

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

JOHN RODRIGUES,
Petitioner,

vs.

CLACKAMAS COUNTY,
Respondent.

LUBA Nos. 2024-094

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Petitioner represented themselves.

Caleb J. N. Huegel represented respondent.

WILSON, Board Member; ZAMUDIO, Board Chair; RUDD, Board
Member, participated in the decision.

DISMISSED 03/24/2025

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

NATURE OF THE DECISION

Petitioner appeals the county's denial of an application to operate a temporary forest labor camp.

MOTION TO DISMISS

The 11.6-acre subject property is located north of Highway 26 and east of SE McCabe Road and zoned timberland (TBR). On February 6, 2024, petitioner filed an application to operate a temporary forest labor camp, including dwellings for six laborers, on the subject property.

The county hearings officer issued a written decision denying the application on November 21, 2024. A copy of the decision was mailed to petitioner the same day. Petitioner filed a notice of intent to appeal (NITA) on December 20, 2024, by mailing the NITA to LUBA by certified mail. We received the NITA on December 27, 2024, and on the same day sent petitioner a Notice of Noncompliance stating that the NITA did not comply with all of our rules and giving petitioner 14 days to submit a corrected NITA. On January 10, 2025, petitioner submitted a corrected NITA that complies with our rules. Therefore, for purposes of the motion to dismiss, the NITA was filed with LUBA on December 20, 2024.

The county moves to dismiss the appeal as untimely because the NITA was filed more than 21 days after the challenged decision became final. A NITA appealing a land use decision or limited land use decision must be filed no later

1 than 21 days after the decision sought to be reviewed becomes final. ORS
2 197.830(9); OAR 661-010-0015(1)(a). “A decision becomes final when it is
3 reduced to writing and bears the necessary signatures of the decision maker(s)
4 * * *.” OAR 661-010-0010(3). The decision was reduced to writing and signed
5 by the hearings officer on November 21, 2024.¹ Accordingly, the NITA was due
6 on December 12, 2024.

7 Petitioner raises several arguments for why the NITA was timely filed.
8 Petitioner argues that the county violated ORS 197.195(3)(c)(H) because the
9 notice of the decision did not “include an explanation of appeal rights[.]” ORS
10 197.195 governs “limited land use decisions.” Under ORS 197.015(12), limited
11 land use decisions include certain decisions “pertaining to a site within an urban
12 growth boundary.” The subject property is not within an urban growth boundary.
13 Therefore, the challenged decision is not a limited land use decision and ORS
14 197.195(3)(c)(H) does not apply. Petitioner’s argument does not provide a basis
15 to extend the deadline for filing the NITA.

16 Petitioner also argues that because service of the NITA is not jurisdictional
17 and the county was served with the NITA that the NITA is not untimely.
18 Petitioner cites *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735
19 (2005). While petitioner is correct that *Friends of the Metolius v. Jefferson*

¹ Petitioner does not argue that the decision became final at a later date based upon a local rule or ordinance. OAR 661-010-0010(3).

1 *County* stands for the proposition that timely service of a NITA is not
2 jurisdictional, *service* of the NITA and *filing* of a NITA are different things.
3 Timely *service* of a NITA is not jurisdictional, but timely *filing* of a NITA is
4 jurisdictional. *Winner v. Multnomah County*, 30 Or LUBA 420, 423 (1996).
5 Petitioner's argument does not provide a basis to extend the deadline for filing
6 the NITA.

7 Finally, petitioner argues that a NITA must be filed 21 *business* days after
8 a decision is final. Petitioner cites *Kine v. Deschutes County*, 72 Or LUBA 423
9 (2015) for this proposition. *Kine* involved the application of what is now OAR
10 661-010-0075(6), which provides:

11 "Time deadlines in these rules shall be computed by excluding the
12 first day and including the last day. If the last day is Saturday,
13 Sunday or other state or federal legal holiday, the act must be
14 performed on the next working day."²

15 As the county points out, under OAR 661-010-0075(6), time deadlines are
16 not computed by excluding *all* weekends and holidays. Instead, weekends and
17 holidays are only excluded if they are the last day of the time deadline. In *Kine*,
18 the time deadline was the day after Thanksgiving, which was a state holiday.
19 Under the rule, the time deadline was extended to the next Monday. *Kine* does
20 not stand for the proposition that only business days count towards the 21-day

² In *Kine* this rule was codified at OAR 661-010-0075(8).

1 deadline for filing a NITA. Petitioner's argument does not provide a basis to
2 extend the deadline for filing the NITA.

3 The challenged decision was final on November 21, 2024. The NITA was
4 due December 12, 2024. The NITA was not filed until December 20, 2024 – 8
5 days late. Petitioner has not provided a basis to extend the deadline for filing the
6 NITA. Therefore, the NITA was not timely filed.

7 The appeal is dismissed.