



Multnomah County Oregon

Board of Commissioners & Agenda

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BOARD OF COMMISSIONERS

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ANY QUESTIONS? CALL BOARD

CLERK DEB BOGSTAD @ (503) 988-3277

Email: deborah.l.bogstad@co.multnomah.or.us

INDIVIDUALS WITH DISABILITIES PLEASE
CALL THE BOARD CLERK AT (503) 988-3277,
OR MULTNOMAH COUNTY TDD PHONE
(503) 988-5040, FOR INFORMATION ON
AVAILABLE SERVICES AND ACCESSIBILITY.

DECEMBER 4 & 6, 2001

BOARD MEETINGS

FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:30 a.m. Tuesday Executive Session
Pg 2	10:00 a.m. Tuesday Briefings: Safety and Loss Control Section Annual Report; and Evaluation of Human Resource Functions Final Report
Pg 3	9:30 a.m. Thursday Regular Board Meeting
Pg 4	10:00 a.m. Thursday Agreement with Portland Regarding Metro's 2040 Functional Plan Compliance Program
Pg 4	10:30 a.m. Thursday Ordinance Adopting a Temporary Moratorium on Expansions of the Howard Canyon Quarry
***	Board and Agenda Web Site: http://www.co.multnomah.or.us/cc/index.html

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

(Saturday Playback for East County Only)

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, December 4, 2001 - 9:30 AM
Multnomah Building, First Floor Commissioners Conference Room 112
501 SE Hawthorne Boulevard, Portland

EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h) for Consultation with Counsel Concerning Current Litigation or Litigation Likely to be Filed. 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 Sandra Duffy, Kathy Busse, Susan Muir and Kim Peoples. 30 MINUTES REQUESTED.
-

Tuesday, December 4, 2001 - 10:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFINGS

- B-1 Presentation of the Multnomah County Fiscal Year 2000-2001 Annual Report, Safety & Loss Control Section. Presented by Gail Parnell and Chuck Tilden. 10 MINUTES REQUESTED.
- B-2 Presentation of the Multnomah County Evaluation of Human Resource Functions Final Report. Presented by Gail Parnell and Lonnie Hayhurst. 30 MINUTES REQUESTED.

Thursday, December 6, 2001 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

CONSENT CALENDAR - 9:30 AM

DEPARTMENT OF SUSTAINABLE COMMUNITY DEVELOPMENT

- C-1 RESOLUTION Authorizing Execution of Deed D021820 for Repurchase of Tax Foreclosed Property to Former Owners, JUDITH S WEIS and WILLIAM M SCHUSTER
- C-2 RESOLUTION Authorizing Execution of Deed D021821 for Repurchase of Tax Foreclosed Property to Former Owner, CAROL ODIN
- C-3 RESOLUTION Authorizing Private Sale of Certain Tax Foreclosed Property to Kathleen Kent as Trustee of the Kathleen Kent Trust, Including Direction to Tax Title for Publication of Notice Pursuant to ORS 275.225
- C-4 RESOLUTION Authorizing Private Sale of Certain Tax Foreclosed Property to Joseph P & Heather B Waldram, Including Direction to Tax Title for Publication of Notice Pursuant to ORS 275.225
- C-5 RESOLUTION Authorizing Execution of a Deed to the City of Portland for the Remaining Parcels of "Raymond Park", Mistakenly Omitted from a Deed Dated December 30, 1993 from Multnomah County to the City of Portland

REGULAR AGENDA - 9:30 AM

PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

SHERIFF'S OFFICE - 9:30 AM

- R-1 NOTICE OF INTENT to Apply to the National Institute of Justice "Solicitation for Research and Evaluation in Corrections" Grant for Funding to Support a Study of the County's Most Frequently Booked Inmate Population

DEPARTMENT OF HEALTH - 9:35 AM

- R-2 NOTICE OF INTENT to Submit an Application for Funding through the American Legacy Foundation's "Priority Populations Initiative" to Support an Anti-Tobacco Media Campaign Directed at Tobacco Use in the African American Community
- R-3 NOTICE OF INTENT to Submit a Proposal to the Susan G. Komen Breast Cancer Foundation for \$40,000 to Provide Training and Technical Assistance to Promotores de Salud (Community Health Workers) Recruited from and serving Spanish-speaking Communities in Multnomah and Surrounding Counties

NON-DEPARTMENTAL - 9:50 AM

- R-4 Budget Modification 02_NOND 02 Requesting a One-Time \$25,000 General Fund Contingency to Cover Costs Associated with Enforcement of the County's Civil Rights Ordinance

DEPARTMENT OF SUSTAINABLE COMMUNITY DEVELOPMENT - 10:00 AM

- R-5 Intergovernmental Agreement 4600002792 with the City of Portland, Providing Planning Services for Properties Located in Unincorporated Multnomah County within the METRO 2040 Functional Plan Compliance Program
- R-6 Public Hearing, First Reading and Possible Adoption of an ORDINANCE Adopting, Under the Authority of ORS 197.520(3)(b), a Temporary Moratorium on Expansions of the Howard Canyon Quarry in Unincorporated Multnomah County Pending the County's Completion of a Reevaluation and Amendment to the Howard Canyon Reconciliation Report Under Statewide Planning Goal 5 and an Evaluation of the Requirements of the Endangered Species Act to Protect Nearby Fish-bearing Streams, Potential Changes in Mining Methods, Use of Rock, Associated Noise from Mining, and Potential Impacts of Mining on Surrounding Farm Uses, and Declaring an Emergency

Thursday, December 6, 2001 - 10:30 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFING

B-3 Briefing and Board Discussion Regarding County Impact to State of Oregon December Revenue Forecast. Presented by Gina Mattioda and Stephanie Soden. 45 MINUTES REQUESTED.



Diane M. Linn, Multnomah County Chair

MEMORANDUM

TO: Commissioner Maria Rojo de Steffey
Commissioner Serena Cruz
Commissioner Lisa Naito
Commissioner Lonnie Roberts
Board Clerk Deb Bogstad

FROM: Delma Farrell
Administrative Director

DATE: November 28, 2001

RE: Board Briefing/Meeting Excused Absences

Chair Linn will be in Washington DC December 3 and 4 and will miss the Board meeting scheduled for Tuesday December 4, 2001.

cc: Laura Bridges, Executive Assistant

BOARD OF
COUNTY COMMISSIONERS
01 NOV 28 PM 4:25
MULTNOMAH COUNTY
OREGON



MEETING DATE: December 4, 2001
AGENDA NO: E-1
ESTIMATED START TIME: 9:30 AM
LOCATION: Boardroom Conf 112

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Executive Session Pursuant to ORS 192.660(1)(h) - Litigation

BOARD BRIEFING: DATE REQUESTED: Tuesday, December 4, 2001
REQUESTED BY: Sandra Duffy
AMOUNT OF TIME NEEDED: 30 minutes

REGULAR MEETING: DATE REQUESTED: _____
AMOUNT OF TIME NEEDED: _____

DEPARTMENT: Non-Departmental DIVISION: County Attorney
CONTACT: Sandra Duffy TELEPHONE #: (503) 988-3138
BLDG/ROOM #: 503/5

PERSON(S) MAKING PRESENTATION: Sandra Duffy, Kathy Busse and Susan Muir and Kim Peoples

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Executive Session Pursuant to ORS 192.660(1)(h) for Consultation with Counsel Concerning Current Litigation or Litigation Likely to be Filed. 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.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Diane M. Linn
(OR)
DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ (503) 988-3277 or email deborah.l.bogstad@co.multnomah.or.us

01 NOV 28 PM 3:13
MULTNOMAH COUNTY
CLERK OF BOARD



**DEPARTMENT OF
SUSTAINABLE COMMUNITY DEVELOPMENT
LAND USE PLANNING DIVISION**

1600 SE 190TH Avenue,
Portland, OR 97233
(503) 988-3043 FAX: (503) 988 -3389

TO: S. Duffy
FR: K. Peoples
DA: December 4, 2001
RE: Executive Session

Executive sessions may be used by the Board to consult with counsel concerning the legal rights and duties regarding current litigation or litigation likely to be filed. ORS 192.660(h) The issue today, stems from statements made by the Howard Canyon Quarry Owners attorney that if the County takes action towards the adoption of a moratorium on the expansion of quarry activity the property owners would take legal action against the County. We are here to discuss the best legally defensible option for the County in the event litigation actually ensues. This executive session is merely for deliberation, and not to make a final decision. Our discussion therefore, is to consider the best legally defensible approach for the County in light of the threat that litigation is likely if the County adopts a moratorium.

The objective of the moratorium under ORS 197.505 et. seq., provides the County an opportunity to temporarily suspend the acceptance of conditional use applications for the expansion of quarry activities. This would allow planning staff to conduct the necessary analysis of issues raised by the Board and amend the County's comprehensive plan as necessary. Once the County has taken final action on this matter, the moratorium would be rescinded.

The property owners have indicated the County action towards a moratorium will provoke litigation. There are two options that provide a legally defensible way to avoid litigation. The first, however, requires the adoption of the moratorium ideally by emergency yet it would not be in full force and effect until the property owners schedule a pre-application conference precedent to submittal of a land use application. This does take the risk threatened by the property owner that litigation may ensue, however, it does provide an accommodation that a moratorium is only contingent upon their action.

The second option, which was also directed by the Chairs office to explore, is an alternative agreement, a contract in form and substance. It too, provides an accommodation to both parties, however the negotiated agreement is proposed by the property owner and therefore avoids a potentially contentious hearing and a subsequent challenge to a moratorium. The substance of the agreement provides security to the County that the property owners will not submit an application until the County completes its Goal 5 & ESA work. Further, the property owners agree to provide ample notification to the County in the event they change their mind and intend to submit an application before the County's work is completed. In exchange the County would not immediately impose a moratorium although it would preserve its right to do so immediately in the event of a breach by the property owner. The effect of this option arguably deflects the likelihood of litigation against the County since it immediately avoids action by the County towards a moratorium.

HOWARD CANYON QUARRY MORATORIUM OPTIONS FOR ACTION BY BCC

Possible Action	Pros	Cons
<p>1. Adopt the Howard Canyon Quarry Moratorium as proposed by the Planning Commission (Emergency) with two readings. See staff report and recommendation.</p>	<p>Concurs with PC recommendation, ordinance language already written. Neighbors' support the moratorium which provides the County with the opportunity to conduct a review of issues raised by the neighbors and directed by the Board, while at the same time preventing the Quarry owner/operator from submitting a conditional use application for expanded activities. The moratorium would not affect the current level of mining activity being conducted. Responsive to issues raised at BCC, PC, and citizen groups pertaining to recent listing of critical habitat of endangered species under the ESA and the need for improved stream protection; changes in mining methods and uses of rock; associated noise and impacts on surrounding farm operations; and the apparent lack of evidence for the westerly 1000 foot extent of the mine area.</p> <p>An immediate effective date will ensure the efficacy of the moratorium.</p>	<p>The BCC may want to make changes to the ordinance before adoption. One option would be to adopt this draft as is and direct staff to return with amendments to circumvent submittal of an application avoiding this new order. May create a less than efficient working environment with property owner. Staff will need to have access to the property and proposed operations for evaluation.</p>
<p>2 Adopt the Howard Canyon Quarry Moratorium with two readings.</p>	<p>Same as above in effect.</p>	<p>The effective date will be thirty (30) days later. The affected property owners could submit an application between readings and up until the effective date of the Moratorium. This would in effect render the objectives of the moratorium moot. Additionally, owners have indicated that if a moratorium is adopted it would likely be challenged in court.</p>
<p>3 Adopt the Howard Canyon Quarry Moratorium by emergency with an immediate effective date, however, it's power and effect would be suspended until and upon the applicant scheduling a pre-application conference for the submission of a conditional use application.</p>	<p>Same as above, but the moratorium will not take effect on the property unless the property owner/operator elects to submit an application. Allows an accommodation to both the County and the property owners. No imposed moratorium on the property and the assurance that the County can proceed to conclusion with necessary analysis with the security that an application will not be able to</p>	<p>May still sever working relationship with property owner on future actions. May be challenged as an unprecedented approach.</p>

HOWARD CANYON QUARRY MORATORIUM OPTIONS FOR ACTION BY BCC

	<p>vest under the old standards and render the reopening of the Goal 5 process moot. In the event of a breach by property owner/operator the moratorium automatically goes into effect without further action by Board.</p>	
<p>4 Do not adopt the Moratorium. In the alternative, direct Planning Staff to secure property owners proposed agreement to voluntarily forbear the right to submit an application until the County concludes its Goal 5 & ESA analysis.</p>	<p>Provides an accommodation to the affected property owner by avoiding an imposed regulatory moratorium. The agreement between the County and the property owner is intended to provide security to both parties. In lieu of a moratorium, the property owner shall not submit an application until the County completes its Goal 5 & ESA work and further promises to provide ample notification to the County in the event property owner(s) change their mind and intend to submit an application before the work is completed.</p>	<p>There is uncertainty as to whether such an agreement is enforceable e.g., requiring property owners to waive their right to submit a conditional use application for a period of time, in light of Oregon statutory provisions. In the event it is not binding, the property owner will have been able to vest under existing standards. Puts burden and cost of enforcing the contract on the County.</p>

After recording return to: Kathy Busse
Planning Director
Department of Sustainable Community Development
Land Use Planning Division

CONTRACT AFFECTING A FEE INTEREST IN LAND

This agreement is entered into between Multnomah County, a political subdivision of the State of Oregon ("County"); Raymond Smith, Shirlee Lenske, as personal representative of the estate of Reuben Lenske (Smith and the Lenske estate are collectively referred to as "Owners"); and Interstate Rock Products, Inc., a corporation of Washington ("Interstate").

RECITALS

- a. Owners own property in Multnomah County, Oregon where a rock quarry known as the Howard Canyon Quarry has been operating and continues to operate. Specifically, Smith and the Lenske estate, either jointly or separately own the following real property:

1S4E, Sec 1A, Tax Lots 100 (R341075)(R994010010)

1S4E, Sec 1A, Tax Lot 200 (R341076)(R994010020)

1S4E, Sec. 1B, Tax Lot 100 (R341090)(R994010170)

1N4E, Sec. 36D, Tax Lot 500 (R322815)(R944360130);and

1S4E, Sec. 1B, Tax Lot 1000 (R341089)(R994010160)

The mineral and mining rights to real property described as 1N4E, Sec. 36C, Tax Lot 200 (R322815)(R944360710).

The legal description for all the property is attached hereto as Exhibit A and incorporated by this reference.

- b. Interstate operates the Howard Canyon Quarry.
- c. County has land use jurisdiction over the Howard Canyon Quarry.
- d. County's Planning Commission conducted a duly noticed public hearing on October 15, 2001 and has recommended to the County Board of Commissioners that a moratorium on expansion of the existing quarry use be adopted by emergency. The Resolution by the Planning Commission is attached as Exhibit B and incorporated by this reference.
- e. The intent of this agreement is to provide the parties an alternative means to achieve the same objective as the proposed moratorium, which the County believes, conforms to ORS 197.505 to 197.540 and all other legal requirements. That objective is to provide the County the opportunity to accomplish its State

Planning Goal 5 analysis as well as address issues raised by the County Board of Commissioners regarding the protection of the Lower Columbia River Steelhead, and other species, and their critical habitat and the need for improved stream and water quality protection and also resolve the zoning status of the subject properties. The mutually agreed upon terms of this agreement reflect an interest to conduct both the County's obligations as well as the Owners and Interstate's obligations in good faith. County does not intend the moratorium to affect any authorized, existing operation in conformance with OAR 632-030-0016 grant of Total Exemption as administered and required by the Oregon Department of Geology and Mineral Industries currently occurring on the property.

AGREEMENT TERMS

1. The County Board of Commissioners shall continue the hearing on the proposed moratorium until a date certain. The hearing may be continued to a Board of Commissioners meeting in six months or any other scheduled meeting unless the County has received written notice that Owners or Interstate intends to file for a land use pre-application conference as required by the County zoning code or other land use application with Multnomah County.
2. In exchange for County's commitment to continue the moratorium hearing and to not take any action on the moratorium, Owners and Interstate agree to not file any land use application on the subject property without additionally providing written notice of an intent to schedule a pre-application conference to the County Planning Director at least 60 days before scheduling a pre-application conference. Owners agree not to file or consent to the filing of any land use application. In the event of such notice or receipt of a pre-application request or application, the County shall immediately exercise its right to proceed with the adoption of the moratorium.
3. All parties agree that this Agreement covers actions that have a direct effect on real property and on the authority of the County and that monetary damages would not be an adequate remedy for the County. Therefore, the parties agree that the County is entitled to specific performance in case of a breach by Owners or Interstate and that the County is also entitled to a declaration, injunction or other judicial order declaring void and without effect any land use application filed by Owners (or any of them) or Interstate in violation of this Agreement.
4. The parties further agree that this Agreement runs with the land and shall be recorded.
5. This agreement shall be governed by Oregon law and the parties agree that any lawsuit relating to this agreement shall be brought in the Multnomah County Circuit Court and challenges to the moratorium can only be brought to the Land Use Board of Appeals. The parties further agree that in the event of Circuit Court litigation, the

prevailing party shall be entitled to an award of reasonable attorney fees at any stage of any litigation (including arbitration) or appeal as determined by the court.

6. Owners and Interstate agree, that in exchange for the County suspending adoption of the moratorium, they will cooperate fully with the County to provide information regarding the proposed mining operation, allow the County and their consultants on the property, and provide the documentation of any expert reports upon request.
7. County agrees to provide the Owners and Interstate copies of expert reports which will be produced upon request.
8. The parties have read this Agreement carefully. They fully understand its content and fully understand that no other consideration or payment of any kind will be made and that there is no other agreement, promise or inducement of any kind whatsoever for this Release other than that which is herein expressed.
9. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital.
10. This Agreement shall be effective when signed by all parties and shall remain in effect until the effective date of the County's final action adopting the Comprehensive Plan Amendment revising the Howard Canyon Reconciliation Report unless sooner terminated under the terms of this Agreement or by mutual agreement of the parties. In any event this agreement shall terminate December 31, 2002 unless extended by the agreement of the parties.

THOMAS SPONSLER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

Date: _____

By: _____
Sandra N. Duffy, Deputy County Attorney

Raymond Smith

Date: _____

Personal Representative of the
Estate of Reuben Lenske

Date: _____

INTERSTATE ROCK PRODUCTS, INC.,
A corporation of Washington

Date: _____

By: _____

Its: _____

STATE OF OREGON)
) ss
County of Multnomah County)

Personally appeared before me this _____ day of _____ 2001, the above-named Raymond Smith, who, being duly sworn, acknowledged said instrument to be his voluntary act and deed.

NOTARY PUBLIC for Oregon

My Commission Expires: _____

STATE OF OREGON)
) ss
County of Multnomah County)

Personally appeared before me this _____ day of _____ 2001, the above-named Shirlee Lenske, who, being duly sworn, did say that she is the Personal Representative of the Estate of Reuben Lenske, and that said instrument was signed on behalf of the Estate of Reuben Lenske; and acknowledged said instrument to be her voluntary act and deed.

NOTARY PUBLIC for Oregon

My Commission Expires: _____

STATE OF OREGON)
) ss
County of Multnomah County)

Personally appeared before me this _____ day of _____ 2001, the above-named _____, who, being duly sworn, did say he is a member of Interstate Rock Products, Inc., a corporation of Washington, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and acknowledged said instrument to be his voluntary act and deed.

NOTARY PUBLIC for Oregon

My Commission Expires: _____