



1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision approving a plan  
4 and zone change for a 15 acre parcel, from a Rural Service  
5 Center/Commercial plan designation and Rural Service Center  
6 zone, to a Rural Service Center/Industrial plan designation  
7 and Rural Industrial zone.

8 **MOTION TO INTERVENE**

9 Herbert Shields, Sylvia Shields, Katherine Shields, and  
10 Mike Shields move to intervene on the side of respondent in  
11 this appeal proceeding. There is no objection to the  
12 motion, and it is allowed.

13 **MOTION TO DISMISS**

14 Respondent moves to dismiss this appeal on the basis  
15 that it was untimely filed with this Board under ORS  
16 197.830(8).<sup>1</sup> ORS 197.830(8) provides:

17 "A notice of intent to appeal a land use decision  
18 \* \* \* shall be filed not later than 21 days after  
19 the date the decision sought to be reviewed  
20 becomes final. A notice of intent to appeal plan  
21 and land use regulation amendments processed  
22 pursuant to ORS 197.610 to 625 shall be filed not  
23 later than 21 days after the decision sought to be  
24 reviewed is mailed to parties entitled to notice  
25 under ORS 197.615. \* \* \*" (Emphasis supplied.)

26 Respondent does not state whether the challenged plan

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<sup>1</sup>The motion to dismiss was filed March 3, 1992. Our rules provide a party may file a response to a motion within 10 days from receipt of a motion. OAR 661-10-065(2). Petitioner has not filed an answer to respondent's motion to dismiss.

1 and zone change decision at issue here was processed  
2 pursuant to ORS 197.610 to 197.625 governing  
3 postacknowledgment comprehensive plan and land use  
4 regulation amendments. However, as relevant to this  
5 decision, Deschutes County's comprehensive plan and land use  
6 regulations have been acknowledged under ORS 197.251,<sup>2</sup> and  
7 the record establishes the challenged decision was mailed to  
8 the Department of Land Conservation and Development (DLCD)  
9 after it was adopted by respondent, apparently under  
10 ORS 197.615. Therefore, we assume the challenged decision  
11 was processed pursuant to ORS 197.610 to 197.625.

12 ORS 197.615(2)(a) establishes the following  
13 requirements concerning notice of a decision to amend  
14 acknowledged plan and land use regulations:

15 "Not later than five working days after the final  
16 decision, the local government shall mail or  
17 otherwise submit notice to persons who:

18 "(A) Participated in the proceedings leading to  
19 the adoption of the amendment to the  
20 comprehensive plan or land use regulation \* \*  
21 \*; and

22 "(B) Requested of the local government in writing  
23 that they be given such notice."

24 Respondent does not state whether petitioner appeared

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<sup>2</sup>All provisions of Deschutes County's comprehensive plan and land use regulations, except for the plan provisions designed to comply with Statewide Planning Goal 5 with regard to aggregate and mineral resources and zone provisions concerning areas zoned Surface Mining and Surface Mining Reserve, were acknowledged on February 12, 1986. Compliance Acknowledgement Order 86-ACK-004.

1 below or whether she requested notice under  
2 ORS 197.615(2)(a)(B). However, according to the record  
3 submitted by respondent in this appeal proceeding, the  
4 challenged decision was reduced to writing on January 22,  
5 1992 (Record 11-12). The decision was mailed to DLCD on  
6 January 23, 1992 (Record 25) and was mailed to parties,  
7 including petitioner, on January 24, 1992 (Record 1).<sup>3</sup> In  
8 the absence of an allegation from the respondent to the  
9 contrary, we assume petitioner appeared below and requested  
10 notice under ORS 197.615(2)(a)(B). As stated above, the  
11 record reflects that a senior planner for the county mailed  
12 a letter notice of the decision dated January 24, 1992 to  
13 the parties, including petitioner. That letter states in  
14 relevant part:

15 "On January 22, 1992, the Board of County  
16 Commissioners adopted findings, conclusions and  
17 Ordinance Nos 92-005 and 92-006, constituting the  
18 final decision on the above-referenced plan and  
19 map amendments. A copy of these documents are  
20 enclosed for your benefit.

21 "Please be advised that this decision may be  
22 appealed to the Land Use Board of Appeals (LUBA)  
23 for 21 days following the mailing date of this  
24 letter.

25 "\* \* \* \*" Record 1.

26 Accordingly, under ORS 197.830 (8) and ORS 197.615,

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<sup>3</sup>Specifically, the letter mailed to the parties and quoted in the text, infra, is addressed to one of the intervenors, and at the lower left corner of the letter states "cc: \* \* \* Linda Crew \* \* \*." Record 1.

1 petitioner was required to file her notice of intent to  
2 appeal the challenged decision with this Board on or before  
3 February 14, 1992, the 21st day following January 24, 1992.<sup>4</sup>  
4 The notice of intent to appeal was filed on February 18,  
5 1992.<sup>5</sup> OAR 661-10-015(1) provides that if the notice of  
6 intent to appeal is untimely filed, the appeal must be  
7 dismissed.

8 Because the notice of intent to appeal was not timely  
9 filed, this appeal is dismissed.

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<sup>4</sup>We note the notice of intent to appeal states the challenged decision became final on January 22, 1992. In addition, respondent claims the date the decision became final for purposes of an appeal to this Board was January 22, 1992, because ORS 197.615 only applies to legislative plan and zone amendments and not to quasi-judicial plan and zone change decisions. However, respondent cites no language in ORS 197.615 containing such a limitation, and we see none. As far as we can tell ORS 197.610 to 197.625, including the the notice provisions of ORS 197.615, apply equally to legislative and quasi-judicial plan and zone change decisions. However, in any case, it makes no difference here whether the challenged decision became final on January 22 or January 24, 1992. As explained in the text, in either case the notice of intent to appeal was untimely filed.

<sup>5</sup>Under OAR 661-10-015(1) and 661-10-075(2)(a), a notice of intent to appeal is filed when it is actually delivered to this Board.