

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

EUGENE CLEAN FUELS LLC,
Petitioner,

vs.

CITY OF EUGENE,
Respondent,

and

BEYOND TOXICS,
Intervenor-Respondent.

LUBA No. 2025-007

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Garrett H. Stephenson filed the petition for review and reply brief. Also on the brief was Schwabe, Williamson & Wyatt, P.C.

Lauren Sommers filed the respondent's brief and argued on behalf of respondent.

Kelsey Dunn filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief were Eric Wriston and Crag Law Center.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED

07/23/2025

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

NATURE OF THE DECISION

Petitioner appeals a city zoning verification decision that determined petitioner's proposed use is a "Regional Distribution Center" and therefore a prohibited use in the underlying zone.

FACTS

Petitioner seeks to construct and operate a renewable fuels transloading facility on an approximately 6.5-acre portion of Union Pacific Railroad's Eugene Yard. The project would entail construction of railroad side tracks to service new transloading facilities for loading fuels from rail tank cars onto trucks. The types of fuels proposed to be transloaded include denatured alcohol, sustainable aviation fuel, and renewable diesel. Transloading is the process of moving goods between transportation modes by unloading freight from one container, for example, a liquid fuel rail car, into another container, in this case, a fuel truck. The proposed facility would operate year-round, receive an estimated 40 trucks per day, and deliver the fuels to local retailers within a 30-mile radius.

The subject property is located outside of city limits but within the city's urban growth boundary (UGB). Pursuant to agreements between Lane County and the city, the land use code that regulates properties located outside city limits but within the UGB is the Urban Transition Area Code (UTA). The UTA was adopted by the county but is administered by the city. The UTA allows an applicant to submit a zone verification application to determine whether a

1 proposed use would be a permitted use, a use subject to land use application
2 approval or special standards, or a prohibited use. Petitioner initially submitted a
3 zone verification application for the proposed use in May of 2024. The city
4 initially determined that the property was unzoned railroad right-of-way and that
5 the proposed use was permitted on such unzoned land. Intervenor-respondent
6 (intervenor) appealed the May 2024 decision to LUBA. The city subsequently
7 withdrew the decision for reconsideration.

8 On reconsideration, the city reopened the record for 14 days for the
9 submission of additional evidence and argument. The city did not provide formal
10 notice of the open record period to anyone other than petitioner and intervenor,
11 but the city did provide informal notice to affected neighborhood associations.
12 The city received over 200 submissions of written testimony. The city issued its
13 decision on reconsideration, finding that the property is actually zoned Heavy
14 Industrial (I-3) and that the proposed use is a “Regional Distribution Center,”
15 which is a prohibited use in the I-3 zone.

16 This appeal followed.

17 **STANDARD OF REVIEW**

18 The challenged decision is a zoning verification decision.¹ ORS
19 227.160(2)(b) exempts zoning classification decisions from the definition of

¹ Zoning verification decisions are also referred to as zoning classification decisions.

1 “permit” and the requirements that accompany “permit” decisions.² A zoning
2 verification decision provides a process for a property owner to submit
3 information about a proposed use of land within a UGB and obtain a decision on
4 whether the proposed use is allowed. ORS 227.175(11)(b) provides that zoning
5 verification decisions shall be “subject to the jurisdiction of the Land Use Board
6 of Appeals in the same manner as a limited land use decision.”

7 Petitioner asserts that the challenged decision is a land use decision and is
8 subject to reversal or remand for reasons pursuant to ORS 197.835(9).³

² ORS 227.160(2) provides:

“‘Permit’ means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. ‘Permit’ does not include:

“* * * * *

“(b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary[.]”

³ ORS 197.835(9) provides, in pertinent part:

“* * * the board shall reverse or remand the land use decision under review if the board finds:

“(a) The local government or special district:

“(A) Exceeded its jurisdiction;

1 The city and intervenor argue that zoning verification decisions are subject
2 to the same standard of review as limited land use decisions under ORS
3 197.828(2).⁴

4 The question of whether zoning verification decisions are subject to review
5 as land use decisions or limited land use decisions has not been definitively
6 decided. *See Central Eastside Industrial Council v. City of Portland*, 74 Or

“(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

“(C) Made a decision not supported by substantial evidence in the whole record;

“(D) Improperly construed the applicable law; or

“(E) Made an unconstitutional decision[.]”

⁴ ORS 197.828(2) provides in pertinent part:

“The board shall reverse or remand a limited land use decision if:

“(a) The decision is not supported by substantial evidence in the record. The existence of evidence in the record supporting a different decision shall not be grounds for reversal or remand if there is evidence in the record to support the final decision;

“(b) The decision does not comply with applicable provisions of the land use regulations;

“(c) The decision is:

“(A) Outside the scope of authority of the decision maker; or

“(B) Unconstitutional[.]”

1 LUBA 221, 256, n 31 (2016) (*CEIC*) (“We presume that ORS 227.175(11)(b)
2 requires LUBA to dispose of the appeal of a zoning verification in the same
3 manner as a limited land use decision.”). Furthermore, the question of whether
4 different standards for review apply to land use decisions versus limited land
5 decisions is not definitively resolved either. *See Backer v. City of Salem*, LUBA
6 No 2022-053 (Dec 1, 2022) (slip op at 11), *aff’d*, 325 Or App 809 (2023)
7 (“LUBA’s standard of review of evidentiary challenges to a limited land use
8 decision is different from, and likely less rigorous than, the standard of review of
9 challenges to land use decisions.”). We need not resolve either of those thorny
10 issues today, as we would reach the same conclusion under either standard.⁵

11 **FOURTH ASSIGNMENT OF ERROR**

12 Petitioner argues that the city committed a procedural error by failing to
13 allow petitioner to respond to the materials submitted by opponents on remand
14 and by failing to provide a staff report.

15 Petitioner requested that the city open the record on reconsideration. The
16 city explained:

17 “Though not legally required, at [petitioner’s] request, the City
18 reopened the record on reconsideration for a period of 14 days to
19 allow for submission of additional written evidence and argument.
20 Neither the [UTA], nor the statutory procedures for a zone

⁵ At oral argument, neither the city nor intervenor identified how our review would be different under ORS 197.828. Petitioner did not appear at oral argument.

1 verification decision in ORS 227.175(11) require a hearing, an open
2 record period, or the opportunity for applicant rebuttal. The 14-day
3 open record period that the City chose to utilize on reconsideration
4 is consistent with the statutory procedures for limited land use
5 decisions, which, similar to a zone verification decision, do not
6 require a hearing or an opportunity for applicant rebuttal.

7 “* * * [N]otice was mailed and emailed to [petitioner] and
8 [intervenor], as well as their representatives, informing them that the
9 City would re-open the record to accept written testimony (evidence
10 and argument) regarding the Zone Verification application during a
11 14-day period * * *. The City did not provide formal notice of the
12 re-opened record to parties other than [petitioner] and [intervenor];
13 however, the City accepted all written testimony received during the
14 open record period, regardless of the source of the testimony.”
15 Record 2-3.

16 In order to demonstrate a procedural error, a petitioner must identify the
17 process allegedly violated. *Lenhardt v. City of Newberg*, LUBA Nos 2023-
18 021/023 (Jul 31, 2023) (slip op at 5) (citing *Stoloff v. City of Portland*, 51 Or
19 LUBA 560, 563-64 (2006)). Nothing in ORS 197.830(13) or OAR 661-010-0021
20 establishes any requirements for local government proceedings after withdrawal
21 of the decision for reconsideration. *Tylka v. Clackamas County*, 28 Or LUBA
22 417, 425-26 (1994) (citing former ORS 197.830(12) (1994), *renumbered as* ORS
23 197.830(13) (1999)). On reconsideration, a local government must follow any
24 applicable regulations under its local code. *Id.* If there are no local provisions
25 governing local processes on reconsideration, then a local government may
26 decide what process to use on a case-by-case basis. The UTA does not contain
27 any provisions governing processes for decisions on reconsideration of a zone
28 verification decision. Therefore, the city did not commit a procedural error on

1 reconsideration merely by failing to produce a staff report or to allow petitioner
2 to respond to materials submitted during the open record period.

3 Furthermore, the process the city followed is consistent with the statutory
4 process. ORS 227.160(2)(b) does not provide any process requirements other
5 than that such zoning verifications decision are exempt from the requirements of
6 “permit” decisions. *Permit* decisions generally require a hearing or opportunity
7 to request a hearing. Where the local government conducts a hearing, a staff
8 report must be provided seven days before the public hearing. ORS
9 197.797(4)(b). As a zone verification decision is not a permit decision and the
10 city did not hold a hearing subject to ORS 197.797, the failure to provide a staff
11 report is not an error. In *Buckman Community Assoc. v. City of Portland*, the city
12 did not have local procedures for a zone verification decision, so it applied ORS
13 227.160(2)(b) directly and applied the process for limited land use decisions
14 under ORS 197.175, and we affirmed the city’s decision. 36 Or LUBA 630, 633-
15 34 (1999), *aff’d*, 168 Or App 243, 5 P3d 1203 (2000). Similarly, the city here
16 essentially applied the procedures for limited land use decisions, which do not
17 require a staff report or allow for rebuttal. Therefore, the city did not commit a
18 procedural error.

19 Even if the city had committed a procedural error by preventing petitioner
20 from responding to the materials submitted during the open record period, in
21 order to obtain a remand, a petitioner must establish that the procedural error
22 prejudiced its substantial rights. Procedural rights are the rights to an adequate

1 opportunity to prepare and submit one's case and to a full and fair hearing. *Muller*
2 *v. Polk County*, 16 Or LUBA 771, 775 (1988). Petitioner does not point to any
3 evidence submitted during the open record period that petitioner believes the
4 city's decision relies on. As far as we can tell, none of the materials submitted
5 during the open record period concerned whether the proposed use was a
6 Regional Distribution Center – the city apparently arrived at that conclusion on
7 its own. Petitioner has not established that its substantial rights were prejudiced.

8 The fourth assignment of error is denied.

9 **FIRST ASSIGNMENT OF ERROR**

10 Petitioner argues that the city misconstrued the applicable law by finding
11 that the proposed use is a Regional Distribution Center. UTA 9.1080 contains the
12 process for zone verifications and provides in pertinent part:

13 “Zone verification is used by the city to evaluate whether a proposed
14 building or land use activity would be a permitted use or be subject
15 to land use application approval or special standards applicable to
16 the category of use and the zone of the subject property. * * * As
17 part of the zone verification, the planning and development director
18 shall determine whether uses not specifically identified on the
19 allowed use list for that zone are permitted, permitted subject to an
20 approved conditional use permit or other land use permit, or
21 prohibited, or whether a land use review is required due to the
22 characteristics of the development site or the proposed site. This
23 determination shall be based on the requirements applicable to the
24 zone, applicable standards, and on the operating characteristics of
25 the proposed use, building bulk and size, parking demand, and
26 traffic generation. * * *.”

1 The city analyzed the proposed use by using UTA Table 9.2450, which
2 describes the various uses that are permitted in industrial zones. UTA Table
3 9.2450 includes Wholesale Trade, which is allowed in the I-3 zone, as well as
4 Regional Distribution Center, which is a subcategory of Wholesale Trade, which
5 is not permitted in the I-3 zone.⁶ The city found that the proposed use qualifies
6 as a Regional Distribution Center:

7 “UTA Table 9.2540 provides that Regional Distribution Centers are
8 prohibited in the I-3 Heavy Industrial zone. The Planning and
9 Development Director finds that the use the applicant is proposing
10 qualifies as a Regional Distribution Center and is therefore
11 prohibited on the subject property.

12 “* * * * *

13 “The Planning and Development Director agrees with applicant’s
14 assertion that the proposed use falls within the ‘Wholesale Trade’
15 use category. Where the applicant’s analysis falls short is its failure
16 to take into account the distribution feature of the proposed
17 transloading use. The fuels delivered to the subject property will be
18 loaded into trucks and distributed to retailers in the region, which
19 makes applicant’s proposed use a ‘Regional Distribution Center,’ a
20 subcategory of Wholesale Trade that is prohibited in the I-3 zone
21 and is therefore prohibited on the subject property.

22 “While no definition for ‘Regional Distribution Center’ is included
23 within the definitions at UTA 9.0500, the proposed use, as described
24 by the applicant, is a transloading facility that will accept the bulk

⁶ The UTA contains three Industrial zones, I-1 (Campus Industrial), I-2 (Light Industrial), and I-3 (Heavy Industrial). Wholesale Trade is allowed in the I-2 and I-3 zones, while Regional Distribution Centers are allowed in the I-1 and I-2 zones.

1 deliveries of fuel by train and then load the bulk fuel into trucks for
2 distribution to retailers within a 30-mile radius of the facility. The
3 Planning and Development Director finds that the transfer of bulk
4 goods from one transportation mode to another (i.e. transloading),
5 as well as the distribution of the goods from the subject property to
6 retailers in the region (i.e. approximately 30-mile radius of Eugene)
7 qualifies the proposed use as a Regional Distribution Center; a use
8 that is not permitted within the I-3 zone.” Record 4-6.

9 Initially, petitioner argues that the city erred in not determining whether
10 transloading itself was a permitted use. According to petitioner, transloading is a
11 very common function in railyards, and is a permissible use in the I-3 zone, and
12 because transloading is a permitted use in the I-3 zone the inquiry should end
13 there. We agree with the city that petitioner misconstrues the city’s decision.
14 Petitioner appears to assume that the proposed use consists solely of its
15 transloading function, loading goods from one mode of transportation to another.
16 As the city explains, the proposed use *also* includes a distribution component,
17 distributing fuel to wholesalers or other intermediaries who ultimately distribute
18 fuel to retailers. It seems reasonably clear from the city’s decision that the
19 transloading use by itself would not be considered a Regional Distribution
20 Center, but that it is the subsequent distribution of the fuels that, in the city’s
21 view, makes the proposed use a Regional Distribution Center. Thus, the question
22 is not whether transloading by itself is a permitted use, a question the city did not
23 answer, but rather whether the entire proposed use is a Regional Distribution
24 Center, as the city found. If the city is correct that the proposed use is properly
25 included in the use category Regional Distribution Center, then it was not error

1 to fail to consider whether the use is properly viewed as an uncategorized
2 transloading facility use. We proceed to petitioner's challenges to the city's
3 conclusion that the proposed use fits within the use category of Regional
4 Distribution Center.

5 The UTA does not define Regional Distribution Center. The city relied
6 upon the distribution aspect of the proposed use to determine that it constituted a
7 Regional Distribution Center. "The proper construction of a municipal ordinance
8 is a question of law, which we resolve using the same rules of construction that
9 we use to interpret statutes." *City of Eugene v. Comcast of Oregon II, Inc.*, 359
10 Or 528, 540, 375 P3d 446 (2016). Therefore, "we look primarily to the
11 ordinance's text, context, and legislative history, although we may look also to
12 general rules of statutory construction as helpful." *Id.* at 540-41 (internal
13 quotation marks and brackets omitted; citing *Alfieri v. Solomon*, 358 Or 383, 392,
14 365 P3d 99 (2015)). In construing a statute or ordinance, our "paramount goal"
15 is to discern the legislative body's intent. *State v. Gaines*, 346 Or 160, 171, 206
16 P3d 1042 (2009). Where a local ordinance does not define a particular term, we
17 will generally look to dictionary definitions to determine the ordinary meaning
18 of the undefined terms. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78
19 Or LUBA 418, 421, *aff'd*, 296 Or App 224, 436 P3d 797 (2019).

20 The city's decision conducted its interpretative task by focusing on
21 dictionary definitions of the three terms in the phrase "regional distribution
22 center." The pertinent definition of "regional" is "of or relating esp. to a

1 geographical region.” *Webster’s Third New Int’l Dictionary* 1912 (unabridged ed
2 2002). The pertinent definition of “distribution” is “the act or process of
3 distributing” and “delivery or conveyance (as of newspapers or goods) to the
4 members of a group.” *Webster’s* at 660. The pertinent definition of “center” is “a
5 point around which things revolve; *often*: focal point for concentration, attraction
6 or activity.” *Webster’s* at 362. According to the city, the proposed use would: (1)
7 deliver fuels within a thirty-mile distance from Eugene and thus is regional in
8 scope; (2) deliver fuels to retailers in the region and thus includes a distribution
9 function; and (3) centers around the proposed facility, where fuels are transferred
10 and individual trucks fan out to deliver fuel to local retailers.

11 Petitioner does not specifically challenge the city’s argument that the
12 proposed use meets the definitions of the constituent parts of a Regional
13 Distribution Center. Instead, petitioner argues that the terms must be considered
14 in total and thus considered essentially a term of art that means something
15 different in the industry than its constituent terms might mean standing alone.
16 Unless the disputed term is a term of art, its ordinary meaning is presumed to be
17 what is reflected in a dictionary. “When the term has acquired a specialized
18 meaning in a particular industry or profession, however, we assume that the
19 legislature used the term consistently with that specialized meaning.”
20 *Zimmerman v. Allstate Property and Casualty Ins.*, 354 Or 271, 280, 311 P3d
21 497 (2014); *see, e.g., 1000 Friends of Oregon v. Columbia County*, LUBA No
22 2022-039 (Oct 27, 2022) (slip op at 19-22) (taking judicial notice of ODOT

1 publications for determining the meaning of “branch line” as a term of art).
2 Petitioner cites an Oregon Tax Court case, *Linn County v. Dept. of Rev.*, 14 Or
3 Tax 257 (1998), that involved a Target regional distribution center. In *Linn*
4 *County*, the Tax Court described the Target regional distribution center as an
5 enormous building of approximately 616,000 square feet that was located on a
6 105-acre site. *Id.* at 259. Petitioner cites another definition of “distribution” as
7 “to divide among several or many: deal out; apportion esp. to members of a group
8 or over a period of time;” to “give out or deliver esp. to the members of a group;”
9 and to “market a (commodity) under a franchise in a particular area esp. at
10 wholesale.” *Webster’s* at 680. According to petitioner, *Linn County* stands for the
11 proposition that a Regional Distribution Center must be a very large facility on a
12 large property that divides, sorts, and ships out products to members of a group.
13 Petitioner also argues that context from other parts of the UTA and Envision
14 Eugene Comprehensive Plan demonstrate that a Regional Distribution Center
15 must be more like the Target regional distribution center in *Linn County* than the
16 proposed facility. According to petitioner, the context provided by the purpose
17 statements for the three industrial zones indicate that a Regional Distribution
18 Center is more like a large, vertically-integrated Target regional distribution
19 center than the proposed use, which functions more like a small-scale wholesale
20 trade business that distributes goods to retailers in the region.

21 We agree with petitioner that, as used in the UTA, the phrase “Regional
22 Distribution Center” may well have a distinct and narrower meaning separate

1 from the simple sum of the individual definitions of “regional,” distribution,” and
2 “center.” The city’s dictionary-based view of the constituent terms of Regional
3 Distribution Center threatens to sweep up activities that arguably fall within the
4 broader parent category of Wholesale Trade. The challenged decision seems to
5 conclude that the Wholesale Trade category does not include any distribution
6 component, but does not explain that conclusion. The use category “Wholesale
7 Trade” is not defined in the UTA or the decision, but as petitioner argues, that
8 use category under any definition would almost certainly encompass the
9 wholesale distribution of goods to retailers and intermediate wholesalers. Other
10 than the unexplained conclusion that Wholesale Trade does not involve any
11 distribution at all, the city’s decision does not delimit the use category of
12 Wholesale Trade, explain what that use encompasses, explain the differences
13 between Wholesale Trade and Regional Distribution Centers, or explain why the
14 proposed facility fits within the presumably narrower sub-category of Regional
15 Distribution Center, rather than the broader parent category of Wholesale Trade.

16 While a Regional Distribution Center need not necessarily be the same as
17 the Target regional distribution center as petitioner argues, we agree with
18 petitioner that, viewed in context with the parent category Wholesale Trade, the
19 use category Regional Distribution Center represents a specialized term of art
20 that may well constitute something different, and more limited, than the sum of
21 its constituent words.

1 Petitioner also argues that the city did not address the additional
2 considerations of UTA 9.1080 that require “[a]s part of the zone verification, the
3 planning and development director shall determine whether uses not specifically
4 identified on the allowed use list for that zone are permitted * * *. This
5 determination shall be based on the requirements applicable to the zone,
6 applicable standards, and on the operating characteristics of the proposed use,
7 building bulk and size, parking demand, and traffic generation.” According to
8 petitioner, as the proposed transloading use is not specifically identified on the
9 allowed use list, the city was required to address the additional considerations.⁷

10 UTA 9.1080 operates where an uncategorized use is proposed for
11 verification. In the present case, petitioner argued that the proposed transloading
12 use is uncategorized or, alternatively, fits best in the Wholesale Trade parent
13 category. The city concluded that the proposed use fits within the Regional
14 Distribution Center sub-category, and therefore did not address the
15 considerations at UTA 9.1080. The city is not required to address the
16 considerations at UTA 9.1080 where it is clear that the proposed use is a
17 categorized use. However, we agree with petitioner that the considerations at
18 UTA 9.1080 might be useful, at least, in deciding which of two or more use
19 categories a proposed use best fits within. Here, remand is necessary for the city
20 to better explain its conclusion that the proposed use falls within the Regional

⁷ Petitioner expands on this argument in the second assignment of error.

1 Distribution Center sub-category rather than the parent Wholesale Trade
2 category. In conducting that evaluation, the city should employ the
3 considerations at UTA 9.1080.

4 Petitioner also argues that the city erred in failing to consider context
5 provided by an Employment Land Study adopted as part of the Envision Eugene
6 Comprehensive Plan, which notes that “[r]egional distribution centers require
7 sites of 200 acres.” Envision Eugene Comprehensive Plan, Appendix B, 123. The
8 city’s decision explains:

9 “In certain cases, other adopted land use plans can be used to provide
10 context for an undefined term in the land use code. However, in this
11 case, Eugene’s adopted Employment Land Study does not provide
12 the context that [petitioner] alleges. The 2017 Employment Land
13 Supply Study referenced by [petitioner] was adopted by the Lane
14 County Board of Commissioners * * * thirty years after the
15 County’s adoption of the UTA Code * * * [and] does not amend the
16 UTA Code[.] * * * The Employment Land Supply Study is a
17 document used to determine whether Eugene’s UGB contains
18 enough land for employment and industrial uses. The study does not
19 regulate or define uses allowed on lands within the UGB.

20 “As noted above, the study does not amend the UTA Code or define
21 the term ‘regional distribution center.’ Instead, under the heading
22 ‘Site Needs of Businesses that May Consider Locating in Oregon or
23 the Eugene-Springfield Region’ the study identifies, based on
24 information from Business Oregon, characteristics that would make
25 a site competitive for businesses considering locating or expanding
26 in Oregon – in other words, the study identifies the characteristics
27 of sites that might be attractive to certain uses. The study does not
28 define or identify the characteristics of the uses themselves.” Record
29 6.

1 As the decision notes, the purpose of the Employment Study is to
2 determine whether there is enough land inside the city's UGB to support
3 economic growth over a 20-year planning period. The Employment Study
4 discusses characteristics that might make certain sites more competitive for
5 businesses that are considering locating or expanding in Oregon. The
6 Employment Study identifies the characteristics that might be attractive to certain
7 users, but the Employment Study does not identify the characteristics of the uses
8 themselves. While large sites, such as the 200-acre sites mentioned in the
9 Employment Study, might well be attractive to certain types of businesses for
10 regional distribution centers, that does not necessarily mean that all regional
11 distribution centers must also be that large or that they are prohibited from being
12 the size of the proposed use.

13 We agree with the city that the Employment Study does not provide a
14 definition or defining characteristic of the use category Regional Distribution
15 Center. We also agree with the city that the proper interpretive "inquiry focuses
16 on what the legislature intended at the time of enactment and discounts later
17 events." *Holcomb v. Sunderland*, 321 Or 99, 105, 894 P2d 457 (1995). That said,
18 we and the city may refer to later-adopted documents "for the purposes of
19 demonstrating consistency (or inconsistency) in word usage as indirect evidence
20 of what the enacting legislature most likely intended." *Halperin v. Pitts*, 352 Or
21 482, 490, 287 P3d 1069 (2012). In that sense, the Employmnet Study may have
22 some utility in defining Regional Distribution Center as a term of art. On remand,

1 the city should consider the Employment Study for whatever weight or worth it
2 might have.

3 Finally, petitioner moves to take judicial notice of purported legislative
4 history of a city ordinance that arguably has a bearing on the city council's
5 understanding of the meaning of Regional Distribution Center. The motion seeks
6 to have LUBA consider a staff report, city council minutes, and the ordinance
7 itself, all of which petitioner argues supports its interpretation of Regional
8 Distribution Center. According to petitioner, the city council minutes establish
9 that there is a regional headquarters aspect to a regional distribution center, and
10 the ordinance demonstrates that the I-1 Campus Industrial Zone, which allows
11 Regional Distribution Centers, is intended to have large-scale industrial uses in
12 campus-like settings.

13 LUBA's ability to consider local legislative history outside the record is
14 limited. *See Byrnes v. City of Hillsboro*, 104 Or App 95, 98, 798 P2d 1119 (1990),
15 ("[N]othing in the [Oregon Evidence] Code allows judicial notice to be taken of
16 local legislative history."); *Martin v. City of Central Point*, 73 Or LUBA 422,
17 426 (2016); *19th Street Project v. City of the Dalles*, 20 Or LUBA 440, 447
18 (1991). The parties dispute whether it is appropriate for LUBA to consider the
19 proffered legislative history in the course of reviewing the city's zoning
20 verification decision. As explained above, remand is necessary for the city to
21 provide a more adequate interpretation of the relevant code provisions.
22 Accordingly, we need not resolve the parties' dispute regarding whether it is

1 appropriate for LUBA to consider the context provided by the proffered
2 legislative history. On remand, the city may consider contextual arguments based
3 on the cited legislative history, to the extent that history has some bearing on the
4 remand issues.

5 In conclusion, we agree with petitioner that the city misconstrued the
6 applicable law by only analyzing the individual terms “regional,” “distribution,”
7 and “center” rather than considering the extent to which Regional Distribution
8 Center functions as a term of art. The city concludes that “distribution”
9 distinguishes Regional Distribution Center from the parent category Wholesale
10 Trade, without explaining the basis for its apparent presumption that Wholesale
11 Trade does not involve “distribution.” Petitioner urges us to make our own
12 determination of whether the proposed use best fits within the Regional
13 Distribution Center subcategory, the Wholesale Trade category, or an
14 uncategorized use. While we agree that the city’s analytical approach
15 misconstrued the law and resulted in the adoption of inadequate findings and
16 interpretations, we do not exercise our discretion to interpret the relevant UTA
17 provisions, in context with other relevant code and plan provisions. The better
18 course is to remand to the city to determine the appropriate use category under a
19 corrected analytical approach, based on full evaluation of the applicable text and
20 relevant context

21 The first assignment of error is sustained.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioner argues that the city adopted inadequate findings, citing cases that
3 involve findings supporting so-called “permit” decisions as defined at ORS
4 215.402(4) and ORS 227.173(3). Initially, we note that a zone verification
5 decision is not a “permit” decision subject to the findings requirement for permit
6 decision under ORS 227.173(3). Instead, the City’s decision must demonstrate
7 that the applicable criteria were applied and that the required considerations were
8 considered. *Kerns Neighbors for Rational Growth v. City of Portland*, 67 Or
9 LUBA 130, 137 (2013) (citing *Citizens Against Irresponsible Growth v. Metro*,
10 179 Or App 12, 16 n 6, 38 P3d 956 (2002)). Thus, the premise underlying the
11 second assignment of error, that the city was obligated to adopt findings and those
12 findings must have the same qualities as findings supporting a “permit” decision,
13 is a flawed premise.

14 On the merits, petitioner largely repeats arguments under the first
15 assignment of error. We see no purpose in re-addressing those arguments under
16 this second assignment of error, with respect to the adequacy of findings.
17 Petitioner’s arguments under this assignment of error add no new or additional
18 basis for reversal or remand. Accordingly, the second assignment of error is
19 denied.

20 **THIRD ASSIGNMENT OF ERROR**

21 Petitioner argues that the city’s decision is not supported by substantial
22 evidence for a number of reasons. As we have already concluded that the city

1 misconstrued the applicable law and the findings are inadequate, the city will
2 need to adopt another decision on remand. Therefore, we do not address
3 petitioner's substantial evidence arguments in this decision.

4 We do not reach the third assignment of error.

5 The city's decision is remanded.