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## Required Notice Of Permit Decision Without A Hearing

Governing bodies are required to give notice of a permit decision without a hearing to all four categories of persons described in ORS 197.830(3), ORS 215.416(11)(a), ORS 215.416(11)(c), and ORS 215.422(1) & (2).

1. Owners of Property Adjacent to Property Subject to Application
2. Adversely Affected
3. Aggrieved
4. Neighborhood or Community Organization Recognized.



Under ORS 215.416(11)(a)(A) a person (i.e., adversely affected or aggrieved) can not participate (assert a position) in a local process and can appeal directly to LUBA under the conditions set out in *Wilber Residents* and *Tarjoto* if they have no notice or known opportunity to appeal locally (*Wilber Residents v. Douglas County*, 33 Or LUBA 412, *aff'd* 151 Or App 523, 950 P2d 368 (1997); *Wilber Residents v. Douglas County*, 34 Or LUBA 634 (1998); and *Tarjoto v. Lane County*, 137 Or App 305, 308-09 (1995)).

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## No Time Limit

Under the conditions of *Wilber Residents* and *Tarjoto*, there is no time limit on the appeal to LUBA until adversely affected or aggrieved persons receive notice and an opportunity to appeal locally.

"Footnote 6. We recognize that our elaboration of the "adversely affected" standard at ORS 215.416(11)(a) may require local governments in future cases to identify, or require an applicant to identify, a potentially broader category of persons affected by the development than the category of landowners within a certain distance from the subject property. If so, that is a necessary consequence of the statutory framework."



"However, under ORS 215.416(11) [and the city analog], the local government must provide the opportunity for individuals to obtain a hearing through a de novo local appeal, as required by those statutes. If the local government fails to provide the notice of decision required by ORS 215.416(11) \* \* \*, it cannot rely on that failure to prevent it from providing the opportunity for a de novo local appeal required by statute. Therefore, in such a situation, the time for filing a local appeal does not begin to run until a local appellant is provided the notice of decision to which he or she is entitled. Because a local appeal is available to such an individual, under ORS 197.825(1)(a) that appeal must be exhausted before appealing to LUBA."

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## LUBA & Oregon Court of Appeal Opinions

"LUBA's conclusion that the time for a local appeal does not begin to run until the required notice of the decision is provided was based on opinions of ours and its own, dealing with analogous issues in the interpretation and application of ORS 215.402 et seq and the corresponding statutes applicable to cities. See, e.g., *League of Women Voters V. Coos Co.*, 82 Or App 673, 729 P2d 588 (1986), and authorities there cited (holding that the time for appealing a local permit decision to LUBA is tolled by the county's failure to give notice of the decision as required by ORS 215.416(11). LUBA also indicated, in a footnote, that local code provisions may not be interpreted or applied in a way that is contrary to that state statutory requirement. *Accord Flowers v. Klamath County*, 98 Or App 384, 388, 780 P2d 227, rev den 308 Or 592(1989)."

"We need not decide and we reserve judgement about the relative effects and applicability of ORS 197.830(3) and ORS 215.416(11)(a) to facts that differ from those here. For example, we do not reach the question of whether petitioner could have appealed directly to LUBA under ORS 197.830(3) after learning of the planning director's decisions, had he not also appealed to the hearings officer and thereby obtained rulings from the county, LUBA and us that the local remedy is "available" within the meaning of ORS 197.825(2)(a)."

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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.

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## 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 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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## Required Notice Without A Hearing



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*Land Use Committee*

**Hugo Neighborhood Association &  
Historical Society**

**Member of the CACNA Coalition**