



1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an agreement dated July 28, 1995  
4 (Agreement) between the city council and the Confederated  
5 Tribes of Siletz Indians of Oregon (Tribe) regarding the  
6 provision of city services to the Tribe's casino and other  
7 matters related to the Tribe's reservation land within the  
8 city.

9 **MOTION TO APPEAR AS AMICUS**

10 The Tribe moves pursuant to OAR 661-10-052 to appear as  
11 an amicus. The Tribe has filed an amicus brief. There is  
12 no opposition to the motion to appear as an amicus, and it  
13 is allowed.

14 **FACTS**

15 Prior to its acquisition by the Tribe, the subject  
16 property was zoned Recreation-Commercial (R-C) and  
17 designated Commercial Recreation District in the city's  
18 comprehensive plan. On February 27, 1989, the city council  
19 approved a preliminary master plan, subject to conditions,  
20 for a planned unit development (PUD). The subject property  
21 is comprised of parcels 1 and 4 of the PUD. Parcel 1 was  
22 restricted to development as a convention center "or should  
23 that fail within 6 years, then as Commercial uses, either  
24 retail or hotel." Record 1439. Parcel 4 was restricted to  
25 commercial retail uses. There is apparently no dispute that  
26 if the city's regulations govern the development of the

1 property, these restrictions apply.

2 The recitals in the Agreement explain what occurred in  
3 the years following the 1989 PUD approval:

4 "A. Pursuant to Public Law 103-345, certain land  
5 within the boundaries of the City (Land) has  
6 become Tribal reservation land held in trust  
7 by the United States Secretary of Interior.

8 "B. The Tribe and the State of Oregon have  
9 entered into a Tribal-State Compact for  
10 Regulation of Class III Gaming Between the  
11 Confederated Tribes of Siletz Indians of  
12 Oregon and the State of Oregon (Compact),  
13 relating to the Tribe's proposal to construct  
14 and operate a temporary and then a permanent  
15 gaming facility on the Land.

16 "C. The Tribe is in the process of constructing  
17 first a temporary gaming facility (Temporary  
18 Facility) and then a permanent  
19 gaming/convention facility (Permanent  
20 Facility) on the Land and intends to operate  
21 the facilities (Facilities), subject to the  
22 requirements and procedures of the federal  
23 Indian Gaming Regulatory Act.

24 "D. The Tribe asserts that the Land and  
25 activities on it, under federal law  
26 applicable to Tribal reservation lands, are  
27 not subject to the regulatory authority of  
28 the City. The Tribe further asserts that the  
29 Land and activities on it, since they are  
30 within the boundaries of the City, are  
31 entitled to receive those City services that  
32 the Land's occupants desire to receive, at  
33 least so long as they are willing to pay for  
34 the services on the same basis as others  
35 within the City pay for the services.

36 "E. The City Attorney has prepared legal opinions  
37 indicating that the Tribe's assertions  
38 probably are correct but that the matter is  
39 not free from some doubt. Based on this, the  
40 City has expressed an intention to accept the

1 Tribe's position regarding the City's lack of  
2 regulatory authority over the Land and  
3 activities on it and its obligation to  
4 provide services to the Land and activities  
5 on it, subject to a satisfactory agreement  
6 being negotiated and executed between the  
7 Tribe and the City.

8 "F. The Tribe and the City have been engaged in  
9 negotiations toward an agreement, with each  
10 of them reserving the right to file any  
11 appropriate litigation in the event of their  
12 failure to reach a mutually acceptable  
13 agreement. They now have reached and wish to  
14 execute an agreement, in avoidance of  
15 litigation and in settlement of matters they  
16 presently have identified as needing  
17 resolution between them." Record 7.

18 The Agreement addresses water and sewer service to the  
19 temporary and permanent casinos, storm drainage,  
20 transportation, solid waste collection, code reviews and  
21 inspections, law enforcement and alcohol service. It  
22 provides remedies for breach. Record 7-25.

### 23 JURISDICTION

24 Subject to exceptions that are not relevant here,  
25 ORS 197.825(1) grants LUBA exclusive jurisdiction "to review  
26 any land use decision or limited land use decision of a  
27 local government, special district or a state agency in the  
28 manner provided in ORS 197.830 to 197.845." Although the  
29 subject property is within the city's urban growth boundary,  
30 the challenged decision is neither a land use decision nor a  
31 limited land use decision, as these are defined in  
32 ORS 197.015(10) and ORS 197.015(12). The Agreement does not  
33 purport to adopt, amend or apply the Statewide Planning

1 Goals or the city's comprehensive plan or land use  
2 regulations. It instead provides for the grant of various  
3 ministerial permits and for appropriate inspections, as well  
4 as for services completely unrelated to land use.  
5 Petitioner's contention that the Agreement is, nevertheless,  
6 a land use decision is as follows:

7 "The basis for the appeal is that the City, by  
8 entering into the Agreement to A) allow the change  
9 of use on parcels 1 and 4 and B) provide water,  
10 sewer service and other facilities, has given  
11 approval to the Siletz Tribe's de facto  
12 development application for a permanent casino  
13 gaming center in an existing PUD on land  
14 restricted in use to a convention center/theatre  
15 and a temporary casino on land restricted to  
16 commercial/retail uses. In so doing, the City has  
17 1) failed to follow the procedural requirements of  
18 notice of open hearings; 2) failed to follow and  
19 properly apply local and state land use laws,  
20 regulations, goals and comprehensive plans; and 3)  
21 violated the due process clauses of the United  
22 States Constitution. These decisions have a  
23 significant impact on present and future land  
24 uses." Petition for Review 7.

25 In short, petitioner contends not that the city has  
26 incorrectly applied its comprehensive plan and land use  
27 regulations, but that the city has not applied them at all.

28 Our jurisdiction is limited to the review of land use  
29 and limited land use decisions. ORS 197.825(1). The  
30 circuit courts retain jurisdiction over proceedings "brought  
31 to enforce the provisions of an adopted comprehensive plan  
32 or land use regulations." ORS 197.825(3)(a). Since  
33 petitioner's objective is simply to require the city to  
34 apply its comprehensive plan or land use regulations,

1 petitioner's remedy lies in circuit court, not at LUBA.  
2 Doughton v. Douglas County, 90 Or App 49, 750 P2d 1174  
3 (1988).

4       This appeal is dismissed.