

**Appendix II.B.9.d) Example Carrying Capacity Standards**  
**Hugo Land Use Committee/Rogue Advocates/ Goal One Coalition**  
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**Draft November 2008 Example AOE**

**Executive Summary**

The Hugo Neighborhood Association & Historical Society, Rogue Advocates, and, Goal One Coalition, are nonprofit charitable and educational organizations whose missions include providing assistance and support to citizens of the Rogue Valley in matters affecting their communities.

The purpose of this paper, *Carrying Capacity Standards*, is to assemble the applicable carrying capacity standards and analyses historically presented during testimonies applicable to most land use applications that were post-acknowledgment plan amendments (PAPAs) in Josephine County, Oregon during the five years from 2002 - 2006. The standards are specific carrying capacity standards defined by the Josephine County Board of County Commissioners in the Josephine County Comprehensive Plan (JCCP) and the Josephine County Rural Land Development Code (RLDC). The historical carrying capacity analyses assembled in this paper were operational testimonies historically presented for different PAPA land use applications by the Hugo Neighborhood Association & Historical Society, Rogue Advocates, and the Goal One Coalition. The *Carrying Capacity Standards* will be published as a stand alone carrying capacity document on the web as a free accessible education tool available for use by the general public (i.e., land use applicants, public, government, etc.).

A local issue of concern is planning for population growth and development project by project, rather than taking a longer look to the future through advanced, or long-term planning. We are so focused on the next marginal increment of growth that we do not ask the questions about long-term regional impacts to our quality of life. How do the cumulative effects of growth or non-growth affect the livability of our existing neighbors? What is the carrying capacity of the land to accommodate the next project when evaluated in relationship to the existing development and reasonably predictable future development?

Josephine County's carrying capacity standards are identified in its JCCP and RLDC. The RLDC 11.030 definition of carrying capacity is the ability of the land to support the proposed development, and clearly provides that the "ability of the land" must consider the on-site "land proposed to be developed" and the "off-site" ability of the land, including the surrounding roads, air, water, vegetation, and facilities and services as they relate to special land use concerns.

"Carrying Capacity. The ability of land to support proposed development as determined by an evaluation of suitability for sewage disposal, the adequacy of the domestic groundwater supply (quantity and quality), the presence of adequate off-site roads, the

suitability of soil and terrain to support on-site roads, the presence or absence of flood, fire or erosion hazards, and the applicability of other special land use concerns (e.g., watershed protection, protection of wildlife and fishery habitat, the presence of scenic easements, airport flight paths, the availability of emergency services, etc.).”

One of the most basic needs for the local planning commissioner, local government decision maker, planner, developer, land owner, environmentalist, and/or the average neighbor is to understand the land use rules. One of the significant rules a local government must follow is that its hearing bodies are required to include findings in a decision to approve or deny an application. The standards for a Josephine County hearing body’s findings of fact and conclusions of law document for the proposed land use request are covered in ORS 215.416(8) & (9), and RLDC 11.030, Findings). The RLDC 11.030 provides, in relevant part:

“FINDINGS. As required by ORS 215.416(8), written statements of fact, conclusions, and determinations based upon the evidence at hand, presented relative to the criteria and standards for such review and accepted by the review or hearing body in support of a final action.”

Findings are written statements of fact, conclusions, and determinations based upon the evidence at hand, presented relative to the standards and criteria for such review and adopted by the local government’s decision maker(s) in support of a land use decision. Findings have the following requirements.

1. Identify of the relevant approval standards (i.e., standards and criteria).
2. Identify of the facts which were believed and relied upon by the decision maker(s).
3. Explain how those facts lead to the conclusion that the standards are, or are not, satisfied.
4. Respond to specific issues relevant to compliance with applicable approval standards and criteria that were raised by citizens in the proceedings.
5. State that the approval standards are met or that compliance is feasible and impose conditions that will ensure compliance.

Carrying capacity, as designed by the people through their elected representatives and documented in the JCCP and the RLDC, work together to operate at two different geographic levels simultaneously: 1. at the relevant geographic study area and 2. at the site specific lot or parcel level. Carrying capacity analysis is one of those standards and criteria that require an identified study area.

The local government’s carrying capacity requirements for “*special land use concerns*” (Carrying Capacity, RLDC 11.030) of a specific land use request in a quasi-judicial process requires an analysis of the “ability of the land” to consider the on-site “land proposed to be developed” *and* the “off-site” ability of the land, including the surrounding roads, air, water,

vegetation, and facilities and services. Six special land use carrying capacity concerns are identified.

1. Carrying Capacity Ground Water Availability Analysis By Aquifer And Tax Lot
2. Carrying Capacity Preserve Rural Character Analysis of Other Lands In Area And Josephine County
3. Carrying Capacity Transportation Analysis by Travelshed and Tax Lot
4. Carrying Capacity Air Quality Analysis of Avoiding Air Pollution by Airshed And Tax Lot
5. Carrying Capacity Analysis of Extreme Wildfire Hazard By Wildfire Hazard Area And Tax Lot
6. Carrying Capacity Analysis of Avoiding Developing Infrastructure And Public Facilities And Providing Services That Can Not Be Afforded by Geographical Area of County And Tax Lot

These carrying capacity analyses are applicable to most land use applications that are PAPAs in Josephine County, Oregon. They can be adapted to non-PAPA applications.

All six carrying capacity issues require an analysis addressing the incremental and continuous development proposals for a relevant study area (i.e., area depends on individual impact issue) over a logical time frame (i.e., life of comprehensive land use plan) from reasonably predictable events (i.e., population prediction and comprehensive plan allocations) with an evaluation (i.e., potentially significant impacts) of the ability of land to support the proposed land use request. For example, the methodology used to develop Josephine County's Transportation Plan satisfies the analysis parameters. This carrying capacity analysis methodology is usually disputed by the local hearing body and some lesser standard is used.

The required carrying capacity demonstrations may be inadequate and not supported by substantial evidence. The potential carrying capacity assignment of errors also include a seventh error that documented compliance determinations for conditions of approval to meet criteria must be made at a stage that provides opportunity for public review and comment. Further, the majority of findings do not identify that the conditions of approval will ensure the approval standards are met, except in the most generic manner, or that compliance is feasible and that the imposed conditions will ensure compliance.

The availability of ground water involves an understanding of the carrying capacity of aquifers and the potential significant beneficial and adverse impacts of additional cumulative ground water recharges and withdrawals. The standard or threshold for the meaning of the adequacy of the groundwater supply includes both quantity and quality. The carrying capacity criteria require an evaluation of the ability of land to provide an adequate source of ground water supply all year. A county finding that there is available ground water adequate for the proposed density of development, without addressing the carrying capacity of the land by aquifer and tax lot, including lots to be developed ("water availability" criteria and "do not exceed the physical

capability of the land” criteria), will misconstrue the applicable law, be inadequate, and will not be supported by substantial evidence.

The RLDC’s standards for the carrying capacity of “*change in designations at the location consistent with the character of the surrounding area*” and “*compatible with the existing land use pattern*” is nearly identical for plan amendment review criteria, subdivisions, land partitions, replats, and planned unit developments. The criteria of preserving the rural character of Josephine County by maintaining a stable land use pattern during the life of the plan needs to be addressed. The standard or threshold that the rural character of the county be preserved is through maintaining minimum lot or parcel sizes and a stable land use pattern. In this case the findings must demonstrate that approving the land use application preserves the "rural" character of the area. A county finding that the proposed development is consistent with the character of the surrounding area and compatible with the existing land use pattern, and development will not adversely effect other lands in the area without a carrying capacity analysis, will misconstrue the applicable law, be inadequate, and will not be supported by substantial evidence.

Perhaps no other aspect of land use affects so many people as traffic. Surely none causes as much frustration. When traffic is managed poorly we lose: time, wages, productivity, property value, the quiet and safety of our neighborhood streets, open space, our health, and our overall quality of life. A major carrying capacity standard for adequate off-site roads being adequate to serve the proposed development are the standards of its travelshed. The usual land use application does not provide substantial evidence in the record to support a finding that the proposed development does not exceed the carrying capacity of its travelshed (e.g., the Merlin Travelshed, especially at the Merlin I-5 Interchange, nor that the existing and required infrastructure and public facilities and services are adequate to serve the proposed development in a manner which would comply with the RLDC). Without a carrying capacity analysis a county's finding that the existing and required infrastructure and public facilities and services are adequate to serve the proposed development will misconstrue the applicable law, will be inadequate, and will not be supported by substantial evidence.

The county's findings must address air pollution by airshed and tax lot. The record must be sufficient to allow review. The overriding concern of JCCP Goal 8 is to control air pollution. This correlates highly with citizens maintaining their independent rural lifestyle and preserving the rural character of the county while developing facilities and services that can be afforded. There must be an attempt to identify the carrying capacity of the airshed to accept additional air pollution generators, and, therefore, demonstrate the proposal is in compliance with definition of carrying capacity. A county finding that an airshed has the capacity to accept additional air pollution generators, without addressing the carrying capacity of the land to avoid air pollution by airshed and tax lot, will misconstrue the applicable law, be inadequate, and will not be supported by substantial evidence.

The county’s findings must address extreme wildfire hazard by wildfire hazard area and tax lot.

The suitability of an area for development because of lack of development hazards such as extreme wildfire hazard criteria comes from the state definition of forestland combined with the intent of Goals 3 and 6 of the JCCP. Is the land suitable for development as determined by the lack of development hazards such as extreme wildfire hazards? The State of Oregon also considers the suitability (i.e., fire hazard) of an area for development in how it assesses the costs of fire protection of forestlands. The record must consider the carrying capacity issue for a land use application's high fire hazard risk and consider mitigation measures for the property and community. The analysis will be inadequate if it does not address the carrying capacity of the applicable high fire risk region (e.g., Jumpoff Joe Creek, etc.). In that case a county finding of compliance will misconstrue the applicable criteria, will be inadequate, and will not be supported by substantial evidence.

The overriding concern of the JCCP is to preserve the rural character of the county while developing infrastructure and public facilities and providing services that can be afforded (i.e., citizens of the county need to live within their budget while maintaining their independent rural lifestyle). Without a carrying capacity analysis, a county's finding that the rural character of the county is preserved by developing infrastructure and public facilities and providing services that can be afforded will misconstrue the applicable law, will be inadequate, and will not be supported by substantial evidence. No attempt to address the issues of preserving the rural character by maintaining existing and developing required infrastructure and public facilities, and services being affordable; public health, safety, and welfare issues; and the carrying capacity to pay will result in the proposal not complying with the JCCP and the RLDC. The record will not be sufficient to allow review and the county's findings will be inadequate in addressing legitimate issues raised in a quasi-judicial land use proceeding concerning relevant approval criteria.

The majority of findings by Josephine County hearing bodies do not identify that the conditions of approval will ensure the approval standards are met, except in the most generic manner, or that compliance is feasible and that the imposed conditions will ensure compliance. These findings of compliance misconstrue the applicable criteria, are inadequate, and not supported by substantial evidence. They are usually conclusory and fail to explain how the facts lead to the conclusion that the request satisfies the approval standards. Documented compliance determinations for conditions of approval to meet criteria that determinations are met must be made at a stage that provides opportunity for public review and comment. Where the staff report identifies an approval criterion and the final decision and findings fails to demonstrate compliance with the criterion or take the position that the criterion does not apply, the decision is flawed.

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*Carrying Capacity Standards*

Hugo Land Use Committee/Rogue Advocates/ Goal One Coalition

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