

Ord. 1100, Amended, 09/27/2007; Ord. 1098, Amended, 08/16/2007; Ord. 1079, Amended, 07/27/2006; Ord. 1033, Amended, 05/13/2004; Ord. 999, Amended, 11/14/2002; Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 982, Amended, 05/16/2002; Ord. 977, Amended, 02/07/2002, eff. 3/9/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

§ 33.2625 REVIEW USES

(A) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating power for public use by sale or transmission towers over 200 feet in height provided:

- (1) Radio and television towers 200 feet and under when found to satisfy the requirements of ORS 215.275 “Utility facilities necessary for public service; criteria; mitigating impact of facility” and MCC 33.6100 through 33.6130.
- (2) Wireless communications facilities 200 feet and under when found to satisfy the requirements of MCC 33.6175 through 33.6188.
- (3) All other utility facilities and transmission towers 200 feet and under in height subject to the following.
 - (a) The facility satisfies the requirements of ORS 215.275, “Utility facilities necessary for public service; criteria; mitigating impact of facility”; and
 - (b) The facility satisfies the requirements of MCC 33.4100 through 33.4215; 33.6020(A); 33.7000 through 33.7060; and 33.7450.

(B) *Deleted by 2001, Ord. 958 § 1 & Ord. 997).*

(C) A farm help dwelling for a relative on real property used for farm use if the dwelling is:

- (1) Located on the same lot or parcel as the dwelling of the farm operator; and is
- (2) Occupied by a relative of the farm operator or the farm operator's spouse, if the farm operator does or will require the assistance of the relative in the management of

the farm use. Qualifying relatives include, child, parent, step-parent, grandchild, grandparent, step-grandparent, brother, sister, sibling, stepsibling, niece, nephew or first cousin.

(3) Notwithstanding ORS 92.010 to 92.190 or the minimum lot size requirements of MCC 33.2660, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel, pursuant to OAR 660-033-0130(9)(b)&(c). However, pursuant to MCC 33.2675(D), the area of land with the homesite created by the foreclosure shall not be deemed a Lot of Record, and shall be subject to all restrictions on development associated with that designation.

(D) A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use:

(1) High-value farmland soils, \$80,000 income. On lands identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years, or the average farm income earned on the tract in the best three of the last five years; and

(b) Except as permitted in ORS 215.283 (1) (p) (1999 Edition) (i.e. seasonal farmworker housing), there is no other dwelling on land designated for exclusive farm use that is owned by the farm or ranch operator, or that is on the farm

or ranch operation. “Farm or ranch operation” shall mean all lots or parcels of land owned by the farm or ranch operator that are used by the farm or ranch operator for farm use as defined in ORS 215.203; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this subsection; and

(d) In determining the gross income required by subsection (a) of this subsection:

1. The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;
2. Only gross income from land owned, not leased or rented, shall be counted; and
3. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used; and
4. For the purposes of this subsection, lots or parcels zoned for farm use in Multnomah County or contiguous counties may be used to meet the gross income requirements.

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as “Exhibit A” in OAR 660-033-0135(9) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.

1. The covenants, conditions and restrictions shall preclude all future rights to construct a dwelling except for accessory farm dwellings, relative farm help dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215.

2. The covenants, conditions and restrictions shall preclude the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

3. The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.

4. Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located.

5. The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section.

6. The County Planning Director shall maintain a copy of the covenants, conditions and restrictions that have been filed in the county deed records pursuant to this subsection and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions. The map or other record required by this subsection

shall be readily available to the public in the county planning office.

(2) Not high-value farmland soils, 160 acres. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The parcel on which the dwelling will be located is at least 160 acres; and

(b) The subject tract is currently employed for farm use, as defined in ORS 215.203; and

(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(d) Except as permitted in ORS 215.283 (1) (p) (1999 Edition) (i.e. seasonal farm worker housing), there is no other dwelling on the subject tract.

(3) Not high-value farmland soils, capable of producing the median level of annual gross sales. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract [the median size of commercial farm and ranch tracts shall be determined pursuant to OAR 660-33-135(3)]; and

(b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or

ranch tracts used to calculate the tract size in subsection (a) of this section; and

(c) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in subsection (b) of this section; and

(d) The subject lot or parcel on which the dwelling is proposed is not less than ten acres; and

(e) Except as permitted in ORS 215.283(1)(p) (1999 Edition) (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract; and

(f) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(g) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by subsection (c) of this section.

(4) Not high-value farmland soils, \$40,000 income or mid-point of median income range. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced in the last two years, three of the last five years, or the average farm income earned on the tract in the best three of the last five years, or the lower of the following:

(B) Extension of a Type I permit is permitted only when the use or development to be established under the Type I permit is contingent on a Type II, III, or IV permit associated with the same use or development. However, a Type I permit shall not be granted an extension beyond the expiration period of the Type II, III, or IV permit associated with the same use or development. An extension request for a Type I permit is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. The extension request may be approved provided:

- (1) An applicant makes a written request for an extension of the approval period;
- (2) The request is submitted to the county prior to the expiration of the approval period; and
- (3) The requested extension aligns with and does not extend beyond the expiration period of a Type II, III, or IV permit associated with the same use or development.

(C) Expiration under (A) above is automatic. Failure to give notice of expiration shall not affect the expiration of a Type I permit.

(D) If a permit decision is appealed, the expiration period shall not begin until all appeals have been completed, including any remand proceedings.

(Ord. 1262, Added, 08/30/2018)

§ 37.0690 EXPIRATION OF TYPE II OR TYPE III DECISIONS.

(A) Type II or Type III land use approval issued pursuant to this Chapter for a use or development that does not include a structure shall expire two years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. Expiration of an approval means that a new application is required for uses that are not established during the approval period. For land divisions, “established” means the final deed or plat has been recorded with the county recorder.

(B) Except for approval of residential developments as specified in (C) below, a Type II or Type III land use approval issued pursuant to this Chapter for a use or development that includes a structure shall expire as described in 1 or 2 below:

(1) When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

(2) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

(C) A Type II or III decision approving residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is subject to the following provisions:

(1) The approval shall expire as described in (a) or (b) below:

(a) When construction has not commenced within four years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

(b) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of

the structure and compliance with all conditions of approval in the land use approval.

(2) For the purposes of this section, the expiration provisions in (a) and (b) shall also apply to all other Type II or III decisions associated with approval of the residential development, such as SEC or HDP permits.

(3) The provisions in (C) shall only apply to residential development for which a decision of approval:

(a) Was valid (not expired) on January 1, 2002, or

(b) Was issued after January 1, 2002 (the effective date of Senate Bill 724, 2001).

(4) For the purposes of this section, “residential development” only includes dwellings as provided for under:

(a) ORS 215.283(1)(s) – alteration, restoration or replacement of a lawfully established dwelling in the EFU zones as provided in MCC 33.2620 (J), (L) & (M); 34.2620 (J), (L) & (M); 35.2620 (J), (L) & (M); 36.2620 (J), (L) & (M); and

(b) ORS 215.284 – dwelling not in conjunction with farm use in the EFU zones (not currently provided for in any MCC Chapter); and

(c) ORS 215.705 (1) to (3) – “Heritage Tract Dwelling” in the EFU zones as provided for in MCC 33.2625 (F); 33.2630 (M) & (N); 34.2625 (F); 34.2630 (M) & (N); 35.2625 (F); 35.2630 (M) & (N); 36.2625 (F); 36.2630 (J) & (K); and

(d) ORS 215.720 – “Heritage Tract Dwelling” in the CFU zones as provided in MCC 33.2230 (C); and 35.2230 (C); 36.2030 (C); and

(e) ORS 215.740 – “Large Acreage Dwelling” in the CFU zones as provided for in MCC 33.2030 (A); 33.2230 (A); 35.2230 (A); 36.2030 (A); and

(f) ORS 215.750 – “Template Dwelling” in the CFU zones as provided for in MCC 33.2230 (B); 33.2430 (A); 35.2230 (B); 36.2030 (B); and

(g) ORS 215.755 (1) – alteration, restoration or replacement of a lawfully established dwelling in the CFU zones as provided in MCC 33.2020 (D) & (E); 33.2025 (A) & (B); 33.2220 (D) & (E); 33.2225 (A) & (B); 33.2420 (D) & (E); 33.2425 (A) & (B); 35.2020 (D) & (E); 35.2025 (A) & (B); 35.2220 (D) & (E); 36.2020 (D); 36.2025 (A) & (B); and

(h) ORS 215.755 (3) a caretaker residence for a public park or public fish hatchery in the CFU zones as provided for in MCC 33.2020 (H); 33.2220 (H); 33.2420 (H); 35.2020 (H); 35.2220 (H); and 36.2020 (G).

(D) Expiration under (A), (B), or (C) above is automatic. Failure to give notice of expiration shall not affect the expiration of a Type II or III approval.

(E) Notwithstanding Subsections (A), (B), or (C) of this section, on exception lands the decision maker may set forth in the written decision specific instances or time periods when a permit expires.

(F) Deferral of the expiration period due to appeals. If a permit decision is appealed beyond the jurisdiction of the County, the expiration period shall not begin until review before the Land

Use Board of Appeals and the appellate courts has been completed, including any remand proceedings.

(Ord. 1186, Amended, 10/13/2011; Ord. 1176, Amended, 03/03/2011; Ord. 1037, Amended, 05/13/2004; Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 993, Amended, 09/26/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

§ 37.0691 EXPIRATION OF PRIOR LAND USE DECISIONS.

All land use decisions authorized prior to January 1, 2001 (Ord. 953 & Ord. 997) shall expire on January 1, 2003, unless:

(A) A different timeframe was specifically included in the decision, or

(B) The decision was for “residential development,” as specified in MCC 37.0690(C), which have the expiration timeframes of MCC 37.0690(C)(1).

(Ord. 1176, Renum37.0750, 03/03/2011; Ord. 1037, Amended, 05/13/2004; Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 993, Amended, 09/26/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

§ 37.0692 EXPIRATION OF PRIOR TYPE I PERMITS.

All Type I permits issued prior to September 29, 2018 (Ord. 1262) shall expire on September 29, 2024, unless a different timeframe was specifically included in the permit or the use of development has been established according to all specifications and conditions of approval in the permit by September 29, 2024. Expiration of a Type I permit means that a new application is required for uses that are not established within the approval period.

(Ord. 1262, Added, 08/30/2018)

§ 37.0695 EXTENSION OF A TYPE II OR TYPE III DECISION.

(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in Section 37.0690(C) and shall grant one extension period of up to 12 months for all other approvals provided:

(1) An applicant makes a written request for an extension of the development approval period;

(2) The request is submitted to the county prior to the expiration of the approval period;

(3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(B) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 37.0580.

(C) Additional one year extensions shall be authorized where applicable criteria for the decision have not changed. For each additional extension the Planning Director shall confirm compliance with the standards in MCC 37.0695 (A) (1-4).

(Ord. 1176, Add, 03/03/2011)

§ 37.0702 REVOCATION OF DECISIONS.

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the County's approval, the County may institute a revocation or modification proceeding under this section.

(A) All Type I, Type II, Type III and Type IV decisions may be revoked or modified if the Planning Director determines a substantial likelihood that any of the following situations exists:

(1) One or more conditions of the approval have not been implemented or have been violated; or