

1 Bassham, Board Member.

2 **NATURE OF THE DECISION**

3 Petitioners appeal Ordinance 95-1, adopted in January 1995, that in relevant part amends
4 the county's inventory of significant aggregate sites.

5 **JURISDICTION**

6 The county moves to dismiss petitioners' appeal of Ordinance 95-1 as untimely. The
7 county explains that Ordinance 95-1 is a legislative, post-acknowledgment plan and land use
8 regulation amendment processed pursuant to ORS 197.610 to 197.625 that was adopted,
9 following a public hearing, on January 11, 1995. The county contemporaneously mailed notice of
10 Ordinance 95-1 to the Department of Land Conservation and Development (DLCD), pursuant to
11 ORS 197.615. According to the county, petitioners did not appear during the proceedings leading
12 up to adoption of Ordinance 95-1, and were not otherwise entitled to notice of that decision.
13 Therefore, the county argues, the deadline for filing an appeal of Ordinance 95-1 to LUBA expired
14 21 days after notice of the decision was mailed to DLCD, pursuant to ORS 197.830(9).¹

15 Petitioners have not responded to the county's motion to dismiss. In the notice of intent to
16 appeal, however, petitioners assert that:

17 "Jackson County adopted Ordinance 95-1 in January 1995, which abolished the
18 county's existing Goal 5 aggregate resource inventories '... until periodic review
19 had been completed, and all recognized significant aggregate sites had been
20 designated AR [Aggregate Resource].' Petitioners, as owners of land affected by
21 this decision (*i.e.*, land shown on the aggregate resource inventory map as a
22 'significant resource,' but zoned EFU [exclusive farm use]), and who had been
23 members of the Jackson County Aggregate Resource Committee, were never

¹ ORS 197.830(9) provides, in relevant part:

"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.
* * *"

1 mailed a notice of this decision, as required by ORS 197.8930(8) [sic] and
2 OAR 660-023-0060. Petitioners did not receive notice of Ordinance 95-1 until
3 April 14, 2004, when petitioners received a copy of [LUBA’s opinion in *Copeland*
4 *Sand and Gravel, Inc. v. Jackson County*, 46 Or LUBA 653, *aff’d* 193 Or App
5 822, ___ P3d ___ (2004)], which made the determination that Ordinance 95-1 did
6 in fact abolish the aggregate resource inventory, and precluded petitioners from
7 receiving approval of an application for a Conditional Use Permit (CUP) consistent
8 with ORS 215.298(2).” Amended Notice of Intent to Appeal 2.

9 Like the county, we do not understand the reference to “ORS 197.8930(8).” OAR 660-
10 023-0060 requires that local governments provide timely notice to landowners and others during the
11 process of preparing the county’s inventory of significant Goal 5 resources. However, as the county
12 points out, OAR 660-023-0060 was adopted in 1996, a year after the county’s adoption of
13 Ordinance 95-1. Petitioners do not explain why the county’s alleged noncompliance with an
14 administrative rule that did not exist at the time Ordinance 95-1 was adopted allows petitioners to
15 file a belated appeal of that ordinance to LUBA. Because petitioners have not demonstrated that
16 their appeal of Ordinance 95-1 is timely, this appeal must be dismissed.

17 This appeal is dismissed.