

Summary AOE Examples From Local & LUBA Land Use Testimony

Appeal To LUBA You settled on five AOE of your original nine that you thought had the greatest potential to prevail at LUBA. The summaries of those arguments follow.

- 1st AOE The county’s findings are inadequate and the decision is not supported by substantial evidence in the whole record. The county erred in not addressing the new Goal 4 rules. Therefore, the county’s decision should be remanded. ORS 197.835(9)(a)(C); 197.835(11).
- 2nd AOE 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 applicable law and is based on inadequate findings not supported by substantial evidence in the whole record. Therefore, the county’s decision should be remanded. ORS 197.835(9)(a)(C); 197.835(11).
- 3rd AOE The county failed to make the required finding that the subject property is not “other forested lands that maintain soil, air, water and fish and wildlife resources.” There is not substantial evidence in the record to establish that the subject does not maintain soil, air, water, fish and wildlife resources. The county’s conclusion that the subject property is not “managed for other forest uses such as watershed protection or wildlife of fisheries habitat” does not address applicable law and is not supported by substantial evidence in the whole record. Therefore the county’s decision should be remanded. ORS 197.835(6); 197.835(7)(a); 197.835(8); 197.835(9)(a)(C); 197.835(11).
- 4th AOE The county’s findings that the carrying capacity of the land’s groundwater supply has adequate carrying capacity to support the allowed densities and uses are inadequate and not supported by substantial evidence in the whole record. The county made no findings concerning the carrying capacity of the land to support densities and uses allowed by the amendment in addition to existing and allowed uses in the surrounding area. The county’s findings fail to explain how the evidence in the record supports its conclusion that available groundwater supplies are available to support the allowed densities and uses on the subject property. There is not substantial evidence in the record to support the county’s conclusion that the carrying capacity of the groundwater resource is adequate to support the allowed densities and uses. Therefore, the county’s decision should be remanded. ORS 197.835(9)(a)(D); ORS 197.835(9)(a)(C); ORS 197.835(11).
- 5th AOE The county’s findings that the carrying capacity of the transportation system is met and that all transportation infrastructure and public facilities and services are adequate and that the project meets the standards as established in the Josephine County Transportation System Plan (TSP) and RLDC are inadequate and not supported by substantial evidence in the whole record. The findings are insufficient to demonstrate compliance with OAR 660-012-0060, RLDC 11.030, and RLDC 46.040.A. and C. Therefore, the county’s decision should be remanded. ORS 197.835(9)(a)(C); 197.835(11).