
Why LUBA?

LUBA Prior to the creation of the Oregon Land Use Board of Appeals (LUBA), land use appeals were heard by the Land Conservation and Development Commission and the circuit courts. LUBA was created by the Legislation in 1979 as an experiment with a four-year “sunset” provision. The Legislature determined it worked sufficiently well and today LUBA has exclusive jurisdiction to review all governmental land use decisions. The Legislature’s reasons for keeping LUBA, over the merits of returning to the trial courts of Oregon, are: developed and application of expertise, single body of experts resulted in an accurate and consistent body of precedent, routine cases of a specialized nature are handled better by an efficient system of administrative adjudication, and cost savings to the public over the costly and burdensome trial court system.¹

Simplify the Appeal Process LUBA was created to simplify the appeal process, speed resolution of land use disputes and provide consistent interpretation of state and local land use laws. LUBA board members are attorneys who are experts in land use planning law. A major difference from most local hearings is that LUBA hearings are for legal argument based on the briefs filed by the parties, *not* for the presentation of evidence by witnesses. Because LUBA’s review process is subject to strict deadlines, it issues decisions much faster than the circuit courts (139 days for LUBA compared to 243 days for circuit courts).¹

1. Sullivan, Edward J. 2000. *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979-1999*. Willamette Law Review. Garvey Schubert Barer Law. Portland, OR.

2. Hugo Land Use Committee. 2006. *150-Day ORS Standards*. Hugo, OR.

Circuit Court, Mandamus Proceedings, & Attorney Fees

Issue. The issue is the adverse effect on citizen participation from a Josephine County (JO CO) violation of the 150-day rule (ORS 215.427), and a mandamus process (ORS 215.429) that may follow from the violation, to move the land use process out of the jurisdiction of the JO CO Board of County Commissioners to the local circuit court.



Effect. The effect of JO CO 150-Day violations, and the resort to the mandamus process follow.

1. The mandamus process subverts the basic land use scheme that the laws of this state established.
2. It negates local government’s decisionmaking role and responsibility that the statutes envision.
3. The mandamus process excludes local citizens from participation in the decisionmaking process.
4. It aborts the LUBA review process that is designed to assure the correctness of land use decisions.
5. It subjects the applicant to delay, and to the need for and expense of, a judicial proceeding to redress the county’s violation of the law.

Chilling Effect. The “Mandamus Proceeding” has a chilling effect upon citizen involvement because it takes the land use process to the alien culture of the local circuit court. For example, LUBA was created after six years of chaos created by local circuit courts inexperienced in interpreting land use laws and arriving at decisions all across the board with little consistency between different circuit courts.

More Information

LUBA Open & Accessible. The LUBA appeal process is open and accessible to decision makers, attorneys and citizens (i.e., appeals follow steps outlined in LUBA’s rules of procedure (OAR Chapter 661, Division 10), published statewide opinions and headnotes available in hard copy and on LUBA web site; opinions available in JO CO Law Library).

Circuit Court Inaccessible Statewide. Mandamus proceedings in Circuit Court are conducted under the Oregon Rules of Civil Procedure (ORCPs) and the Oregon Evidence Code (OEC), to the extent these rules are consistent with the mandamus statutes (ORCP 1A.; *State ex rel Lowell v. Eads*, 148 Or App 56, 60, 939 P2d 79 (1997); ORS 40 - OEC). Parties must be sure to consider how the ORCPs and OECs will affect the case. Circuit Court proceedings are relatively inaccessible statewide as they are only available in the individual local jurisdictions and are not published on the web.

This brochure is one of 11 brochures in the *Hugo Neighborhood’s* education series on 150-Day Violations.²

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



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.

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. Send us your e-mail address if you want to know what we are doing.

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

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Mandamus Proceedings For 150-Day Violations

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**Land Use Committee
Hugo Neighborhood Association**

Members of the CAC/NA Coalition