

Section A: Sustainable Materials Management Plan (SMMP)

INTRODUCTION

Benton County is seeking to develop a first ever Sustainable Materials Management Plan (SMMP) to help guide decisions and policies for the future of solid waste and disposal consistent with Benton County values. Historically, the County has not had the benefit of such a plan. The main theme of the subcommittee's findings and recommendations are that an SMMP should help transition and re-focus from linear, end-of-life waste management to more holistic, systemic, circular approaches for all materials. The many positive impacts of this transition include:

- Efficiencies of full life cycle/cradle-to-cradle sustainable material management.
- Cost savings and other benefits from waste reduction
- Creating opportunities for efficient circular economies both locally *and regionally*
- Better inclusion of equity and shared prosperity in waste considerations
- Recognizing and encouraging innovation in the materials stream

Traditionally, Benton County has managed waste materials with an end-of-life approach – largely by landfilling them locally in Coffin Butte Landfill, and by recovery, recycling, and composting. This has presented challenges, which include, but are not limited to, the landfill's limitations environmentally and economically. The SMMP Subcommittee sought to chart the expectations and aspirations for a longer-range vision to guide the County towards more sustainable materials management. Our report advises the County on the parameters for a Request For Proposals (RFP) that would bring in consultants to develop a Plan that enables the County to achieve that longer-range vision.

Based on the magnitude of ideas and possibilities we encountered, the SMMP could usher in a paradigm shift in how we view and interact with the materials we use in our everyday lives. In addition to Findings and Recommendations, this section includes a list of Questions that consultants and the County can use to frame the thinking about this new paradigm, its benefits, and the practical paths to get there.

The subcommittee was tasked to develop a “table of contents” outlining subjects that should be covered in an SMMP. The group started by looking at examples of Solid Waste Management Plan (SWMP) documents from other Oregon counties, and by listing, reviewing, and comparing the topics covered in each. The group was able to add to and edit that list, creating a “table of contents” of topics to cover in a future SMMP, as well as an associated list of questions for the SMMP to answer. This overarching sustainable materials management approach evaluates impacts across the full life cycle of materials and weighs the costs and benefits in the decision-making process.

The Subcommittee also reviewed Benton County's 2040 Thriving Communities Initiative, as well as the values and goals expressed in other planning documents, to develop an overarching framework for developing an appropriate SMMP for Benton County.

The more recent subcommittee work focused on future next steps and recommendations for the RFP process, including contracting out, workplan and timeline, and who should “at the table” in future discussions. The Subcommittee included lessons learned from outside of

Benton County, including information and lessons from neighboring counties' presentations to the full work group.

SUBCOMMITTEE [WEBPAGE LINK](#)

SUBCOMMITTEE CHARGE

Long Term Sustainable Materials Management Plan (SMMP) tasks:

- 1) Contracting out;
- 2) Subjects to be covered;
- 3) (Moved from Common Understandings) Benefit-Cost Topics are only Outlined;
- 4) (New) Add in Vision 2040 and related County documents with similar from other counties referenced;
- 5) Who needs to be at the table beyond those in the County;
- 6) A workplan outline with a timeline for completion;
- 7) Topics covered in recent similar planning efforts across the state; and
- 8) What "lessons learned" should be brought forward in this process. Includes necessary foundational "common understandings" and protocols needed before beginning the actual planning process.

NOTE: This charge does not include completing the plan. It only includes a discussion of the preliminary scoping to start that planning process.

If there is sufficient time to complete the original Charge and the following activities, subcommittee to provide recommendations on:

1. the most important topics/subjects from the draft of the SWMP Table of Contents;
2. brainstormed options for those topics/subjects; and
3. the reasoning, both pro and con, for their selection.

SUBCOMMITTEE MEMBERS AT END OF PROCESS

Brian May
Daniel Redick
John Deuel
Ken Eklund
Marge Popp
Ryan McAlister
Sean McGuire
County Staff: Daniel Redick

The **SUBCOMMITTEE'S REPORT** can be found linked [HERE](#) and in Appendix C.

The **SUBCOMMITTEE'S "MEETING NOTES"** can be found linked [HERE](#).

KEY FINDINGS AND KEY RECOMMENDATIONS

This section lists Key Findings and Key Recommendations from the full subcommittee report below. These key findings and key recommendations do not capture the comprehensive discussions of the subcommittee, nor are they intended to do so. Instead, these provide a summary overview of key observations. The link adjacent to each Key Finding and Key

Recommendation provides access to the full report. These summaries encourage readers to follow the links to find detailed content under in the full subcommittee report.

Key Findings:

#	Finding	Formal Workgroup Polling		
		1's	2's	3's
<u>SMMP F-1</u>	Many Sustainable Materials Management Plans (SMMP) and related Request For Proposals (RFP)s have been formulated, executed, and are in use in Oregon and beyond.	11	1	0
<u>SMMP F-2</u>	The charges of the SMMP Subcommittee are intimately related to and should be embodied when scoping the necessary tasks to start a Long-Term Sustainable Materials Management Plan process.	11	1	0
<u>SMMP F-3</u>	Contracting-out processes often include a Technical Advisory Committee (TAC), which vet technical information in the RFP, and a Community Advisory Committee (CAC), which review the RFP from the community perspective. Institutions of higher learning, including Oregon State University has a large population of faculty, faculty emeriti, staff and students that are subject matter experts in many of the technical areas that the SMMP will address.	12	0	0
<u>SMMP F-4</u>	The overall length of the project can be heavily impacted and defined by the level of public interaction/engagement included in the project. The consultant may help define the scope of public engagement, including engagement in rural areas of the county and in communities outside the county.	10	2	0
<u>SMMP F-5</u>	There are aspects of the work to be performed that are technical in nature or lend themselves toward extensive research, that the consultant may conduct at the same time as public engagement. To expedite the process, certain procedural elements can be done concurrently. The timeline can generally be defined throughout the process.	11	1	0
<u>SMMP F-6</u>	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 that of all the materials from neighboring counties, as Benton County's waste contribution to the landfill is	10	2	0

relatively small. SMMPs are not specifically about landfills, but about materials management across the full lifecycle of materials, including addressing impacts from production, transportation, use, reuse, recovery, and disposal.

SMMP F-7

Benton County has limited control over the waste management practices of the counties that emplace the vast majority of the annual landfill waste intake, and the volume of waste material they haul to Coffin Butte Landfill, however, the county and its infrastructure 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).

SMMP F-8

The 2040 Thriving Communities Initiative identified our communities' Core Values and has been adopted by Benton County government which is used as a benchmark or lens for initiatives such as the Benton County SMMP.

9	3	0
10	1	0

Key Recommendations:

#	Recommendation	Formal Workgroup Polling		
		1's	2's	3's
<u>SMMP R-1</u>	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 (DEQ's Materials Management in Oregon 2020 Framework for Action), 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).	10	3	0
<u>SMMP R-2</u>	Benton County should use the 2040 Thriving Communities Initiative as a high-level lens to frame our communities' Core Values in developing the SMMP.	12	0	0

<u>SMMP R-3</u>	The SMMP should not just be about how Benton County can better manage materials, but to also address how to approach inter-county collaboration from a regional perspective. The RFP should 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 have the capability to address this need.	10	2	0
<u>SMMP R-4</u>	Counties impacting Benton County through their materials management practices (including by contributing materials to Coffin Butte Landfill) should have an SMMP in place. The SMMP should have a perspective on how to strategize this.	10	3	0
<u>SMMP R-5</u>	SMMP content should incorporate the sustainability of materials management strategies/tactics. The result of the process should give us a method of measuring costs and benefits to evaluate the impact on economic, social, and environmental indicators. Specific goals should be included of how materials in Benton County can fit within a circular economy, cradle-to-cradle, or similar framework.	12	0	0
<u>SMMP R-6</u>	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.	12	0	0
<u>SMMP R-7</u>	Bring “lessons learned” into the process from other sources, including international examples as well as other counties, lessons from past Benton County experiences, and West Coast states. See full report for more sources.	11	1	0
<u>SMMP R-8</u>	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 government, 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	10	2	0

stakeholders from the “who should be at the table” list. These stakeholders should represent a broader area than Benton County.

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 subcommittee researched other jurisdiction’s plans, compared and aggregated a list of subjects, and the SMMP should evaluate and address the subjects listed in the full subcommittee report, answering the 117 questions listed as RFP priorities allow, and include recommended courses of action.

SMMP R-11 Recruitment for the RFP needs to be extensive, and selection of 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. Benton County’s Advisory Committees related to SMMP work should have an advisory role during the development of the plan.

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).

11	0	0
11	2	0
11	1	0
12	0	0
12	0	0
11	1	0
11	1	0
12	0	0

<u>SMMP R-17</u>	The RFP should demonstrate flexibility in allowing further work plan development after applications are reviewed and accepted.	10	1	0
<u>SMMP R-18</u>	The SMMP Timeline should allow for extensive public interaction and engagement. In order to expedite the process, procedural elements should be done concurrently as possible. The timeline should generally be defined throughout the process.	10	2	0
<u>SMMP R-19</u>	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.	12	0	0
<u>SMMP R-20</u>	It's important that the SMMP process include extensive public outreach and engagement. In addition, a Technical Advisory Committee (TAC) should vet the consultant's technical work (SMMP development) and a Community Advisory Committee (CAC) to provide more general review. SMMP Sub-Committee members should be included in the CAC. The TAC should include subject matter experts from Oregon State University, and other regional academic institutions. Many of the subject areas of central importance to the SMMP are characterized by fast-moving science, and a SAC could help the SMMP consultant to navigate to the best available data and knowledge.	11	2	0
<u>SMMP R-21</u>	Proposals contain the following information, with parameters around each of these items in terms of document length. Requested information includes project team experience and qualifications, understanding of the project, approach to the scope of work, cost of the proposal, the project schedule, social/environmental responsibility, and references. Each criteria includes a total set of points the proposal can be awarded. See full report for more information.	10	2	0
<u>SMMP R-22</u>	An evaluation team consisting of County staff and members of the stakeholder group should determine the best proposal deemed most qualified based on the above criteria.	11	1	0
<u>SMMP R-23</u>	The SMMP should emphasize impacts of the results of the RFP on social equity, innovation, to understand and emphasize the upstream aspects of material sustainability, and creative solutions that provide pathways for tangible long-term outcomes.	10	2	0

<u>SMMP R-24</u>	The workplan should include ongoing adaptive management and refinement and include 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 additional presentation. The committee then evaluates proposals, selects a consultant, and develops a workplan with selected consultant. See full report for more information.	10	2	0
<u>SMMP R-25</u>	The County should evaluate if it would be in their best interest to have an SMMP in place prior to any major materials management decisions.	13	0	0
<u>SMMP R-26</u>	The county should consider using alternative funding mechanisms, including landfill revenue, to support the SMMP recommendations.	13	0	0
<u>SMMP R-27</u>	A complete materials audit is highly recommended as both a benchmark and a way to measure progress. Benton County should initiate a Waste Audit to characterize more precisely what is in the waste stream of Coffin Butte Landfill. The SMMP consultant can use this audit information when formulating this plan, and there is no up-to-date information specific to the landfill currently available. The benchmark audit should be completed as soon as possible, along with recommendations for follow up audits.	10	2	0
<u>SMMP R-28</u>	The SMMP should evaluate the costs, benefits, risks, and opportunities of a wide range of materials management strategies to find the most sustainable future for Benton County. The successful applicant should present a complete benefit-cost analysis of a wide range of strategies that work as a more integrated system, including but not limited to, the benefit-costs analysis of Benton County acting as the host of a regional landfill that contributes a small portion of the total waste the landfill receives. This analysis should include key parameters of Coffin Butte landfill, such as its operating life, its large intake from outside the county, its franchise fees, and its long-term environmental risks and costs.	11	2	0

CONCLUSION

A modern, long-term SMMP that reflects the unique needs and values of Benton County, the Willamette Valley, and Oregon will serve the County, its residents and the state now and into the future. Acknowledging the long-term nature of such a plan, the SMMP should be adaptable to new technologies while aligning with clearly stated County and Statewide goals.

Benton County should not rush the selection process or solicitation process – selecting a partner team whose core values and vision align with what has been assembled will be a key component to getting the best outcome in the process of developing a long-term SMMP.



Section B: Landfill Size/Capacity/Longevity

INTRODUCTION

The landfill size/capacity/longevity subcommittee aimed to research and compile factual information about the landfill as it relates to the group's charge. One of the primary interests of the group was to communicate accurate information about the landfill's estimated end-of-life and capacity, which resulted in estimates provided by Republic Services staff, as well as other information about how the estimated life span of the landfill can change depending on various additional factors and scenarios not included as assumptions in Republic Services' estimate. The subcommittee's report includes information about the landfill's size over time, including annual tonnage accepted, landfill volume, and the landfill's geographic footprint. The report also includes information about specific locations at the landfill which relate to the capacity, including the status of the current active cell, the future disposal area currently occupied by the quarry operation, the landfill site zoning designation, and areas approved for disposal.

Supporting data researched and compiled by the group includes historical end-of-life projections, and annual intake tonnage over time. Some information about the landfill was not available for the group to review, a challenge most prevalent with the lack of information available about the landfill prior to 1974. The following Key Findings and Key Recommendations are based on the information compiled in the subcommittee's report, as well as the subcommittee's discussions in each of the topic areas.

SUBCOMMITTEE [WEBPAGE LINK](#)

SUBCOMMITTEE CHARGE

A chronological history of key Coffin Butte Landfill topics:

1. Size
2. Specific locations
3. Assumptions (e.g., when will the landfill close?)

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Key Findings:

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

#	Finding	Formal Workgroup Polling		
		1's	2's	3's
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 an area of Landfill Site zoned property in the northeast corner of the site for waste placement stability engineering. This area was removed from the landfill's site development plan based on updated state seismic guidance for landfill stability.	13	0	0
LSCL F-2	In 2013 EOL was projected to be 2053-2062, with a Landfill Life estimate of 40-49 years ⁶³ . Ten years later EOL is projected to be 2037-2039 with a Landfill Life of 14-16 years, a lower and upper range reduction of approximately 16 and 23 years respectively.	13	0	0
LSCL F-3	Current (1Q2023) estimate for landfill EOL = CY 2037 – 2039, with a landfill life estimate of 14-16 years, based on an annual intake level of 1.0 – 1.1 MTons/year and a density of 0.999 Tons/yd ³ , 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 modeling process that is standard in the landfill industry. Valley Landfills, Inc. acknowledges that a variety of factors, including human factors, can impact	13	0	0

⁶³ 2013 Coffin Butte Landfill and Pacific Region Compost Annual Report

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 is a registered engineer of record stamped and dated plan set which includes but not limited to a projected a 2039 EOL based on an annual intake of approximately 846,000 Tons/year, but this intake tonnage is not considered binding or controlling by either ODEQ or Valley Landfills, Inc. This is based on the best information available at time of approval by Oregon DEQ, which can change based upon 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 the extension of 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. Republic Services said it was unlikely such a scenario would occur, due to operational limitations at the Landfill and in the Service Area [could not reach consensus].

Nonetheless, transitioning from the current linear landfill economy to a circular economy landfill can potentially extend the life of a landfill. This is because a circular economy landfill is designed to minimize the amount of waste sent to the landfill and extract value from the materials that are discarded. By recovering valuable materials through recycling, composting, and other forms of recovery, a circular economy landfill reduces the volume of waste that needs to be disposed of in the landfill. This, in turn, reduces the rate at which the landfill is filled up, which can extend its lifespan with or without tonnage cap limitation.

Notwithstanding, a landfill tonnage cap is a regulatory limit on the amount of waste that can be disposed of in a landfill over a certain period of time. The tonnage cap is typically set by the local or state government and is intended to prevent the landfill from becoming overfilled and causing environmental or problems such as contamination of groundwater, soil, air, or demand

11	2	0
6	6	0

and supply equilibrium problems, while transitioning to a circular economy.

LSCL F-6

For purposes of 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 its greenhouse gas reporting webpage that uses different data from another source.

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.

LSCL F-8

Landfill Life (longevity) is the availability of the landfill reserve resources and landfill ancillary resources that currently operates the landfill’s demand, supply and equilibrium of refuse disposal in a linear economy model.

LSCL F-9

The subcommittee identified these factors that could impact usable landfill airspace: Landfill expansion(s) and associated removal of tonnage cap; the quarry excavation schedule; water table concerns; disasters that happen to the landfill itself.

LSCL F-10

The subcommittee identified many factors that could impact the landfill’s annual tonnage, i.e., the rate at which its usable volume fills up. These included: exceedance of the tonnage cap; recession(s); economic growth; structural and societal reductions in waste generation; disposal alternatives; transportation alternatives; global health issues such as pandemics; climate change and other environmental legislation concerning methane and other greenhouse gases; climate change and other environmental legislation concerning the reduction of waste and pollution in landfilled material; state and local legislation upgrading waste diversion efforts; environmental activism, especially about the climate crisis; wildfires and other disasters that generate debris for landfilling; service area changes; changes in population in the service area.

LSCL F-11

Recognizing that the question “What factors could make the landfill close earlier than the Baseline Scenarios (by 2037–39)?” is of particular importance to this report’s readers, the subcommittee has prepared a table that

12	0	0
12	1	0
12	1	0
9	4	0
13	0	0
11	1	0

contains background information about each factor and proposes questions for the County and the SMMP to answer. This information can be found in Table 4.

LSCL F-12

Landfills are known to be major emitters of methane, but previously these emissions have typically been estimated through mathematical modeling, because the emissions themselves were hard to measure directly. The methane emissions from Coffin Butte Landfill have not been well-characterized, so the possible effects of methane-reducing legislation on the landfill’s waste intake rates are also hard to characterize.

LSCL F-13

One proven way to reduce a landfill’s greenhouse gas emissions is to divert organic material. Landfill gas collection systems are another tool to lessen the greenhouse gas impact but do not remediate it. In 2019 the Oregon DEQ estimated that Coffin Butte Landfill’s controls (engine/generators with backup flare) collected 57% (<https://downloads.regulations.gov/EPA-R10-OAR-2019-0640-0011/content.pdf>). Republic Services provided data to Oregon DEQ for inclusion in EPA’s 2021 Greenhouse Gas report that estimated the Landfill’s gas collection system had an efficiency of 91.2 percent. (Reference: <https://ghgdata.epa.gov/ghgp/service/html/2021?id=1007054&et=undefined>)

LSCL F-14

The impetus to curtail methane emissions is focusing attention on ways to divert organic waste from landfill wastestreams. The 2023 Food Donation Improvement Act, for example, enables existing food donation organizations to expand operations and incentivizes the creation of new methods and innovations in preventing food waste, both to stop wasting a valuable resource and to reduce methane emissions.

10	3	0
11	1	0
13	0	0

Landfill Size: Capacity

#	Finding	Formal Workgroup Polling		
		1’s	2’s	3’s
<u>LSCL F-15</u>	A significant portion of the permitted airspace in the quarry area (also known as Cell 6) is currently unavailable for waste disposal due to unexcavated rock. As with other cells at Coffin Butte, permitted airspace is ultimately the result of two separate decisions by two	13	0	0

	separate entities. Benton County approves the land use for the landfill's footprint, while DEQ and the franchisee (Valley Landfills Inc.), approve the cell design that determines the physical volume available.			
LSCL F-16	The addition of Cell 6 added approximately 13,400,000 cubic yards of airspace. The Landfill total capacity increased by approximately 9,000,000 cubic yards in 2003 with the addition of the West and East triangle areas for a total of approximately 35,500,000 cubic yards. Since 2004, reported remaining airspace has decreased gradually, while total permitted airspace has remained remaining somewhat constant. As of end 2021 approximately 44% of permitted capacity remained unused. [See also LSCL F-17]	12	0	0
LSCL F-17	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 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 of 2023 with completion in Spring 2025.	11	2	0

Landfill Size: Intake Tonnage

#	Finding	Formal Workgroup Polling		
		1's	2's	3's
LSCL F-18	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. In 2013, the waste tonnage was 479,000, and in 2021, 1,046,000 tons were placed into the landfill.	12	1	0
LSCL F-19	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. Actual tonnage should be updated upon receipt of the 2022 Coffin Butte Landfill Annual Report.	12	1	0
LSCL F-20	The 2000 Landfill Franchise Agreement stipulated that the County was to perform a "Baseline" study as a	12	0	0

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-21

The 2000 intake tonnage threshold was exceeded in calendar years 2017, 2018 and 2019.

LSCL F-22

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. Riverbend’s owner/operator diverted tonnage to Coffin Butte in an effort to extend Riverbend’s site life.

LSCL F-23

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-24

Benton County received approximately \$3.1M of incremental revenue from the increased intake volumes over the 2017-2019 period. Of this, approximately \$1.08M was the result of intake volume in excess of 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-25

In an official 2018 presentation to 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-26

Both the 2000 Landfill Franchise Agreement and the 2020 Landfill Franchise Agreement include a section

12	0	0
12	0	0
12	0	0
11	0	0
12	0	0
12	0	0

stating that “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-27 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 explicitly defined in the 2000 agreement and implicit (violation of contract) consequences in the 2020 agreement.

LSCL F-28 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-29 The 2020 Landfill Franchise Agreement also includes a provision that the tonnage cap would be eliminated upon governmental approval of an application to “expand the landfill onto the Expansion Parcel.”

LSCL F-30 It is unclear if the 2020 Franchise Agreement’s enforcement mechanisms are strong enough to prevent agreement violation or if the County will pursue the options at its disposal.

LSCL F-31 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 reflect the increase in business development.

LSCL F-32 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-33 Republic Services states that the drop in volumes to Coffin Butte in 2020 is due to the global COVID-19 pandemic, coupled with 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 as a result of the pandemic, as well as debris from the Oregon wildfires.

11	1	0
10	2	0
12	0	0
12	0	0
12	0	0
12	0	0
12	0	0

LSCL F-34	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 out of the waste stream.	12	0	0
LSCL F-35	More human factors are emerging that could 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 the producers of waste material, newly enacted national legislation addressing food waste, and national legislation being rolled out that targets methane and other greenhouse gas pollution.	12	0	0
LSCL F-36	A 2016 MOU between Benton County and Republic Services acknowledged “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.”	12	0	0
LSCL F-37	The 2016 MOU does not contain language preventing Benton County from exercising its rights under the 2000 Landfill Franchise Agreement (see Recommendations).	12	0	0

Specific Locations

#	Finding	Formal Workgroup Polling		
		1’s	2’s	3’s
LSCL F-38	Approval of the 1983 rezoning was recommended by SWAC and CAC with on the condition that “No landfill be allowed on property south of Coffin Butte Road.”	12	0	0
LSCL F-39	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 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	11	1	0

Understanding executed by Valley Landfills and Benton County.

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Landfill Size: Footprint and Structure

#	Finding	Formal Workgroup Polling		
		1's	2's	3's
LSCL F-40	The 1983 rezoning action defined 194 acres as Landfill Size (LS) zone. An additional 59-acre parcel south of Coffin Butte Road, while zoned LS, would not be used for disposal of solid waste 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.	11	0	0
LSCL F-41	Twenty-three tax lots are owned by landfill-affiliated entities. Six of these tax lots are zoned LS, and the five 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).	11	1	0
LSCL F-42	The workgroup took two polls on various versions of this finding, and the results appear below: Version 1: The landfill has developed visually over time in accordance with site development plans. Coffin Butte Landfill has changed visually since it’s designation as a regional landfill in 1974, growing in both height and size, and visual appearance. However, the overall landfill acreage has not changed significantly since 1983; it has filled in more of its footprint.	7	1	2
	Version 2: The landfill has developed visually over time in accordance with site development plans. Coffin Butte Landfill has changed visually since it’s designation as a regional landfill in 1974, growing in both height and size, and visual appearance. However, the overall landfill acreage has not changed significantly since 1983; it has filled in more of its footprint.	8	1	2

Key Recommendations:

#	Recommendation	Formal Workgroup Polling

		1's	2's	3's
<u>LSCL R-1</u>	The Sustainable Materials Management Plan should further develop scenarios and factors that may impact the landfill lifespan, including detailed analyses of likely projections. The Commissioners and County staff should keep the questions about these factors and their effects in mind when making decisions affecting the landfill.	11	2	0
<u>LSCL R-2</u>	Benton County should create and share a plan for the enforcement of all franchise agreements.	11	1	0
<u>LSCL R-3</u>	Benton County should contract for 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 new study should determine and measure adverse effects, including but not limited to: traffic, soil conditions and contamination levels, air quality, surface and ground water conditions and contamination levels, noise, odor, visual screenings, litter, hours of operation, solid waste control systems and compliance with all solid waste Permits. This baseline study could help inform Benton County in decision making and financial choices regarding how to use the income from the landfill.	9	4	0
<u>LSCL R-4</u>	The County should, as soon as possible, consider the public record of the deliberations leading to the execution of the 2020 Landfill Franchise Agreement in order 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. These negotiations were conducted privately (not in public meetings), and there are elements of these discussions that may be proprietary and/or fall under attorney-client privilege.	9	3	0

<u>LSCL R-5</u>	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.).	9	3	0
<u>LSCL R-6</u>	The County should clarify when formal approval of Cell 6 as a disposal area was granted. LLU F-23 provides information on this issue.	7	5	0
<u>LSCL R-7</u>	The Benton County Disposal Site Advisory Council (DSAC) should review all future Coffin Butte Landfill Annual Reports relative to past reports and official approvals, in particular with regard to intake volume, landfill traffic volume (both Municipal Solid Waste and leachate transport), expected landfill life and end of life, and total and remaining Permitted Space. DSAC should report these findings to the Board for consideration.	9	3	0
<u>LSCL R-8</u>	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.	12	0	0
<u>LSCL R-9</u>	The baseline scenarios laid out in this report assume that landfilling will continue as it is doing today for the next 16 years. That expectation should be tempered by signals of factors that can reshape Coffin Butte Landfill's social and regulatory landscape, especially environmental considerations related to the climate crisis. This reshaping is something that Benton County can participate in, on behalf of its citizens, as the landfill's permitted volume is filled.	12	1	0
<u>LSCL R-10</u>	Benton County should take steps to acquire better information about the methane emissions of Coffin Butte Landfill, because the landfill's emissions are currently not well-characterized and use this information to guide diversion programs that could limit the amount of organic waste going to the Landfill.	12	1	0
<u>LSCL R-11</u>	In its current actions and in concert with its Sustainable Materials Management Plan, the County should be aware of and prepare for changes in Coffin Butte Landfill's social and regulatory landscape, as the future could hold significant opportunities for the County and affiliated organizations to bring waste management closer into alignment with the County's goals and values.	12	1	0

LSCL R-12

Benton County should keep in mind that the most effective way to curtail a landfill’s greenhouse gas emissions is to divert organic material from being landfilled. This can inform County and area-wide decisions regarding recycling, composting, food waste, and other initiatives affecting how the landfill’s permitted volume is filled.

11	2	0
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ADDITIONAL INFORMATION

The current landfill activities north of Coffin Butte Road consist of a total of 194 acres, with 6 cells currently slated or approved for disposal of waste.

- In 2003 the End of Life (EOL) of Coffin Butte Landfill was projected to be approximately 2074, with a Landfill Life estimate of 71 years.
- In 2013 EOL was projected to be years 2053-2062, with a Landfill Life estimate of 40-49 years.
- In the current year of 2023 the EOL is projected to be years 2037 -2039, with a landfill life estimate of 14-16 years.

The above landfill progression reflects a linear economy model that represents a waste management approach in which waste is generated, collected, and disposed of in a linear manner, without much emphasis on resource recovery or reuse. This approach is often characterized by a "take-make-dispose" model, where resources are extracted, processed into products, used, and then discarded as waste by society.

The linear model of a landfill economy is being replaced by more sustainable models, such as the circular economy. In a circular economy, waste is minimized by prioritizing waste reduction and recycling, and by designing products and processes that focus on sustainability and longevity. In this model, waste is seen as a valuable resource that can be reused, repurposed, or recycled, rather than being discarded into a landfill.

This circular approach supports the solid waste management plan of Benton County working shoulder to shoulder with a sustainable materials management plan being developed by Benton County in conjunction with Oregon Department of Environmental Quality, local community members, as well neighboring Counties and municipalities using Republic Services waste management services.

In Republic Services’ 2021 Sustainability Report, President and Chief Executive Officer, Jon Vander Ark, reports, “This is our company vision, which is intentionally ambitious because we believe we are uniquely positioned to help our customers achieve their own sustainability goals. That commitment begins with our Elements of Sustainability – Safety, Talent, Climate Leadership and Communities – and these elements anchor our 2030 sustainability goals.”

The reader of this executive summary is encouraged to read further into the full subcommittee reports to appreciate the wealth of information members of the community have brought

forward in a short amount of time during the Benton County Talks Trash bridge process, into a needed sustainable landfill economy and transportation plan for waste disposal.

Landfill Life Projections

CONCLUSION

After reviewing extensive information about the variable factors that can influence the landfill's size, capacity, and longevity, this subcommittee developed dozens of findings and



recommendations. While these Key Findings and Key Recommendations summarize much of the group's work, readers are encouraged to review the full subcommittee report for more details on each topic. This subcommittee topic is complex; the variables influencing site life are nuanced and often multi-faceted. The findings and recommendations are supported by the details provided in the subcommittee's report, which cover the landfill's end-of-life, tonnage intake, volume, footprint, and specific locations.

Section C: Legal Issues and Land Use Review

INTRODUCTION

The purpose of this subcommittee is to address: a) law relevant to, and the legal status of, landfill operation and oversight; b) relevant law related to land use regulation, and c) typical practices in land use regulation. The majority of the subcommittee's work product is in the form of objective legal information; however, the charge elements that relate to land use also include descriptions of practices and considerations and are noted as such. In all areas, the subcommittee's goal is to be clear, concise, and legally informative.

Membership of the subcommittee consists of Benton County Counsel Vance Croney, Planning Commissioner Liz Irish, Republic Services land use attorney Jeff Condit and Republic Services in-house counsel Holly Doyle. The facilitator invited participation by Jeff Kleinmann, a land use attorney who represented a group of property owners in the vicinity of the landfill during the 2021 Planning Commission hearings on the proposed expansion. Mr. Kleinmann declined to participate and [submitted a letter stating his reasons](#). The facilitator subcontracted with Virginia "Ginny" Lucker, a highly regarded Oregon land use attorney and Benton County community member, to participate on the subcommittee and provide a third legal perspective. The County staff member supporting the subcommittee was Greg Verret, Deputy Director of the Community Development Department.

The Key Findings and Key Recommendations summarize most of the subcommittee's work. However, a wealth of information on each charge element is presented in the subcommittee's full report and readers are encouraged to refer to that report for a full accounting of any topic.

SUBCOMMITTEE [WEBPAGE LINK](#)

SUBCOMMITTEE CHARGE

SUBCOMMITTEE CHARGE

Charge A:

2) A Summary of the County's current rights and obligations to Republic Services, and vice versa, surrounding:

- a. The hauling franchise;
- b. The landfill CUP; and
- c. What legally can and cannot be conditions of any land use approvals (e.g., past compliance, compliance with future laws, codes, and policies, DEQ compliance, reopening, limitations on what can be brought into the County from where, required facilities and practices, reporting/compliance/financial monitoring requirements, etc.)

3) *Interpretation and Deference:* A Summary of the rights and obligations of other entities surrounding landfills, hauling, and sustainability initiatives, etc.:

- a. Federal;
- b. Tribal;
- c. State (e.g., Is DEQ prohibited from permitting another landfill west of the Cascades and what does the "regional landfill" designation mean?);

- d. Local Government; and
- e. Summary of the step-by-step process in ORS chapter 459 and associated timing for the cross-jurisdictional approvals of landfill applications, (e.g. DEQ) including:
 - (i) What topics are within whose authority, and
 - (ii) Whether, for example, the County can or should consider the topics it does not have permitting authority over when assessing the criteria outlined in Code section 53.215?

Charge B: Clarifying existing criteria and information requirements for the land use review process for any proposed landfill expansion. Specifically:

- 1) Create a common understanding document outlining which Development Code criteria are applicable to the review of a conditional use application for landfill expansion by reviewing:
 - 53.215 (Criteria)
 - 77.305 (Conditional Uses)
 - 77.310 (Review)
 - 77.405 (DEQ)
 - Review Chapters 50 and 51 for context, and then
 - a. Preparing a conceptual list of any other Development Code criteria the WORKGROUP recommends be applicable.
 - b. Developing recommended guidelines for interpreting any ambiguous provisions recognizing current statutes, regulations, case law, and County precedent, etc.
 - A. The phrase, “Other information as required by the Planning Official” 77.310(e)
 - B. The terms found in Section 53.215, e.g.
 - C. “seriously interfere”
 - D. “character of the area”
 - E. “purpose of the zone”
 - F. “undue burden”
 - G. “any additional criteria which may be required for the specific use of this code.
 - H. Other: _____
- 2) In doing so, refer to Comprehensive Plan for policy guidance regarding interpretation of any ambiguous Development Code provisions (see, BCC 50.015,) and Review the Planning Commission comments made during its last review of Republic Services’ CUP application for context. Examples for consideration include:
 - a. Necessary Tasks to Start Planning Reopening of Existing Hauling Agreement
 - b. Roles, Responsibilities, and Protocols of SWAC and DSAC
 - c. Specific Recommended Review Criteria for the Evaluation of Landfill CUP applications
 - d. SWAC/DSAC, Planning Commission, and BOC Use of the Review Criteria
 - e. Future Timeline for Discussing any Needed Changes to the Benton County Code Flowing from WORKGROUP Recommendations

SUBCOMMITTEE MEMBERS AT END OF PROCESS

Jeff Condit
 Liz Irish
 Vance Croney
 Holly Doyle
 Ginny Lucker
 County Staff: Greg Verret

The **SUBCOMMITTEE’S REPORT** can be found linked [HERE](#), and in Appendix C.

The **SUBCOMMITTEE’S “MEETING NOTES”** can be found linked [HERE](#).

KEY FINDINGS AND KEY RECOMMENDATIONS

This section lists Key Findings and Key Recommendations from the full subcommittee report below. These key findings and key recommendations do not capture the comprehensive discussions of the subcommittee, nor are they intended to do so. Instead, these provide a summary overview of key observations. The link adjacent to each Key Finding and Key Recommendation provides access to the full report. These summaries encourage readers to follow the links to find detailed content under in the full subcommittee report.

Key Findings:

#	Finding	Formal Workgroup Polling		
		1’s	2’s	3’s
LLU F-1 [Link]	Do conditions of approval imposed as part of a later land use approval supersede conditions imposed as part of a prior approval? 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).	11	0	0
LLU F-2 [Link]	Only the current franchise agreement has legal effect. The previous franchise agreement is superseded when a new agreement takes effect.	11	0	0
LLU F-3a [Link]	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. [See additional DEQ information on this topic in full subcommittee report.]	11	0	0

LLU F-3b

[\[Link\]](#)

DEQ reviewed the last annual FA update submittal, which was dated April 1, 2022 and approved on April 13, 2022. DEQ’s approval letter summarizes the following:

1. The updated cost estimates for closure (\$16,222,800) and post-closure care (\$5,743,202) were correctly updated, prepared, and stamped by a registered P.E.
2. The current penal sum of your Bond, as provided by Evergreen National Indemnity Company, with your new Riders in place, covers the total of updated cost estimates.

DEQ identifies Valley Landfill Inc. as the owner of the landfill and the DEQ solid waste permittee for DEQ permit #306. The operator of the landfill is Coffin Butte Landfill. The owner or operator of the landfill is responsible for compliance with the permit and permit conditions. The owner or operator is responsible for providing financial assurance for closure, post closure and any needed corrective action per ORS 459.272.

Valley Landfill Inc. uses a bond to provide financial assurance. According to OAR 340-094-0140(6)(d) and (6)(e) the permittee is to recertify compliance every year which Valley Landfill Inc. did in a March 28, 2022 attachment to the annual financial assurance submittal that DEQ received.

11	1	0
12	0	0
11	0	0

LLU F-3c

[\[Link\]](#)

In negotiating the [2020 landfill franchise agreement](#), Benton County established three elements to provide assurance that costs of closure, post-closure and corrective action are covered: Statutory DEQ financial assurances, insurance, and the environment trust fund

LLU F-4

[\[Link\]](#)

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 [Link]	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. The mechanism for enforcing conditions of approval is a separate process; see recommendation LLU R-11.	11	0	0
LLU F-6 [Link]	Benton County may not prohibit a private landfill operator from accepting solid waste from outside Benton County.	12	0	0
LLU F-7 [Link]	Is DEQ prohibited from permitting another landfill west of the Cascades? No.	12	0	0
LLU F-8 [Link]	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.	11	1	0
LLU F-9 [Link]	Interpretation of the review criteria for a landfill-expansion conditional use permit requires determinations that are based on the facts of the specific application. 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 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	11	1	0

flexibility in interpreting those terms in the context of the specific application before it.

LLU F-9a

[\[Link\]](#)

The first criterion requires the decision-maker to find that *“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 the term “seriously interfere”, 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. This is not a recommendation 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-9b

[\[Link\]](#)

In the phrase “character of the area” in BCC 53.215(1), how narrow or broad has “the area” typically been? When the County is evaluating the “character of the area”, the “area” is based on the facts of each application and 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). Because each review is unique, examining past cases for the specific distances utilized may not be illuminating. Staff reports that in past CUP applications the Planning Official, Planning Commission or Board has considered these factors in determining the character of the area and its extent include:

- The particular attributes of the geographic setting (including existing operations in the vicinity.)
- Is there a distinct change in the area's physical characteristics beyond a certain point (such as a change

11	0	0
11	0	0

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).

This is not a recommendation 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-9c

[\[Link\]](#)

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)], what constitutes a “burden” is again based on the facts of the application. Staff has stated that in past CUP applications the Planning Official, Planning Commission or Board has considered a “burden” on public infrastructure and service is 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 the County has typically not considered “undue” include those that can be mitigated through planned improvements, that are incremental service additions⁶⁴ consistent with that generated by other uses in the area or that fall below an established threshold (such as road classification standards). For planned improvements to be relied upon in determining that a burden is not undue, the implementation of those improvements must be certain, such as through a condition of approval specifying the improvement and the timeline for implementation. Again, as noted in LLU F-9 above, so long as the interpretation is plausible, the decision makers have wide discretion in interpreting the term “undue burden.” This is not a recommendation on how the Planning Commission and Board should interpret future applications. Restated, each body fully retains its flexibility

11	0	0

⁶⁴ Incremental service additions are additions to the overall burden on services that are small relative to the total. For example, adding 10 daily vehicle trips to a road currently experiencing 300 daily vehicle trips could be considered an incremental service addition.

in interpreting those terms in the context of the specific application before it.

LLU F-9d

[\[Link\]](#)

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.

LLU F-10

[\[Link\]](#)

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. Based on SWAC’s bylaws and role in planning and implementing solid waste management, 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 expressly limit the scope of SWAC’s recommendations.

LLU F-11

[\[Link\]](#)

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-12

[\[Link\]](#)

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

10	0	0
9	1	0
10	0	0
10	0	0

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-13

[\[Link\]](#)

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 maker determines that the information is necessary to comply with an approval criterion.

LLU F-14

[\[Link\]](#)

Pursuant to long-standing LUBA case law, representations and 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 as conditions of approval. See LLU R-10.

LLU F-15

[\[Link\]](#)

The workgroup took two polls on various versions of this finding/rec and the results appear below:

Version 1: 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.

10	0	0
10	0	0
8	0	2

Version 2: ~~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.~~

Notes Regarding the 2002 MOU: 1) it does not mention how the MOU was intended to relate to land use decisions 2) it is unclear as to what LUCS are referred to and their impact e.g.: the 1996 LUCS referred to in the MOU has not been found, 3) a LUCS dated 12/18/00 has been found as a free standing document, 4) a 2000 Site Plan (Is the last DEQ approve in 2000 the MOU refers to?) using a LUCS dated Feb 25 '22 was found i.e. an 8 year gap between LUCS issuance and use in an identified document. 4) the current Operating Permit was issued in 2019 but references a 12/18/00 LUCS i.e. 20 year gap

LLU F-16

[\[Link\]](#)

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-17

[\[Link\]](#)

Once any land use application is submitted to the County, the County Planning Official must determine within 30 days whether the application is complete. Following the [completeness process](#), the County then has 150 days to make a final land use decision, including the completion of

	2	4	4
	10	0	0
	10	0	0

any appeal to the Board of Commissioners or other proceeding under County Code. If the County does not make a final decision within the prescribed time, an applicant may petition the circuit court for a “writ of mandamus.” ORS 215.429(1) et seq and citing ORS 34.130. This statute requires the circuit court to approve the application unless the County can prove it violates a substantive provision of the Comprehensive Plan or Code. If the court determines the County has not met that burden, the applicant may then proceed with the development as proposed.

LLU F-18

[\[Link\]](#)

Section 2 of [the June 7, 2022, collection franchise agreement](#) between Benton County and Allied Waste Services of Corvallis (“Republic Services”) contains a mandatory 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

[\[Link\]](#)

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.

10	0	0
9	1	0

LLU F-20[\[Link\]](#)

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. See recommendation R-11.

LLU F-21[\[Link\]](#)

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 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 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 whether that noncompliance is causing the existing land use to “seriously interfere” with uses on surrounding properties. That fact can then be used as evidence 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. If the language in a condition of a past decision was unclear or insufficient to ensure compliance with an approval criterion, in evaluating a new application the decision maker could craft and impose a condition on a new decision that more clearly describes the measures necessary to ensure compliance. Past conditions superseded by subsequent decisions or changes in the law could not form a basis for such analysis.

LLU F-22[\[Link\]](#)

Were the site plan and narrative in PC-83-7 regulatory conditions of approval?

No.

The Board adopted the applicant’s site plan and narrative in PC-83-07 as “findings” but did not specifically adopt

9	1	0
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7	1	3

them as conditions of approval. Findings are not conditions of approval. Rather, they explain how the decision was reached and the facts the decision maker relied on to determine compliance with a criterion. For compliance with specific findings to be enforceable they must be made conditions of approval.

The conditions that were adopted through the 1983 decision, described as “conditions of development”, specified changes to be made to the applicant’s site plan. Compliance with those revisions was not required as a condition of approval; the conditions required only that the revisions be submitted. The decision did not describe these revisions as necessary to establish compliance with any approval criteria and required only submission of additional documentation and a revised narrative. Because a) the site plan and narrative, while relied upon as findings, were not made conditions of approval, and because b) the conditions imposed in PC-83-07 that required changes to the site plan did not require those changes on the basis that they were necessary to establish compliance with any criterion but rather required only that they be submitted, the site plan and narrative are not conditions approval of PC-83-07.

LLU F-22A

[\[Link\]](#)

In 1983 the County created community expectations for how the landfill would look in decisions documented in PC83-07. Appearance issues including steepness of the landfill slopes, terracing, screening, and returning the land to grazing or other farm-like uses were addressed and committed to by the County and landfill operator. The way the County chose to implement these commitments is questionable given legal hindsight. Whether they be enforceable “conditions of approval” or “findings” in the PC83-07 record remains in dispute. The BCTT Workgroup is not a court of law. The differing interpretations over a possible process or wording error of the 83-07 decision, that causes this issue to arise, should not be the primary concern. Of greater importance for the County’s relationship with its residents is the Planning Commission and Board of Commissioners decisions to adopt the offered designs and reclamation plans to meet public expectations. These expectations were made clear in the records of PC83-07. At a minimum, the debate over PC83-07’s intended vs. actual conditions of approval or findings draws attention to the fragile “good neighbor” relationship between the County, landfill owner/operator and the

5	2	4

public established through the 83-07 land use hearing process. Acknowledging these discrepancies with prior commitments should form a basis for the County, landfill owner/operator, DEQ and the public to come to reasonable expectations for the appearance and long-term use and closure of the landfill facility.

LLU F-23

[\[Link\]](#)

The workgroup took three polls on various versions of this finding, and the results appear below:

Version 1:

Clarify when formal approval of landfilling Cell 6 (current quarry) was granted.

Land Use File PC-83-7 has been interpreted by Benton County, including in the 2002 MOU, as authorizing landfilling of the area known as Cell 6, the current quarry. The record in PC-83-07 does not clearly specify that the portion of the property containing the current quarry is authorized for landfilling. However, the Board of Commissioners’ findings in PC-83-7 state that 194 acres are approved for landfilling on the property north of Coffin Butte Road; that the total area of the property in the LS zone is approximately 266 acres; and that 59.23 acres of the LS zone are located south of Coffin Butte Road. That leaves approximately 207 acres north of Coffin Butte Road. Given that several areas are clearly shown on the 1983 site plan as being designated open space/buffer, there is no possible configuration of 194 acres out of the 207 acres total that does not include the current quarry area. Based on this analysis, this subcommittee concludes that quarry area was included in the area approved for landfills by PC-83-7.

Version 2:

Clarify when formal approval of landfilling Cell 6 (current quarry) was granted.

Land Use File PC-83-7 has been interpreted by Benton County, including in the 2002 MOU, as authorizing landfilling of the area known as Cell 6, the current quarry. The record in PC-83-07 does not clearly specify that the portion of the property containing the current quarry is authorized for landfilling. However, the Board of Commissioners’ findings in PC-83-7 state that 194 acres are approved for landfilling on the property north of Coffin Butte Road; that the total area of the property in the LS zone is approximately 266 acres; and that 59.23 acres of

5	3	3
5	2	4

the LS zone are located south of Coffin Butte Road. That leaves approximately 207 acres north of Coffin Butte Road. Given that several areas are clearly shown on the 1983 site plan as being designated open space/buffer, there is no possible configuration of 194 acres out of the 207 acres total that does not include the current quarry area. Based on this analysis, this subcommittee concludes that quarry area was included in the area approved for landfills by PC-83-7.

"Cell 6" is: 1) not mentioned in PC-83-7. 2) not show on applicant drawings of the landfill as late as 2011. 3) is shown on applicant drawings dated 2022. The portion of a drawing LS offered showing the 1983

"Existing Quarry": 1) places the quarry outside the "Approximate Solid Waste Disposal Boundary" and "Proposed Solid (illegible word) Disposal Boundary". 2) does not show a quarry extending into the area identified in 2020 as Cell 6. 3) does not show what use the drawing was intended for, no date drawn, etc. i.e. it cannot be validated. 4) shows a requirement for screening the landfill along Coffin Butte Road and Hwy 99 with about 3 dozen conifers.

Regarding the 2002 MOU: 1) it does not mention how the MOU was intended to relate to land use decisions 2) is unclear as to what LUCS are referred to and their impact e.g.: the 1996 LUCS referred to in the MOU has not been found, 3) a LUCS dated 12/18/00 has been found as a free standing document, 4) a 2000 Site Plan (Is the the last DEQ approve in 2000 the MOU refers to?) using a LUCS dated Feb 25 '22 was found i.e. an 8 year gap between LUCS issuance and use in an identified document. 5) the current Operating Permit was issued in 2019 but references a 12/18/00 LUCS i.e. 20 year gap 6) it was written years before a "Cell 6" was defined in a landfill operator's drawing.

Version 3:

Clarify when formal approval of landfilling Cell 6 (current quarry) was granted.

Land Use File PC-83-7 has been interpreted by Benton County, including in the 2002 MOU, as authorizing landfilling of the area known as Cell 6, the current quarry. The record in PC-83-07 does not clearly specify that the portion of the property containing the current quarry is authorized for landfilling. However, the Board of

5	1	5

Commissioners’ findings in PC-83-7 state that 194 acres are approved for landfilling on the property north of Coffin Butte Road; that the total area of the property in the LS zone is approximately 266 acres; and that 59.23 acres of the LS zone are located south of Coffin Butte Road. That leaves approximately 207 acres north of Coffin Butte Road. Given that several areas are clearly shown on the 1983 site plan as being designated open space/buffer, there is no possible configuration of 194 acres out of the 207 acres total that does not include the current quarry area. Based on this analysis, this subcommittee concludes that quarry area was included in the area approved for landfills by PC-83-7. However, no official county land use determination has been made on this point.

LLU F-24

[\[Link\]](#)

The County’s decision on a conditional use permit must be based on the evidence submitted into the record. Evidence must be submitted into the record before the record is closed. The Planning Commission makes the initial decision on a conditional use application to expand the landfill, and the record includes all evidence submitted into the record before the Planning Commission makes its decision. The Planning Commission’s decision may be appealed to the Board of Commissioners. The Board considers the record of the decision being appealed (all evidence and testimony submitted to the Planning Commission) and any new evidence or testimony that is submitted into the record at the Board’s appeal hearing. The record closes either at the end of the final hearing on the application, or if there has been a request to leave the record open before the end of the final hearing, on the date specified at that hearing.

LLU F-25a

The current CUP criteria give the Board discretion and, under the existing statute, [LUBA and the courts will defer to the Board’s interpretation of its criteria so long as the interpretation is “plausible.”](#) That discretion, however, is not unlimited and does not extend to applying unadopted criteria or to adding criteria that are not in the code at the time an application is filed. The current CUP criteria do not include – and cannot plausibly be interpreted to include -- any requirement that the applicant demonstrate need or that it must evaluate alternatives to a proposed landfill expansion. Interpreting the existing code criteria to require demonstration of “need” or alternatives is beyond the range of discretion afforded by state statute and would constitute an improper code amendment under the guise of interpretation.

	10	0	0
	10	0	0

LLU F-25b	Under both state law and the county code, an application must be evaluated based on the criteria in effect on the date the application is filed. Because the current CUP criteria do not require the applicant to address need or reasonable alternatives to the expansion, even if the evidence existed today, evidence regarding the need for or alternatives to landfill expansion is not relevant to the existing conditional use approval criteria; and therefore the possible evidence that might flow from a future SMMP is not relevant to the Board’s evaluation of whether there is substantial evidence in the record as a whole related to compliance with the CUP criteria.	10	0	0
LLU F-25c	The County could amend BCC chapter 77 to add a criterion under BCC 53.215(3) to require compliance with specific provisions of an adopted SMMP. However, that criterion would apply only to applications filed after the code was amended to include, as criteria, specific requirements of such a plan. [See also Recommendation LLU R-8.]	10	0	0
LLU F-26	Oregon Department of State Lands (DSL) has regulatory authority for all wetlands that meet the definition of “jurisdictional wetlands.” Benton County has additional regulatory authority for wetlands the County has identified as “significant” in a wetland inventory adopted pursuant to the Oregon Administrative Rule 660 Division 23 (Statewide Planning Goal 5 procedures). While wetlands are present in the vicinity of Coffin Butte Landfill, they have not yet been evaluated and determined to be “significant” in accordance with OAR 660. The County has not conducted a comprehensive wetland inventory and analysis of significance since the 1980s. Until then, the County cannot regulate land uses in these wetlands. See LLU R-11.	11	0	1

Key Recommendations:

#	Recommendation	Formal Workgroup Polling		
		1’s	2’s	3’s
LLU R-1	The County should enable public input on all franchise agreements. Specifically regarding the 2022 collection franchise agreement between Benton County and Allied Waste Services of Corvallis (“Republic Services”), a process to allow public input, comment, and feedback on any	6	6	0

provisions subject to Section 2 of that agreement 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, County staff would bring the proposed franchise agreement 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, decision by the Board of Commissioners at a regular board meeting.

LLU R-2

The County 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, the public should be informed that the statutory completeness is a

7	3	1

	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 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.			
LLU R-3	Benton County should engage with the Oregon Department of Environmental Quality at the pre-application stage to understand relative permitting responsibilities and processes, with the goal of a more coordinated and informed review of both the land use application (by Benton County) and, if the County land use application is approved, the subsequent landfill-related permitting (by DEQ).	12	0	0
<u>LLU R-4</u>	With regard to other information needed to make an application complete, 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. “Additional information” required by the Planning Official does not become part of the applicable criteria but may contribute to the completeness of the application. BCC 77.310 states only what the applicant’s narrative shall include; it does not identify criteria for SWAC’s review of a CUP application. This absence contributed to the subcommittee’s recommendation in LLU R-6.	10	2	0
<u>LLU R-5</u>	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 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	11	0	0

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. Public comment during a pre-application neighborhood meeting, as with other public comment submitted before the application is complete and notification is sent, is not part of the formal record of the land use review and cannot be considered by decision-makers. The record includes only public comment submitted after formal notification has been sent to affected parties stating that the comment period is open.

LLU R-6

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”, the Board of Commissioners should provide nonbinding guidelines for SWAC’s role by articulating the scope, manner and timing of SWAC’s review. Interpreting the existing County Code is within the Board’s purview, but amending that code effects a more permanent solution. As an initial step, the Board could issue an official interpretation of SWAC’s role pursuant to Chapter 23. Then, as a subsequent step, the Board could initiate amendments to Chapter 23 and/or Chapter 77, which would then proceed through a public hearings process. (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-7

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,

7	4	1
7	4	1

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-8 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 would have to 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.

[LLU R-9](#) When the County adopts its SMMP, it should amend BCC chapter 77 to add a criterion under BCC 53.215(3) to require compliance with specific provisions of an adopted SMMP.

[LLU R-10](#) 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 provision might have been codified before adoption of the current state agency coordination requirements, which now require a land use compatibility statement (LUCS) as part of any application for a state permit in which local land use is implicated.) 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 a code amendment to clarify this provision. For example, a code amendment could require that when DEQ issues a landfill permit, the Planning Official shall review the permit and

9	2	1
11	0	0
9	2	0

conditions of approval and, if discrepancies with the County’s land use approval are noted, determine whether this constitutes a “modification of a conditional use permit” (BCC 53.225) and, if so, require the applicant to submit application for such modification. A workgroup recommendation on how public review of DEQ permit requirements could most benefit the public would also be helpful.

LLU R-11 Compliance with Oregon Department of State Lands regulations and permitting requirements for any impacts to wetlands should be a condition of approval of any land use approval at the landfill.

LLU R-12 In issuing land use decisions, Benton County decision-makers should:

- a) Draft clear findings and be certain to incorporate into the conditions of approval the items that are intended to be binding.
- b) State conditions of approval in clear and explicit terms and ensure that what is expected of the applicant in order to comply is clearly stated in the text of the conditions.

LLU R-13 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:

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

The future cost of such a system, the benefits, and the consequences of not improving the current practices and procedures.

12	0	0
11	0	0
10	1	0

ADDITIONAL INFORMATION

The following table summarizes the topic areas Benton County can and cannot regulate. Some of these topic areas are discussed more fully in the full subcommittee report.

Topic Areas Benton County Can or Cannot Regulate
-- Summary Table --

<i>Topic Area</i>	<i>Agency with Primary Jurisdiction</i>	<i>County Allowed to Regulate?</i>	<i>Notes</i>
Wetlands	Department of State Lands	Yes, if the County has identified significant wetlands at the site in a wetland inventory adopted through the Statewide Planning Goal 5 procedure.	No significant wetlands are identified in the vicinity of the landfill on the County's adopted inventory.
Groundwater quality	DEQ	No. Statute precludes.	County can regulate the impact of one land use on another.
Groundwater quantity	OWRD	No. Statute precludes.	County can regulate the impact of one land use on another.
Noise	DEQ	Yes. DEQ has adopted noise standards but does not enforce. County may apply (only) those standards and enforce.	
Odors	DEQ's regulation of air quality via emissions standards does not specifically address odor, but DEQ does regulate nuisance odor through a complaint-based system (see DEQ's Nuisance Odor Strategy).	Benton County cannot substitute a different regulatory standard for DEQ's regulation of air quality emissions. County could determine that odor will violate a CUP criterion and then impose a condition regulating odor, typically by requiring specified odor mitigations to be in place.	No objective "odor meter" (similar to a decibel meter for noise) seems to be available.
Methane emissions	DEQ	Precluded if regulated by DEQ.	
Wildlife	ODFW	Yes, if Benton County were to adopt a program pursuant to	Requires Comprehensive Plan Amendment.

		the Statewide Planning Goal 5 procedure.	
Stormwater runoff	DEQ	Yes, pursuant to BCC 99.650-99.680.	
Point-source discharge to surface waters	DEQ	Yes, pursuant to BCC Chapter 36 Illicit (Non-Stormwater) Discharges.	
Light	None	Yes, through CUP criteria and resulting conditions of approval. Not directly regulated in Development Code.	No state regulations that we are aware of.

CONCLUSION

Solid waste topics in Benton County intersect with legal and land use issues in several ways:

- Franchise agreements (in this case collection and landfill franchises) are contracts between a local government and a service provider.
- Legal requirements for permitting a landfill at a given location.
- Land use regulations.
- Benton County’s oversight of solid waste topics through Chapter 23 of the Benton County Code, including the Solid Waste Advisory Council and the state-mandated Disposal Site Advisory Committee.

Franchise agreements are subject to contract law, applicable Oregon Revised Statutes and County Code, and applicable federal law and court cases. For example, the U.S. Supreme Court has determined the federal constitution prevents the County from limiting the area from which the landfill can accept waste.

While franchise agreements are the product of confidential contract negotiations between the parties, the County and Republic Services also recognize and acknowledge the public interest in these agreements and the desire to ensure the agreements reflect community priorities.

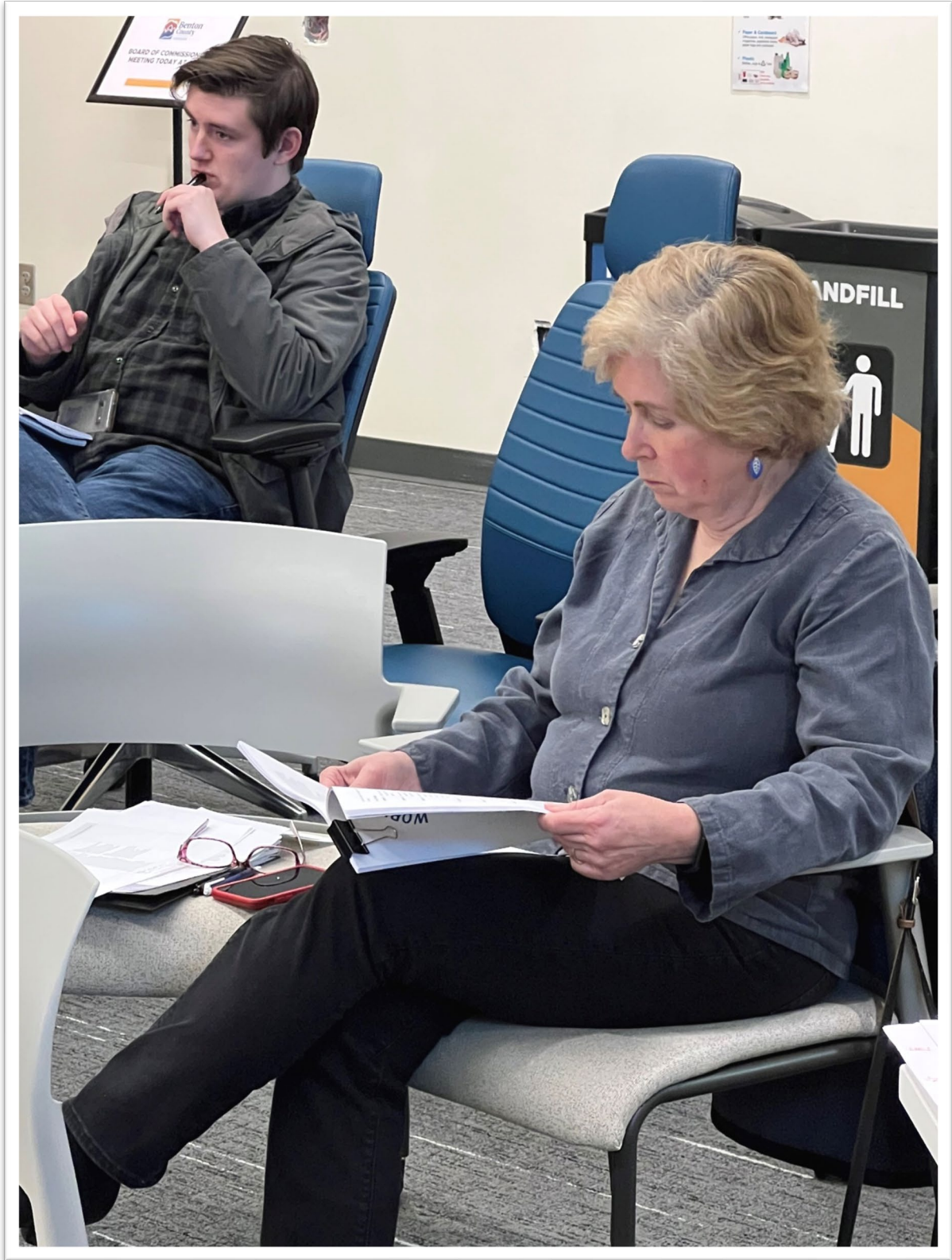
Permitting a landfill or changes to a landfill is a complex mixture of state law (involving a variety of agencies) and Benton County Code. Understanding the roles and limitations on authority of each entity is important to enable community members to provide informed comment and for Benton County decision-makers to arrive at informed decisions.

Benton County has latitude to interpret the provisions of its own code and to interpret ambiguities in past decisions, provided those interpretations are plausible. Decisions and conditions of approval must be rooted in the applicable criteria in the County’s Development Code and can only address the current application (not look to alter previous land use decisions or conditions). Subjective terms in the review criteria and procedures applicable to a conditional use permit (CUP) in Benton County, including a CUP to expand the landfill, were discussed in the subcommittee findings with the intent *not* of directing how these terms should be interpreted and applied in a future land use review but of providing such legal context as exists and how the County has historically interpreted them.

The County's long land use history with Coffin Butte Landfill has resulted in legal and interpretation questions which the subcommittee has attempted to clarify from an objective legal perspective. The 1983 approval of the landfill did include approval for landfilling of Cell 6 (the present quarry) and did not establish the site plan and narrative as regulatory conditions of approval. The 2002 memorandum of understanding (MOU) between Benton County and the landfill operator memorialized the County's understanding that at that time the landfill was operating in compliance with local requirements, but the MOU did not replace or negate conditions of past land use approvals.

The subcommittee makes recommendations to:

- clarify the role of the Solid Waste Advisory Council in the land use conditional use review process;
- consider specifying what "additional information" would be helpful in review of a conditional use application;
- consider requiring a "pre-application conference" and a "neighborhood meeting";
- consider specifying any additional criteria necessary for CUP review and/or requiring compliance with the proposed site plan and reclamation plan;
- clarify BCC 77.405 regarding review of DEQ permits;
- provide the public with information regarding the initial review of the completeness of an application;
- consider a proposed process for public input in the re-opener of the collection franchise agreement;
- evaluate the system of compliance monitoring and enforcement;
- ensure that land use findings are clear and that conditions of approval include all elements intended to be binding and are clear about what is necessary to comply with the conditions.



SECTION D: PAST LAND USE APPLICATION CONDITIONS

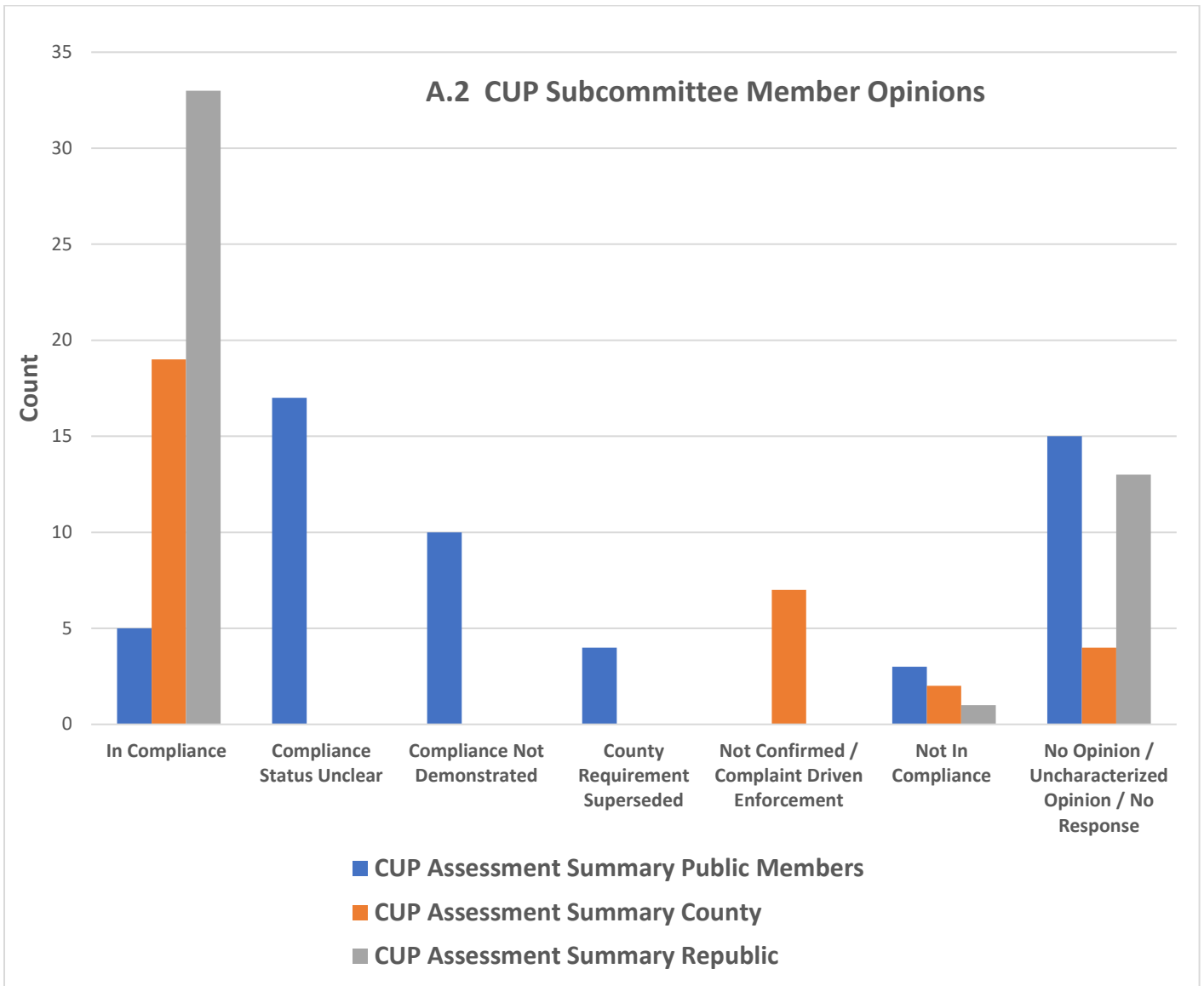
INTRODUCTION

The subcommittee's report is intended to provide an overview of all the Coffin Butte historical documents, starting in 1974, relating to land use provided to the Subcommittee by Benton County as of November 2022. It provides the context needed to better understand how Benton County got to where it is now regarding the Coffin Butte Landfill. All files were reviewed in depth by, at a minimum, the public members of the subcommittee (Catherine Biscoe, Edward Pitera, Mark Yeager).

The subcommittee report contains a summary and plain language evaluation of each of the historical files. Where possible, real-world examples are used to explain a review. Some situations point to a need for further information from the Oregon Department of Environmental Quality (DEQ). Other situations are annotated as possibly involving requirements stated in the 50-year long historical record that may have been superseded by legal interpretations of land use decisions or new laws or modified by subsequent decisions.

Table 2. *Assessments of Land Use Application Conditions* of the subcommittee report provides an overview of 13 historical documents representing 85 conditions of approval or other information contained in the reviewed files. The 85 conditions include 17 associated with power generation and 12 associated with the quarry. Although all conditions were reviewed, the subcommittee's efforts focused on the 56 associated with the landfill. The public members and the County indicated their evaluation of each condition in six clearly defined categories including "In Compliance", "Compliance Unclear", "Not In Compliance", "No Opinion" etc. The Republic evaluations tended to be as comments making it difficult to summarize how close to consensus the three parties were. A chart summarizing the subcommittee's review of the historical record since 1974 is included follows below. It illustrates that the public members feel they need more information before concluding the landfill is in compliance with CUP Conditions.

Evaluations of legal theories impacting the enforceability of past land use decisions can be found in the section authored by the Legal Subcommittee. Some key situations where the Legal Subcommittee findings point to Land Use commitments that may no longer be enforceable are: 1) limitations on the geographical area sending solid wastes to Coffin Butte (1974 CP-74-01) due to legal precedents; 2) screening the landfill from view from County roads, plus how the site is to appear and be used after solid waste disposal operations stop (1983 PC-83-07 / L-83-07) due to how the County decision was structured; 3) A 2002 County/Republic Memorandum of Understanding.



SUBCOMMITTEE [WEBPAGE LINK](#)

SUBCOMMITTEE CHARGE

Charge: A chronological history of key Coffin Butte Landfill topics:

- A) Conditions of past land use approvals;
- B) Compliance with prior land use approvals and SWMP;

SUBCOMMITTEE MEMBERS AT END OF PROCESS

Catherine Biscoe
 Ed Pitera
 Jeff Condit
 Mark Yeager
 County Staff: Inga Williams

The **SUBCOMMITTEE’S REPORT** can be found linked [HERE](#), and in Appendix C.

The **SUBCOMMITTEE’S “MEETING NOTES”** can be found linked [HERE](#).

KEY FINDINGS AND KEY RECOMMENDATIONS

This section lists Key Findings and Key Recommendations from the full subcommittee report below. These Key findings and Key recommendations do not capture the comprehensive discussions of the subcommittee, nor are they intended to do so. Instead, these provide a summary overview of key observations. The link adjacent to each Key Finding and Key Recommendation provides access to the full report. These summaries encourage readers to follow the links to find detailed content under in the full subcommittee report.

Key Findings:

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

#	Finding	Formal Workgroup Polling		
		1's	2's	3's
CUP F-1	The Subcommittee’s Full Report is an in-depth review of selected historical land use documents. County Staff, Republic, Workgroup and public members participating on the Subcommittee provided comments, opinions and evaluations of the historical record. Each condition was vetted in depth. Consensus was reached by public members of the Subcommittee on most topics. Consensus was not reached with County Staff and Republic. Information from DEQ is needed to potentially reach consensus on many Conditions of Approval. All inputs have been retained to assist the public in understanding the historical documents and how they were viewed by the Subcommittee. Where needed, information obtained by firsthand experiences on BCTT’s Landfill and Neighborhood Tours was used to verify the compliance status of visible Conditions of Approval.	11	0	0
CUP F-2	Benton County has not and does not actively monitor compliance with many Conditions of Approval, nor does it proactively act to enforce compliance. See Table 5 in Appendix C4 of the CUP subcommittee report.	11	0	0
CUP F-3	Benton County relies on complaints to initiate action to enforce Conditions of Approval.	11	0	0

CUP F-4	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.	11	0	0
CUP F-5	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.	11	0	0
CUP F-6	No record was found of an official Benton County decision to increase the number of counties sending wastes to Coffin Butte Landfill prior to the Supreme Court’s 1998 ruling . However, the 1983 land use decision expressly repealed the comprehensive plan provisions that were adopted after the 1974 decision that limit the number of counties that could waste to landfill. According to the staff report, the effect of this change was to remove such limitation.	10	1	0
CUP F-7	Conditions of Approval 4 and 6 in CP-74-01 require reclamation of the landfill to meet criteria relating to visual appearance, screening from abutting county road, and use for grazing or another farm-type operation or other permitted use as approved by the Planning Commission and Board of County Commissioners. Reclamation was also addressed in PC-83-07.	11	0	0
CUP F-8	The required DEQ reports are submitted by the Applicant and maintained by the County for the public record. A full review of these County required submittals (e.g. monitoring records) was not conducted due to time constraints.	11	0	0
CUP F-9 [Link]	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.	11	0	0
CUP F-10	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.	11	0	0
CUP F-11	In assessing the status of compliance with past land use documents, there are numerous instances where supporting evidence may not be or is not available in County records.	11	0	0

<p>CUP F-12</p>	<p>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. See Table 5 in Appendix C4 of the CUP subcommittee report.</p>	<p>11</p>	<p>0</p>	<p>0</p>
<p>CUP F-13</p>	<p>Benton County has issued land use Conditions of Approval 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 for DEQ permits.</p>	<p>11</p>	<p>0</p>	<p>0</p>
<p>CUP F-14</p>	<p>As of 1974 the Coffin Butte landfill was identified as a regional landfill site for wastes from ten areas in three counties. Expanding beyond this limited geographic area was to require re-review by the Planning Commission. Starting in 1998, legal precedents are believed to have superseded the 1974 requirements allowing for the expansion of the service area beyond the original three counties. Since 2013, the Coffin Butte Landfill has served 39 counties. Also, since 2013, Coffin Butte Landfill has accepted waste from seven out-of-state counties (2 from CA, 5 from WA). Only one out-of-state county (in WA) was served in 2021, which represented 1.88 Tons (0.00018% of total). For supporting information see Comments for CP-74-01 Condition 1 in Table 2 Assessments of Land Use Conditions and Legal Land Use Subcommittee analysis.</p>	<p>11</p>	<p>0</p>	<p>0</p>
<p>CUP F-15</p>	<p>County land use decisions have been written in a way that makes it difficult to understand the County’s commitment to public expectations and enforceability of Conditions of Approval. Building on information presented by the Legal issues and Landfill Capacity Subcommittees, examples of these are:</p> <ul style="list-style-type: none"> • A 1983 County decision where all but one of the publicly agreed to requirements for the visual appearance and ultimate use of the landfill may be unenforceable. • A 1983 Benton County Amendment to the Comprehensive Plan. • A 1992 United States Supreme Court ruling (Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of 	<p>11</p>	<p>0</p>	<p>0</p>

Natural Resources, 504 U.S. 353, 112 S.Ct. 2019 (1992) limiting the County’s power to regulate where wastes come from, wastes from as many as 39 counties in three states (OR, WA, ID) are allowed to be brought to Coffin Butte. These wastes have made up over 90 percent of the material coming to Coffin Butte in the last 5 years.

The Workgroup’s CUP Subcommittee and Legal Subcommittee have analyzed past land use documents and have reached different conclusions as to their effect. This has resulted in changes to what was authorized to occur at the landfill without notification or a public review process that would ensure public trust.

CUP F-16

County approval documents and Applicant submittals for PC 83-07/L-83-07 describe reclamation of the site once it stops receiving waste. Requirements include what the appearance of the site is to be, terracing, allowable steepness of slopes, screening, use for grazing, consistency with agricultural and forest land use, etc. The Subcommittee did not reach a consensus on whether the County decisions and Applicant submittals associated with PC 83-07/L-83-07 are enforceable and require compliance. The public members believe they are enforceable. The County and Republic members believe they are not enforceable. Information on the County documents and Applicant submittals are in Comments for PC 83-07/L-83-07 [Conditions 1](#) and [3](#) in Table 2 Assessments of Land Use Conditions. The viewpoints of the Public Members can be found [here](#). The position of the Legal Subcommittee is found at [here](#).

CUP F-17

DEQ’s requirements for a Worst–Case Closure and Post-Closure Care Plan and financial assurances do not require Valley Landfills to comply with County’s reclamation conditions of approval or public expectations.

CUP F-18

[\[Link\]](#)

Currently, it is not clear to the public what appropriate reclamation will look like for the ultimate disposition of the landfill.

CUP F-19

The Subcommittee did not reach a consensus on the applicability and the authority of the 2002 Memorandum of Understanding and how it may affect Conditions of Approval in pre-2002 decisions. The resolution of this issue potentially impacts ten land-use matters, which is over half of the decisions, containing fifty-three Conditions of Approval.

	11	0	0
	11	0	0
	11	0	0
	11	0	0

<p>CUP F-20</p>	<p>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. 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 (Record of Decision from the DEQ Cleanup Program), 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 (PC 83-07/L-83-07), but these are not reflected in Republic’s current DEQ-required site closure plans. Republic prepares annual plans to verify there is sufficient financial assurance per DEQ requirements.</p>	10	1	0
<p>CUP F-21 (CONVERTED TO FINDING FROM PREVIOUS CUP R-19, WHICH HAS SINCE BEEN REMOVED)</p>	<p>With regard to the 2002 MOU, DEQ has provided information already on what a LUCS is used for. A LUCS should not be used as evidence of compliance with DEQ requirements. Per Oregon Administrative Code, OAR 340-018, a LUCS is a signed document provided by a local government that verifies that the entity applying for a DEQ permit is located in an area zoned appropriately for the proposed use by the local government.</p>	9	2	0
<p>CUP F-22 [Link]</p>	<p>Leachate from the landfill site is currently trucked to public wastewater treatment plants in Corvallis and Salem which discharge to the Willamette River. The last five years have ranged from 25.6 to 31.8 million gallons per year, with an average of 28.5. Last year the amount was 29.1 million gallons. The tanker truck capacity is 7000 gallons, which means 6 to 13 trips per day with an average of ten.</p>	11	0	0
<p>CUP F-23</p>	<p>The acquisition of buffer land by landfill-related entities is a condition of DEQ’s Record of Decision from the DEQ Cleanup Program for the landfill. Landfill-related entities have acquired such buffer lands over the years that are currently zoned Rural Residential, Forest Conservation, Exclusive Farm Use. This situation was not evaluated by this subcommittee for consistency with Vision 2040 which went into effect in 2019.</p>	11	0	0
<p>CUP F-24 [Link]</p>	<p>Documentation for a required submittal of a plan for emergency water supplies to the Power Generation facility was not found in the land use records.</p>	11	0	0
<p>CUP F-25</p>	<p>Odor issues have not been addressed in any of the land use Conditions of Approval.</p>	9	2	0

CUP F-26 [Link]	In reviewing historical files it was not clearly specified what conditions were to be completed before final approval of the application and which conditions are applied to the on-going use of the land.	11	0	0
CUP F-27	A Land Use Compatibility Statement (LUCS) with a faxed date of Feb 25 '92 along with instructions on how to fill it out and what the intended use of the LUCS is was found as a supporting document in a 2000 Updated Site Development Plan report. The current 2019 dated Operating permit is based on a 2000 dated LUCS.	7	3	0
CUP F-28	There are Valley Landfill, Inc. Closure Plan Reports / Financial Assurance documents dating from the mid 1990's identifying areas of the landfill that are closed to meet DEQ requirements. Financial Assurance amounts were reduced to reflect the closure. The landfill owner utilized existing financial assurance to meet DEQ closure requirements in the 1990s. For explanation of financial assurance see LLU F-3b.	9	2	0
CUP F-29	There is a record of citizen odor complaints in a March 29, 2005 DSAC meeting minutes. Detailed information (e.g. date, time, weather conditions) on odors was reportedly presented to DSAC. Two odor control methods mentioned: 1) Keep the power generation equipment running or keep the flare lit (i.e. burn the vapors), 2) "We are using soil cover and closing the landfill at night." September 16, 2008. Landfill representative told County to refer complainants to the landfill organization because the landfill is obligated to report them to DEQ.	9	2	0
CUP F-30	Sources of Wastes: A 2001 tonnage report does not list any wastes as coming from out of state. Reports from subsequent years do e.g. 2002 lists ~12,000 tons under "Private Vehicles" (as separate from Commercial). 2003 @ ~37,000; 2004 @ ~34,000 tons; 2005 @ ~18,000; 2006 @ ~16,000	9	2	0
CUP F-31	A "Special Waste Management Plan (Draft) 10/03 file date" identifies wastes other than household material that can be brought to Coffin Butte.	8	3	0
CUP F-32	A number of County records were made available for review as of November 2022. However, files for PC-94-10 ⁶⁵ and PC-	9	2	0

⁶⁵ PC-94-10 Zone change from Rural Residential to Landfill Site Zone, Comprehensive Plan change from Rural Residential to Landfill Site

94-11⁶⁶ listed for CUP review in the October CUP planning document were not available.

CUP F-33 Hosting a privately owned landfill in the County involves a complex interplay of land use decisions, environmental regulations, legal precedent, and community perceptions.

11	0	0

Key Recommendations:

#	Recommendation	Formal Workgroup Polling		
		1's	2's	3's
CUP R-1	Maintain the CUP Appendix along with the supporting County and DEQ files as an integral part of the Final Workgroup Report.	11	0	0
CUP R-2	Make the Appendix and supporting comprehensive library of files related to the Coffin Butte landfill electronically and continuously available to the public to increase accessibility and reduce the need for public records requests.	11	0	0
CUP R-3	Actively monitor and enforce prior land use decision Conditions of Approval for the landfill or any other land use decision.	7	4	0
CUP R-4	Establish and widely advertise a reporting process for receiving, tracking, and resolving complaints, such as odor, noise, hours of operation, not following conditions of approval. This administrative process should include an appeals process. Ensure there is a mechanism for providing reports regarding the nature, number and resolution of complaints to be provided to the Board of County Commissioners in the normal course of its business.	11	0	0
CUP R-5	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 County records for that land use application and posted electronically and continuously available to the public.	11	0	0
CUP R-6	Create a system that tracks receipt of reports that are submitted as required per Conditions of Approval (E.g., copies of water quality and air quality permits, emergency plans,	10	1	0

⁶⁶ PC-94-11 A conditional use permit to expand the area approved for a landfill within the Landfill Site Zone and update the site development plan.

permit submittals, financial assurance statements, etc., and data produced from associated monitoring programs, etc.).

CUP R-7 Determine if the Site Plan and Narrative included in the applicant submittals for PC-83-07/L-83-07 are regulatory conditions the landfill is required to follow. Please see LLU F-22 for a contrary view.
[\[Link\]](#)

CUP R-8 In 1983 the County created community expectations for how the landfill would look in decisions documented in PC83-07. Appearance issues including steepness of the landfill slopes, terracing, screening, and returning the land to grazing or other farm-like uses were addressed and committed to by the County and landfill operator. The way the County chose to implement these commitments is questionable given legal hindsight. Whether they be enforceable “conditions of approval” or “findings” in the PC83-07 record remains in dispute. The BCTT Workgroup is not a court of law. The differing interpretations over a possible process or wording error of the 83-07 decision, that causes this issue to arise, should not be the primary concern. Of greater importance for the County’s relationship with its residents is the Planning Commission and Board of Commissioners decisions to adopt the offered designs and reclamation plans to meet public expectations. These expectations were made clear in the records of PC83-07. At a minimum, the debate over PC83-07’s intended vs. actual conditions of approval or findings draws attention to the fragile “good neighbor” relationship between the County, landfill owner/operator and the public established through the 83-07 land use hearing process. Acknowledging these discrepancies with prior commitments should form a basis for the County, landfill owner/operator, DEQ and the public to come to reasonable expectations for the appearance and long-term use and closure of the landfill facility.
[\[Link\]](#)

CUP R-9 Clarify and communicate to the public what appropriate reclamation will look like to appropriately manage community expectations for the ultimate disposition of the landfill. For example, the county should explain to the public, with DEQ’s and Republic’s assistance, DEQ’s minimum reclamation requirements in the current Worst–Case Closure and Post-Closure Care Plan.

CUP R-10 Determine how or if the County’s reclamation conditions of approval can be incorporated into DEQ’s requirements for Valley Landfill’s Worst–Case Closure and Post-Closure Care Plan for the landfill.
[\[Link\]](#)

6	5	0
7	2	2
12	0	0
11	1	0

CUP R-11	Determine the authority of the 2002 Memorandum of Understanding as it relates to pre-2002 Conditions of Approval and broadly communicate the applicability of the 2002 MOU to the public to help manage community expectations.	9	2	0
CUP R-12	Clarify the intersecting roles between the County and DEQ in future CUP actions, recognizing the line between "environmental" and "land use" impacts may not be clear and establish a process of reconciliation.	11	0	0
CUP R-13	Establish a reporting program for compliance confirmation for facilities contributing to environmental impacts on the County, such as a landfill, industrial-scale composting, or direct dischargers to water bodies within the County, etc.	11	0	0
CUP R-14	Consider the impact 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.	11	0	0
CUP R-15	The workgroup took two polls on various versions of this recommendation, and the results appear below: <i>Version 1:</i> Evaluate whether acquiring buffer land by landfill-related entities impacts is consistent with 2040 Initiative including the impact on housing, forestry, and agricultural land uses. Acquiring buffer land is an action specified in DEQ's Record of Decision from the DEQ Cleanup Program for the landfill. "Property purchases as buffer around the landfill." is identified as one of the remedies for groundwater contamination. In addition, identifying options to disclose to the community who adjacent land owners are. <i>Version 2:</i> Evaluate whether acquiring buffer land by landfill-related entities is consistent with 2040 Initiative including the impact on housing, forestry, and agricultural land uses. Acquiring buffer land is an action specified in DEQ's Record of Decision from the DEQ Cleanup Program for the landfill. "Property purchases as buffer around the landfill." Is identified as one of the remedies for groundwater contamination.	9	1	2
		8	2	2
CUP R-16	Require submittal of a plan for emergency water supplies for fire protection to the Power Generation facility per S-97-58. [Link]	11	0	0
CUP R-17	Develop a comprehensive emergency preparedness/response plan with neighboring counties, cities and fire districts given the experiences from the nationally reported 1999 landfill fire.	11	0	0
CUP R-18	To address public concerns about odor, engage in a dialogue with the community to promptly develop and implement an	10	1	0

	odor reporting and mitigation plan that is consistent with the community’s needs and DEQ requirements and County health and nuisance regulations.			
CUP R-19	Update the Benton County Code and land use application documents to reflect the conditions of approval that are to be completed before final approval of an application and which conditions are applied to the on-going use of the land. This would improve understanding of the differing conditions of approval for the applicant, public, and decision-making bodies.	11	0	0
CUP R-20	Benton County should ensure that its land use decisions clearly capture and make binding the intent of the decision-makers; and should communicate with the public the outcome of such decisions in understandable language. In addition, the County should inform the public – particularly those members living within 5 miles of the landfill - when changes outside of a public land use process affect how the landfill operates or is regulated.	11	0	0
CUP R-21	Review historical and current closure related documentation to determine their impact on the ultimate closure of the landfill site.	9	1	0
CUP R-22	Continue working with DEQ to access their files and make the information readily available on the County website.	10	1	0
CUP R-23	Conduct additional searches of County records and other depositories of County correspondence such as DEQ records to uncover documents that may impact the evaluation of future land use matters. Make existing files for PC-94-10 and PC-94-11 available to the public.	9	2	0
CUP R-24	Future users are encouraged review all then-available source files for evaluating land use decisions and not rely solely on Appendix C4 documentation.	11	0	0
CUP R-25	Retain a specialized professional team of outside resources to act in the County’s behalf in all aspects of upcoming expansions of the landfill. This team should be structured to require only guidance from County staff. The team resources should not be dependent on County staff for administrative tasks or clerical support. Public Members of BCTT knowledgeable in the issues should participate in the selection of outside resources.	9	3	0

CONCLUSION

The Land Use subcommittee reviewed documents spanning more than 50 years to assess compliance with land use requirements and Conditions of Approval placed on the landfill. The efforts of the Benton County staff to locate and organize records and provide them in an

electronic format was essential to allowing a full review of the historical documents and is appreciated. DEQ's similar efforts to assemble and make documents available for review was of great value and is also recognized. As a result of these efforts, for the first time the County now has a documented history of land use files for the landfill.

The subcommittee members reviewed these files from differing positions. The public members were looking for a record of compliance. In many cases, documentation of decisions made and tracked were missing, reasoning around decisions was sparse or missing, follow up documentation, once an application was closed, is seldomly found. Some records may have been in other files kept by DEQ or other county departments, but these were not available for review.

County staff and Valley Landfills, Inc. (Republic Services) were working from alternate views. Valley Landfills, Inc. has presumed their work processes have achieved compliance with Conditions of Approval since their purchase of the landfill business in 2008. Throughout this process Valley Landfills has asserted their belief that the landfill was also in compliance at the time of purchase.

Benton County's work processes do not proactively monitor and enforce all land use Conditions of Approval. This means that when an application is given final approval and the requested use is allowed to begin, County staff then find the applicant to be in compliance with initial Conditions of Approval. However, Conditions of Approval that span the life of a use are not necessarily tracked once an application file is closed. Benton County relies on complaints to initiate a compliance review rather than performing proactive site inspections.

The Public Members of the Subcommittee looked for facts in County and DEQ records to assess compliance as illustrated in the chart titled A.2 CUP Subcommittee Member Opinions, additional information is needed to gain consensus on roughly 80% of land use requirements.

SECTION E: COMMUNITY EDUCATION & PUBLIC INVOLVEMENT SUMMARY

INTRODUCTION

Benton County relies on community participation for nearly all aspects of its policies and decisions. In June 2021, Republic Services filed its initial Conditional Use Permit (CUP) application, requesting to expand landfill operations south of Coffin Butte Road. Community members affected felt they had limited opportunity for input. The Benton County Planning Commission denied Republic's CUP application in December, 2021, at which point Republic Services timely appealed that decision to the Benton County Board of Commissioners. In March 2022, Republic services withdrew its appeal, stating its intent to file a new CUP request in 2023.

The County and its Board-appointed bodies, including the Solid Waste Advisory Council Committee (SWAC) and the Planning Commission must follow legal criteria in making land use decisions, including following County regulations that provide opportunities for community input. This input is critically important. Recommendations to ensure that community engagement and education are present for the next CUP process and other future land use decisions are discussed below.

Committee recommendations include: providing more time for public comments, updating community outreach methods to include underserved populations, providing more language accessibility, expanding website and social media reach beyond the existing self-selected lists, and ensuring that public comments are organized and easily accessible for review.

Goals and Objectives

- Best practice recommendations for Benton County communication and outreach with the public for future CUP's and communications concerning the Sustainable Materials Management Plan (SMMP.)
- Review past CUP processes and standard Benton County Communication practices.
- Provide ideas and feedback for the BCTT, SWAC, and the PC to help in Community Engagement
- Develop an outreach plan that allows community members more time to be involved in the CUP and other Land Use processes in the future and gives the County more access to community input for decision-making.

SUBCOMMITTEE [WEBPAGE LINK](#)

SUBCOMMITTEE CHARGE

- 1) General History:
 - a. Directed at the public and those new to the issue.
 - b. Not as detailed as the initial draft
 - c. Narrative more than a table of newspaper articles
 - d. Other historical details will appear in the Capacity and CUP reports for cross-referencing.
- 2) Next CUP Communications Protocols:
 - a. Start with legal requirements from Legal Subcommittee

- b. Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions.
 - c. Look at wide distribution via multiple communication channels.
 - d. Note opportunities for input from the jump.
 - e. Possible Open House/Community Forum events
 - f. Benton County devoted website with public comment email/form, Etc.
 - g. Legal Issue: Apply to just landfill CUP or all CUPs – perhaps, two processes; one for big/large area impacts vs. smaller/localized impacts, etc. It may require code amendments.
- 3) Executive Summary:
- a. Emphasis will be on recommendations.
 - b. Note where “consensus” and MAJ- MIN
- 4) Community Education Plan:
- a. Focus on the ending of the BCTT process and preparation for the next CUP.
 - b. SMMP info?
 - c. FAQs from a process perspective – not the substantive perspective
 - d. Outreach Plan
- 5) Recommendations

SUBCOMMITTEE MEMBERS AT END OF PROCESS

Cory Grogan
 Ginger Rough
 JonnaVe Stokes
 Louisa Shelby
 Marge Popp
 Mark Henkels
 Mary Parmigiani
 Staff: Amelia Webb

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KEY FINDINGS AND KEY RECOMMENDATIONS

This section lists Key Findings and Key Recommendations from the full subcommittee report below. These key findings and key recommendations do not capture the comprehensive discussions of the subcommittee, nor are they intended to do so. Instead, these provide a summary overview of key observations. The link adjacent to each Key Finding provides access to the full report. These summaries encourage readers to follow the links to find detailed content under in the full subcommittee report.

Key Findings:

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

#	Finding	Formal Workgroup Polling		
		1's	2's	3's
<u>CEO F-1</u>	Insure language accessibility for at least the County's most used languages. (English, Spanish, Mandarin, and Cantonese)	10	1	0
<u>CEO F-2</u>	Use methods that help target underserved populations, particularly youth and low-income demographics. <ul style="list-style-type: none"> 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. 	11	0	0
<u>CEO F-3</u>	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.	10	1	0
<u>CEO F-4</u>	Create user-friendly access to public input documents and testimonies during the process to ensure Benton County, Planning Commission, SWAC, and others.	10	1	0
CEO F-5	It is important for CUP applicants to have a pre-application meeting with community members to further foster collaboration and open communication.	9	2	0
CEO F-6	Community input on environmental health and safety concerns in the area around the landfill is helps assess criteria for a CUP. In the last CUP process, community members were concerned about odor, noise, air quality and other environmental health issues that may affect the use of the surrounding property and character of the area ⁶⁷ . Concerns & Complaints on the Benton County website provides links and phone numbers to report odor and air quality concerns about the landfill to the County, DEQ and Republic Services. There is not a link for noise or light complaints. The follow up and public access to this data is unclear.	n/a	n/a	n/a

Key Recommendations:

⁶⁷Benton County. (2021). Planning commission findings. <https://www.co.benton.or.us/pc>

NOTE: Generally, these recommendations focus on the landfill. However, absent a change to the existing County Code they could potentially apply to all CUP expansions. In addition, please note that recommendations are listed in chronological order of their application, and not necessarily in order of significance.

#	Recommendation	Formal Workgroup Polling		
		1's	2's	3's
CEO R-1	County Development Department and County PIO are responsible for conducting communication and outreach.	7	4	0
CEO R-2	The Board should consider changes to these notification recommendations based on the potential impact of other CUP applications.	12	0	0
CEO R-3	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 from the landfill and should go out ideally a month before the survey closes.	11	0	0
CEO R-4	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 from the landfill is proposed, and notifications should be sent 72 hours after the report is finished.	11	0	0
CEO R-5	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 of the landfill, and notifications should be sent 24 hours after the board hearing is scheduled.	11	0	0
CEO R-6	The County should notify the public when Republic first notifies the County that they plan to file a CUP application. This starts off any pre-filing public involvement. Notifications should include a postcard, email blast, newspaper notification, and social media posts and advertisements.	9	2	0

	Postcards should be sent to everyone within a 10- or 15-Mile radius of the landfill, and notifications need to begin 24 hours after the County is notified.			
CEO R-7	Notifications for CUP filings, which includes the application review process, should consist of 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 of the landfill, and notifications need to begin 24 hours after the initiation of a CUP filing. 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. Determining that an application is complete does not mean the information satisfies the approval criteria.	11	0	0
CEO R-8	Notification when County determines the application is complete 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.	11	0	0
CEO R-9	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.	11	0	0
CEO R-10	Notifications of the SWAC Recommendation should include website posts and email blasts to interested groups and people already on the existing email list. The notifications should be sent out 24 hours after the recommendation.	11	0	0
CEO R-11	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.	11	0	0
CEO R-12	Notifications of the Planning Commission's decision on the application should include website posts and email blasts to interested groups and people already on the existing email list. The notifications should be sent out 24 hours after the recommendation.	11	0	0
CEO R-13	Notifications of when the Board is hearing the CUP application for approval will include a postcard, email blast, newspaper notification, and social media posts and advertisements. They should be sent to everyone within a	11	0	0

10- or 15-Mile radius of the CUP site and occur 24 hours after scheduled.

CEO R-14 Notifications of the Board’s decision on the application will include an email blast, website banner, newspaper notification, and social media posts. The notifications should be sent out 24 hours after the decision.

CEO R-15 Applicants of CUPs should have a pre-application meeting with notification to the communities affected by the CUP as directed by the County.

CEO R-16 Neighborhood concerns about the landfill need to be collected, tracked, and resolved in an organized reporting and appeals process as cross referenced in CUP R-4 and CUP R-17. The data and actions taken should be accessible by the public. An updated area of the website with a streamlined reporting process for odor, noise, air quality and other environmental health concern reporting is needed. For example, a community member could click on the area of concern and check off boxes quickly to make a report. Phone numbers and emails should also be available for those who can more easily access these methods of communication. A link to the reporting area of the website on social media accounts would also be needed.

11	0	0
12	0	0
9	3	0

CONCLUSION

Community education and extended outreach are vital steps of the land use application process. Making sure everyone in the community gets information about this process requires two broad methods: specifically targeting underserved groups and using multiple outreach methods. Targeting underserved groups can include increased social media use and other outreach methods that can easily be accessed with a phone. It is also essential that communications are succinct and easily understood by the entire population. In addition, it is critical that some of the communications do not require community members to be pre-signed up. Using multiple outreach methods is also important, and during the process, the county should gauge the effectiveness of the communication strategy and change it if necessary.⁶⁸

⁶⁸ Benton County Oregon. (2022). Benton County Talks Trash solid waste process workgroup communication and outreach plan. https://www.co.benton.or.us/sites/default/files/fileattachments/community_development/page/8384/imperati_grogan_121222_fw_bctt_subcommittee_e_swppwg_communication_outreach.pdf