
Decision Violates Law & Is Prohibited As A Matter Of Law

LUBA will reverse a decision when the decision of local government violates a provision of applicable law.¹ Additionally, for a decision to be reversed, it must be “prohibited as a matter of law.”² This means the decision is illegal and there is no way for the local government to cure the illegality by modifying the decision or supporting it with additional information.

LUBA may, for example, reverse a decision that violates a local comprehensive plan provision or an applicable land use regulation.³ Quite often, however, there is a possibility that a decision could be made legal after some modifications by the local government. Thus, it is much more common for LUBA to “remand” a decision than to reverse it. LUBA may also reverse decisions that violate statewide law,⁴ including statutes, land use goals, administrative agency rules,⁵ or Oregon’s constitution.⁶



This brochure is one of several in the “findings” series.⁷

Government Exceeded Jurisdiction Or Decision Unconstitutional

LUBA will also reverse a decision in which the local government exceeded its scope of authority (jurisdiction) in making the decision.⁸ A local government may exceed its jurisdiction, for example, by passing a regulation affecting land outside its geographic boundaries or impose restrictions which are sole responsibility of the state or federal government. Additionally, LUBA will reverse a decision in which the local government acted “outside its range of discretion” in denying an application.⁹ This would occur if the local government considered factors it was not supposed to take into account when deciding to deny an application.

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1. OAR 661-010-0071(1)(c).
 2. OAR 661-010-0071(1)(c); OAR 661-010-0073(1)(c); ORS 197.835(5), (6), (7); ORS 197.828(2)(b).
 3. ORS 197.835(5) - (7).
 4. OAR 661-010-0071(1)(c); OAR 661-010-0073(1)(c); ORS 197.835(5),(7).
 5. *Id.*
 6. OAR 661-010-0071(1)(b); OAR 661-010-0073(1)(b); ORS 197.835(9)(a); ORS 197.828(2)(c)(B).
 7. Hugo Neighborhood Association & Historical Society. 2003. *Land Use Decisions: What Are Findings?*. Brochure 1 in Findings Series. Grants Pass, OR.
 8. OAR 661-010-0071(1)(a); OAR 661-010-0073(1)(a); ORS 197.835(9)(a)(A); ORS 197.828(2)(c)(A).
 9. ORS 197.828(10)(a)(A).
 10. ORS 197.835(7)(a).
 11. ORS 197.835(5).
 12. ORS 197.835(6).
 13. Alliance for Responsible Land Use in Deschutes County v. Deschutes County, 115 Or App 621, 839 P.2d 746 (1992).14. OAR 661-010-0071(1)(c).

Reversal - More Information

When a local government creates a new land use regulation or amends an existing one, that decision may be reversed if it violates a provision of the local comprehensive plan,¹⁰ or if the local plan or the state-wide planning goals provide no basis for creating the regulation or amendment in the first place.¹¹ Amendments to the comprehensive plans themselves must comply with the state-wide goals¹² and state statutes.¹³ State agency and special district land use decisions are also reviewed for goal compliance.

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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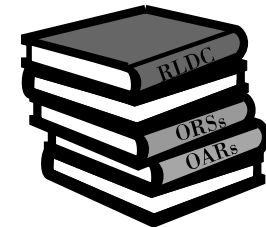
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LUBA Reversal

Brochure 8 In
Findings Series



*Decision Violates a Provision of Applicable Law
and Is Prohibited as a Matter of Law; Governing
Body Exceeded its Jurisdiction; or
Decision Is Unconstitutional.*

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**Land Use Committee
Hugo Neighborhood Association &
Historical Society**

Member of the CACNA Coalition