

**ANALYSIS AND FINDINGS  
DIRECTOR'S INTERPRETATION  
DI2017-0003 OBRC-BCRC**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications. The applicant responds to these criteria in the document prepared by Michael Robinson, dated December 21, 2017, titled Narrative in Support of the Request filed by Oregon Beverage Recycling Cooperative (OBRC).

These approval criteria are as follows:

***1. The proposal satisfies the threshold requirements for a Director's Interpretation application.***

The applicant has requested that the Director interpret the Beaverton Development Code in writing. Staff finds the Director's Interpretation (DI) application to be consistent with threshold number one.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

***2. All City application fees related to the application under consideration by the decision-making authority have been submitted.***

The applicant has paid the fee associated with the Director's Interpretation Application.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

***3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.***

The Applicant has identified several applicable Comprehensive Plan policies (Exhibit 2.1), and states that there are no conflicts with these policies. The Director has identified the following applicable Comprehensive Plan policies for discussion:

***Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses. Allow commercial uses at a range of scales, including large-format retail, to address community needs.***

This policy specifies that the purpose of the Community Commercial Land Use designation, within which the BCRC is located, is to accommodate a wide variety of uses at a range of scales, including large-scale retail and convenient drop-off of redeemable beverage containers.

***Goal 8.8.1: Reduce the amount of solid waste generated per capita.***

***a) The City shall support efforts to reduce the amount of solid waste generated from household, industrial, and commercial uses through source reduction and recycling activities, pursuant to Municipal Code requirements.***

The applicant states that the requested interpretation is consistent with this policy because the BCRC collects and removes beverage containers from the waste stream. The Director concurs and notes that the BCRC additionally has the explicit purpose of making bottle redemption and recycling pursuant to state law more accessible and convenient for city residents. Allowing recycling/redemption centers in areas that easily serve the population encourages redemption and recycling. Ultimately, the BCRC model may lead to an increase in the amount of beverage containers that are diverted from landfills. Recent data (<http://www.bottlebill.org/legislation/usa/oregon.htm>) shows that a greater proportion of redeemable beverage containers have been returned statewide since BCRC facilities have been operating; 64.3% in 2016, and 82% in 2017. This increase is at least partially attributable to an increase in the deposit/refund but may also be due to the increased convenience for BCRC patrons compared to the previous dispersed model.

***Goal 9.1.1 Maximize efficient use of the city's employment land***

***d) Identify and protect the city's employment areas by adopting regulations that promote an appropriate mix of uses in industrial and other employment zones.***

The applicant states that adopting the requested interpretation will help protect and conserve industrial land for higher intensity industrial uses.

The Director concurs. Beaverton has limited industrially zoned land to provide jobs and space for growing businesses to expand. Commercial and service-related uses such as BCRC that are primarily characterized by patronage from the general public are ideally located in commercial areas.

***Development Code***

***10.20 Interpretation and Application of Code Language.***

The Director recognizes the extensive discussion of this section provided by the applicant (Exhibit 2.1).

The Director concurs that the Director's Interpretation application laid out in BDC Section 40.25 is the appropriate mechanism for requesting an interpretation of the BDC in this case.

***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.***

The Applicant has provided an extensive discussion of this provision (Exhibit 2.1).

The Director notes that the Director's Interpretation application laid out in BDC Section 40.25 identifies the criteria for approval of that application. The Director's discussion of the provisions of Section 10.50 are encompassed in the response to criterion 4 below.

### **20.10.10 Purpose**

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### **2. Community Service (CS)**

***The CS District is intended to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.***

Beaverton's major streets carry high traffic volumes and allow for larger scale, more intense commercial uses such as regional retail and fast food restaurants with drive-up windows, as well as smaller scale retail and service uses. Uses like the BCRC serve a similar customer and operate within the range of scales of other uses located along the city's major streets.

### **60.55 Purpose and Intent.**

***It is the purpose and intent of this chapter to establish design standards and performance requirements for all streets and other transportation facilities constructed or reconstructed within the City of Beaverton.***

Some public comments received raise concerns about the potential for traffic impacts related to BCRC operations. The applicant retained an engineering firm to conduct an analysis of transportation impacts (Exhibit 2.2). This analysis concluded that the roadways operate and will continue to operate acceptably, meeting City and ODOT standards with no identifiable crash patterns that are likely to be affected by site activity. The City Traffic Engineer has reviewed the applicant's analysis and concurs that the impact on surrounding streets and intersections is insignificant.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

- 4. *When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.***

According to the applicant, the proposed use is a BCRC, which is not expressly identified in the BDC as a Permitted, Conditional or Prohibited Use. The applicant's response to Criterion No. 4 refers to the response provided to BDC Section 10.50, where the applicant explains that a BCRC is a permitted use because it is substantially similar to a "Service Business or Professional Services" use, and is not a "Recycling Center."

The Director also includes the following discussion, which addresses in detail the two findings required by this criterion and informed by the provisions of Section 10.50. First, that the BCRC is not already expressly identified in the Development Code, and second, that the BCRC is substantially similar to another use currently allowed in the CS zoning district.

As the applicant explains, the BCRC is an establishment operated for the purpose of receiving redeemable beverage containers from customers, providing applicable rebates for these containers, and consolidating these containers for transport to a larger facility for further processing. The BCRC is in fact a new type of recycling business in Oregon. In 2017 the Oregon Legislature enacted ORS 459A.735 to provide a convenient location for customers to redeem beverage containers, and allow retailers of beverages sold in redeemable containers to themselves opt out of redeeming those containers when a business like the BCRC operates within the parameters laid out in ORS 459A.

Public comments in response to this Director's Interpretation application and briefing to LUBA in a previous appeal of the city's approval of the BCRC's design review application assert that the BCRC is a "Recycling Center," which is an expressly identified conditional use in the Industrial (IND) zone. BDC 20.15.20. There, Recycling Centers are grouped with "Salvage Yards" and "Solid Waste Transfer Stations." Since "Recycling Center" is not a defined term in Chapter 90, the Director must determine if what opponents characterize as a "recycling center" in the CS zone is the same thing as the Recycling Center grouped together with Salvage Yards and Solid Waste Transfer Stations as a conditional use in the IND zone.

Of the three terms, only Salvage Yards has a definition in Chapter 90:

*A place out-of-doors where waste, discarded or salvaged materials are bought, sold, 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 garage sales of no more than four (4) days duration. Three or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard.*

The statement that "[t]hree or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard" serves a different purpose from the rest of the definition. It does not mean that salvage yards are typically characterized by three or more dismantled or inoperable vehicles. The focus of the sentence is on the dissonant impacts of even a small collection of dismantled or inoperable vehicles, which justify confining the collection to industrial zones.

BDC 10.20.6.B states that when a term is not defined in Chapter 90, it has the meaning set forth in Webster's Third New International Dictionary, 1993. The dictionary entry for 'recycle' is as follows:

*to pass again through a cycle of changes or treatment <an industrial plant. . . cooling water through cooling towers as many as 50 times – J.R. Whitacker & E. A. Ackerman>; esp : to feed back continuously in a laboratory or industrial operation or process for further treatment*

Generally speaking, uses are conditional when they have external impacts that exceed those of permitted uses in the zone. "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" are conditional uses in a zone where Storage Yard; Fuel Oil Distributors; Bulk Fuel Distributors; Heavy Equipment Sales; Manufacturing, Fabricating, Assembly, Processing, Packing, and Storage; and Warehousing are among the permitted uses. This context indicates that the scale of what is meant by "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" in the IND zone is completely different from a BCRC use, which has almost no external impacts compared to the permitted uses in the zone and is on a much smaller scale. While BCRC's use is recycling, the term "recycling" in current usage is associated with a broad range of activities that are permitted in every zoning district today. The term "Recycling Center," as it is used in the BDC, does not include any and all recycling activities that occur in the city.

For example, many homes have areas for collecting and sorting recyclable materials under the kitchen sink, or in a pantry or garage. There are even consumer products marketed as "recycling centers" designed for home use (see Exhibit 1.5). Office buildings, restaurants, schools and parks all routinely collect, sort, and package recyclable materials. It would be absurd to suggest that these activities were intended to be confined to IND districts, and subject to a conditional use review.

While the BCRC is a commercial facility that operates at a larger scale than the widely distributed recycling activity described above, it is equally, if not more, distant on the recycling spectrum from large operations that receive recyclables, mostly transported by truck, primarily from commercial haulers. Patrons of the BCRC bring in bags of redeemable containers that have accumulated through ordinary household or commercial use over a period of time, perhaps a few weeks or a month (or maybe after a New Year's Eve party).

ORS 459A-735 explicitly establishes requirements for the number of containers per customer that must be accepted by facilities under the program. Bottle drop locations may set a maximum number of containers to be accepted per customer per day, but that maximum must be at least 350 for automated sorting, and 50 containers for hand-sorting, as well as drop off of at least 125 bagged containers. The BCRC meets statutory requirements by allowing daily container redemption up to 350 auto-sort and 50 manual sort.

Environmentally Conscious Recycling ("ECR") is a regional example of a large recycling facility in Multnomah County (Exhibit 1.4). It may be accessed by the general public for recyclable materials and construction debris drop-off, but much of the incoming materials

is from trucks operated by the business itself or other businesses with the primary function of solid waste disposal, or a need to dispose of large quantities of debris and recycling. The facility processes 90,000 tons of material per year, and is 9.2 acres in size, with a significant amount of the unenclosed lot area devoted to separating recyclable from non-recyclable material. Equipment on site includes:

*a wood grinder, metal shear/baler, cardboard baler, plastic baler, rock crusher, box-spring recycling machine. ECR has four excavators and four front wheel loaders, four forklifts for handling incoming and outgoing materials.*

ECR dwarfs the BCRC. The definition of Salvage Yard in BDC Chapter 90, above, matches in scale the operations of ECR, not the BCRC.

Since it is clear that the BDC term “Recycling Center” cannot be interpreted to include recycling activity of all sizes and shapes, a Director’s Interpretation is required to articulate the scope of the term. The Director’s Interpretation in this case must also determine whether the operations of the BCRC fall within the designated scope.

A number of factors and characteristics can be used to assess the scale and intensity of a use:

- The users or customers that the establishment serves; the general population, other businesses, industrial businesses, etc.;

The BCRC is explicitly intended to provide the general public with a convenient location to return redeemable bottles, rather than a location for medium or large-scale businesses to use.

- Noise, odors, and other potential impacts, whether the use is outdoors or enclosed;

The BCRC is fully enclosed, allowing potential noise and odors to be limited. In addition, the Beaverton City Code Chapter 5.15 and Section 5.05.050 establish limitations on noise and odors, respectively. Opponents complain that there are bottle and can crushing facilities on the subject property. While that is true, their concern is unfounded and does not support the argument that the BCRC is an industrial use. Similar crushing activities have been occurring for years and continue to occur at supermarket machines, and the number of bottles and cans crushed on site at the BCRC does not increase external impacts on neighboring properties compared with ongoing grocery store operations.

- The volume and type of traffic generated by the use; private passenger vehicles, small commercial trucks, large tractor trailer trucks;

As noted above, the BCRC serves the general public, and as such the majority of the traffic associated with the facility is private passenger vehicles; large trucks pick up sorted and compressed containers a few times a week. Based on the data presented in the traffic analysis (Exhibit 2.2, Figure 3), the facility is generating approximately 7.05 trips per 1000 gross square feet of building area (gsf) during the PM peak hour. For

context, here are the same PM peak hour trip generation numbers for other land uses (ITE Trip Generation Manual, 9th Edition) allowed in the Community Service Zoning District, trips per 1,000 gsf:

Free-standing discount store	4.98 trips
Quality restaurant	7.49
Discount supermarket	8.34
Pharmacy with drive-through	9.91
Daycare	12.34
Drive-in bank	24.30
Fast food with drive-through	32.65

All of these factors and characteristics indicate BCRC operations are distinct from both the BDC-defined Recycling Center and the regional examples of recycling centers and solid waste transfer stations that the BDC regulates as conditional uses in IND districts.

The Director notes a supplementary submission from the applicant (Exhibit 2.5), that indicates the zoning district locations of every BCRC in the State of Oregon. While this Director's Interpretation must interpret the BDC, where other jurisdictions determined a BCRC would be most appropriate provides additional context. Twenty-one out of 24 jurisdictions have approved locating a BCRC in a commercial or mixed-use zoning district.

Based on the submission of the applicant and the discussion above, the Director concludes that the term "Recycling Center," as it is used in the BDC, does not include BCRC operations.

The second question to evaluate is whether the BCRC is substantially similar to a use permitted in the Community Service (CS) zoning district. The Director does not believe the inclusion of the word "substantially" indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of "substantially similar" must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, "substantially" in this context means "more or less," where the focus is on the intensity of activity and the external impacts generated by the activity.

The CS district is one of four commercial zoning districts included in the BDC. It is a general purpose commercial district that allows a wide range of businesses and service uses, as well as residential use. It is mapped along regional corridors such as Beaverton Hillsdale Highway, Cedar Hills Boulevard, and other relatively dense, high traffic locations. As discussed in response to criterion 3, the purpose of the CS District, stated in BDC 20.10.10, is:

*. . . to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.*

Businesses like retail stores with no limitation on size; eating and drinking establishments, including fast food drive-up windows; and gas stations are all allowed. Service businesses such as health clinics, real estate offices, and health clubs are also allowed.

Many allowed uses in the CS district have characteristics similar to a BCRC. For example, a drive-up pharmacy restaurant can generate 9.91 trips per 1000 gsf in the pm peak hour, while the BCRC traffic study concludes that it will generate 7.05 trips per 1000 gsf. A number of permitted uses also draw users from a wide geographic area. Large shopping centers, for example, typically draw customers from a regional radius. These uses typically involve an in-person exchange of goods or services for money at an establishment open to the public.

Most importantly, the specific activity of beverage container redemption that takes place at the BCRC facility has been part of ordinary grocery store operations since the bottle bill was passed in 1971, and is permitted in the CS district. Even today, while the presence of the BCRC has allowed grocery stores in the area to opt out of container redemption, stores selling beverages in redeemable containers that are not located within the designated radius of a BCRC continue to be required by state law to redeem these containers for customers.

As stated above, the CS Zoning District allows a wide variety of uses, including “Service Businesses and Professional Services” as discussed in the applicant materials, “Eating and Drinking Establishments” and “Retail Trade.” While staff recognizes that the BCRC is substantially similar to uses included in the two former categories, the specific activity of container redemption has long been associated with grocery store operation, which falls into the “Retail Trade” use category.

Since the specific activity (container redemption) is substantially similar, in type, scale and effect, to many other uses currently allowed in the CS district, the criteria for approval are satisfied.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

**5. *The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.***

All applicable submittal requirements for the Director’s Interpretation application have been submitted. The application was deemed complete by the city on January 10, 2018.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

**6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

The necessary documents related to the Director’s Interpretation have been submitted. The earlier Design Review decision issued by the city in case file DR2017-003 for OBRC (building and site remodel) subject to review under separate criteria



identified in BDC Section 40.20.15.1.C. is affirmed with findings that support the use as permitted outright by the zone.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

## CONCUSION

Based on the facts and findings stated herein, the Community Development Director hereby makes this interpretation in support of the applicant's BCRC, finding it to be substantially similar to *Service Business / Professional Service*, a use permitted outright in the Community Service zone under Chapter 20, Section 20.10.20 of the Beaverton Development Code.