

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

3
4 MURPHY CITIZENS ADVISORY)
5 COMMITTEE,)
6)
7 Petitioner,)
8)
9 vs.)
10)
11 JOSEPHINE COUNTY,)
12)
13 Respondent,)
14)
15 and)
16)
17 COPELAND SAND AND GRAVEL, INC.,)
18)
19 Intervenor-Respondent.)

LUBA No. 95-031
FINAL OPINION
AND ORDER

20
21
22 Appeal from Josephine County.

23
24 Matthew G. Fawcett, Medford, represented petitioner.

25
26 Steven Rich, County Counsel, Grants Pass, represented
27 respondent.

28
29 James R. Dole, Grants Pass, represented intervenor-
30 respondent.

31
32 GUSTAFSON, Referee; LIVINGSTON, Chief Referee; HANNA,
33 Referee, participated in the decision.

34
35 DISMISSED 09/15/95

36
37 You are entitled to judicial review of this Order.
38 Judicial review is governed by the provisions of ORS
39 197.850.

1 Gustafson, Referee.

2 Intervenor-respondent (intervenor) moves to dismiss
3 this appeal because the petitioners have not appealed a land
4 use decision over which LUBA has jurisdiction.¹

5 Petitioners appeal what they describe as a "decision"
6 of the county, which is reflected in three separate actions
7 of the county. First, petitioners challenge a memorandum
8 from the assistant county counsel to the county planning
9 director expressing her interpretation that a circuit court
10 order on a writ of mandamus requires the county to issue a
11 building permit to intervenor. Second, they challenge a
12 letter from the county planning director to intervenor
13 stating the conditions intervenor must satisfy in order for
14 the county to issue a building permit. Third, they
15 challenge the issuance of the building permit.

16 Petitioners have the burden to establish LUBA's
17 jurisdiction. Billington v. Polk County, 299 Or 471, 475,
18 703 P2d 232 (1985); Bowen v. City of Dunes City, 28 Or LUBA
19 324, 330 (1994). Petitioners have not responded to
20 intervenor's motion to dismiss, and have not established how
21 any of the three actions taken by the county, either
22 individually or cumulatively, constitute a land use
23 decision. See Braun v. City of La Grande, 27 Or LUBA 581,

¹Respondent also moves to dismiss on the grounds that petitioners have no standing or are not the real party in interest in this matter. Because of our disposition of this case, we need not discuss respondent's alternative grounds for dismissal.

1 582 (1994).

2 As intervenor explains, the issuance of the building
3 permit, and the correspondence preceding its issuance, were
4 in response to a circuit court writ of mandamus. State ex
5 rel Copeland Sand & Gravel v. Burton, et al, Lane County
6 Circuit Court Case No. A87361. Even if petitioner had
7 established that any of the three challenged actions could
8 be construed to be a land use decision in another context,
9 when the county's actions are mandated by a circuit court
10 order, as is the case here, they are not land use decisions
11 under over which we have jurisdiction. State ex rel Compass
12 Corporation v. City of Lake Oswego, 319 Or 537, 878 P2d 403
13 (1994); Gearhard v. Klamath County, 22 Or LUBA 377 (1991).²

14 LUBA's lack of jurisdiction over actions taken in
15 compliance with a circuit court writ of mandamus has been
16 statutorily confirmed through the adoption Oregon Laws 1995,
17 chapter 812, section 1, which became effective September 9,
18 1995. That statute modifies the definition of "land use
19 decision" under ORS 197.015(10) to exclude "[a] local land
20 use approval in response to a writ of mandamus."

21 Petitioner's appeal is dismissed.

²We note that none of the challenged county actions appears to otherwise constitute a land use decision. ORS 197.015(10)(b)(B) expressly excludes from the definition of land use decision a local decision "which approves or denies a building permit issued under clear and objective land use standards." The county's issuance of a building permit is not a land use decision. The other actions are merely correspondence discussing the issuance of that permit.