

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDER NO. 2022-090

Order establishing costs and persons liable for road hazard on SE Pounder Road.

The Multnomah County Board of Commissioners Finds:

- a) SE Pounder Road, in the area of Corbett, is a County road under the meaning of ORS 368.001(1).
- b) Beginning in 2020, and continuing into 2021, Multnomah County Land Use Planning received complaints that excavation and ground disturbing activities were being performed at 645 SE Pounder Road in a manner that caused erosion, blocked the County's culvert and ditch, and impacted adjacent property and Pounder Road. According to recorded documents in the Tax Assessor's Office, Heather Moon owns the real property at 645 SE Pounder Road.
- c) On or about February 23, 2021, Multnomah County Transportation was notified that large cracks had formed on SE Pounder Road. Transportation conducted a site visit and observed water, mud and debris sheeting across the road, a plugged public culvert, sloughing of the road shoulder, and sinking and cracking in the pavement.
- d) The County Engineer determined that the activities at 645 SE Pounder Road created a road hazard under the meanings in ORS 368.251 and 368.256(1), and presented a substantial risk of damage or injury to the traveling public, requiring abatement without delay and without notice or a hearing, and proceeded accordingly pursuant to ORS 368.271(1)(c).
- e) Beginning February 23, 2021, County Transportation took emergency action to abate the road hazard created by the activities at 645 SE Pounder Road. Abatement measures were completed on March 4, 2022. The emergency abatement measures resulted in over \$387,000 in costs to County Transportation funds.
- f) On July 14, 2022, the Multnomah County Board of Commissioners accepted a written report from the County Engineer. That report is attached hereto as Exhibit 1.
- g) On July 14, 2022, the Board of County Commissioners set a public hearing for October 6, 2022 at 9:30 AM in the Board Room in accordance with ORS 368.276(1).
- h) Notice of the hearing was provided in accordance with ORS 368.276(2).
- i) On October 6, 2022, the Board of County Commissioners conducted a public hearing where staff presented facts supporting the financial impacts of the emergency abatement measure, and provided opportunity for public comment in accordance with ORS 368.276(1) and (3).

The Multnomah County Board of Commissioners Orders:

1. Ms. Heather Moon is the property owner of 645 SE Pounder Road. The activities conducted on that property caused a road hazard on SE Pounder Road that resulted in mud and debris sheeting across the road, a plugged public culvert, sloughing of the road shoulder, and sinking and cracking in the pavement that required an emergency closure of the road and abatement measures.
2. The emergency abatement measures resulted in over \$387,000 in costs to County Transportation funds.
3. Ms. Heather Moon is hereby assessed \$ \$387,000 in costs, due within 60 days of this Order.
4. The Office of County Attorney is authorized to negotiate assessed costs and a payment schedule with Ms. Heather Moon.

ADOPTED this 6th day of October, 2022.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Courtney Lords*
Courtney Lords, Senior Assistant County Attorney

SUBMITTED BY:

Jenny M. Madkour, County Attorney



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only
Meeting Date: _____

Agenda Item #: _____

Est. Start Time: _____

Agenda Title: Reporting on County Road Hazard Abatement Activities on SE Pounder Road and Setting a Public Hearing to Assess Costs & Liability pursuant to ORS 368.276(1).

Requested Date: July 14, 2022	Time Needed: 10 minutes
Department/Division: Community Services/Transportation	Requester Name & Email: Jon Henrichsen, jon.p.henrichsen@multco.us
<p>Please list all presenters, with their titles, organization or department, in order of speaker, or note if their role is to answer questions:</p> <p>Jon Henrichsen, County Engineer and DCS Transportation Division Director and Courtney Lords, Senior Assistant County Attorney</p>	
<p>Will your group join virtually or in-person? (check <u>one</u>)</p> <p><input type="checkbox"/> Presenters will be in the Multnomah Building Boardroom</p> <p><input checked="" type="checkbox"/> Presenters will be virtual/online. List emails of all virtual presenters:</p> <p>Note: Virtual presenters must log in 15 mins prior to the start of the meeting to test video & mic</p>	

General Information:
1. What are you requesting from the Board?

Reporting on County road hazard abatement activities on SE Pounder Road, in Corbett, in accordance with ORS 368.271(4); and setting a public hearing date of October 6, 2022 for the Board to assess costs of abatement and determine the person or party responsible for payment of such costs pursuant to ORS 368.276(1).

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer(s) this action affects and how it impacts the results.

This APR constitutes the County's written report regarding Transportation's emergency abatement actions on SE Pounder Road, pursuant to ORS 368.271(4). Transportation was authorized to take emergency abatement actions, pursuant to ORS 368.271(1)(c), due to the County Engineer's determination that a road hazard was created and caused emergency conditions and damage to the right of way, and presented a substantial risk of damage or injury to the traveling public, requiring abatement without delay and without notice or a hearing.

On or about February 23, 2021, Transportation was notified about large cracks forming in SE Pounder Road in the Corbett area of east County. Transportation did a site visit and observed water, mud and debris sheeting across the road, a plugged public culvert, sloughing of the road shoulder, and sinking and cracking in the pavement. Based on these observations, the County Engineer made a determination that a road hazard was present and presented a substantial risk of damage or injury to the traveling public, requiring abatement without delay and without notice or a hearing, and proceeded accordingly.

Transportation performed emergency work including removal and replacement of the obstructed culvert, cleaned out the preexisting County ditch, regraded a ditch that was created and modified by the property owner without County approval or notice, repaired a roadway embankment that had washed out, cleared and replaced a man hole, installed a rock retaining wall to support the road structure that was necessary due to unpermitted excavation, replaced damaged asphalt, and replaced damaged fencing on an adjacent property. Corbett Water District also had to replace its water line.

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

Transportation incurred \$387,005.00 in costs to remediate the road hazard and repair the road due to the damage caused the property owner's failure to comply with County rules and regulations, as well as to obtain a right of way permit. Consequently, and pursuant to ORS 368.276, Transportation is seeking reimbursement of those costs.

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

Pursuant to ORS 368.271, counties are authorized to take emergency actions to abate a road hazard when a road hazard presents a substantial risk of damage, injury, or other emergency condition. Obstruction of a road drain is not permitted under ORS 368.251, and creation of a road hazard is prohibited under ORS 368.256. ORS 368.251 states:

When a county road official takes emergency abatement actions, the county road official is required to file a written report to the county governing board explaining those actions, the reason for the actions, and costs incurred in accordance with ORS 368.271(4); this APR is

that report.

Pursuant to ORS 368.276 and upon receipt of the report, the County governing body shall set a hearing date and time to assess costs performed under ORS 368.271 and determine persons liable for those costs. A hearing date is requested for October 6, 2022.

This action is subsequent to the County obtaining a restraining order against the property owner in Multnomah County Circuit Court, and a land use enforcement action that resulted in a Hearings Officer Order in favor of the County.

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

The public hearing required under ORS 368.276 allows for the adjacent property owner and public participation in the County Board's determination of costs and persons liable for payment of those costs.

Required Signature:

Elected Official/ Department Director:	/s/ Jamie Waltz	Date:	
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Note: Please insert name of your approver following the /s/. Send accompanying electronic approvals to the Board Clerk.