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## 150-Day ORS Standards For Oregon Land Use Planning<sup>1</sup>

### Authorities

- **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
- **ORS 34.210(2)** Prevailing Party and Awarding Attorney Fees
- **ORS 197.335** Order for compliance with goals; review of order; withholding grant funds; injunctions.
- **ORS 197.835(10)(a)(B)** - LUBA Scope of Review
- **OAR 660-045-0040** Citizen Initiated Enforcement Order

### ORS 197.835(10)(a)(B) - LUBA Scope of Review

“(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

“(B) That the local government's **action** was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.” [Emphasis added]



ORS 197.835(10)(a) authorized LUBA to reverse a city or county “**action**” that was taken “for the purpose of avoiding the requirements of ORS 215.427 or 227.178.”

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## Legislative History of ORS 197.835(10)(a)(B)<sup>2</sup>

The following legislative history of ORS 197.835 (10)(a)(B) is from *Wal-Mart Stores, Inc* and Miller.<sup>2</sup>

“As initially proposed, Senate Bill 245 would have eliminated the mandamus remedy at ORS 215.428(7) and replaced it with automatic approval if the local government failed to take final action by the 120<sup>th</sup> day. Subsequent revisions softened this approach in favor of the requirement, now codified at ORS 215.428-(7)(a), that the county must refund 50 percent of the application fee if the county exceeds the 120-day period.”

“Senate Bill 245, section 5, amending ORS 197.835-(10), was added later in response to a concern that counties would begin denying applications ‘when they reached the 118<sup>th</sup> day’ to avoid refunding fees. Testimony of Kelly Ross, Oregon Association of Realtors, before the Senate Water and Land Use Committee, February 8, 1995, Tape 24, Side A, 326. The chairman of the committee commented that the amendments to ORS 197.835(10) are ‘a way of putting teeth’ into the refund incentive for counties to meet the 120-day requirement. *Id.* at 390. The committee adopted those amendments without further discussion, and the bill passed the House and Senate and in conference without discussion or amendment relevant to this case.”

“The scenario that prompted the amendments to ORS 197.835(10), and their connection with the refund provision, indicate that the purpose of ORS 197.835-(10)(a)(B) is to discourage counties from spuriously denying application to avoid refunding application fees.”

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## More Information

“The legislative history does not suggest that ORS 197.835(10)(a)(B) is intended to apply where the local government makes a decision, timely or untimely, based solely on the merits of the application. In other words, we agree with intervenor that ORS 197.835-(10)(a)(B) is not intended to apply to good faith denials on the merits.”

LUBA provided in *Wal-Mart Stores, Inc.* “. . . we conclude that if a city or county adopts a “spurious, bad faith” denial of a “permit, limited land use decision or zone change application” under ORS 215.427 or 227.178 for the purpose of avoiding one of the statutory consequences for failing to take timely action on an application, such a decision constitutes an “**action** \* \* \* for the purpose of avoiding the requirements of ORS 215.427 or 227.178,” within the meaning of ORS 197.835-(10)(a)(B).” [Emphasis added].

**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. Hugo Land Use Committee. December 5, 2006. *150-Day ORS Standards*. Hugo, OR.
  2. *Wal-Mart Stores, Inc. v. City of Central Point*. \_\_\_ Or LUBA \_\_\_ (LUBA No. 2004-075, March 17, 2005); *Miller v. Multnomah County*, 33 Or LUBA 664 (1997), *aff'd* 153 Or App 30, 956 P2d 209 (1998).

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**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*  
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## Legislative History of 150-Day Rule



Brochure 12AB in Josephine County  
CI Issues & Problems Series



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Land Use Committee  
Hugo Neighborhood Association

Members of the CAC/NA Coalition