

**Appendix II.B.9.d) Example Assignment of Error (AOE)  
For Preserve Rural Character**

**Assignments of Error (AOEs) Format**

**IV.B. Carrying Capacity Demonstration Inadequate And Not Supported By Substantial Evidence: Development Will Not Adversely Effect Other Lands in the Area — Preserve Rural Character of Josephine County**

Assignments of Error (AOEs) have four sections.

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

**2008 Example AOE**

**IV.B. Carrying Capacity Demonstration Inadequate And Not Supported By Substantial Evidence: Development Will Not Adversely Effect Other Lands in the Area — Preserve Rural Character of Josephine County**

The following testimony for Preserve Rural Character Carrying Capacity has four sections.

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

**1. Potential Assignment of Error: Carrying Capacity Demonstration Inadequate And Not Supported By Substantial Evidence: Development Will Not Adversely Effect Other Lands in the Area — Preserve Rural Character of Josephine County**

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. When the provisions of JCCP, Goal 1 and Overview; Goal 3 and Policy 3; Goal 10, Overview, and Policy 1.E.; and JCCP Goal 11, Policy 2.C. and 2.D., are read together with the definition of carrying capacity in RLDC 11.030, and RLDC 46.040, RLDC 51.050.D., RLDC 52.050.D., RLDC 53.050.D., and RLDC 55.050.D., they establish the standard or threshold that the rural character of the county be preserved by

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, will misconstrue the applicable law, be inadequate, and will not be supported by substantial evidence.

## **2. Standards & Criteria, Relevant Laws & Rules**

Goal 1, JCCP provides, in relevant part:

“Goal 1: TO PRESERVE AND MAINTAIN \* \* \* THE RURAL CHARACTER OF JOSEPHINE COUNTY

Goal 3, JCCP provides, in relevant part:

### ***POLICIES:***

1. Land allocations shall be made to provide a wide variety of housing choices to accommodate urban and rural lifestyles. \* \* \*

\* \* \*

“3. Land use allocations will, to the greatest extent possible, accommodate the identified need and public desire for rural residential homesites, while preserving the rural character of the area. Appropriate minimum lot sizes for rural residential areas shall be determined by land limitations, including the following:

\* \* \*

d. The character of the area[.]

\* \* \*

Zoning standards for rural areas shall be designed to permit residential, commercial, industrial, agricultural, forestry, and other rural land uses. Further, standards shall be developed governing density, setback structures on property and access, or in the case of a substantial hardship, the temporary placement of an additional housing unit on a single lot.”

Goal 10, JCCP provides, in relevant part:

“Goal 10: TO DEPICT A LAND USE PATTERN TO GUIDE FUTURE USES, TO IMPLEMENT THE DESIRES OF THE COUNTY AND TO MEET THE REQUIREMENT OF THE STATE OF OREGON (*The Comprehensive Plan For Josephine County, October 20, 2000*)”

### **“OVERVIEW:**

It is in the best interest of the citizens of the County to have a stable land use pattern. A Comprehensive Plan Map is an acceptable method to show existing and desired land use patterns for the Planning Period.”

Policy 1.E. “E. Residential (R). \* \* \* The rural character of these area shall be preserved by appropriate lot sizes to insure uses do not exceed the physical capability of the land and services shall be provided to the extend necessary to maintain a rural lifestyle.”

JCCP Goal 11, Policy 2.C. provides, in relevant part:

“C. Requests involving changes to the plan and/or zone maps shall demonstrate the land has adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations. The adequacy of carrying capacity. . . .”

JCCP Goal 11, Policy 2.D. provides, in relevant part:

“[1] The change in designations at the location is consistent with the character of the surrounding area.”

“[2] Demonstrate how the introduction of inconsistent density or uses into an area is justified.”

RLDC 11.030 provides, in relevant part:

“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.).”

RLDC 31.070.A. provides, in relevant part:

“A. The burden of proof shall be on the applicant. The more a proposed use or structure changes existing land use patterns, or causes impacts on surrounding lands or the community, the greater the burden of proof shall be on the applicant to show the request complies with all applicable criteria. . . .”

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.

RLDC 46.040 - Plan Amendment Review Criteria provides, in relevant part:

“A. *Amendments to a plan and zone map shall demonstrate compliance with all applicable statewide and county goals and policies.*”

“B. *Requests involving changes for lands from a resource designation to a non-resource designation shall either comply with statewide exception criteria contained in Oregon Revised Statutes 197.732, and as implemented in Oregon Administrative Rules, Chapter 660, Division 4, or demonstrate the land is non-resource pursuant to the criteria contained in Section 46.050 below.*”

“C. *Requests involving changes to the plan and/or zone maps shall demonstrate the land has adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations. The adequacy of carrying capacity, at a minimum, shall be evaluated using the criteria listed below. The criteria are to be considered together to determine whether the geography of the land is suited to support the kind of development associated with the proposed designations. With the exception of criterion [1] below, the application of any one criterion is not intended to be determinative of carrying capacity alone, unless the review body finds the importance of a specific benefit or detriment associated with the criterion overrides the consideration of other criteria. Nevertheless, in order to determine the adequacy of carrying*

*capacity, the analysis must consider and address all of the listed criteria in relationship to one another. Sites may be altered to achieve adequate carrying capacity, but as alterations become more extensive, technical or difficult to perform or maintain, the greater the burden of proof shall be on the applicant to demonstrate compliance with the following criteria:*

*“1. The proposed density and types of uses can be supported by the facility, service and other applicable development standards contained in this code or contained in other applicable federal, state and local rules and regulations governing such densities and types of uses.”*

*“D. The density and types of uses authorized by the proposed plan and zoning designations are appropriate based on the requirements of subsection [1] or [2] below:”*

*“1. **The change in designations at the location consistent with the character of the surrounding area.** Consistency shall be demonstrated by a detailed review of the relationship between the area covered by the proposed change in designations and the surrounding area, subject to the following rules.”*

*“a. The detailed review shall describe the similarities or dissimilarities between the area of proposed change and the surrounding area based upon parcel size and ownership patterns,<sup>1</sup> zoning, existing or authorized land uses and structures, public facilities and services, and natural or man-made features.<sup>2</sup>”*

*“b. The detailed review shall include a written statement explaining the rationale used to include or exclude areas from study, and be supported by zoning maps, aerial photographs, contour maps, and any other public or private records, statistics or other documents necessary or helpful to establish the character of the area and show how the change will be consistent.”*

*“2. Demonstrate how the introduction of inconsistent density or uses into an area is justified. This demonstration may be based upon changes in the area resulting from rezonings, new residential, commercial, industrial or resource development, the introduction or improvement of public facilities and services, changes in demographics, changes in plan inventories, and other similar circumstances. The application shall show how the proposed change in designations, in the context of the foregoing circumstances, implements applicable state and/or county goals and policies. The more the change introduces inconsistent densities and uses into an area, the greater the burden on the applicant to justify the basis for the change.”*

RLDC 51.050.D. (subdivisions) provides.

*“D. The **carrying capacity** as defined in Section 11.030 is adequate for the proposed density of development;”*

RLDC 51.050.H. (subdivisions) provides.

*“H. The proposed development is compatible with the existing land use pattern in the area;”*

RLDC 52.050.D. (land partitions) provides.

*“D. The **carrying capacity** as defined in Section 11.030 is adequate for the proposed density of development;”*

RLDC 52.050.H. (land partitions) provides.

*“H. The proposed development is compatible with the existing land use pattern in the area;”*

RLDC 53.050.D. (replats) provides.

*“D. The carrying capacity as defined in Section 11.030 of the subject property is adequate for the proposed density of development;”*

RLDC 53.050.H. (replats) provides.

*“H. The proposed development is compatible with the existing land use pattern in the area;”*

RLDC 55.050.D. (planned unit development) provides.

*“D. The carrying capacity as defined in Section 11.030 of the subject property is adequate for the proposed density of development;”*

RLDC 55.050.H. (planned unit development) provides.

*“H. The proposed development is compatible with the existing land use pattern in the area;”*

### **3. Analysis of Facts**

The burden of proof is on the applicant to show the request complies with all applicable criteria and the responsibility of the hearing body is to determine if the “rural” character of the area is being preserved. When the provisions of JCCP, Goal 1 and Overview; Goal 3 and Policy 3; Goal 10, Overview, and Policy 1.E.; and JCCP Goal 11, Policy 2.C. and 2.D., are read together with the definition of carrying capacity in RLDC 11.030, and RLDC 46.040, RLDC 51.050.D., RLDC 52.050.D., RLDC 53.050.D., and RLDC 55.050.D., they establish the standard or threshold that the rural character of the county be preserved by 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. The standards and criteria establish the standard or threshold for rural character. The standard is preservation of the rural character of the area. The carrying capacity criteria require an analysis of the ability of land to preserve the rural character of the area.

The term “existing land use pattern in the area” is not defined in the JCCP or the RLDC. The county finding must demonstrate the proposed development is compatible with the existing land use pattern in the area.

To adequately address the standards of “consistent with the character of the surrounding area,” and “to preserve and maintain the rural character of Josephine County,” the county needs to look at the surrounding area. In defining a study area for purpose of the “compatibility” standard, the local government must explain what justifies the scope and configuration of the study area. Approval standards that require an analysis of the impacts of a proposed use on nearby areas, and the uses in those areas, require that the findings identify the relevant area. LUBA cases have consistently held that approval standards that require an analysis of the impacts of a proposed use on nearby areas, or the uses in those areas, necessarily require that the findings identify the relevant area. *Knight v. City of Eugene*, 41, Or LUBA 279 (2002).

“\* \* \* Friends of the Metolius v. Jefferson County, 25 Or LUBA 411, aff’d 123 Or App 256, 860 P2d 278, adhered to 125 Or App 122, 866 P2d 463 (1993), rev den 318 Or 582 (1994) (impact on surrounding area); DLCD v. Curry County, 21 Or LUBA 130, 135-36 (1991) (consistency with “size of other parcels being managed for the same purpose in the area”); Benjamin v. City of Ashland, 20 Or LUBA 265 (1990) (“minimal impact on livability of surrounding neighborhood”); Murphey v. City of Ashland, 19 Or LUBA 182, 203, aff’d 103 Or App 238, 796 P2d 402 (1990) (more than minimal impact on “qualities of livability and the appropriate development of abutting properties and the surrounding neighborhood”); Eckis v. Linn County, 19 Or LUBA 15 (1990) (impact area); Multnomah County v. City of Fairview, 18 Or LUBA 8 (1989) (consistent with the character of the area); Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989) (materially alter the stability of the overall land use pattern in the area). . . .”

“Although a map or a geographically precise written description of an “area” or “neighborhood” or the “surroundings” might be helpful in cases where those terms are used in approval criteria, neither is an absolute prerequisite. As the above cases make reasonably clear, we require some effort on the part of the decision maker to define the “area” or “neighborhood” when applying such criteria because those terms are inherently subjective and frequently are modified by equally subjective adjectives. However, it is one thing to say that in applying such standards the relevant area that must be analyzed must first be identified. It is quite another thing to say a map or precise written description of the “footprint” is the only way to do so or is always required.”

“In this case, “compatibility” must be measured with the “surroundings.” \* \* \*”

Without an identified study area addressing all the “existing land use pattern in the area” it will be impossible to determine whether the decision is in compliance.

The “*consistent with the character of the surrounding area*” and/or “*compatible with the existing land use pattern*” standards requires the county to (1) select a reasonably definite study area encompassing all the existing land use pattern in the area, including adjacent farm and forest lands; (2) examine the types of uses existing in the selected area, sufficient to give a “clear picture” of the existing land use pattern; and (3) determine whether the proposed development is compatible with the existing land use pattern in the area.

Land uses within the study area are defined by the activities and development supporting the land uses (e.g., farm animals, cultivation, indirectly a farm tax deferral, roads, irrigation, wells, playgrounds, homes, etc.). Land uses are not defined by zoning districts. A description of the land uses in the area needs to draw a “clear picture” of those uses. The county needs to identify any uses on most of the parcels within the area, and not assume that the dominant land use in the area is reflected by zoning. The county needs to identify what the land use practices are and explain why the proposed development would be compatible with such uses and practices.

In this case the subject property, and the large majority of nearby lands has a rural character and is commercial forest land that has been logged several times in the past. All of the land to the west, north, and east of the subject property, including the subject property, are planned and zoned for resource uses along with the associated operations or practices necessary to support that resource use. The subject property is resource land and on the dividing line between land allocated to resource and non-resource lands.

The biggest forest manager in Josephine County, the BLM, has large amounts of land it administers in the Merlin-Hugo Areas as general forest management areas. All of the Sprague

Seed Orchard and other BLM-administered land adjacent to the subject property has a rural character and is allocated “Southern General Forest Management Area.” The BLM’s General Forest Management Area and Connectivity/Diversity Blocks are its primary allocation to manage as commercial forest land.

Adjacent and nearby rural character lands to the subject property have a long tradition of commercial logging and the Oregon Forest Practices Act does not limit timber harvesting to resource lands. Timber harvesting regularly occurs on rural residential lands (RR-5, FF-2.5, RR-1) and resource lands (Forest Resource, Woodlot Resource). Even more discernable are the larger parcels within one to two miles of the subject property which have had commercial timber harvesting.

The nearby rural character land to the subject property beyond one to two miles west and northwest up the Quartz Creek drainage is zoned 100 percent Forest Resource and includes very large parcels of land administered by the BLM and/or large timber companies. This land has had, or is scheduled to have, large harvests of commercial timber.

A county finding of compliance needs to be supported by substantial evidence. Findings which are conclusory and fail to explain how the facts lead to the conclusion that the request satisfies the approval standards will be remanded. For example, *Doob v. City of Grants Pass, supra*; *Le Roux v. Malheur County, supra*; *Sunnyside Neighborhood v. Clackamas Co., Comm., supra*; *Penland v. Josephine County, supra*; *Reeves v. Yamhill County, supra*; *Hart v. Jefferson County, supra*.

#### **4. Conclusion Statement**

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. When the provisions of JCCP, Goal 1 and Overview; Goal 3 and Policy 3; Goal 10, Overview, and Policy 1.E.; and JCCP Goal 11, Policy 2.C. and 2.D., are read together with the definition of carrying capacity in RLDC 11.030, and RLDC 46.040, RLDC 51.050.D., RLDC 52.050.D., RLDC 53.050.D., and RLDC 55.050.D., they establish the standard or threshold that the rural character of the county be preserved by 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, will misconstrue the applicable law, be inadequate, and will not be supported by substantial evidence. ORS 197.835(9)(a)(D); ORS 197.835(9)(a)(C); ORS 197.835(11).

Carrying Capacity Standards  
Hugo Land Use Committee/Rogue Advocates/ Goal One Coalition  
Draft November 2008

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