

**Chapter 18.02**  
**PERMIT APPLICATION REVIEW, VESTING**  
**AND EXISTING DEVELOPMENT**

**18.02.010 Intent.**

The intent of this Chapter is to address applications, reviews, approvals, and consolidation of proceedings in the administration of applications for development permits, as well as the administration of land use laws in association with vesting laws, non-conforming uses, and existing lots of record. Development permit, or development permit application shall mean: any discretionary land use or environmental permit or license or determination required from a local government in a multi-regulation review process, including, but not limited to, construction or exterior alteration of structures, dredging, drilling, dumping, filling, earth movement, clearing or removal of vegetation, Class IV general forest practices, or other site disturbance which either requires a permit, approval or authorization from the County or from another public agency, but excluding the adoption of amendment of the comprehensive plan or development regulations or health regulations, or any amendments thereto.

**18.02.020 Purpose.**

This Chapter describes processes for the interpretation and application of County land use regulations, and supplements procedures on processing of applications for permits under Cowlitz County Code (CCC) Chapter 11.36 and Titles 15, 16, 17, 18 and 19.

**18.02.030 Administration and interpretation.**

A. Responsible Official. The Responsible Official is responsible for administering the provisions of this Title. For purposes of this Title, the “Responsible Official” shall be the Director of the Department responsible for the applying the permitting regulations and decisions. In addition to the Director of Building and Planning, the Responsible Official responsible for regulations and decision making may reside in other departments or offices pursuant to County organization or pursuant to state statute, as with the County Engineer, or with the County Health Officer and Health Administrator, and their designees. In each case, the relevant Code Titles or statutes shall address the particular department heads or officials responsible for official administrative decisions and interpretations.

B. Counter Information. From time to time, County officials and departmental staff may respond to inquiries from members of the public regarding the applicability and interpretation of various code provisions prior to, or outside of the context of a specific development permit application. Unless an official interpretation request is filed in conjunction with a particular development permit application, as described below, general at-the-counter inquiries for information and regulations shall be provided as a public convenience only, and shall not be processed or subject to appeal as a final decision pursuant to the provisions of County regulations and state law.

C. Official administrative interpretations.

1. Generally. Administrative interpretations are decisions by a Responsible Official, defined above, as to the meaning, application, or intent of any of the provisions of their respective County regulations and procedures. Administrative interpretations are also available for questions regarding a map and parcel boundaries or an alleged scrivener’s mapping error that does not involve public hearing for reconsideration or rebalancing of designation or boundary criteria. Procedural provisions and statements of policy shall not be subject to this process. A decision by the Responsible Official that the interpretation request is not subject to this process shall be final, does not require a formal notice of decision, and is not subject to local appeal.

2. Decision Criteria. The Responsible Official shall research and consider the original intent of the language or provision at the time of its adoption. The Responsible Official shall also consider relevant provisions of any comprehensive plan or other applicable policy document.

3. Process. Requests for administrative interpretation shall be written and shall concisely identify the singular issue of interpretation, and its context and application in the desired interpretation by the requestor. A formal notice of decision of a Responsible Official interpretation shall be issued within 45 days from the date of receipt.

4. Appeals. Appeals of official administrative interpretations shall be available, and shall follow the Hearings Examiner process of Chapter 2.05 CCC, as presently codified or later amended. Standing to bring an appeal shall be limited to aggrieved parties.

5. Administrative Decision. Administrative decisions are land use decisions regarding the application of a specific Code section(s) where typically there is no legislative act or appellate review.

D. Responsibilities of applicant and department.

Permit applicants are responsible for cooperating in the review process, including, but not limited to:

1. Reading the code for their project;
2. Submitting applications that are fully complete so they can be processed in a timely manner;
3. Monitoring time limitations and review deadlines for applications;
4. Paying the appropriate fees;
5. Managing their project team to ensure requested information is complete and provided in a timely manner; to the extent practicable, consolidating inquiries to minimize inefficient review; and providing a single point of contact for all communication;
6. Addressing issues with department leadership when they think conditions or service is not code-based or appropriate; and
7. Maintaining Active Applications. If an application expires, a new application may be filed with the department, but it shall be subject to new application fees and a new vesting date.

The Department is responsible for processing applications in a manner that is timely and adequate, including, but is not limited to:

1. Providing applications, checklists, and information to direct the applicant to pertinent parts of the code that must be met for a fully complete application;
2. Processing the application in the times established within this chapter;
3. Ensuring the applicant, or point of contact, is notified in a timely manner when additional materials for review are required;
4. Ensuring project conditions are supported by applicable federal, state, or local law; and
5. Providing a process for applicants to address concerns regarding conditions or departmental service delivery.

**18.02.040 Lot Review and identification.**

A. Lot Identification. A lot identification is an administrative review and determination that is required as part of a complete application for a development permit, as described herein. Lot identification will be conducted as part of development review, or may be requested separately as an administrative review by the Responsible Official or individual property owner. A lot identification determination may be appealed to the Hearing Examiner by the property owner, or by any other aggrieved party with standing as part of a final decision on a permit application. An appeal of a lot identification determination shall include a statement and such sufficient evidence as is necessary for the County to determine that the party appealing is aggrieved by the determination and, therefore, has standing to raise this issue on appeal. Because public notices on pending development permits and appeals do not require a lot identification determination, appeals are not limited to parties of record for

purposes of this, single issue. Lot identification shall be a departmental review to determine whether a lot is legally created and, therefore, eligible for permits, and including, but not limited to the following considerations:

1. Conveyance. The County shall determine whether a lot was legally created. A legally created lot is a legal, lot of record under state subdivision and planning laws, or a lot determined as being owned by an innocent purchaser meeting the requirements of RCW 58.17.210. A lot of record may also have been created as an exception under RCW 58.17.040 or recorded survey under RCW 58.09, but may or may not be eligible for development permits. Parcels not qualifying as a lot of record may violate state law if conveyed, and may not be considered eligible for development approvals.

2. Development. If a lot of record is reviewed under subsection (1), above, the County shall also determine whether or not the lot of record will be eligible for development permits. To be considered for development permits, the lot of record must be legally available to develop, and either meet the minimum lot size requirements of the zoning district in which it is located, or, if the lot of record does not meet the minimum lot size requirements of the zoning district in which it is located (a “substandard lot of record”), it must meet one or more of the following exemptions:

a. The lot was property platted and approved by Cowlitz County on or after effective dates of its short, rural, urban or large subdivision regulations applicable to the lot. Lots restricted from development by prior County decisions or actions, or legal decisions or actions shall not be considered for development purposes regardless of lot size or history.

b. The lot was legally created prior to effective dates of the County short, rural, urban or large subdivision regulation thereafter applicable to this lot, as evidenced by a recorded survey, or by the payment of excise tax or the recording of the deed, or the recorded commencement of a contract of sale in the County Auditor’s Office.

c. A separate and distinct assessor’s tax parcel number, alone, shall not be sufficient evidence that the lot meets the definition of a lot of record. Tax parcel numbers are provided for the orderly collection of property taxes and do not establish legal subdivision or zoning compliance.

d. Once issued, a lot identification shall constitute the bases for regarding a lot of record as eligible for further development permit consideration and for purposes of legal description in an application for development. Any future development permit requests utilizing the same legal description shall not require a new lot identification review, but may rely on the existing lot identification. Nothing in this lot identification section shall be interpreted to replace or supersede any requirements of any applicable building code, onsite septic standard or water availability standard.

**18.02.050 Consolidation of development permit applications.**

The County shall consolidate the development application approval process and review, where practicable, in order to integrate the development permit and environmental review process and avoid duplication of the review processes. Consolidated permit processing shall follow the review and approval process of the highest numbered permit level represented among the required permits. However, the County may determine whether the multiple permit applications shall be processed concurrently or independently, except that any variance associated with a preliminary subdivision division review shall be processed concurrently with the proposed land division.

**18.02.060 Integration of SEPA review with development permit review.**

A. Developments subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed in accordance with the policies and procedures contained in CCC Chapter 19, and State Environmental Policy Act, RCW Chapter 43.21C and WAC Chapter 197-11.

B. To the maximum extent possible, SEPA review shall be combined and integrated in all development permit processing. SEPA review and the review of a development application shall be

combined and integrated for all development permits not categorically exempt from SEPA or for which environmental review has not already been completed, in the following manner:

1. SEPA review, if required, should be analyzed within a single, development permit review process that includes all land use, environmental, public and governmental reviews, as addressed by this Chapter. If applicable development regulations already require studies that adequately analyze a project's specific probable adverse environmental impacts, then additional or redundant studies shall not be required under SEPA.

2. Documents or studies prepared in the development permit review process under the requirements of SEPA or under specific development regulations shall be prepared so that they can be reviewed by the public, the County and other agencies during applicable commenting periods.

3. A SEPA threshold determination and/or a scoping notice may be issued with any public notice required under the pending, associated development application.

4. Pursuant to RCW 43.21C.060 and -.075, and WAC 197-11, as referenced in CCC Chapters 19.11 and 2.05, any appeal of a determination of significance, or any appeal of procedure or the scope of local authority to review, determine, approve, or condition thereunder may proceed in advance of any hearings or appeals of the underlying development permit(s), and any appeal of a determination of nonsignificance pursuant to CCC 19.11.080 shall be combined with and processed at the same time as the hearings or appeals of the underlying development permit(s).

C. Nothing herein shall restrict County's authority to impose conditions on permits pursuant to the state SEPA Chapter 43.21C RCW and WAC 197-11-600.

#### **18.02.070 Pre-planning and pre-application review.**

A. Pre-planning. Applicants may seek informal contact with County staff prior to the formal pre-application meeting, although such pre-planning discussions may not be mandatory. The purpose of such discussions is to generally and informally acquaint the applicant on options on development, application requirements, design standards, design alternatives, other possible permits and processing.

B. Pre-application. Applicants may be required to participate in a pre-application meeting by the Responsible Official. No pre-application meeting will be required for administrative interpretations, general administrative decisions, minor variances, boundary line adjustments, or flood area development permits. The purpose of such meeting is to conduct a review of the development application prior to formal submission to the Department. Pre-application review will include discussion of requirements for application completeness, code interpretation, particular permit or approval requirements, fees, processing pathways and anticipated schedule. In order to expedite development review, County may invite other affected jurisdictions and public agencies or entities to the meeting.

#### **18.02.080 Contents of application.**

A. The applicant shall apply for all permits and approvals required by the County Code.

1. A development application shall be declared complete only when the County has received all of the following:
  - a. Completed application form, including written description of all elements of the proposal;
  - b. Letter of Legal Authorization by the landowner(s), if applicant is not the landowner(s);
  - c. Application fee (as established by the Board of County Commissioners);
  - d. Grading, fill or clearing supplemental details in a format requested by the Responsible Official;
  - e. Site plan to be provided on paper sized in letter, legal or 11" x 17". Unless waived in writing by the Responsible Official, the site plan shall contain the following:

- i. Scale, including graphic scale and a north-identifying arrow;
  - ii. Date that the site plan was prepared;
  - iii. Existing legal property lines and dimensions;
  - iv. Location, dimensions, square footage and use of all existing and proposed structures, as well as distance of these structures from property lines and any other structures;
  - v. Location, scope and purpose of all proposed filling, grading and clearing, as well as the distance from property lines and structures;
  - vi. Location of existing and proposed utilities and utilities easements, including, as applicable, septic tank, septic drainfield and reserve area, sewer and water lines, electrical, natural gas and telecommunication lines, fire hydrant, propane tank, and domestic water well or source. Include the dimensions all existing and proposed utilities, as well as the distance from property lines and any other structures.
  - vii. Location and name(s) of nearest public roadway, including centerline dimensions;
  - viii. Existing and proposed driveway locations, and their access to abutting public or private roadways;
  - ix. Existing and proposed parking areas;
  - x. All easement locations, and their dimensions and purpose, as applicable;
  - xi. Existing public and private waterbodies, including streams, creeks, rivers, ponds, wetlands, ditches, and stormwater retention;
  - xii. Existing slopes of land within 50 feet of the proposed development activity, including direction of slope.
- f. A fully completed, signed, and acknowledged environmental checklist for development subject to review under SEPA and/or a completed Critical Areas Ordinance checklist.
  - g. Other items as identified at a pre-application meeting or post-application staff consultation. If a pre-application meeting is held, the pre-application checklists and notes shall be submitted as part of the application package.
- B. Determination of completeness.
- 1. As part of application review, the responsible official shall:
    - a. Verify information submitted by applicant;
    - b. A determination of completeness of an application shall not preclude the Responsible Official from requesting, in writing, additional information or studies either at the time of the notice of completeness or, subsequently, if new information is required or substantial changes in the proposed development proposal occur.
  - 2. The determination of completeness may include the following as optional information:
    - a. A preliminary determination of those development regulations that will be used for project mitigation.
    - b. A preliminary determination that the type of land use is permitted, either outright or under limited or special circumstances on the site.
    - c. A preliminary determination of whether the proposed density is consistent with applicable Comprehensive Plan designations, zoning designations and development regulations.
    - d. A preliminary determination on other information the County chooses to include.
  - 3. If additional permitting needs are identified, including those for which the responsible official does not have sole jurisdiction, these processes shall be completed prior to issuance of Planning Clearance.

- a. If an application under review is placed on-hold pending receipt of additional information, it may remain on-hold for one year from the date of notification. If requested materials are not received within one year, the application will expire, and a new application must be submitted. One extension of 90 days may be granted to the applicant, provided action is being taken to complete the application and reinstate the review process.
    - b. A determination of completeness is valid for five (5) years upon issuance unless invalidated by the responsible official due to a serious threat to public health, safety or welfare.
  - 4. Revisions to a complete application.
    - a. A revision of a complete application is required when development is proposed on a site that was not identified on the previously reviewed and approved application plan, that is outside the previously approved area of impact, or that involves a change in use or site conditions that was not previously identified.
      - i. Minor Revisions are those that do not result in a change in conformance with review criteria. Minor Revisions require submittal of a new application form, revised site plan, and fee (as established by the Board of County Commissioners).
      - ii. Substantial Revisions are those in which the site or the proposed development activity has changed in a way that may impact conformance with review criteria. Substantial Revisions will require submittal of a new application form, site plan, application fee (as established by the Board of County Commissioners), and additional materials as necessary to demonstrate conformance with review criteria.
    - b. Revisions will be processed and reviewed as outlined in subsections 1 and 2, above.

**18.02.090 Existing development.**

A. Continuation. Except as otherwise provided in this Chapter and/or as referenced in CCC 18.02.020, the lawful use of any building, land or premises, existing on the effective date of adoption or amendment of this chapter, may be continued although such use does not conform to the provisions hereof. If such nonconforming use is discontinued for a period of 12 months or more, any future use of said building, land or premises shall be consistent with the provisions of this chapter. A structure occupied by a nonconforming residential use may lawfully be utilized as set forth in RCW 36.70.990 and RCW 70.128.140 provided the structure remains of similar in size, facilities and occupancy to the nonconforming residential use;

B. Expansion of nonconforming use.

1. The expansion of a pre-existing use to a portion of a structure which was arranged or designed for the pre-existing use at the time of passage of the land use ordinance is not an expansion of the nonconforming, pre-existing use.

2. The expansion of a nonconforming use by addition or enlargement shall require a special use permit. The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable land use district regulations except the use restrictions and complies with the siting standards set forth in CCC 18.10.355, subsections (C.1-4) and (D).

3. For the purposes of this section, the expansion of a nonconforming surface mining operation shall require a special use permit unless the expansion is being conducted in accordance with a previously approved special use permit.

C. Zoning change – continuation. When zoning is changed, existing nonconforming uses may be continued consistent with the provisions of this Section.

D. Change to another nonconforming use. If a pre-existing use which is nonconforming is changed, it shall be changed to a use conforming to CCC Chapter 18.10. Such change shall not require the new water availability at a level greater than that currently approved for the subject property, and that the new nonconforming shall not result in greater impacts upon surrounding properties than did the original nonconforming use.

E. Damage or destruction – rebuilding permitted. If a nonconforming use or physical feature of a building or group of buildings is destroyed by any natural or accidental cause, said use or structure may be rebuilt within one year following destruction and devoted only to that pre-existing nonconforming use prior to destruction. If court of competent jurisdiction rules at any time that the owner of the destroyed pre-existing nonconforming use or structure was responsible for said destruction, any existing or future structure shall conform with CCC Chapter 18.10.

F. Legal lots of record. Legally created parcels or lots legally recognized in official records that do not meet the minimum area or width requirements of a particular land use district may be developed with permitted, accessory and conditional uses provided:

1. That all other district standards are met; and
2. The lots or parcels were created pursuant to applicable state and local subdivision regulations in place at the time of lot segregation; and
3. The owner of the substandard lot does not own any adjoining conforming lot.
  - a. If the owner of a conforming lot owns one or more adjoining substandard lots, the conforming lot and all adjoining substandard lots (including any series of adjoining substandard lots) owned by the same person shall be treated as one lot for the purposes of this chapter. This shall not prohibit the owner from combining two or more substandard lots to create one or more conforming lots.
  - b. If a person owns a series of two or more adjoining substandard lots, none of which adjoins a conforming lot owned by the same person, the entire series of adjoining substandard lots shall be treated as one lot, which may be developed for any use permitted by this chapter. This shall not prohibit the owner from combining two or more substandard lots to create one or more conforming lots.
  - c. Whether and to what extent a person owns adjoining lots for the purposes of this subsection shall be determined as of the time the person files a complete application for a development.

4. A substandard lot developed under this Chapter need not conform to the requirements of Chapters and regulations referenced in CCC 18.02.020, above, for minimum size, minimum width, or maximum lot coverage. A combination of substandard lots developed under subsection D of this section likewise need not conform to such requirements, unless the size of the combined lots is at least equal to the minimum lot size requirements for the district in which the lots are located, in which case the combined lots shall conform to such requirements. Development under this section of a substandard lot, or combination of substandard lots, shall conform to all other requirements of this chapter except as otherwise permitted by variance.

G. Access to existing public road. No parcel shall be created and treated as an independent, usable legal lot of record that does not have access to an existing public road.

H. Reduction of area. A land use approval shall not cause or increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements through boundary line adjustments; provided, however, that the Responsible Official or a Hearings Examiner may approve boundary line adjustments required to satisfy an unidentified or disputed property line or to identify the same in accordance with RCW 58.04.007.

I. Establishing a nonconforming use. The burden of proof of applicability of this Section shall rest with the property owner. The owner may request a determination from the Responsible Official

regarding legal status of a non-conforming use. Such request shall be made in writing and include the following:

1. Application Form;
2. Application Fee; and
3. Evidence of lawful creation or establishment of use in accordance with regulations in existence at time of creation or thereafter binding upon the use; BUT excepting
4. No person shall have any rights under this section if the Responsible Official determines that such person, or anyone acting for or in concert with such person, has employed any scheme, artifice, sham, or subterfuge or has otherwise acted in bad faith in attempting to establish a nonconforming use. The Responsible Official may require an applicant to provide additional records and information to determine whether the applicant is entitled to any rights under this section.

J. Nonconforming use in shorelines. Notwithstanding any provision in this code to the contrary, any use or structure legally located within shorelines of the state that was established or vested on or before the effective date of development regulations to protect critical areas shall be regulated consistent with RCW 36.70A.480(3)(c). Such uses or structures may continue as a conforming use, and may be redeveloped or modified if the redevelopment or modification is consistent with the Cowlitz County Shorelines Master Program and either: (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or (2) the redevelopment or modification is consistent with Chapter 19.15, Critical Areas.

#### **18.02.100 Vesting.**

A. Land divisions. Applications for the division of land under Title 18 shall vest to and be considered under the development regulations in effect when a complete application is submitted and all initial deposit fees are paid. The requirements for a fully completed application vary by permit type and are generally set forth in Section 18.02.070.

B. Other permits.

1. Applications for other permits shall vest to and be considered only under the specific regulations applicable to the permit in effect when a complete application is submitted and all initial deposit fees are paid. They shall not vest to development regulations, generally. The requirements for a fully completed application vary by permit type and are generally established in Section 18.02.070.

2. An application for approval of a land use action requiring a shoreline permit, but not a building permit, shall be vested against enforcement of an ordinance implementing a change in shoreline regulations set forth in the Cowlitz Shoreline Master Program, if a complete substantial development permit application is submitted prior to the effective date of such ordinance. Land use actions requiring a building permit and a shoreline permit are governed by subsection (C) of this section.

C. Building code. Vesting of building permit applications is governed by RCW 19.27.095.

D. Limitations. The vesting of an application does not:

1. Imply that the application will be approved or that the applicant has permission to proceed with the development;

2. Vest any subsequently required or related permits, except as required by statute or case law, nor does it affect the requirements for the vesting of subsequent permits or approvals;

3. Restrict the ability of the department to impose conditions under Chapter 43.21C RCW; or

4. Restrict the ability of the state, or county legislative authority and departments to impose newly enacted development, building, health and fire codes that are necessary to protect public health and safety; PROVIDED, that applications submitted prior to the effective date of the ordinance establishing new code, but which applications have not received final approval on or before the

effective date of ordinance adoption shall be deemed vested under the zoning and land use regulations in effect at the time the application is complete under Section 18.02.070.

D. Procedures and fees excluded. No application may vest to regulations governing procedures and process, including the administrative regulations in this Chapter, or fees or other costs.

E. Waiver. An applicant may voluntarily waive vested rights at any time during the processing of an application by submitting a written and signed waiver to the Responsible Official stating that the applicant agrees to comply with the new regulations in effect on the date the waiver request is submitted.

F. Termination. Rights vested acquired on a permit application shall terminate upon expiration of the permit application, which shall be 36 mos. after a complete application unless otherwise provided under the Chapters and regulations referenced in section 18.02.020, above.

#### **18.02.110 Appeals.**

Appeals under this Chapter, unless otherwise provided in County Code, shall be to the Hearing Examiner under the processes outlined in CCC sections 18.10.370 through -. 10.395, and CCC Chapter 2.05, and filed within fourteen (14) days of the final action, decision or interpretation subject to review. To be timely, a written notice of appeal must be received by the Responsible Official within the fourteen (14) day time limit.