

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

961



FROM: Transportation and Land Management Agency

SUBMITTAL DATE:
September 6, 2012

SUBJECT: Resolution No. 2012-201 Amending Procedures and Requirements for Consideration of Development Agreements (Commercial or Industrial Projects).

RECOMMENDED MOTION: That the Board of Supervisors approve Resolution No. 2012-201 Amending Procedures and Requirements for Consideration of Development Agreements (Commercial or Industrial Projects).

BACKGROUND: Riverside County continues to struggle with high unemployment, and we are looking for tools that help bring jobs to our local economy. Development Agreements are a useful tools to facilitate economic development. They provide a higher level of certainty as a project moves forward in exchange for providing extraordinary public benefits. Approval of Resolution No. 2012-201 gives the County the ability to enter into a Development Agreement in


Juan C. Perez
Director of Transportation and Land Management

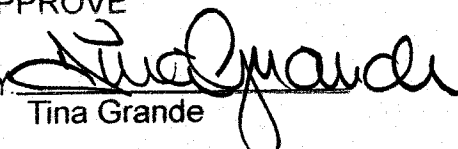
JCP:dlp
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	No
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	2012/2013

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Tina Grande

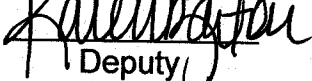
County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Benoit and Ashley
Nays: None
Absent: Stone
Date: September 11, 2012
xc: TLMA

Kecia Harper-Ihem
Clerk of the Board

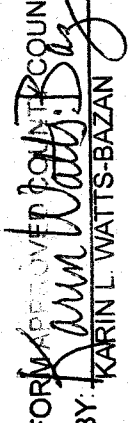
By: 
Deputy

Prev. Agn. Ref.

District: ALL

Agenda Number:

3.65

FOR APPROVAL BY COUNTY COUNSEL
 BY: 
 KARIN L. WATTS-BAZAN
 DATE: 9/6/12
 Departmental Concurrence

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

The Honorable Board of Supervisors

RE: Resolution No. 2012-201 Amending Procedures and Requirements for Consideration of Development Agreements (Commercial or Industrial Projects).

September 6, 2012

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connection with a qualifying commercial or industrial project that demonstratively provides extraordinary public benefits by creating significant employment sites, construction of major public regional infrastructure improvements beyond that required to mitigate project impacts, or other significant public benefits.

The following resolution allows the Board the flexibility to consider Development Agreement applications on individual qualifying projects, and to make a determination on a project-by-project basis as to which ones will provide significant public benefit. The types of job-generating projects that the procedures and requirements will apply to include: Commercial Retail Centers, Business Parks and Offices, Industrial Parks, Warehouses, and other similar facilities.

Development Agreements are restricted to projects that have been vetted and approved or are going through the public approval process, in which case the Development Agreement is processed concurrently with the project application.

Staff will also continue to work on developing procedures and requirements for residential projects that may provide extraordinary public benefits through a Development Agreement, and will bring those forward to the Board for consideration at a later time.

2

3 RESOLUTION NO. 2012-201

4 AMENDING PROCEDURES AND REQUIREMENTS FOR THE

5 CONSIDERATION OF DEVELOPMENT AGREEMENTS

6 (COMMERCIAL OR INDUSTRIAL PROJECTS)

7

8 WHEREAS, Government Code Section 65864 et seq. authorizes the County to enter into binding

9 development agreements with persons having legal or equitable interests in real property for the

10 development of such property; and,

11 WHEREAS, said provisions of the Government Code authorize the County to establish procedures

12 and requirements for the consideration of development agreements; and,

13 WHEREAS, development agreements can serve to strengthen the public planning process,

14 encourage private participation in comprehensive planning, reduce the economic costs of development,

15 and promote the maximum efficient utilization of resources at the least economic cost to the public; and,

16 WHEREAS, the County desires to implement this authorization for development agreements in an

17 efficient and equitable manner by providing for procedures and requirements that balance public and

18 private benefits; and,

19 WHEREAS, there is an immediate need to provide procedures and requirements for commercial

20 or industrial projects involving the construction of commercial retail centers, business parks and offices,

21 industrial parks, warehouses and other similar facilities; and

22 WHEREAS, on February 7, 2012, the Board of Supervisors adopted procedures and requirements

23 for the consideration of development agreements for solar power plant projects; and,

24 WHEREAS, this resolution amends said resolution and the adopted procedures and requirements

25 to allow for the consideration of development agreements for commercial or industrial projects involving

26 the construction of commercial retail centers, business parks and offices, industrial parks, warehouses and

27 other similar facilities; and

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FORM APPROVED COUNTY COUNSEL

BY: *[Signature]* DATE: 09/16/12

BY: KABIN L. WAIN S. BAZAN

1 WHEREAS, the adoption of procedures and requirements for the consideration of such
2 development agreements for commercial or industrial projects involving the construction of commercial
3 retail centers, business parks and offices, industrial parks, warehouses and other similar facilities is in the
4 public interest and the public health, safety and general welfare will be promoted thereby; now, therefore,

5 BE IT RESOLVED, FOUND, DETERMINED AND ORDERED by the Board of Supervisors of
6 the County of Riverside, State of California, in regular session assembled on September 11, 2012, that it
7 adopts the procedures and requirements for the consideration of development agreements set forth in
8 Exhibit "A" to this resolution, which exhibit is incorporated herein by this reference.

9 BE IT FURTHER RESOLVED by the Board that this resolution shall be operative and effective
10 immediately.

11 ROLL CALL:

12 Ayes: Buster, Tavaglione, Benoit, and Ashley
13 Nays: None
14 Absent: Stone

15 The foregoing is certified to be a true copy of a resolution duly
16 adopted by said Board of Supervisors on the date therein set forth.

17 KECIA HARPER-IHEM, Clerk of said Board

18 By: _____
19 Deputy

1 EXHIBIT "A"
2 PROCEDURES AND REQUIREMENTS
3 OF THE COUNTY OF RIVERSIDE FOR THE
4 CONSIDERATION OF DEVELOPMENT AGREEMENTS

5 Article 1. AUTHORITY AND APPLICATIONS.

6 Section 101. Authority and Applicability
7 Section 102. Qualification as an Applicant
8 Section 103. Necessary Parties
9 Section 104. Agents
10 Section 105. Application Form and Information
11 Section 106. Standard Form Development Agreement
12 Section 107. Application Fees
13 Section 108. Review of Application

14 Section 101. Authority and Applicability. These Procedures and Requirements are
15 adopted pursuant to Article 11, Section 7 of the California Constitution and the California Development
16 Agreement Statutes, (Government Code Section 65864 et seq.). These Procedures and Requirements
17 shall apply only to development agreements for projects involving solar power plants and commercial or
18 industrial projects involving the construction of commercial retail centers, business parks and offices,
19 industrial parks, warehouses and other similar facilities, but may in the future be amended to address other
20 types of projects.

21 Section 102. Qualification as an Applicant. Subject to the requirements of Section 103
22 with respect to necessary parties, any qualified person may file an application to enter into a development
23 agreement. A prospective applicant is a qualified person within the meaning of this section if he has a
24 legal or equitable interest in the real property which is the subject of the development agreement. The
25 Planning Director shall require a prospective applicant to submit proof of his interest in the real property.
26 Such proof shall include a preliminary title report issued by a title company licensed to do business in the
27 State of California evidencing the requisite real property interest and shall also include the statement of
28 the applicant identifying his interest in the real property and identifying any other persons known to him
who have any interest in the real property. Before accepting an application, the Planning Director shall
obtain the opinion of the County Counsel as to the sufficiency of the real property interest.

1 Section 103. Necessary Parties. All owners of fee simple title to all or any part of the
2 real property which is the subject of a development agreement shall be necessary parties to the
3 development agreement. Also, any person having a legal or equitable interest in such real property who is
4 reasonably necessary to ensure the full implementation and performance of the development agreement
5 throughout its term shall be a necessary party. The Planning Director shall obtain the opinion of the
6 County Counsel as to the necessary parties to a development agreement. Notwithstanding any other
7 provisions of these Procedures and Requirements, no hearing on the development agreement shall be held
8 until and unless all necessary parties have agreed in writing to join in the application for the development
9 agreement. "Necessary parties" and their successors in interest, if any, are referred to herein as "property
10 owner(s)".

11 Section 104. Agents. Any applicant or necessary party may authorize an agent to act
12 on his behalf with respect to an application by submitting written authorization acceptable to the Planning
13 Director.

14 Section 105. Application Form and Information. The Planning Director shall determine
15 the form of the application and may require an applicant to submit any information and supporting data
16 that he considers necessary to process the application.

17 Section 106. Standard Form Development Agreement. The County Counsel, in
18 consultation with the Planning Director, shall prepare one or more standard form development
19 agreements. Separate standard form development agreements may be prepared for different types of
20 development projects. Standard form development agreements shall be consistent with the provisions of
21 the California Development Agreement Statutes and these Procedures and Requirements, and may include
22 any other provisions deemed necessary or convenient to provide for implementation and performance of
23 the development agreement. An application for a development agreement shall include a completed
24 standard form development agreement applicable to the proposed type of development without any
25 revision to the standard form development agreement. A written request for a revision to any provision of
26 the standard form development agreement may also be submitted. Any such requested revision shall state
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1 the exact language of the proposed revised provision and the reasons for the request. All requested
2 revisions shall be considered during review of the application.

3 Section 107. Application Fees. An application shall be accompanied by the
4 application fees required by Ordinance No. 671 and shall be subject to the provisions prescribed therein
5 with respect to payment, accounting, appeals and refund.

6 Section 108. Review of Application. The Planning Director shall endorse on the
7 application the date of receipt, shall review the application, and may reject the application if it is
8 incomplete or inaccurate. If the application is complete, the Planning Director shall accept it for filing.
9 The Planning Director shall determine any additional requirements necessary to complete the
10 development agreement on the basis of the application as filed. After receiving all required information,
11 the Planning Director shall prepare a report and recommendation as to whether or not the proposed
12 development agreement is consistent with the general plan, any applicable specific plan, and the
13 provisions of these Procedures and Requirements.

14 Article 2. REQUIREMENTS.

15	Section 201.	Required Contents
16	Section 202.	Public Benefits in General
17	Section 203.	Public Benefits for Residential Projects
18	Section 204.	Public Benefits for Commercial or Industrial Projects
19	Section 205.	Public Benefits for Solar Power Plant Projects
20	Section 206.	Term of Development Agreement
21	Section 207.	Reservation of Authority
22	Section 208.	Construction Codes

23 Section 201. Required Contents. A development agreement shall include the
24 following:

- 25 (a) A legal description of the property subject to the agreement.
- 26 (b) The duration of the agreement, the permitted uses of the property, the density and
27 intensity of the use, the maximum height and size of proposed buildings, and provisions for the
28 reservation or dedication of land for public purposes.

1 (c) Conditions, terms, restrictions and requirements for subsequent County
2 discretionary actions, provided that such conditions, terms, restrictions and requirements for
3 subsequent discretionary actions shall not prevent development of the land for the uses and to the
4 density or intensity of development set forth in the agreement.

5 (d) Public benefits in accordance with these Procedures and Requirements.

6 (e) If the development agreement includes a subdivision, as defined in Section 66473.7
7 of the Government Code, the agreement shall provide that any tentative map prepared for the
8 subdivision shall comply with Section 66473.7 of the Government Code.

9 Section 202. Public Benefits in General. As consideration for the significant private
10 benefits conferred on property owners, a development agreement shall provide for significant public
11 benefits in addition to any fees, dedications and public improvements otherwise required through project
12 approval. A development agreement shall include provisions necessary or convenient to secure the
13 performance of all requirements with respect to public benefits during the entire term of the agreement.

14 Section 203. Public Benefits for Residential Projects. [RESERVED]

15 Section 204. Public Benefits for Commercial or Industrial Projects. A development
16 agreement for a project that includes commercial or industrial development involving the construction of
17 commercial retail centers, business parks and offices, industrial parks, warehouses and other similar
18 facilities shall include provisions requiring the development of significant employment sites or provisions
19 which will result in the County receiving other significant public benefits including, but not limited to, the
20 construction of major public infrastructure above and beyond that required to mitigate project impacts.

21 Section 205. Public Benefits for Solar Power Plant Projects. A development
22 agreement for a project that includes a solar power plant shall include provisions generally consistent with
23 the requirements of Board of Supervisors Policy B-29.

24 Section 206. Term of Development Agreement. The term of a development agreement
25 shall be subject to the following provisions.

26 (a) Residential Projects. [RESERVED]
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1 (b) Commercial or Industrial Projects. Unless the Board of Supervisors determines
2 that a longer or shorter term is appropriate based on special circumstances applicable to the
3 project, the term of a development agreement for a project that consists of entirely commercial or
4 industrial development involving the construction of commercial retail centers, business parks and
5 offices, industrial parks, warehouses and other similar facilities shall be twenty (20) years from the
6 date of recordation of the development agreement.

7 (c) Solar Power Plant Projects. Unless the Board of Supervisors determines that a
8 longer or shorter term is appropriate based on special circumstances applicable to the project, the
9 term of a development agreement for a project involving a solar power plant shall be 30 years
10 from the date of recordation of the development agreement.

11 Section 207. Reservation of Authority. Unless otherwise provided by these
12 Procedures and Requirements or the development agreement, the rules, regulations, and official policies
13 governing permitted uses of the land, governing density, and governing design, improvement, and
14 construction standards and specifications, applicable to development of the property subject to a
15 development agreement, shall be those rules, regulations, and official policies in force at the time of
16 recordation of the agreement ("existing rules"). A development agreement shall not, however, prevent the
17 County from doing any of the following:

18 (a) Applying to subsequent development approvals new rules, regulations, and policies
19 ("new rules") that do not conflict with those existing rules applicable to the property as set forth
20 herein;

21 (b) Denying or conditionally approving subsequent development projects on the basis
22 of the existing rules or on the basis of the new rules that do not conflict with the existing rules;

23 (c) Imposing subsequently adopted development exactions that are applied uniformly
24 to similar development unless such exactions would physically prevent development of the
25 property for the uses and at the density or intensity set forth in the development agreement; or

26 (d) Imposing regulations that may be in conflict with the development agreement,
27 but which are reasonably necessary to protect the public health and safety.
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1 Section 208. Construction Codes. A development agreement shall acknowledge the
2 possibility of changes in the building, plumbing, mechanical, electrical, fire and grading codes applicable
3 in the County during the term of the agreement and shall provide that any amendments to such codes
4 relating to construction, fire or grading standards and specifications shall apply to the project subject to
5 the development agreement.

6
7 Article 3. NOTICE AND HEARING.

8 Section 301.	Duty to Give Notice
9 Section 302.	Form, Time and Manner of Notice
10 Section 303.	Failure to Receive Notice
11 Section 304.	Rules Governing Hearing
12 Section 305.	Errors in Proceedings

13 Section 301. Duty to Give Notice. The Planning Director shall give notice of the
14 Planning Commission hearing to consider adoption of a development agreement, and the Clerk of the
15 Board shall give notice of the Board of Supervisors hearing to consider adoption of a development
16 agreement.

17 Section 302. Form, Time and Manner of Notice. Notice of hearing to consider adoption
18 of a development agreement shall be governed by the provisions of state law (Sections 65090, 65091, and
19 65867) and County Ordinance No. 348 (Sections 1.06 and 1.11 inclusive), as such statutes and ordinances
20 now exist or may hereafter be amended. Notice of hearing to consider adoption of a development
21 agreement shall be in addition to any other notice required by law for other actions to be considered
22 concurrently with the development agreement.

23 Section 303. Failure to Receive Notice. The failure of any person to receive notice
24 given pursuant to these Procedures and Requirements shall not affect the authority of the County to enter
25 into a development agreement.

26 Section 304. Rules Governing Hearing. The public hearing shall to the maximum
27 extent possible be conducted in accordance with the procedural standards set forth in Government Code
28 Section 65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an

1 opportunity to be heard. The applicant shall have the burden of proof on all issues at the public hearing
2 on a proposed development agreement.

3 Section 305. Inapplicability of Formal Rules of Evidence or Procedures. The
4 following provisions of Section 65010 of the Government Code shall apply to all proceedings concerning
5 development agreements under these Procedures and Requirements. Formal rules of evidence or
6 procedure applicable in judicial actions and proceedings shall not apply in any proceeding concerning a
7 proposed development agreement. No action, inaction, or recommendation by the County or the Board of
8 Supervisors or County administrative agencies or officials on a proposed development agreement shall be
9 held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or
10 by reason of any error, irregularity, informality, neglect, or omission (hereinafter, "error") as to any matter
11 pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations,
12 appeals, or any matters of procedure, unless the court finds that the error was prejudicial and that the party
13 complaining or appealing suffered substantial injury from that error and that a different result would have
14 been probable if the error had not occurred. There shall be no presumption that the error was prejudicial
15 or that injury was done if an error is shown.

16
17 Article 4. REVIEW, FINDINGS AND DECISION

18 Section 401.	Hearing and Recommendation by Planning Commission
19 Section 402.	Fast Track Projects
20 Section 403.	Hearing and Decision by the Board of Supervisors
21 Section 404.	Approval of Development Agreement
22 Section 405.	Execution by Property Owner(s)
23 Section 406.	Execution by County

24 Section 401. Hearing and Recommendation by Planning Commission. Except as
25 otherwise provided under Section 402 for Fast Track Projects, all development agreements shall be
26 considered at a public hearing before the Planning Commission. At the conclusion of the hearing, the
27 Planning Commission shall make a written recommendation to the Board of Supervisors. The Planning
28 Commission shall include therein its reasons for making the recommendation and a determination as to
whether or not the proposed development agreement:

- 1 (a) Is consistent with the general plan and any applicable specific plan;
- 2 (b) Is consistent with public health, safety, and general welfare and;
- 3 (c) Will provide significant public benefits.

4 Section 402. Fast Track Projects. A development project which has been designated as
5 a fast track project by majority vote of the Board of Supervisors or by the Assistant County Executive
6 Officer/Economic Development Agency (“EDA Director”) in accordance with the provisions of Board of
7 Supervisors Policy A-32, as now adopted or hereafter amended, may include a proposed development
8 agreement. Notwithstanding any other provision of these Procedures and Requirements, the Board of
9 Supervisors hereby deems it appropriate and necessary to reserve to itself the functions of the planning
10 agency with respect to hearing any development agreement included in the fast track project.
11 Notwithstanding Section 401 or any other provision of these Procedures and Requirements, no hearing
12 before the Planning Commission shall be required with respect to any development agreement included in
13 a fast track project. A development agreement included in a fast track project shall be subject to the
14 procedures set forth in Section 18.26a of Ordinance No. 348 and shall remain subject to all provisions of
15 these Procedures and Requirements except the requirement for hearing before the Planning Commission.

16 Section 403. Hearing and Decision by the Board of Supervisors. Upon receipt of the
17 recommendation of the Planning Commission, the Clerk of the Board of Supervisors shall set the
18 proposed development agreement for hearing by the Board. After the Board completes its public hearing
19 it may approve, modify, or disapprove, the recommendation of the Planning Commission. A
20 development agreement shall not be approved unless the Board finds that the provisions of the agreement
21 are:

- 22 (a) Consistent with the general plan and any applicable specific plan;
- 23 (b) Consistent with the public health, safety, and general welfare; and
- 24 (c) Provide significant public benefits.

25 The decision of the Board shall be final.
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1 Section 404. Approval of Development Agreement. A development agreement is a
2 legislative act that shall be approved by ordinance and is subject to referendum. The ordinance shall refer
3 to and incorporate by reference the text of the development agreement.

4 Section 405. Execution by Property Owner(s). Prior to close of the Board of
5 Supervisors hearing on a development agreement, all property owner(s) shall execute the agreement. The
6 executed agreement shall be accompanied by a current title report, in a form satisfactory to the County,
7 issued by a title company licensed to do business in the State of California confirming the ownership
8 interest of all property owner(s) to the satisfaction of the County. The executed agreement shall also be
9 accompanied by a statement by each property owner, in a form satisfactory to the County, identifying his
10 interest in the real property and identifying any other persons known to him who have any interest in the
11 real property. The County may require that the evidence of title required by this section be further
12 updated prior to execution by the County.

13 Section 406. Execution by County. Within ten days after the ordinance approving a
14 development agreement takes effect, the Chairman of the Board shall execute the agreement on behalf of
15 the County.

16 Article 5. RECORDATION.

17	Section 501.	Recordation of Agreement
18	Section 502.	Recordation of Amendment or Cancellation
19	Section 503.	Recordation of Modification or Termination
20	Section 504.	Effect of Recordation

21 Section 501. Recordation of Agreement. Within ten days after the County executes a
22 development agreement, the Clerk of the Board of Supervisors shall record with the County Recorder a
23 copy of the agreement, which shall describe the land subject thereto.

24 Section 502. Recordation of Amendment or Cancellation. If the parties to the
25 agreement or their successors in interest amend or cancel the agreement as provided in Article 6 of these
26 Procedures and Requirements and Government Code Section 65868, the Clerk of the Board of
27 Supervisors shall record notice of such action with the County Recorder.

1 Section 503. Recordation of Modification or Termination. If the County terminates or
2 modifies the agreement as provided in Article 8 of these Procedures and Requirements and Government
3 Code Section 65865.1, the Clerk of the Board of Supervisors shall record notice of such action with the
4 County Recorder.

5 Section 504. Effect of Recordation. From and after the time of the recordation
6 required by this Article, notice shall be imparted as provided by the recording laws of the State of
7 California. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall
8 inure to, all successors in interest to the parties to the agreement.

9
10 Article 6. AMENDMENT OR CANCELLATION.

11 Section 601.	Who May Propose
Section 602.	Procedure
12 Section 603.	Mutual Consent

13
14 Section 601. Who May Propose. Any party, or successor in interest, to a development
15 agreement may propose an amendment or cancellation, in whole or in part, of the agreement.

16 Section 602. Procedure. The procedure for proposing, reviewing, hearing and
17 adopting an amendment or cancellation, in whole or in part, of a development agreement shall be the
18 same as the procedure for entering into the development agreement in the first instance; provided,
19 however, that the special procedures for Fast Track Projects set forth in Section 402 of these Procedures
20 and Requirements shall not apply to any amendment or cancellation. In addition, if the County initiates a
21 proposed amendment or cancellation of the agreement, it shall first give written notice by mail to all
22 parties, or their successors in interest, of its intention to initiate such proceedings not less than thirty days
23 prior to giving the public notice of any hearing to consider the amendment or cancellation.

24 Section 603. Mutual Consent. Any amendment or cancellation shall be by mutual
25 consent of the parties or their successors in interest except as provided in Article 8 of these Procedures
26 and Requirements and Government Code Section 65865.1.

1 Article 7. REVIEW.

2 Section 701. Annual Review
3 Section 702. Special Review
4 Section 703. Procedure

5 Section 701. Annual Review. The Transportation and Land Management Agency
6 (“TLMA”) Director, in consultation with the County Executive Officer and the County Counsel, shall
7 review a development agreement annually in order to determine the good faith compliance of the property
8 owner(s) with the terms of the agreement. On or before the annual review date set forth in the agreement,
9 the property owner(s) shall submit an annual monitoring report, in a form specified by the TLMA
10 Director providing all information necessary to evaluate such good faith compliance as determined by the
11 TLMA Director. The property owner(s) shall pay the annual review and administration fee set forth in
12 Ordinance No. 671 prior to submission of the annual monitoring report. Any development agreement
13 may include provisions requiring prepayment, or securing payment, of the annual review and
14 administration fee.

15 Section 702. Special Review. The Board of Supervisors may order a special review
16 of good faith compliance of all property owner(s) with a development agreement at any time. The TLMA
17 Director, in consultation with the County Executive Officer and the County Counsel, shall conduct such
18 special reviews. The property owner(s) shall provide all information required to conduct such special
19 review.

20 Section 703. Procedure.

21 (a) During either an annual review or a special review, the property owner(s) shall be
22 required to demonstrate good faith compliance with the terms of the agreement. The burden of
23 proof on this issue shall be on the property owner(s).

24 (b) Upon completion of an annual review or a special review, the TLMA Director shall
25 submit a report to the Board of Supervisors setting forth the evidence concerning good faith
26 compliance by the property owner(s) with the terms of the agreement and his recommended
27 finding on that issue.
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1 (c) If the Board of Supervisors finds on the basis of substantial evidence that there has
2 been good faith compliance by the property owner(s) with the terms and conditions of the
3 agreement, the review shall be concluded.

4 (d) If the Board of Supervisors makes a preliminary finding on the basis of substantial
5 evidence that there has not been good faith compliance by the property owner(s) with the terms or
6 conditions of the agreement, the Board may modify or terminate the agreement as provided in
7 Article 8 of these Procedures and Requirements.

8
9 Article 8. MODIFICATION OR TERMINATION.

10 Section 801. Notice
Section 802. Hearing

11 Section 801. Notice. If, upon a preliminary finding under Section 703(d) above, the
12 Board of Supervisors decides to proceed with modification or termination of the agreement, the County
13 shall give at least ten days written notice to the property owner(s) of its intention to do so. The notice
14 shall contain:

15 (a) The time and place of hearing;

16 (b) A statement as to whether or not the County proposes to modify or terminate the
17 development agreement; and,

18 (c) Such other information as is reasonably necessary to inform the property owner(s)
19 of the nature of the proceeding.

20 Section 802. Hearing. At the time and place set for the hearing on modification or
21 termination, the property owner(s) shall be given an opportunity to be heard and shall be entitled to
22 present written and oral evidence. The property owner(s) shall be required to demonstrate good faith
23 compliance with the terms and conditions of the agreement. The burden of proof on this issue shall be on
24 the property owner(s). If the Board of Supervisors finds, based upon substantial evidence, that there has
25 not been good faith compliance by the property owner(s) with the terms or conditions of the agreement,
26 the Board may terminate or modify the agreement and impose such conditions as are reasonably
27 necessary to protect the interests of the County. The decision of the Board is final.

1 Article 9. CHANGES IN STATE OR FEDERAL LAW.

2
3 Section 901. Effect of Changes in State or Federal Law on Development Agreement.

4 In the event that state or federal laws or regulations, enacted after a development agreement has been
5 entered into, prevent or preclude compliance with one or more provisions of the development agreement,
6 such provisions of the agreement shall be modified or suspended as may be necessary to comply with
7 such state or federal laws or regulations.

8
9 Article 10. ARCHIVE COPY OF DEVELOPMENT AGREEMENT.

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11 Section 1001. Archive Copy. The Clerk of the Board of Supervisors shall maintain
12 an archive copy of all development agreements, including all incorporated exhibits. The archive copy
13 shall include all subsequent approvals granted pursuant to the development agreement and a record of
14 each annual or special review conducted on the development agreement. The Planning Director shall
15 provide the Clerk of the Board with copies of all exhibits incorporated in all development agreements
16 including copies of all subsequent approvals granted pursuant to such development agreements.

17
18 09/06/12
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