



1 substantial rights of the parties shall not interfere with LUBA’s review).

2 If petitioners had filed the motion to transfer before LUBA issued its final opinion  
3 and order dismissing the appeal, we might agree with petitioners that, absent a showing of  
4 prejudice to intervenors’ substantial rights, petitioners’ filing of the motion to transfer more  
5 than 14 days after the jurisdictional challenge was raised is not a basis to deny the motion.  
6 However, as intervenors also argue, LUBA lacks authority to modify or reconsider a final  
7 opinion once issued. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524,  
8 537 (2002) (LUBA no longer has jurisdiction over an appeal once a party seeks judicial  
9 review of LUBA’s final order in that appeal, pursuant to ORS 197.850); *Sarti v. City of Lake*  
10 *Oswego*, 20 Or LUBA 562 (1991) (the Board lacks statutory authority to reconsider its final  
11 decisions); *Forest Highlands Neighborhood Association v. City of Lake Oswego*, 10 Or  
12 LUBA 416 (1984) (the Board as a state agency has only those powers granted by legislature,  
13 and the Board lacks statutory authority to reconsider its final decisions). Changing the  
14 disposition in our September 29, 2011 final opinion likely would qualify as a modification or  
15 reconsidering of that final opinion. Even if it would not, LUBA has already determined that  
16 it lacks jurisdiction to transfer an appeal to circuit court, after it has issued a final decision  
17 dismissing the appeal. *Ehle v. City of Salem*, 55 Or LUBA 685, 687 (2007); *see also Miller*  
18 *v. City of Dayton*, 113 Or App 300, 305, 833 P2d 299 (1992) (LUBA did not err by  
19 dismissing an appeal rather than transferring the appeal to circuit court, where petitioner had  
20 not filed a motion to transfer pursuant to OAR 661-010-0075(11)).

21 Here, petitioners request that LUBA modify the disposition of the September 29,  
22 2011 final opinion and order from “dismissal” to “transfer.” We agree with intervenors that  
23 LUBA lacks authority to modify the disposition of a final opinion and order. The motion to  
24 transfer this appeal to circuit court is denied.

1 Dated this 27th day of October, 2011.

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Tod A. Bassham  
Board Member