

March 13, 2026

VIA EMAIL

Multnomah County Hearings Officer
1600 SE 190th Ave
Portland, OR 97233
LUP-Comments@multco.us

Re: Portland Water Bureau – Temporary Permit for Construction Trailers
County File T2-2025-0046 & -0048

Hearings Officer:

This firm represents the Cottrell Community Planning Organization (“CPO”) in the above-referenced case. Through these applications, the Portland Water Bureau (PWB) seeks to continue locating construction trailers that have already existed on the Carpenter Lane filtration facility site and Lusted Road for more than 12 months. This request must be denied because a temporary use for more than 12 months does not qualify for approval under Multnomah County Code 39.8750(A). In addition, the applicant has failed to establish that the criteria necessary for siting a temporary use are satisfied. These defects cannot be resolved with conditions of approval because there is no reasonable basis to conclude that the applicable standards will be satisfied. Therefore, these applications must be denied.

Background

In 2024, the county issued a temporary use permit for the storage of construction office trailers in the same numbers, configuration and location on the subject property from September 7, 2024 until September 7, 2025. County File No. T2-2024-0060 and -0062. Conditions of approval required that if a “new permit is to be applied for,” an application shall be filed 60 days prior to the expiration. Rather than file a “new permit” 60 days in advance, PWB filed these applications five days before the expiration in violation of the condition. The conditions went on to provide that failure to comply with this requirement would require removal of the trailers within five days of permit expiration, which also did not occur. This use, which began on or about September 7, 2024, continues to this day.

This Use is Not “Temporary”

PWB now seeks approval of a new “temporary use” authorization, which the staff decision authorized from November 25, 2025 to November 25, 2026. If these applications are approved,

the result will be the storage of construction office trailers for 27 months. The conditions of approval recommended in the Director's decision allow for an additional one-year extension or until November 25, 2027 which would extend the authorization for 39 months, assuming that PWB will comply, which is entirely questionable given PWB's actions to date. In either case, this use is not "temporary" and cannot be approved under MCC 39.4315.

A "temporary use" may be permitted within the MUA-20 zone "when approved pursuant to MCC 39.8700 and .8750." MCC 39.4315(A). MCC 39.8700 establishes health hardship dwelling standards and has no relevance to this case. MCC 39.8750 does apply and imposes a strict one-year limitation for temporary permits for "certain uses." The applicant and county staff have concluded that the construction field office trailer use "fits within the above categories of temporary uses." What the staff decision fails to acknowledge is that this temporary authorization can only be allowed for "one year." More specifically, the plain language of MCC 39.8750(A) reads:

"Notwithstanding the limitations of use as established by this Chapter in each of the several base zones, the Planning Director may issue temporary permits, valid for a period of not more than one year after issuance, for structures, or uses which are of a temporary nature, such as:"

The language of this standard could not be more clear - the use cannot extend for more than one year. In this case, PWB has expended the allowed one year authorization for this use in T2-2024-0060 and -0062. To allow the applicant to continue the use for, what is now, nearly 18 months at present and up to 27 months, if this permit is approved, is not a "temporary use."

Nothing in the language of MCC 39.8750(A) suggests that serial application of the temporary use authorization is allowed, either by virtue of an extension or a new application. To take PWBs approach would allow a use to remain for decades and simply file an application to renew the same whenever an owner gets caught in violation. The result is to completely undercut the term "temporary," depriving it of any meaning. Such an interpretation would probably be of great interest to farmstand, food cart operators or others storing equipment "temporarily" forever. If an applicant is allowed to file a new application for an expired temporary use, the use must first cease for some period such that restoration of the former use can reasonably be viewed as a new temporary use.

Further, the language of MCC 39.8750 does not suggest that a "temporary use" can be extended pursuant to MCC 39.1195(A). In the conditions for T2-2024-0060 and -0062, the County expressly found that no extension was permitted and yet, without explanation, that interpretation has changed. If a one-year extension is available, a change in interpretation must be justified taking into account the lack of support in the Code. Further, if a one-year extension for a temporary use is contemplated then the total amount that can ever be allowed for a temporary use to exist is 24 months. Therefore, PWB must cease the use in 24 months removing this use no

later than September 7, 2026, which would be one year plus a one-year extension. Once these two years have passed, the use must cease and the trailers be removed.

Additionally, in order to grant approval of an application, the hearings officer must have assurance, based on substantial evidence, that compliance with the criteria are or will be assured through conditions of approval. Here, there is no evidence from which to conclude that PWB's storage of construction trailers will conclude by November 25, 2026 or, if the use will not conclude by this date, that PWB will apply for an extension at least 60 days prior to the expiration of the permit. Instead, what the evidence shows is that PWB will not comply with this requirement and will violate the terms of this permit, just as it is now. There is simply no basis to conclude that compliance with the requirements of MCC 39.8750(A) are feasible or that the condition of approval is adequate, nor enforceable to ensure that the criteria will be met. *Meyer v. City of Portland*, 67 Or App 274, 678 P2d 741, rev den 297 Or 82 (1984). For these reasons, these applications must be denied.

On-site Sewage Disposal Evaluation is Insufficient

MCC 39.4325(G) requires a finding that adequate on-site sewage disposal and on-site stormwater drainage and control be provided on the lot. The applicant responds by explaining that ground disturbance was approved through an Erosion and Sediment Control Permit, T1-2023-16751, the 2024 Temporary Permit including a Stormwater Drainage Control Certificate demonstrating compliance with the County's stormwater requirements and that the drainage remains unchanged. This is all well and good but simply stating that these other approvals occurred and no change is proposed, is not responsive to the obligation to show that all sewage and stormwater disposal is occurring onsite, as the criterion requires. An application is either a new use, which is what PWB claims by filing a new application, or it is the continuation of an old use, to which the 2024 data might be sufficient. In these applications, PWB has elected the former approach, PWB must provide the evidence necessary for the County to find that MCC 39.4325(G) is satisfied. Compliance with the requirement in 2024 or obtaining a certificate establishing compliance with other standards is insufficient.

Exterior Lighting Standards are Not Satisfied

This same defect plagues the obligation to ensure dark-sky-compliant exterior lighting under MCC 39.4325(J) and 39.6850. Although not discussed in any findings, MCC 39.6850 requires that "all new exterior lighting supporting a new ...use approved through a development permit" must include "fully shielded" light sources with opaque materials that are directed downwards. PWB responds by referencing a "submitted lighting detail" which does not appear in the record. The three photographs showing exterior fixtures on trailers coupled with a claim that these "examples" is similarly insufficient. First, these photographs are taken from the front during daylight hours making it impossible to determine if they are fully shielded. Second, "examples" of the types of light do not establish compliance with a standard for "all" lighting. Finally,

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PWB's failure to address this criterion begs the question of whether PWB complied with condition of approval 3 in the 2024 Permit which required submitting documentation of the lighting details prior to establishing this use. If PWB did not submit these lighting details in 2024, the hearings officer should decline any invitation to condition this approval for the submittal of the same in this case because again, there is no sound reason for assuming compliance.

Conclusion

In summary, PWB has failed to establish that this proposal satisfies the applicable criteria for authorizing a temporary use and as such, these applications must be denied. Please place this letter into the record of these proceedings and provide me notice of your decision.

Very truly yours,



Carrie A. Richter

CAR:kms

cc: Client