
Remand - Misconstrues Applicable Law & Lacks Substantial Evidence

LUBA will remand a decision that improperly construes applicable law.¹ Many decisions are remanded under this standard. Also, many local decisions are defective in only one or two respects, which are correctable, but comply with the law otherwise.² This fact accounts for many remands.

LUBA will remand a decision that is not “supported by substantial evidence in the whole record.”³ This means that LUBA will send a decision back to the local government if:

1. there was virtually no evidence to support the decision, or
2. the supporting evidence was so undermined by other evidence that it was unreasonable for the local government to decide as it did.⁴



This brochure is one of several in the “findings” series.⁵

1. OAR 661-010-0071(2)(d); OAR 661-010-0073(2)(d); ORS 197.835(9)(a)(D).

2. Alliance for Responsible Land Use in Deschutes County v. Deschutes County, 115 Or App 621, 839 P.2d 746 (1992).

3. OAR 661-010-0071(2)(b); OAR 661-010-0073(2)(b); ORS 197.835(9)(a)(C); ORS 197.828(2)(a).

4. *Younger v. City of Portland*, 305 Or 346, 752 P.2d 262 (1988); *Dodd v. Hood River County*, 317 Or 172, 855 P2d 608 (1993).

5. Hugo Neighborhood Association & Historical Society. 2003. *Land Use Decisions: What Are Findings?*. Brochure 1 in Findings Series. Grants Pass, OR.

Remand - Insufficient Findings & Prejudiced Substantial Rights

Land use decisions often involve valid evidence both for and against a given proposal. It is up to the local government, and not LUBA, to decide which evidence deserves more weight in these cases.⁶ Likewise, evidence may be subject to more than one legitimate interpretation, in which case a reasonable interpretation by the local government controls.⁷

The local government is required to adopt written “findings” that explain the criteria which apply to its decision and say how those criteria have been satisfied.⁸ This is a very important requirement which local governments often fail to meet. LUBA will remand when there are inadequate findings to allow review of the decision.⁹

6. *Stefan v. Yamhill County*, 18 Or LUBA 820, 838 (1990);

Boumon v. Jackson County, 23 Or LUBA 628, 641 (1992);

Harwood v. Lane County, 23 Or LUBA 191 (1992).

7. *Dority v. Clackamas County*, 23 Or LUBA 384, 388, *aff'd* 115 Or. App. 449, 838 P2d 1103 (1992), *rev. den.* 315 Or 311 (1993); *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

8. ORS 215.416(9); ORS 227.173(2)(land use permit); *Sunnyside Neighborhood V. Clackamas Co. Comm.* 280 Or 3, 19-23, 569 P.d2 1063 (1977)(quasi-judicial plan amendment); *Von Lubken v. Hood River County*, 22 Or LUBA 307, 313 (1991)(for legislative plan amendment, explanation may be made in either the findings or the record); *Latta v. City of Joseph*, 36 Or LUBA 708 (1999)(where the staff report identifies an approval criterion and the final decision fails to demonstrate compliance with the criterion or take the position that the criterion does not apply, the decision will be remanded).

9. OAR 661-010-0071(2)(a); OAR 661-010-0073(2)(a).

10. OAR 661-010-0071(2)(c); OAR 661-010-0073(2)(c); ORS 197.835(9)(a)(B); ORS 197.828(2)(d).

11. ORS 197.835(9)(a)(B).

12. *West Amazon Basin Landowners Association, Inc. v. Lane County*, 25 Or LUBA 508, 512 (1992)(notice of hearing made available nine days rather than ten prior to hearing did not prejudice substantial rights of the parties); *Mazeski v. Wasco County*, 26 LUBA 226 (1993).

More Information

LUBA will also remand a decision if the local government fails to follow proper procedures to such an extent that the failure “prejudiced the substantial rights of the petitioner.”¹⁰ Land use participants commonly feel they have been treated unfairly, but LUBA remands very few decisions under this standard. Only when serious procedural errors were made is a remand likely.¹¹ Procedural problems, which can range from minor flaws in the notice procedure to a hostile planning staff or decision maker, but which have no provable effect on the outcome of the case, do not provide a basis for remand.¹²

In practice, a significant number of LUBA decisions are remands, rather than reversals, which are comparatively rare

More Information. Would you like to learn more about citizen involvement in land use planning? 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 promoting the social welfare of its neighbors.

Land Use & History

The *Hugo Neighborhood's* land use mission is to promote the social welfare of the citizens of the area by working to promote Oregon Statewide Goal 1 — Citizen Involvement, and by preserving, protecting, and enhancing the livability and economic viability of its farms, forests, and rural neighbors. It will act, as requested, as a technical resource assisting neighbors to represent themselves.

On January 2003 we began the concept of volunteer membership dues. They are \$10.00 annually and will be used for paper, ink, envelopes, publications and mailings. Make checks to the *Hugo Neighborhood* and send them to a member of the Land Use Committee. Send us your e-mail address if you want to know what we are doing.

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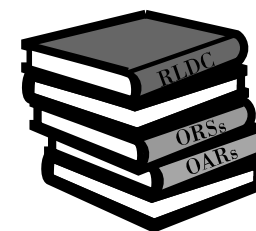
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LUBA Remand

Brochure 7 In
Findings
Series



*Findings Are Insufficient; Decision Is Not Supported
by Substantial Evidence in the Whole Record;
Decision Errors That Prejudice the Substantial Rights
of the Petitioners; or
Decision Improperly Construes the
Applicable Law.*

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Land Use Committee

**Hugo Neighborhood Association &
Historical Society**

Member of the CACNA Coalition