

1 **Appendix II.B.9.d) Example Assignment of Error (AOE)**
2 **For Not Addressing The New Statewide Goal 4 Rules**
3 **Assignments of Error (AOEs) Format**

4
5 **June 19, 2013**

6
7 **The County Erred In Not Addressing The New Statewide Goal 4 Rules**

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9 **Assignments of Error (AOEs)** have four sections.

- 10 1. Potential Assignment of Error
11 2. Standards & Criteria, Relevant Laws & Rules
12 3. Analysis of Facts
13 4. Conclusion Statement

14
15 **2008 Example AOE**

16 **A. FIRST ASSIGNMENT OF ERROR**

17 **The County Erred In Not Addressing The New Statewide Goal 4 Rules**

18 **1. Assignment of Error**

19 The county failed to apply the April 18, 2008 Oregon Land Conservation and
20 Development Commission (LCDC) Goal 4 rules to the application for the comprehensive
21 plan amendment. Its findings fail to address compliance with OAR 660-006-0010 or 660-
22 006-0005(2) or to evaluate the potential forest productivity of the property as measured
23 by cubic feet per acre per year.

24 **2. Summary Of Standards And Criteria, Relevant Laws, And Rules**

25 Approval of the plan amendment requires findings of compliance with OAR 660-
26 006-0005 and 660-006-0010. App B1.

27 Compliance with OAR 660-006-0005(2) and 660-006-0010 was raised at the
28 local level. Recs 1,845, 2008 - 2,011, 2,017, 2019

1 **3. Summary Of Applicable Findings Of Fact**

2 The county’s November 26, 2008 Findings Of Fact concludes that the forest
3 productivity data supports the decision that the property is non-resource and unsuitable
4 for forest use (Finding III.E., Rec 60; Finding III.F., Rec 61; Finding III. H., Recs 62 - 63;
5 Appendix C). The county’s decision relies entirely on the county’s findings that the
6 subject property does not meet the threshold for “forest land” as defined by the county’s
7 Internal Rate of Return (IRR) system. The findings do not address OAR 660-006-0005
8 and 660-006-0010. Recs 49 - 67; App A

9 **4. Analysis of Facts And Arguments**

10 A county decision to change the plan designation of land from a resource
11 designation to a nonresource designation requires findings that the subject land does not
12 meet the Goal 4 definition of “forest land.”

13 In this case the county’s decision relies entirely on the county’s findings that the
14 subject property does not meet the threshold for “forest land” as defined by the county’s
15 IRR system. App C.

16 In *Doob v. Josephine County (Eliason)*, 48 Or LUBA 227 (2004), LUBA held that
17 Josephine County could rely exclusively on the Josephine County Comprehensive Plan
18 (JCCP) Goal 11, Policy 3(B)(1) to conclude that a property was nonresource land,
19 without further consideration of whether the soils on the property might qualify as forest
20 land under the broad Goal 4 definition of “Forest Lands.” LUBA rejected the argument
21 that Goal 4 must be applied directly and concluding that the petitioner’s contrary
22 argument was a collateral attack on the acknowledged JCCP Goal 11, Policy 3(B). That

1 holding was reaffirmed by LUBA and affirmed by the Court of Appeals. *Sommer v.*
2 *Josephine County*, 49 Or LUBA 134, 201 Or App 528 (2005).

3 However, subsequent to LUBA’s decision on that issue, on March 21, 2008, the
4 LCDC adopted amendments to OAR 660-006-0005 and 660-006-0010. The amendments
5 became effective on April 18, 2008.

6 The amended rules are clear that: 1. the determination of forest production
7 capability must be by cubic feet per acre per year as defined in OAR 660-006-0005(2); 2.
8 that if the submitted forest productivity analysis is not based on one of the specifically
9 listed sources, the State Forester, not the county, must determine that the information
10 used is “of comparable quality”; and 3. that any alternate methodology must be based on
11 the specifically listed Department of Forestry technical bulletin and be approved by the
12 department, not the county.

13 LUBA has held that LCDC intended the Goal 4 rule amendment to clarify and limit
14 the types of data that may be relied upon in determining forest productivity and that where
15 the record does not demonstrate that the sources of data the county relied upon satisfy the
16 amended rules, remand is warranted. *Anderson v. Lane County*, __ Or LUBA __ (LUBA
17 No. 2008-107, 10/14/2008).

18 The amended rules are applicable to the county’s decision. The “goal posts rule,”
19 ORS 215.427(3), applies only to applications for “a permit, limited land use decision, or
20 zone change.” ORS 215.427(1); *Rutigliano v. Jackson County*, 42 Or LUBA 565, 574
21 (2002); *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LBUA 558, 563 (1993).

22 With regard to comprehensive plan amendments, ORS 197.175(2)(a) requires counties to
23 comply with the LCDC goals and implementing administrative rules as they are in effect at

1 the time the decision is made. *Anderson v. Lane County*, ___ Or LUBA ___ (LUBA No.
2 2008-107, 10/14/2008).

3 When the county commissioners made the county's final decision, they failed to
4 apply the then-current LCDC Goal 4 rules to the application for the comprehensive plan
5 amendment. The county's findings fail to address compliance with OAR 660-006-0010 or
6 660-006-0005(2) or to evaluate the potential forest productivity of the property as
7 measured by cubic feet per acre per year. Recs 49 - 67, App A, App B1

8 The county commissioners failed to apply the applicable Goal 4 rules to the
9 application for the comprehensive plan amendment. Because of such the county's
10 decision represents either an erroneous application of the law or an erroneous
11 interpretation of the applicable law, the decision should be reversed or remanded
12 accordingly.

13 **5. Conclusion Statement**

14 The county's findings are inadequate and the decision is not supported by
15 substantial evidence in the whole record. The county erred in not addressing the new
16 Goal 4 rules. Therefore, the county's decision should be remanded. ORS
17 197.835(9)(a)(C); 197.835(11).