

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

MOLLIE KING, JAMES KING,
MARSHALL CHRISTENSEN,
JOYCE CHRISTENSEN, and BETH
WILLHITE
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Petitioners,
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v.
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CLACKAMAS COUNTY,
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Respondent,
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and
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)
POWERHOUSE RE GEN LLC, BULL
RUN SCHOOLHOUSE LLC,
TRACKERS EARTH INC., BULL
RUN EDUCATION CENTER LLC,
and RESTORE OREGON,
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)
Intervenor-Respondents

LUBA No. 2015-022

INTERVENOR-RESPONDENT RESTORE OREGON'S BRIEF

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1 **I. STANDING**

2 Intervenor-Respondent Restore Oregon (“Restore Oregon”) participated in
3 the County’s proceeding below. Rec 725. Restore Oregon timely filed its
4 motion to intervene on May 5, 2015, within the 21 days required by ORS
5 197.830(7)(a). Therefore, Restore Oregon has standing to participate in this
6 case.

7 **II. STATEMENT OF THE CASE**

8 **A. Nature of the Land Use Decision and Relief Sought.**

9 Petitioners correctly stated the nature of the land use decision. Restore
10 Oregon respectfully requests that LUBA affirm the County’s decision approving
11 an exception to Goal 4 to allow for the preservation and protection of a
12 designated historic power generating plant, rural school and park located on
13 resource lands.

14 **B. Summary of Arguments.**

15 Goal 5 requires that “Local governments shall adopt programs that will
16 ...conserve...historic...resources.” In order to conserve historic resources, Goal
17 5 and the County’s comprehensive plan require rehabilitation and reuse of
18 historic buildings in ways that ensures the preservation of the resource. In cases
19 where retention of the resources requires a change from resource use, a reasons
20 exception is appropriate and justified.

21 Further, obtaining a reasons exception is a highly fact-specific inquiry.
22 The Power Plant and school structures, built to house specific uses, and a park
23 requiring retention of the trees, are not suitable for uses permitted or

1 conditionally allowed within the County’s Timber zone. Unlike dwelling
2 structures located in resource zones, adaptation for new uses is required. These
3 facts coupled with: (1) the process of designating a historic resource under Goal
4 5, (2) the County’s regulatory restrictions for altering a use as well as the
5 structure of a designated historic resource, along with (3) the exception process
6 requirement that non-resource use be limited as necessary to make it compatible,
7 serve to limit the occasions when a Goal 5 historic resource justifies an exception
8 to a resource goal.

9 **C. Statement of Material Facts.**

10 Restore Oregon agrees with and adopts the facts as set forth in Intervenor -
11 Respondents’ Powerhouse Re Gen LLC *et al.* Joint Brief. That joint brief does
12 not include any background on the history of the structures at issue and, for that
13 reason, it is provided here.

14 The Bull Run Elementary School and the Bull Run Hydroelectric Project –
15 which included the Bull Run Powerhouse (the “Power Plant”), Roslyn Lake, and
16 Roslyn Lake Park – all played an important role in the history of Clackamas
17 County and the Metropolitan area over the last century. Supp Rec 10. This
18 historic significance has been captured by Clackamas County Historic Landmark
19 designations for the three properties and a Historic District overlay zone. The
20 Bull Run School was designated on September 8, 1994, the Power Plant was
21 designated on April 27, 1995, and PGE Day Use Park on April 30, 2014.¹ App 1,

22 ¹ LUBA may take judicial notice of “an ordinance, comprehensive plan or
23 enactment of any county or incorporated city in the state.” OEC 202(7).

1 10, and 20. On April 30, 2014, all three properties were included in a 58-acre
2 Bull Run Historic District. BCC Order 2014-33, App 23.

3 The History of Bull Run

4 The Bull Run community emerged around the construction of the Power
5 Plant by Portland General Electric (PGE), completed in 1912. App 26. The
6 Power Plant complex was built into the adjacent hillside and is constructed of
7 board-formed reinforced concrete. Supp Rec 11-12. The hydroelectric facility is
8 somewhat unique in that water from the Little Sandy and Sandy Rivers was
9 diverted through pipes, tunnels, and flumes to Roslyn Lake (a reservoir adjacent
10 to the Power Plant) and then added to a different river, the Bull Run, after
11 traveling through the Power Plant's penstocks. Rec 975. A community known as
12 Bull Run was established adjacent to the Power Plant, very few signs of which

13 _____
14 Restore Oregon respectfully requests that LUBA take judicial notice of the
County's adoption of the following:

15 Order No. 94-1026 – Designating Bull Run School a Historic Landmark

16 Order No. 95-361 – Designating Bull Run Hydro Plant a Historic
Landmark

17 Order No. 2014-30 – Increasing the size of the school property designation
by 5 acres

18 Order No. 2014-31 – Decreasing the size of the Power Plant property
designation from 35 acres to 11 acres

19 Order No. 2014-32 – Designating the PGE Day-Use Park a Historic
Landmark

20 Order No. 2014-33 – Creating the Bull Run Historic District

21 LUBA may also take judicial notice of findings and exhibits incorporated by
22 reference to official enactments. *Root v. Klamath County*, 63 Or LUBA 230
(2011). LUBA may take judicial notice of the findings adopted by reference
23 to the County Board Order Nos. 2014-33 and attached as an Appendix herein.

1 remain standing today—a nearby school and park being primary among them, in
2 addition to the Power Plant complex. Rec 285, 1297. The Power Plant ceased
3 being used in 2008 and was, along with the adjacent Day Use Park and School,
4 sold to a private party in 2010. Rec Supp 13.

5 The Bull Run School

6 The two-room Bull Run School and its associated gymnasium were built
7 in 1923 on land owned by Portland General Electric, and granted to the School
8 District. Supp Rec pp 10 -14. The School, subsequently part of the Oregon Trail
9 School District, was closed in 2003, used for storage and occasional educational
10 needs, and formally abandoned in 2011. *Id.* The School was built in the
11 Bungalow style and was determined to be significant because of “the role the
12 school has played in the social, cultural and educational history of the
13 community.” App. 2.

14 PGE-Day Use Park

15 The Clackamas County Historic Review Board wrote the following about
16 the PGE-Day Use Park:

17 “The park was developed by PGE starting in 1956 on the shores of
18 Roslyn Lake approximated 50 years after the lake was built. The
19 lake served as a reservoir to ensure a steady source of water to the
20 Bull Run Powerhouse. Roslyn Lake remained until May 2008 when
21 the Powerhouse was decommissioned and the last lake water
22 drained through the turbines. The lake and the park were both used
23 for recreation by local residents and visitors from Portland. It was a
popular fishing spot and was reachable by electric streetcars. One of
the relicensing requirements for PGE was to better manage lands
around its various projects for natural resources and recreation.”
App 10-11.

1 The Bull Run Historic District has been determined a “good candidate for a
2 National Registry nomination.” App 13. However, as documented in text and in
3 photographs in the Record at pages 133-135, many of the significant contributing
4 structures in the Historic District are damaged, with broken windows, graffiti,
5 interior vandalism, and the loss of historic elements to pillaging. Rec 133-135.
6 Photographs of the historic resources are included in Record at pages 991-1037.

7 **III. JURISDICTION**

8 Restore Oregon agrees that the County’s decision is a “land use decision”
9 subject to LUBA’s jurisdiction.

10 **IV. RESPONSE TO FIRST AND FIFTH ASSIGNMENTS OF ERROR –**

11 **Upon designation, Goal 5 and the County’s Comprehensive Plan required**
12 **conservation of the historic resources. The County correctly found that**
13 **conservation of the resources, including providing public access and the**
14 **funds necessary to maintain the buildings for public access, was only**
15 **possible through adaptive reuse. An exception to Goal 4 was necessary to**
16 **conserve these resources as required by Goal 5.**

17 Pursuant to ORS 197.732(2)(c), Statewide Planning Goal 2, Part II(c), and
18 OAR 661-004-0020(2)(a), a local government may take an exception to a
19 statewide planning goal to authorize uses of land not otherwise allowed under the
20 goal, if the local government identifies “reasons” that “justify why the state
21 policy embodied in the applicable goals should not apply[.]” Here, the applicable
22 goal is Goal 4, (Forest Land), which is generally to conserve forest lands. The
23 types of reasons that may or may not be used to justify certain types of uses not

1 allowed on resource lands are set forth in OAR 660-004-0022, which provides in
2 relevant part:

3 “(1) For uses not specifically provided for in subsequent sections of
4 this rule or OAR 660, division 014, the reasons shall justify why the
5 state policy embodied in the applicable goals should not apply. Such
6 reasons include but are not limited to the following:

7 “(a) There is a demonstrated need for the proposed use or activity,
8 based on one or more of the requirements of Statewide Goals 3 to 19.”

9 This will be the first time LUBA has had an opportunity to consider how a
10 Goal 2 reasons exception applies to a comprehensive plan amendment and zone
11 change allowing for expanded uses of a Goal 5 designated historic resource in
12 support of its preservation. Petitioners’ challenges are premised on the idea that
13 existing law, particularly Goal 5, does not require historic preservation. Pet. Br.
14 10, 13, and 38-39.² Nothing could be further from the truth. In Oregon, historic
15 preservation protections are provided by a framework of Statewide Planning
16 Goal 5, state statutes, comprehensive plans, and zoning codes, in partnership

17 ² The best summary of Petitioners’ argument can be found in their brief:

18 “Because a demonstrated need for the proposed use must be based on one
19 or more of the requirements of Goals 3 to 19, and the County identified
20 that the demonstrated need was based on Goal 5, the County needed to
21 establish that adaptive reuse is a Goal 5 requirement and demonstrate that
22 it would be unable to satisfy its obligations under Goal 5 without the
23 proposed exception. However, neither the implied ‘need’ of historic
24 preservation (which was the reasons given to justify the Goal 4 exception
25 Rec. 23-24), nor the stated ‘demonstrated need’ for OAR 660-004-
26 0022(1)(a), which is ‘the adaptive reuse of the historic School site,
27 Powerhouse site, and Park site,’ are required by any Goal 5 provisions.
28 Therefore, the demonstrated need cannot meet the first requirement of
29 OAR 660-004-0022(1)(a), and the County cannot establish that it will fail
30 to satisfy its Goal 5 obligations without a proposed exception. Failure to
31 meet either of the two criteria of OAR 660-004-0022(1)(a) disallows a
32 reasons exception.” Pet Br 38-39.

1 with nonprofit organizations, local governments, and the owners of the historic
2 resources themselves. Goal 5 is clear in its requirement: “Local governments
3 shall adopt programs that will ...conserve...historic...resources.” Additionally,
4 it might be helpful to provide some explanation of the federal, state and local
5 government obligations imposed on the County and the property owners in this
6 case.

7 **A. The Evolution of Historic Preservation Nationally**

8 Government regulation for the protection of historic structures pre-dates
9 the adoption of Oregon’s statewide land use system. In 1935, Congress passed
10 the Historic Sites Act that established a national policy for preservation and
11 permitted the Secretary of Interior to create programs on behalf of preservation
12 efforts. This Act opens with the following preamble:

13 “That it is hereby declared that it is a national policy to preserve for
14 public use historic sites, buildings and objects of national
15 significance *for the inspiration and benefit of the people of the
United States.*” 49 Stat. 666; 16 U.S.C. §461 (emphasis added).

16 In 1966, Congress passed the National Historic Preservation Act. 16 U.S.C. 470.
17 The Act established the National Register of Historic Places, overseen by the
18 National Park Service, as the nation-wide official list of districts, sites, buildings,
19 structures, and objects worthy of preservation. The purpose statement for the Act
20 reads:

21 “It shall be the policy of the Federal Government, in cooperation
22 with other nations and in partnership with States, *local governments*,
23 Indian tribes, Native Hawaiian organizations, and private
organizations and individuals, to (1) use measures, including
financial and technical assistance, to foster conditions under which

1 our modern society and our historic property can exist in productive
2 harmony and fulfill the social, economic, and other requirements of
3 present and future generations...(4) contribute to the preservation of
4 nonfederally owned historic property and give maximum
5 encouragement to organizations and individuals undertaking
preservation by private means [and] (5) encourage the public and
private preservation and utilization of all usable elements of the
Nation's historic built environment." 16 U.S.C. 470-1 (emphasis
added).

6 In 1978, the US Supreme Court ruled that the designation and regulation of
7 historic properties is a constitutionally allowable function of local government so
8 long as an owner is not deprived of reasonable economic gain. *Penn Central*
9 *Transportation Co. v. New York City*, 438 U.S. 104 (1978). As the Supreme
10 Court of the United States explained:

11 "Over the past 50 years, all 50 states and over 500 municipalities
12 [now over 2,300] have enacted laws to encourage or require the
13 preservation of buildings and areas with historic or aesthetic
14 importance. These nationwide legislative efforts have been
15 precipitated by two concerns. The first is recognition that, in recent
16 years, large numbers of historic structures, landmarks, and areas
17 have been destroyed without adequate consideration of either the
values represented therein or the possibility of preserving the
destroyed properties for use in economically productive ways. *The*
second is a widely shared belief that structures with special historic,
cultural, or architectural significance enhance the quality of life for
all." 438 U.S. at 107 (citations omitted; emphasis added).

18 This decision, upholding the constitutionality of a mandatory historic
19 preservation regime, fostered a remarkable blossoming of historic preservation as
20 a major tool for land use regulation.

21 **B. Historic Preservation in Oregon**

22 Beginning as early as 1968, Oregon communities began enacting
23 "landmarks ordinances" to provide special considerations for the growing

1 number of designated historic resources.³ These landmarks ordinances, often
2 codified as part of a community's zoning code, provide a framework for public
3 review of proposals to alter, either in terms of structure design or use, add to, or
4 demolish designated historic resources. Oftentimes landmark ordinances also
5 provide special incentive provisions for historic resources to allow additional
6 uses, conditional uses, transfer of development rights, and/or flexibility from
7 other regulations. *See* page 20 for additional discussion.

8 Since 1975, the Oregon Legislature has recognized the importance of
9 providing incentives to promote the preservation and rehabilitation of privately-
10 held historic resources. The policy of ORS 358.475 captures the essence of the

11 ³ Portland Ordinance 127512, adopted August 13, 1968 (“There is hereby
12 created a Portland Historical Landmarks Commission.”) In 1969, the Portland
13 City Council adopted an ordinance designating 13 buildings within the
14 Skidmore Fountain area as Historical Landmarks. Portland Ordinance
15 130148.

16 In 1980, Clackamas County adopted a Zoning Ordinance that included
17 provisions for designating and reviewing alterations to historic resources
18 (Board of County Commissioners Court Order Number 80-1291, June 26,
19 1980). The stated purposes of the code were “A. To designate and preserve
20 the structures, sites, objects and areas within Clackamas County having
21 historical, architectural, archaeological, cultural or aesthetic significance. B.
22 To identify and resolve conflicts between the preservation of cultural
23 resources and other land uses.” Included in that 1980 code was a prohibition
against demolition of any designated “cultural resource” unless one of five
criteria was met. Criteria four allowed demolition in instances “that no
reasonable use can be made of the property without such approval.” ZO
707.04 (former).

In 1981, Clackamas County designated the first ten properties to their list of
local historic resources, described then as the “Historic Sites and Cultural
Resource Zoning.” These properties included a school, log cabin, two houses,
three churches, and three farms (Exhibit B, Board of County Commissioners
Court Order Number 81-1268, July 1, 1981).

1 State of Oregon’s position on historic preservation:

2 “The Legislative Assembly hereby declares that it is in the best
3 interest of the state to maintain, preserve and rehabilitate properties
4 of Oregon historical significance. *Historic preservation incentive*
5 *programs provide a public benefit by encouraging preservation and*
6 *appropriate rehabilitation of significant historic properties.* These
7 historically significant portions of the built environment contain the
8 visual and intellectual record of our irreplaceable cultural heritage.
9 They link us with our past traditions and values, establish standards
10 and perspectives for measuring our present achievements and set
11 goals for future accomplishments. To the extent that Oregon’s [sic]
12 historic preservation incentive programs encourage the preservation
13 and appropriate rehabilitation of significant historical property, the
14 programs create a positive partnership between the public good and
15 private property that promotes economic development; tourism;
16 energy and resource conservation; sustainability; neighborhood,
17 downtown and rural revitalization; efficient use of public infra-
18 structure; and civic pride in our shared historical and cultural
19 foundations.” (Emphasis added.)

20 All of these federal and state statutory policy statements highlight that the
21 preservation of historic buildings does not exist for its own sake. The
22 preservation of historic resources provide public benefits and foster, inspire and
23 enhance the lives of present and future generations through education and
24 enjoyment of the human past. Such enjoyment is only possible if the buildings
25 are visible and open to the public, even if in limited circumstances, to visit, use
26 them, and learn from them.

27 The protection and stewardship of historic resources, and all of the
28 benefits they provide to the community, has for a half-century been facilitated by
29 local, state, and federal policies. These public policies are implemented by
30 owners who steward both a community and a real estate asset when owning a
31 historic resource. The preservation of historic properties—the overwhelming

1 majority being privately owned—necessitates a careful balancing of rights and
2 responsibilities such that an owner is able to uphold public expectations of
3 preservation while not being denied reasonable use of his or her property.

4 This balance is acknowledged by federal law – the National Historic
5 Preservation Act, state law - ORS 358.475, and the County’s own
6 Comprehensive Plan, which incentivize owners of privately-held historic
7 properties to engage in protection of resources for the benefit and enjoyment of
8 the public as a whole. Inherent in this concept is a recognition that owners
9 should not be expected to bear an unreasonable financial burden in order to
10 preserve significant historic resources.

11 Petitioners’ First and Fifth Assignments of Error ignore the decades-old
12 fundamental reality of preserving historic resources in Clackamas County,
13 Oregon, and the United States. Historic buildings are most often abandoned and
14 vacated because their original uses are no longer viable, and new uses must be
15 found to justify their continued existence. A review of applicable policies
16 demonstrates that identifying an appropriate use for historic properties that
17 confer a public benefit and, at the same time, include economic incentives for
18 maintenance necessary to continue the use of a historic resource are essential
19 components for fostering historic preservation objectives.

20 **C. The Obligations of Goal 5 Require an Exception**

21 Returning to the requirements for an exception under Oregon law, a
22 threshold determination necessary to support a reasons exception is a finding that
23 the county is unable to satisfy its obligations under some other goal absent the

1 proposed exception. *Morgan v. Douglas County* 42 Or LUBA 46. Conservation
2 of the Power Plant, rural school and park, with protected tree coverage, as
3 required by Goal 5, is the reason necessitating this exception. Statewide
4 Planning Goal 5 provides:

5 “Local governments shall adopt programs that will protect natural
6 resources and conserve scenic, historic, and open space resources
7 for present and future generations. These resources promote a
healthy environment and natural landscape that contributes to
Oregon’s livability.”

8 Goal 5 thus imposes a mandatory requirement on local governments to
9 “conserve” historic resources. The term “conserve” is explicitly defined in the
10 Goals as follows:

11 “CONSERVE. To manage in a manner which avoids wasteful or
12 destructive uses and provides for future availability.”

13 Conserving historic resources to avoid wasteful or destructive results and
14 providing for future availability suggests that historically designated buildings
15 must be used. In order to use these buildings, funds will be expended to maintain
16 structures so that they are safe and accessible for the intended activities. In other
17 words, allowing a historic property to sit fallow, as would be the case if the
18 structures remain zoned for Timber uses, amounts to a destructive use and would
19 be inconsistent with the Goal 5 conservation requirement.⁴

20 _____
21 ⁴ Although not the case in Clackamas County, several Oregon jurisdictions
22 have adopted demolition-by-neglect clauses as it is commonly held within the
23 historic preservation field that a vacant historic building is susceptible to
deterioration, vandalism, and eventual loss. City of Astoria Development
Code Section 5.670, Property Maintenance, Vacant Building, and Derelict
Building, includes enforcement procedures “To prevent demolition by neglect

1 In 1996, the Land Conservation and Development Commission (LCDC)
2 promulgated new administrative rules outlining the general Goal 5 inventory and
3 designation process, as well as specific rules relating to historic resources. OAR
4 660-023-0200. Under the standard process, local governments must inventory
5 historic and cultural areas to determine their significance. OAR 660- 023-0030.
6 If areas, properties, or particular structures are determined to be significant, a
7 local government must go through a process of identifying conflicting land uses
8 and then resolve those conflicts. OAR 660-023-0040. Once the conflicts are
9 resolved, local governments must provide sufficient implementation measures to
10 put their Goal 5 programs into effect. To do this, the rules specify that:

11 “Local comprehensive plans should foster and encourage the
12 preservation, management, and enhancement of structures,
13 resources, and objects of historic significance within the jurisdiction
in a manner conforming with, but not limited by, the provisions of
ORS 358.605. 660-023-0200(3).”

14 Petitioners rely on OAR 660-023-0200(2), not requiring local governments
15 to update or alter their inventories of historic resources, to suggest that Goal 5
16 does not require preservation. Pet Br 13. This argument relies on a cherry-
17 picked portion of what OAR 660-023-0200(2) requires. OAR 660-023-0200(2)
18 quoted in full states:

19 “(2) Local governments are not required to amend acknowledged
20 plans or land use regulations in order to provide new or amended
inventories or programs regarding historic resources, except as
21 specified in this rule. The requirements of the standard Goal 5
process (see OAR 660-023-0030 through 660-023-0050) in

22 of historic properties within the City as they are deemed to be an economic
23 resource of the City.” *See also* Salem Revised Code 230.095.

1 conjunction with the requirements of this rule apply when local
2 governments choose to amend acknowledged historic preservation
3 plans and regulations. However, the sequence of steps in the
4 standard process is not recommended, as per section (3) of this rule.
The provisions in section (3) of this rule are advisory only. Sections
(4) through (9) of this rule are mandatory for all local governments,
except where the rule provides recommended or optional criteria.”

5 The second sentence of this provision mandates that, when a local government
6 decides to update its inventory to include new resources, as Clackamas County
7 did in 1994 with the designation of the school, in 1995 with the designation of
8 the Power Plant, and in 2014 with designation of the park along with the creation
9 of the historic district, the requirements of Goal 5 apply.

10 More importantly, OAR 660-023-0200(2) provides the standards a local
11 government must use when designating a historic resource. Once a local
12 government decides to designate a resource, OAR 660-023-0200(3) and its cross-
13 reference to ORS 358.605 controls.⁵ ORS 358.605 sets forth the legislative
14 findings underpinning Oregon’s historic preservation program. Although
15 lengthy, ORS 358.605 provides as follows:

16 “(1) The Legislative Assembly declares that the cultural heritage of
17 Oregon is one of the states most valuable and important assets; that
18 the public has an interest in the preservation and management of all
19 antiquities, historic and prehistoric ruins, sites, structures, objects,
20 districts, buildings and similar places and things for their scientific
and historic information and cultural and economic value; and that
the neglect, desecration and destruction of cultural sites, structures,
places and objects result in an irreplaceable loss to the public.

21 ⁵ The County had discretion to determine whether or not to designate these
22 resources as historic pursuant to OAR 660-023-0200(2) and, since 1995, the
23 property owner could have refused to consent to such designation under ORS
197.772(1).

1 “(2) The Legislative Assembly finds that the preservation and
2 rehabilitation of historic resources are of prime importance as a
3 prime attraction for all visitors; that they help attract new industry
4 by being an influence in business relocation decisions; and that
5 rehabilitation projects are labor intensive, with subsequent benefits
6 of payroll, energy savings and are important to the revitalization of
7 deteriorating neighborhoods and downtowns.

8
9 “(3) It is, therefore, the purpose of this state to identify, foster,
10 encourage and develop the preservation, management and
11 enhancement of structures, sites and objects of cultural significance
12 within the state in a manner conforming with, but not limited by, the
13 provisions of the National Historic Preservation Act of 1966 (P.L.
14 89-665; 16 U.S.C. 470).”

15 Although this expresses a constant theme running through all of the federal
16 and state historic preservation regulations, ORS 358.605 provides the clearest
17 expression - in order to “conserve” buildings, as required by Goal 5, a local
18 government is to advance rehabilitation and reuse of historic buildings in ways
19 that attracts visitors and educates the public.

20 Allowing the Power Plant to be used as a museum with supporting uses,
21 the school as an outdoor school and community meeting place, and preserving
22 use of the existing park for outdoor education, puts these historic resources to
23 use, attracting visitors in ways that retention of the Timber zoning would render
impossible. These structures were designed to accommodate a Power Plant,
school, and related recreation activities. They are not suitable for conversion into
timber or log-processing related uses. The parcels are not large enough to
accommodate a forest dwelling or located so as to allow a template test dwelling,
precluding all of the home-occupation, hunting or fishing related commercial
uses.

1 The resource objectives of Goals 4, the protection and promotion
2 forestland, is intended to protect and largely prevent access and use. Although
3 removing a small portion of lands from the County's overall resource base as it
4 exists on paper, it is important to remember that this exception does not
5 physically remove lands from productive forest uses, but instead allows the
6 continued use of structures that pre-date resource land designation. The only
7 way that these areas will be put to forest uses is if the buildings are allowed to
8 decay through demolition-by-neglect and are eventually removed. Such removal
9 would be contrary to the requirement to conserve historic resources. An
10 exception is necessary and required under Goal 5 to prohibit that result.

11 In *VinCEP v. Yamhill County*, 55 Or LUBA 433 (2007), LUBA considered
12 whether the need for a proposed wine hotel under Statewide Planning Goal 9
13 (Economic Development) could justify an exception under OAR 660-004-
14 0022(1)(a). Petitioners challenging the county's decision argued that the
15 demonstration of need required a finding that the county was "between the devil
16 and the deep blue sea." LUBA characterized this dilemma as being faced with a
17 choice between violating its obligations under two separate goals before a need is
18 established. LUBA disagreed with the petitioners' assertion of the appropriate
19 test. Putting it another way, LUBA held that, in order to justify an exception, a
20 county must establish that it "has failed or is at risk of failing" to satisfy its
21 obligations under one Goal to justify an exception. According to LUBA's
22 decision in *VinCEP*, an appropriate showing of need requires a finding in the
23 Goals or the county's comprehensive plan implementing the goal, that a wine

1 hotel was “a necessary step to satisfying the goal requirement.” *Id.* at 448.

2 Unlike *VinCEP*, in this case the County (and the property owners) were, in
3 fact, stuck “between the devil and the deep blue sea.” So long as these structures
4 exist and the historic designations remain, the properties can never be put to Goal
5 4 uses, while at the same time generating sufficient revenue to allow for their
6 rehabilitation. The exception area for the Power Plant and school encompass
7 only the structures and development grounds, which preclude their use for
8 growing timber. The park’s historic designation specifically requires a
9 management plan for the preservation of character-setting trees, prohibiting their
10 commercial harvest in the park area. The use of the property is as consistent with
11 Goal 4 as is possible without violating Goal 5. To allow uses that would further
12 Goal 4 in this case would necessarily require harm to the Goal 5 protected
13 resources.

14 The County’s findings details the predicament for these historic resources
15 at pages 18-19, as follows:

16 “The County previously added the school, the powerhouse, and the
17 park to its Goal 5 inventory of historic and cultural resources. Approval of the Comprehensive Plan Amendment and Zone
18 Change Application will be consistent with the decision to add these resources to the County's inventory because it will facilitate
19 activities that will ensure maintenance and preservation of these resources. Specifically, given the County's fiscal limitations and the
20 absence of public sector or non-profit parties who can acquire and maintain the historic structures, the Board finds that the only viable
21 option for preservation of the designated historic resources is through private investment. In order for private investment to
22 remain a viable option, the Board finds that adaptive reuse of the structures must be allowed so that they can generate revenue to
23 offset the expense of maintenance. The Comprehensive Plan

1 Amendment and Zone Change Application propose adaptive reuse
2 of the structures.” Rec 18-19.

3 The County made a choice in 1994, 1995 and 2014, that the historic significance
4 of these buildings and open space was such that they deserved protection under
5 Goal 5, in effect restricting demolition of the structures to accommodate forest
6 uses. *See Appendix.* Goal 4 is met to the extent possible by the relatively
7 circumscribed size of the historic area and the use of open space in the park. The
8 goal exception was needed to fulfill the conservation objectives imposed by that
9 designation decision and ensuing obligations under Goal 5.

10 **D. The County’s Comprehensive Plan Policy Incentivizing**
11 **Adaptive Reuse of Historic Resources and Zoning Regulations Require an**
12 **Exception**

13 In order to implement Goal 5, Clackamas County has in place
14 comprehensive plan policies and regulations requiring the conservation of
15 historic resources through adaptive reuse that includes providing access to the
16 public.⁶ Those policies can be found in Chapter 9, Historic Landmarks, Districts

17
18 ⁶ An excerpt from the introductory portion of the County’s Comprehensive
19 Plan, Chapter 9, Historic Landmarks, Districts, and Transportation Corridors
provides:

20 “Cultural, economic, and social benefits can come from preservation of the
21 County’s historic resources. There is cultural value in establishing firm,
22 visible links with the past. Economic benefits include enhanced property
23 values, savings in structure replacement costs, tourism, and, in commercial
areas, strengthened retail sales. Social and community benefits appear in
the renewal of older neighborhoods and the increased pride fostered in the
residents.

1 and Transportation Corridors, of the County’s Comprehensive Plan, which
2 contains a number of policies that support Goal 5 and a reasons exception for the
3 historic resources at issue in this case. Policies 6.0 – 8.0. They provide:

4 “6.0 Develop policies and programs to protect historic resources and
5 minimize the conflicts.

6 “7.0 Pursue private and public sources of funding for use by
7 property owners in the renovation and maintenance of historic
8 properties.

9 “8.0 Pursue options and incentives to allow productive, reasonable
10 use, and adaptive reuse of historic properties.”

11 These planning policies implement the requirements of Goal 5 and ORS 358.605,
12 that Goal 5 designated resources are to be preserved for productive and adaptive
13 re-use. To the extent that OAR 660-023-0200(2) could be read to make
14 subsection (3) of the rule advisory, as petitioners suggest, Clackamas County has
15 implemented Goal 5, OAR 660-023-0200(3) in a manner that makes the goal and
16 the rules that implement it mandatory.

17 Finally, these comprehensive plan policies are implemented in Clackamas
18 County’s Zoning and Development Ordinance (ZDO) Chapter 1004. The
19 Chapter’s stated purpose is “to preserve structures, sites, objects, and areas
20 within Clackamas County having historic, cultural, or archaeological
21 significance.” The procedures and standards governing uses, alterations, moving
22

23 “To effectively preserve historical resources, an evaluation must determine
which structures and sites are worthy of preservation. A method of
regulating the use or demolition of historic resources would then be
necessary to protect them. It is essential that the County make a firm
commitment to protect its historic resources.”

1 and demolition of historic resources are set forth in ZDO Chapter 707. Among
2 other stated purposes, Chapter 707 is intended to:

3 “D. Facilitate restoration and upkeep of historic buildings, structures
4 or other physical objects or geographical areas.

5 “* * * * *

6 “F. Foster community and neighborhood pride and sense of identity
7 based on recognition and use of cultural resources.

8 “G. Promote the enjoyment and use of historic and cultural resources
9 appropriate for the education and recreation of the people of the
10 County.

11 “* * * * *

12 “I. Enhance property values and increase economic and financial
13 benefits to the County and its inhabitants.

14 “J. Identify and resolve conflicts between the preservation of
15 cultural resources and alternative land uses.” (ZDO 707.01).

16 Provisions that make ‘adaptive reuse’ of historic structures feasible are common
17 in regulations across Oregon. Portland provides zoning flexibility to historic
18 resources for additional density, nonresidential uses in residential zones, and
19 additional commercial uses in certain zones. ZC 33.445.610. Astoria’s
20 Development Code states, “It is the purpose of the City to promote and
21 encourage the preservation, restoration, rehabilitation, and adaptive use of
22 buildings, structures, appurtenances, objects, sites, and districts that are
23 indicative of Astoria's historical heritage.” DC 6.010.

It is out of both financial necessity and community benefit that historic
buildings must be used. Vacant buildings provide their owners with no cash flow
to invest in the maintenance and upgrade of the historic property necessary to

1 keep historic resources safe for use. Furthermore, vacant buildings do not allow
2 public access to the historic resource and over time, as demolition-by-neglect
3 inevitably sets in, detract from the public's ability to even appreciate the property
4 from the exterior.

5 While criteria for minor and major alterations are detailed in ZDO
6 707.07(C), the ZDO does not mandate restoration, upgrade, or ongoing
7 maintenance of historic resources, even though ZDO 707.01(D) as referenced
8 above does include "upkeep" as a purpose. Applications for alterations are
9 reviewed pursuant to code criteria, but historic resource protections do not
10 prohibit a property from deteriorating into demolition-by-neglect. Requests to
11 allow for demolition of historic resource must consider "economic hardship" and
12 determination of "dangerous building" by the building official. Therefore, it is
13 not unreasonable to conclude that, if feasible economic opportunities are not
14 provided to the owners of historic resources, they will inevitably lose their
15 historic resource status to demolition.

16 If Goal 5 provides protection only to those properties for which economic
17 hardship is not present, then many historic resources will be lost, ultimately
18 resulting in failure to accomplish Goal 5. Because Goal 5 mandates the
19 conservation of historic resources for "present and future generations" it requires
20 consideration of the long-term implications of greatly reducing the economic
21 opportunities available to designated historic resources. Limiting the use of
22 historic resources on timber resource lands to only timber uses would make it
23

1 unlikely that historic resources such as these will remain standing for the use and
2 enjoyment of future generations.

3 The adaptive reuse of historic structures is a balancing act between
4 economic viability and retention of physical integrity. A rigid restriction on the
5 uses allowed, as would be the case if the Timber zone were to remain for these
6 historic resources, would force historic resources to go unused or would require
7 such vast alterations that it would destroy the very integrity that characterizes it
8 as a historic resource, therefore violating Goal 5.

9 In summary, Petitioners' argument that that the County erred in finding
10 "the only option for historic preservation is through private investment and
11 adaptive reuse" ignores the underpinnings of the field of historic preservation,
12 the requirements of Goal 5 and the County's comprehensive plan and code, and
13 the accepted practices adopted by jurisdictions across Oregon and the United
14 States. The structure of historic preservation regulation in Oregon, as required
15 by Goal 5 and the County's plans and regulations, prioritize conservation for use,
16 and, in cases where adaptive reuse requires a change from resource use, a reasons
17 exception is appropriate and justified.

18 **E. The Proposed Uses are Specially Tailored to Allow for the**
19 **Preservation of the Historic Resources without Adversely Affected**
20 **Surrounding Resource Lands**

21 In the conclusion of their First Assignment of Error, Petitioners assert that
22 allowing an exception for Goal 5 in this case presents a slippery slope: if an
23 exception is allowed in this case, "there might be no end to Oregon agricultural

1 and forest resource lands with historic resources that could be designated under
2 Goal 5 and subsequently rezoned to non-resource designations.” Pet Br 17.
3 Petitioners’ slippery slope argument is not supported by the facts of this case or a
4 review of the record. The unique factual circumstances that would give rise to
5 the need for an exception coupled with the legal regime restricting conflicting
6 uses suggests that these concerns are unfounded. The County narrowed the
7 allowable uses to a limited number that are appropriate for the historic character
8 of the sites, for their connection with public use of the sites for education, and
9 that were compatible with the surrounding properties. Rec 154, 155, 159 and 470.

10 From a factual perspective, this is the first LUBA case considering the use
11 of a reasons exception to allow adaptive reuse of a structure under Goal 5. As
12 noted above, historic preservation pre-dates implementation of the statewide land
13 use system. If most local government’s land use regimes were acknowledged in
14 the early 1980s, as was the case with Clackamas County, and this is the first time
15 a Goal 5 reasons exception case has been before LUBA, that history suggests
16 that property owners are not clamoring to designate resources in order to take
17 advantage of this process.

18 Further, the facts giving rise to these types of cases are unique. Finding
19 new uses for a privately-owned decommissioned Power Plant on land where the
20 utility use could not be re-established, because the lake has been drained, is not
21 typically the case. Power plants would more appropriately be located on rural
22 industrial zoned land, rather than resource land, allowing their conversion to
23 other industrial uses.

1 Similarly, although schools are allowed on land zoned for exclusive farm
2 use (EFU), they are not allowed on land zoned for timber uses. Compare ZDO
3 Table 401-1 with Table 406-1. Therefore, where schools exist on EFU zoned
4 lands, they can be put to school uses. The Bull Run School, which was designed
5 and constructed to accommodate students for educational uses, can no longer be
6 used for that purpose, making adaptive reuse the only option. In sum, it is likely
7 that most of the pre-existing uses on resource lands contain farms or forests.
8 Farm and forest dwellings are allowed outright in resource zones and can
9 continue to exist without an exception, alleviating Petitioners' concerns about
10 functional properties seeking an exception. Pet Br 16.

11 Setting aside the factual circumstances that give rise to the need for a Goal
12 2 reasons exception to accommodate a Goal 5 uses in this case, the legal
13 obligations imposed to allow an exception are rigorous and serve to limit any
14 non-resource use such that it will be compatible.

15 First, as noted above, in order to designate a historic resource under Goal
16 5, the local government must conclude that the benefits obtained by protecting
17 the historic use outweigh the consequences of allowing, limiting or restricting a
18 conflicting use.⁷ OAR 660-023-0030 through -0050. The findings supporting

19 _____
20 ⁷ Although an ESEE analysis is not required for the amendment of a historic
21 inventory under OAR 660-023-0200(7), Clackamas County Comprehensive
22 Plan policies require that in order to designate significant historic resources,
23 the County must:

“5.0 Identify conflicts by analyzing the economic, social, environmental,
and energy consequences of land use actions with regard to significant
historic resources.”

1 the 1994 designation of the school and 1995 designation of the Power Plant
2 included analyses of the economic consequences of not designating these
3 resources including, in relevant part:

4 “3) Potential loss of significant historic resource, which could reduce
5 tourism potential in area.

6 “* * * * *

7 “5) Loss of potential in reinvestment in existing buildings. *Would
8 not qualify to apply for conditional use permit to allow potential
9 commercial uses of historic property. No allowance for adaptive
10 reuse of historic resource.” App. 5 and 18.

11 The ESEE-identified benefits of designation included providing tourists
12 the opportunity to access to the structures and the possibility for adaptive reuse,
13 which the County acknowledged required the monetary investment resulting
14 from income opportunities arising from rehabilitation. Rec 279 and 309-10.

15 Second, Clackamas County ZDO 707.02 specifies criteria for historic
16 resource designation. Not any ‘old’ building can be designated as a historic
17 resource. Rather a building must have architectural, environmental or historical
18 significance. Architecturally significant buildings are those that evidence a
19 particular architectural style or craftsmanship that retains little change, and is
20 unique or representative of one of few remaining properties of the style or
21 construction type. Buildings with environmental significance are those that serve
22 as a landmark to a community or contribute to the character of a street or

23 “6.0 Develop policies and programs to protect historic resources and
minimize the conflicts.”

1 neighborhood. Those buildings that are associated with the life or activities of a
2 person, group or organization that made a significant contribution may be
3 designated for historical significance.

4 Upon designation, ZDO 1004 places constraints on designated properties
5 to protect the physical integrity of the historic resource when considering
6 development proposals. These constraints ensure that “all developments shall be
7 planned, designed, constructed, and maintained to assure protection of any
8 designated historic or cultural resource on or near the site.” ZDO 1004.02(B).
9 Among other considerations, the ordinance allows the County to attach
10 additional conditions related to “proposed intensity of development” and
11 “relationship to designated open space.” ZDO 1004.02(C).

12 Further, Clackamas County ZDO 707.05(B) and 707.05(C) provide a
13 regimented structure for allowing certain uses within designated historic
14 resources in urban and rural zoning districts. Only the uses permitted in the
15 underlying zone are permitted outright for any property, including historic
16 resources. The list of additional conditional uses that can be approved, but are
17 not granted by right, for historic resources in urban and rural districts are:

- 18 1. Art and music studios
- 19 2. Galleries
- 20 3. Offices
- 21 4. Craft shops
- 22 5. Bed and Breakfast establishments
- 23 6. Gift shops

- 1 7. Museums
- 2 8. Catering Services
- 3 9. Book stores
- 4 10. Boutiques
- 5 11. Restaurants
- 6 12. Antique shops
- 7 13. Community Center for civic or cultural events

8 This is a specific and discrete list of uses and the list does not, as Petitioners
9 assert, open the door for a dismantling of the intent of resource lands should a
10 goal exception be provided for Goal 5 resources in limited circumstances.

11 A conditional use can be granted only upon a finding that:

12 “The proposed use will not alter the character of the surrounding area
13 in a manner that substantially limits, impairs, or precludes the use of
14 surrounding properties for the primary uses allowed in the zoning
 district(s) in which surrounding properties are located. ZDO
 1203.03(D).”

15 In addition to restricting the types of uses, as well as the design of any alteration,
16 ZDO 707.05(B) specifies that the applicant “will utilize existing structures rather
17 than new structures, except where new structures are determined by the Historic
18 Review Board to be in the best interest of preserving the historic resource.”⁸ As

19
20 ⁸ Given historic design review restrictions, it is not uncommon for
21 jurisdictions to adopt special provisions to allow historic properties to be used
22 in otherwise not allowable ways that make them economically viable. Because
23 of factors of age, building type, construction, accessibility, and code-
 compliance, many historic buildings must be adapted to be useful in modern
 times.

1 a result, these restrictions on the use and alterations tend to ebb the tide of
2 property owners seeking historic designation, as petitioners claim. Pet Br 16.

3 If these designation and review restrictions were not enough, the exception
4 criteria provide an additional layer of protection to ensure that any conversion of
5 uses is appropriate. In addition to demonstrating need, OAR 660-004-0020(2)(d)
6 requires a finding that the proposed uses are compatible with adjacent uses or can
7 be made compatible through conditions restricting the use. These compatibility
8 limitations are in place to protect surrounding areas, presumably resource areas,
9 allowing them to remain in resource uses.

10 Designating a property as significant under Goal 5 and then seeking an
11 exception to allow non-resource uses is not only an intensely fact-driven inquiry,
12 it is legally complicated and difficult to obtain. To suggest that many owners of
13 older homes or historical properties surrounding Roslyn Lake will seek
14 exceptions to allow for the creation of education and community centers is not a

15 In recognition of this, the State Historic Preservation Office's (SHPO) model
16 county landmarks ordinance suggests that Oregon communities codify the
following language:

17 "County staff shall consider granting zoning variances and/or
18 conditional use permits in order to encourage the productive use and
preservation of Landmarks."

19 http://www.oregon.gov/oprd/HCD/SHPO/docs/orshpomodelordnance_
20 county.rtf.

This recommendation from SHPO's model code is especially pertinent in light
of Clackamas County Plan Policy 3.0, which provides:

21 "Develop criteria to further evaluate the significance of these
22 historic resources using state and federal criteria as models."

23 Granting an exception was entirely consistent with the SHPO's
recommendation allowing for productive use.

1 reason to find that the exception criteria are not met in this case. Rather, to
2 conclude that Goal 5 designated resources may never be granted an exception to
3 allow for adaptive reuse would remove one of the few tools local governments,
4 historic preservation protection groups and property owners have to save select,
5 yet significant, historic resources. Such a result would impose a significant blow
6 to historic preservation in Oregon and would not be consistent with the exception
7 process set forth in OAR 660-004.

8 **V. CONCLUSION**

9 For these reasons, LUBA must find that a Goal 2 reasons exception is
10 available for property owners who need adaptive reuse in order to conserve their
11 Goal 5 protected resources. For this reason coupled with the reasons set forth in
12 the joint brief of Intervenor-Respondents Powerhouse Re Gen LLC *et al* the
County's decision should be affirmed.

13 DATED: August 3, 2015.

14 Respectfully submitted,

15 GARVEY SCHUBERT BARER

16
17 By: 

18 Carrie A. Richter, OSB #003703
19 Of Attorneys for Intervenor-Respondent
20 Restore Oregon
21
22
23

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Considering Designating
the BULL RUN SCHOOL
described as T2S-R5E-Section 6,
Tax Lot 600,
a Clackamas County Historic Landmark
in compliance with State
Land Use Law Goal 5.

Order No. 94-1026

This matter coming on at this time and it
appearing to the Board of County Commissioners that the BULL RUN SCHOOL
does meet the criteria of Subsection 707 of the Zoning and Development
Ordinance, "Historic Landmark, Historic District and Historic Corridor",
and Goal 5 for designation as a Historic Landmark; and

It further appearing to the Board that the
Historic Review Board at its public hearing on MAY 2, 1994 has recommended
designating the BULL RUN SCHOOL as a Historic Landmark; and

It further appearing to the Board that
hearings were held before this Board on MAY 11, 1994, at which testimony
was taken and evidence presented; and

It further appearing to the Board that a
decision was made by this Board on MAY 11, 1994;

NOW, THEREFORE, IT IS HEREBY ORDERED that
the BULL RUN SCHOOL, is designated a Clackamas County Historic Landmark

Dated this 8th day of September, 1994.

BOARD OF COUNTY COMMISSIONERS

N/A

Ed Lindquist, Chair

Judie Hammerstad

Judie Hammerstad, Commissioner (Vice Chair)

Darlene Hooley

Darlene Hooley, Commissioner

GOAL 5 ANALYSIS OF HISTORIC RESOURCEEVALUATION FOR SIGNIFICANCE

(Must receive 40 points or more to be eligible for Historic Landmark designation. The numbers coincide with Ordinance Criteria under Section 707.02B, see attached)

	<u>ARCHITECTURE</u>					<u>ENVIRONMENT</u>				<u>HISTORY</u>			
	A	B	C	D	E	A	B	C	D	A	B	C	D
<u>Z0075-94-Z</u>													
Bull Run School#1195													
25E06 00600													
41515 SE Thomas Rd.	3	2	1	3	7	10	3	7	5	0	5	7	0
GTD, 2.88 acre													
C 1910, STYLE: Bungalow/Craftsman													
TOTAL POINTS: 53													

COMMENTS: The Bull Run School is located along Thomas Road, approximately 1/2 mile south of Raslyn Lake. The area is characterized by scattered rural residences.

The school building was constructed c. 1910. There is evidence to suggest the building was constructed elsewhere and moved to the subject property in the 1930's. The school was later enlarged.

The school is constructed in the Bungalow style. Aside from a one story wing added to the west elevation, the building has had few alterations. In addition to the classroom building, there is a gymnasium which dates to the historic period. It is also constructed in the Bungalow/Craftsman style.

In the Sandy/Boring study area, only one of the three schools on the Inventory is designed in the Craftsman/Bungalow style. The Bull Run School is the only Craftsman/Bungalow School in the study area built during the Motor Age (1914-1940).

Despite alterations, the school buildings are significant as examples of Craftsman/Bungalow school buildings and for the role the school has played in the social, cultural and educational history of the community.

GOAL 5 ANALYSIS OF HISTORIC RESOURCE

Bull Run School #1195
File #Z0075-94-Z

CONFLICTING USE ANALYSIS**A. FINDINGS:**

1) **Current Zone:** GTD, 80 acre minimum lot size. No conflict with overlay.

2) **Private Development Plans:** none

3) **Public Development Plans:** none

4. **Potential Conflicting Uses:**

Potential impacts on historic resource:
Alteration of historic resource, relocation of resource, new construction, land division, and demolition.

Potential impacts of Historic Landmark designation on existing land use:
Requirement that alterations, relocation, new construction, land division and demolition be reviewed under Historic Landmarks Ordinance criteria.

B. Conclusions: No existing conflicting uses exist under this zoning designation, however, since there are potential conflicting uses, an analysis of the Economic, Social, Environmental and Energy consequences on the Goal 5 Resource is necessary (see next page).

C. Recommendation: Designate Historic Landmark as 3C Goal 5 resource, protected by Historic Landmarks Ordinance.

GOAL 5 ANALYSIS OF HISTORIC RESOURCESUMMARY OF CONFLICTING USE ANALYSIS:

Identify conflicting use: a conflicting use is one which, if allowed could negatively impact a Goal 5 resource site. Goal 5 resource sites may impact the conflicting uses.

When conflicting uses are identified, the economic, social, environmental and energy consequence analysis for the Goal 5 historic resource must be undertaken. A determination of the ESEE consequences of identified conflicting uses is adequate if it enable a jurisdiction to provide reasons to explain why decisions are made for specific sites. There are three alternative recommendations as per Chapter 660, Division 16 of the Oregon Administrative Rules, Land Conservation and Development Commission:

- 3A If there are not conflicting uses: Preserve the resource site.
- 3B If there are conflicting uses: Determine the Economic, Social, Environmental and Energy consequences. Both the impacts on Resource and on conflicting use must be considered (i.e. if there is a conflict, what consequence will provide the community at large with the greatest benefit?).
- 3C If there needs to be a balance or compromise reached: Allow the conflicting use while preserving the resource.

III. ECONOMIC, SOCIAL, ENVIRONMENTAL, ENERGY CONSEQUENCE ANALYSIS
FOR CLACKAMAS COUNTY GOAL 5 HISTORIC RESOURCES

CONFLICTING USES:

Potential impacts on Goal 5 historic resource: Alteration of historic resource, relocation of resource, new construction, land division, and demolitions.

Potential impacts of Goal 5 historic resource on existing land use: Requirement that alterations, relocation, new construction, land division and demolition be reviewed under Historic Landmarks Ordinance criteria.

POTENTIAL ACTION: Historic Landmark Designation

	<u>CONSEQUENCE OF ACTION</u>	<u>CONSEQUENCE OF NO ACTION</u>
E C O N O M I C	1) Maintain and potentially enhance property values.	1) Potential loss of incentives to maintain and potentially enhance property values.
	2) Enhance Tourism potential.	2) Potential loss of significant historic resource, which could reduce tourism potential in area.
	3) Provide full range of housing stock.	3) Potential loss of housing stock.
	4) Potential for increased costs to property owners for restoration in order to meet Landmarks Ordinance criteria.	4) Property owners make alterations without application of Historic Landmarks Ordinance is potentially less costly.
	5) Potential for reinvestment in existing buildings. *Qualify to apply for Conditional Use permit for uses not otherwise allowed in underlying zone. *Potential for adaptive reuse of historic resources; an incentive to make resource economically viable for property owner while maintaining historic and architectural integrity. *Qualify for low interest deferred loan program. *First step in National Register nomination which gives tax incentives and qualifies property	5) Loss of potential in reinvestment in existing buildings. *Would not qualify to apply for conditional use permit to allow potential commercial uses of historic property. No allowance for adaptive reuse of historic resource. *Would not qualify for special loan program for historic rehabilitation. *Would not be readily

owner for rehab money through the State Historic Preservation Office.
 *Qualify to apply for C.B.D.G. block grant money for historic preservation and rehabilitation.

considered for National Register nomination if not Co. HL; would not qualify for tax incentives and grant money for rehab.

CONSEQUENCE OF ACTION

CONSEQUENCE OF NO ACTION

S
O
C
I
A
L

1) Resource retains architectural and historic integrity.

1) Architectural, environmental and historical integrity of Goal 5 historic resource lost due to incompatible alterations, relocation, new construction, land division and demolition.

2) Historic resource protected to enhance understanding and appreciation of County's historical, cultural and architectural heritage.

2) Potential loss of significant County historic resource in terms of understanding and educational awareness of heritage to present and future generations. Loss to community at large.

3) Foster neighborhood, community and civic pride.

3) Potential loss to neighborhood livability.

4) Adds to quality of life/community at large.

4) Potential loss of quality of life/community at large.

E/E
N/N
V/E
I/R
R/G
O/Y
N
M
E
N
T
A
L

1) Conservation of existing housing and building resources.

1) Added energy expenditure to replace existing resource.

2) Potential for more open space with mature trees and shrubs

2) Potential loss of open space and mature landscapes.

CLACKAMAS COUNTY HISTORIC PROPERTIES
EVALUATION CRITERIA FORM
 Criteria for architectural, environmental,
 and historical significance

ARCHITECTURE

(A) STYLE/BUILDING TYPE/CONVENTION: Significance as an example of a particular architectural style, building type or conven.

Especially fine or extremely early (1860 or earlier)	10
Excellent or early (1861-1890)	5
Good	3
Of little interest	0

(B) DESIGN/ARTISTIC QUALITY: Significance because of quality of composition, detailing, and craftsmanship.

Excellent	4
Very Good	3
Good	2
Fair	1
Poor	- 0

(C) MATERIALS/CONSTRUCTION: Significance as an example of a particular material or method of construction.

Especially fine or extremely early	4
Excellent or early	3
Good	2
Of some interest	1
Of little interest	0

(D) INTEGRITY: Significance because it retains its original design features, material, and character.

No apparent changes	7
Minor changes	5
Major changes	3
Altered/Deteriorated	0

(E) RARITY: Significance as the only remaining, or one of the few remaining, properties of a particular style, building type, design material, or method of construction.

One of a kind	10
One of few	7
One of several	5
One of many	3

ENVIRONMENT**(A) LANDMARK:**

Symbol for the community	10
Conspicuous/well-known in community	7
Conspicuous/well-known in neighborhood	5
Not conspicuous/not well-known	0

(B) SURROUNDING SETTING: Significance because the current land-use surrounding the property contributes to the integrity of the pertinent historic period.

Excellent	4
Very Good	3
Good	2
Fair	1
Intrusive	0

(C) ON SITE SETTING: Significance because the property consists of a complex of interrelated elements including associated structures from the historic period, viewsheds, natural features and historic landscape materials.

Excellent	10
Good	7
Fair	3
Poor	0

(D) CONTINUITY: Significance because the property contributes to the continuity or historic character of the street, neighborhood, or community.

Establishes character	7
Important/maintains character	5
Compatible	3
Incompatible	0

HISTORICAL ASSOCIATION

(A) PERSON/GROUP/ORGANIZATION: Associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation.

Particularly strong	10
Strong (Donation Land Claim)	7
Some (century farm, school, business, grange, church)	5
None	0

(B) EVENT Associated with an event that has made a significant contribution to the community, state or nation.

Particularly strong	10
Strong	7
Some	5
None	0

(C) PATTERN: Associated with, and illustrative of, trends of historical development or broad patterns of cultural, social, political, economic, or industrial history in the community state, or nation. Pattern is reflective of cultural lifestyles during historic period.

Particularly strong (DLC)	10
Strong (century farms, educ., religion, social, recreation)	7
Some (farming, land use planning, architecture)	5
None	0

(D) LIKELIHOOD TO YIELD INFORMATION: Resource has yielded, or may be likely to yield, information important in prehistory or history*

Very likely	10
Likely	5
Unlikely	0

*(site occupied prior to 1880 and is relatively undisturbed, then likely to very likely. If site is located near stream bank or water source, then likely to very likely)

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Considering Designating
the BULL RUN HYDRO PLANT,
described as T2S-R5E-Section 6,
Tax Lot 100,
a Clackamas County Historic Landmark
in compliance with State
Land Use Law Goal 5.

Order No. 95-361

This matter coming on at this time and it
appearing to the Board of County Commissioners that the BULL RUN HYDRO
PLANT does meet the criteria of Subsection 707 of the Zoning and
Development Ordinance, "Historic Landmark, Historic District and Historic
Corridor", and Goal 5 for designation as a Historic Landmark; and

It further appearing to the Board that the
Historic Review Board at its public hearing on MAY 25, 1994 has
recommended designating the BULL RUN HYDRO PLANT as an Historic Landmark;
and

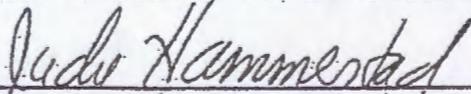
It further appearing to the Board that
hearings were held before this Board on JUNE 1, 1994, at which testimony
was taken and evidence presented; and

It further appearing to the Board that a
decision was made by this Board on JUNE 1, 1994;

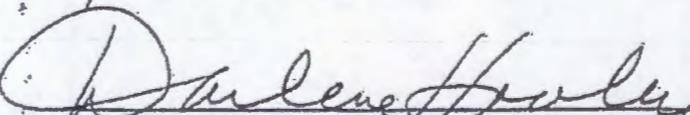
NOW, THEREFORE, IT IS HEREBY ORDERED that
the BULL RUN HYDRO PLANT IS designated a Clackamas County Historic
Landmark. The Board recognizes the owner's ability to pursue future
maintenance and use consistent with operations is unimpeded by this ORDER.

Dated this 27th day of April, 1995.

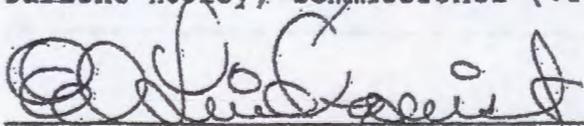
BOARD OF COUNTY COMMISSIONERS



Judie Hammerstad, Chair



Darlene Hooley, Commissioner (Vice Chair)



Ed Lindquist, Commissioner

GOAL 5 ANALYSIS OF HISTORIC RESOURCEEVALUATION FOR SIGNIFICANCE

(Must receive 40 points or more to be eligible for Historic Landmark designation. The numbers coincide with Ordinance Criteria under Section 707.02B, see attached)

	<u>ARCHITECTURE</u>					<u>ENVIRONMENT</u>				<u>HISTORY</u>			
	A	B	C	D	E	A	B	C	D	A	B	C	D
<u>Z0139-94-Z</u>													
Bull Run Hydro Plant#1193													
25E06 00100													
42000 SE Bull Run Rd.	3	2	2	5	7	7	4	10	3	5	5	10	5
GTD, 38.42 acre													
C 1912, STYLE: Early Modern													
TOTAL POINTS: 68													

COMMENTS: The Bull Run Hydroelectric Plant is located on the west side of Bull Run River on Bull Run Road. The Plant is surrounded by undeveloped, forested lands.

The Bull Run Plant was built as a result of the need for nearby electrical sources due to the technological limitations to transmit electricity long distances. Expense limited the size and location of facilities private utility companies could afford to build.

As originally constructed, the project consisted of a wood crib, rock-filled dam 40 feet high and 195 feet long on the Sandy River that diverted water six miles to the east through canals and tunnels to the Little Sandy River, where a low head dam on the Little Sandy diverted water to a wood box flume (#1191) which carried the water to Lake Roslyn. Water was carried from the forebay by two steel penstocks which served three 3750 kw. generating units.

Water from the lake is still carried to the powerhouse through two steel penstocks. There are currently four units in the powerhouse with a combined capacity of 22 megawatts. The Bull Run Hydroelectric Plant is composed of two cast concrete buildings and a wood crib, rock filled dam. Additional equipment was added to the plant in 1954.

The Hydroelectric plant is significant for its association with the industrial history of Clackamas County and the metropolitan area.

GOAL 5 ANALYSIS OF HISTORIC RESOURCE

Bull Run Hydro Plant #1193
File #Z0139-94-Z

CONFLICTING USE ANALYSIS

A. FINDINGS:

1) **Current Zone:** GTD, 80 acre minimum lot size. No conflict with overlay.

2) **Private Development Plans:** none

3) **Public Development Plans:** none

4) **Potential Conflicting Uses:**

Potential impacts on historic resource:

Alteration of historic resource, relocation of resource, new construction, land division, and demolition.

Potential impacts of Historic Landmark designation on existing land use:

Requirement that alterations, relocation, new construction, land division and demolition be reviewed under Historic Landmarks Ordinance criteria.

B. Conclusions:

No existing conflicting uses exist under this zoning designation, however, since there are potential conflicting uses, an analysis of the Economic, Social, Environmental and Energy consequences on the Goal 5 Resource is necessary (see next page).

C. Recommendation:

Designate Historic Landmark as 3C Goal 5 resource, protected by Historic Landmarks Ordinance.

GOAL 5 ANALYSIS OF HISTORIC RESOURCESUMMARY OF CONFLICTING USE ANALYSIS

Identify conflicting use: a conflicting use is one which, if allowed could negatively impact a Goal 5 resource site. Goal 5 resource sites may impact the conflicting uses.

When conflicting uses are identified, the economic, social, environmental and energy consequence analysis for the Goal 5 historic resource must be undertaken. A determination of the ESEE consequences of identified conflicting uses is adequate if it enable a jurisdiction to provide reasons to explain why decisions are made for specific sites. There are three alternative recommendations as per Chapter 660, Division 16 of the Oregon Administrative Rules, Land Conservation and Development Commission:

- 3A. If there are not conflicting uses: Preserve the resource site.
- 3B. If there are conflicting uses: Determine the Economic, Social, Environmental and Energy consequences. Both the impacts on Resource and on conflicting use must be considered (i.e. if there is a conflict, what consequence will provide the community at large with the greatest benefit?).
- 3C. If there needs to be a balance or compromise reached: Allow the conflicting use while preserving the resource.

WHAT IS THE HISTORIC LANDMARKS ORDINANCE AND WHAT AFFECT WILL IT HAVE ON MY PROPERTY?

The intent of this ordinance is to protect and preserve important historic resources in Clackamas County. The Historic Landmark zoning designation is an overlay zone which is an addition to the current zoning designation on your property. For instance, if your property is zoned for farm use or for apartment use, these underlying zoning districts and their restrictions are still maintained, but with a Historic Landmark overlay.

THE HISTORIC LANDMARKS, HISTORIC DISTRICTS AND HISTORIC CORRIDORS ORDINANCE DOES:

- *** Allow for greater options for the use of your historic property within urban and rural zones. Owners of properties within such zones can apply for a conditional use permit to allow for uses such as antique or book shops, or for cafes or bed and breakfast establishments. Many zoning districts do not allow these options without the Historic Landmark overlay zone.
- *** Require that the Historic Review Board review the following to insure compatible design solutions:
 - exterior alterations
 - land divisions
 - demolitions
 - new construction

THE HISTORIC LANDMARKS ORDINANCE DOES NOT:

- *** review interior changes
- *** affect property taxes
- *** require that a building be open to the public
- *** prevent ordinary maintenance

WHO IS ON THE HISTORIC REVIEW BOARD?

Historic Review Board members are volunteer citizens appointed by the Board of County Commissioners. Their backgrounds focus on special expertise or knowledge in the field of historic preservation: architects with knowledge in historic preservation, architects with knowledge in historic restoration, contractors with expertise in construction techniques applied to historic structures, and representatives from historic groups in the County.

The Historic Review Board's role is to advise and assist property owners on appropriate restoration techniques and compatible alterations so that the integrity of the historic building be maintained.

The Historic Review Board also evaluates historic resources and determines which buildings and properties meet criteria in the Ordinance to qualify as a Historic Landmark. They recommend to the Board of County Commissioners the most significant properties be designated Clackamas County Historic Landmarks.

CLACKAMAS COUNTY HISTORIC PROPERTIES
EVALUATION CRITERIA FORM
 Criteria for architectural, environmental,
 and historical significance

ARCHITECTURE

(A) STYLE/BUILDING TYPE/CONVENTION: Significance as an example of a particular architectural style, building type or conven.

Especially fine or extremely early (1860 or earlier)	10
Excellent or early (1861-1890)	5
Good	3
Of little interest	0

(B) DESIGN/ARTISTIC QUALITY: Significance because of quality of composition, detailing, and craftsmanship.

Excellent	4
Very Good	3
Good	2
Fair	1
Poor	0

(C) MATERIALS/CONSTRUCTION: Significance as an example of a particular material or method of construction.

Especially fine or extremely early	4
Excellent or early	3
Good	2
Of some interest	1
Of little interest	0

(D) INTEGRITY: Significance because it retains its original design features, material, and character.

No apparent changes	7
Minor changes	5
Major changes	3
Altered/Deteriorated	0

(E) RARITY: Significance as the only remaining, or one of the few remaining, properties of a particular style, building type, design material, or method of construction.

One of a kind	10
One of few	7
One of several	5
One of many	3

ENVIRONMENT(A) LANDMARK:

Symbol for the community	10
Conspicuous/well-known in community	7
Conspicuous/well-known in neighborhood	5
Not conspicuous/not well-known	0

(B) SURROUNDING SETTING: Significance because the current land-use surrounding the property contributes to the integrity of the pertinent historic period.

Excellent	4
Very Good	3
Good	2
Fair	1
Intrusive	0

(C) ON SITE SETTING: Significance because the property consists of a complex of interrelated elements including associated structures from the historic period, viewsheds, natural features and historic landscape materials.

Excellent	10
Good	7
Fair	3
Poor	0

(D) CONTINUITY: Significance because the property contributes to the continuity or historic character of the street, neighborhood, or community.

Establishes character	7
Important/maintains character	5
Compatible	3
Incompatible	0

HISTORICAL ASSOCIATION

- (A) PERSON/GROUP/ORGANIZATION: Associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation.

Particularly strong	10
Strong (Donation Land Claim)	7
Some (century farm, school, business, grange, church)	5
None	0

- (B) EVENT Associated with an event that has made a significant contribution to the community, state or nation.

Particularly strong	10
Strong	7
Some	5
None	0

- (C) PATTERN: Associated with, and illustrative of, trends of historical development or broad patterns of cultural, social, political, economic, or industrial history in the community state, or nation. Pattern is reflective of cultural lifestyles during historic period.

Particularly strong (DLC)	10
Strong (century farms, educ., religion, social, recreation)	7
Some (farming, land use planning, architecture)	5
None .	0

- (D) LIKELIHOOD TO YIELD INFORMATION: Resource has yielded, or may be likely to yield, information important in prehistory or history*

Very likely	10
Likely	5
Unlikely	0

*(site occupied prior to 1880 and is relatively undisturbed, then likely to very likely. If site is located near stream bank or water source, then likely to very likely)

III. ECONOMIC, SOCIAL, ENVIRONMENTAL, ENERGY CONSEQUENCE ANALYSIS FOR CLACKAMAS COUNTY GOAL 5 HISTORIC RESOURCES.

CONFLICTING USES:

Potential impacts on Goal 5 historic resource: Alteration of historic resource, relocation of resource, new construction, land division, and demolitions.

Potential impacts of Goal 5 historic resource on existing land use: Requirement that alterations, relocation, new construction, land division and demolition be reviewed under Historic Landmarks Ordinance criteria.

POTENTIAL ACTION: Historic Landmark Designation

E C O N O M I C	CONSEQUENCE OF ACTION	CONSEQUENCE OF NO ACTION
	<p>1) Maintain and potentially enhance property values.</p> <p>2) Enhance Tourism potential.</p> <p>3) Provide full range of housing stock.</p> <p>4) Potential for increased costs to property owners for restoration in order to meet Landmarks Ordinance criteria.</p> <p>5) Potential for reinvestment in existing buildings. *Qualify to apply for Conditional Use permit for uses not otherwise allowed in underlying zone. *Potential for adaptive reuse of historic resources; an incentive to make resource economically viable for property owner while maintaining historic and architectural integrity. *Qualify for low interest deferred loan program. *First step in National Register nomination which gives tax incentives and qualifies property</p>	<p>1) Potential loss of incentives to maintain and potentially enhance property values.</p> <p>2) Potential loss of significant historic resource, which could reduce tourism potential in area.</p> <p>3) Potential loss of housing stock.</p> <p>4) Property owners make alterations without application of Historic Landmarks Ordinance is potentially less costly.</p> <p>5) Loss of potential in reinvestment in existing buildings. *Would not qualify to apply for conditional use permit to allow potential commercial uses of historic property. No allowance for adaptive reuse of historic resource. *Would not qualify for special loan program for historic rehabilitation. *Would not be readily</p>

owner for rehab money through the State Historic Preservation Office.

*Qualify to apply for C.B.D.G. block grant money for historic preservation and rehabilitation.

considered for National Register nomination if not Co. HL; would not qualify for tax incentives and grant money for rehab.

CONSEQUENCE OF ACTION

CONSEQUENCE OF NO ACTION

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A
L

1) Resource retains architectural and historic integrity.

1) Architectural, environmental and historical integrity of Goal 5 historic resource lost due to incompatible alterations, relocation, new construction, land division and demolition.

2) Historic resource protected to enhance understanding and appreciation of County's historical, cultural and architectural heritage.

2) Potential loss of significant County historic resource in terms of understanding and educational awareness of heritage to present and future generations. Loss to community at large.

3) Foster neighborhood, community and civic pride.

3) Potential loss to neighborhood livability.

4) Adds to quality of life/community at large.

4) Potential loss of quality of life/community at large.

E/E
N/N
V/E
I/R
R/G
O/Y
N
M
E
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T
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L

1) Conservation of existing housing and building resources.

1) Added energy expenditure to replace existing resource.

2) Potential for more open space with mature trees and shrubs.

2) Potential loss of open space and mature landscapes.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Enlarging the
Historic Landmark Designation for
The BULL RUN SCHOOL, Described as
T2S-R5E-Section 6, Tax Lot 600, a
Clackamas County Historic Landmark



Order No.: 2014- 30

File No.: Z0075-94-HL

This matter coming at this time and it appearing to the Board of
County Commissioners the BULL RUN SCHOOL does meet the criteria of Subsection 707 of the
Zoning and Development Ordinance; and

It further appearing to the Board that the Historic Review Board at
its public hearing on February 13, 2014, has recommended increasing the designation at the BULL
RUN SCHOOL; and

It further appearing to the Board that a hearing was held before
this Board on April 30, 2014 at which testimony was taken and evidence presented; and

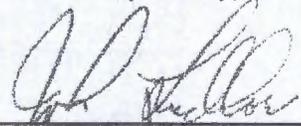
It further appearing to the Board that a decision was made by this
Board on April 30, 2014;

Based upon the evidence and testimony presented this Board makes the following findings and
conclusions:

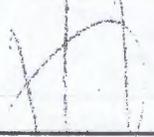
1. The application meets the applicable approval criteria.
2. The Board adopts the relevant findings and conclusions contained in the Decision of the Historic
Review Board, dated February 24, 2014 and in the staff materials presented at the April 30,
2014 hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the BULL RUN SCHOOL,
designation is increased as specified in the staff materials presented at the April 30, 2014 hearing.

Dated this 1st day of May, 2014



Chair



Recording Secretary

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Reducing the
Historic Landmark Designation for
The BULL RUN POWER PLANT,
Described as T2S-R5E-Section 6,
Tax Lot 102, a Clackamas County
Historic Landmark



Order No.: 2014- 31

File No.: Z0139-94-HL

This matter coming at this time and it appearing to the Board of County Commissioners the BULL RUN POWER PLANT does meet the criteria of Subsection 707 of the Zoning and Development Ordinance; and

It further appearing to the Board that the Historic Review Board at its public hearing on February 13, 2014, has recommended decreasing the designation at the BULL RUN POWER PLANT; and

It further appearing to the Board that a hearing was held before this Board on April 30, 2014 at which testimony was taken and evidence presented; and

It further appearing to the Board that a decision was made by this Board on April 30, 2014;

Based upon the evidence and testimony presented this Board makes the following findings and conclusions:

1. The application meets the applicable approval criteria.
2. The Board adopts the relevant findings and conclusions contained in the Decision of the Historic Review Board, dated February 24, 2014 and in the staff materials presented at the April 30, 2014 hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the BULL RUN POWER PLANT, designation is decreased as specified in the staff materials presented at the April 30, 2014 hearing.

Dated this 1st day of May, 2014

Chair

Recording Secretary

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Designating the
PGE-DAY PARK, described as part of
T2S-R5E-Section 6, Tax Lot 102, as a
Clackamas County Historic Landmark



Order No.: 2014- 32

File No.: Z0579-13-HL

This matter coming at this time and it appearing to the Board of County Commissioners the PGE-DAY USE PARK does meet the criteria of Subsection 707 of the Zoning and Development Ordinance; and

It further appearing to the Board that the Historic Review Board at its public hearing on February 13, 2014, has recommended the designation of the PGE DAY-USE PARK; and

It further appearing to the Board that a hearing was held before this Board on April 30, 2014 at which testimony was taken and evidence presented; and

It further appearing to the Board that a decision was made by this Board on April 30, 2014;

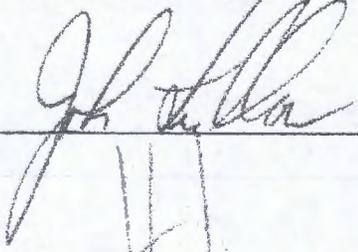
Based upon the evidence and testimony presented this Board makes the following findings and conclusions:

1. The application meets the applicable approval criteria.
2. The Board adopts the relevant findings and conclusions contained in the Decision of the Historic Review Board, dated February 24, 2014 and in the staff materials presented at the April 30, 2014 hearing.

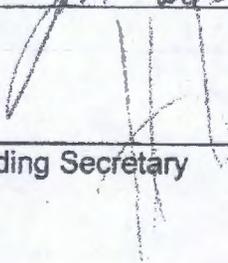
NOW, THEREFORE, IT IS HEREBY ORDERED that the PGE DAY-USE PARK, is designated a Clackamas County Historic Landmark: and

It is further ordered that the required changes be made in the relevant zoning maps.

Dated this 30th day of April, 2014



Chair



Recording Secretary

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Designating the
BULL RUN HISTORIC DISTRICT,
Described as part of T2S-R5E-Section 6,
Tax Lot 102, and T2S-R5E-Section 6,
Tax Lot 600 as a Clackamas County
Historic District

Order No.: 2014- 3 3

File No.: Z0579-13-HL

This matter coming at this time and it appearing to the Board of County Commissioners the BULL RUN HISTORIC DISTRICT does meet the criteria of Subsection 707 of the Zoning and Development Ordinance; and

It further appearing to the Board that the Historic Review Board at its public hearing on February 13, 2014, has recommended the designation of the BULL RUN HISTORIC DISTRICT; and

It further appearing to the Board that a hearing was held before this Board on April 30, 2014 at which testimony was taken and evidence presented; and

It further appearing to the Board that a decision was made by this Board on April 30, 2014;

Based upon the evidence and testimony presented this Board makes the following findings and conclusions:

1. The application meets the applicable approval criteria.
2. The Board adopts the relevant findings and conclusions contained in the Decision of the Historic Review Board, dated February 24, 2014 and in the staff materials presented at the April 30, 2014 hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the BULL RUN HISTORIC DISTRICT, is designated a Clackamas County Historic District; and

It appears that the BULL RUN POWERHOUSE SITE is approximately 11 acres, the PGE DAY-PARK SITE is approximately 42 acres, and the BULL RUN SCHOOL SITE is 5 acres for an Historic District area of approximately 58 acres.

It is further ordered that the required changes be made in the relevant zoning maps. It is ordered that in addition to the HL on the three sites, HD shall be written.

Dated this 30th day of April, 2014

Chair

Recording Secretary

Planning and Zoning Division

Development Services Building

Mike McCallister, Director

150 Beavercreek Road Oregon City, OR 97045

Phone: (503) 742-4500 fax: (503) 742-4550 e-mail: zoninginfo@co.clackamas.or.us

Web: <http://www.clackamas.us/transportation/planning>

DECISION OF THE HISTORIC REVIEW BOARD

This document represents the Decision of the Historic Review Board for a Land Use Application requesting Historic Landmark overlay to be placed on the PGE Day-Use Camp area and create a Historic District – to include the PGE Day-Use Camp, the Historic Landmark PGE decommissioned Bull Run Powerhouse and the Historic Landmark Bull Run School.

SECTION 1 – SUMMARY

DECISION DATE: FEBRUARY 24, 2014

APPEAL DATE: March 4, 2014

CASE FILE NO.: Z0579-13-HL

STAFF CONTACT: Linda Preisz, (503)742-4528, lindap@co.clackamas.or.us

LOCATION: 13115 SE Bull Run Road, Sandy OR, 97055, T2S R5E Section 06, Tax Lots 102 and 600

APPLICANT: Karen Karlsson, 906 NW 23rd Avenue, Portland, OR 97210

OWNER: Powerhouse Re Gen LLC

TOTAL AREA: Approximately 115 acres

ZONING: TBR/HL, Timber Zoning District, Historic Landmark Overlay

CITIZENS PLANNING ORGANIZATION: Bull Run Community Association, Roger Bell, 503-632-7063, P.O. Box 75, Sandy, OR 97055, maia007@yahoo.com

PROPOSAL: Request for Historic Landmark Overlay be applied to the PGE Day Use Park and create a Historic Bull Run District.

APPLICABLE APPROVAL CRITERIA: This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections(s) 707.02B and C.

Planning and Zoning Division

Development Services Building

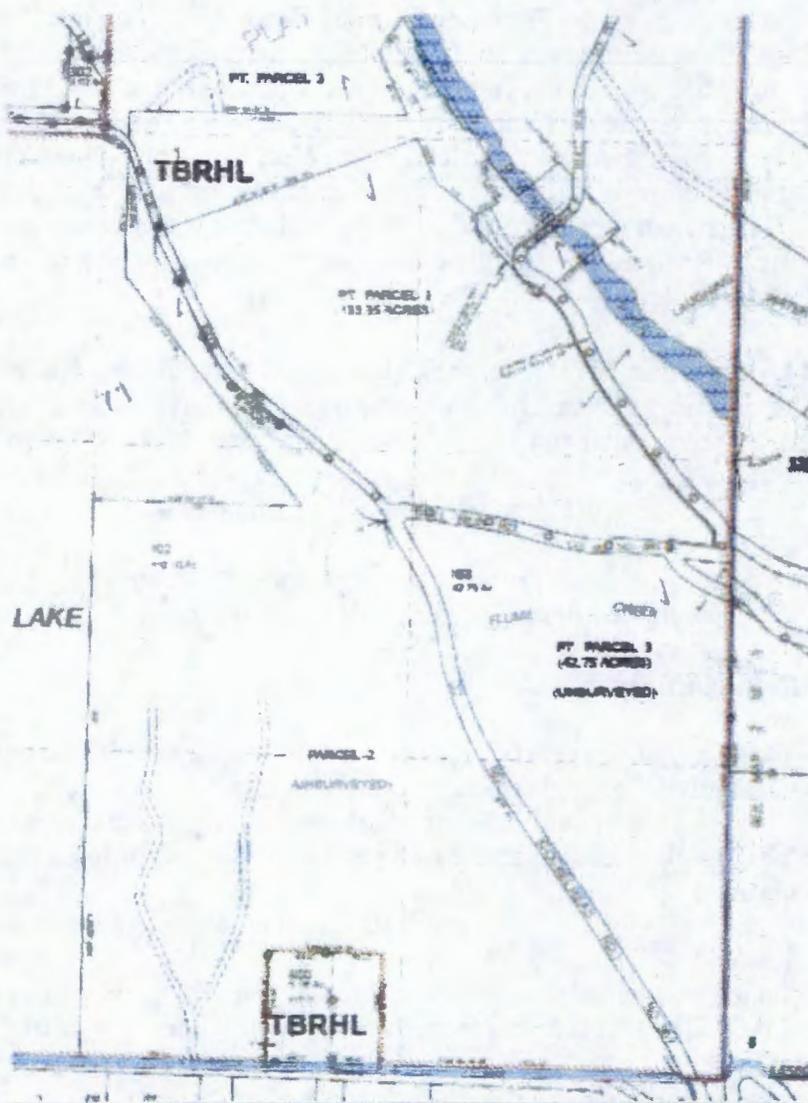
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Location Map



Planning and Zoning Division

Development Services Building

Mike McCallister, Director

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Phone: (503) 742-4500 fax: (503) 742-4550 e-mail: zoninginfo@co.clackamas.or.usWeb: <http://www.clackamas.us/transportation/planning>**BACKGROUND:**

In 1995, Clackamas County designated the Bull Run Hydro Plant (Powerhouse) and the Bull Run School history landmarks. The community of Bull Run was established as the "Unavilla" post office in 1893 possibly a result of the construction of the water supply. Its name was changed to Bull Run in 1895. The completion of the Bull Run Hydroelectric Project played a significant role in the development of the Bull Run community. By 1915, just three years after the completion of the project, the community had a population of 100. The large reservoir, Roslyn Lake and its picnic area known as the PGE Day-Use Park, the log flume and the powerhouse were connected with Portland by the Bull Run trolley line. The Bull Run trolley was discontinued before WWII but the other elements in the district continued in use until more recent time. The school closed in 2003. The powerhouse was decommissioned in 2008, leading to the draining of Roslyn Lake and the closure of the park. The park remains in informal use by the surrounding residents.

CRITERIA: Section 707.02B of the Clackamas County Zoning Ordinance states that a structure, site or object may be zoned a Historic Landmark if it is rated "significant" under the architectural, environmental and historic association criteria. A site or structure must receive a total of 40 or more points under the flowing criteria to be considered for Historic Landmark status. The Historic Review Board will rank its significance.

To break down the requests and make it easier to understand, staff recommends that the PGE Day-Use Park be evaluated first. The park will be rated thusly:

Architectural Significance

1. It must be an early (50 years or older), or exceptional, example of a particular architectural style, building type, or convention. (up to 10 points)
2. It must possess a high quality of composition, detailing and craftsmanship. (up to 4 points)
3. It must be a good or early example of a particular material or method of construction. (up to 4 points)
4. It must retain, with little or no changes its original design features, materials, and character. (up to 7 points)
5. It must be the only remaining, or one of the few remaining, properties of a particular style, building type, design, material, or method of construction. (up to 10 points)

AND

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Environmental Significance

1. It must be a conspicuous visual landmark in the neighborhood or community. (up to 10 points)
2. It must be well located considering the current land use surrounding the property, which contributes to the integrity of the pertinent historic period. (up to 10 points)
3. It consists of a grouping or interrelated elements including historic structures, plant material and landscapes, view sheds and natural features. (up to 10 points)
4. It is an important or critical element in establishing or contributing to the continuity or character of the street, neighborhood, or community. (up to 7 points)

AND

Historical Significance

1. It must be associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation (up to 10 points)
2. It must be associated with an event that has made a significant contribution to the community, state, or nation (up to 10 points)
3. It must be associated with, and illustrative of, broad patterns of cultural, social, political, economic, or industrial history in the community, state, or nation. (up to 10 points)
4. It possesses the potential for providing information of a prehistoric or historic nature. (up to 10 points)

The HRB scored the PGE Day-Use Park (approximately 42 acres) as follows:

Evaluation for Significance

	<u>ARCHITECTURE</u>					<u>ENVIRONMENT</u>				<u>HISTORY</u>			
	A	B	C	D	E	A	B	C	D	A	B	C	D
PGE Day-Use Park	3	2	1	3	3	10	2	7	5	7	0	10	0

Total Points: 53

A site or structure must receive a total of 40 or more points to be considered for Historic Landmark status. The HRB finds that the PGE Day-Use Park should be designated as a Historic Land Mark.

The park was developed by PGE starting in 1956 on the shores of Roslyn Lake approximated 50 years after the lake was built. The lake served as a reservoir to ensure a steady source of water to the Bull Run Powerhouse. Roslyn Lake remained until May 2008 when the Powerhouse was decommissioned and the last lake water drained through the turbines. The lake and the park were both used for recreation by local residents and visitors from Portland. It was a popular

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fishing spot and was reachable by electric streetcars. One of the relicensing requirements for PGE was to better manage lands around its various projects for natural resources and recreation. A single picnic area was built in 1956. By the end of 1957, restrooms and 10 improved picnic areas with heavy wooden tables, benches and a multipurpose fireplace was built. Two years later another 8 picnic areas were added. Running water and electric stoves were available at many of the picnic spots. In 1961-63, installation occurred of additional restrooms and a large covered group picnic shelter with a large stone fireplace. The last picnic shelter was built in 1970. The park entry and a fee collection booth were added in 1977.

A total of nine structures survive in the Park – three restroom structures, two large picnic shelters, a dressing room later converted into a concession stand; a park office, an entry fee booth, baseball backstops and two horseshoe pits are also present. Two docks were lost when the lake was drained. The main park area has 80 parking spaces with an additional 96 spaces in the overflow parking area. In 1960, 15,800 people visited the park. In 1966, the park hit a peak of 100,000 visitors. The park has been a local attraction with most of its visitors coming from less than 25 miles away. The park has been a conspicuous symbol for the community for the last 60 years.

The loop road which is used to reach the park travels through a pristine and manicured well-stocked 100-year old even-aged Douglas Fir forest. The average diameter is 25 inches with dominant tree height reaching over 140 feet tall. The forest management plan for this stand of trees states it contains 24.36 acres. The HRB wants to help preserve this forest along with the park. The HRB discussed a possible condition to preserve this forest as an historic landmark Landscape just as important as the structures. The applicants were supportive of the HRB desire to prohibit clear cutting on this historic site and are willing to record a deed statement.

They have offered this statement. “The historic site is subject to a forest management plan that will emphasize protecting the historic character of the site with its fully developed tree canopy and grove like character of the understory. Tree thinning and cutting is limited to that which encourages the long term health of the forest. Examples include cutting trees that are dead or diseased, are located so close together as to produce crowding conditions, and thinning to allow some sunlight to reach the forest floor. Clear cutting will not be allowed in the PGE Day-Use Park Historic Site.”

The HRB will require the applicant to record this statement on the deed of the property and have a recorded copy placed in this application file.

The Bull Run Hydro Plant was designated a Historic Landmark in 1995. It was evaluated and given a score of 68. The Board Order 95-361 designated a portion, roughly 39 acres of Tax Lot 100 which was a parcel containing over 500 acres. As it states in the record, the Plant is surrounded by undeveloped, forested lands. In 2011, the owner of the property, PGE divided up

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their holdings in this area. The Powerhouse is now contained on a portion of the newly created tax lot 102 (110.1 acre).

The Bull Run School was designated a Historic Landmark in 1994. It was evaluated and given a score of 53. The Board Order 94-1026 designated Tax Lot 600 a 2.88 acre parcel.

Historic District consideration:

Section 707.02C states that a designation of a **Historic District** on the county Zoning and Comprehensive Plan maps may be initiated by a petition of a least sixty percent of the property owners within the geographically defined area and when the following criteria is met.

1. The area is listed as a National Register Historic District, or
2. The area includes a significant concentration or linkage of sites, buildings, structures, objects of landscapes which are unified visually by style, plan, or physical development and distinguished by association with historic periods, events, people, or culture trends, AND
3. The area is of sufficient size and scope, and the component parts are cohesive enough to adequately represent, demonstrate, or commemorate the significant historic period, event, people, or trend, AND
4. A substantial number of the component parts within the area are exceptionally well preserved.

Findings:

The application has been submitted by all the property owners. The ownership request requirement is met. This request is concerning property that is not listed on the National Register therefore it must meet the last three criteria.

The HRB finds that the area includes a significant concentration of buildings, etc which are associated with the formation of the community Bull Run.

The HRB finds that the area proposed is more than sufficient size and the component parts are cohesive to adequately represent the historic period.

The HRB also finds that there are a substantial number of the component parts within the area (particularly around the Powerhouse) which are exceptionally well preserved.

The HRB recommends to the Board County Commissioners that a Discontinuous Historic District be created to best meet preserving the story of the Bull Run community.

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This application is requesting that a Historic District be made of the component parts containing the Powerhouse, Bull Run School and the PGE Day-Use Park. The size of the District is an issue. The related elements do form a historical context but the parcels also include large expanses of timberland that is not historic.

The day-park features and other buildings have been estimated to be contained in the northern 11.8 acres of Tax Lot 102. Designating Stands #1 and #2 of the existing Forest Management Plan, representing the historic forested landscape, will add approximately 30 acres. Including the remainder of the tax lot, Stands #3 and #4 is not warranted. Therefore, the day-park designation would result in a 42 acre parcel.

In 2011, when the property lines were changed in Partition Plan No. 2011-071, no requests to change the HL overlay was included in that application. The HL designated 35 acres originally. The HRB now requires that the current tax lot boundaries be recognized. The new HL designation contains approximately 11 acres.

The Bull Run School is also an existing Historic Landmark consisting of 2.8 acres. The tax lot was increased in size in 2011 to incorporate the ball fields. The HRB recommends that the new HL designation change to reflect that map change.

The HRB recommends that a new designation, the Bull Run Historic District (HD) containing 58 acres, approximately 11 acres surrounding the Powerhouse and penstocks (underground water tubes), 42 acres containing the PGE Day-Use Park and Doug Fir Forest on T2S, R5E, Section 06 Tax Lot 102 and the Bull Run School on Tax Lot 600 of approximately 5 acres, be granted.

SHPO feels that a Bull Run Historic District would be a good candidate for a National Registry nomination.

RECOMMENDATION:

The HRB recommends to the BCC that the PGE Day-Use Park, approximately 42 acres, be designated as a Historic Landmark.

The HRB recommends that the Powerhouse designation be changed to reflect approximately 11 acres.

The HRB recommends that the Bull Run School landmark be changed to reflect approximately 5 acres.

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And finally, the HRB recommends to the BCC that the three historic landmark sites should be designated as an approximate 58 acre Historic District – The Bull Run Historic District and request the appropriate map changes be made.

THE APPROVAL OF THE HISTORIC REVIEW BOARD SHALL BECOME FINAL 10 DAYS FROM THE DATE OF THE WRITTEN FINDINGS UNLESS APPEALED IN WRITING BY ANY AGGRIEVED PARTY PURSUANT TO SECTION 1304 OF THE CLACKAMAS COUNTY ZONING ORDINANCE.

1 CERTIFICATE OF SERVICE

2 I certify that on the date indicated below, I filed the original and four
3 copies of INTERVENOR-RESPONDENT RESTORE OREGON'S BRIEF
4 with the

5 Land Use Board of Appeals
6 DSL Building
775 Summer Street NE, Suite 330
Salem, Oregon 97301-1283

7 by first-class mail, postage prepaid. On the same date I served a true and
8 correct copy by first-class mail, postage prepaid, on the following parties:

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10 44495 SE Phelps Road
Sandy, OR 97055

Stephen Madkour
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Portland, OR 97201

14 DATED: August 3, 2015.

15 Respectfully submitted,

16 GARVEY SCHUBERT BARER

17 By: 
18 Carrie A. Richter, OSB #003703
19 Of Attorneys for Intervenor-Respondent
Restore Oregon

20 GSB:7227414.2

21
22
23 CERTIFICATE OF SERVICE, INTERVENOR-
RESPONDENT RESTORE OREGON'S BRIEF

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