

Multnomah County Land Use Planning  
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**RE: T2-2025-0048 Applicant's Final Written Argument – Lusted Road Site**

Mr. Kearns:

Thank you for your time and consideration of the temporary permit for construction office trailers for the approved Portland Water Bureau Filtration and Pipelines Project during its construction. The construction trailers are critical for the successful and efficient construction of the project.

The proposed findings enclosed with this letter support the approval of the temporary permit for the construction trailers at the raw water pipelines construction site on Lusted Road. As detailed in the proposed findings, there is ample evidence in the record showing that the proposal meets the approval criteria for a temporary permit.

The applicant respectfully requests your approval of the temporary permit for the construction office trailers in Case No. T2-2025-0048.

Sincerely,



Zoe Lynn Powers  
Radler White Parks & Alexander

## PROPOSED DECISION OF THE HEARINGS OFFICER

36800 SE Lusted Road & 36910 SE Lusted Road (R237226 & R237225)

T2-2025-0048

### THRESHOLD LEGAL DETERMINATIONS:

Counsel for the Cottrell Community Planning Organization (“**CCPO**”) submitted a letter dated March 13, 2026, which was entered into the record as Exhibit I.8. In the letter, the CCPO asserts that the temporary construction trailers approved at the SE Carpenter Lane property (T2-2025-0046) and the SE Lusted Road property (T2-2025-0048) are not “temporary.” Specifically, the CCPO contends that the plain language of MCC 39.8750(A) limits temporary uses to a maximum duration of one year. The argument rests on an incorrect reading of the code that equates the length of time a temporary *permit* remains valid with the permissible duration of the temporary *use* itself and fails to consider the broader regulatory context for inherently temporary construction uses.

Under the familiar methodology of *Portland General Electric Co. v. Bureau of Labor & Industries*, 317 Or 606, 610–12, 859 P2d 1143 (1993), as clarified in *State v. Gaines*, 346 Or 160, 171–72, 206 P3d 1042 (2009) (“**PGE/Gaines**”) the interpretation of a local code provision focuses on the text and context, which are the best evidence of the enacting body’s intent. Interpretation of a local code is a question of law governed by the same *PGE/Gaines* framework that applies to state statutes. *Waste Not of Yamhill County v. Yamhill County*, 305 Or App 436, 457, 471 P3d 769 (2020).

MCC 39.8750(A) limits permit validity, not the duration of the temporary use.

MCC 39.8750(A) states:

*“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:”*

CCPPO’s attorney emphasizes and focuses exclusively on the phrase “valid for a period of not more than one year after issuance” to argue that no temporary use could ever extend for more than one year. That clause, however, exclusively addresses the term of the permit, not the ultimate length of time a qualifying temporary structure or use may exist.

Nothing in the plain language of MCC 39.8750 establishes a one-year cap on the temporary use itself. As staff correctly noted in their March 20, 2026, memorandum (Exhibit J.1), MCC 39.8750 neither prohibits nor discourages the issuance of sequential temporary permits for the same temporary use or structure, provided the use continues to qualify as “of a temporary nature.”

Sequential temporary permits do not render the term “temporary” meaningless.

The CCPO contends that authorizing sequential temporary use permits deprives the term “temporary” of meaning by permitting a temporary use to exist indefinitely. The concern ignores

(1) the context provided by the list of temporary uses in MCC 39.8750(A), and (2) the safeguard inherent in the annual permitting requirement.

First, the list of examples in MCC 39.8750(A) provides critical context. The enumerated structures/uses are either inherently temporary (*e.g.*, a real estate office used for the sale of lots) or expressly designated as “temporary” (*e.g.*, temporary housing). A temporary permit is also authorized for “other uses of a temporary nature when approved by the Planning Director.” Critically, the code does not define the term “temporary.”<sup>1</sup> I find that staff is correct that, as a result, the code grants the Planning Director broad discretion to determine whether, and for how long, a specific use remains temporary based on its purpose and circumstance.

Second, the annual permit requirement provides a mechanism for preserving the meaning and relevancy of “temporary.” The requirement to seek a new permit every year places an annual burden on the applicant to demonstrate that the use remains temporary and authorizes the Planning Director to deny a new temporary permit for a use that is no longer “of a temporary nature.” Contrary to authorizing permanent uses by default, the requirement for annual review ensures continued oversight on the nature of the use.

Finally, MCC 39.8750(A) does not require a temporary use to cease for some period if a new temporary permit is issued. This argument once again conflates the annual permit requirement with the temporary use itself. In this case, there is not a “former use” and a “new temporary use” as suggested by the CCPO. Instead, new temporary permits have been issued for existing and continuing temporary uses.

#### Construction trailers are inherently temporary.

While the determination of whether a use remains temporary may present close questions in other circumstances, there is no ambiguity in this case. The construction office trailers are inherently and undeniably temporary. They were placed on the properties solely to support construction and will be removed once construction concludes.

Moreover, the MCC expressly identifies the length of time allowed for construction activity to develop a use permitted through a Type III land use decision. Pursuant to MCC 39.1185(B), projects that have commenced construction have four years to complete construction. Under *PGE/Gaines*, MCC 39.1185(B) provides important context that supports the interpretation of the plain language (above), as the CCPO’s interpretation would produce an unreasonable and impractical result by limiting essential construction-support trailers to just one year of a legally authorized multi-year construction period. That result would be in conflict with the *PGE/Gaines* context provided by MCC 39.1185(B). Nothing in MCC 39.8750 suggests an intent to prohibit temporary construction support facilities for the full duration of permitted construction activity.

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<sup>1</sup> The plain dictionary definition is “lasting for a time only : existing or continuing for a limited time : impermanent, transitory.” *Merriam-Webster’s Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/temporary>. Visited March 26, 2026.

Past noncompliance with the 60-day application condition does not justify denial.

Finally, the CCPO contends that a lack of evidence that the applicant will apply for a new permits at least 60 days prior to the expiration of the permits as required by Condition 3a justifies denial of the temporary permits. The argument lacks merit and is unsupported by any relevant case law.

The untimely submittal of new temporary permit applications was appropriately addressed through the County's enforcement authority and cured through the current permit process. The fact that the applicant's submittal of the 2025 applications was delayed does not mean that a timely submittal for the new set of temporary permits is infeasible or that the condition of approval requiring the 60-day lead time is inadequate, as suggested by the CCPO. Indeed, LUBA has long held that evidence of past land use violations is not, by itself, a lawful basis to deny a land use application absent express code standards authorizing denial on that ground. See *Stephens v. Multnomah County*, 10 Or LUBA 147, 152 (1984). As explained further in the findings for MCC 39.1250 below, this application is not prohibited by application of that code standard.

STAFF IDENTIFIED APPLICABLE APPROVAL CRITERIA - MULTNOMAH COUNTY CODE (MCC):

- MCC 39.8750 Temporary Permits for Certain Uses
- MCC 39.1250 Code Compliance and Applications
- Lot of Record Criteria:
  - MCC 39.3005 Lot of Record – Generally
  - MCC 39.3090 Lot of Record – Rural Residential (RR)
- Rural Residential (RR) Zone Criteria:
  - MCC 39.4365(A) Review Uses, Temporary Uses
  - MCC 39.4375 Dimensional Requirements and Development Standards
- MCC 39.6235 Stormwater Drainage Control
- MCC 39.6850 Dark Sky Lighting Standards

**§39.8750- TEMPORARY PERMITS FOR CERTAIN USES.**

*(A) 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:*

- (1) Storage of equipment during the building of roads or developments;*
- (2) Real estate office used for the sale of lots or housing in subdivisions;*
- (3) Temporary storage of structures or equipment;*
- (4) Sheds used in conjunction with the building of a structure;*
- (5) Temporary housing; or*
- (6) Other uses of a temporary nature when approved by the Planning Director.*

**Findings:**

MCC 39.8750 does not apply.

MCC 39.8750 does not explicitly or implicitly require a temporary use permit for on-site construction office trailers that are located on the same property as, and directly support, an otherwise fully land use–approved project. Therefore, and in the alternative to the detailed findings below addressing compliance, I find that approval under MCC 39.8750 is not required in order to allow construction office trailers at an active construction site for a use that has received full land use approval.

As discussed at the hearing, the applicant is unaware of any instance in the history of Multnomah County land use review in which a temporary use permit was required for construction office trailers located on the same site as active construction for a project that has otherwise received full land use approval. That past practice (while of course not binding on the County) is more consistent with the text and context of MCC 39.8750 under a *PGE/Gaines* analysis than an interpretation that requires such permits.

MCC 39.8750 authorizes the Planning Director to issue temporary permits for “structures, or uses which are of a temporary nature,” and then provides a non-exclusive list of examples, ending with “other uses of a temporary nature.” However, LUBA specifically held that this construction, in this case, is not a “use” under Multnomah County Code. *Cottrell Community Planning Organization v. Multnomah County*, LUBA No 2023-086 (Jan 22, 2025). Consistent with that reasoning, construction activities and the ordinary, on-site facilities necessary to carry out construction are part of the implementation of an approved use, not a separate land use subject to temporary use permitting.

The common feature of the examples listed in MCC 39.8750(A) is that they involve stand-alone structures or activities that would not otherwise be allowed on a site absent temporary authorization. For example, a property used solely for construction equipment storage independent of any approved construction activity on that site, constitutes a temporary use because the site has not otherwise received land use

approval for a permanent use. By contrast, construction occurring on the site of an approved permanent use is simply the construction of that approved use. It is not also a separate temporary use.

The structure of MCC 39.8750 supports this conclusion. The code authorizes temporary permits “notwithstanding the limitations of use as established by this Chapter in each of the several base zones.” That language confirms that the purpose of the section is to allow otherwise prohibited uses to occur temporarily, not to regulate or re-permit construction *already authorized in the base zone* as part of an approved project. To find otherwise would lead to an absurd result, requiring common construction-related structures like cranes to meet standards they inherently cannot meet, such as height limits.

Construction office trailers located on the same site as construction of a permitted use are an ordinary and expected construction activity and are integral to implementing the underlying land use approvals. This interpretation is reinforced by MCC 39.1185(B), which allows up to four years to complete construction once commenced. The code plainly anticipates that construction will occur over a multi-year period and does not impose additional land use review requirements for the routine, temporary facilities necessary to complete that construction.

For these reasons, MCC 39.8750 does not require a temporary use permit for the construction office trailers proposed here. The trailers are part of the implementation of an otherwise fully approved land use project and do not constitute a separate temporary use subject to MCC 39.8750.

This standard is met.

In the alternative, I find that MCC 39.8750 does not contain or point to any approval standards that must be satisfied through findings. Instead, it is an authorizing provision that grants discretion to the Planning Director to issue permits for temporary uses that would not otherwise be allowed. Broad discretion is granted to the Planning Director to issue temporary permits as she deems appropriate. For this reason, there are no applicable approval criteria for a proposed temporary permit other than the approval of the Planning Director – which has been obtained by the issuance of the approval being appealed in this case. That standard is met. Accordingly, findings below are provided in the alternative to this finding that the only applicable approval criterion is the approval of the Planning Director.

To the extent MCC 39.8750 is interpreted to apply as an approval standard, I find that the construction office trailers are inherently temporary (as explained above in the “Threshold Legal Determinations” section), as they are used solely for the duration of construction and will be removed upon completion. The Planning Director has exercised her discretion to approve the permit under appeal. Accordingly, to the extent that MCC 39.8750 provides an approval criterion, I find that it is met.

CODE COMPLIANCE AND APPLICATIONS CRITERIA:

**39.1250 CODE COMPLIANCE AND APPLICATIONS.**

*Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.*

*(A) A permit or other approval, including building permit applications, may be authorized if:*

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or*
- (2) ....*
- (3) It is for work related to and within a valid easement over, on or under an affected property; ....*

**Findings:** As the Staff Report (Exhibit A.0, page 6), explains:

*“The County received a code compliance complaint related to the use of construction trailers on the site after the expiration of casefile T2-2024-0062. On November 21, 2025, Multnomah County issued a Request for Voluntary Compliance to the Portland Water Bureau (PWB) (Code Case # CC-2025-0005). The County’s code compliance process for violations such as this is to first request the applicant apply for and obtain permits for the use, and then to require the removal of the trailers if no application is made or the subsequent applications are not approved. The initial processing of T2-2025-0048 addressed the issues raised in CC-2025-0005.”*

T2-2025-0048, if approved, will address the entirety of issues reported in code complaints CCINT-2025-0053 and CCINT-2025-0060 and remedy violations subsequently identified in code case CC-2025-0005 related to the Properties. Exhibit I.3. There are no other open code compliance cases for these Properties, other than CC-2025-0005. Exhibit I.3. If T2-2025-0048 is approved, the County would consider the Properties to be in full compliance with all applicable provisions of the Multnomah County Zoning Code and any permit approvals previously issued by the County, under the County’s interpretation of MCC 39.1250. Exhibit I.3.

Because this casefile, T2-2025-0048, will remedy the portion of the code complaint related to this property, this standard is met at the time of issuance of this decision. Additionally, the code provides at MCC 39.1250(A)(1) that permits may be authorized even if an open code compliance case exists where the application moves the property into compliance with the code. That is the situation that exists here. As explained above, this application brings the property into full compliance, this is the only open case on the property, and this application will remedy the portion of the code complaint that is relevant to this property.

Additionally, under exception (3), the construction trailers in this case are “for work related to and within a valid easement”. Exhibit A.6.

Accordingly, this standard is met.

#### LOT OF RECORD CRITERIA:

##### § 39.3005- LOT OF RECORD – GENERALLY.

*(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.*

##### § 39.3090 LOT OF RECORD – RURAL RESIDENTIAL

*In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following: [...].*

**Findings:** The County has previously determined that this property comprises two Lots of Record meeting all code requirements for lots of record generally and in the RR zone. A full analysis of this issue was performed in the main land use case for the filtration facility project, as shown in Exhibit I.1. The text of the analysis of these code sections in the Staff Report (Exhibit A.0) and Exhibit I.1 are hereby incorporated in their entirety into these findings. These standards are met.

#### RURAL RESIDENTIAL (RR) CRITERIA:

##### § 39.4365 REVIEW USES.

*The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter.*

*(A) Temporary uses when approved pursuant to MCC 39.8700 and 39.8750.*

**Findings:** The Applicant is requesting the approval of construction trailers as a temporary use during construction, if such approval is needed. The findings for MCC 39.8750 are under the *Temporary Permits For Certain Uses* section above. This standard is met.

##### §39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

*(A) Except as provided in MCC 39.3090, 39.4380, 39.4385 and 39.5300 through 39.5350, the minimum lot size for new parcels or lots shall be five acres. [...]*

*(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.*

**Findings:** These sections (A) and (B) are not applicable as no new parcels or lots are proposed with this application.

*(C) Minimum Yard Dimensions – Feet*

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
30	10	30	30

**Findings:** The proposed location of the construction office trailer complies with the above yard dimensions, as shown on the site plans at Exhibit H.9. The analysis of this code section in the Staff Report (Exhibit A.0) is hereby incorporated in its entirety into these findings. This standard is met.

*Maximum Structure Height – 35 feet*

**Findings:** Exhibit A.4 explains that “Height of building; h = 13.5 ft”. Accordingly, the proposed construction office trailers will not exceed the 35-foot maximum structure height. This standard is met.

*Minimum Front Lot Line Length – 50 feet.*

**Findings:** This standard is not applicable as no new parcels or lots are proposed with this application.

- (1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard....*
- (2) An Accessory Structure may encroach ...*
- (3) A Variance is required for any Accessory Structure that ...*

**Findings:** These standards are not applicable as no fences, retaining walls, or Accessory Structures are proposed with this application.

*(D) The minimum yard requirement shall be increased ...*

*(E) ... may exceed the height requirement ...*

**Findings:** These standards are not applicable as the proposed construction office trailers do not exceed the height requirement nor require a reduced yard requirement.

*(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.*

- (1) [N/A].*

**Findings:** Findings are provided below on each topic of this code section.

*Sewage Disposal.* The applicant provides temporary on-site sanitary stations that are served by a DEQ-licensed pumper. The County Sanitarian reviewed the provided sanitary system and approved it. Exhibit H.1, 36800 SE Lusted Septic Review Cert Temp Job Trailer \_Signed.pdf. The contractor continues to be licensed for this work. Exhibit I.4. As explained in the Staff Report (Exhibit A.0, page 7), the County

interprets its code to provide that permanent septic systems are not required for temporary construction activities. This standard is met.

*Stormwater / drainage control.* Addressed below under subsection (2).

*Water systems.* The construction trailers only have piped cold water. The applicant, Portland Water Bureau (PWB), self serves all water for the trailers at this site through pre-existing infrastructure (that serves water to customers in the area), as noted in Exhibit I.7. This standard is met.

All the standards in MCC 39.4375(F) are met.

*(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.*

**Findings:** No new impervious surfaces are proposed with this application compared to the previously approved application. Exhibit H.1. Topics related to ground disturbance are separately handled by the Erosion and Sediment Control Permit for the site (T1-2023-16751) and are outside the scope of this case. However, staff notes that the plans for T1-2023-16751 included all ground disturbance required to site the construction trailers and showed the location of construction trailers. Exhibit A.0, page 7.

The applicant provided a Stormwater Drainage Control Certificate (signed by a Registered Professional Engineer licensed in Oregon) for the construction trailers at this site. Exhibit I .5/I.6. The Certificate specifically provides that the “rate of stormwater runoff attributed to the [trailers] for a 10-year/24-hour storm event will be no greater than that which existed prior to any development[.]” *Id.* Therefore, compliance with stormwater requirements remains fully addressed. This standard is met.

*(G) New, replacement, or expansion of existing dwellings ...*

**Findings:** These standards are not applicable as no dwellings are proposed.

*(H) All exterior lighting shall comply with MCC 39.6850.*

**Findings:** As discussed in the Dark Sky Lighting Standards section below, the proposed lighting complies with MCC 39.6850. This standard is met.

## STORMWATER CRITERIA

### **§ 39.6235 STORMWATER DRAINAGE CONTROL.**

*(A) Persons creating new or replacing existing impervious surfaces exceeding 500 square feet shall install a stormwater drainage system as provided in this section. This subsection (A) does not apply to shingle or roof replacement on lawful structures.*

**Findings:** Addressed above under MCC 39.4375(F) subsection (2). This standard is met.

*(B) The provisions of this section are in addition to and not in lieu of any other provision of the code regulating stormwater or its drainage and other impacts and effects, including but not limited to regulation thereof in the SEC overlay.*

**Findings:** There are no other code sections regulating stormwater (or its drainage and other impacts and effects) that are applicable to this proposed temporary use. The proposed construction trailers are not located in any SEC overlay. This standard is not applicable.

*(C) The provisions of this section are in addition to and not in lieu of stormwater and drainage requirements in the Multnomah County Road Rules and Design and Construction Manual, including those requirements relating to impervious surfaces and proposals to discharge stormwater onto a county right-of-way.*

**Findings:** There are no stormwater or drainage requirements in the Multnomah County Road Rules or Design and Construction Manual applicable to this proposed temporary use. The proposed construction trailers do not discharge stormwater onto a county right-of-way. This standard is not applicable.

*(D) The stormwater drainage system required in subsection (A) shall be designed to ensure that the rate of runoff for the 10-year 24- hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body.*

**Findings:** Addressed above under MCC 39.4375(F) subsection (2). This standard is met.

*(E) At a minimum, to establish satisfaction of the standards in this section and all other applicable stormwater-related regulations in this code, the following information must be provided to the planning director:*

*(1) [...]*

**Findings:** This code section provides submittal requirements, which are not approval criteria. This standard does not apply.

## DARK SKY CRITERIA

### § 39.6850 DARK SKY LIGHTING STANDARDS.

*(A) The purpose of the Dark Sky Lighting Standards in this Section is [...].*

**Findings:** This section provides a purpose statement, which is not an approval criterion. This standard is not applicable.

*(B) The following exterior lighting is exempt from the requirements of paragraph (C) of this section:*

....

*(8) Lighting used by a public agency in service of a temporary public need, when such lighting cannot both serve the public need and comply with the standards in paragraph (C) of this section.*

**Findings:** The proposed lighting complies with the standards in paragraph (C), as explained further below and in the Dark Sky Lighting Compliance Inventory at Exhibit I.2. This standard does not apply.

*(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.*

**Findings:** This standard does not apply to temporary permits, as there is no “use approved through a development permit.” MCC 39.6850(C). LUBA specifically held that this construction is not a “use” under Multnomah County Code. *Cottrell Community Planning Organization v. Multnomah County*, LUBA No 2023-086 (Jan 22, 2025). Accordingly, the Dark Sky Lighting Standards do not apply as an approval criterion for this construction temporary use. In the alternative, I find that the standards for Dark Sky Lighting are met, as explained immediately below.

*(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.*

*(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.*

**Findings:** The proposed lighting meets these standards. In Exhibit I.2, the applicant provided a comprehensive Dark Sky Lighting Compliance Inventory with photographic evidence of all styles of lighting used on every temporary office trailer at the site. The photos in Exhibit I.2 show that the lighting is fully shielded and directed downwards with shielding permanently attached and done with opaque materials. In addition, all lighting supporting the construction trailers are contained within the boundary of the site. Exhibit I.2, page 1. These standards are met.

The public expressed concerns about lighting at night coming from the filtration facility property and provided photos. Exhibit I.9 (CCPO). However, the “attached photographs” in Exhibit I.9 (CCPO) and accompanying text relate entirely to the main construction site, not to the raw water portal site under review in this case, T2-2025-0048. Exhibit J.2. Therefore, that testimony is not relevant to this case. Nevertheless, I find that light from a construction site as a whole is outside the scope of these proceedings, which concern only the lights that support the temporary construction trailers, and evidence in the record shows that the lighting on the construction trailers in this case meets dark sky standards.

Overall, I find that the Dark Sky Lighting Standards in MCC 39.6850 do not apply to this proposed temporary use, and, in the alternative, I find that all Dark Sky Lighting Standards in MCC 39.6850 are met.

As the application complies with all applicable approval criteria, the appeal is denied and the approval is upheld.