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## Modifications To The Proposal<sup>1</sup>

**Nothing Prohibits Modifications.** Modifications to the original land use applications may evolve from discussions with staff, neighborhood groups, opponents, and other interested people or associations. Nothing prohibits modifications unless expressly limited by the local code. *Lamm v. City of Portland*, 28 Or LUBA 468, 475-476 (1995). The modification may be made before the hearing by the applicant or during the hearing by the applicant or hearings body.

### Application Stays “Fundamentally Intact.”

Modifications to an application may not constitute a new application. *Wentland v. City of Portland*, 23 Or LUBA 321, 326 (1992); *Seitz v. City of Ashland*, 24, Or LUBA 311 (1992); *Bonner v. City of Portland*, 11 Or LUBA 40, 60 (1984); *Sullivan v. City of Woodburn*, 33 Or LUBA 356 (1997). The test is whether the application stays “fundamentally intact.” *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601, 606-607 (1993).

**Opportunity To Comment.** Interested persons must be given ample notice and an opportunity to comment. *Bonner v. City of Portland*, *supra*; *Wentland v. City of Portland*, *supra*. The modification may be made at the hearing, provided interested persons have an opportunity to comment. *Billington v. Polk Co.*, 13 Or LUBA 125, 135-136 (1985) *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146, 151 (1994). See footnote 2 for information on failure to give notice of hearing and changes in land use proposal.

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## Effect Of Modification On 120-Day Rule, or 150-Day Rule

A modification to a land use proposal after notice is given may trigger the provisions of ORS 197.763 (4) and (6).

**Query.** What is the effect of a modification on the 120-Day Rule? See *Ortiz v. City of Sandy* (Clackamas Co Cir Ct. Maurer, J., Mar 10, 2000):

*“The obvious balance to be struck is to allow submission of a substantially changed component of the application, that does not constitute a new application, and simply start the 120 days from that date. This is consistent with the balance struck by ORS 227.178 between an applicant’s right to a prompt decision and the City’s need to have a reasonable period of time for review and public participation. This is not to say that any modification would restart the clock, but this submission was a significant change.”*



**Note.** If a decision differs from the proposal described in the notice, the decision is appealable until 21 days after actual notice, or when the person should have known. ORS 197.830(3). Therefore, it may be advisable to give new notice and continue the hearing to a date certain. *Bigley v. City of Portland*, \_\_\_LUBA\_\_\_(LUBA No 99-089, Jan 21, 2000).

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## More Information

**Reviewable Decisions.** Views of staff and legal counsel do not make up the decision and are not reviewable by LUBA. *Sullivan v. City of Woodburn*, 31 Or LUBA 192, 200 (1996); *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992); *Gruber v. Lincoln County*, 16 Or LUBA 456, 461 (1988).



**More Information.** Would you like to learn more? Contact a member of the Land Use Committee of the *Hugo Neighborhood*.

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1. Oregon State Bar. 2000 Supplement. *Land Use (Oregon Continuing Legal Education 1994 & Supp 2000)*. *Administrative Law Aspects Of Local Proceedings* by Beery, Pamela J., et. al. 2000. Library of Congress Catalog Card No. 94-065735. United States of America. The case citations were checked for overrulings and reversals through March 2000; the ORS citation were checked through 1999.

2. Hugo Land Use Committee. 2006. *Failure To Give Notice Of Hearing & Change In Land Use Proposal*. Hugo, Or.

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**Disclaimer.** This brochure is as much about providing information and provoking questions as it is about opinions concerning the adequacy of findings of fact and land use decisions. It does not provide recommendations to citizens and it is not legal advice. It does not take the place of a lawyer. If citizens use information contained in this paper, it is their personal responsibility to make sure that the facts and general information contained in it are applicable to their situation.

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## Hugo Neighborhood Association & Historical Society's Mission

This information brochure is one of a series of documents published by the Hugo Neighborhood Association & Historical Society (*Hugo Neighborhood*). It is designed to be shared with neighbors for the purpose of helping protect our rural quality of life by promoting an informed citizenry in decision-making. The *Hugo Neighborhood* is an informal nonprofit charitable and educational organization with a land use and history mission of promoting the social welfare of its neighbors.

### Land Use & History

The *Hugo Neighborhood's* land use mission is to promote Oregon Statewide Goal 1 — Citizen Involvement, and to preserve, protect, and enhance the livability and economic viability of its farms, forests, and rural neighbors. It will act, if requested, as a technical resource assisting neighbors to represent themselves.

Its history mission is to educate, collect, preserve, interpret, and research its local history and to encourage public interest in the history of the Hugo area.

Volunteer membership dues are \$10.00 annually per family and normally used for paper, ink, envelopes, publications and mailings. Make checks to the *Hugo Neighborhood* and send them to our Treasurer.

*Hugo Neighborhood Association*

Web Page: <http://jeffnet.org/~hugo/>

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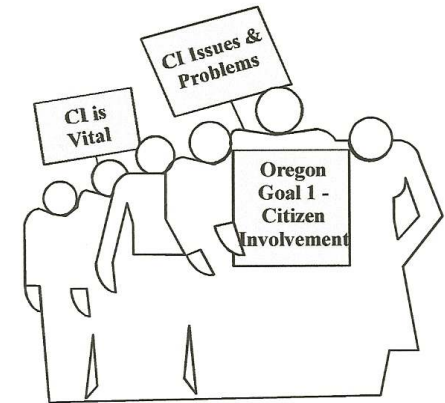
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## Modifications To The Proposal & 150-Day Rule



Brochure 11D in Josephine County  
CI Issues & Problems Series



**November 14, 2006**

**Land Use Committee  
Hugo Neighborhood Association**

**Members of the CAC/NA Coalition**