

CUP Introductory Language

Current Draft as of 12/20/22 with Lucker 1-6-23 Suggestion

This document contains a historical summary of land use actions¹ including adopted conditions of approval for past land use applications and Conditional Use Permits (CUPs) relevant to the Coffin Butte Landfill. It provides the context needed to better understand how we got to where we are now. Our goals for this section included:

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

For context, Benton County's Development Code (BCC) describes conditional uses as "land uses which may have an adverse effect on surrounding uses in a zone." (BCC 53.205). To lessen the adverse impacts, the county may "impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise ensure compliance with the purpose and provisions of this code." (BCC 53.220).


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

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

Conditions of approval must be related to and necessary to ensure compliance with approval criteria. They cannot expand the approval criteria; nor can they substitute for a finding of compliance with a criterion for approval. Rather, after the decision maker has determined compliance, or feasibility of compliance, with approval criteria, conditions may be imposed to ensure compliance with those criteria. BCC 53.215 establishes the approval criteria for conditional use permits in Benton County. All conditions of approval must relate to those

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

approval criteria. Accordingly, for conditional use permits for landfill expansion in the Landfill Site Zone, conditions of approval may be imposed to mitigate negative impacts to adjacent property in order for the decision maker to find that “[t]he proposed use does not seriously interfere with uses on adjacent property, with the character or the area, or with the purpose of the zone”; and that “the proposed use does not impose an undue burden on any public improvements, facilities, utilities or services available to the area.” (BCC 53.215(1) and (2).² To be effective, conditions must be monitored and enforced.

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

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



² BCC 53.2145(3) includes a criterion that “the proposed use complies with any additional criteria which may be required for the specific use by this code. BCC chapter 77 does not include any additional criteria for expansions to landfills in the Landfill Site Zone.