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5 BEFORE THE MULTNOMAH COUNTY
6 HEARINGS OFFICER
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8 MULTNOMAH COUNTY,

9 Plaintiff,

10 v.

11 SCOTT AND STACY REED,

12 Defendants.
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Zoning Violation CCPR1-2025-0003

DEFENDANTS' MOTION TO DISMISS
PROCEEDING FOR LACK OF
JURISDICTION AND ALTERNATIVE
MOTION FOR AN ORDER
DETERMINING PROCEDURAL PROCESS

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MOTION

Defendants, Scott Reed and Stacy Reed, respectfully move for an order dismissing this matter, as jurisdiction for this proceeding rests solely with the Multnomah County Circuit Court, pursuant to ORS 153.030(4), ORS 153.036, and ORS 197.825(3). In the alternative, should the Hearings Officer determine that he has jurisdiction to hear this matter, Defendants move for an order specifying a procedural process for this matter that ensures due process and reissuance of the Notice of Hearing pursuant to MCC 39.1550 (B). In establishing these administrative procedures, Defendants request the Hearings Officer at minimum:

- 1 1. Require the County to produce, without charge to Defendants, any evidence in the
2 County's possession which the County believes is exculpatory to the violations
3 alleged by the County;
- 4 2. Require the County to produce, without charge to Defendants, all written
5 correspondence and notes of oral correspondence between County staff and
6 complainants alleging Defendants were using their property in a manner relied upon
7 by the County to issue the Notice of Violation in this matter, without redaction of the
8 name(s) of the complainant(s).
- 9 3. Require the County to produce, without charge to Defendants, all written material
10 regarding any investigation by County staff which resulted in the issuance of the
11 Notice of Violation in this matter.
- 12 4. Require the parties to produce witness lists of witnesses each party intends to call in
13 a hearing on the merits in this matter;
- 14 5. Require any witness to be sworn under oath prior to testifying;
- 15 6. Allow either party to exclude witnesses from the hearing on the merits in this matter
16 until such time as they are called to testify;
- 17 7. Provide Defendants subpoena power to compel the attendance of persons Defendants
18 wish to call as witnesses;
- 19 8. Prohibit testimony from any person unless called by a party; and
- 20 9. Exclude all irrelevant, immaterial, or unduly repetitious evidence from the record.

1 This motion is supported by the following points and authorities incorporated herein by this
2 reference.

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4 **I. POINTS AND AUTHORITIES**

5 **i. Introduction**

6 Defendants are charged with multiple “violations” under the Multnomah County Code.
7 As punishment for the alleged violations, Multnomah County (the County) seeks “civil fines” of
8 \$525 per day, beginning on the date of the Hearings Officer’s final order and continuing until
9 the alleged violations are corrected. The County informed the Defendants that to contest the
10 violations, the Defendants would need to appeal through a local administrative process and have
11 a hearing before a Hearings Officer. The County informed the Defendants that the procedure
12 would follow a normal land use hearing. At this juncture, the parties dispute the proper
13 procedure and forum for contesting the violations.

14 First, Defendants contend that the proper procedure and forum for issuing and enforcing
15 a violation of this nature is in Multnomah County Circuit Court pursuant to ORS Chapter 153.
16 In the alternative, if ORS Chapter 153 does not apply to these proceedings, Defendants dispute
17 the validity of notice given to the Defendants and the procedures chosen by the County, as they
18 raise due process concerns. Accordingly, Defendants move to dismiss the proceedings for lack
19 of jurisdiction, and in the alternative, move the Hearings Officer to establish procedures that
20 guarantee the Defendants’ due process rights.

1 **ii. Facts**

2 Defendants own real property located at 12424 NW Springville Rd, Portland, OR 97229
3 located in Multnomah County. On or around March 5, 2026 the County issued a Notice of Civil
4 Violation alleging that Defendants violated Multnomah County Code provisions relating to
5 ground-disturbing activity and development within a Significant Environmental Concern (SEC)
6 stream overlay. See Exhibit A. Specifically, the Notice of Civil Violation alleges “violations” of
7 MCC 39.6210 and MCC 39.5510 and seeks continuing “civil fines” of \$525 per day, beginning
8 on the date of the Hearings Officer’s final order and continuing until the alleged violations are
9 corrected. On March 17, 2026 Defendants appealed the County’s Notice of Violation using the
10 form provided by the County and then retained counsel.

11 On or around April 24th, Defendants received a Notice of Public Hearing. See Exhibit
12 B. The Notice of Public Hearing, however, does not describe the appeal process or Defendants’
13 rights in that process in sufficient detail as required by MCC 39.5510(B). Id. Instead, it states
14 only that “[t]he hearing procedure will follow the Hearing Officer’s Rules of Procedure and will
15 be explained at the hearing.” Id. Additionally, the County’s Code does not describe the hearing
16 process or Defendants’ rights in that process in sufficient detail. MCC 39.1550 - MCC 39.1565.
17 The lack of available information in County Code required counsel to contact the County on
18 Defendants’ behalf for clarification.

19 In addition to seeking clarification on the County’s procedures, Defendants’ counsel
20 requested via email all exculpatory materials in the County’s possession related to this matter
21 and a refund of the appeal fee assessed by the County to obtain a hearing before the County
22 Hearings Officer pursuant to ORS 135.815 and ORS 153.076(3). See Exhibit C, Page 8. County
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1 counsel subsequently informed Defendants that the hearing will be conducted in a manner
2 similar to a hearing on an application for land use approval under MCC 39.1140, and that in the
3 County's opinion, the provisions of ORS Chapter 153 (and thus ORS Chapter 135) did not
4 apply to a proceeding of this nature. See Exhibit C, Page 7, 3. County Counsel also provided,
5 presumably, the script that the Hearings Officer would read to Defendants at the hearing
6 explaining the process and their rights. See Exhibit C, Pages 9-13.

7 The dispute over the proper procedure and what pretrial information the Defendants
8 were entitled to receive prompted a request for a status conference, which was delivered to the
9 Hearings Officer on May 8, 2026. On May 20, 2026 the Hearings Officer held a status
10 conference and set the preliminary procedural issue for briefing.

11 **iii. Argument**

12 Oregon law grants counties broad authority to legislate on matters of local concern. ORS
13 203.035. ORS Chapter 153 likewise recognizes that, in appropriate circumstances, a county may
14 establish local administrative enforcement procedures to prosecute alleged violations of its
15 ordinances. ORS 153.030(4). Those procedures may include adjudication by a hearings officer.
16 ORS 153.030(6). That authority, however, is not unlimited. ORS 153.030(4) expressly restricts
17 the use of administrative enforcement where the local prohibition is designated as an offense:

18 (4) This chapter does not affect the ability of a city described in ORS 3.136 (1) to engage
19 in the activities described in ORS 3.136 (3). Nothing in this chapter affects the ability of
20 any other political subdivision of this state to provide for the administrative enforcement
21 of the charter, ordinances, rules and regulations of the political subdivision, including
22 enforcement through imposition of monetary penalties. *Except for ordinances governing*
23 *the parking of vehicles, administrative enforcement as described in this subsection may*
not be used for any prohibition designated as an offense.

1 ORS 153.030(4). (Emphasis added). For purposes of ORS 153.030(4), Oregon law defines an
2 “offense” as conduct for which imprisonment or a fine is provided by state law or by the law or
3 ordinance of a political subdivision. ORS 161.505.

4 As explained in greater detail herein, the County has charged Defendants with ordinance
5 violations punishable by fines, and is seeking the payment of a fine as a penalty for conviction
6 of the alleged violation. That makes the prohibitions in question “offenses”, and based on ORS
7 153.030(4), Oregon’s statutory framework for violation proceedings applies. The County is
8 prohibited from bringing a code violation proceeding through administrative enforcement. The
9 County cannot rely on its general home-rule or local enforcement authority to displace the
10 procedures the Legislature prescribed for fine-only ordinance violations. Because the County
11 has proceeded administratively on charges that must be governed by ORS Chapter 153, the
12 Hearings Officer lacks authority to adjudicate these proceedings and should dismiss them.

13 In the alternative, if the Hearings Officer concludes that administrative authority exists,
14 the proceedings still cannot move forward without procedures adequate to protect Defendants’
15 due-process rights. At a minimum, the Hearings Officer should first identify the governing
16 procedural rules, the source of the Hearings Officer’s authority, the burden and standard of
17 proof, the rules governing evidence and objections, the manner in which witnesses may be
18 examined or cross-examined, and the process for issuing findings and preserving objections for
19 review. The County may not seek fines through an ad hoc process that leaves the parties
20 uncertain about the rules governing notice, proof, evidence, and review. If the matter is not
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1 dismissed, the Hearings Officer should enter a procedural order establishing those safeguards
2 before requiring Defendants to proceed on the merits.

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4 **A. The alleged violations must be governed by the procedures for violation
proceedings under ORS Chapter 153; not a local administrative enforcement
process:**

5 The County's allegations are not merely informal administrative matters. The County
6 has charged Defendants with violations of county ordinances and seeks fines as the
7 consequence for the alleged noncompliance. Under Oregon law, that form of enforcement
8 places this proceeding within the statutory framework governing violations. ORS 153.030(1)
9 provides that the procedures set forth in ORS Chapter 153 apply to "violations" described in
10 ORS 153.008. ORS 153.008(1)(c) expressly includes offenses created by local ordinance where
11 the ordinance authorizes punishment by fine but does not authorize imprisonment as
12 "violations":

13 The offense is created by an ordinance of a county, city, district or other political
14 subdivision of this state with authority to create offenses, and the ordinance provides that
15 violation of the ordinance is punishable by a fine but does not provide that the offense is
punishable by a term of imprisonment. The ordinance may provide for punishment in
addition to a fine as long as the punishment does not include a term of imprisonment.

16 ORS 153.008(1)(c).

17 The County's enforcement theory in this matter fits that statutory description. The
18 alleged violations arise under county ordinances, and the County seeks monetary fines rather
19 than imprisonment. Those are the defining features of a "violation" under ORS 153.008(1)(c).
20 Once the County proceeds on that basis, the applicable procedures are those supplied by
21 Chapter 153, including the criminal procedure laws of the state. See ORS 153.030(1).
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1 The County may not avoid application of the statutory procedures for violation
2 proceedings by characterizing the matter as a local administrative enforcement action under
3 ORS 153.030(4). As explained *supra*, ORS 153.030(1) provides that the procedures in Chapter
4 153 apply to “violations” described in ORS 153.008. The remaining subsections of ORS
5 153.030 identify exceptions and limitations to that general rule. For example, ORS 153.030(2)
6 provides that, notwithstanding subsection (1), Chapter 153 and Oregon criminal procedure laws
7 do not apply to parking violations created by ordinance or agency rule. That exception makes
8 practical sense. Parking violations are high-volume, low-penalty matters, and the Legislature
9 chose not to require ordinary Chapter 153 procedures for every parking ticket issued by a local
10 government.

11 ORS 153.030(4) recognizes that local governments may, in appropriate circumstances,
12 use administrative enforcement mechanisms and impose monetary penalties – but the last
13 sentence of the subsection prohibits the use of administrative enforcement mechanisms when
14 the prohibition is designated as an “offense.” Oregon law defines an “offense” as “conduct for
15 which a sentence to a term of imprisonment or to a fine is provided by any law of this state or
16 by any law or ordinance of a political subdivision of this state.” See ORS 161.505. The statute
17 goes on to say that an “offense” is either a crime, as described in ORS 161.515, or a violation,
18 as described in ORS 153.008.

19 Applying the definitions together, an “offense” is a “violation” if it is created by an
20 ordinance of a county and the punishment for a violation of the ordinance includes a fine, but
21 not a term of imprisonment. Thus, where a county ordinance prohibits conduct and imposes a
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1 fine for that conduct (but not imprisonment) the ordinance creates an “offense”. At this point,
2 the County loses the ability to create its own administrative enforcement procedures, and
3 Chapter 153 procedures must apply.

4 In more practical terms, a county may use its own administrative procedures to
5 administer and enforce local ordinances, so long as the enforcement remains administrative or
6 remedial in nature. That authority ends, however, when the county seeks to punish an alleged
7 violation of an ordinance by imposing a fine. At that point, the matter falls within Chapter 153,
8 and the county must follow the procedures for violations required by state law. Counties may
9 also still impose and collect fees, assessments, abatement costs, or other monetary obligations
10 (i.e. “monetary penalties” under ORS 153.030(4)), but they cannot avoid Chapter 153 if they
11 choose fines as the enforcement penalty. Once a fine is imposed as punishment for a violation,
12 the defendant is entitled to the protections and procedures provided by Chapter 153.
13 Accordingly, the controlling inquiry here is not the County’s chosen label for the proceeding,
14 but the legal character of the charge (prohibition of conduct created by an ordinance) and the
15 sanction sought (punishable by a fine).

16 Here, Multnomah County has adopted ordinances regulating development and ground-
17 disturbing activity in certain protected areas. Under MCC 39.5510, development or excavation
18 of land within a Significant Environmental Concern overlay generally requires an SEC overlay
19 permit, subject to limited exceptions. Similarly, MCC 39.6210 prohibits ground-disturbing
20 activity without an enumerated permit, again subject to limited exceptions. To enforce those and
21 other development prohibitions, Multnomah County adopted the Multnomah County

1 Enforcement Code, codified at MCC 39.1500 through MCC 39.1565. The Enforcement Code
2 defines a “violation” broadly. Under MCC 39.1505, a “violation” means:

3 Any act or failure to act that is prohibited or not allowed, including any failure to take
4 any required action, under the goals, law, rules, regulations or permits specified in MCC
39.1510.

5 MCC 39.1510 further provides that the following may be subject to enforcement and fines
6 under the Enforcement Code:

7 Any use of land, land division, adjustment to property boundaries, work within a County
8 right-of-way, or other activity by a person in violation of any provision of:

9 (A) MCC Chapters 39, 29.001 through 29.207 and 29.500 through 29.583; Multnomah
10 County Road Rules or the terms and conditions of any permit issued under those code
provisions; or

11 (B) Any statute adopted by the Oregon Legislature and those land use planning goals and
12 rules of the Land Conservation and Development Commission (LCDC) that apply
directly to the County through ORS 197.646.

13 Read together, these provisions establish that unpermitted development in an SEC overlay and
14 unpermitted ground-disturbing is prohibited conduct, and doing so constitutes “violations”
15 under the Multnomah County Code, unless an exception applies.

16 The Enforcement Code then provides the suite of consequences for those violations. The
17 County may pursue voluntary measures, such as a compliance agreement under MCC 39.1525.

18 It may then impose non-monetary penalties such as a “stop work” order under MCC 39.1540.

19 The Enforcement Code also allows the County to impose fines. Under MCC 39.1560, violations
20 as defined in MCC 39.1510 “may be subject to fines and liens,” and fines may be assessed for
21 each violation for each day of noncompliance. MCC 39.1560(A) provides that the maximum
22 fine may not exceed \$3,500 per violation for each day of noncompliance, and the minimum fine
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1 may not be less than \$45 per violation for each day of noncompliance. MCC 39.1560(B) further
2 authorizes the Director to set criteria for determining fines, appeal fees, and “administrative
3 fees” – which are distinct from fines.

4 Pursuant to those provisions, the Notice of Civil Violation issued to the Defendants
5 seeks continuing “civil fines” of \$525 per day, beginning on the date of the Hearings Officer’s
6 final order and continuing until the alleged violations are corrected. See Exhibit A, Page 2-3.
7 The Notice describes the alleged noncompliance as “violations” and states that the alleged acts
8 constitute violations of MCC 39.6210 and MCC 39.5510.

9 Therefore, this matter is not a voluntary administrative compliance matter where the
10 County is free to come up with whatever administrative process it sees fit. Instead, the County
11 has adopted ordinances that prohibit certain conduct, classified noncompliance as a violation,
12 authorized fines as the consequence for noncompliance. Accordingly, the alleged violations fall
13 within the definition of violations under ORS 153.008(1)(c), are “offenses” under ORS 161.505,
14 and must be governed by the procedures of Chapter 153.

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16 **B. The Hearings Officer lacks jurisdiction to decide this matter because the**
17 **County may not conduct hearings for administrative enforcement in this**
matter:

18 For the reasons explained *supra*, ORS 153.030(4) bars the County from using its local
19 administrative process to adjudicate the alleged violations and impose a fine. That conclusion
20 has a direct jurisdictional consequence: if the County may not avail itself of the administrative
21 enforcement procedures provided by ORS 153.030(4), then the Hearings Officer has no
22 authority to hear or decide the matter. Jurisdiction cannot be created by the County’s decision to
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1 route the case to a local hearings officer. The County must identify a lawful source of authority
2 for this tribunal to act.

3 ORS 153.030(6) expressly authorizes a county to conduct administrative hearings
4 through a hearings officer or the county commission but limits a hearings officer's authority to
5 "administrative enforcement as described in subsection (4)." That cross-reference matters.
6 Subsection (6) does not create an independent hearing power broader than subsection (4); it
7 merely preserves the ability to conduct hearings when the underlying administrative
8 enforcement is lawful under subsection (4).

9 Because this proceeding is outside the administrative enforcement authority preserved
10 by ORS 153.030(4), it is also outside the local hearings officer authority preserved by ORS
11 153.030(6). The Hearings Officer therefore lacks jurisdiction to determine whether the alleged
12 violations occurred or to impose the requested fine. The County cannot cure that defect by
13 characterizing the matter as administrative after choosing to pursue punitive enforcement (i.e. a
14 fine) for an alleged offense. Therefore, this administrative enforcement proceeding should be
15 dismissed.

16 **C. If the Hearings Officer determines he has jurisdiction to hear this matter, he**
17 **must set forth a procedural process for the conduct of the hearing that**
18 **provides adequate procedural safeguards to ensure Defendants receive due**
19 **process and order the County to reissue a proper Notice of Public Hearing:**

20 If the Hearings Officer concludes, contrary to Defendants' position, that he has
21 jurisdiction to proceed, the next question is what procedures will govern the hearing. That
22 question cannot be left unresolved. The County is attempting to adjudicate alleged code
23 violations and impose monetary sanctions through a local administrative process, yet MCC

1 39.1550 does not set out the procedures that will govern the hearing, the parties' evidentiary
2 rights, the method for presenting and challenging evidence, or the rules for preserving a record
3 for review. As explained above, the Notice of Public Hearing sent to the Defendants is equally
4 lacking in specifics. In short, the County claims that it has the authority to prosecute Defendants
5 through a local administrative process, but has not codified any formal procedures to conduct
6 that process, leaving the Hearings Officer and Defendants to guess how the matter is being
7 handled.

8 To ensure this process is fair to the Defendants so that they may adequately prepare their
9 defense, the Hearings Officer must identify and announce the procedures that will apply *before*
10 the matter proceeds. Without that threshold procedural ruling, Defendants cannot know how to
11 prepare, what evidence will be considered, what rights they may exercise, or what evidentiary
12 burdens the County must satisfy. The County's suggestion that Defendants discover the process
13 being used when they arrive for the first hearing displays a staggering disregard for fundamental
14 fairness. See Exhibit B, Page 1-2.

15 This level of uncertainty creates a due process problem. The Fourteenth Amendment of
16 the United States Constitution prohibits a state or local government from depriving a person of
17 "liberty" or "property" without due process of law. U.S. Const. amend. XIV, § 1. Procedural
18 due process protections apply to deprivations of property in the form of sanctions (or fines),
19 even in cases where the government has taken relatively small amounts of money from
20 individuals. See *Miranda v. Southern Pacific Transportation Co.*, 710 F.2d 516 (9th Cir. 1983);
21 See also *Fuentes v. Shevin*, 407 U.S. 67, 88-90, 32 L. Ed. 2d 556, 92 S. Ct. 1983 & n.21

1 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 342, 23 L. Ed. 2d 349, 89 S. Ct. 1820
2 (1969).

3 The United States Supreme Court has long held that while procedural due process is
4 flexible, it at least requires proper notice and an opportunity to be heard at a meaningful time
5 and in a meaningful manner. See *Mathews v. Eldridge*, 424 US 319, 333, 96 S Ct 893, 902, 47
6 LEd2d 18, 32 (1976); citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). In determining the
7 proper procedure afforded in any given circumstance, the Court articulated a three-factor
8 analysis for determining what process is due: (1) the private interest affected by the government
9 action; (2) the risk of erroneous deprivation under the procedures used and the probable value of
10 additional or substitute safeguards; and (3) the government’s interest, including the fiscal and
11 administrative burdens of additional procedures. *Mathews v. Eldridge*, 424 US 319, 335, 96 S
12 Ct 893, 903, 47 LEd2d 18, 33 (1976). Oregon courts apply that same framework in
13 administrative adjudications. See *Sachdev v. Oregon Medical Board*, 312 Or. App. 392, 494
14 P.3d 1018 (2021).

15 Here, the *Mathews* factors weigh in favor of clear and robust procedural safeguards that
16 differ from the County’s proposed ad hoc land use procedures, and more importantly, from the
17 lack of any description of the process governing the proceedings in the County’s Enforcement
18 Code (i.e. “we’ll create a process when we get to the hearing and the Defendants can find out if
19 they’ve prepared accordingly”).

20 Applying the first *Mathews* factor, Defendants’ private interests are substantial. The
21 County seeks monetary sanctions in significant amounts – \$525 per day, beginning on the date
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1 of the Hearings Officer's final order and continuing until the alleged violations are corrected. It
2 is unclear how the Defendants can even "correct" the violations because the County has never
3 inspected the property, and cannot tell Defendants how to properly correct the alleged
4 violations. Thus, the financial consequences of a formal finding of a violation are potentially
5 significant.

6 Additionally, Defendants are farmers using land in an Exclusive Farm Use (EFU) zone.
7 The alleged violations arise from Defendant's farming activity. Oregon law recognizes that farm
8 use and accepted farm practices on EFU-zoned land receive special protection. Because the
9 County is potentially punishing conduct that qualifies as farm use and an accepted farm practice
10 under Oregon law, the proceeding threatens Defendants' practical ability to continue farming in
11 a zone where farming is the protected and expected use. Defendants therefore have significant
12 private interests in this matter.

13 Under the second *Mathews* factor, the risk of erroneous deprivation is especially high if
14 this matter proceeds under the County's undefined land-use-style process, and the value of the
15 Hearings Officer establishing an alternative process is great. This is not a routine land-use
16 application, a ministerial code determination, or a simple calculation of fees. The County is
17 seeking to impose significant fines based on alleged violations arising from Defendants'
18 protected farming activities. The merits therefore turn on disputed factual and legal questions:
19 whether Defendants' conduct constitutes protected farming activity, whether the complained-of
20 activities are accepted farm practices, whether the County's code may lawfully be applied to
21 those practices, and whether any restriction is necessary to protect public health or safety.

1 Resolving these issues requires a robust evidentiary process and the right of Defendants to
2 directly challenge the County's witnesses, including through the use of expert testimony.

3 The risk of error is heightened because this matter appears to be driven by serial
4 neighbor complaints about Defendants' farm operation and on-going collaboration between the
5 County and the complainants. Complaints from these neighboring property owners may reflect
6 misunderstanding of ordinary farming practices, disagreement with the realities of living near
7 agricultural land, personal animus, inaccurate observations, or subjective objections to noise,
8 odor, equipment, animals, traffic, structures, or other conditions commonly associated with
9 farming – the types of complaints that the Oregon Legislature has taken great steps to protect
10 farmers from.

11 If the County intends to rely on those complaints to drive violations, Defendants must
12 have a meaningful opportunity to test them. That includes knowing who made the complaints,
13 what each complainant claims to have observed, whether the complaint is consistent with other
14 evidence, and whether the complainant's account is credible. Defendants must be able to
15 challenge the County's evidence and require complainants to appear under oath, subject to
16 Defendants right of cross examination, to make it less likely that complainants will exaggerate
17 or prevaricate. Without that opportunity, the Hearings Officer would be left to decide disputed
18 farm-practice issues based on untested accusations made by unknown "witnesses" filtered
19 through the County's enforcement staff.

20 Further, the County's own Staff Decision underscores why clearer procedural safeguards
21 are necessary. The County states that additional complaints remain under investigation, even
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1 though those complaints are not before the Hearings Officer for decision in this proceeding. See
2 Exhibit D, Page 6, Item 14. That information is highly prejudicial to Defendants, who have not
3 violated any provision of the County's code.

4 The County's intentional attempt to cast doubt upon the Defendants invites the Hearings
5 Officer to view Defendants through the lens of unresolved accusations rather than the evidence
6 relevant to the specific alleged violations at issue. It also unfairly implies a broader pattern of
7 wrongdoing without requiring the County to prove those additional allegations, disclose the
8 supporting evidence, or allow Defendants to challenge the complainants. If the County intends
9 to proceed administratively, there must be a clear procedure for excluding or striking irrelevant
10 and prejudicial material from the record. Defendants are entitled to have this matter decided on
11 competent evidence related to the charged violations – not on references to pending
12 investigations, unproven complaints, or other allegations that are not properly before the
13 Hearings Officer, but which would be admissible under the traditional land use process the
14 County seeks to use.

15 To the third *Mathews* factor, the County has no legitimate interest in proceeding under
16 unclear or unfair rules, which the County believes can explained to Defendants for the first time
17 – at the time of hearing. The County may have an interest in efficient code enforcement, but
18 efficiency does not justify an undefined and unfair adjudicatory process. Basic safeguards for
19 code enforcement proceedings – proper notice of the hearing procedures, disclosure of probative
20 evidence, providing non-prejudicial information to an impartial decisionmaker, the ability to

1 subpoena and cross examine relevant witnesses – are ordinary features of administrative
2 adjudication. They are not extraordinary burdens.

3 Moreover, these are the exact procedural protections which would be afforded to
4 Defendants should the County choose to prosecute this matter through the Multnomah County
5 Circuit Court, as MCC 39.1530(E) authorizes.¹ Surely neither the Due Process Clause nor the
6 Oregon Legislature would allow a County to have the unfettered discretion to forego a process
7 with predictable, fair, and enforceable procedures in favor of a standardless, quasi-judicial
8 “free-for-all” where the County makes it up as it goes.

9 Fortunately for Oregon property owners, many other local Oregon jurisdictions provide
10 safeguards for their administrative hearings. For example, the City of Portland’s procedures for
11 code enforcement proceedings incorporate basic due process protections.² See Attachment E.
12 The Hearings Officer could look to established local-government hearing procedures, including
13 the City of Portland’s Code Hearings Officer procedures, as a model. Portland’s code provides a
14 workable structure for local administrative hearings, including procedures for notice, hearings,
15 evidence, hearing-officer authority, orders, and review. The existence of that type of municipal
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19 ¹ The proper process for initiating a violation procedure in Multnomah County
20 Circuit Court would be through the issuance of a citation. In fact, the County could use the
21 uniform citation form used by local governments and law enforcement officials for all manner of
22 alleged violations.

23 ² To the extent that the City of Portland’s procedures authorize the City’s
Hearings Officer to impose a fine for a purported violation of a City ordinance, the City is
explicitly authorized by ORS 153.030(4) and ORS 3.136(3) to impose that sanction. The County
and other Oregon cities are not.

1 framework demonstrates that the safeguards Defendants seek are not unusual, impractical, or
2 burdensome. They are ordinary features of local administrative adjudication.

3 Using an existing model would substantially reduce any burden on the County. The
4 Hearings Officer could issue a procedural order adopting similar safeguards for this matter:
5 disclosure of the evidence the County intends to rely on, identification of witnesses, a defined
6 burden and standard of proof, the opportunity to present testimony and documents, the
7 opportunity to challenge adverse evidence, a process for excluding irrelevant and prejudicial
8 material from the record, and a written decision based on competent evidence. Those procedures
9 would not prevent the County from enforcing its code. They would simply ensure that
10 enforcement occurs through a fair and reviewable process.

11 Accordingly, if the Hearings Officer determines that he has jurisdiction, he should not
12 proceed directly to the merits. He should first issue a procedural order setting forth the rules that
13 will govern the hearing and ensure that those rules satisfy due process. The Hearings Officer
14 should also order the County to reissue the Notice of Public Hearing and attach the description
15 of the appeal process and associated rights pursuant to MCC 39.1550(C).

16 **iv. CONCLUSION**

17 This is not an argument that counties lack code enforcement authority. It is an argument
18 about the statutory limit on that authority and what process landowners should be entitled to.
19 Once the County seeks fines for a non-parking ordinance violation, Oregon law classifies the
20 matter as a violation/offense, and ORS 153.030(4) prohibits administrative enforcement for that
21 category. In this case, Multnomah County may adopt land use and environmental protection
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1 ordinances, and it may require permits for SEC overlay development and ground-disturbing
2 activity. The County may administer and enforce these ordinances through various means. But
3 once the County makes noncompliance with these ordinances punishable by a fine, the alleged
4 violations fall within Oregon's offense-and-violation framework. This entitles Defendants to a
5 clearer and more established procedure than the "free for all" local land use process. Since the
6 alleged violations are non-parking, fine-punishable county ordinance violations, the County
7 may not proceed through its local administrative enforcement process. Chapter 153 supplies the
8 required procedure. As such, these administrative proceedings must be dismissed.

9 Even more importantly, if the County is permitted to proceed in this forum at all, it must
10 first establish a fair, transparent, and reliable process before imposing fines or entering violation
11 findings. That requirement is especially important here because the County's approach, if
12 accepted, would create a troubling model for rural code enforcement: ordinary farming practices
13 could be subject to punitive proceedings whenever neighboring property owners object.
14 Unresolved complaints and prejudicial allegations could taint the record before the accused
15 farmer has any meaningful opportunity to test their credibility. That is not a minor procedural
16 defect; it is a structural problem that threatens not only these Defendants, but other farmers and
17 property owners who may lack the resources to overcome an undefined, complaint-driven
18 process.

19 Clear procedures – proper notice, disclosure of probative materials, witness testimony,
20 cross-examination where credibility is at issue, exclusion of irrelevant or prejudicial material, a
21 defined burden of proof, and clear written findings based on competent evidence – are not
22
23

1 obstacles to legitimate enforcement. They are what make enforcement legitimate. Because those
2 safeguards are readily available through established local models such as the City of Portland's
3 code-hearing procedures, the County cannot justify proceeding without them. The Hearings
4 Officer should therefore require a constitutionally adequate process before this matter proceeds,
5 or decline to adjudicate the alleged violations in this forum.

6
7 DATED this 10th day of June, 2026.

8
9 /s/ Samantha J. Bayer

10 Samantha J. Bayer, OSB 185220
sbayer@oregonpropertyowners.org

11 David J. Hunnicutt, OSB 923426
dhunnicutt@oregonpropertyowners.org

12 OPOA Legal Center
13 PO Box 230637
14 Tigard, OR 97281
Telephone: (503) 620-0258

15 *Of Attorneys for Defendants*
16 *Scott and Stacy Reed*
17
18
19
20
21
22
23

March 5, 2026

Exhibit A, Page 1

Scott and Stacy Reed (Owners/Respondents)
13305 NW Cornell Rd Ste C
Portland, OR 97229

Subject Property: 12424 NW Springville Rd, Portland, OR 97229
Map Tax Lot: 1N1W15C -00600, 1N1W16D -02800,
1N1W16D -03100
Alt. Tax Account #: R961150770, R961160130, R961160590

Zoning: Exclusive Farm Use (EFU)
Affected Overlay(s) Significant Environmental Concern – Stream (SEC-s)

Code Case #: CCPR1-2025-0003

Multnomah County	)
	) NOTICE OF CIVIL VIOLATION
v.	)
	) Zoning Violation CCPR1-2025-0003
Scott and Stacy Reed	)

I. **NATURE OF VIOLATION:** Respondents have engaged in the following activity relevant to this Notice of Civil Violation (NCV):

A. Ground Disturbing Activity

1. Respondents conducted or allowed to be conducted filling related to the development of four private driveways (A, B, C and D), a loading area (G), and ground preparation for a corral (H) in violation of MCC 39.6210.
2. MCC 39.6210 requires a permit for all ground disturbing activities, including filling and excavation, unless exempt.
3. Filling related to farming practice is not exempt from permit requirements for ground disturbing activity. MCC 39.6215(F).
4. Respondents assert that the development of the private driveways, the loading area, and ground preparation for a corral are farming practices.
5. Respondents engaged in filling, which is not exempt under MCC 39.6215(F), even if done in support of farming practices.

6. Respondents do not have a permit authorizing ground disturbing activity.

B. Significant Environmental Concern – Stream (SEC-s)

Exhibit A, Page 2

1. Respondents conducted or allowed to be conducted excavation, filling or a combination thereof related to the development of five private driveways (A, B, D, E and F), a loading area (G), and ground preparation for a corral (H) within the SEC-s overlay of the subject properties in violation of MCC 39.5510.
2. MCC 39.5510 requires a permit for development within SEC overlays, including the SEC-s overlay, unless exempt.
3. Within the Metro 2009 jurisdictional boundary, an SEC-s permit is required for development associated with farm practices and agricultural uses other than agricultural fences. MCC 39.5515(B)(2).
4. The subject properties are located within the Metro 2009 jurisdictional boundary.
5. Respondents assert that the development of the private driveways, the loading area, and ground preparation for a corral are farming practices.
6. Respondents engaged in development within the SEC-s consisting of excavation, filling or a combination thereof, which is not exempt under MCC 39.5515(B)(2), even if done in support of farming practices.
7. Furthermore, change, alteration, or expansion of a lawfully established use that increases ground coverage in excess of 400 square feet is not exempt from SEC-s permit requirements. MCC 39.5515(A)(4)(b).
8. Activities that change the size, scope and configuration of a roadway or driveway beyond the original design are not “maintenance” exempt from SEC permit requirements. MCC 39.5515(A)(9); MCC 39.2000.
9. Respondents claim to be conducting maintenance of existing farm roads.
10. Respondents engaged in development of driveways that increased the ground coverage of any existing roads within the SEC-s overlay of the subject properties in excess of 400 square feet, which is not exempt under MCC 39.5515(A)(4)(b).
11. Respondents do not have a permit authorizing development within the SEC-s overlay.

II. **CIVIL FINES:** Pursuant to MCC 39.1560 and, as applicable, MCC 39.1545 and 39.1550, the following civil fines will be recommended to a County Hearings Officer for imposition on Respondent based on the activity described in Section 1:

- A. **CONTINUING CIVIL FINE** of **\$525.⁰⁰per day (the total of two daily civil fines of \$210.⁰⁰and \$315.⁰⁰)** beginning on the date of the Hearings officer Final Order and continuing until the violations are corrected,

except that the civil fine shall not accrue from the time that an application seeking to resolve the below violations is received by the Land Use Planning office and until a written determination is made on that application or the application is withdrawn by the applicant.

Exhibit A, Page 3

- B. The acts described in Section I of this NOV constitute a violation of MCC 39.6210 (requiring a permit for ground disturbing activity) and MCC 39.5510 (requiring a permit for development within Significant Environmental Concern overlays).

NOTE: Payment of the civil fines does not relieve you of the requirement to correct the violations. MCC 39.1530(B).

III. **COMPLIANCE ACTIONS:** Pursuant to MCC 39.1530 and, as applicable, MCC 39.1545 and 39.1550, the following actions will be recommended to a County Hearings Officer for inclusion in a final order requiring Respondents' compliance:

- A. **Immediately** cease all unpermitted development, including ground disturbing activity and development within the SEC-s overlay, until such time that an application for the necessary permits is approved by the County.
- B. Of the following:
1. Submit to the Land Use Planning office an application seeking approval for the ground disturbing activity and development within the SEC-s overlay.
- OR-
2. Remove all earthen and non-earthen materials deposited on the subject properties in order to develop the four private driveways, the loading area, and ground preparation for a corral, and return the properties to their pre-development condition.
- C. Of the following:
1. If the required permit application(s) are approved: Complete all work and conditions of approval required by the permit application approval in the timeline specified by the approval.
- OR-
2. If the required permit application(s) are not approved and you have either accepted the decision or have utilized all appeal rights provided by relevant code and statute, then the following needs to be undertaken: **Within 15 days of the final decision**, schedule and attend a meeting with staff from the Code Compliance and Land Use Planning offices to discuss the options available for moving forward with the resolution of this compliance case.

- IV. **APPEAL RIGHTS:** Pursuant to MCC 39.1530 and MCC 39.1550, **you may appeal** this Notice of Civil Violation to a County Hearings Officer. To appeal, you must complete and return the enclosed Notice of Violation Appeal form together with payment of the \$250.⁰⁰ appeal fee payable to “Multnomah County” **within 14 days of** the date of this notice to:

Code Compliance
Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233

Exhibit A, Page 4

If you do not appeal, the Multnomah County Code Compliance Specialist will forward this Notice to the County Hearings Officer pursuant to MCC 39.1545 for review and final determination of the validity of the alleged violations and any civil fine and other recommended actions.

IT IS SO ORDERED:
MARGI BRADWAY, DIRECTOR OF MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES

Megan Gibb

Megan Gibb
Planning Director
Land Use Planning Division

Enclosures:

Fine Calculation Form
Appeal of Notice of Violation Form
Map of Violations

NOTICE OF PUBLIC HEARING

Exhibit B, Page 1

This notice concerns a public hearing scheduled to consider the Code Case described below.

Code Case File: CCPR1-2025-0003

Scheduled before one of the County's Hearing's Officer on **Friday, May 29th, 2026 at 10:30 a.m.** via virtual hearing. Virtual Hearing Instructions may be found at www.multco.us/landuse/public-notice.

This Hearing will be open to the public. Interested parties may contact our office to register for this event. Please provide your name, phone number, and email address either by phone to 503-988-3043 or by email to LUP-hearings@multco.us **no later than noon on Thursday, May 28th.**

SUBJECT OF THE HEARING: Appeal of Notice of Violation – Unpermitted ground disturbing activity and unpermitted development within the Significant Environmental Concern Stream (SEC-s) overlay

LOCATION: 12424 NW Springville Rd, Portland, OR and adjacent properties

Map, Tax lot:	Alt. Acct. #
1N1W15C -00600,	R961150770,
1N1W16D -02800,	R961160130,
1N1W16D -03100	R961160590

APPELLANT: Scott Reed

OWNER(s): Scott and Stacy Reed

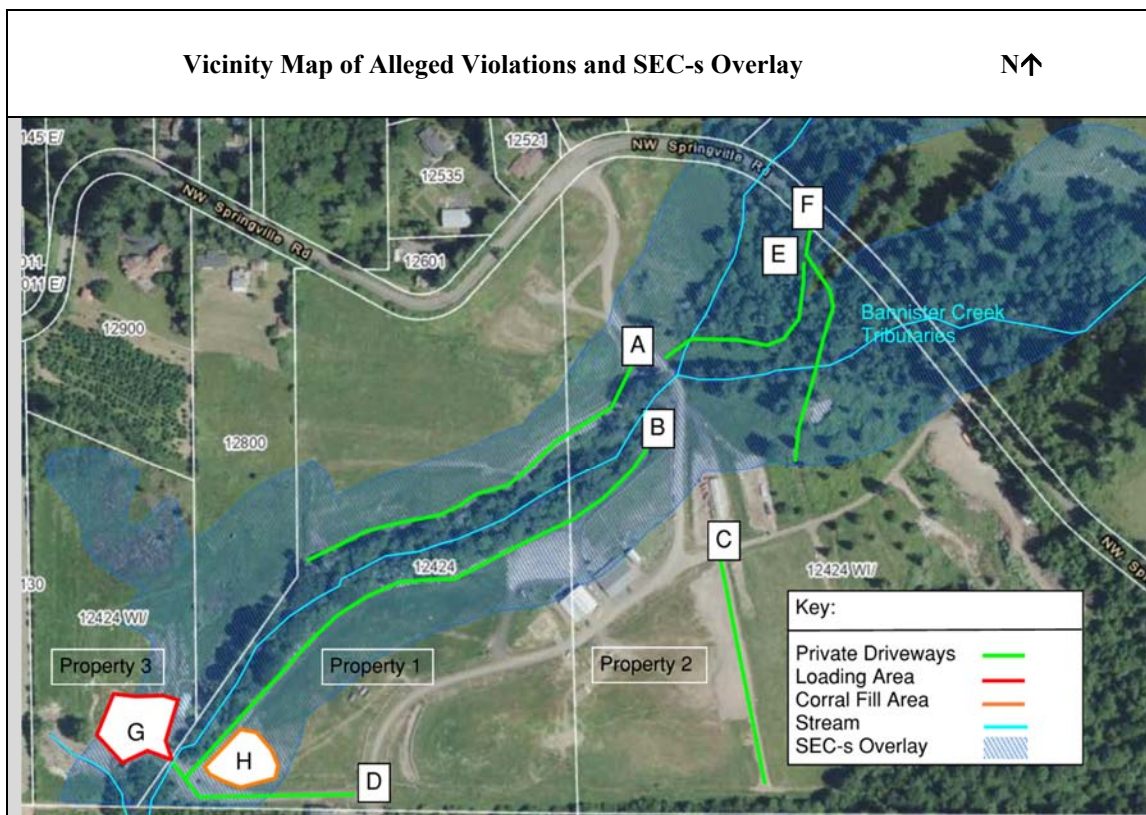
- ❖ **PUBLIC PARTICIPATION AND HEARING PROCESS:** A copy of the Notice of Violation (NOV), Staff Report, and all evidence submitted in support of the NOV is available for inspection, at no cost, by contacting LUP-hearings@multco.us or by visiting our website at www.multco.us/landuse/hearings-officer. Paper copies of all documents may be purchased at the rate of \$0.71/page. For further information on this case, contact LUP-hearings@multco.us.

All interested parties may appear and testify virtually or submit written comment on the NOV at or prior to the hearing. Comments should address either support of, or opposition to, the specific violation(s) of Multnomah County Code being appealed; and must be received prior to the close of the public hearing record. The hearing procedure will follow the Hearings Officer's *Rules of Procedure* and will be explained at the hearing. must be received

prior to the close of the public hearing. The hearing procedure will follow the Hearing Officer's Rules of Procedure and will be explained at the hearing.

The Hearings Officer may announce a decision at the close of the hearing or on a later date, or the hearing may be continued to a time certain. Notice of the decision will be mailed to the hearing participants, usually within 10 days of the announcement. A decision by the Hearings Officer may be appealed by the appellant, the County, or any aggrieved

party to the Oregon Circuit Court, or the Columbia River Gorge Commission if the property in violation is located in the Columbia River Gorge National Scenic Area.



❖ **APPLICABLE ENFORCEMENT CRITERIA** [Multnomah County Code (MCC)]:

Violations, Enforcement and Fines: MCC 39.1530 Notice of Violation, Abatement, Fine and Right to Appeal, and 39.1550 Appeal.

Base Zone: MCC 39.4215 Exclusive Farm Use (EFU) Uses

Permit Requirements: MCC 39.6210 Ground Disturbing Activity and Stormwater - Permits Required; and MCC 39.5510 Significant Environmental Concern (SEC) Overlays - Permits Required

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link **Chapter 39: Multnomah County Zoning Code** and at <https://multco.us/landuse/comprehensive-plan> under the link **Multnomah County Comprehensive Plan**.

Notice to Mortgage, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

Thank you,

June

On Fri, May 8, 2026 at 10:20 AM A. June Bradley <june.bradley@multco.us> wrote:

Hi, Dave.

As previously stated, the County does not object to a prehearing if the Hearings Officer chooses to address Mr. Reed's procedural concerns that way. If the Hearings Officer determines that different procedures or timelines are required, the County also has no objection to complying with those procedures or timelines, including discovery or a rescheduled hearing.

Please copy me on your email to the Hearings Officer, and I will communicate your request to the County's Land Use Planning Department.

Thank you,

June

On Thu, May 7, 2026 at 3:32 PM Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org> wrote:

This Message Is From an External Sender

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information. June,

Thanks for your response and draft letter to the HO. We see the law differently and are going to want Hearings Officer Doughman to weigh in ahead of a hearing to enable both the County and our client to operate under a commonly understood set of hearing procedures.

Our client has been charged with multiple "violations" under Multnomah County Code. These violations stemmed from a series of citizen-driven complaints and on-going collaboration between the complainants and County staff. Pending the decision of the hearings officer, Mr. Reed is potentially subject to civil fines of \$525 per day.

We believe that ORS 153 does apply to these proceedings. A "violation" under ORS 153.008 is an offense "created by an ordinance of a county, [...] and the ordinance provides that violation of the ordinance is punishable by a fine, but does not provide that the offense is punishable by a term of imprisonment." See ORS 153.008(1)(c).

ORS 153.030(1) states that the criminal procedure laws of this state applicable to "crimes" also

apply to “violations”. While ORS 153.030(4) grants counties the authority to adopt procedures for administrative enforcement in lieu of the Chapter 153 procedures, the subsection is limited by its final sentence: *Except for ordinances governing the parking of vehicles, administrative enforcement as described in this subsection may not be used for any prohibition designated as an offense.*

Under ORS 161.505, an “offense” is “conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state.” ORS. 161.505.

Further, it goes on to state that an offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008. Id.

We believe that the violations brought against Mr. Reed are violations described in ORS 153.008(1) (c), thus making it an “offense” under ORS 161.505. Therefore, ORS 153.030(4) does not shield the county from complying with ORS 153 in this proceeding. Moreover, Oregon Courts have recognized that Chapter 153 applies to violation proceedings with similar subject matter to this case. See [*Hood River Cty. v. Mazzara*, 193 Or App 272, 89 P3d 1195 \(2004\)](#).

Since ORS 153.030(1) states that the criminal procedure laws of this state applicable to “crimes” also apply to “violations,” our client is entitled to all the standard processes available to criminal defendants, including but not limited to the right to depose witnesses, seek discovery, subpoena witnesses to testify, cross-examine witnesses, and move to exclude irrelevant, immaterial, or unduly repetitious evidence. This is why we believe we are entitled to the names of the co-complainants and all communications between the complainants, code enforcement, and Multnomah County Planning staff.

We also need to know what the correct rules of procedure are for a case of this nature. Multnomah County’s process is very different from other counties and cities on code enforcement proceedings. If you look at other neighboring jurisdictions (e.g. City of Portland), you’ll notice that property owners are afforded a much more traditional and inclusive procedural process befitting of the potential for significant financial impact upon the property owner. We shouldn’t be using the typical land use free-for-all. Assuming we’re going to disagree on the proper form of procedure and/or the evidence the County is obligated to provide us, we’ll need to file a motion to compel production of the needed material we’ll want so that the Hearings Officer can rule on the motion and make a determination on the proper procedures for the hearing. We’ll both want time to brief and argue that motion to the Hearings Officer. Should the Hearings Officer give us more procedural rights than the County is currently offering, we’ll need time to exercise those rights so that we’re prepared for the hearing. That will take longer than the three weeks between now and the scheduled hearing date, and if we’re right, the County is going to be required to send out a new notice, as we don’t believe the correct process provides standing and the right to testify to anyone who shows up for the hearing. For these reasons, it doesn’t make sense to try and resolve these issues at the May 29th hearing.

What we propose is that we stipulate to a status conference with the Hearings Officer where we set dates for motions, replies, and argument, and depending on the Hearings Officer’s determination, follow up with a hearing date that gives us sufficient time to complete discovery.

If you're willing to stipulate to a status conference, I can email the Hearings Officer tomorrow and attach a letter that I can mail (presumably to County Planning) seeking an immediate status conference to discuss the issues. There'll be less of a scheduling time crunch if the County is willing to reschedule the Hearing on its own accord (and we don't have a 150 day requirement), but if you're insistent on keeping the May 29 hearing, we'll need to get the conference scheduled quickly, so that we can move the Hearings Officer to reschedule the hearing over the County's objection. Either way, I plan on getting something in the email/mail to the Hearings Officer tomorrow. Let me know if we can stipulate and/or how the County would like to proceed.

Dave Hunnicutt

President

PO Box 230637

Tigard, OR 97281

Office: 503-620-0258



From: A. June Bradley <june.bradley@multco.us>
Sent: Wednesday, May 6, 2026 12:25 PM
To: Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org>
Cc: Samantha Bayer <sbayer@oregonpropertyowners.org>
Subject: Re: Multnomah County v. Scott Reed, Zoning Violation CCPR1-2025-0003

Hi, Dave.

I have no objections to a stipulated request for a prehearing to the Hearings Officer identifying your procedural concerns and letting the Hearings Officer decide how to proceed—whether by setting a prehearing or by taking those concerns up at the hearing set for May 29th. I have attached a draft stipulated request for a prehearing for your review.

In the interest of clarifying and narrowing the issues, it does not appear to me that ORS 153 applies to local administrative enforcement proceedings such as these. See ORS 135.030(4)-(6) (stating that ORS 153 does not prohibit a local government from providing for administrative enforcement, including enforcement through imposition of monetary penalties, by establishing procedures and conducting hearings before a hearings officer); *Hood River Cnty. v. Stevenson*, 177 Or App 78, 85, 33 P3d 325, 329 (2001) (stating that "ORS chapter 153 applies to violation proceedings brought in state circuit courts"). Let me know if you disagree, but it seems fairly clear to me that ORS 153, and therefore also ORS 135.815, does not apply here.

Thank you,

June

On Mon, May 4, 2026 at 4:27 PM Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org> wrote:

This Message Is From an External Sender

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information. Hi June:

Thank you for your prompt emails re: process and discovery. Unfortunately, the County has not provided materials responsive to the requirements of ORS Ch. 135. For example, we do not have copies of email correspondence between complainants and staff, staff notes from telephone conversations with complainants or others, or any field notes taken from the various staff site visits. Moreover, the names of complainants have been redacted from the documents submitted by the County. We are entitled to all those materials, and the names/emails of the complainants should not be redacted. We are not sure what additional materials remain in the County's possession that will enable us to prepare a defense for our client, but the County is obligated to provide them to us.

We appreciate clarification on the County's plan that the hearing be conducted in the same manner as a land use proceeding, subject only to the shifting of the burden to the County to demonstrate the alleged violation. Please advise if that is the County's ordinance requirement, or if that is merely a suggestion.

I believe holding a hearing on May 29 is likely to be overly ambitious, given what we believe are additional materials withheld by the County that we are entitled by both statute and the Constitution to receive in aid of our client's defense. I suggest we schedule a status conference at your earliest convenience with the Hearings Officer to set some reasonable timelines, a process for motions, hearings, and resolution by the HO, and a scheduled hearing date giving the HO and the parties an opportunity to obtain resolution on what materials the County is obligated to provide us and what procedural process will govern any further proceedings.

Dave Hunnicutt

President

PO Box 230637

Tigard, OR 97281

Office: 503-620-0258



From: A. June Bradley <june.bradley@multco.us>
Sent: Friday, May 1, 2026 2:20 PM
To: Samantha Bayer <sbayer@oregonpropertyowners.org>
Cc: Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org>
Subject: Re: Multnomah County v. Scott Reed, Zoning Violation CCPR1-2025-0003

Hi, Samantha.

MCC Chapter 37 "Administration and Procedures" was consolidated into MCC Chapter 39 during the County's [Code Consolidation and Reorganization Project \(2018\)](#).

Hope this helps!

Best,

June

On Fri, May 1, 2026 at 1:15 PM Samantha Bayer <sbayer@oregonpropertyowners.org> wrote:

This Message Is From an External Sender

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information. Hi June,

Thank you for sending over this information. We will have more follow up next week, but I am hoping you could please send me a copy of MCC Chapter 37 "Administration and Procedures". I am having a hard time finding it on the County's website.

Thank you!

Samantha Bayer

General Counsel

OPOA Legal Center

sbayer@oregonpropertyowners.org



PROTECTING PRIVATE PROPERTY RIGHTS SINCE 1989

OPOA Legal Center

(503) 620-0258

www.oregonpropertyowners.org

From: A. June Bradley <june.bradley@multco.us>
Sent: Tuesday, April 28, 2026 2:27 PM
To: Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org>
Cc: Samantha Bayer <sbayer@oregonpropertyowners.org>
Subject: Re: Multnomah County v. Scott Reed, Zoning Violation CCPR1-2025-0003

Apologies--I didn't mean to omit Sam! Thanks the catch and for bringing her back into the thread.

On Tue, Apr 28, 2026 at 2:21 PM Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org> wrote:

This Message Is From an External Sender

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information. Thanks
June.

Forwarding this to Sam – please include her on all correspondence.

Dave Hunnicutt

President

PO Box 230637

Tigard, OR 97281

Office: 503-620-0258



From: A. June Bradley <june.bradley@multco.us>
Sent: Tuesday, April 28, 2026 1:46 PM
To: Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org>
Subject: Re: Multnomah County v. Scott Reed, Zoning Violation CCPR1-2025-0003

Hi Dave and Samantha,

In addition to the procedures outlined in MCC 39.1550 - MCC 39.1565, staff has provided the attached compliance hearing script, which outlines how the hearing is to be conducted. You will note that the procedures track the procedures for land use hearings (e.g., "raise it or waive it" and the "7-7-7 rule" apply), and the final order is appealable to LUBA if the Hearings Officer makes a land use decision pursuant to ORS Chapter 197. Note also that there are a couple areas of the script that need to be updated; namely, on page 1-2 the burden of proof is misstated (per MCC 39.1150(C)(1), the County must prove the violation alleged by a preponderance of the evidence) and on page 5 the manner in which testimony is submitted is outdated (hearings are now held virtually). Staff is making the necessary updates, but I am sending you the script now in its current form so that you have ample time to review the procedures.

As to the public records request: Without conceding or denying that the pretrial discovery rules in ORS Ch. 135 apply to this compliance hearing, it is the County's practice to disclose the evidence it intends to submit at the compliance hearing at no cost to the appellant. As I indicated in my last email to you, that evidence will be posted along with the staff report to the hearing webpage, and I will ensure that you are notified at that time. The remainder and sweeping majority of the records Mr. Reed has requested are not within the scope of ORS 135.815. Should Mr. Reed want those records, he will need to confirm that he wishes the County to move forward with responding to his public records request. At Mr. Reed's request, the County will provide an updated cost estimate.

As to the appeal fee: the County will waive the \$250 appeal fee in this instance; however, should the hearings officer rule in favor of the County, the County will request that reimbursement of the County's fees and costs be included in the final order as outlined in MCC 39.1550(C)(2)(d).

Thank you,

June

On Fri, Apr 24, 2026 at 1:17 PM Dave Hunnicutt <dhunnicutt@oregonpropertyowners.org> wrote:

This Message Is From an External Sender

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information. Hi

June:

Thanks for the phone call this morning. As you know, we represent Scott Reed in the above-numbered enforcement matter. Please direct all correspondence regarding this matter to Samantha Bayer (co-counsel) and me.

As we discussed, please send us an email setting out the procedural process the County uses in its code enforcement hearings. The Code isn't clear whether you treat your enforcement proceedings as land use hearings or if you employ an alternative process. Clarifying that issue would be appreciated.

I also indicated that it is our position that Mr. Reed is entitled to all materials in the County's possession related to this matter without charge, and that he is entitled to a refund of the appeal fee assessed by the County to obtain a hearing before the County Hearings Officer. The County has chosen to process this matter as a Civil Violation, which carries a monetary fine and possible lien rights to Mr. Reed's property. ORS 135.815 sets forth the pretrial discovery obligations of the County. Those obligations are made applicable to violation proceedings pursuant to ORS 153.076(3). There is no ability for the County to assess a fee to a defendant for the costs of providing those materials. Charging a defendant to defend themselves against County mandated charges raises significant constitutional questions.

The same rationale applies to the County's mandated appeal fee. The County has no authority to demand that a defendant subject to a violation resulting in a monetary fine and the potential loss of property be forced to pay a fee to be entitled to a hearing before an impartial decision maker. An indigent defendant would be forced to accept a violation because they lacked the financial resources to "have their day in court". That isn't consistent with either the Constitution or the Oregon statutory scheme.

Let me know the County's position on the fee for the records and appeal, and please provide me with the procedure the County uses in its violation hearings. Sam and I are looking forward to working with you in this matter.

Dave Hunnicutt

President

PO Box 230637

Tigard, OR 97281

Office: 503-620-0258



Hearings Officer (HO): This is the time set for _____ (Zoning Violation case number and appellant name). I am _____ (HO name) and I am a Hearings Officer for the Multnomah County Code Compliance Program.

This hearing is a quasi-judicial proceeding and I am the presiding officer. My role is to determine the outcome of this matter. My duty is to apply the law, not to revise the law. I will make a decision based on the record in this matter, the evidence presented today and the requirements of all applicable rules and regulations. Evidence may be submitted in any form - such as testimony, land use permits, letters, petitions, slides, photographs, maps, drawings or other items.

Based on the evidence and the applicable rules and regulations, I will determine whether the alleged violations exist, whether the Code Compliance Program has the authority to impose the civil fine associated with the Notice of Violation, whether the Code Compliance Program substantially complied with the procedures for imposing a civil fine, and whether the Code Compliance Program calculated the fine properly.

The appellant in this case is responsible for proving compliance with all applicable rules and regulations by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of the evidence. It is such evidence that is more probably true and accurate than any opposing

evidence. Proof of compliance with any or all rules and regulations by a preponderance of the evidence will invalidate the imposition of any associated civil fine set forth in the Notice of Violation appealed.

Please take note that this is a *de novo* hearing. A *de novo* hearing is a full evidentiary hearing and all issues relevant to the violation notice criteria may be submitted and will be considered in this hearing. In fact, the appellant is cautioned that any and all claims or issues, constitutional or otherwise, arising out of the issuance of the Notice of Violation must be raised in this proceeding with sufficient specificity to allow the local government or its designee to respond fully. If not raised in this proceeding, the appellant may lose the right to raise such claims in subsequent proceedings.

GUIDELINES: I would like to announce several guidelines for those presenting testimony and participating in the hearing. The guidelines are established by the zoning code and state law and are as follows:

1. Any testimony and evidence you present must be directed toward the applicable criteria for the appeal of the civil fine imposed with the Notice of Violation, or other criteria in the County's comprehensive plan or zoning code which you believe apply to the Notice of Violation.

2. The Code Compliance Program staff will identify the applicable violation criteria as part of their staff report to the Hearings Officer. The staff report lists this criteria. There are copies of the staff report at the back of the room on the table. If we have run out of copies, we will pause and make more available for the audience.

3. Before the closing of this hearing, any participant may ask for an opportunity to present additional evidence. If this kind of request is made, I will either grant a continuance or hold the record open for at least 7 days to provide an opportunity to submit additional evidence and will hold the record open for an additional 7 days to provide an opportunity for parties to respond to that new evidence.

4. After the record is closed to all parties, the appellant may ask for an additional 7 days to submit final written arguments before I make my decision.

5. If you fail to raise an issue supported by statements or evidence sufficient to give the Hearings Officer and the parties an opportunity to respond to the issue, you will be precluded from appealing to the Circuit Court, or the Columbia River Gorge Commission if the property involved is within the Columbia River Gorge National Scenic Area, based on that issue.

DISCLOSURES: [Any ex parte contacts or conflicts of interest should be disclosed at this time. If there are none that should be stated on the record.]

If there are disclosures of ex parte contacts, participants should be given an opportunity to rebut the substance of any disclosure.

If there are any disclosures of conflicts of interest, the HO should state whether he/she can still be fair in conducting the hearing and making a decision.

If the HO has been on a site visit, that should be disclosed. The HO should describe the time and date of the visit, what he/she observed, who (if anyone) the HO talked to at the site and any other relevant facts or observations obtained as a result of the site visit. Then hearing participants should be invited to rebut any facts adduced in the disclosure.

CONDUCT OF THE HEARING:

I will ask for testimony and other evidence in the following order:

1. Staff report
2. Appellant
3. Proponents/Supporters of the appeal
4. Opponents of the appeal
6. Rebuttal by the appellant if necessary
7. HO discussion, questions, deliberation

8. Future scheduling if necessary

How to present testimony:

There are testimony cards at the back of the room and should be filled out by anyone wishing to testify. The cards should be given to the recorder (*usually the administrative office staff person, sitting to your left*).

How to present your testimony:

1. State your name and address
2. If you can, identify the violation criteria to which your testimony is directed, by stating the section of the zoning ordinance, comprehensive plan, state statute or other legal authority to which your evidence or arguments are directed.
3. Avoid repetitive testimony
4. During the hearing, I ask those in the audience to refrain from demonstrations in support or opposition.

Staff Report for Hearings Officer Review

Evidence and Supporting Documents for Notice of Violation

Code Case #: CCPR1-2025-0003

Exhibit D, Page 1

Subject Properties:

Property 1	
Address	12424 NW Springville Rd, Portland, OR 97229
Legal Description	SECTION 16 1N 1W, TL 2800, SPLIT MAP R501639 (R961150770)
Alt Acct #	R961160130
Size	22.27 acres

Property 2	
Address	Vacant Property adjacent to 12424 NW Springville Rd, Portland, OR 97229
Legal Description	SECTION 15 1N 1W, TL 600, SPLIT MAP R324300 (R961160130)
Alt Acct #	R961150770
Size	54.49 acres

Property 3	
Address	Vacant Property adjacent to 12424 NW Springville Rd, Portland, OR 97229
Legal Description	SECTION 16 1N 1W, TL 3100
Alt Acct #	R961160590
Size	7.67 acres

Affected Zoning: Exclusive Farm Use (EFU)

Affected Overlay: Significant Environmental Concern – Stream (SEC-s)

Owners/Respondents: Scott and Stacy Reed, 13305 NW Cornell Rd Ste C Portland, OR 97229

I. STAFF SUMMARY

Code Case CCPR1-2025-0003 concerns a Notice of Violation (NOV) issued to Scott and Stacy Reed on March 5, 2026 for alleged violations of Multnomah County Code (MCC or Code).

Exhibit D, Page 2

- a) Excavation, filling, and depositing of earth and non-earth materials related to development of private driveways A, B, C and D on properties 1, 2, and 3;
- b) Excavation related to development of private driveways E and F on property 2;
- c) Excavation, filling, and depositing of earth and non-earth materials related to development of a loading area (G) on property 3; and
- d) Filling consisting of earth in preparation for corral placement (H) on property 1.

[illegible]

Respondents assert that development of the private driveways on the Properties was maintenance of existing farm roads (Ex. D.1). As discussed below, excavation is apparently exempt from the requirement for a ground disturbing activity permit pursuant to MCC 39.6215(F) (exempting farming practices other than filling or the placement of structures). Therefore, the NOV only alleges a violation of MCC 39.5510 for excavation related to development of the private driveways.

This staff report is forwarded to the Hearings Officer for review and determination. Pursuant to MCC 39.1550, the Land Use Planning Director (LUP Director) is seeking affirmation of the NOV, imposition of civil fines, an Order for Respondents to cease unpermitted ground disturbing activity and unpermitted development within the SEC-s overlay and to take corrective actions, and reimbursement of the County's reasonable administrative costs and costs for its enforcement actions, including appeals.

II. STAFF FINDINGS

Exhibit D, Page 3

A. Property Ownership

Scott and Stacy Reed are listed in the Multnomah County tax assessment records as the owners of the Properties from June 23, 2014, to present (Ex. B.2). In addition to being the property owners, per MCC 39.1505, Scott and Stacy Reed are also the Respondents in this matter as the persons alleged to have committed the violations or to be responsible for the violations set forth in the NOV.

B. Case Background

1. On May 19, 2025, Multnomah County received community-generated complaint CCINT-2025-0019 (Complaint 1) alleging unpermitted importation of fill material (Ex. A.1). The complaint included four photos showing a dump truck and an excavator appearing to distribute dirt on the Properties as evidence of the allegations (Ex. A.1).

On May 30, 2025, a co-complainant submitted via email additional concerns about possible violations based on Google Earth images. The allegations stated that Google Earth showed:

“...many piles of fill being deposited along a roadway towards the lower right corner of the image. ... I can't tell what the piles of white material are, but there is some kind of earth moving equipment (backhoe?) shown. There is considerable earth movement and possibly the addition of fill at the upper Springville entrance to the property (pan to the right in the Google Earth image) in the last 6 months. There are also piles of white ru [sic] that area... Aerial photos of the Reed property last summer appear to show a very dark material as well as piles of what might be concrete rubble being deposited on what might be new roadway adjacent to a creek on the property, shown in this photo. Is this within the riparian corridor?...” (Ex. A.3).

2. On June 3, 2025, the CCS conducted a document investigation that included a review of the Multnomah County permit history of the Properties (Ex. B.3). The CCS found that three permits allowing importation of fill material and other ground disturbing activity had been previously approved for the Properties; however, none of the three permits were still in effect at the time that Complaint 1 was made (Ex. B.4-6).

In addition, a review of Google Earth aerial images from 2013 through 2025 showed evidence of development of three private driveways (A, B and D)

and two disturbed areas (loading area G and fill area H) within the SEC-s overlay of the Properties (Ex. B.7-B.12). The aerial images also showed evidence of development of another private driveway (C) outside the SEC-s overlay. The foregoing development was not included in the approved plans for the prior permits, and therefore is not covered by those permits (Ex. B.4, page 5; Ex. B.5, pages 5-9, Ex. B.6, page 14).

Exhibit D, Page 4

In the Document Investigation Report, the CCS concluded that the alleged ground disturbing activity and development within the SEC-s overlay was unpermitted. The CCS requested an offsite inspection from the public right-of-way to further assess the allegations. (Ex. B.13).

3. On June 03, 2025, Robert Hyde, Code Compliance Inspector (CCI), conducted a site inspection from several locations adjacent to the Properties. In his report, the CCI documented several dump trucks entering the Properties carrying loads of what appeared to be dirt (Ex. B.14, photographs 9287-9294).

The CCI also reported an area on the south end of property 1 within the SEC-s overlay where active development was occurring. The CCI described seeing deposited dirt piles and heavy equipment consisting of a bobcat and a mini excavator. Photographs taken during the inspection show the southwest corner of property 1, where approximately 4 feet of earth fill material was deposited, increasing both the elevation and grade of the land within that portion of property 1 (Ex. B.14, photographs 9296-9299).

4. On June 05, 2025, after reviewing the staff investigation file, the LUP Director determined that there was evidence of development in the form of active ground disturbing activity occurring on the Properties, both within and outside of the SEC-s overlay; that no permit was in effect authorizing the development; and that the development was not exempt from all ground disturbing activity and SEC overlay permit requirements. Based on this determination, the investigation of Complaint 1 concluded, and Code Case CCPR1-2025-003 was opened (Ex. C.1).
5. Due to the evidence of unpermitted development within the SEC-s overlay, a Stop Work Order (SWO) was issued pursuant to MCC 30.1540 and posted to accesses to the Properties adjacent to NW Springville Rd and NW Redfox Dr. The SWO required immediate cessation of all unpermitted ground disturbing activity within a protected environmental overlay, immediate cessation of unpermitted importation of fill material to the subject properties, and immediate cessation of unpermitted excavation (Ex. C.2). At the time that the SWO was placed on June 05, 2025, the CCI did not observe any ongoing development (Ex. B.15).
6. On June 12, 2025, a Request for Voluntary Compliance (RVC) notice was issued to the Respondents. The RVC provided follow-up to the SWO, outlined the alleged Code violations, reiterated the requirement that the unpermitted development cease, and provided the Respondents with an opportunity to voluntarily resolve the alleged Code violations through voluntary corrective action (Ex. C.3).

7. On June 24, 2025, the CCS held a phone conversation with Respondent Scott Reed. During the conversation, Respondent indicated that he had removed the SWO signage from both accesses, but the development described in the SWO had not resumed. He also reported that the stockpiles of fill material shown in the photographic evidence of the RVC had already been distributed on the property and did not require further management to control erosion or sedimentation. Respondent indicated that the work observed by the CCI on June 03, 2025 in the southwest corner of property 1 was being done in preparation for placement of a larger stock corral, in an area where a prior corral had been in place. Respondent further indicated that any work that had occurred on roadways on the Properties was maintenance of existing farm roads.

In a follow-up email on June 24, 2025, Respondent submitted aerial images of the Properties from 1936 and 1947 as evidence that farm roads were in place within the SEC-s overlay on the subject properties prior to SEC overlay permit requirements, which were adopted under ordinance 801 in 1994 (Ex. B.27). The submitted photos appear to show partial dirt tracks on properties 1 and 3 within the vicinity of current private driveways A and B (Ex. D.2 - D.3).

8. On July 17, 2025, Respondent Scott Reed attended a virtual meeting with Land Use Planning (LUP) staff, Alexandra Howard and Ann Shank-Root, as well as the CCS. During that meeting, LUP confirmed that the corral structure itself would be considered a fence, and therefore, would be exempt from SEC-s permit requirements per MCC 39.5515(B)(2) (stating that agricultural fences shall not require an SEC-s permit). However, LUP further stated that depositing of fill material prior to construction of the corral was not subject to that exemption. Respondent shared two additional aerial images from 1958 and 1984 with LUP and the CCS, as evidence of existing development on the properties. The photos appear to show further extension of the dirt tracks on properties 1 and 3 to the south (Ex. D.5-D.6) in comparison to the 1936 and 1947 aerial photos submitted by Respondent on June 24, 2025 (D.2-D.3).
9. On July 24, 2025, Multnomah County received an additional community-generated complaint CCINT-2025-0028 (Complaint 2) alleging unpermitted installation of a driveway off NW Springville Rd. The complaint included photo evidence to support the allegation, consisting of three photos showing what appears to be a recently excavated driveway within a wooded hillside. The excavation was determined to be recent based on the color of the earth material and lack of vegetation seen in the photos (Ex. A.4).
10. On August 28, 2025, the CCS conducted a Document Investigation that included a review of the current Multnomah County permit history of the subject properties (Ex. B.17).

The CCS found that Transportation right-of-way permit ROW-GEN-2024-0028, issued on September 11, 2024, approved three accesses from NW

Springville Rd to the Properties. The driveway being investigated was represented as #2 North on the approved site plan for permit ROW-GEN-2024-0028 (Ex. B.18).

Exhibit D, Page 6

Although Transportation right-of-way permit ROW-GEN-2024-0028 approved an access within the right-of-way of NW Springville Rd from property 2, the permit does not provide LUP authorization for excavation inside the boundary of the property.

The CCS found that two additional ESC permits: T1-2024-0058 (ground disturbing activity related to a new farm dwelling) and T1-2025-0014 (ground disturbing activity related to a new agricultural building) had been issued by Land Use Planning for the subject properties in August 2025. However, the foregoing development was not included in the plans for the those permits, and therefore is not covered by those permits (Ex. B.19, page 19 and Ex. B.20, page 7).

12. On September 02, 2025, the CCI conducted a site inspection from the public right-of-way of NW Springville Rd. In the inspection report, the CCI documented findings of recent excavation seen as disturbed areas with clear cuts and dark soil to create an access and interior driveway off of NW Springville Rd. Photos taken during the inspection support these findings (Ex. B.23).

The CCI also conducted further inspection of the subject properties to assess the status of the corrective actions outlined in the CCPR1-2025-0003 RVC (Ex. C.3). In the inspection report, the CCI noted that there did not appear to be ongoing development within the areas described in the RVC (Ex. B.24).

13. On September 18, 2025, after reviewing the staff investigation file, the LUP Director determined that there was evidence of additional unpermitted development on property 2 that was not previously outlined in the SWO or RVC notices. The development consisted of ground disturbing activity, including excavation, within the SEC-s overlay in order to develop private driveways E and F. The LUP Director found that no land use permit had been issued that authorized the development, and that the development was not exempt from SEC-s overlay permit requirements (Ex. C.4). Based on this determination, the investigation of Complaint CCINT-2025-0028 concluded and the newly identified violations were incorporated into existing Code Case CCPR1-2025-0003.
14. On February 6, 2026, Multnomah County issued a Request for Inspection (RFI) letter to the Respondents in order to investigate several recent community-generated complaints that were submitted to the Code Compliance office, and to also determine the status of violations outlined in the RVC on June 12, 2025. The Respondents declined to schedule an inspection by the February 20, 2026 deadline outlined in the RFI. Therefore, the LUP Director determined that a NOV would be issued based on all available evidence absent the requested site inspection. Of note, the more recent allegations outlined in the RFI are still under investigation, and are not included in the NOV.

1. Ground Disturbing Activity

- a. Under MCC 39.6210(A), no ground disturbing activity, unless exempt, shall occur except pursuant to a permit.
- b. “Ground disturbing activity” is any excavating or filling or any combination thereof. MCC 39.2000.

“Excavation” is the motorized removal of earth material or other motorized activity resulting in the exposure of the ground surface, including, but not limited to, cutting, digging, grading, stripping, trenching, dredging, bulldozing, benching, terracing, mining or quarrying, and vegetation or tree removal. Work conducted by hand without the use of motorized equipment is not excavating. MCC 39.2000.

“Fill” is the deposit (noun or verb) of any earth materials by motorized means for any purpose, including, but not limited to, stockpiling, storage, dumping, raising elevation or topography, and tracking materials such as mud onto a road surface with vehicle tires. Work conducted by hand without the use of motorized equipment is not filling. For the purposes of this code, fill does not include materials included in a design by a registered professional engineer to physically support and/or protect a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. MCC 39.2000.

“Earth materials” are any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste). MCC 39.2000.

- c. As relevant here, certain farming practices are exempt from ground disturbing activity permit requirements. Under MCC 39.6215(F), “farming practices other than filling or placement of structures” are exempt from Minimal Impact Project and Erosion and Sediment Control Permit requirements.

2. SEC-s Overlay

- a. Under MCC 39.5510(A)(1), except as provided in MCC 39.5515 and 39.5525, an SEC overlay permit is required for all development within the SEC overlays, including but not limited to the location, design, change, replacement, or alteration of any use or structure.
- b. “Development” specific to the SEC overlays, is any human-made change defined as buildings or other structures, mining, dredging,

paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Any other activity that results in the removal of more than 10 percent of the existing vegetation in the Riparian Area on a lot or parcel. MCC 39.5520

- c. As relevant here, under MCC 39.5515(A), an SEC overlays permit shall not be required for:

“(4) Change, alteration, or expansion of a lawfully established use or structure provided that:

* * *

Exhibit D, Page 8

- (b) Within the * * * SEC-s, there is no change to, or alteration or expansion of, the structure’s or a driveway’s ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by-project basis, but rather applies on a cumulative basis to all expansions after the issuance of the original permit for the construction of the structure.

* * *

- e. As relevant here, under MCC 39.5515(A), an SEC overlay permit shall not be required for:

- (9) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that are lawfully established[.]”

* * *

- f. “Maintenance” is an activity that restores the size, scope, configuration, and design of a serviceable structure to its previously authorized and undamaged condition. Activities that change the size, scope and configuration of a structure beyond its original design are not included. MCC 39.2000.

- g. As relevant here, under MCC 39.5515(B), “[f]arm use, as defined in ORS 215.203(2)(a), including buildings and structures accessory to a farm use do not require an SEC permit except in the following situations:

- (2) Within Metro’s 2009 jurisdictional boundary, an SEC-s permit is required for agricultural buildings, structures and development associated with farm practices and agricultural uses, except that agricultural fences shall not require an SEC-s permit.”

D. Description of Violations

1. **MCC 39.6210 – Ground Disturbing Activity Permit**

Exhibit D, Page 9

Filling related to the development of private driveways A, B, C and D, loading area G, and ground preparation for corral placement in fill area H is in violation of MCC 39.6210.

MCC 39.6210 requires a permit for all ground disturbing activities, including filling and excavation, unless exempt. Per MCC 39.6215(F), filling is not exempt from the MCC 39.6210 permit requirement.

Respondents assert that the development of the private driveways on the Properties was maintenance of existing farm roads (Ex. D.1). Respondents also assert that development of the ground on property 1 was in preparation for placement of a corral for livestock (Ex. D.1). Last, on the site plan for ESC permit T1-2025-0014, Respondents assert that the loading area on property 3 is an existing gravel loading area that will provide access to a future agricultural building (Ex. B.20, page 7).

Respondents engaged in filling activity outlined below, which is not exempt from ground disturbing permit requirements under MCC 39.6215(F), even if done in support of farming practices. Specifically:

- Soil and/or rock was deposited to driveway A in May 2021 (Ex. B.8, page. 7); and
- Soil was deposited to driveway B in June 2022 (Ex. B.9, page 8), May 2023 (Ex. B.9, page 7), August 2023 (Ex. B.9, page 4), April 2024 (Ex. B.9, page 3), and November (Ex. B.9, page 2);
- Soil was deposited to driveway C in June 2022 (Ex. B.10, page 4), August 2023 (Ex. B.10, page 3), April 2024 (Ex. B.10, page 2), June 2025 (Ex. B.14, photos 9284, 3285, and 9295), and July 2025 C (Ex. B.16, photos 9522 and 9525); and
- Soil was deposited to driveway D in June 2022 (Ex. B.11, page 5); and
- Soil was deposited to loading area G in June 2022 (Ex. B.12, page 6) and September 2025 (Ex. B.24, photo 0074); and
- Soil was deposited to fill area H in August 2023 (Ex. B.12, page 4), July 2024 (Ex. B. 12, page 3), November 2024 (Ex. B.12, page 2), and June 2025 (Ex. B.14, photos 9296-9299).

Because filling is not exempt under MCC 39.6215(F) and Respondents did not obtain a permit for ground disturbing activity, the above activities are in violation of MCC 39.6210.

2. **MCC 39.5510 – SEC Overlay Permit**

Filling, grading, excavation, and deposit of non-earth materials related to the development of private driveways A, B, D, E and F, loading area G, and ground preparation for corral placement in fill area H is in violation of MCC 39.5510.

MCC 39.5510 requires an SEC overlay permit for all development, including filling and excavation activities in excess of ten (10) cubic yards within the SEC overlays, unless exempt. The development of private driveways A, B, D, E and F, loading area G, and ground preparation for corral placement in fill area H occurred within the SEC-s overlay.

The depositing of non-earth materials in lieu of earth fill materials is not listed as a permissible use under MCC.

Per MCC 39.5515(A), an SEC overlay permit is not required for: “a change, alteration, or expansion of a lawfully established use provided that the ground coverage is not increased by more than 400 square feet; or routine repair and maintenance of roadways and driveways areas that are lawfully established.” Under MCC 39.2000, “maintenance” does not include activities that change the size, scope and configuration beyond the original design.

Per MCC 39.5515(B), within Metro’s 2009 jurisdictional boundary, an SEC-s permit is required for agricultural development associated with farm practices and agricultural uses, except agricultural fences. Based on Metro’s jurisdictional boundary map, the Properties are located within the Metro 2009 jurisdictional boundary (Ex. B.28).

a. Private Driveways A and B

As above, Respondents assert that the development of the private driveways was maintenance of existing farm roads (Ex. D.1). Dirt tracks are apparent in the same location as private driveways A and B in historic aerial images provided by the Respondent (Ex. D.2-D.3 and D.4-D.5) and in 1994 aerial images (Ex. B.8, page 12 and Ex. B.9, page 14) when SEC permit requirements were adopted by Multnomah County (Ex. B.27). However, the following additional development occurred between 1994 and 2025 that affected the size, scope and configuration of the driveways:

- Driveway A was excavated in August 2020 (Ex. B.8, page 8); soil, rock, concrete debris and chipped asphalt were deposited in May 2021 (Ex. B.8, page. 7); and additional concrete was deposited in May 2023 (Ex. B.8, page 5). That development increased the surface area of driveway A within the SEC-s overlay from approximately 7,760 square feet in 1998 (the first land use map available when the SEC-s overlay can be applied for measurement) to 18,373 square feet in 2025; **a difference of 10,613 square feet** (Ex. B.25, page 1-2). Multnomah County has not been allowed access to the Properties to conduct an onsite engineering review to determine the depth of the fill and/or excavation. Therefore, we will be applying a 1-inch depth estimate for all volume calculations. This estimate is based on what the County believes is a reasonable minimum depth of disturbance. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway A, the total volume of material moved is **33 cubic yards** (Ex. B.25, page 1).

- Driveway B was excavated between August 2020 (Ex. B.9, page 10) and June 2022 with deposits of soil on the latter date (Ex. B.9, page 8), as well as deposits of soil and concrete in May 2023 (Ex. B.9, page 7), soil in August 2023 (Ex. B.9, page 4), and soil, concrete and asphalt in April 2024 (Ex. B.9, page 3) and November 2024 (Ex. B.9, page 2). That development increased the surface area of driveway B within the SEC-s overlay from approximately 28,932 in 1998 to 36,346 in 2025; **a difference of 7,414 square feet** (Ex. B.25, pages 1-2). Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was **23 cubic yards** (Ex. B.25, page 1).

Because the excavated and/or deposited volume of private driveways A and B is in excess of 10 cubic yards, the development of each driveway is consistent with development within an SEC overlay per MCC 39.5520, and subject to SEC permit requirements. That development is not exempt from SEC permit requirements under MCC 39.5515(A) because it resulted in increased ground coverage of each driveway in excess of 400 square feet and altered the size, scope and configuration of the driveways. Since the Respondents did not obtain an SEC permit prior to development, the unpermitted development of driveways A and B within the SEC-s overlay is in violation of MCC 39.5510.

Further, because Respondents deposited concrete within excavated areas of private driveways A and B, and because concrete is a non-earth material that does not qualify as fill under MCC 39.2000, Respondents should be required to propose and gain approval for a permissible use under MCC for those materials or remove them from the disturbed areas within the SEC-s overlay.

b. Private Driveways D, E and F

There is no evidence that private driveways D, E and F existed prior to the adoption of SEC permit requirements in 1994. Driveway D is first apparent in aerial photos from 2022 showing development through deposits of dirt and crushed asphalt and excavation (Ex. B.11, page 5). As of 2025, the disturbed area of driveway D was **12,319 square feet**. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was **38 cubic yards** (Ex. B.25, page 1).

A dirt track is first visible in a 2006 aerial photo within the general vicinity of private driveway E and within a portion of driveway F (Ex. B.21, page 6). Following excavation in 2025, the disturbed area of driveway E was **9,655 square feet** and the disturbed area of driveway F was **17,953 square feet** (Ex. B.25, pages 1-2). Assuming an average depth of 1 inch of excavation across the developed area of driveway E, the total volume of material moved was **30 cubic yards** (Ex. B.25, page 1). Likewise, the total

volume of material moved for development of driveway F was **55 cubic yards** (Ex. B.25, page 1).

Exhibit D, Page 12

Because the excavated and/or deposited volume of private driveways D, E and F is in excess of 10 cubic yards, the development of each driveway is consistent with development within an SEC overlay per MCC 39.5520, and subject to SEC permit requirements. Furthermore, because the driveways did not exist prior to the adoption of SEC permit requirements, the driveways do not qualify for exemption under MCC 39.5515(A). As such the unpermitted development of private driveways D, E and F within the SEC-s overlay is in violation of MCC 39.5510.

c. Loading Area G

Respondents assert that loading area G is an existing gravel loading area that will provide access to a future agricultural building (Ex. B.20, page 7). Based on available aerial photos, loading area G did not exist in 1994 when SEC permit requirements were adopted (Ex. B.12, pg. 10). Rather, evidence shows that loading area G was developed through excavation, filling with earth materials, and depositing of non-earth materials including concrete, wood and chipped asphalt from approximately June 2022 (Ex. B.12, page 6) to September 2025 (Ex. B.24, photo 0074). In 2025, the disturbed area of loading area G was **26,430 square feet** (Ex. B.25, pages 1 and 3). Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of loading area G, the total volume of material moved was **82 cubic yards** (Ex. B.25, page 1).

Because the loading area consists of greater than 10 cubic yards of excavated and/or deposited materials, it is considered development within an SEC overlay per MCC 39.5520, and subject to SEC permit requirements. Excavation and filling in order to develop a loading area are not exempt from SEC-s permit requirements per MCC 39.5515. Respondents did not obtain an SEC permit prior to development of the loading area. Therefore, the unpermitted development of loading area G through filling and excavation activity within the SEC-s overlay is in violation of MCC 39.5510.

Further, because Respondents deposited concrete within excavated areas of loading area G, and because concrete is a non-earth material that does not qualify as fill under MCC 39.2000, Respondents should be required to propose and gain approval for a permissible use under MCC for the material or remove it from the disturbed area within the SEC-s overlay.

d. Fill Area H

Respondents assert that the development of the corral can occur without an SEC-s permit because the corral is an agricultural fence (Ex. D.1), and agricultural fences are exempt from SEC-s permit requirements per MCC 39.5515(B)(2). LUP agrees that a corral would not require an SEC-s permit prior to placement. However, Respondents also engaged in filling in order to prepare the ground for corral placement in August 2023 (Ex. B.12, page

4), July 2024 (Ex. B. 12, page 3), November 2024 (Ex. B.12, page 2), and June 2025 (Ex. B.14, photos 9296-9299). In 2025, the disturbed area of fill area H was **13,183 square feet** (Ex. B.25, page 1 and 3). Assuming an average depth of 1 inch of deposit of material across the developed area of fill area H, the total volume of material moved was **41 cubic yards** (Ex. B.25, page 1). The volume of fill material in area H exceeded 10 cubic yards and, therefore, meets the definition of development within the SEC overlay requiring a permit per MCC 39.5510. The exception for agricultural fences listed under 39.5515(B)(2) does not apply to filling prior to placement of an agricultural fence. Respondents did not obtain an SEC permit prior to depositing fill within fill area H. As such, ground preparation consisting of filling prior to corral placement in fill area H within the SEC-s overlay is in violation of MCC 39.5510.

III. CONCLUSION

Based on the foregoing, Respondents were required to, but did not, obtain a ground disturbing activity permit for: filling related to development of driveways A, B, C and D on properties 1, 2 and 3; filling related to development of a loading area on property 3; and filling in preparation for development of a corral on property 1. Respondents were also required to, but did not, obtain an SEC overlays permit for: development of driveways A, B, D, E and F within the SEC-s overlay on properties 1, 2 and 3; development of a loading area within the SEC-s overlay on property 3; and ground preparation for a corral within the SEC-s overlay on property 1.

IV. CALCULATION OF CIVIL PENALTY

On March 05, 2026 the Code Compliance office calculated and included with the Notice of Violation a recommended continuing civil fine of \$525.00 per day, beginning on the date of the Hearings Officer Final Order: \$210.00 for violation of MCC 39.6210 and \$315.00 for violation of MCC 39.5510 (Ex. C.4).

V. STAFF RECOMMENDATION FOR HEARINGS OFFICER DECISION

The LUP Director respectfully recommends and requests an Order of the Hearings Officer pursuant to MCC 39.1550:

- A. Affirming the determination of violations in the Notice of Violation CCPR1-2025-0003; and
- B. Imposing:
 - 1. A continuing civil fine of \$210.00 per day for the violation of MCC 39.6210 pursuant to MCC 39.1560 and MCC 39.1545, plus interest in accordance with law, beginning on the date of the Hearings Officer Final Order, and continuing until the violation is corrected; and
 - 2. A continuing civil fine of \$315.00 for the violation of MCC 39.5510 pursuant to MCC 39.1560 and MCC 39.1545; and
 - 3. Ordering the Respondent to take the corrective actions set forth in Section (3) Compliance Actions of the Notice of Violation, dated March 05, 2026.

Exhibits will be available at <https://multco.us/info/hearings-officer> at least five days prior to a scheduled appeal hearing. If no appeal is filed, you may request the case exhibits by submitting a public records request via email to dcs.records@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received
'A'	#	Complaint	Date
A.1	5	Complaint 1 with Photo Evidence	05.19.2025
A.2	2	Complaint 1 Additional Photo Evidence	05.21.2025
A.3	2	Complaint 1 Additional Allegations	05.30.2025
A.4	4	Complaint 2 with Photo Evidence	07.24.2025
'B'	#	Staff Investigation	Date
B.1	2	CCINT-2025-0019 Complaint Intake Form	05.29.2025
B.2	9	Assessment and Taxation Property Information	06.03.2025
B.3	1	CCINT-2025-0019 Property Case and Permit History	05.29.2025
B.4	5	T1-2017-8544 Grading and Erosion Control Permit	11.17.2017
B.5	9	T1-2017-9729 Grading and Erosion Control Permit	02.14.2018
B.6	14	T1-2020-13263 Agricultural Fill Permit	03.19.2021
B.7	11	Google Earth Aerial Images – Properties 1-3	May 1994 to August 2025
B.8	12	Google Earth Aerial Images – Driveway A Development	05.23.1994 - 02.28.2025
B.9	14	Google Earth Aerial Images – Driveway B Development	05.23.1994 - 02.28.2025
B.10	8	Google Earth Aerial Images – Driveway C Development	05.23.1994 - 02.28.2025
B.11	11	Google Earth Aerial Images – Driveway D Development	05.23.1994 - 02.28.2025
B.12	10	Google Earth Aerial Images – Loading Area G and Fill Area H	05.23.1994 - 02.28.2025
B.13	1	CCINT-2025-0019 Complaint Intake and Document Investigation Report	06.03.2025
B.14	24	CCINT-2025-0019 Site Inspection Report	06.03.2025
B.15	15	CCPR1-2025-0003 Site Inspection Report	06.05.2025
B.16	18	CCPR1-2025-0003 Site Inspection Report	07.03.2025
B.17	1	CCINT-2025-0028 Property Case and Permit History	08.28.2025
B.18	11	ROW-GEN-2024-0028 ROW Access Permit	09.11.2024
B.19	19	T1-2024-0058 Erosion and Sediment Control Permit	08.22.2025

B.20.a	11	T1-2025-0014 Erosion and Sediment Control Permit	08.06.2025
B.20.b	21	T1-2025-0014 Ag Building Registration	08.06.2025
B.21	8	Google Earth Images – Driveway E and F Development	05.23.1994- 08.10.2025
B.22	6	CCINT-2025-0028 Document Investigation Report	08.28.2025
B.23	3	CCINT-2025-0028 Site Inspection Report	09.02.2025
B.24	4	CCPR1-2025-0003 Site Inspection Report	09.02.2025
B.25	3	CCPR1-2025-0003 Driveway A and B SEC-s Measurements	10.08.2025
B.26	1	Multnomah County Watershed Map	2003
B.27	28	Multnomah County Board Ordinance 801	10.18.1994
B.28	1	Metro Jurisdictional Boundary Map	2009
'C'	#	Administration & Procedures	Date
C.1	1	CCINT-2025-0019 Director Determination on Investigation	06.05.2025
C.2	1	CCPR1-2025-0003 Stop Work Order	06.05.2024
C.3	11	CCPR1-2025-0003 Request for Voluntary Compliance Notice	06.12.2025
C.4	4	CCINT-2025-0028 Director Determination on Investigation	09.18.2025
C.5	3	CCINT-2026-0012 and CPR1-2025-0003 RFI	02.06.2026
C.6	8	CCPR1-2025-0003 Notice of Violation with Appeal Form	03.05.2026
C.7	1	CCPR1-2025-0003 Notice of Violation - Map of Code Violations	03.05.2026
C.8	3	CCPR1-2025-0003 Civil Fine Calculation Worksheet	03.05.2026
C.9	10	Notice of Public Hearing – Public Notice	04.24.2026
C.9.a	10	Notice of Public Hearing – Respondent Notice	04.24.2026
C.10	15	Staff Report	04.28.2026
'D'	#	Respondent	Date Received
D.1	6	Email correspondence with Respondent, Scott Reed	06.24.2025 - 08.17.2025
D.2	1	1936 Aerial Image	06.24.2025
D.3	1	1947 Aerial Image	06.24.2025
D.4	2	Email correspondence with Respondent, Scott Reed	07.17.2025
D.5	1	1958 Aerial Image	07.17.2025
D.6	1	1984 Aerial Image	07.17.2025
D.7	1	Appeal of Notice of Violation	03.17.2026

Exhibit D, Page 15



Chapter 22.03 Code Enforcement Procedures

City code chapter

22.03.010 Authority of the Code Hearings Officer to Adopt Rules, Procedures, and Forms.

(Amended by Ordinances [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

A.

Hearings Officer will be conducted in accordance with the procedure set forth in this Chapter. The Code Hearings Officer may promulgate rules and regulations, not inconsistent with this Chapter, concerning procedure and the conduct of hearings.

B.

Title 22.

C. Adoption of rules.

1. The Code Hearings Officer may adopt rules pertaining to matters within the scope of Title 22.

2.

rules will be given not less than 30 days prior to the adoption of such rules. Such notice will include a brief description of the proposed rules, the location at which copies of the full text of the proposed rules may be obtained, and the method of submitting written testimony or comment regarding the proposed rules.

3.

comments received and may adopt the proposed rules or modify or reject them. If a substantial modification of the proposed rules is made, no additional public notice need be given, but notice of the proposed modifications will be given to all persons who submitted timely written testimony or comments and all other persons who request such notification, and a reasonable opportunity for additional written testimony and comment will be provided.

4.

be filed with the Auditor's Office. Copies of all current rules will be made available to the public upon request. If any person feels aggrieved by any such rule, they may appeal to the Council for its amendment or repeal by filing with the Auditor a petition which will be presented to the Council at its next regular meeting. But until amended or repealed by the Council, such rule will be in full force and effect.

5.

without prior notice upon a finding that failure to act promptly will result in prejudice to the public interest or to the interest of affected parties.

Any rule adopted pursuant to this Subsection will be effective for a period of not more than 180 days.

(Amended by Ordinances 174444, [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

A. A proceeding before the Code Hearings Officer may be initiated only as specifically authorized elsewhere in the Code.

B. Except as provided in Sections 22.10.030 and 22.20.010 of this Title, a proceeding before the Code Hearings Officer may be initiated only by the City filing a complaint with the Office of the Code Hearings Officer in accordance with the procedures established by that Office. The complaint must contain:

1. The name(s) of the respondent(s).
2. The address or location at which the violation is alleged to have occurred.
3. A short and plain statement of the alleged violations, including a reference to the particular statutes, rules, or regulations involved.
4. The nature of the relief sought by the City.
5. The City bureau(s) initiating the proceeding and the name, title, and signature of the person initiating the proceeding on behalf of the City.
6. Such other information as the Hearings Officer may require.

22.03.025 Setting of Hearings.

(Amended by Ordinances [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

A. Upon filing of a complaint, the Code Hearings Officer will specify a time, date, and place for a public hearing on the complaint and the matters alleged therein. A complaint will be deemed filed upon it being received by the Code Hearings Office in accordance with the Hearings Office's administrative rules.

B. The date set for hearing will be not less than 14 days nor more than 30 days after the date the complaint is filed, except that the Code Hearings Officer may specify a date for hearing less than 14 days after the complaint is filed where it appears that the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person. The time frames set forth in this section are waived if the hearing is postponed.

C. The Code Hearings Officer may postpone, continue, set over, or reschedule any hearing with the consent of all parties or on the motion of any party for good cause shown. The time frames set forth in Subsection 22.03.025 B. above are waived if the hearing is postponed.

D. The Code Hearings Officer may postpone or reschedule any hearing on their own motion when the Mayor or the Governor of Oregon declares an emergency and the Code Hearings Officer finds that the nature of the emergency prevents the Hearings Office from conducting a hearing. The time frames set forth in Subsection 22.03.025 B. above are waived if the hearing is postponed or rescheduled.

22.03.030 Notice of Hearing.

(Amended by Ordinances [190387](#) and [191689](#), and [191973](#), effective January 1, 2025.)

A. The City will give notice of the hearing, together with a copy of the complaint, a list of violations, statement of rights, and any participation instructions to the respondent(s) and all other parties, not less than 10 calendar days prior to the date set for hearing except that the Code Hearings Officer may set a shorter period when it appears that the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or the life, health, safety, welfare, or property of any person. When the City is providing notice of the hearing by United States Postal Service mail, then three business days must be added to the deadline above.

B. The notice of hearing will specify the time, date, and place set for the hearing.

C. Notice may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by:

1. Personally delivering the notice to the parties, or
2. Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the parties, or
3. Any method authorized by the Oregon Rules of Civil Procedure for the service of summons, or
4. Any other method, including electronic mail (email), when authorized by the hearings officer, by rule or otherwise.
5. If notice is given by United States Postal Service mail, such notice is deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail.

D. Notice of the hearing and a copy of the complaint will also be given to:

1. The tenants, residents, and lessees of any building, property, or structure if the City has requested in the complaint the vacation, closure, or demolition of the building, property, or structure, or if the Code Hearings Officer determines that such vacation, closure, or demolition is a reasonably possible outcome of the proceeding.
2. Any other person who reasonably appears to have a financial interest in the property involved and who it reasonably appears may be adversely affected by any determination, decision, or order of the Code Hearings Officer.
3. Any person who has requested such notification. The Code Hearings Officer may provide by rule, as provided by Section 22.03.010, for the manner and means of giving notice to such persons in a manner reasonably calculated to provide such persons with actual notice of the proceedings.

E. The failure of any person to receive actual notice of the proceeding will not invalidate the hearing or any determination, decision, or order of the Code Hearings Officer.

22.03.040 Notice; Rights; Procedure.

(Amended by Ordinances [190387](#) and [191689](#), effective July 1, 2024.)

A. Prior to the commencement of a contested hearing, the Code Hearings Officer will inform each party to the hearing of the following matters:

1. A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens going forward with the evidence.
2. That a record will be made of the proceedings and the manner of making the record and its availability to the parties.
3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the Code Hearings Officer.
4. Whether an attorney will represent the City in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
5. The title and function of the Code Hearings Officer, including the effect of and authority for the Code Hearings Officer's determination.
6. In the event a party is not represented by an attorney, whether the party may, during the course of proceedings, request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.
7. A party may request a continuance of the hearing to a future date when a party determines that additional evidence should be brought to the attention of the Code Hearings Officer.
8. If the Code Hearings Officer determines, upon a party's motion, or sua sponte, that a party should bring additional evidence to the Code Hearings Officer's attention, the Code Hearings Officer will also announce the method for submission (a continued hearing or post-hearing submission), and whether there will be an opportunity for the other party to respond. The Hearings Office may provide represented parties with less latitude or leniency than pro se litigants.
9. A description of the appeal or judicial review process from the determination or order of the Code Hearings Officer.

B. The information required to be given to a party to a hearing under Subsection A. of this Section may be given in writing or orally before commencement of the hearing.

C. The failure to give notice of any item specified in Subsection A. of this Section will not invalidate any determination or order of the Code Hearings Officer unless on appeal from or review of the determination or order a court finds that the failure affects the substantive rights of the complaining party. In the event of such a finding, the court will remand the matter to the Code Hearings Officer for a reopening of the hearing and will direct the Code Hearings Officer as to what steps will be taken to remedy the prejudice to the rights of the complaining party.

22.03.050 Hearings Procedure.

(Amended by Ordinances 173369, [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

A. Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default. However, after issuance of a notice of hearing, no building occupied as a residential structure may be vacated based on an informal disposition unless approved by the Code Hearings Officer.

- B.** Parties may elect to be represented by counsel and to respond to and present evidence and argument on all issues involved.
- C.** An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the Code Hearings Officer.
- D.** Testimony will be taken upon oath or affirmation of the witness from whom received. The Code Hearings Officer may administer oaths or affirmations to witnesses.
- E.** The Code Hearings Officer will place on the record a statement of the substance of any written or oral ex parte communications made to the Code Hearings Officer on a fact in issue during the pendency of the proceedings. The Code Hearings Officer will notify the parties of the communication and of their right to rebut such communications.
- F.** The record in a proceeding before the Code Hearings Officer will include:
 - 1. All pleadings, motions, and intermediate rulings;
 - 2. Evidence received or considered;
 - 3. Stipulations;
 - 4. A statement of matters officially noticed;
 - 5. Questions and offers of proof, objections, and rulings thereon;
 - 6. A statement of any ex parte communications on a fact in issue made to the Code Hearings Officer during the pendency of the proceedings;
 - 7. Proposed findings and exceptions; and
 - 8. Any proposed, intermediate, or final order prepared by the Code Hearings Officer.
- G.** A verbatim, written, mechanical, or electronic record will be made on all motions, rulings, and testimony.

22.03.060 Depositions or Subpoena of Material Witness; Discovery.

(Amended by Ordinances [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

- A.** On petition of any party, the Code Hearings Officer may order that the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken via audio or audio visual recordings. The petition must set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the witness' testimony, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this State and is unwilling to appear, the Code Hearings Officer may issue a subpoena, to require the appearance of the witness at the hearing or deposition.
- B.** The Code Hearings Officer may, by rule, prescribe other methods of discovery which may be used in proceedings before the Hearings Officer.

22.03.070 Subpoenas.

(Amended by Ordinances [190387](#) and [191689](#), effective July 1, 2024.)

A. The Code Hearings Officer will issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. The hearings office may make available a form with the information required to make this showing. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the City, will receive fees and mileage as prescribed by law for witnesses in civil actions. Unless a witness expressly declines payment of fees and mileage, the witness's obligation to appear is contingent on the payment of fees and mileage.

B. A subpoena may be served by a party, the party's attorney, or any other person who is 18 years of age or older. Service may be accomplished by personal service of a true copy of the subpoena upon the witness or an agent of the witness authorized to receive the subpoena; substituted service by leaving a true copy of the subpoena at a person's dwelling house or usual place of abode with a person over 14 years of age; office service by leaving true copies of the subpoena with a person who is apparently in charge of an office; or service by United States Postal Service mail if the witness consents to this method.

C. If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the person may be lawfully interrogated, the Code Hearings Officer, a designated representative of the Code Hearings Officer, or the party requesting the issuance of the subpoena, may apply to a judge of the Circuit Court to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.

22.03.075 Discovery of Documents and Things

(Amended by Ordinances [190387](#) and [191689](#), effective July 1, 2024.)

A. On petition of any party and a showing of the general relevance of the documents or things sought, the Code Hearings Officer may enter an order directing any party to produce and make available to the petitioning party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party. The hearings office may make available a form with the information required to make this showing.

B. The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.

C. The Code Hearings Officer will not enter an order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law.

22.03.080 Evidence.

(Amended by Ordinances [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

A. Irrelevant, immaterial, or unduly repetitious evidence will be excluded. Erroneous rulings on evidence will not preclude action by the Code Hearings Officer on the record unless the error is shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs will be admissible. The Code Hearings Officer will give effect to the rules of privilege recognized by law. Objections to evidence may be received in written form or orally at the hearing on the record.

B.

except as provided in Subsection D. of this Section, no other factual information or evidence may be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

C.

rebuttal evidence.

D.

scientific facts within the specialized knowledge of City employees. Parties will be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they will be afforded an opportunity to contest the facts so noticed.

E.

and in accordance with reliable, probative, and substantial evidence.

22.03.090 Continuance of Tenancy.

(Amended by Ordinances [190387](#), [191689](#), and [191973](#), effective January 1, 2025.)

After issuance of a notice of hearing, and until such time as the Code Hearings Officer issues a final decision, neither the respondent(s) nor the bureau initiating the hearing will take any action that results in the vacation of a building used for residential occupancy without the permission of the Code Hearings Officer, except that in cases where buildings are found to be imminently hazardous, the building official or Chief Fire Marshal may order the building vacated if no other means are available to eliminate the imminent hazard.

22.03.100 Proposed and Final Orders.

(Amended by Ordinances [191689](#) and [191973](#), effective January 1, 2025.)

The Code Hearings Officer will prepare and mail to all parties, a proposed order including findings of fact and conclusions of law. The proposed order becomes final on the date specified in the order, which date will not be less than 14 days after such mailing, unless the Code Hearings Officer finds that an existing violation is imminently dangerous to the health, safety, or property of any person or of the public, in which case the order may specify an earlier date.

22.03.110 Orders.

(Amended by Ordinances [190387](#) and [191689](#), effective July 1, 2024.)

A. Every order adverse to a party to the proceeding will be in writing or stated in the record and may be accompanied by an opinion.

B. Unless otherwise stipulated, a final order will be accompanied by findings of fact and conclusions of law. The findings of fact will consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Code Hearings Officer's order. The findings of fact and conclusions of law may be orally stated on the record by the Code Hearings Officer and those findings and conclusions incorporated in the written order by reference.

- C.** The Code Hearings Officer will notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.
- D.** Every final order will include either a citation of the Oregon Revised Statutes or other applicable ordinances under which the order may be appealed or judicially reviewed.

22.03.115 Petitions for Reconsideration, Rehearing.

(Amended by Ordinances [190387](#), [191689](#) and [191973](#), effective January 1, 2025.)

- A.** A party may file a petition for reconsideration or rehearing on a final order with the Code Hearings Officer within 30 days after the order is mailed.
- B.** The petition must set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by written argument. A motion for reconsideration cannot be used to expand the record as stated in Subsection F. below.
- C.** The Code Hearings Officer may grant a request for reconsideration if good and sufficient reason therefor appears. If the petition is granted, an amended order will be issued. Good and sufficient cause may include, but is not limited to, any of the following: an intervening change in controlling law, a clear error of law, plainly incorrect or irrational reasoning, a failure to consider evidence, a need to prevent manifest injustice.
- D.** The Code Hearings Officer may grant a rehearing petition if good and sufficient reason therefor appears. The rehearing may be limited by the Code Hearings Officer to specific matters. If a rehearing is held, an amended order may be issued.
- E.** The Code Hearings Officer, at any time, upon its own motion, and upon a showing of due diligence, may set aside, modify, vacate, or stay any final order, or re open any proceeding for additional hearing when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by such order.
- F.** A motion for reconsideration cannot rely on new evidence (that is, evidence that was not previously submitted before the close of the record) unless the proponent of the evidence demonstrates the evidence was not reasonably discoverable with due diligence prior to the close of the record.

City code titles

[Title 1 General Provisions](#)

[Title 2 Legislation & Elections](#)

[Title 3 Administration](#)

[Title 4 Original Art Murals](#)

[Title 5 Revenue and Finance](#)

[Title 6 Special Taxes](#)

[Title 7 Business Licenses](#)

CERTIFICATE OF SERVICE

I hereby certify that on the below date, I filed and served a true and correct copy of the below stated document on the below stated persons, using the below stated method of service.

Mail by first-class mail, postage prepaid to the last known address of the persons identified below;

Fax by facsimile transmission to the last known facsimile of the persons identified below;

E-Filing by electronic filing with the Oregon Judicial Department File and Serve;

E-mail by electronic mail to the last known e-mail address of the persons identified below, and if sent by electronic mail only, under agreement pursuant to ORCP 9.

Name/Address

Relationship

Manner of Service

A. June Bradley, OSB #243455
Multnomah County Attorney's
Office
501 SE Hawthorne Blvd Ste 500
Portland, OR 97214
june.bradley@multco.us

*Attorney for
Multnomah
County*

Email
Mail

DEFENDANTS' MOTION TO DISMISS PROCEEDING FOR LACK OF JURISDICTION AND
ALTERNATIVE MOTION FOR AN ORDER DETERMINING PROCEDURAL PROCESS

DATED this 10th day of June, 2026.

OPOA LEGAL CENTER

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