

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STOP THE DUMP COALITION,  
Willamette Valley Wineries Association,  
Ramsey McPhillips, and  
Friends of Yamhill County,

*Respondents*  
*Cross-Petitioners,*

*v.*

YAMHILL COUNTY,  
*Respondent below,*  
*and*

RIVERBEND LANDFILL CO.,  
*Petitioner*  
*Cross-Respondent.*

Land Use Board of Appeals  
2016026; A171246

Argued and submitted August 1, 2019.

Tommy A. Brooks argued the cause for petitioner-cross-respondent. Also on the briefs was Cable Huston LLP.

Jeffrey L. Kleinman argued the cause for respondents-cross-petitioners. Also on the joint brief was William F. Paulus.

Before Lagesen, Presiding Judge, and DeVore, Judge, and Powers, Judge.

PER CURIAM

Affirmed on petition and cross-petition.

## PER CURIAM

This is the latest stage of a long-running dispute about petitioner Riverbend Landfill Co.'s efforts to expand its solid waste landfill in Yamhill County. The Supreme Court recently recounted the history of the case in *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 435 P3d 698 (2019). The current matter arises on a petition and a cross-petition for judicial review of a final order of the Land Use Board of Appeals (LUBA) issued following the Supreme Court's remand in *Stop the Dump Coalition*. We affirm.

We easily dispose of the cross-petition because the parties, ultimately, agree that the issue raised in it is not something in dispute. That is, the parties agree that LUBA's order did not eliminate the county's obligation to evaluate the cumulative impacts on the Frease farm on remand.

The petition raises a single issue: whether LUBA "failed to properly understand and apply its substantial evidence review obligation under ORS 197.835(9)(a)(C)" when it rejected the county's determination that landfill litter would not cause a significant change in accepted farm practices on the McPhillips property under ORS 215.296. In particular, petitioner contends that LUBA improperly ignored factual findings by the county regarding the volume of litter escaping the landfill that, in petitioner's view, would support the conclusion that any change to accepted farm practices resulting in the landfill expansion necessarily would be minimal. Respondents counter that petitioner's argument ignores the procedural posture of the case. Respondents point out that LUBA's task on remand from the Supreme Court was narrow: to "reconsider whether the county correctly determined that the change in accepted farm practices was not substantial before it remands to the county," in view of that court's determination that one of the mitigating conditions imposed by the county was itself a change in "accepted farm practices on the McPhillips farm." *Stop the Dump Coalition*, 364 Or at 462. In their view, LUBA correctly identified the question before it on remand and correctly applied the substantial evidence standard in rejecting the county's insubstantiality finding.

Our task in reviewing LUBA's application of the substantial evidence standard is to determine whether LUBA correctly understood its role on substantial evidence review. *Root v. Klamath County*, 260 Or App 665, 670, 320 P3d 631 (2014). If LUBA correctly articulates its standard of review, we cannot reverse LUBA's decision unless there is no evidence to support a finding that it has upheld or unless the evidence in the case is "so at odds with LUBA's evaluation" that it is inferable that LUBA misunderstood or misapplied its scope of review. *Younger v. City of Portland*, 305 Or 346, 359, 752 P2d 262 (1988). Having considered LUBA's order within the context of its procedural history and the record, we are unable to say that LUBA's determination of the question before it on remand is "so at odds" with the evidence in the case that LUBA misunderstood its scope of review.

Affirmed on petition and cross-petition.