

1 **Appendix II.B.9.d) Example Assignment of Error (AOE)**
2 **For Necessary Forest Lands**
3 **Assignments of Error (AOEs) Format**

4
5 **The County’s Findings That the Subject Property Is Not Forest Land Protected by**
6 **Goal 4, as “Adjacent or Nearby Lands Which Are Necessary to Permit Forest**
7 **Operations or Practices” Are Inadequate and Not Supported by Substantial Evidence**
8 **in the Record**
9

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

- 11
12 1. Potential Assignment of Error
13 2. Standards & Criteria, Relevant Laws & Rules
14 3. Analysis of Facts
15 4. Conclusion Statement
16

17 **2008 Example AOE**

18
19 **B. SECOND ASSIGNMENT OF ERROR**

20 **The County’s Findings That the Subject Property Is Not Forest Land**
21 **Protected by Goal 4, as “Adjacent or Nearby Lands Which Are**
22 **Necessary to Permit Forest Operations or Practices” Are Inadequate and**
23 **Not Supported by Substantial Evidence in the Record**

24 **1. Assignment of Error**

25 The findings that the subject property is not necessary to permit forest
26 operations or practices on adjacent or nearby lands are conclusory, inadequate, and
27 not supported by substantial evidence in the whole record. The county’s findings fail
28 to list and describe existing or potential farm practices and forest operations on
29 adjacent or nearby lands. The county’s findings do not contain the required analysis
30 of how the uses permitted by the proposed non-resource designations may or may not
31 significantly impede or significantly increase the cost of accepted forest operations or
32 practices. The required analysis could not even be undertaken in the absence of an

1 adequate listing and description of surrounding and nearby forest operations and
2 practices.

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

4 Approval of the plan amendment requires findings of compliance with Oregon
5 Statewide Goal 4 - Forest Land, JCCP Goal 11 Policy 3.B.[3], JCCP Goal 11 Policy
6 3.C., RLDC 46.050.B.3. and RLDC 46.050.C. App B1

7 Goal 4 defines forest land to include “adjacent or nearby lands which are
8 necessary to permit forest operations or practices.” JCCP Goal 11 Policy 3.B[3]
9 implements this element of Goal 4 and requires findings that the subject property is
10 not “necessary lands.” JCCP Goal 11 Policy 3.C., RLDC 46.050.B.3. and RLDC
11 46.050.C explain what facts and factors are to be considered and how the analysis is
12 to be conducted.

13 **3. Summary of Applicable Findings Of Fact**

14 The county’s November 26, 2008 Findings Of Fact concludes that the subject
15 property is not necessary to permit farm or forest practices on adjacent or nearby
16 lands in accordance with the requirements of RLDC 46.050.C. Finding III.I., Recs
17 63 - 64, App A and App C; Finding III.J., Rec 64, App A and App C

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

19 JCCP Goal 11 Policy 3.C.[3] and RLDC 46.050.C.3 require a review that lists
20 and describes existing or potential farm practices and forest operations on adjacent or
21 nearby lands, as well as the general geography and potential land uses on the subject
22 property. The county’s findings do not include the required list and description of
23 forest operations on adjacent or nearby lands.

1 JCCP Goal 11 Policy 3.C.[3] and RLDC 46.050.C.3 further require an
2 analysis of how the uses permitted by the proposed non-resource designations may or
3 may not significantly impede or significantly increase the cost of accepted farm
4 practices or forest operations. The county's findings do not include the required
5 analysis.

6 **a) Character Of Area**

7 Evidence in the record establishes that all of the land to the west, north, and
8 east of the subject property are planned and zoned for resource uses along with the
9 associated operations or practices necessary to support those resource uses. Recs
10 797, 872, 1,463, 2,116 - 2,117 Aerial photographs show that the subject property and
11 its surroundings lands are either predominately forest or agricultural uses, even those
12 lands zoned rural residential. Recs. 136 - 137, 798, 800, 1,464, 1,466, 2,112 - 2,114,
13 2,118 The BLM, the largest forest manager in Josephine County, administers large
14 areas of land in the Merlin-Hugo areas in general; and adjacent to or nearby the
15 subject property in particular. Recs 2,118, 2,119

16 **b) Adjacent BLM Forest Management Units, BLM Policy
17 And Concerns, Impacts, And Findings**

18 Two large BLM commercial management units are adjacent to the 158 acre
19 subject property: 1. 193.20 acre Sprague Seed Orchard (two parcels) to the east, and
20 280 acre parcel to the north (BLM Unit 2). Both are managed by BLM as a
21 "Southern General Forest Management Area". Recs 801, 1,054 - 1,055, 1,252 -
22 1,253, 1,467, 2,118 - 2,119 The BLM's stated objectives and map (Rec 2,119) for
23 General Forest Management Area and Connectivity/Diversity Blocks contradict the

1 county's Finding III.I. and Finding III.J. that the adjacent BLM properties are not
2 managed for commercial timber and other commercial forest commodities:

3 "Produce a sustainable supply of timber and other forest commodities." Recs
4 2,462, 2,466 - 2,467

5
6 The BLM's "Resource Management Plan and Environmental Impact
7 Statement" states that these two large adjacent parcels are managed as general forest
8 management areas, or commercial forest land. Recs 2,119, 2,459 - 2,460, 2,461 -
9 2,464, 2,465 - 2,469 These general forest management areas are BLM's primary
10 allocations for lands available for scheduled timber harvest. Recs 2,462 - 2,463,
11 2,466 - 2,467

12 Evidence in the record from BLM identified potential conflicts between
13 BLM's resource management and rural residential living activities on lands located
14 near the Sprague Seed Orchard and BLM Unit 2: Recs 2,026 - 2,031, 2,474 - 2,475

15 "This letter is in reference to Township 35 South, Range 6 West, Section 8,
16 Tax Lot 100, 157.93 acres located in 3200 block of Hugo Road. The Bureau
17 of Land Management (BLM) would like to express our concern related to
18 Amending and Updating the Comprehensive Plan, Rural Development Code:
19 Article 46 for the 3200 block of Hugo Road. The BLM administers public
20 land in Township 35 South, Range 6 West, Section 5 and 9 in Merlin adjacent
21 to Tax Lot 100 to the East, better known as the Charles A. Sprague Seed
22 Orchard, and to the North." Rec 2,474

23
24 "Our concerns are access, easements, rights-of-way, fire and residential land
25 use next to BLM administered lands. RR-5 development near the Seed
26 Orchard has a high potential for creating problems relating to drainage,
27 access, fire breaks, and other resource issues in the future. The Seed Orchard
28 is an agricultural operation and BLM property to the north is forest lands.
29 This type of land use next to residential subdivision has created conflict in the
30 past with residential neighbors." Rec 2,474

31
32 "BLM has concerns regarding a high density development near the Seed
33 Orchard and forest lands. If it were to be approved BLM would recommend a
34 minimum of a 150 foot set back on the private land from any BLM/private
35 shared property lines to reduce the risk of adverse effects on BLM lands
36 caused by the close proximity of building sites and development. This would

1 be consistent with the 150' setback on the East side of the Orchard. BLM
2 request that local County Planning work closely with BLM to identify and
3 mitigate access and other issues in advance of issuing permits for
4 development (especially in subdivision developments).” Rec 2,474

5
6 “The nature of the checkerboard pattern of the public lands managed by the
7 BLM in Medford has created some level of management difficulty. Most of
8 these lands are located in alternating sections across the district resulting in
9 the presence of a “neighbor” in almost every direction. Property boundaries
10 are established and must be respected.” Recs 701, 1,405

11
12 “The Bureau’s present Resource Management Plan (RMP) addresses these
13 “rural” interface areas and determined in 1995 that the Medford District has
14 about 136,000 acres of this “transition” area. In our plan we have stated what
15 actions we would take with regards to project planning, mitigation measures,
16 public hazards, road systems, fire risks, traffic and many others.” Recs 701,
17 1,405

18 “Since 1995, there has been an increase in the number of neighbors that we
19 have living adjacent to BLM managed lands. Until our management plans are
20 superseded by a new management plan, we expect to follow our present
21 guidelines regardless of the increased residential areas adjacent to public
22 lands. Due to the number of neighbors to BLM managed lands, buffering is
23 not a feasible option because of the large amount of perimeter area we have.
24 BLM policy is to manage our lands in a fashion consistent with our
25 management plan right up to the property line.” Recs 701, 1,405

26
27 The county Finding III.I. erroneously identify that “No testimony was offered
28 to establish a need for the subject property in order to continue the seed production.”
29 (Rec 63) and commercial management of adjacent lands. Both the BLM (Recs 700
30 - 701, 1,223 - 1,225, 1,404 - 1,405; 2,474 - 2,475, App D) and others testified about
31 concerns (Recs 1,860 - 1,865, 2,026 - 2,031) that the subject parcel was necessary
32 lands to permit forest operations or practices on adjacent lands. The BLM identified
33 specific concerns with the proposed development impacting adjacent BLM
34 management units and the need for buffering to minimize land use conflicts.

35 On February 5, 2007 Dave Russell, Manager, BLM Sprague Seed Orchard,
36 followed up the two BLM letters in the record with oral testimony before the RPC
37 which follows in relevant part:

1 “I’m Dave Russell, I am the Seed Orchard Manager for the Sprague Seed
2 Orchard, Bureau of Land Management. . . . Rather we have some concerns
3 about how it might affect our operation, and some suggestions for mitigation.
4 . . .” “And, specifically our concerns have to do with fire and fuels, potential
5 wildfire, and changes in drainage, and how development might affect the well
6 that we have back on the property.” Recs 1,223 - 1,225, App D
7

8 “The fire issue is, we currently, maintain sugar pine tress back there and in
9 kinda open fields that we mow the grass to four to six inches every year to
10 mitigate the fire danger and for cultural activity in terms of accessing our trees
11 and irrigating them. And, we would have concerns that if development occurs
12 back there, in terms of the fuels profile and a lot of neighbors, wildfires could
13 start with human activity back there, and move on to our land. No one can
14 determine its effects per say or response time, but my only suggestion there at
15 this time would be that, if development occurs active fuel management
16 projects, reduction of fuels, and reduction of fuels profiles occur immediately
17 during, or just prior to any development back there rather than after the fact.
18 It becomes more messy when you get a lot of houses in different land owners
19 back there.” Recs 1,223 - 1,225, App D
20

21 “. . . So we would have concerns if a number of wells were introduced in that
22 area, or in some level of drainage was changed. . . .” Recs 1,223 - 1,225, App
23 D
24

25 “As it concerns drainage we currently ask, and have held to a 150 foot setback
26 as it regards to the southeast 40 on our orchard. We think that is a good
27 distance that ought to be maintained from our orchard in terms of new
28 housing. And, I will give you a couple of examples of a couple of problems
29 we have that did affect us, so that you know that the 150 foot is something
30 we’ve had experience with. . . .” Recs 1,223 - 1,225, App D
31

32 The county failed to respond to or make findings regarding these BLM stated
33 concerns.

34 **c) Other Evidence In Record**
35

36 According to the ODF there is an increased occurrence of wildfire from
37 increased densities of rural residential units in the forest. The retention of normally
38 accepted wildfire fighting strategies on adjacent or nearby commercial forest uses is
39 being lost as a result of these increased densities. The Salem ODF and the local
40 ODF’s Grants Pass Unit Forester have stated that as development occurs, conflicts

1 between residential activities and commercial forest uses increase and result in lower
2 timer production. They quote Wear in support of the position that as nearby
3 population increases the probability of management decreases (Wear.1999. *The*
4 *effects of population growth on timber management and inventories in Virginia.*
5 *Forest Ecology and Management*, 118: 107-115). The ODF is concerned that
6 increased development would negatively impact commercial production on
7 developed and adjacent lands. Recs 2,186 - 2,190, 1,402

8 The ODF's Grants Pass Unit Forester is specific in his concerns about the
9 Virginia research by Wear that include the subject property:

10 "The finding in the Virginia based research of **increased development**
11 **negatively impacting commercial production is likely universal.** The FPA
12 (ORS 527.630) sets a public policy of encouraging forest management as the
13 leading use of private forestland in Oregon. . . ." (emphasis added) Rec 1,402
14

15 Evidence in the record establishes that forest operations and practices are
16 occurring on adjacent and nearby resource lands and that there is conflict between the
17 resource management and extraction activities and the rural and residential uses
18 activities of new neighbors. There is evidence in the record that this conflict
19 significantly increases the cost of the resource practices or operations. ODF's
20 position is that continued fragmentation of resource lands into new rural residential
21 land will accelerate this conflict process, and the cost of doing business to the point,
22 where in some cases, it will cause a cessation of the forest operations and practices.
23 *See (Doob vs. Josephine County, 27 Or LUBA 293 (1994); LUBA No. 94-018*
24 *(5/25/94)).*

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d) Conditions Of Approval

The BLM identified issues of concern and recommended a condition of approval regarding the Sprague Seed Orchard and BLM Unit 2 for a minimum of a 150 foot set back on the private land from any BLM/private shared property lines to reduce the risk of adverse effects on BLM lands caused by the close proximity of building sites and development. The findings (Recs 49 - 67, App A) had no conditions of approval (JCCP Goal 11, Policy 3.C.[5]) applied to the subject property which would assure its special benefit to the Sprague Seed Orchard and BLM Unit 2 to continue for purposes of maintaining a water supply and minimizing land use conflicts. Recs 701, 1,405, 1,223 - 1,225, 2,474, App D

5. Conclusion Statement

The findings that the subject property is not necessary to permit forest operations or practices on adjacent or nearby lands are inadequate and are not supported by substantial evidence in the record. The county’s findings fail to list and describe existing or potential farm practices and forest operations on adjacent or nearby lands and are contradicted by BLM testimony in the record concerning management of adjacent lands. The county’s findings do not contain the required analysis of how the uses permitted by the proposed non-resource designations may or may not significantly impede or significantly increase the cost of accepted forest operations or practices and were not adequate and could not even be undertaken in the absence of the required listing and description of surrounding and nearby forest operations and practices.

The county’s conclusion that the subject property is not forest lands necessary to permit forest operations or practices on adjacent or nearby lands is contrary to

1 applicable law and is based on inadequate findings not supported by substantial
2 evidence in the whole record. Therefore, the county's decision should be remanded.
3 ORS 197.835(9)(a)(C); 197.835(11)(b).

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23 4 Clean Air and Water\Training Presentation\Appendix IIB9d) 2008 Example Necessary Forest Lands AOE 052209.wpd