

NOTICE OF PUBLIC HEARING For an Appeal of a Notice of Violation

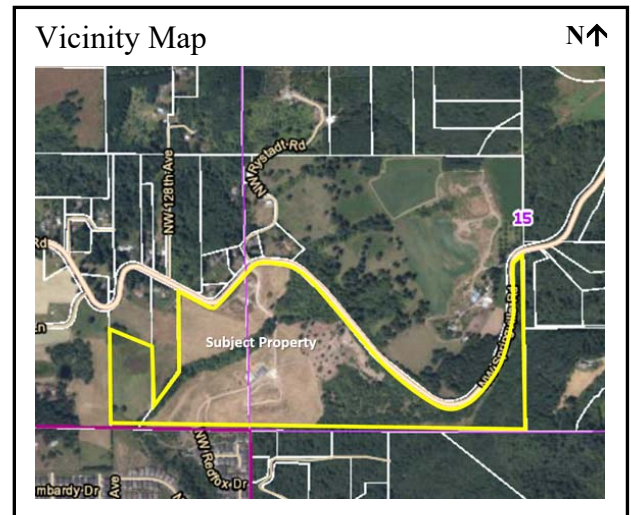
This notice concerns a public hearing scheduled to consider the land use case(s) cited and described below.

Case File: Zoning Violation (ZV)-2021-15025
pertaining to failure to comply with
conditions 8, 11, 16 and 17 from
Agricultural Fill Permit T1-2020-13263
dated March 19, 2021

Scheduled before County Hearings Officer
Dan Kearns

The virtual hearing is to be held on **November 19, 2021**, at **11:00 am** or soon thereafter. Instructions for how to attend, participate, and submit written comments are available via:

<https://www.multco.us/landuse/public-notice> by clicking on the box labeled 12424 NW Springville Road



Location 12424 NW Springville Road, Portland, OR 97229
of Subject 1N 1W 16D -02800, 1N 1W 15C -00600, 1N 1W 16D -0300
Property: Alternate Tax Account Number #R961160130, R961150770, R961160590

Owner/ Scott & Stacy Reed
Appellant: 13305 NW Cornell Road, Suite C
Portland, OR 97229

Public Participation and Hearing Process: A copy of the Notice of Violation and appeal documents are available for inspection, at no cost, at the Land Use Planning Division office during normal business hours. A staff report with supporting evidence will be available for inspection 7 days prior to the hearing, also at no cost. Copies of all documents may be purchased at the rate of 40-cents per page. For further information on this case, contact Joreen Whitson, Code Compliance Specialist, at 503-988-0184.

All interested parties may appear and testify or submit written comment on the appeal at or prior to the hearing. Comments should be directed toward the Code provisions and conditions of approval cited in the Notice of Violation, including MCC 39.6230(B)(2), (13), and (14); MCC 39.2000; Multnomah County Road Rule 3.000; and Conditions 8, 11, 16, and 17 of Agricultural Fill Permit T1-2020-13263. The hearing procedure will follow MCC 39.1550 and will be explained at the hearing. The hearing will open with a description of the hearing procedures, followed by a staff report, the appellant's presentation, opportunity for public testimony, rebuttal, and, unless the hearing is continued to a time, date, and location certain, or the record is left open, the record will be closed at the conclusion of 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, date, and location certain. Regardless of whether a decision is announced at the hearing, the Hearings Officer subsequently will issue an order in writing, which may be accompanied by an opinion. Notice of the decision will be mailed to the appellant, parties within 750 feet of the subject property, and any other persons who submitted written comment or provided oral testimony at the hearing.

Judicial review of the final order of a Hearings Officer by any aggrieved party shall be by writ of review as provided in ORS 34.010 through 34.100, unless the Hearings Officer makes a land use decision, in which case the land use decision may be reviewed by the Land Use Board of Appeals pursuant to ORS Chapter 197. A statement of appeal rights will be included in the Hearings Officer's order.

Failure to raise an issue before the close of the public record in sufficient detail to afford the County and all parties an opportunity to respond may preclude appeal on that issue to the Land Use Board of Appeals.

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

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



Land Use Planning Division
Code Compliance Office

1600 SE 190th Avenue, Portland Oregon 97233 • PH. (503) 988-5508 • Fax (503) 988-3389

September 16, 2021

Property Owner/
Respondent:

Scott & Stacy Reed
12521 NW Springville Road
Portland, OR 97229

Location/Property:
State ID:

12424 NW Springville Road, Portland, OR 97229
1N 1W 16D -02800, 1N 1W 15C -00600, 1N 1W 16D -03100

Alt. Tax Account #: R961160130, R961150770, R961160590

Zoning: Exclusive Farm Use (EFU), Commercial Farm Use (CFU-2)

Zoning Overlays: Significant Environmental Concern-streams (SEC-s)
and wildlife habitat (SEC-h), and Geologic Hazard

Case#: ZV-2021-15025

Multnomah County

v.

Scott & Stacy Reed

)
) **NOTICE OF CIVIL VIOLATION**
)
) **Zoning Violation ZV-2021-15025**
)

(1) **NATURE OF VIOLATION:** Respondent has engaged in the following activity relevant to this Notice of Civil Violation (NCV):

- 1.1 Respondent failed to comply with the conditions of approval listed under On-Going Responsibilities, Obligations, Modifications and Limitations in the Modified Agricultural Fill Permit T1-2020-13263, dated March 19, 2021. Condition #8: ***The 11-acre area for the proposed Agricultural Fill permit contains two soil types according the Natural Resources Conservation Service: Cascade silt loam (7C) and Helvetia silt loam (21B). The proposed fill will come from a property that contains Cornelius and Kinton silt loam (11B), which are considered high-value soils (Attachment 1). The imported fill must be composed of topsoil only. No concrete, asphalt, subsoil or construction debris shall be brought to the property to be used as fill or stockpiled as part of this permit. [MCC 39.6230(B)(2)]***

Topsoil is defined as "The top organic and mineral rich layer of soil that provides nutrients to growing plants" [MCC 39.2000].

- 1.1.1 County staff observed haul trucks dumping unapproved fill material consisting of large chunks of woody debris.

- 12 Respondent failed to comply with the conditions of approval listed under On-Going Responsibilities, Obligations, Modifications and Limitations in the Modified Agricultural Fill Permit T1-2020-13263, dated March 19, 2021. Condition #11: ***The total daily number of vehicle trips shall not exceed 84 trips per day in the Spring-Summer (March 20 through September 22) and 42 trips per day in the Fall-Winter (September 23 through March 19). At no point in time shall fill haul truck trips exceed 60 trips (30 loads) per day. For purposes of this condition, the term "trip" has the meaning given in Multnomah County Road Rule 3.000: "A one-way vehicular movement. A vehicle entering a property and later exiting that property has made two trips."***

- 1.2.1 Community members have observed and logged in excess of 30 loads in one day on more than one occasion. Vehicle and Haul Log August 7, 2021: 40 plus haul truckloads recorded in 1½ hours. August 31, 2021: 130 plus haul truckloads recorded.

- 13 Respondent failed to comply with the conditions of approval listed under On-Going Responsibilities, Obligations, Modifications and Limitations in the Modified Agricultural Fill Permit T1-2020-13263, dated March 19, 2021. Condition #16: ***Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from***

dropping, shifting, leaking, or otherwise escaping from vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way. [MCC 39.6230(B)(13)]

1.3.1 County staff and community members have observed large dust clouds over Springville road from the haul trucks entering and exiting respondent's driveway impairing visibility and impacting air quality for nearby neighbors.

14 Respondent failed to comply with the conditions of approval listed under On-Going Responsibilities, Obligations, Modifications and Limitations in the Modified Agricultural Fill Permit T1-2020-13263, dated March 19, 2021. Condition #17: ***Fill shall not be transported on a public roadway during weekdays from 6:30 am to 9:30 am and 4:00 pm to 6:30 pm.*** [MCC 39.6230(B)(14)]

1.4.1 County staff and community members have observed and tracked on several occasions haul trucks entering respondent's property before 9:30 am. Vehicle and Haul Log entries from August 7, 2021 noted 130 truckloads between 7:29 am to 9:03 am and August 31, 2021 noted 2 loads before 9:30 am. On August 20, 2021, County staff witnessed and photographed three haul trucks before 9:30 am.

(2) **CIVIL FINES:** Pursuant to Multnomah County Code (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:

21 **CONTINUING CIVIL FINE** of **\$600.⁰⁰ per day (\$600.⁰⁰ for each of the violations listed below)**, beginning on the date of this notice and continuing until the violations are corrected:

2.1.1 The acts described in Section 1.1, 1.2, 1.3, and 1.4 of this NCV constitute violations of ***MCC 39.1170(C)*** Conditions of Approval and Notice of Decision (Failure to comply with conditions of approval).

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

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 Respondent's compliance:

- 22 **Immediately** cease all activity being conducted on the property which is not in compliance with the fill permit T1-2020-13263, and more specifically with conditions 8, 11, 16 and 17 as detailed above. Work which is in compliance with fill permit T1-2020-13263 and the conditions of approval may continue.

(3) APPEAL RIGHTS:

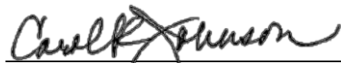
Pursuant to MCC 39.1530 and MCC 39.1550, YOU MAY APPEAL this Notice of Civil Violation to a County Hearings Officer. To appeal, you must complete and return the enclosed Notice of Violation Appeal form together with payment of the \$250.⁰⁰ appeal fee payable to "Multnomah County" **within 14 days of**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

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

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:

JAMIE WALTZ, DIRECTOR OF MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES



Carol R. Johnson, AICP
Planning Director
Land Use Planning Division

Enclosures:
Fine Calculation Form
Appeal of Notice of Violation Form

Zoning Violation Civil Fine Calculation Worksheet

Case – ZV-2021-15025 – September 16, 2021

Owners: Scott & Stacy Reed
Location: 12424 NW Springville Road, Portland, OR 97229
State ID: 1N 1W 16D -00600, 1N 1W 15C -00600, 1N 1W 16D -0300
Alt. Tax Account #: R961160130, R961150770, R961160590
Zoning: Exclusive Farm Use (EFU), Commercial Farm Use (CFU-2)
Case#: Zoning Violation (ZV)-2021-15025

1. Violation of *Multnomah County Code (MCC) 39.1170 (C)*

1.1 Specific violation: Failure to comply with **Conditions** of Approval for Permit, T1-2020-13263 **Agricultural Permit:**

Condition #8) The imported fill must be composed of topsoil. No concrete, asphalt, subsoil or construction debris shall be brought to the property to be used as fill or stockpiled as part of this permit Limits fill to top soil only.

Condition #11) Total daily number of vehicle trips shall not exceed 84 trips per day in the Spring-Summer (March 20 through September 22) and 42 trips per day in the Fall-Winter (September 23 through March 19). At no point in time shall fill haul truck trips exceed 60 trips (30 loads) per day.

Condition #16) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, shifting, leaking or otherwise escaping from vehicle. No fill shall be tracked or discharged in any manor onto any public right-of way.

Condition #17) Fill shall not be transported on a public roadway during weekends from 6:30 am and 9:30 am and 4:00pm to 6:30 pm.

(10)(4)(\$15) = \$600– Civil Fine Amount

X = [H+P+R+C+E] Y = [A x G]

	X base		Y Multiplier		\$15		Amount
4	History		1	Action to Enforce			
1	Prior Violation		3	Gravity			
2	Repeated						
2	Cause						
1	Efforts to Correct						
10	TOTAL	X	4	TOTAL	X	\$15	= \$600

Zoning Violation Civil Fine Calculation Process

Enforcement Code Administrative Rule 4.2

CALCULATION OF CIVIL FINE

- (a) The Director shall document the calculation of each civil fine imposed by the Director. The civil fine shall be calculated as follows in this and the subsequent sections of this rule:

$$\text{Civil Fine (\$)} = (\mathbf{X})(\mathbf{Y})(\$15)$$

- (b) Variable **X** = [**H**+**P**+**R**+**C**+**E**] is calculated as follows:

- (1) **H** is the rating of Respondent's performance of the required corrective actions requested or demanded by the Director for a particular violation. **H** shall equal:
 - (A) **0** if Respondent took actual and substantial steps, more than verbal assurance, towards attempting full performance of the required corrective actions or other resolution of the matter;
 - (B) **1** if Respondent took actual, but minor, steps, more than verbal assurance, towards attempting full performance of the required corrective actions or other resolution of the matter; and
 - (C) **4** if Respondent took inconsequential or no actual steps, regardless of verbal assurance, towards attempting full performance of the required corrective actions or other resolution of the matter.
- (2) **P** is the number of prior, affirmed violations of the same section of the MCC by Respondent. **P** shall equal:
 - (A) **1** if there are no prior violations.
 - (B) **2** if there has been one violation within the last five years; and
 - (C) **4** if there have been two or more violations within the last five years.
- (3) **R** is the frequency of occurrence of the violation. **R** shall equal:
 - (A) **1** if the violation occurred as a one-time event; and
 - (B) **2** if the violation is occurring or occurred as an intermittent, repeated or continuous event.
- (4) **C** is Respondent's intent to cause the violation. **C** shall equal:
 - (A) **1** if Respondent did not intend the violation, but rather the violation was inadvertent. An inadvertent violation is one that is unavoidable, accidental or caused by others not under the control or influence of Respondent;
 - (B) **2** if the violation occurred as a result of Respondent's negligence. A violation occurs as a result of Respondent's negligence if Respondent fails to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation;
 - (C) **4** if the violation occurred as a result of Respondent's reckless or intentional acts. A violation occurs as a result of Respondent's reckless act if Respondent acts with indifference to the consequences of that act. A violation occurs as a result of

Respondent's intentional act if Respondent knows the results that will flow from the act and desires those results to occur, regardless of whether Respondent knows that the act is a violation of law.

(5) **E** is the rating of Respondent's responsiveness to the Director's communications and/or requests. **E** shall equal:

- (A) **0** if Respondent was highly responsive such that repetition of the Director's communications and/or requests was minimal;
- (B) **1** if Respondent was moderately responsive such that the Director found a need to repeat only a small portion of prior communications and/or requests; and
- (C) **2** if Respondent was minimally responsive or not responsive.

(c) Variable **Y** = [**A** x **G**] is calculated as follows:

(1) **A** is the number of prior requests or demands by the Director for Respondent's performance of required corrective actions. **A** shall equal:

- (A) **1** if this is the first such request or demand by the Director within the last five years;
- (B) **2** if this is the second such request or demand by the Director within the last five years; and
- (C) **3** if there have been more than two such requests or demands by the Director within the last five years.

(2) **G** is the severity and magnitude of the violation as measured by the imminence of the threat to public health or safety or to natural resources, physical size, geographic extent, duration of time, frequency of occurrence, actual or potential economic harm or otherwise. Partial correction of a violation by any person after the NOV is issued does not reduce the value assigned to this factor. **G** shall equal:

- (A) **1** if there is no immediate threat to public health or safety or to natural resources, and the remaining measures of severity and magnitude of the violation prove minor;
- (B) **2** if there is no immediate threat to public health or safety or to natural resources, but the remaining measures of severity or magnitude of the violation prove moderate. The remaining measures of severity or magnitude of a violation prove moderate when required corrective actions can be taken in due course without a risk of irreparable harm; and
- (C) **3** if the violation poses an immediate threat to public health or safety or to natural resources or the remaining measures of severity or magnitude of the violation prove substantial. The remaining measures of severity or magnitude of a violation prove substantial when required corrective actions must be taken immediately to prevent irreparable harm.

Appeal of Notice of Violation

Notice of Violation Case #: _____

Address or Legal Description as listed in the Notice of Violation:

Appellant Name: _____ Phone: _____

Mailing Address: _____

Representative Name: _____ Phone: _____

Mailing Address: _____

(Attach to this appeal form, documentation demonstrating you are an authorized agent of the property owner.)

Briefly state what in the Notice of Violation you are appealing and why (use additional paper as needed):

Appellant/Representative's Signature

Date

Code Enforcement Appeals Are Governed By:
Multnomah County Code (MCC) 39.1530, 39.1545, 39.1550

1. An Appeal of a fine imposed through a Notice of Violation must be filed within 14 days of the date of the notice. The Appeal fee of \$250.00 must be paid to Multnomah County.
2. Within 30 days from the date of filing this appeal, you must provide all evidence supporting the appeal to the Hearings Officer. Evidence may include: building permits, approved plans, photographs, aerial photographs, Assessment & Taxation records, letters, receipts, affidavits, written explanations or any other documents supporting the Appeal. **Appeal evidence is to be mailed to Attention of Administrative Staff, 1600 SE 190th Avenue, Portland, OR 97233.** The Hearings Officer may request additional evidence or explanations.
3. The Hearings Officer will review all evidence and written comments from interested parties, and determine by a preponderance of the evidence whether the violation(s) occurred and affirm the imposition and amount of the civil penalty. A Decision of Appeal will be mailed to the appellant, representative and interested parties who attend.

FOR STAFF USE ONLY – CASE NUMBER: ZV- _____

Appeal of Notice of Violation Fee: \$250.00

Received by: _____ Date: _____