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December 21, 2017

Michael C. Robinson  
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**VIA HAND DELIVERY AND EMAIL**

Mr. Scott Whyte, AICP  
Senior Planner  
City of Beaverton  
12725 SW Millikan Way  
PO Box 475  
Beaverton, OR 97076-4755

**RECEIVED**

DEC 21 2017

City of Beaverton  
Planning Services

**Re: Application for Director's Interpretation for Oregon Beverage Recycling Cooperative**

Dear Scott:

This office represents Oregon Beverage Recycling Cooperative ("Applicant"). Applicant requests City of Beaverton ("City") approval of a Community Development Director's Interpretation ("Application").

Enclosed with this letter, please find the original and three copies of the following materials submitted in support of the Application:

- Completed and signed City "Application for Director's Interpretation" form
- Completed and signed Director's interpretation checklist
- Check payable to "City of Beaverton" in the amount of \$1,072.00 for the application fee
- Narrative explaining how the Application satisfies the requirements of the Beaverton Comprehensive Plan and the Beaverton Development Code with the following exhibits:
  - Exhibit 1 – Existing Conditions Plan
  - Exhibit 2 – Metro Solid Waste Transfer Station summary sheet

Mr. Scott Whyte, AICP  
December 21, 2017  
Page 2

- Exhibit 3 – Pre-Application Conference Notes from City

We are also providing the City an electronic copy of these materials. We are hopeful that, upon receipt of these materials, the County will deem the Application complete and proceed with its review.

My colleague Seth King and I are Applicant's representatives in this matter. Please copy us on all correspondence, notices, staff reports, and decisions in this matter.

If you have any questions, do not hesitate to contact me. We look forward to working with the County toward approval of the Application. Thank you for your courtesies in this matter.

Very truly yours,



Michael C. Robinson

MCR

Enclosures

cc: Mr. Peter Livingston (via email) (w/encls.)  
Mr. John Andersen (via email) (w/encls.)  
Ms. Stephanie Marcus (via email) (w/encls.)  
Mr. Seth King (via email) (w/encls.)

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DEC 21 2017

City of Beaverton  
Planning Services

125302-0001/137956951.1

Perkins Cole LLP

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DEC 21 2017

City of Beaverton  
Planning Services  
**Beaverton**  
OREGON

CITY OF BEAVERTON

Community Development  
Department

Planning Division

12725 SW Millikan Way  
PO Box 4755

Beaverton, OR. 97076

Tel: (503) 526-2420

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OFFICE USE ONLY

FILE #: DI 2017 0003

FILE NAME: OBRC Directors

Interpretation

TYPE: 2

RECEIVED BY: BS

FEE PAID: \$1072

CHECK/CASH: 350581

SUBMITTED: 12/21/17

LWT/DESIG: N/A

LAND USE DESIG: C

NAC: BS/RW

**DIRECTORS INTERPRETATION APPLICATION**

**APPLICANT:**  Use mailing address for meeting notification.

Check box if Primary Contact

COMPANY: Oregon Beverage Recycling Cooperative

ADDRESS: 3900 NW Yeon Avenue

(CITY, STATE, ZIP) Portland, OR 97210

PHONE: (503) 222-2266 x6940

FAX: (503) 222-2291

E-MAIL: smarcus@obrc.com

SIGNATURE: Stephanie Marcus  
(Original Signature Required)

CONTACT: Stephanie Marcus

**APPLICANT'S REPRESENTATIVE:**

Check box if Primary Contact

COMPANY: Perkins Coie LLP

ADDRESS: 1120 NW Couch St, Tenth Floor

(CITY, STATE, ZIP) Portland, OR 97209-4128

PHONE: (503) 727-2264

FAX: (503) 346-2264

E-MAIL: MRobinson@perkinscoie.com

SIGNATURE: \_\_\_\_\_

CONTACT: Mike Robinson

(Original Signature Required)

**PROPERTY OWNER(S):**  Attach separate sheet if needed.

Check box if Primary Contact

COMPANY: Oregon Beverage Recycling Cooperative

ADDRESS: 3900 NW Yeon Avenue

(CITY, STATE, ZIP) Portland, OR 97210

PHONE: (503) 222-2266

FAX: (503) 222-2291

E-MAIL: jandersen@obrc.com

SIGNATURE: [Signature]

CONTACT: John Andersen

**Note: A land use application must be signed by the property owner(s) or by someone authorized by the property owner(s) to act as an agent on their behalf. If someone is signing as the agent of the property owner(s), that person must submit a written statement signed by the property owner(s), authorizing the person to sign the application.**

**PROPERTY INFORMATION (REQUIRED)**

SITE ADDRESS: 9307 SW Beaverton-Hillsdale Highway

AREA TO BE DEVELOPED (s.f.): 10,889

ASSESSOR'S MAP & TAX LOT # Map 1S1-14AB, Tax Lot 4100

LOT SIZE 38,717 SF

ZONING DISTRICT CS

EXISTING USE OF SITE: \_\_\_\_\_

PROPOSED DEVELOPMENT ACTION: \_\_\_\_\_

PRE-APPLICATION DATE: \_\_\_\_\_

# DIRECTORS INTERPRETATION SUBMITTAL CHECKLIST

## WRITTEN STATEMENT REQUIREMENTS

- A. APPLICATION FORM.** Provide **one (1) completed** application form with original signature(s).
- B. CHECKLIST.** Provide **one (1) completed** copy of this four page checklist.
- C. WRITTEN STATEMENT.** Submit **three (3) copies** of a detailed description of the proposed project including, but not limited to, the changes to the site, structure, landscaping, parking, and land use. In the written statement, please:
- Identify the section of the Development Code for which the applicant requests an interpretation.
  - Describe the requested interpretation of the section of the Development Code.
  - Provide a description of the reason for the interpretation request including but not limited to how the section to be interpreted currently applies, how it would apply under the requested interpretation, any previously identified differences in interpretation between the applicant and the staff
  - Provide individual findings specifically addressing how and why the proposal satisfies each of the criteria in Section 40.25.15.1.C.1-6 of the City's *Development Code* (ORD 2050), attached.
- D. FEES,** as established by the City Council. Make checks payable to the City of Beaverton.
- E. SITE ANALYSIS INFORMATION (Required only if site specific):**
- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Proposed parking modification: <u>3200</u> sq. ft. | <input checked="" type="checkbox"/> Existing building height: <u>19'3" to 23'11"</u> ft. |
| Proposed number of parking spaces: <u>28</u>   | Proposed building height: <u>n/a</u> ft  |
| Proposed use: <u>loading dock</u>  | Existing building area: <u>10,889</u> sq. ft.  |
| Parking requirement: <u>10 stalls</u>  | Proposed building modification: <u>10,889</u> sq. ft.                                    |
| <input checked="" type="checkbox"/> Existing parking area: <u>16,000</u> sq. ft.       | <input checked="" type="checkbox"/> Existing landscaped area: <u>7,820</u> sq. ft.       |
| Existing number of parking spaces: <u>41</u>   | Percentage of site: <u>20.2</u> %  |
|  | Proposed landscape modification: <u>192</u> sq. ft.                                      |
|  | Percentage of site: <u>0.5</u>   |
- F. CLEAN WATER SERVICES (CWS) DOCUMENTATION.** Pursuant to Section 50.25.1.F of the City's *Development Code* requires that all development proposals provide written documentation from Clean Water Services (formerly Unified Sewerage Agency) stating that water quality will not be adversely affected by the subject proposal. Therefore, the City recommends that you contact CWS in order to obtain the required documentation. For more information, please contact Amber Wierck, Environmental Plan Review Project Manager, at (503) 681-3653 or [WierckA@CleanWaterServices.org](mailto:WierckA@CleanWaterServices.org)
- G. PRE-APPLICATION CONFERENCE NOTES. (REQUIRED FOR TYPE 2, 3, & 4 APPLICATIONS ONLY)**  
Provide a copy of the pre-application conference summary as required by the City's *Development Code Section 50.25.1.E*. The Pre-Application Conference must be held within the one (1) year prior to the submission date of the proposed project application.
- H. OTHER REQUIREMENTS.** Provide documentation showing that the project proposed is permitted by, or satisfies the requirements of, other agencies and/or jurisdictions OR submit a schedule that details the forecasted submission and approval timelines for permits/applications to the respective agencies and/or jurisdictions.

## PLANS & GRAPHIC REQUIREMENTS

All plans, except architectural elevations, shall be presented at a minimum of 1" = 20' engineering scale and on a maximum sheet size of 24" x 36". Architectural elevations may be presented at an architectural scale. **A total of three (3) copies of each plan shall be submitted, unless otherwise noted. All plans shall be folded to fit a legal size file jacket.**

Each of the following plans and drawings shall be submitted on **separate sheets**. If the size of the project requires the use of match line sets, each set of match line sets must include a sheet (at a scale to fit a 24" x 36" sheet) depicting the entire site, including match lines, as a cover sheet.

**Include all of the following information:**

- A. EXISTING CONDITIONS PLAN (Required only if application is site specific):**
- 1. North arrow, scale and date of plan.
  - 2. Vicinity map.
  - 3. The entire lot(s), including area and property lines dimensioned.
  - 4. Points of existing access, interior streets, driveways, and parking areas.
  - 5. Location of all existing buildings and structures, including refuse storage locations, pedestrian/bike paths, swimming pools, tennis courts, tot lots, and lighting.
  - 6. Existing right-of-way and improvements.
  - 7. Dimension from centerline to edge of existing right-of-way.
  - 8. Existing topographical information, showing 2 ft. contours.
  - 9. Surrounding development and conditions within 100 ft. of the property such as zoning, land uses, buildings, driveways, and trees.
  - 10. Location of existing public and private utilities, easements, and 100-year floodplain.
  - 11. Location, quantities, size (diameter breast height), genus and species of Significant Trees and Groves, Historic Trees, Trees within a Significant Natural Resource Area, Landscape Trees, Street Trees, and Community Trees, as applicable.
  - 12. Sensitive areas, as defined by Clean Water Services (CWS) standards.
  - 13. Wetland boundaries, upland wooded area boundaries, riparian area boundaries, rock outcroppings, and streams. *Wetlands must be professionally delineated.*
- B. DIMENSIONED SITE PLAN (Required only if application is site specific):**
- 1. North arrow, scale and date of plan.
  - 2. The entire lot(s), including area, property lines dimensioned and labeled "front," "side," and "rear."
  - 3. Points of access, interior streets, driveways, and parking areas.
  - 4. Location of buildings and structures, including refuse storage locations, pedestrian/bike paths, swimming pools, tennis courts, and tot lots.
  - 5. Proposed right-of-way, dedications and improvements.
  - 6. Dimension from centerline to edge of proposed right-of-way.
  - 7. Dimensions of all improvements, including setbacks, parking spaces, driveways, and distance between buildings.
  - 8. Location of storm water quality/detention facilities.
  - 9. Boundaries of development phases, if applicable.
  - 10. Location, quantities, size (diameter breast height), genus and species of Significant Trees and Groves, Historic Trees, Trees within a Significant Natural Resource Area, Landscape Trees, Street Trees, and Community Trees, as applicable.
  - 11. Sensitive areas, as defined by CWS standards.
  - 12. Wetland boundaries, upland wooded area boundaries, riparian area boundaries, rock outcroppings, and streams. *Wetlands must be professionally delineated.*

- C. LANDSCAPE PLAN (Required only if site specific):**
- 1. North arrow, scale and date of plan.
  - 2. The entire lot(s).
  - 3. Points of access, interior streets, driveways, and parking areas.
  - 4. Location of buildings and structures, including refuse storage locations, pedestrian/bike paths, swimming pools, tennis courts, and tot lots.
  - 5. Proposed right-of-way, dedications and improvements.
  - 6. Boundaries of development phases, if applicable.
  - 7. Location, quantities, size (diameter breast height), genus and species of Significant Trees and Groves, Historic Trees, Trees within a Significant Natural Resource Area, Landscape Trees, Street Trees, and Community Trees, as applicable.
  - 8. Sensitive areas, as defined by the CWS standards.
  - 9. Wetland boundaries, upland wooded area boundaries, riparian area boundaries, rock outcroppings, and streams. *Wetlands must be professionally delineated.*
  - 11. The location and design of landscaped areas for variance, indicating all plant materials, including genus, species, quantity, plant sizes, and spacing.
  - 12. List of plant materials, including genus, species, common name, size, quantity, spacing and method of planting.
  - 13. Other pertinent landscape features, including walls, retaining walls, berms, fences, and fountains.
  - 14. Proposed location of light poles, bollards and other exterior illumination.
  - 15. A note on the plan indicating that an irrigation system will be installed to maintain the landscape materials.

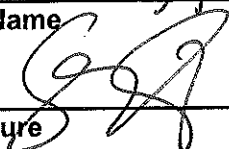
**D. ARCHITECTURAL ELEVATIONS:** Provide, *if relevant to interpretation request*, drawings that depict the character of the proposed building(s) and structure(s) (these include buildings, retaining walls, refuse storage facilities, play structures, fences and the like). These drawing should include dimensions of the building(s) and structure(s) and indicate the materials, colors, and textures proposed for the structures.

**E. MATERIALS BOARD:** Provide, *if relevant to interpretation request*, one (1) 8½"x11" or one (1) 8½"x14" Materials Board that includes examples of all building materials, colors, and textures of exterior surfaces for building(s) and structure(s). *Materials Boards provided at a size other than what is indicated above will not be accepted.*

**F DESCRIPTION OF MATERIALS AND FINISHES FORM:** Provide, *if relevant to interpretation request*, one (1) completed copy of the Materials and Finishes Form with the application submittal.

**Note:** Complete sets of plans reduced to 8 ½"x11" (11"x17" are not acceptable) will be required at the time the application is deemed complete.

*I have provided all the items required by this four (4) page submittal checklist. I understand that any missing information, omissions or both may result in the application being deemed incomplete, which may lengthen the time required to process the application.*

Seth King, Perkins Cole LLP  
 \_\_\_\_\_  
 Print Name  
  
 \_\_\_\_\_  
 Signature

503.727.2024  
 \_\_\_\_\_  
 Telephone Number  
 12/21/2017  
 \_\_\_\_\_  
 Date

## DIRECTORS INTERPRETATION SUBMITTAL CHECKLIST

PURSUANT TO SECTION 50.25.1.B OF THE DEVELOPMENT CODE, A WRITTEN STATEMENT ADDRESSING THE APPROVAL CRITERIA FOR AN APPLICATION MUST BE SUBMITTED IN ORDER FOR AN APPLICATION TO BE DEEMED COMPLETE. STATEMENTS SUCH AS "NOT APPLICABLE" OR "THE PROPOSAL WILL COMPLY WITH APPLICABLE DEVELOPMENT REGULATIONS" ARE NOT SATISFACTORY. THE WRITTEN STATEMENT MUST ADDRESS EACH CRITERION AND MUST SPECIFY IN DETAIL HOW EACH WILL BE COMPLIED WITH.

An applicant for a Director's Interpretation shall address compliance with all of the following Approval Criteria as specified in 40.25.15.1.C.1-6 of the Development Code:

- 1. The proposal satisfies the threshold requirements for a Director's Interpretation application.
- 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
- 3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.
- 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.
- 5. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.
- 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.





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DEC 21 2017

City of Beaverton  
Planning Services

BEFORE THE COMMUNITY DEVELOPMENT DIRECTOR

OF THE CITY OF BEAVERTON

**In the Matter of a Request for a Director's Interpretation that a Beverage Container Redemption Center is Permitted by Right in the CS Zoning District as a Use that is of the Same General Type and is Similar to "Service Business or Professional Services" Uses.**

**NARRATIVE IN SUPPORT OF THE REQUEST FILED BY OREGON BEVERAGE RECYCLING COOPERATIVE**

**I. Introduction and Request.**

Oregon Beverage Recycling Cooperative ("OBRC"), an Oregon cooperative, submits this application requesting that the City of Beaverton ("City") Community Development Director ("Director") determine that OBRC's operation of a Beverage Container Redemption Center ("BCRC") is permitted by right in the CS zoning district because it is of the same general type and is similar to a "Service Business or Professional Services" use.

This narrative describes the nature and details of the BCRC use and explains how the requested interpretation satisfies applicable provisions of the Beaverton Development Code ("BDC") and Beaverton Comprehensive Plan ("BCP"). For the reasons set forth in this narrative, OBRC requests that the Director issue the requested interpretation.

**II. Background.**

In early 2017, OBRC obtained a permit from the Oregon Liquor Control Commission ("OLCC") to operate a BCRC on land that is less than an acre in size at 9307 SW Beaverton-Hillsdale Highway in the City ("Property"). On February 22, 2017, OBRC also obtained approval of a Type I Design Review Compliance Letter from the City to redevelop the existing vacant retail building on the Property into a BCRC ("Design Review Decision"). OBRC then obtained a building permit, completed the improvements, and commenced operations. Since then, OBRC has served thousands of individuals at this location.

The Property is located in the City's Community Service (CS) zoning district. The properties to the east and west are generally zoned for and developed with commercial uses. The properties to the north are zoned for and developed with residential uses.

A neighboring property owner appealed the Design Review Decision to the Land Use Board of Appeals ("LUBA"), which remanded the matter back to the City for the limited purpose of addressing whether the BCRC is an allowed use in the CS zoning district. *Glenwood 2006, LLC v. City of Beaverton*, \_\_ Or LUBA \_\_ (LUBA No. 2017-027, September 21, 2017) (slip op. at 9-11). LUBA also directed the City to follow its Type 2 procedure if the City intended to approve the BCRC as a use that is similar to a CS permitted use. *Id.* LUBA denied the neighbor's contention that the BCRC is a "Recycling Center" and thus not allowed in the CS zoning district. *Id.* LUBA also left open the possibility that the City could find that the BCRC is allowed as a "Service Business or Professional Services" use:

"In addition, the BDC 40.25.15(1)(C)(4) authority to permit uses that are 'substantially similar to a use currently identified in the subject zoning district' is a sufficiently subjective exercise that we are also unprepared to say that the city council could not determine that the proposed BCRC is substantially similar to one or more of the many permitted use[s] in the CS District. We do note that although at least one planning staff member concluded the BCRC qualifies as a 'service use,' it does not appear the CS District lists 'service uses' as a permitted use. The CS District does, however, permit 'Service Business/Professional Services.' BDC 20.10.20(13). If that was the provision the city was intending to rely on, it can clarify and explain that position on remand."

*Id.* OBRC submits this Director's Interpretation request in response to LUBA's order.

### **III. Description of BCRC.**

A BCRC is a staffed, indoor facility approved by the OLCC pursuant to the Oregon Bottle Bill, ORS Chapter 459A.700 *et seq.*, and its implementing rules OAR 845-020-0005 *et seq.* A BCRC serves individuals who return empty beverage containers in exchange for payment of the refund value of the containers.

Oregon's Bottle Bill went into effect in October 1972. Pursuant to the Bottle Bill, grocery stores throughout Oregon counted the returned containers, sorted them by commodity, and paid customers the redemption value. These same functions continue today at OBRC's BCRCs, which are located across the State. As such, the activities

proposed at the BCRC are not new or unique. They have been an ancillary function in other Beaverton-area grocery retailers within the CS zone designation for many years, including the Winco Foods located at 3025 SW Cedar Hills Boulevard and the New Seasons Store at 3495 SW Cedar Hills Boulevard.

At OBRC's BCRC, individuals may redeem the deposits on their beverage containers in one of three ways:

(1) Hand Count Option, where a BCRC employee hand counts the containers at a customer service counter and provides the refund to the individual:



Figure 1- Hand Count Option

(2) Self-Serve Option, where an individual places the containers into what is effectively a reverse vending machine, which counts the containers and issues a refund to the individual:



*Figure 2- Self Serve Option, using a Reverse Vending Machine*

- (3) Account Holder Option, where an individual drops off a bag with empty containers; a BCRC employee places the containers into an automated counting system with the refund being applied to the individual's account:



*Figure 3 - Outside access for Account Holders to drop off their containers*



*Figure 4 - Bags ready to be counted and credited to customer accounts*

After counting and collecting an individual's containers, OBRC then compacts the containers within the BCRC building to enable efficient transport for final processing. OBRC then loads the compacted materials onto trucks, which transport the material to an industrial recycling plant where the materials are processed for shipment to recycling vendors. The BCRC is open from 8 am until 6 pm, with the Account Holder option available via a drop door from 7 am until 10 pm. Under the previous process, existing grocery retailers would have compacted containers, which would have been picked up by OBRC and transported to an industrial recycling plant.

The photos below illustrate both the interior and exterior of the BCRC:





Front Entrance



Front room – customer service area and self-serve reverse vending machines



Automated machine for counting account holder's containers

The BCRC only sells bags for those individuals wishing to use the Account Holder option of redemption; no other product sales occur. Further, recycling does not occur on-site. With the exception of incidental items (such as a cardboard box that is used to carry empty beverage containers), the BCRC does not accept items for recycling that are not subject to redemption under the Oregon Bottle Bill. Applicant has included an existing conditions plan in Exhibit 1.

#### **IV. Responses to Applicable BDC Provisions.**

This section of the narrative addresses applicable provisions of the BDC and explains how and why the Director should approve the request.

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

\* \* \* \*

- 2. The Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this Code. The City Council shall have the final authority to interpret all terms, provisions and requirements of this Code. Other persons requesting such an interpretation in writing shall do so in accordance with Section 40.25.**

RESPONSE: OBRC has requested an interpretation in writing in accordance with BDC 40.25. OBRC acknowledges the authority of the Director and City Council to render the interpretation.

\* \* \* \*

- 4. Proposals for uses where the code is silent or where the rules of the Code do not provide a basis for concluding that the use is allowed are prohibited.**

RESPONSE: For the reasons explained below, BDC 10.50 and 40.25.15.4 provide a basis for concluding that the BCRC is allowed because it is substantially similar to 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 BDC is not silent, and the use is not prohibited on the Property. The Director should find that the requested interpretation is consistent with this provision.

**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.**

RESPONSE: OBRC acknowledges the initial authority of the Director to render the interpretation. Pursuant to BDC Chapter 90, the "Director" referred to in the BDC is the City's Community Development Director or his/her designee.

#### **40.25.15. Application.**

**There is a single Director's Interpretation application which is subject to the following requirements.**

#### **1. Director's Interpretation.**

**A. Threshold. An application for Director's Interpretation shall be required when one or more of the following thresholds apply:**

- 1. A request that the Director interpret the Development Code in writing.**
- 2. A request that the Director provide a determination of nonconforming status of a lot, structure, or use in writing.**

RESPONSE: OBRC has filed a request that the Director interpret the BDC in writing. Therefore, a Director's Interpretation is required.

**B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Director's Interpretation. The decision making authority is the Director.**

RESPONSE: OBRC acknowledges that the Type 2 procedure described in BDC 50.40 applies to this request, and the Director is the decision-making authority.

**C. Approval Criteria. In order to approve a Director's Interpretation application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:**

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

RESPONSE: As explained above in response to BDC 40.25.15.1.A, this request satisfies the threshold requirements for a Director’s Interpretation because OBRC has made a written request for a Director’s Interpretation. The Director should find that the request satisfies this criterion.

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

RESPONSE: The City’s fee for a Director’s Interpretation application is \$1,072.00. OBRC has submitted a check in this amount to the City to cover the applicable application fee. The Director should find that this request satisfies this criterion.

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

RESPONSE: The Director’s Interpretation is consistent with the BCP for the following reasons:

**Goal 3.2.1 Provide for thoughtful and strategic infill and redevelopment**

**Policies:**

\* \* \* \*

- b) **Encourage and support quality redevelopment in target areas that are consistent with city goals.**

RESPONSE: Granting the requested Director’s Interpretation will facilitate redevelopment of the Property, which is located along one of the City’s most visible and highly-traveled corridors. The Director should find that the requested interpretation is consistent with this goal and policy.

**Goal 3.7.1 Enhanced Commercial Centers and Corridors**

**The following policies apply to all Commercial Centers and Corridors.**

**Policies:**

**a) Over time, new development and redevelopment should improve accessibility and comfort for non-auto modes, including:**

- i. Improving pedestrian and bicycle connections within and between sites.**
- ii. Enhancing or creating multi-modal connections wherever feasible.**
- iii. Providing direct pedestrian connections to, and amenities, near transit stops.**
- iv. Providing a more visually engaging and appealing street frontage through the addition of buildings adjacent to the street, enhanced landscaping, more pedestrian scale signage, etc.**
- v. Providing safe and convenient paths for pedestrians within large parking areas.**

**RESPONSE:** This policy is aspirational and not mandatory because it uses the term “should.” As a result, it is not binding on the BCRC and does not affect the Director’s Interpretation.

**b) Emphasize commercial and employment uses, and limit ground floor residential uses to preserve land to meet the city’s employment needs.**

**RESPONSE:** The BCRC is a commercial use; it does not include ground floor residential uses. The Director should find that the request is consistent with this policy.

**c) Allow for housing as part of an integrated mixed use development, generally behind or above commercial uses, and buffered from high-traffic roadways or uses incompatible with residential use.**

**RESPONSE:** The BCRC does not propose an integrated mixed use development. The Director should find that this policy is not applicable to the requested Director’s Interpretation.

**Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community with limited auto-oriented uses.**

**The following policies apply to Community Commercial areas, in addition to policies under Goal 3.7.1.**

**Policies:**

**a) Allow commercial uses at a range of scales, including large-format retail, to address community needs.**

RESPONSE: This policy directs the City to take legislative action to allow various commercial uses; it is not applicable to a site-specific development. Alternatively, the request is consistent with this policy because it would authorize operation of a small-scale commercial use that will address community needs.

**b) Allow limited new automotive services (e.g. gas stations, car wash, and car repair) where compatible with adjacent uses and where the design of the site and building or structure promote a quality pedestrian environment along the street.**

RESPONSE: The BCRC is not an automotive service use. This policy is not applicable to the requested Director's Interpretation.

**c) Prohibit land-intensive vehicle sales and service uses and uses requiring extensive outdoor storage.**

RESPONSE: The BCRC is not a land-intensive vehicle sales and service use or a use requiring extensive outdoor storage. The requested Director's Interpretation is consistent with this policy.

**d) Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access and parking.**

RESPONSE: This policy directs the City to take legislative action to adopt development standards and/or conditional use review to address compatibility issues; it is not applicable to a Director's Interpretation.

**e) Require multimodal or pedestrian connections based on block size standards to encourage a pattern of development that can be easily navigated by foot or bike.**

RESPONSE: This policy directs the City to take legislative action to establish block size standards and to require multimodal or pedestrian connections; it is not applicable to a request for a Director's Interpretation.

**f) The Community Commercial designation may be applied in areas along arterial roads with relatively high visibility and auto accessibility that also provide pedestrian, bicycle, and/or transit connections to the surrounding community.**

RESPONSE: This policy establishes parameters for applying the Community Commercial designation. This application does not include a request to apply the Community Commercial designation to any properties. The Director should find that this policy is not applicable.

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

**Policies:**

**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.**

RESPONSE: Granting the requested interpretation will facilitate continued operation of the BCRC in the City, which will collect and remove redeemable beverage containers from the solid waste stream. The Director should find that the requested interpretation is consistent with this goal and policy.

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

**Policies:**

\* \* \* \*

**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.**

RESPONSE: Granting the requested interpretation will maximize efficient use of the Property and facilitate an appropriate employment use on the Property, which is in a mixed-use CS zone. It will also protect and conserve industrial land for higher-intensity industrial uses. The Director should find that the requested interpretation is consistent with this goal and policy.

The Director's Interpretation is consistent with other provisions within the BDC as addressed in this narrative.



The Director should find that the request satisfies this criterion.

4. **When interpreting that a use is not identified in the Development Code as a Permitted, 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.**

RESPONSE: OBRC's proposed use is a BCRC, which is not expressly identified in the BDC as a Permitted, Conditional, or Prohibited Use. For the reasons explained above in response to BDC 10.50, a BCRC is a permitted use because it is substantially similar to a "Service Business or Professional Services" use, and it is not a "Recycling Center." These reasons are incorporated herein by reference.

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

RESPONSE: OBRC is the owner of the Property and has completed and submitted the Director's Interpretation application form to the Director. The form is accompanied by the following information, which includes the information specified in BDC 50.25.1 and that information identified through the Pre-Application Conference:

- Applicable fee
- Narrative explaining how application satisfies applicable approval criteria
- Copy of Pre-Application Conference Summary (Exhibit 3)

The Director should find that the request is complete.

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

RESPONSE: There are no other applications and documents related to the request that will require further City approval. The Director should find that this provision is not applicable to the requested interpretation.

- D. **Submission Requirements. An application for a Director's Interpretation shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Director's Interpretation application shall be**

**accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.**

**RESPONSE:** OBRC is the owner of the Property and has completed and submitted the Director's Interpretation application form to the Director. The form is accompanied by the following information, which includes the information required by BDC 50.25.1 and information identified through the Pre-Application Conference:

- Applicable fee
- Narrative explaining how application satisfies applicable approval criteria
- Copy of Pre-Application Conference Summary

The Director should find that this request is complete.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Director's Interpretation application to ensure compliance with the approval criteria.**

**RESPONSE:** OBRC acknowledges that the Director may impose conditions on the approval of a Director's Interpretation application to ensure compliance with the approval criteria. For the reasons explained in this narrative, no such conditions are warranted.

- F. Appeal of Decision. Refer to Section 50.65.**

**RESPONSE:** BDC 50.65.5 reads as follows:

**"The appellate decision making authority for Director's Interpretation (Section 40.25.) shall be the City Council. The appeal hearing for Director's Interpretation shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in accordance with Section 50.85. through 50.88. except as otherwise required by statute."**

OBRC acknowledges that this provision governs any appeal of the Director's interpretation in this case.

- G. Expiration of a Decision. A Director's Interpretation shall not expire unless superseded by a subsequent Director's Interpretation or a Development Code change.**

RESPONSE: OBRC acknowledges that a Director's Interpretation does not expire unless it is superseded.

- H. Extension of a Decision. Because a Director's Interpretation does not expire, extension of a Director's Interpretation is not necessary. If a prior Director's Interpretation is superseded, the prior Director's Interpretation will not be in effect and cannot be extended.**

RESPONSE: OBRC acknowledges that extension of a Director's Interpretation is not necessary.

**50.60.13 If a decision of the appellate decision making authority is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA)...**

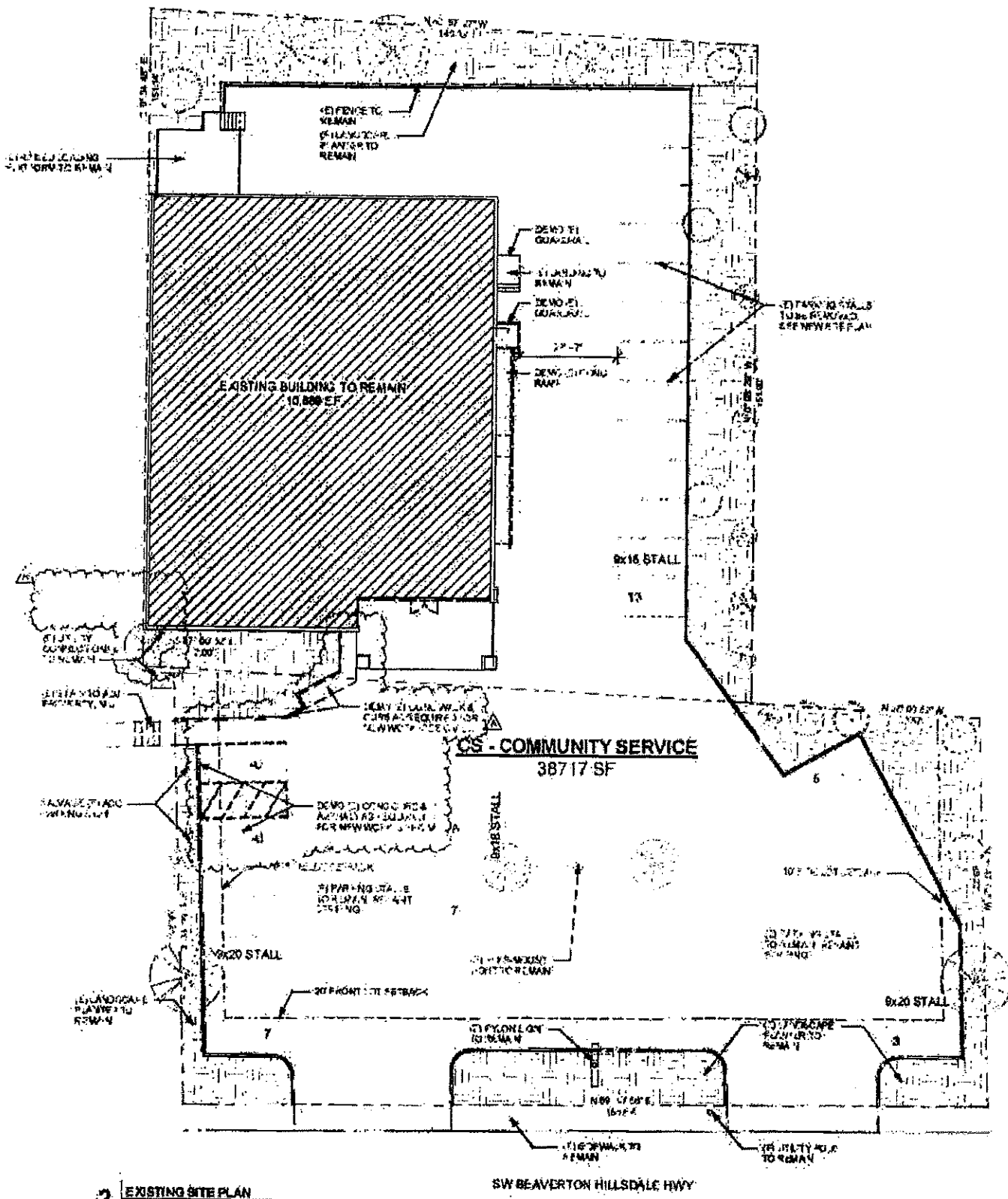
RESPONSE: Although this request responds to a LUBA remand of a City decision, the decision being remanded was not made by a City appellate decision making authority. Therefore, this provision is not applicable.

**V. Conclusion.**

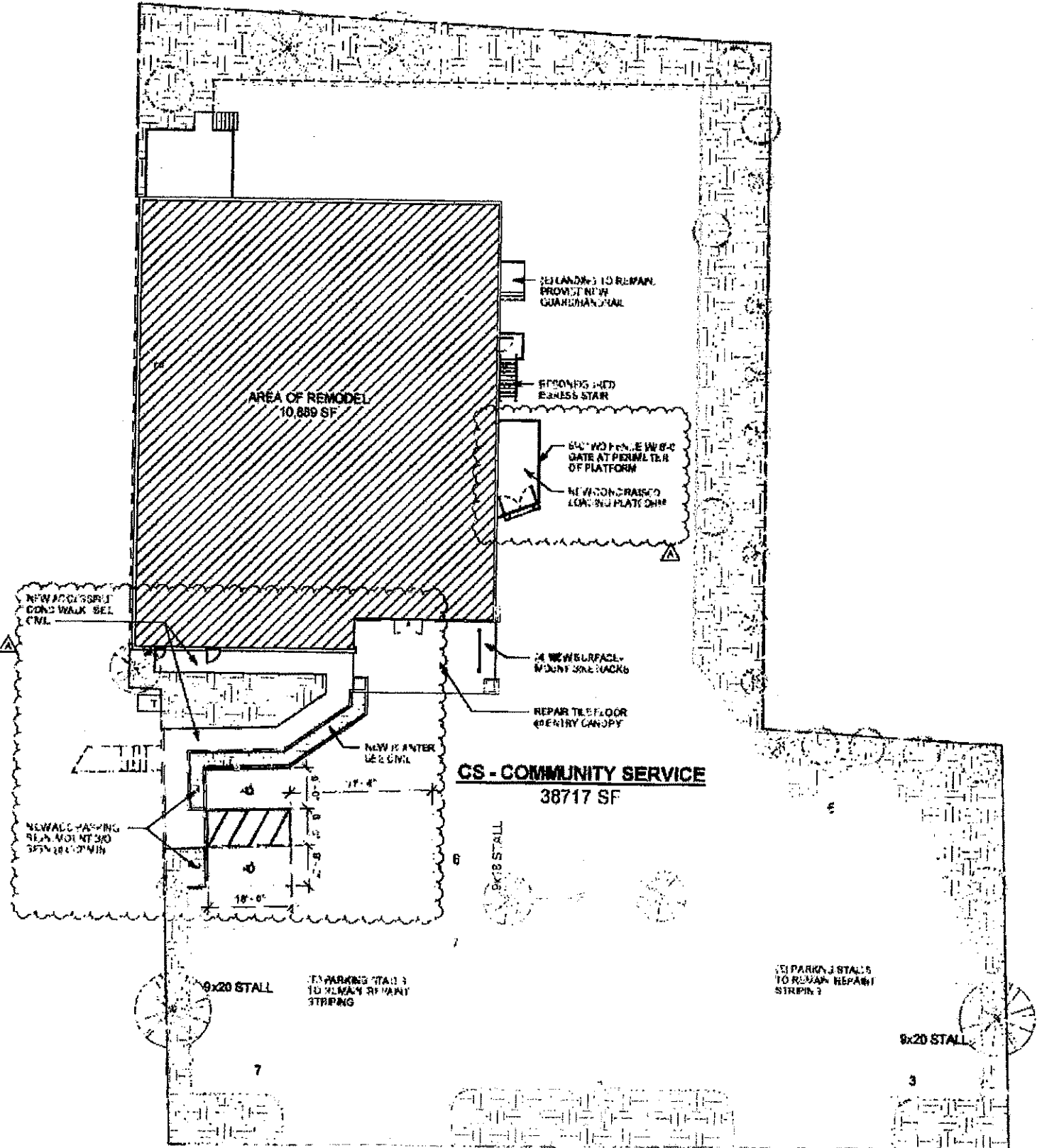
For the reasons set forth above, the Director's Interpretation meets the applicable requirements of the BDC and should be approved.

Prepared by: OBRC and Perkins Coie LLP

Date: December 21, 2017



**2** EXISTING SITE PLAN  
 SCA. F. 1/8" = 1'-0"



1 SITE PLAN  
SCALE: 1/16" = 1'-0"

SW BEAVERTON HILLSDALE HWY



# Solid waste transfer stations

Metro protects our clean air and water by ensuring the things we can't reuse or recycle are safely disposed. Metro owns two solid waste transfer stations where you can take trash and recyclables. Metro also operates two hazardous waste facilities next to each transfer station.

### Metro Central Station

6161 NW 61st Ave., Portland  
Recorded info. line: 503-223-6788

### Transfer station hours:

8 a.m. to 5 p.m. daily

### Household hazardous waste hours:

9 a.m. to 4 p.m.  
Monday to Saturday,  
closed Sundays

### Metro South Station

2001 Washington St., Oregon City  
Recorded info. line: 503-657-2872

### Transfer station hours:

Spring/summer hours  
(March 1 to Sept. 30)  
7 a.m. to 7 p.m. daily

Fall/winter hours  
(Oct. 1 to Feb. 28)  
7 a.m. to 6 p.m. daily

### Household hazardous waste hours:

9 a.m. to 4 p.m.  
Monday to Saturday,  
closed Sunday

Transfer stations and household hazardous waste facilities are closed Thanksgiving, Christmas and New Year's Day.

## HAZARDOUS WASTE FACILITIES

Metro operates hazardous waste collection sites at both transfer stations. Common types of household hazardous waste include paint, batteries, fluorescent light bulbs, solvents, medical sharps, pesticides, fertilizers, poisons and aerosol spray products. Only Oregon residents can dispose of household hazardous waste at Metro's hazardous waste facilities.

If you live outside Metro boundaries or have business-generated waste, call 503-234-3000 for options.

### Hazardous waste fees

There is a \$5 fee to dispose of up to 35 gallons of hazardous waste. This fee is in addition to any waste disposal fee already paid.

## ASBESTOS PAPERWORK REQUIRED FOR CONSTRUCTION WASTE

To protect the health and safety of our employees and customers, Metro cannot accept materials containing asbestos. Metro's transfer stations screen all loads of remodeling, construction and demolition waste for materials that may contain asbestos. Proper paperwork for loads with suspect materials is required from all customers.

Visit [oregonmetro.gov/asbestosrules](http://oregonmetro.gov/asbestosrules) or call 503-234-3000 for more information on how to protect your health and safety in dealing with asbestos.

## RATES

Rates cover the costs of providing safe disposal and reclamation of materials and are adjusted every year. The minimum fee applies to loads up to 380 pounds. Additional fees will be added to rates for uncovered loads.

Loads over 380 pounds are charged a proportion of the per-ton rate plus a transaction fee of \$10 per load to recover the costs of processing each load.

### Rates per ton (covered loads)

Trash/garbage \$94.95  
*minimum fee* 28.00

Wood/yard debris mixed, engineered wood 94.95  
*minimum fee* 28.00

Clean wood 49.69  
*minimum fee* 19.00

Clean yard debris 49.69  
*minimum fee* 19.00

Residential organics 66.67  
*minimum fee* 23.00

Commercial organics \* 66.23  
*minimum fee* 23.00

## PAYMENT

Cash, Visa, MasterCard, American Express, debit cards and checks are accepted. Personal checks require a valid driver's license matching the check. Signer must be present.

\* Commercial organics are not accepted at Metro South Station.

## **SAVE MONEY, PREPARE YOUR LOAD**

**Be prepared:** Upon arrival, be prepared to discuss the contents of your load with the scalehouse attendant.

**Reduce the number of trips you make:** Bigger loads are cheaper by the pound, so you save money by combining trips.

**Sort and separate your recyclables:** This can result in a \$3 rebate on your disposal charge for less than 100 pounds of recyclables, or a \$6 rebate for 100 pounds or more.

**Cover your load:** Loads of municipal solid waste or clean wood or yard debris that are not covered with a tarp or other covering are charged an additional \$25 per ton (\$5 extra for minimum loads). Uncovered loads cause potential danger to other vehicles on the road as well as environmental hazards and can result in a littering fine. Metro does not accept uncovered loads of commercial or mixed-residential organics.

**Make it safe:** Materials such as pool and spa chemicals, sharps and hazardous waste should not be mixed with other garbage. Take these materials to Metro's hazardous waste facilities.

## **YARD DEBRIS AND WOOD**

Yard debris and wood must come in separate loads. Yard debris must be free of dirt, sod, stumps, rocks, metal, glass, garbage and plastic bags.

Wood must be raw dimensional lumber, pallets or packing crates free of paint, stain and other treatments and free of strapping, shrink wrap, shipping labels and hardware (nails OK). Engineered wood (plywood, oriented strand board, particle board), laminated wood and paneling, and painted, treated, stained or varnished wood will be charged at garbage rates.

## **RAILROAD TIES**

Railroad ties 4 feet or less in length are accepted in small numbers from noncommercial customers at the garbage rate. Railroad ties longer than 4 feet are not accepted.

## **CAR TIRES**

Minimum charge is \$10 for first tire. Each additional tire is \$2 off rim or \$4 on rim. Tires 21 inches and larger in diameter are not accepted. Bicycle tires, motorcycle tires and solid core tires are accepted as garbage at the garbage rate. Once the per-tire fee exceeds the tip fee minimum (\$28), loads will be weighed and charged the garbage rate. There is a limit of 15 tires per day per customer. The per-ton rate applies if tires are brought in with a garbage load.

## **COOLANT APPLIANCES**

All appliances built to contain coolants, such as air conditioners, freezers and refrigerators, are accepted for \$30 per appliance.

## **OTHER APPLIANCES**

Other appliances may be accepted free of charge. See "Free recycling" at right for more information. (The per-ton rate applies if tires or appliances containing coolant are brought in with a garbage load.)

## **SHARPS**

Syringes, IV tubing with needles, scalpel blades, etc., from residential users are accepted when disposed of in a red state-certified sharps container. Sharps must be delivered to one of the hazardous waste facilities.

## **FREE RECYCLING**

You can recycle the following free of charge:

- Aluminum – clean all containers
- Appliances – metal dishwashers, water heaters, washers, dryers, stoves; No plastic appliances
- Batteries – automobile (secure leaking batteries in leakproof containers)
- Cardboard – corrugated. Paper grocery bags, too
- Copper and ferrous metals
- Electronics – Computer CPUs, monitors, televisions, laptops, keyboards, mice and desktop printers are accepted for free to anyone bringing seven or fewer items at one time.
- Glass – jars and bottles only; Rinse and sort by color, recycle caps with tin cans
- Magazines
- Motor oil and antifreeze – limited to 20 gallons per customer per day. Must be in 5-gallon or smaller unbreakable containers with screw-on lids.
- Newspaper – no strings or paper bags
- Plastic film – includes shrink wrap, pallet wrap, shopping bags, dry-cleaner bags and bubble wrap
- Plastic milk jugs, bottles with neck or threaded opening – remove lids, rinse, flatten
- Plastic tubs – containers for yogurt, cottage cheese, salsa, margarine, etc., cat litter buckets, laundry-detergent buckets and rigid nursery pots. Rinse and remove metal handles and recycle them with scrap metal. Recycle tubs and buckets in same bin as plastic bottles and jars. Plastic lids and plastic handles are OK.
- Scrap paper – includes junk mail, cereal boxes, etc.
- Tin cans
- Metal wire fencing may be accepted for recycling. Cyclone fencing must be neatly rolled and uncontaminated with other material (plastic slats, concrete, etc.). Barbed wire is accepted as garbage.



November 3, 2017

Mike Robinson, Seth King  
Perkins Coie LLP  
1120 NW Couch Street, Tenth Floor  
Portland, OR 97209-4128

Stephanie Marcus  
Oregon Beverage Recycling Cooperative  
3900 NW Yeon Avenue  
Portland, OR 97210

Subject: Pre-Application Summary Notes for Director's Interpretation in response to LUBA remand

Dear Mr. Robinson, Mr. King and Ms. Marcus,

Thank you for attending the Pre-Application Conference held on October 25, 2017. We are pleased to provide you with the following notes prepared in response to your proposal.

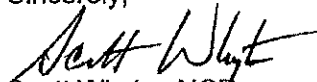
Comments prepared by staff are reflective of the proposal considered at the Pre-App. A copy of your proposal was also sent to other members of staff who did not attend the Pre-App but have provided written comments hereto. Please feel free to contact anyone who provided comments. Contact information is provided herein.

Following every Pre-App, staff understands that there may be changes to the plan or use considered. If these changes effectively re-design the site plan or involve a change to a use not discussed, please be advised that such change could require different land use application(s) than were identified by staff at the Pre-App. It's also possible that different issues or concerns may arise from such change. In these cases, we highly encourage applicants to request a second Pre-App for staff to consider the change and provide revised comments accordingly.

In part, the Pre-App is intended to assist you in preparing plans and materials for staff to determine your application(s) to be "complete" as described in Section 50.25 of the City Development Code. For your application(s) to be deemed complete on the first review, you must provide everything required as identified on the Application Checklist(s) (provided at the Pre-App) in addition to any materials or special studies identified in the summary notes hereto. If you have questions as to the applicability of any item on the checklist(s) or within this summary, please contact me directly.

On behalf of the staff who attended the Pre-App, we thank you for sharing your proposal with us. If we can be of further assistance, please do not hesitate to call.

Sincerely,

  
Scott Whyte, AICP  
Senior Planner  
(503) 526-2652



# PRE-APPLICATION CONFERENCE MEETING SUMMARY NOTES

Prepared for

## Director's Interpretation – Response to LUBA Order No. 2017-027

The following pre-application notes have been prepared pursuant to Section 50.20 of the Beaverton Development Code. All applicable standards, guidelines and policies from the City Development Code, Comprehensive Plan and Engineering Design Manual and Standard Drawings identified herein are available for review on the City's web site at: [www.beavertonoregon.gov](http://www.beavertonoregon.gov). Copies of the Development Code and Comprehensive Plan are also available for review at the City's Customer Service Kiosk located within the Community Development Department. Copies of these documents are also available for purchase.

The following is intended to identify applicable code sections, requirements and key issues for your proposed development application. Items checked are to be considered relevant to your proposed development.

---

**PRE-APPLICATION CONFERENCE DATE:** October 25, 2017

### PROJECT INFORMATION:

Project Name: Director's Interpretation – Response to LUBA Order No. 2017-027

Proposal: Respond to the conclusion reached by the Land Use Board of Appeal (LUBA) in its Final Opinion and Order (LUBA No. 2017-027). Page 10 of the Opinion and Order identifies Section 40.25.05 (Director's Interpretation) and Section 40.25.15.(1)(B) (associated procedure type) from the Beaverton Development Code (BDC) as an appropriate means for the city to determine that the use is similar to a permitted use of Beaverton's Community Service (CS) zone, applicable to the subject property. As the Director's Interpretation application is specifically cited in the LUBA Opinion/ Order, this summary is focused to plan and material submittal expectations for processing the Director's Interpretation (DI) application.

Property/Deed Owner: Oregon Beverage Recycling Cooperative

Site Address: 9307 SW Beaverton-Hillsdale Highway, Beaverton

Tax Map and Lot: Map 1S1-14AB, Tax Lot 4100

Zoning: Community Service (CS)

Comp Plan Designation: Corridor – changes to *Community Commercial* designation on November 24.

Site Size: N/A

### APPLICANT INFORMATION:

Applicant's Name: Oregon Beverage Recycling Cooperative (OBRC)

Applicant's Rep: Perkins Coie LLP

Phone / e-mail: 503 727-2264 (Mike Robinson, primary contact / rep) MRobinson@perkincoie.com

### PREVIOUS LAND USE HISTORY:

The city issued Design Review approval for recent exterior remodel of the former Pier 1 building (city case file DR2017-0003). Other city case files (Design Review) include: BDR 18-72 and BDR 93-020 – Pier 1.

**SECTION 50.25 (APPLICATION COMPLETENESS):**

The completeness process is governed by Section 50.25 of the Development Code. The applicant is encouraged to contact staff to ask any questions or request clarification of any items found on the application checklists that were provided to the applicant at the time of the pre-application conference. In addition, the applicant should be aware that staff is not obligated to review any material submitted 14 days or later from the time the application has been deemed "complete" that is not accompanied with a continuance to provide staff the necessary time to review the new material.

**APPLICATION FEES:**

Based on the materials provided, the identified application fees (**land use only**) are as follows:

**Director's Interpretation\***      \$1,072.00

\*See Key Issues/Considerations herein for description of application and associated process. The fees in effect at the time a complete application is received will control.

**SECTION 50.15. CLASSIFICATION OF APPLICATIONS:**

Applications are subject to the procedure (Type) specified by the City Development Code. In this case, the **Director's Interpretation** application is subject to a **Type 2** procedure (50.40). See "Key Issues / Considerations" herein for additional notes on this topic. Where the DI application is intended to respond to the remand by LUBA, staff will also review the procedures identified in Section 50.60.13. A and B of the Development Code and determine relevancy.

Also, pursuant to Section 50.15.4, the applicant may choose to have an application at the time of submittal be subject to a procedure type requiring broader notice and opportunity to participate provided the applicant pays the appropriate fee for the selected procedure type and the Director determines that statutory timelines for reaching a final decision can be satisfied. In this case, the fee for a Director's Interpretation application (above) stays the same regardless the procedure type. However, the applicant may choose the **Type 3** procedure (in-lieu of the Type 2) which allows for broader notice and necessitates a public hearing before the Beaverton Planning Commission. The Type 3 procedure is described in 50.45 of the BDC.

**SECTION 50.30 (NEIGHBORHOOD REVIEW MEETING):**

A Neighborhood Review Meeting is optional for Type 2 process. In the case where the applicant requests a Type 3 process, staff generally advises the applicant follow procedures identified in Section 50.30 of the Development Code that describe the Neighborhood Review Meeting. This is to occur before submitting the land use application to the city. In this case, the name of Neighborhood Advisory Committee is Denney Whitford – Raleigh West and the Chair is Ernie Conway (503) 329-7978. Also Miles Glowacki (City Neighborhood Office staff) is able to assist in this capacity. His # is (503) 526-3706

**CHAPTER 20 (LAND USES):**

Zoning:                                    **Community Service (CS)**  
Applicable Code Sections:    Section 20.10.20 (Uses) and Section 20.10.15 (Site Development Requirements)  
    And Section 20.10.25 (Use Restrictions – as applicable).

Comments: See "Key Issues / Considerations" herein for additional comments.

**CHAPTER 30 (NON-CONFORMING USES):**

Proposal subject to compliance to this chapter?  Yes  No

**CHAPTER 40 (PERMITS & APPLICATIONS):**

Facilities Review Committee review required?  Yes  No

Comments: D.I. application is not subject to Facilities Review approval criteria under Section 40.03.

<u>Application Description</u>	<u>Code Reference</u>	<u>Application Type</u>			
1. Director's Interpretation (Threshold #1)	40.25.15.1	<input type="checkbox"/> Type 1	<input checked="" type="checkbox"/> Type 2	<input type="checkbox"/> Type 3	<input type="checkbox"/> Type 4

Comments: In order for your application to be deemed complete, a written statement is necessary, supported by substantial evidence in response to all applicable approval criteria. Your application narrative will need to explain how and why the proposed application meets applicable approval criteria for the land use application identified above. Approval criteria and development regulations in effect at the time an application is received will control. Approval criteria and development regulations are subject to change. See "Key Issues / Considerations" herein for additional comments.

**CHAPTER 60 (SPECIAL REGULATIONS):**

The following special requirements when checked could be applicable to your proposal. Staff recommends reviewing these special requirements in the preparation of written and plan information for a formal application:

- |   |   |
|---|---|
| <input type="checkbox"/> Section 60.05 (Design Review Principles Standards and Guidelines)                                | <input type="checkbox"/> Section 60.07 (Drive-Up Window Facilities)     |
| <input type="checkbox"/> Section 60.10 (Floodplain Regulations)   | <input type="checkbox"/> Section 60.15 (Land Division Standards)        |
| <input type="checkbox"/> Section 60.20 (Mobile & Manufactured Home Regulations)   | <input type="checkbox"/> Section 60.25 (Off-Street Loading)             |
| <input type="checkbox"/> Section 60.30 (Off-Street Parking)   | <input type="checkbox"/> Section 60.33 (Park and Recreation Facilities) |
| <input type="checkbox"/> Section 60.35 (Planned Unit Development)   | <input type="checkbox"/> Section 60.40 (Sign Regulations)               |
| <input type="checkbox"/> Section 60.45 (Solar Access Protection)  | <input type="checkbox"/> Section 60.50 (Special Use Regulations)        |
| <input checked="" type="checkbox"/> <b>Section 60.55 (Transportation Facilities)</b><br>(See Key Issues / Considerations) | <input type="checkbox"/> Section 60.60 (Trees and Vegetation)           |
| <input type="checkbox"/> Section 60.65 (Utility Undergrounding)   | <input type="checkbox"/> Section 60.67 (Significant Natural Resources)  |
| <input type="checkbox"/> Section 60.70 (Wireless Communication)   |   |

Comments: See "Key Issues / Considerations" herein for comments in response to Section 60.55 of the Development Code.

**OTHER DEPARTMENT/AGENCY CONTACTS:**

Your project may require review by other City departments and outside agencies. Please plan to contact the following staff persons at the City of Beaverton or other agencies when their name is checked. In some instances, some or all of these staff persons may submit written comments for the pre-application conference. These comments may be discussed at the pre-application conference and will be attached to this summary:

Recommended  
contact for  
further  
information  
if checked

**Clean Water Services**

(CWS not informed of Pre-App)

The Clean Water Services (CWS) is the agency that regulates sanitary sewer, storm and surface water management within Washington County and the City of Beaverton. As the subject matter in this case is specific to a question of use similarity to other permitted uses of the CS zone, no documentation from CWS is expected (pre-screen / service provider letter or otherwise). For more information contact: For more information about CWS review email [spireview@cleanwaterservices.org](mailto:spireview@cleanwaterservices.org) or contact **Laurie Bunce**, CWS Engineering Technician, at (503) 681-3639.

**Jeremy Foster**, Tualatin Valley Fire & Rescue,  
503-259-1414 / [Jeremy.foster@tvfr.com](mailto:Jeremy.foster@tvfr.com)

Proposal reviewed. No comments.

**Brad Roast**, Building, City of Beaverton  
(503) 526-2524 / [broast@beavertonoregon.gov](mailto:broast@beavertonoregon.gov)

Proposal reviewed. No comments.

**Steve Brannen**, Operations, City of Beaverton  
(503) 526-2200 / [sbrannen@beavertonoregon.gov](mailto:sbrannen@beavertonoregon.gov)

Proposal reviewed. No comments.

**Naomi Patibandla**, Site Development, City of Beaverton  
(503) 526-2550 / [npatibandla@beavertonoregon.gov](mailto:npatibandla@beavertonoregon.gov)

Proposal reviewed. No comments.

**Ken Rencher**, Transportation, City of Beaverton  
(503) 526-2427 / [krencher@beavertonoregon.gov](mailto:krencher@beavertonoregon.gov)

Proposal reviewed. No comments.

**Seth Brumley**, Region 1, Oregon Dept. of Transportation  
(503) 731-8258 [Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)

ODOT not informed of Pre-App.

**KEY ISSUES/CONSIDERATIONS:**

Staff has identified the following key development issues, or design considerations or procedural issues that you should be aware of as you prepare your land use application for submittal. The identification of these issues or considerations here does not preclude the future identification of other key issues or considerations:

1. **Land Use Applications.** As previously stated, page 10 of LUBA's Opinion and Order identifies the **Director's Interpretation** by referring to Section 40.25.05 of the Beaverton Development Code (BDC)

and specifically refers to the procedure type associated with this application (reference to 40.25.15(1)(B) which identifies Type 2). As previously mentioned, pursuant Section 50.15.4 of BDC, the applicant may choose to have an application at the time of submittal be subject to a procedure type requiring broader notice and opportunity to participate. Below are two procedural options (summarized under A and B). A decision to have the application processed as Type 3 must be stated in writing when the Director's Interpretation application, fee and written statement are delivered to the City.

The two procedural summaries are as follows:

A. If the applicant chooses the Type 2 Procedure (does not specifically request the Type 3 Procedure):

1. Type 2 notice (50.40 BDC) is initiated when LUBA petitioners and owners of property within 300 feet of the subject property receive notice by mail, which must be at least 20 days prior to a date when the Director will convene city staff and review written testimony received during this period. A notice board is posted for the same 20-day period.
2. The Director makes an interpretation, answering to LUBA's remand, and gives written notice. The decision will respond to issues raised in written testimony if that testimony is received within the 20-days following the date of the notice. The appeal clock begins when a Notice of Decision is issued.
3. If there is no appeal, the Director's decision is the final decision of the city on this matter. If the Director's decision is appealed, the city initiates the appeal hearing procedure described in Section 50.65 of the Development Code. BDC 50.65.5 states that appeals of a Director's Interpretation shall be heard by the City Council (instead of the Planning Commission, which is otherwise the appeal body for appeals of Type 2 decisions).
4. After the appeal noticing period, a Staff Report / Agenda Bill is produced approximately three weeks prior to the Council appeal hearing date. In this report, the Director's Interpretation of the matter is made clear to the City Council, answering to the LUBA remand. In this report, the city will also respond to relevant matters of written testimony if received at least three weeks ahead of the scheduled appeal hearing date. The appeal hearing is *de novo*. The City Council's written decision in response to the appeal is the city's final land use decision.

B. If the applicant chooses broader notice type (Type 3 Procedure).

1. Type 3 notice (50.45 BDC) is initiated, where LUBA petitioners and owners of property within 500 feet of the subject property receive notice by mail at least 20 days prior to the hearing. A notice board is posted on-site for the same period.
2. A Staff Report is produced one week prior to the hearing date. In this report, the Director's interpretation of the relevant BDC language is made clear to the Planning Commission, answering to the LUBA remand. In this report, the city will also respond to relevant matters of written testimony received at least two weeks ahead of the scheduled hearing date (e.g. end of 20 day notice period).
3. A hearing is held before the Planning Commission / Deliberation / Conclusion / Decision. (Sections 50.55., 50.57. and 50.58. of BDC).
4. Approximately two weeks after the Planning Commission decision, staff will prepare a written Notice of Decision that reflects the decision. The appeal clock begins when Notice of Decision is issued.
5. If no appeal, the Notice of Decision (Planning Commission) represents the final decision of the city on this matter. If decision is appealed, the city initiates the appeal hearing procedure as described in Section 50.70 of the Development Code and the City Council becomes the appellate decision making body. The City Council's written decision in response to the appeal is the city's final land use decision.

2. **Traffic Impact Study – recommended but not required.** Staff recommends a separate scoping meeting for this purpose. Section 60.55.20 of the Beaverton Development Code describes the thresholds for Traffic Impact Analysis (TIA). Contents of a full TIA are described in 60.55.20.4. In this case, full analysis is not necessary as staff observes existing conditions of the subject property to remain essentially the same. The scoping meeting (with a certified traffic engineer) would be scheduled with the City Traffic Engineering to discuss the scope and parameters of the TIA in further detail. With respect to the TIA, the following items are suggested for study:
  - Current average daily vehicle trip counts (ADT) during peak days of operation.
  - Current volume to capacity along this portion of Beaverton-Hillsdale Highway (LOS).
  - Analysis as to full capacity of the convenience zone established for the Beaverton OBRC store, consistent with the maximum radius distance allowed under law.
  - Analysis as to net difference in vehicle trips compared to former use of same site.
3. **Similar Use Response.** Staff recommends responding to D.I. approval criterion No. 4 in concert with Section 10.50 of the BDC (Authorization for Similar Uses).
4. **November 24 – effective date of new chapter update to the Beaverton Comprehensive Plan.** At this time, the subject property is zoned CS which is an implementing zone of the existing *Corridor* land use map designation of the Beaverton Comprehensive Plan, which also applies to the subject property. On November 24, 2017, the *Corridor* land use map designation effectively changes to *Community Commercial* via legislative amendment recently approved by City Council. The CS zone remains an implementing zone of the new *Community Commercial* designation.

D.I. approval criterion No. 3 requires findings of support that the interpretation is consistent with the Comprehensive Plan. This Pre-App summary has not taken into account certain Goals or Policies of the Comprehensive Plan that might be relevant to the D.I. proposal. If the application is to be filed after November 24, 2017, staff recommends reviewing the new Land Use Element of the Comprehensive Plan (link to Beaverton website provided below) that also becomes effective on November 24. Goal 3.7.3 is specific to the new *Community Commercial* designation. This Goal has associated Policies a through f identified thereto.

[www.BeavertonOregon.gov/ComprehensivePlan2035](http://www.BeavertonOregon.gov/ComprehensivePlan2035)