

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

LANE COUNTY PUBLIC WORKS,  
*Petitioner,*

vs.

LANE COUNTY,  
*Respondent,*

LANE COUNTY GARBAGE AND RECYCLING ASSOCIATION,  
SANIPAC, INC., CAMERON SAXON, SYLVIA RONNING, and  
STEVEN K. STEWART REVOCABLE TRUST,  
*Intervenors-Respondents.*

LUBA No. 2025-036

FINAL OPINION  
AND ORDER

Appeal from Lane County.

Joshua P. Soper filed the petition for review and reply brief and argued on behalf of petitioner. Also on the briefs was Jodi M. Gollehon and Beery, Elsner & Hammond, LLP.

No appearance by Lane County.

Wendie L. Kellington filed an intervenor-respondent's brief and argued on behalf of intervenor-respondent Lane County Garbage and Recycling Association. Also on the brief was Kellington Law Group, PC.

E. Michael Connors filed an intervenor-respondent's brief and argued on behalf of intervenor-respondent Sanipac, Inc. Also on the brief was Hathaway Larson LLP.

1           Andrew H. Stamp filed an intervenor-respondent's brief on behalf of  
2 intervenors-respondents Cameron Saxon, Sylvia Ronning, and Steven K. Stewart  
3 Revocable Trust. Also on the brief was VF Law.  
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5           ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the  
6 decision.  
7

8           WILSON, Board Member, did not participate in the decision.  
9

10           AFFIRMED

12/22/2025

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

**NATURE OF THE DECISION**

Petitioner appeals a hearings official's decision denying petitioner's application for approval to develop a resource recovery facility in the Goshen Light Industrial (LI) zone.

**FACTS**

The subject property is an approximately 26-acre parcel owned by the county and located north of W. Peebles Road, between Highway 99 to the west and Interstate 5 to the east. The subject property and abutting properties to the south, west, and northeast are zoned LI. Properties to the northwest are zoned Rural Residential.

Petitioner applied for a special use permit and site design review to develop a resource recovery facility that would receive municipal solid waste and comingled recycling, and then separate recyclable from non-recyclable waste and organic waste from inorganic waste.<sup>1</sup> Inorganic non-recyclable waste would be transported to a landfill for disposal. Recyclable materials would be sorted and sold. Organic waste would be diverted to anaerobic digestion processes to

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<sup>1</sup> The county previously approved a zone change for the subject property to an industrial zone that, petitioner believed, explicitly allowed the proposed resource recovery facility. That approval was appealed in *Steven K. Stewart Revocable Trust v. Lane County*, LUBA Nos 2024-070/071 (Nov 21, 2024). Petitioner subsequently withdrew the zone change application and the appeal was voluntarily dismissed. *Id.*

1 generate natural gas. Solid effluent from the anaerobic digestion process would  
2 be transported to the landfill. The proposed development would include a  
3 processing building, a composting building, an education center, storage tanks,  
4 employee and visitor parking, and stormwater treatment facilities.

5 The planning director approved the application with conditions.  
6 Opponents appealed. The hearings official concluded that the proposed facility  
7 constitutes a waste-related use that is prohibited in the LI zone and denied the  
8 application. This appeal followed.

## 9 **ASSIGNMENTS OF ERROR**

10 Petitioner presents its arguments under three assignments of error and  
11 multiple subassignments of error. Petitioner argues that the hearings official  
12 erroneously concluded that the proposal is not allowed as a government facility,  
13 an industrial service use, or a similar use to an industrial service use. The central  
14 and dispositive issue in this appeal is whether the hearings official erred in  
15 determining that the proposed development is a prohibited waste-related use. We  
16 address that central issue and, as relevant to that issue, the assignments of error  
17 collectively, and affirm the denial.

### 18 **A. Waste-Related**

19 The challenged decision provides a comprehensive explanation of the  
20 relevant code provisions and the hearings official's reasoning. We describe the  
21 decision as context for our resolution of petitioner's assignments of error. In the  
22 challenged decision, the hearings official first set out the parties' competing



1 arguments. The hearings official then identified that the primary issue before  
2 them was “whether the proposed facility is a permitted use in the LI zone.”  
3 Record 13. Lane County Code (LC) 16.280 governs the LI zone. At the outset of  
4 the analysis, the hearings official observed that, for purposes of the LI zone,

5 “[u]ses are assigned to the category whose description most closely  
6 describes the nature of the primary use. The characteristics  
7 subsection of each use category describes the characteristics of each  
8 use category. Developments may have more than one primary use.  
9 Developments may also have one or more accessory uses.” LC  
10 16.280(3)(a); *see also* Record 13 (quoting LC 16.280(3)(a)).

11 The hearings official concluded that the proposed facility is properly categorized  
12 as a waste-related use, a use category that is expressly prohibited in the LI zone.

13 LC 16.280, Table 8-1. LC 16.280(4)(d) defines the “waste-related” use category  
14 as follows:

15 “(i) ‘Waste-Related’ refers to uses that receive solid or liquid  
16 wastes from others for disposal on the site or for transfer to  
17 another location, uses that collect sanitary wastes, or uses that  
18 manufacture or produce goods or energy from the biological  
19 decomposition of organic material. Waste-Related uses also  
20 include uses that receive hazardous wastes from others and  
21 are subject to the regulations of OAR 340-100-110,  
22 Hazardous Waste Management.

23 “(ii) Accessory uses may include but are not limited to recycling  
24 of materials, offices, and repackaging and transshipment of  
25 by-products.

26 “(iii) Examples include sanitary landfills, limited use landfills,  
27 waste composting, energy recovery plants, sewer treatment  
28 plants, portable sanitary collection equipment storage and  
29 pumping, and hazardous-waste-collection sites.

1           “(iv) Exceptions

2                   “(aa) Disposal of clean fill, as defined in OAR 340-093-  
3                   0030, is considered a fill, not a Waste-Related use.

4                   “(bb) Sewer pipes that serve a development are considered a  
5                   basic utility.

6                   “(cc) Recycling operations are not considered a Waste  
7                   related use. They are classified as an Industrial Service  
8                   use.”

9           The hearings official concluded that the use is waste-related because most  
10   of the waste delivered to the site would be transferred to the landfill for disposal  
11   (a waste-related use) or composted to produce natural gas (a waste-related use).  
12   The hearings official acknowledged that LC 16.280(3)(c) accounts for that  
13   possibility that a development may have multiple primary and accessory uses.<sup>2</sup>  
14   “When a use’s category is not clearly identifiable, the Director, through an  
15   administrative action, determines the applicable use category” considering  
16   enumerated factors. LC 16.280(3)(b). The hearings official concluded that the

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<sup>2</sup> LC 16.280(3)(c) provides:

“Developments with multiple primary uses. When all of the primary uses of a development fall within one use category, then the development is assigned to that use category. For example, a development that contains a Research and Development facility and a manufacturing and production facility, the uses would be classified in the Industrial category because all the primary uses are in that category. When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the regulations for that category.”

1 proposed use is clearly identifiable as a waste-related use. The hearings official  
2 rejected petitioner's argument that the proposed use can be approved as a  
3 government facility, industrial service use, or similar to an industrial service use.

4 **B. The decision does not provide alternative bases for denial.**

5 Intervenor-respondent Lane County Garbage and Recycling Association  
6 (GRA) asserts that the county provided four bases for denial: (1) the proposed  
7 use is waste-related, (2) the proposed use is not an industrial service use, (3) the  
8 proposed use is not a government facility, and (4) the proposed use is not similar  
9 to other permitted uses. GRA argues that "to prevail, petitioner must successfully  
10 challenge each of the bases for denial." GRA Intervenor-Respondent's Brief 9,  
11 18.

12 We will sustain a denial decision on appeal if we conclude that the local  
13 government adopted one valid basis for denial. *Wal-Mart Stores, Inc. v. Hood*  
14 *River County*, 47 Or LUBA 256, 266, *aff'd*, 195 Or App 762, 100 P3d 218 (2004),  
15 *rev den*, 338 Or 17 (2005); *Horizon Construction, Inc. v. City of Newberg*, 28 Or  
16 LUBA 632, 635 (1995). We will affirm a denial when a petitioner fails to  
17 challenge all alternative bases for denial. *Lee v. City of Oregon City*, 34 Or LUBA  
18 691, 694-95 (1998).

19 We do not agree with GRA that there are four independent, alternative  
20 bases for denial. Petitioner's essential argument is that the county erred in  
21 denying its application because the county miscategorized the proposed use. We  
22 agree with intervenors that the hearings official correctly categorized the



1 proposed use as a waste-related use based on the transfer of solid waste to the  
2 landfill and the production of energy from the biological decomposition of  
3 organic material, both activities that are expressly categorized as waste-related.  
4 LC 16.280(4)(d)(i). Petitioner does not directly challenge the hearings official's  
5 conclusion that the proposed use is primarily waste-related. Instead, petitioner  
6 argues that the use can and should be categorized as a government facility,  
7 industrial service use, or similar to an industrial use. We would remand the  
8 decision if we agreed with petitioner that the hearings official was required to  
9 find that the proposed use is in a category of use that is allowed in the LI zone.  
10 The hearings officials findings were not true alternative bases for denial. Instead,  
11 the additional findings support the hearings official's primary finding that the use  
12 is a waste-related use that is prohibited in the LI zone. Thus, it is appropriate that  
13 we resolve petitioner's arguments that the county miscategorized the proposed  
14 use, which requires us to consider all the assignments of error.

### 15 **C. Government Facility**

16 The hearings official rejected petitioner's argument that the proposed use,  
17 even if waste-related, is allowed as a "[g]overnment facilit[y] where the public is  
18 generally not received. (*e.g.*, public safety, utilities, school district bus facilities,  
19 public works yards, transit and transportation, and similar facilities)." LC 16.280,  
20 Table 8-1. The code does not define "government facility." The hearings official  
21 reasoned that the proposed waste-related uses are not included in the list of  
22 examples of government facilities and are not similar to the listed facilities. The



1 hearings official rejected petitioner's argument that "government facilities" is a  
2 catch-all use category that allows any use that the government owns, operates, or  
3 is involved in. The hearings official also concluded that, because the facility is  
4 designed and intended to accommodate visits by the public, it is not a facility  
5 where "the public is generally not received." LC 16.280, Table 8-1.

6 On appeal, petitioner reprises its argument that an otherwise prohibited  
7 waste-related use can be approved as a government facility. We understand  
8 petitioner to assert that the hearings official misconstrued the code and adopted  
9 inadequate findings on this issue. Petitioner argues that the list in LC 16.280,  
10 Table 8-1 of example government facilities is not exclusive and, while the  
11 hearings official disagreed with petitioner that its proposed use is similar to the  
12 listed examples, the decision does not set out the common characteristics of the  
13 listed examples and explain why the proposed use is not similar.

14 Intervenors-respondents (intervenors) respond, and we agree, that the  
15 hearings official reasoned that the more general government facility use could  
16 not be used to shoe-horn in an otherwise prohibited waste-related use that was  
17 not specifically listed in the government facility examples, and for which  
18 petitioner did not establish common characteristics with the listed examples. The  
19 findings are adequate and do not misconstrue the code.<sup>3</sup>

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<sup>3</sup> We affirm the hearings official's conclusion that the proposed waste-related use is not allowable as a government facility because it is not the type of facility listed in LC 16.280, Table 8-1. Therefore, we need not and do not resolve

1           **D.     Industrial Service Use**

2           The hearings official rejected petitioner's argument that the proposed use  
3   is an industrial service use as defined in LC 16.280(4)(a).<sup>4</sup> The hearings official  
4   reasoned that the waste-related use defined in LC 16.280(4)(d) specifically lists

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petitioner's argument that the hearings official misconstrued the code and adopted inadequate findings in concluding that the proposed visitor and education center portion of the use precludes a finding that the use is a government facility "where the public is generally not received." LC 16.280, Table 8-1.

<sup>4</sup> LC 16.280(4)(a) provides:

"(i) 'Industrial Service' refers to the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

"(ii) Accessory uses may include but are not limited to offices, parking, storage, rail spur or lead lines, and docks.

"(iii) Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; storage, salvage or wrecking of heavy machinery, metal, and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire re-treading or recapping; truck stops; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories; technology development and support centers; industrial laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories."

1 the proposed activities of composting, energy recovery, and transfer of waste,  
2 and prohibits those uses in the LI zone. Therefore, those uses are not allowed  
3 under the more general industrial service use category.

4 “Recycling of materials” is listed as an accessory use in the waste-related  
5 use category. LC 16.280(4)(d)(ii). Differently, “recycling operations” are  
6 allowed as an industrial service use and specifically exempted from the waste-  
7 related use category. LC 16.280(4)(a)(iii); LC 16.280(4)(d)(iv)(cc). The hearings  
8 official rejected petitioner’s assertion that the proposed use should be approved  
9 as recycling operations and reasoned that

10 “the term ‘recycling operations’ is intended to apply to operations  
11 that exclusively perform recycling activities, that accept only  
12 recyclable material, whereas ‘recycling of materials’ is intended to  
13 apply to waste-related uses that are able to extract some recyclable  
14 material from the solid waste they receive. This consistent with the  
15 LC 16.090(64), which includes ‘material recovery and recycling  
16 from solid wastes,’ along with ‘energy recovery facilities’ and  
17 ‘composting plants’ as uses occurring at a ‘disposal site.’ This is  
18 also consistent with the other types of ‘recycling’ uses listed as  
19 permitted industrial service uses in LC 16.280(4)(a)(iii)—‘[s]alvage  
20 or wrecking of heavy machinery, metal, and building materials; and  
21 auto and truck salvage and wrecking \* \* \*’—all of which involve  
22 acceptance and recycling of specific types of materials (metals,  
23 building materials, vehicles, and machinery), as opposed to the  
24 extraction of useable material from [municipal solid waste].”  
25 Record 15-16 (footnote omitted, first brackets in original).

26 Petitioner argues that the hearings official misconstrued the code in  
27 determining that the activities on the site constitute “recycling of materials”  
28 rather than “recycling operations.” For the reasons explained in the decision and



1 quoted above, we conclude that the hearings official correctly determined that the  
2 recycling activities are “recycling of materials” accessory to the primary waste-  
3 related uses and not “recycling operations” that are excluded from prohibited  
4 waste-related uses.

5 The hearings official also reasoned that the design and proposed operation  
6 of the use conflict with the portion of the “Industrial Facility” definition in LC  
7 16.280(4)(a)(i) which provides that “[f]ew customers, especially the general  
8 public, come to the site.” Petitioner proposed to operate a visitor and education  
9 center in a portion of a building to provide educational tours to the public and  
10 potential customers. The proposal includes dedicated parking spaces for visitor  
11 cars and buses. Petitioner proposed to cap tour-related vehicle trips to one percent  
12 of the total vehicle trips to the site. However, the hearings official reasoned that

13 “limiting the number of visitor vehicle trips may not substantially  
14 limit the number of persons visiting the site[,] as the two buses  
15 proposed to be accommodated on the site could carry a significant  
16 number of individual visitors, constituting a significant proportion  
17 of the total number of persons on the site.” Record 20.

18 The hearings official’s findings that the proposed public visit portion of the use  
19 is not “few” for purposes of LC 16.280(4)(a)(i), correctly construes the code and  
20 is supported by adequate findings and substantial evidence.

#### 21 **E. Similar Use**

22 The hearings official concluded that, because the proposed facility is  
23 clearly identifiable as a waste-related use, there is no need for the director to

1 determine the applicable use category under the factors listed in LC 16.280(3)(b)  
2 or whether the facility is a similar use to those uses allowed in the zone. LC  
3 16.280(8)(b). Alternatively, the hearings official found that the facility is most  
4 similar to a waste-related use.

5         Petitioner argues that the hearings official misconstrued the “similar use”  
6 process in LC 16.280(8) and failed to apply the LC 16.280(3)(b) criteria for  
7 determining whether a component of a use is a primary or accessory use.  
8 Intervenors respond, and we agree, that the hearings official correctly concluded  
9 that, because the use is clearly identifiable as waste-related, the county did not  
10 need to make a similar use determination under LC 16.280(3) or (8).

11         The assignments of error are denied.

12         The county’s decision is affirmed.