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## Adversely Affected Party

**ADVERSELY AFFECTED** ORS 197.830(3), (4) & (5) & ORS 215.416(11)(a)

**Wilber Residents v. Douglas County, 34 Or LUBA 634 (1998)** Whether a person is “adversely affected” within the meaning of ORS 215.416(11)(a) is a fact-specific inquiry that depends upon the nature of the development, and any factors regarding the person’s property or activities thereon that render the property more or less susceptible to impacts from the development.

Petitioners demonstrate they are adversely affected by a sewage treatment facility, where there is no attempt to rebut petitioner’s allegations that they are adversely

affected because they are within “sight and smell” of the facility and petitioners also allege “direct, specific, tangible and negative impacts” from the proposed facility.



**Walz v. Polk County, 31 Or LUBA 363, 369 (1996)**

It is well-established that someone whose property is within sight and sound of a property is presumptively considered “adversely affected or aggrieved” by land use decisions affecting it. *Franklin v. Deschutes County*, 30 Or LUBA 33, 41, *aff’d* 139 Or App 1 (1995); *Kamppi v. City of Salem*, 21 Or LUBA 498, 501 (1991); *Stephens v. Josephine County*, 14 Or LUBA 133, 135 (1985); *Stephens v. Josephine County*, 11 Or LUBA 154, 156 (1984); *Worcester v. City of Cannon Beach*, 9 Or LUBA 307,311-12 (1983).

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## Sight, Sound, & Smell

**PHYSICAL PROXIMITY** Closeness or nearness (e.g., within sight, sound, or smell) and harm are criteria to consider when making a “standing” determination because of adversely affected, but physical proximity is not the sole standard. However, it has become a sort of proxy for adversely affected versus the real issue which is harm.

**Friends of Douglas County v. Douglas County, 39 Or LUBA 156 (2000)** The facts that the petitioners have no geographic proximity to the area affected by the decision and that they can suffer no economic or noneconomic harm are germane to whether they were adversely affected, not to whether they were aggrieved by the planning commission’s decision.

**Jefferson Landfill Comm. v. Marion Co., 297 Or 280, 283, 686 P2d 310 (1984)** In the context of section 4(3), “adversely affected” means that local land use decision impinges upon the petitioner’s use and enjoyment of his or her property or otherwise detracts from interests personal to the petitioner. Examples, of adverse effects would be noise, odors, increased traffic or potential flooding.

**Jefferson Landfill Comm. v. Marion Co. 65 Or App 323, 325 (1983)** The court pointed out that the statute does not limit either adverse affect or aggrievement to property interests which must be in physical “proximity” to the disputed land.

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1. Hugo Neighborhood Association & Historical Society. 2004. *The Party Series: A Party, Or A Witness?; Aggrieved; Adversely Affected; Actual Notice Of Decision; and Geographic Proximity.* Grants Pass, OR.

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## More Information

**Benton County v. Friends of Benton County, 294 Or 79, 653 P2d 1249 (1982)** The court held that the interpretation of the statutory words, “adversely affected” or “aggrieved” in section 4(3) is a question of law to be decided by the court, citing *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979). It went on to discuss the two terms, stating that “aggrieved” means something more than being “adversely affected” by it. The court pointed out that the statute does not limit either adverse affect or aggrievement to property interests which must be in physical “proximity” to the disputed land use.

**Marbet v. Portland Gen. Elect., 277 Or 447, 454, 561 P2d 154 (1977)** Nor does the statute support PGE’s contention that the “public interest” is restricted geographically. Communities in immediate proximity to a proposed site have economic and other reasons to desire or to oppose a project that differ from the interests of a wider public, as the hearing in this case shows.

**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*.



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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*) located in Josephine County, Oregon. 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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Adversely  
Affected  
Party



Brochure 3 In The Party Series



Persons who are adversely affected is intended to refer, at a minimum, to persons who are within sight and sound of a development proposal. *Kamppi v. City of Salem*,  
21 Or LUBA 498, 501 (1991)

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

**Member of the CACNA Coalition**