

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

3  
4                                   MOLLIE KING, JAMES KING,  
5                                   MARSHALL CHRISTENSEN,  
6                                   JOYCE CHRISTENSEN,  
7                                   and BETH WILLHITE,  
8                                   *Petitioners,*

9  
10                                   vs.

11  
12                                   CLACKAMAS COUNTY,  
13                                   *Respondent,*

14  
15                                   and

16  
17                                   POWERHOUSE RE GEN LLC,  
18                                   BULL RUN SCHOOLHOUSE LLC,  
19                                   TRACKERS EARTH INC.,  
20                                   BULL RUN EDUCATION CENTER LLC,  
21                                   and RESTORE OREGON,  
22                                   *Intervenors-Respondents.*

23  
24                                   LUBA No. 2015-022

25  
26                                   FINAL OPINION  
27                                   AND ORDER

28  
29                                   Appeal from Clackamas County.

30  
31                                   Mollie King, James King, Marshall Christensen, Joyce Christensen, and  
32                                   Beth Willhite, Sandy, filed the petition for review. Mollie King and Beth  
33                                   Willhite argued on their own behalf.

34  
35                                   No appearance by Clackamas County.

36  
37                                   Carrie A. Richter, Portland, filed a response brief on behalf of  
38                                   intervenor-respondent Restore Oregon. With her on the brief was Garvey  
39                                   Schubert Barer PC. William K. Kabeiseman, Portland, argued on behalf of

1 intervenor-respondent Restore Oregon.  
2

3 Seth J. King, Portland, filed a joint response brief and argued on behalf  
4 of intervenors-respondents Powerhouse Re Gen LLC and Bull Run  
5 Schoolhouse LLC. With him on the brief were Steven L. Pfeiffer and Perkins  
6 Coie LLP.  
7

8 Christe C. White, Portland, filed a joint response brief on behalf of  
9 intervenors-respondents Trackers Earth Inc. and Bull Run Education Center  
10 LLC. With her on the brief was Radler White Parks & Alexander LLP.  
11

12 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN Board  
13 Member, participated in the decision.  
14

15 AFFIRMED 09/21/2015  
16

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

**NATURE OF THE DECISION**

Petitioners appeal a county board of commissioners’ decision that adopts a reasons exception, comprehensive plan and zoning map amendments, and a conditional use permit, to allow use of historic buildings at the site of a former electrical generating facility, school and day-use area.

**MOTION TO FILE REPLY BRIEF**

Petitioners move to file a reply brief to address alleged “misstatement of the facts and erroneous allegations” in the response briefs. Reply Brief 1. OAR 661-010-0039 limits the content of a reply brief to “new matters” raised in the response brief. Intervenor-respondent Restore Oregon opposes the reply brief, arguing that petitioners do not identify any “new matters” raised in the response briefs. We agree with Restore Oregon. The reply brief simply disputes the merits of arguments made in the two response briefs, but does not identify or limit itself to any “new matters” within the meaning of OAR 661-010-0039. The reply brief is not allowed.

**MOTION TO STRIKE**

Intervenors-respondents Powerhouse Re Gen LLC and Bull Run Schoolhouse LLC (intervenors) move to strike footnote 10 in the petition for review, arguing that the footnote includes factual assertions not found in the record, specifically application of a formula taken from a “Transportation Energy Data Book” that is not in the record.

That text in a petition for review is not supported by evidence in the record is not a basis for striking that text. *Hammack & Associates, Inc. v. Washington County*, 16 Or LUBA 75, 78, *aff’d* 89 Or App 40, 747 P2d 373 (1987). However, LUBA will disregard allegations of fact that are not

1 supported by the evidentiary record. *Id.* We agree with intervenors that the  
2 formula and calculations therefrom are outside the record and may not be  
3 considered for their evidentiary value in this appeal. ORS 197.835(2) (with  
4 exceptions not applicable here, LUBA’s review is limited to the local  
5 evidentiary record).

6 **FACTS**

7 The subject property includes the sites of (1) the former Portland General  
8 Electric (PGE) Bull Run Powerhouse, (2) the former PGE day-use park  
9 adjacent to the now-drained Roslyn Lake, and (3) the former Bull Run  
10 Elementary School, located on a tract of three parcels that total 158 acres. Tax  
11 lot 102 is approximately 110 acres, and includes the powerhouse site and the  
12 park site. Tax lot 600 is five acres and includes the school site. Tax lot 103 is  
13 43 acres and is vacant. All three parcels are designated Forest on the county  
14 comprehensive plan and zoned Timber (TBR). That plan designation and zone  
15 implement Statewide Planning Goal 4 (Forest Lands).

16 The school and powerhouse were designated as county historic  
17 landmarks in 1994 and 1995, respectively, pursuant to Statewide Planning Goal  
18 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces). The PGE  
19 day-use park was designated as a historic landmark in 2014. At the same time,  
20 the three sites were included in a 58-acre Bull Run Historic District, and the  
21 sites were made subject to an Historic District overlay zone.

22 The powerhouse was built in 1912, and diverted waters from the Little  
23 Sandy and Sandy Rivers to Roslyn Lake for storage. The school was built in  
24 1923 to serve the Bull Run community. The day use park opened in 1956 on  
25 the shores of Roslyn Lake, and includes several structures. The school closed  
26 in 2003. In 2008, the powerhouse ceased functioning, the lake was drained,

1 and the day-use park closed. In 2010 PGE sold the three parcels to a private  
2 party.

3         Intervenors, the applicants below, applied to the county for  
4 comprehensive plan and zoning amendments, and conditional use permits, to  
5 use the historic structures at the three sites for a variety of educational, cultural  
6 and commercial uses, described below. The parties, the decision, and this  
7 opinion sometimes refer to the proposed use of the historic structures as  
8 “adaptive reuse,” a term of art that intervenors defined during the proceedings  
9 below to mean “the process of reusing an old site or building for a purpose  
10 other than which it was built or designed for[.]” Record 1173. The term is also  
11 used in the county’s comprehensive plan. Clackamas County Comprehensive  
12 Plan (CCCP) Historic Landmarks, Districts and Transportation Corridors  
13 Policy 8.0 provides that a county policy regarding historic resources is to  
14 “pursue options and incentives to allow productive, reasonable use, and  
15 adaptive reuse of historic properties.” For purposes of this opinion we employ  
16 the phrase “adaptive reuse” as shorthand for a proposal to rezone properties  
17 with historic structures that otherwise have no lawful and economically viable  
18 use under current zoning, to allow new uses of the structures in order to  
19 generate revenue to offset the cost of maintaining and preserving the historic  
20 structures.

21         In the present case, intervenors seek plan map and zoning map  
22 amendments for three sites totaling 35 acres of the subject 158-acre tract, to  
23 include the powerhouse, school and park sites. Intervenors propose changing  
24 the comprehensive plan designation for the three sites from a Forest to a Rural  
25 designation, and rezoning the three sites from TBR to Farm-Forest 10-Acre  
26 District (FF-10). The application requested a reasons exception to Goal 4, to

1 allow educational and commercial uses of the historic structures and grounds,  
2 uses that are not otherwise allowed under Goal 4.

3 Rezoning the 10-acre powerhouse site to FF-10 would allow intervenors  
4 to seek conditional use approvals to use the powerhouse structure and grounds  
5 for a museum, art gallery and studios, classes related to the site's history and  
6 natural environment, machine shop, office space, a small restaurant and gift  
7 shop, and to hold limited community events. In addition, intervenors propose  
8 construction of a dwelling for a caretaker, which is a permitted use in the FF-10  
9 zone.

10 Rezoning the 5-acre school site to FF-10 would allow conditional use  
11 approvals to use the historic school structure for a school, daycare facility, art  
12 and music studio and offices, in addition to a dwelling for a caretaker.

13 On the 20-acre park site, intervenors applied for a conditional use permit  
14 for a private park, a campground, and an educational center, located on the site  
15 of the former day-use park, using the existing park structures and additional  
16 new structures. The proposed private park would accommodate up to 800  
17 daytime participants and up to 300 overnight participants. In addition to use of  
18 the existing park structures, intervenors proposed to construct six convertible  
19 classrooms/bunkrooms, two pavilions, six outdoor classrooms (platform tents)  
20 and an archery range.

21 In addition, intervenors applied for a second conditional use permit to  
22 authorize a private park on 80 acres of the subject property that remains zoned  
23 TBR, for low-impact recreational uses such as hiking trails.

24 The county planning commission conducted hearings on the applications  
25 and recommended approval. The board of county commissioners held hearings  
26 on the planning commission recommendation, On December 3, 2014, the

1 commissioners approved the applications, with conditions of approval limiting  
2 allowed uses to those proposed. This appeal followed.

3 **FIRST AND FIFTH ASSIGNMENTS OF ERROR**

4 To support a reasons exception to a statewide planning goal, ORS  
5 197.732(2), Goal 2, Part II(c) and OAR 660-004-0020(2)(a) require that the  
6 local government identify “reasons” that “justify why the state policy embodied  
7 in the applicable goals should not apply.” In the present case, the applicable  
8 goal is Goal 4, which generally limits use of forest land to forestry operations,  
9 and a limited subset of non-forest uses.

10 In addition, OAR 660-004-0022(1)(a) provides in relevant part that  
11 reasons sufficient to justify why the state policy embodied in the applicable  
12 goals should not apply include, but are not limited to:

13 “There is a demonstrated need for the proposed use or activity,  
14 based on one or more of the requirements of Goals 3 to 19, and  
15 \* \* \*

16 \* \* \* \* \*

17 “(B) The proposed use or activity has special features or qualities  
18 that necessitate its location on or near the proposed  
19 exception site.”

20 Intervenors argued, and the county agreed, that the uses allowed under  
21 Goal 4 in the 35-acre exception area would not provide sufficient economic  
22 return to preserve and maintain the historic powerhouse, school and park  
23 structures. Intervenors testified that repair, maintenance and security of the  
24 historic structures on the property costs approximately \$10,000 per month. The  
25 county concluded that “adaptive reuse” of the structures was necessary in order

1 to both preserve the structures and to generate sufficient revenue to offset the  
2 expense of maintaining the structures.<sup>1</sup>

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<sup>1</sup> The county's findings discuss the school, powerhouse and park sites in similar terms. With redundancies omitted, the findings state, in relevant part:

“School Site: The need to preserve significant historic resources designated for protection by the County, consistent with Goal 5 and the County's adopted and acknowledged Comprehensive Plan, justifies why the state policy embodied by Goal 4 should not apply to this property. Given the County's fiscal limitations and the absence of public sector or non-profit parties willing to acquire and maintain the historic structures, the only viable option for preservation of the designated historic resources is through private investment. In order for the private investment to remain a viable option, adaptive reuse of the structures must be allowed [so] that they can generate revenue to offset the expense of maintenance. The School site cannot be used as a school in the Timber zone, nor are there other uses that are allowed in the Timber zone that would allow for financially viable adaptive reuse compatible with the Historic Landmark designation. Furthermore, the objective of financially viable adaptive reuse cannot be achieved if the future use is limited to a school.

“Powerhouse site: \* \* \* Since the powerhouse has been decommissioned and can no longer be used as a powerhouse, the only way to preserve the historic structures is to allow new use of the site. \* \* \* Adaptive reuse of the structures must be allowed so that they can generate revenue to offset the expense of maintenance. If the site remains in the Timber zone \* \* \* no economically viable uses of the Powerhouse site will remain.

“Park Site: \* \* \* With Roslyn Lake drained and PGE no longer operating the day-use park (which it had done in order to meet state and federal requirements, rather than because it provided a financial benefit), there is need for a new purpose for the site. \* \* \* Without the lake as an attraction or an operable powerhouse to subsidize park operations and maintenance, additional uses

1           Petitioners argue in the first assignment of error that the county  
2 misconstrued the applicable law in concluding that adaptive reuse of historical  
3 structures to generate revenue to maintain those structures is a sufficient  
4 “reason” that justifies why the policies embodied in Goal 4 should not apply,  
5 for purposes of OAR 660-004-0020(2)(a). Similarly, under the fifth assignment  
6 of error, petitioners argue that the county failed to demonstrate that there is a  
7 “demonstrated need” for adaptive reuse of the historic structures, or that the  
8 proposed use “has special features or qualities that necessitate its location on or  
9 near the proposed exception site” within the meaning of OAR 660-004-  
10 0022(1). We address these arguments together.

11           **A.     Preservation of Historic Structures via Adaptive Reuse**

12           Petitioners first contend that the requirements of Goal 5 and its  
13 implementing rules and regulations are fully met by the existing historic district  
14 overlay imposed on the three historic sites. According to petitioners, Goal 5  
15 does not mandate preservation of historic resources *per se*, but rather  
16 encourages local governments to adopt programs to protect historic resources  
17 from demolition, removal or modification, which the county has done by  
18 designating the three historic sites and imposing the historic district overlay  
19 zone on those sites. Because the requirements of Goal 5 are fully met by the  
20 historic district overlay and other existing components of the county’s Goal 5  
21 program, petitioners argue, the alleged need to generate revenue via adaptive  
22 reuse of the structures in order to preserve the historic structures is not a  
23 sufficient reason for purposes of OAR 660-004-0020(2)(a), and does not

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beyond the historic use—a private park for casual day use—must be allowed in order for the park to generate revenue to offset the expense of maintenance.” Record 23-24.

1 provide a “demonstrated need” based on the requirements of Goal 5, for  
2 purposes of OAR 660-004-0022(1).

3 The county and intervenors respond, and we agree, that the county has  
4 identified a sufficient “reason” why the policy embodied in Goal 4 should not  
5 apply within the 35-acre exception area. As discussed below, the county has an  
6 obligation under Goal 5 to support conservation of inventoried historic  
7 resources. The county found that employing the 35-acre exception area for  
8 uses allowed under Goal 4 will not raise sufficient revenue to offset the cost of  
9 maintaining the historic structures, which is approximately \$10,000 per month.  
10 The county found that the historic structures have no allowed economic use  
11 under the TBR zone, and that some viable economic use of the historic  
12 structures is needed to preserve the historic structures from deterioration and  
13 eventual loss through neglect. Those findings, if supported by substantial  
14 evidence, appear to state a sufficient reason, to ensure the preservation of  
15 historic structures, why the policy embodied in Goal 4 should not apply to the  
16 exception area.

17 Petitioners dispute that adaptive reuse is the only viable strategy for  
18 ensuring the preservation of the historic structures. Petitioners argue that  
19 certain non-forest uses allowed or conditionally allowed in the TBR zone could  
20 produce sufficient income to offset the cost of maintaining the historic  
21 structures, for example farm use, nurseries, forest research facilities, day-use  
22 parks and youth camps. However, petitioners cite to no evidence that uses  
23 allowed in the TBR zone on the 35-acre exception area could generate enough  
24 income to provide for the maintenance of the historic structures.

25 Petitioners also argue that approving an exception to allow for adaptive  
26 reuse of historic structures, in order to preserve those structures, presents a

1 slippery slope that would potentially allow landowners an easy means to gain  
2 an exception for commercial uses of resource land, based on the alleged need to  
3 preserve old farm houses, barns, schools, churches, lumber mills, etc.  
4 However, petitioners do not cite any statute, goal or administrative rule that  
5 precludes obtaining a reasons exception to allow adaptive reuse of an  
6 inventoried historic structure that the local government finds is necessary to  
7 ensure the preservation of that structure, if the reasons exception complies with  
8 all criteria for taking an exception.

9 **B. Demonstrated Need Based on the Requirements of Goal 5**

10 Under the fifth assignment of error, petitioners advance similar  
11 arguments under OAR 660-004-0022(1), which as noted provides in relevant  
12 part that one potential reason for taking an exception is (1) a “demonstrated  
13 need” for the proposed use or activity, based on one or more of the  
14 requirements of Goals 3 to 19, and that (2) the proposed use or activity has  
15 special features or qualities that necessitate its location on or near the proposed  
16 exception site. The county found that there is a demonstrated need to allow the  
17 proposed uses of the historic structures, based on the requirements of Goal 5,  
18 and that the proposed uses must, by necessity, be located in or near the historic  
19 structures.<sup>2</sup>

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<sup>2</sup> The county concluded with respect to OAR 660-004-0022(1)(a):

“The Board finds that there is a demonstrated need for the proposed use—the adaptive reuse of the historic School site, Powerhouse site and Park site—based on the requirements of Goal 5. The existing historic buildings and structures, and the site/grounds that are essential to their historic context, are the critical features and resources that dictate where the adaptive reuse can take place.” Record 42-43.

1           Petitioners challenge those findings. First, petitioners contend that Goal  
2 5 and its administrative rule at OAR 660-023-0200 do not *require* local  
3 governments to *preserve* historic resources. Instead, petitioners argue that  
4 Goal 5 and its administrative rule impose largely procedural requirements on  
5 local governments. According to petitioners, the only language in the Goal 5  
6 rule that addresses local government responsibility with respect to the actual  
7 preservation of historic resources is OAR 660-023-0200(3), which merely  
8 states that “[l]ocal comprehensive plans should foster and encourage the  
9 preservation, management, and enhancement of structures, resources and  
10 objects of historic significance \* \* \*.” However, petitioners argue, OAR 660-  
11 023-0200(2) specifies that the provisions of OAR 660-023-0200(3) are  
12 “advisory only.” Because nothing in Goal 5 or the Goal 5 rule expressly  
13 requires local governments to actually preserve historic resources, petitioners  
14 argue, the county cannot rely on a “demonstrated need” for the proposed use,  
15 based on a “requirement” of Goal 5.

16           Restore Oregon responds, and we agree, that Goal 5 imposes obligations  
17 on local governments with respect to the preservation of historic resources.  
18 Goal 5 provides that local governments “shall adopt programs that will protect  
19 \* \* \* and conserve scenic, historic and open space resources for present and  
20 future generations.” The goals define “conserve” to mean “[t]o manage in a  
21 manner that avoids wasteful or destructive uses and provides for future  
22 availability.” If an historic structure has no use supporting its maintenance, it  
23 is likely that the landowner will allow the structure to deteriorate, which is not  
24 consistent with the goal of conserving historic resources.

25           It is true that a local government’s obligations and authority with respect  
26 to historic resources under Goal 5 and its administrative rule are heavily

1 qualified. For example, by statute and rule a property owner may remove a  
2 historic designation that the local government imposed on the property when  
3 certain conditions are present. ORS 197.772; OAR 660-023-0200(6) and (7).  
4 Such qualifications exist because many historic resources are in private  
5 ownership, and conservation of historic resources often represents a significant  
6 financial burden. As a practical and financial reality, the preservation of  
7 historic resources depends heavily on the voluntary efforts and financial  
8 resources of private property owners. Local governments are frequently in a  
9 position where they can only “foster and encourage the preservation,  
10 management and enhancement” of historic resources. Nonetheless, it is clear  
11 that Goal 5 requires a local government to do what it can, within the limits of  
12 the goal and rule, to help willing property owners achieve the *actual* (and not  
13 merely nominal) conservation of historic resources for present and future  
14 generations.

15 In the present case, the county found that the historic structures have no  
16 economic use under the TBR zoning, and that maintaining the structures  
17 requires significant financial resources that far exceed what the 35-acre  
18 exception area can generate if used under the TBR zoning. Petitioners have not  
19 demonstrated error in that finding. Absent a lawful economic use of some  
20 kind, it is unreasonable to expect that the property owners will continue to  
21 maintain the historic structures, in which event the structures will effectively be  
22 demolished by neglect over time. That outcome is inconsistent with the intent  
23 of Goal 5. Accordingly, we agree with Restore Oregon that the county did not  
24 err in concluding that there is a demonstrated need for the proposed uses of the  
25 historic structures, based on the requirements of Goal 5.

1           The county also found, under one of the alternative prongs of OAR 660-  
2 004-0022(2)(a), that the proposed use or activity has special features or  
3 qualities that necessitate its location on or near the proposed exception site.  
4 Petitioners argue that the county’s finding is inadequate and not supported by  
5 substantial evidence. For example, petitioners argue that there is no evidence  
6 that the proposed school use of the school site has “special features or  
7 qualities” that necessitate its location at the school site. However, that  
8 argument overlooks the fact that the proposed use or activity involves not just a  
9 school in the abstract, but adaptive reuse of the historic school structure, which  
10 obviously must occur within the structure.

11           In sum, petitioners have not demonstrated that the county erred in  
12 concluding that preservation of the historic structures made possible by  
13 adaptive reuse is a sufficient reason to justify why the state policy embodied in  
14 Goal 4 should not apply, and that there is a demonstrated need based on the  
15 requirements of Goal 5 to allow adaptive reuse of the historic structures.

16           The first and fifth assignments of error are denied.

17 **SECOND ASSIGNMENT OF ERROR**

18           To support an exception to a statewide planning goal, ORS  
19 197.732(2)(c)(B), Goal 2, Part II(c), and OAR 660-004-0020(2)(b) require a  
20 finding that “[a]reas that do not require a new exception cannot reasonably  
21 accommodate the use.” Under the reasonable accommodation standard, the  
22 county must discuss why other areas that do not require an exception, such as  
23 non-resource land or land within an urban growth boundary, cannot reasonably  
24 accommodate the proposed use. OAR 660-004-0020(2)(b)(B). The county  
25 may consider economic and other relevant factors in applying the reasonable  
26 accommodation standard. *Id.*

1           The county found that an analysis of alternative non-resource sites for  
2 the proposed uses is not required, because “the adaptive reuse of the historic  
3 sites cannot reasonably be accommodated on any piece of land other than  
4 where those historic resources are currently located, which is on resource  
5 land.” Record 40.<sup>3</sup> The county found that the purposes of providing public

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<sup>3</sup> The county’s findings state in relevant part:

“The limited set of uses to be allowed on the historic sites will serve three purposes:

- “1. To activate the spaces and help make them centers for the surrounding community;
- “2. To encourage people to visit the sites and learn about their history and hear the story of their surroundings; and
- “3. To raise revenue to pay for the continued upkeep of the buildings and make them partially self-supporting.

“To preserve the buildings without allowing them to be used has little value to the public, because the sites are fairly secluded and isolated with limited visibility from the public right-of-way. If no use of the buildings is allowed, it would preclude public experience and enjoyment of the historic buildings and the understanding of the area’s history that they can impart. The historic buildings need to house active, accessible, and economically viable uses and activities, not simply be prevented from deteriorating \* \* \*.

“\* \* \* \* \*

“Based on information provided by the applicant, upkeep on the subject property including repair, maintenance and security for the historic buildings and grounds, costs approximately \$10,000 per month. If the historic structures and grounds themselves cannot be put to an economically viable use, the cost of their upkeep will

1 access to the historic structures, and generating sufficient revenue to maintain  
2 the historic structures, cannot be reasonably accomplished by conducting the  
3 proposed uses at remote sites on non-resource lands or within an urban area.  
4 Further, the county found that relocating the historic structures to non-resource  
5 lands is prohibitively expensive and/or physically impossible.

6 Petitioners argue that the county conflated the proposed uses—the  
7 revenue-generating uses—with the adaptive reuse of the structures themselves.  
8 According to petitioners, the proposed revenue-generating uses need not take  
9 place within the historic structures or within the exception area at all, but can  
10 be located on non-resource lands or within urban areas, and still generate

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become such a burden that it is no longer reasonable to maintain them. The necessary income stream to maintain the three historic sites is beyond what is reasonable to expect a private entity to generate by fundraising or with potential net revenues from off-site businesses (for example, from pursuing the proposed uses at a location not requiring a goal exception), which would require additional investment for both acquisition and operation. Therefore, areas that do not require a new exception cannot reasonably accommodate the proposed uses while achieving the purpose that has been given for the reasons exception.

“It is also unreasonable to consider re-location of the existing historic structures to an area that does not require a goal exception. Not only would this be prohibitively expensive or even physically impossible (especially for some structures, such as the powerhouse), but the site and context are important components of the historic character that are not available anywhere.

“An alternatives analysis of non-resource locations is not appropriate for this unique circumstance; the adaptive reuse of the historic sites cannot reasonably be accommodated on any piece of land other than where those historic resources are currently located, which is on resource land. Preservation of the historic sites requires a goal exception.” Record 39-40.

1 revenue to offset the cost of maintaining the structures. For example,  
2 petitioners contend that many of the proposed uses for the powerhouse site,  
3 such as the gift shop, restaurant, studio, hosting of community events, etc.,  
4 could be located within the nearby City of Sandy urban area. Consequently,  
5 petitioners argue, the county erred in failing to conduct an alternative sites  
6 analysis and concluding that the proposed uses cannot be reasonably  
7 accommodated on lands that do not require a new exception.

8         Intervenors respond, and we agree, that the “proposed uses” are not  
9 merely a gift shop, restaurant, studio, community events and other revenue-  
10 generating uses proposed for the historic sites in the abstract, but rather the  
11 proposal to reuse the historic structures with revenue-generating uses,  
12 necessary to offset the cost of maintaining and preserving the historic  
13 structures. The county found that locating these uses on lands that do not  
14 require an exception would require additional investment for acquisition and  
15 operation, disconnect the uses from their historic context, and would not  
16 generate sufficient net revenue to offset the costs of maintaining the unused  
17 historic sites. Petitioners cite no evidence to the contrary.

18         The unusual nature of the proposed uses in the present case—reuse of  
19 historic structures to both preserve the structures and generate sufficient  
20 revenue to maintain those structures—essentially dictates that no alternative  
21 site that does not require an exception, for example lands within an urban  
22 growth boundary, can reasonably accommodate the proposed use. Petitioners  
23 have not demonstrated that the county erred in so concluding.

24         The second assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2       ORS 197.732(2)(c)(C), Goal 2, Part II(c), and OAR 660-004-0020(2)(c)  
3 require a finding that the long-term environmental, economic, social and  
4 energy (ESEE) consequences resulting from the use at the proposed site are not  
5 significantly more adverse than would typically result from the same proposal  
6 being located in other resource lands that would also require a goal exception.  
7 The county is not required to evaluate specific alternative sites unless parties  
8 identify specific sites and provide evidence that developing such sites with the  
9 proposed uses would have significantly fewer adverse impacts. OAR 660-004-  
10 0020(2)(c).

11       The county found that because the three historic sites were already  
12 developed with structures and infrastructure, the ESEE consequences of  
13 allowing adaptive reuse of those structures in the exception area are not  
14 significantly more adverse than the ESEE consequences of allowing the same  
15 proposed uses on other resource lands that would require a goal exception.<sup>4</sup>

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<sup>4</sup> We quote the county’s ultimate conclusion regarding the powerhouse site, which is similar to the conclusions regarding the school and park sites:

“If a use similar to the envisioned “Powerhouse on the Bull Run” were to be established on other resource land that does not already contain historic structures, more site improvements would be needed, possibly including extending infrastructure to serve the site as well as conversion of resource land to non-resource uses. As a result, the long-term environmental, economic, social and energy consequences resulting from the use at the Powerhouse Site are not more adverse than these other areas requiring a Goal exception. The Board finds that the powerhouse use satisfies this criterion.” Record 27.

1           Petitioners argue that the county’s ESEE findings are inadequate in  
2 several respects. According to petitioners, the findings fail to adequately  
3 discuss all the disadvantages of using the subject property for the proposed  
4 uses versus the advantages of developing other resource sites with the same  
5 uses. For example, petitioners suggest that the ESEE consequences of public  
6 travel to the exception area might be significantly more adverse than the ESEE  
7 consequences of developing a resource site that is closer to the Portland Metro  
8 area. Petitioners also argue that the county erred in assuming that no other  
9 resource sites have structures that can be adaptively reused.

10           Intervenors respond, and we agree, that the county’s findings regarding  
11 ESEE consequences are adequate and supported by substantial evidence. The  
12 question posed by OAR 660-004-0020(2)(c) is whether the ESEE  
13 consequences resulting from the use at the proposed site are significantly more  
14 adverse than would typically result from the same proposal being located in  
15 other resource lands that would also require a goal exception. Petitioners cite  
16 no evidence that it is “typical” for resource sites to have structures and  
17 infrastructure similar to that found within the proposed exception area. Nor do  
18 petitioners identify any specific alternative site with those characteristics. A  
19 reasonable person could conclude, as the county did, that locating the same  
20 proposal on other resource lands that require a goal exception would require  
21 significant new construction of buildings and infrastructure, and accordingly  
22 result in much more adverse ESEE consequences, than locating the proposed  
23 uses within the existing historic structures in the proposed exception area.

24           The third assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2           ORS 197.732(2)(d), Goal 2, Part II(c), and OAR 660-004-0020(2)(d)  
3 require a finding that the proposed uses are “compatible with other adjacent  
4 uses or will be so rendered through measures designed to reduce adverse  
5 impacts.” Petitioners argue that the county’s findings with respect to the three  
6 historic sites are inadequate and not supported by substantial evidence.  
7 However, petitioners’ arguments focus almost entirely on the park and school  
8 sites, possibly because of the geographic isolation of the powerhouse site.  
9 Because petitioners identify no uses adjacent to the powerhouse site that could  
10 be impacted by proposed use of that site, we also focus our analysis on the  
11 county’s findings regarding the park and school site.

12           The county found that the proposed adaptive uses of the park and school  
13 sites are compatible with adjacent uses, based in part on findings that the  
14 proposed uses of the school and park site are not more intensive than the  
15 historic use of those sites.<sup>5</sup>

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<sup>5</sup> The county’s findings regarding the park site include the following:

“Properties surrounding the subject site are zoned Timber and are generally rural in character. \* \* \* Existing uses adjacent to the site include several small farms with homes to the south across SE Thomas Road, undeveloped and currently unmanaged wooded areas to the east and west, and the former Roslyn Lake bed (currently sandy and filling in with shrubs, grasses, and alder trees) on the north and northeast edges. The historic Bull Run Elementary School is also adjacent to the site at the southeast corner; the two properties are expected to be managed together.

“Compatibility of the proposed use of the Park site must be considered in light of the fact that the site was historically a heavily used recreational destination for the Portland region, with

1           Petitioners dispute the finding that proposed use of the park site is not  
2 more intensive than the historic use of the former day-use park. Petitioners  
3 point out that the former day-use park was limited to day-use, without  
4 overnight stays. Further, petitioners argue that the county failed to appreciate

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tens of thousands of visitors each year for several decades. While anecdotal recollections of some community members suggest that usage was in the hundreds of visitors on busy weekends, the number of visitors was documented in forms submitted to the Federal Energy Regulatory Commission (FERC) regarding usage of the recreation facilities at the Roslyn Lake reservoir \* \* \*. In 1966 the park hit a peak of 100,000 visitors. From 1991 to 2002, the annual number of visitors ranged from over 40,000 to 63,000 with peak weekends averaging 3,000 visitors throughout that time. The park was a beloved amenity for the surrounding community—there is no evidence of compatibility concerns from adjacent uses when the park was operating and heavily used.

“The use of the exception area to be permitted by the Board’s action is less intense than the historic use of the park. The limitations on the number of users at the site per day and overnight will minimize any potential adverse impacts on adjacent uses. The only portion of the use to be permitted by the Board’s action that exceeds what took place at the site historically is the addition of overnight stays, and these have been limited. \* \* \*

“While the goal exception and zone change is for 20 acres, the full park site (exclusive of the Powerhouse site) totals 100 acres. The developed portion of the park where the zone change and more intense park use will occur, including the cabins for overnight use, is located in the center of the site, surrounded on all sides by land the same parcel that will remain in the Timber zone. This land provides a buffer and transition to other adjacent resource land by allowing only the low-impact, casual, recreational use that is acceptable in the Timber zone to extend into those areas. The goal exception and FF-10 zone area is set back from SE Thomas Road, where the only nearby rural homes are located, by nearly a quarter mile. \* \* \*” Record 30.

1 that the visitor count for the former day-use park represented the total number  
2 of visitors to the entire PGE recreational property, including Roslyn Lake, not  
3 just the number of visitors to the 20-acre day-use site itself. Petitioners also  
4 contend that the county's findings fail to adequately describe the proposed  
5 uses, their individual or cumulative impacts, or the uses on adjacent properties.

6 Intervenor respond, and we agree, that the county's findings that the  
7 proposed use of the park site is compatible with other adjacent uses or will be  
8 so rendered through measures designed to reduce adverse impacts are adequate  
9 and supported by substantial evidence. As intervenors note, whether the  
10 proposed uses are more or less intensive than the historic uses, or whether  
11 historic uses were compatible with adjacent uses, is not the question; the  
12 question is whether the proposed uses are compatible with adjacent uses. Even  
13 if the record supported a finding that the proposed uses are more intensive than  
14 historic uses, that would not necessarily undermine the county's ultimate  
15 conclusion, based on a number of considerations, that the proposed uses are  
16 nonetheless compatible with adjacent uses.

17 In any case, the county's finding that the proposed uses of the park sites  
18 as limited, are not more intense in most respects than the historic uses of the  
19 site is supported by substantial evidence. A reasonable person could conclude,  
20 as the county did, that the proposed use of the park site, limited to 800 persons  
21 per day and 300 overnight, will likely be no more intensive than the former use  
22 of the PGE recreation area, which the county found included peak weekends  
23 averaging 3,000 visitors.

24 In addition, the county's findings emphasize that the park site is  
25 surrounded and buffered by TBR-zoned land owned by the applicants, with the  
26 nearest dwellings a quarter-mile away across SE Thomas Road. That finding

1 alone goes a long way to supporting the county’s conclusion that the proposed  
2 use of the park site will be compatible with adjacent uses. Intervenors also  
3 note that the county imposed conditions of approval intended to reduce impacts  
4 on nearby properties, including limits on noise. Petitioners have not  
5 demonstrated that the county erred in concluding that the proposed use is  
6 “compatible with other adjacent uses or will be so rendered through measures  
7 designed to reduce adverse impacts.”

8 With respect to the school site, the county concluded that the proposed  
9 uses are consistent with the historic use of the school, and that based on that  
10 and other considerations the proposed uses will be compatible with adjacent  
11 uses.<sup>6</sup> Petitioners argue that the proposed uses expand on the uses that

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<sup>6</sup> The county’s findings state, in relevant part:

“The uses to be permitted by the Board’s action at the School Site, which include a school, daycare facility, art and music studio, office, and dwelling, will be compatible with other adjacent uses. The specific allowed uses are addressed individually below.

“**School.** The site was historically used as a school. Use of the site as an educational facility with overnight accommodations would be equally compatible with adjacent uses as the school that originally occupied the building.

“**Daycare facility.** Since it was historically used as an education facility for children, use as a daycare would be consistent with its historic character. It would have no more impact on adjacent uses than the school that originally occupied the building.

“**Art and music studio.** This use would take place within the existing building, and would have an educational component that would link to the site’s history. It would likely be less intense than the public school use that originally occupied the building, and would have little or no impact on adjacent uses.

1 historically occurred at the site, adding overnight accommodations, daycare  
2 facility, administrative offices, an art and music studio, and a dwelling.  
3 However, petitioners do not specifically challenge the county’s findings that  
4 the proposed uses are consistent with historic uses of the school site, and will  
5 likely be compatible with adjacent resource and residential uses. Petitioners  
6 identify no evidence to the contrary. Petitioners have not demonstrated that the  
7 county’s findings with respect to the school site are inadequate or not  
8 supported by substantial evidence.

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**“Offices.** Since historically the school included administrative offices office use within the existing building would be consistent with the site. There would be little or no impact on adjacent uses.

**“Dwelling.** A residence is needed in order to provide year-round presence on the site. The presence of a single dwelling on the site will have little or no impact on adjacent uses, other than by discouraging vandalism and trespassing on the site. This improvement will have a positive impact on adjacent uses.

“While none of the uses is expected to be incompatible with adjacent uses, there are also factors specific to the site that help buffer and minimize any impacts on adjacent uses. The school building is situated close to Thomas Road; and the school grounds provide a buffer to [adjacent resource lands owned by the applicants]. The only other nearby resource uses are buffered by Thomas Road and the row of four small, developed rural residential properties across Thomas Road to the south of the School Site. Utilization of the school property will not have the effect of committing any additional resource land to non-resource uses. Furthermore, as an additional mitigating factor, the conditional use and/or public hearing review process that will be required for the proposed future uses (except a single dwelling) will also help ensure compatibility with adjacent uses through control of the extent, intensity, configuration, and/or hours of future uses.” Record 28-29.

1 The fourth assignment of error is denied.

2 **SIXTH AND SEVENTH ASSIGNMENTS OF ERROR**

3 As noted, the county’s decision changes the comprehensive plan  
4 designation of the 35-acre exception area from Forest to Rural. The county  
5 concluded that the three historic sites did not meet the comprehensive plan  
6 criteria for the Forest designation, largely due to their developed nature, which  
7 limits forest operations. The county concluded that the three historic sites did  
8 meet the comprehensive plan criteria for the Rural designation, which is  
9 intended to be applied to lands subject to an exception to Goals 3 or 4. Under  
10 these assignments of error, petitioners challenge both conclusions.

11 **A. Forest Designation**

12 Policy 1.0 of the Forest designation identifies five characteristics for  
13 land designated Forest: (a) suitability for forest use, (b) soils capable of  
14 generating timber, (c) areas generally in forest use, (d) areas that are  
15 environmentally sensitive, and (e) forested areas that buffer more intense land  
16 uses from less intense land uses. The county concluded with respect to all  
17 three historic sites that Policy 1.0(a) and (c-e) characteristics are not present,  
18 and only the Policy 1.0(b) characteristic, soil capability, is present. In balance,  
19 the county concluded, consideration of the five Policy 1.0 characteristics  
20 indicated that the three sites should not continue to be designated Forest.

21 Petitioners disagree with that conclusion. We understand petitioners to  
22 argue that the Policy 1.0(a) characteristic, suitability for forest use, includes not  
23 only growing and harvesting trees, but also various non-forest uses allowed in  
24 the TBR zone. Further, under the Policy 1.0(c) and (d) characteristics, areas  
25 generally in forest uses and areas that are environmentally sensitive, petitioners  
26 argue that some portions of the historic sites have growing trees, and even if

1 not actively managed those treed areas provide forest values, such as fish and  
2 wildlife habitat. With respect to the Policy 1.0(e) characteristic, forested areas  
3 that buffer, petitioners argue that the forested portions of the historic sites act  
4 as a buffer between more intensive rural residential uses to the south, and the  
5 less intensive farm and forest operations to the east, west and north.

6 Petitioners' disagreement with the county's findings under the Policy 1.0  
7 characteristics does not provide a basis for reversal or remand. Petitioners have  
8 not demonstrated that the county's findings and weighing of the Policy 1.0  
9 characteristics misconstrue the applicable law or are not supported by  
10 substantial evidence. Moreover, petitioners' disagreement is academic. It is  
11 entirely possible that an exception area could continue to meet most or all of  
12 the five Forest characteristics, while still qualifying for a reasons exception to  
13 Goal 4. In the present case, the question is not whether the 35-acre exception  
14 area continues to meet the Forest designation characteristics, but rather what is  
15 the most appropriate comprehensive plan designation for the exception area,  
16 once a reasons exception is approved. The county concluded that the Rural  
17 designation, which is expressly intended to be applied to exception areas, is the  
18 most appropriate comprehensive plan designation. We therefore turn to  
19 petitioners' challenges to that conclusion.

20 **B. Rural Designation**

21 The comprehensive plan describes the Rural plan designation as follows:

22 "Rural lands are exception lands, as defined in [OAR] 660-0040-  
23 0005(1), that are outside urban growth boundaries and  
24 Unincorporated Communities and are suitable for sparse  
25 settlement, such as small farms, woodlots, or acreage home sites.  
26 They lack public facilities or have limited facilities and are not  
27 suitable, necessary or intended for urban, agricultural, or forest  
28 use."

1 Policy 1.0 of the Rural lands designation states that “[a]reas may be designated  
2 Rural if they are presently developed, built upon, or otherwise committed to  
3 sparse settlement or small farms with limited, if any public services available.”

4 The county found that the three historic sites are largely developed with  
5 historic structures and committed to non-resources, and that while public water  
6 is available to each site, public sewer is not. After considering Policy 1.0 and  
7 other Rural policies, the county concluded that the Rural designation was the  
8 most appropriate comprehensive plan designation for the exception area  
9 comprising the three historic sites.

10 Petitioners argue that the county erred in focusing on the 35-acre  
11 exception area and the three historic sites to be designated Rural, rather than  
12 the larger tract totaling 158 acres, most of which is not developed and is not  
13 committed by development to non-resource uses. However, the county’s  
14 decision redesignates to Rural only the 35-acre exception area. Petitioners  
15 have not demonstrated that the county must consider the entire 158-acre tract,  
16 or committed any other error, in concluding that the Rural plan designation is  
17 an appropriate plan designation for the 35-acre exception area.

18 The sixth and seventh assignments of error are denied.

19 The county’s decision is affirmed.