CIWMB
C&D ORDINANCE WORKSHOP

Constance Hornig, Esq.

7/23/2004
REGULATION V.

AGREEMENT

1. Examples of regulation: ordinances, code provisions, permit conditions, license requirements. Compliance is mandated.

2. Examples of agreement: franchise agreement, service contract. Execution is consensual. (Forms of agreement are developed in stakeholders’ meetings.)
Why enter into C&D agreements instead of adopting a C&D ordinance?

1. There are less C&D haulers than demo and building permit applicants, so hauler agreement administration is less time consuming than permit applicant plan review and diversion corroboration.
Why enter into C&D agreements instead of adopting a C&D ordinance?

2. C&D collection, recycling and disposal is the core business of haulers. It is only incidental to developers’ and contractors’ business. (And often subcontracted.)
Why enter into C&D agreements instead of adopting a C&D ordinance?

3. Use carrots rather than sticks: financial diversion incentives for surpassing contractual performance rather than disincentives (bond forfeiture, fines and penalties) for violating terms of ordinance.
Why enter into C&D agreements instead of adopting a C&D ordinance?

4. Local governments can designate C&D processing facilities in consensual agreements, but not by unilateral regulation. (Carbone.) Use of designated processing facility can replace diversion tonnage reporting, calculation and corroboration.
Franchise agreement v. service contract

In a **franchise agreement** the local government grants a franchisee the non/semi/exclusive right to conduct business in consideration of franchise fee payment.
Franchise agreement v. service contract

If the local government wants to designate a processing facility, consider a service contract. The local government arguably remains a “market participant” for purposes of the Commerce Clause. It can charge fees under PRC 40059 or 41900 rather than franchise fees.
Require permit applicants to use franchised / contracted C&D haulers.

Consider self-haulers’ (such as roofers) exception, subject to diversion substantiation.
How are C&D agreements developed and procured?

Local governments hold workshops and meetings with the haulers to review-and-develop contractual terms; they solicit haulers’ comments on agreement terms.

A condition of a C&D haul permit (or a business license) is execution of C&D agreement.
Example local governments that have C&D contract diversion requirements.

La Canada Flintridge (non-exclusive, open market)
Hawthorne (semi-exclusive)
Monterey County (exclusive with self-haul exception)