

1
2 BEFORE THE LAND USE BOARD OF APPEALS
3 OF THE STATE OF OREGON
4

5 KELLY BARTHOLOMEW,
6 *Petitioner,*
7

8 vs.

9
10 CLACKAMAS COUNTY,
11 *Respondent,*
12

13 and

14
15 PORTLAND GENERAL ELECTRIC COMPANY,
16 *Intervenor-Respondent.*
17

18 LUBA No. 2025-073
19

20 SAVE STAFFORD ROAD,
21 *Petitioner,*
22

23 vs.
24

25 CLACKAMAS COUNTY,
26 *Respondent,*
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28 and

29
30 PORTLAND GENERAL ELECTRIC COMPANY,
31 *Intervenor-Respondent.*
32

33 LUBA No. 2025-074
34

35 FINAL OPINION
36 AND ORDER
37

38 Appeal from Clackamas County.

1
2 Kelly Bartholomew filed a petition for review and reply brief and argued
3 on behalf of themselves.

4
5 Gregory S. Hathaway filed a petition for review and reply brief and argued
6 on behalf of petitioner Save Stafford Road. Also on the brief was Trinh C. Tran
7 and Hathaway Larson LLP.

8
9 Caleb Huegel filed the respondent's brief and argued on behalf of
10 respondent.

11
12 Iván Resendiz Gutierrez filed the intervenor-respondent's briefs and
13 argued on behalf of intervenor-respondent. Also on the briefs were Cozette Tran-
14 Caffee, LeAnne M. Bremer, and Miller Nash LLP.

15
16 ZAMUDIO, Board Chair; BASSHAM, Board Member; WILSON, Board
17 Member, participated in the decision.

18
19 REMANDED

03/19/2026

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

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NATURE OF THE DECISION

Petitioners appeal a hearings officer’s decision approving a conditional use permit (CUP) for an electrical transmission line along Stafford Road.

BACKGROUND

The challenged decision approves intervenor-respondent Portland General Electric Company’s (PGE’s) application for a conditional use permit for a high-voltage transmission line in a 5.9-mile corridor along Stafford Road from a substation at SW Rosemont Road to the Wilsonville city limits at SW Kahle Road. PGE is replacing 134 poles with taller poles and increased line capacity as “part of a larger PGE project, the *‘Tonquin Rosemont-Wilsonville Line Replacement Project,’* located in Tualatin, Sherwood, Stafford, Wilsonville and unincorporated Clackamas County.” Record 6 (italics in original).

“The existing utility corridor along Stafford Road was established between 1947 and 1948. Existing poles in this corridor are being upgraded and strengthened to allow both distribution and transmission lines. Approximately two-thirds of existing poles will be converted from wood to steel, and one-third will remain wood. The basic components of a transmission line are the structures/poles, conductor cables, insulators, guying with anchors, foundations to support the structures, and communication cables.” Record 3.

“The existing utility line has been in existence since the late 1940s in two separate pieces * * *. The portion of the utility line corridor along SW Stafford Road north of SW Boreland Road currently includes 115 kV electrical transmission lines, distribution lines, and other communication lines. The portion south of I-205 is limited to electrical distribution lines and other communication lines. The proposal is to connect these two utility lines together and add

1 electrical transmission lines to the entire route.” Record 27.

2 The project area includes lands zoned Rural Residential Farm Forest 5-
3 Acre (RRFF-5) and Exclusive Farm Use (EFU). Electric transmission lines are a
4 conditional use in the RRFF-5 zone. Clackamas County Zoning and
5 Development Ordinance (ZDO) Table 316-1. The EFU zone allows utility lines,
6 including electric transmission lines, located in the right-of-way to be replaced
7 without land use review. ZDO Table 401-1. However, electric transmission lines
8 located on EFU land outside of the right-of-way require review. *Id.*

9 In July 2025, PGE requested conditional use approval for the
10 improvements in the RRFF-5 zone and approval of a “utility facility necessary
11 for public service” for improvements at Rosemont Substation, which is in the
12 EFU zone and outside of the right-of-way.¹ After a public hearing, the hearings
13 officer approved with conditions PGE’s application for conditional use approval
14 for utility poles in the RRFF-5 zone and approved a “utility facility necessary for
15 public service” to replace utility poles at Rosemont Substation. ZDO Table 401-
16 1. These appeals followed, challenging only the conditional use approval for
17 improvements in the RRFF-5 zone.

¹ PGE previously applied to the county for approval of the project as an alteration of a nonconforming use. The county determined that PGE’s application was void. PGE appealed and we remanded for the county to decide the merits of the application. *Portland General Electric Company v. Clackamas County*, LUBA No 2024-069 (Jan 23, 2025). On March 26, 2025, the county denied PGE’s application for alteration of a nonconforming use. Record 933.

1 **BARTHOLOMEW BRIEFS**

2 Petitioner Bartholomew is self-represented in this appeal. Bartholomew
3 filed a petition for review asserting three assignments of error and 40 pages of
4 argument. In the respondent’s brief, the county alerted us that Bartholomew cited
5 cases that do not exist and speculated that the citations to invalid authorities were
6 generated using artificial intelligence. Upon our own review, we agree that most
7 of Bartholomew’s case citations are to cases that do not exist. In addition,
8 Bartholomew repeatedly cites cases and statutes that do exist, but that do not
9 support the proposition for which they are cited. We refer to those fabricated
10 authorities and incorrect citations here as “invalid authorities.”

11 After the county identified Bartholomew’s reliance on invalid authorities,
12 Bartholomew filed a reply brief stating, in part:

13 “Proceeding pro se, [Bartholomew] relied in good faith on sources
14 believed to be reliable at the time, later learned that some authorities
15 could not be verified, and accepts responsibility for that mistake.
16 [Bartholomew] does not ask the Board to rely on any such authority.
17 Importantly, the dispositive issues here do not depend on any
18 disputed citation.” Bartholomew Reply Brief 2.²

19 Bartholomew did not explain the origin of the invalid authorities or withdraw the
20 petition for review or attempt to submit an amended petition for review removing
21 the invalid authorities. At oral argument, PGE suggested that LUBA should strike

² References and citations to Bartholomew’s reply brief are to the document titled Petitioner’s Second Corrected Response Brief, which the Board received on February 6, 2026.

1 the portions of the petition for review that rely on invalid authorities. Audio
2 Recording, LUBA No 2025-074, Feb 10, 2026, at 39:00. Also at oral argument,
3 the county pointed out that Bartholomew’s reply brief *also* contains a fabricated
4 case citation. *Id.* at 35:55. In rebuttal at oral argument, Bartholomew stated that
5 they submitted the petition for review before realizing “that a lot of the sources
6 were not reliable,” emphasized that they “do not have access to legal resources,”
7 and requested that they not “be shut out of the process.” *Id.* at 43:00.
8 Bartholomew reiterated that most of their arguments “would really stand
9 regardless of which references I used.” *Id.* at 44:10. Bartholomew did not
10 acknowledge or explain the fabricated case citation in their reply brief.

11 Bartholomew does not recognize the seriousness of their misconduct.
12 Bartholomew does not acknowledge that submitting briefs relying on invalid
13 authorities actively misrepresents the law and invites the Board to rely on the
14 invalid authorities. Moreover, even after the county identified Bartholomew’s
15 reliance on invalid authority in their petition for review, Bartholomew persisted
16 in the practice and submitted an invalid authority in their reply brief.

17 The question is what we should do with Bartholomew’s briefing. As far as
18 we are aware, this is a novel issue for LUBA, and a widespread issue in the courts.
19 As the county points out, where attorneys are involved, citing fabricated authority
20 is a breach of professional duties of candor and truthfulness. Respondent’s Brief
21 6 (citing *Ringo v. Colquhoun Design Studio, LLC*, 345 Or App 301, 304, 582 P3d
22 695 (2025)). We appreciate that self-represented parties often advocate for their

1 interests without the benefit of legal training and access to what can be expensive
2 legal research tools, such as subscription-based commercial legal databases,
3 which allow for legal queries and citation checking.³ The land use planning
4 process, including LUBA appeals, is designed and intended to be open to public
5 participation, which includes self-representation by nonlawyers. To ensure a fair
6 and predictable process, we must hold self-represented parties to the same
7 standard as a reasonable attorney with respect to arguments and representations
8 submitted to the Board, including citations submitted in pleadings and briefs.
9 That standard requires that all appeal parties exercise reasonable diligence to
10 ensure that the cited authorities exist and support their legal arguments.
11 Bartholomew submitted their petition for review without exercising reasonable
12 diligence to verify that their arguments and legal citations were supported by law.

13 We agree with the county's observation that citation to invalid authorities
14 jeopardizes the rule of law. Legal precedent serves to avoid an adjudicator's
15 arbitrary discretion. *Ringo*, 345 Or App at 304-05 (citing *The Federalist* No. 78.
16 at 141 (Alexander Hamilton) (R. B. Bernstein ed., 2024)). The injection of false
17 precedent into a legal proceeding potentially disrupts the integrity of that
18 particular proceeding and strains the institutions and systems that uphold the rule

³ LUBA appeals generally primarily concern the application of local city and county law and codified state statutes and rules, which may be accessed online without fees and subscriptions.

1 of law. When a party submits briefs based on invalid authorities, that party
2 engages in conduct that jeopardizes the integrity of the LUBA appeal process.

3 Regardless of who submits fabricated citations, or whether they originate
4 from the use of artificial intelligence or otherwise, such citations strain LUBA’s
5 and the parties’ limited resources. *Ringo*, 345 Or App at 304.⁴ The time and
6 resources consumed for parties and LUBA to address Bartholomew’s reliance on
7 fabricated authorities would be far better used to address the merits of pending
8 matters. *See id.* (“Every hour spent addressing false citations and statements of
9 law is an hour diverted from those matters in which attorneys have supported
10 their arguments with precedent that exists.”). Submitting legal citations invites
11 LUBA to rely on them and includes an implicit certification that the authorities
12 exist and that the citations support the party’s legal assertions. Legal arguments
13 are bolstered by citations to valid authorities. Every time a party relies on even a
14 single false authority, LUBA must commit attention and time to check the
15 authorities to maintain integrity in the process and public confidence that LUBA
16 will not rely on invalid authority in resolving an appeal. While parties and legal
17 practitioners may at times miscite or mischaracterize existing legal authority, it
18 is significantly more egregious for a party to rely on invalid authority.

⁴ The court has observed that “generative artificial intelligence is not perceiving nonexistent law as the result of a disorder. Rather, it is generating nonexistent law in accordance with its design.” *Ringo*, 345 Or App 304.

1 LUBA appeals proceed to briefing and decision on a short statutorily
2 mandated timeline. “It is the policy of the Legislative Assembly that time is of
3 the essence in reaching final decisions in matters involving land use and that
4 those decisions be made consistently with sound principles governing judicial
5 review.” ORS 197.805; *see also* ORS 197.830 (setting out deadlines in LUBA
6 proceedings). It is unlikely that we would allow an amended petition for review
7 to remove invalid authorities. Because the deadline for filing response briefs and
8 reply briefs are so short (21 and seven days, respectively), it is difficult to imagine
9 a case where such a practice would not prejudice the responding parties. For those
10 same reasons, we are unlikely to issue an order to show cause why we should not
11 strike a brief or pleading, or portions of a brief or pleading, that rely on invalid
12 authorities. Instead, we will strike such briefs and pleadings on our own motion.

13 We do not consider Bartholomew’s self-represented status and lack of
14 access to professional legal research tools adequate justifications for submitting
15 briefs that rely on invalid authorities. *See Powell v. Employment Dept.*, 347 Or
16 App 55, 57-60, ___ P3d ___ (2026) (refusing to consider the portions of a self-
17 represented claimant’s briefs that relied on fabricated authority and imposing
18 monetary sanctions for submitting fabricated authority). We do not accept
19 Bartholomew’s argument that we can and should consider their legal arguments
20 stripped of the invalid authorities cited in support of those arguments. We agree
21 with PGE’s suggestion that we do not consider the portions of Bartholomew’s
22 briefing that rely on invalid authorities. The problem is so pervasive and

1 persistent throughout all three assignments of error that we strike the entirety of
2 Bartholomew's petition for review on our own motion. Accordingly, we do not
3 reach or resolve the assignments of error therein.

4 **SAVE STAFFORD ROAD'S FIRST, SECOND, AND THIRD**
5 **ASSIGNMENTS OF ERROR**

6 Conditional use criterion ZDO 1203.03(D) requires PGE to demonstrate
7 the following:

8 "The proposed use will not alter the character of the surrounding
9 area in a manner that substantially limits, impairs, or precludes the
10 use of surrounding properties for the primary uses allowed in the
11 zoning district(s) in which surrounding properties are located."

12 Primary uses in the surrounding area are generally rural residential,
13 farming, and forestry uses. The corridor contains improvements including
14 dwellings, schools, places of worship, and agricultural businesses. Record 28.
15 The project will replace the existing power poles with taller poles and remove
16 some existing trees. Record 29 ("The proposal to add transmission capacity to an
17 existing power distribution line will result in the removal of up to 204 trees in the
18 RRF-5 zone to adhere to the voltage-based clearance requirements to reduce
19 wildfire risks.").

20 Petitioner Save Stafford Road (SSR) consists of property owners in the
21 Stafford Road area. SSR argued below, and reiterates on appeal, that the added
22 height, larger-diameter poles, and additional wires combine to create a far more
23 industrial aesthetic than the current power lines, and the industrial aesthetic is

1 inconsistent with the current visual identity of the Stafford Road area. SSR
2 Petition for Review 14.

3 The hearings officer found that the visual and aesthetic impacts of the
4 project would not substantially impair the residential uses within the Stafford
5 Road Area and, therefore, PGE had sustained its burden of demonstrating
6 compliance with ZDO 1203.03(D).⁵

7 The hearings officer found:

8 “As noted above, clearing within the powerline corridor will alter
9 the existing visual character of the area. Under existing conditions
10 drivers on SW Stafford Road will see a mix of trees and open areas.
11 Clearing for the powerlines will remove trees, increasing the amount
12 of open areas. However, it could be argued that clearing will create
13 more panoramic views of the landscape. Therefore, the impact of
14 that change is subjective depending on the viewer’s preference for
15 forested or open rural views.

16 “However, as staff noted in the nonconforming use decision, ‘The
17 added height, larger diameter poles, and additional wires [proposed
18 with this project] combine to create a far more industrial aesthetic
19 than the current power lines * * *’ (Exhibit 57 at 27). This is well
20 illustrated by the photo simulations submitted by [PGE] (Exhibit 2
21 at 113-136) and opponents (Exhibit 42 and Exhibit 66 at 9-22). The
22 hearings officer finds that Mr. Wagner’s photo simulations are
23 accurate as they merely cropped versions of [PGE’s] simulations.
24 [PGE’s] simulations illustrate views from a relative distance while

⁵ The hearings officer started their ZDO 1203.03(D) analysis by noting that the ZDO does not define the majority of the terms used in that section and setting out dictionary definitions of the terms “alter,” “character,” “surround,” “area,” “substantial,” “limit,” “impair,” and “preclude.” Record 33-34. SSR accepts that those definitions reflect the plain meaning of the ZDO 1203.03(D) standard.

1 Mr. Wagner's show a closer view. Drivers on Stafford Road will
2 experience both views as they travel along the roadway.

3 "The project will also impact views from abutting homes and
4 properties. Although the proposed facilities will replace existing
5 utility poles and lines that currently affect these views, the taller,
6 wider poles and additional wires will increase the visual impact.
7 However, these facilities will not completely obscure such views as
8 a building or tall trees would. The poles will be spaced an average
9 of 250 feet apart and transmission wires will be spaced between
10 eight and ten feet apart (Exhibit 2 at 97-98). Therefore, the new
11 poles and wires will consume a relatively small portion of the larger
12 viewing shed. In addition, the existing poles and powerlines, which
13 are located at lower elevations, already impact views in this area.
14 The new wires will be elevated above the 25-foot building height
15 limit allowed in the RRFF-5 zone, which will limit their impact on
16 views from residences, as the wires will be above the elevation of
17 second floor windows (*Id.*).

18 "* * * * *

19 "The visual and aesthetic impacts of the project will not
20 substantially limit, impair, or preclude the use of surrounding
21 properties. Although the area may look different after the project is
22 completed, surrounding properties can continue to be used for
23 residences, farms, and other permitted uses. Transmission lines exist
24 in relative harmony with these uses throughout the region." Record
25 45-46 (first brackets and first omission in original; emphasis
26 omitted).

27 In the first assignment of error, SSR argues that the hearings officer
28 misconstrued ZDO 1203.03(D) in concluding that the transmission line changes
29 would not substantially visually impair the use and enjoyment of residential uses.
30 In the second assignment of error, SSR argues that the hearings officer
31 misconstrued ZDO 1203.03(D) by concluding that criterion is satisfied if the

1 surrounding residential properties can continue to be used for residential uses. In
2 the third assignment of error, SSR argues that the hearings officer's findings are
3 inadequate to explain why the project will not visually impair the use and
4 enjoyment of the residential uses. We address these three assignments of error
5 together because they are directed at the same criterion and the issues and
6 resolution are interrelated.

7 The central issue is whether the proposed electrical transmission line
8 development along Stafford Road would alter the character of the area in a way
9 that would substantially limit or impair residential uses on surrounding RRFF-5
10 properties. Detached single-family dwellings are the primary residential use
11 allowed in the RRFF-5-zoned property. ZDO Table 316-1. The primary impacts
12 from the transmission line that opponents argued would substantially limit or
13 impair residential uses include visual and aesthetic changes. SSR argues that the
14 use of rural residential property includes the scenic character of the surrounding
15 area. SSR argues that the visual impact of the transmission line changes and
16 impairs the surrounding residential uses because the changes create an industrial
17 aesthetic that is out of character with the surrounding area.

18 PGE responds that we should deny SSR's first three assignments of error
19 because SSR does not connect the visual impacts to some substantial interference
20 with the primary uses allowed in the zone and SSR does not explain how the
21 upgraded transmission line will substantially impair the use of the surrounding
22 properties for the primary residential uses. SSR replies that the hearings officer

1 found that the project would create significant visual impacts that are inconsistent
2 with the current visual character and identity of the Stafford Road area and that
3 finding supports a conclusion that the project would substantially impair the use
4 and enjoyment of residential uses in the Stafford Road area.

5 This argument is almost identical to an argument that we rejected in *York*
6 *v. Clackamas County*, 81 Or LUBA 20 (2020) (*York II*). There, the petitioners
7 argued that the visual impact of a solar facility substantially impaired the
8 surrounding residential uses because a solar facility is out of character with the
9 surrounding area. We reasoned that the petitioners’ argument misinterpreted the
10 appropriate inquiry. *Id.* at 24. In *York v. Clackamas County*, 79 Or LUBA 278
11 (2019) (*York I*), the petitioners argued that even if the proposed facility does not
12 substantially limit, impair, or preclude the primary residential uses in the RRRF-
13 5-zoned area, the proposed solar facility nonetheless failed to comply with ZDO
14 1203.03(D) because it altered the “rural” character of the area. We rejected that
15 argument and explained:

16 “ZDO 1203.03(D) does not prohibit alteration of the character of the
17 surrounding area, only alterations ‘in a manner that substantially
18 limits, impairs, or precludes the use of surrounding properties for
19 the primary use[.]’ As ZDO 1203.03(D) is structured, if the hearings
20 officer concludes that the proposed use does not substantially limit,
21 impair or preclude the primary uses of the surrounding area, there is
22 no need to address whether it has ‘alter[ed] the character’ of the
23 surrounding area in some other manner.” *York I*, 79 Or LUBA at
24 288.

1 Similarly, here, SSR emphasizes that the conditional use will alter the
2 visual character and identity of the Stafford Road area, but SSR has not explained
3 how the transmission line will substantially impair the use of the surrounding
4 properties for the primary residential uses. Accordingly, we agree with PGE that
5 SSR has not identified any remandable error regarding the hearings officer's
6 conclusion that ZDO 1203.03(D) is satisfied.

7 SSR's first, second, and third assignments of error are denied.

8 **SAVE STAFFORD ROAD'S FOURTH ASSIGNMENT OF ERROR**

9 In the fourth assignment of error, SSR argues that the hearings officer's
10 finding are inadequate to demonstrate that the proposed project is consistent with
11 the county's Rural Scenic Roads Policies 5.I.1 and 5.I.2. The county was required
12 to find that "[t]he proposed use is consistent with the applicable goals and policies
13 of the Comprehensive Plan." ZDO 1203.03(E). It is undisputed that the
14 northernmost 2.7-mile segment of the proposed project along Stafford Road is
15 designated as a rural scenic road.

16 The Rural Scenic Roads Policies in the comprehensive plan provide, in
17 part:

18 "5.I.1 Implement a County Scenic Road System that is safe and
19 attractive for all users.

20 "5.I.2 Promote the protection of recreation values, scenic features
21 and an open, uncluttered character along designated scenic
22 roads.

23 "Developments adjacent to scenic roads shall be designed
24 with sensitivity to natural conditions and:

1 approval standards that were raised in the proceedings below. *Norvell v. Portland*
2 *Area LGBC*, 43 Or App 849, 852-53, 604 P2d 896 (1979); *Space Age Fuel, Inc.*
3 *v. Umatilla County*, 72 Or LUBA 92, 97-98 (2015). Generally, findings must (1)
4 address the applicable standards, (2) set out the facts relied upon, and (3) explain
5 how those facts lead to the conclusion that the standards are met. *Heiller v.*
6 *Josephine County*, 23 Or LUBA 551, 556 (1992).

7 The hearings officer found:

8 “The section of SW Stafford Road between the City of Lake Oswego
9 and SW Mountain Road is designated a ‘scenic road’ (Policy 5.I.3).
10 As discussed above, this project will alter the character of the
11 surrounding area to some extent. However, the comprehensive plan
12 does not prohibit transmission lines along scenic roads. If the Board
13 had intended to impose such a prohibition it would have said so by
14 using the terms ‘prohibit’ or ‘shall not’ as it did in other sections of
15 the comprehensive plan (See e.g., Policy 3.C.2.4, Policy 3.C.6.5,
16 Policy 3.L.2, Policy 3.B.1.5, Policy 3.C.2.2, Policy 3.C.3.3, Policy
17 3.C.6.7, Policy 3.F.1, and many others.) The determination that
18 transmission lines are not prohibited on scenic roads is supported by
19 the fact that there are existing 115kV transmission lines on scenic
20 roads in the County; the section of S. Redland Road that are similar
21 to the lines proposed with this application (Exhibit 2 at 65 and 67)
22 and on the scenic road section of SW Stafford Road between the
23 Rosemont substation and SW Boreland Road (applicant testimony).
24 Eight other scenic roads include lower voltage transmission lines.
25 Therefore, the hearings officer cannot find that transmission lines
26 conflict with the goals and policies for scenic roads.

27 “Scenic road policies 5.I.2.1-5.I.2.3 relate to the design of and
28 access to scenic roads and are inapplicable to this development
29 which will not alter SW Stafford Road or require additional roadway
30 access.

31 “Design review is not required for institutional uses in the RRF-5

1 zone (ZDO 1102.01). Therefore, policy 5.I.2.4 is inapplicable.

2 “Policy 5.I.2.5 is inapplicable as no buildings are proposed.

3 “Policy 5.I.2.6 is inapplicable as no parking areas are proposed.

4 “Policy 5.I.2.7 is inapplicable as no frontage roads are proposed.

5 “As noted above, this project does not involve placement of ‘*utility*
6 *service lines.*’ Therefore, Policy 5.I.2.8 is inapplicable.” Record 54
7 (emphases in original).

8 SSR argues that these findings are inadequate to support a conclusion that
9 the development is consistent with Rural Scenic Road Policies 5.I.1 and 5.I.2.
10 The hearings officer reasoned that the Rural Scenic Road Policies do not prohibit
11 transmission lines on county-designated scenic roads, and similar transmission
12 lines exist on other designated rural scenic roads in the county. SSR argues that
13 those general findings are inadequate to demonstrate whether the project results
14 in a scenic road that “is safe and attractive for all users” and whether the
15 conditional use approval “[p]romote[s] the protection of recreation values, scenic
16 features and an open, uncluttered character along” the portion of Stafford Road
17 that is a designated scenic road. Rural Scenic Road Policies 5.I.1, 5.I.2.

18 PGE responds that the scenic road policies are not approval criteria. PGE
19 observes that a criterion that requires the county find “consistency” with a
20 comprehensive plan requires assessing the development within the context of the
21 comprehensive plan as an overarching guide, often with internally inconsistent
22 policies that must be applied in concert. We have acknowledged that such a
23 consistency inquiry typically requires balancing competing applicable policies.

1 *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 245, 251 (2018),
2 *aff'd*, 295 Or App 669, 433 P3d 802 (2019); *Waker Associates, Inc. v. Clackamas*
3 *County*, 111 Or App 189, 194, 826 P2d 20 (1992). PGE criticizes that SSR quotes
4 the hearings officer's rural scenic road policy findings in insolation and does not
5 acknowledge or challenge the hearings officer's initial and overarching finding
6 that "the proposed development is, on balance, consistent with the applicable
7 goals and policies of the Comprehensive Plan[.]" Record 52.

8 The hearings officer analyzed ZDO 1203.03(E) by first identifying and
9 listing the comprehensive plan provisions that were referenced in the application
10 and testimony, which include goals and policies concerning agriculture, natural
11 resources, open space, urbanization, energy, public facilities, and transportation.
12 Record 47-52. The hearings officer then made findings on those policies. Record
13 52-55. The list of comprehensive plan policies does not include Policies 5.I.1 and
14 5.I.2. Record 50. That list includes the rural scenic road design policies at
15 subsections 5.I.2.1 through 8, but does not include the first sentence that
16 articulates the overarching policy of 5.I.2. Record 50. In the findings "regarding
17 scenic roads," the hearings officer did not make any findings on Policy 5.I.1.
18 Record 54. The hearings officer found that the design policies at subsections
19 5.I.2.1 through 8 are not applicable, but did not address the overarching policy
20 language in 5.I.2. Record 54.

21 The hearings officer did not find, and PGE does not argue, that the first
22 sentence that articulates the overarching policy of 5.I.2 does not apply, based on

1 the hearings officer's conclusions that the design subsections 5.I.2.1 to 8 do not
2 apply. Similarly, the hearings officer did not find, and PGE does not argue, that
3 the hearings officer's conclusions that the design subsections 5.I.2.1 to 8 do not
4 apply to the proposed use demonstrates that the use is consistent with Policy 5.I.2.

5 PGE argues that the decision demonstrates that the hearings officer
6 considered all of the applicable comprehensive plan policies and implicitly
7 concluded that the impacts on the scenery along Stafford Road within the
8 designated scenic road area are balanced by the advancement of other
9 comprehensive plan goals and policies, including those concerning public
10 facilities. For example, a comprehensive plan public facilities goal is to
11 "[p]rovide for the location and development of drinking water facilities to support
12 existing and future land development." Record 51 (quoting a provision of chapter
13 seven of the comprehensive plan). The hearings officer found that the project is
14 consistent with that goal because PGE "identified that the need for additional
15 transmission capacity is partly related to a new water treatment facility, which is
16 a drinking water facility to support existing and future land development."
17 Record 54-55.

18 PGE also points to and quotes a section of the decision titled "hearing and
19 record highlights," where the hearings officer summarized PGE's hearing
20 presentation:

21 "ZDO 1203.03(E) requires that the project be '*consistent*' with the
22 goals and policies of the comprehensive plan. Most of the goals and
23 policies cited by opponents are aspirational. Some goals and policies

1 conflict with others; therefore, the goals must be read together in
2 context and balanced when conflicts occur. The hearings officer
3 must apply the plain words of the plan and may not add or delete
4 text from the plan. ORS 174.040. When the County intends to
5 prohibit something it uses the words '*prohibit*' or '*shall not*' in its
6 plan and goals. The County comprehensive plan does not prohibit
7 transmission lines on scenic roads. Comprehensive plan policy 5.I.3
8 designates 24 scenic roads in the County. All of the scenic roads
9 include powerlines and eight, including SW Stafford Road, include
10 transmission lines. This is evidence that the Board of County
11 Commissioners * * * did not intend to prohibit transmission lines on
12 scenic roads. In addition, ORS 758.010 provides that utilities have a
13 '*right and privilege*' to construct, maintain, and operate electric
14 transmission lines '*along the public roads in this state * * **' ORS
15 758.010(1). The County only has the '*[a]uthority to designate the*
16 '*location upon roads * * * where lines * * * may be located * * **'
17 ORS 758.010(2). Therefore, the hearings officer should interpret the
18 ZDO and the comprehensive plan consistent with this statute to
19 allow this transmission line project." Record 4, 9 (emphases,
20 omissions, and brackets in original).

21 However, PGE does not point to where the hearings officer adopted that hearing
22 summary and PGE's argument as their own analysis and findings supporting the
23 approval, and we do not consider that quoted hearing summary as the hearings
24 officer's findings on ZDO 1203.03(E).

25 PGE also argued below that

26 "In this case, whatever small, purported impacts there might be on
27 the scenery adjacent to Stafford Road will be far outweighed by the
28 significant advancement of more important plan goals and policies,
29 including those set out in the chapters concerning energy (Ch. 3),
30 housing (Ch. 6), public facilities and services (Ch. 7), and
31 economics (Ch. 8). In fact, the transmission and supply of electricity
32 advances the vast majority of the plan goals and policies as it
33 literally powers all aspects of modern society." Record 69-70.

1 PGE asserts in their brief that the hearings officer made that same finding.
2 Intervenor-Respondent’s Brief 35-36. However, PGE does not point to anywhere
3 in the decision where the hearings officer adopted that reasoning and performed
4 that balancing of comprehensive plan policies.

5 We do not agree with PGE that, taken as a whole, the decision
6 demonstrates that the hearings officer balanced the applicable comprehensive
7 plan policies to conclude that the impacts on the scenery along Stafford Road
8 within the designated scenic road area are counterbalanced by the advancement
9 of other comprehensive plan goals and policies. The decision does not set out or
10 address the overarching policy language of Rural Scenic Road Policies 5.I.1 and
11 5.I.2—whether the project results is a scenic road that “is safe and attractive for
12 all users” and whether approval of the proposed use “[p]romote[s] the protection
13 of recreation values, scenic features and an open, uncluttered character along”
14 the portion of Stafford Road that is a designated scenic road. The hearings officer
15 did not find that the project is consistent with the pertinent, overarching policy
16 language of Rural Scenic Road Policies 5.I.1 and 5.I.2, or that the project is
17 inconsistent with those policies, but that inconsistency is counterbalanced by the
18 project advancing other applicable comprehensive plan policies. The decision
19 simply does not address the issues that SSR raised under Rural Scenic Road
20 Policies 5.I.1 and 5.I.2. The hearings officer’s finding that the county has
21 previously approved transmission lines along scenic roads, or designated scenic
22 roads with preexisting transmission lines, does not establish that the proposed use

1 is consistent with Policies 5.I.1 and 5.I.2, so that ZDO 1203.03(E) is satisfied.
2 We agree with SSR that the findings do not address whether the decision is
3 consistent with the overarching policy language in Policies 5.I.1 and 5.I.2, and
4 remand is warranted for further findings on ZDO 1203.03(E).

5 SSR's fourth assignment of error is sustained.

6 The county's decision is remanded.