

MEMORANDUM

October 5, 2022

TO: Benton County Talks Trash Workgroup

FROM: Greg Verret, Deputy Director

SUBJECT: **Charge B: Interpreting Provisions of Benton County's Development Code**

To support the workgroup's efforts on Item B in the Workgroup Charge, this memo a) recaps the workgroup's charge on this topic, b) provides as background an overview of the land-use review process and the decision-making process for the public hearings bodies, and then c) in the section titled Interpreting Code Provisions, includes a brief description of the extent and limits of local interpretation of local code, describes the potential roles that a recommendation from the workgroup could play in future land use applications related to the landfill, and then quotes the directly applicable sections of the Development Code, identifying particularly subjective terms and discussing past practice in interpreting and applying those terms.

BCTT WORKGROUP 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,) and 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; and*
 - b) *Developing recommended guidelines for interpreting any ambiguous provisions recognizing current statutes, regulations, case law, and County precedent, etc. Examples for consideration include:*
 - i) *The phrase, "Other information as required by the Planning Official" 77.310(e); and*

- ii) *The terms found in Section 53.215, e.g., “seriously interfere,” “character of the area,” “purpose of the zone,” “undue burden,” and “any additional criteria which may be required for the specific use by this code.”*
- 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.*
- 3) *Develop protocols for the timely and broad distribution of CUP-related information to the public, other governmental entities, and internal committees, groups, and divisions.*

This proposed element does NOT include opining on the merits of Republic Services’ expected Coffin Butte application, nor does it involve the actual writing of potential code language or recommendations that change the current steps in the existing CUP review process. The scope is limited to developing conceptual language for recommended review criteria and recommended guidelines for interpreting any existing ambiguous provisions using the below “Common Understanding” as guideposts. The WORKGROUP must operate within the legal parameters associated with its specific recommendations.

BACKGROUND

How does a land use decision get made in Benton County?

1. Application submitted:
 - a. form;
 - b. fee;
 - c. documentation to support a demonstration of compliance relative to the applicable criteria in the Development Code (and, in some instances, in state law).
2. 150-day clock starts. County must reach a final decision within 150 days.
3. If Planning Official determines application is “incomplete” (i.e., missing any of the documentation required by “c.” above) and notifies applicant within 30 days of application submittal, then 150-day clock is paused.
 - a. Once application is complete or applicant directs application proceed without the missing information, 150-day clock starts again.
4. Notification is mailed to nearby property owners and other interested parties identifying a public comment period. Public notice in newspaper.
5. Staff researches and prepares a report evaluating the proposal relative to the applicable criteria.
6. Planning Official issues a decision; notice of the decision is mailed as in #4 above.
 - a. 14-day appeal period; if no appeal, decision is final.

7. If appealed, or in the instance of certain land use applications that go directly to the Planning Commission, a Planning Commission hearing is scheduled. Notice of the hearing is mailed as in #4, above.
8. Planning Commission receives staff presentation, applicant presentation, public testimony, applicant's rebuttal.
 - a. Planning Commission may ask questions of any testifiers.
 - b. May keep record open for additional written testimony or may continue hearing for additional oral testimony.
 - c. Planning Commission deliberates, votes to approve or deny the application.
9. Notice of Planning Commission decision is sent to, at minimum, all participants. Practice has been to mail as in #4, above.
 - a. 14-day appeal period.
 - b. If no appeal, decision is final decision
10. If appealed, Board of Commissioners hearing is scheduled. Process is the same as for Planning Commission hearing (#9, above)
11. Board of Commissioners decision is final local decision, ending the 150-day clock.
12. Notice of Board of Commissioners decision mailed to, at minimum, all participants.
 - a. 21-day appeal period
 - b. Appeal is to the Oregon Land Use Board of Appeals and from there to the Oregon Court of Appeals and then to the Oregon Supreme Court. Federal constitutional issues (such as regulatory takings of property without just compensation) may be appealed to the U.S. Supreme Court.

Decision-making Process for Planning Commission or Board of Commissioners

- A) Criteria applicable to the land use proposal are identified.
 - Typically these are all within the Benton County Development Code
 - Some instances where state rules or statute are directly applicable; examples:
 - i. Exceptions to a statewide planning goal
 - ii. Expansion of an urban growth boundary
- B) Decision-makers consider available evidence in determining whether the proposed use complies with the applicable criteria. When the criteria are subjective, this analysis (either explicitly or implicitly) involves interpretation of what the criteria mean. Evidence and testimony can address the interpretation of the criteria as well as whether the proposal meets the criteria.
 - Staff research and analysis
 - Public testimony, including from other agencies
 - Members of the Planning Commission or Board of Commissioners are discouraged from doing their own research as that can lead to issues or perception of bias or ex parte contact.

- C) A motion is made; deliberations (oral discussion of the matter) are held by the decision-making body, including reasons why the proposal does or does not comply with the applicable criteria, and a vote is taken. If the motion fails, another motion is made, and so on, until a motion approving or denying the application passes.

INTERPRETING CODE PROVISIONS

Provisions that are mandated by state law must be interpreted consistent with state law and the case law that bears on that state law.

Example: whether a property qualifies for a farm-related dwelling is spelled out in Oregon Administrative Rule (OAR).

Example: the “conditional use” criteria for exclusive farm use zones are specified in ORS 215.296

Provisions that derive not from state statute or rule but are developed and adopted by the local jurisdiction may be interpreted by the local jurisdiction, and are granted deference so long as the interpretation is plausible.

Example: Benton County’s conditional use criteria (which serve as additional criteria in the Exclusive Farm Use zone).

Example: the provisions of the Landfill Site zone (Chapter 77).

Role of a Recommendation from the Workgroup as to Interpretation of Terms

1. The recommendation would not have the force of law unless it were to be adopted into the Benton County Development Code. That said, County staff and decision-making bodies would reference or draw upon such a recommendation.
2. The recommendation would provide the Planning Official with valuable information and perspective to consider in evaluating what makes a given application “complete.”
 - a. An application that is not deemed “incomplete” within the first 30 days means that decision-makers may have insufficient information to make the best decision and/or face time-pressure to comply with the 150-day clock.
 - b. Having adequate information for evaluating the extent, nature and potential impacts of a proposed use is key to the land use process serving the public’s interests.
3. The recommendation, submitted as testimony during the public comment period of a land use application review, would be valuable to the Planning Commission and Board of Commissioners as they apply subjective criteria to a given application.

- a. The forethought and analysis that would go into such a recommendation is typically highly valued and appreciated by those decision-making bodies.
- b. Because of the time limits on land use review processes, it is not always possible to fully consider such questions of interpretation once an application is before the decision-making body.

Without such a recommendation, the County and the community risks a situation similar to what occurred with the last CUP review, in which the 150-day time limit constrains the ability of the community to have a thoughtful examination and discussion of all elements involved in a complex topic like this one.

Subjective/Ambiguous Terms

Conditional Use Review:

53.215 Criteria. *The decision to approve a conditional use permit shall be based on findings that:*

(1) 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;

The term “seriously interfere” is crucial to the determination of whether a proposed conditional use can be approved, and it is a quite subjective term. The term is not defined in Benton County Code. These criteria are locally derived and thus this term is not defined by state law or case law. Over at least the past twenty years, “seriously interfere” has generally been interpreted as: does the proposed use make it difficult to continue uses on 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. “Seriously interfere” has been applied as meaning more than an inconvenience or irritation to neighboring property residents, but is a lesser threshold than rendering impossible the uses on adjacent property.

Hypothetical examples: A building that obstructs a portion of the view from a neighboring residence typically is not, by itself, serious interference. A noise-generating use such as an auto-repair shop locating next to an established meditation retreat center could be considered as seriously interfering with the use on the adjacent property if the noise could not be mitigated and would make it difficult to continue the land use on the neighboring property.

Note that staff recalls no instances in which the potential or perceived effect on property values was a primary element in the determination of whether a proposed use “seriously interferes.”

In the findings adopted by the Planning Commission in the matter of the 2021 conditional use permit for expansion of Coffin Butte landfill (File No. LU-21-047; see attachment), the meaning of the term “seriously interfere” is not explicitly addressed. The Planning Commission identified a number of impacts to adjacent properties and the broader area and did not find it necessary to parse the term “seriously interfere” in order to reach a conclusion that the proposal did seriously interfere with uses on adjacent property, the character of the area and the purpose of the zone. Nonetheless, the Planning Commission’s findings are useful to this charge topic in that they identify the types of concerns that are likely to be important in considering whether any future landfill-related conditional use permit application can be approved. A future application would be formally evaluated on its own merits, not in relation to the previous application, but the Planning Commission’s findings provide information as to what applicants and decision-makers in the future would do well to consider.

(2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and

The term “undue burden” is not defined. In practice, it has been applied generally as follows. A burden on public infrastructure and service is clearly “undue” if it overloads the system or causes significant degradation in terms of quality, effectiveness or timeliness of infrastructure or service. Lesser burdens may also be “undue” if the effect of the added burden is to jeopardize the health, safety or welfare of other people. Burdens that have typically not been considered “undue” include those that can be mitigated through planned improvements (particularly in cases where road improvements will be funded by the applicant as a condition of approval); burdens that are incremental service additions consistent with that generated by other uses in the area; burdens that fall below an established threshold (such as road classification standards that are tied to traffic levels).

(3) The proposed use complies with any additional criteria which may be required for the specific use by this code.

Additional criteria are those that, by their terms, apply to the land use or property in question. In the case of a landfill conditional use permit, the provisions of BCC 77.305 and 77.310 are additional criteria.

Not cited in the charge but relevant:

53.220 Conditions of Approval. *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. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.925 to ensure compliance with a condition of approval. Conditions may address, but are not limited to: [list of 12 topic areas]*

Conditions of approval are limited to those that are necessary in order for the proposed use to comply with applicable criteria.

Provisions in the Landfill Site Zone Regarding a Conditional Use Application:

77.305 Conditional Uses Approved by the Planning Commission. *Any proposal to expand the area approved for a landfill within the Landfill Site Zone is allowed by conditional use permit approved by the Planning Commission. The Benton County Environmental Health Division and the Solid Waste Advisory Council shall review and make recommendations through the Planning Official to the Planning Commission regarding the Site Development Plan Map and narrative. The Oregon Department of Environmental Quality shall be given an opportunity to review and comment on any proposal which may affect this site. [Ord 26I, Ord 90-0069]*

This section directs the Solid Waste Advisory Council (SWAC) to review and make recommendations; however, the code does not specify what criteria or considerations that recommendation should be based on. There are several options for how SWAC could develop its recommendation. One option is that SWAC could review the Site Development Plan Map and narrative relative to the conditional use criteria in BCC 53.215, the same as the Planning Commission would do. A second option would be to review the site plan and narrative relative to BCC 77.310; in other words, confirming that the topic areas in 77.310 are adequately described. A third option is to consider the site plan and narrative from the perspective of meeting the County's objectives related to solid waste management, as articulated in Benton County Code Chapter 23 (Solid Waste Management). This third option is staff's recommendation. Option 1 would put SWAC into the realm of the Planning Commission, which is the body with land use expertise and tasked with considering the BCC 53.215 criteria, when SWAC's expertise is on questions of solid waste management. Option 2 limits SWAC's role and fails to benefit the County by SWAC's expertise. Option 3 is consistent with SWAC's overall role as articulated in its bylaws.

The workgroup may wish to provide a recommendation on the general purpose of SWAC's review of a conditional use permit and may also wish to recommend more specific questions or considerations for SWAC in such reviews. In the case of LU-21-047, staff provided SWAC with suggested questions to consider in their review of the proposal, emphasizing that SWAC was free to use or not use the questions to structure their review. Those questions were:

1. Is the proposed expansion consistent with long-term plans for the landfill site?
2. Is the proposal consistent with principles of responsible solid waste management?
3. What (solid waste management) benefits do you see to the proposed expansion?
4. What potential (solid waste management) negative effects do you see? Are there ways to minimize or mitigate those effects, or do you think the proposal should be rejected?

77.310 Conditional Use Review.

(1) *The applicant for a conditional use permit shall provide a narrative which describes:*

- (a) Adjacent land use and impacts upon adjacent uses;*
 - (b) Future use of site as reclaimed, and impacts of that reclamation on adjacent uses;*
 - (c) Provisions for screening of the site from public roads and adjacent property;*
 - (d) Egress and ingress; and*
 - (e) Other information as required by the Planning Official.*
- (2) A site plan map shall accompany a conditional use permit application. The map shall contain at least a scale, north arrow, assessor map numbers, location of existing landfill, access, proposed alteration, leachate treatment or monitoring areas surface water systems, and existing and proposed screening (location and types of materials). A statement shall be placed on the map that the site plan map and narrative together are considered as the Site Development Plan. A signature block shall be included for the date the approval is given and the signature of the Planning Official indicating approval.*
- (3) A conditional use permit application shall contain a reclamation plan describing present efforts and future reclamation plans related to the site.*
- (4) The following environmental and operational considerations shall be reviewed prior to changes in the documents referenced above:*
- (a) Geology;*
 - (b) Groundwater and surface water;*
 - (c) Soil depth and classification, and erosion control factors;*
 - (d) Slope; and*
 - (e) Cover material availability, transportation, and use.*

These provisions are less subjective than the provisions discussed earlier but there is still room for interpretation in terms of, for example, what should be included in a narrative to adequately describe the items listed in (1)(a) through (d). Recommendations from the workgroup in this area would be helpful. The workgroup could also recommend “other information” that the Planning Official should require in order to have an adequate understanding of the proposal. Note that the Planning Official can only require information that is relevant to applicable criteria.

77.405 Review of DEQ Permits. *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 unusual and a bit unclear. How the Planning Official would determine that “permit application materials or conditions of DEQ permit are judged to merit public review” is subjective. Furthermore, the kind of public hearing is not specified. Typically, a public hearing results from an application submitted by a property owner which is then reviewed relative to code criteria and approved or denied. But this code provision does not state that the property owner shall submit an application or that this provision constitutes a

re-opening of the previous land use approval. The code may intend that a public hearing (more of a public conversation?) be held in which the terms of the DEQ permit are discussed but with no land use action to occur. Or the code may be obliquely stating that if the Planning Official determines that what the applicant proposes to DEQ or what DEQ permits is different from what the County has given land use approval to, then an application for a revised conditional use permit is required. This is already required by BCC 53.225¹, but the lack of cross-reference or use of similar terminology in section 77.405 is confusing. Staff has not had opportunity to carefully consider the language of this section, but initial interpretation is that 77.405 simply requires new review of a conditional use permit if, as described in 53.225, the use originally approved has been modified.

Workgroup recommendation on how public review of DEQ permit requirements could most benefit the public would be helpful. Attachments:

Attachments

Benton County Development Code Chapters 50 and 51

Planning Commission Findings – LU-21-047

¹ 53.225 Modification of a Conditional Use Permit. An original applicant or successor in interest may request that a conditional use permit be modified if a change in circumstance has occurred since approval which would justify a change in the permit. Such application shall be processed as a new request for a conditional use permit.

Chapter 50

Benton County Comprehensive Plan

50.005 Comprehensive Plans Incorporated by Reference. (1) The Benton County Comprehensive Plan, including the Comprehensive Plan Map, is hereby incorporated by reference into the Benton County Code.

(2) The Comprehensive Plans of the Cities of Adair Village, Albany, Corvallis, Monroe and Philomath are hereby adopted as part of the Benton County Comprehensive Plan for the respective areas between the urban growth boundary and the city limits of the above mentioned cities. [Ord 90-0069]

50.010 Purpose. The Comprehensive Plan is the official policy guide for decisions about growth, development, and conservation of natural resources in Benton County. [Ord 90-0069]

50.015 Relationship to Development Code. The policies of the Comprehensive Plan shall serve as the basis for developing the implementing regulations of the Development Code. The policies of the Comprehensive Plan are not implementing regulations and shall not be directly applied to individual applications except as provided by the Development Code. When the interpretation of a particular Development Code provision is in doubt, the Comprehensive Plan shall be referred to for policy guidance. [Ord 90-0069]

Chapter 51

Development Code Administration

51.005 Title. BCC Chapters 51 to 100 shall be known as the Benton County Development Code. [Ord 90-0069]

51.010 Scope. The Development Code is intended to implement the Benton County Comprehensive Plan. All amendments to the Development Code shall comply with the Comprehensive Plan. Land within unincorporated Benton County may be used and developed only as provided by the Development Code. The Development Code is part of the Benton County Code, and unless otherwise provided, is subject to applicable general regulations of the Benton County Code. [Ord 90-0069]

51.015 Private Land Use Restrictions. There may be private land use restrictions (e.g. Covenants, Conditions and Restrictions) recorded in the public records of Benton County which limit or impair a property owner's ability to utilize their property. Nothing in the Benton County Development Code shall be interpreted as superseding or limiting the enforcement of such private land use restrictions. Benton County will not enforce and will not interpret private land use restrictions. Private land use restrictions are private legal matters which may be enforced in appropriate legal proceedings in the courts of this state. [Ord 97-0131]

51.015 Transition to the Development Code.

- (1) All applications filed prior to the effective date of this code shall be processed pursuant to Ordinance 7 or 26. [Ord 97-0131]
- (2) All applications or permits approved pursuant to Ordinance 7 or 26 shall continue in full force and effect unless the approved use becomes nonconforming as a result of the adoption of the Development Code. If the use has become nonconforming, an approved application or permit shall continue in full force and effect if the use has been established or if the property owner qualifies for a vested right pursuant to BCC 53.335. Where a condition of approval specifies that a subsequent land use application be filed for review, or when an applicant wishes to change a condition or term of a prior approval, such application shall be processed in accordance with the provisions of the this code. [Ord 90-0069]

51.020 Definitions. As used in BCC Chapters 51 to 100:

- (1) "Access" means the method of ingress and egress.
- (2) "Accessory dwelling unit" means an interior, attached, or detached residential structure that is used in connection with or that is accessory to a single-family dwelling. Standards for accessory dwelling units are found in BCC Section 91.050. [Ord 2018-0285; Ord 2018-0286]
- (3) "Accessory use or structure" means a use or structure which is incidental and subordinate to the principal use or structure.
- (4) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. Also referred to as the "100 year flood". Designation on Flood Insurance Rate Maps always begins with the letter "A".
- (5) "Base flood elevation" means the height of the flood waters during a base flood at points along the water course, expressed in feet above mean sea level.
- (6) "Big game" means deer and elk.
- (7) "Cemetery" means a place used for the permanent interment of human remains.
- (8) "Church" means a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship. When a church is allowed on real property pursuant to the Development Code, also allowed shall be the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child

October 7, 2021

care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education. [Ord 2015- 0269]

- (9) "Day care center" means an establishment providing specialized group care for thirteen or more children.
- (10) "Driveway" means access to private land.
- (11) "Duplex" means two dwelling units connected by an architectural feature and having at least one structural wall on one unit located within 20 feet of a structural wall on the other unit.
- (12) "Dwelling" means a single-family dwelling, as further defined below for purposes of this Development Code. "Dwelling" includes a manufactured dwelling unless otherwise provided by this code. "Dwelling" does not mean a tent, tepee, yurt, hotel, motel, recreational vehicle or bus.

The land use category of "dwelling" is limited to a structure or structures, designed and occupied as a single housekeeping unit by an individual, two or more related persons (including dependents), or a group of not more than five unrelated persons. This type of use is distinct from a short-term rental use (defined as rental of a dwelling for less than a one month period) which is considered a home occupation and allowed subject to the applicable standards for home occupations in this code. Use of a structure or a portion of a structure as a second, independent housekeeping unit is allowed only when specifically authorized pursuant to this Development Code, such as for a duplex, accessory dwelling unit, medical hardship dwelling, farm-help dwelling, or other approved use. However, if the occupants described above occupy a primary dwelling structure and accessory living area in a separate structure on the same property, share a single kitchen, and live together as a household, the two structures would be considered components of one dwelling.

A separate structure containing a kitchen, as defined below, in combination with a bathroom and a bedroom or a room that could function as a bedroom, is allowed only when authorized as an additional dwelling or accessory dwelling unit pursuant to the Development Code.

Within a dwelling, a second kitchen, as defined below, is allowed only when authorized as a duplex, accessory dwelling unit, or additional dwelling in those zones that allow such uses, or when the dwelling is organized such that neither kitchen can support a second, separate housekeeping unit; for example, the kitchen may not be capable of being shut off from the rest of the dwelling in a way that would isolate a combination of kitchen, bathroom, bedroom or a room that could function as a bedroom, and outside entrance.

As used in this definition, "kitchen" means a room or area containing a combination of:

- (a) Wash basin designed to be used for washing and food preparation; and
 - (b) Range, stove, microwave or other cooking facility, or 220 wiring, or gas line, except as to service a facility other than a cooking facility. [Ord 2018-0285; Ord 2018-0286]
- (13) "Dwelling, multi-family" means a building used by two or more families living independently of each other in separate dwelling units.
 - (14) "Family" means an individual, two or more related persons (including dependents), or a group of not more than five unrelated persons living together as a housekeeping unit. [Ord 2018-0285; Ord 2018-0286]
 - (15) "Farm use" means the following:
 - (a) In only the Exclusive Farm Use, Forest Conservation, and Multi-Purpose Agriculture zones, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Marijuana, grown commercially pursuant to a license issued by the State of Oregon, is a crop. "Farm Use" includes the preparation, storage and disposal by marketing or

October 7, 2021

otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees defined in ORS 215.203 (3) or land described in ORS 321.267 (3) or 321.824. A wholesale or retail plant nursery is considered horticultural use and therefore is allowed under this definition. [Ord 2015-0270]

- (b) In zones other than Exclusive Farm Use, Forest Conservation and Multi-Purpose Agriculture, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops, or by the feeding, breeding, management and sale of livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry, or any combination thereof. "Farm Use" includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. It does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees or for hardwood species marketable as fiber for manufacturing paper products as described in ORS 321.267(3) or 321.824. Farm use shall be appropriate for the continuation of existing, or the promotion of new, commercial agriculture enterprise in the area.

"Farm use" in zones other than Exclusive Farm Use, Forest Conservation and Multi-Purpose Agriculture is distinguished from the 51.020(13)(a) definition by the exclusion of:

- (A) "stabling or training equines";
- (B) "bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission";
- (C) "on-site construction and maintenance of equipment and facilities" used for farm use; and
- (D) "marijuana, grown commercially pursuant to a license issued by the State of Oregon," as a farm crop. [Ord 2015-0270]
- (c) As used in the definition of "farm use",
- (A) "Current employment" of land for farm use includes:
- (i) Farmland, the operation or use of which is subject to any farm-related government program;
 - (ii) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
 - (iii) Land planted in orchards or other perennials, other than land specified in subparagraph (iv) of this paragraph, prior to maturity;
 - (iv) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;
 - (v) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common

October 7, 2021

ownership with a farm use land and which is not currently being used for any economic farm use;

- (vi) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);
 - (vii) Water impoundments lying in or adjacent to and in common ownership with farm use land;
 - (viii) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;
 - (ix) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;
 - (x) Any land described under ORS 321.267 (3) or 321.824 (3); and
 - (xi) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:
 - 1. Only the crops of the landowner are being processed;
 - 2. The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
 - 3. The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.
- (B) "Accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.
- (C) "Cultured Christmas trees" means trees:
- (i) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
 - (ii) Of a marketable species;
 - (iii) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and
 - (iv) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. {ORS 215.203}
- (D) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and
- (E) "Products or by-products raised on such land" means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

[Ord. 2001-0174, Ord 2006-0214, Ord 2015-0269, Ord 2015-0270]

October 7, 2021

- (16) "Feed lot" means a premise where six or more cattle or pigs are kept within a confined area of less than five (5) acres such that a nuisance from noise, sound, or odor occurs.
- (17) "Fire break" means a minimum area of thirty (30) feet around a dwelling cleared of vegetation except for ornamental shrubbery, sod, single trees or similar plants used for ground cover. Trees and large ground cover shall be placed to prevent rapid movement of a fire. If slopes are greater than thirty percent (30%), "fire break" means a minimum of fifty (50) feet.
- (18) "Flag lot" means a parcel or lot connected by means of a narrow strip of land to a road right-of-way.
- (19) "Flood hazard" means a risk to life or property caused by flooding.
- (20) "Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures for the reduction or elimination of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.
- (21) "Floodplain" means a land area capable of being inundated by water during a base flood.
- (22) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the "Regulatory Floodway". Refer to the diagram at the end of Chapter 83. Note that the "Floodway" within the Corvallis Urban Growth Boundary is based on a 0.2-foot increase in the water surface elevation (rather than a one-foot increase) as defined in BCC 83.110(3)(a).
- (23) "Floodway fringe" means that portion of the floodplain of a river or other watercourse that lies landward of the floodway and serves as a temporary floodwater storage area during the base flood.
- (24) "Forest use" means:
 - (a) The production of trees and the processing of forest products;
 - (b) Open space, buffers from noise, and visual separation of conflicting uses;
 - (c) Watershed protection and wildlife and fisheries habitat;
 - (d) Soil protection from wind and water;
 - (e) Maintenance of clean air and water;
 - (f) Outdoor recreational activities and related support services, and wilderness values compatible with these uses; or
 - (g) Grazing land for livestock.
- (25) "Frontage" means the boundary of a parcel or lot abutting a road.
- (26) "Functional classification" means the designation of a road based upon the level of service intended, as specified by the Transportation Management Plan incorporated in the Benton County Comprehensive Plan. Private roads do not have a functional classification, but are considered local roads.
- (27) "Home occupation" means a business carried on within a dwelling or an accessory structure where the business is secondary to the use of the property as a residence.
- (28) "Junkyard" means any lot or premise where there is accumulated eight or more motor vehicles in any condition, or an equivalent volume of salvaged materials or solid waste. "Junkyard" includes an auto wrecking yard, garbage dump, junk dealer, and a scrap metal processing facility.
- (29) "Kennel" means one of the following:
 - (a) "Commercial kennel" means a premise on which five or more adult dogs and/or cats are kept for breeding purposes for profit and/or where five or more adult dogs and/or cats are boarded for profit. A commercial kennel established for breeding purposes is characterized as a business venture with the primary purpose to produce and sell dogs or cats. An adult dog or cat is one that

October 7, 2021

has reached the age of six months.

- (b) "Hobby kennel" means a premise on which five or more adult dogs and/or cats are kept for purposes other than those described for a commercial kennel. These purposes include show, hunting, stock raising, or other personal use. An adult dog or cat is one that has reached the age of six months.
- (30) "Land division" means a subdivision or land partition where a new lot or parcel is created.
- (31) "Landfill" means land used for the disposal of solid wastes, and may include the removal and classification of recycled materials.
- (32) "Legislative land use action" means an ordinance amendment to the policies, procedures, standards or criteria of the Comprehensive Plan or Development Code which does not apply to specifically identified persons or properties, except insofar as persons or properties are generally affected by reason of the change in such policies, procedures, standards or criteria.
- (33) "Limited Land Use Decision" means a final decision or determination by a local government pertaining to a site within an urban growth boundary which concerns:
 - (a) The approval or denial of a subdivision or partition, as described in ORS chapter 92;
 - (b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.
- (34) "Lot" means a unit of land created by a subdivision of land approved by Benton County and filed with the Benton County Records and Elections Department.
- (35) "Major stream" means that stretch of a creek designated as a flood hazard area on the Flood Insurance Rate Maps.
- (36) "Manufactured dwelling" means:
 - (a) A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962.
 - (b) A mobile house, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.
 - (c) A manufactured dwelling, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction.
- (37) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include industrial hemp, as defined in ORS 571.300.
- (38) "Marijuana crop" means marijuana grown commercially pursuant to a license issued by the State of Oregon.
- (39) "Ministerial decision" means an action of the Community Development Department to approve or deny a request based on nondiscretionary application of clear and objective review standards. Such action may include imposing clear and objective conditions of approval. Examples of typical ministerial decisions include, but are not limited to, property line adjustments and the zoning compliance determination for building permits when such reviews involve only clear and objective standards.

October 7, 2021

- (40) "Minor stream" means that stretch of a creek which is not designated as a flood hazard area on the Flood Insurance Rate Maps.
- (41) "Mobile home park or manufactured dwelling park" means a property designed for rental of four (4) or more spaces for mobile homes or manufactured dwellings.
- (42) "Natural Area" means an area open to the public for passive outdoor recreation and containing only minor and impermanent improvements or alterations of the landscape, such as unpaved pedestrian trails, portable toilet facilities, portable picnic tables. Permanent alterations shall be limited to a parking lot appropriately sized for the expected number of park users, interpretive signs and informational kiosks. "Natural Area" is distinguished from "Park, Developed" by the level and type of landscape alteration.
- (43) "Nonfarm use" means any use which is not a "farm use" as defined by this code.
- (44) "Open space" means lands which:
- (a) Conserve or enhance natural or scenic resources;
 - (b) Protect air or streams or water supply;
 - (c) Promote conservation of soils or wetlands;
 - (d) Conserve landscaped areas, such as public or private golf courses, which reduce air pollution and enhance the value of neighboring property;
 - (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries;
 - (f) Enhance recreational opportunities;
 - (g) Preserve historic sites; or
 - (h) Promote orderly urban or suburban development.
- (45) "Ordinary high water line" means the top of the bank of a stream or river.
- (46) "Owner" means the person on record with the Benton County Assessor as owning real property, or who is a contract purchaser of record of real property.
- (47) "Parcel" means a single unit of land conforming with all land development regulations in effect on the date the parcel was created. "Parcel" also refers to a unit of land legally created prior to partition ordinances and recognized as a distinct unit of land by the County pursuant to ORS 92.017. "Parcel" does not include a unit of land created solely to establish a separate tax account. "Parcel" does not include "lot" as defined under BCC 51.020.
- (a) Except as provided in (b), a parcel is considered legally created and will be recognized as a legally created unit of land if:
 - (A) The creation of the parcel was approved by the County pursuant to County zoning and land division ordinances in effect at the time of the partitioning; or
 - (B) The creation of the parcel was by one of the following listed methods and the creation of the parcel was in accordance with applicable laws in effect at the time:
 - (i) The parcel is shown on a survey filed with the State of Oregon prior to October 5, 1973; or
 - (ii) The parcel was described in a land sales contract entered into prior to November 28, 1975; or
 - (iii) The parcel was described in a deed recorded prior to November 28, 1975.
 - (b) Any legally created parcel as described in (a) above will cease to be recognized by the County as a distinct unit of land once it has been reconfigured, altered, or consolidated into a larger unit of

October 7, 2021

land by approval or recording of any one or more of the following:

- (A) partition plat;
 - (B) subdivision plat;
 - (C) deed with a single unified metes and bounds legal description;
 - (D) deed expressly stating an intent to unify separately described parcels;
 - (E) covenant expressly stating an intent to unify separately described parcels.
- (c) Units of land that do not meet the definition of a legally created parcel as provided above may become legally created parcels upon complying with the standards of BCC 94.160 and ORS 92.176 or BCC 94.300. [Ord 2018-0289]
- (d) A legally created unit of land does not mean a buildable unit of land. Zoning and other development restrictions may exist which require the combination of lots or parcels in order for such parcels to be developed. [Ord 96-0117, Ord 96-0118]
- (48) "Park, Developed" means an area open to the public for active or passive outdoor recreation and containing structures, other improvements, or alterations of the landscape, including but not limited to picnic shelters, permanent restrooms, playground equipment, and sports fields. "Developed Park" is distinguished from "Natural Area" by the level and type of landscape alteration.
- (49) "Partition land" means to divide land into two or three parcels or lots within a calendar year. "Partition land" does not include a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance; or a sale or grant by a person to a public agency or public body for state highway, county road, or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and other provisions of this code. However, any property divided by the sale or grant of property for state highway, county road, or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.
- (50) "Planning Official" means the Director of the Community Development Department or the Director's designee.
- (51) "Property line" means the exterior boundary of a lot or parcel. For contiguous lots or parcels held in common ownership and combined for development purposes, the property line for purposes of setbacks shall be the exterior boundary of the combined lots or parcels. Unless otherwise specified, setbacks set forth in this code shall be measured to the property line.
- (52) "Property line adjustment" means the relocation of a common boundary where an additional unit of land is not created.
- (53) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has more than three (3) service connections or supplies water to a public or commercial establishment which operates a total of at least sixty (60) days per year, and which is used by ten (10) or more individuals per day or is a facility licensed by the Health Division of the Oregon Department of Human Services. A public water system is either a "community water system" or a "non-community water system".
- (a) "Community water system" means a public water system which has fifteen (15) or more service connections used by year-round residents, or which regularly serves twenty-five (25) or more year-round residents;
 - (b) "Non-community water system" means a public water system that is not a community water system.

October 7, 2021

- (54) "Quasi-judicial land use action" is land use decision made pursuant to existing criteria regarding specifically identified persons or properties.
- (55) "Recreational vehicle" means a vacation trailer or other unit which is designed for human occupancy.
- (56) "Replat" means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.
- (57) "Residential facility" means a facility licensed by or under the authority of the Oregon Department of Human Services under ORS 443.400 to 443.460 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.
- (58) "Residential home" means a home licensed by or under the authority of the Oregon Department of Human Services under ORS 443.400 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.
- (59) "Resource zone" means the Exclusive Farm Use, Multi-Purpose Agriculture, Floodplain Agriculture, Forest Conservation, and Open Space Zones.
- (60) "Restoration" means the process of accurately recovering the form and details of the property and its setting as they appeared at a particular period of time by means of removal of later improvements, or by the replacement of missing earlier features.
- (61) "Right-of-way" means the area between the boundary lines of a road.
- (62) "Road" means the entire right-of-way of any public or private way that provides access for persons to property.
- (a) "Private road" means a road that has not been dedicated for public use and in which no rights have accrued to the public.
 - (b) "Public road" means a road dedicated to the public, or a road which the public has accrued a right to use.
 - (c) "County road" means a public road that has been accepted by the Board of Commissioners into the County road maintenance system.
- (63) "Roadway" means the road surface improved for use by vehicular traffic.
- (64) "Sanitary landfill" means land used for the disposal of solid wastes in accordance with State and County requirements.
- (65) "School" means a public or private place or institution for teaching, instructing, educating, and learning; including elementary, secondary, college or university levels, and trade schools; including their accessory structures.
- (66) "Seasonal farm-worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivating or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including by not limited to, the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.
- (67) "Seasonal farm-worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months a year.

October 7, 2021

- (68) "Secondary road" means a road which is not required to meet County urban or rural road standards.
- (69) "Setback" means the minimum allowable horizontal distance from a given line of reference (usually a property line) to the nearest vertical wall of a structure.
- (70) "Sign face" means the entire surface area of a sign upon which a message can be placed.
 - (a) Where a sign has two display faces back to back, the area of only one face shall be considered the sign face. If one face is larger, the area of the larger sign face shall be considered the sign face. The supporting structure or bracing of a sign shall not be counted as part of the sign face, unless such structure or bracing is made a part of the sign's message.
 - (b) Where a sign has more than one display face, all areas which are viewed simultaneously shall be considered the sign face of a single sign. All faces displayed on the same means of support, such as a single pole, shall be considered a single sign.
- (71) "Structural alterations" means a change in the supporting members of a structure, such as bearing walls, columns, beams, girders, or foundations.
- (72) "Structure height" means the vertical distance from the average finished grade to the highest point of a roof. "Average finished grade" means the midpoint between the highest and lowest finished grades adjacent to the building.
- (73) "Subdivide land" means to divide land into four or more lots within a calendar year.
- (74) "Subdivision" means either the act of subdividing land or a tract of land subdivided.
- (75) "Surface mining" means the extraction or processing of mineral or aggregate resources.
- (76) "Tract" means, for the purposes of the Exclusive Farm Use and Forest Conservation zones and Chapter 100, one or more contiguous lots or parcels in the same ownership. [Ord 94-0108; Ord 2001-0174]
- (77) "Urban fringe" means that area between an urban growth boundary and the city limits of an incorporated city.
- (78) "Water dependent use" means a use or activity which can be carried out only on or near water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water. "Water dependent use" does not include effluent treatment and/or disposal.
- (79) "Water related use" means a use which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water dependent land or waterway use. "Water related use" does not include a dwelling, parking lot, spoil dump site, road, restaurant, business, factory, or trailer park.
- (80) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- (81) "Winery" means a structure where grapes or other produce may be processed and converted to wine, bottled, blended, stored and sold. "Winery" includes a tasting room open to the public where wine may be sampled and purchased and where incidental wine related paraphernalia may be sold.

[Ord 7, Ord 26, Ord 90-0069, Ord 92-0092, Ord 93-0096, Ord 96-0117, Ord 96-0118, Ord 98-0134, Ord 2005-0209, Ord 2005-0210, Ord 2006-0214, Ord 2009-0233, Ord 2015-0269; Ord 2018-0285; Ord 2018-0286, Ord 2021-0304]

51.100 Designated Primary Zones. The unincorporated portions of Benton County are divided into primary zones which establish the requirements for the use of land in a given area. Primary zones in Benton County are:

- (1) Exclusive Farm Use (EFU)

October 7, 2021

- (2) Multi-Purpose Agriculture (MPA)
- (3) Floodplain Agriculture (FPA)
- (4) Forest Conservation (FC)
- (5) Open Space (OS)
- (6) Rural Residential (RR)
- (7) Urban Residential (UR)
- (8) Urban Commercial (UC)
- (9) Rural Commercial (RC)
- (10) Urban Industrial (UI)
- (11) Rural Industrial (RI)
- (12) Agricultural Industrial (AI)
- (13) Landfill Site (LS)
- (14) Public (P)
- (15) Rural Service Center (RSC)
- (16) Philomath Low-Density Residential (PR-1)
- (17) Philomath Medium-Density Residential (PR-2)
- (18) Philomath High-Density Residential (PR-3)
- (19) Philomath General Commercial (PC-2)
- (20) Philomath Light Industrial (PLI)
- (21) Philomath Heavy Industrial (PHI)
- (22) Village Residential (VR)
- (23) Village Commercial (VC)
- (24) Special Use (SU)

[Ord 90-0069, Ord 2009-0233; Ord.2012-0247; Ord 2013-0253]

51.105 Overlay Zones. An overlay zone may be applied to any portion of a primary zone in order to establish special requirements in addition to those required by the primary zone. Overlay zones in Benton County are:

- (1) Floodplain Management (/FP) The depiction of the Floodplain Management Overlay Zone on the Official Zoning Map is approximate; the official boundaries of this zone are shown on the Flood Insurance Rate Maps provided by the Federal Emergency Management Agency.
- (2) Greenway Management (/GM) The depiction of the Greenway Management Overlay Zone on the Official Zoning Map is approximate; the official boundaries of this zone are shown on the adopted Willamette River Greenway maps located in the Planning Division.
- (3) Flexible Industrial (/FI)
- (4) Airport (/A) The depiction of the Airport Overlay Zone on the Official Zoning Map is derived from the boundaries described in Chapter 86. In the event of a conflict between these, the text description in Chapter 86 shall prevail.
- (5) Goal 5 Resources
 - (a) Wetland (/W)

- (b) Surface Mining (/SM)
 - (c) Sensitive Fish and Wildlife Habitat (/FW)
 - (d) Fender's Blue Butterfly (/FB)
- (6) Use (/U)
- (7) Natural Features Overlays
- (a) Natural Hazards
 - (b) Natural Resource

[Ord 97-0131; Ord 2004-0196; Ord 2006-0214, Ord 2009-0233; Ord 2013-0253]

51.110 Official Zoning Map.

- (1) The Official Zoning Map shall divide Benton County into primary and overlay zones and shall be consistent with the Benton County Comprehensive Plan Map and adopted City Comprehensive Plan Maps. The boundaries of the zones shown on the Official Zoning Map may be modified in accordance with the procedures for a zone change pursuant to this code. Annexation of territory to a City shall result in automatic amendment of the zoning map as of the effective date of annexation. [Ord 90-0069]
- (2) The Official Zoning Map shall be maintained by the Planning Official in the offices of the Development Department. The Official Zoning Map adopted with an effective date of July 8, 2004, exists in official form as an electronic map layer within the Benton County geographic information system at a scale of 1:24,000.
- (a) The official copy of the electronic version of the zoning map shall be recorded onto permanent media to ensure the electronic information is protected.
 - (b) When the official zoning map is amended by Ordinance, the Planning Official shall cause the changes to be made to the electronic version of the zoning map, and shall cause the electronic map's metadata to be annotated with the date and type of change and the ordinance number.
 - (c) Any zoning map or map containing data from the official zoning map shall be annotated with the date of the most recent revision of the zoning map by ordinance, and shall state that the map data is valid at a maximum scale of 1:24,000.
- (3) The Official Zoning Map adopted with an effective date of July 8, 2004, is intended to be consistent with the June 2, 1982 Zoning Map. The exceptions are those zone change requests adopted by ordinance after June 2, 1982. The owner of any property, the zoning of which was inadvertently changed by the conversion from the 1982 Zoning Map to the 2004 Zoning Map, may obtain correction of the error through the procedure in BCC 53.530.
- (4) Interpretation of the zoning map shall comply with the following:
- (a) Zone boundaries are generally intended to coincide with discernable geographic features or property lines. In cases where a zone line crosses a lot or parcel without reference to a specific landmark (such as a road or stream), it may be necessary to consult the record of hearings that led to adoption of the Zoning Map, or other relevant information, in order to determine the precise location of the zone line.
 - (b) Zone boundaries that are indicated as approximately following roads, railroad lines, streams or other water bodies shall be construed to follow the centerlines of these entities.
 - (c) Zone boundaries that are indicated as approximately following city limits, urban growth boundaries, or property lines shall be construed to follow those lines.
 - (d) Boundaries indicated as parallel to or extensions of the features listed above shall be so construed.
 - (e) Where a water body, such as a river, changes location through annual erosion or accretion (i.e.

October 7, 2021

the gradual and imperceptible removal or addition of alluvial material), any coincident zone line shall be interpreted as moving with the centerline of that body of water. Where a water body changes location through avulsion (i.e. the sudden and visible loss or addition to land, or the sudden change in the bed or course of the stream), any coincident zone line shall be interpreted as remaining in the location of the water body prior to the avulsion.

- (5) Where a right-of-way is vacated, the zone requirements applicable to the property of which the vacated property becomes a part shall apply to the vacated property.
- (6) Errors in the Official Zoning Map shall be resolved by means of the procedure in BCC 53.530.
- (7) Refinement of the zoning map to improve consistency with the interpretation standards of subsection (4) may be effected under the direction of the Planning Official. [Ord 2004-0196]

THE PLANNING OFFICIAL

51.205 Duties and Powers of the Planning Official. The Planning Official is responsible for the administration of the Development Code. In carrying out these duties, the Planning Official shall have the following powers:

- (1) The Planning Official shall provide the official interpretation of the Comprehensive Plan and Development Code, including the Zoning Map and Comprehensive Plan Map. Any member of the public may apply for a Planning Official's Interpretation of provisions of the Comprehensive Plan or Development Code or their application to a specific property, project, or issue. The Planning Official's Interpretation is an administrative land use action. The Interpretation shall be based on the Benton County Comprehensive Plan, the purpose and intent of the applicable code chapter(s), and any other information deemed relevant by the Planning Official. The interpretation cannot constitute a legislative act effectively amending the code or Comprehensive Plan. Notice of the decision shall be published in a newspaper of general circulation pursuant to BCC 51.625(2) and notice shall be provided to the applicant and any member of the public who has requested in writing to the Community Development Department within the past year to be notified of land use actions regarding the subject matter of the Interpretation. Additionally, for questions of interpretation pertaining to specific properties or land areas, notice shall be provided to owners of neighboring properties as specified in BCC 51.610(1)(a) through (c). The decision is subject to appeal under the provisions of BCC 51.805 through 51.840. The application for an interpretation may be referred to the Planning Commission at the discretion of the Planning Official. If referred, the Planning Commission will consider the matter as a quasi-judicial land use action at a public hearing pursuant to BCC 51.705 through 51.725.
- (2) The Planning Official may approve a use not specifically listed in the Development Code in any zone, provided that the use is substantially similar in character, scale, and impact to permitted uses in the zone, and is compatible with the purpose of the zone. However, if the use in question is specifically listed in another zone, other than Chapter 81 (Special Use Zone), the Planning Official shall not approve the use through this procedure. [Ord. 2012-0247]
- (3) The Planning Official, and any employee of Benton County, may enter upon land subject to a land use application or to enforce any provision of this code to make examinations and surveys in the performance of their functions.
- (4) The Planning Official shall review and decide all land use applications, except as otherwise specifically provided by this code. The Planning Official may refer any application to the Planning Commission for a public hearing.

[Ord 90-0069; Ord 2000-0161; Ord 2004-0196]

CITIZEN ADVISORY COMMITTEES

51.305 Citizen Advisory Committees Established. The Board of Commissioners may establish Citizen Advisory Committees (CAC) in unincorporated areas of Benton County. [Ord 90-0069]

51.310 Purpose. The purpose of a CAC is to:

- (1) Encourage participation of citizens in all phases of the land use planning process and other aspects of County government that affect their area;
- (2) Increase communication between citizens and elected and appointed County officials;
- (3) Obtain input from citizens in a CAC area on land use legislation and actions affecting their area; and
- (4) Assist the County and educate citizens regarding the technical and legal aspects of land use planning. [Ord 90-0069]

51.315 Participation. Participation in the activities of a CAC is open to any resident, property owner, or person operating or leasing a farm or business in the CAC area. CAC meetings shall be open to anyone who wishes to attend. [Ord 90-0069]

51.320 Bylaws. CAC membership, terms, organization, meeting requirements and the boundaries of CAC areas shall be established in the CAC bylaws adopted by the Board of Commissioners pursuant to BCC Chapter 3. The Board may establish a new CAC, abolish an inactive CAC, or combine CAC areas. [Ord 90-0069]

51.325 CAC Duties.

- (1) The Planning Official shall refer proposed legislative and quasi-judicial land use actions which require a public hearing to each affected active CAC, as determined by the Planning Official, for review and recommendation.
- (2) The Planning Official may refer a proposed land use action which does not require a public hearing to an affected CAC for review and recommendation.
- (3) Failure of a CAC to meet or to forward its recommendation to the Planning Official prior to the hearing or decision shall not affect the validity of the decision. [Ord 90-0069]

THE PLANNING COMMISSION

51.400 Planning Commission Codified. The Benton County Planning Commission, as established by County Resolution on July 11, 1951, and as developed and expanded by County Orders on December 12, 1963, February 1, 1978, September 2, 1981, and November 23, 1983, is hereby codified. [Ord 90-0069]

51.405 Powers and Duties.

- (1) The Planning Commission shall review and make recommendations to the Benton County Board of Commissioners concerning proposed amendments to the Benton County Comprehensive Plan, Development Code, or Zoning Map. Prior to making a final recommendation on a proposed amendment, the Planning Commission shall hold at least one public hearing on the amendment.
- (2) The Planning Commission may propose amendments or additions to the Benton County Comprehensive Plan, Development Code, or Zoning Map. Prior to holding a public hearing on such proposed amendments, the Planning Commission shall receive preliminary authorization to consider amendments from the Board of Commissioners.
- (3) The Planning Commission shall decide appeals of a decision of the Planning Official on applications made pursuant to this code, and shall decide applications as the initial decision maker as provided by this code. The Planning Commission shall hold a public hearing before deciding any land use action or appeal.
- (4) The Planning Commission shall serve as the Committee for Citizen Involvement (CCI). The CCI shall assist the Board of Commissioners with the development and evaluation of Benton County's Citizen

October 7, 2021

Involvement Program as it relates to land use planning. The CCI shall conduct an annual review of the Citizen Involvement Program, and report its findings to the Board of Commissioners. [Ord 90-0069]

51.410 Membership.

- (1) The Planning Commission shall consist of nine members appointed by the Board of Commissioners for staggered four year terms. Terms shall commence on January 1st, except as otherwise provided by BCC Chapter 3.
- (2) In the event that a Planning Commissioner resigns or leaves office prior to the expiration of his or her term, the Board of Commissioners shall appoint a person to serve the unexpired portion of the original term.
- (3) Members of the Planning Commission may be removed from office by the Board of Commissioners pursuant to BCC Chapter 3.
- (4) No more than two voting members of the Planning Commission shall be engaged in the same kind of occupation, business, trade, or profession. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. [Ord 90-0069]

51.415 Bylaws. Bylaws governing the Planning Commission shall be established by resolution of the Board of Commissioners. [Ord 90-0069]

APPLICATION AND FEES

51.505 Method of Application. A person shall apply for a land use action or limited land use decision on a form provided by the Planning Official. Prior to reviewing an application, the Planning Official may request additional information which, in the opinion of the Planning Official, is necessary to complete the application. [Ord 90-0069, Ord 93-0096]

51.507 Railroad Crossing. At the time of application for a land use decision, limited land use decision, or expedited land division, the applicant shall inform Benton County if the only access to the subject property is or will be by means of a road, open to the public, crossing a railroad. In such case, the Planning Official shall notify the Oregon Department of Transportation and the railroad company. [Ord 2006-0214]

51.510 Signature on Application. The applicant shall sign the application. If the applicant is not the owner or the agent of the owner of the property subject to the land use action or limited land use decision, the property owner must authorize the application in writing before the Planning Official may review the application. For the purposes of this section, "agent of the owner" includes a public agency with condemnation authority which is proposing to construct a public improvement. [Ord 90-0069, Ord 93-0096]

51.515 Application Fee.

- (1) The Planning Official may charge a fee to process an application filed pursuant to the Development Code.
- (2) Fees shall be set by order of the Board of Commissioners. The Planning Official shall review application fees annually and shall recommend proposed fees and fee changes to the Board for adoption. [Ord 90-0069]

51.520 Waiver of Fees.

- (1) Any application fee may be waived or reduced by the Planning Official upon written request if:
 - (a) The proposed project will benefit the general public;
 - (b) The applicant is a non-profit, community-oriented service organization; and
 - (c) Payment of the application fee would pose a financial hardship to the applicant.

October 7, 2021

- (2) Only the "local" portion of a fee may be waived or reduced when a portion of a fee must be remitted to another agency as required by law. [Ord 90-0069]

51.525 Revision of Application.

- (1) All documents or evidence relied upon by the applicant shall be submitted to the Planning Official and be made available to the public at the time notice is provided pursuant to BCC 51.605 to 51.615. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance as follows:
 - (a) If no public hearing will be conducted prior to the decision, any party which has reviewed the application materials shall be notified and given a reasonable opportunity to review the additional documents or evidence and submit testimony.
 - (b) A public hearing may be continued pursuant to BCC 51.720 or 51.725.
- (2) If the applicant proposes a revision to the application that changes the type of land use action or limited land use decision requested in the initial application, the applicant shall withdraw the initial application and shall file a new application for the revised request. [Ord 90-0069, Ord 92-0092, Ord 93-0096]

51.530 Withdrawal of Application; Fee Refund.

- (3) The applicant or owner may submit a written request to the Planning Official to withdraw an application prior to a decision to approve or deny the application. The Planning Official may refund all or part of the application fee based upon the amount of County staff work completed prior to the withdrawal.
- (4) The applicant may submit a request to the Planning Official to withdraw an application after a final decision to approve the application. Upon receipt of such request, the Planning Official shall cancel the permit. No refund shall be granted where a permit is cancelled following a final decision. [Ord 90-0069]

51.535 Final Action.

- (1) The County shall take final action on an application, including resolution of all appeals to County bodies, within 120 days for permit, limited land use, or zone change applications involving land located within an urban growth boundary or involving mineral aggregate extraction, or within 150 days for all other applications, unless otherwise specified in the Benton County Code. The 120-day or 150-day time period begins the day the application is deemed complete by the Planning Official. The time period may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days. The time period does not apply to an appeal of a decision of the Board of Commissioners, or to a text amendment.
- (2)(a) The Planning Official shall determine whether an application is complete and shall in writing notify the applicant of exactly what information is missing within 30 days of the date of the filing of an application. The applicant then has 180 days to complete the application.
 - (b) The application shall be deemed complete for the purpose of BCC 51.535(1) upon the Planning Official's receipt of:
 - (A) All of the missing information;
 - (B) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (C) Written notice from the applicant that none of the missing information will be provided.
 - (c) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information and has not submitted the information specified in subsection (2)(b)(A), (2)(b)(B) or (2)(b)(C) of this section.

[Ord 26, Ord 90-0069, Ord 98-0134, Ord 2000-0157, Ord 2009-0232]

October 7, 2021

NOTICE REQUIREMENTS

51.605 When Public Notice is Required.

- (1) The Planning Official shall issue public notice pursuant to BCC 51.605 to 51.625 of applications for the following quasi-judicial land use actions:
 - (a) Appeal of a decision of the Planning Official or Planning Commission.
 - (b) Conditional use.
 - (c) Variance.
 - (d) Nonconforming use alteration.
 - (e) Vested right determination.
 - (f) Nonfarm parcel creation.
 - (g) Partition resulting in a parcel smaller than the minimum parcel size in the Forest Conservation, Exclusive Farm Use, or Multi-Purpose Agriculture Zone.
 - (h) Discretionary property line adjustment in a resource zone.
 - (i) Validation of a unit of land not legally established pursuant to BCC 94.160.
 - (j) Non-farm dwelling or lot of-record dwelling in the Exclusive Farm Use zone.
 - (k) Dwelling in a Forest Conservation zone, except a replacement dwelling or a dwelling on 160 acres or 200 noncontiguous acres.
 - (l) Historic resource – alteration or demolition (resource on the Benton County Register of Historic Resources).
 - (m) Historic resource – placement or removal from the Benton County Register of Historic Resources.
 - (n) Planned unit development.
 - (o) Subdivision.
 - (p) Zoning Map amendment.
 - (q) Comprehensive Plan Map amendment.
 - (r) Any other discretionary approval of a proposed development of land under the Benton County Comprehensive Plan or Development Code.
- (2) The Planning Official shall issue public notice pursuant to BCC 51.605 to 51.630 for the following legislative land use actions:
 - (a) Comprehensive Plan text amendment.
 - (b) Development Code text amendment.
- (3) The Planning Official shall issue public notice pursuant to BCC 51.621 for limited land use decision actions.
- (4) Notwithstanding subsection (1) of this section, the following quasi-judicial actions require notice of decision pursuant to BCC 51.625, but not notice of proposed action pursuant to BCC 51.610:
 - (a) Administrative review pursuant to BCC 53.160; and
 - (b) Planning Official’s Interpretation.

[Ord 90-0069, Ord 92-0092, Ord 93-0096, Ord 96-0118, Ord 2006-0214, Ord 2009-0232]

October 7, 2021

51.608 Public Notice When Proposal Would Re-zone Property or Limit or Prohibit a Use.

- (1) Pursuant to ORS 215.503, the Planning Official shall provide notice pursuant to this section for any land use action which proposes to:
 - (a) Change the zone designation of a property;
 - (b) Amend the Comprehensive Plan or adopt a new Comprehensive Plan such that a property will have to be rezoned in order to comply with the new or amended Comprehensive Plan; or
 - (c) Amend the Development Code or adopt a new land use regulation, the effect of which would be to limit or prohibit a use or uses which are currently allowed on a property.
- (2) In addition to the notice required under BCC 51.610 (3) or 51.618(2), the Planning Official shall mail written individual notice to all owners of property described in (1)(a), (b), or (c).
- (3) The notice shall describe in detail how the amendment will affect the use of the property, and shall be provided as follows:
 - (a) For a land use action pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633, and 197.636:
 - (A) Notice shall be mailed to all owners of property described in (1)(a), (b), or (c) at least 30 days prior to the first Planning Commission hearing on the amendment;
 - (B) The notice shall contain substantially the following language and format:

This is to notify you that Benton County has proposed a land use regulation that may affect the permissible uses of your property and other properties.

As a result of an order of the Land Conservation Development Commission, Benton County has proposed _____[Ordinance Number or File Number]. Benton County has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

[Ordinance Number or File Number] will become effective on [date].

[Ordinance Number or File Number] is available for inspection at no cost at the Benton County Community Development Department located at [current address]. A copy of [Ordinance Number or File Number] also is available for purchase for the cost of copying.

- (b) For any other land use action requiring notice under this section:
 - (A) Notice shall be mailed to affected property owners at least 20 days but not more than 40 days prior to the first Planning Commission hearing on the amendment;

(B) The notice shall contain substantially the following language and format:

This is to notify you that Benton County has proposed a land use regulation that may affect the permissible uses of your property and other properties.

On [date of public hearing], Benton County will hold a public hearing regarding the adoption of [Ordinance Number or File Number]. Benton County has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

[Ordinance Number or File Number] is available for inspection at no cost at the Benton County Community Development Department located at [current address]. A copy of [Ordinance Number or File Number] also is available for purchase for the cost of copying.

- (4) As used in this section, “owner” means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll. [Ord 2006-0214]

51.610 Public Notice Requirements for Quasi-Judicial Land Use Actions.

- (1) When BCC 51.605(1) requires public notice, the Planning Official shall mail notice of a proposed quasi-judicial land use action at least 14 days prior to the date of decision or public hearing and shall publish notice of the application in a newspaper of general circulation in Benton County. In the case of a quasi-judicial land use action proposing to limit or prohibit a currently allowed use on a property, the notice requirements of BCC 51.608 shall apply. The notice required by BCC 51.610 shall be sent by regular mail to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
- (a) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
 - (b) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (c) Within 750 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone. If the 750 foot radius includes a portion of a neighborhood zoned for resource use that exceeds a density of one residence per two acres, the notice area shall be expanded to 1000 feet in that neighborhood only.
 - (d) The distances prescribed in subsections (a) through (c) of this section shall be considered minimums; the intent of this section is to notify property owners who could be affected by the proposed land use action.
- (2) Failure of a property owner to receive notice as provided by subsection (1) of this section shall not invalidate the proceedings if the Planning Official can demonstrate by affidavit that notice pursuant to subsection (1) was given.
- (3) The Planning Official shall publish notice of all land use actions which require a public hearing in at least one newspaper of general circulation in Benton County. Notice shall be published at least ten (10) days prior to the date of public hearing. The applicant shall pay the cost of the newspaper publication.
- (4) Notice shall be provided to:
- (a) Any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
 - (b) The Oregon Department of Transportation (ODOT) when the proposed land use action could

October 7, 2021

affect an ODOT facility (including roads).

(c) Oregon Department of Fish and Wildlife when required by BCC 53.515.

(d) An airport owner when required by BCC 53.515.

(5) Nothing in BCC 51.605 to 51.625 shall preclude the County from providing additional notice where the County in its discretion deems additional notice to be appropriate.

[Ord 90-0069, Ord 93-0096, Ord 2000-0157, Ord 2009-0232, Ord 2015-0269]

51.615 Form of Notice of Proposed Quasi-Judicial Land Use Action.

(1) Public notice of a quasi-judicial land use action shall:

- (a) Explain the nature of the application or land use action and the use or uses which could be authorized;
- (b) List the applicable criteria from the Comprehensive Plan and Development Code that apply to the application at issue;
- (c) Set forth the street address or other easily understood geographical reference to the subject property;
- (d) State the proposed date of decision, or the date, time, and location of the public hearing;
- (e) State that failure of an issue to be raised in person or in writing by the close of the record at or following the final evidentiary hearing, or failure to provide sufficient specificity to afford the County decision maker the opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue;
- (f) Include the name of a local government representative to contact and the telephone number of the County official where additional information can be obtained;
- (g) State that a copy of the application, all documents and evidence relied upon by the applicant, together with all applicable criteria, are available for inspection at no cost, and a copy will be provided at cost;
- (h) State that a copy of the preliminary staff report will be available for inspection at no cost at least seven days prior to the date of decision or public hearing, and a copy will be provided at cost; and
- (i) State that any interested person may submit written testimony, and state the public comment period during which such testimony will be accepted. For a decision of the Planning Official, the public comment period shall be at least 14 days commencing on the date of notice and concluding at least 1 day before the date of decision. For a public hearing, the public comment period continues up to and through the public hearing until the hearing is closed pursuant to BCC 51.720. As used in this section, "written testimony" shall mean statements written or printed on paper, whether delivered in person, by mail, or by facsimile transmission. "Written testimony" shall also mean electronic mail (e-mail), provided the transmittal clearly states an intent for such testimony to be included in the record and the transmittal is received during the comment period by the staff contact listed on the notice of application.
- (j) State the address to which written comments may be sent, and state the procedure for making the decision or for conduct of the hearing.
- (k) For a hearing before the Planning Commission, state that notice of the decision will be mailed only to people who testify orally or in writing.

(2) The following statement shall appear on all notices sent to property owners pursuant to BCC 51.610(1):
NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215
REQUIRES THAT IF YOU RECEIVE THIS NOTICE IT MUST BE PROMPTLY

October 7, 2021

FORWARDED TO THE PURCHASER. The recipient of this notice is hereby responsible to forward a copy of this notice to every person with a documented interest, including a renter or lessee.

- (3) If the notice regards an appeal of a decision, the notice shall also include a description of the reasons for appeal and shall state the name of the appellant. [Ord 90-0069, Ord 2006-0214]

51.618 Public Notice Requirements for Legislative Land Use Actions.

- (1) All legislative land use actions shall be noticed pursuant to this section.
 - (a) A legislative land use action proposing to limit or prohibit a use currently allowed on a property shall also be subject to the notice requirements of BCC 51.608.
 - (b) Exception: The provisions of this section do not apply to a Comprehensive Plan or Development Code amendment that is solely for the purpose of conforming to new requirements in state statutes, Planning Goals, or administrative rules when the change will be adopted without a public hearing, pursuant to BCC 53.630.
- (2) Notice of all legislative land use actions shall be provided to the Oregon Department of Land Conservation and Development as prescribed in ORS 197.610.
- (3) The Planning Official shall publish notice of a proposed legislative land use action in at least one newspaper of general circulation in Benton County. Notice shall be published at least ten (10) days prior to the date of public hearing. Published notice shall contain the information specified in BCC 51.615(1).
- (4) The Planning Official shall make a reasonable attempt to mail notice of a proposed legislative land use action to all citizens, groups, organizations, and agencies, which testified in the most recent legislative action which addressed the subject matter under review in the proposed legislative land use action when such past legislative action occurred within the previous four years.
- (5) The Planning Official shall mail notice of a proposed legislative land use action to all groups, organizations, and agencies, whether comprised of citizens or professionals, which have declared an interest in the subject matter addressed by the proposed legislative land use action. Such declaration shall have been directed to the Planning Official in writing within one year of the pending public hearing on the proposed legislative land use action as a specific request to be notified of legislative proposals regarding a particular subject or subjects.
- (6) Notice shall be provided to:
 - (a) The Oregon Department of Transportation (ODOT) when the proposed land use action could affect an ODOT facility.
 - (b) Oregon Department of Fish and Wildlife, pursuant to BCC 53.615.
- (7) Nothing in this section shall preclude the County from providing additional notice where the County in its discretion deems additional notice to be appropriate. [Ord 92-0092, Ord 2006-0214, Ord 2015-0269]

51.620 Form of Notice of Proposed Legislative Land Use Actions.

- (1) Public notice of a proposed legislative land use action shall:
 - (a) Explain the nature of the proposed legislative enactments;
 - (b) State the date, time, and location of the public hearing;
 - (c) Include the telephone number of the Community Development Department where additional information can be obtained;
 - (d) State that a copy of the proposed ordinance is available for inspection at the Community Development Department at no cost and a copy will be provided at cost; and

October 7, 2021

- (e) State that any interested person may submit testimony prior to the final decision or prior to or at the public hearing and state the address to which written comments may be sent. [Ord 90- 0069, Ord 2006-0214]

51.621 Form of Notice of Limited Land Use Decision Actions (see definition of “limited land use decision”).

- (1) The Planning Official shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (2) The notice for limited land use decisions shall:
 - (a) Provide a 14-day period for submission of written comments prior to the decision;
 - (b) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the County decision maker to respond to the issue;
 - (c) List, by commonly used citation, the applicable criteria for the decision;
 - (d) Set forth the street address or other easily understood geographical reference to the subject property;
 - (e) State the place, date and time that comments are due;
 - (f) State that copies of all evidence relied upon by the applicant are available for review and that copies can be obtained at cost;
 - (g) Include the name and phone number of a local government contact person;
 - (h) Provide notice of the decision to applicant and any person who submits comments under subsection (a) of this section. The notice of decision must include an explanation of appeal rights; and
 - (i) Briefly summarize the local decision making process for the limited land use decision being made. [Ord 93-0096, Ord 2006-0214]

51.625 Notice of Decision Regarding a Quasi-Judicial Land Use Action.

- (1) The Planning Official shall mail a notice of decision for which BCC 51.605(1) requires public notice to the applicant, the appellant in the case of an appeal, and the affected property owners as defined in BCC 51.610(1). In addition, the Planning Official shall mail notice of decision to all persons who testified either orally or in writing regarding the proposed action. The Planning Official shall mail a notice of decision within two days from the date of the final decision as defined in BCC 51.810. If the Planning Official fails to mail the notice of decision within two days, the appeal period of a decision to a County appellate body shall be extended one day for each day the mailing of the notice is delayed.
- (2) If the decision was made following a public hearing pursuant to BCC 51.705 to 51.725, the notice of decision need be mailed only to all persons who testified either orally or in writing regarding the proposed action. Furthermore, no published newspaper notice of decision is required.
- (3) The notice shall be entitled "Notice of Decision" and shall describe the location and nature of land use action and the nature of the decision, including any conditions of approval. The notice shall state the date of the decision and shall state that copies of the Findings of Fact are available for inspection at the Community Development Department, and that a copy will be provided at cost. The notice shall also state that the decision may be appealed, shall state the requirements for standing to appeal pursuant to BCC 51.825, shall state the appeal period, and shall state the name, address, and phone number of the appropriate appellate authority. [Ord 90-0069, Ord 2015-0269]

51.630 Notice of Decision Regarding a Legislative Land Use Action.

- (1) The Planning Official shall mail a notice of decision to all persons who testified either orally or in writing regarding the proposed action. The Planning Official shall mail a notice of decision within two days from the date of the final decision as defined in BCC 51.810. If the Planning Official fails to mail the notice of decision within two days, the appeal period of a decision to a County appellate body shall be extended one day for each day the mailing of the notice is delayed.
- (2) The notice shall be entitled "Notice of Decision" and shall describe the nature of the land use action and the nature of the decision. The notice shall state the date of the decision and shall state that copies of the amendment and the Findings of Fact are available for inspection at no cost at the Community Development Department during specified hours, and that a copy will be provided at cost. The notice shall also state that the decision may be appealed, shall state the requirements for standing to appeal pursuant to BCC 51.825, shall state the appeal period, and shall state the name, address, and phone number of the appropriate appellate authority. [Ord 92-0092, Ord 2006-0214]

PUBLIC HEARINGS

51.705 Scheduling Public Hearings. The Planning Official shall schedule a public hearing on an application or an appeal that requires a decision by a hearings authority at the next available meeting of that body. The Planning Official shall schedule applications for hearing in the order in which they are received. [Ord 90-0069]

51.710 Exhibits and Evidence for Hearings Regarding Quasi-Judicial Land Use Actions and Limited Land Use Decision Actions.

- (1) All documents or evidence relied on by the applicant shall be submitted to the Community Development Department at least 14 days prior to the date of the hearing and be made available to the public at the time notice pursuant to BCC 51.610 and 51.615 is provided.
- (2) The staff report to be used at the hearing shall be available at least seven days prior to the date of the hearing.
- (3) Any person may submit exhibits or written comments prior to or at a public hearing. Such exhibits and written comments shall be attached to the staff report. If such exhibits or written comments are submitted after the staff report is made available pursuant to subsection (2) of this section, the Planning Official shall submit them at the public hearing for inclusion into the record. As used in this section, "written comments" shall mean comments written or printed on paper, whether delivered in person, by mail, or by facsimile transmission. "Written comments" shall also mean electronic mail (e-mail), provided the comments clearly state an intent for such comments to be included in the record and the transmittal is received during the comment period by the staff contact listed on the notice of application.
- (4) If the applicant modifies the application (e.g. details of the use requested, the size or number of parcels/lots proposed) after the deadline established in BCC 51.710(1), any party shall be entitled to a continuance of the hearing to consider and comment on the modified application. The applicant may modify arguments or evidence without triggering a continuance. The time period for a continuance under this section shall be at the discretion of the hearings authority, up to a maximum of 14 days. A continuance granted pursuant to this subsection shall not be subject to the 120/150- day local action deadline of BCC 51.535. [Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006- 0214]

51.715 Exhibits and Evidence for Hearings on Legislative Land Use Actions.

- (1) The proposed ordinance shall be drafted and made available to the public at the time notice pursuant to BCC 51.618 is provided.

- (2) Any person may submit exhibits or written comments prior to or at a public hearing. The Planning Official shall submit exhibits submitted prior to the hearing at the public hearing for inclusion into the record. [Ord 90-0069, Ord 2000-0161, Ord 2006-0214]

51.720 Conduct of a Public Hearing.

- (1) A public hearing shall be conducted in accordance with the bylaws of the hearing authority.
- (2) If the hearing is quasi-judicial, or a limited land use decision action, the applicant for the initial land use decision shall testify first, followed by those persons in favor of the application. The Chair shall then call for testimony from those in opposition to the application. In an appeal hearing, testimony in opposition shall begin with the appellant, if different from the applicant. The Chair shall then call for testimony from governmental bodies. Prior to closing the hearing, the Chair shall allow the applicant an opportunity to rebut opposing testimony. Rebuttal shall be limited to issues raised during testimony in opposition or by governmental bodies. Following deliberation and decision, the hearings authority shall state that the decision is subject to appeal, shall state the appeal period, shall state the name of the appellate authority, and shall note that the address and phone number of the appellate authority will be contained in the mailed notice of decision.
- (3) If the hearing is legislative, the Chair will call for testimony generally and shall close the hearing after every person has been given an opportunity to comment.
- (4) At the commencement of a quasi-judicial or limited land use decision action hearing, a presentation shall be made to those in attendance that:
 - (a) Lists the applicable substantive criteria;
 - (b) States that testimony and evidence must be directed toward the applicable substantive criteria or other criteria in the plan or Development Code which the person believes to apply to the decision; and
 - (c) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
- (5) Prior to closing an initial evidentiary hearing on a quasi-judicial or limited land use decision action, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the hearings authority shall either grant a continuance of the hearing pursuant to (a) below, or shall hold the record open for additional written testimony pursuant to (b) below.
 - (a) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days hence. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
 - (b) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record and allow any person to raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.
 - (c) A continuance or extension granted pursuant to this section shall be subject to the local action deadline set forth in BCC 51.535, unless the continuance or extension is requested or agreed to by the applicant.
 - (d) Unless waived by the applicant, the hearings authority shall allow the applicant at least seven

October 7, 2021

days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the local action deadline set forth in BCC 51.535.

- (6) After a quasi-judicial or limited land use decision action hearing has been closed and the record has been closed, the hearings authority shall decide the issue based on the evidence and testimony in the record and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision and explains the justification for the decision based on the criteria, standards and facts set forth. The hearings authority shall adopt findings of fact in support of its decision. The hearings authority shall not make a decision which is different from the proposal described in the notice of proposed action provided pursuant to BCC 51.615(1) to such a degree that the notice of the proposed action does not reasonably describe the final decision, unless the hearings authority continues the public hearing for further testimony and issues new notice pursuant to BCC 51.605 to 51.625 which reasonably describes the proposed modification.

[Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006-0214]

51.725 Continuance of a Public Hearing.

- (1) In addition to a continuance required by BCC 51.720(5), the hearing authority may continue a public hearing at its discretion to a date and time certain. If a quorum of the hearing authority does not appear for a scheduled public hearing, the public hearing shall automatically be continued to the date and time of the next regularly scheduled meeting. Where a hearing is continued by the hearing authority, no additional public notice shall be required unless the continuation results in a change in the application to such a degree that the notice of the proposed action does not reasonably describe the application.
- (2) When the hearings authority continues a hearing or reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.
- (3) A continued hearing shall be conducted in the same manner as the original hearing pursuant to the requirements of BCC 51.720. [Ord 90-0069]

APPEALS

51.805 Jurisdiction. Except for ministerial decisions such as approving or denying a property line adjustment, a final decision on an application made pursuant to this code is subject to review by appeal.

- (1) Except as otherwise provided by this code, a decision of the Planning Official may be appealed to the Planning Commission and a decision of the Planning Commission may be appealed to the Board of Commissioners.
- (2) A decision of the Historic Resources Commission may be appealed to the Board of Commissioners. [Ord 26, Ord 90-0069, Ord 2006-0214]

51.810 Final Decision Required. No decision may be appealed except a final decision.

- (1) A decision of the Planning Official becomes final on the date the Notice of Decision is signed by the Planning Official.
- (2) A decision of the Planning Commission becomes final upon the date of the vote of the Planning Commission rendering a decision and adopting findings. A Planning Commission recommendation to the Board is not a final decision for purposes of appeal.
- (3) A decision of the Board of Commissioners becomes final as follows:
 - (a) A decision of the Board regarding a land use action or limited land use decision action that

October 7, 2021

requires adoption of an ordinance becomes final upon the date notice is mailed to those entitled pursuant to BCC 51.630, after the second reading of the ordinance as provided by the Benton County Charter.

- (b) A decision of the Board regarding a land use action or limited land use decision action that does not require the adoption of an ordinance becomes final upon the date notice of the Board's adoption of the Findings of Fact, Conclusions of Law, and Order deciding the action is mailed to those entitled pursuant to BCC 51.625. [Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006-0214]

51.815 Appeal Period. An appeal of a decision of the Planning Official or Planning Commission shall be filed within fourteen (14) calendar days from the date of final decision. An appeal of a decision of the Board of Commissioners shall be filed as provided by State law. [Ord 26, Ord 90-0069]

51.820 Effective Date of a Decision. A final decision becomes effective upon expiration of the appeal period. Except for land use ordinances, the filing of an appeal of a land use action automatically stays the decision until resolution of the appeal by County appellate authorities. Land use ordinances take effect as provided by the Benton County Charter. [Ord 26, Ord 90-0069]

51.825 Standing to Appeal.

- (1) Any person may appeal a decision of the Planning Official to the Planning Commission.
- (2) The Planning Commission may determine upon its own initiative to call up a decision of the Planning Official for review. The Planning Commission may call up a decision of the Planning Official in one of two ways:
 - (a) If a public meeting of the Planning Commission occurs within the appeal period, the Commission may determine by majority vote at the public meeting to review a decision of the Planning Official and shall set a public hearing on the decision for the next regular Planning Commission meeting for which public notice pursuant to BCC 51.605 to 51.625 can be provided. No appeal fee shall be charged.
 - (b) If a public meeting of the Planning Commission does not occur within the appeal period, an individual Planning Commissioner may cause a decision to be reviewed at a public hearing at the next regular meeting for which public notice can be provided by filing a signed notice of appeal with the Planning Official within the appeal period. No appeal fee shall be charged.
- (3) A person may appeal a decision of the Planning Commission to the Board of Commissioners if while the record was open the person provided written or oral testimony to the Planning Commission regarding the decision.
- (4) The Board of Commissioners may determine by majority vote to call up a decision of the Planning Commission for review if the vote occurs within the appeal period. [Ord 26, Ord 90-0069, Ord 2006-0214]

51.830 Filing an Appeal. The appeal requirements of this section are jurisdictional. Failure to fully comply with the appeal requirements of this section is a jurisdictional defect. An appeal shall be filed with the Planning Official no later than 5:00 p.m. on the final day of the appeal period. The appeal must be filed in writing on the form provided by the Planning Official, and shall include:

- (1) A statement of the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated;
- (2) A statement of the standing to appeal; and
- (3) Payment of the filing fee established by order of the Board of Commissioners. [Ord 26, Ord 90-0069, Ord 98-0134]

51.831 Fee Limitations.

- (1) Where the county provides only a notice of the opportunity to request a hearing, the county may charge a fee for the initial hearing. This fee shall be limited to the lesser of the County's cost for preparing and conducting the hearing or \$250. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by:
 - (a) The Department of Land Conservation and Development; or
 - (b) Citizen Advisory Committees established by the Board of Commissioners and whose boundaries include the site. [Ord 93-0096, Ord 98-0134, Ord 2006-0214]

51.835 Notice of Appeal Hearing. The Planning Official shall issue public notice of an appeal hearing pursuant to BCC 51.610 and BCC 51.615. In addition, the following persons shall be sent notice by mail of the appeal hearing at least ten (10) days in advance of the hearing:

- (1) The appellant.
- (2) The applicant, if different from the appellant.
- (3) Those persons who testified either orally or in writing regarding the application prior to the decision that is under appeal. [Ord 90-0069]

51.840 Conduct of an Appeal Hearing.

- (1) The appellate authority shall conduct a public hearing pursuant to BCC 51.705 to 51.725 prior to deciding an appeal. The appellate authority shall review the record of the decision that is under appeal, and shall additionally consider any new evidence or testimony that is submitted into the record at the hearing. Any person may appear and be heard. The appellate authority shall affirm, reverse, or modify in whole or in part the decision that is under appeal. The appellate authority shall not modify the decision on appeal to such a degree that the notice of the appeal does not reasonably describe the final decision, unless the appellate authority continues the public hearing for further testimony and issues new notice pursuant to BCC 51.605 to 51.625 which reasonably describes the proposed modification. The appellate authority shall adopt findings of fact supporting its decision.
- (2) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Board of Commissioners. Such issues shall be raised with sufficient specificity to afford the Board of Commissioners and the parties an adequate opportunity to respond to each issue. [Ord 90- 0069]

RECONSIDERATION OF DECISION BEFORE LUBA ON APPEAL

51.900 Reconsideration by Board of Commissioners of Decision Before LUBA on Appeal. At any time after the filing of a notice of intent to appeal a land use decision or limited land use decision to the Land Use Board of Appeals, and prior to the date set for filing of the record, the Board of Commissioners may withdraw its decision for purposes of reconsideration. If the Board of Commissioners withdraws an order for purposes of reconsideration, it shall within such time as the Land Use Board of Appeals allows, affirm, modify, or reverse its decision. [Ord 93-0096]

REMAND HEARINGS

51.905 Hearing Procedure on Remand from LUBA. When a final decision of the Board of Commissioners on a quasi-judicial land use action is remanded to the County by the Oregon State Land Use Board of Appeals (LUBA), the Board of Commissioners shall hold a hearing on remand. Notice shall be given pursuant to BCC

October 7, 2021

51.605 to 51.625, and the hearing shall be conducted pursuant to BCC 51.705 to 51.840 except that notice shall be provided at least 20 days prior to the hearing, and evidence and testimony shall be limited to the criterion or criteria or the issue or issues upon which LUBA based its decision to remand. These criteria or issues shall be described in the notice and at the hearing as provided by BCC 51.615(1)(b) and 51.720(4). [Ord 90-0069, Ord 2006-0214]



PLANNING COMMISSION FINDINGS

| | |
|--|--|
| NATURE OF REQUEST: | Conditional Use Permit to expand Coffin Butte Landfill. Republic Services is proposing: to create a new disposal cell for the Coffin Butte Landfill which will extend from the current cell south of Coffin Butte Road; close Coffin Butte Road to public traffic (vacate the right-of-way) so the new cell can cover the road; relocate a replacement roadway (for landfill and quarry traffic only) around the area of the new disposal cell; relocate the leachate ponds south of Coffin Butte Road, and move some other structures. |
| APPLICABLE CODE CRITERIA: | Benton County Code (BCC) Section 51.505, Sections 51.705 through 51.840, Sections 53.205 through 53.235, Section 60.215, Section 60.220, Chapter 77, Chapter 99. The Benton County Code can be found at this link: https://www.co.benton.or.us/planning/page/development-code |
| PROJECT LOCATION: | <ul style="list-style-type: none"> • 29000 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 1107 • 29160 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 1200 • 28972 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 1101 • Township 10 S, Range 4 W, Section 18, Tax Lot 1104 • Township 10 S, Range 4 W, Section 18, Tax Lot 1108 • 29175 Coffin Butte Road; Township 10 S, Range 4 W, Section 18, Tax Lot 801 |
| APPLICANT: | Republic Services |
| PROPERTY OWNER: | Valley Landfills Inc. |
| ZONE DESIGNATION: | Landfill Site (LS), and Forest Conservation (FC) |
| COMPREHENSIVE PLAN DESIGNATION: | Landfill Site, Forestry |
| CAC PLANNING AREA: | North Benton (not active) |
| STAFF CONTACT: | Inga Williams, inga.williams@co.benton.or.us |
| FILE NUMBER: | LU-21-047 |

This matter came before the Planning Commission in public hearings held November 2 and November 16, 2021. At the November 16 meeting:

- the applicant was provided the opportunity to submit additional written evidence up to 5 PM on November 19th;
- per statute, the record was held open so that the public could to submit further written testimony until 5 PM on the 29th; and
- per statute, the applicant was allowed one additional week, until 5 PM on December 6, to submit final written argument.

On December 7, 2021, the Planning Commission returned to deliberate on the application. At the meeting on the 7th, the Planning Commission considered the record as a whole, then deliberated and reached a decision. The decision of the Planning Commission is to **DENY** the Applicant’s request for a Conditional Use authorization to expand Coffin Butte Landfill based upon the following findings of fact.

FINDINGS

General Conditional Use Criteria - Chapter 53

53.215 Criteria. The decision to approve a conditional use permit shall be based on findings that:

(1) 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;

Uses on adjacent property:

Many residents of the area testified that the odor and noise has continually gotten worse over the years. Some testified that they have to seek shelter inside to avoid the noise and smell. They warn that the levels expected in the future will affect their rural residential uses. Some farmers have testified that getting workers to work in the stench has been an issue.

Odor: Methane emission rules do not capture the impacts to the character and use of the area because many people testified that the smell inhibits them from going outside and enjoying the use of their property. Property owners within miles of the site stated they could smell the landfill. The current mitigation of an earthen cap over cells does not mitigate smell and smell reflects emissions of other gases such as Volatile Organic Compounds (VOCs) and hydrogen sulfide. The same mitigation is proposed for the expansion and if it currently does not mitigate the odor then it cannot be used as a mitigation for the future and be expected to minimize the concern.

Bad air quality: People living in areas with poor air quality does pose serious interference with livability. Risk of health concerns is likely with the landfill expansion; enough so nearby residents speak out about it. Some residents point to increasing cancer clusters in their neighborhood and suggest that poor air quality may be responsible. One nearby resident pointed to studies in Europe that tied poor air quality in the proximity of landfills to bad health issues. The applicant noted they cannot control all of the releases of VOCs or hydrogen sulfide and these gases are understood to be potent carcinogens. The applicant did not address the long-term effects of those gases in varying concentrations in different weather situations but the Planning Commission certainly heard from people that they can smell these.

Noise: The noise study contracted by the applicant has been criticized as faulty and inadequate. Proposed mitigations do not seem feasible and such conditions couched as "whenever feasible" or "if permitted by safety conditions" are not stringent enough. Further concern of noise from banging truck gates, loud noises from unloading, was not addressed. Point noises are often the most debilitating and background noise is easier to live with. The proposed Condition of Approval PA-7 (A) is inadequate to address this concern. To base approval on the applicant's assurance that future studies will ensure compliance would be inappropriate.

Much of the applicant's response to these issues is to rely on subsequent review and approval by Oregon Dept. of Environmental Quality (DEQ); however, there is no ability for the Planning Commission to review the situation after DEQ's approval to ensure that DEQ's standards were adequate to prevent the proposed use from seriously interfering with uses on adjacent property.

Conclusion: The proposed use does seriously interfere with uses on adjacent property.

The character of the area:

Increase in landfill area

Residents of the area point to the change in the character of the area. The minimal footprint of the landfill in previous years has and will be changed to a dominant footprint. The proposed expansion

will increase that interference in a number of ways. A whole valley will be filled with garbage. Modification of the fundamental topography at this scale, turning a valley into a ridgeline and burying the valley under 100 feet of garbage seriously interferes with the character of the area. This level of impact could not have been reasonably anticipated by any existing resident or past prospective purchaser. No condition could mitigate this level of change to the character of the area; therefore, the application fails to meet this criterion.

Open space and views of the cascades will disappear. The agricultural production from fields have gone away. The livability of the area because of noise, odors, and the visibility of the garbage pile will continue to degrade. One resident testified that their view of the dump has steadily increased to the point that it is now noticed and commented on by her children, and it is expected to increase more if the expansion is allowed.

Closure of Coffin Butte Road

The closure of Coffin Butte Road seriously affects those that use this road and the proposed Conditions of Approval do not lower the impact below the level of serious. The proposed mitigations for a closure may not be feasible or, if implemented, may seriously interfere with uses on adjacent property or seriously interfere with the character of the area. Improvement to Tampico Road would drastically alter the character of the area. Traffic will increase on Tampico Rd, and no amount of leveling and grading will be sufficient to make Tampico Road a better egress route without substantially altering the character of the area. These improvements will also increase certain dangers on Tampico Road by enabling traffic to travel it faster and increase risks to non-motorized users.

Staff and the applicant conclude that the Tampico Rd corridor would be heavily impacted by the increased passenger traffic and changes to the nature of every day traffic to include freight, agriculture, and forestry heavy equipment. Increasing truck traffic on Tampico will negatively affect the area. It may be widened, but sight issues will remain. This will increase risks to non-motorized users of the road from increased traffic. No amount of widening will change the underlying topography and hazards inherent in it; yet widening would further damage the local community character with no guarantee of success.

Conclusion: The proposed use does seriously interfere with the character of the area.

The purpose of the zone:

Purpose of Conservation Zone

The applicant has not met the burden of proof that the proposal will not interfere with the purpose of the Forest Conservation zone for protection of the wildlife resources. The Conditions of Approval requiring further study of Great Blue Heron (GBH) rookeries do not provide us with timely information to determine if the criteria is met nor if mitigation is possible. Further, testimony regarding threatened Streaked Horn Lark populations, Oregon Vesper Sparrow populations, and wildlife movements in the area of the landfill expansion point to the need for more wildlife investigations before action is taken in this area.

Proposed Condition of Approval PA-4 only addresses GBH concerns. Either that condition should be expanded to include other wildlife or additional conditions should be added. There is also concern that the applicant has limited ability to hire qualified consultants. The inventory of GBH nesting activity by their hired consultant has been challenged by residents with compelling photographic evidence.

Buffering and Zoning

The proposed landfill expansion relies heavily on the buffering of noise, odor, sight, and other nuisances by adjacent property owned by the applicant. Some of this buffering is provided by properly zoned land. However, some of the adjacent land is zoned Rural Residential (tax lots 10419001600 and 104180001200). Rural Residential zoning has no provisions for landfill buffering or for the extension of the landfill's grading footprint. The buffering of the landfill site and proposed grading plan for the new haul road under this CUP shows the new haul road positioned on the lot boundary of tax lot 104180001107 (zoned LS) and tax lot 10419001600 (zoned RR-10) and the land graded in the RR-10 zone. If the landfill requires a buffer to operate and extend grading, that buffer becomes part of the landfill use. As such, it should require appropriate zoning; a zone change or Conditional Use Permit if necessary. If the landfill cannot operate without establishing an illegal use on residentially-zoned lands, then reconsideration of this expansion location is necessary.

Conclusion: The proposed use does seriously interfere with the purpose of the zone.

(2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area;

Closure of Coffin Butte Road

This is an undue burden because Coffin Butte Road is used as a bicycle and walking route, log truck and freight haul road, an emergency egress by the neighborhoods to the south and west, and is used by Adair Rural Fire Protection District for public safety and fire access. The closure of Coffin Butte Road seriously affects facilities and services.

Closure of Coffin Butte Road results in the loss of the most direct, safe evacuation route in case of inclement weather or wildfire; it eliminates the best (paved, flat, one curve) and shortest egress from the Soap Creek Valley. Closure of Coffin Butte Road results in the permanent loss of one of only three routes out of the Valley. In addition, the Coffin Butte Road closure results in the loss of the only locally available, direct east/west crossing of Hwy 99W, creating additional traffic conflicts on Hwy 99W at Camp Adair Road, Tampico Road, and Robison Road.

Based on community testimony, during the February 2021 ice storm Coffin Butte road was the only egress for several days. There is testimony dated November 23, 2021, from Chief Aaron Harris to Joe Bessmen and email from County Emergency Manager Bryan Lee dated Nov. 23, 2021, to Julie Jackson, and later that day forwarded to County staff, indicating that they both felt that the loss of Coffin Butte Road would be an impact on public safety.

The Adair Rural Fire Protection District Board advises, "this route should not be closed" and "closure of Coffin Butte Road would be detrimental to public safety". Proposed Conditions of Approval to mitigate this road's loss through improvement to the northern route will not be "superior to Coffin Butte Road with regards to evacuation routes and public safety".

Closing Coffin Butte Road for this conditional use would remove an important route, replacing it with a lesser, compromised route or routes.

Leachate

Leachate from the proposed expansion is planned to be hauled off-site and disposed at the Corvallis Wastewater Treatment Facility (CWTF). The increased volume of leachate hauled will increase tanker truck loads to Corvallis and burden the transportation corridor and create an undue burden on the CWTF. The treated leachate from CWTF is released into the Willamette River and poses water quality concerns. The applicant has presented no leachate plan to account for this increased volume and continued maintenance and disposal for the future.

Conclusion: The proposed use does impose an undue burden on public improvements, facilities, or services available to the area:

Conditional Use Criteria for the Forest Conservation Zone - Chapter 60

60.220 Conditional Use Criteria. (1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use: (a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; (b) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and (c) Complies with criteria set forth in BCC 53.215 and 53.220.

There will be increased transportation costs to local farm and forestry operations from the closure of Coffin Butte Road. One commercial forester commented that their harvesting operations use Coffin Butte Road as a major haul route and that closure of the road would affect their forestry operation. "Closing Coffin Butte Road and replacing it with an alternative will add time and cost." Another commercial forester commented that closing Coffin Butte Road would create problems for them in increased costs and safety issues.

Adair Rural Fire and Rescue uses Coffin Butte Road for public safety and fire access. Alternative routes take more time for fire response and are narrower. "The closure of Coffin Butte Road will negatively impact the response time from the Substation to the northern/northeastern areas of our fire district and North Albany automatic aid response areas." It will also create an increase in fire suppression costs and increase risk to fire suppression personnel because of the increase in transportation time to reach a fire.

Conclusion: The proposed use will force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands, and will significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

Conditional Use Criteria for the Landfill Site Zone - Chapter 77

77.310 Conditional Use Review. (1) The applicant for a conditional use permit shall provide a narrative which describes:

(c) Provisions for screening of the site from public roads and adjacent property;

The staff discussion in the staff memorandum of November 29, 2021, concluded that screening is appropriate for this application. Pages 2-5 propose screening mitigation activities (tree planting), but even those would not be sufficient. Proposed condition of approval OA-6 and OA-7 for screening are not adequate to address screening of the site from public roads or adjacent property. It will be impossible to adequately screen the view of this mountain of garbage. Since no mitigation is possible, we must deny the application for non-compliance to the criteria.

Conclusion: Provisions for screening of the site from public roads and adjacent property is inadequate.

PLANNING OFFICIAL: _____



Date of Decision: December 7, 2021