
Mandamus Proceedings

The issue is the chilling effect on citizen participation in a county violation of the 150-day rule (ORS 215.427), and a mandamus process that may follow from the failure, to move the land use process out of the jurisdiction of the JO CO Board of Commissioners (BCC) to the local circuit court, and the award of attorney fees against intervenors (i.e., citizens).

- **ORS 215.427** - Final Action On County Permit Within 150 Days
- **ORS 215.429** - Mandamus Proceeding When County Fails to Take Final Action Within 150 Days
- **ORS 20.075(1)** Factors to Be Considered by Court in Awarding Attorney Fees



It is clear from Appellant Court opinions that mandamus actions under ORS 215.428(7)^{2&3} are not procedures that the legislature established to provide counties with an alternative to making the land use decisions that ORS 215.428(1)^{2&3} and other statutes require. It is a remedy that the legislature created to deal with circumstances where counties have failed to make the decisions that those statutes require them to make.^{2&3}

Chilling Affect Against Citizen Involvement

Awarding attorney fees against citizen land use advocates and activists acting as intervenors for counties in writ of mandamus cases where the counties fail to take a final action within 150 days (ORS 215.427)^{2&3} and fail to challenge writ of mandamus actions have a chilling effect on good faith claims and defenses of intervenors, especially when the counties' conduct gave rise to the litigation.^{2&3}

It negates the local decisionmaking role and responsibility that the statutes envision; it excludes local citizens from participation in the decisionmaking process.

“The effect of such a violation [of ORS 215.428(1)], and the resort to the mandamus process that may follow from it, is to subvert the basic land use scheme that the laws of this state establish. It negates the local decisionmaking role and responsibility that the statutes envision; *it excludes local citizens from participation in the decisionmaking process.* . . .”^{2&3}

“... an award of attorney fees against intervenor in this case would serve to deter other citizens from participating in good faith in mandamus actions that are necessitated by the failure of local governmental authorities to perform their statutory land use decisionmaking responsibilities.”^{2&3}

More Information

In summary, a pattern and practice of the county failing to meet the 150-day statutory time limits law will have a chilling effect on citizen participation.



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

This brochure is one of 11 brochures in the Hugo Neighborhood's education series on 150-Day Violations.¹

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1. Hugo Land Use Committee. 2006. *150-Day ORS Standards*. Hugo, OR.
 2. Hugo Land Use Committee. 2006. *Appellant Court Opinions On Attorney Fees From 150-Day mandamus Proceedings*. Hugo, OR.
 3. *State ex rel K. B. Recycling v. Clackamas Cty.*, 171 Or App 46 (2000); *State ex rel Aspen Group v. Washington County*, 166 Or App 217, 996 P2d 1032 (2000); *State ex rel Coastal Management v. Washington Cty.*, 159 Or App 533, 550, 979 P2d 300 (1999).
 3. All statutory citations and quotations from footnote 2 refer to the pertinent provisions that were in effect at the time of the relevant events.

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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Hugo Land Use Committee

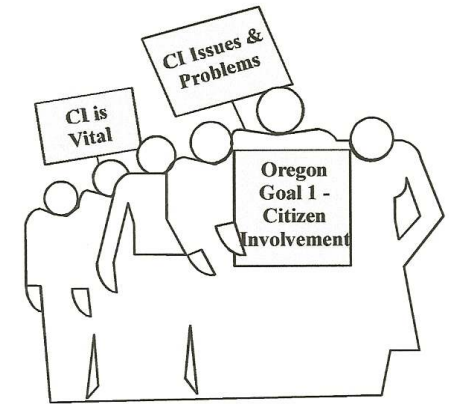
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Chilling Effect On Citizen Involvement From Violation Of 150-Day Rule

Brochure 12G in Josephine County
CI Issues & Problems Series



An award of attorney fees against intervenors serve to deter other citizens from participating in good faith in mandamus actions that are necessitated by the failure of local governmental authorities to perform their statutory land use decisionmaking responsibilities.

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**Land Use Committee
Hugo Neighborhood Association**

Members of the CAC/NA Coalition