

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON

3  
4 PAUL SCOTT,  
5 *Petitioner,*

6  
7 vs.

8  
9 JOSEPHINE COUNTY,  
10 *Respondent,*

11  
12 and

13  
14 MAJESTIC DESTINATIONS LLC,  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2021-079

18  
19 ORDER

20 **MOTION TO INTERVENE**

21 Majestic Destinations LLC (intervenor), the applicant below, moves to  
22 intervene on the side of the county. The motion is unopposed and granted.

23 **MOTION TO DISMISS**

24 In *Scott v. Josephine County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2020-080,  
25 Mar 9, 2021), we remanded a county decision approving intervenor's application  
26 for a conditional use permit (CUP) authorizing a 25-space recreational vehicle  
27 (RV) park on land zoned exclusive farm use (EFU). On April 23, 2021, intervenor  
28 submitted to the county its remand application and, on June 14, 2021, intervenor  
29 updated its application. On June 17, 2021, the county provided notice of the  
30 remand hearing. On July 12, 2021, the board of county commissioners conducted

1 a remand hearing and voted to approve the CUP. On August 18, 2021, the board  
2 chair signed the decision. On August 26, 2021, the county sent petitioner an email  
3 including the decision as an attachment and stating that the decision would be  
4 mailed on August 31, 2021. On August 31, 2021, the county mailed the decision.

5 On August 12, 2021, petitioner filed a notice of intent to appeal (NITA)  
6 the county's decision on remand. On August 18 and August 26, 2021, petitioner  
7 filed corrected NITAs. On November 10, 2021, intervenor filed a motion to  
8 dismiss the appeal, arguing that petitioner did not file their NITAs within the time  
9 required by law because they filed the original NITA and both corrected NITAs  
10 before the challenged decision became final, which intervenor alleges was on  
11 August 31, 2021. On November 15, 2021, petitioner filed a response to the  
12 motion to dismiss. For the reasons set out below, the motion is denied.

13 "A notice of intent to appeal a land use decision or limited land use  
14 decision shall be filed *not later than 21 days after* the date the decision sought to  
15 be reviewed becomes final." ORS 197.830(9) (Emphasis added.) Pursuant to our  
16 rules,

17 "[a] decision becomes final when it is reduced to writing and bears  
18 the necessary signatures of the decision maker(s), unless a local rule  
19 or ordinance specifies that the decision becomes final at a later date,  
20 in which case the decision is considered final as provided in the local  
21 rule or ordinance." OAR 661-010-0010(3).

22 Josephine County Code (JCC) 19.31.130(C) provides:

23 "A quasi-judicial decision of a Hearing Body shall not become final  
24 until written findings of fact are prepared and approved by a

1 majority vote of the participating members, signed by the presiding  
2 officer or a designate, *and mailed as required by Chapter 19.32*  
3 *JCC*. The findings shall include the criteria, standards for approval,  
4 the facts relied on in making the decision, and a statement showing  
5 how the facts, when applied to the criteria, justify the final action.”  
6 (Emphasis added.)

7 We assume for purposes of this opinion that JCC 19.31.130(C) is a local  
8 ordinance that specifies that the decision becomes final later than the date it is  
9 reduced to writing.

10 Although JCC 19.32.030 is titled “Mailed notice,” JCC 19.32.030(B)(2)  
11 provides that “[n]otice of the final action on a quasi-judicial land use request  
12 made at the conclusion of a public hearing *shall be given* to all participants who  
13 established party status in the hearing pursuant to JCC 19.31.100.” (Emphasis  
14 added.) Unlike JCC 19.32.030(B)(1), which requires written notice of a planning  
15 director decision made without a hearing “to be mailed,” the express language of  
16 JCC 19.32.030(B)(2) does not require notice of a decision made after a hearing  
17 to be “mailed.” Rather, it provides that “notice of the final action \* \* \* shall be  
18 given,” without specifying the manner in which it shall be given.

19 Accordingly, we assume for purposes of this order that the county’s  
20 August 26, 2021 emailed notice to petitioner was sufficient to comply with JCC  
21 19.32.030(B)(2), and the corrected NITA that petitioner filed on that date was  
22 not premature.

23 The motion to dismiss is denied.

1   **BRIEFING SCHEDULE**

2           On November 4, 2021, petitioner filed the petition for review. Thereafter,  
3   we suspended this appeal pending resolution of the motion to dismiss. The appeal  
4   is reactivated. The response briefs shall be filed not later than 21 days from the  
5   date of this order. Oral argument will be scheduled by separate letter.

6           Dated this 6th day of December 2021.

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12           Michelle Gates Rudd  
              Board Member