



**NATURE OF THE DECISION**

Petitioner appeals a land use compatibility statement (LUCS) issued by the county to petitioner in connection with petitioner’s application to the Oregon Liquor Control Commission (OLCC) for a retail marijuana license. The challenged LUCS determined that petitioner’s proposed land use is prohibited in the county’s Tourist Commercial (C-T) zone. A copy of the challenged decision is attached to petitioner’s Notice of Intent to Appeal (NITA).

**JURISDICTION**

ORS 475B.063 provides:

“(1) Prior to the issuance of a license under ORS 475B.070, 475B.090, 475B.100 or 475B.110, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

“(2) A city or county that receives a request for a land use compatibility statement under this section must act on that request within 21 days of:

“(a) Receipt of the request, if the land use is allowable as an outright permitted use; or

“(b) Final local permit approval, if the land use is allowable as a conditional use.

1           “(3) A city or county action concerning a land use compatibility  
2           statement under this section is not a land use decision for  
3           purposes of ORS chapter 195, 196, 197 or 215.”

4   In an order dated April 18, 2017, and in a subsequent order dated May 25,  
5   2017, we cited and quoted ORS 475B.063(3) and questioned LUBA’s  
6   jurisdiction over the appeal. We allowed the parties the opportunity to brief the  
7   jurisdictional question before the record was filed. Neither petitioner nor the  
8   county responded to our orders or filed jurisdictional memoranda. We now  
9   resolve the jurisdictional question and conclude we lack jurisdiction over the  
10  appeal.

11           LUBA has exclusive jurisdiction to review land use decisions. ORS  
12  197.825(1). ORS 197.015(10)(a)(A)(iv) defines the term “[l]and use decision”  
13  to include “[a] final decision” “by a local government” “that concerns the \* \* \*  
14  application of” “[a] land use regulation[.]” The county’s decision that the  
15  proposed use is prohibited in the C-T zone almost certainly concerns the  
16  “application of” the county’s zoning ordinance. However, ORS 475B.063(3)  
17  provides in relevant part, without ambiguity, that “[a] \* \* \* county action  
18  concerning a land use compatibility statement under this section is not a land  
19  use decision for purposes of ORS chapter \* \* \* 197[.]” The challenged LUCS  
20  includes the following explanation for the requested county determination:

1           “Section 34(4)(a) of 2015 Oregon Laws, Chapter 614 requires  
2           OLCC to request and obtain the LUCS and have a positive LUCS  
3           prior to issuing a license.”<sup>1</sup>

4           As the appealing party, petitioner bears the burden of establishing that  
5           LUBA has jurisdiction to review the challenged decision. *Billington v. Polk*  
6           *County*, 299 Or 471, 475, 703 P2d 232 (1985). Petitioner has not established  
7           that LUBA has jurisdiction to review the challenged decision. The challenged  
8           decision is a county action concerning a LUCS requested pursuant to ORS  
9           475B.063(3), and pursuant to ORS 475B.063(3), is not a land use decision for  
10          purposes of ORS Chapter 197 and the definition of “land use decision” in ORS  
11          197.015(10).

12          The appeal is dismissed.

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<sup>1</sup> Section 34(4)(a) of 2015 Oregon Laws, Chapter 614 is codified at ORS 475B.063.