

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

CENTRAL OREGON LANDWATCH,
Petitioner,

and

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON,
Intervenor-Petitioner,

vs.

DESCHUTES COUNTY,
Respondent,

and

KAMERON DELASHMUTT,
CENTRAL LAND AND CATTLE COMPANY, LLC, and
PINNACLE UTILITIES, LLC,
Intervenors-Respondents.

LUBA No. 2025-050

FINAL OPINION
AND ORDER

Appeal from Deschutes County.

Carol E. Macbeth represented petitioner.

Josh Newton represented intervenor-petitioner.

David Doyle represented respondent.

J. Kenneth Katzaroff represented intervenors-respondents.

1 ZAMUDIO, Board Chair; BASSHAM, Board Member; WILSON, Board
2 Member, participated in the decision.

3
4 DISMISSED 12/05/2025

5
6 You are entitled to judicial review of this Order. Judicial review is
7 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a county decision approving a modification to a destination resort final master plan.

MOTION TO DISMISS

Kameron Delashmutt, Central Land and Cattle Company, LLC, and Pinnacle Utilities, LLC (intervenors-respondents) and the county (collectively, respondents) move to dismiss this appeal for lack of jurisdiction on the basis that petitioner's notice of intent to appeal (NITA) was untimely filed. We grant the motion to dismiss for the reasons that follow.

The challenged decision became final on July 30, 2025.¹ The deadline to file an appeal was August 20, 2025. *See* ORS 197.830(9) (providing that an appeal must "be filed no later than 21 days after the date the decision sought to be reviewed becomes final"). The legislature did not specify the manner of filing a NITA or prescribe how LUBA should determine the date of filing. ORS 197.830. The legislature authorized LUBA to adopt rules governing LUBA appeals. ORS 197.820(4). OAR 661-010-0015(1)(b) provides that the date of filing a NITA is:

¹ The challenged decision was appealed by other petitioners in LUBA Nos. 2025-0047/048/049. We consolidated this appeal with those appeals. We bifurcate the appeals in a separate order issued contemporaneously with this decision.

1 “(A) The date the Notice is received by the Board;

2 “(B) The date the Notice is mailed, provided it is mailed by
3 registered or certified mail, *and the party filing the Notice has proof*
4 *from the post office of such mailing date. If the date of mailing is*
5 *relied upon as the date of filing, the date of the receipt stamped by*
6 *the United States Postal Service showing the date mailed and the*
7 *certified or registered number is the date of filing; or*

8 “(C) The date the Notice is deposited with or dispatched for
9 delivery by a commercial delivery service, *provided the party filing*
10 *the Notice has proof from the commercial delivery service of such*
11 *deposit or dispatch date. Proof of such deposit or dispatch date*
12 *includes a receipt from the commercial delivery service showing the*
13 *date the Notice is deposited with the commercial delivery service or*
14 *a receipt from the commercial delivery service’s online tracking*
15 *service showing the date the Notice is dispatched for delivery by the*
16 *commercial delivery service.” (Emphases added.)*

17 If a NITA is filed after the 21-day deadline then “the appeal shall be dismissed.”

18 OAR 661-010-0015(1)(a). “Failure to comply with the time limit for filing a
19 notice of intent to appeal under OAR 661-010-0015(1) * * * is not a technical
20 violation.” OAR 661-010-0005.

21 The NITA was received by LUBA on August 25, 2025, bearing a first-
22 class mail postage sticker and a certified mail label and barcode. The NITA
23 certificate of filing states that the NITA was filed by certified mail on August 20,
24 2025. Respondents move to dismiss, arguing that “[t]racking history for [the
25 NITA envelope] shows that it was put into the mail in Portland, Oregon on
26 August 21, 2025[,]” a day after the August 20, 2025, deadline. Motion to Dismiss
27 3. As an exhibit to the motion to dismiss, respondents attach a printout of the
28 United States Postal Service (USPS) tracking history showing that the NITA

1 envelope “[a]rrived at USPS Facility” in Portland, Oregon, on August 21, 2025,
2 with no prior tracking entries. Motion to Dismiss Ex 2.

3 Petitioner responds that they “deposited [the NITA] with the USPS on
4 August 20, 2025, at 11:40 AM, in Bend, Oregon.” Petitioner Response to Motion
5 to Dismiss 5. Petitioner submits as proof of an August 20, 2025, mailing date (1)
6 the date on a Pack Ship & More #3 receipt for postage, (2) the handwritten date
7 on an unstamped certified mail receipt, and (3) the same USPS tracking history
8 provided by respondents. An e-Receipt from Pack Ship & More #3, in Bend,
9 Oregon, dated August 20, 2025, contains two line items above the purchase total
10 and tender of payment. The first item is “USPS First Cl 273” for \$1,037.40. The
11 second is “USPS First Class Mail Flat” for \$15.48. Petitioner’s Response to
12 Motion to Dismiss Ex B. Below the total and tender is a line “Total shipments:
13 0.” *Id.* The certified mail receipt includes a tracking number that matches the
14 certified mail label on the NITA envelope received by LUBA. Response to
15 Motion to Dismiss Ex E. The certified mail receipt is not stamped by the USPS
16 in the location that states “Postmark Here.” In the space for the postmark stamp,
17 there is a handwritten date “8/20.” *Id.*²

² Petitioner explains that they “customarily obtained proof of date of filing for a certified mail receipt in red ink from a postal meter stamp, but learned on August 20, 2025, that such meters were decertified by the USPS on December 31, 2024.” Petitioner’s Response to Motion to Dismiss 9 n 1.

1 Petitioner cites our order in *Miller v. City of Maupin*, LUBA No 2025-027
2 (Aug 5, 2025) to support their assertion that petitioner’s proof of mailing
3 deviations from our rules are mere “technical violations” that should not result in
4 dismissal of this appeal. OAR 661-010-0005.³ Respondents respond, and we
5 agree, that *Miller* is distinguishable. In *Miller*, the petitioner mailed the NITA by
6 Priority Mail Express on the day of the NITA filing deadline. The city moved to
7 dismiss the appeal, arguing that the NITA filing date was the date that we
8 received the NITA, and not the mailing date, because the petitioner mailed the
9 NITA by Priority Mail Express and not registered or certified mail, as specified
10 in OAR 661-010-0015(1)(b)(B). Petitioner opposed the motion to dismiss and
11 submitted as proof of the mailing date a receipt from the USPS of their postal
12 transaction, with the tracking number of the Priority Mail Express NITA
13 envelope and the estimated date of delivery, as well as a printout of the tracking

³ OAR 661-010-0005 provides:

“These rules are intended to promote the speediest practicable review of land use decisions and limited land use decisions, in accordance with ORS 197.805-197.855, while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice. Technical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision or limited land use decision. Failure to comply with the time limit for filing a notice of intent to appeal under OAR 661-010-0015(1) or a petition for review under OAR 661-010-0030(1) is not a technical violation.”

1 information for the NITA envelope. Importantly, the USPS receipt provided
2 objective proof of the date that the petitioner deposited the NITA envelope with
3 the USPS. We agreed with the petitioner that OAR 661-010-0015(1)(b)(B) was
4 substantively satisfied and the petitioner's failure to select certified or registered
5 mail was a technical violation.

6 Petitioner argues that the provided evidence collectively, objectively
7 demonstrates the NITA was dispatched from Bend on August 20, 2025, because
8 the first-class postage sticker on the NITA parcel contains the zip-code for Bend,
9 the receipt from Pack Ship & More #3 is in Bend, and the USPS tracking
10 information shows the arrival of the parcel in Portland on August 21, 2025.
11 Respondents respond, and we agree, that petitioner's evidence, individually and
12 collectively, does not objectively demonstrate that petitioner deposited the NITA
13 envelope with a parcel delivery service provider on August 20, 2025.

14 The date on the Pack Ship & More #3 receipt demonstrates that petitioner
15 purchased postage on August 20, 2025, at 11:40 a.m., but it does not demonstrate
16 that petitioner deposited the NITA parcel either with Pack Ship & More #3 or the
17 USPS on August 20, 2025. That receipt is dated, but it does not contain any
18 information linking the postage purchase to the NITA parcel deposit, such as
19 parcel tracking information. An informal, handwritten date on the unstamped
20 certified mail receipt is not objective proof because it lacks any verification from
21 the USPS of the date of deposit with the USPS. The first-class postage sticker on
22 the NITA parcel does not include a postage date. The USPS tracking information

1 shows that the NITA parcel arrived in Portland on August 21, 2025, but it does
2 not demonstrate when or where the NITA parcel was deposited. Petitioner has
3 not provided objective proof of the date that the NITA was deposited or
4 dispatched. Accordingly, the NITA filing date is the date that we received the
5 NITA.

6 The Board received the NITA on August 25, 2025, five days after the
7 NITA filing deadline.⁴ Petitioner's NITA is therefore not "deemed timely filed,
8 and the appeal shall be dismissed." OAR 661-010-0015(1); OAR 661-010-0005.

9 The appeal is dismissed.

⁴ Respondents note that the USPS tracking information states that the NITA parcel was "delivered to LUBA's office in Salem, Oregon on August 23, 2025." Motion to Dismiss 3 (citing Motion to Dismiss Ex 1, at 3). August 23, 2025, was a Saturday and LUBA's office was closed. The date the NITA was "received by the Board" was the following Monday, August 25, 2025. OAR 661-010-0015(1)(b)(A); OAR 661-010-0075(6).