

## **CHAPTER 28: MASTER PLAN OVERLAY DISTRICT (MPO)**

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### **28.1. PURPOSE.**

The purpose of this Chapter is to describe the process and set forth criteria for the applicability of the Master Plan Overlay. It is the intention of the Master Plan Overlay to provide greater flexibility of use on lands which have an extraordinarily high potential to offer dedications considered by the Land Use Authority to be of great benefit to the Town, including easements, roads, trails, parks, open space, or land parcels designated for future public use in Town planning documents. Establishment of the Master Plan Overlay Zone requires that the landowner enter into a Master Plan Agreement with the Town of Virgin which governs all of the properties considered.

#### **28.1.1. APPLICABILITY.<sup>1</sup>**

Master Plan Overlay Zone designation is only available for:

**28.1.1.A.** Tracts of land, under one (1) legal ownership, of ten (10) acres or more.

**28.1.1.B.** Where multiple parcels are considered, a single discontinuity is allowed for every ten (10) acres under consideration [one-hundred (100) acres would allow up to ten (10) discontinuities.

**28.1.1.C.** Tracts that fulfill the potential of providing: easements, roads, trails, contiguous open space, publicly accessible parks and parcels designated for future public use in Town planning documents.

#### **28.1.2. RESTRICTIONS.**

**28.1.2.A.** Except as otherwise provided in this chapter, standards for each proposed use will be those applying to that use in the zoning district where it is usually found, or elsewhere in the VULU.

**28.1.2.B.** No use which is not permitted in at least one zoning district of the Town may be permitted.

**28.1.2.C.** Density may be transferred or re-distributed, however, total density shall not exceed the combined underlying zoning density of the aggregated parcels.

**28.1.2.D.** Densities appropriate to the current underlying zone or the zoning designation shown on the Future Land Use Map may not be exceeded unless an approved independent sewer system is constructed.

**28.1.2.E.** Master Plan Overlay determinations may set forth general use, density, height, design and site planning criteria; more specific standards are addressed under Master Plan Review. Any applied criteria shall result in projects which:

**28.1.2.E.i.** complement the natural features of the site;

**28.1.2.E.ii.** ensure neighborhood compatibility;

**28.1.2.E.iii.** complement the rural character of Virgin;

**28.1.2.E.iv.** are tax-base contributory;

**28.1.2.E.v.** result in a net positive contribution of amenities to the community;

<sup>1</sup>As amended per Ordinance # 2018-05

**28.1.2.E.vi.** provide or contribute to a diversity of interactive, community-serving uses;

**28.1.2.E.vii.** provide permanent protection for open space or critical lands on the site;

**28.1.2.E.viii.** fulfill or maintain the specific development patterns described in Town planning documents; and

**28.1.2.E.ix.** efficiently and cost effectively extend and provide infrastructure.

## **28.2. PRE-APPLICATION PROCEDURE.**

### **28.2.1. PRE-APPLICATION CONFERENCE.**

[At the discretion of Planning & Zoning Chair, this step may be combined with VULU Chapter 9.3., Division of Land.]

A Pre-Application Conference shall be held with a representative of the Town as determined by the chairman of the Planning & Zoning Commission in order for the applicant to become acquainted with Town requirements, procedures, and schedules. The Town may give preliminary feedback to the potential applicant based on information available at the Pre-Application Conference and will inform the applicant of issues or special requirements which may result from the proposal. This feedback is for the applicant's convenience only; binding decisions and determinations are made only by vote of the Land Use Authority.

### **28.2.2. PRE-APPLICATION PUBLIC MEETING.**

[At the discretion of Planning & Zoning Chair, this step may be combined with VULU Chapter 9.3., Division of Land.]

In order to provide an opportunity for the public and the Planning & Zoning Commission to give preliminary input on a general concept for a Master Plan Overlay, all Master Plan projects will be required to go through a Pre-Application Public Meeting at a regularly scheduled meeting of the Planning & Zoning Commission. Completion of the Pre-Application Conference qualifies applicant to submit a Pre-Application Public Meeting request with the Virgin Town Clerk. The request shall include proof of ownership (and, if applicable, authorization of agency), a rough site plan identifying adjacent properties, streets, landmarks, trails, utilities, structures and known significant historical or archaeological features; topographic and plat maps of all properties proposed for inclusion marked with current zoning for each parcel, a schedule and total of parcel acreages, a development yield estimate (a professional analysis of development yield will be required in subsequent steps: see VULU Chapter 28.5.1.C., Land Suitability, and Endnote A) and an overlay showing the location and description of proposed uses, along with any applicable fee. If applicant is pursuing concurrent Division of Land with Master Plan Overlay application, consult VULU Chapter 9 for additional required submissions and fees. The public will be notified and invited to attend, and will be given an opportunity to comment on the preliminary concepts so that the Applicant can address neighborhood concerns in preparation of an Master Plan Agreement. At the Pre-Application Public Meeting, the applicant will have an opportunity to present the preliminary concepts for the proposed Master Plan Overlay. This preliminary review will focus on site resources, the General Plan, and zoning compliance for the proposed Master Plan Overlay.

### **28.2.3. PRE-APPLICATION PUBLIC MEETING, MASTER PLAN AGREEMENT QUALIFICATION.**

Because mixing uses requires a limited suspension of the approved requirements of underlying zoning, a rigorous test must be applied to ensure that the project is compatible with Town Goals and the General Plan, that any relaxation requested will not undermine the purpose of the rule being relaxed, and that

the amenities offered are of great public value. A scheduled public site visit by the Planning and Zoning Commission is a prerequisite to Agreement Qualification. In order for a project to qualify for a Master Plan Agreement, the Planning Commission must make each of the following findings:

**28.2.3.A.** The project site includes locations or connections of great importance to the public as expressed in town planning documents or maps (for such things as trails or streets, contiguous open space, infrastructure needs, etc.), which are substantial in value and unique to the property;

**28.2.3.B.** Similar alternatives to those locations or connections would be difficult or impractical for the Town to secure;

**28.2.3.C.** The proposed uses, with appropriate conditions, will comply with all the requirements of the VULU otherwise applicable to each proposed use and uphold the Town standards in VULU Chapter 8.1.;

**28.2.3.D.** The mix of land uses is appropriate and compatible for the subject property and its surroundings;

**28.2.3.E.** Any density incentives included will reduce or maintain impacts on town water supply and septic saturation, and support town goals of centralized growth and protection of open space; and

**28.2.3.F.** With appropriate conditions, no proposed use will create an impact to surrounding uses due to traffic, noise, dust, light, or public safety greater than would be reasonably anticipated under the maximum allowed usage in the underlying current or approved future zoning.

**28.2.3.G.** If the project meets all of the above criteria, the project shall be deemed Qualified for a Master Plan Agreement with the Town. Although Applicants must receive findings from the Planning & Zoning Commission to be eligible for this Agreement, the details of the Agreement will be identified after formal public hearing and an extensive Master Plan Review, and no Final Master Plan Agreement shall be made until all of the criteria for Master Plan Review are met. At this point, applicant may proceed to zone Change, or opt to suspend the Master Plan process and preserve Master Plan Qualification under an Interim Agreement.

### **28.3. MASTER PLAN OVERLAY INTERIM AGREEMENT.**

**28.3.1.** If the Planning Commission has deemed a project area qualified for Master Plan Agreement, and applicant wishes to document and preserve this qualification for subsequent owners of the area, applicant may request approval from Town Council of an Interim Master Plan Agreement. This agreement certifies that the applicant's project area has received Master Plan Agreement Qualification. The Interim Agreement will allow the property owner to:

**28.3.1.A.** List the property for sale;

**28.3.1.B.** advertise for investors or development partners;

**28.3.1.C.** hire engineers to begin assessment of project viability; and

**28.3.1.D.** choose either to delay, or to continue, progress toward a final Master Plan Agreement approval.

**28.3.2.** Council may approve a draft Interim Agreement subject to Town Attorney approval, or require an Interim Agreement to be drafted by the Town Attorney. All associated attorney fees shall be paid by the applicant. Council must specify an expiration date, and may name circumstances under which the

qualification may be nullified, each of which shall have a rational connection to the public benefits of the plan upon which qualification was based. Plans and documentation upon which Qualification was based shall be attached to the Interim Agreement, which shall, at a minimum, contain:

**28.3.2.A.** A specific expiration date, three (3) years or less from the date of Council approval;

**28.3.2.B.** a statement that Qualification attaches to the land in the event of ownership change;

**28.3.2.C.** a reasonably specific list of public benefits upon which project is deemed Qualified for a Master Plan Agreement;

**28.3.2.D.** a condition that any Subdivision of Land or changes to plans upon which Qualification was based shall void Qualification; and

**28.3.2.E.** any other conditions under which the Interim Agreement becomes void prior to the named expiration date.

#### **28.4. ZONE CHANGE PROCEDURE.**

**28.4.1.** After a project qualifies for a Master Plan Agreement, applicant may apply for the zone change to a Master Plan Overlay. If applicant intends to subdivide, the Planning & Zoning Chair may allow or require preliminary Concept Plan submissions (see VULU Chapter 9) to be presented at the same meeting. applicant must provide the following:

**28.4.1.A.** A site plan in measurable scale indicating: project boundaries, property lines, any roadways and access, any dedications, easements, or contiguous open space, any publicly accessible parks, disposition of uses, disposition of density, any existing and proposed setbacks, major flow lines, any lands deemed unsuitable for development under this ordinance or other laws.

**28.4.1.B.** A phasing plan or schedule.

**28.4.1.C.** An analysis of development Yield (see Endnote A) based on the underlying zoning, prepared by a licensed engineer.

**28.4.1.D.** A summary of any modifications made based on preliminary input from the Pre-Application Public Meeting.

**28.4.1.E.** A summary of specific ways the project furthers the General Plan of the Town of Virgin.

**28.4.2.** The Planning Commission may request at its sole discretion (i) a preliminary Grading Plan; (ii) Review by the Fire Marshal; and (iii) additional information appropriate to determining the suitability and feasibility of the project.

**28.4.3.** The Planning Commission will schedule and hold a formal public hearing following at least ten (10) days advertised notice. applicant shall provide formal written notice of the application and hearing date, including a brief description of the proposal, to all owners of property within 200 feet of the parcel in question. Within a reasonable time following the public hearing, the Planning Commission shall make its recommendation for the Town Council.

**28.4.4.** After receiving a recommendation on the rezone from the Planning & Zoning Commission, applicant may request placement on the agenda of a regularly scheduled Town Council meeting. After reviewing the proposal, the Town Council shall approve or deny the rezone.

**28.4.5.** The Town Council shall establish: (i) that the applicant has met all requirements to be Qualified

for the Master Plan Agreement, and (ii) that the project substantially furthers the goals of the General Plan; (iii) there is substantial benefit to the town in the form of easements, roads, trails, publicly accessible parks, contiguous open space, or land parcels designated for future public use in Town planning documents, and (iv) that the application has the potential to successfully meet the Master Plan Review Criteria.

**28.4.6.** Approval shall carry the condition that, should any substantial change be made to the project plan, including any change in the specific uses granted, the project shall revert to the original underlying zoning. Approval may carry other conditions, including conditions which set forth general use, density, height, design and site planning criteria. In making its decision, the Council shall weigh the benefits of the project overall and in light of the findings of the planning commission, shall consider public input, and shall make its own findings for the record. The zone Change shall be contingent on a successful Master Plan Review.

## **28.5. MASTER PLAN REVIEW.**

**28.5.1.** If the zone change is approved, applicant may then apply for Master Plan Review, along with any conditional use or division of land applications required (see VULU Chapters 8, 9, & 10). If applicant is pursuing subdivision, the Planning & Zoning Commission Chair may allow consideration of the Concept Plan recommendation at the same meeting. In performing a Plan Review of a Master Plan development, the Planning & Zoning Commission or Town Council may require conditions to be included in the Master Plan Agreement to mitigate any negative impacts of the proposal, and to maintain compliance with the Agreement Qualification Findings.

### **28.5.1.A. Findings.**

In addition to findings made during the Agreement Qualification, the Planning Commission must arrive at the following findings during the Master Plan Review:

**28.5.1.A.i.** The Master Plan development, with appropriate conditions, will be compatible in scale and mass with adjacent properties, and promote neighborhood compatibility.

**28.5.1.A.ii.** development, with appropriate conditions, will not create a greater visual impact due to structure height, building mass, off-site visibility due to siting of development, area of site disturbance, or other measurable characteristic.

**28.5.1.A.iii.** If the rule being relaxed governs density, the density of the project will not have a greater impact on our overall septic potential than would development of the allowed density in the underlying zone.

**28.5.1.A.iv.** If the proposal is for uses that would have a greater water supply requirement than one ERU per developable acre, developer agrees to purchase or otherwise provide the necessary water from a Town-approved source other than the Town (i.e., through agreement with the WCWCD).

**28.5.1.A.v.** The Master Plan development is consistent with the General Plan.

**28.5.1.A.vi.** The project is consistent with Town Goals (VULU Chapter 8), and will not create a financial burden on the Town that listed uses would not.

**28.5.1.A.vii.** The project siting, with appropriate conditions, will provide the highest possible value of permanent protection for important flood plain, habitat, open space, agricultural, historic, and/or view-shed areas, as determined by the Land Use Authority.

**28.5.1.A.viii.** The project siting, with appropriate conditions, will complement the natural features on the site and preserve \significant features or vegetation to the extent possible.

**28.5.1.A.ix.** The Master Plan development, with appropriate conditions, will not detract from the rural character of Virgin.

**28.5.1.B. Density Transfer Incentive.**

If all of the findings in the above Section are made, the applicant may seek qualification for additional acreage credit in density transfer. applicant must provide a detailed development yield analysis (previously submitted under zone Change), including total acreage of the MPO area under application and a breakdown of acreage for any and each type of unsuitable land as described in VULU Chapter 28.5.1.C., Land Suitability. This additional density may only be transferred in a direction that brings it closer or more accessible to existing infrastructure than the land from which it is being transferred. Density transferred under this incentive may not be used to construct single-family dwellings. The Land Use Authority may grant bonus acreage in density transfers to a maximum of the un-developable acreage which was subtracted from total land acreage to determine development yield.

**28.5.1.C. Land Suitability.**

No land shall be developed which is held to be unsuitable for any proposed use if identified as being environmentally sensitive. Areas identified as being environmentally sensitive include, but are not limited to:

**28.5.1.C.i.** All areas mapped as floodplain by the Federal Emergency Management Agency (FEMA), Utah Department of Natural Resources, or other public or private entity, and deemed unsuitable for the proposed development under the flood Damage Prevention sections of Virgin Town ordinances.

**28.5.1.C.ii.** All wetlands as defined in federal and Utah State code, including a fifty-foot (50') buffer.

**28.5.1.C.iii.** All areas having slopes greater than thirty percent (30%).

**28.5.1.C.iv.** Areas that are proven to provide habitat for rare, threatened or endangered species, unless species have been removed by certified experts under procedures approved by all authorized entities.

**28.5.1.C.v.** Known burial sites and Indian mounds.

**28.5.1.C.vi.** Drainage ways that contain running water during spring runoff, during storm events or when it rains, as well as twenty-five foot (25') buffers from the edges of the drainage way.

Areas determined to be environmentally sensitive may be included as common open space but shall not be included in the development yield determined in VULU Chapter 28.5.1.B., Density Transfer Incentive, above. These lands shall be identified as an out-lot or other designation that indicates the land is not available for development.

**28.5.1.D. Master Plan Review Approval.**

Plan recommendation or approval may carry other conditions, including conditions which set forth general use, density, height, design and site planning criteria, which may vary from normal

standards to mitigate anticipated impacts of combining different uses. Standards applied may be stricter, but not less strict, than standards applying to uses in zones where they are normally permitted. All separate parcels to host commercial uses or uses of greater impact than one ERU shall require the drafting, LUA approval, and recordation of a development agreement with the Town, separate from the Master Plan Agreement, as well as any other approval processes required under the VULU, before construction or development of these uses may begin. These and any other findings made during Qualification and Plan Review will become conditions of ratification of the Master Plan Agreement.

## **28.6. FINAL MASTER PLAN AGREEMENT.**

**28.6.1.** Once the Land Use Authority has completed Master Plan Review and approved a zone change, the approval shall be put in the form of a Master Plan Agreement. The Town Council shall assign the drafting of the agreement either to the applicant or to town staff. In the event Council assigns the task to town staff, the applicant shall pay the actual cost of drafting the agreement. The Agreement shall be in a form approved by the Town Attorney, and shall contain, at a minimum, the following:

**28.6.1.A.** A legal description of the land including identification of the zoning designations of all parcels at the time of application;

**28.6.1.B.** all relevant zoning parameters including all findings, conclusions and conditions of approval;

**28.6.1.C.** an express reservation of the future legislative power and zoning authority of the Town;

**28.6.1.D.** a copy of the approved site plan, architectural plans, landscape plans, grading plan, trails and open space plans, and other plans which are a part of the Land Use Authority approval;

**28.6.1.E.** a description of all developer exactions or agreed upon public dedications;

**28.6.1.F.** management plans for open space and public areas;

**28.6.1.G.** the developer's agreement to pay all specified impact fees;

**28.6.1.H.** the form of ownership anticipated for the project;

**28.6.1.I.** if applicable, a specific project phasing plan, addressing public improvements, approval processes for individual uses, and all other elements of the plan; and

**28.6.1.J.** agreement that no individual project may be approved prior to finalization of associated public dedications. If applicable, a subdivision concept plan (see VULU Chapter 9) shall be submitted.

**28.6.2.** The Master Plan Agreement shall contain language which allows for minor, administrative modifications to occur to the approval without revision of the agreement.

**28.6.3.** The Master Plan Agreement and any required bonds must be submitted to the Town within six (6) months of the date the project was approved by the Land Use Authority, or the approval shall expire. After preliminary review and recommendation by the Town Attorney, applicant may request placement on the agenda of a regularly scheduled Town Council meeting for a vote to ratify the Agreement. If it is found that the Agreement fulfills the conditions created during the processes of Qualification for Master Plan Agreement, Zone Change, and Master Plan Review, as well as all other applicable conditions, laws and standards, the Agreement shall be ratified by the Land Use Authority, and signed by the Town Council and the applicant.

**28.6.4.** Following Council ratification of the Master Plan Agreement, applicant may deliver any required bond to the Town. The town must be in receipt of all required plans, documents, and bonds before the Town Attorney may begin his final review. The Town Attorney shall review the bond, the Master Plan Agreement, and other elements of the plan to ensure compliance with agreements made, conditions of approval, Town ordinances and all other applicable laws. The final signature of the Town Attorney on the Master Plan Agreement signifies the attorney's satisfactory review of all items, that the document is ready for recordation with the County. Construction on those agreed upon improvements which require no further approvals may now begin construction. If applicant intends to subdivide and has included an approved subdivision concept plan with his Master Plan Agreement, he may now proceed to apply for preliminary plat approval.

**28.7. LIMITATIONS.**

**28.7.1.** Approval of a Master Plan Agreement does not constitute final approval of any individual concept plans, plats, use permits, other development agreements or other applications which may be required for specific projects within the approved Master Plan Overlay Zone.

**28.7.2.** No division of land or use application may be approved, conditionally or otherwise, without written confirmation from the County Recorder that the Master Plan Agreement has been successfully recorded.

**ENDNOTES.**

**A. Development Yield Analysis.**

See VULU Chapter 9 and include total acreage of the MPO area under application and a breakdown of acreage for any and each type of unsuitable land, including those described in VULU Chapter 28.5.1.C., Land Suitability.

**B. VULU Chapter 9.15., Development Yield Analysis.**

Applicant shall submit a table showing the maximum number of dwelling units (or Equivalent Residential Units) that would be permitted under the Virgin Town ordinances, consistent with the minimum lot size, lot widths, set backs, and other provisions of the Town ordinances. Land that is un-developable because of laws and ordinances that prohibit development in certain areas (e.g. floodplains, wetlands, steep slopes, and drainage ways) shall be excluded from the development yield analysis.

**C. VULU Chapter 9.15.3., General Performance Standards.**

**C.1.** development envelopes shall not be located on ridges, hilltops, along peripheral public roads or in other visually prominent areas.

**C.2.** Storm water management: Roof down spouts shall drain to porous surfaces.

**C.2.1.** Peak discharges during the two (2) and ten (10) year storm events shall be no more than pre-developed conditions.

**C.2.2.** The development shall capture eighty percent (80%) of the sediments/pollutants from the one (1) year storm event. Landscape plantings shall be used to increase infiltration and decrease runoff.

**C.2.3.** Natural open drainage systems (i.e., washes and dry river beds) shall be preserved.