of stakeholders should be brought to the table. Stakeholders include community members, advocacy groups, businesses and industry, local and state governments, and resources for innovation. See report for full stakeholder list. The consultant should provide recommendations based on analysis and extensive outreach and engagement with community stakeholders from the “who should be at the table” list. These stakeholders should represent a broader area than Benton County.

[SMMP R-8](#): It is recommended that the RFP indicate the need for researching and exploring opportunities for a regional multi-county approach to achieve the goals of sustainable materials management. RFP firms with experience with Oregon’s materials management legislation, policies, and other county materials management plans may be able to address this need. (Recommendations about strategies to engage surrounding counties in addressing impacts of materials to follow.)

[SMMP R-9](#): Benton County should use an RFP to find consultant(s) for developing a Sustainable Materials Management Plan.

[SMMP R-10](#): The SMMP should address the subjects listed in the full subcommittee report, answering the questions listed as RFP priorities allow.

[SMMP R-11](#): Recruitment for the RFP needs to be extensive, and the selection of a successful proposal should be careful and thorough. Qualities of a successful applicant should include those listed in the full subcommittee report.

[SMMP R-12](#): The scope of work for this project is expected to be broad and comprehensive, with specific goals recommended for the County to consider as milestones.

[SMMP R-13](#): The RFP development process should: 1) provide details about the Workgroup process and its findings to RFP applicants, 2) prioritize topics, adding additional topics that are important to consider, and 3) communicate accurate priorities to applicants.

[SMMP R-14](#): Members of this BCTT SMMP subcommittee should be offered to participate in subsequent stakeholder group meetings for RFP development and review. SWAC/DSAC should have an advisory role during the plan's development.

[SMMP R-15](#): The RFP Release/Announcement should 1) communicate an expectation that this plan can be approached by teams (multiple firms) instead of just single firms, 2) put guidelines on the size/length of proposals and sections of proposals, and 3) be distributed to allow enough time for it to be posted to various trade groups, shared with underrepresented groups and internationally minded outlets.

[SMMP R-16](#): The County should share the various steps of the process with the public, making updates available and demonstrating transparency (Cross-referencing subcommittee E.1. work).

[SMMP R-17](#): The RFP should demonstrate flexibility in allowing further work plan development after applications are reviewed and accepted.

[SMMP R-18](#): The overall project length will depend heavily on the level of public interaction/stakeholder engagement included in the project and by requirements from the county. During the public interaction/stakeholder engagement process, R&D from the consultant can occur in the background.

[SMMP R-19](#): Applicants should include various scope/cost options for one-year, two years, and three-year timelines. The report should be released in sections based on timeline and content priorities.

[SMMP R-20](#): Include a Technical Advisory Committee (TAC), which vets technical information from a consultant and get to a place of consensus, and a Community Advisory Committee (CAC), which provide a review in the technical experts' areas of disagreement. SMMP Subcommittee members should be included in the CAC.

[SMMP R-21](#): Proposals contain the following information, with parameters around each item regarding document length. The requested information includes project team experience and qualifications, understanding of the project, approach to the scope of work, proposal cost,

project schedule, social/environmental responsibility, and references. Each criterion includes a total set of points the proposal can be awarded. See the full report for more information.

[SMMP R-22](#): An evaluation team consisting of County staff and stakeholder group members should determine the best proposal deemed most qualified based on the above criteria.

[SMMP R-23](#): The SMMP should emphasize the impacts of the results of the RFP on social equity and innovation to understand and emphasize the upstream aspects of material sustainability and creative solutions that provide pathways for tangible long-term outcomes.

[SMMP R-24](#): The workplan should include ongoing adaptive management and refinement with a timeline for completion. The sections of the workplan outline include RFP development and release, a webinar for prospective consultants, a pre-proposal Q&A period, a period for application submittal, and the selection committee to identify shortlisted firms who are given time for an additional presentation. The committee then evaluates proposals, selects a consultant, and develops a workplan with the chosen consultant. See the full report for more information.

## Landfill Size/Capacity/Longevity A.1. Subcommittee

### Key Findings:

#### **Landfill Estimated Remaining Life, Projected End of Life (EOL)**

[LSCL-F-1](#): In 2003, EOL was projected to be approximately 2074, with a Landfill Life estimate of 71 years (2003 East Triangle CUP document, Benton County file PC-03-11.pdf). Twenty years later, EOL is projected to be 2037-2039 with a Landfill Life of 14.5-16 years, a reduction of approximately 36 years of estimated life in 20 elapsed years. In 2013 Valley Landfills Inc. reevaluated the East Triangle's waste placement stability engineering. The East Triangle was removed from the landfill's site development plan based on updated state seismic guidance for landfill stability.

[LSCL-F-2](#): In 2013, EOL was projected to be 2053-2062, with a Landfill Life estimate of 40-49 years. [2013 Coffin Butte Landfill and Pacific Region Compost Annual Report](#). Ten years later, EOL is projected to be 2037-2039 with a Landfill Life of 14-16 years and a lower and upper range reduction of approximately 16 and 23 years, respectively.

[LSCL-F-3](#): Current (1Q2023) estimate for landfill EOL = CY 2037 – 2039 based on an annual intake level of 1.0 – 1.1 M Tons/year and a density of 0.999 Tons/yd<sup>3</sup>, assuming the quarry area will be fully excavated by the time the current disposal areas are full. Valley Landfills, Inc. has represented that this nominal life projection (“baseline”) is derived from a few data points in annual measurements and is the product of a standard modeling process in the landfill industry. Valley Landfills, Inc. acknowledges that various factors, including human factors, can

impact landfill site life but are not included in this baseline calculation. Valley Landfills, Inc.'s baseline projection of a 2037-2039 closure date is based both upon existing demand and Valley Landfill Inc.'s efforts to maintain and/or grow its service area and business in the market.

[LSCL-F-4](#): The 2021 Site Development Plan projected a 2039 EOL based on an annual intake of approximately 846,000 Tons/year. However, this intake tonnage is not considered binding or controlling by either DEQ or Valley Landfills, Inc. This is based on the best information available at the time of approval by Oregon DEQ, which can change based on service area impacts.

[LSCL-F-5](#): Under the 2020 Franchise Agreement, the 1.1M tonnage cap is eliminated upon Benton County's approval of a CUP (expansion). If intake volumes increase, an **expansion would not necessarily guarantee an increase in site life** or extending the Landfill's closure date. For example, if an expansion increases available airspace but intake volumes increase the fill rate even more, the overall life of the landfill could decrease.

[LSCL-F-6](#): For this discussion, the subcommittee agreed to rely on data from the annual reports and other landfill filings with the county. EPA also provides data in their [GHG reporting webpage] that uses different data from another source. We do not know the source or reasons for the disconnect between these two data sets.

[LSCL-F-7](#): Factors such as population growth and debris from disasters may drive up intake rates and thus shorten landfill life; factors such as recycling and waste diversion, plus emerging factors such as extended producer responsibility (EPR) incentives and climate crisis legislation, may drive down intake rates and thus lengthen landfill life.

### **Landfill Size: Capacity**

[LSCL-F-8](#): A significant portion of the permitted capacity in the quarry area (Cell 6) is currently unavailable due to unexcavated rock. Permitted space is the physical volume available for the placement of solid waste. Benton County approves the land use for the landfill's footprint. However, DEQ and the franchisee (Valley Landfills Inc.) approve the cell design determining the available physical volume. "Airspace" is the resulting volume left within the permitted space for solid waste disposal.

[LSCL-F-9](#): Landfill total capacity increased by approximately 9,000,000 cubic yards in 2003 with the addition of the West and East triangle areas. The addition of Cell 6 (in TBD) added approximately 13,400,000 cubic yards, for a total of approximately 35,500,000 cubic yards. The formal approval of Cell 6 as a disposal area has yet to be identified or confirmed. (Pending further review.)

[LSCL-F-10](#): Reported remaining airspace increased by over 6,000,000 Cubic Yards between 2003 and 2004. Since 2004, reported remaining airspace has decreased gradually, while total permitted airspace has remained somewhat constant. As of the end of 2021, approximately 44% of licensed capacity remained unused.

### **Landfill Size: Intake Tonnage**

[LSCL-F-11](#): The amount of waste placed into the landfill has grown dramatically over the past 40 years. In 1983, 375 tons per day were placed into the landfill (117,000 tons per year). By 1993, the tonnage volume increased to 310,000 tons per year. In 2003 550,000 tons were placed into the landfill. By 2013, the waste tonnage was 479,000, and in 2021, 1,046,000 tons were emplaced.

[LSCL-F-12](#): The official 2022 Coffin Butte annual intake tonnage is not available at the time of this report (February 2023). The size of the Host Fee payment to Benton County in January 2023 indicates a 2022 intake volume of 1,066,436 Tons. The actual tonnage figure should be updated after the receipt of the 2022 Coffin Butte Landfill Annual Report.

[LSCL-F-13](#): The 2000 Landfill Franchise Agreement stipulated that the County was to perform a “Baseline” study as a reference for measuring potential future adverse effects (completed in 2001) and defined a ramping intake tonnage threshold to be applied during the term of the agreement (CY2001-2019). Intake volumes in excess of this threshold granted the County clear right to pursue specific remedies: a) the County, at its expense, could perform an updated Baseline assessment, and b) if the County determined that the new assessment indicated an adverse impact on “the Baseline,” the agreement stipulated that “the parties shall immediately proceed in good faith to negotiate an increase in the Franchise Fee and/or Host Surcharge...”.

[LSCL-F-14](#): The 2000 intake tonnage threshold was exceeded in calendar years 2017, 2018, and 2019.

[LSCL-F-15](#): Washington County waste tonnage accepted at the landfill increased by over 400% between 2016-2017, with the increased tonnage continuing through 2019. Riverbend Landfill was a regional landfill that accepted waste from many counties, including Washington County. Tonnage from Riverbend was diverted to Coffin Butte in an effort to extend Riverbend’s site life.

[LSCL-F-16](#): Benton County did not utilize either of the contractual remedies available to it as a result of the intake tonnage exceeding the threshold in 2017-2019. No updated Baseline study was performed, and no renegotiation of the landfill fee structure was undertaken.

[LSCL-F-17](#): Benton County received approximately \$3.1M of incremental revenue from the increased intake volumes over the 2017-2019 period. Of this, approximately \$1.08M resulted from intake volume exceeding the annual limits over the three-year period. This equates to roughly \$11.50 total per Benton County resident for the three-year period.

[LSCL-F-18](#): In an official 2018 presentation to the Benton County Board of Commissioners, Benton County represented the 2000 Franchise Agreement intake threshold as “Annual Maximums Specified in Franchise Agreement.” However, the 2000 Franchise Agreement does not describe the tonnage threshold as a “limit” or “maximum” and does not limit the number of tons that can be accepted.

[LSCL-F-19](#): Both the 2000 Landfill Franchise Agreement and the 2020 Landfill Franchise Agreement include a section stating, “The parties acknowledge that there may be adverse effects to the County’s infrastructure and environmental conditions due to increased annual volumes of Solid Waste accepted at the Landfill.” In both agreements, this section of the agreement then stipulates terms regarding intake volumes.

[LSCL-F-20](#): The intake threshold defined in the 2000 Landfill Franchise Agreement and the Tonnage Cap defined in the 2020 Landfill Franchise Agreement were stipulated as contractual provisions, with consequences [reference other findings] explicitly defined in the 2000 agreement and implicit (violation of contract) consequences in the 2020 agreement.

[LSCL-F-21](#): The 2020 Landfill Franchise Agreement defined a 2020 Tonnage Cap of 1.1 M Tons/year that the Landfill "shall not exceed." That includes 75,000 tons reserved annually for Benton County. The Tonnage Cap does not apply to fire, flood, natural disaster, or Force Majeure event materials.

[LSCL-F-22](#): The 2020 Landfill Franchise Agreement also includes a provision that the tonnage cap would be eliminated upon a successful application to “expand the landfill onto the Expansion Parcel.”

[LSCL-F-23](#): Some residents near the landfill are concerned that the landfill will accept more waste than the allowed Tonnage Cap of 1.1M tons and are unsure if the 2020 Franchise Agreement’s enforcement mechanisms will do enough to prevent agreement violations.

[LSCL-F-24](#): The landfill operator generally chooses how much tonnage to accept based on demand and their contracts with various jurisdictions and haulers. Some of the increasing tonnage accepted at the landfill from 1993-2021 reflects the increase in business development.

[LSCL-F-25](#): The slow downward trend in intake volume in the 2006-2010 period is explained by the franchisee as resulting from the economic downturn of 2008.

[LSCL-F-26](#): Republic Services states that the drop in volumes to Coffin Butte in 2020 is due to the global COVID-19 pandemic, coupled with the diversion of tonnage from Riverbend Landfill to other landfills besides Coffin Butte. However, tonnage volumes increased again in 2021 due in part to changes in lifestyle/development/at-home shopping patterns due to the pandemic and debris from the Oregon wildfires.



[LSCL-F-27](#): A range of human factors have been seen to influence the landfill's intake rate and, therefore, its operating life in the past. These include business factors such as expansions or contractions of the Service Area, social factors such as recessions and population growth, and environmental factors such as recycling and other initiatives that divert materials from the wastestream.

[LSCL-F-28](#): More human factors are emerging that will influence the landfill's intake rate and, therefore, its operating life in the future. These include newly enacted state legislation assigning responsibility for disposal costs to waste material producers, new legislation addressing food waste, and national legislation being rolled out that targets methane and other greenhouse gas pollution.

[LSCL-F-29](#): A 2016 MOU between Benton County and Republic Services acknowledged that "Coffin Butte Landfill will be accepting municipal solid waste currently being delivered to Waste Management's Riverbend Landfill for a term of 1-2 years, beginning in January of 2017."

[LSCL-F-30](#): The 2016 MOU does not contain language preventing Benton County from exercising its rights under the 2000 Landfill Franchise Agreement (see Recommendations).

### **Specific Locations**

[LSCL-F-31](#): Valley Landfills Inc. anticipates it will no longer be able to place waste in Cell 5 by mid-year 2025. When Cell 5 is full, Republic Services is working on a contingency plan to deposit waste in the permitted area of the landfill known as the quarry known as Cell 6. Excavation of the primary quarry footprint is scheduled to begin in Spring 2023, with completion in Spring 2025.

[LSCL-F-32](#): Approval of the 1983 rezoning was recommended by SWAC and CAC on the condition that "No landfill be allowed on property south of Coffin Butte Road."

[LSCL-F-33](#): The recommended condition prohibiting landfill south of Coffin Butte Road was not included in the 1983 rezoning ordinance through a change recommended by Benton County Staff, in which Staff noted that any new disposal area would require approval of the Planning Commission in a public vote. The process for approving the landfill south of Coffin Butte Road was subsequently changed to "allowed by conditional use permit." This appears to be done via Ord. 90-0069 (BCC 77.305). This change was memorialized in the 2002 Memorandum of Understanding executed by Valley Landfills and Benton County.

### **Landfill Size: Footprint and Structure**

[LSCL-F-34](#): The 1983 rezoning action defined 194 acres as Landfill Size (LS) zone. An additional 56-acre parcel south of Coffin Butte Road, while zoned LS, would not be used for solid waste disposal unless approved by a conditional use permit and Department of Environmental Quality permit for solid waste landfill use. The site map attached to the 2002 MOU restricted “fill” activity to the north side of Coffin Butte Road.

[LSCL-F-35](#): Twenty-three tax lots are owned by landfill-affiliated entities. Six of these tax lots are zoned LS, and the 5 LS tax lots on the north side of Coffin Butte Road contain landfill cell disposal areas. The most recent tax lots associated with the landfill were purchased in 2001 (non-disposal areas).

[LSCL-F-36](#): The landfill has changed visually over time. Coffin Butte Landfill has changed visually since its designation as a regional landfill in 1974, growing in both height and size. However, the overall landfill acreage, most notably permitted airspace, hasn't changed significantly since 1983; it has filled in more of its footprint.

## **Key Recommendations:**

[LSCL-R-1](#): The Sustainable Materials Management Plan should further develop scenarios and factors that may impact the landfill lifespan, including detailed analyses of likely projections.

[LSCL-R-2](#): Benton County should create and share a plan to enforce all franchise agreements, including the 2020 Landfill Franchise Agreement Tonnage Cap.

[LSCL-R-3](#): Benton County shall conduct an updated Baseline Study to evaluate the impact of the current intake level at Coffin Butte. As with the 2001 Baseline Study stipulated in the 2000 Landfill Franchise Agreement, this study should determine and measure adverse effects, including but not limited to: traffic, soil conditions and contamination levels, air quality, surface and groundwater conditions and contamination levels, noise, odor, visual screenings, litter, hours of operation, solid waste control systems and compliance with all solid waste Permits. The county should then use this information to inform decision-making and financial choices regarding income from the landfill franchise.

[LSCL-R-4](#): The County should, as soon as possible, consider the public record of the deliberations leading to the execution of the 2020 Landfill Franchise Agreement to assess a) which party requested that the 2020 Tonnage Cap be eliminated if expansion was approved, b) if Benton County proposed the elimination of the 2020 Tonnage Cap, determine why this was done, c) determine the County's expectation for the benefit(s) to the County of accepting up to 1.1M Tons of waste per year when the County's reserve portion is approximately 6.8% of that amount, d) interpretation of the "Tonnage Cap," specifically relative to the 2020 Tonnage Cap, and e) expectations of both parties for future landfill site expansion, including any plans for multiple (repeated) future expansions. The county should then use this information to inform landfill-related decision-making.

[LSCL-R-5](#): Benton County should clarify and document the process for officially establishing Permitted Space, including any and all required Benton County actions and regulatory agency approvals (ODEQ, EPA, etc.).

[LSCL-R-6](#): The County should clarify when formal approval of Cell 6 as a disposal area was granted.

[LSCL-R-7](#): The Benton County Solid Waste Advisory Council (SWAC) should review all future Coffin Butte Annual Reports relative to past reports and official approvals, in particular about intake volume, landfill traffic volume (both Municipal Solid Waste and leachate transport), expected Landfill Life and EOL, and total and remaining Permitted Space. SWAC should report these findings to the BOC for consideration.

[LSCL-R-8](#): Benton County should secure information from Republic Services about the Annual Tonnage figures for presentation to SWAC/DSAC as soon as they are available and not wait to include them for the first time in the Annual Report.

## Legal Issues and Land Use Review Subcommittee

### 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.
- 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 “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-7.** 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.

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

**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 in the context of a specific application. In the criterion 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)], the term "seriously interfere" has generally been interpreted in Benton County land use decisions 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.** 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 may differ by particular effect—for example, the impact of noise might extend farther than visual impact (or vice versa).

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. Key factors that are 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)?

[Language in this finding needs fine-tuning.]

**LLU F-11.** 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 burden on public infrastructure and service is clearly “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 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 above, so long as the interpretation is plausible, the decision makers have wide discretion in interpreting the term “undue burden.”

**LLU F-12.** 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; therefore, no additional criteria apply.

**LLU F-13.** BCC 77.305 directs the Solid Waste Advisory Council (SWAC) to review and make recommendations 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, 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.** 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-15.** 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.

**LLU F-16.** 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.

- 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.

**LLU F-17** 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 determination of whether an application is complete.

**LLU F-18** 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.

**LLU F-19** 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. (Except for regulatory programs that DEQ formally delegates to a local government, such as with on-site sewage disposal regulation.) 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-20** 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.

**LLU F-21** 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 non-compliance of an existing land use condition could provide information that the Planning Commission considers in crafting 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 and that noncompliance is causing issues for surrounding land uses, noncompliance of the original land use is not in itself grounds to deny the new application. However, the decision-maker could potentially look at the existing noncompliance, consider whether that noncompliance is causing the existing land use to "seriously interfere" with uses on surrounding properties, and consider that as evidence toward determining 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.]



## Key Recommendations:

- LLU R-1.** Consistent with SWAC's bylaws and Chapter 23 of the County Code, 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 those criteria.
- 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.
- LLU R-5.** If the County provides an opportunity for public input into the determination of application completeness, the information provided to the public 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 testimony on the merits of the application.

**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-5 and F-20b, 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 the County decision-makers 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 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?

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## Compliance with Past Land Use Actions Subcommittee

### Key Findings:

*A review of the extensive number of land use decisions and associated conditions of approval reveals some overarching key findings about how land use decisions for the landfill, the quarry, power generation, and associated uses are implemented in Benton County.*

- CUP F-1** All County materials reviewed reflect historical information and/or decisions from public processes (e.g., meetings, hearings, advertisement notices, etc.) based on public input and approval by appropriately authorized public planning boards.
- CUP F-2** For over 50 years, Conditional Use Approvals have been the basis for the public's understanding of many aspects of the landfill, including but not limited to: hours of operation, management of noise, screening of the site from view, how the site should look, and how the site can be used after the landfill is closed.
- CUP F-3** Reports are required to be submitted and maintained for the public record. An extensive review of the existing records was not conducted due to time constraints.
- CUP F-4** Compliance with Conditions of Approval often involves a direction from the County that the Applicant should obtain permits from other entities such as, but not limited to, state agencies.
- CUP F-5** Benton County has not and does not actively monitor compliance with many conditions of approval, nor does it proactively act to enforce compliance.
- CUP F-6** Benton County relies on complaints to initiate action to enforce conditions of approval for the landfill.
- CUP F-7** Benton County did not and does not have a readily accessible, transparent complaint tracking system known to the public in place to receive and record land use complaints for documentation, investigation, and resolution.
- CUP F-8** In assessing the status of compliance with past land use documents, there are numerous instances where supporting evidence may not or is not available in County records.
- CUP F-9** Benton County does not review reports and other submitted materials as required per conditions of approval. Examples include: copies of water quality and air quality permits, emergency plans, permit submittals, financial assurance statements, etc., and data produced from associated monitoring programs required of the applicant by the Oregon Department of Environmental Quality or other governmental agencies.
- CUP F-10** When Benton County issued the land use approvals before the applicant was granted necessary operating permits from multiple State agencies, the County

advised the applicant that those permits were required but did not check that those required permits were procured by the applicant, except the DEQ permits.

**CUP F-11** The subcommittee did not reach a consensus on whether the Site Plan and Narrative included in the applicant submittals for PC 83-07/L-83-07 are regulatory such that they require compliance. The public members believe they are enforceable. The County and Republic members believe they are not enforceable. A detailed analysis of these positions can be found at XXXXXXXXXXXX and XXXXXXXXXXXX.

**CUP F-12** [Pending] The subcommittee did not reach a consensus on the applicability and the authority of the 2002 MOU found XXXXXX and how they may affect conditions of approval pre-2002. (**Republic** believes the Site Plan and Narrative are not regulatory conditions by their terms and could not have been imposed as conditions because they were not created or submitted until after the Board of Commissioners made the final decision approving the expansion. Regardless, such conditions are rendered moot by subsequent modifications and the 2002 Memorandum of Understanding. The **public members** believe the Site Plan and Narrative are regulatory conditions that require compliance. This was addressed during the CUP review process. See 83-07 analysis and supporting documents shared with the members and BCTT on December 9, 2022, and Legal Subcommittee members on 5 January 2023. The relevance of the 2002 MOU remains in dispute.)

**CUP F-13** [Pending] Generally, DEQ has jurisdiction over many environmental impacts, and the County has jurisdiction over the land use impacts. The line between “environmental impact” and “land use” is not always clear and may lead to conflicting perceptions of what is to be done. The subcommittee did not reach a consensus on this matter. For example, as a remedy for groundwater contamination at the site, DEQ requires the purchase of land to limit the public’s exposure to contaminated water (RCRA Corrective Action decision), which may or may not adversely impact neighboring County approved land uses. In another situation, the County publicly agreed to limitations on the appearance and uses of the closed landfill, but these are not reflected in Republic’s current DEQ-required site closure plans. These plans are the basis of DEQ’s required Financial Assurance filing that would fund the landfill’s closure if Republic could not do so. The DEQ-required plan and Financial Assurance from Republic must address County land use requirements to adequately fund the site’s reclamation. (**Republic** states this is an allocation of resources question for the County, and the County would have to treat the landfill consistently with other industrial, agricultural, and forestry operations that can have similar or great impacts. This would require significant analysis before implementation to avoid negative or unintended consequences.)

- CUP F-14** [Pending] There is a public burden associated with leachate from the landfill site on traffic safety, road maintenance, public wastewater treatment plants (Corvallis, Salem), and the Willamette River (water quality, sediments, wildlife, etc.).
- CUP F-15** Currently, it is not clear to the public what appropriate reclamation will look like for the ultimate disposition of the landfill. (**Public Members** recommend the County communicate to the public DEQ's minimum reclamation requirements (Closure and Post-Closure Care) and work with Republic to implement a reclamation approach acceptable to the community. Benton County and Republic are not limited to agreeing to a reclamation plan that exceeds minimum standards. **Republic** disagrees, noting that the reclamation plan's regulation and enforcement are under DEQ's exclusive jurisdiction. This should be part of the long-term materials management plan; it is irrelevant to past or future land actions.)
- CUP F-16** [Pending] A determination as to whether the public burden associated with the acquisition of buffer land (a condition of DEQ's RCRA Corrective Measures for the landfill by landfill-related entities) is consistent with Vision 2040 and the impact on housing, forestry, and agricultural land uses has not been made. (**Republic** notes the County has no authority to regulate a private party's acquisition of real property. Ownership changes do not affect the lawful/required uses of property under the applicable land use regulations.)
- CUP F-17** [Pending] Documentation for a required submittal of a Fire Response Plan for the power generation facility was not found in the land use records.
- CUP F-18** [Pending] Odor issues do not seem to be mentioned in any of the conditions. (**Republic** notes DEQ responds to and enforces odor complaints.)
- CUP F-19** [Pending] It is difficult for people other than the county staff to understand what conditions must be completed before final approval and which conditions carry over through the life of the use.

#### **Key Recommendations:**

- CUP R-1** Benton County should actively monitor and enforce prior land use decision conditions of approval for the landfill or any other land use decision.
- CUP R-2** Establish and widely advertise a County process for receiving, tracking, and resolving complaints. It should include an appeals process beyond communicating with the Board in the normal course of its business.
- CUP R-3** [Pending] Ensure that all documents involved in a land use application and all documentation required to be submitted by a condition of approval are acquired and placed in the relevant file for that land use application.

- CUP R-4** Create a system that tracks Benton County receipt of reports that are submitted as required per Conditions of Approval (E.g., copies of water quality and air quality permits, emergency plans, permit submittals, financial assurance statements, etc., and data produced from associated monitoring programs, required of the applicant by the Oregon Department of Environmental Quality or other governmental agencies.
- CUP R-5** Determine if the Site Plan and Narrative included in the applicant submittals for PC-83-07/L-83-07 were regulatory conditions the landfill was required to follow. Currently, there is a difference of opinion as to whether they are regulatory. Either way, a determination should be made on these requirements moving forward.
- CUP R-6** [Pending] Determine the applicability and authority of the 2002 MOU as it relates to pre-2002 conditions of approval.
- CUP R-7** Clarify the intersecting roles between the County and DEQ in future CUP actions. The line between "environmental" and "land use" impacts may not be clear.
- CUP R-8** Consider a program for compliance confirmation for facilities contributing to environmental burdens on the County, such as a landfill, industrial-scale composting, or direct dischargers to water bodies within the county, etc.
- CUP R-9** Consider the public burden of leachate from the landfill site on traffic safety, road maintenance, public wastewater treatment plants (Corvallis, Salem), and the Willamette River (water quality, sediments, wildlife, etc.) in future assessments of the impact of landfilling in Benton County.
- CUP R-10** Clarify and communicate to the public what appropriate reclamation will look like to appropriately manage community expectations for the ultimate disposition of the landfill.
- CUP R-11** Evaluate the public burden of acquiring buffer land – a condition of DEQ's RCRA Corrective Measures for the landfill - by landfill-related entities is consistent with Vision 2040 and the impact on housing, forestry, and agricultural land uses.
- CUP R-12** Assess the landfill's emergency water supply plan to establish if the applicant is in compliance with this 1997 power plant condition.
- CUP R-13** Develop an adequate emergency preparedness/response plan with neighboring counties given the lessons learned from the nationally reported 1999 landfill fill fire and emergency services available to address new fire situations regardless of location.
- CUP R-14** There should be further discussion on how to address odor issues in the context of DEQ's then-existing program.
- CUP R-15** Future conditional use permit conditions of approval and decisions should clearly convey the basis of approval and completion.

**CUP R-16** Improve land use terminology for what an applicant is required to do to be considered in compliance with preliminary and operational Conditions of Approval.

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## Community Education & Outreach E.1. Subcommittee

### Key Findings

*Public engagement needs to be widened and become more inclusive. This is most likely to be achieved through the following measures:*

- CEO F-1** Insure language accessibility for at least the County's most used languages. (English, Spanish, Mandarin, and Cantonese)
- CEO F-2** Use methods that help underserved target populations, particularly youth and low-income demographics.
- a. This can be achieved through more SMS communication and ensuring all websites and surveys are mobile-friendly.
  - b. Increase social media communication and expand to more platforms. (Reddit, TikTok, Sub-Reddit, etc.)
  - c. Utilize social media advertising.
- CEO F-3** Use outreach methods that do not require people to be pre-signed up or self-selected. This includes, but is not limited to, flyers in public spaces, paid advertising on social media, in newspapers, and on the radio, informational mailers, and other resources.)
- CEO F-4** Create user-friendly access to public input documents and testimonies during the process to ensure Benton County, Planning Commission, SWAC, and others.

### Key Recommendations

*County Development Department and county PIO are responsible for communication and outreach. Maps displaying the different radii referenced in the following recommendations can be found in Appendix C:5 with the full CEO report and linked [here](#).*

- CEO R-1** Notifications for Board Hearings on the report should include a postcard, an email blast, a newspaper notification, and social media posts and advertisements. The postcards should be sent to everyone in a 10- or 15-Mile radius, and notifications should be sent 24 hours after the board hearing is scheduled.
- CEO R-2** Notifications for CUP filings should include a postcard, email blast, newspaper notification, and social media posts and advertisements. Postcards should be sent to everyone within a 10- or 15-Mile radius, and notifications need to begin immediately after initiating the CUP filing.

- CEO R-3** Notifications for the BCTT Report completion should include an email blast to the Interested Parties List, Organic Subscribers, those who spoke at the meetings, the Soap Creek Neighbors Group, and other landfill neighbors. Notifications should also include a possible postcard to the entire county with a link to go to and/or scan to get on a list to be informed of further updates and/or have an open house event/public informational meeting. It should be on a weekend during the day so that most people can attend, and the link and email list should be readily available. A 10-Mile radius is proposed, and notifications should be sent 72 hours after the report is finished.
- CEO R-4** Notifications for the BCTT Survey for public input on the Workgroup Report should include an email blast, website post, and displays or presentations where people already spend time (i.e., Library, community events). Notifications should include a 10-Mile radius and should go out ideally a month before the survey closes.
- CEO R-5** Notification of CUP completion will include a postcard, email blast, newspaper notification, and social media posts and advertisements. They should be sent to the entire county and occur 24 hours after completion.
- CEO R-6** Notifications for Franchise Agreements should include a postcard, email blast, newspaper notification, and social media posts and advertisements. Postcards should be sent to the entire County. Notifications need to begin no later than 24 hours after the agreement.
- CEO R-7** Notifications for Planning Commission Meetings should include website posts and email blasts to interested groups and people already on the existing email list. The notifications should be sent no later than two weeks before the meeting.
- CEO R-8** Notifications for SWAC Meetings should include website posts and email blasts to interested groups and people already on the existing email list. The notifications should be sent one to two weeks before the meeting.