



HATHAWAY LARSON

Koback · Connors · Heth

July 3, 2018

VIA EMAIL

City Council
c/o Anna Slatinsky, Planning Division Manager
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005

Re: Oregon Beverage Recycling Cooperative - 9307 SW Beaverton Hillsdale Hwy
Appeal of Director's Interpretation Decision
Post-Hearing Rebuttal Submission
Our Client: Glenwood 2006, LLC

Dear Mayor Doyle and Councilors:

As you know, this firm represents Glenwood 2006, LLC ("Glenwood"), the owners of the Laurelwood Animal Hospital and the Oregon Veterinary Specialty Hospital located adjacent to the above-referenced Oregon Beverage Recycling Cooperative ("OBRC") beverage container redemption center ("BCRC"). At the June 19, 2018 appeal hearing, the City Council left the record open to allow the parties the opportunity to submit rebuttal argument and evidence into the record on or before July 3, 2018. Glenwood is submitting this letter and the attached exhibits as rebuttal for the City Council to consider.

A. OBRC's proposed mitigation measures are too little, too late and demonstrate that OBRC has never taken the neighborhood complaints seriously.

At the appeal hearing, OBRC claimed that it wanted to work with the neighbors but has been unable to do so because the neighbors will not engage with OBRC. According to OBRC, it is the neighbors' fault that it has been unable to address their concerns. As we demonstrated in our June 19 submission, OBRC has known about the neighbors' concerns for over a year and one-half. Many of the neighbors communicated their concerns directly to OBRC. It is OBRC who ignored these concerns and has been unwilling to engage with the neighbors. OBRC's June 19 submission proves that OBRC had sufficient information to propose mitigation measures but it chose not to do so until it was concerned that the City's approval was in jeopardy as a result of this appeal.

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Glenwood initiated contact with OBRC before the City approved the design review application, explained its concerns and proposed some of the same mitigation measures OBRC is now proposing, only to be ignored. Letter from E. Michael Connors, dated June 19, 2018, p.4. As reflected in the minutes of the various neighborhood meetings before and after LUBA's remand, Glenwood and other neighbors explained the problems they were experiencing with the BCRC but OBRC refused to offer any proposals or mitigation to address these concerns. Letter from E. Michael Connors, dated June 19, 2018, p.5. OBRC admits that it never followed through on its agreement with the only neighbor that OBRC agreed to work with (Holli and Brandon Bridgens) back in August of 2017. Letter from Michael C. Robinson, dated June 26, 2018, p.10 & Exhibit 17. OBRC's neighborhood complaint log does not show a large number of complaints because OBRC obviously did not log all of the complaints it received, as evident by the lack of any reference to Glenwood's multiple communications and complaints.¹

OBRC's last minute mitigation proposals only demonstrates that it has not worked in good faith to address neighborhood concerns and is only doing so now for self-preservation. OBRC could have proposed these mitigation measures before it commenced operating and forced Glenwood to appeal the design review decision. It could have proposed these mitigation measures as part of its Director's Interpretation Application since it knew by that time that other neighbors were concerned about the impacts as well. It could have come to the appeal hearing with these proposed mitigation measures so that the neighborhood and the City Council had an opportunity for a discussion about these measures in a public forum.² Instead, OBRC waited to the very last stage of this one and a half year long process – the post-hearing submission process – to dump a list of mitigation measures for the first time into the record. With all due respect, OBRC is simply attempting to salvage its application, not engage with the neighbors or address their concerns.

B. The central question in this appeal is whether the BCRC qualifies as a Recycling Center.

OBRC disputes Glenwood's argument that the City must determine if the BCRC qualifies as a Recycling Center and claims that "[t]he central question in this appeal is whether the redemption center is substantially similar to other uses in the CS zone." Letter from Michael C. Robinson,

¹ As an example, Glenwood sent a June 1, 2017 email to OBRC describing a series of problems, including customers parking in the Glenwood parking lot, litter, abandoned shopping carts, etc. Letter from E. Michael Connors, dated June 19, 2018, Exhibit F. Glenwood also repeatedly asked OBRC to post no-parking signs to address the parking lot conflicts, clean up the trash and take other measures to address continuing problems with the BCRC. Letter from E. Michael Connors, dated June 19, 2018, Exhibit A, pp.2-3. None of these complaints, which OBRC ignored, are reflected in the complaint log.

² There are a number of questions about OBRC's proposed mitigation measures that could have been addressed at the appeal hearing. For example, OBRC agreed to cooperate with Jesuit on security issues but did not propose anything similar for Glenwood even though Glenwood has had several security related incidents and has similar concerns. OBRC could also agree to provide an onsite security guard like it provides at some of its other BCRC facilities.

dated June 26, 2018, p.10. OBRC's position is inconsistent with the express language of the Beaverton Development Code ("BDC") 10.50 and 40.25.15.1.C.4. ORS 197.829(1)(a).

The BDC expressly prohibits the City from approving a use as a substantially similar use if it already qualifies as a use addressed elsewhere in the BDC. BDC 10.50 provides that: "the Director may *not* permit a use already allowed in any other zoning district of this Code." (Emphasis added). BDC 40.25.15.1.C.4 limits the authority of the Director's Interpretation to interpreting "a use *not identified* in the Development Code is a Permitted, Conditional, or Prohibited Use." (Emphasis added). If the BCRC qualifies as a Recycling Center, or is more similar to a Recycling Center than allowed uses in the CS zone, it may not be approved as "substantially similar" use in the CS zoning district because Recycling Centers are limited to the Industrial ("IND") zoning district. BDC 20.15.20.

If the Director erred in determining that the BCRC does not qualify as a Recycling Center, the City Council must deny the Application pursuant to BDC 10.50 and 40.25.15.1.C.4 regardless of what it thinks about the substantially similar analysis. Therefore, the central question in this appeal *is* indeed whether the BCRC is a Recycling Center.

C. OBRC has been forced to repeatedly change its position on the legal standards for determining the nature of the use and the substantially similar test because its underlying claim is fundamentally flawed.

The flaws in OBRC's case are perhaps most apparent from OBRC's continually changing position regarding the standard for determining the nature of the use and the use category for which the BCRC is substantially similar. Every time Glenwood and the other appellants point out flaws in OBRC's position, OBRC is forced to change its position to compensate for these problems.

In its Application, OBRC argued that the nature of the BCRC use should be determined based on the BDC, dictionary and regulatory definitions. Exhibit A, pp.1-4.³ Using this definition approach, OBRC argued that the BCRC does not meet the relevant definitions of "recycling," and therefore is not a Recycling Center. Exhibit A, pp.2-4. OBRC argued that the BCRC is substantially similar to a "Service Business or Professional Services" use based on the BDC definition of that term. Exhibit A, pp.1-4.

After Glenwood and other appellants demonstrated that the BCRC does in fact meet the dictionary, regulatory and industry definitions of a Recycling Center, OBRC changed tactics in response to the written appeals. Although OBRC admitted that the BCRC conducts "recycling" as that term is defined, OBRC claimed that is not enough to demonstrate that the BCRC is a "recycling center." Letter from Garrett Stephenson, dated June 11, 2018, p.7. OBRC claimed that the BCRC does not qualify because it is not a "center" even though it refers to the facility as a center (beverage container redemption *center*) and the BCRC exclusively handles recyclable material. OBRC also changed its position regarding the regulatory definitions, claiming that

³ Glenwood attached relevant portions of OBRC's Application Narrative, dated December 21, 2017, as Exhibit A.

these definitions are no longer relevant. Letter from Garrett Stephenson, dated June 11, 2018, p.8. Instead, OBRC relied predominately on the impact-based test used by the Director. Letter from Garrett Stephenson, dated June 11, 2018, pp.10-12.

After the testimony at the appeal hearing demonstrated that the BCRC is causing substantial external impacts on the surrounding neighborhood, OBRC changed its position again and is now backing off the impact-based test. OBRC claims that “external impacts related to the OBRC facility are unrelated to the legal approval criteria for the Director’s Decision.” Letter from Michael C. Robinson, dated June 26, 2018, p.6. Instead of determining the nature of the BCRC based on its external impacts, OBRC is now proposing that the City Council allow the use and address these impacts through a series of conditions of approval to mitigate these impacts. Letter from Michael C. Robinson, dated June 26, 2018, pp.4-6.

OBRC also abandoned its original argument that the BCRC is substantially similar to a “Service Business or Professional Services” after the appellants demonstrated that it is nothing like the uses listed as examples in that definition.⁴ OBRC now claims it does not matter what particular use category the City selects so long as the BCRC is generally similar to other commercial uses. Letter from Garrett Stephenson, dated June 11, 2018, p.13.

OBRC’s constantly evolving position on the core legal issues demonstrates the legal flaws with its case. There is no need for such a convoluted approach - this case is straightforward. The BCRC is a stand-alone facility that exclusively accepts, processes, stores and transports recyclable material. It meets the dictionary, regulatory and industry definitions of a Recycling Center. The BCRC shares the same core characteristics as *all* of the uses listed as industrial uses in BDC 20.15.20 (Recycling Centers, Salvage Yards and Solid Waste Transfer Stations) – they all exclusively handle waste material. The BDC does not recognize a purely impact-based test for determining the nature of the use. Based on these undisputed facts, there is no question that the BCRC is a Recycling Center and therefore is prohibited in the CS zone.

D. OBRC failed to provide evidence to support the claim that the City treated grocery store recycling facilities as a retail use or that the BCRC is the same as these grocery store facilities.

As the applicant, OBRC bears the burden of proof to demonstrate compliance with all of the applicable criteria and standards. *Rochlin v. Multnomah County*, 35 Or LUBA 333, 348 (1998), *aff’d* 159 Or App 681, 981 P2d 399 (1999). OBRC is required to demonstrate compliance based on “substantial evidence” in the record. ORS 197.835(9)(a)(C); *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988). As part of its evolving arguments in this case, OBRC is now relying heavily on its assertion that the City approved grocery store recycling facilities as retail uses and the BCRC is the same as these grocery store facilities. However, OBRC failed to provide any evidence, let alone substantial evidence, to support these claims.

⁴ Service Business or Professional Services are defined as: “Uses engaged in providing services to the general public: *such as small dental and medical offices, real estate, insurance, administrative facilities, personal care, business, professional, and similar services.*” BDC Chapter 90. (Emphasis added).

While grocery stores have had beverage container recycling facilities associated with their stores, there is no evidence in the record regarding if or how the City treated those facilities. The only City approval of a grocery store in the record, Mr. Neff's submission of the Cornell Walmart store, makes no reference to the beverage container recycling facility associated with that store. In the absence of *any* evidence, it is unclear if the City overlooked these ancillary components of the grocery store, allowed them as accessory uses only, approved them under some other use category or approved them under a prior version of the BDC.⁵ Without any supporting evidence, OBRC cannot demonstrate based on substantial evidence that the City approved these facilities as a "retail trade" use.

Similarly, OBRC did not provide any evidence to support its assertion that the BCRC is the same as these grocery store facilities. There is no evidence in the record regarding these grocery store facilities, such as their size, operations, machinery, etc. Nor did OBRC provide any details about the backroom operations in the BCRC. As a result, there is no evidentiary basis for the City Council to determine the extent to which the two types of facilities are the same or substantially similar.

To the extent there is evidence in the record, it undermines OBRC's claim. The BCRC is a large stand-alone recycling facility while the grocery store facilities are smaller, ancillary facilities that are part of the grocery store itself. The standard grocery store facilities are nothing more than a few reverse vending machines. The size of the smaller grocery store facilities pale in comparison to the 10,889 sq. ft. BCRC building, loading dock and 16,000 sq. ft. parking lot with 41 parking spaces. Unlike the grocery store facilities, the BCRC has a large backroom facility that looks like a mini-manufacturing plant and does processing onsite. The BCRC is intended to replace 24 grocery store facilities, and therefore will do 24 times the volume of these grocery store facilities. The BCRC processes approximately 80,000 containers per day or *30 million* beverage containers per year, well beyond the volume that one of these grocery store facilities could possibly do.

E. OBRC failed to provide evidence to dispute the appellants' evidence that the BCRC includes processing activity in the backroom area.

One of the key issues of contention is whether or not there is any processing activity taking place in the back area of the BCRC. OBRC claims there is no processing activity, but they failed to provide any specific evidence regarding the backroom operations to support their claims. OBRC's attorneys statements that there is no processing is not evidence, it is simply their opinion on an issue they are obviously biased on. It would have been easy for OBRC to put this issue to rest by providing more details about the backroom operations, especially since Councilor San Soucie specifically asked about it at the appeal hearing, so the City Council should question why they have not done so. The obvious answer is that OBRC does not want to provide this

⁵ As Mr. Neff explained, the BDC treats accessory uses and principal uses differently. Letter from Michael G. Neff, dated June 26, 2018, p.2. There is a significant difference between the smaller beverage container recycling facilities associated with grocery stores and a 10,889 square foot stand-alone recycling facility.

information or let the Councilors see the backroom because it knows the evidence would undermine their claim.

In contrast, Glenwood and other appellants submitted far more detailed information about the backroom operations which demonstrates that the BCRC is in fact processing the containers on site. Mr. Neff submitted the Declaration of Gage Bergeron, a former Site Supervisor of the BCRC facilities in Bend and Redmond, which clearly shows there is significant processing activity taking place in the backroom area, including mechanical sorting machines, conveyer belts, crushing machines, augers that perforate or shred material, and other equipment that consolidates the processed material.⁶ Memorandum from Michael Neff, dated June 15, 2018, Attachment B. Although OBRC has not been willing to allow appellants to access the backroom, we included several pictures of various BCRC backroom areas that were publically available, attached as Exhibit B. These pictures only show a small portion of the backroom area, but it is clear that there are significant processing machines that looks like a mini-manufacturing plant.

As previously noted, OBRC bears the burden of proof in this case. OBRC failed to provide any evidence to support their claim that there is no processing on site. Appellants provided far more evidence regarding the processing activity in the backroom area notwithstanding their limited access to such information. Given the burden of proof, the weight of the evidence and OBRC's unwillingness to be more forthcoming about the backroom operations, the City Council has no choice but to conclude that there is processing activity taking place in the BCRC backroom.

F. LUBA did not reject Glenwood's claim that the BCRC is a Recycling Center, LUBA remanded that issue to allow the City to consider it first.

OBRC's claim that LUBA rejected Glenwood's argument that the BCRC qualifies as a Recycling Center is a gross mischaracterization of LUBA's decision. LUBA declined to decide one way or the other if the BCRC is a Recycling Center because LUBA concluded that the City should have an opportunity to consider that issue first since it did not address the use issue in the design review decision.

After remanding the City's design review decision because the City failed to address if the BCRC is an allowed use in the CS District pursuant to the required Type 2 Director's Interpretation process, LUBA addressed Glenwood's additional argument that it should reverse the City's decision if LUBA concludes that the BCRC qualifies as a Recycling Center:

“Petitioner asks that we go further and determine that the proposed BCRC is a ‘recycling center,’ which is allowed in the Industrial District but not the CS District, and that it does not qualify as a “service use,” as planning staff suggested while the application for design review was pending. Petitioner asks that we reverse the city's decision. We decline to do so. The term ‘recycling center’ is not

⁶ The Metro Code defines “processing” broadly as “a method or system of altering the form, condition or content of wastes,” and includes a broad category of activities such as “separating,” “shredding,” and “pulverizing.” Metro Code Section 5.00.010.

defined in the BDC, and *we are unprepared to say based on the current state of the briefing that the term could not be interpreted to exclude BCRCs*. Although the planning commission would not be entitled to any particular deference regarding such an interpretation, *we believe the city should have an opportunity to address that question in the first instance.*” *Glenwood 2006, LLC v. City of Beaverton and Oregon Beverage Recycling Cooperative*, LUBA No. 2016-026/027, dated September 21, 2017, Slip Op. p.8. (Emphasis added).

The italicized language makes it clear that LUBA determined it was premature to decide if the BCRC is a Recycling Center based on the parties’ LUBA briefings and that the City should have the opportunity to make that determination in the first instance. That is why the Director addressed this issue as part of her decision. Therefore, the question of whether the BCRC qualifies as a Recycling Center is an open issue and must be decided by the City Council as part of this appeal.

G. Glenwood’s assertion that the City should address where BCRCs should be allowed in the City through a legislative amendment is not inconsistent with its position before LUBA.

Once again, OBRC mischaracterizes Glenwood’s argument regarding the legislative amendment in an attempt to confuse the City Council about the issues. At LUBA, Glenwood argued that the City was required to consider if the BCRC is an allowed use in the CS zone pursuant to the Type 2 Director’s Interpretation process. LUBA agreed and remanded the case to require the City to follow the Type 2 Director’s Interpretation process. That is what led OBRC to file the Director’s Interpretation Application that is on appeal before the City Council.

As part of the appeal, OBRC is arguing that the City Council should allow BCRCs in commercial zones because that zone is more appropriate zone for these facilities than the IND zone. But OBRC’s approach is flawed because this appeal is not a policy making decision process – the sole issue before the City Council is whether or not the BCRC qualifies as an allowed use in the CS zone based on the existing language in the BDC. If the City Council believes that the BCRCs *should* be allowed in some or all commercial zones, the appropriate process for addressing that question is a legislative code amendment. The legislative amendment process would not only clarify where BCRC facilities are allowed and avoid these types of disputes, but it would provide a public process and opportunity for all citizens to weigh in on the proposal. There is nothing inconsistent between this argument and Glenwood’s arguments before LUBA.

H. The BCRC is an appropriate use in the IND zone.

OBRC’s claim that it would be inappropriate to locate the BCRC in the IND zone is erroneous for multiple reasons. OBRC currently operates three BCRCs in industrial zones in other jurisdictions (Oregon City, Redmond and Medford) so it clearly is capable of operating these facilities in industrial zones. Letter from Garrett Stephenson, dated June 11, 2018, Enclosure 2. The supposedly “inherently dangerous” conflicts between pedestrian/vehicles and “heavy trucks, forklifts and other industrial equipment” will be an issue regardless of where the BCRC is

located since the BCRC uses heavy trucks, forklifts and industrial equipment. OBRC and the City staff cited Far West Recycling as an example of a Recycling Center under the BDC, but just like the BCRC the general public bring their recyclable material directly to the Far West Recycling facility. Finally, reserving industrial lands for other types of uses is not a legal or appropriate basis for ignoring the BDC and allowing a use not permitted in the CS zone. If the City Council wants to allow BCRC in commercial or other non-industrial zones, it can certainly do so through a legislative amendment process.

I. Other uses in the CS zone have not generated near the level of complaints and opposition due to impacts after commencing operations.

OBRC's claim that the external impacts of the BCRC are no different than the typical impacts of uses allowed in the CS zone is undermined by one simple fact – none of these other uses have generated near the level of complaints and opposition as the BCRC. While it is not uncommon for neighbors to question or oppose a use at the time it is being proposed, it is unprecedented for a use to generate so many complaints and opposition as the BCRC has long after it has commenced operations. After operating for more than a year, and having multiple opportunities to refine its operations and address neighborhood concerns, OBRC has been unable quell the mounting complaints and opposition. Virtually all of the neighbors, including commercial, residential and institutional uses, have complained about the same impacts and lack of response from OBRC. The City Council must know from the written and oral testimony that these are not trivial complaints - the impacts are real and severe. Although there are restaurants, bars, drive-up windows and retail uses in the area, none of same neighbors have complained about these uses because they do not generate nearly the level of impacts. The extensive level of complaints that the BCRC has generated in comparison to other uses allowed in the CS zone is proof positive that the BCRC is not an appropriate use in the CS zone.

J. Glenwood and others are concerned about criminal activity and drug use associated with the BCRC, not the homeless.

Once again, OBRC's mischaracterizes Glenwood and other neighbors' complaints about criminal and safety related incidents by accusing them of criticizing the homeless. OBRC is the one that is assuming that these incidents have been caused by homeless individuals, not Glenwood and the neighborhood. Since several of these incidents involved individuals in automobiles parking in the Glenwood parking lot or trespassing on the Jesuit High School grounds, it is unclear why OBRC keeps assuming all of the incidents are related to homeless. Regardless of who is causing these incidents, it is not right or fair to say that these legitimate safety concerns should be ignored because it is part of a larger "societal problem."

OBRC also makes the ridiculous claim that "the issue is unrelated to any particular use or location." Letter from Michael C. Robinson, dated June 26, 2018, p.6. The evidence proves otherwise. Glenwood, who has been at its location for 12 years, never had any of these problems until the BCRC started operating and now it has become a pervasive issue. Many other neighbors testified that the BCRC has changed the entire character of the neighborhood. The significant increase in criminal and safety related issues in this neighborhood since the BCRC

started operating, as supported by the Beaverton Police Department's own analysis, is no coincidence. It is a direct result of this particular use in this particular location.

Conclusion

Based on the evidence in the record, there is no question that the BCRC is a Recycling Center and therefore is not an allowed use in the CS zone. The BCRC is a standalone center that exclusively accepts, processes, stores and transports recyclable material and satisfies the applicable BDC, dictionary and regulatory definitions. The BCRC processes 30 million containers per year and is at least 24 times the intensity of the smaller grocery store facilities that operated as accessory uses in conjunction with the grocery stores. Even if the City Council considers the external impacts, despite the lack of any authority in the BDC to determine the use based purely on impacts, there is extensive evidence that the BCRC generates significant impacts on the surrounding area and is not appropriate for this CS zoned location. OBRC can site the BCRC in the industrial zone or initiate a legislative code amendment process to determine what other zones are appropriate, so the City Council's decision will not prohibit these facilities. Accordingly, we respectfully request that the City Council grant the appeals and deny the Application.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

EMC/pl
Attachments

cc: Glenwood 2006, LLC

5. Uses of land not expressly allowed or not incidental to a permitted or conditional use are prohibited.

RESPONSE: For the reasons explained below, the BCRC is allowed as a "Service Business or Professional Services" use. "Service Business or Professional Services" uses are permitted in the CS zone. The Property is zoned CS. Therefore, the BCRC is expressly allowed.

* * * *

10.50. Authorization for Similar Uses. The Director may authorize that a use, not specifically named in the allowed uses, be Permitted if the use is of the same general type and is similar to the allowed uses; provided, however, that the Director may not permit a use already allowed in any other zoning district of this Code. Application for such a decision shall be processed as a Director's Interpretation, as provided by Section 40.25 of this Code.

RESPONSE: The BDC does not expressly identify a BCRC as a Permitted, Conditional or Prohibited use. As a result, the Director may authorize the BCRC pursuant to BDC 10.50 if it is of the same type and is similar to an allowed use.

A. A BCRC is of the same general type as, and is similar to, a "Service Business or Professional Services" use.

The BDC defines "Service Business or Professional Services" as follows:

"Service Business or Professional Services. Uses engaged in providing services to the general public: such as small dental and medical offices, real estate, insurance, administrative facilities, personal care, business; professional, and similar services."

BDC Chapter 90. Based upon this definition and the examples cited therein, the Director should find that "Service Business or Professional Services" uses have a few defining characteristics.

First, they provide services to individuals involving, or resulting from, the intellectual, professional, or manual personal labor of the server. For example, at dental offices, individuals receive dental care from trained professionals. At medical offices, individuals receive medical care and services from trained professionals. At a real estate

business, individuals receive advice about buying or selling land from trained professionals. At an insurance business, individuals receive advice about insurance policies and claims from trained professionals. At a personal care business, individuals receive specialized care, such as from a nail technician or a masseuse. At the BCRC, individuals will be able to return their empty beverage containers and receive their container deposits in exchange, all as a result of the professional and manual personal labor of BCRC staff.

Second, "Service Business or Professional Services" do not typically involve the consumer's purchase of a product that is made or created by the server on site. In fact, the plain text of the definition refers to the use providing "services" as opposed to "goods or "products." Additionally, none of the examples listed in the definition typically provide goods or products that are made on-site. As noted in the use description above, the only sales that take place are bags purchased for the return of containers by consumers using the account holder option; no other products are made or sold on site at the BCRC.

For these reasons, the BCRC is of the same type and is similar to a "Service Business or Professional Services" use, and the Director should find that the BCRC is permitted where "Service Business or Professional Services" uses are permitted in the city.

B. A BCRC is not a "Recycling Center."

The Director should reach this conclusion for four reasons. First, the Director should find that the BCRC is not a recycling center because it does not meet the definition of "Recycling Center." Although this term is not defined in the BDC, its plain and ordinary meaning is a location where "recycling" occurs. "Recycling" is also not defined in the BDC, but its plain and ordinary meaning is "convert (waste) into reusable material." As stated above, OBRC will not convert any waste into reusable material at the BCRC; rather, OBRC will package up the waste items and send them offsite, where they will be converted into reusable material. Therefore, the Director should find that the BCRC is not a "Recycling Center."

Second, the BCRC is not a recycling center because it is unlike other uses the City Council regulates the same as Recycling Centers. Specifically, the use charts in the BDC list Recycling Centers together with other uses:

"18. Salvage Yards, Recycling Centers and Solid Waste Transfer Stations."

BDC 20.15.20. As a result, from a use standpoint, the City regulates all three uses the same, which reflects the City Council decision that “Recycling Centers” are similar in nature and impacts to “Salvage Yards” and “Solid Waste Transfer Stations.” By contrast, a BCRC is not like a “Salvage Yard” or “Solid Waste Transfer Station.”

Chapter 90 of the BDC defines “Salvage Yard” as follows:

“A place out-of-doors where waste, discarded or salvaged materials are bought, exchanged, baled, packed, disassembled or handled including vehicle wrecking yards, building wrecking yards, used lumber yards and places of storage of salvaged building; wrecking and structural steel materials and equipment, but not including rummage, yard or garbage sales of more than (4) days duration. Three or more dismantled or inoperable materials on one lot shall constitute a salvage yard.”

The BCRC is not an outdoor facility, and the beverage containers handled at the BCRC are not like the wrecked and disassembled cars and buildings referenced in the definition.

Additionally, the BCRC is not a “Solid Waste Transfer Station.” The BDC does not define this use, but the Director should find that it is a term of art in the solid waste industry where smaller collection vehicles deposit various types of waste, which is then separated, sorted and transferred offsite in larger vehicles. The Director should find that Metro, the regional governing agency, owns and operates two solid waste transfer stations in the region, which are significant in size and accept a full array of materials, including tires, appliances, batteries, and hazardous waste. See attached information sheet describing Metro Solid Waste Transfer Stations in Exhibit 2. As explained above, the BCRC is comparatively limited in size and operations and accepts a much more innocuous type of materials than these Metro solid waste transfer stations.

Third, beyond mere definitions, there is additional context in the BDC that supports the conclusion that the BCRC is not a “Recycling Center.” The City only allows “Recycling Centers” in a single zoning district – the city’s most intensive district (Industrial) – and even then, only as a conditional use. The purpose of conditional use review in the City is to “review uses that may be compatible in the underlying zoning district but because of their size, operation, or other characteristics require review on a case by case basis.” BDC 40.15.05. They may “result in significant adverse effects upon the environment, overburden public services, alter the character of the surrounding area or create nuisances.” *Id.* Thus, the BDC reflects a legislative determination that “Recycling Centers” require more scrutiny and have the potential to have detrimental effects on

the surrounding area. The BCRC will not have such effects; it will not generate adverse impacts to surrounding properties such as noise, odor, or lighting. Further, it will operate during limited hours and in a small, indoor facility. Thus, it would not make sense to regulate the BCRC as a conditional use.

Fourth, state law has created unique operating standards that apply to BCRCs and distinguish a BCRC from Salvage Yards, Recycling Centers and Solid Waste Transfer Stations. See ORS 459A.737(2), which lists specific rules for a BCRC that are similar to the operational characteristics required from many grocery stores that offer beverage container redemption services under ORS 459A.710. In addition, ORS 459A.735(3) states that the OLCC “shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers,” and lists specific guidelines for the location of convenience zones as specified under ORS 459A.738(1).

For these reasons, the Director should find that the BCRC is of the same general type, and is similar to, a “Service Business or Professional Services” use, and therefore, the BCRC is permitted where “Service Business or Professional Services” uses are permitted in the City, including in the CS zone.

40.25. DIRECTOR’S INTERPRETATION

40.25.05. Purpose.

The purpose of the Director’s Interpretation is to address new uses which may come into existence over time that are not addressed specifically in the Code or some of the terms or phrases within the Code which may require further interpretation. The Director’s Interpretation is established for resolving Code interpretation issues in advance of, or concurrent with, applying for approval of an application, development, permit, or other action. This Section is carried out by the approval criteria listed herein.

RESPONSE: As explained in this narrative, the term “Services Business or Professional Services” requires further interpretation as it relates to the BCRC. Therefore, this issue is the appropriate subject of an interpretation.

40.25.10. Applicability.

The Director shall have the initial authority and responsibility to interpret all terms provisions, and requirements of this Code.





