

---

## Staff Report

---

### Evidence and Supporting Documents for Zoning Violation (ZV)-2021-14224

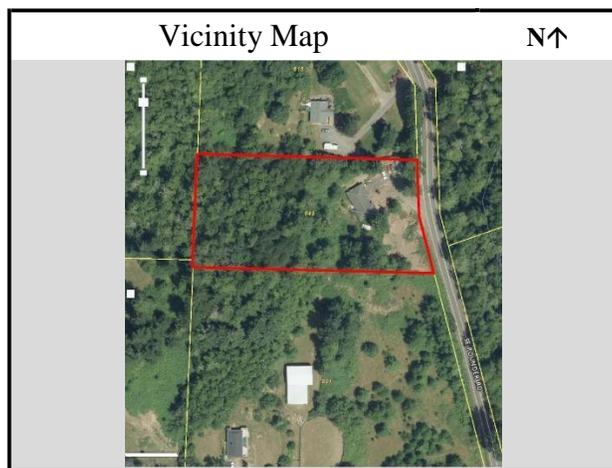
**Case File:** ZV-2021-14224

**Hearing Date:** August 20, 2021

Appeal Hearing scheduled before one of  
the following County Hearings Officers:

*Dan Kearns*

*Joe Turner*



---

**Subject Property:** 645 SE Pounder Rd, Corbett, OR 97019  
Map Tax Lot: Lot 700, Section 02BA, Township 1 South, Range 4 East, W.M.  
(1S 4E 02BA -00700)  
Alt Account: R994020700  
Property ID: R341184

**Zoning:** Commercial Forest Use (CFU-4)

**Owner/Respondent:** Heather L. Moon  
645 SE Pounder Road  
Corbett, OR 97019

**Summary:** Case ZV-2021-14224 concerns a *Notice of Violation (NOV)* issued to Heather Moon (Respondent) on March 3, 2021, for violations of Multnomah County Code (MCC) 39.1540 and 39.6210 and violations of Multnomah County Road Rules (MCRR) 18.100.

Specific violations include: (1) Failure to comply with two separate Stop Work Orders, dated April 28, 2020 and January 8, 2021; (2) Non-permitted ground disturbing activity on the subject property; and (3) Non-permitted work within SE Pounder Road public right of way adjacent to the subject property, directly impacting the ability of a County culvert to properly function.

This staff report is forwarded to the Hearings Officer for review and determination. Pursuant to MCC 39.1550, the County is seeking affirmation of the NOV, imposition of civil fines, an order for Respondent to cease unpermitted work and take corrective actions, and reimbursement of County's reasonable administrative costs and costs for its enforcement actions, including appeals.

**Staff Recommendation for Hearings Officer Decision:** The Land Use Planning Division respectfully recommends and requests an order of the Hearings Officer pursuant to MCC 39.1550(C)(2):

1. Affirming the *Notice of Violation* ZV-2021-14224 and specifically the determination of violations, except for the allegation of a violation of MCC 39.5510 for failure to obtain a Significant Environmental Concern – Stream permit; and
2. Imposing a continuing civil fine of \$3,150.00 per day (\$1,050.00 for the violations of MCC 39.1540, \$1,050.00 for the violation of MCC 39.6210, and \$1,050.00 for the violations of MCRR 18.100) pursuant to MCC 39.1560 and, as applicable, MCC 39.1545 and 39.1550, plus interest in accordance with law, beginning on March 19, 2021 (the second date of mailing plus three additional days for delivery of the NOV) and continuing until the violations are corrected; and
3. Ordering the Respondent, Heather L. Moon, to refrain from personally engaging in, or allowing or directing her agents, contractors, invitees, or any other person on the subject property to engage in any further unpermitted ground disturbing activity or other development on the subject property or in the adjacent SE Pounder Road right of way; and
4. Ordering the Respondent to cease and refrain from personally engaging in, or allowing or directing her agents, contractors, invitees, or any other person on the subject property to engage in any unpermitted activities in the right of way; specifically, ceasing obstruction of road drains, ditches and culverts; placing machinery in the right of way; working in and disturbing the right of way; removing and disturbing fill adjacent and within the right of way; moving and depositing or causing fill to deposit into the right of way; activities that hinder, redirect or prevent the flow of water over, across, under or within the right of way as designed and engineered by the County road official, and activities that result in a hazard to the traveling public and compromise the design and engineering of the right of way; and
5. Ordering the Respondent to take the corrective actions set forth in Sections 2.2 to 2.6 of the NOV; and
6. Ordering the Respondent to provide any permits of entry or temporary construction easements necessary for the County to construct the repair in the right of way, and that Respondent is not entitled to compensation; and
7. Ordering the Respondent to apply for a County driveway permit following the County's repair and construction of adjoining culvert, costs of all permits and repairs are the responsibility of the Respondent; and
8. Ordering the Respondent to repair the damaged driveway slope caused by the Respondent's unauthorized activities, such repair must adhere to County Engineer requirements; and
9. Ordering the Respondent to reimburse Multnomah County for its present and future costs,

disbursements, and other expenses in accordance with MCC 39.1545(A)(4), in an amount to be requested and proven in a motion for a supplemental Order.

In addition, pursuant to MCC 39.1550(C)(3), the Land Use Planning Division respectfully requests an Opinion from the Hearings Officer setting forth those findings of fact, reasons, explanations, and conclusions of law deemed by the Hearings Officer to be necessary and sufficient to support the determinations made in the Hearings Officer's Order in this matter.

## **Staff Findings**

### **A. Preliminary Procedural Matter**

1. Under MCC 39.1530(C), an appeal from a Notice of Violation may be made by submitting a written request for an appeal hearing together with the appeal fee indicated in the Notice of Violation within 14 days of the date of service of the Notice of Violation. Under MCC 39.1530(D), a Notice of Violation may be served by certified mail, return receipt requested through the United States Postal Service.
2. Under Enforcement Code Rule (ECR) 4.5, the Hearings Officer shall dismiss an appeal filed without the appeal fee, unless the appeal fee is subsequently filed within the time allowed under *former* MCC 37.0940(C), *renumbered as* MCC 39.1530(C).
3. On March 3, 2021, the County sent a Notice of Violation letter with the Civil Fine Calculation worksheet to Respondent via certified mail. See Exhibit (Ex.) 8. On April 2, 2021, the letter was returned to the County as "unclaimed." Ex. 8.
4. On March 16, 2021, the County made a second attempt to deliver the NOV to Respondent via certified mail and first class mail. On April 23, 2021, the certified mail was returned as not deliverable; however, the first class letter was not returned. See Ex. 8.
5. On April 5, 2021, Multnomah County received an appeal form from Respondent, which was dated March 30, 2021 (14 days from the date the second NOV was mailed) and postmarked April 3, 2021. See Exhibit (Ex.) 10. The required fee did not accompany the appeal and as of the preparation of this staff report still has not been paid.
6. Because the appeal fee was not timely paid, or ever paid, ECR 4.5 contemplates dismissal of the appeal. The effect of dismissal of the appeal would be that the Hearings Officer could undertake review of this matter without a hearing pursuant to MCC 39.1545. However, as an alternative to dismissal of the appeal, the County does not object to the appeal proceeding if Respondent agrees to immediately pay the appeal fee.
7. Because the County does not object to the appeal proceeding if Respondent agrees to pay the appeal fee, and because the ECR contemplates that it is the Hearings Officer, rather than the Planning Director, who determines whether to dismiss an appeal, the County scheduled a public hearing with the Hearing Officer.

### **B. Property Owner/Respondent**

Heather L. Moon is listed as the owner of the subject property in the Multnomah County Assessment and Taxation records. Ex. 1 (showing Moon as the owner of the subject property since September 23, 2011). In addition to being the owner of the subject property, Heather L. Moon is the Respondent in this matter because

she is the person alleged to have committed the violations and to be responsible for the violations set forth in the Notice of Violation. MCC 39.1505 (defining Respondent); MCC 39.1530 (providing that County can issue NOV to respondent and property owner, if different).

### **C. Ground Disturbing Activity and Right-of-Way Requirements**

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

A. “Excavation” is defined as “The motorized removal of earth material or other motorized activity resulting in the exposure of the ground surface or other earth layer to wind, water, ice, gravity, or other element, 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.

B. “Fill” is defined as “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.” MCC 39.2000.

3. Certain landscaping activity is exempt from ground disturbing activity permit requirements. Under MCC 39.6215(G), the following activity is exempt from Minimal Impact Permit and Erosion and Sediment Control Permit requirements:

“Residential gardening disturbing less than 5,000 square feet of ground surface area and landscape maintenance disturbing less than 10,000 square feet of ground surface area when either activity is at least 100 feet from the top of the bank of any watercourse located at a lower elevation to and in the surface drainage path of the ground disturbing activity. Landscape maintenance includes normal planting, transplanting, and replacement of trees and vegetation. Landscape maintenance does not include preparatory ground disturbing activity for a development project.”

4. Under MCRR 18.100, except pursuant to exceptions not relevant here, a permit is required for construction or placement of any object in the right-of-way:

“[A] permit shall be required for any construction, installation, or the placement of any object or fixture; or the planting or placement of any vegetation within the public right-of-way or for any modification of existing construction or use in the right-of-way...”

Permits are not required for “any short-term use of 8 hours or less if the County Engineer determines such use is not a hazard to the public and will have no detrimental impact to the right-of-way.”

5. The use of land or work within a County right-of-way without required land use and transportation permits in violation of MCC Chapter 39 and the Multnomah County Road Rules, or in violation of state statute, is subject to enforcement and fines.
  - A. In particular, MCC 39.1505 defines a “violation” as “Any act or failure to act that is prohibited or not allowed, including any failure to take any required action, under the goals, laws, rules, regulations or permits specified in MCC 39.1510.”
  - B. Under MCC 39.1510, “[a]ny use of land, land division, adjustment to property boundaries, work within a County right-of-way, or other activity by a person in violation of any provision of: (A) MCC Chapters 39, 29.001 through 29.207 and 29.500 through 29.583 [or] Multnomah County Road Rules” or “(B) Any statute adopted by the Oregon Legislature and those land use planning goals and rules of the Land Conservation and Development Commission (LCDC) that apply directly to the County through ORS 197.646” may be subject to enforcement and fines.
6. When work is performed without required land use and transportation permits, the County may issue a Stop Work Order. Failure to comply with a Stop Work Order may result in issuance of a Notice of Violation. MCC 39.1540.

#### **D. Property and Case Background**

1. On April 27, 2020, the Code Compliance Office received the original complaint relating to the subject property. The nature of the alleged violation was in part non-permitted development activity, including significant ground disturbing activity, such as excavation and site clearing work. Code Compliance opened compliance case UR-2020-13222 based on an emailed complaint, and added field photos and property detail information obtained from County records as is standard practice. See Exhibit (Ex.) 1.
2. On April 28, 2020, Code Compliance Specialist (CCS) Bill Gotzinger issued a Stop Work Order for non-permitted development activity conducted on the property, specifically extensive non-permitted ground disturbing activity, including grading, site clearing and excavation work. See Exhibit (Ex.) 2. The Stop Work Order was sent by certified mail on April 28, 2020, and signed for by Respondent on May 4, 2020. Respondent did not take any of the actions set forth in Section 2 of the Stop Work Order, such as attending a pre-filing meeting or submitting applications for the work conducted on the property.
3. On December 28, 2020, newly assigned CCS Joreen Whitson reviewed a backlog of unanswered voice messages, which had been left during an extended absence of the previous Code Compliance Specialist. Six messages were left by Aaron Simmons between May 11, 2020 and May 18, 2020 regarding 645 SE Pounder Road. He identified himself as the brother of property owner and Respondent Heather L. Moon and stated that he had placed silt fencing on the subject property as requested by CCS Bill Gotzinger and that they were only clearing blackberry bushes. CCS Whitson responded that an inspector would come to verify that the erosion control measures were present and installed correctly. See Exhibit (Ex.) 13.
4. On January 3, 2021, Vera Jagendorf left a message on the Code Compliance voicemail stating that the neighbors at the subject property of 645 SE Pounder Road were once again working in the right of way with equipment and possibly causing environmental harm to the nearby creek.
5. On January 5, 2021, CCS Robert Hyde did an investigation of the subject property. He spoke with the neighbor Bud Scott and property owner and Respondent Heather Moon. See Exhibit (Ex.) 3.

During that visit, Respondent stated to CCS Hyde that she was only landscaping and that no further work would be conducted without a permit. Ex. 3. CCS Hyde also observed that rock had been placed on the property, and a County culvert had been blocked, which was causing silt to spill into the roadway. Ex. 3.

6. On January 8, 2021, CCS Joreen Whitson issued a second Stop Work Order for extensive non-permitted ground disturbing activity, including grading and site clearing excavation work, and that Stop Work Order was posted by CCS Robert Hyde at the subject property, and sent by certified mail. See Exhibit (Ex.) 4. The certified letter was returned January 12, 2021 unclaimed. While at the property to post the Stop Work Order, CCS Hyde observed additional ground disturbing activity, in particular extensive excavation, and water spilling onto the SE Pounder Road right of way due to the plugged culvert. Ex. 4. Respondent asserted that she was preparing the slope to plant grass. Ex. 4.
7. On January 11, 2021, the County received a formal complaint about the subject property from Vera Jagendorf, stating that work was continuing on the property with a backhoe and that water was being pumped across the SE Pounder Road right of way into a nearby stream. A new zoning violation case, ZV-2021-14224, was opened. See Exhibit (Ex.) 5. CCS Hyde visited the subject property and observed evidence of additional ground disturbing activity, including additional excavation (digging and stripping) and an excavator apparently stuck in a hole on the subject property. Ex. 5.
8. On January 12, 2021, CCS Hyde visited the subject property and observed that the subject property was flooded, and water was pooled in the SE Pounder Road right of way. Ex. 5.
9. On January 13, 2021, CCS Hyde visited the subject property and observed that water was pooled on the property and hay bales had been placed on the property, but that water continued to enter the SE Pounder right of way from the subject property. Ex. 5. The hay bales were placed without consultation with the County to determine whether that placement would serve as adequate temporary erosion control. Two large excavators remained on the subject property. Ex. 5.
10. On January 20, 2021, CCS Hyde visited the subject property and observed that large boulders had been placed on the property, but that water continued to enter the SE Pounder Road right of way from the subject property. Ex. 5. He also observed that the culvert remained plugged and that mud was being tracked up and down the road from the subject property. Ex. 5.
11. On January 25, 2021, CCS Hyde visited the subject property and observed that the excavators had been removed from the subject property, but that soil remained exposed, with a large hole on the subject property. Ex. 5. In addition, the culvert remained plugged, allowing silt to continue to enter the SE Pounder Road right of way. Ex. 5. Large boulders and some hay bales remained on the subject property.
12. County received emails with photos from neighbors/complainants expressing concerns about activity at the property resulting in water flowing across Pounder Road, various debris in the right of way, vehicles and equipment blocking the travel lanes of Pounder Road, erosion and deterioration of slopes, and a broken water main. See Exhibits (Ex.) 6, 11, 12 and 13.
13. Aerial photos from Multnomah County Geographic Information Systems have also confirmed the ground disturbing activity. The 2016 aerial shows no development or ground disturbing activity, and aerials from 2018, 2019 and 2020 show extensive ground disturbing activity. GIS measuring tools indicate that approximately 10,298 square feet of area has been disturbed. See Exhibit (Ex.) 7.

14. On March 2, 2021, County Engineering staff made a field visit to SE Pounder Road adjacent to the subject property and observed that the roadway embankment on the east side of Pounder Rd near the subject property had failed and slid towards Pounder Creek, destabilizing the east half of the roadway. The pavement in this section of roadway was visibly depressed with alligator cracking present adjacent to the failed slope. See Exhibit (Ex.) 15, Photos B, F and G. The slope failure is a result of oversaturation of the roadbed that was caused by at least partial blockage of the County's culvert, which carries water runoff from the uphill slope on the west side of the roadway to Pounder Creek on the east side of the road. See Exhibit (Ex.) 16, pp. 2-4. County Engineering staff also found that water was sheeting off the slope of the frontage of the subject parcel in multiple areas and flowing down the road. See Ex. 15, Photos A, B and C.
  - A. County Engineering staff were unable to locate the west end of the culvert (inlet), which would (had it been visible) help drain the sheeting water into Pounder Creek. See Ex. 15, Photos A, B and E. The culvert was not visible and staff surmised it was buried under mud, hay bales, large rocks or silt, all of which were present in the right of way adjacent to the subject parcel; working in the right of way without a permit is a violation of MCRR 18.100, and such work and actions directly caused and created a road hazard under ORS 368.256.
  - B. Additional information reported by County staff includes:
    - i. Some of the water running off the hill on the south side of the subject property's driveway was flowing down a newly cut ditch (presumed to be cut by the Respondent) along the County right of way from the subject property (645 SE Pounder Road) all the way to the shared driveway of 821/915/921 SE Pounder Rd. See Ex. 15, Photo H.
    - ii. The new ditch was about 520 feet long and had been cut along the County right of way; this was a surprise and unknown to County staff because the County had not been working in the area. In addition to the water coming from the slope south of the subject property's driveway, there was also significant ponding just north of the driveway. There is an existing ditch that runs along the County right of way north of the driveway and County staff surmised there is likely a culvert beneath the driveway that is no longer functioning, leading to the ponding. This water had filled the existing ditch and was sheeting across the road, just north of the failure across the road. See Ex. 15, Photo B.
15. As noted above, on March 3, 2021, a Notice of Violation letter with the Civil Fine Calculation worksheet was sent via certified mail and returned to the County as not deliverable. On March 16, 2021, a second attempt was made to deliver the NOV via certified and first class mail. The certified mail was returned as not deliverable; however, the first class letter was not returned. See Exhibit (Ex.) 8.
16. On March 10, 2021, Multnomah County Road crew worked in the right of way to unplug the County culvert, but were not able to successfully complete this task. The County Survey crew was out previously on February 24, 2021 to stake the limits of right of way. See Exhibit (Ex.) 9.
17. Due to the extensive damage to County assets observed during the March 2 site visit and the long- and short-term threat to the safety and stability of SE Pounder Road, the County Engineer retained WSP (a national engineering consulting firm) on March 24, 2021 to produce documents that the County can use to bid and construct repairs to all of the damaged County assets. The design/construction documents will include guidance on permitting the repairs with appropriate state agencies (due to the presence of an active steam within the work area) and drawings and specifications to repair the culvert, the surrounding roadway ditches, the road section, road shoulder,

and the fencing on private property across from the resident at 645 SE Pounder Road. The final design and calculation of costs is anticipated from the consultant by the end of August 2021. The County will need to construct the designed solution prior to fall/winter 2021 because a strong rain event (or series of events) will likely cause full failure of at least half of the roadway if the culvert and associated stormwater assets are not repaired. Initial estimates of the repair were approximately \$215,000. The County anticipates the final estimate to be higher because the original estimate did not include a complete design of the repair. The County intends to seek recovery of the costs of the road remediation work from Respondent through the process set forth in the road hazard statutes in ORS Chapter 368.

## **E. Description of the Violations**

- 1.** Respondent failed to comply with two Stop Work Orders posted for the property. Specifically, Respondent engaged in, or, as the property owner allowed others to engage in, non-permitted ground disturbing activity (such as grading and excavation work) conducted after the Stop Work Orders were posted on April 28, 2020 and January 8, 2021, and did not contact Land Use Planning or Transportation to obtain permits as required by the Stop Work Orders.
  - 1.1.** The acts described in Section 1, above, constitute violations of MCC 39.1540 Stop Work Order.
- 2.** Respondent allowed and/or conducted non-permitted construction activity on the property, specifically, significant non-permitted ground disturbing activity, including excavation (such as digging and stripping) and fill (such as the placement of large boulders and tracking of mud onto road surfaces), which resulted in unstable slopes, localized flooding and erosion.
  - 2.1.** The acts described in Section 2, above, constitute violations of MCC 39.6210 Permits Required – Grading & Stormwater because Respondent did not get permits for the ground disturbing activity as required.
  - 2.2.** The activity conducted on the subject property does not qualify as landscape maintenance exempt under MCC 39.6215(G) from the ground disturbing activity permit requirements both because more than 10,000 square feet of surface area was disturbed (See Ex. 7) and because the extensive excavation and fill activities went beyond “normal planting, transplanting, and replacement of trees and vegetation.” There is no evidence that any planting, transplanting, or replacement of trees and vegetation occurred, and the bare soil led to significant erosion and runoff from the subject property.
- 3.** Respondent allowed and/or conducted non-permitted construction activity within the County right of way and placement and storing of equipment in the right of way, which directly affected the ability of the County culvert to function properly.
  - 3.1.** The acts described in Section 3 above constitute violations of MCRR 18.100 because the County requires a permit for any work or placement of any object within the right of way.
  - 3.2.** The acts described in Section 3 also resulted in violations of ORS 368.251 and 368.256 (creation of road hazards prohibited) because it is unlawful to obstruct road drains or cause a road hazard. The NOV does not refer to the creation of road hazards under ORS 368.251 and 368.256 because at the time the NOV was issued, the road hazard had not yet occurred. Reference to the road hazard violation is to show that Respondent’s action of unpermitted work within the right of way not only caused damage to the County road, but also is a violation of state law. However, the County is not seeking a determination from the Hearings Officer that

Respondent created a road hazard under ORS 368.256 and is not seeking an order from the Hearings Officer for Respondent to pay the costs of abating the road hazard. The County will seek that determination and order through the road hazard process set forth in ORS 368.276 and 368.281.

**3.3** Permits are required for work conducted in the right of way to ensure that the County Engineer is able to confirm that the work will not cause damage to the road or other assets in the right of way. Respondent failed to seek a permit for the work in the right of way. Because of this, the County Engineer was not able to review or approve work in the right of way before it was conducted. The unpermitted work done in the right of way caused emergent and lasting damage to the road and right of way. The damages caused by this unpermitted work include obstructing drains and culverts, placement and storage of equipment in the right of way, creating unauthorized ditches within the right of way, and destabilization of the roadway, all violations of MCRR 18.100. The dangerous conditions created by Respondent's unpermitted work will need to be repaired prior to the next large rain event. If not, the continued saturation of the slope may cause the road to fail which would endanger the lives of the traveling public.

**F. Calculation of Civil Penalty**

1. The Code Compliance office calculated a continuing civil fine of \$3,150.<sup>00</sup> per day (\$1,050.00 for the violations of MCC 39.1540, \$1,050.00 for the violation of MCC 39.6210, and \$1,050.00 for the violations of MCRR 18.100). See Ex. 8.
2. A fine of \$1,050.00 for violations of MCC 39.5510 Uses, SEC Permit Required, previously shown on the Zoning Violation Civil Fine Calculation Worksheet for ZV-2021-14224 dated March 3, 2021 and which accompanied the Notice of Violation, was incorrectly included. A mapping error had resulted in a zoning overlay for Significant Environmental Concern-Streams being shown on a portion of the subject property when it should not have. The Zoning Violation Civil Fine Calculation Worksheet was revised accordingly and is dated June 7, 2021. See Ex. 8.

**H. Exhibits -** See attached Exhibit list dated August 20, 2021.