

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

3  
4                   LYDIA HAMILTON,  
5                                   *Petitioner,*

6  
7                                   vs.

8  
9                   CURRY COUNTY,  
10                                   *Respondent.*

12/22/17 AM 8:21 LU99

11  
12                   LUBA No. 2017-109

13  
14                                   FINAL OPINION  
15                                   AND ORDER

16  
17           Appeal from Curry County.

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19           Lydia Hamilton, Gold Beach, represented herself.

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21           John R. HuttI, Curry County Counsel, Gold Beach, represented  
22 respondent.

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24           RYAN, Board Chair; BASSHAM, Board Member; HOLSTUN, Board  
25 Member, participated in the decision.

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27                   DISMISSED                   12/22/2017

28  
29           You are entitled to judicial review of this Order. Judicial review is  
30 governed by the provisions of ORS 197.850.

1 Ryan, Board Member.

2 On November 13, 2017, petitioner filed a notice of intent to appeal  
3 (NITA). The NITA states that “[t]he Decision became final on October 29,  
4 2017, and involves the planning commission referral of the applicants directly  
5 to the city council for approval of the conditional use permit.” NITA 1. The  
6 NITA identifies Curry County as the respondent.

7 On November 27, 2017, the county moved to dismiss the appeal, arguing  
8 that the county did not make the land use decision identified in the NITA and is  
9 not the respondent, and therefore the NITA does not satisfy the requirements of  
10 OAR 661-01-0015.<sup>1</sup> As the county points out, the county has a board of  
11 commissioners, not a city council. In an order dated November 30, 2017, we  
12 suspended the appeal, and gave petitioner the time set forth in our rules to  
13 respond to the county’s motion to dismiss.

14 Petitioner has not responded to the county’s motion to dismiss. It is  
15 petitioner’s burden to establish that LUBA has jurisdiction over an appeal.

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<sup>1</sup> OAR 661-010-0015(3)(a) requires that the NITA include a caption with the “name of the governing body, identifying the governing body as respondent.” OAR 661-010-0015(3)(f)(B) requires that the NITA include the name and telephone number of the “governing body and the governing body’s legal counsel.” The main purpose of these requirements is to notify LUBA and the governmental entity that made the challenged decision that the decision has been appealed, so that the governmental entity can take appropriate steps, such as preparing the record or perhaps making an appearance before LUBA to challenge the NITA. *Stoloff v. City of Portland*, 51 Or LUBA 812, 816-17 (2008).

1 *Billington v. Polk County*, 299 Or 471, 475, 703 P2d 232 (1985). Petitioner has  
2 not met that burden.

3 Accordingly, this appeal is dismissed.

## Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2017-109 on December 22, 2017, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:


John R. Hutt  
Curry County Counsel  
94235 Moore Street Suite 123  
Gold Beach, OR 97444

Lydia Hamilton  
95721 Jerrys Flat  
Gold Beach, OR 97444

Dated this 22nd day of December, 2017.

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Kelly Burgess  
Paralegal



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Kristi Seyfried  
Executive Support Specialist