



**NATURE OF THE DECISION**

Petitioner appeals a county ordinance amending the Polk County Zoning Ordinance (PCZO) to allow a “dog control facility” as an outright permitted use on property owned by a public agency in three county zones.

**FACTS**

The county is a Dog Control District as authorized by state law and is required to provide a shelter or dog control facility. Until recently, the county facility was provided by a local veterinarian under a contract due to expire at the end of 2004. In 2003, the county began searching for alternative sites on which to construct a new facility housing up to 12 dogs. For financial reasons the county’s search focused on property already owned by the county, and it identified two potential sites: (1) Nesmith Park, one of 16 county parks zoned Public Park (PP), and (2) the Polk County Fairgrounds, which is zoned Public Amusement and Recreation (PA). The Nesmith Park site includes an historic cemetery. The two sites adjoin each other, and are located in the unincorporated community of Rickreall.

County staff prepared text amendments to the PP and PA zone that would authorize a dog control facility “within the unincorporated community of Rickreall,” “on property owned by a public agency.” Staff provided notice of the proposed amendments to a number of agencies and persons, including petitioner in her capacity as chair of the Rickreall area advisory committee. Based on comments received, staff drafted additional language that made “alteration, expansion, or replacement” of a dog control facility on property owned by a public agency a permitted use within the Public Service (PS) zone. This amendment was proposed to accommodate expansion of an existing dog control facility owned by the City of Dallas at its wastewater treatment facility, which is zoned PS.

The planning commission conducted three public hearings on the proposed amendments. Opposition arose to siting the proposed facility at either Nesmith Park or the fairgrounds. The

1 planning commission recommended that the board of commissioners not adopt the proposed  
2 amendments to the PP and PA zone allowing a dog control facility in the Rickreall community, but  
3 that the board of commissioners should adopt the amendment allowing expansion of a dog control  
4 facility in the PS zone.

5 The board of commissioners conducted a hearing on August 25, 2004. One of the  
6 recommendations advanced by staff was to adopt the amendments allowing a dog control facility as  
7 a permitted use in the PP and PA zones, but remove the references to the Rickreall community, so  
8 that dog control facilities could be allowed on any publicly-owned property zoned PP or PA. The  
9 board of commissioners ultimately adopted this recommendation, adding a qualification that the  
10 facility be no more than 4,000 square feet in size.<sup>1</sup> The board of commissioners also adopted the

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<sup>1</sup> As amended, PCZO 170.010, the PA zone, and PCZO 170.050, the PP zone, provide in relevant part:

**“PUBLIC AMUSEMENT AND RECREATION ZONE.** Within any PA [zone] no building, structure, or premises shall be used, arranged or designed to be used, erected, structurally altered, or enlarged except for one or more of the following uses:

- “(A) Airport
- “(B) Amusement park
- “(C) Armory
- “(D) Auditorium
- “(E) Ball park
- “(F) Dwelling for the caretaker or watchman; or mobile home
- “(G) Exposition
- “(H) Fairground
- “(I) Golf course
- “(J) Military training facilities
- “(K) Race tracks
- “(L) Stadium
- “(M) Stock show
- “(N) Zoo
- “(O) When authorized under the procedure provided for conditional uses, a recreational vehicle park may be allowed \* \* \*
- “(P) Marina or boat club.

1 amendment to the PS zone recommended by the planning commission, again adding the qualification  
2 that the facility be no more than 4,000 square feet in size.<sup>2</sup> The board of commissioners' decision  
3 adopts the staff report as its findings.

4 This appeal followed.

#### 5 **FIRST ASSIGNMENT OF ERROR**

6 Petitioner argues that a “dog control facility” is inconsistent with the purpose of the PP and  
7 PA zones, which are limited to recreational and public amusement uses, as shown by the list of uses

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“(Q) Eating places and/or drinking places where alcoholic beverages may or may not be served, accessory to a permitted non-residential use identified in this section \* \* \* [.]”

“(R) A dog control facility authorized under [PCZO] Chapter 42 may be authorized on property owned by a public agency, subject to a building size limitation of 4,000 square feet.”

“**PP, PUBLIC PARK ZONE.** Within any PP [zone] no building, structure, or premises shall be used arranged, or designed to be used, erected, structurally altered, or enlarged except for one or more of the following uses:

“(A) Public park (non-commercial)

“(B) Public playground (non-commercial)

“(C) Parkway

“(D) Municipal Golf Course

“(E) Dwelling for the caretaker or watchman

“(F) Eating places and/or drinking places where alcoholic beverages may or may not be served, accessory to a permitted non-residential use identified in this section \* \* \* [.]”

“(G) A dog control facility authorized under [PCZO] Chapter 42 may be authorized on property owned by a public agency, subject to a building size limitation of 4,000 square feet.”

<sup>2</sup> As amended, PCZO 170.060, the PS zone, provides:

“**PS, PUBLIC SERVICE ZONE.** Within any PS [zone] no building, structure, or premises shall be used, arranged, or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

“(A) Municipal or government service building, structure and use, i.e., reservoir, water tower, pump station, sewage treatment plant, land fill operation, bus equipment, parking, servicing or repairing

“(B) Dwelling for the caretaker or watchman

“(C) Alteration, expansion, or replacement of a dog control facility on property owned by a public agency on the date of adoption of this subsection of this ordinance, as shown on Appendix 1 to Chapter 170, subject to a building size limitation of 4,000 square feet.”

1 allowed in those zones. Petitioner points out with respect to the PP zone that it allows only parks,  
2 playgrounds, parkways, golf courses, a caretaker dwelling, and eating and drinking places  
3 accessory to one of the foregoing non-residential uses. Non-recreational uses are not allowed in the  
4 PP zone, petitioner contends. Because a dog control facility is neither a recreational nor a public  
5 amusement use, petitioner argues, it cannot be allowed in the PP and PA zones.<sup>3</sup>

6 The county’s only response to this argument is, in full, “ORS 197.763 is not applicable to  
7 legislative land use proceedings—it applies only to quasi-judicial land use hearings.” Respondent’s  
8 Brief 4. That response is puzzling, because we do not understand petitioner to argue that the  
9 challenged decision is quasi-judicial or that the requirements of ORS 197.763 apply.

10 On the other hand, petitioner does not identify any applicable criteria or standard that  
11 requires uses within the PP and PA zones to be consistent with each other, or that limits those zones  
12 to “recreational” and “public amusement” uses. Further, we note that, while the uses allowed within  
13 the PP zone could be broadly characterized as “recreational” in nature, or accessory to recreational  
14 uses, the PA zone authorizes a number of uses that do not appear to offer much public amusement.  
15 *See* n 1 (allowing airports, armory, military training facilities, and recreational vehicle parks in the PA  
16 zone). We also note that the Public plan designation, which presumably the PP, PA and PS zones  
17 implement, does not assign particular subsets of public uses to particular zones.<sup>4</sup> Absent a more  
18 developed argument from petitioner as to why the addition of “dog control facilities” to the PP and  
19 PA zones is inconsistent with some controlling comprehensive plan or code authority, petitioner’s  
20 arguments do not provide a basis for reversal or remand.

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<sup>3</sup> Petitioner also advances arguments under the statewide planning goals that we address under the fourth assignment of error.

<sup>4</sup> The Polk County Comprehensive Plan (PCCP) describes the Public plan designation as follows:

“The purpose of the Public Plan designation is to recognize those areas and improvements which accommodate or provide various government services to the people of Polk County. These include schools, parks fire stations, hospitals, cemeteries and other public buildings. Adequate public facilities are essential to well ordered community life, sustaining and enhancing the health, safety, educational and recreational aspects of rural living.”

1 The first assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR**

3 The county approved the challenged zoning ordinance text amendments under  
4 PCZO 115.060, which sets out criteria for legislative plan amendments. In relevant part,  
5 PCZO 115.060 requires a determination, based on substantive information providing a factual base,  
6 that the proposed amendment complies with applicable statutes and statewide planning goals,  
7 conforms to comprehensive plan goals, policies and intent, and “is in the public interest and will be  
8 of general public benefit.”<sup>5</sup>

9 Petitioner argues that (1) the county’s decision is not based on substantive information  
10 providing a factual base, (2) the county failed to demonstrate that authorizing “dog control facilities”  
11 in the PP and PA zones is in the public interest, and (3) failed to consider continuing to contract out  
12 the dog shelter to private parties instead of establishing a county shelter, as authorized by  
13 ORS 609.090(2). According to petitioner, the only reason given for the amendments was to save  
14 money by allowing the county to site a dog control facility on publicly owned land. Petitioner  
15 contends that the county should have considered allowing new dog control facilities to be sited in

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<sup>5</sup> The county apparently has no criteria specific to zoning ordinance text amendments. PCZO 115.060 provides:

**CRITERIA FOR LEGISLATIVE PLAN AMENDMENTS.** A legislative plan amendment may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the Comprehensive Plan, Polk County shall demonstrate:

- “(A) Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4;
- “(B) Conformance with the Comprehensive Plan goals, policies and intent, and any plan map amendment criteria in the plan;
- “(C) That the proposed change is in the public interest and will be of general public benefit; and
- “(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.”

1 other zones in which the county owns property, including the PS zone and the EFU zone. Further,  
2 petitioner argues that the county should have considered siting the facility at the county public works  
3 site, which is located within the city of Dallas.

4 With respect to the public benefit requirement, petitioner cites to testimony indicating that  
5 locating a dog control facility in a park or at the county fairgrounds, as authorized by this decision,  
6 would have a number of negative consequences, including potential loss of park space to a non-  
7 recreational public service, and potential interference with fairground operations. Petitioner argues  
8 that saving money by using publicly owned land is not a sufficient basis to find that the amendments  
9 are in the public interest and will be of general public benefit.

10 The county adopted findings concluding that the amendments are in the public interest and  
11 would benefit the public.<sup>6</sup> We disagree with petitioner that those findings are inadequate or not

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

“The public benefit of the proposed Zoning Ordinance text amendments would be continuation of the existing dog control services in Polk County at the conclusion of the current lease agreement. Polk County declared a Dog Control District in 1987 under the authority of the Oregon Revised Statutes Chapter 609. The ability to establish a dog control facility on property currently owned by Polk County would benefit in terms of reduced costs for purchasing of additional property for the purpose of establishing a new facility. \* \* \* Continuation of the dog control program and establishment of a rural site (the area the facility serves) would be a benefit to the general public by containing the ‘running at large’ dogs and providing a method to return dogs to property owners.

“The Rickreall Area Advisory Committee (RAAC) requests that Polk County analyze how other counties have handled zoning for a dog control facility. The RAAC requests that the current lease of a facility be an option. The RAAC requests that all of the current zoning districts be reviewed to determine where a dog control facility may be established. These requests have not specifically been linked to [PCZO] criteria for a text amendment, so it is unclear the relevance of these requests. \* \* \* The RAAC suggests that purchase of land should not be a factor. Specifically, the Board of Commissioners did request that staff consider property that is owned by Polk County be a high priority. An analysis of all properties owned by Polk County was conducted to determine zoning compatibility and feasibility for each property. Few properties currently owned by Polk County were suitable for a dog control facility due to various factors such as size, physical constraints such as flood hazard areas, or geographic location in the county. Based on [a sample of properties], purchasing land would be a significant cost consideration and locating the dog control facility on property owned by Polk County would be a clear benefit to the public in the use of public funds.

“\* \* \* \* \*

1 supported by substantial evidence. Specifically, we disagree that saving public money is not in the  
2 public interest or a public benefit, for purposes of PCZO 115.060(C). Whether it is a *sufficient*  
3 consideration presumably depends on what other perceived advantages and disadvantages are  
4 considered. Here, petitioner argues that locating a dog control facility at certain sites might have  
5 negative consequences that outweigh the fiscal savings. The county’s findings acknowledge that  
6 proposals for particular dog control facilities at certain locations might have negative consequences,  
7 but concluded that it would not consider the “management characteristics” of particular proposals at  
8 particular sites in the context of a legislative text amendment process. Petitioner does not explain  
9 why that approach is erroneous, and we do not see that it is. The text amendments approved by  
10 the county change the uses allowed in three zones that apply to a number of different sites around  
11 the county. A reasonable person could conclude that, even if allowing a dog control facility at some  
12 sites might have net negative benefits, as a whole it is in the public interest and to the general public  
13 benefit to allow such facilities within the three affected zones. Petitioner has not demonstrated that  
14 the county’s decision is not based on substantive information providing a factual base, or that the  
15 county erred in concluding the challenged text amendment is in the public interest and will be of  
16 general public benefit.

17 With respect to ORS 609.090(2), while that statute authorizes a county to contract with  
18 private parties to provide a dog shelter, it does not require the county to consider that option as an  
19 alternative to providing a county dog shelter.<sup>7</sup>

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“The RAAC contends that Polk County has not addressed the potential health risks of a dog control facility. The RAAC contends that Polk County has not addressed potential impacts to other area properties. The RAAC is concerned with replacement of Nesmith Park with other park land, as required by the federal funding agreement for the park. Polk County acknowledges that the mentioned concerns are legitimate management considerations. Management of a dog control facility would include these issues regardless of the location of the facility or zoning district. Polk County is not considering the management characteristics of a dog control facility during this Zoning Ordinance text amendment process. \* \* \*” Record 39-40 (footnote omitted).

<sup>7</sup> ORS 609.090(2) provides:



1 The second assignment of error is denied.

2 **THIRD ASSIGNMENT OF ERROR**

3 Petitioner contends that the county failed to coordinate its decision with affected  
4 governmental units, in violation of Statewide Planning Goal 2 (Land Use Planning). Specifically,  
5 petitioner argues that, while the county solicited and received comments from the Polk County Fair  
6 Board, Oregon State Parks, and the Polk County Historical Society that expressed concerns with  
7 the proposed text amendments to the PP and PA zones, the county failed to address those  
8 concerns.

9 According to petitioner, the Fair Board expressed a number of concerns with any proposal  
10 to site a dog control facility at the fairgrounds or at the adjoining Nesmith Park, including potential  
11 spread of kennel diseases to stock animals at the fair and the ability of the fairground to attract  
12 events. Oregon State Parks expressed concern with siting the facility at Nesmith Park, noting that  
13 under the terms by which the county acquired the park a change in use obligates the county to  
14 replace the park with land of equal value. The Historical Society, which operates the county  
15 museum at the fairground site, expressed concern about loss of parking space if the facility is  
16 located there.

17 The county's decision notes the comments from the Fair Board and dismisses them as  
18 premature:

19 "The Polk County Fair Board (Fair Board), through Ray Steele, Chairman,  
20 commented in written testimony. The Fair Board requested copies of site plans,  
21 building footprints, and sound reduction study. The Fair Board stated concern that  
22 a dog control facility might have fiscal impacts to revenues to the Fair. Polk County

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"All dogs impounded under this section and ORS 609.030 shall be held in an adequate and sanitary pound to be provided by the county governing body from the general fund or out of funds obtained from dog licenses and from the redemption of dogs so impounded. *However, in lieu of the establishment of a dog pound, the county governing body may contract for the care of the dogs.* Unless claimed by its keeper, a dog shall be impounded for at least three days if the dog is without a license or identification tag and for at least five days if it has a license or identification tag. A reasonable effort shall be made to notify the keeper of a dog before the dog is removed from impoundment." (Emphasis added).

1 is not in the construction development phase at this time. There are no construction  
2 plans available. A site plan has not been prepared. The requested information,  
3 while possibly useful in evaluating potential impacts, is premature at this stage in a  
4 text amendment process. It may be appropriate to allow future evaluation of the  
5 project through the management decisions made by the governing body in the  
6 construction phase of the project (if the project reaches that phase).” Record 20-  
7 21.

8 The county’s findings do not specifically address the State Parks and Historical Society’s concerns.  
9 However, the response in the above-quoted findings—that any concerns with siting the facility at  
10 Nesmith Park or the fairground will be addressed during the “construction phase of the project,”  
11 would seem to apply equally well to the concerns raised by State Parks and the Historical Society.  
12 The closer question is whether that response adequately complies with the Goal 2 coordination  
13 requirement. As petitioner notes, Goal 2 requires that the county (1) engage in an exchange of  
14 information with affected governmental units, or at least invite such an exchange; and (2) use the  
15 information received to balance the needs of all governmental units as well as the needs of citizens.  
16 *Rajneesh v. Wasco County*, 13 Or LUBA 202, 210 (1985). While Goal 2 does not require the  
17 local government to accede to every request that made by an affected governmental unit, it must  
18 adopt findings addressing legitimate concerns raised by governmental units. *Brown v. Coos*  
19 *County*, 31 Or LUBA 142, 145-46 (1996); *Waugh v. Coos County*, 26 Or LUBA 300, 314  
20 (1993).

21 Here, the county’s findings essentially dismiss the concerns raised by the three governmental  
22 entities that commented, finding that those concerns can be addressed during the construction  
23 phase, presumably meaning building permit review, when and if a dog control facility is proposed for  
24 Nesmith Park or the fairgrounds. That response would be more than adequate if dog control  
25 facilities require discretionary review and a public process that would allow such concerns to be  
26 raised by those governmental units and addressed at that time. However, that does not appear to  
27 be the case. One of the proposals before the board of commissioners was to allow dog control  
28 facilities in the PP and PA zones only as conditional uses, which presumably would require a  
29 discretionary review process. Record 23. For unexplained reasons, the commissioners did not

1 accept that proposal, and ultimately adopted language that makes such facilities an outright  
2 permitted use. While the county is not required to accede to requests of affected governmental  
3 units, it must adopt findings addressing legitimate concerns, and it must use the information received  
4 to balance the needs of all governmental units as well as the needs of citizens. We cannot tell from  
5 the decision, the record or the response brief that the county did so.<sup>8</sup> We do not mean to suggest  
6 that the county cannot allow dog control facilities as permitted uses, or that the county must take any  
7 particular action in balancing the legitimate concerns of governmental units and its citizens.  
8 However, a response that concerns raised will be addressed during the “construction phase” is not  
9 an adequate response, if the review process applicable to the “construction phase” provides no  
10 standards or other means to raise and address those concerns, as appears to be the case. Remand  
11 is necessary for the county to adopt adequate findings addressing the raised concerns and, to the  
12 extent necessary, demonstrate that it has balanced the needs of all governmental units and the needs  
13 of its citizens.

14 The third assignment of error is sustained.

15 **FOURTH ASSIGNMENT OF ERROR**

16 Petitioner argues that county failed to demonstrate that allowing a dog control facility in any  
17 of the 16 county parks zoned PP is consistent with Statewide Planning Goals 5 (Natural Resources,  
18 Scenic and Historic Areas, and Open Spaces), Goal 8 (Recreational Needs), and Goal 15  
19 (Willamette Greenway), and related comprehensive plan and code provisions.

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<sup>8</sup> It might be said that the county implicitly responded to the concerns raised when it eliminated the language limiting a dog control facility to PP and PA zones within the Rickreall community (*i.e.*, the Nesmith Park and fairgrounds), and thus expanded the number of potential sites to include any publicly-owned sites in the county zoned PP and PA. However, as far as we are advised the fairgrounds is the only site in the county zoned PA, and as discussed below under the fourth assignment of error it seems unlikely that any of the other park sites zoned PP in the county are suitable for the proposed facility. Further, after evaluating a number of sites the county identified Nesmith Park and the fairgrounds as the preferred sites, the county’s findings address only those sites, and it seems reasonably clear that those sites remain the most likely location for the proposed facility.

1           **A.     Goal 5 Open Space Resources**

2           According to petitioner, 15 county parks in the PP zone are listed in the county’s Goal 5  
3 inventory of significant resource sites as “1-C” sites. Record 220-21. Eight of the 15 listed parks  
4 are rated a “high quality” resource, while the remainder are “medium quality” resource sites, under  
5 OAR 660-016-000(1). *Id.* The county’s inventory lists four options to protect the identified sites  
6 under OAR 660-016-0010: 3-A (Preserve the Resource), 3-B (Allow Conflicting Uses), 3-C  
7 (Limit Conflicting Uses) and 2-A (No Conflicting Uses—Existing Management). *Id.* at 221. The  
8 management program for each of the listed county parks is 2A.

9           Petitioner also notes that the county’s inventory of significant historic resources identifies  
10 three PP-zoned sites: Nesmith Park, Buell Mill Site, and Fort Yamhill. Each of these sites is  
11 designated “3-C,” which apparently signifies that the program to protect the resource is to  
12 “[b]alance conflicting uses,” pursuant to OAR 660-016-0010(3). Record 218-19.

13           Petitioner contends that the county erred in amending the PP zone to allow a use that  
14 conflicts with preservation of resources listed in the county’s inventory of significant natural and  
15 historic resource sites. According to petitioner, the county must adopt findings explaining why it is  
16 consistent with Goal 5 to allow a dog control facility on the PP-zoned sites, or the county must take  
17 an exception to Goal 5.

18           The county’s findings with respect to Goal 5 address only the Nesmith Park property, and  
19 state in relevant part:

20           “The Nesmith Park property is listed in the [PCCP] as a Goal 5 resource, under  
21 Open Space Lands. The implementation program identified for this property is that  
22 there are no ‘conflicting uses’ (it was designated a 2A property under the Goal 5  
23 rules in effect at the time of adoption). This designation allows uses to be  
24 established on the property consistent with the Comprehensive Plan. The historic  
25 property regulations are found in [PCZO] Chapter 183. The Nesmith Park  
26 property is not identified as an historic property (the Nesmith Cemetery is on the  
27 Polk Count Inventory). The proposed text amendment would not alter the historic  
28 Nesmith Cemetery property.

29           “\* \* \* \* \*

1 “Polk County finds that this legislative amendment to change the text of the [PCZO]  
2 does not require the adoption of an Exception for any Statewide Planning Goal and  
3 specifically not for Goals 5, 7, 8 and 11.” Record 19.

4 The fact that the county’s findings address only Nesmith Park rather than all of the PP-  
5 zoned Goal 5 parks in the county is not necessarily fatal, because the county’s reasoning with  
6 respect to Nesmith Park—that it is a 2-A site and therefore any uses may be allowed on the  
7 property that are consistent with the comprehensive plan—would seem to apply equally well to all  
8 PP-zoned Goal 5 parks, which are also designated 2-A. However, the county’s reasoning that any  
9 and all uses allowed under the comprehensive plan may be allowed on a 2-A Goal 5 site is  
10 unexplained and, as far as we understand that reasoning, inconsistent with Goal 5.

11 A “2-A” designation under the old Goal 5 rule at OAR 660-016-0005 is shorthand for a  
12 significant resource site that the county has determined has no conflicting uses at the time the site is  
13 added to the inventory, under OAR 660-016-0005(2).<sup>9</sup> If the county identifies conflicting uses, it  
14 must go on to evaluate the economic, social, environmental and energy (ESEE) consequences under  
15 OAR 660-016-0005(3) and determine whether to protect the resource site, allow the conflicting

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<sup>9</sup> OAR 660-016-0005 provides:

- “(1) It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:
- “(2) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which ensure preservation of the resource site.
- “(3) Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.”

1 uses fully, or limit conflicting uses under OAR 660-016-0010. Where, as here, the county  
2 determines that there are no conflicting uses allowed under the applicable zoning districts, the county  
3 must simply “adopt policies and ordinance provisions, as appropriate, which ensure preservation of  
4 the resource site.” Presumably for each of the PP-zoned park sites the county determined that the  
5 uses allowed in that zone are consistent with preservation of the resource site, and therefore no  
6 additional policies or ordinance provisions were necessary. *See* n 1 (uses allowed in the PP zone).  
7 In short, the county apparently determined that the PP zone was adequate to preserve the open  
8 space resource on the identified sites.

9 The challenged decision amends the PP zone to allow a new use—a dog control facility—  
10 that certainly could conflict with preservation of the open space resource on the identified significant  
11 resource sites. Under such circumstances, the county is required to apply Goal 5. OAR 660-023-  
12 0250(3)(b).<sup>10</sup> If the new use indeed conflicts with preservation of the resource, then the county  
13 must either (1) apply the requirements of Goal 5, or (2) take an exception to Goal 5. If the county  
14 applies Goal 5, it must either demonstrate that a dog control facility is not a conflicting use (*i.e.*, that  
15 the amended PP zone preserves the open space resource) or, if the dog control facility is a  
16 conflicting use, conduct an ESEE analysis sufficient to determine whether to protect the resource  
17 fully, allow conflicting uses, or limit conflicting uses.

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<sup>10</sup> OAR 660-023-0250 provides, in relevant part:

“(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section ‘initiated’ means that the local government has deemed the PAPA application to be complete.

“(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

“\* \* \* \* \*

“(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list \* \* \* [.]”

1 In short, the “2-A” designation in the county’s inventory does not, as the county apparently  
2 believes, mean that no uses could possibly conflict with these resource sites, and therefore the  
3 county may amend the PP zone to allow any use that is consistent with the comprehensive plan on  
4 these sites. The county’s program to protect these sites is “Existing Management,” *i.e.*, the  
5 unamended PP zone. We agree with petitioner that the county cannot amend that program to allow  
6 what could be a conflicting use without demonstrating compliance with Goal 5 or taking an  
7 exception to that goal. The county has done neither.

8 **B. Goal 5 Historic Resources**

9 The above-quoted finding states that Nesmith Park itself is not listed on the county’s  
10 inventory of historic resources, although the Nesmith Cemetery, found within the park, is so listed.  
11 The county appears to reason that no further Goal 5 inquiry is necessary because “[t]he proposed  
12 text amendment would not alter the historic Nesmith Cemetery property.”

13 We agree with petitioner that the county’s findings with respect to historic resources are  
14 inadequate. The findings do not address the other two parks that are identified as including historic  
15 resources. Although it is not entirely clear, it appears that all three historic sites are protected by the  
16 PP zone, not by the county’s historic preservation provisions at PCZO chapter 183. *See* Record  
17 218 (listing the PP zone and not PCZO 183 as the “Treatment” for the historic resource). Even if  
18 PCZO 183 applies to the three sites, the county does not explain why allowing a new potentially  
19 conflicting use on or near these historic resources is consistent with Goal 5. The county may not  
20 presently contemplate that the proposed dog control facility will be located on or near any historic  
21 site, but the challenged amendments do nothing to prevent that: the PP zone as amended allows a  
22 dog control facility on public land anywhere within the zone as an outright permitted use. For the  
23 reasons expressed above, the county must adopt findings demonstrating that the amended zone is  
24 consistent with Goal 5 or take an exception to the goal.

1           **C.     Goal 8**

2           Goal 8 is to “satisfy the recreational needs of the citizens of the state and visitors.”  
3           Petitioner argues that the PP-zoned county parks represent the county’s effort to comply with Goal  
4           8, and the county cannot amend the PP zone to allow a non-recreational use in the parks without  
5           demonstrating compliance with the Goal. Petitioner points out that many of the county parks are so  
6           small that siting a dog control facility and associated infrastructure on them would effectively  
7           obliterate any recreational or open space value.

8           The challenged decision includes no discussion of Goal 8, other than a conclusory finding,  
9           quoted above, that no exception to Goals 5, 7, 8, or 11 are necessary. The response brief’s  
10          discussion of Goal 8 is equally terse. Although we do not necessarily agree with petitioner that  
11          adding a non-recreational use to a zone that governs the county’s parks is inconsistent with Goal 8,  
12          absent some findings or evidence in the record demonstrating that the amendment is consistent with  
13          the goal, we agree with petitioner that remand is necessary to adopt findings addressing Goal 8.

14          **D.     OAR 660-004-0018**

15          Petitioner argues that nine of the PP-zoned county parks are located within areas subject to  
16          exceptions from farm or forest resource goals. Record 220-21. Petitioner points out that  
17          OAR 660-004-0018 imposes certain requirements when the county zones or amends the zoning of  
18          exception lands, and argues that the county failed to address these requirements.<sup>11</sup> *Friends of*  
19          *Yamhill County v. Yamhill County*, 41 Or LUBA 247, 254 (2002).

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<sup>11</sup> OAR 660-004-0018 provides, in relevant part:

- “(2) For ‘physically developed’ and ‘irrevocably committed’ exceptions to goals, plan and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
  - “(a) Which are the same as the existing land uses on the exception site;
  - “(b) Which meet the following requirements:



1 The county’s findings do not address OAR 660-004-0018 and the response brief is silent  
2 about the rule. The county does not dispute petitioner’s contention that nine of the county parks are  
3 located on lands within exception areas, or explain why the rule need not be addressed. Remand is  
4 necessary for the county to address whether the rule applies and, if so, whether the challenged  
5 amendments are consistent with the rule.

6 **E. Goal 11**

7 Goal 11 is “[t]o plan and develop a timely, orderly and efficient arrangement of public  
8 facilities and services to serve as the framework for urban and rural development.” Petitioner  
9 argues that the county contemplates that the proposed dog facility may be expanded for use by  
10 several cities within the county, as a joint effort with the county. If so, petitioner argues, the county  
11 must address the requirements of Goal 11 or take an exception to that goal. Petitioner notes that

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“(A) The rural uses, density, and public facilities and services will maintain the land as ‘Rural Land’ as defined by the goals and are consistent with all other applicable Goal requirements; and

“(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

“(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses; or

“(c) The uses, density, and public facilities and services are consistent with OAR 660-022-0030, ‘Planning and Zoning of Unincorporated Communities’, if applicable.

“(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

“(4) ‘Reasons’ Exceptions:

“(a) When a local government takes an exception under the ‘Reasons’ section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

“(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a ‘Reasons’ exception, a new ‘Reasons’ exception is required[.]”

1 Goal 11 defines “rural facilities and services” as “facilities and services suitable and appropriate  
2 solely for the needs of rural lands,” and that one of the Goal 11 guidelines states that “[p]ublic  
3 facilities and services for rural areas should be provided at levels appropriate for rural use only and  
4 should not support urban uses.”

5 The county’s findings regarding Goal 11 do not address petitioner’s concern for an  
6 expanded facility serving multiple cities as well as the county.<sup>12</sup> However, it is not clear to us that  
7 Goal 11 is implicated when a dog control facility located on rural lands also provides services to  
8 urban areas. *See Stallkamp v. City of King City*, 43 Or App 333, 342-43 (2002), *aff’d* 186 Or  
9 App 742, 66 P3d 1029 (2003) (an exception to Goal 11 is not required to adopt zoning that would  
10 allow a park serving urban residents on rural land, because under statute a park is allowed on EFU  
11 lands without inquiry under Goal 11). We note, as does the county’s decision, that a dog control  
12 facility is similar to a dog kennel, allowed in the EFU zone without the requirement that the kennel  
13 be sized to serve only rural needs. Even if Goal 11 is potentially implicated by a dog control facility  
14 on rural lands that also serves urban areas, we note that the board of commissioners limited the size  
15 of the permitted facility to 4,000 square feet. Petitioner does not explain why that size limitation is  
16 insufficient to preclude the combined city-county facility petitioner is concerned about, and we do  
17 not see that it is.

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<sup>12</sup> The county’s decision states, in relevant part:

“Goal 11 requires an exception to extend sewer services outside of an urban growth boundary or unincorporated community. The Polk County Fairground property and the Nesmith Park property are located within the unincorporated community of Rickreall—Derry. The City of Dallas property on Bowersville Road that is in the Public Service Zone is located outside the urban growth boundary and outside of unincorporated communities. Regardless, the use specified in this text amendment (dog control facility) is expected to function satisfactorily with on-site sewage disposal system and would not need urban sewage disposal services. Other services (police protection, electricity, fire protection, etc.) would be satisfactorily provided at a level typical of other rural lands. An Exception to Goal 11 is not needed for this text amendment nor is an Exception expected in the future. Polk County is aware that if sewer services are required in areas outside urban growth boundaries or unincorporated communities, in the future, an Exception to Goal 11 would be required at that time. Statewide Planning Goal 11 would not be applicable to the proposed text amendments.” Record 19.

1           **F.       Goal 15 (Willamette River Greenway)**

2           Goal 15 is “[t]o protect, conserve, enhance and maintain the natural, scenic, historical,  
3 agricultural, economic and recreational qualities of lands along the Willamette River[.]” The goal  
4 states that “[i]ntensification of uses, changes in use or developments may be permitted after  
5 [December 6, 1975] only when they are consistent with the Willamette Greenway Statute, this goal,  
6 the interim goals in ORS 215.515(1) and the statewide planning goals[.]”

7           Petitioner points out that three county parks zoned PP are located within the Willamette  
8 Greenway, subject to the Greenway Management Overlay zone (PCZO 173). PCZO 173.010(F)  
9 provides that one purpose of the overlay zone is to “provide for the review of any intensification of  
10 use, change of use, or development on properties located within the Willamette River Greenway of  
11 Polk County.” A dog control facility is not among the permitted uses in the overlay zone listed at  
12 PCZO 173.040, although we note that PCZO 173.050(A) allows as a conditional use “[a]ll uses  
13 permitted in the primary zone but not permitted” in the overlay zone. We also note that  
14 PCZO 173.050(B) sets out 19 criteria that apply to conditional uses within the overlay zone,  
15 presumably designed to ensure that conditional uses allowed within the greenway are consistent with  
16 Goal 15.

17           The decision and response brief do not mention Goal 15 or PCZO 173. We might  
18 speculate that the county believes the requirements of PCZO 173.050(A) and (B) are adequate to  
19 ensure that amending the underlying zone to allow a dog control facility as a permitted use within the  
20 Willamette Greenway is consistent with Goal 15. However, without findings or even argument on  
21 these points, the more prudent course is to remand to allow the county to address the issue in the  
22 first instance.

23           The fourth assignment of error is sustained, in part.

24           The county’s decision is remanded.