
Josephine County Rural Land Development Code - Notice: RLDC 32.030.2

The function of public notice is to provide parties with sufficient information to prepare for the public hearing and to address the relevant criteria. *Seagraves v. Clackamas County*, 17 Or LUBA 1329, 1335 (1990). The required contents of the notice are set forth in ORS 197.763(3), the legal consequences flow from the failure to follow the requirement. Any error under ORS 197.763(3) is at least a procedural error under ORS 197.835(9)(a)(B). If the local government fails to list the applicable criteria as required by ORS 197.763(3)(b), a petitioner who has objected and is prejudiced may raise new issues before LUBA that are based on the omitted criteria. ORS 197.835(4)(a); *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281, 289 (1995). Note: ORS 197.835(4) was amended in 1995 to limit the issues that can be raised on appeal. This amendment must be considered in reading older cases.



The notice must explain the nature of the application and the proposed use or uses that could be authorized. ORS 197.763(3); *Caine v. Tillamook County*, 22 Or LUBA 687 (1992). Thus, each required land use approval must be identified and explained, for example, subdivision, PUD, zone change, or variance requests. *Tylka v. Clackamas County*, 38 Or LUBA 417, 428-429 (1994); *Tucker v. City of Adair Village*, 31 Or LUBA 382, 386 (1996).

Failure To Follow Notice Requirements - ORS 197.763(3)

The notice must also state the specific proposed use or uses for which the land use approval is sought. When there is no specific proposal, it is enough to identify the proposed action, for example, a zone change from R-20 to R-5. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421, 433, *aff'd*, 104 Or App 690 (1990).

The notice requirements of ORS 197.763(3)(b) are limited to local plan and ordinance approval criteria.

When plan and code provisions are mentioned in a decision, but are not approval criteria, the provision need not be identified in the notice. However, when there is an omission and the applicable criteria are very similar to the criteria identified in the notice, and the error is corrected during the announcements under ORS 197.763(5)(a), and the petitioner is not prejudiced, it is not grounds for remand or reversal. Similarly, if the criteria are not listed in the notice, but are listed in the staff report and the parties are given two weeks to response to the staff report, there is no ground for remand or reversal. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

A notice that states that a list of the applicable criteria will be available at city hall seven days before the hearing does not satisfy the requirement. *ONRC v. City of Oregon City*, 28 Or LUBA 263, 267 (1994); *Friends of Bryant Woods Park v. City of Lake Oswego*, 26, Or LUBA 185, 199 (1993), *rev'd in part on other grounds*, 126 Or App 205 (1994).

More Information

The notice must also explain the hearings procedures and rights under ORS 197.763(6). ORS 763(3)(j); *Wissusik v. Yamhill County*, 20 Or LUBA 246, 252 (1990). The rights under ORS 197.763(4)(b) must be included. *Reed v. Clatsop County*, 22 Or LUBA 548, 554 (1992).

The local government must make available any staff report at the hearing at least seven days before the hearing. If additional documents or evidence are provided by any party, the local government must allow a continuance or leave the record open so that parties have a reasonable opportunity to respond. ORS 197.763(4)(b).

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. Citizen Involvement Program Josephine County (Josephine County Ordinance 93-13); *Hugo Neighborhood*. 2002 (updated). *Role of JO CO's Citizen Involvement Committee*. Hugo, OR.; Hugo Land Use Committee. 2003. *Citizen Involvement Committee*. Hugo, OR.; Hugo Neighborhood. 2004. *Josephine County & City of Grants Pass CAC Programs*. Hugo, OR.

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.

Hugo Neighborhood Association
Web Page: <http://jeffnet.org/~hugo/>
Edited by Holger Sommer & Mike Walker

Hugo Land Use Committee

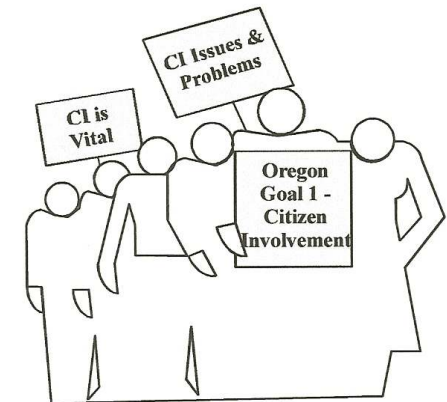
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Notice Contents & Failure To Follow Notice Requirements

Brochure 6C in Josephine County
CI Issues & Problems Series



The required contents of the notice are set forth in ORS 197.763(3), the legal consequences flow from the failure to follow the requirement.

November 19, 2006

**Land Use Committee
Hugo Neighborhood Association**

Members of the CAC/NA Coalition