

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

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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,*

18  
19 and

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

23  
24 LUBA No. 2005-112

25 ORDER

26 **MOTIONS TO INTERVENE**

27 The notice of intent to appeal in this appeal was filed on July 25, 2005. By statute and  
28 under LUBA's rules, the deadline for filing motions to intervene in this appeal expired 21 days later,  
29 on August 15, 2005. ORS 197.830(7)(a); OAR 661-010-0050(2). On July 27, 2005, a motion  
30 to intervene on the side of respondent was filed by an attorney on behalf of Copeland Sand and  
31 Gravel. On July 30, 2005, a *pro se* motion to intervene on the side of petitioner was filed by  
32 Holger T. Sommer (hereafter Sommer). On August 11, 2005, a *pro se* motion to intervene on the  
33 side of petitioner was filed by Cecil E. Waldron (hereafter Waldron).

34 Although each of the above-noted moving parties is recognized as an intervenor from the  
35 date their motion to intervene was filed, status as an intervenor may be denied at a later time. OAR

1 661-010-0050(2). LUBA’s general practice is to allow all parties the 14 days provided by OAR  
2 661-010-0065(2) to file written opposition to any motions to intervene that are filed in an appeal.  
3 LUBA then rules on pending motions to intervene, either in an interlocutory order or in the final  
4 opinion and order. We will follow that general practice with regard to the motions to intervene filed  
5 by Copeland Sand and Gravel, Sommer and Waldron.

6 In Sommer’s motion to intervene, he describes himself as “Lead-Intervenor-Petitioner.”  
7 Motion to Intervene 1. However Sommer’s motion to intervene is only signed by Sommer.  
8 Sommer could only be a lead intervenor-petitioner if other individuals signed that motion to  
9 intervene. OAR 661-010-0075(7)(b). Sommer represents himself in this appeal, but he is not a  
10 lead intervenor-petitioner.

#### 11 **MOTION TO EXTEND THE DEADLINE FOR INTERVENTION**

12 On August 11, 2005, Sommer filed a Motion to Extend Time for Intervention in which he  
13 erroneously states, “[t]he 21 day Intervention period expired August 2, 2005.”<sup>1</sup> Sommer’s motion  
14 also includes the following argument:

15 “Because several individual[s] and the Lower Applegate Citizen Advisory  
16 Committee, a committee recognized by Respondent, were not served with the  
17 Notice of Decision and because Respondent did not follow state law (ORS  
18 197.615), Intervenor-Petitioner, with the support of Petitioner’s [sic] asks, that the  
19 original date of the Notification of Decision is [sic] set to a date 21 days after all  
20 parties to these proceedings (as listed in Exhibit A) have been notified. This will  
21 allow other parties to intervene, after they received their Notice of Decision.”

22 We are not sure we understand what Sommer is requesting. In any event, and without  
23 expressing any position on the merits of Sommer’s motion, Sommer does not need an extension of  
24 time to file his motion to intervene. Any persons who wish to file a motion to intervene in this appeal  
25 and seek an extension of the 21-day deadline imposed by ORS 197.830(7)(a) and OAR 661-010-  
26 0050(2) may do so. If they do, LUBA will allow other parties in this appeal an opportunity to

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<sup>1</sup> As we noted earlier in this order, the 21-day deadline for filing motions to intervene in this appeal is measured from the date the notice of intent to appeal was filed, and that deadline expired on August 15, 2005.

1 respond in writing to any such motions before ruling on those motions. But those persons will have  
2 to sign and file the motion to intervene themselves or have the motion signed and filed by an attorney  
3 on their behalf. OAR 661-010-0075(6). Sommer is not an attorney admitted to practice in the  
4 state of Oregon; and, therefore, Sommer may not file a motion to intervene on behalf of other  
5 individuals and organizations. Neither may Sommer file a motion on their behalf to extend the 21-  
6 day deadline for filing motions to intervene.

7 We emphasize that because we do not reach the merits of Sommer's arguments, we do not  
8 decide here whether any notice failures by the county may require that the August 15, 2005  
9 deadline for filing motions to intervene be extended. However, for the reasons explained above,  
10 Sommer's motion to extend the August 15, 2005 deadline is denied.

11 Dated this 16<sup>th</sup> day of August, 2005.  
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18 Michael A. Holstun  
19 Board Member