

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

## Subcommittee Meetings Report

11/7/2022

### 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 Croney
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

<b>Vance Croney</b>	<b>X</b>
<b>Staff: Greg Verret</b>	<b>X</b>
<b>Facilitator: Sam Imperati</b>	<b>X</b>
<b>Observers:</b>	
<b>Marge Popp</b>	<b>X</b>
<b>Holly Doyle</b>	<b>X</b>
<b>Camille Hall</b>	<b>X</b>
<b>Pam Vaughan</b>	<b>X</b>

**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.

### Next Steps/Action Items:

- Mr. Croney and Mr. Condit to submit a memo that would explain further how ambiguous terms are interpreted.
  - ✓ *Completed 11/2/2022. Document titled "Ambiguous Terms and Deference to Local Interpretation." Needs to be integrated into master document.*
- 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.*
- Mr. Condit and Mr. Verret will address certain limitations on local authority over state-regulated topics such as wetlands and environmental quality.
- Both Mr. Croney and Mr. Condit will be reviewing all previous documents to be sure they have all been updated.
- Mr. Condit will review the franchise agreement portions of Section A2 and submit any markups (tracked changes).
- 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.*
- County staff review "What legally can and cannot be conditions of any land use approval."
- 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.*
- Identify which provisions of past franchise agreements decisions remain in force today.

- ✓ Draft statement added to Page 3 of master document. Review needed.
- Identify which provisions/conditions of approval of past land use decisions remain in force today.

*Section heading added as placeholder on Page 3; content needed.*

### Post-Meeting Next Steps/Action Items:

- 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 in progress by staff. Placeholder on Page 44 of the master document.*

- 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 heading added. See Page 45 of the master document. No content yet.*

### Next Meetings:

- Meeting #2: November 8, 2022 – 3:00pm-4:30pm
- Meeting #3: November 15, 2022 – 3:00pm-4:30pm

### 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](#)