



Staff Response

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Date: Thursday, January 07, 2021

File Number: AP-20-001 (Appeal of EXT-20-005)

From: Jill Rolfe, Planning Director

RE: Response to certain items raised in the December 18, 2020
Hearing and Testimony

There appears to be some confusion about what criteria actually applies to the extension application. In 2019 the extension criteria was updated to include legislative changes and to clarify the language. The updates were adopted through Ordinance No. 19-12-011PL and the findings explain that the language was both to comply with the legislative changes as well as to fix some language recommended by County Counsel and the Hearings Body. The following language was adopted, new language is indicated by bold/italics. This is the same language that was included in the staff report. All notices related to Ordinance No. 19-12-011PL were provided consistent with ORS 197.175. This was a Post Acknowledgment Plan Amendment accepted by Department of Land Conservation and Development. Therefore, if someone had an issue with the language that was adopted through in Ordinance No. 19-12-011PL then it should have been appealed within the 21 day appeal period to the Land Use Board of Appeals. That time period has expired and the language has appropriately been codified into the Coos County Zoning and Land Development Ordinance and appropriately applied in the staff review. Below is the language from the Ordinance that was adopted:

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

- (1) Permits approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit is valid for four years.*
- a. Extensions for Residential Development as provided for under ORS 215.213 (3) and (4), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3) shall be granted as follows:*
- i. First Extension - An extension of a permit for “residential development” as described in Subsection (1) above is valid for two (2) years.*
- 1. The applicant shall submit an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions. Untimely extension requests will not be processed.*
 - 2. Upon the Planning Department receiving the applicable application and fee, staff shall verify that the application was received within the deadline and if so issue an extension.*
 - 3. An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.*
- ii. Additional Extensions - A county may approve no more than five additional one-year extensions of a permit if:*

1. *The applicant submits an application requesting the additional extension prior to the expiration of a previous extension;*
2. *The applicable residential development statute has not been amended following the approval of the permit; and*
3. *An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.*
4. *An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.*

(2) Permits approved under ORS 215.416, except for a land division and permits described in Subsection (1)(a) of this section, for agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438, or under county legislation or regulation adopted pursuant thereto, are void two years from the date of the final decision if the development action is not initiated in that period.

- a. *Extensions for Non-Residential Development as described in Subsection (2) above may be granted if:*
 - i. *The applicant submits an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions.*
 - ii. *The Planning Department receives the applicable application and fee, and staff verifies that it has been submitted within the deadline;*
 - iii. *The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*
 - iv. *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. *An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.*
- c. *Additional one-year extensions may be authorized where applicable criteria for the original decision have not changed, unless otherwise permitted by the local government.*

(3) On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:

- a. *All conditional uses for residential development including overlays shall not expire once they have received approval.*
- b. *All conditional uses for nonresidential development including overlays shall be valid for period of ~~four (4)~~ **five (5)** years from the date of final approval. (This will be consistent with the hazards overlay)*
- c. *Extension Requests:*
 - i. *For all conditional uses subject to an expiration date of ~~four (4)~~ **five (5)** years are eligible for extensions so long as the **subject** property has not been:*
 1. *Reconfigured through a property line adjustment or land division; and*
 - or*
 2. *Rezoned to another zoning district **in which the use is no longer allowed.***

- d. ~~An~~ *Extensions* shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.
- e. *There shall be no limit on the number of extensions that may be applied for and approved pursuant to this section.*
- f. An extension *application* shall be received prior the expiration date of the conditional use or the prior extension. *See section 5.0.250 for calculation of time.*

(4) Changes or amendments to areas subject to natural hazards^[2] do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level risk as established by Coos County.

Staff would like to clarify that amendments to areas subject to natural hazards completed in 2018 and 2019 do not provide justification for a denial of an extension. The language clearly states original authorization for a use, or uses as they do not determine if a use can or cannot be sited but how it can be sited with the least amount of risk possible. Even if this language was not in place there has been no proof that the pipeline has been inventoried in a regulated mapped Hazard or Overlay zone that has changed and requires additional review within this last extension approval period. Staff has reviewed the pipeline route and the regulated mapped hazard areas along with the adopted language and found no changes to that are applicable in this review period that would void or provide justification for a denial of an extension. Furthermore, the applicant acknowledged in their submittal that they would address any additional hazards if necessary. It is important to remember the criteria set out in subsection 2(c) requires the reviewing body to determination that applicable criteria for the original decision has not changed, unless otherwise permitted by the local government. Subsection (4) states any changes or amendment to natural hazards are not relevant criteria to the original decision but does provide a path that allows the county to consider if additional reviews are required to determine if new hazards apply in the Agricultural (Exclusive Farm Use) and Forest (Forest or Forest Mixed Use) zoned properties if found the pipeline route is within a regulated hazard area then a Geological Hazard Review would be required.

The hazard inventory update does not change that fact that hazards are exempt under Section 5.2.600(4) as allowed by the local government. Ms. Moro fails to show how the amendments are relevant language as she did not provide any proof that the hazards even apply to the pipeline. She has testified that because there were amendments that somehow that automatically becomes relevant.

There was an allegation made by in Ms. Moro December 18, 2020 testimony that certain sections of the 2019 Ordinances were not codified online in the Coos County Zoning and Land Development Ordinance. For clarification these sections made reference to in her testimony are adopted in the Coos County Comprehensive Plan and not in the Coos County Zoning and Land Development Ordinance. Despite the incorrect reference, again, Ms. Moro fails to show why or how the updated language is “relevant criteria” or how it would apply on the pipeline route. She continually makes the argument that any change or amendment is just cause for a denial. This is completely false as a change in language does not automatically cause a denial of any prior application

^[2] Natural hazards are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

applying for an extension. It has to be shown the language change is **applicable** relevant approval criteria. The language for extensions states “[a]dditional one-year extensions may be authorized where applicable criteria for the original decision have not changed, unless otherwise permitted by the local government.” The original applicable criteria are in place but there may be additional criteria to be addressed prior to this project receiving a Zoning Compliance Letter. This is a consistent interpretation given Section 5.2.600(4) which specifically states additional criteria may apply with the hazards updates. It is also worth noting Section 5.4.600(4) was not part of the 2019 amendments and has been in place and this seems like another attempt to overturn the applicability of this subsection. As to the allegations that online information is incorrect, not all documents may be available or are they legally required to be placed on the website. If there are questions about documents on the website anyone is free to make a records request or talk to a staff member to ensure the most up to date information is available. Staff tries to ensure information is posted on the website to reduce questions and staff load but sometimes it is not technically feasible to post information. This is why the hearing notices provide guidance and where to find additional information and who to contact.

To clarify some procedural issues raised there is no regulatory method in the Coos County Zoning and Land Development Ordinance or Plan to allow remanding a decision back to the Planning Director.

- There is no regulation that covers taking “official notice” of orders and it is up to a party to submit evidence into the record as explained in Section 5.7.300. Testimony that request staff to make copies without actually submitting documents does not mean the documents are part of the records. All testimony submittals shall comply with Section 5.7.300.
- Some submittals refer to the online documents as a “Docket”. There is no reference to a “docket” in the ordinance. The official record of the procedure is maintained internally in the Planning Department. The documents posted online usually consist of notices, staff reports and exhibits but staff is not always able to get all documents online. The hearing notice explains how to view items.
- Submission of written materials for consideration shall be provided in the form one original hard copy and one exact paper copy or one original hard copy and one electronic copy. If you submit an electronic copy a hard copy should follow. If someone submitting testimony and evidence would like staff to make a hard copy a fee will apply. Links are outside of the official record. All material shall be provided by the person submitting testimony. All hard copies shall be provided prior to the close of the record.

Attachments:

- “A” Oregon Department of Land Conservation and Development Post Acknowledgment Plan Amendment Acknowledgment of Ordinance 19-12-01 IPL with attached Ordinance.
- “B” Letter from Amy Dibble, Coos County Planner II regarding Mangan Notice of Hearing