

Procedures Manual

Subject: MERGER BY CONTIGUITY

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Date Issued: 6/1/09
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1.1. PURPOSE

The purpose of this procedure is to provide a consistent framework by which all Mergers by contiguity are processed, reviewed, and approved.

1.2. BACKGROUND

Merger by Contiguity is the process whereby nonconforming substandard-sized lots or parcels can be combined to create a lot or parcel (i.e., zoning lot) that more closely approximates the lot size requirements of the applicable zoning district to provide for building permit issuance for new construction or habitable additions in conformance with the provisions of the LDC without necessitating a replat or variance. Merger by contiguity is a form of subdivision exemption that can be processed administratively. Merger by contiguity may only be applied to any contiguous nonconforming lots or parcels of land where:

- Not more than one residential dwelling is located on the lots or parcels to be combined;
- The lots or parcels to be combined are located within the same zoning district; and
- The lots or parcels are owned in common ownership by the same person, persons or entity.

Merger by contiguity is governed by State statutes. Of particular importance is C.R.S. §30-28-139, which provides remedy for a property owner to be heard where it is determined by the property owner of the property to be merged that the Merger is not desired by the property owner and the property owner wishes to have their concerns be heard before the Board of County Commissioners. Alternatively, C.R.S. §30-28-139(4) allows the property owner to voluntarily request a Merger.

1.3. APPLICABLE STATUTES AND REGULATIONS

C.R.S. §§30-28-101, et seq. allows the BoCC to grant exemptions from the definition of the term "subdivision" for any division of land the BoCC determines is not within the purposes of this statute.

C.R.S. §30-28-139 establishes the requirements for Merger hearings.

C.R.S. §30-28-139(4) provides that Mergers may be sought voluntarily by the owners of the property.

Section 2.1.2 of the LDC provides the authority for the DSD Director to establish standards for processing development applications.

Section 2.2.4 of the LDC establishes the authorities of the DSD Director.

Section 7.2.2(E)(3) of the LDC governs the Merger of nonconforming lots or parcels.

Section 5.6.7(B)(2) of the LDC governs the conditions under which Merger by Contiguity may be required.

1.4. RESOURCES

See Section 1.1. of P-AR-APX-09

1.5. GENERAL SUBMITTAL LIST

1.5.1. Voluntary Merger

The applicant wishing to voluntarily execute a Merger by Contiguity Agreement in accordance with the requirements of Section 5.6.7(B)(3) and Section 7.2.2(E)(3) of the LDC and the Voluntary Merger allowance provided by C.R.S. §30-28-139(4) in order to bring their property into conformance with the LDC in order to obtain a development or building permit and who is willing to waive any notice and right to a hearing before the Board of County Commissioners allowed by C.R.S. §30-28-139 and state that the Merger is voluntarily sought under C.R.S. §30-28-139(4) shall submit the required number of each of the following:

- See Section 1.2. of P-AR-APX-09

1.5.2. Involuntary Merger

Section 5.6.7(B)(2) and Section 7.2.2(E)(3) of the LDC establish a requirement and basic process whereby the County may require the Merger of nonconforming contiguous lots or parcels to bring them into closer conformance with the requirements of the LDC. As such, if a property owner does not wish to voluntarily combine their nonconforming lots, the property owner is not eligible to be heard before the Board of Adjustment for a lot size variance. As a result, pursuant to C.R.S. §30-28-139, the property owner shall have the right to be heard if the County takes affirmative action to merge the nonconforming lots or parcels or may apply for an Involuntary Merger by Contiguity in order to initiate consideration of the Involuntary Merger invoked by the requirements of Section 5.6.7(B)(2). Application for an Involuntary Merger may be initiated by El Paso County or a property owner, who shall submit the required number of each of the following:

- See Section 1.2. of P-AR-APX-09

1.6. STEP BY STEP REVIEW PROCEDURE

1.6.1. Steps for Voluntary Merger

- (A) Step 1 Early Assistance Meeting**
See Section 1.3.1.(B)(D) and (E) of P-AR-APX-09
- (B) Step 2 Neighborhood Meeting**
Not Applicable
- (C) Step 3 Application Submitted**
See Section 1.3.3.(C) of P-AR-APX-09
- (D) Step 4 Determination of Completeness**
See Section 1.3.4.(A) of P-AR-APX-09
- (E) Step 5 Resubmission of application (if required)**
See Section 1.3.5.(C) of P-AR-APX-09

- (F) **Step 6 Application Referral**
See Section 1.3.6.(B) of P-AR-APX-09
- (G) **Step 7 Consolidation of Comments and Request to Applicant**
See Section 1.3.7.(B) of P-AR-APX-09
- (H) **Step 8 Applicant Submits Information Requested**
See Section 1.3.8.(B) of P-AR-APX-09
- (I) **Step 9 Staff Report and Recommended Action**
See Section 1.3.9.(A) of P-AR-APX-09
- (J) **Step 10 Hearing Scheduled**
Not Applicable
- (K) **Step 11 Notice of Hearing**
Not Applicable
- (L) **Step 12 Hearing Held**
Not Applicable
- (M) **Step 13 Decision Concerning Development Permit**
See Section 1.3.13.(B) of P-AR-APX-09
- (N) **Step 14 Development Permit Closeout**
A copy of the decision is provided to applicant by DSD project manager. If the approval includes any conditions, the DSD project manager sends a letter to the applicant requesting documentation concerning conditions. Once all conditions have been met, the DSD Director or delegate signs the approved Merger Agreement and the DSD project manager files the executed Merger Agreement for recording with the El Paso County Clerk and Recorder. A copy of original is placed in project file. A copy of original development permit is scanned along with a copy of the decision and the file is closed. If denied, denied development permit is filed in project file along with copy of decision of DSD Director.

1.6.2. Steps for Involuntary Merger

- (A) **Step 1 Early Assistance Meeting**
See Section 1.3.1.(B)(D) and (E) of P-AR-APX-09
- (B) **Step 2 Neighborhood Meeting**
Not Applicable
- (C) **Step 3 Application Submitted**
See Section 1.3.3.(C) of P-AR-APX-09
- (D) **Step 4 Determination of Completeness**
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- (E) **Step 5 Resubmission of application (if required)**
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- (G) **Step 7 Consolidation of Comments and Request to Applicant**
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- (H) **Step 8 Applicant Submits Information Requested**
See Section 1.3.8.(B) of P-AR-APX-09
- (I) **Step 9 Staff Report and Recommended Action**
See Section 1.3.9.(B) of P-AR-APX-09
- (J) **Step 10 Hearing Scheduled**
In conformance with C.R.S. §30-28-139, the project manager sends notice of the county's intent to complete the Merger to each owner of the affected parcels by certified mail in accordance with Section 1.8.2. If the property owner(s) request a hearing, the DSD project manager shall schedule a hearing before the Board of County Commissioners following the process defined in Section 1.8.2 of this procedure and BoCC Hearing (P-GP-016-08). A hearing is not scheduled if not specifically requested pursuant to the terms of Section 1.8.2. If the item is scheduled for action before the Board of County Commissioners by the DSD project manager, then Step 13 shall be initiated.
- (K) **Step 11 Notice of Hearing**
In conformance with C.R.S. §30-28-139, a notice is sent to the property owners of those properties that are to be merged and notice is provided at least 14 days in advance of hearing (See Section 1.8.2 for the special notice and hearing procedures). Published notice is prepared in accordance with Section 1.8.2. and P-FM-026-08 Published Notice.
- (L) **Step 12 Hearing Held**
The Board of County Commissioners holds a hearing concerning the development application at which it shall receive any testimony from the property owners of the lots or parcels proposed to be merged.
- (M) **Step 13 Decision Concerning Development Permit**
See Section 1.3.13.(D) of P-AR-APX-09
- (N) **Step 14 Development Permit Closeout**
Copy of decision is provided to the property owner(s) by DSD project manager. If the approval includes any conditions, the DSD project manager sends a letter to the applicant requesting documentation concerning conditions. Once all conditions have been met, the DSD Director signs the approved Notice of Merger Agreement and the DSD project manager files the executed Notice of Merger

Agreement for recording with the El Paso County Clerk and Recorder. A copy of original is placed in project file. A copy of original development permit is scanned along with a copy of the decision and the file is closed. If denied, denied development permit is filed in project file along with copy of decision of DSD Director.

1.6.3. Criteria for Consideration

The Merger by Contiguity may only be applied to any contiguous (see Section 7.2.2(E)(3)(b) of the LDC for conditions affecting contiguity) nonconforming lots or parcels of land.

1.6.4. Criteria for Approval

Section 7.2.2(E)(3)(f) of the LDC provides the approval criteria for a Merger by Contiguity.

In the case of an Involuntary Merger, the following additional findings shall be made:

- Notice has been served to the property owners of the lots or parcels to be merged; and
- The property owners of the lots or parcels to be merged requested a hearing, the property owners were noticed as required by C.R.S. §30-28-139 and the hearing was scheduled and held.

1.7. REVIEW PERIOD

A voluntary Merger by Contiguity is classified as a Type C Development Application. An involuntary Merger by Continuity is classified as a Type D Development Application. The timeline for reviewing a Type C and D Development Applications is dependent upon several factors, including, but not limited to, staffing, workload, project size and/or complexity, and quality and completeness of submittal materials.

1.8. NOTICE

1.8.1. Voluntary Merger

Not Applicable

1.8.2. Involuntary Merger

The following special notice provisions shall be followed in processing an involuntary Merger by Contiguity (See also P-GP-012-09 Public Notice). Notice is the responsibility of El Paso County DSD.

Prior to the completion of the Merger, the DSD shall send notice of the county's intent to complete the Merger to each owner of the affected parcels by certified mail. The notice shall also specify that each such owner may request a hearing on the proposed Merger and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing within one hundred twenty (120) days of the date the notice is received by the owner.

Prior to the completion of the Merger, where any owner of an affected parcel has requested a hearing on the proposed Merger, a public hearing on the Merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the

purpose of allowing the Board to discuss with the owner of each affected parcel its reasons for proceeding with the Merger and to give each owner the opportunity to submit any basis provided under law for challenging the Merger. In such case, notice of the time, place, and manner of the hearing shall be provided to each owner of the affected parcels and also published in a newspaper of general circulation in the County at least 14 days in advance of the hearing providing the time, place, and nature of the hearing.

In order to give the owner of the parcels the opportunity to take whatever remedial action is allowed under law, the hearing shall take place no sooner than ninety (90) days following the date of the original notice.

1.9. FORM OF ACTION

1.9.1. Voluntary Merger

A Voluntary Merger by Contiguity shall be considered complete and in effect as of the date of filing of an approved and executed Merger agreement in the Office of the El Paso County Clerk and Recorder.

1.9.2. Involuntary Merger Agreement

An Involuntary Merger by Contiguity shall be considered complete and in effect as of the date of the approval by the vote of a majority of the Board of County Commissioners and the subsequent filing of a Notice of Merger in the Office of the El Paso County Clerk and Recorder.

1.10. EXPIRATION (IF APPLICABLE)

1.10.1. Development Application and Conditional Development Permit Approval

If at any time the applicant fails to provide requested materials or information within 60 days of the DSD project manager's request for information or documentation necessary to process the development application or closeout the development permit, the development application or permit shall be deemed to have expired and a new development application must then be submitted for consideration. If the applicant needs an extension of time to provide the requested materials or information, the applicant may request in writing and receive an additional 60 days to meet the requirements from the DSD project manager. Only one such extension shall be granted.

1.10.2. Development Permit

No expiration

1.11. SIMILAR PROCEDURES

See Section 1.1. of P-AR-APX-09

1.12. TECHNICAL GUIDANCE

1.12.1. Other Processes Provided for Dealing with Reconfiguring Lot Lines and Combining Parcels

Several provisions of the LDC allow for the combination or Merger of contiguous parcels of land or modification of lot or parcel boundaries in order to bring lots or parcels into

conformance with or into closer conformance with zoning requirements or to allow a group of lots or parcels to be recognized as a zoning lot for purposes of the application of the zoning provisions contained in the LDC.

Where the conditions required to invoke a Merger by Contiguity are not met, a different procedure may be applicable. Alternative related procedures are identified in Section 1.11. of this resource guidance.

El Paso County
Development Services Department
Subject: MERGER BY CONTIGUITY
Procedure # P-AR-009-09
Issue Date: 6/1/09
Revision Issued: 00/00/00

**MERGER BY CONTIGUITY
OF PROPERTIES SITUATED
WITHIN UNINCORPORATED EL PASO COUNTY**

By this document, it is hereby acknowledged that the properties listed below are merged together pursuant to Section 35.2 K., Nonconforming Lot or Parcel and Merger by Contiguity, of the El Paso County Land Development Code.

12-19-00: PLEASE NOTE: **(PLEASE TYPE)**
THIS MERGER FORM WILL NOT BE PROCESSED UNLESS IT IS TYPED.
The property owner(s) formalizing the merger by contiguity are:

Location of merged property:

Current Tax Schedule number(s):

Legal Description:

The properties described above have merged together pursuant to Section 35.2 K. of the El Paso County Land Development Code and are considered as one (1) parcel for purposes of zoning administration as the properties do not contain the required minimum lot area as specified within the _____ zoning district which is applicable to this property.

No portion of this merged property shall be sold or conveyed away individually or separately unless said portion and/or remaining portion:

- 1) Is brought into compliance with the zoning on the property, or
- 2) Is otherwise approved by El Paso County in accordance with applicable regulations.

Property Owner(s) signature:

X _____

Date: _____

Date: _____

NOTE: Merger does not relieve the property of compliance with regulations or criteria of other agencies or departments or of other applicable sections of the Land Development Code, except as otherwise expressly provided for in subsection K.

Merger does not eliminate lot lines or any easements associated with the property.

Merger does not guarantee that the affected parcel will be considered as a "buildable parcel."

SUBMITTED IN CONFORMANCE WITH SECTION 35.2 K.
OF THE EL PASO COUNTY LAND DEVELOPMENT CODE

Date

Director, El Paso County Planning Department

Exhibit A: Merger Map