



# City of Moses Lake Planning Commission Agenda

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**Thursday August 10, 2023 @ 6PM**  
**Civic Center Annex Conference Room**  
**321 S Balsam St., Moses Lake, WA**

1. Call to Order / Roll Call 6 PM
2. Approval of the Agenda
3. Approval of Minutes from June 8<sup>th</sup> and July 13<sup>th</sup> Meetings
4. Commission Business:
  - a. Department of Commerce Short Course Video- Implementing Your Plan (10+ Minutes)
  - b. Continued Review of Div II Permit Review Code Chapter
5. Adjournment

To join this meeting virtually, please use below link and/or call in ID.  
<https://cityofml.zoom.us/j/94641841582>

Meeting ID: 946 4184 1582  
One tap mobile  
+12532050468,,94641841582# US



## **CITY OF MOSES LAKE PLANNING COMMISSION MEETING MINUTES OF June 8th, 2023**

Commissioners Present: Nathan Nofziger (Chair), Charles Hepburn (Vice Chair), Gary Mann, Susan Tao, Adam Weber

Commissioners Absent: N/A

Staff Present: Community Development Director Kirsten Sackett, Planning Manager Vivian Ramsey, Senior Planner Nathan Pate, Associate Planner Amy Harris, Levi Bisnett, Special Projects Surveyor

The meeting was called to order at 6:00 p.m. Attendance was called by Amy Harris.

### Item # 1- Approval of Minutes from May 25<sup>th</sup>, 2023 Meeting

Commissioner Mann moved to approve the minutes; this motion was seconded by Commissioner Hepburn. **Passed Unanimously.**

### Item #2 Shoreline Substantial Development Permit Application; Strevy Retaining Wall 509 Astor Loop presented by Amy Harris (*Public Hearing*):

After the agenda item was announced for the record both Chair Nofziger and Commissioner Mann informed the commission that they both had ex parte knowledge of the project and asked the commission if they should recuse themselves from the hearing, the commission stated they did not have any issue with both members participating in the public hearing due to the nature of the knowledge. Associate Planner Amy Harris presented the staff report for the Strevy Retaining Wall to the commission and the applicant, Chad and Melanie Strevy, who attended the meeting virtually. The public hearing was opened by Chair Nofziger at 6:26PM and with no one from the public in attendance, the public hearing was closed via motion by Hepburn and seconded by Mann at 6:28PM. Discussion ensued regarding the Shoreline Master Program and the necessity of the Shoreline Substantial Development Permit for the retaining wall within the buffer.

Mann moved to approve the Shoreline Substantial Development Permit with the PC interpretation that the application was not necessary and the motion was seconded by Hepburn. **Passed Unanimously.**

Item #3 Six Year Transportation Improvement Program – Presented by Levi Bisnett

Levi Bisnett presented the City of Moses Lake's 6 Year TIP to the commission and gave a brief overview of the requirements for the plan from the State and the Growth Management Act. The commission had questions for Levi in regards to the projects the City sees as necessary and the projects that would be considered "wishlist".

Item #4 Staff and Commission Questions and Comments:

Planning Manager Vivian Ramsey gave the commission a brief update on the current progress of the development code update and reminded them that the next meeting would take place in the auditorium and a WSDOT Consultant would be in attendance to present.

Meeting adjourned at 7:26 PM by Chair Nofziger.



## **CITY OF MOSES LAKE PLANNING COMMISSION MEETING MINUTES OF July 13, 2023**

Commissioners Present: Nathan Nofziger (Chair), Charles Hepburn (Vice Chair), Gary Mann, Adam Weber

Commissioners Absent: Susan Tao

Staff Present: Community Development Director Kirsten Sackett, Planning Manager Vivian Ramsey, Senior Planner Nathan Pate, Associate Planner Amy Harris, Planning Technician Michelene Torrey

The meeting was called to order at 6:00 p.m. Attendance was called by Secretary Michelene Torrey.

### Item # 1- Approval of Minutes from July 3rd, 2023 Meeting

Commissioner Mann moved to approve the minutes; this motion was seconded by Commissioner Hepburn. **Passed Unanimously.**

### Item #2 Covered Parking Interim Controls Presented by Nathan Pate:

Senior Planner Nathan Pate presented the commission with an Interim Control ordinance from the City Council for their review. Pate gave a brief background of the reason for the interim controls and the requirements moving forward including the 60-day review and the SEPA requirements as well as a workplan. Interim Controls are allowed for up to six months and still have all the same requirements for a code change. Commissioners questioned whether builders and developers would still build garages and how the change could affect the real estate market.

### Item #3 Development Code Rewrite Public Participation Plan Review- Kirsten Peterson

Community Development Director Kirsten Peterson presented the Draft Public Participation Plan for the Development Code Rewrite to the Commission. Events, flyers, and surveys were included in the plan as well as stakeholder meetings and meeting with the various clubs within the city such as Rotary, Lions Club, etc. The Commission

suggested that staff and the commission work together to meet with local businesses for their input. CDD Peterson reassured the commission that the code will be available for review online as well as through QR Codes, paper versions will be made available to the public.

The Commission was given Division II of the code update in their packet for their review. A workshop was scheduled for July 27<sup>th</sup>, 2023.

Item #4 Project Updates:

Staff presented their current projects including Twelve, several short plats, Cad Homes Knolls Vista Major Subdivision, Sand Hill Place Major Subdivision and several others via Powerpoint Presentation.

Item #5: Department of Commerce Short Course Video: Planning Policies

Video shown to the commission with the history of the Growth Management Act.

Staff discussed upcoming meeting schedule for the code workshops and the commissioners stated they were available for the August 10<sup>th</sup> and August 24<sup>th</sup> meeting dates.

Meeting adjourned at 7:38 PM by Chair Nofziger.

# Division II. Development Review & Enforcement

- 15.02.01 Purpose
- 15.02.02 Permit Review Process Types
- 15.02.03 Permit Review Procedures
- 15.02.04 Hearings and Appeals
- 15.02.05 Review Criteria for Certain Permits
- 15.02.06 Supplementary Standards
- 15.02.07 Subdivisions

## 15.02.01 Purpose

The purpose of this division is to establish standard procedures for land use permit applications, public notice, hearings and appeals in the city. These procedures are designed to promote timely and informed public participation in discretionary land use decisions; eliminate redundancy in the application, permit review, hearing and appeal processes; provide for uniformity in public notice procedures; minimize delay and expense; and result in development approvals that implement the policies of the comprehensive plan.

### 15.02.01.01 Administration

The elected officials, appointed commissions, hearing examiner and city staff share the roles and responsibilities of carrying out the provisions in Title 15, Unified Development Code. This Administration section is meant to support regulations as outlined in Title 2, Administration and Personnel. The following roles are described relative to this title:

- A. **Community Development Director** (Referred to in this Code as “Director”) or his/her designee.
  - 1. The Director unless specified otherwise, shall review and act on the following:
    - a. Is responsible for the administration of the Unified Development Code.
    - b. Administrative Interpretation. Upon request or as determined necessary, the Director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation within thirty (30) days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.
    - c. Administrative Approvals. Administrative approvals set forth in Section 15.02.02.
- B. **Hearing Examiner**
  - 1. **Creation:** The City creates the office of the Hearing Examiner consistent with Article XI, Section 11 of the Washington State Constitution, and Chapters 35A.63 and 58.17 of the Revised Code of Washington, as currently written or hereafter amended.
  - 2. **Purpose:** The purpose of the office of the Hearing Examiners is to provide an efficient and effective system for the determination and/or appeals of land use decisions, code

enforcement violations, and other regulatory or administrative actions taken by the City; to provide for consistency and predictability in certain land use determinations; to establish clear and understandable rules for the application of policies and regulations adopted by the City; and to provide for fair and impartial determinations of matters while ensuring procedural due process.

3. **Appointment:** The Hearing Examiner is appointed by and serves at the pleasure of the City Manager. Alternatively, the City Manager may contract for hearing examiner services, and/or may appoint one or more Hearing Examiners Pro Tem.
  - a. The Hearing Examiner shall be licensed to practice law in the State of Washington.
  - b. A Hearing Examiner Pro Tem shall serve in the event of the absence or the disability of the Hearing Examiner, including in the event of a conflict of interest.
  - c. A Hearing Examiner Pro Tem shall have all the duties and powers of the Hearing Examiner.
  - d. The Hearing Examiner and Hearing Examiner Pro Tem shall not be a member of the City Council, Planning Commission, other boards or commissions or city employees. There shall be a degree of separation between the hearing examiner and city officials within the city.
4. **Duties and Powers:** The Hearing Examiner shall receive and examine all information in the official file, conduct hearings, administer the preparation of the official record, and issue a written recommendation or decision on the matter. Further,
  - a. The Hearing Examiner is authorized to impose conditions on the applicant's proposal, consistent with federal, state, and local law.
  - b. In addition to these general duties and powers as granted herein, the Hearing Examiner shall have the specific authority granted to them in other chapters of this Code.
  - c. The City Council and/or the Director may grant to the Hearing Examiner additional powers and authority as they deem appropriate, consistent with state and local laws.
5. **Decisions:** All decisions or recommendations of the Hearing Examiner must be supported by findings of fact and conclusions of law.
  - a. The findings of fact must be supported by substantial evidence in the record.
  - b. The conclusions of law must be based upon applicable:
    1. Policies of the comprehensive plan
    2. Environmental regulations
    3. Standards and regulations set forth in this Code
    4. Any other relevant plan, regulation, or law.
  - c. Decisions or recommendations of the Hearing Examiner may be to approve, conditionally approve, or deny.
  - d. All decisions or recommendations of the Hearing Examiner will be rendered within ten working days following the conclusion of all testimony and hearings and closing of the record, unless specifically provided otherwise by the governing ordinance.

1. A longer period may be mutually agreed upon by the applicant/appellant and the Hearing Examiner.
- e. Upon issuance of the Hearing Examiner's decision, the Hearing Examiner will transmit a copy of the decision to:
  1. The Director, or his/her designee;
  2. The applicant/appellant, via certified mail; and
  3. To other parties of record, via regular mail.
- f. Unless specifically provided for elsewhere in this Code, or in any other applicable ordinance, the decision of the Hearing Examiner shall be the final administrative decision of the City and may be appealed by a party of record with standing to the Grant County Superior Court pursuant to Chapter 36.70C RCW.
  1. A petition for a judicial appeal must be filed within twenty-one days of the issuance of a decision.
6. **Reconsideration:** Reconsideration shall be submitted, processed and reviewed in accordance with XXXXX.
7. **Filing an Appeal:** Appeals shall be submitted, processed and reviewed in accordance with 15.02.04.
8. **Conflicts of Interest:** The Hearing Examiner shall recuse themselves from any matter if they believe their review of the matter would represent a conflict of interest or violate the appearance of fairness doctrine, as set forth herein.
  - a. The Hearing Examiner shall not conduct or participate in any hearing, decision, or recommendation in which they have:
    1. A direct or indirect personal interest;
    2. A beneficial interest, directly or indirectly, in any aspect of the matter on which they are called upon to issues a decision; or
    3. A direct or indirect familial interest which might influence or interfere with their decision-making process or give rise to a violation of the appearance of fairness doctrine as codified in Chapter 42.36 RCW, as written or hereafter amended, and as in the common law.
  - b. The Hearing Examiner shall disclose matters involving ex parte contacts, conflicts of interest, or appearance of fairness issues prior to or at the beginning of any matter, or immediately upon becoming aware of the need for such disclosure.
  - c. In the event the Hearing Examiner recuses themselves, a Hearing Examiner Pro Tem will be appointed.
9. **Improper Influence:** No City official, whether elected or appointed, shall attempt to influence the Hearing Examiner in any matter officially before them, so as to constitute misconduct by a public officer under Chapter 42.20 RCW, as written or hereafter amended, or that would constitute a violation of the appearance of fairness doctrine as codified in Chapter 42.36 RCW, as written or hereafter amended.



## 15.02.02 Permit Review Process Types

### 15.02.02.010 Purpose and Intent

The purpose of this chapter is to establish standardized decision-making procedures for reviewing applications for development activities within the City. This chapter will also establish the standards for public notification and the timing of other key events in the administration and application of all applicable criteria found in this Code. These processes and procedures are intended to:

- A. Ensure timely review of development applications;
- B. Establish clear guidelines with predictable processes and procedures;
- C. Provide for necessary public review and comment on certain development activities;
- D. Minimize adverse effects on surrounding land uses;
- E. Encourage flexibility and innovation in the design and layout of development proposals;
- F. Ensure consistency with the Comprehensive Plan and Development Regulations; and
- G. Promote development that furthers City goals and objectives.

### 15.02.02.020 Decision Types

There are four types of decisions that may be made under the provisions of this titles. All applications for land use and development activities within the City will be classified as one of the following:

- A. Type I – Administrative
- B. Type II – Administrative with Notice
- C. Type III – Quasi-Judicial
- D. Type IV – Legislative

### 15.02.02.030 Assignment of Development Applications to Decision Type.

- A. **Assignment by Table.** Land use and development applications shall be classified and processed pursuant to their designation in Table 15.02.02.030 below:

**Table 15.02.02.030 – Application and Permit Type**

| Type   | Land Use and Development Application          | MLUDC Cross-Reference |
|--------|-----------------------------------------------|-----------------------|
| Type I | Administrative Variance                       |                       |
|        | Building Site Plan                            |                       |
|        | Boundary Line Adjustment or Lot Consolidation |                       |
|        | Code Interpretations                          |                       |
|        | Critical Area Exemption Request               |                       |
|        | Critical Area Reasonable Use Request          |                       |
|        | Home Occupations                              |                       |
|        | Time Extension for Approvals                  |                       |
|        | Minor Amendments to Approved Permits          |                       |
|        | Small Cell Wireless Facilities                |                       |
|        | Shoreline Exemption                           |                       |
|        | Final Plat                                    |                       |
|        | Grading Permit                                |                       |
|        | Site Development Permit <50 cubic yards       |                       |
|        | Site Development Permit >50 cubic yards       |                       |
|        | Critical Area Determination & Permit          |                       |

|                 |                                                    |                                    |
|-----------------|----------------------------------------------------|------------------------------------|
| <b>Type II</b>  | Preliminary Short Subdivision                      |                                    |
|                 | Non-Conforming Uses and Structures                 |                                    |
|                 | Home Occupation*                                   | (Section with criteria, no notice) |
|                 | Binding Site Plan                                  |                                    |
|                 | Critical Areas Development Permit (no hearing)     | (Return once CAO section done)     |
|                 | Short Term Vacation Rental                         |                                    |
| <b>Type III</b> | Critical Areas Development Permit (public hearing) |                                    |
|                 | Site-specific Zoning Change                        |                                    |
|                 | Preliminary Subdivision                            |                                    |
|                 | Conditional Use Permit                             | (Return once CAO section done)     |
|                 | Variance                                           |                                    |
|                 | Variance – Critical Areas                          |                                    |
|                 | Shoreline Variance                                 |                                    |
|                 | Shoreline Substantial Development Permit           |                                    |
|                 | Shoreline Conditional Use Permit                   |                                    |
|                 | Wireless Communication Facilities                  |                                    |
| <b>Type IV</b>  | Major Subdivision Plat Alteration                  |                                    |
|                 | Comprehensive Plan Text or Map Amendments          |                                    |
|                 | Area-Wide Re-Zones or Map Amendments               |                                    |
|                 | Development Regulations Amendments                 |                                    |
|                 | Zoning Code Text Amendments                        |                                    |
|                 | Shoreline Text or Map Amendments                   |                                    |
|                 | Development Agreements                             |                                    |
| Annexations     |                                                    |                                    |

- B. Assignment by Director.** Any application for development that is not defined or assigned in Table 15.02.02.030 shall be assigned a type by the Director or their designee based on the most closely related application type. When more than one procedure may be appropriate, the process providing the greatest opportunity for public notice or input should be followed. The Director may also determine that the application is exempt from this chapter. The Director shall communicate their decision in writing. This determination is considered a Type I Code Interpretation decision.
- C. Shoreline Permits.** Shoreline letters of exemption, shoreline substantial development permits, shoreline conditional use permits, shoreline variances, and shoreline conforming use or structure review shall generally be processed pursuant to the provisions of this chapter. These applications will also be subject to any additional or modified procedures provided in XXXXXXXXXXXXXXXX Shoreline Regulations.
- D. Critical Areas.** Any application for development with designated critical areas is further subject to XXXXXX Critical Areas Ordinance.
- E. SEPA.** See Here.
- F. Wireless Communication Facilities.** Small cell permits and wireless communication facilities shall generally be process pursuant to the provisions of this chapter, except as may otherwise be required pursuant to governing federal and state law. These applications will also be subject to any additional or modified procedures provided in XXXXXXXXXXXXXXXX.

- G. Consolidated Process for Multiple Permits.** In general, if a proposal requires multiple permits with decisions of different types, the higher numbered process type applies to the entire proposal. For more detailed information on consolidating permits, refer to MLUDC 15.02.03.090.

#### 15.02.02.040 Permits Not Governed by this Chapter.

- A. Street, Sidewalk, and Special Event Permits.** The following permits or approvals are specifically excluded from the provisions of this chapter:
1. Street Vacations – processed by the City’s Municipal Services Department. See XXXXXX
  2. Sidewalk Use Permits – Processed by Community Development. See Title 12 of the Moses Lake Municipal Code.
  3. Special Event Permits – Processed by the Parks and Recreation Department. See XXXX
- B. Other Exemptions.** Certain other permits that are not listed here, nor in Table 15.02.02.030, or that will be created by the City in the future, may be exempt from the provisions of this chapter. The Director shall determine whether such a permit is exempt or should be classified as a specific permit type to be processed under this chapter. See also MLUDC 15.02.02.030(B).

#### 15.02.02.050 Type I Applications: Administrative

1. **In General.** Type I applications and decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated in code and supporting documents.
2. **Notice.** Type I applications are exempt from notice requirements.
3. **Public Hearing.** Type I applications do not require a public hearing.
4. **Decision Maker.** The decision maker for Type I applications is the Director, or their designee. Decisions by the Director on Type I applications are Final Decisions and may be in the form of the issuance of the permit.
5. **Where Appealed.** Decisions by the Director on Type I Applications may be appealed to the Hearing Examiner. See MLUDC 15.02.05.020.
6. **List of Type I Applications.**
  1. Administrative Variance
  2. Building Site Plan
  3. Boundary Line Adjustment or Lot Consolidation
  4. Code Interpretations
  5. Critical Area Exemption Request
  6. Critical Area Reasonable Use Request
  7. Home Occupations
  8. Time Extension for Approvals
  9. Minor Amendments to Approved Permits
  10. Small Cell Wireless Facilities
  11. Shoreline Exemption
  12. Grading Permit
  13. Site Development Permit <50 cubic yards

#### 15.02.02.060 Type II Applications: Administrative with Notice

- A. In General.** Type II applications and decisions are based on compliance with specific, mostly nondiscretionary and/or technical standards that are enumerated in code and supporting

documents. Some criteria for approval may involve discretionary elements or may involve the determination of site-specific conditions of approval necessary to meet code requirements.

- B. Notice.** Type II applications are required to provide public notice in accordance with MLUDC 15.02.03.070.
- C. Public Hearing.** Type II applications do not require a public hearing.
- D. Decision Maker.** The decision maker for Type II applications is the Director, or their designee. Decisions by the Director on Type II applications are Final Decisions and must be in writing.
- E. Where Appealed.** Decisions by the Director on Type II Applications may be appealed to the Hearing Examiner. See MLUDC 15.02.05.020.
- F. List of Type II Applications.**
  - 1. Site Development Permit >50 cubic yards
  - 2. Critical Area Determination & Permit
  - 3. Preliminary Short Subdivision
  - 4. Non-Conforming Uses and Structures
  - 5. Home Occupation
  - 6. Binding Site Plan
  - 7. Critical Areas Development Permit (no hearing)
  - 8. Short Term Vacation Rental

#### 15.02.02.070 Type III Applications: Quasi-Judicial

- A. In General.** Type III applications and decisions are based on compliance with standards and criteria that involve a greater use of discretionary judgment and application of conditions of approval that are tailored to each specific application. Type III decisions are made by the Hearing Examiner following an open record public hearing.
- B. Notice.** Type III applications are required to provide public notice in accordance with MLUDC 15.02.03.070 - .080.
- C. Public Hearing.** Type III applications require a public hearing before the Hearing Examiner.
- D. Decision Maker.** The decision maker for Type III applications is the Hearing Examiner. Decisions by the Hearing Examiner are final actions that must be in writing, and shall include written findings, conclusions, and conditions, if any. The Hearing Examiner may approve, approve with modifications or conditions, or deny the Type III application. See MLUDC 15.02.03.090.
- E. Where Appealed.** Decisions by the Hearing Examiner on Type III Applications may be appealed to the Grant County Superior Court. See MLUDC 15.02.05.030.
- F. List of Applications.**
  - 1. Critical Areas Development Permit (public hearing)
  - 2. Site-specific Zoning Change
  - 3. Preliminary Subdivision
  - 4. Conditional Use Permit
  - 5. Variance
  - 6. Variance – Critical Areas
  - 7. Shoreline Variance
  - 8. Shoreline Substantial Development Permit
  - 9. Shoreline Conditional Use Permit
  - 10. Wireless Communication Facilities
  - 11. Major Subdivision Plat Alteration

### 15.02.02.80 Type IV Applications: Legislative

- A. In General.** Type IV applications and decisions are legislative or quasi-legislative in nature, involving the creation, revision, application, or large-scale implementation of public policy. Type IV decisions are made by the City Council, following a public hearing before either the Planning Commission and/or the City Council.
- B. Notice.** Type IV applications are required to provide public notice in accordance with MLUDC 15.02.03.070 - .080, as well as any other requirements based on the specific application criteria.
- C. Public Hearing.** Type IV applications require a public hearing before the Planning Commission or City Council, depending on the specific application type.
- D. Decision Maker.** The decision maker for Type IV applications is the City Council. Final Decisions by the City Council must be formalized in writing.
- E. Where Appealed.** Type IV legislative decisions may be appealed to the appropriate jurisdictional entity charged by state law with hearing such appeals, such as the Washington State Growth Management Board or the Grant County Superior Court. See MLUDC 15.02.05.030.
- F. List of Type IV Applications.**
  - 1. Comprehensive Plan Text or Map Amendments
  - 2. Area-Wide Re-Zones or Map Amendments
  - 3. Development Regulations Amendments
  - 4. Zoning Code Text Amendments
  - 5. Shoreline Text or Map Amendments
  - 6. Development Agreements
  - 7. Annexations
- G. Other Matters for City Council.** Other matters that come before the City Council for deliberation and decision as a legislative function are not subject to the requirements of this Chapter. This Chapter and the requirements herein shall only apply to applications that are considered a Type IV application and are specifically classified as such.

## 15.02.03 Permit Review Procedures

### 15.02.03.010 Purpose and Intent

The purpose of this chapter is to define the general requirements and procedures for the acceptance and processing of development permit applications, and generally to ensure adherence to the requirements of RCW 36.70B. These procedures are intended to ensure the timely and sensible processing of applications for development within the City of Moses Lake.

### 15.02.03.020 Development Application Requirements

- A. In General.** The requirements for any individual application for development within the City may be found in this Code and/or in supporting documents and forms that are provided by the Department. Any contradiction or discrepancy shall be resolved by the discretion of the Director to apply the more stringent criteria or requirement.
- B. Application Forms Required.** All applications shall be made on forms provided by the Department, and only on those approved forms that are in use at the time of submittal. The Director shall have the authority to modify the application forms.

- C. Submittal Information.** All applications shall include the information required in the applicable provisions of this Code, as well as any other information or documentation required by the Department. These requirements may be revised from time to time, either through the formal amendment of the text within in this Code, or through the discretionary revision of forms, checklists, and other document submittal requirements the Department may establish for particular application types. See also, standards for the determination of Counter-Complete in Section 15.02.03.040.
- D. Signature of Owner Required.** All land use and development applications shall be signed by the owner(s) of the property.
- E. Fees Required.** All land use and development applications shall be accompanied by the fee applicable to the specific application type. Fee schedules are adopted by the City Council and are available with the Department but may change from time to time. The fee that applies shall be the required fee in place at the time an application could otherwise be determined to be Counter-Complete per Section 15.02.03.040.
- F. Required Procedures by Application Type.** The required procedural steps for applications Type I - Administrative, Type II – Administrative with Notice, and Type III – Quasi-Judicial are generally set forth in Table 15.02.03.020 below. Type IV applications are processed according to the specific procedural and substantive requirements governing each type of proposal, as well as the general requirements in MLUDC 15.02.03.110 - .120.

**Table 15.02.02.020 – Procedural Requirements by Application Type**

| <b>Application Type</b>                                                                                  | <b>Pre-Application Conference<br/><u>15.02.03.030</u></b> | <b>Counter-Complete Determination<br/><u>15.02.03.040</u></b> | <b>Determination of Completeness<br/><u>15.02.03.050</u></b> | <b>Notice of Application<br/><u>15.02.03.060</u></b> | <b>Notice of Public Hearing<br/><u>15.02.03.070</u></b> | <b>Final Decision and Notice<br/><u>15.02.03.080</u></b> |
|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------|---------------------------------------------------------|----------------------------------------------------------|
| <b>I</b>                                                                                                 | O                                                         | R                                                             | R                                                            | N/A                                                  | N/A                                                     | R                                                        |
| <b>II*</b>                                                                                               | R                                                         | R                                                             | R                                                            | R**                                                  | N/A                                                     | R                                                        |
| <b>III</b>                                                                                               | R                                                         | R                                                             | R                                                            | R**                                                  | R                                                       | R                                                        |
| R = Required      O = Optional      N/A = Not Applicable                                                 |                                                           |                                                               |                                                              |                                                      |                                                         |                                                          |
| *Does not apply to SEPA threshold determinations. See MLUDC XXXXXXXXXXXXXXX for noticing requirements    |                                                           |                                                               |                                                              |                                                      |                                                         |                                                          |
| ** The scope and scale of notice requirements differ between Type II and Type III, and some specific app |                                                           |                                                               |                                                              |                                                      |                                                         |                                                          |

**15.02.03.030 Pre-Application Conference**

- A. In General.** The purpose of a Pre-Application Conference is to provide the City and other agency staff with a sufficient level of detail about the proposed development that enables them to advise the applicant about applicable Code provisions and other requirements. Sharing of information between the applicant and the City is intended to identify opportunities for successful application and generally to improve the quality of development while reducing the time needed to review and complete the processing of the application without substantial revisions or outright denials.
- B. When Required.** Pre-Application Conferences are required for any intended Type II or Type III permits, and for any requests for a Consolidated Permit Process of any types.
- C. Pre-Application Waiver.** The Director may waive the requirement for a Pre-Application Conference if they determine that the impending proposal has few development related issues, involve

subsequent phases of an approved development activity, is substantially similar to a prior proposal regarding the same property or property owner, or for any other reason that is within the sound discretion of the Director.

- D. Fee Required, Deducted from Application Fee.** A Pre-Application Conference requires the payment of the applicable fee prior to the scheduling of the meeting. The applicable fee is the one in place at the time the Pre-Application Conference is requested, and can be found on the City Council adopted Fee Schedule that is maintained by the Department. Any fee accepted for a Pre-Application Conference shall be counted towards the total fee required for the official submission of the underlying permit(s).

#### 15.02.03.040 Counter-Complete Determination and Acceptance of Applications

- A. In General.** The purpose of the Counter-Complete Determination is to allow Department staff an initial opportunity to ensure an applicant is providing all the non-substantive submittal requirements, including completed forms, other required supporting documents, and applicable fees. This threshold determination is intended to reduce instances of staff determining that an application is Incomplete per Section 15.02.03.050 based solely on an applicant's failure to provide basic information, completed forms, or other documents that are clearly required. It is further intended to generally prevent the confusion and potential mismanagement of applications that can occur when applications are submitted in a piecemeal manner.
- B. Counter-Complete Defined.** An application shall be determined to be Counter-Complete if the applicant submits a full and complete application packet that includes all the submittal requirements, together with fees.
- C. Only Counter-Complete Accepted.** The City shall only accept an application if it is determined to be Counter-Complete. No parts of an application will be accepted or retained by the City on behalf of an applicant unless it is part of a complete and accepted application. Applications that are not Counter-Complete shall not begin the timing for a Determination of Completeness under Section 15.02.03.050.
- D. Time to Deliver all Materials.** All required application materials and fees shall be received by the Department within ten (10) days of the submittal of the first portion of the application. Portions of applications that are received, but not part of a Counter-Complete application, will only be held by the Department for these ten (10) days. After this time, an applicant shall resubmit any previously submitted materials along with the other required materials in one application packet. A new fee is not required unless a new fee amount has been adopted by City Council before the delivery of a Counter-Complete application.
- E. Not a Determination of Completeness.** A determination that an application is Counter-Complete does not constitute a Determination of Completeness under Section 15.02.03.050.

#### 15.02.03.050 Determination of Completeness

- A. In General.** A Determination of Completeness is the first major milestone after an application is accepted, memorializing the Department's determination that there is sufficient information for the formal review process to proceed. This section is intended to ensure compliance with the substantive and procedural requirements found in RCW 36.70B.070.
- B. Completeness Defined.** A project application shall be given a Determination of Completeness when the application has met the procedural requirements of this Code and is determined to contain

sufficient information and documentation for continued processing and review. This may be determined even though additional information may be required, other project modifications may be subsequently undertaken, or there are still ongoing special studies or reports that may have been identified in the Pre-Application Conference.

- C. Time to Determine.** Within twenty-eight (28) days after accepting a project permit application as Counter-Complete, the Department shall notify the applicant via written determination stating either:
  - 1. The application is Complete; or
  - 2. The application is Incomplete and what is necessary to make the application Complete.
- D. Requesting Additional Information.** A Determination of Completeness shall not preclude the Department from requesting additional information or studies either at the time of Notice of Completeness, or subsequently if new information is required or substantial changes in the proposed action occur.
- E. Timeline for Additional Information Request.** If the additional information requested by the Director is not fully submitted within ninety (90) calendar days from the date it was requested, the application shall be considered withdrawn. The applicant may submit a written request for up to a ninety (90) day extension of this deadline. The Director may grant a single extension if the applicant has demonstrated that they are actively working to obtain the requested information.
- F. Time to Determine After Additional Information Provided.** If the application was determined to be Incomplete with additional information requested, then the applicant shall provide the requested information before any further review or processing will occur. When an applicant does provide the requested information, the Department shall provide the applicant with written determination of whether the application is now Complete or not within fourteen (14) days of receipt of the requested information.
- G. Notice of Completeness.** If a project application is given a Determination of Completeness, this determination shall be provided to the applicant in writing as a Notice of Completeness. This Notice may also identify other agencies with jurisdiction over some aspect of the application, but in no way absolves or assumes the responsibility of the applicant to seek applicable permits from other jurisdictions.

#### 15.02.03.060 Notice of Application

- A. In General.** A Notice of Application is a formal document designed to provide notice of an application to the public and/or the departments and agencies with jurisdiction over some aspect of the proposed project. This section is intended to ensure compliance with the substantive and procedural requirements found in RCW 36.70B.110.
- B. When Required.** A Notice of Application is required for all Type II and Type III applications. No Notice of Application is required for Type I applications.
- C. Time to Provide.** The Notice of Application shall be provided within fourteen (14) days after the Determination of Completeness is provided.
- D. Information to be Provided.** The Notice of Application shall include, at least, the following information:
  - 1. The date of application;
  - 2. The date of Notice of Completeness;
  - 3. The date of Notice of Application;



4. A brief description of the proposed project action with a list of the project permits included in the application;
  5. A list of studies requested, if any;
  6. The identification of other permits not included in the application, to the extent known by the Department;
  7. The identification of any existing environmental documents that evaluate the proposed project, including where such documents can be reviewed;
  8. A statement of the public comment period, including statements of the right of any person to comment on the application, to receive notice of and participate in any hearing, to request a copy of the decision once made, and any appeal rights;
  9. The date, time, place, and type of hearing, if applicable;
  10. A statement of the preliminary determination, if one has been made at the time of Notice of Application, of those development regulations that will be applied to the proposal; and
  11. Any other information determined to be appropriate by the Department.
- E. Timing If Hearing Required.** If an open record predecision hearing is required for the requested project permit, then the Notice of Application shall be provided at least fifteen (15) days prior to the open record hearing.
- F. Notice of Application to the Public.** The Notice of Application shall be made available to the public by one or more of the following primary methods, as specified for each permit application type:
1. By posting of a sign or placard in accordance with XXXXXX;
  2. By mailing a Notice of Application to the owners of real property located within three hundred (300) feet of the subject property.
  3. By publishing or posting the Notice of Application on the City's website.
- G. Comment Period.** The Department shall allow a public comment period of fourteen (14) calendar days for Type II and Type III application. This public comment period shall commence when the Notice of Application is mailed or posted on the subject property. There is no comment period for Type I applications.

#### 15.02.03.070 Notice of Public Hearing

- A. In General.** A Notice of Public Hearing is substantially similar to a Notice of Application but is used more specifically to encourage and illicit public participation and input during open record hearings.
- B. When Required.** A Notice of Public Hearing is required for all Type III applications.
- C. Time to Provide.** The Notice of Public Hearing shall be provided at least fifteen (15) days prior to the open record hearing.
- D. Information to be Provided.** The Notice of Public Hearing shall include, at least, the following information, through text or graphic:
1. The application and/or project number;
  2. The name of the applicant or the applicant's authorized representative;
  3. The general project location/vicinity, with address(es) and/or parcel number(s);
  4. A brief project summary or description for each project permit application to be decided upon;
  5. The designated hearing body;
  6. The date, time, and place of the hearing;
  7. The date when the staff report will be available, and where it can be reviewed; and
  8. A statement regarding the appeal process.

- E. Notice of Public Hearing to the Public.** When required, the Notice of Public Hearing shall be provided to the public by all the following methods:
1. By posting of a sign or placard in accordance with XXXXXX;
  2. By mailing a Notice of Public Hearing to the owners of real property located within three hundred (300) feet of the subject property; and
  3. By publishing or posting the Notice of Public Hearing on the City's website.

#### 15.02.03.080 Final Decisions and Notice of Decision

- A. In General.** Every application for a proposed development activity within the City is seeking an affirmative decision and approval to proceed. Final Decisions and written notice thereof serve as the basis for permits to be issued and the project to proceed, or it serves as the written record from which an interested party may seek to appeal the decision(s). A Notice of Decision is the formal transmission of a Final Decision to affected parties.
- B. When Required.** A written Final Decision must be made for every application. A Notice of Decision is required for all Type II and Type III applications.
- C. Timing of the Decision.** A Final Decision shall be made no more than one hundred and twenty (120) days after the date of the Determination of Completeness.
- D. Writing Required.** All Final Decisions must be in writing.
- E. Contents of a Final Decision – Type I.** Final Decisions for Type I applications may be memorialized and conveyed by the issuance of the requested permit. If the permit is denied, then the decision shall be writing with a short explanation or basis for the decision, along with the rights and process for appeal, to be transmitted directly to the applicant.
- F. Contents of a Final Decision – Type II and Type III.** Final Decisions for Type II and Type III applications shall be in writing and contain the following information:
1. Findings of Fact;
  2. Conclusions of Law; and
  3. Appeal rights.
- G. Notice of Decision.** Notice of a Final Decision may be the transmittal of the Final Decision with or without a coversheet or additional information. For Type II project permits, the Notice of Decision may be a copy of the final report, so long as the transmittal includes any SEPA threshold determinations or Critical Area final determinations if the project was not categorically exempt from such. For Type III project permits, dissemination of the Hearing Examiner's Decision shall constitute a Notice of Decision. If any of the required contents of a Final Decision are not included in that document, including especially the rights and process for appeal, then this information shall be included with the transmittal of the Final Decision.
- H. Who Receives Notice of Decision.** The Notice of Decision shall be provided to:
1. The applicant;
  2. Any government agency that commented or requested notice;
  3. Any person who testified at the hearing or who provided substantive written comments on the application during the public comment period; and
  4. Any persons who, prior to the rendering of the decision, requested a Notice of Application or Notice of Decision.

- I. **Other Requirements.** The Notice of Decision shall provide notice of decision that also includes a statement of any threshold determination made under 43.21C RCW (SEPA), and procedures for administrative appeal, if any.
- J. **Effective Date of Decision.** The effective date of the Final Decision is date on which the Notice of Decision was placed in the mail or sent electronically, whichever is earlier.

#### 15.02.03.090 Consolidated Permit Process

- A. **In General.** Many proposed projects will involve the application for several different permit types with differing notice and hearing requirements. In many cases, it will be prudent to integrate and consolidate the review and decision-making process for the associated applications. In such cases, the applicant and City may opt to consolidate the applications into one cohesive review process.
- B. **Consolidation Optional.** A Consolidated Permit Process may be used when there are two (2) or more project permits related to a proposed project action.
- C. **Consolidation into Single Process.** If an applicant requests a Consolidated Permit Process, and the City agrees, then the proposed permits shall be consolidated into a single application review and approval process that covers all project permits requested by the applicant. Once consolidated, the Determination of Completeness, Notice of Application, Notice of Public Hearing (if any), and Notice of Final Decision must include all project permits being reviewed in one cohesive document for each procedural stage.
- D. **Pre-Application Conference Required.** A Pre-Application Conference is required to discuss the potential of a Consolidated Permit Process. This conference topic is separate and distinct from the requirement for Pre-Application Conferences regarding the particulars of any of the underlying permit applications. One Pre-Application Conference may be done that concurrently discusses all proposed permits and the consolidated process in the same meeting, or be separated into difference meetings, to be decided by the sound discretion of the Director.
- E. **Limit on Number of Hearings.** For any Consolidated Permit Process, there shall only be a maximum of one (1) open record hearing and a maximum of one (1) closed record appeal.
- F. **Highest Application Type Controls.** When multiple application types are consolidated, the procedural requirements for the highest permit type shall apply to the entire Consolidated Permit Process. If the applications are to be processed under the individual procedures option, the highest number type procedure must be processed prior to the subsequent lower numbered process procedure.
- G. **Type IV Permits Not to be Consolidated.** Applications classified as a Type IV proposal shall not be consolidated with Type I, II, or III permit applications. This is done to ensure that the City Council does not make the Final Decision on Administrative or Quasi-Judicial applications.
- H. **Discretion of Director.** The Director, or their designee, shall have complete discretion on whether and how to consolidate, or not, application packages in a way that serves the interests of the timely and judicious review and processing of the applications. This includes, especially, the discretion of the Director to require the pursuit of Final Decisions for Type III and Type IV applications before other applications that could rely on those decisions.

#### 15.02.03.100 Applicability and Exceptions

**SEPA/Shoreline/Etc. Disclaimer \*\*\*\*Will reference to specific code sections on SEPA, CAO, Shoreline\*\*\*\***

## 15.02.04 Hearings and Appeals

### 15.02.04.010 Open Record Public Hearings and Closed Record Hearings

- A. In General.** Hearings play an important role in the processing and evaluation of applications for development. The purpose of an Open Record Public Hearing is to help inform the decision maker and compile a complete record from which a recommendation or Final Decision will be made. Closed Record Hearings are used to allow a decision maker to hear evidence and argument that is based on a previously created record. It is importance to the City to strictly limit the amount of hearings brought before the relevant decision making body. This is done to reduce the burden of process, time, and expense associated with providing notice and then conducting the hearings.
- B. Limit on Number of Hearings.** For any project permit application, there shall be no more than one (1) Open Record Hearing and no more than one (1) Closed Record Hearing.
1. This includes multiple applications that are consolidated into a single process under the Consolidated Review Process in MLUDC 15.02.03.090.
- C. Open Record Public Hearings; When Used.** Open Record Public Hearings shall be held for all Type III and Type IV applications.
1. Type III Open Record Hearings shall be conducted by and held before the Hearing Examiner.
  2. Type IV applications shall be conducted by the Director, or their designee, and shall be held before the Planning Commission or City Council, depending on the specific application.
- D. Closed Record Hearings; When Used.** Closed Record Hearings shall be held for all appeals of Type I and Type II applications, and for most Type IV applications:
1. Appeals of Type I and Type II Final Decisions shall be conducted by and held before the Hearing Examiner.
  2. Type IV applications that have a Closed Record Hearing shall be conducted by the Director, or their designee, and shall be held before the City Council.
- E. Hearing Procedure.** The order of proceedings for a hearing will depend in part on the nature of the hearing. The establishment and amendment to hearings procedures shall be within the sound discretion of the Director, or their designee, or the Hearing Examiner if they are the hearing body.
- F. Ex Parte Communications Prohibited.** No member of the hearing body, be it the Hearing Examiner, a Planning Commission Member, or City Councilmember, may communicate, directly or indirectly, regarding any issues in a proceeding before them, other than to participate in necessary communications on procedural aspects. The member may receive advice from their legal counsel and may communicate with staff members. If a member of the hearing body receives ex parte communications regarding a pending application to be heard by them, then that person shall:
1. Notify the Director of the communication; and
  2. Disclose the nature and contents of the communications on the open record at the hearing, to include the identity of each person from whom the ex parte communications were received.
- G. Conflicts of Interest, Ethics, Open Public Meetings, and Appearance of Fairness.** The hearing body shall always comply with and remain subject to RCW 42.23, RCW 42.30, and RCW 42.36, as they may now exist or be lawfully amended hereafter.
- H. Consolidating Appeals from Threshold Determinations.** In accordance with RCW 43.21C.075, any hearing stemming from the appeal of a SEPA threshold determination or Critical Area determination may be consolidated with and heard along with the associated permit application. No more than one appeal proceeding shall be allowed on each procedural determination (the adequacy of a

determination of significance/nonsignificance or of a final environmental impact statement). Appeals of procedural issues and of substantive determinations (such as a decision to require particular mitigation measures or to deny a proposal) shall be consolidated as well. This does not apply to:

1. An appeal of a determination of significance;
2. An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under RCW 43.21C, including any appeals of its procedural determinations, prior to submitting an application for a project permit;
3. An appeal of a procedural determination made by an agency on a nonproject action; or
4. An appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes.

#### 15.02.04.020 Appeals of Type I and Type II Decisions

- A. In General.** Appeals are officially lodged requests by applicants or other affected parties attempting to overturn or modify a Final Decision of the Department. Appeals of a Final Decision for a Type I or Type II application shall be appealed to the Hearing Examiner and shall be governed by the provisions and requirements of this section.
- B. Standing; Who May Bring Appeal.** An appeal of a Type I or Type II Decision may only be brought by one of the following:
  1. The Applicant;
  2. Any party who participated in the decision process through the submittal of substantive written comments; or
  3. Any other person who can demonstrate, as a threshold manner, that they would have standing according to the standing requirements in RCW 36.70C.060.
- C. Time to Appeal.** An Appeal of a Type I or Type II Decision shall be filed with the Department within fourteen (14) days of the date the Notice of Decision was mailed.
- D. Fees.** An appeal will only be accepted if it is accompanied by the appropriate appeal fee. If the applicable fee is not received by the City within the prescribed time to appeal, the appeal shall not be accepted nor considered.
- E. Contents of Appeal.** Appeals shall be in writing and contain the following information:
  1. Appellant's name, address, and phone number;
  2. The Application and Final Decision that they are appealing;
  3. A statement describing the Appellant's standing to appeal;
  4. A statement describing the grounds for appeal and the facts upon which the appeal is based, with specific reference to only those facts that are contained in the official record from which the Decision was based upon;
  5. A statement describing what relief is sought;
  6. A statement that the Appellant has read the appeal and believes the contents to be true; and
  7. The Appellant's signature, or the signature of the Appellant's agent/representative that is accompanied by written authorization to act on the Appellant's behalf.
- F. Time to Amend.** The Hearing Examiner shall have discretion to allow an appellant up to fourteen (14) days to amend or perfect an otherwise timely filed appeal.

**G. Standards and Process for Appeal Hearing.** An appeal of an administrative appeal under this section shall be heard by the Hearing Examiner as a Closed Record Hearing according to the following standards:

1. The burden of proof is on the Appellant to prove;
2. That by a preponderance of the evidence;
3. The Decision, or any determinative portion thereof, was erroneous.

**H. Judicial Review Only After Administrative Exhaustion.** No person may seek judicial review of any Decision of the City unless that person first exhausts the administrative remedies provided by the City. Any judicial appeal shall be filed in accordance with state law, primarily RCW 36.70C.

#### 15.02.04.030 Appeals of Decisions of the Hearing Examiner or City Council; and other Exceptions

- A. In General.** Appeals of a Final Decision of the Hearing Examiner or City Council are generally not governed by the provisions of this code. Judicial review of land use decisions is controlled by RCW 36.70C. Other quasi-judicial bodies hold jurisdiction to hear certain land use decisions, such as the Growth Management Hearings Board. No provisions of this code should be interpreted or applied in a way that conflicts with state law regarding judicial or quasi-judicial review of land use decisions.
- B. Appealing a Hearing Examiner Decision.** A Final Decision by the Hearing Examiner for a Type III application, or from a Final Decision on the appeal of a Type I or Type II decision, shall be appealed to the Grant County Superior Court in accordance with RCW 36.70C.
- C. Appealing a Decision of the City Council.** A Final Decision by the City Council shall only be appealed to the appropriate jurisdictional entity charged by state law with hearing such appeals.
- D. Other Exceptions.** Other City decisions may be required to be appealed to other quasi-judicial bodies created by state law to maintain jurisdiction over specific matters, including, for example, the Shorelines Hearing Board. Nothing in this code is or should be interpreted as an attempt to abrogate jurisdiction from these duly created appellate entities.

#### 15.02.04.040 Reconsideration

\*\*\* Do you want a reconsideration provision? \*\*\*

## 15.02.05 Criteria for Certain Permits

### 15.02.05.0XX Conditional Use Permit

- I. In General.** A Conditional Use Permit (“CUP”) is used for proposed uses that are allowed in principle, but that will only be approved after a more rigorous review and hearing process that considers and applies conditions designed to ensure compatibility with nearby uses.
- J. Permit Process Type.** A CUP is a Type III Permit and must comply with all applicable provisions of MLUDC 15.02.02.070 and 15.02.03.
- K. Criteria for Approval.** A CUP shall be approved with conditions only if the Applicant demonstrates that all the following criteria are met:
  - 1. The proposed use is compatible with adjacent land uses and consistent with the character of the surrounding area;
  - 2. The granting of the conditional use is not inconsistent or incompatible with the goals, objectives, and policies of the comprehensive plan;
  - 3. The size of the site is adequate for the proposed use, including all facilities and amenities that are required by this Code or desired by the applicant;
  - 4. The proposed use will not be detrimental to the public health, safety, and general welfare of the community, and will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties;
  - 5. The proposed use will be supported by adequate water, sewer, storm drainage, schools, electrical, police, fire protection facilities and services. The use will not overburden or adversely affect said public facilities and services;
  - 6. The traffic generated by the proposed use will not unduly burden the traffic circulation system in the vicinity and will serve to maintain or enhance the existing connectivity, including for pedestrian purposes.
  - 7. An adequate site layout is proposed for on-site circulation and transportation activities. This should consider the potential impacts of the proposed use on traffic flow and control, especially emergency vehicle movements and safety associated with the suitability of access points. Other considerations include, but are not limited to, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths, or other transportation facilities required by this Code or desired by the applicant;
  - 8. The proposed use does not inhibit or endanger existing operations in the vicinity.
  - 9. The proposal will cause no unreasonably adverse effects to wetlands, shorelands, wildlife habitat, or other critical areas, and otherwise fully complies with the Moses Lake Critical Areas Ordinance.
  - 10. Buffering devices such as fencing, landscaping or topographic characteristics adequately protect adjacent properties from adverse effects of the proposed use, including adverse visual or auditory effects;
  - 11. The proposed use complies with all applicable development and performance standards of the city of Moses Lake Unified Development Code, and any other applicable provisions or legal requirements; and
  - 12. All conditions necessary to lessen any impacts of the proposed use have been included in the project design or will be required as conditions of approval.

- L. Conditions for Approval.** In approving a CUP, the Hearing Examiner may impose any condition that is crafted to accomplish or satisfy a criterion for approval. These conditions may include, but are not limited to, any of the following:
1. Limit the way the use is conducted, including restricting the time an activity may take place, and imposing any reasonable restraints to minimize environmental effects such as noise, vibration, air pollution, glare, and odor;
  2. Establish a special yard or other open space, with specified lot area, location, or dimension;
  3. Limit the height, size, or location of a building or other structure(s);
  4. Designate the size, number, or nature of vehicle access points;
  5. Increase the amount of street dedication, roadway width, or other improvements within the street right-of-way;
  6. Designate the size, location, screening, drainage, surfacing, or other improvements of off-street parking or truck loading areas;
  7. Limit or otherwise designate the number, size, location, and height of lighting and signs;
  8. Limit the number and intensity of outdoor lighting or require its shielding;
  9. Require screening, landscaping, or other improvement to protect adjacent or nearby property that designates standards for installation and/or maintenance;
  10. Require and establish the size, height, location, or materials for a fence;
  11. Protect existing trees, vegetation, water resources, wildlife habitat or other significant natural resources; or
  12. Any other reasonable restriction, condition, or safeguard that will uphold the intent of the MLUDC and the City's Comprehensive Plan, or that is used to mitigate any adverse effect upon adjacent properties that would result from the proposed use.
- M. Runs with Land.** A Conditional Use Permit is granted to and attaches to the subject property of the proposal, not to the owner of the property. The CUP remains attached to and enforceable against the property during and after conveyance to any and all subsequent owners or successors in interest.
- N. Revocation for Noncompliance.** A CUP may be suspended or revoked if the grantee of the CUP, or their successors in interest, fail to comply with the conditions or restrictions included in the CUP. The Director, or their designee, shall notify the CUP holder in writing of their violation, who then have thirty (30) days to submit a written response to the notice of violation. If the CUP holder fails to respond, fails to rectify ongoing violations, or is otherwise found to not be in compliance with the duly imposed conditions of the permit, the Director shall revoke or suspend the CUP. The revocation of a CUP for failure to comply with attached conditions is an Administrative Final Decision that can be appealed to the Hearing Examiner.

#### 15.02.05.0XX Variance – Administrative

- A. In General.** A Variance - Administrative is used for requests for minor exceptions or deviations from established standards that do not represent a significant departure from those standards. These requests may only be accepted and approved for deviations from dimensional requirements only and are not granted as a matter of right. A request for a Variance – Administrative should involve the application of mostly nondiscretionary criteria and be reviewed in an expedited manner through an administrative process.
- B. Permit Process Type.** A Variance - Administrative is a Type I Permit and must comply with all applicable provisions of MLUDC 15.02.02.050 and 15.02.03.



- C. Parameters.** A Variance - Administrative may be requested for any of the following standards when the request is within the corresponding parameter:
1. Front Yard Setbacks. Up to a ten percent (10%) reduction to the front yard setback standard in the applicable land use zoning district.
  2. Interior Setbacks. Up to a ten percent (10%) reduction of the dimensional standards for the side and rear yard setbacks required in the applicable land use zoning district.
  3. Lot Coverage. Up to a ten percent (10%) increase of the maximum lot coverage required in the applicable land use zoning district.
  4. Landscape Area. Up to a ten percent (10%) reduction in landscape area (overall area or interior parking lot landscape area).
  5. Building Height. Up to a ten percent (10%) increase in maximum building height in the applicable land use zoning district, except within any land use zoning district or overlay district with view protection regulations.
  6. Parking Standards. A variance may be approved to the minimum or maximum standards for off-street parking (quantity of parking spaces only).
- D. Criteria for Approval.** The Department may approve, or approve with any reasonable conditions, a Variance - Administrative only if the Applicant demonstrates all the following:
1. The variance is necessary due to the lot configuration or other conditions of the site that prevents its reasonable use when the standards are strictly applied;
  2. The variance does not require the removal of any trees within a critical area or its buffer, designated greenbelt, or habit conservation area; or it is proposed to avoid or reduce impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the natural feature to be preserved or protected; and
  3. There shall be no more than a fifty percent (50%) reduction in the number of required parking spaces, and no reduction in the size or dimension of the required stalls. Parking standard variances shall only be approved if the following additional criteria are also found to be true:
    - a. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
    - b. The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity, as demonstrated by a parking analysis or other facts provided by the applicant;

#### 15.02.05.0XX Variance – Quasi-Judicial

- A. In General.** A Variance – Quasi-Judicial is used for requests for exceptions or deviations from established standards that do not meet the definition of a Variance-Administrative. These requests propose deviations that may more greatly affect neighboring parcels and therefore necessitate heightened review and a process that incorporates input from those who may be affected.
- B. Permit Process Type.** A Variance – Quasi-Judicial is a Type III Permit and must comply with all applicable provisions of MLUDC 15.02.02.070 and 15.02.03.
- C. Criteria for Approval.** The Hearing Examiner may approve, or approve with any reasonable conditions, a Variance – Quasi-Judicial only if the Applicant demonstrates all the following:
1. An undue hardship exists. Special circumstances or characteristics of the property cause the strict application of the relevant regulations to deprive such property of privileges enjoyed by other similar properties in the same vicinity and zone as the subject property. The circumstances

or characteristics that constitute an undue hardship include, but are not limited to, the property's size, shape, topography, location, or surroundings;

2. The special characteristics that serve as the basis for the request are more than a mere inconvenience to the applicant, and otherwise impose a burden beyond just aesthetics or purely financial considerations;
  3. The special circumstances applicable to the property are not self-imposed by any person having an interest in the property;
  4. The Variance as proposed, or amended, or with conditions, is the minimum variation needed. Granting the variance will not constitute a grant of special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;
  5. The variance will not allow the establishment of a use which:
    - a. Is materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
    - b. Is not otherwise permitted in the zone;
    - c. Would result in the extension of a nonconforming use or structure; or
    - d. Would change the terms of the zone applicable to any or all of the subject property.
- D. Conditions for Approval.** In approving a Variance – Quasi-Judicial, the Hearing Examiner may impose any reasonable condition that is crafted to accomplish or satisfy a criterion for approval, or that will otherwise serve to ameliorate negative effects that the variance may cause.

## 15.02.06 Supplementary Standards

### 15.02.06.0XX Nonconformance

- A. In General.** Within areas of the City, there exist uses, lots, and structures which were lawful before the adoption of this Code, but may be prohibited, regulated, or restricted under the terms of this Code. It is the intent of this chapter to allow these nonconformities to continue until they are removed or abandoned. It is also the intent of this chapter to allow some nonconformities, under certain circumstances and controls, and subject to review, to potentially enlarge, intensify, or modify such nonconforming uses and structures in a way that is consistent with the objectives of maintaining the economic vitality of such uses and structures, while protecting the rights of other property owners to use and enjoy their properties.
- B. Definitions:** Legal nonconforming uses and structures include:
1. Any use which does not conform with the regulations of the district(s) in which it is located, but was, prior to the adoption of this Code:
    - a. In existence
    - b. In regular and continuous use; and
    - c. In lawful operation
  2. Any permanent structure which does not conform with the regulations of the district(s) in which it is located, but was, prior to the adoption of this Code:
    - a. In existence
    - b. In regular and continuous use; and
    - c. Was lawfully constructed.
  3. Any use or structure that was considered legal nonconforming under prior regulations or ordinances of the City, and that were not extinguished or abandoned prior to the adoption of this Code.

- C. **Residential Exception:** Existing legally established (single-family) residential structures located in a nonresidential district shall not be deemed nonconforming and shall be permitted as a legal structure.
- D. **No Retroactivity:** This Chapter shall not require changes to plans, construction, or designated use for which:
  - 1. A building permit has been issued or a site plan approved by the City prior to the adoption of this Code; or
  - 2. A substantially complete application for a building permit has been accepted by the building official prior to the adoption of this Code.
- E. **General Provisions.**
  - 1. **Abandonment or Discontinuance:** A nonconforming use shall be deemed abandoned by discontinuance if such use is discontinued for a period of twelve consecutive months. Such abandoned use may generally not be resurrected or resumed and any subsequent uses after abandonment must comply with all applicable provisions of this Code.
    - i. An owner may apply to the Director, or their designee, for a time extension to this automatic provision prior to the conclusion of the one-year period of abandonment.
      - a. The application must be in writing and state the reason(s) an extension is warranted.
      - b. Granting such a time extension is entirely within the sound discretion of the Director.
      - c. Only one (1) time extension of twelve months is permitted per nonconforming use.
        - ii. An abandoned or discontinued use may be resurrected through the Conditional Use process, as found in Section 15.02.XXXXXX & CUP###.
          - a. Such application for a CUP must be submitted and accepted as substantially complete within the twelve months following the date the use is deemed abandoned.
          - b. Beyond all other applicable criteria found in this chapter and Code, the applicant must demonstrate:
            - a. Good cause for the resurrection; and
            - b. Compelling justification for their failure to prevent abandonment, including a failure to apply for an extension.
          - iii. An abandoned or discontinued use that shall not be resurrected or resumed under any circumstances twenty-four months from the initial date of discontinuance.
  - 2. **Continuance and Transferability:** The right to continue a nonconforming use shall transfer to all successive interest in the property.
  - 3. **Restoration After Damage or Partial Destruction:** Any structure which contained a nonconforming use that is damaged or destroyed by fire, earthquake, explosion, or other casualty, may be repaired or restored, and the prior occupancy or use reestablished as a legal nonconforming use, provided:
    - i. The extent of the damage does not exceed eighty percent of current replacement cost;
    - ii. Such repair or restoration shall not increase the extent, floor area, or physical dimension of the original structure, nor increase the nonconformance;
    - iii. Such repair or restoration shall be commenced within twelve months from the date the damage occurred; and
    - iv. Such repair or restoration shall be completed within eighteen months from the date the damage occurred.
- F. **Nonconforming Uses**

1. **In General.** Nonconforming uses are generally considered to be incompatible with the permitted uses associated with the district(s) involved and are therefore generally disfavored and discouraged from expansion and increases in intensity of use.
2. **Expansion within Structure:** A nonconforming use may be expanded or extended throughout the structure occupied by the original nonconforming use. Such a structure's usable floor area may only be increased pursuant to granting of a nonconformance conditional use permit, as found in Section 15.02.04.XXX, and subject to any other application provisions of this Code.
3. **Expansion Beyond Structure:** A nonconforming use generally shall not be expanded beyond the structure in which it existed at the time it became a nonconforming use. Such nonconforming use may be expanded beyond the existing structure only pursuant to the granting of a nonconformance conditional use permit, as found in Section 15.02.04.XXX, and subject to any other application provisions of this Code.
  1. Additional criteria?
4. **Expansion within Parcel:** A nonconforming use of land generally shall not be expanded beyond the area being used when the use becomes nonconforming. Such nonconforming use may be expanded beyond said area only pursuant to the granting of a nonconformance conditional use permit, as found in Section 15.02.04.XXX, and subject to any other application provisions of this Code.
5. **Changing to Comparable Nonconforming Use:** A nonconforming use which has not been abandoned or discontinued may be replaced with another substantially similar nonconforming use when, in addition to any other applicable criteria, the use meets the following criteria:
  1. The new use is not less conforming than the prior use.
  2. The proposed use does not place a greater demand on transportation and other public facilities than the original use; and
  3. The proposed use does not adversely impact the use of neighboring property.
6. **Reestablishing Abandoned or Discontinued Use:** An abandoned or discontinued use may only be reestablished pursuant to Section 15.02.04.030.
7. **Residential Lots:** Residential lots made nonconforming relative to dimensional requirements shall be deemed conforming if the use is allowed in the respective zone.
8. **No New Parking Requirements:** Nonconforming uses that do not provide the required number of off-street parking spaces pursuant to current standards shall not be required to meet parking standards.

**G. Nonconforming Structures**

1. **In General:** A structure which is nonconforming to provisions of this Code poses less of a risk of disharmony or fraught incompatibility in the same way that a nonconforming use does. Therefore, these rules are primarily intended to prohibit the expansion of any such nonconformity. All provisions of the City's Building Codes, or any other applicable laws, plans, or regulations, still apply and supersede anything in this chapter.
2. **Nonconformance to Lot or Development Standards:** A structure which is nonconforming only by reason of causing substandard yards, setbacks, open spaces, or other development standards, may be structurally altered, enlarged, or repaired, so long as such activities do not increase the extent of the nonconformity.

i. CUP?

3. **Nonconformance to Building Requirements:** A structure which is nonconforming only by reason of height may be structurally altered, enlarged, or repaired, so long as such activities do not increase the height of the structure.

i. CUP?

4. **Alterations With Nonconformance Conditional Use Permit:** Notwithstanding the foregoing, a nonconforming structure may be altered or expanded pursuant to the granting of a nonconformance conditional use permit, as found in Section 15.02.04.XXX, and subject to any other application provisions of this Code. Such an application may include requests for any required variances to provisions or requirements of this Code that would so restrict such an alteration, addition, or expansion of the structure.

i. Additional criteria?

H. **Nonconforming Lots**

1. **In General:** A lot which is nonconforming to provisions of this Code poses less of a risk of disharmony or fraught incompatibility in the same way that a nonconforming use does. Therefore, these rules are primarily intended to prohibit the expansion of any such nonconformity. All provisions of the City's Building Codes, or any other applicable laws, plans, or regulations, still apply and supersede anything in this chapter.

I. **Nonconformance Conditional Use Permit Criteria**

1. **In General:** A nonconforming use, structure, or lot may be changed or expanded, subject to the applicable criteria of this chapter, by applying for a Conditional Use Permit pursuant to 15.XXXXXXXXXXX.

2. **Additional Criteria of Approval:** In addition to any additional criteria found in this Section, or any other applicable provisions of this Code, including those found in 15.XXXXXXXXXXX, such nonconformance conditional use permit should only be granted if it is also found that:

- i. The expanded use does not adversely affect the use of neighboring property;
- ii. The expanded use does not degrade the transportation level of service greater than the original use;
- iii. The expansion does not create additional development opportunities on adjacent lots that would not otherwise exist; and
- iv. The use is not single-family residential use.

3. **Conditions of Approval Allowed:** Beyond the existing authority in place in 15.XXXXXXXXXXX to impose conditions of approval with the granting of a conditional use permit, the hearing body can and should impose any and all reasonable conditions that can be used to ameliorate or address possible deficiencies in the criteria of approval found in this Section.

15.02.06.0XX **Concurrency and Development Mitigation Program**

A. **In General.** Within areas of the City, there exist uses, lots, and structures which were lawful before the adoption of this Code, but may be prohibited, regulated, or restricted under the terms of this Code. It is the intent of this chapter to allow these nonconformities to continue until they are removed or abandoned. It is also the intent of this chapter to allow some nonconformities, under certain circumstances and controls, and subject to review, to potentially enlarge, intensify, or modify such nonconforming uses and structures in a way that is consistent with the objectives of maintaining the economic vitality of such uses and structures, while protecting the rights of other property owners to use and enjoy their properties.

B. **Applicability.**

1. **In General.** All development activities must be reviewed to determine whether such activities will cause City transportation facilities to fall below standards adopted in the transportation element of the City's Comprehensive Plan. All applications for development must submit to a Concurrency Review, as either a "Full Review" or a "Limited Review." The extent and requirements of each avenue for review will be described in this chapter and may include application materials and forms that are created and promulgated by the City, the Director, or their designees.
2. **Full Review for Concurrency.** All development activities that are for ten (10) or more residential lots, or include any new commercial component, shall be required to submit to a Full Review of Concurrency.
3. **Limited Review for Concurrency.** All development activities that do not rise to the level of requiring a Full Review shall be required to submit to a Limited Review of Concurrency.
  1. Proposed development activities that are not anticipated to create ten (10) or more new peak p.m. trips should be subjected to Limited Review. This includes commercial remodels and interior work, any change of use, and any other development activity of limited scope that is not anticipated to create **ten (10) or more new peak p.m. trips.**
4. **Temporary Trips Exempt.** Generally, new peak p.m. trips that are not permanent shall not be included in concurrency analysis. This includes, especially, traffic that is associated with the development activities but will cease upon project completion.
5. **Exemptions in General.** Generally, activities that are not considered "development," as defined in this Chapter, Code, or in SECTION XX.XX.XXX, do not require a Concurrency Review. For any activity that does not create any new permanent demand on City transportation facilities, a Concurrency evaluation is not required.
6. **Categorically Exempt.** The following is a list of activities that are not considered "development activities" for the purposes of this Concurrency Chapter. This list is non-exhaustive and should serve as a reference for determining the applicability of this chapter to other activities which may not be listed here.
  - i. Administrative interpretations;
  - ii. Sign permit;
  - iii. Street vacations;
  - iv. Demolition permit;
  - v. Street use permit;
  - vi. Interior alterations of a structure with no change in use;
  - vii. Excavation/clearing permit;
  - viii. Hydrant use permit;
  - ix. Right-of-way permit;
  - x. Single-family remodeling with no change of use;
  - xi. Plumbing permit;
  - xii. Electrical permit;
  - xiii. Mechanical permit;
  - xiv. Excavation permit;
  - xv. Sewer connection permit;
  - xvi. Driveway or street access permit;
  - xvii. Grading permit;
  - xviii. Tenant improvement permit;
  - xix. Fire code permit;
  - xx. Design review approval;
  - xxi. Events permitted under XXXXXXXX;

1. Temporary uses, structures, and activities permitted under XXXXXXXX; and
  2. Temporary uses, structures, and activities described under XXXXXXXX.
7. **Director Determines Applicability.** Any dispute about whether a proposed activity is a “development activity” such that a Concurrency Review is required, shall be resolved by and subject to the complete discretion of the Director.
  8. **Issued Permits and Accepted Applications Exempt.** Project permits that have already been issued and project applications that were determined to be complete prior to the effect date of these regulations are exempt from concurrency review.
  9. **Director’s Discretion for Full Review.** Notwithstanding any of the foregoing, the Director has complete discretion to require any proposed development activity to submit to Full Review for Concurrency, if the Director determines that the development activity is likely to create ten (10) or more new peak p.m. trips.

**C. Application Procedures.**

1. **In General.** Applications for concurrency review shall be submitted to the City at the time of the submission of the underlying development application. The appropriate application forms will be provided by the City. Concurrency review shall be performed for the specific property, uses, densities and intensities, and traffic distribution information provided by the applicant and shall include any project phasing proposed.
2. **Additional Information.** The City may request additional information in order to make a determination. Such a request may toll the timing requirements for determinations of completeness and other application processing time requirements of this Code.
3. **Completeness.** A Concurrency Application shall be deemed complete if all requested information is received, and otherwise comports with the completeness requirements of XX.XX.XX.XXX
4. **Agency Circulation.** All applications will be circulated for comment to the appropriate departments or agencies, depending on the review level for concurrency. Notwithstanding the specific requirements of this Chapter, the Director may elect to solicit comments from any potentially affected agencies or departments.
5. **Finding of Concurrency or Denial.** Upon completion of the review for Concurrency in accordance with the requirements of this Chapter, the City must find either:
  - i. Finding of Concurrency: If adequate facilities exist or will be made available in accordance with the requirements of this Chapter, then the City shall make a Finding of Concurrency; or
  - ii. Denial: If the City finds that adequate facilities do not exist, and/or that the proposed development will degrade a Level of Service identified in a Comprehensive Plan Element below the minimum identified therein, and that the applicant will not be able to implement improvements or strategies to ameliorate the impacts of their proposed development, then the City shall Deny the project application.
6. **Certificate of Concurrency.** If the City makes a Finding of Concurrency, the City shall issue a Certificate of Concurrency. The Certificate of Concurrency:
  - i. Shall be issued to the property owner and their heirs and assigns;
  - ii. Shall apply only to the specific land uses, densities, intensities, and project(s) described in the application and project permit;
  - iii. Shall not be transferred to any other property or project, but may be transferred to new owners of the same property or project;
  - iv. Shall remain valid so long as the accompanying project permit has not expired or been revoked;

- v. Shall remain valid for any modification of the permits for which the Certificate was issued, so long as such modification does not require the applicant to obtain a new project permit; and
  - vi. Shall only be issued upon payment of any applicable fees.
- 7. **When Certificate Void.** A Certificate of Concurrency shall automatically be voided if the associated project permit has been withdrawn, expires, or is otherwise cancelled.
- 8. **Fees established in Resolution adopted and amended by City Council.**
- D. **Limited Review for Concurrency.**
  - 1. **In General.** A Limited Review for Concurrency is intended for those development activities which are presumed to be concurrent and pose a negligible increase in demand on City facilities. Limited Review is primarily for development that is smaller in size, scope, and intensity, and such limited stature creates this rebuttable presumption. It is also the intent of the City to prevent the unequal or inequitable imposition of concurrency requirements for small-scale development activities that might arguably be the last in line to “tip the scale” on the Level of Service for a City transportation facility, or other City facilities and Comprehensive Plan Elements.
  - 2. **Application - Limited Review for Concurrency.** Every application for development activity not exempted in XXXXXXXX, and not reaching the threshold for Full Review, shall submit to a Limited Review of Concurrency.
  - 3. **Application Contents.** Forms for the Application for Limited Review of Concurrency will be provided by the City to all potential applicants for development activities. Such forms may be changed from time to time, under the discretion of the Director, but shall include at a minimum:
    - a. Date of submittal;
    - b. Developer's name, address, telephone number and e-mail;
    - c. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
    - d. Acreage of property;
    - e. Existing use of property;
    - f. Proposed use(s) by land use category, square feet and number of units;
    - g. Phasing information by proposed uses, square feet and number of units, if applicable;
    - h. Proposed site design information, if applicable;
    - i. The applicant's proposed mitigation (if any) for the impact on the City's transportation facilities;
    - j. The applicant's proposed mitigation (if any) for the impact on the City's other facilities;
    - k. Written consent of the property owner, if different from the developer;
    - l. Proposed request of capacity by legal description, if applicable;
  - 4. **Discretionary Circulation.** The Director, or their designee, may circulate a Concurrency Application to all agencies or departments they believe should have an opportunity to review and comment on the proposed development activity.
  - 5. **No Traffic Report Required.** An application for a Limited Review of Concurrency does not require the submission of a Traffic Impact Analysis or Traffic Report.
  - 6. **Further Information Requested.**
  - 7. **Determination of Completeness.**
  - 8. **Fee**
- F. **Submission and Acceptance**
  - 1. **In General.** A Full Review for Concurrency is intended for those development activities which have no presumption of concurrency. Full Review is deemed necessary for those projects that are presumed to pose a significant risk to the degradation of Level of Service standards for City transportation facilities, or other City facilities and Comprehensive Plan Elements.



2. **Application - Full Review for Concurrency.** Every application for development activities that are for ten (10) or more residential lots, or that includes any new commercial component, excepting those activities listed in XX.XX.XX.XXX, or any development activity that is otherwise determined by the Director to pose a potentially significant impact on City facilities in accordance with the provisions of this Chapter, shall be required to submit to a Full Review of Concurrency.
3. **Application Contents.** Forms for the Application for Full Review of Concurrency will be provided by the City to all potential applicants for development activities. Such forms may be changed from time to time, under the discretion of the Director, but shall include at a minimum:
  - i. Date of submittal;
  - ii. Developer's name, address, telephone number and e-mail;
  - iii. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
  - iv. Acreage of property;
  - v. Existing use of property;
  - vi. Proposed use(s) by land use category, square feet and number of units;
  - vii. Phasing information by proposed uses, square feet and number of units, if applicable;
  - viii. Proposed site design information, if applicable;
  - ix. The applicant's proposed mitigation (if any) for the impact on the City's transportation facilities;
  - x. The applicant's proposed mitigation (if any) for the impact on the City's other facilities;
  - xi. Written consent of the property owner, if different from the developer;
  - xii. A preliminary site plan which shows the approximate layout of proposed structures and other development, type and number of dwelling units, type and number of nonresidential building areas with gross square footage, the land use coders per the most recent edition of Trip Generation from the Institute of Transportation Engineers (ITE) and an analysis of the points of access to existing and proposed roadways.
  - xiii. A summary of the accompanying Traffic Impact Analysis or other acceptable Traffic Report.
  - xiv. Proposed request of capacity by legal description, if applicable;
4. **Mandatory Circulation.** The Director, or their designee, shall circulate the Full Review for Concurrency Application to all agencies and departments that are responsible for administering City facilities that have been identified in the City's Comprehensive Plan Elements.
5. **Traffic Report Required.** An application for a Full Review of Concurrency shall require the inclusion of a Traffic Impact Analysis that was performed and compiled by a licensed Professional Traffic Operations Engineer (PTOE).
  - i. Contents of TIA?
  - ii. Rejecting TIA?
6. **Further Information Requested.**
7. **Determination of Completeness.**
7. **Submission and Acceptance.**
  1. **Notice of Application.** Issuance of a notice of application for the underlying permit application shall be handled by the community development director or designee, following the process in XxXXXXX. The notice of application required by XXXXXXXX shall state that an application for a concurrency determination has been received by the city.
  2. **Determination of Completeness.** The community development director shall immediately forward all capacity evaluation applications received with development applications to the public works director. Within twenty-eight days after receiving a capacity evaluation application, the

public works director shall mail or personally deliver to the applicant a determination which states either:


- i. That the application for capacity evaluation is complete; or
- ii. That the application for capacity evaluation is incomplete and what is necessary to make the application complete.

3. **Additional Information.** An application for capacity evaluation is complete for purposes of initial processing when it meets the submission requirements in. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The director's determination of completeness shall not preclude the director's ability to request additional information or studies.

4. **Incomplete Applications**

- i. Whenever the city issues a determination that the application for capacity evaluation is not complete, the application for capacity evaluation shall be handled in the same manner as a project permit application under XXXXXXXX.
- ii. Date of Acceptance of Application. An application for capacity evaluation shall not be officially accepted or processed until it is complete and the underlying development application has been determined complete. When a capacity application is determined complete, the director shall accept it and note the date of acceptance.

**G. Concurrency Determinations.**

1. The following facilities and services must be evaluated for concurrency:
  - i. Transportation;
  - ii. Public water;
  - iii. Public sewer;
  - iv. Fire protection;
  - v. Police protection;
  - vi. Parks and recreation;
  - vii. Schools.
2. The City may also consider concurrency issues for the following facilities and services:
  - i. Libraries;
  - ii. Solid waste disposal;
  - iii. Trail and pedestrian improvements;
3. The review authority shall be the city manager or designee. 

15.02.06.0XX Wireless Facilities

HOLD

## 15.02.07 Subdivisions

15.02.07.010 Purpose and General Provisions

**A. In General.** The process by which land is divided is an important matter of state and local concern that should be administered in a uniform and predictable manner. The purpose of this Chapter is to regulate the subdivision of land in order to:

1. Promote the public health, safety, and general welfare;
2. Prevent the overcrowding of land;
3. Lessen congestion in streets and highways;

4. Promote effective use of land;
  5. Promote safe and convenient travel by the public on streets and highways;
  6. Provide for adequate light and air;
  7. Facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds, and other public requirements;
  8. Provide for proper ingress and egress;
  9. Provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies;
  10. Adequately provide for the housing and commercial needs of the citizens of the state; and
  11. Require uniform monumenting of land subdivisions and conveyancing by accurate legal description.
- B. Division of Land Processes.** The regulations contained herein shall apply to all subdivisions of land wholly or partially within the City. These regulations shall apply to all divisions of land and shall adhere to one of the four following processes:
1. Boundary Line Adjustments and Lot Consolidations;
  2. Short Subdivision;
  3. Major Subdivision; or
  4. Binding Site Plan.
- C. Exemptions.** In accordance with the corresponding sections in RCW 58.17.040, the provisions of this Chapter 15.02.07 MLUDC shall not apply to:
1. Cemeteries and other burial plots while used for that purpose;
  2. A division of land into lots or tracts that are all each five (5) acres or larger;
  3. Divisions made by testamentary provisions or laws of descent;
  4. A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose; and
  5. A division of land for the purpose of establishing and operating electric utility facilities.
- D. Intent to Comply with State Law.** This Chapter is established in accordance with RCW 58.17 and is intended to comply with the requirements found therein. The provisions of RCW 58.17 shall supplement the provisions of this Chapter wherever this Chapter fails to address a specific item. When a conflict exists between this Chapter and RCW 58.17, the most restrictive land use condition shall control. If the conflict cannot be construed to be harmonious with a state provision in a particular instance, then the state provision shall control. This applies to RCW 58.17 as it is now adopted or how it may be hereafter amended.
- E. Other Costs Associated with Review.** An applicant shall be responsible for all costs for engineering, legal, and other consulting services incurred by the City in processing an application governed by this chapter, to the extent that the cost of said services exceeds the application fees. The Director, or their designee, shall advise the applicant of all known or anticipated additional fees and costs to be incurred by the applicant and may require the additional fees and costs to be paid prior to service. In any case, the applicant shall pay all additional fees and costs associated with processing their application before final recording.

#### 15.02.07.020 Boundary Line Adjustments and Lot Consolidation

- A. In General.** Boundary Line Adjustments and Lot Consolidations are minor actions concerning the division of land that are generally considered to be administrative with nondiscretionary criteria for

approval. As such, they are processed as Type I Applications and should be approved when the applicant demonstrates they satisfy the criteria for approval.

- B. Definitions.** A Boundary Line Adjustment is a minor reorientation of a lot line between existing lots which results in no more lots than existed before the adjustment. A Lot Consolidation is a form of Boundary Line Adjustment wherein an existing lot line is extinguished, resulting in the merger of two or more lots into a single lot of record.
- C. Forms, Submission, and Fees.** An application for a Boundary Line Adjustment must comply with the following requirements and include the following items in order to be accepted as Counter-Complete and initiate the review process:
1. Applications must be submitted on forms provided by the City, and only on those approved forms that are in use at the time of submittal.
  2. Applications shall be signed by all property owners of record.
  3. A non-refundable fee per the current fee schedule or adopted fee resolution that is in place at the time of submission.
  4. Applications may be submitted digitally but shall always include a number of printed copies in a quantity to be determined by the Department.
  5. The record of survey shall show the entire contiguous tract owned by the applicant. The record of survey shall show all current structures, utilities, easement, points of access, and any other information or detail necessary to show that the proposal meets all other requirements within the Moses Lake Municipal Code for lots.
  6. One reduced copy of the record of survey for the boundary line adjustment that is at a size and scale as determined by the Department. All reduced copies shall be fully legible.
  7. A plat certificate from a title company licensed to do business in the State of Washington, confirming that the title of the lands corresponds with the owners described and shown on the record of survey and application.
- D. Criteria for Approval.** A request for a Boundary Line Adjustment or Lot Consolidation may be approved only if it satisfies all the following criteria:
1. No additional lot is created by the proposed boundary line adjustment.
  1. No lot is created that does not comply with all zoning and health regulations.
  2. No lot is created that does not have adequate drainage, water supply, and sanitary sewage disposal, and access for vehicles, utilities, and fire protection.
  3. The new parcel lines do not separate an accessory structure from its associated primary structure;
  4. The adjustment does not increase any existing nonconformity. The adjustment may reduce the degree of nonconformity without eliminating it so long as no new nonconformity is created;
  5. The adjustment does not replat, amend, or vacate a plat or subdivision; and
  6. The adjustment does not conflict with existing conditions of approval for previously platted property.
  7. No unbuildable lot is created.
- E. Approval and Time to Complete.** When a boundary line adjustment application is acceptable for recording, the Director will send a notice of approval to the applicant and to the Grant County Assessor's Office. All documents that are required to complete a boundary line adjustment shall be provided by the applicant to the Director within one hundred eighty (180) calendar days from the date of the notice of approval, otherwise, the approved application shall be voided.

- F. Recording.** The applicant shall provide two (2) reproducible full-size copies of a record of survey to the Community Development Department, along with a check payable to the Grant County Auditor for the recording fees. Additionally, the applicant shall submit one (1) electronic copy to the Director, and one (1) electronic copy to the Grant County Assessor's office.
- G. When Final.** The boundary line adjustment shall not be final until the Community Development Department has provided the record of survey and all necessary documents to the Grant County Auditor for recording and the applicant has recorded all necessary documents for the conveyance of the property.
- H. Not a Conveyance.** To complete a boundary line adjustment, all necessary documents containing the appropriate legal descriptions of the reconfigured lots or tracts shall be recorded with the Grant County Auditor. The recording of the adjustment does not constitute a conveyance of ownership of the property.
- I. Alterations of Binding Site Plans and Short Subdivisions.** An existing Binding Site Plan or Short Subdivision may use a Boundary Line Adjustment process for minor amendments to those plans or plats. All standards within this section, as well as the underlying requirements and conditions for the existing plan or plat shall always apply. Major amendments to Binding Site Plans and Short Subdivisions shall not use this section. The determination of whether an amendment is minor or major is within the sound discretion of the Director.

#### 15.02.07.030 Short Subdivision

- A. In General.** The Short Subdivisions process is established to provide for the orderly and efficient division of land that is on a smaller scale. While the City still has important interests in promoting the public health, safety, and general welfare, the smaller scale of Short Subdivisions do not fully implicate a need for expansive review or quasi-judicial involvement. As such, a request for a Preliminary Short Subdivision is processed as a Type II application, with the Final Plat following a Type I Process.
- B. Definition.** A Short Subdivision is a division or redivision of land into nine (9) or fewer lots for the purpose or sale, lease, or transfer of ownership. A Short Subdivision is prohibited if the subject parcel was previously subdivided or created via the Short Subdivision process within the last five (5) years. Short Subdivisions generally follow a two-step process:
  - 1. Preliminary Plat.** The initial preparation and submission to the City is called a Preliminary Plat and shall be processed as a Type II Permit. The requirements in this section are supplementary to the general requirements and procedures for the Processing of a Type II Permit found in MLUDC 15.02.02.060 and 15.02.03.
  - 2. Final Plat.** After Preliminary Plat approval for a Short Subdivision, the second stage for final approval requires an application for Final Plat approval. The Final Plat approval is in the nature of a ministerial, non-discretionary process that reviews the application to ensure conformity with the approved Preliminary Plat, as well as state and local laws. As such, a request for Final Plat approval is processed as a Type I application. See MLUDC 15.02.02.050 and 15.02.03.
- C. Preliminary Plat Submittal Requirements.** An application for a Preliminary Short Subdivision shall include all the following items:
  - 1.** Applications must be submitted on forms provided by the City, and only on those approved forms that are in use at the time of submittal;
  - 2.** A non-refundable fee per the current fee schedule or adopted fee resolution that is in place at the time of submission.

3. A reduced set of all application drawings, each drawing on eleven-inch (11") by seventeen-inch (17") paper. Smaller sized drawings may be approved by the Director.
  4. A plat certificate from a title company licensed to do business in the State of Washington confirming that the title of the lands corresponds with the owners described and shown on the plat and instrument of dedication. The plat certificate shall be dated within thirty (30) calendar days of filing.
  5. Three (3) full-size copies of the preliminary plat. The preliminary plat shall be a neat and accurate drawing, stamped and signed by a land surveyor. The preliminary short plat shall show sufficient detail and information to provide verification that the proposed subdivision layout can meet all approval requirements of a subdivision. The format shall be as specified in Chapter 17.15, with the ultimate goal of the applicant to provide a final plat per specifications in Chapter 17.15. Specific items that are required on a preliminary plat are listed below.
    - a. Name of proposed subdivision, names of all existing streets within the survey, and names of all proposed streets.
    - b. Boundaries of proposed subdivision established by the preliminary survey, and locations of the monuments found and established during the preliminary survey.
    - c. All proposed lots with their dimensions, lot numbers, block numbers, and lot areas.
    - d. Location and dimension of all existing and proposed streets, alleys, rights-of-way, municipal easements, public utility easements, and other public lands within and adjacent to the proposed subdivision.
    - e. Location and dimensions of all existing and proposed USBR irrigation water rights-of-way on and adjacent to the proposed subdivision.
    - f. Legal description of land within the proposed subdivision.
    - g. Name, address, and seal of the land surveyor who made the preliminary survey.
    - h. Date map is prepared, vicinity map, scale, north arrow, basis of bearing, vertical datum.
  6. Three (3) full-size copies of the site plan. Site plans exhibits shall be provided on a separate sheet from the plat.
  7. A Concurrency statement that demonstrates the proposal satisfies all applicable requirements from MLUDC XXXXX Concurrency.
  8. A completed SEPA checklist, if applicable. See MLUDC XXXXX SEPA.
- D. Preliminary Plat Mandatory Referral to Other Departments, Agencies, and Offices.** The Director shall distribute a copy of the Preliminary Short Subdivision to each of the following entities:
1. The Planning Department
  2. Public Utility District
  3. Gas Company
  4. Telephone Company
  5. Engineering Division of the Municipal Services Department
  6. Fire Department
  7. Building Division of the Community Development Department
  8. Grant County local health jurisdiction
  9. Irrigation districts with jurisdiction
  10. Grant County Assessor
  11. Communications Company
  12. Grant County Auditor

13. United States Bureau of Reclamation
14. Grant County Emergency Management
15. United States Post Office
16. Washington State Department of Fish and Wildlife
17. Grant Transit Authority.
18. School District
19. Grant County Treasurer.
20. Moses Lake Police Department
21. Moses Lake Parks and Recreation Department
22. Moses Lake City Manager
23. Any other agency, department, or offices determined by the Director.

- E. Preliminary Plat Contingent Referrals to Other Departments, Agencies, and Offices.** The Director shall distribute a copy of the Preliminary Short Subdivision to each of the following entities if the specific condition is present, or at the discretion of the Director:
1. The Grant County Planning Department and Grant County Public Works Department if the proposed subdivision abuts the municipal boundary.
  2. The Washington State Department of Transportation if the proposed subdivision abuts the right-of-way of a state highway, or if the subdivision is within two (2) miles of the boundary of a state or municipal airport.
- F. Time for Comment from Referrals.** For every notice or copy of a Preliminary Short Subdivision sent to an entity listed in the preceding subsections, the Director shall notify the recipient that written recommendations will be accepted within fourteen (14) calendar days from the date the notification was sent. If no comment is received, the Preliminary Plat will proceed to be processed under the assumption that the entity has no recommendation.
- G. Preliminary Plat Criteria for Approval.** A Preliminary Short Subdivision shall only be approved if all the following criteria and requirements are found to be met:
1. The subdivision shall make adequate provision for roads, streets, curbs, gutters, sidewalks, street lighting circuits, alleys, municipal utilities (sewer, storm, and water), drainage ways, irrigation water rights-of-way, other public ways, public access, and other improvements as deemed necessary in conformance with **Community Street and Utility Standards, Chapter 17.21, Chapter 17.24**, and other codes and regulations that are applicable.
  2. The subdivision shall comply with all zoning and health regulations.
  3. The subdivision shall be consistent with the Comprehensive Plan.
  4. The applicant shall make arrangements with Grant County PUD for payment of all street lighting fees.
  5. The subdivision shall provide for irrigation water rights-of-way pursuant to state law.
  6. The subdivision shall not have been divided by a short subdivision within five (5) years.
  7. The subdivision shall consist of nine (9) or fewer lots.
  8. The subdivision shall demonstrate that it will meet all Concurrency requirements.
  9. The subdivision shall have incorporated or be subject to all conditions of approval per City and referral agency requirements.
- H. Simultaneous Processing.** Unless the applicant requests otherwise, a Preliminary Short Subdivision must be processed simultaneously with applications for accompanying rezones, variances, site plan approvals, and any other quasi-judicial or administrative actions to the extent that the procedural

requirements for those actions allow for simultaneous processing. See also MLUDC 15.02.03.090 Consolidated Permit Process.

- I. **Approval and Consent to Proceed.** Approval of a Preliminary Short Subdivision shall constitute approval for the Applicant to proceed to develop construction plans and specifications for all facilities and improvements, and to prepare the final subdivision application.
- J. **Expiration of Preliminary Plat Approval.** A Preliminary Short Subdivision approval shall expire and become null and void after one (1) year from the date of approval unless an extension is approved by the Director. The Director may grant one (1) extension for a period not to exceed one (1) year, provided that the applicant submits a written request for an extension at least thirty (30) calendar days before the expiration of the approval.
- K. **Improvements.** Once an Applicant receives approval of their Preliminary Short Subdivision, the Applicant shall proceed with the construction of required improvements in accordance with **Chapter 17.24**. All improvements shall comply with all of the following requirements, where applicable:
  1. Relevant improvements shall be reviewed by the Municipal Services Department to ensure conformance with the approved plans and specifications.
  2. Prior to submittal of a request for Final Plat approval, the Applicant shall complete all required improvements, except as follows:
    - a. In lieu of completing and installing all required improvements, a subdivision bond or other security shall be submitted by the applicant for approval by the City Attorney. A bond or alternative security shall be in an amount of one hundred fifty percent (150%) of the cost of the actual construction remaining. The applicant shall submit documentation of the cost of construction to the Municipal Services Director to support the determination of the amount required for bond or alternative security. Bonds or alternate security for short subdivisions shall be in effect for one (1) year, and shall be on forms approved by the City Attorney.
    - b. All improvements listed in the subdivision bond or approved security shall be installed by the contractor, and acceptable by the City, within one (1) year of accepting the bond or approved security.
    - c. The Director may approve one (1) extension of the subdivision bond or approved security for a period not to exceed one (1) year, provided that said request for an extension is filed with the Director at least sixty (60) calendar days prior to expiration of the bond or approved security.
    - d. If a time extension is approved, new security documents shall be submitted by the applicant. The new security shall be adjusted to accommodate increased costs for completing all required improvements. A new security shall not include additional construction requirements beyond the original scope of work. If the increased costs are not accepted by the surety, or if the Director denies the request for extension, and the required improvements are not complete, the City shall foreclose on the existing security, and the subdivision will be held in abeyance.
- L. **Final Plat Submittal Requirements.** An application for a Final Short Subdivision shall include all the following items:
  1. Applications must be submitted on forms provided by the City, and only on those approved forms that are in use at the time of submittal;
  2. A plat certificate from a title company licensed to do business in the State of Washington, dated within thirty (30) days of submitting the final subdivision application confirming that the title of



the lands corresponds with the owners described and shown on the plat and instrument of dedication.

3. A non-refundable fee per the current fee schedule or adopted fee resolution that is in place at the time of submission.
4. Three (3) full-size copies of the final plat, drawn in accordance with the requirements of **Chapter 17.15**.
5. Lot, block, and boundary closures for review by the Development Engineer.
6. A reduced set of all application drawings, each drawing on eleven inch (11") by seventeen inch (17") paper. Smaller sized drawings may be approved by the Director.
7. A copy of the Bond(s) with Bond number(s).

**M. Final Plat Mandatory Referral to Other Departments, Agencies, and Offices.** The Director shall distribute a copy of the Final Short Subdivision to each of the entities who responded or provided comment from their referral at the Preliminary Plat stage. The Director shall always distribute a copy of the Final Short Subdivision to the following entities:

1. Grant County Assessor
2. Grant County Auditor

**N. Time for Comment from Referrals.** For every notice or copy of a Final Short Subdivision sent to an entity listed in the preceding subsections, the Director shall notify the recipient that written recommendations will be accepted within seven (7) calendar days from the date the notification was sent. If no comment is received, the Final Plat will proceed to be processed under the assumption that the entity has no recommendation. However, Final Plat approval conditions shall not modify the terms of the Preliminary Plat approval conditions without written consent of the Applicant.

**O. Final Plat Criteria for Approval.** A Final Short Subdivision shall only be approved if all the following criteria and requirements are found to be met:

1. Owners listed on the plat correspond with the owners listed on the plat certificate.
2. Legal description on the plat is within the boundaries of the land described on the plat certificate.
3. Required improvements have been completed or other approved security has been approved in conformance with this chapter.
4. Plat is technically correct, includes valid certification by the applicant's land surveyor, and provides specific requirements per **Chapter 17.15**.
5. All public dedications that are required or approved for a subdivision, together with any restrictions or limitations thereon, shall be shown on the final plat. These areas shall be shown as dedications on the final plat; or deeds, municipal easements, or both, for properties outside the subdivision boundaries. All deeds and easements required with approval for a subdivision shall be provided for review and acceptance by the City prior to recording.
6. The proposed subdivision is in conformance with applicable zoning ordinances and land use controls.
7. If the subdivision lies in whole or in part in an irrigation district organized pursuant to state law, there shall be irrigation water right-of-way provided pursuant to state law.
8. If the subdivision is to include Covenants, Conditions, and Restrictions (CC&Rs) and/or the creation of a Homeowner's Association (HOA), these documents are prepared and ready to be recorded with the plat.

- P. Final Submittal.** The applicant shall remit the following payments, fees, mylars, and covenants for an approved Final Short Subdivision Final before being recorded:
1. A check payable to the Grant County Auditor sufficient to cover the recording fee.
  2. When applicable, payment in lieu of a dedication of land, or to mitigate a direct impact that has been identified as a consequence of the subdivision, pursuant to state law.
  3. All other reimbursements and payments that are required as a condition of approval.
  4. Two (2) original mylar plats, with notarized signatures of the owners.
  5. One (1) electronic copy of the plat to the Director, and one (1) electronic copy of the plat to the Grant County Assessor's office.
  6. All deferred city improvements that are required to run with the land, if any, signed by the owners and notarized, on forms provided by the Community Development Department.
- Q. Recording; Expiration.** After all fees and payments are accepted, and prior to recording, the approval signatures of the City Engineer and Community Development Director shall be affixed to the Final Plat mylars. The Director shall take two (2) original mylar plats with approval signatures to the Grant County Auditor for recording. One (1) of the two (2) mylar plats shall be conformed by the Grant County Auditor and returned to the City Engineer. Within one (1) year after a final plat is approved, the applicant shall provide all necessary documents for Final Submittal, with notarized signatures of the owners, and all payments and fees that are required with the plat, to the Director. If said documents and fees are not provided to the Director within one (1) year of final plat approval, the plat shall be expired.
- R. Vested Rights.** A Short Subdivision shall be governed by the terms of approval of the Final Plat, and the statutes, ordinances, and regulations in effect at the time of approval pursuant to state law, for a period of five (5) years after final plat approval. Except, if the City Council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision, modifications may be made according to such findings. All lots in a subdivision shall be a valid land use, notwithstanding changes in zoning laws, for a period of five (5) years from the date of Final Plat approval.
- S. Amendment.** Minor amendments to Short Subdivisions may be accomplished via the Boundary Line Adjustment process in MLUDC 15.02.07.020. Major amendments or alterations shall be processed according to the substantive and procedural requirements of the original application. The determination of whether an amendment is minor or major is within the sound discretion of the Director.

#### 15.02.07.040 Major Subdivision

- B. In General.** Major subdivisions are a significant development activity that require thorough review by the Department and other agencies with jurisdiction, call for the input and consideration of public comment, and overall seek careful determination of whether and how the proposal will satisfy the policy objectives of MLUDC 15.02.07.010. As such, a request for a Major Subdivision Preliminary Plat is processed as a Type III application, with the Final Plat following a Type I process.
- C. Definition and Process Type.** The regulations in this section apply to all requests for the division or redivision of land for the purpose of sale, lease, or transfer of ownership into ten (10) or more lots. Major Subdivisions generally follow a two-step process:

1. **Preliminary Plat.** The initial preparation and submission to the City is called a Preliminary Plat and shall be processed as a Type III Permit. The requirements in this section are supplementary to the general requirements and procedures for the Processing of a Type III Permit found in MLUDC 15.02.02.070 and 15.02.03.
  2. **Final Plat.** After Preliminary Plat approval for a Major Subdivision, the second stage for final approval requires an application for Final Plat approval. The Final Plat approval is in the nature of a ministerial, non-discretionary process that reviews the application to ensure conformity with the approved Preliminary Plat, as well as state and local laws. As such, a request for Final Plat approval is processed as a Type I application. See MLUDC 15.02.02.050 and 15.02.03.
- D. Preliminary Plat Submittal Requirements.** An application for a Major Subdivision Preliminary Plat shall include all the following items:
1. Applications must be submitted on forms provided by the City, and only on those approved forms that are in use at the time of submittal;
  2. A non-refundable fee per the current fee schedule or adopted fee resolution that is in place at the time of submission.
  3. A reduced set of all application drawings, each drawing on eleven-inch (11") by seventeen-inch (17") paper. Smaller sized drawings may be approved by the Director.
  4. A plat certificate from a title company licensed to do business in the State of Washington confirming that the title of the lands corresponds with the owners described and shown on the plat and instrument of dedication. The plat certificate shall be dated within thirty (30) calendar days of filing.
  5. Three (3) full-size copies of the preliminary plat. The preliminary plat shall be a neat and accurate drawing, stamped and signed by a land surveyor. The preliminary major plat shall show sufficient detail and information to provide verification that the proposed subdivision layout can meet all approval requirements of a subdivision. The format shall be as specified in Chapter 17.15, with the ultimate goal of the applicant to provide a final plat per specifications in Chapter 17.15. Specific items that are required on a preliminary plat are listed below:
    - a. Name of proposed subdivision, names of all existing streets within the survey, and names of all proposed streets.
    - b. Boundaries of proposed subdivision established by the preliminary survey, and locations of the monuments found and established during the preliminary survey.
    - c. All proposed lots with their dimensions, lot numbers, block numbers, and lot areas.
    - d. Location and dimension of all existing and proposed streets, alleys, rights-of-way, municipal easements, public utility easements, and other public lands within and adjacent to the proposed subdivision.
    - e. Location and dimensions of all existing and proposed USBR irrigation water rights-of-way on and adjacent to the proposed subdivision.
    - f. Legal description of land within the proposed subdivision.
    - g. Name, address, and seal of the land surveyor who made the preliminary survey.
    - h. Date map is prepared, vicinity map, scale, north arrow, basis of bearing, vertical datum.
  6. Three (3) full-size copies of the site plan. Site plans shall be provided on a separate sheet from the plat.
  7. A Concurrency statement that demonstrates the proposal satisfies all applicable requirements from MLUDC XXXXX Concurrency.

- a. Traffic memos are required if the subdivision will increase traffic by more than one hundred (100) trips per day or more than ten (10) peak-hour trips.
  - 8. An environmental checklist for the proposed subdivision is required to be completed by the applicant and submitted with all subdivision applications. See MLUDC XXXXXX SEPA.
  - 9. Variance requests, if any.
- E. Preliminary Plat Mandatory Referral to Other Departments, Agencies, and Offices.** The Director shall distribute a copy of the Preliminary Major Subdivision to each of the following entities:
- 1. The Planning Department
  - 2. Public Utility District
  - 3. Gas Company
  - 4. Telephone Company
  - 5. Engineering Division of the Municipal Services Department
  - 6. Fire Department
  - 7. Building Division of the Community Development Department
  - 8. Grant County local health jurisdiction
  - 9. Irrigation districts with jurisdiction
  - 10. Grant County Assessor
  - 11. Communications Company
  - 12. Grant County Auditor
  - 13. United States Bureau of Reclamation
  - 14. Grant County Emergency Management
  - 15. United States Post Office
  - 16. Washington State Department of Fish and Wildlife
  - 17. Washington State Department of Ecology
  - 18. Grant Transit Authority
  - 19. School District
  - 20. Grant County Treasurer
  - 21. Moses Lake Police Department
  - 22. Moses Lake Parks and Recreation Department
  - 23. Moses Lake City Manager
  - 24. Any other agency, department, or offices determined by the Director.
- F. Preliminary Plat Contingent Referrals to Other Departments, Agencies, and Offices.** The Director shall distribute a copy of the Preliminary Major Subdivision to each of the following entities if the specific condition is present, or at the discretion of the Director:
- 1. The Grant County Planning Department and Grant County Public Works Department if the proposed subdivision abuts the municipal boundary.
  - 2. The Washington State Department of Transportation if the proposed subdivision abuts the right-of-way of a state highway, or if the subdivision is within two (2) miles of the boundary of a state or municipal airport.
- G. Time for Comment from Referrals.** For every notice or copy of a Preliminary Major Subdivision sent to an entity listed in the preceding subsections, the Director shall notify the recipient that written recommendations will be accepted within thirty (30) calendar days from the date the notification was sent. If no comment is received, the Preliminary Plat will proceed to be processed under the assumption that the entity has no recommendation.

- H. Preliminary Plat Criteria for Approval.** A Preliminary Major Subdivision shall only be approved if all the following criteria and requirements are found to be met:
1. The subdivision shall make adequate provision for roads, streets, curbs, gutters, sidewalks, street lighting circuits, alleys, municipal utilities (sewer, storm, and water), drainage ways, irrigation water rights-of-way, other public ways, public access, and other improvements as deemed necessary in conformance with **Community Street and Utility Standards, Chapter 17.21, Chapter 17.24,** and other codes and regulations that are applicable.
  2. The subdivision shall comply with all zoning and health regulations.
  3. The subdivision shall be consistent with the Comprehensive Plan.
  4. The applicant shall make arrangements with Grant County PUD for payment of all street lighting fees.
  5. The subdivision shall provide for irrigation water rights-of-way pursuant to state law.
  6. The subdivision shall demonstrate that it will meet all Concurrency requirements.
  7. The applicant has prepared and submitted all required documents and information mandated by the State Environmental Policy Act (RCW 43.21C) and MLUDC **XXXXX.**
  8. Environmental information shall be prepared and submitted by the applicant in accordance with the guidelines established under the State Environmental Policy Act of 1971, as amended. Said information is a part of and shall accompany the preliminary subdivision application.
  9. The subdivision shall have incorporated or be subject to all conditions of approval per City and referral agency requirements.
  10. The subdivision and dedication will serve the public interest.
- I. Simultaneous Processing.** Unless the applicant requests otherwise, a Preliminary Major Subdivision must be processed simultaneously with applications for accompanying rezones, variances, site plan approvals, and any other quasi-judicial or administrative actions to the extent that the procedural requirements for those actions allow for simultaneous processing. See also MLUDC 15.02.03.090 Consolidated Permit Process.
- J. Approval and Consent to Proceed.** Approval of a Preliminary Major Subdivision shall constitute approval for the Applicant to proceed to develop construction plans and specifications for all facilities and improvements, and to prepare the final subdivision application.
- K. Expiration of Preliminary Plat Approval.** A Preliminary Major Subdivision approval shall expire and become null and void after one (1) year from the date of approval unless an extension is approved by the Director. The Director may grant one (1) extension for a period not to exceed one (1) year, provided that the applicant submits a written request for an extension at least thirty (30) calendar days before the expiration of the approval.
- L. Improvements.** Once an Applicant receives approval of their Preliminary Major Subdivision, the Applicant shall proceed with the construction of required improvements in accordance with **Chapter 17.24.** All improvements shall comply with all of the following requirements, where applicable:
1. Relevant improvements shall be reviewed by the Municipal Services Department to ensure conformance with the approved plans and specifications.
  2. Construction of municipal improvements that require a Street and Utility Construction Permit shall be obtained in accordance with **Chapter 12.16.**
  3. Prior to submittal of a request for Final Plat approval, the Applicant shall complete all required improvements, except as follows:

- a. In lieu of completing and installing all required improvements, a subdivision bond or other security shall be submitted by the applicant for approval by the City Attorney. A bond or alternative security shall be in an amount of one hundred fifty percent (150%) of the cost of the actual construction remaining. The applicant shall submit documentation of the cost of construction to the Municipal Services Director to support the determination of the amount required for bond or alternative security. Bonds or alternate security for Major Subdivisions shall be in effect for two (2) years, and shall be on forms approved by the City Attorney.
- b. All improvements listed in the subdivision bond or approved security shall be installed by the contractor, and acceptable by the City, within two (2) years of accepting the bond or approved security.
- c. The Director may approve one (1) extension of the subdivision bond or approved security for a period not to exceed one (1) year, provided that said request for an extension is filed with the Director at least sixty (60) calendar days prior to expiration of the bond or approved security.
- d. If a time extension is approved, new security documents shall be submitted by the applicant. The new security shall be adjusted to accommodate increased costs for completing all required improvements. A new security shall not include additional construction requirements beyond the original scope of work. If the increased costs are not accepted by the surety, or if the Director denies the request for extension, and the required improvements are not complete, the City shall foreclose on the existing security, and the subdivision will be held in abeyance.

**M. Final Plat Submittal Requirements.** An application for a Major Subdivision Final Plat shall include all the following items:

1. Applications must be submitted on forms provided by the City, and only on those approved forms that are in use at the time of submittal;
2. A plat certificate from a title company licensed to do business in the State of Washington, dated within thirty (30) days of submitting the final subdivision application confirming that the title of the lands corresponds with the owners described and shown on the plat and instrument of dedication.
3. A non-refundable fee per the current fee schedule or adopted fee resolution that is in place at the time of submission.
4. Three (3) full-size copies of the final plat, drawn in accordance with the requirements of **Chapter 17.15**.
5. Lot, block, and boundary closures for review by the Development Engineer.
6. A reduced set of all application drawings, each drawing on eleven-inch (11") by seventeen-inch (17") paper. Smaller sized drawings may be approved by the Director.
7. A copy of the Bond(s) with Bond number(s).

**N. Final Plat Mandatory Referral to Other Departments, Agencies, and Offices.** The Director shall distribute a copy of the Final Major Subdivision to each of the entities who responded or provided comment from their referral at the Preliminary Plat stage. The Director shall always distribute a copy of the Final Major Subdivision to the following entities:

1. Grant County Assessor
2. Grant County Auditor

- O. Time for Comment from Referrals.** For every notice or copy of a Final Major Subdivision sent to an entity listed in the preceding subsections, the Director shall notify the recipient that written recommendations will be accepted within fifteen (15) calendar days from the date the notification was sent. If no comment is received, the Final Plat will proceed to be processed under the assumption that the entity has no recommendation. However, Final Plat approval conditions shall not modify the terms of the Preliminary Plat approval conditions without written consent of the Applicant.
- P. Final Plat Criteria for Approval.** A Final Major Subdivision shall only be approved if all the following criteria and requirements are found to be met:
1. Owners listed on the plat correspond with the owners listed on the plat certificate.
  2. Legal description on the plat is within the boundaries of the land described on the plat certificate.
  3. Required improvements have been completed or other approved security has been approved in conformance with this chapter.
  4. Plat is technically correct, includes valid certification by the applicant's land surveyor, and provides specific requirements per **Chapter 17.15**.
  5. All public dedications that are required or approved for a subdivision, together with any restrictions or limitations thereon, shall be shown on the final plat. These areas shall be shown as dedications on the final plat; or deeds, municipal easements, or both, for properties outside the subdivision boundaries. All deeds and easements required with approval for a subdivision shall be provided for review and acceptance by the City prior to recording.
  6. The proposed subdivision is in conformance with applicable zoning ordinances and land use controls.
  7. If the subdivision lies in whole or in part in an irrigation district organized pursuant to state law, there shall be irrigation water right-of-way provided pursuant to state law.
  8. If the subdivision is to include Covenants, Conditions, and Restrictions (CC&Rs) and/or the creation of a Homeowner's Association (HOA), these documents are prepared and ready to be recorded with the plat.
- Q. Final Submittal.** The applicant shall remit the following payments, fees, mylars, and covenants for an approved Final Major Subdivision before being recorded:
1. A check payable to the Grant County Auditor sufficient to cover the recording fee.
  2. When applicable, payment in lieu of a dedication of land, or to mitigate a direct impact that has been identified as a consequence of the subdivision, pursuant to state law.
  3. All other reimbursements and payments that are required as a condition of approval.
  4. Two (2) original mylar plats, with notarized signatures of the owners.
  5. One (1) electronic copy of the plat to the Director, and one (1) electronic copy of the plat to the Grant County Assessor's office.
  6. All deferred city improvements that are required to run with the land, if any, signed by the owners and notarized, on forms provided by the Community Development Department.
- R. Recording; Expiration.** After all fees and payments are accepted, and prior to recording, the approval signatures of the City Engineer and Community Development Director shall be affixed to the Final Plat mylars. The Director shall take two (2) original mylar plats with approval signatures to the Grant County Auditor for recording. One (1) of the two (2) mylar plats shall be conformed by the Grant County Auditor and returned to the City Engineer. Within one (1) year after a final plat is

approved, the applicant shall provide all necessary documents for Final Submittal, with notarized signatures of the owners, and all payments and fees that are required with the plat, to the Director. If said documents and fees are not provided to the Director within one (1) year of final plat approval, the plat shall be expired.

- S. Vested Rights.** A Major Subdivision shall be governed by the terms of approval of the Final Plat, and the statutes, ordinances, and regulations in effect at the time of approval pursuant to state law, for a period of five (5) years after final plat approval. Except, if the City Council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision, modifications may be made according to such findings. All lots in a subdivision shall be a valid land use, notwithstanding changes in zoning laws, for a period of five (5) years from the date of Final Plat approval.

#### 15.02.07.070 Binding Site Plans

- A. In General.** A Binding Site Plan is an alternative method of dividing land that can only be used in specific circumstances that call for an alternative process. This section is enacted under the authority of RCW 58.17.035 and is intended to full comply with this and all other applicable state laws. The requirements and procedures herein are designed to ensure the orderly and efficient division of land into parcels for the purpose of lease or sale for industrial or commercial uses, or for condominiums and manufactured home communities. Binding Site Plans are processed as a Type II permit application.
- B. When Allowed.** A Binding Site Plan may only be used for one of the following types of development activities to take place on a single lot:
1. Divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4);
  2. Divisions of property for lease as provided for in RCW 58.17.040(5) – Manufactured Home Communities; or
  3. Divisions of property as provided for in RCW 58.17.040(7) – Condominiums.
- C. Forms, Submission, and Fees.** An application for a Binding Site Plan must comply with the following requirements in order to be accepted as Counter-Complete and initiate the review process:
1. Applications must be submitted on forms provided by the City, and only on those approved forms that are in use at the time of submittal.
  2. A non-refundable fee per the current fee schedule or adopted fee resolution that is in place at the time of submission.
  3. The application shall include a preliminary record of survey.
  4. The application shall be accompanied by four (4) full-size copies of the record of survey for the binding site plan, one (1) eleven inch (11") by seventeen inch (17") reduction of the record of survey, and a plat certificate that is dated within thirty (30) days of the application.
  5. The record of survey for a binding site plan shall be a neat and accurate drawing in black permanent ink prepared, stamped, and signed by a land surveyor. The trimmed size of the record of survey shall measure eighteen inches (18") by twenty-four inches (24") with a two-inch (2") margin on the left margin, a three-fourths inch (3/4") margin on the top, and a half inch (1/2") border on the remaining two (2) margins. The record of survey shall be drawn on two (2) or more sheets if the scale necessary to accommodate the map on one (1) sheet would unduly congest the drawing.



- 6. A Concurrency statement that demonstrates the proposal satisfies all applicable requirements from MLUDC XXXXX Concurrency.
- 7. All environmental documents and information that are required to comply with MLUDC XXXXX SEPA.

**D. Record of Survey Contents.** The record of survey for the Binding Site Plan shall contain all the following information and/or be presented in to following format:

- 1. The title to read as follows;  
 (NAME OF THE SUBDIVISION, LOT, AND BLOCK)  
 (TYPE OF) BINDING SITE PLAN  
 A Record of Survey
- 2. All existing streets, municipal easements, and public utility easements, including those shown on an underlying preliminary subdivision.
- 3. Parcel locations including dimensions and number or letter designations.
- 4. Distances and bearings for line segments for each parcel, and length, delta angle, and radius for all curved lines for each parcel.
- 5. The names of all subdivisions immediately adjacent thereto.
- 6. All public dedications shown on the plat being overlaid shall be shown on the record of survey for the binding site plan.
- 7. The scale of the record of survey for a binding site plan shall be drawn one hundred feet (100') per inch, or at an alternate scale that is approved by the Community Development Director. Alternate scales shall be at ten (10), twenty (20), thirty (30), forty (40), fifty (50), or sixty (60) feet per inch; or multiples of ten (10) to these six (6) scales. A graphical scale shall be included on the record of survey.
- 8. A vicinity map at a sufficient scale that shows the location of the binding site plan.
- 9. *Surveyor's Certificate.* In substantially the following form:  
 This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of \_\_\_\_\_ in \_\_\_\_\_, 20\_\_\_\_\_.  
 \_\_\_\_\_  
 Name of Person  
 (Signed and Sealed) \_\_\_\_\_  
 Certificate No. \_\_\_\_\_
- 10. *Auditor's Certificate.* In substantially the following form:  
 Filed for the record this day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_ M.  
 in book \_\_\_\_\_ of binding site plans at page \_\_\_\_\_ at the request of the City of Moses Lake.  
 Grant County Auditor  
 \_\_\_\_\_  
 by Deputy Auditor
- 11. The Grant County Treasurer's Certificate shall be included on the last sheet or sheets of all binding site plans as follows:

Treasurer's Certificate: I hereby certify that all taxes and assessments now due and payable according to the records of Grant County, including \_\_\_\_\_ advanced taxes, have been fully paid.

\_\_\_\_\_  
Grant County Treasurer

\_\_\_\_\_  
Date

**12. Approvals:**

Examined and approved by the Moses Lake City Manager on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
City Manager

- E. Record of Survey Contents if Re-Division.** If the binding site plan is a re-division of an existing binding site plan, the parcels of the preceding binding site plan shall be shown by dotted lines in their proper positions in relation to the new arrangement of the binding site plan, the new binding site plan being so clearly shown in solid lines as to avoid ambiguity.
- F. Referral to Other Agencies.** Upon receipt of a Counter-Complete application for a Binding Site Plan, copies of the record of survey for the binding site plan will be distributed for review and comment to the following offices:
  - 1. Development Engineering
  - 2. Fire Department
  - 3. Grant County Assessor
  - 4. Grant County Auditor
- G. Time for Comment from Referrals.** All comments from a referral agency shall be returned to the Director, or their designee, within fourteen (14) days after the record of survey was distributed for review. If an agency determines the Binding Site Plan is unacceptable, this information shall be transmitted to the applicant within twenty (20) days of receiving the application as Counter-Complete.
- H. Criteria of Approval.** For a Binding Site Plan to be approved, it shall satisfy all the following criteria:
  - 1. The plan shall make adequate provision for roads, streets, curbs, gutters, sidewalks, street lighting circuits, alleys, municipal utilities (sewer, storm, and water), drainage ways, irrigation water rights-of-way, other public ways, public access, and other improvements as deemed necessary in conformance with **Community Street and Utility Standards, Chapter 17.21, Chapter 17.24**, and other codes and regulations that are applicable.
  - 2. The plan shall comply with all zoning and health regulations.
  - 3. The plan shall be consistent with the Comprehensive Plan.
  - 4. The plan is in compliance with SEPA and MLUDC **XXXXX**.
  - 5. The plan shall demonstrate that it will meet all Concurrency requirements.
  - 6. All required monuments are set, and all parcel corners as shown on the record of survey are staked.
  - 7. The survey and drafting stands for the records of survey comply with all the regulations set forth in state law.
- I. Approval and Consent to Proceed.** After all conditions of approval for a Binding Site Plan are met and acceptable to the Director, the applicant may submit the final mylars, electronic copies, and fees to the City for final approval signatures and recording.

- J. Final Recording Requirements.** Once an application for a Binding Site Plan has been approved by the Director, the Applicant and Department shall proceed to final recording of the plan according to following requirements and procedures:
1. Binding Site Plans shall be recorded as a record of survey.
  2. The applicant shall remit a check that is payable to the Grant County Auditor for the recording fees.
  3. The Applicant shall submit two (2) full-size copies of the record of survey on mylar to the Community Development Department. Additionally, the applicant shall submit one (1) electronic copy to the Community Development Director, and one (1) electronic copy to the Grant County Assessor's office.
  4. The Community Development Department shall take the two (2) mylar record of surveys to the Grant County Auditor after the mylars are signed by the City Manager. One (1) mylar record of survey shall be conformed by the Grant County Auditor and returned to the City Engineer.
  5. Binding site plans are not valid and do not confer any rights or privileges upon the property or its owners unless the record of survey for a binding site plan bears the approval by the City Manager.
- K. Amendment.** Minor amendments to Binding Site Plans may be accomplished via the Boundary Line Adjustment process in MLUDC 15.02.07.020. Major amendments or alterations shall be processed according to the substantive and procedural requirements of the original application. The determination of whether an amendment is minor or major is within the sound discretion of the Director.