

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 JENNIFER AKIYAMA, DAVID ALLEN,
5 KIMBERLY D.M. BERGSTROM, ERIC C.M. BERGSTROM,
6 PETER BIRCH, KATHY HAMEL, MARK BUXTON,
7 ROBIN BUXTON, NATE CASTILLO, MINERVA CASTILLO,
8 DOUG COATES, CARL T. COFFMAN, PAUL S. COSGROVE,
9 EMILY DRAPER, CHRISTINE EISENSCHMIDT,
10 ROBERT GOVENDER-TOWLE, JUSTIN GREENE,
11 NICOLE RALSTON, COLIN GREY, KAREN JACKSON,
12 BRIAN JOHNSON, THE SMITH JOHNSON-LEUPP LLC,
13 JUSTIN JONES, TRUSTEE, CARRIE KOEPKE,
14 CASCADIA INVESTMENT PROPERTIES, INC.,
15 LANA KOWALSKI, MIKE KOWALSKI, RON LOCKWOOD,
16 MARTHA LOCKWOOD, RICHARD LOFTON,
17 JEANINE LOFTON HENDRIX, ANDY LONG,
18 SANDRA Y. MANNING, TRUSTEE, BONNIE MCDOWELL,
19 PHIL ZAPF, JOHN P. MCLOUGHLIN, KATIE MCLOUGHLIN,
20 DESIREE MCMENAMIN, DUSTIN MCMENAMIN,
21 MARIA M. MEYER, JOHN MEYER, SKIP PATTEN,
22 BRIAN PATTERSON, BARBARA PATTERSON,
23 STEPHEN PIUCCI, MELISSA POWERS, ANTHONY POWER,
24 HOLLY POWER, SUSAN SCHOMBURG, MICHAEL SMITH,
25 JANELL WEEKS, HEATHER L. WEIGLER, JAKE WEIGLER,
26 KENNETH G. WILLETT, KEVIN WINGERT,
27 BRENDA HUFFSTUTTLER, JORDAN WINTERS,
28 and RACHEL WINTERS,

29 *Petitioners,*

30
31 vs.

32
33 TILLAMOOK COUNTY,
34 *Respondent,*

35
36 and

37
38 TOM PREHODITCH, JERRY KEENE, VICKIE PREHODITCH,

1 JACKI HINTON, DAVID BOONE, BARBARA TRIPLETT,
2 AMY BELL, GARY BILLINGSLEY, MICHAEL WOODIN,
3 DAVE BENNETH, CAROL HOKE, LAURIE KOVACK,
4 BRUCE BISHOP, MARK L. ROBERTS, JOANIE BLUM,
5 CANDICE MILLER, and GREGORY MILLER,
6 *Intervenors-Respondents.*
7

8 LUBA No. 2023-063
9

10 FINAL OPINION
11 AND ORDER
12

13 Appeal from Tillamook County.
14

15 David J. Petersen represented petitioners.
16

17 Daniel H. Kearns represented respondent.
18

19 Tom Prehoditch, Jerry Keene, Vickie Prehoditch, Jacki Hinton, David
20 Boone, Barbara Triplett, Amy Bell, Gary Billingsley, Michael Woodin, Dave
21 Benneth, Carol Hoke, Laurie Kovack, Bruce Bishop, Mark L. Roberts, Joanie
22 Blum, Candice Miller, and Gregory Miller represented themselves.
23

24 RYAN, Board Chair; RUDD, Board Member; ZAMUDIO, Board
25 Member, participated in the decision.
26

27 DISMISSED 02/09/2024
28

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

NATURE OF THE DECISION

Petitioners appeal a July 19, 2023 county ordinance (Ordinance 84-2) that amends Ordinance 84, the Tillamook County Short-Term Rental Ordinance relating to the regulation and licensing of short-term rental use of residential dwelling units.

BACKGROUND

In 2017, the county adopted Ordinance 84, which established the Tillamook County Short-Term Rental Ordinance.¹ Ordinance 84 (2017) included, among other things, definitions for terms used in Ordinance 84, standards for short-term rental of dwelling units, required owners to acquire and pay for a short-term rental license prior to occupancy of a dwelling unit for short-term rental purposes, and provided for revocation of a license for noncompliance with the ordinance or with the county’s ordinances imposing a Transient Lodging Tax. In 2019, the county adopted Ordinance 84-1, which amended the Short-Term Rental Ordinance in ways that are not relevant to this appeal. Ordinance 84-1 (2019).

¹ Prior to 2017, in 2009, the county enacted Ordinance 69, the “Tillamook County Short-Term Rental Ordinance.” *See* Response to Motion to Dismiss 4. Ordinance 69 (2009) required owners of dwellings used for short-term rentals to pay a fee and obtain a county short-term rental permit in order to operate a short-term rental. Ordinance 69, section 7 (2009). Ordinance 69 was amended in 2012 to include additional standards and increase fees, and included a five-year sunset. Ordinance 69-1 (2012).

1 On July 19, 2023, the county adopted Ordinance 84-2, which repeals
2 Ordinance 84-1 and establishes short-term rental operational requirements,
3 standards, and fees; continues the licensing program; and creates penalties for
4 violations of the Short-Term Rental Ordinance. Ordinance 84-2 also (1) limits
5 the number of new short-term rental licenses that can be issued for each qualified
6 licensee to one license (Ordinance 84-2, section .040(B)) (“This provision applies
7 only to applications for new STR licenses submitted after the effective date of
8 this 2023 provision, not renewals or lawfully transferred licenses”); (2)
9 establishes geographical subareas of the county and limits the number of short-
10 term rental licenses that may be issued for each subarea (Ordinance 84-2, section
11 .040(D)); (3) establishes a density limitation on the issuance of short-term rental
12 licenses (Ordinance 84-2, section .040(E)); and (4) establishes a minimum rental
13 requirement to qualify for license renewal (Ordinance 84-2, section .040(F)).

14 On August 8, 2023, petitioners filed a notice of intent to appeal Ordinance
15 84-2. On September 25, 2023, the county and lead intervenor-respondent
16 (together, respondents) filed a motion to dismiss the appeal for lack of
17 jurisdiction. On November 20, 2023, petitioners filed their response to the motion
18 to dismiss, along with an appendix containing various exhibits (A through T). On
19 December 1, 2023, respondents filed a reply, and on December 11, 2023, the
20 county filed a motion to strike exhibits H, S, and T from petitioners’ appendix.

1 **MOTION TO STRIKE/MOTION TO TAKE EVIDENCE**

2 The county moves to strike exhibits H, S, and T from petitioners' appendix
3 to their Response to Motion to Dismiss. Exhibits H contains signed declarations
4 from each of the 21 petitioners attesting to how long they have owned their
5 dwellings located in the county. Exhibits S and T are legislative history for ORS
6 215.130. Petitioners filed a response and a concurrent motion to take evidence
7 not in the record. Because we conclude below that we lack jurisdiction over the
8 appeal, we need not resolve either motion.

9 **JURISDICTION**

10 LUBA has exclusive jurisdiction to review "land use decisions." ORS
11 197.825(1). "Land use decision" includes a local government decision that
12 "concerns the adoption, amendment, or application of:

- 13 "(i) The goals;
- 14 "(ii) A comprehensive plan provision;
- 15 "(iii) A land use regulation; or
- 16 "(iv) A new land use regulation[.]" ORS 197.015(10)(a)(A).

17 "Land use regulation" means "any local government zoning ordinance,
18 land division ordinance[,] * * * or similar general ordinance establishing
19 standards for implementing a comprehensive plan." ORS 197.015(11). "New
20 land use regulation" means "a land use regulation other than an amendment to an
21 acknowledged land use regulation adopted by a local government that already

1 has a comprehensive plan and land regulations acknowledged under ORS
2 197.251.” ORS 197.015(17).

3 As the party seeking LUBA’s review, the burden is on petitioners to
4 establish that the appealed decision is a land use decision. *Emerald Cove LLC v.*
5 *City of Lincoln City*, 73 Or LUBA 72, 76 (2016). As we explain in more detail
6 below, petitioners argue that (1) Ordinance 84 (2017) is a “land use regulation”
7 and Ordinance 84-2 is an “amendment * * * of * * * a land use regulation;” (2)
8 Ordinance 84-2 is a “new land use regulation;” (3) Ordinance 84-2 qualifies as
9 the rezoning of property within the meaning of ORS 215.503(9); and (4) LUBA
10 has jurisdiction over Ordinance 84-2 because it has a significant impact on land
11 uses.

12 **A. Ordinance 84 (2017) is not a land use regulation and Ordinance**
13 **84-2 is not a new land use regulation.**

14 In a combined argument, petitioners argue that (1) Ordinance 84 (2017) is
15 a “land use regulation” within the meaning of ORS 197.015(11) and Ordinance
16 84-2 amends that land use regulation, and (2) Ordinance 84-2 is a “new land use
17 regulation” within the meaning of ORS 197.015(10)(a)(A)(iv) and 197.015(11).
18 The county responds that Ordinance 84 (2017) is not a “land use regulation”
19 because it does not establish standards for implementing the Tillamook County
20 Comprehensive Plan (TCCP). The county also argues that Ordinance 84-2 is not
21 a “new land use regulation” for the same reason. According to the county,
22 Ordinance 84-2 is a business licensing regulation and licenses issued under

1 Ordinance 84-2 are permission to operate a short-term rental business on a
2 property for one year, and nothing more. The county argues that nothing in the
3 Tillamook County Land Use Ordinance (LUO) or the TCCP either allows or
4 prohibits use of a dwelling for operation of a short-term rental business.

5 In *Winters v. Tillamook County*, ___ Or LUBA ___ (LUBA No 2023-030,
6 Sept 29, 2023), *aff'd*, 330 Or App 188 (2024), we rejected the petitioners'
7 argument that Ordinance 84 (2017) is a "land use regulation" as defined in ORS
8 197.015(11) and that the challenged board of commissioners' order suspending
9 issuance of licenses under Ordinance 84 (2017) was an amendment of a land use
10 regulation. *Id.* at slip op 8-9. Petitioners do not address *Winters*. For the reasons
11 explained below, we adhere to the holding in *Winters*.

12 In support of their argument, petitioners first argue that "[d]uring the
13 hearings on [Ordinance 84-2], County staff and elected officials agreed that
14 [Ordinance 84 (2017)] and its predecessors were land use regulations," and
15 "acknowledged that the term 'permit' (as used in [Ordinance 84]) has a land use
16 connotation." Response to Motion to Dismiss 9-10. The county responds that
17 petitioners mischaracterize staff and officials' statements, and that, in any event,
18 explanatory statements made by staff or officials are irrelevant in determining
19 whether Ordinance 84 (2017) is a "land use regulation." As the county points out
20 in its reply, local governments regularly issue various types of "permits" that are
21 not statutory land use permits as defined in ORS 215.402(4) and are not subject
22 to our jurisdiction. *See, e.g., Ramsey v. City of Portland*, 30 Or LUBA 212, 213,

1 217-18 (1995) (city ordinance requiring a tree-cutting “permit” was not a land
2 use regulation subject to LUBA’s jurisdiction). We conclude that regardless of
3 whether county staff or officials stated that they believed Ordinance 84 (2017) or
4 Ordinance 84-2 were land use regulations, the statements do not demonstrate that
5 Ordinance 84 (2017) or Ordinance 84-2 establish standards for implementing the
6 county’s comprehensive plan and are therefore land use regulations under ORS
7 197.015(11).

8 Petitioners next argue that Ordinance 84-2 is a new land use regulation
9 because, according to petitioners, it has a “clear connection” to the LUO and the
10 TCCP. In *Rest-Haven Memorial Park v. City of Eugene*, we explained that

11 “[w]here a local government makes it clear that the ordinance it is
12 adopting is not intended to be a land use regulation, LUBA does not
13 have jurisdiction to review such an ordinance, provided there is no
14 clear connection between the ordinance *and the comprehensive*
15 *plan*. In that circumstance, and with that limitation, the ordinance is
16 not a land use regulation even though it may arguably further some
17 comprehensive plan provisions in a general or indirect way.” 39 Or
18 LUBA 282, 288, *aff’d*, 175 Or App 419, 28 P3d 1229 (2001)
19 (emphasis added).

20 *See also Ramsey*, 30 Or LUBA at 217 (requiring a “clear” connection between
21 the city ordinance alleged to be a land use decision and the city’s comprehensive
22 plan for LUBA to have jurisdiction to review decisions related to the ordinance).²

² Ordinance 84-2, section .020(E), under the heading “Purpose and Scope,” provides:

1 Petitioners cite LUO 1.030(2), which provides that “[a]ny applications or
2 any decisions based upon any State or local regulation administered by the
3 Director [of the Department of Community Development], the Department [of
4 Community Development], the [Planning] Commission or the Board, shall
5 constitute an application or a decision pursuant to [the LUO].” Petitioners point
6 out that Ordinance 84-2 confers authority to administer its provisions on the
7 Director of the Department of Community Development (Director). Petitioners
8 argue that pursuant to LUO 1.030(2), any decisions made by the Director in the
9 administration of Ordinance 84-2 are thus made “pursuant to” the LUO.
10 Response to Motion to Dismiss 11. Petitioners argue that because the LUO
11 implements the TCCP, there is a “clear connection” between the administration
12 provisions of Ordinance 84-2 and the comprehensive plan.

13 The clear connection required when the local government has stated that
14 the ordinance is not a land use regulation must be between the challenged
15 ordinance and the county’s comprehensive plan. *Rest-Haven*, 39 Or LUBA at
16 288. We explained in *Buys v. City of Portland* that a city’s design guide is a land
17 use regulation if it establishes standards for implementing a comprehensive plan,

“The requirements of this Ordinance are not ‘land use regulations’ as defined in ORS 197.015 or 195.300(14). The regulations contained in this Ordinance are not intended to, nor do they, implement the Tillamook County Comprehensive Plan, the Tillamook County Land Use Ordinance, nor do they implement any of the State-wide Planning Goals.”

1 stating: “Where a provision establishes standards and the connection between the
2 disputed standards and the comprehensive plan is ‘direct and clear,’ the standards
3 will be found to implement the comprehensive plan.” 69 Or LUBA 486, 491
4 (2014). Here, the requisite clear connection is not present where the claimed
5 connection between the challenged ordinance and county’s comprehensive plan
6 is through a zoning ordinance provision that does not clearly implement the
7 comprehensive plan. We disagree that petitioners have established a clear
8 connection between Ordinance 84-2 and the TCCP based on LUO 1.030(2). At
9 best, petitioners have established a tenuous connection between Ordinance 84-2
10 and a general provision of the LUO, not the TCCP.

11 Petitioners further cite TCCP Goal 1 (Citizen Involvement), Goal 7
12 (Hazards), Goal 10 (Housing), and Goal 14 (Urbanization) to support a clear
13 connection between Ordinance 84-2 and the TCCP. Petitioners quote the TCCP
14 Goal 1 policy to “continue use of Citizen Advisory Committees and special
15 advisory groups to provide advice and implementation of the [TCCP].”
16 Petitioners argue that the participation of the county’s Citizen Advisory
17 Committees (CACs) in the process leading to the adoption of Ordinance 84-2
18 “makes clear that [Ordinance 84-2] is part of the ‘maintenance, update and
19 implementation of’ the TCCP, in furtherance of Goal 1.” Response to Motion to
20 Dismiss 14. The county responds that CACs participate in non-land use matters
21 in an advisory capacity, and its participation does not mean that Ordinance 84-2
22 establishes standards for implementing the TCCP.

1 Petitioners cite TCCP Goal 7’s policy to “take reasonable measures to
2 protect life and property * * * from the impact of a * * * tsunami,” and argue that
3 Ordinance 84-2’s requirement to post the Department of Geology and Mineral
4 Industries’ Tsunami Evacuation Brochure in short-term rentals located in the
5 Tsunami Hazard Overlay Zone implements this policy. Petitioners cite TCCP
6 Goal 10’s policy to “minimize the effect of regulations on housing cost,” and
7 argue that Ordinance 84-2’s stated purpose to “address local affordable and
8 workplace housing needs and increase availability of housing” implements this
9 policy. Finally, petitioners cite TCCP Goals 10 and 14’s requirement to establish
10 UGBs around the county’s “functionally urban unincorporated communities,”
11 and argue that because Ordinance 84-2 establishes boundaries for the purpose of
12 applying limits on the percentage of short-term rentals, Ordinance 84-2
13 implements those plan policies. Petitioners also argue that, even if it failed to do
14 so, the county should have implemented the TCCP in Ordinance 84-2 because
15 Ordinance 84-2 regulates the use of land. Petitioners’ Opposition to Motion to
16 Dismiss 18.

17 We have reviewed petitioners’ arguments and the cited TCCP provisions
18 and conclude that petitioners have not established that Ordinance 84-2 establishes
19 standards that implement the TCCP, or that the county was required and failed to
20 apply any of those TCCP provisions when it adopted Ordinance 84-2. An
21 ordinance’s subject matter may touch on or overlap with some of the same subject
22 matter or policies in a comprehensive plan; however, that type of connection does

1 not demonstrate that the ordinance *establishes standards* for implementing the
2 comprehensive plan or *concerns the application of* the comprehensive plan. ORS
3 197.015(10), (11); *Emerald Cove LLC*, 73 Or LUBA at 78; *Ramsey*, 30 Or LUBA
4 at 213, 217-18; *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252,
5 256-61 (2013).

6 We also disagree with petitioners that Ordinance 84-2 regulates the use of
7 land. As respondents explain, the LUO does not regulate, by either prohibiting or
8 allowing, short-term rental of dwellings at all, and Ordinance 84-2 does not
9 regulate the use of land either. Ordinance 84-2 amends the county's existing
10 short-term rental ordinance to limit the number of short-term rental licenses that
11 can be issued for each qualified licensee to one license, establishes geographical
12 subareas of the county and limits the number of short-term rental licenses that
13 may be issued for each subarea and for unincorporated areas of the county outside
14 of those listed subareas, and establishes a density limitation on the issuance of
15 short-term rental licenses.

16 Finally, petitioners quote Ordinance 84-2, section .040(C), which
17 provides:

18 "No Nonconforming Status Conferred. The fact that an owner of
19 property or other entity may hold a license on the date of adoption
20 of this Ordinance does not confer a property right, land use permit
21 or nonconforming use status under ORS 215.130 to continue
22 operation of a short-term rental. Operation, advertisement, or
23 offering a dwelling unit for short-term rental use, in all cases,

1 requires a valid license.”³

2 Petitioners also quote Ordinance 84-2, section .080(G), which provides:

3 “Zoning Compliance. The property shall be in compliance with all
4 applicable County zoning requirements and any development
5 permits related to the subject property. If the property owner claims
6 any sort of non-conforming use status for any aspect of the property
7 or structures thereon, the property owner shall obtain a
8 nonconforming use verification for those aspects through an
9 appropriate land use decision making process. In no event shall this
10 Ordinance be construed as a land use or development regulation, nor
11 does prior operation of a short-term rental give rise to a
12 nonconforming use right under the County’s land use ordinance.”

13 Citing our order in *Briggs v. Lincoln County*, ___ Or LUBA ___ (Order, LUBA
14 No 2021-118/2022-030, May 17, 2022) (*Briggs Ballot Measure*), petitioners
15 argue that Ordinance 84-2, sections .040(C) and .080(G) “legislatively
16 adjudicate[] that each dwelling of each existing STR permit holder is ineligible
17 for nonconforming use status.” Opposition to Motion to Dismiss 25.

18 The county responds that a short-term rental license is a business license,
19 and that the cited language merely (1) confirms that possessing a short-term rental
20 license does not establish nonconforming use rights to operate a short-term rental
21 business in a dwelling, and (2) references the LUO procedure for adjudicating

³ ORS 215.130(5) provides, in relevant part:

“The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. * * * A change of ownership or occupancy shall be permitted.”

1 nonconforming uses.⁴ We agree with the county that Ordinance 84-2, sections
2 .040(C) and .080(G) do not convert that ordinance into a land use regulation.

3 *Briggs Ballot Measure* was an appeal of a ballot measure that adopted
4 amendments to the county’s short-term rental ordinance that deemed “existing
5 licensed STR uses” in certain zones to be *nonconforming uses that were not*
6 *transferable*. That ran afoul of ORS 215.130(5). Ordinance 84-2 does not do that;
7 it recites that possession of a short-term rental license does not confer
8 nonconforming use status, and that a holder of a license who claims
9 nonconforming use status must establish that status through the nonconforming
10 use verification procedure in the LUO. It does not legislatively predetermine the
11 outcome of a nonconforming use verification application pursuant to the LUO.

12 Petitioners have not established a clear connection between Ordinance 84-
13 2 and the TCCP, and therefore have not established that Ordinance 84-2 is a “new
14 land use regulation” subject to our jurisdiction. ORS 197.015(10)(a)(A)(iv).

15 **B. Ordinance 84-2 is not a “zoning ordinance” and does not rezone**
16 **property.**

17 Relying on ORS 215.503(9), petitioners also argue that Ordinance 84-2 is
18 a “zoning ordinance” within the meaning of ORS 197.015(11) because Ordinance
19 84-2 rezones property by limiting uses that petitioners argue were previously
20 allowed in all zones. ORS 215.503(3) to (7) require local governments to provide

⁴ LUO 7.020 includes the process for verifying a nonconforming use.

1 certain individualized notice when “property is rezoned.” ORS 215.503(9)
2 provides:

3 “*For purposes of this section*, property is rezoned when the
4 governing body of the county:

5 “(a) Changes the base zoning classification of the property; or

6 “(b) Adopts or amends an ordinance in a manner *that limits or*
7 *prohibits land uses* previously allowed in the affected zone.”
8 (Emphases added.)

9 Petitioners argue that Ordinance 84-2 rezones property because it “limits or
10 prohibits” the short-term rental of dwelling units that petitioners argue was
11 previously allowed.

12 We rejected a similar argument in *Briggs v. Lincoln County*, ___ Or LUBA
13 ___ (LUBA No 2021-113, Feb 10, 2022) (*Briggs Ordinance*). In *Briggs*
14 *Ordinance*, we held that ORS 215.503(9) was not relevant in determining
15 whether the county, in enacting a similar short-term rental ordinance, enacted a
16 “new land use regulation” or amended its zoning ordinance. ___ Or LUBA at ___
17 (slip op at 8). We explained that ORS 215.503(9) is a notice statute and does not
18 answer the question of whether the county’s ordinance was effectively an
19 amendment to the county’s comprehensive plan and zoning ordinance. *Id.*
20 Petitioners have similarly failed to establish that Ordinance 84-2 rezones property
21 within the meaning of ORS 215.503(9) or that it is a “zoning ordinance” within
22 the meaning of ORS 197.015(11).

1 We conclude that Ordinance 84 (2017) is not a land use regulation, and
2 therefore that Ordinance 84-2 is not an amendment of a land use regulation.
3 *Winters*, ___ Or LUBA at ___ (slip op at 8-9). We also conclude that Ordinance
4 84-2 is not a new land use regulation. Accordingly, Ordinance 84-2 is not a
5 statutory land use decision under ORS 197.015(10)(a).

6 **C. Ordinance 84-2 is not a “significant impacts” land use decision.**

7 Petitioners argue that even if the Ordinance is not a statutory land use
8 decision, LUBA nevertheless has common law jurisdiction under the significant
9 impacts test. Under the significant impact test, a government decision that has a
10 “significant impact on present or future land use” is a land use decision.
11 *Billington v. Polk County*, 299 Or 471, 479-80, 703 P2d 232 (1985); *see also City*
12 *of Pendleton v. Kerns*, 294 Or 126, 653 P2d 992 (1982). In *Kerns*, the Supreme
13 Court held that a local government decision that is not a statutory land use
14 decision may nonetheless be subject to LUBA’s review if the decision will have
15 a “significant impact” on present or future land uses in the area. 294 Or at 134.
16 To be a significant impacts land use decision, the decision must create “an actual,
17 qualitatively or quantitatively significant impact on present or future land uses.”
18 *Carlson v. City of Dunes City*, 28 Or LUBA 411, 414 (1994). Under the
19 significant impact test, the “expected impacts must be likely to occur as a result
20 of the decision, not speculative.” *Phillips v. Polk County*, ___ Or LUBA ___
21 (LUBA No 2023-014, Apr 13, 2023).

1 Petitioners argue that Ordinance 84-2 significantly impacts petitioners’ use
2 of their dwellings for short-term rental by “injuring constitutional property rights
3 of existing [short-term license] holders” by restricting transferability of licenses,
4 imposing minimum annual rental obligations, percentage caps and density limits
5 in certain areas, and a limitation on the number of licenses one owner can obtain.
6 Response to Motion to Dismiss 31. According to petitioners, “[t]he land use
7 status quo under [Ordinance 84 (2017)] was unrestricted STR use of any dwelling
8 in any zone where dwellings are allowed, provided that a permit was obtained.”
9 Opposition to Motion to Dismiss 32.

10 Respondents respond, and we agree, that petitioners have not established
11 that a restriction on the issuance or transfer of a business license will have a
12 significant impact on the *land use status quo* of their dwellings, and that
13 Ordinance 84-2 has no more or less impact on land use than any other business
14 licensing programs that regulate business use of property. In *Cave v. Lincoln*
15 *County*, we concluded that the petitioners had not established that a county
16 resolution temporarily restricting the issuance of new licenses authorizing the
17 short-term rental of dwellings was a significant impacts land use decision because
18 petitioners did not explain why a restriction on the issuance of business licenses
19 would have a significant impact on the designated *land use* of dwellings, where
20 petitioners had not identified any provision of the county’s zoning code that
21 authorized or prohibited the use of dwellings as short-term rentals. ___ Or LUBA
22 ___ (LUBA No 2021-122, Mar 4, 2022). Similarly, here, petitioners have not

1 established that Ordinance 84-2 will have any bearing on the land use status quo
2 of petitioners' dwellings. Respondents argue that short-term rental use of
3 dwellings is not and has never been a land use regulated by the LUO. Petitioners
4 have not identified any provision of the LUO that authorizes or prohibits the use
5 of dwellings as short-term rentals.

6 We conclude that Ordinance 84-2 does not have a significant impact on
7 land use.

8 **DISPOSITION**

9 Where petitioners do not file a conditional motion to transfer, and LUBA
10 concludes it lacks jurisdiction, it will dismiss the appeal. OAR 661-010-
11 0075(9)(c); *Miller v. City of Dayton*, 22 Or LUBA 661, 666, *aff'd* 113 Or App
12 300, 833 P2d 299, *rev den* 314 Or 573, 840 P2d 1295 (1992); *Early v. Jackson*
13 *County*, 70 Or LUBA 273, 277 (2014).

14 Petitioners did not file a motion to transfer. Accordingly, the appeal is
15 dismissed.