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

MURPHY CITIZENS ADVISORY )  
COMMITTEE, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
JOSEPHINE COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
COPELAND SAND & GRAVEL, INC., )  
 )  
Intervenor-Respondent. )

LUBA No. 92-234  
FINAL OPINION  
AND ORDER

On remand from the Oregon Supreme Court.  
Matthew G. Fawcett, Medford, represented petitioner.

No appearance by respondent.

James Dole, Grants Pass, represented intervenor-respondent.

KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON, Referee, participated in the decision.

REMANDED 11/15/94

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision settling a mandamus  
4 action filed in Josephine County Circuit Court pursuant to  
5 ORS 215.428(7).<sup>1</sup>

6 **FACTS**

7 In Murphy Citizens Advisory Comm. v. Josephine County,  
8 25 Or LUBA 507 (1993), LUBA dismissed this appeal  
9 proceeding, determining it lacked jurisdiction over the  
10 challenged decision. However, in Murphy Citizens Advisory  
11 Comm. v. Josephine County, 319 Or 477, \_\_\_ P2d \_\_\_ (1994),  
12 the supreme court reversed and remanded LUBA's decision,  
13 determining the challenged decision is a land use decision  
14 subject to LUBA's jurisdiction.

15 The basic facts are not in dispute. In 1991,  
16 intervenor submitted an application to the county for a  
17 permit for a rock crushing and asphalt and cement batching  
18 facility on the subject Rural Industrial (RI) zoned  
19 property. A site plan review was conducted without a

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<sup>1</sup>ORS 215.428(7) provides:

"If the governing body of the county or its designate does not take final action on an application for a permit \* \* \* within 120 days after the application is deemed complete, the applicant may apply to the circuit court of the county where the application was filed for a writ of mandamus to compel the governing body or its designate to issue the approval. The writ shall be issued unless the governing body shows the approval would violate a substantive provision of the county comprehensive plan or land use regulations as defined in ORS 197.015."

1 hearing, and the site plan review committee approved the  
2 application. Petitioner appealed the site plan approval  
3 decision. The planning commission conducted a public  
4 hearing on the appeal and, thereafter, approved the proposal  
5 subject to several conditions of approval. Petitioner  
6 appealed the planning commission's decision to the board of  
7 commissioners. At the close of the board of commissioners'  
8 public hearing, the commissioners continued their  
9 deliberations to a later time. The time set for those  
10 deliberations exceeded the 120 day time period provided by  
11 ORS 215.428(7).

12 On September 22, 1992, intervenor filed a mandamus  
13 proceeding under ORS 215.428(7) seeking to require the  
14 county to approve its application. In the circuit court  
15 proceeding, intervenor requested the circuit court to "stay"  
16 further county proceedings on intervenor's permit  
17 application. The circuit court issued the requested stay  
18 and ordered the county to take no further action on  
19 intervenor's development application. The circuit court  
20 also issued an alternative writ of mandamus requiring the  
21 county to either approve intervenor's application or show  
22 cause why the county should not be required to do so.

23 The board of commissioners obeyed the court's order and  
24 conducted no further public proceedings on intervenor's  
25 application. Thereafter, the county and intervenor entered  
26 into a stipulation in which the county agreed to issue the

1 requested permit, subject to the conditions of approval  
2 imposed by the planning commission in its earlier decision.  
3 This appeal followed.

4 **MOTION TO HOLD CASE IN ABEYANCE**

5 Intervenor moves that we refrain from issuing a  
6 decision in this matter pending resolution of a related  
7 case, State of Oregon ex rel Copeland Sand and Gravel, Inc.,  
8 v. Bartow, Case No. CA A78820, arising from a Josephine  
9 County Circuit Court decision dismissing the mandamus  
10 action. Petitioner objects to intervenor's motion.

11 Where, as here, LUBA's decision is remanded by the  
12 appellate courts, ORS 197.850(11) requires this Board to  
13 respond to the court's mandate within 30 days.  
14 Additionally, ORS 197.805 establishes a statutory policy  
15 that time is of the essence in reaching final decisions in  
16 land use matters. Therefore, we deny intervenor's motion.

17 **FIRST, THIRD, FOURTH, FIFTH AND SIXTH ASSIGNMENTS OF ERROR**

18 The challenged decision consists only of the stipulated  
19 settlement of the ORS 215.428(7) mandamus action and the  
20 conditions of approval imposed by the planning commission.  
21 The board of commissioners adopted no findings supporting  
22 the challenged decision and, therefore, made no  
23 determination of applicable standards or the proposal's  
24 compliance with those standards. Petitioner argues the  
25 challenged decision is erroneous because it fails to adopt  
26 findings establishing the proposal complies with certain

1 approval standards. Petitioner also argues the use approved  
2 by the county violates certain requirements imposed by the  
3 RI zoning district.

4 Local land use decisions must be supported by findings  
5 which identify relevant approval standards, identify the  
6 facts relied upon, and explain why those facts support a  
7 conclusion that the standards are met. Testa v. Clackamas  
8 County, 26 Or LUBA 357, aff'd 127 Or App 138, rev den 319 Or  
9 81 (1994); Lathrop v. Wallowa County, 25 Or LUBA 693 (1993);  
10 Heiller v. Josephine County, 23 Or LUBA 551 (1992). The  
11 challenged decision's failure to adopt any findings makes it  
12 unreviewable and warrants remand.

13 Petitioner's first, third, fourth, fifth and sixth  
14 assignments of error are sustained.

15 **SECOND ASSIGNMENT OF ERROR**

16 Petitioner argues that during the proceedings before  
17 the planning commission, the county improperly shifted the  
18 burden of proof to petitioner. Petitioner also contends the  
19 county failed to identify the relevant approval standards  
20 during the local proceedings and this failure severely  
21 impaired petitioner's ability to participate meaningfully  
22 below.<sup>2</sup>

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<sup>2</sup>Petitioner also contends intervenor's application fails to contain information required by local standards. However, whether this is accurate, and the extent to which this provides a basis for reversal or remand, depends upon the standards applicable to the proposal. We cannot determine this until the county identifies the applicable standards.

1           Petitioner is correct that the applicant bears the  
2 burden of proof to establish its application satisfies  
3 relevant approval standards. Further, petitioner is correct  
4 that the county is obliged to identify relevant approval  
5 standards. ORS 215.416(5) and 197.763(3)(b).

6           Our review of this assignment of error is hampered  
7 because the county filed no brief in this matter and  
8 intervenor simply contends in its brief that the challenged  
9 decision is not a land use decision. Nevertheless, it  
10 appears the burden was improperly shifted to petitioner  
11 during the local proceedings. Further, the county failed to  
12 identify the relevant standards, and petitioner's  
13 participation in the local proceedings, particularly in the  
14 evidentiary phases of those proceedings, was impaired by  
15 that failure.

16           The second assignment of error is sustained.

17           The county's decision is remanded.