

1 **Appendix II.B.9.d) Example Assignment of Error (AOE)**
2 **For Transportation Facilities**
3 **Assignments of Error (AOEs) Format**
4

5 **The County's Findings Regarding the Adequacy of Transportation Facilities Do Not**
6 **Comply with Applicable Law, Are Inadequate, and Are Not Supported by**
7 **Substantial Evidence in the Record**
8

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

- 10
11 1. Potential Assignment of Error
12 2. Standards & Criteria, Relevant Laws & Rules
13 3. Analysis of Facts
14 4. Conclusion Statement
15

16 **2008 Example AOE**

17 **F. FIFTH ASSIGNMENT OF ERROR**

18 The County's Findings Regarding the Adequacy of Transportation Facilities Do
19 Not Comply with Applicable Law, Are Inadequate, and Are Not Supported by
20 Substantial Evidence in the Record

21 **1. Assignment of Error**

22 The county's findings that the carrying capacity of the transportation system is met
23 and that all transportation infrastructure and public facilities and services are adequate and
24 that the proposal meets the standards as established in the relevant criteria in Oregon
25 Statewide Planning Goal 12, the Transportation Planning Rule (TPR); Josephine County
26 Comprehensive Plan (i.e, Josephine County Transportation System Plan (TSP)); and the
27 Josephine County Rural Land Development Code (RLDC) are inadequate and not
28 supported by substantial evidence in the whole record.

1 **2. Relevant Facts**

2 If the application is approved to rural residential 5-acre minimum, the 157.93 acre
3 subject property is proposed to be divided into 29 lots as the land base for 29 new
4 dwellings and their association traffic. Recs 66, 78, 120, 199, 214, 365, 502

5 The TSP established level of service (LOS) “D” as the minimum mobility
6 performance standard for intersections under county jurisdiction (Recs 369, 371, 521,
7 523, 1,919), and recognized that the Oregon Highway Plan mobility standard for the
8 Merlin I-5 interchange intersections under the jurisdiction of the Oregon Department of
9 Transportation (ODOT) is the volume-to-capacity (v/c) ratio of 0.85, and stated that is
10 presently being exceeded. Recs 125 -126, 371, 376, 499, 521, 523, 1,919

11 Uncontroverted evidence in the record establishes that the Merlin I-5 interchange
12 (i.e., Louse Creek I-5 interchange) does not meet the State of Oregon mobility standards.
13 That facility currently does not have the capacity to serve the existing development or the
14 projected future traffic. The ODOT concluded that the traffic at the Louse Creek I-5
15 intersection exceeded state performance standards in 2008 and that the transportation
16 impact analysis (TIA) concluded that the proposed development degrades the Louse
17 Creek I-5 interchange ramp in year 2010 (i.e., day-of-opening or year proposal is expected
18 to be developed), and it made recommended conditions of approve to mitigate
19 development impacts. Recs 125 -126, 499, 524, 530

20 *“Potential long-term alternatives for the Merlin area including the interchange are*
21 *addressed in Chapter 6.”* [of the TSP.] Rec 377. Without mitigation the TSP inventory
22 projects the Merlin I-5 interchange to remain failing at the end of the planning period in 2025.

1 Recs 377, 510, - 511, 1,919 - 1,922; App B4 The TIA for the Paradise Ranch Resort
2 identified the Merlin I-5 interchange was failing for 2008 - 2018. Recs 912 - 921.

3 Although they are not included as part of the county's final decision, the Josephine
4 County Rural Planning Commission (RPC) did make a recommendation regarding the
5 carrying capacity of off-site transportation facilities. The RPC concluded that compliance
6 with several criteria had not been met and specifically acknowledged the off-site
7 transportation facilities were not adequate for the Rural Residential 5 acre density. Recs 762,
8 952 - 954 On March 15, 2008 the RPC recommended denial of the application with an 8 to
9 1 vote to disapprove. Rec 954

10 **3. Arguments**

11 **Subassignment of Error One: The County's Findings That the Local**
12 **Transportation Carrying Capacity Criteria Are Meet Are Inadequate and Not**
13 **Supported by Substantial Evidence in the Record**

14 **a) Local Carrying Capacity Subassignment of Error One**

15 The county's findings that the carrying capacity of the transportation system is met
16 and that all transportation infrastructure and public facilities and services are adequate and
17 that the proposal meets the standards as established in the relevant criteria of the TSP and
18 RLDC are inadequate and not supported by substantial evidence in the whole record.

19 **b) Summary Of Standards And Criteria**

20 The Oregon Highway Plan/TSP mobility standard for the Merlin I-5 interchange
21 intersections under the jurisdiction of ODOT is the v/c ratio of 0.85. The TSP established

1 LOS “D” as the minimum mobility performance standard for intersections under county
2 jurisdiction.

3 JCCP, Goal 11, Policy 2.A and RLDC 46.040.A require demonstration of compliance
4 with state and county goals and policies. Recs 49, 770; App B1-9, App B2-8, App B3-7

5 JCCP, Goal 11, Policy 2.C[2] and RLDC 46.040.C.2 require findings that the land and
6 *surrounding area* is suitable for the proposed densities and uses. They require that the
7 carrying capacity analysis consider a specified list of factors and any other “similar natural or
8 man-made conditions or circumstances.” Recs 50, 771 - 772, 775 - 776; App B1-9, App B2-
9 8, App B3-8

10 JCCP, Goal 11, Policy 2.C[3] and RLCD 46.040.C.3. require findings that the land
11 in its natural state accommodates the proposed uses and densities, or special alterations or
12 mitigation plans can make the land achieve the carrying capacity for the allowed densities and
13 types of uses. Recs 50, 771 - 772, 775 - 776; App B1-10, App B2-9, App B3-8

14 When amending the JCCP the meaning of the term “significant”, under JCCP, Goal
15 11, Policy 5 and RLDC 46.050.G, provides, in relevant part:

16 “For the purposes of implementing the provisions of the foregoing rules, the term
17 “significant” shall mean the proposed change is likely to have considerable
18 influence or effect upon the matter being considered, or that the effect or impacts
19 arising from the change will result in important or weighty consequences or risks. .
20 . .” Recs 55, 785, 794, 887; App B1-10, App B2-14, App B3-12

21

22 The RLDC 11.030 definition of “carrying capacity” provides, in relevant part:

23 “The ability of land to support proposed development as determined by an
24 evaluation of * * * the presence of adequate off-site roads[.]” App B1-10, App
25 B3-3

1 The RLDC 11.030 definition of “significant adverse impact” provides, in relevant
2 part:

3 “A criterion used to determine whether proposed land use activities will
4 inappropriately affect the use or quality of other properties or public facilities. . . .”
5 Rec 1,884; App B1-10, App B3-4

6

7 **c) Summary Of Applicable Findings Of Fact**

8 Regarding the adequacy of the carrying capacity of the transportation system to
9 support development allowed by the plan amendment and zone change, the county made
10 concurrency findings responsive to local carrying capacity transportation criteria (i.e.,
11 Finding II.F. (Rec 56), Finding II.J. (Rec 57), Finding III.D. (Rec 60), Finding III.I. (Rec
12 64), and Finding III.Q. (Rec 65)). The county found testimony to conclude that: the
13 roadway system meets the criteria of the ordinance to show adequate carrying capacity for
14 both onsite and offsite roads, that public services and facilities are adequate for the
15 intended use based on the standards of the JCCP, and levels of services and facilities are
16 appropriate for the proposed use. Recs 56-57, 60, 64; App A-1, A-10, A-13, A-16
17 through A-17, A-18; App C-5

18 The county also found that Oregon Statewide Goal 12 regarding transportation
19 had been met through the TSP and implementing ordinances that had been reviewed
20 relative to this request (Finding III.U, Rec 65; App C-6). It referenced testimony from
21 ODOT that the proposed project met the standards of ODOT with a condition of approval
22 that would ensure adequate ODOT facilities are planned to serve the area (Finding II.J.,
23 Rec 57; App C-5). The TIA relied on impacts for 2008 and near term impacts for 2010.

1 The county argued that the TSP's failing and degraded traffic facilities will meet applicable
2 performance standards at the time the proposed subdivision is developed in 2010.

3 The county's approach in designing most of the transportation findings for
4 concurrency is consistent with the local carrying capacity standards requiring
5 concurrency, especially for RLDC 11.030 carrying capacity issues. Recs 771 - 772; App
6 B1-10, App B3-3, App B3-7 through B3-8

7 **d) Why County's Decision Fails to Adequately Address the Criteria**

8 The local RLDC transportation carrying capacity criteria at RLDC 46.040.C
9 require that amendments to a plan and zone map demonstrate that the land has adequate
10 carrying capacity to support the densities and types of uses allowed by the proposed plan
11 and zone designations (i.e., in this case LOS "D" for county facilities and mobility
12 standard v/c ratio of 0.85 for state facilities). RLDC 11.030 specifically identifies that
13 carrying capacity is the ability of land to support the proposed development as determined
14 by an evaluation of the presence of adequate off-site roads.

15 The Louse Creek 1-5 intersection projects (i.e., state Project 21 - App B4-8 and
16 county Project 16 - App B4-7) have been determined by ODOT and the county in its
17 findings to be off-site roads. The ODOT found the proposed development degrades the
18 Louse Creek I-5 interchange ramp in year 2010. Noncompliance with state and county
19 goals and policies (JCCP Goal 11, Policy 2.A and RLDC 46.040.A - Rec 49, App B1-9)
20 satisfies the RLDC 11.030 definition of a "significant adverse impact". App B3-4
21 Contrary to the findings no mitigation measures (i.e., conditions of approval) had been
22 adopted in the findings to ensure that the facilities will meet applicable performance

1 standards in year 2010, the year the proposal is expected to be developed. For example,
2 Project 21 and Project 16 are not identified in Oregon’s current and long-range “statewide
3 transportation improvement programs (STIPs) out to 2010-2013. The STIP, is Oregon's
4 transportation capital improvement program. It is the document that identifies the funding
5 for, and scheduling of, transportation projects and programs. It includes projects on the
6 federal, state, city, and county transportation systems. Therefore, the county’s findings
7 that the transportation “carrying capacity” criteria are meet is both inadequate and not
8 supported by substantial evidence in the record.

9 A local government may property grant approval based on either (1) a finding that
10 an applicable approval standard is satisfied, or (2) a finding that it is feasible to satisfy an
11 applicable approval standard and the imposition of conditions necessary to ensure that the
12 standard will be satisfied. *Just v. Linn County*, 32 Or LUBA 325 (1997); *Myer v. City of*
13 *Portland*, 67 Or App 274, 678 P2d 741, rev den 297 Or 82 (1984). In its findings and
14 decision, the county did neither. It imposed no conditions whatsoever to ensure that
15 failing and degraded traffic facilities will meet applicable performance standards at the time
16 the subdivision is proposed to be developed in 2010. Recs 49 - 67, App A

17 **Subassignment of Error Two: The County Failed to Address Impacts as of**
18 **the End of the Planning Period as Required by Transportation Planning Rule**
19 **Standard OAR 660-012-0060(1)**

20 **(1) Subassignment of Error Two**

21 The TIA demonstrated that the traffic at the Louse Creek I-5 interchange
22 intersections exceeded state performance standards in 2008, and that the proposed
23 development degrades the intersections in year 2010 (i.e., day-of-opening). Further, the

1 TIA was silent concerning the required evaluation of the impact of the plan amendment on
2 the Louse Creek I-5 interchange “at the end of the planning period,” that is, year 2025.
3 Without such an analysis the proposal does not comply with OAR 660-012-0060. App
4 B1-7 through B1-8

5 **(2) Summary Of Standards And Criteria, Relevant Laws, And Rules**

6 Approval of the plan amendment requires findings of compliance with the TPR
7 OAR 660-012-0060. App B1-7 through B1-8

8 Approval of the plan amendment requires findings of compliance with OAR 660-
9 012-0060 which requires that plan amendments be evaluated to determine if they would
10 result in a “significant impact” on transportation facilities and, if a “significant impact”
11 would result, that one or more mitigation measures from a specified menu of mitigation
12 options be adopted.

13 As relevant here, plan and zoning amendments “significantly affect” a
14 transportation facility if they would allow uses generating traffic that would worsen the
15 performance of an existing or planned transportation facility that is otherwise projected to
16 perform below the minimum acceptable performance standard identified in the TSP or the
17 JCCP.

18 **(3) Summary Of Applicable Findings Of Fact**

19 Regarding the adequacy of the carrying capacity of the transportation system to
20 support development allowed by the plan amendment and zone change, the county made
21 TPR findings responsive to Oregon Statewide Goal 12 standards (i.e., Finding II.J. and
22 Finding III.U.). Recs 57, 65; App A-10, App A-18, App C-5 through C-6

1 The county did not directly address the TPR, instead taking the approach that
2 compliance with Oregon Statewide State Goal 12 could be met by complying with the
3 county's TSP. In summary, the county's findings conclude the TSP's failing and degraded
4 traffic facilities will meet applicable performance standards at the time the proposed
5 subdivision is developed.

6 **(4) Why County's Decision Fails to Adequately Address the Criteria**

7 The TIA demonstrated that the traffic at the Louse Creek I-5 interchange
8 intersections exceeded state performance standards in 2008, and that the proposed
9 development degrades the intersections in year 2010 (i.e., day-of-opening). Further, the
10 TIA was silent concerning the required evaluation of the impact of the plan amendment on
11 the Louse Creek I-5 interchange intersections "at the end of the planning period," that is,
12 year 2025. Year 2025 as the end of the planning period reflects the long-range road
13 improvements horizon identified in the TSP (2014 - 2023) and the 20 year planning
14 horizon year from the 2004 date of publication for the TSP (2025). Without such an
15 analysis the proposal does not comply with OAR 660-012-0060.

16 **Subassignment of Error Three: The County's Decision Fails to Comply with**
17 **the TPR Because Adequate Measures Are Not Imposed to Ensure Applicable**
18 **Performance Standards Are Met as of the End of the Planning Period**

19 In its findings/decision, the county imposed no conditions whatsoever to ensure
20 that failing and degraded traffic facilities will meet applicable performance standards at the
21 time the subdivision is developed, or at the end of the planning period. Without such an
22 analysis the proposal does not comply with OAR 660-012-0060.

1 **5. Overall Conclusion Statement**

2 The county’s findings that the carrying capacity of the transportation system is met
3 and that all transportation infrastructure and public facilities and services are adequate and
4 that the project meets the standards as established in the JCCP and RLDC, including the
5 TPR, are inadequate and not supported by substantial evidence in the whole record. The
6 findings are insufficient to demonstrate compliance with ORS 197.835(6); ORS
7 197.835(7)(a); ORS 197.835(8); ORS 197.835(9)(a)(C); ORS 197.835(9)(a)(D); Oregon
8 Statewide Goal 12 - Transportation Planning, OAR 660-012-0060; JCCP Goal 11, Policy
9 2.A; JCCP Goal 11, Policy 2.C; RLDC 11.030; and RLDC 46.040.A. and C. Therefore,
10 the county’s decision should be remanded. ORS 197.835(9)(a)(D); ORS
11 197.835(9)(a)(C); ORS 197.835(11)

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