

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 THE CONFEDERATED TRIBES OF
5 THE WARM SPRINGS RESERVATION
6 OF OREGON,
7 *Petitioner,*

8
9 and

10
11 FRIENDS OF THE METOLIUS, TONI FOSTER,
12 NANCY PRINCE, MARY A. ZEMKE,
13 PALMER GROTE, TAMMY A. DEVINE,
14 DONALD E. RATLIFF Jr., RUPERT LAVERS,
15 EDITH LAVERS, DAVE STEVENSON and
16 JEFFERSON COUNTY FARM BUREAU,
17 *Intervenors-Petitioner,*

18
19 vs.

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21 JEFFERSON COUNTY,
22 *Respondent.*

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24 LUBA Nos. 2002-017, 2002-018,
25 2002-019, 2002-020 and 2002-021

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27 FINAL OPINION
28 AND ORDER

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30 Appeal from Jefferson County.

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32 Paul D. Dewey, Bend, filed a petition for review on behalf of petitioner. With him on
33 the brief was Karnopp, Petersen, Noteboom, Hansen, Arnett and Sayeg, LLP.

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35 Bill Kloos, Eugene, filed a petition for review on behalf of intervenors-petitioner
36 Friends of the Metolius and Toni Foster.

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38 Caroline E. Kuerschner, Portland, filed a petition for review on behalf of intervenors-
39 petitioner Dave Stevenson and the Jefferson County Farm Bureau.

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41 Mary Zemke, Madras, filed a petition for review on her own behalf.

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43 Tammy Devine, Palmer Grote, Rupert Lavers, Edith Lavers, Nancy J. Prince, Donald
44 E. Ratliff, Madras, represented themselves.

1 Michael C. Robinson, Portland, and Paul L. Hathaway, County Counsel, Madras,
2 represented Jefferson County.

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4 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,
5 participated in the decision.

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7 REMANDED

06/20/2002

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9 You are entitled to judicial review of this Order. Judicial review is governed by the
10 provisions of ORS 197.850.

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DECISION

Respondent moves for voluntary remand. Respondent also moves to dismiss intervenors-petitioner Nancy Prince, Palmer Grote, Tammy Devine, Donald Ratliff, Rupert Lavers, and Edith Lavers (hereafter the named intervenors). The asserted basis for that motion to dismiss is that none of the named intervenors filed a petition for review before the deadline for filing petitions for review expired.

A. Motion to Dismiss Named Intervenors

The remedy for failure to file a petition for review is set out at OAR 661-010-0030(1). As relevant OAR 661-010-0030(1) provides:

“* * * Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-010-0045(9) or OAR 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body.”

In this case a total of four separate petitions for review were filed. Although the named intervenors did not file petitions for review, the dismissal remedy specified in OAR 661-010-0030(1) does not apply unless no petition for review is filed and, therefore, does not apply here.

The named intervenors filed separate motions to intervene alleging that they satisfied the statutory requirements for intervention in this appeal. ORS 197.830(7). There was no opposition to the named intervenors’ separate motions to intervene, and those motions were allowed on April 23, 2002. Although the failure of the named intervenors to file a petition for review may have a number of legal consequences, their dismissal from this appeal or an order denying their previously allowed motions to intervene is not among those legal consequences.

Respondent’s motion to dismiss the named intervenors-petitioner is denied.

1 **B. Motion for Voluntary Remand**

2 Respondent moves for voluntary remand and states that it will consider all issues
3 presented in the petitions for review. No party objects to the motion, and it is allowed.

4 *OTAK, Inc. v. City of Sherwood*, 40 Or LUBA 218(2001).

5 The county's decision is remanded.