

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JACK L. LINDSEY
5 and DELMER C. BRINK,
6 *Petitioners,*

7
8 and

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10 HOLGER T. SOMMER
11 and CECIL E. WALDRON,
12 *Intervenor-Petitioners,*

13
14 vs.

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16 JOSEPHINE COUNTY,
17 *Respondent,*

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19 and

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21 COPELAND SAND & GRAVEL, INC.,
22 *Intervenor-Respondent.*

23
24 LUBA No. 2005-112

25 ORDER ON

26 MOTION TO DISMISS

27 ORS 197.830(9) establishes a 21-day deadline for filing a notice of intent to appeal with
28 LUBA.¹ The general rule is expressed in the first sentence of ORS 197.830(9), and the 21-day
29 deadline begins to run on the date the decision becomes final.² However, where the challenged

¹ As relevant, ORS 197.830(9) provides:

“A notice of intent to appeal a land use decision or limited land use decision shall be filed *not later than 21 days after the date the decision sought to be reviewed becomes final*. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed *not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615*.” (Emphases added.)

²OAR 661-010-0010(3) provides the following definition:

1 decision is post acknowledgment comprehensive plan or land use regulation amendment processed
2 under ORS 197.610 to 197.625 (commonly referred to as a PAPA), the second sentence of ORS
3 197.830(9) applies, and the 21-day deadline begins to run on the date the local government
4 provides the written notice of PAPA decision that is required under ORS 197.615.

5 A chronology of the material events in this appeal is set out below:

6 6-29-2005 A single county land use decision approving comprehensive plan
7 and zoning ordinance amendments and granting site plan approval
8 was reduced to writing and signed by the Josephine County
9 Commissioners.

10 7-12-2005 The county issued written notice of its 6-29-2005 decision by mail.

11 7-25-2005 Petitioners filed their notice of intent to appeal with LUBA by
12 certified mail.

13 Intervenor-respondent moves to dismiss this appeal, arguing that the 21-day deadline for
14 filing the notice of intent to appeal should be measured from June 29, 2005. If intervenor-
15 respondent is correct about the date the 21-day deadline began to run, the notice of intent to appeal
16 was filed 26 days after that date, and this appeal must be dismissed. Petitioners contend that the
17 21-day deadline for filing the notice of intent to appeal should be measured from July 12, 2005. If
18 petitioners are correct about the date the 21-day deadline began to run, the notice of intent to
19 appeal was filed 13 days after that date, and the motion to dismiss must be denied.

20 Although the exact nature of the applications that led to the single county decision that is
21 before us in this appeal is not entirely clear, the staff report that was provided to the county planning
22 commission provided the following description of the proposal:

23 “The applicant has submitted a request for a Post Acknowledgment Plan
24 Amendment (PAPA) to determine that Middleton Bar is a significant aggregate
25 resource to be added to the Josephine County Inventory of Aggregate Resources;

“Final decision’: A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance.”

1 to change the zone of 14.3 acres in the mining area from Exclusive Farm (EF) to
2 Mineral & Aggregate Resource Zone (MARZ); to allow mining; and to protect the
3 site from new conflicting uses. The request involves:

- 4 "1. A Comprehensive Plan Text Amendment to add Middleton Bar to
5 the County Inventory of Significant Aggregate Sites;
- 6 "2. A Site Plan Review to permit mining on the entire 16.1 acres
7 involved in the proposed operation on Tax Lot 600; and
- 8 "3. A Comprehensive Plan Zone Change from Exclusive Farm (EF) to
9 Mineral and Aggregate Resource (MARZ) for 14.3 acres of Tax
10 Lot 600." Record 154 (footnote omitted).

11 The county only issued one decision in response to the four applications that are included in
12 the record.³ At least three of those applications concern post-acknowledgment plan or land use
13 regulation amendments that were processed pursuant to ORS 197.610 to 197.625. Where a single
14 decision is rendered in response to four land use applications and three of those applications are
15 applications for post-acknowledgment plan or land use regulation amendments, the second sentence
16 of ORS 197.830(9) applies and a notice of intent to appeal challenging such a decision must be filed
17 "not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise
18 submitted to parties entitled to notice under ORS 197.615." In this case, the notice of intent to
19 appeal was filed 13 days after the notice required by ORS 197.615 was mailed, and the notice of
20 intent to appeal is therefore timely.

21 Intervenor-respondent's motion to dismiss is denied.

22 After respondent and intervenor-respondent have had the time provided by our rules to
23 respond to petitioners' November 7, 2005 record objections, we will resolve those record
24 objections and establish a deadline for filing the petition for review.

25 Dated this 18th day of November, 2005.

³ The challenged decision and petitioners refer to five applications. We only count four applications. Three of those four applications appear to be post-acknowledgment plan or land use regulation amendments processed pursuant to ORS 197.610 to 197.625. Intervenor-respondent makes no attempt to explain why they should be viewed as something other than applications for a post-acknowledgment plan or land use regulation amendment.

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Michael A. Holstun
Board Member