



Multnomah County Oregon

Board of Commissioners & Agenda

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BOARD OF COMMISSIONERS

Diane Linn, Chair

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-3308 FAX (503) 988-3093

Email: mult.chair@co.multnomah.or.us

Maria Rojo de Steffey, Commission Dist. 1

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-5220 FAX (503) 988-5440

Email: district1@co.multnomah.or.us

Serena Cruz, Commission Dist. 2

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-5219 FAX (503) 988-5440

Email: serena@co.multnomah.or.us

Lisa Naito, Commission Dist. 3

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-5217 FAX (503) 988-5262

Email: district3@co.multnomah.or.us

Lonnie Roberts, Commission Dist. 4

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-5213 FAX (503) 988-5262

Email: lonnie.j.roberts@co.multnomah.or.us

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NOVEMBER 9, 2004

BOARD MEETINGS

FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:30 a.m. Briefing on passage of Ballot Measure 37, which requires governments to pay owners, or forego enforcement, when certain land use restrictions reduce the value of their property
Pg 2	10:15 a.m. If Needed Executive Session
	Thursday November 11 Board Meeting Cancelled due to Veterans' Day Holiday
	Thursday November 25 Board Meeting Cancelled due to Thanksgiving Holiday

Thursday meetings of the Multnomah County Board of Commissioners are cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30

Friday, 11:00 PM, Channel 30

Saturday, 10:00 AM, Channel 30

Sunday, 11:00 AM, Channel 30

Produced through Multnomah Community Television

(503) 491-7636, ext. 333 for further info
or: <http://www.mctv.org>

Tuesday, November 9, 2004 - 9:30 AM
Multnomah Building, Sixth Floor Commissioners Conference Room 635
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFING

- B-1 Briefing on Passage of Ballot Measure 37, Which Requires Governments to Pay Owners, or Forego Enforcement, when Certain Land Use Restrictions Reduce the Value of their Property. Presented by Karen Schilling, Derrick Tokos and Sandra Duffy. 45 MINUTES REQUESTED.
-

Tuesday, November 9, 2004 - 10:15 AM
OR IMMEDIATELY FOLLOWING BOARD BRIEFING
Multnomah Building, Sixth Floor Commissioners Conference Room 635
501 SE Hawthorne Boulevard, Portland

IF NEEDED EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(2)(h). Only Representatives of the News Media and Designated Staff are allowed to Attend. Representatives of the News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Executive Session. No Final Decision will be made in the Executive Session. Presented by Agnes Sowle and Sandra Duffy. 15-30 MINUTES REQUESTED.



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
501 S.E. HAWTHORNE BLVD., Room 600
PORTLAND, OREGON 97204
(503) 988-5217

LISA NAITO • DISTRICT 3 COMMISSIONER

MEMORANDUM

TO: Chair Diane Linn
Commissioner Maria Rojo de Steffey
Commissioner Serena Cruz
Commissioner Lonnie Roberts
Board Clerk Deb Bogstad

FROM: Carol Wessinger
Staff to Commissioner Lisa Naito

DATE: November 3, 2004

RE: Commissioner Naito will be unable to attend the November 9, 2004 Board Briefing and Executive Session.

The Commissioner will be out of town.

Thank you,
Carol Wessinger



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 11/09/04
Agenda Item #: B-1
Est. Start Time: 9:30 AM
Date Submitted: 11/03/04

BUDGET MODIFICATION: -

Agenda Title: **Briefing on the Passage of Ballot Measure 37**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested: November 9, 2004 **Time Requested:** 45 minutes
Department: Non-Departmental **Division:** District 3
Contact(s): Karen Schilling
Phone: 503-988-3043 **Ext.** 29635 **I/O Address:** 455/2/214
Presenter(s): Karen Schilling, Derrick Tokos, Sandra Duffy

General Information

1. What action are you requesting from the Board?

This request is to allow staff to provide the Board of Commissioners with a brief overview of the provisions of Measure 37 and its impact on County programs. We will also be prepared to discuss implementation options. No formal action is being requested.

2. Please provide sufficient background information for the Board and the public to understand this issue.

Ballot Measure 37 requires governments pay owners, or forego enforcement, when certain land use restrictions reduce the value of their property. An explanatory statement and text of the measure is attached. The provisions of this measure specifically apply to local government land use regulations, directly impacting Multnomah County's land use planning program for rural unincorporated areas. County agreements with the cities of Portland and Troutdale to provide planning services for urban unincorporated areas, and other County services or programs that work with or are subject to land use planning regulations, might also be impacted. This measure is a statutory amendment, effective no sooner than 30 days from the date of the general election.

3. Explain the fiscal impact (current year and ongoing).

The official estimate of the financial impact to local governments for administering claims is between \$46 million and \$300 million per year (attached). It is not known at this time how that translates to Multnomah County. The measure does not identify a revenue source for paying claims and there are no estimates as to the dollar value of claims that are likely to be filed.

4. Explain any legal and/or policy issues involved.

The County Attorney's office will be participating in this briefing and may offer a legal opinion or analysis on significant provisions of the measure. Policy issues will likely relate to the meaning of language contained in the measure and the County's implementation approach, both of which are issues that staff will be prepared to further discuss with the Board at the briefing.

5. Explain any citizen and/or other government participation that has or will take place.

County staff is coordinating with other government agencies on how best to implement this measure, and plan to continue to do so.

ATTACHMENT A

Budget Modification

If the request is a **Budget Modification**, please answer all of the following in detail:

- What revenue is being changed and why?
- What budgets are increased/decreased?
- What do the changes accomplish?
- Do any personnel actions result from this budget modification? Explain.
- How will the county indirect, central finance and human resources and departmental overhead costs be covered?
- Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?
- If a grant, what period does the grant cover?
- If a grant, when the grant expires, what are funding plans?

Contingency Request

If the request is a **Contingency Request**, please answer all of the following in detail:

- Why was the expenditure not included in the annual budget process?
- What efforts have been made to identify funds from other sources within the Department/Agency to cover this expenditure?
- Why are no other department/agency fund sources available?
- Describe any new revenue this expenditure will produce, any cost savings that will result, and any anticipated payback to the contingency account. What are the plans for future ongoing funding?
- Has this request been made before? When? What was the outcome?

NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.

Grant Application/Notice of Intent

If the request is a Grant Application or Notice of Intent, please answer all of the following in detail:

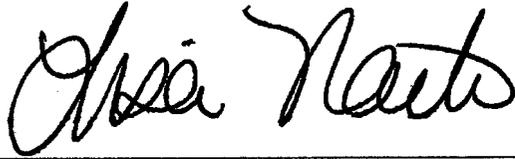
- Who is the granting agency?
- Specify grant (matching, reporting and other) requirements and goals.
- Explain grant funding detail – is this a one time only or long term commitment?
- What are the estimated filing timelines?
- If a grant, what period does the grant cover?
- When the grant expires, what are funding plans?
- How will the county indirect, central finance and human resources and departmental overhead costs be covered?

ATTACHMENT B

BUDGET MODIFICATION: -

Required Signatures

**Department/
Agency Director:**



Date: 11/03/04

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

Proposed by Initiative Petition

MEASURE 37

GOVERNMENTS MUST PAY OWNERS, OR FORGO ENFORCEMENT, WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUE

RESULT OF "YES" VOTE: "Yes" vote requires that governments pay owners, or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce owners' property value.

RESULT OF "NO" VOTE: "No" vote rejects requiring that governments pay owners or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce property value.

SUMMARY: Currently, Oregon Constitution requires government(s) to pay owner "just compensation" when condemning private property or taking it by other action, including laws precluding all substantial beneficial or economically viable use. Measure enacts statute requiring that when state, city, county, metropolitan service district enacts or enforces land use regulation that restricts use of private real property or interest thereon, government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change, or not apply restrictions in lieu of payment; if compensation not timely paid, owner not subject to restrictions. Applies to restrictions enacted after "family member" (defined) acquired property. Creates civil right of action including attorney fees. Provides no new revenue source for payments. Certain exceptions. Other provisions.

ESTIMATE OF FINANCIAL IMPACT:

The measure would require state administrative expenditures to respond to claims for compensation of between \$18 million and \$44 million per year.

The measure may require compensation to landowners. The amount of state expenditures needed to pay claims for compensation cannot be determined.

There is no financial effect on state revenues.

The measure would require local government administrative expenditures to respond to claims for compensation of between \$46 million and \$300 million per year.

The measure may require compensation to landowners. The amount of local government expenditures needed to pay claims for compensation cannot be determined.

The effect of the measure on local government revenues cannot be determined.

November 2, 2004 General Election

Ballot Measure 37

Explanatory Statement:

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property owner proves that a land use regulation restricts the use of the owner's property, and reduces its value then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the owner's property.

The measure allows the state, county, city or metropolitan service district to adopt procedures for processing claims for compensation, but prohibits those procedures from being treated as a prerequisite to the filing of a claim in circuit court.

The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

The measure specifies that compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present owner is entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect compensation.

The measure provides no new revenue source for payments, if any, required under this measure.

The measure defines several terms that are used in the statute including "family member" which is defined as wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION

JOHN LINDBACK
DIRECTOR

141 STATE CAPITOL
SALEM, OREGON 97310-0722

ELECTIONS — (503) 986-1518

March 17, 2003

To All Interested Parties:

Secretary of State Bill Bradbury is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#36), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #36 was filed in our office on March 14, 2003, by Eugene Prete and Barbara Prete, for the General Election of November 2, 2004.

Enclosed is a copy of the text of this proposed initiative petition. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division in the State Capitol. Your comments, if any, must be received by the Elections Division no later than April 7, 2003, in order for them to be considered in the review.

BILL BRADBURY
Secretary of State

BY: *Summer Davis*

Summer Davis
Compliance Specialist



The following provisions are added to and made a part of ORS chapter 197:

- (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
- (2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.
- (3) Subsection (1) of this act shall not apply to land use regulations:
 - (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;
 - (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
 - (C) To the extent the land use regulation is required to comply with federal law;
 - (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
 - (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
- (4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.
- (5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land

use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

- (6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.
- (7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.
- (8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.
- (9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).
- (10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.
- (11) Definitions – for purposes of this section:
 - (A) “Family member” shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law,

mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

- (B) "Land use regulation" shall include:
- (i) Any statute regulating the use of land or any interest therein;
 - (ii) Administrative rules and goals of the Land Conservation and Development Commission;
 - (iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
 - (iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
 - (v) Statutes and administrative rules regulating farming and forest practices.
- (C) "Owner" is the present owner of the property, or any interest therein.
- (D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.
- (12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.
- (13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

RECEIVED
03 MAR 14 PM 3 34
BILL BRADBURY
SECRETARY OF STATE

BOGSTAD Deborah L

From: SCHILLING Karen C
Sent: Wednesday, October 27, 2004 11:30 AM
To: BOGSTAD Deborah L
Subject: FW: Measure 37 tentative briefing

Deb,

This is a request for a briefing if Measure 37 should pass. I'm wondering if there is any time available on Tuesday Nov 9? A minimum of 30 minutes is needed—45 would probably be better but we could get by on 30 if needed. If Measure 37 fails, we will not need a briefing. However, if it passes, it will be critical that we get direction from the BCC early in our 30 days that we have to implement it.

I know the schedule is full but is there any way to schedule a briefing?

Karen

-----Original Message-----

From: NAITO Lisa H
Sent: Friday, October 22, 2004 9:36 AM
To: SCHILLING Karen C; NAITO Terri W
Cc: DUFFY Sandra N; JOHNSON Cecilia
Subject: RE: Measure 37 tentative briefing

We'd be happy to request a briefing. Lisa

-----Original Message-----

From: SCHILLING Karen C
Sent: Friday, October 22, 2004 8:46 AM
To: NAITO Lisa H; NAITO Terri W
Cc: DUFFY Sandra N; JOHNSON Cecilia
Subject: Measure 37 tentative briefing

Lisa,

Yesterday we met with the County attorneys and Bob Ellis to discuss Measure 37 implications, process, etc... Sandy Duffy and I thought it would be valuable if we could set a tentative briefing and executive session for some time after election day. If the measure passes we will have a monumental task to prepare for the effective date (30 days later on Dec 2). However, we will need policy direction to be able to prepare quickly. It would be great if we could get a briefing scheduled either late in the week after election day or early the following week. Can you request a tentative briefing time for this important issue? Obviously if the measure fails, we will not need the briefing.

Sandy will notify Agnes about the need for an executive session.

Thank you,
Karen



**MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST**

Board Clerk Use Only

Meeting Date: 11/09/04
 Agenda Item #: E-1
 Est. Start Time: 10:15 AM
 Date Submitted: 11/03/04

BUDGET MODIFICATION: -

Agenda Title: Executive Session

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested: November 9, 2004 **Time Requested:** 15-30 minutes
Department: Non-Departmental **Division:** County Attorney
Contact(s): Agnes Sowle
Phone: 503 988-3138 **Ext.** 83138 **I/O Address:** 503/500
Presenter(s): Agnes Sowle, Sandra Duffy

General Information

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No Final Decision will be made in the Executive Session.
2. **Please provide sufficient background information for the Board and the public to understand this issue.**
Only Representatives of the News Media and Designated Staff are allowed to Attend. Representatives of the News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Executive Session.
3. **Explain the fiscal impact (current year and ongoing).**
4. **Explain any legal and/or policy issues involved.**
ORS 192.660(2)(h).
5. **Explain any citizen and/or other government participation that has or will take place.**

ATTACHMENT A

Budget Modification

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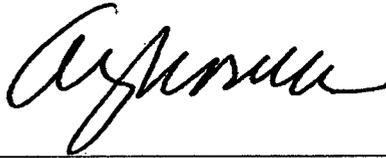
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ATTACHMENT B

BUDGET MODIFICATION: -

Required Signatures

**Department/
Agency Director:**



Date: 11/03/04

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

BOGSTAD Deborah L

From: SOWLE Agnes
Sent: Monday, November 08, 2004 4:56 PM
To: BOGSTAD Deborah L
Subject: exec session tomorrow

In addition to the short item from Sandy, we have a case to talk about appealing with the board.

Agnes Sowle
Multnomah County Attorney
501 SE Hawthorne Blvd., Ste. 500
Portland, OR 97214
(503)988-3138