Yamhill County

1843

535 NE Fifth St, McMinnville, OR 97128 • (503) 434-7502 • Fax (503) 434-7553 • TTY 800/735-2900

OFFICE OF COUNTY COUNSEL

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COUNTY COUNSEL

JODI GOLLEHON
ASSISTANT COUNTY COUNSEL II

COLTON TOTLAND
ASSISTANT COUNTY COUNSEL

NOHELY BARAJAS-MONTALVO
LEGAL ASSISTANT

DATE: November 23, 2022

TO: Board of Commissioners

CC: Kenneth Huffer, County Administrator
Christian Boenisch, County Counsel
Mark Kemper, Code Enforcement
Ashley Watkins, SWAC Coordinator

FROM: Jodi Gollehon, Assistant County Counsel

SUBJECT: 12/1/22 Agenda Item Related to a SWAC Abatement Order: Marc O. Leigh

The Yamhill County Solid Waste Advisory Committee (SWAC) issued a "Notice to Abate" to Marc O. Leigh in late October of this year (see Addendum #1). In its notice, SWAC gave Mr. Leigh until November 23, 2022 to abate certain Solid Waste Ordinance (SWO) violations that were found to exist on his property, located 15865 NW Berry Creed Rd in McMinnville (the "Property"). Mr. Leigh failed to abate the Property as ordered by SWAC. A summary of the violation can be found in the attached Addendum #2.

Pursuant to SWO 5.4(e), the Board is now required to hold a hearing for Mr. Leigh to allow him the opportunity to show why a violation of the SWO does not exist. The purpose of the 12/1/22 agenda item is to: 1) accept formal notice that there is probable cause that a violation of the SWO still exists on the Property; 2) schedule the public hearing, and 3) order staff to send to Mr. Leigh notice of the pending public hearing in a form substantially similar to the attached Addendum #3 (feel free to tweak as needed).

B.O. 22-362

If after the hearing the Board finds that a violation does exist, it will need to formally declare the existence of the violation and order it abated within 30 days. In addition, the Board may also include within its order authorization for staff to abate the violation themselves should Mr. Leigh fail to abate the violation within the 30-day deadline. Any costs associated with a staff cleanup would then be recovered either directly from Mr. Leigh or by becoming a lien against the Property. If Mr. Leigh disagreed with the abatement costs as reported by staff, he would be given the opportunity to formally object directly to the Board.

Additional clarifications will be sent prior to the scheduled hearing, but please do feel free to reach out if you have any questions or concerns.

Encl.

Accepted by Yamhill County
Board of Commissioners on
12/1/22 by Board Order
22-362

Yamhill County

DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4TH STREET • McMINNVILLE, OREGON 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • Internet Address: http://www.co.yamhill.or.us/planning/

NOTICE TO ABATE PUBLIC NUISANCE

ISSUED THIS _____ Day of October, 2022

RESPONSIBLE PARTY:

Marc O. Leigh
15865 NW Berry Creek Rd.

SITUS ADDRESS:

15865 NW Berry Creek Rd
McMinnville, OR 9712

NOTICE IS HEREBY GIVEN OF THE FOLLOWING VIOLATION(S):

1. Yamhill County Ordinance 626, Section 5.1, *Solid Waste Accumulation Prohibited*
   No person shall store, collect, maintain, or display on private property, solid waste that is offensive or hazardous to the health and safety of the public, or which creates offensive odors or a condition of unsightliness. In addition to any other penalty provided in this ordinance or in any other applicable county ordinance, the storage, collection, maintenance, or display of solid waste in violation of this subsection shall be considered to be a public nuisance which may be abated as provided in Section 5.4 of this ordinance or as otherwise provided by Oregon law.

2. Yamhill County Ordinance 626, Section 5.2, *Unauthorized Dumping Prohibited*
   a. Except as provided in subsection (c) of this section, it shall be unlawful to dispose of solid waste at any other place than a disposal site designated by written approval of the Board.
   b. No person shall use or permit to be used any land within the county outside of incorporated cities as public or private disposal site without approval of the Board.
   c. Persons desiring to bury or dispose of solid waste in any other manner on their own property may do so only in accordance with rules promulgated pursuant to ORS Chapter 459 and regulations approved by the Board pursuant to this ordinance.

REQUIRED ACTION: You must immediately take steps to bring the property into compliance with Ordinance 626. Steps shall include, but are not limited to:

1. Remove and properly dispose of all solid waste accumulation on the property; and
2. Provide receipts of proposer disposal to Yamhill County Code Enforcement Officer, Mike Kemper, who can be contacted at 503-434-7516 x3631 or kemperm@co.yamhill.or.us.

Full abatement must be completed no later than **November 23, 2022**.

FAILURE TO ACT: If you fail to abate the property as required, the violation will be forwarded to the Yamhill County Board of Commissioners for further action. Such action may include (but is not limited to) the County abating the property and then placing a lien on the property for all expenses incurred.

B.O. 22-362
Exhibit "A"

Yamhill County

DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4TH STREET • McMINNVILLE, OREGON 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • Internet Address: http://www.co.yamhill.or.us/planning/

DATE: October 19, 2022

TO: Solid Waste Advisory Committee (SWAC)

FROM: Code Enforcement Officer Mike Kemper

RE: Abatement Notice for 15865 NW Berry Creek Rd

Pursuant to Yamhill County Ordinance 626, Section 5.4, I have attached my investigative report (Addendum 1) for your review for real property located at 15865 NW Berry Creek RD in McMinnville (the "Property") that I have determined to be in violation of the Solid Waste Code. The Property consists of approximately 6.5 acres and is zoned AF-80 – Agriculture/Forestry Large Holding District, with an 80-acre minimum lot size.

The Property's owner was found guilty by the Yamhill County Circuit Court of being in violation of the Solid Waste Code on September 23, 2022 (see Addendum 2). As of the date of this memo, the condition of the Property continues to worsen, and the Property owner appears to be unable or unwilling to abate.

Section 5.4 of the Solid Waste Code requires SWAC to review the investigatory report and determine whether a violation has occurred. If SWAC determines that a violation has occurred, it must then send written notice to the owner in accordance with Section 5.4(c). Accordingly, I have drafted a notice that fully complies with the requirements of the Solid Waste Code (see Addendum 3).

If the violation is not abated within the deadline provided in Addendum 3, I will next notify the Yamhill County Board of Commissioners, and the Board will conduct a public hearing and take appropriate action if warranted, including, but not limited to, ordering County staff to complete the abatement and placing a lien on the Property to cover the expense.

Actions requested of this Committee:

1. Find that the property identified herein is in violation of the Yamhill County Solid Waste Code.
2. Authorize County staff to send an abatement notice to the property owner in the form provided in Addendum 3.

SUMMARY FOR SWAC MEETING OCTOBER 19, 2022

I-08-20 15865 NW BERRY CREEK RD. MARC LEIGH

The matter before you today is a violation of the Yamhill County Solid Waste Ordinance 626, Section 5.1 accumulation and display of solid waste. Mr. Leigh was cited under Ordinance 755.

The elements of the offense are that on March 25, 2021 Mr. Leigh, owner of the property located at 15865 NW Berry Creek Rd., McMinnville, OR 97128 a property that is located within the boundaries of Yamhill County did commit the offense of accumulating and displaying solid waste in violation of Section 5.1 of the Yamhill County Solid Waste Ordinance 626. Section 5.1

01/31/20 Complainant reports RV habitation and solid waste accumulation. Site inspection, 4 RV's on the property, one closest to the road near the shop appears occupied. Junk vehicles and one stripped motorhome, auto parts, junk boat, old appliances and garbage. I have 20 photographs I would like to introduce into evidence as **Exhibit 1**

02/07/20 Correction letter mailed. I would like to introduce into evidence this letter as **Exhibit 2**

03/09/20 Site inspection. Occupied RV trailer is now gone. Two other RV trailers removed and some appliances and trailer full of garbage removed. Mr. Leigh arrived shortly after. I greeted him and I thanked him for the efforts he has made up to this point. He then pulled his shirt down and said I just had shoulder surgery, he then pulled his collar down on the left side and said I just got a pacemaker put in. I'm working on it, it will get done when it gets done. I have 11 photos I would like to introduce into evidence as **Exhibit 3**

05/28/20 Site inspection. Some progress made on cleanup but new solid waste has been brought in as well. I would like to introduce 7 photographs into evidence **Exhibit 4**

08/05/20 Site inspection. Some progress has been made. Mr. Leigh continues to strip the RV motorhome. I would like to introduce 9 photographs into evidence. **Exhibit 5**

10/15/20 Site inspection, very little change to the property. I would like to introduce into evidence 7 photographs **Exhibit 6**

10/30/20 Pre-citation letter mailed. I would like to introduce into evidence the letter **Exhibit 7**

01/06/21 Site inspection. Minor improvement noted. Mr. Leigh was outside the shop building. We spoke briefly. He again mentioned his shoulder injury and his pacemaker and told me he is working on it.

03/25/21 Site inspection. Old partially stripped motorhome, two old 50's model pickup trucks and the junk blue Jeep still there. Old frame from a 5th wheel trailer, old pallets, old fiberglass boat with weeds growing out of it, old appliances. I would like to introduce into evidence 14 photos **Exhibit 8**

04/02/21 Citation mailed certified mail. Initial appearance date of 5-3-21.

04/30/21 Site inspection. Minor progress. Partially stripped MH still there, the old pickups, jeep, old RV trailer frame, old boat, appliances other solid waste still there. Mr. Leigh was there. We spoke briefly. He again brought up his shoulder surgery and pacemaker. He told me he is working on it.

05/03/21 Arraignment with Judge Collins. Mr. Leigh plead not guilty.

06/14/21 Site inspection. Very little progress. I talked to Mr. Leigh for a bit. He said he is still working on it. He asked if he could keep the old boat as he is using it as a planter, I told him that would be okay if the next time I come up there he actually has something other than weeds growing out of it.

07/14/21 Site inspection. Maybe some minor progress? Hard to tell. I contacted Mr. Leigh. He again told me about his pacemaker and his shoulder surgery. I asked him about the dismantled motorhome and asked him why he just doesn't call a tow truck to get rid of it. He told me he will eventually tow it down to his shop and cut it up. The two old pickups, the old Jeep still remain as well as old appliances, pile of pallets and other miscellaneous solid waste.

07/15/21 Court with Judge Wiles. Mr. Leigh a no show. Default judgement for $150.00.

08/30/21 Site inspection. Dismantled motorhome is still there, old appliances, scrap metal, trailer full of trash, auto parts, abandoned vehicles. I would like to introduce 14 photographs into evidence. **Exhibit 9**

09/02/22 Received notification that default judgement has been set aside and a new trial scheduled for 10/19/21.

10/13/21 Site inspection. It appears there is more solid waste than there was on 08/30/21. I would like to introduce 15 photographs into evidence. **Exhibit 10**

10/19/21 Trial date. At beginning of trial there was some confusion, Mr. Leigh thought we were here for a status check and stated he was not prepared and requested time to find an attorney.

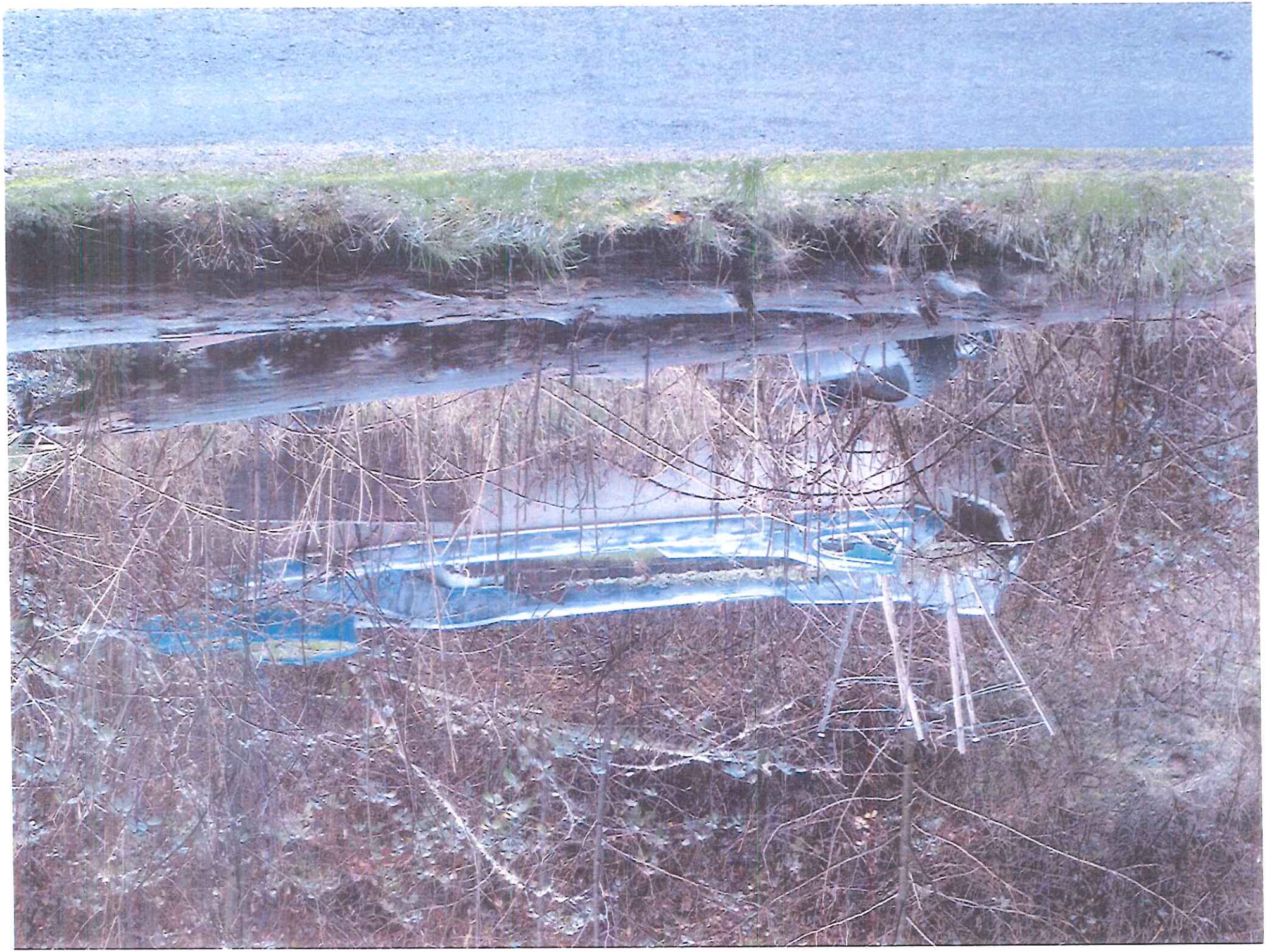
09/21/22 Site inspection. Property now looks worse than it did on 01/31/20. I would like to introduce 19 photographs into evidence. **Exhibit 11**

1-31-20
PENGAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT
1

327LFB

Prowler

Prowler
ADVENTURE
RV CENTER



BOEING

Prowler

PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
2

Yamhill County

DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMINNVILLE, OREGON 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • Internet Address: http://www.co.yamhill.or.us/planning/

Marc Leigh
15865 NW Berry Creek Rd.
McMinnville, OR 97128

February 5, 2020

Re: Code Enforcement File #I-008-20
Tax Lot #4502-1400

Mr. Leigh:

In response to a complaint the Planning Department received concerning an accumulation of and display of solid waste and occupancy of an RV trailer on your property, a drive by inspection was performed on January 31, 2020. At the time of the inspection, I observed a dilapidated wooden trailer filled with scrap, old appliances, old metal barrels, a trailer filled with garbage, a junk fiberglass boat, a junk blue jeep, an orange trailer filled with solid waste, a junk green Dodge pickup truck and another green junk vehicle almost completely covered in blackberry brambles, miscellaneous auto parts and 4 recreational vehicles/motorhomes. The Prowler brand RV trailer parked near the green shop building appears to be occupied.

I. Permitting to use or using land for a public or private disposal site is a violation of Section 5.2 (b) of the Yamhill County Solid Waste ordinance. The accumulation or displaying of solid waste that is offensive or hazardous to the health and safety of the public, or which creates offensive odors or a condition of unsightliness on private property is a violation of Section 5.1 of the Yamhill County Solid Waste Ordinance. In order to correct this violation(s), you will need to provide our office with documentation that you have properly disposed of the solid waste by March 9, 2020.

Documentation as referred to above means receipts from county franchised or licensed recycling or landfill sites. Tires/wheels can also be receipted as being legally disposed of at a retail or wholesale dealer or recycler of tires or rubber. Vehicles and metal can be receipted as being legally disposed of at licensed wrecking and recycling yards as well as retail and wholesale metal recovery businesses.

Failure to provide the Planning Department with adequate and prescribed documentation for all disposed of material WILL result in continued enforcement that may include the issuance of Circuit Court citations.

II. The Department of Environmental Quality regulations (OAR 340-264-0060(3) states in part:

No person may cause or allow to be initiated or maintained any open burning of any open burning of wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, tires, cardboard, treated wood products, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors- (Class I);

Unsafe storing or burying of hazardous wastes so that they leak or could leak into the environment; Burying garbage, plastic, cardboard, paper, waste food products, or tires.

Burn piles are supposed to include only vegetation cuttings.

3.9.20
PENGAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT
3

BJ 3278

DIRECT

5-28-20
PLAINTIFF'S
EXHIBIT
4
FERGAD-Bayonne, N. J.

640 FRD

8.5.78
PENGAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT

FORD

10-15-80
PENGAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT
B

Yamhill County

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PENGAD-Bayonne, N. J.

PLAINTIFF'S EXHIBIT 7

October 30, 2020

Marc Leigh
15865 NW Berry Creek Rd.
McMinnville, OR 97128

Re: Code Enforcement File #I-008-20
Tax Lot #4502-1400

PRE-CITATION WARNING

Mr. Leigh:

It has been nearly nine months since I sent you a correction letter for solid waste violations on your property. Since that time the progress has been slow. This is not the first time that you have been under enforcement for solid waste. The remaining solid waste needs to be removed and the property needs to remain free from solid waste.

I. Permitting to use or using land for a public or private disposal site is a violation of Section 5.2 (b) of the Yamhill County Solid Waste ordinance. The accumulation or displaying of solid waste that is offensive or hazardous to the health and safety of the public, or which creates offensive odors or a condition of unsightliness on private property is a violation of Section 5.1 of the Yamhill County Solid Waste Ordinance. In order to correct this violation(s), you will need to provide our office with documentation that you have properly disposed of the solid waste by January 4, 2021.

Documentation as referred to above means receipts from county franchised or licensed recycling or landfill sites. Tires/wheels can also be receipted as being legally disposed of at a retail or wholesale dealer or recycler of tires or rubber. Vehicles and metal can be receipted as being legally disposed of at licensed wrecking and recycling yards as well as retail and wholesale metal recovery businesses.

Failure to provide the Planning Department with adequate and prescribed documentation for all disposed of material WILL result in continued enforcement that may include the issuance of Circuit Court citations.

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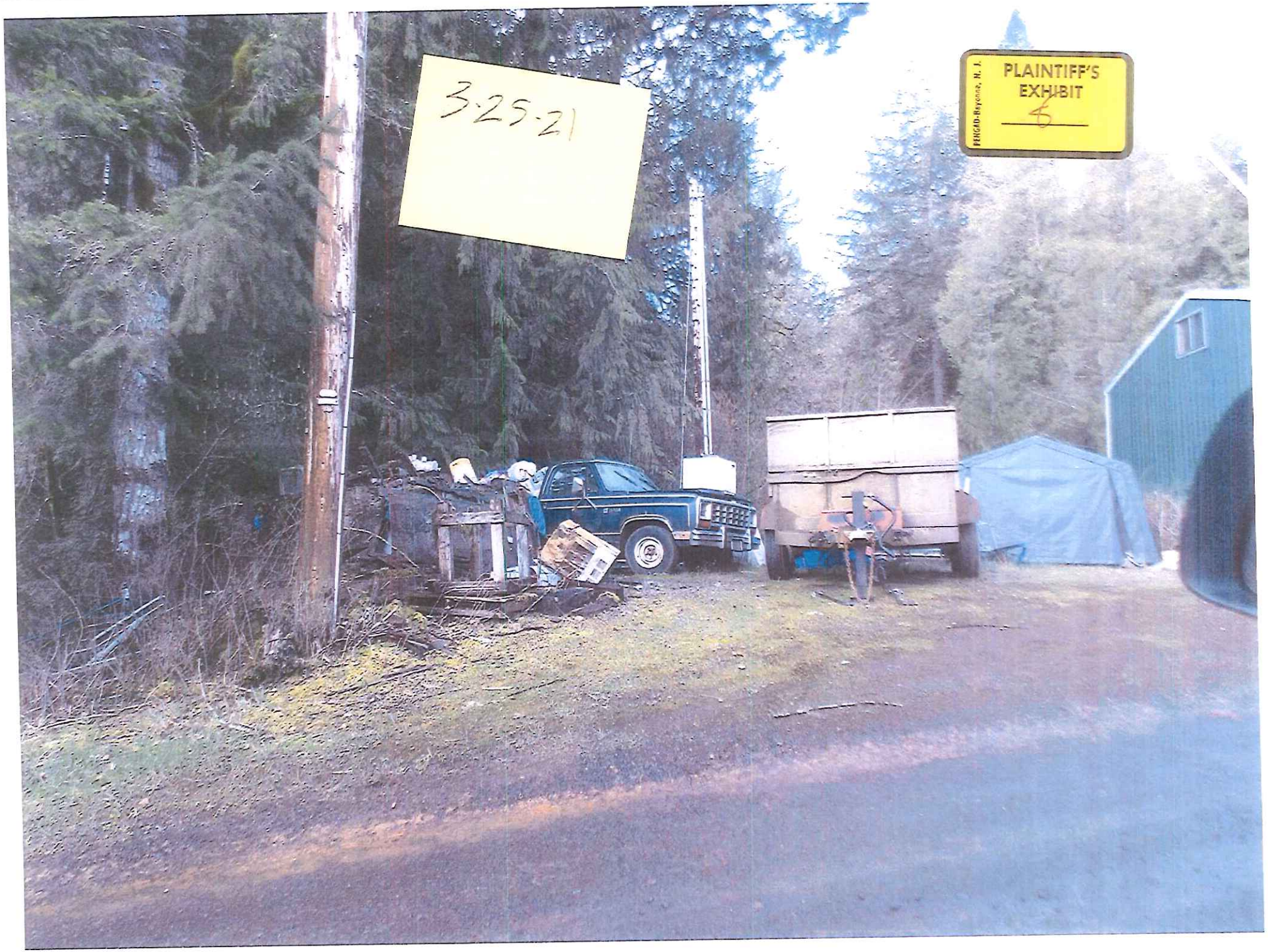
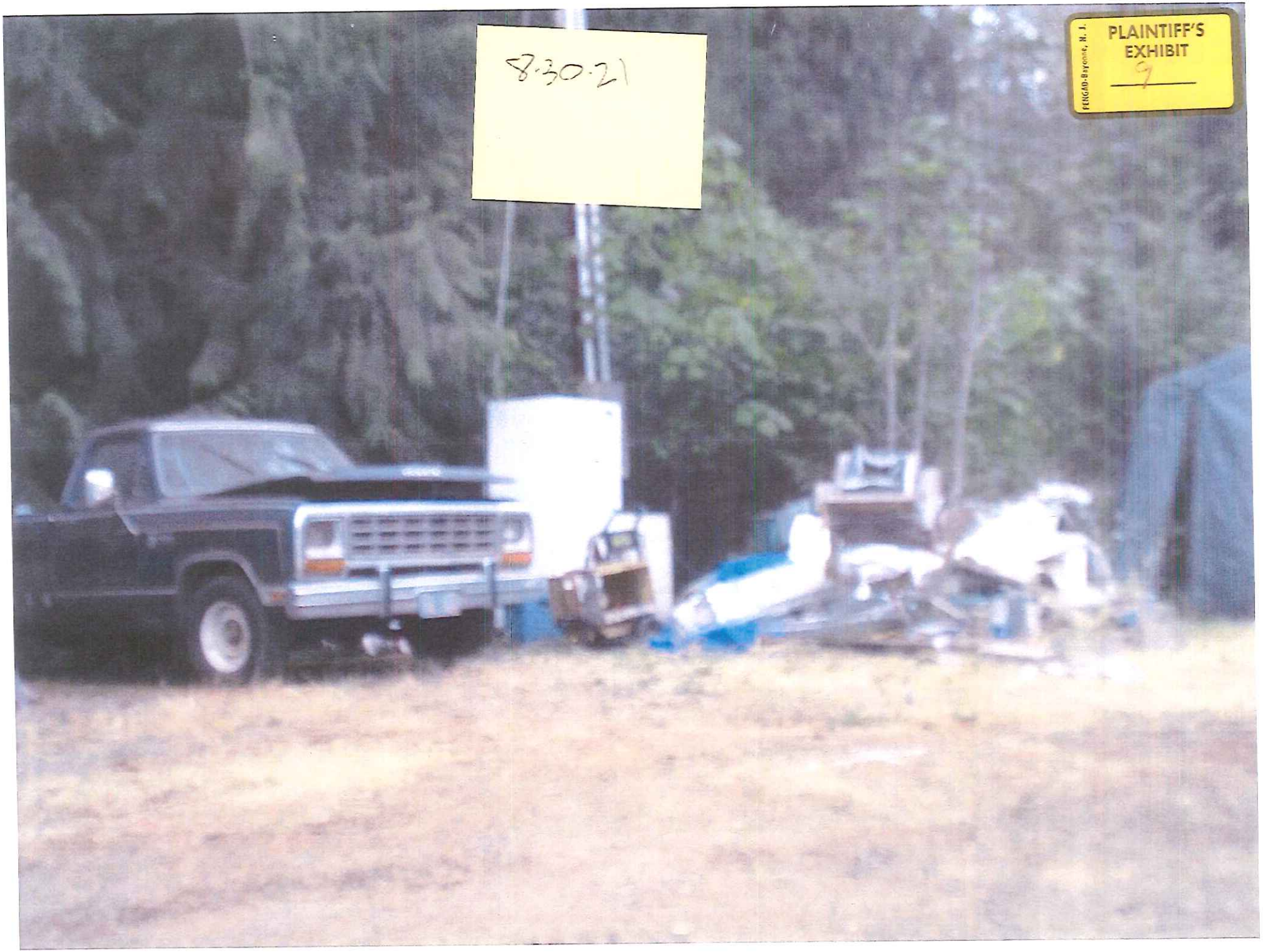
Unsafe storing or burying of hazardous wastes so that they leak or could leak into the environment; Burying garbage, plastic, cardboard, paper, waste food products, or tires.

Burn piles are supposed to include only vegetation cuttings.


3-25-21
PLAINTIFF'S
EXHIBIT
6
FERGUD-Bayonne, N. J.

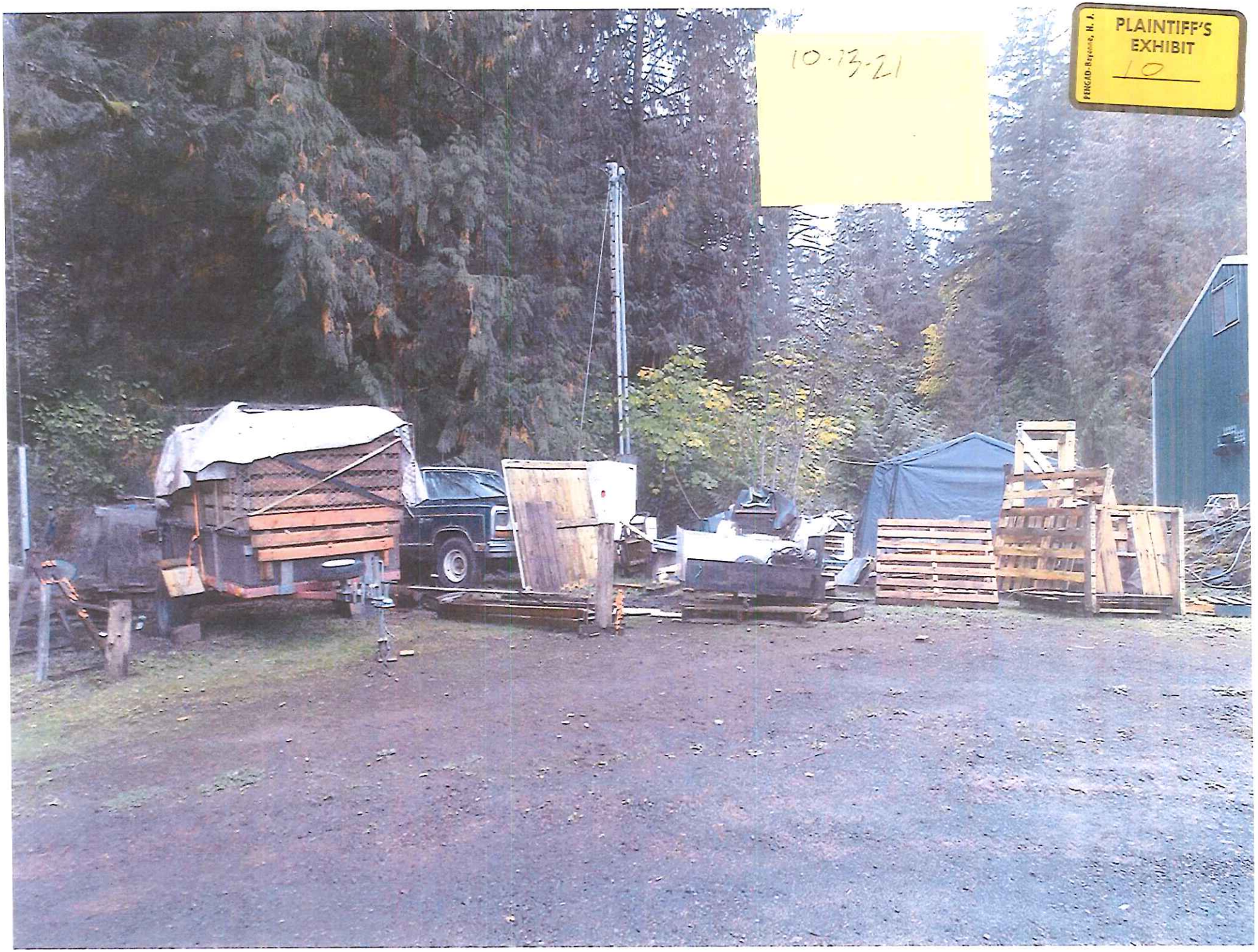
RAM

FORD


8-30-21
PLAINTIFF'S
EXHIBIT
9
FENGAD-Bayonne, N. J.

260B
JOHN DEERE

KOMATSU



10-13-21

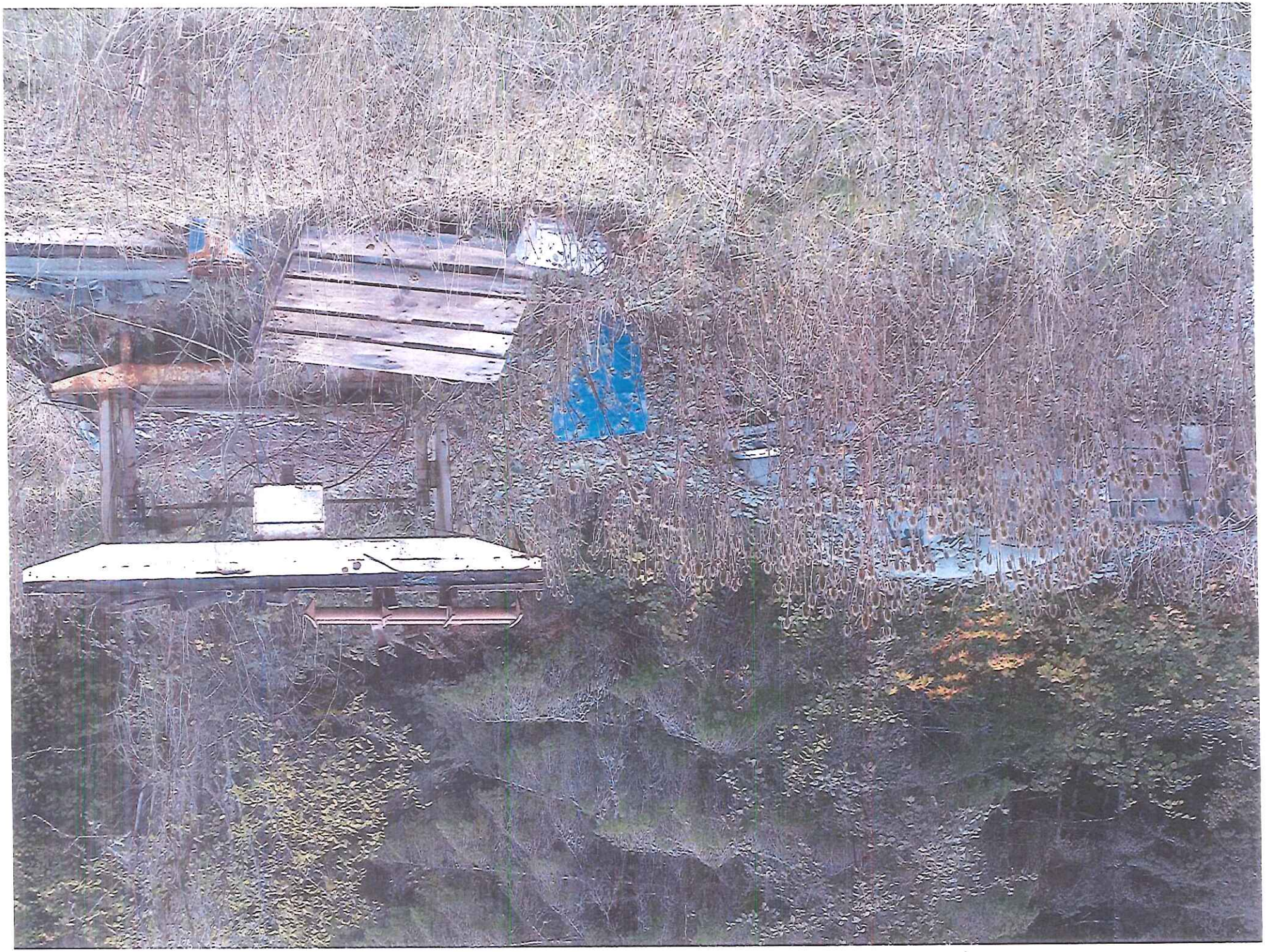
PLAINTIFF'S EXHIBIT
10

FENGAD-Bayonne, N. J.

FOR

D

Jeep
Sport
WRANGLER
4.0L
C30



PLAINTIFF'S
EXHIBIT
FINGAD-Bayonne, N. J.

Bridge
Just

WR&E
WR&E

FORD
FC30

DC 30

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL
535 NE 5th St. McMinnville Oregon 97128

State of Oregon
v.

Marc O Leigh
Defendant

Case No: 21VI38742

GENERAL JUDGMENT
Re: Citation #: **30713**
LIEN - ☐ This judgment creates a lien

The court finds the defendant GUILTY of the charges designated "CONVICTED" in the section below

Driver's License# & State:			Commercial DL? **No**
License Name: **Leigh, Marc O**			
Date of Birth:	Height:		Def is Passenger? **No**
Sex: Male	Weight:		
Address: **15865 NW Berry Creek Rd McMinnville OR 97128**			
Offense Date: **03/25/2021**			
EMP: **No**	CMV: **No**	Com'l Pass Veh: **No**	HAZ: **No**
Location:		Time:	
ORS/OAR#:			
Other	**Convicted - Failure to Appear**	Yamhill County Ordinance	Violation Unclassified
Convicted Speed:	Designated Speed:	In School Zone?	
		No	
Original Date to Appear: **05/03/2021**			

FINE ASSESSED: $150.00
Go to www.courts.oregon.gov/ePay to pay online

(☐ includes restitution of $ payable to: *(name, address:*)
Judgment Creditor: State of Oregon **Judgment Debtor:** Defendant

Payment in full is due IMMEDIATELY

9/23/2022 9:12:04 AM

9/23/2022

John T. Mercer

Pro Tem Judge John T. Mercer

Yamhill County

DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4TH STREET • McMINNVILLE, OREGON 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • Internet Address: http://www.co.yamhill.or.us/planning/

NOTICE TO ABATE PUBLIC NUISANCE

ISSUED THIS _____ Day of October, 2022

RESPONSIBLE PARTY:

Marc O. Leigh
15865 NW Berry Creek Rd.

SITUS ADDRESS:

15865 NW Berry Creek Rd
McMinnville, OR 9712

NOTICE IS HEREBY GIVEN OF THE FOLLOWING VIOLATION(S):

1. Yamhill County Ordinance 626, Section 5.1, *Solid Waste Accumulation Prohibited*
   No person shall store, collect, maintain, or display on private property, solid waste that is offensive or hazardous to the health and safety of the public, or which creates offensive odors or a condition of unsightliness. In addition to any other penalty provided in this ordinance or in any other applicable county ordinance, the storage, collection, maintenance, or display of solid waste in violation of this subsection shall be considered to be a public nuisance which may be abated as provided in Section 5.4 of this ordinance or as otherwise provided by Oregon law.

2. Yamhill County Ordinance 626, Section 5.2, *Unauthorized Dumping Prohibited*
   a. Except as provided in subsection (c) of this section, it shall be unlawful to dispose of solid waste at any other place than a disposal site designated by written approval of the Board.
   b. No person shall use or permit to be used any land within the county outside of incorporated cities as public or private disposal site without approval of the Board.
   c. Persons desiring to bury or dispose of solid waste in any other manner on their own property may do so only in accordance with rules promulgated pursuant to ORS Chapter 459 and regulations approved by the Board pursuant to this ordinance.

REQUIRED ACTION: You must immediately take steps to bring the property into compliance with Ordinance 626. Steps shall include, but are not limited to:

1. Remove and properly dispose of all solid waste accumulation on the property; and
2. Provide receipts of proposer disposal to Yamhill County Code Enforcement Officer, Mike Kemper, who can be contacted at 503-434-7516 x3631 or kemperm@co.yamhill.or.us.

Full abatement must be completed no later than **November 4, 2022**.

FAILURE TO ACT: If you fail to abate the property as required, the violation will be forwarded to the Yamhill County Board of Commissioners for further action. Such action may include (but is not limited to) the County abating the property and then placing a lien on the property for all expenses incurred.

BOARD OF COUNTY COMMISSIONERS

LINDSAY BERSCHAUER • CASEY KULLA • MARY STARRETT

535 NE Fifth Street • McMinnville, OR 97128-4523
(503) 434-7501 • Fax (503) 434-7553
TTY (800) 735-2900 • www.co.yamhill.or.us

NOTICE OF PUBLIC NUISANCE HEARING

DATE: December 1, 2022

RESPONSIBLE PARTY: Marc O. Leigh

SITUS ADDRESS: 15865 NW Berry Creek Rd, McMinnville, OR 9712

SCHEDULED SHOW-CAUSE HEARING: January 12, 2023

NOTICE IS HEREBY GIVEN THAT:

The Yamhill County Solid Waste Advisory Committee believes that there is probably cause that real property located at the address listed above is in violation of the Yamhill County Solid Waste Ordinance (SWO). Pursuant to the SWO, you are hereby ordered to appear before the Yamhill County Board of Commissioners (Board) on January 12, 2023 to show cause why a violation does not exist.

If you fail to appear at the scheduled hearing, the Board may order your property abated by County staff and authorize a lien to be placed on the property for any expenses incurred. In abating a violation upon order by the Board, County staff shall not be liable for either trespass or conversion.

B.O. 22-862
Exhibit "A"