

BCTT Subcommittee - A.3. Legal Issues and B.1. Land Use Review

Subcommittee Meetings Notes

Contents

Charge.....	2
Members.....	3
Meeting #1 Report to BCTT Work Group DRAFT – 10/27/22.....	4
Meeting #2 Report to BCTT Work Group DRAFT – 11/8/22.....	6
Meeting #3 Report to BCTT Work Group DRAFT – 11/15/22.....	8
Meeting #4 Report to BCTT Work Group DRAFT – 11/29/22.....	10
Meeting #5 Report to BCTT Work Group DRAFT – 12/6/22.....	13
Meeting #6 Report to BCTT Work Group DRAFT – 12/13/22.....	15
Meeting #7 Report to BCTT Work Group DRAFT – 1/3/23.....	17
Meeting #8 Report to BCTT Work Group DRAFT – 1/10/23.....	20
Meeting #9 Report to BCTT Work Group DRAFT – 1/17/23.....	22
Meeting #10 Report to BCTT Work Group DRAFT – 1/24/23.....	27
Meeting #11 Report to BCTT Work Group DRAFT – 2/7/23.....	29
Meeting #12 Report to BCTT Work Group DRAFT – 2/14/23.....	32
Meeting #13 Report to BCTT Work Group DRAFT – 2/21/23.....	37
Meeting #14 Report to BCTT Work Group DRAFT – 2/28/23.....	42
Meeting #15 Report to BCTT Work Group DRAFT – 3/7/23.....	44
Meeting #16 Report to BCTT Work Group DRAFT – 3/14/23.....	45

Charge

1. *A Summary of the County's current rights and obligations to Republic Services, and vice versa, surrounding:*
 1. *The hauling franchise;*
 2. *The landfill CUP; and*
 3. *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.)*
 4. *Interpretation and Deference*
2. *A Summary of the rights and obligations of other entities surrounding landfills, hauling, and sustainability initiatives, etc.:*
 1. *Federal;*
 2. *Tribal;*
 3. *State (e.g. Is DEQ prohibited from permitting another landfill west of the Cascades and what does the "regional landfill" designation mean?);*
 4. *Local Government; and*
 5. *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:*
 1. *What topics are within whose authority, and*
 2. *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: Land Use Review Tasks

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:*
 1. *53.215 (Criteria)*
 2. *77.305 (Conditional Uses)*
 3. *77.310 (Review)*
 4. *77.405 (DEQ)*
2. *Review Chapters 50 and 51 for context, and then prepare a conceptual list of any other Development Code criteria the WORKGROUP recommends be applicable.*

3. *Developing recommended guidelines for interpreting any ambiguous provisions recognizing current statutes, regulations, case law, and County precedent, etc. 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:*
 1. *The phrase, "Other information as required by the Planning Official" 77.310(e)*
 2. *The terms found in Section 53.215, e.g.*
 3. *"seriously interfere"*
 4. *"character of the area"*
 5. *"purpose of the zone"*
 6. *"undue burden"*
 7. *"any additional criteria which may be required for the specific use by this code.*
 8. *Other: _____*
4. *Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions.*

Members

Liz Irish
Jeff Condit
Vance Cronney
Staff: Greg Verret
Facilitator: Sam Imperati

Meeting #1 Report to BCTT Work Group DRAFT – 10/27/22

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Vance Croney	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
Marge Popp	X
Holly Doyle	X
Camille Hall	X
Pam Vaughan	X

Meeting #1: Oct 25, 2022 03:00 – 4:30 PM Pacific Time [Recording](#)

1. Document titled "[Legal Issues & Land Use Review subcommittee - master working document](#)" contains a compilation of work done to date on this topic, by staff and members of the BCTT Workgroup.
2. Vance Croney and Jeff Condit had reviewed the documents generally but committed to closer review in certain areas, which are identified under Next Steps, below.
3. The current Republic Service agreements with the county had been worked on for 2.5 years. That agreement had been parsed and discussed at length in regards to rights and obligations.
4. Past franchise agreements are no longer relevant to the current franchise agreement. All new agreements are all new. There are no conditions carried over from previous agreements.
5. Benton County does not actively monitor compliance with conditions of land use approvals, including at the landfill.
6. Republic Services sets responsibility for compliance with conditions of approval on the landfill manager.

7. Vance Croney confirmed that the County can not limit by conditional use or in any other way who brings trash to the landfill. The only control they have would be a cap on total tonnage into the landfill. Mr. Croney had already prepared a memo on this topic, which will be added to the subcommittee's document.
8. DEQ decides what kinds of waste are prohibited from entering the land fill.
9. Can or should the County consider DEQ permitting topics when assessing the local land use application criteria? (Section A3, Line 12)
 - A) The committee agreed that its role is to answer the legal question ("can the County ..."); the policy question ("should the County ...") was better left to another group.
 - B) Also address extent to which County can influence or overlap with state permitting authority. Pre-emption language in DEQ statute limits topics that a local jurisdiction can regulate. By cross-referencing state permit requirements in the conditions of the County's land use approval, the state and local government have more of a tool for enforcement.
 - Can the county set a higher threshold for a DEQ-regulated item?
 - State that DSL is in charge of wetlands; they regulate all wetlands that meet the jurisdictional definition
 - Address why can't the county regulate all wetlands, too?
 - Jeff Condit will draft a response to these topics; Greg Verret will fill in additional boxes.

Meeting #2 Report to BCTT Work Group DRAFT – 11/8/22

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Vance Croney	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
Holly Doyle	X

Working Agenda and Materials

Topic	Lead	Start	Duration	Materials
Welcome and Introductions	Facilitator	3:00	5 mins	
Review Subcommittee Tasks (5 minutes)	Facilitator	3:05	5 mins	Charge
Process Protocols and Goals (5 minutes)	Facilitator	3:10	5 mins	
Review Subcommittee Meetings Report document; suggest modifications	Staff Facilitator	3:15	10 mins	Subcommittee Meetings Report
Work through the Next Steps/Action Items identified in the Subcommittee Meetings Report document, referring to Master Document.	Staff Facilitator	3:25	20 mins	Subcommittee Meetings Report ; Master Document
Identify additional Action Items needed to meet subcommittee's charge.	Staff Facilitator	3:45	10 mins	Subcommittee Meetings Report
BCTT Meeting Reports	Facilitator	3:55	5 mins	
Adjourn	All	4:00		

Meeting #2: November 8, 2022 – 3:00pm-4:30pm

1. Group reviewed Meeting Report Document (this document) and concurred with layout, function and content.
2. Worked through the Next Steps/Action Items listed above.

3. Confirmed Action Items A & B:

Mr. Croney and Mr. Condit to submit a memo that would explain further how ambiguous terms are interpreted.

4. Lengthy discussion of Action Item C (Mr. Condit and Mr. Verret will address certain Mr. Croney will draft an answer to "Can the County consider DEQ limitations on local authority over state-regulated topics such as wetlands and permitting topics when assessing the local land use application criteria.") Discussion of identifying what product would be most useful to the BCTT and the Board of County Commissioners. Could be a significant undertaking. Decided on a table with brief entries summarizing info covered in different locations in the document with caveats for areas of uncertainty. Identify topics definitively regulated by DEQ, DSL, Benton Co, others, ... and those that are uncertain.

DRAFT

Meeting #3 Report to BCTT Work Group DRAFT – 11/15/22

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Vance Croney	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
Holly Doyle	X

Working Agenda and Materials

Topic	Lead	Start	Duration	Materials
Welcome and Introductions	Facilitator	3:00	5 mins	
Review Subcommittee Tasks (5 minutes)	Facilitator	3:05	5 mins	Charge
Review draft summary table of “Who Regulates What” based on discussion at 11/8 meeting	Staff	3:10	10 mins	Will be distributed 11/15; For reference: Master Document
Introductory statement for Past Land Use Decisions Document – review draft from A.2 Subcommittee	Staff	3:20	15 mins	Document distributed via email
Address the topic of “Identify which provisions/conditions of approval of past land use decisions remain in force today.” Note that this topic overlaps with the charge of the A.2 Subcommittee (Past Land Use Application Conditions).	Staff	3:35	15 mins	None prepared.
Address Charge B.4: “Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions.”	Staff Facilitator	3:50	10 mins	None prepared.

BCTT 11/17: Subcommittee report-out.	Staff	4:00	5 mins	Subcommittee Meetings Report
Open House 11/17: Determine the focus of the Subcommittee's table and which members will staff it.	Facilitator	4:05	15 mins	
Next steps on fulfilling charge.	Staff	4:20	5 mins	Subcommittee Meetings Report
Scheduling	Facilitator	4:25	5 mins	
Adjourn	All	4:30		

Meeting #3: Nov 15, 2022 03:00 – 4:30 PM Pacific Time

- Review draft summary table of “Who Regulates What” based on discussion at 11/8 meeting:
 - Draft table seems to be in the right direction. Republic wants chance to review prior to release.
 - Need to get group approval for what documents will be made available at the open house.
 - Noise standards – County has historically not taken this on. County could hire a specialist or somehow.
- An additional task for this subcommittee is to opine on whether conditions of past approvals are still relevant/applicable. Not same analysis as with franchise agreements, where a new contract (franchise agmt) supersedes the previous contract in full. Land use approvals are fuzzier. Best practice is to clearly state in a land use decision which if any of the prior approval conditions carry over with new approval.
 - Sam requests a memo on this topic: Best practice going forward; what applies from the past decisions.
- Reviewed draft intro statement from A.2 subcommittee. Edits recommended to distinguish between compliance and enforcement; to clarify the legal basis for conditions of approval; and to explain that for all land use decisions, enforcement is typically complaint-driven.
- Agreed on dates for next 2-3 meetings: 11/29, 12/6, 12/13. 3:00-4:30pm.

Meeting #4 Report to BCTT Work Group DRAFT – 11/29/22

Attendance

Member	Present
Liz Irish	X
Jeff Condit	
Holly Doyle (sub for Condit)	X
Vance Croney	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
-none-	

Meeting #4: Nov 29, 2022 03:00 – 4:30 PM Pacific Time

DRAFT Working Agenda and Materials

For Reference: [Master Document for Legal & Land Use Issues Subcommittee](#)

Topic	Lead	Start	Duration	Materials
Welcome and Introductions	Facilitator	3:00	5 mins	
Introductory statement for Past Land Use Decisions Document – review draft revised by members of both subcommittees	Staff	3:05	20 mins	Sam will provide latest version
Address the topic of “Identify which provisions/conditions of approval of past land use decisions remain in force today.” Note that this topic overlaps with the charge of the A.2 Subcommittee (Past Land Use Application Conditions).	Staff	3:25	35 mins	None prepared.
Address Charge B.4: “Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions.”	Staff Facilitator	4:00	15 mins	None prepared.

Address topic of liability after landfill closure.	Facilitator	4:15	10 mins	See email from Marge Popp, sent to BCTT by Sam Imperati 11/27 @ 4:55pm
--	-------------	------	---------	--

Topic: Introductory statement for Past Land Use Decisions Document

- Latest compiled draft sent out by Sam today will be reviewed by the Past Approvals subcommittee, then further revised draft will be sent to the Legal/Land Use subcommittee

Topic: Address the topic of “Identify which provisions/conditions of approval of past land use decisions remain in force today.” Note that this topic overlaps with the charge of the A.2 Subcommittee (Past Land Use Application Conditions).

- Jeff Condit or someone in his office will research and prepare a first draft of a white paper on this topic. Holly also involved. Hope to have draft by Meeting #5. Vance has looked into Westlaw and it’s not a black-and-white answer. In past land use decisions, some conditions of approval were clearly specified as continuing on from past decisions; others were not specific, so it’s unclear whether the conditions of approval were superseded or not.
- Goal is to state a general principle, and then identify those that do apply and those that do not.
- Understand that currently applicable conditions of approval could be viewed as a menu for the PC/BOC to choose from for what conditions should apply in the future
- Include advice for going forward: decisions should clearly state which conditions carry forward from past.

Topic: Address Charge B.4: “Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions.”

- The public outreach and information subcommittee needs to have the legal requirements to work with. Staff pull out notification requirements from our existing work to summarize legal requirements around notification; describe default process as well; options that have been used.

Topic: Address liability after landfill closure.

- What are the current requirements and assurances in place?
- DEQ has closure and post-closure requirements. Franchise agreement has requirements, including environmental trust fund. If concern is that VLI tries to sell the landfill, they can’t sell the franchise agreement without BOC approval. ORS and OAR spell out the closure process pretty clearly.
- To Do: Summarize the relevant franchise agmt requirements and the DEQ requirements. Holly Doyle will take first shot at this; Vance to review.
- Related question seems to be, what happens if a parent company divests itself of a subsidiary that is responsible for a landfill. Review case that Marge forwarded. Or

check with Brian Fuller (DEQ); there may be an Oregon statutory answer to the situation. Holly will contact Brian.

New topic: Do statements in a land use application, in which the applicant says they will do certain things, become binding? Particularly in the absence of a condition specifically listing the things the applicant said they would do.

- A general statement that “the land use shall be established as described in the application” can cover this, but can introduce ambiguity. Best practice would be to state more clearly, as conditions of approval, what is expected in implementation. This should be a key recommendations to the BOC as a best practice, to reduce uncertainty in the future.

DRAFT

Meeting #5 Report to BCTT Work Group DRAFT – 12/6/22

Attendance

Member	Present
Liz Irish	X
Jeff Condit	
Holly Doyle (sub for Condit)	X
Vance Croney	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
-none-	

Meeting #5: December 6, 2022 03:00 – 4:30 PM Pacific Time

DRAFT Working Agenda and Materials

For Reference: [Master Document for Legal & Land Use Issues Subcommittee](#)

Topic	Lead	Start	Duration	Materials
Welcome and Introductions	Facilitator	3:00	5 mins	
Introductory statement for Past Land Use Decisions Document – review draft further revised by A.2 subcommittee.	Staff/ Facilitator	3:05	30 mins	“CUP Introductory Language 12-2-22 Draft...” sent by email 12/6/22
Review list of action items. Address items that can be dealt with in the meeting. Identify homework!	Staff	3:35	40 mins	Subcommittee Meetings Report
Next steps on fulfilling charge.	Facilitator	4:15	10 mins	Subcommittee Meetings Report
Adjourn (use your extra 5 minutes wisely!)	All	4:25		

Committee reviewed revised introductory statement for Past Land Use Decisions Document and discussed a) how much narrowing of the issues had occurred (significant agreement on the text between

the two committees) and b) a couple areas needing further refinement. Edited version for Facilitator to continue working with A.2 subcommittee on.

Reviewed action item list and established plan for addressing remaining items.

Reviewed preparation for Dec 15 workgroup meeting:

Send updated master doc to full workgroup by 12/12 at latest

Send to Sam end of Thursday 12/8

45 min presentation: Where we are, what we've covered

The X number of key determinations – as a powerpoint, ideally

Sam will prepare a template

High-level overview of the key determinations, then:

1. Ask the workgroup: Which of these do you want more info on?
2. Ask the workgroup: Are there any that are different than you were thinking?
3. Describe the issues we're working on next.
4. Ask the workgroup: Are there other questions you don't see on our plate that you think should be?

Meeting #6 Report to BCTT Work Group DRAFT – 12/13/22

Attendance

Member	Present
Liz Irish	X
Jeff Condit	
Holly Doyle (sub for Condit)	X
Vance Croney	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
-none-	

DRAFT Working Agenda and Materials

For Reference: [Legal Issues & Land Use Review subcommittee - master working document v6](#)

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Presentation for Dec 15 BCTT Workgroup Mtg	Liz	3:05	40 min	1 st draft attached (emailed by Liz 12/11/22)
Closure/Post-Closure Obligations	Holly	3:45	20 min	Memo attached (emailed by Holly 12/13/22)
Relevance of applicant statements	Vance/Greg	4:05	10 min	Page 47 in Master Document (incorporated from Vance's 12/1/22 email titled "Aspirational promises")
Introductory statement for Past Land Use Decisions Document – review draft further revised by A.2 subcommittee.	Staff/ Facilitator	4:15	10 min	???
Next steps on fulfilling charge.	Facilitator	4:25	5 mins	Subcommittee Meetings Report
Adjourn	All	4:30		

Presentation for Dec 15 BCTT Workgroup Mtg

Sam suggests presenting information, then asking:

Questions for clarification?

Anything you see missing?

Any conclusions that you object to?

Group reviewed draft slides and notes, had discussion. Liz will finalize and present at BCTT workgroup.

Closure/Post-Closure Obligations

DEQ's safety net is robust; helps ensure an uneventful landfill closure/post-closure.

Financial assurances required

Relevance of applicant statements

Group decided that a group discussion was not necessary.

Introductory statement for Past Land Use Decisions Document – review draft further revised by A.2 subcommittee

Other subcommittee wants to have a joint meeting to discuss paragraph in question. Will schedule for after Jan 1.

Also, topic of 1983(?) CUP: Was current practice of conditions needing to be self-contained in place in 1983? Totality of decision seems to require compliance with a submitted map/plan, per CUP subcommittee.

Meeting #7 Report to BCTT Work Group DRAFT – 1/3/23

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
-none-	

DRAFT Working Agenda and Materials

For Reference: [Legal Issues & Land Use Review subcommittee - master working document v7](#)

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Review schedule, work left to do. Establish game plan for completion.	Facilitator & Staff	3:05	10 min	Workgroup Calendar ;
Introduce Viginia Lucker; initial comments on review of materials	Facilitator	3:15	10 min	
Past CUPs Introductory Language	Facilitator	3:25	15 min	12/20/22 draft attached to email
New Topic: Address “Other information as required by the Planning Official.” List topic areas considered by Planning Commission in 2021 CUP decision. Add to Section B.3.	Staff	3:40	10 min	See Charge B.3 on Page 2 of Subcommittee Meetings Report .
New Topic: Address how 2002 MOU informs questions of the relevance of past land use approvals.	Staff	3:50	15 min	2002 MOU b/w Benton County & Valley Landfills, Inc
New Topic: draft memo from Chuck Gilbert	Facilitator	4:05	10 min	Attached to email
Next steps on fulfilling charge.	Facilitator	4:15	15 mins	Subcommittee Meetings Report
Adjourn	All	4:30		

New Topic: Address “Other information as required by the Planning Official.” List topic areas considered by Planning Commission in 2021 CUP decision. Add to Section B.3.

What can the Planning Official legally ask for in terms of, say, a traffic study?

What are the parameters? Are there limits on what the Planning Official can require?

Are there areas off-limits?

How robust a requirement can be made?

Croney: limited to info relevant to the criteria; may need to demonstrate connection to the criteria in order to justify the requirement to supply certain info.

Applicant can provide info or can state that they believe their application is complete, compel the application review to proceed.

What did the Planning Official/PC ask for and either get or not get?

How much is too much to ask?

Standard of proof:

Applicant’s burden of proof; decision must be based on substantial evidence in the record; consider conflicting evidence. (see deference memo)

“Other information ...” is a curious provision in the code. Is a completeness review element, not an approval criterion.

Undue burden review: which facilities could be impacted; amount of impact from proposed use.

Decision maker can decide whether there is adequate information to meet the burden of proof.

Appeal can be on the basis of inadequacy in the record, or adequacy that was rejected.

Greg to compile the above into a draft memo.

2002 memorandum:

Holly: Recommend to workgroup that this memo makes review of conditions pre-2002 moot?

Memo has not been discussed by CUP subcommittee.

Can a memo outside of land use process affect approvals/conditions?

It’s a contractual agreement about what the two parties agree to, but not a land use decision superseding prior land use approvals. County saying VLI is in compliance at that time, that as of this date (2002) all conditions met and no violations.

Group review; interpretation memo from B Co.

Chuck Gilbert's memo: looking for confirmation that terms are correctly defined, and whose property trash is.

Franchise Agreement addresses this directly.

Sam will follow up.

DRAFT

Meeting #8 Report to BCTT Work Group DRAFT – 1/10/23

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	
Facilitator: Sam Imperati	X
Observers:	
-none-	

January 10, 2023 BCTT Subcommittee Legal & Land Use Issues Agenda

Meeting #8: January 10, 2023 03:00 – 4:30 PM Pacific Time

DRAFT Working Agenda and Materials

For Reference: [Legal Issues & Land Use Review subcommittee - master working document v8](#)

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Overview of Existing Document: <ol style="list-style-type: none"> 1) Overall Formatting 2) 150-Day Review (PG 63) 3) Which version is correct? (PG 16-17) 4) Two Memo Situation (Id. + Others) 5) Ginny's Suggestions 	Facilitator	3:05	30 min	
Request from Past Land Use Subcommittee: Does the 1983 CUP approval require ongoing compliance with the site plan and narrative?	Facilitator	3:35	15 min	Pages 57 – 60
Assign Additional Charge Tasks: <ul style="list-style-type: none"> • Necessary Tasks to Start Planning Reopening of Existing Hauling Agreement • Roles, Responsibilities, and Protocols of SWAC and DSAC 	Facilitator	3:50	30 min	

<ul style="list-style-type: none"> • Specific Recommended Review Criteria for the Evaluation of Landfill CUP applications • SWAC/DSAC, Planning Commission, and BOC Use of the Review Criteria • Future Timeline for Discussing any Needed Changes to the Benton County Code Flowing From WORKGROUP Recommendations • Key Findings • Key Recommendations • Gilbert's, If Time 				
Review Schedule and Next Steps	Facilitator	4:20	10 min	Workgroup Calendar;
Adjourn	All	4:30		

- 1) This is the most recent version of the master document. Please track change it and send around by COB on Friday.
- 2) My team will merge the versions into a new master for Ginny to review.
- 3) While you are free to edit as you deem necessary, please attend to the issues we discussed today.
 - a. The 150-Day section (PG 63)
 - b. Remove any historical versions of sections that are no longer needed because you now have a final version
 - c. Remove references to who wrote the memo unless there is a conflict. The next draft belongs to the whole subcommittee – not the original author.
 - d. Review and respond to Ginny's suggestions.
- 4) As to new sections:
 - a. Necessary Tasks to Start Planning the Reopening of the Existing Franchise agreement, (Liz and Greg, with Vance help)
 - b. Roles, Responsibilities and Protocols for SWAC/DSAC (Vance and Liz) Include sideboards and roles.
 - c. Specific Recs for REV Criteria and Eval of Landfill CUP: Done
 - d. SWAC?PC?BOC Use of Review Criteria: Done
 - e. Future Steps and Timeline for Discussing an Needed Changes to the Codes Flowing from Workgroup Process (Vance and Liz)

Meeting #9 Report to BCTT Work Group DRAFT – 1/17/23

Attendance

Member	Present
Liz Irish	
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
-none-	

January 17, 2023 BCTT Subcommittee Legal & Land Use Issues

Meeting #9: January 17, 2023 03:00 – 4:30 PM Pacific Time

DRAFT Working Agenda and Materials

For Reference: Latest version of Subcommittee Doc was emailed 1/16 5:54pm from Jeff Condit

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Feedback from Workgroup <ul style="list-style-type: none"> • Environmental information on page 18 and other tables aren't complete; combined tables would be easier to read. • Q & A section either in one place or labeled as such after each topic. [style edit at end] • Suggest a table comparing different interpretations. [Not needed if we produce a consensus document.] • How many of the Republic Obligations is Republic actually following? [Not in scope of this document] • Page 40, more information on the PAPA process [new section drafted today] • Define “right” and “obligation.” [will be clarified in later draft] 				

<ul style="list-style-type: none"> • More bullets, less wordiness. Summaries would help. • Why doesn't DEQ enforce noise std? [addressed in full table; re-worded summary table to describe] • Is there any amount of public comment period that is legally required? 				
Key Findings/Key Recommendations <ul style="list-style-type: none"> • Changes? Or good to go? 				
Document Review – Edits to Existing Sections <ul style="list-style-type: none"> • Review latest draft • OK with staff standardizing formatting? 				
Document Review -- New Sections: <ol style="list-style-type: none"> 1) Necessary Tasks to Start Planning the Reopening of the Existing Franchise agreement, (Liz, Greg, Vance) 2) Roles, Responsibilities and Protocols for SWAC/DSAC (Vance and Liz) Include sideboards and roles. 3) Specific Recs for REV Criteria and Eval of Landfill CUP: Done 4) SWAC?PC?BOC Use of Review Criteria: Done 5) Future Steps and Timeline for Discussing an Needed Changes to the Codes Flowing from Workgroup Process (Vance, Greg, Liz) 				
Review Schedule and Next Steps	Facilitator	4:20	10 min	Workgroup Calendar;
Adjourn	All	4:30		

Reviewed feedback from workgroup members; some addressed in current draft, other input to be addressed in subsequent draft or outside scope.

Reviewed key findings/key recommendations, in brief. With disclaimer, subcommittee okay with these going into report to full Workgroup.

Reviewed latest draft, agreed on edits to some areas. A few areas will need further review and discussion prior to 1/25 draft release.

Reviewed new section work; okay for 1/17 draft; may have further comments prior to 1/25 release.

Running List of Action Items

- A. Mr. Croney and Mr. Condit to submit a memo that would explain further how ambiguous terms are interpreted.
- ✓ *Completed 11/2/2022. See Page 19 of master document.*
- B. Mr. Croney will draft an answer to “Can the County consider DEQ permitting topics when assessing the local land use application criteria?”
- ✓ *Completed 11/2/2022. Response inserted in Section A3, Line 12, of the master document.*
- C. Mr. Condit and Mr. Verret will address certain limitations on local authority over state-regulated topics such as wetlands and environmental quality. Present as a summary table.
- *Draft begun; see Page 16 of master document. Staff to continue populating table, then subcommittee review.*
- ~~D. Both Mr. Croney and Mr. Condit will be reviewing all previous documents to be sure they have all been updated.~~
- ✓ *Deleting, as this action is assumed part of final review by subcomm*
- E. Mr. Condit will review the franchise agreement portions of Section A2 and submit any markups (tracked changes).
- F. Add number of franchise agreements there have been, the current ones are the ones that control, and those are the ones discussed herein.
- ✓ *Added statement to Page 3 of master document. Did not list number of past agreements as that appears to be irrelevant.*
- G. County staff review "What legally can and cannot be conditions of any land use approval."
- ✓ *Drafted by Vance Croney and Jeff Condit; see Page 12 of the master document. Confirm: does this replace original version (from Republic Services 9/30/22)? Need Jeff Condit to review/discuss.*
- H. Incorporate Mr. Croney’s previous memo on the topics of “Can Benton County prohibit solid waste generated outside the county from being deposited at Coffin Butte landfill?” and “What effect does the regional landfill designation have?”
- ✓ *Completed 11/2/2022. See Page 12 and Page 31 of the master document.*

I. Identify which provisions of past franchise agreements decisions remain in force today.

✓ *Completed 12/6/22. See Page 3 of master document.*

J. Address which provisions/conditions of approval of past land use decisions remain in force today. Identify best practice for the County going forward and discuss what applies from the past decisions.

✓ *Memo submitted by Jeff Condit and Vance Croney. Incorporated into master document; see Page 3.*

- *Does the memo sufficiently address this topic? Two points: 1) the memo describes the Board of Commissioners as making the determination of whether previous conditions remain in force; however, in practical terms this question is more often determined by the Planning Official where the majority of land use actions are decided. 2) The BCTT will likely want to produce a list of currently applicable conditions of approval; this memo provides a legal framework for that determination, but who is going to produce the list?*

K. Elaborate on the 150-day time limit for rendering a final land use decision (currently addressed under Charge B, Background (Page 35) of the master document). What options exist in how the County processes a land use application that could facilitate meaningful public input to the decision-making process? [Request from Facilitator]

✓ *Draft added to master document (Page 48); subcommittee review needed (offline).*

L. Add Charge B.4: "Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions."

✓ *Section drafted. See Page 51 of the master document. Priority Item to enable Subcommittee E to start.*

M. Introductory statement for Past Land Use Decisions Document

➤ *Reviewed and returned to B.2 subcommittee.*

N. Address liability after landfill closure. Address what happens if a parent company divests itself of a subsidiary that is responsible for a landfill.

✓ *Memo submitted by Jeff Condit and Vance Croney. Incorporated into master document; see Page 4 and Appendix A.*

O. Do statements in a land use application, in which the applicant says they will do certain things, become binding?

- ✓ Draft on Page 47, based on Croney email 12/1/22. Subcommittee should review.
- P. New: Address “Other information as required by the Planning Official.” List topic areas considered by Planning Commission in 2021 CUP decision. Add to Section B.3.
 - ✓ Greg and Vance drafted memo.
- Q. New: Address how 2002 MOU informs questions of the relevance of past land use approvals.
 - R. Necessary Tasks to Start Planning Reopening of Existing Hauling Agreement
 - ✓ Vance and Greg to drafted memo.
 - S. Roles, Responsibilities, and Protocols of SWAC and DSAC
 - T. Specific Recommended Review Criteria for the Evaluation of Landfill CUP applications
 - U. SWAC/DSAC, Planning Commission, and BOC Use of the Review Criteria
 - V. Future Timeline for Discussing any Needed Changes to the Benton County Code Flowing From WORKGROUP Recommendations
 - W. Recommendations

Relevant Documents

- [DRAFT Report Common Understandings: Republic Services and Benton County’s Current Rights and Obligations \(IV.A.2\)](#)
- [DRAFT Report Common Understandings: Other Entity Rights and Obligations \(IV.A.3\)](#)
- [County Counsel Deference Memo](#)
- [Staff Memo - Charge B - Dev Code Provisions](#)
- [DRAFT Report Common Understandings: Reporting requirements \(IV.A.1.E\)](#)
- [Common Understandings Feedback - Republic 9-30-22](#)
- [Common Understandings Feedback \(Attachment A\) - Republic Services 9-30-22](#)
- [Master Working Document - Legal Issues and Land Use Review Subcommittee; \(Click Here to Download Word Version\)](#)
- [BCTT Tours Q&A - 10/30/22](#)
- [Fuller - 11/3/22 - Regional Disposal Site Statutes](#)

Meeting #10 Report to BCTT Work Group DRAFT – 1/24/23

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
-none-	

Meeting #10: January 24, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

DRAFT Working Agenda and Materials

For Reference: Latest version of Subcommittee Doc was emailed 1/16 5:54pm from Jeff Condit

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Final editing of report prior to full workgroup editing and release to Planning Commission and SWAC/DSAC for their review.	Staff	3:05	80 min	
Review Schedule and Next Steps	Facilitator	4:25	5 min	Workgroup Calendar
Adjourn	All	4:30		

Subcommittee worked through draft Key Findings & Recommendations document, reviewing edits and comments that members had made prior to the meeting, and then worked through the full subcommittee report, addressing comments and edits made by the subcommittee members prior to the meeting. The starting point for this review was

the [subcommittee report dated 1/17/23](#) and the result was the Key Findings/Recommendations (starting on Page 37) and full subcommittee report (starting on Page 371) contained in [the BCTT Report Draft 3 dated 1/23/23](#).

DRAFT

Meeting #11 Report to BCTT Work Group DRAFT – 2/7/23

Attendance

Member	Present
Liz Irish	
Jeff Condit	
Holly Doyle	
Vance Croney	
Ginny Lucker	
Staff: Greg Verret	
Facilitator: Sam Imperati	
Observers:	
-none-	

Meeting #11: February 7, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

DRAFT Working Agenda and Materials

For Reference: Latest version of Subcommittee Doc was emailed 1/16 5:54pm from Jeff Condit

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Overview of Preliminary Feedback from Planning Commission (reflected in Task List, below) <ul style="list-style-type: none"> Final input to come 2/7/23 	Staff	3:05	5 min	
Review Task List (below) <ul style="list-style-type: none"> Tasks to add? Assign work 	Facilitator & Staff	3:10	75 min	
Review Schedule and Next Steps	Facilitator	4:25	5 min	Workgroup Calendar
Adjourn	All	4:30		

Task List

- ❑ Application Completeness – opportunity for public input: Review Ginny’s suggestion. **Group to review individually.**
- ❑ Franchise Agreement memo: Republic’s input re draft memo needed. **Holly will send.**
- ❑ Did PC-83-7 authorize landfilling the quarry? Analysis needed. (Referral from A.1 subcommittee) **Members need time to review materials. Did the 2002 MOU include a map that relates? Did MOU state that no further CUP required for landfilling LS-zoned areas north of CB Road? Greg will distribute materials to group.**
- ❑ Does participation by planning commissioners now in the BCTT compromise their ability to participate in review of a future land use application involving the landfill? (Planning Commission request) **The only issue would be if a planning commissioner was biased through the BCTT process. If unable to be fair, impartial, unbiased, would need to step aside. County Counsel will draft statement on this; primarily a question for County Counsel to advise County’s committee. Review by the group would be helpful.**
- ❑ Recommendation to amend the Development Code re the ambiguous terms in BCC 53.215 (Conditional Use Review Criteria)? (Planning Commission request) **Flexibility in reviewing applications with current terms. Code amendment unlikely to be in place before a CUP application from Republic. Would affect all CUPs in County. [Desire to fully understand these terms and how to apply them. More input from PC will occur 2/7. Newer planning commissioners may also be looking for the lay of the land.]**
- ❑ [Ask PC what they are looking for, has the report answered the question adequately?]
- ❑ In the phrase “character of the area” in BCC 53.215 (Conditional Use Review Criteria), how narrow or broad has “the area” typically been? (Planning Commission request) **Applies to all conditional uses; depends on the particular land use and its setting. What help can we provide the Planning Commission to understand the goalposts? How it’s been applied in past cases could be provided for reference. In a general sense, these types of criteria often look at common characteristics. But does looking at past cases really illuminate, if each one is case-specific? Keep it conceptual, not literal. Greg draft for review.**
- ❑ Table 2: complete. Add “light pollution.” (Planning Commission request) **Add “light” to the table. Can come into play through CUP criteria, but not directly regulated in County Code. No state regulations that we are aware of.**
- ❑ What if the County determines that DEQ regulation of a particular parameter is inadequate or likely to be inadequate? (Planning Commission request) **DEQ rules don’t allow County to override DEQ environmental regulations. County lacks expertise or personnel to determine whether an environmental parameter is being exceeded. DEQ determination of noncompliance is addressed through enforcement. Also, can’t**

assume that an activity will result in violation of DEQ parameters when the activity hasn't happened. Odor: DEQ regulates air quality, not odor specifically. [PC wants to know: can they ever say that odor is impacting surrounding areas and then impose a condition regulating odor?] How to regulate something subjective as odor? Conditions must be clear enough that they can be objectively enforced. Could require odor mitigations to be in place (e.g., odor box?).

Condition compliance with DEQ

Add info from DEQ website re: odor/nuisance.

- ❑ 2016 MOU: Review how A.1 Subcommittee addressed in the Appendix to their report. **Holly is addressing in her memo on franchise agreement.**
- ❑ LLU F-5. Past CUPs can't be "revisited" -- find better word. **Relates to topic above re: previous land use approvals.**
- ❑ Crossover with other subcommittees' findings: Staff will be identifying any conflicts and working with subcommittees to resolve.
- ❑ "Compliance with Past Land Use Actions..." introduction: Review A.2 subcommittee final draft. **Group review offline.**
- ❑ "Compatibility" topic: explain the distinctions between perspectives on whether a conditional use must be "compatible" with surrounding land uses. **Draft an explanation that lays out the difference between "compatibility" and the actual criteria, with finding and (potentially) recommendation. Use Ginny's paragraph?**
- ❑ 2002 MOU: Review Mark Yeager input and consider topic in light of "Compliance with Past Land Use Actions..." introduction. **Waiting on Mark to send input.**

Recording

- [Recording](#)

Meeting #12 Report to BCTT Work Group DRAFT – 2/14/23

Attendance

Member	Present
Liz Irish	
Jeff Condit	
Holly Doyle	
Vance Croney	
Ginny Lucker	
Staff: Greg Verret	
Facilitator: Sam Imperati	
Observers:	
-none-	

February 14, 2023 BCTT Subcommittee
Legal & Land Use Issues
Agenda

Meeting #12: February 14, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

DRAFT Working Agenda and Materials

For Reference: Latest version of Subcommittee Doc was emailed 1/16 5:54pm from Jeff Condit

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Overview of Feedback from Planning Commission & SWAC	Staff	3:05	5 min	
Review Task List	Facilitator & Staff	3:10	75 min	
Open House: Subcommittee members volunteer				
Joint Meeting of Past Approvals and Legal/Land Use Subcommittees	Facilitator			
Review Schedule and Next Steps	Facilitator	4:25	5 min	

				Workgroup Calendar;
Adjourn	All	4:30		

Task List

Application Completeness – opportunity for public input: Review Ginny’s suggestion. **Group to review individually.**

Vance: no changes but concern that allowing comments/input during the completeness phase will create misunderstandings among the public and muddy the review process for staff.

Jeff/Holly: No changes. Concur with Vance’s concern.

Recommendation: website should clearly communicate the limitations. Include a caution in the public-facing info that staff will not have time to fully vet and address public input during the 30-day completeness review.

Franchise Agreement memo: Republic’s input re draft memo needed. Ready to incorporate into report.

Did PC-83-7 authorize landfilling the quarry? Analysis needed. (Referral from A.1 subcommittee) 2002 MOU clarifies that area north of road is authorized for landfilling. 2014 memo from Planning Official to County Administrator also touches on this. Subcommittee’s memo on 2002 MOU addresses this, will be discussed at joint subcommittees meetings.

2002 MOU was not a land use decision but did address the status of land use approvals at the landfill. As of the date of the MOU, the landfill was operating in compliance: “the landfill was being operated in compliance with Benton County Ordinances.”

Discussion about whether this includes compliance with code and compliance with conditions of approval. LUCS signoff implies conditions as well as code are complied with. A permit is not an ordinance; however, to operate in compliance with the ordinance requires being in compliance with the permit and conditions. (Does the MOU specifically state that there were no land use violations at the landfill as of 11/5/2002?)

The 2002 MOU does not negate obligation to comply with previous conditions of approval. Action occurring after 11/5/2002, could result in noncompliance.

Where the subcommittee’s memo states “Sections 14 and 15 of the MOU provide evidence that as of 2000, there were no land use violations at the landfill,” the term “evidence” is not dispositive, summary judgment: it is not saying that Sections 14 and 15 provide undeniable proof, but rather that they provide evidence supporting the notion that there were no violations.

- ❑ Does participation by planning commissioners now in the BCTT compromise their ability to participate in review of a future land use application involving the landfill? (Planning Commission request) **The only issue would be if a planning commissioner was biased through the BCTT process. If unable to be fair, impartial, unbiased, would need to step aside. County Counsel will draft statement on this; primarily a question for County Counsel to advise County's committee. Review by the group would be helpful.**
- ❑ Recommendation to amend the Development Code re the ambiguous terms in BCC 53.215 (Conditional Use Review Criteria)? (Planning Commission request) **Flexibility in reviewing applications with current terms. Code amendment unlikely to be in place before a CUP application from Republic. Would affect all CUPs in County. [Desire to fully understand these terms and how to apply them. More input from PC will occur 2/7. Newer planning commissioners may also be looking for the lay of the land.]**
- ❑ **[Ask PC what they are looking for, has the report answered the question adequately?]**
- ❑ In the phrase "character of the area" in BCC 53.215 (Conditional Use Review Criteria), how narrow or broad has "the area" typically been? (Planning Commission request) **Applies to all conditional uses; depends on the particular land use and its setting. What help can we provide the Planning Commission to understand the goalposts? How it's been applied in past cases could be provided for reference. In a general sense, these types of criteria often look at common characteristics. But does looking at past cases really illuminate, if each one is case-specific? Keep it conceptual, not literal. Greg draft for review.**
- ❑ Table 2: complete. Add "light pollution." (Planning Commission request) **Add "light" to the table. Can come into play through CUP criteria, but not directly regulated in County Code. No state regulations that we are aware of.**
- ❑ What if the County determines that DEQ regulation of a particular parameter is inadequate or likely to be inadequate? (Planning Commission request) **DEQ rules don't allow County to override DEQ environmental regulations. County lacks expertise or personnel to determine whether an environmental parameter is being exceeded. DEQ determination of noncompliance is addressed through enforcement. Also, can't assume that an activity will result in violation of DEQ parameters when the activity hasn't happened. Odor: DEQ regulates air quality, not odor specifically. [PC wants to know: can they ever say that odor is impacting surrounding areas and then impose a condition regulating odor?] How to regulate something subjective as odor? Conditions must be clear enough that they can be objectively enforced. Could require odor mitigations to be in place (e.g., odor box?).**
Condition compliance with DEQ
Add info from DEQ website re: odor/nuisance.

❑ 2016 MOU: Review how A.1 Subcommittee addressed in the Appendix to their report.

of the questions regarding the 2016 MOU from the A.1. LSCL subcommittee are essentially as follows:

- What purpose does this MOU serve? Why was this MOU created?
- Was the purpose to allow the landfill to accept more waste than the 2000 franchise agreement threshold?
- Was the purpose to just acknowledge that the landfill will accept more waste than the 2000 franchise agreement threshold? If so, why would the county use an MOU to outline an acknowledgement without any legal implications?
- Does the purpose relate at all to the county's choice of not pursuing an updated baseline assessment?

Holly: not an allowance, just informing/acknowledging. Threshold in 2000 franchise agmt is a number of tons that can allow the County to require another baseline study; not a limit.

Sam: issue seems to be resolved re "allow vs acknowledge", "threshold vs limit". But why did it continue beyond year or two?

Where waste was coming from remains a question for A.1., that you can't look to the Commerce clause re intra-state. Vance: Michigan case dealt with intra-state.

Jeff: can agree to limit via contract? Seems still unconstitutional. That may be why there is a tonnage limitation rather than a geographic limitation.

Vance: leaves to the operator the decisions about from where and how much waste to accept. Purpose of the cap.

[Send these notes to A1 and CUP subcomms]

Does 2020 franchise agmt state that if CUP is approved, cap is removed? Not renegotiated, just removed. Yes. Purpose was to maximize life of landfill by allowing waste deposition in another area prior to needing to use the quarry area. Area/volume able to be filled south of the road would be established in the CUP approval (if approved).

❑ LLU F-5. Past CUPs can't be "revisited" -- find better word. **Relates to topic above re: previous land use approvals.**

❑ Crossover with other subcommittees' findings: Staff will be identifying any conflicts and working with subcommittees to resolve.

❑ "Compliance with Past Land Use Actions..." introduction: Review A.2 subcommittee final draft. **Group review offline.**

❑ "Compatibility" topic: explain the distinctions between perspectives on whether a conditional use must be "compatible" with surrounding land uses. **Draft an explanation that lays out the difference between "compatibility" and the actual criteria,**

with finding and (potentially) recommendation. Use Ginny's paragraph? How to describe from a layman's perspective. "Compatibility" has been used to argue that by definition the landfill should not be expanded because it is not "compatible" with surrounding uses. Review is by criteria, not by "compatibility." [incl. dictionary def.] Operationally, this means the code criteria.....

2002 MOU: Review Mark Yeager input and consider topic in light of "Compliance with Past Land Use Actions..." introduction. **Waiting on Mark to send input.**

Clarify relation of

Can PC limit the rate at which waste comes to the landfill (as a condition of approving expansion)? **If tied to a review criterion, apparently yes. (e.g., traffic impact) Unless there's a DEQ regulation that precludes county from limiting. Could PC put limit on further expansions?**

Recommendation to address enforcement/monitoring.

Recording

- [Recording](#)

Meeting #13 Report to BCTT Work Group DRAFT – 2/21/23

Attendance

Member	Present
Liz Irish	
Jeff Condit	
Holly Doyle	
Vance Croney	
Ginny Lucker	
Staff: Greg Verret	
Facilitator: Sam Imperati	
Observers:	
Darren Nichols	

Meeting #13: February 21, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

DRAFT Working Agenda and Materials

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Finalize Key Findings & Recommendations	Staff & Facilitator	3:05		
SWAC and PC Comments	Facilitator & Staff	3:10		
Open House: Subcommittee members volunteer 3/9/2023				
Review Schedule and Next Steps	Facilitator	4:25	5 min	Workgroup Calendar
Adjourn	All	4:30		

Task List

Application Completeness – opportunity for public input: Review Ginny’s suggestion. **Group to review individually.**

Vance: no changes but concern that allowing comments/input during the completeness phase will create misunderstandings among the public and muddy the review process for staff.

Jeff/Holly: No changes. Concur with Vance’s concern.

Recommendation: website should clearly communicate the limitations. Include a caution in the public-facing info that staff will not have time to fully vet and address public input during the 30-day completeness review.

Franchise Agreement memo: Republic’s input re draft memo needed. Ready to incorporate into report.

Did PC-83-7 authorize landfilling the quarry? Analysis needed. (Referral from A.1 subcommittee) 2002 MOU clarifies that area north of road is authorized for landfilling. 2014 memo from Planning Official to County Administrator also touches on this. Subcommittee’s memo on 2002 MOU addresses this, will be discussed at joint subcommittees meetings.

2002 MOU was not a land use decision but did address the status of land use approvals at the landfill. As of the date of the MOU, the landfill was operating in compliance: “the landfill was being operated in compliance with Benton County Ordinances.”

Discussion about whether this includes compliance with code and compliance with conditions of approval. LUCS signoff implies conditions as well as code are complied with. A permit is not an ordinance; however, to operate in compliance with the ordinance requires being in compliance with the permit and conditions. Does the MOU specifically state that there were no land use violations at the landfill as of 11/5/2002?

The 2002 MOU does not negate obligation to comply with previous conditions of approval. Action occurring after 11/5/2002, could result in noncompliance.

Where the subcommittee’s memo states “Sections 14 and 15 of the MOU provide evidence that as of 2000, there were no land use violations at the landfill,” the term “evidence” is not dispositive, summary judgment: it is not undeniable proof, but rather evidence supporting the notion.

Does participation by planning commissioners now in the BCTT compromise their ability to participate in review of a future land use application involving the landfill? (Planning Commission request) **The only issue would be if a planning commissioner was biased through the BCTT process. If unable to be fair, impartial, unbiased, would**

need to step aside. **County Counsel will draft** statement on this; primarily a question for County Counsel to advise County's committee. Review by the group would be helpful.

Recommendation to amend the Development Code re the ambiguous terms in BCC 53.215 (Conditional Use Review Criteria)? (Planning Commission request) **Flexibility** in reviewing applications with current terms. Code amendment unlikely to be in place before a CUP application from Republic. Would affect all CUPs in County. [Desire to fully understand these terms and how to apply them. More input from PC will occur 2/7. Newer planning commissioners may also be looking for the lay of the land.]

[Ask PC what they are looking for, has the report answered the question adequately?]

In the phrase "character of the area" in BCC 53.215 (Conditional Use Review Criteria), how narrow or broad has "the area" typically been? (Planning Commission request) **Applies to all conditional uses; depends on the particular land use and its setting. What help can we provide the Planning Commission to understand the goalposts? How it's been applied in past cases could be provided for reference. In a general sense, these types of criteria often look at common characteristics. But does looking at past cases really illuminate, if each one is case-specific? Keep it conceptual, not literal. Greg draft for review.**

Table 2: complete. Add "light pollution." (Planning Commission request) **Add "light" to the table. Can come into play through CUP criteria, but not directly regulated in County Code. No state regulations that we are aware of.**

What if the County determines that DEQ regulation of a particular parameter is inadequate or likely to be inadequate? (Planning Commission request) **DEQ rules don't allow County to override DEQ environmental regulations. County lacks expertise or personnel to determine whether an environmental parameter is being exceeded. DEQ determination of noncompliance is addressed through enforcement. Also, can't assume that an activity will result in violation of DEQ parameters when the activity hasn't happened. Odor: DEQ regulates air quality, not odor specifically. [PC wants to know: can they ever say that odor is impacting surrounding areas and then impose a condition regulating odor?] How to regulate something subjective as odor? Conditions must be clear enough that they can be objectively enforced. Could require odor mitigations to be in place (e.g., odor box?).**

Condition compliance with DEQ

Add info from DEQ website re: odor/nuisance.

2016 MOU: Review how A.1 Subcommittee addressed in the Appendix to their report.

of the questions regarding the 2016 MOU from the A.1. LSCL subcommittee are essentially as follows:

- What purpose does this MOU serve? Why was this MOU created?

- Was the purpose to allow the landfill to accept more waste than the 2000 franchise agreement threshold?
- Was the purpose to just acknowledge that the landfill will accept more waste than the 2000 franchise agreement threshold? If so, why would the county use an MOU to outline an acknowledgement without any legal implications?
- Does the purpose relate at all to the county's choice of not pursuing an updated baseline assessment?

Holly: not an allowance, just informing/acknowledging. Threshold in 2000 franchise agmt is a number of tons that can allow the County to require another baseline study; not a limit.

Sam: issue seems to be resolved re "allow vs acknowledge", "threshold vs limit". But why did it continue beyond year or two?

Where waste was coming from remains a question for A.1., that you can't look to the Commerce clause re intra-state. Vance: Michigan case dealt with intra-state.

Jeff: can agree to limit via contract? Seems still unconstitutional. That may be why there is a tonnage limitation rather than a geographic limitation.

Vance: leaves to the operator the decisions about from where and how much waste to accept. Purpose of the cap.

[Send these notes to A1 and CUP subcomms]

Does 2020 franchise agmt state that if CUP is approved, cap is removed? Not renegotiated, just removed. Yes. Purpose was to maximize life of landfill by allowing waste deposition in another area prior to needing to use the quarry area. Area/volume able to be filled south of the road would be established in the CUP approval (if approved).

- ☑ LLU F-5. Past CUPs can't be "revisited" -- find better word. **Relates to topic above re: previous land use approvals.**
- ☐ Crossover with other subcommittees' findings: Staff will be identifying any conflicts and working with subcommittees to resolve.
- ☐ "Compliance with Past Land Use Actions..." introduction: Review A.2 subcommittee final draft. **Group review offline.**
- ☐ "Compatibility" topic: explain the distinctions between perspectives on whether a conditional use must be "compatible" with surrounding land uses. **Draft an explanation that lays out the difference between "compatibility" and the actual criteria, with finding and (potentially) recommendation. Use Ginny's paragraph? How to describe from a layman's perspective. "Compatibility" has been used to argue that by definition the landfill should not be expanded because it is not "compatible" with surrounding uses. Review is by criteria, not by "compatibility." [incl. dictionary def.] Operationally, this means the code criteria.....**
- ☐ 2002 MOU: Review Mark Yeager input and consider topic in light of "Compliance with Past Land Use Actions..." introduction. **Waiting on Mark to send input.**

Recording

- [Recording](#)

DRAFT

Meeting #14 Report to BCTT Work Group DRAFT – 2/28/23

Attendance

Member	Present
Liz Irish	
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
Darren Nichols	X

Meeting #14: February 28, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

DRAFT Working Agenda and Materials

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Review Feedback from BCTT Workgroup on Key Findings & Recommendations	Facilitator & Staff	3:05	40 min	
Responses to SWAC and PC Comments	Staff	3:45	35 min	
Open House: Subcommittee members volunteer 3/9/2023	Facilitator	4:20	5 min	

Review Schedule and Next Steps	Facilitator	4:25	5 min	Workgroup Calendar;
Adjourn	All	4:30		

Meeting Notes:

Reviewed revised BCTT workplan/calendar

Findings and Recommendations:

Reviewed [latest version](#) which reflects:

- Sam and Ginny’s work in response to BCTT workgroup discussion 2/23
- Mark’s comments sent 2/27
- Vance’s comments sent 2/28
- My notes from the BCTT workgroup discussion 2/23
- Comments from SWAC members received 2/10 that relate to findings and recommendations and were not already addressed.

Subcommittee made/accepted edits during the meeting, resulting in [3-1-23 draft](#).

Recording

- [Recording](#)

Meeting #15 Report to BCTT Work Group DRAFT – 3/7/23

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
Darren Nichols	

Meeting #15: March 7, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

Agenda:

Finalize Findings & Recommendations

Meeting Notes

Subcommittee reviewed 3/7/2023 draft of key findings and recommendations, including comments/suggestions from Mark Yeager and Ed Pitera. Subcommittee discussed and made edits.

Result of discussion is 3-10-23 draft of key findings and recommendations.

Recording

- [Recording](#)

Meeting #16 Report to BCTT Work Group DRAFT – 3/14/23

Attendance

Member	Present
Liz Irish	X
Jeff Condit	X
Holly Doyle	X
Vance Croney	X
Ginny Lucker	X
Staff: Greg Verret	X
Facilitator: Sam Imperati	X
Observers:	
Darren Nichols	X
Maren Schermer (Benton Co)	X

March 14, 2023 BCTT Subcommittee
 Legal & Land Use Issues
 Agenda

Meeting #14: March 14, 2023 03:00 – 4:30 PM Pacific Time

<https://meet.goto.com/454802405>

You can also dial in using your phone. United States: +1 (408) 650-3123

Access Code: 454-802-405

Meeting will be recorded

DRAFT Working Agenda and Materials

Topic	Lead	Start	Duration	Materials
Review Agenda	Facilitator	3:00	5 min	
Ed Pitera input, DEQ (Audrey O'Brien) input	Facilitator & Staff			3/14/23 version sent
Numerical Order of Recommendations	Staff			
Introduction and Conclusion	Staff			3/14/23 draft sent

Future SMMP, CUP Conditions, and Moratoria	Facilitator			Draft memo from Sam, emailed 3/8
Open House: Subcommittee members volunteer 4/4/2023	Facilitator			
Review Schedule and Next Steps	Facilitator	4:25	5 min	
Adjourn	All	4:30		

Meeting notes

1. Review submitted Ed Pitera input, DEQ (Audrey O'Brien) input.

- LLU-F-3:
 - Ed's response is addressed through Audrey (DEQ)'s response.
 - Suggestion to add Audrey's (DEQ) findings to existing group LLU-F-3.
 - Suggestion to link Audrey's (DEQ) version and put in body of report. Keep finding as-is.
 - Consensus to keep as-is.
- LLU-F-???

 - Comment made that this finding has not been reviewed, nor vetted.
 - Suggestion to add to the index to include in report, but not as a finding.
 - Audrey's summary (comment): - Suggestion to shift Audrey's summary into a Finding.
 - Consensus to make into a finding.

- LLU?Fd?

 - Move Ed's comments and Audrey's reactions, and more to Appendix instead.
 - Consensus to move Ed and Audrey's comments to Appendix.

- LLU?Ra? – LLU?Rb? (Current landfill closure plans)
 - Jeff Condit and Ed worked in Past Approvals Subcommittee to address these recommendations.
 - Question over whether the second LLU?Rb? is needed, as there is already insurance and a trust fund as assurance for landfill closure.
 - Sam asks whether this information already in the document?
 - Remove these three comments (LLU?Ra? – LLU?Rb?). Substitute with the comment that Greg added. Vance to fine-tune the document.
- LLU-F-8:
 - Return to the original finding. Consensus among group.
- LLU-F-9: Designation of "regional landfill."
 - Comments address the same question that has already been asked.
 - Suggestion to return to the original finding language. Consensus among group.
- LLU-F-??V
 - Question from Sam whether the finding is a CUP and/or Capacity sub comment.
 - Content covered in CUP.
- LLU-F-16
 - Comments from Ed were from perspective of the CUP subcommittee.
 - Subcommittee original finding was clear, more neutral.
 - Consensus to return to original language.

2. Question: Why is our Workgroup (and Sam) addressing the community petition?
 - Purpose of Workgroup is to get out ahead of the misunderstandings.
 - Currently there is a misunderstanding in the community that the Commissioners can respond favorably to the petition to reject any new CUP or land use applications.
 - Would prefer to get out ahead of this misunderstanding, and to explain the role of the Commissioners in the process before the new CUP drops.
 - Responding to petition now is taking a proactive approach.
3. Review of Memo: Future SMMP, CUP Conditions, and Moratoria.
 - Group requests additional time to review new findings and recommendations.
 - Sam reminds group that time is limited and that revisions need to be submitted by tomorrow (at the latest).
 - **Homework:** Submit all comments by tomorrow (3/15) by 9am
 - 150 Days/Mandamus Consequences
 - In context of concept of delaying action until a waste management plan is in place.
 - Add a general finding.
 - **Homework:** Greg and Ginny will work on adding a finding.
4. Numerical order of Recommendations
 - Important to consider order of recommendations, pending the public survey that will soon be released.
 - Greg has summarized a suggested order for current Recommendations.
 - Based, more or less, on a chronological order of issues.
5. Introduction and Conclusion
 - Role of introduction is to orient the reader to content, which issues were identified and will be addressed.
 - Greg has drafted an Introduction and Conclusion for subcommittee.
 - Introduction:
 - Critique over wording: "subjective or speculative."
 - Suggestion to add word "not." (i.e "not speculative.")
 - Sam suggests adding "clear, precise, and legally supported."
 - Conclusion:
 - Greg summarized the content that the subcommittee has worked on.
 - Homework: Group members to send in comments by 10am tomorrow (3/15)
 - Table 2: Summary Table – Topic Areas Benton County Can or Cannot Regulate
 - Planning Commission had previously noted that they found the chart useful.
 - Group has not had a chance to vet the full chart yet.
 - Groundwater Quality: "needs vetting" note remains in chart.
 - Group uncertain over the county role in regulation of Groundwater Quality.
 - DEQ has sole purview over Groundwater Quality.
 - Remove "needs vetting."
 - Methane emissions: uncertainty remains on this topic.

- DEQ has had authority over methane deposits recently found in Philomath, and the methane burning and gas-to-energy plant at Coffin Butte.
- Change from “uncertain” to “precluded if regulated by DEQ.”
- Review of finding
 - LLU-F-22
 - Change wording to “this subcommittee concludes...”

Next steps:

- Greg will add edits and send out document to subcommittee members.
- Subcommittee members have until 9am tomorrow (3/15) to review and send in comments.

Next Meetings:

- BCTT Workgroup Meeting #9: Thursday, March 16, 1:30 – 7:30 pm.
- BCTT Workgroup Meeting #10: Thursday, March 23, 1:30 – 7:30 pm.
- Open House: Tuesday, April 4, 5:00 – 7:00 pm.

Recording

- [Recording](#)