

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

1000 FRIENDS OF OREGON and LISA HAMMONDS,
Petitioners,

vs.

LAKE COUNTY,
Respondent,

and

ALLEN HAMBLETON,
Intervenor-Respondent.

LUBA No. 2022-105

FINAL OPINION
AND ORDER

Appeal from Lake County.

Andrew Mulkey filed the petition for review and reply brief and argued on behalf of petitioners. Also on the brief was 1000 Friends of Oregon.

No appearance by Lake County.

Nathan J. Ratliff filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief was Parks & Ratliff, P.C.

ZAMUDIO, Board Chair; RUDD, Board Member; RYAN, Board Member, participated in the decision.

REMANDED

10/16/2023

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a board of commissioners decision approving a conditional use permit (CUP) for a site for the disposal of solid waste on land planned and zoned for agricultural use.

BACKGROUND

The subject property is comprised of approximately 28 acres, designated Range (R) on the comprehensive plan map, and zoned Agriculture Use (A-2).¹ The property is located adjacent to Highway 140, approximately 11.25 miles west of the City of Lakeview. A previous owner of the subject property operated an unpermitted vehicle dismantler business and accepted discarded appliances and tires. Intervenor-respondent (intervenor) applied for a CUP to operate a disposal site. The planning commission held two hearings and approved the CUP. Petitioners appealed the approval to the board of commissioners, which, after two public hearings, affirmed the planning commission's decision and approved the CUP. This appeal followed.

FIRST ASSIGNMENT OF ERROR

As discussed further below, ORS 215.283(2)(k) provides that the county may allow on agricultural land a "site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been

¹ This case involves the same property and some of the same uses at issue in *Garton v. Lake County*, ___ Or LUBA ___ (LUBA No 2021-036, Jan 21, 2022).

1 granted under ORS 459.245 by the Department of Environmental Quality
2 [(DEQ)] together with equipment, facilities or buildings necessary for its
3 operation,” subject to the farm impacts test set out in ORS 215.296, which we
4 discuss below under the fifth assignment of error. Lake County Zoning Ordinance
5 (LCZO) 3.04(B)(7) implements and adopts verbatim ORS 215.283(2)(k).

6 The CUP application asks the applicant to “[p]lease circle the activity/use
7 that you propose on the subject property.” Record 761 (*italics omitted*).
8 Intervenor circled “[a] site for the disposal of solid waste approved by the
9 governing body of a city or county or both and for which a permit has been
10 granted under ORS 459.245 by [DEQ] together with equipment, facilities or
11 buildings necessary for its operation.” Record 762. The application does not
12 further describe the proposed use.

13 The decision describes the proposed use as follows:

14 “[T]he proposed development has been existing on the property
15 since at least 2002, prior to [intervenor’s] acquisition of the property
16 [on] July 16, 2018. [Intervenor requests] the flexibility to continue
17 operations existing on the property at the time of purchase, which
18 operations include a solid waste disposal site as defined by state law
19 and referenced in the LUBA case, so long as the applicant seeks and
20 obtains from the DEQ authorization of such use and only such uses
21 as defined by the corresponding ORS. The existing uses were never
22 permitted, or at least have not been found to be permitted through
23 land use, although the use has been existing sporadically since at
24 least 2002. Unfortunately, this was not correctly permitted at the
25 time it was established and we now have a site that has been in
26 operation for over 20 years, which [intervenor] now wishes to
27 correctly have approved so that operations can continue without
28 question and under the proper permitting that needs to be approved

1 by other agencies including [DEQ].” Record 11.

2 The board of commissioners found that

3 “[intervenor] has applied for a conditional use of land as a solid
4 waste disposal site for the purpose of material recovery and
5 recycling from solid wastes under the statutory definitions set forth
6 at ORS 459.005(8)(a), (16), (20) and (22), and that [intervenor’s]
7 proposed activities and scope of land use are defined by these
8 statutes.” Record 19.

9 The board found that, “pursuant to ORS 459.[24]7, [intervenor] may accept and
10 store, but only for the purposes of recycling or recovering, discarded and
11 abandoned vehicles, discarded large home and industrial appliances, used oil,
12 tires, lead-acid batteries and covered electronic devices.”² Record 19.

13 The county conditioned its approval by reference to state law. Those
14 conditions include the following:

15 “12. The permitted use shall include the limits allowed by DEQ of
16 the following for the purpose of recovery or recycling: the receipt of
17 automobiles, vehicles, implements and other waste normally
18 considered appropriate for scrap or part resale. [Intervenor] shall not
19 store or take in household, commercial or industrial garbage or
20 rubbish, or make any in-ground or long-term storage of hazardous
21 material.

22 “13. This permit is limited to a solid waste disposal site as defined
23 in state law and referenced through this staff report and in the
24 [LCZO], and not to include: a junk yard as this use is not allowed
25 by the zone.” Record 22.

² We set out ORS 459.247, in part, below.

1 Petitioners argue that the county failed to make adequate findings about
2 what activities the county approved in issuing the CUP and how those uses
3 comply with LCZO 3.04(B)(7) and ORS 215.283(2)(k). Intervenor responds that
4 the county defined the allowed use by reference to state law and that is sufficient
5 to describe the permitted uses. We agree with petitioner for the reasons explained
6 below.

7 Generally, findings must (1) address the applicable standards, (2) set out
8 the facts relied upon, and (3) explain how those facts lead to the conclusion that
9 the standards are met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).
10 Findings must address and respond to specific issues relevant to compliance with
11 applicable approval standards that were raised in the proceedings below. *Norvell*
12 *v. Portland Area LGBC*, 43 Or App 849, 853, 604 P2d 896 (1979). “What is
13 needed for adequate judicial review is a clear statement of what, specifically, the
14 decision-making body believes, after hearing and considering all the evidence, to
15 be the relevant and important facts upon which its decision is based.” *South of*
16 *Sunnyside Neighborhood League v. Clackamas County*, 280 Or 3, 20-21, 569 P2d
17 1063 (1977).

18 As referenced in the county’s decision, ORS 459.005 provides the
19 following definitions:

20 “(8)(a) ‘Disposal site’ means land and facilities used for the
21 disposal, handling or transfer of, or energy recovery, material
22 recovery and recycling from solid wastes, including but not
23 limited to dumps, landfills, sludge lagoons, sludge treatment
24 facilities, disposal sites for septic tank pumping or cesspool

cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site.

“* * * * *

“(16) ‘Material recovery’ means any process of obtaining from solid waste, by presegregation or otherwise, materials that still have useful physical or chemical properties and can be reused or recycled for some purpose.

“* * * * *

“(20) ‘Recyclable material’ means any material identified for recycling collection under ORS 459A.914 or any other material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

“(21) ‘Recycling’ means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

“* * * * *

“(25) ‘Solid waste’ means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. ‘Solid waste’ does not include:

“(a) Hazardous waste as defined in ORS 466.005.

“(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are

1 used on land in agricultural operations and the growing
2 or harvesting of crops and the raising of animals.

3 “(c) Woody biomass that is combusted as a fuel by a facility
4 that has obtained a permit described in ORS
5 468A.040.”

6 ORS 459.247 provides, in part:

7 “(1) No person shall dispose of and no disposal site operator shall
8 knowingly accept for disposal the following types of solid
9 waste at a solid waste disposal site:

10 “(a) Discarded or abandoned vehicles;

11 “(b) Discarded large home or industrial appliances;

12 “(c) Used oil;

13 “(d) Tires;

14 “(e) Lead-acid batteries; or

15 “(f) Covered electronic devices.

16 “(2) As used in this section:

17 “(a) ‘Covered electronic device’ has the meaning given that
18 term in ORS 459A.305, except that ‘covered electronic
19 device’ does not include a computer peripheral or a
20 printer as those items are defined in ORS 459A.305;
21 and

22 “(b) ‘Used oil’ has the meaning given that term in ORS
23 459A.555.

24 “(3) Nothing in this section shall prohibit a disposal site operator
25 from accepting and storing, for purposes of recycling or
26 recovering, any of the types of solid waste listed in subsection
27 (1) of this section.”

1 We agree with petitioners that the county's findings do not adequately
2 identify what uses the county has permitted and explain why the county
3 concludes that those uses comply with LCZO 3.04(B)(7) and ORS 215.283(2)(k).

4 ORS 215.283(2)(k) provides that the county may allow on agricultural land
5 a "site for the disposal of solid waste approved by the governing body * * *
6 together with equipment, facilities or buildings necessary for its operation." ORS
7 215.283(2)(k) requires a DEQ permit.³ However, the uses allowed under ORS
8 215.283(2)(k) are not necessarily coextensive with all solid waste disposal
9 activities that DEQ might permit. The legislature afforded counties some
10 discretion in limiting what a county may approve. The county must describe what
11 uses it is allowing. If the site is approved for disposal of solid waste, then the
12 county may approve equipment, facilities, or buildings necessary for its operation
13 that meet the farm impacts test and other county specific criteria. In this case, the
14 county approved all solid waste disposal that may be permitted by DEQ.
15 However, the statutory definitions that the county referred to in describing what
16 is allowed on the property are not specific enough to describe and delineate what
17 is allowed by the CUP.

³ We have explained that ORS 215.283(2)(k) restricts a solid waste disposal site from being established prior to DEQ permitting, but it does not prohibit local government approval of such a site that is conditioned on receipt of the DEQ permit prior to establishment of the site. *Garton*, ___ Or LUBA at ___ (citing *Crocker v. Jefferson County*, 60 Or LUBA 317, 322, *aff'd*, 235 Or App 188, 230 P3d 999 (2010) (slip op at 11)).

1 Importantly, as discussed further below, a use allowed under ORS
2 215.283(2)(k) must satisfy the farm impacts test. It is impossible to describe and
3 evaluate the impacts of the approved use on surrounding lands devoted to farm
4 or forest use without first adequately describing the approved use.

5 Intervenor argues that “the county began with the broad definition of what
6 the statutes allow, and then took successive steps to narrow that use and impose
7 limitations.” Intervenor-Respondent’s Brief 4. We understand intervenor to argue
8 that conditions of approval delineate the uses and activities allowed under the
9 CUP.

10 Petitioners argue and we agree that the conditions of approval are too
11 vague to describe or limit the permitted use. Condition 12 describes categories of
12 materials that intervenor may accept, namely, “automobiles, vehicles,
13 implements and other waste normally considered appropriate for scrap or part
14 resale.” Record 22. The county’s findings do not clarify what materials are
15 “normally considered appropriate for scrap or part resale.” Record 22. Rather
16 than serve as a limitation, Condition 12 appears to allow intervenor to accept
17 materials that intervenor deems appropriate for scrap or resale. Similarly, we
18 agree with petitioners that, “[t]he term ‘implements’ can mean anything that can
19 be described as a tool, utensil, appliance, or equipment with no limit on the size
20 of the implement or its materials. For that reason, the term does not provide a
21 useful explanation of the specific categories of items or materials the applicant
22 may accept.” Petition for Review 18. Condition 12 does not limit or explain what

1 types of waste, items, or materials the county has allowed intervenor to accept as
2 solid waste.

3 Similarly, the decision fails to adequately describe what intervenor is
4 permitted to do with those materials on the property. The findings state that “the
5 applicant may accept and store, but only for the purposes of recycling or
6 recovering, discarded and abandoned vehicles, discarded large home and
7 industrial appliances, used oil, tires, lead-acid batteries and covered electronic
8 devices.” Record 19. The decision does not define “store” or otherwise limit the
9 length of time certain materials may remain on the property before the county
10 would consider them permanently disposed on the property.

11 We agree with petitioners that the findings are inadequate. It would serve
12 no purpose to analyze in this decision whether those inadequate findings are
13 supported by substantial evidence. Thus, we do not reach petitioners’ substantial
14 evidence argument under the first assignment of error.

15 The first assignment of error is sustained.

16 **FIFTH ASSIGNMENT OF ERROR**

17 Petitioners argue that the county fails to comply with the farm impacts test
18 because the decision does not specify farm uses in the area or impacts from the
19 approved use.

20 ORS 215.283(2)(k) is a nonfarm conditional use that a county may allow
21 in an exclusive farm use (EFU) zone only if the county determines that the use
22 will not significantly affect surrounding lands devoted to farm use under ORS

1 215.296, which we refer to as the farm impacts test. The farm impacts test allows
2 certain uses to be approved on land zoned for agricultural use

3 “only where the local governing body or its designee finds that the
4 use will not:

5 “(a) Force a significant change in accepted farm or forest practices
6 on surrounding lands devoted to farm or forest use; or

7 “(b) Significantly increase the cost of accepted farm or forest
8 practices on surrounding lands devoted to farm or forest use.”
9 ORS 215.296(1).

10 *See also Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 435 P3d 698
11 (2019) (explaining ORS 215.296). The farm impacts test is applied to specific
12 farm practices on individual farms. *Id.* at 459. The applicant carries the burden
13 of proving that ORS 215.296(1) has been met. *Id.* at 460.

14 With respect to farm impacts, the county found that

15 “surrounding uses are primarily rural residential, and that those farm
16 and forest practices will not and could not be reasonably considered
17 to be negatively affected in any way from the establishment of the
18 proposed use, and that sufficient evidence was presented in that
19 respect. * * * With the many other nonfarm dwellings that have been
20 approved along Highway 140, never have any of those uses been
21 shown to have created an increase to farm or forest practices or to
22 have significantly impacted these practices. It is unreasonable to
23 assume that this use having been practiced to some level through the
24 years, unpermitted as it was, could be now detrimental to either farm
25 or forest practices, when no claim has ever been made to that point.
26 That the proposed development has been existing on the property
27 since at least 2002 to some level is not in question, and the county
28 and applicant only wishes to have a permitted use established that
29 protects the intent of the zone and existing farm and forest practices.
30 Additionally, the [board of commissioners] find that the conditions

1 of use imposed in relation to the application further assure that the
2 proposed used will not force a significant change in accepted farm
3 or forest practices on surrounding land devoted to farm or forest use,
4 or significantly increase the cost of accepted farm or forest practices
5 on surrounding lands devoted to farm or forest use on adjacent lands
6 devoted to farm use.” Record 11.

7 Elsewhere, under different criteria, the county found:

8 “Commercial operations are existent upon many of the lands in all
9 directions and seasonal grazing is likely occurring on a few of those
10 adjacent lands, to the north across the highway and the lots on the
11 west side of Odegaard Road and the lot to the southeast which
12 accesses Andy Hill Road.” Record 14.

13 “[T]he proposed development will not adversely affect surrounding
14 agricultural operations, although there are surrounding accepted
15 farming practices to the north and mixed farm and forest practices
16 on the west side of Odegaard Road, this property is adjacent to the
17 Highway 140 (a State maintained road) and countless vehicle traffic
18 from all uses farm, non-farm, residential, commercial, industrial,
19 etc., use the same major highway to access Lakeview, and
20 surrounding communities in all directions. It is unreasonable to
21 assume said requested use could interfere seriously with accepted
22 farming practices, when all other uses use the same highway to
23 conduct all types of business, domestic or otherwise and the
24 evidence presented does not lead to a contrary conclusion.
25 Dwellings, both farm and non-farm alike, are within the general
26 vicinity. Agricultural operations in the vicinity continue to operate
27 independent of all other development in the area. Many land use
28 decisions have been approved in the Goose Lake area which support
29 that Farm and Non-Farm uses can coexist without major issues
30 and/or conflicts.

31 “There are a variety of the lots in the area well below the acreage
32 minimum and there have been many [nonfarm dwellings] approved
33 over the years in the vicinity which supports this application being
34 similar to the established development pattern of the area. This also
35 supports the finding that the proposal does not interfere seriously

1 with accepted farming practices as defined in ORS 215.203(2)(C),
2 on adjacent lands devoted to farm use, as the existing mixed uses
3 are developed without existing known conflicts. Although
4 additional land use applications are anticipated on surrounding lands
5 off Highway 140 and Odegard Road, future development on
6 adjacent lands would require land use review and approvals before
7 development could occur. Having considered the size, location,
8 terrain, existing use, and history of use of the property, the fact that
9 no record exists to support this use negatively affecting either farm
10 or forest practices, etc., along with the development patterns in the
11 area, the [board of commissioners] finds that this criterion is met.
12 Furthermore, the [board of commissioners] finds that the conditions
13 of use imposed in relation to the application further assure that the
14 proposed use will not seriously impact farming practices as defined
15 in ORS 215.203(2)(c), on adjacent lands devoted to farm use.”
16 Record 13-14.

17 Petitioners argue, and we agree, that the decision fails to identify the
18 activities that the county has permitted and thus has not described the impacts
19 from the approved use. The decision also fails to adequately identify the farm
20 uses and practices on surrounding lands. Without that information, the evaluation
21 of the potential farm impacts is inadequate—indeed, impossible. We agree with
22 petitioners that the county’s findings are inadequate to support a conclusion that
23 the farm impacts test is satisfied.

24 The fifth assignment of error is sustained.

25 **SECOND ASSIGNMENT OF ERROR**

26 In the second assignment of error, petitioners argue that the county
27 misconstrued ORS 215.283(2)(k) and LCZO 3.04(B)(7) by authorizing
28 intervenor to conduct activities outside the scope of those regulations. Petitioners
29 argue that the decision is so vague and broad that it permits intervenor to conduct

1 the following three activities that are otherwise prohibited in the zone: (1) vehicle
2 dismantler activities by permitting petitioner to recover materials from motor
3 vehicles; (2) junkyard activities by allowing intervenor to accept vehicles for
4 recycling and material recovery; and (3) retail sales of recovered materials.

5 We sustain the first assignment of error because we agree with petitioners
6 that the decision fails to adequately describe the uses permitted by the CUP. The
7 county must adopt new findings on remand describing the approved uses. Thus,
8 it would be premature to analyze in this decision whether the county has
9 authorized intervenor to conduct activities that are otherwise prohibited in the
10 zone.

11 We do not decide the second assignment of error.

12 **THIRD ASSIGNMENT OF ERROR**

13 Petitioners argue that the county misconstrued applicable law by
14 concluding that the phrase “site for the disposal of solid waste” in ORS
15 215.283(2)(k) and LCZO 3.04(B)(7) includes all the activities listed in the
16 definition of “disposal site” in ORS 459.005(8)(a). Specifically, petitioner argues
17 that a site for the disposal of solid waste does not include activities such as
18 material recovery or recycling that do not result in actual, on-site disposal of the
19 waste.

20 Again, ORS 215.283(2)(k) and LCZO 3.04(B)(7) authorize the county to
21 allow on agricultural land a “site for the disposal of solid waste approved by the
22 governing body.” Again, ORS 459.005(8)(a) provides:

1 “‘Disposal site’ means land and facilities used for the disposal,
2 handling or transfer of, or energy recovery, material recovery and
3 recycling from solid wastes, including but not limited to dumps,
4 landfills, sludge lagoons, sludge treatment facilities, disposal sites
5 for septic tank pumping or cesspool cleaning service, transfer
6 stations, energy recovery facilities, incinerators for solid waste
7 delivered by the public or by a collection service, composting plants
8 and land and facilities previously used for solid waste disposal at a
9 land disposal site.”

10 Intervenor responds that the definition for “disposal site” found at ORS
11 459.005(8)(a) covers many activities, including “material recovery and recycling
12 from solid wastes.” Intervenor argues that intervenor did not request, and the
13 county did not approve, a landfill. Instead, intervenor explains that he “is a
14 recycler, collecting material from all corners of the county and intending to store
15 them at his ‘disposal site’ until he has enough metal to justify the transportation
16 expense to the nearest smelter.” Intervenor-Respondent’s Brief 2 (citing Record
17 482, 654-55). Intervenor also responds that the county limited the approved land
18 use to recovery and recycling of solid waste materials. Intervenor acknowledges
19 that the statutory definition of “disposal site” prohibits or limits an operator from
20 dismantling activities and accepting and handling hazardous waste, wastewater,
21 and aggregate. ORS 459.005(8)(b)(A)-(D).

22 We must construe ORS 215.283(2)(k) to determine whether the legislature
23 intended the phrase “site for the disposal of solid waste” to mean the same thing
24 as “disposal site” as defined in ORS 459.005(8)(a). In interpreting a statute, we
25 examine the statutory text, context, and legislative history with the goal of
26 discerning the enacting legislature’s intent. *State v. Gaines*, 346 Or 160, 171-72,

1 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-
2 12, 859 P2d 1143 (1993). We are independently responsible for correctly
3 construing statutes. *See* ORS 197.805 (providing the legislative directive that
4 LUBA “decisions be made consistently with sound principles governing judicial
5 review”); *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803
6 (2012) (“In construing statutes and administrative rules, we are obliged to
7 determine the correct interpretation, regardless of the nature of the parties’
8 arguments or the quality of the information that they supply * * *.” (*Citing Dept.*
9 *of Human Services v. J. R. F.*, 351 Or 570, 579, 273 P3d 87 (2012); *Stull v. Hoke*,
10 326 Or 72, 77, 948 P2d 722 (1997).)).

11 In interpreting the use allowed by ORS 215.283(2)(k), we start with the
12 understanding that uses listed in ORS 215.283 are exceptions to the preferred
13 agricultural use of agricultural land. *1000 Friends of Oregon v. Clackamas*
14 *County*, 320 Or App 444, 455-56, 514 P3d 553 (2022) (citing *Warburton v.*
15 *Harney County*, 174 Or App 322, 328, 25 P3d 978, *rev den*, 332 Or 559 (2001)).
16 Thus, the question is whether ORS 215.283(2)(k) expressly allows all the
17 activities listed within the definition of “disposal site” in ORS 459.005(8)(a). *See*
18 *1000 Friends of Oregon v. Clackamas County*, ___ Or LUBA ___, ___ (LUBA
19 No 2021-003, Jan 24, 2022), *aff’d*, 320 Or App 444, 514 P3d 553 (2022)
20 (explaining that a use is allowed on EFU land must be allowed pursuant to either
21 ORS 215.283(1) or (2)) (slip op at 10).

1 We start with the text. The legislature used different terms in ORS
2 215.283(2)(k) and ORS 459.005(8)(a). Thus, we begin with the assumption that
3 the legislature intended the phrase “site for the disposal of solid waste” to mean
4 something different than the list of activities listed in the definition of “disposal
5 site” in ORS 459.005(8)(a). *Baker v. Croslin*, 359 Or 147, 157-58, 376 P3d 267
6 (2016); *Dept. of Transportation v. Stallcup*, 341 Or 93, 101, 138 P3d 9 (2006);
7 *State v. Newell*, 238 Or App 385, 392, 242 P3d 709 (2010).

8 The terms “site,” “for,” and “disposal” are not defined by statute or rule
9 for purposes of ORS 215.283(2)(k). Hence, we refer to the plain meanings of
10 those terms. *State v. Newman*, 353 Or 632, 641, 302 P3d 435 (2013). “Site,” used
11 as a noun, means “1a : the original or fixed position of a thing” and “3 : the scene
12 of an action.” *Webster’s Third New Int’l Dictionary* 2128 (unabridged ed 2002).
13 “For” is a preposition used as a function word to indicate purpose. *Webster’s* at
14 886. “Disposal” means “1a : orderly or systematic placement, distribution, or
15 arrangement,” “c : the transference of something into new hands or a new place,”
16 “d : a discarding or throwing away * * * : DESTRUCTION * * * : *esp* : the
17 discarding or destroying of garbage or sewage or its transformation into
18 something useful (as fertilizer) or innocuous (as by incineration).” *Webster’s* at
19 654.

20 Petitioners argue that the order of the words in the phrase “site for the
21 disposal of solid waste” means that the purpose of the site to is for the disposal
22 of solid waste *and* that disposal in this context means permanent placement on

1 the subject property. Petitioners argue that material recovery and recycling
2 facilities are not a “site for the disposal of solid waste” because they do not
3 actually dispose of solid waste on site. In other words, petitioners argue that ORS
4 215.283(2)(k) allows permanent disposal of solid waste and does not allow other
5 treatment of solid waste described in ORS 459.005(8) such as transfer, material
6 recovery, and recycling.

7 Nothing in the text, including the word choice or order, indicates that the
8 legislature intended to limit the use allowed by ORS 215.283(2)(k) to the
9 permanent placement of solid waste on site. The term “site” indicates a location
10 for an activity, namely the “disposal of solid waste.” The term “disposal” does
11 not impose any temporal limitation with respect to the location of the solid waste.
12 Instead, the term “disposal” includes distribution, transfer, transformation, and
13 destruction. That term is broad enough to include transfer, material recovery, and
14 recycling.

15 Intervenor points out that the Court of Appeals has used the terms “site for
16 the disposal of solid waste” and “disposal site” interchangeably and with other
17 modifiers. Intervenor-Respondent’s Brief 7 (quoting *Riverbend Landfill Co. v.*
18 *Yamhill County*, 314 Or App 79, 82, 497 P3d 1288 (2021) (“Solid waste disposal
19 facilities are permitted on EFU-zoned land, ORS 215.283(2)(k)[.]”); *Grabhorn*
20 *v. Washington County*, 279 Or App 197, 212, 379 P3d 796, *rev den*, 360 Or 568
21 (2016) (referring to “solid waste disposal sites”); *Waste Not of Yamhill County v.*
22 *Yamhill County*, 240 Or App 285, 289, 246 P3d 493 (2010), *adh’d to as modified*

1 *on recons*, 241 Or App 199, 255 P3d 496 (2011) (referring to “solid waste
2 disposal facility”)).

3 Petitioners reply, and we agree, that the court did not consider or hold in
4 those cases that ORS 215.283(2)(k) allows all types of disposal sites allowed by
5 ORS 459.005. That issue was not presented in those cases. *Riverbend Landfill*
6 and *Waste Not* concerned landfill expansions. *Grabhorn* concerned a landfill and
7 a composting facility.⁴ Thus, those cases are not instructive in this case.

8 Petitioners argue that, if the legislature had intended to allow all activities
9 that are included in the definition of “disposal site” in ORS 459.005(8)(a) on
10 farmland pursuant to ORS 215.283(2)(k), then the legislature would have simply
11 referred to ORS 459.005(8)(a) in ORS 215.283(2)(k) and the legislature did not
12 do so. Instead, the legislature used different phrasing. That is true as far as it goes.
13 However, petitioners essentially argue that ORS 215.283(2)(k) allows only
14 activities that constitute a “landfill” or “land disposal site” as defined in ORS
15 459.005(13) and (14). “‘Land disposal site’ means a disposal site in which the
16 method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.”
17 ORS 459.005(13). “‘Landfill’ means a facility for the disposal of solid waste
18 involving the placement of solid waste on or beneath the land surface.” ORS

⁴ Composting facilities are subject to ORS 215.401, which incorporates the definition of “disposal site” in ORS 459.005. ORS 215.401(1)(b).

1 459.005(14). The legislature could have and did not limit uses allowed by ORS
2 215.283(2)(k) to landfills and land disposal sites.

3 With respect to legislative history, petitioners explain that the legislature
4 first adopted the provision that has since been renumbered ORS 215.283(2)(k),
5 in 1979 and, at that time, the legislature had already used and defined the term
6 “disposal site” in ORS chapter 459. Petition for Review 53 (citing Or Laws 1979,
7 chapter 773, § 10 (SB 925); ORS 459.005(4) (1979); Or Laws 1971, chapter 648,
8 § 2). Petitioners argue that the legislature thus could have allowed a “disposal
9 site” on farmland. However, the legislature did not select that term.

10 Nothing in the text, context, or legislative history provided to us
11 demonstrates that the legislature intended to allow a narrower range of activities
12 under ORS 215.283(2)(k) than those described in ORS 459.005(8)(a), except that
13 uses allowed under ORS 215.283(2)(k) are subject to county approval and limited
14 by the farm impacts test. We conclude that the legislature did not intend to permit
15 only permanent placement of solid waste in ORS 215.283(2)(k). Indeed, such an
16 interpretation would permanently remove land used as a site for disposal of solid
17 waste from agricultural use as waste accumulates and is permanently stored on
18 site. In contrast, handling, transfer, material recovery, and recycling activities
19 would allow solid waste to be stored and removed, which might allow for a
20 smaller footprint and fewer long-term impacts to agricultural land.

21 We conclude that the county did not misconstrue ORS 215.283(2)(k) and
22 LCZO 3.04(B)(7) as authorizing the activities listed in the definition of “disposal

1 site” in ORS 459.005(8)(a). However, this conclusion does not affect our
2 conclusion above that the county’s findings are inadequate to explain what uses
3 are allowed on the site under the CUP.

4 The third assignment of error is denied.

5 **FOURTH ASSIGNMENT OF ERROR**

6 In finding that the CUP general criterion that the proposal be in compliance
7 with the comprehensive plan is satisfied, the decision states: “The Lake County
8 Board of Commissioners finds that the proposed use is allowed by the zone as a
9 [CUP] *and authorization of a pre-existing Nonconforming Use* which follows the
10 intended use of the Zone and Comprehensive Plan Designation.” Record 16
11 (emphasis added).

12 Petitioners argue that the decision allows the use to continue as a
13 nonconforming use and that the findings are inadequate, unsupported by
14 substantial evidence, and misconstrue applicable law. Intervenor responds that
15 intervenor did not request nonconforming use verification and the decision does
16 not apply nonconforming use criteria or verify any nonconforming use.

17 It is unclear from the decision whether the county intended to allow the
18 proposed use to continue as a nonconforming use. The above quoted statement is
19 either dicta or must be supported by further findings.

20 The fourth assignment of error is sustained.

21 The county’s decision is remanded.