

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



ITEM: 3.28
(ID # 12295)

MEETING DATE:
Tuesday, May 05, 2020

FROM : TLMA-PLANNING:

SUBJECT: TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING AND COUNTY COUNSEL: ADOPTION OF RESOLUTION NO. 2020-142 Amending Procedures and Requirements for the Consideration of Development Agreements (Surface Mining); CEQA Exempt; All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. **FIND** that Resolution No. 2020-124 is EXEMPT from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061(b)(3) and not a project pursuant to State CEQA Guidelines section 15378 based on the findings set forth below; and
2. **ADOPT** Resolution No. 2020-124 Amending Procedures and Requirements for the Consideration of Development Agreements, adding surface mining permits to the types of development applications that may utilize development agreements.

ACTION:Policy

Charissa Leach, Assistant TLMA Director

4/30/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: May 5, 2020
xc: Planning

Kecia R. Harper
Clerk of the Board
By:
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: General Fund			Budget Adjustment: No	
			For Fiscal Year: 19/20	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

County staff recently prepared an amendment to Ordinance No. 555, Implementing the Surface Mining and Reclamation Act of 1975 ("SMARA"), and the related Board Policy B-35 establishing Guidelines for Processing Surface Mining Permits for New and Significantly Expanded Surface Mining Operations, which recognizes, among other things, that development agreements may be appropriate for surface mining permits. On February 11, 2020 Item 3.27, the Board of Supervisors ("Board") approved staff recommendations to introduce Ordinance No. 555.20; adopt Board Policy B-35; and found Ordinance No. 555.20 and the related policy to not be a project under the California Environmental Quality Act ("CEQA") and exempt from CEQA pursuant to State CEQA Guidelines sections 15061(b)(3) and 15273. On February 25, 2020 Item 3.20, the Board adopted Ordinance No. 555.20. Ordinance No. 555.20 and Board Policy B-35 are in effect as of April 25, 2020.

Resolution No. 2020-124 adds to previous resolutions that established that development agreements are potentially appropriate for certain types of development projects. First, on February 7, 2012, the Board adopted Resolution No. 2012-047 Item 3.31 adopting procedures and requirements for the consideration of development agreements for solar power plant projects. On September 21, 2012, the Board adopted Resolution No. 2012-201 Item 3.65 amending said procedures and requirements for consideration of development agreements to include commercial or industrial projects. On July 15, 2014, the Board adopted Resolution No. 2014-034 Item 3.60 amending said procedures and requirements for consideration of development agreements to include residential projects. On January 29, 2019 Item 3.52, the Board adopted Resolution No. 2019-037 amending said procedures and requirements for consideration of development agreements to include commercial cannabis activities. Resolution No. 2020-124 is recommended for adoption in order to amend said procedures and requirements for consideration of development agreements to also include surface mining permits. Such development agreements could help ensure that County roadways utilized by certain surface mining operations are adequately maintained, repaired, and expanded where appropriate.

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The California Environmental Quality Act ("CEQA") does not apply to Resolution No. 2020-124, and/or it is exempt from CEQA, because it is merely recognizing and facilitating previous approvals and existing law. (*Union of Medical Marijuana Patients, Inc. v. City of Upland* (2018) 245 Cal.App.4th 1265, 1273.) In addition, it is merely an administrative activity of the County, which does not constitute a project pursuant to State CEQA Guidelines section 15378. Resolution No. 2020-124 is also exempt under State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the resolution may have a significant effect on the environment. The proposed resolution merely allows the County to negotiate and enter into development agreements for surface mining permits, the possibility for which was previously considered and approved by the Board.

Impact on Residents and Businesses

Ordinance No. 555 and Board Policy B-35 have already been approved, and Resolution No. 2020-124 merely effectuates the possibility for development agreements to be approved for surface mining operations, as recognized as potentially appropriate in Ordinance No. 555.20 and Board Policy B-35. The County's ability to negotiate development agreements could reduce the burden on the County's General Fund dollars for road maintenance and expansion in districts with surface mining operations that utilize such agreements.

Additional Fiscal Information

Ordinance No. 555.20 and Board Policy B-35 have already gone into effect and, together with the attached document, provide a mechanism to recover costs by collecting fees for impacts related to surface mining operations where appropriate.

Attachment A: Resolution No. 2020-124



Jason Farin, Senior Management Analyst

4/30/2020



Gregory H. Priamos, Director County Counsel

4/30/2020

2 **RESOLUTION NO. 2020-124**

3 **AMENDING PROCEDURES AND REQUIREMENTS FOR THE**
4 **CONSIDERATION OF DEVELOPMENT AGREEMENTS**
5 **(SURFACE MINING)**

6
7 **WHEREAS**, Government Code section 65864 et seq. authorizes the County of Riverside
8 (“County”) to enter into binding development agreements with persons having legal or equitable interests
9 in real property for the development of such property; and,

10 **WHEREAS**, said provisions of the Government Code authorize the County to establish procedures
11 and requirements for the consideration of development agreements; and,

12 **WHEREAS**, development agreements can serve to strengthen the public planning process,
13 encourage private participation in comprehensive planning, reduce the economic costs of development, and
14 promote the maximum efficient utilization of resources at the least economic cost to the public; and,

15 **WHEREAS**, the County desires to implement this authority for development agreements in an
16 efficient and equitable manner by providing for procedures and requirements that balance public and private
17 benefits; and,

18 **WHEREAS**, on February 7, 2012, in Resolution No. 2012-047 (agenda item 3.31), the County
19 Board of Supervisors (“Board”) adopted procedures and requirements for the consideration of development
20 agreements for solar power plant projects; and,

21 **WHEREAS**, on September 11, 2012, in Resolution No. 2012-201 (agenda item 3.65), the Board
22 amended said procedures and requirements for the consideration of development agreements to include
23 commercial or industrial projects; and,

24 **WHEREAS**, on July 15, 2014, in Resolution No. 2014-034 (agenda item 3.60), the Board amended
25 said procedures and requirements for the consideration of development agreements to include residential
26 projects; and,

FORM APPROVED COUNTY COUNSEL
BY: [Signature] 4/22/2020

EXHIBIT "A"
PROCEDURES AND REQUIREMENTS
OF THE COUNTY OF RIVERSIDE FOR THE
CONSIDERATION OF DEVELOPMENT AGREEMENTS

Article 1. AUTHORITY AND APPLICATIONS.

Section 101.	Authority and Applicability
Section 102.	Qualification as an Applicant
Section 103.	Necessary Parties
Section 103.5	Additional Necessary Parties for Commercial Cannabis Activities
Section 104.	Agents
Section 105.	Application Form and Information
Section 106.	Standard Form Development Agreement
Section 107.	Application Fees
Section 108.	Review of Application

Section 101. Authority and Applicability. These Procedures and Requirements are adopted pursuant to Article 11, Section 7 of the California Constitution and the California Development Agreement Statutes, (Government Code Section 65864 et seq.). These Procedures and Requirements shall apply only to development agreements for projects involving solar power plants; surface mining permits; residential, commercial or industrial and commercial cannabis activity projects involving the construction of commercial retail centers, business parks and offices, industrial parks, warehouses and other similar facilities, and commercial cannabis activities, but may in the future be amended to address other types of projects. Commercial cannabis activity as used herein, shall have the same definition as commercial cannabis activity in Ordinance No. 348, as may be amended.

Section 102. Qualification as an Applicant. Subject to the requirements of Sections 103 and 103.5 with respect to necessary parties, any qualified person may file an application to enter into a development agreement. A prospective applicant is a qualified person within the meaning of this section if he has a legal or equitable interest in the real property which is the subject of the development agreement. The Planning Director shall require a prospective applicant to submit proof of his interest in the real property. Such proof shall include a preliminary title report issued by a title company licensed to do business in the State of California evidencing the requisite real property interest and shall also include the statement of the applicant identifying his interest in the real property and identifying any other persons

1 known to him who have any interest in the real property. Before accepting an application, the Planning
2 Director shall obtain the opinion of the County Counsel as to the sufficiency of the real property interest.

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

12 Section 103.5. Additional Necessary Parties for Commercial Cannabis Activities. For any
13 development agreement involving a commercial cannabis activity, all cannabis owners shall be considered
14 a necessary party to the development agreement. Cannabis owner, as used herein, shall have the same
15 definition as cannabis owner in Ordinance No. 348, as may be amended.

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

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

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

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

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

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19 Article 2. REQUIREMENTS.

20	Section 201.	Required Contents
21	Section 202.	Public Benefits in General
22	Section 203.	Public Benefits for Residential Projects
23	Section 204.	Public Benefits for Commercial or Industrial Projects
24	Section 205.	Public Benefits for Solar Power Plant Projects
25	Section 205.1	Public Benefits for Commercial Cannabis Activities
26	Section 205.2	Public Benefits for Surface Mining Permits
27	Section 206.	Term of Development Agreement
28	Section 207.	Reservation of Authority
	Section 208.	Construction Codes

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

- 30 (a) A legal description of the property subject to the agreement.

- 1 (b) The duration of the agreement, the permitted uses of the property, the density and
2 intensity of the use, the maximum height and size of proposed buildings, and
3 provisions for the reservation or dedication of land for public purposes.
- 4 (c) Conditions, terms, restrictions and requirements for subsequent County discretionary
5 actions, provided that such conditions, terms, restrictions and requirements for
6 subsequent discretionary actions shall not prevent development of the land for the
7 uses and to the density or intensity of development set forth in the agreement.
- 8 (d) Public benefits in accordance with these Procedures and Requirements.
- 9 (e) If the development agreement includes a subdivision, as defined in Section 66473.7
10 of the Government Code, the agreement shall provide that any tentative map prepared
11 for the subdivision shall comply with Section 66473.7 of the Government Code.

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

17 Section 203. Public Benefits for Residential Projects. A development agreement for a
18 project that includes residential development shall include requiring the construction of major public
19 infrastructure and/or dedication of open space land above and beyond that required to mitigate project
20 impacts; payment of development agreement fees; or any combination of the aforementioned public
21 benefits.

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

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

4 Section 205.1. Public Benefits for Commercial Cannabis Activities. A development
5 agreement for a project that includes a commercial cannabis activity shall include provisions generally
6 consistent with the requirements of Board of Supervisors Policy B-9.

7 Section 205.2. Public Benefits for Surface Mining Permits. A development agreement for
8 a surface mining permit shall include provisions generally consistent with the requirements of Board of
9 Supervisors Policy B-35.

10 Section 206. Term of Development Agreement. The term of a development agreement
11 shall be subject to the following provisions:

- 12 (a) Residential Projects. Unless the Board of Supervisors determines that a
13 longer or shorter term is appropriate based on special circumstances
14 applicable to the project, the term of a development agreement for a project
15 that consists of entirely residential development shall be thirty (30) years
16 from the date of recordation of the development agreement.
- 17 (b) Commercial or Industrial Projects. Unless the Board of Supervisors
18 determines that a longer or shorter term is appropriate based on special
19 circumstances applicable to the project, the term of a development agreement
20 for a project that consists of entirely commercial or industrial development
21 shall be twenty (20) years from the date of recordation of the development
22 agreement.
- 23 (c) Solar Power Plant Projects. Unless the Board of Supervisors determines
24 that a longer or shorter term is appropriate based on special circumstances
25 applicable to the project, the term of a development agreement for a project
26 involving a solar power plant shall be 30 years from the date of recordation
27 of the development agreement.
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1 (d) Commercial Cannabis Activities. Unless the Board of Supervisors
2 determines that a longer or shorter term is appropriate based on special
3 circumstances applicable to the project, the term of a development agreement
4 for a project involving a commercial cannabis activity shall be 10 years from
5 the date of recordation of the development agreement. Such term may be
6 extended for one additional five (5) year period pursuant to the provisions of
7 the development agreement and the conditions of approval on the conditional
8 use permit for the commercial cannabis activity and only in accordance with
9 applicable County ordinance.

10 (e) Surface Mining Permits. Unless the Board of Supervisors determines that a
11 longer or shorter term is appropriate based on special circumstances
12 applicable to the project, the term of a development agreement for a project
13 involving a surface mining permit shall be 40 years from the date of
14 recordation of the development agreement. Such term may be extended for
15 one additional ten (10) year period pursuant to the provisions of the
16 development agreement and the conditions of approval on the surface mining
17 permit and only in accordance with SMARA, Ordinance No. 555, and any
18 other applicable law.

19 Section 207. Reservation of Authority. Unless otherwise provided by these Procedures
20 and Requirements or the development agreement, the rules, regulations, and official policies governing
21 permitted uses of the land, governing density, and governing design, improvement, and construction
22 standards and specifications, applicable to development of the property subject to a development agreement,
23 shall be those rules, regulations, and official policies in force at the time of recordation of the agreement
24 (“existing rules”). A development agreement shall not, however, prevent the County from doing any of the
25 following:

- 1 (a) Applying to subsequent development approvals new rules, regulations, and
 2 policies (“new rules”) that do not conflict with those existing rules applicable
 3 to the property as set forth herein;
- 4 (b) Denying or conditionally approving subsequent development projects on the
 5 basis of the existing rules or on the basis of the new rules that do not conflict
 6 with the existing rules;
- 7 (c) Imposing subsequently adopted development exactions that are applied
 8 uniformly to similar development unless such exactions would physically
 9 prevent development of the property for the uses and at the density or
 10 intensity set forth in the development agreement; or
- 11 (d) Imposing regulations that may be in conflict with the development
 12 agreement, but which are reasonably necessary to protect the public health
 13 and safety.

14 Section 208. Construction Codes. A development agreement shall acknowledge the
 15 possibility of changes in the building, plumbing, mechanical, electrical, fire and grading codes applicable
 16 in the County during the term of the agreement and shall provide that any amendments to such codes relating
 17 to construction, fire or grading standards and specifications shall apply to the project subject to the
 18 development agreement.

19
 20 Article 3. NOTICE AND HEARING.

21 Section 301. Duty to Give Notice
 22 Section 302. Form, Time and Manner of Notice
 23 Section 303. Failure to Receive Notice
 24 Section 304. Rules Governing Hearing
 25 Section 305. Errors in Proceedings

26 Section 301. Duty to Give Notice. The Planning Director shall give notice of the Planning
 27 Commission hearing to consider adoption of a development agreement, and the Clerk of the Board shall
 28 give notice of the Board of Supervisors hearing to consider adoption of a development agreement.

1 Section 302. Form, Time and Manner of Notice. Notice of hearing to consider adoption
2 of a development agreement shall be governed by the provisions of state law (Sections 65090, 65091, and
3 65867) and County Ordinance No. 348 (Sections 1.6 through 1.11 inclusive), as such statutes and
4 ordinances now exist or may hereafter be amended. Notice of hearing to consider adoption of a
5 development agreement shall be in addition to any other notice required by law for other actions to be
6 considered concurrently with the development agreement.

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

10 Section 304. Rules Governing Hearing. The public hearing shall to the maximum extent
11 possible be conducted in accordance with the procedural standards set forth in Government Code Section
12 65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity
13 to be heard. The applicant shall have the burden of proof on all issues at the public hearing on a proposed
14 development agreement.

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

1 Article 4. REVIEW, FINDINGS AND DECISION

2 Section 401. Hearing and Recommendation by Planning Commission
3 Section 402. Fast Track Projects
4 Section 403. Hearing and Decision by the Board of Supervisors
5 Section 404. Approval of Development Agreement
6 Section 405. Execution by Property Owner(s)
7 Section 406. Execution by County

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

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

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

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

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

9 The decision of the Board shall be final.

10 Section 404. Approval of Development Agreement. A development agreement is a
11 legislative act that shall be approved by ordinance and is subject to referendum. The ordinance shall refer
12 to and incorporate by reference the text of the development agreement.

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

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

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1 Article 5. RECORDATION.

2	Section 501.	Recordation of Agreement
3	Section 502.	Recordation of Amendment or Cancellation
4	Section 503.	Recordation of Modification or Termination
	Section 504.	Effect of Recordation

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

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

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

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

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22 Article 6. AMENDMENT OR CANCELLATION.

23	Section 601.	Who May Propose
24	Section 602.	Procedure
	Section 603.	Mutual Consent

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

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

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

12
13 Article 7. REVIEW.

14 Section 701.	Annual Review
15 Section 702.	Special Review
16 Section 703.	Procedure

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

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

4 Section 703. Procedure.

- 5 (a) During either an annual review or a special review, the property owner(s)
6 shall be required to demonstrate good faith compliance with the terms of the
7 agreement. The burden of proof on this issue shall be on the property
8 owner(s).
- 9 (b) Upon completion of an annual review or a special review, the TLMA Director
10 shall submit a report to the Board of Supervisors setting forth the evidence
11 concerning good faith compliance by the property owner(s) with the terms of
12 the agreement and his recommended finding on that issue.
- 13 (c) If the Board of Supervisors finds on the basis of substantial evidence that
14 there has been good faith compliance by the property owner(s) with the terms
15 and conditions of the agreement, the review shall be concluded.
- 16 (d) If the Board of Supervisors makes a preliminary finding on the basis of
17 substantial evidence that there has not been good faith compliance by the
18 property owner(s) with the terms or conditions of the agreement, the Board
19 may modify or terminate the agreement as provided in Article 8 of these
20 Procedures and Requirements.

21
22 Article 8. MODIFICATION OR TERMINATION.

23 Section 801. Notice
24 Section 802. Hearing

25 Section 801. Notice. If, upon a preliminary finding under Section 703(d) above, the Board
26 of Supervisors decides to proceed with modification or termination of the agreement, the County shall give
27 at least ten days written notice to the property owner(s) of its intention to do so. The notice shall contain:
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- 1 (a) The time and place of hearing;
- 2 (b) A statement as to whether or not the County proposes to modify or terminate
- 3 the development agreement; and,
- 4 (c) Such other information as is reasonably necessary to inform the property
- 5 owner(s) of the nature of the proceeding.

6 Section 802. Hearing. At the time and place set for the hearing on modification or

7 termination, the property owner(s) shall be given an opportunity to be heard and shall be entitled to present

8 written and oral evidence. The property owner(s) shall be required to demonstrate good faith compliance

9 with the terms and conditions of the agreement. The burden of proof on this issue shall be on the property

10 owner(s). If the Board of Supervisors finds, based upon substantial evidence, that there has not been good

11 faith compliance by the property owner(s) with the terms or conditions of the agreement, the Board may

12 terminate or modify the agreement and impose such conditions as are reasonably necessary to protect the

13 interests of the County. The decision of the Board is final.

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15 Article 9. CHANGES IN STATE OR FEDERAL LAW.

16 Section 901. Effect of Changes in State or Federal Law on Development Agreement. In

17 the event that state or federal laws or regulations, enacted after a development agreement has been entered

18 into, prevent or preclude compliance with one or more provisions of the development agreement, such

19 provisions of the agreement shall be modified or suspended as may be necessary to comply with such state

20 or federal laws or regulations.

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22 Article 10. ARCHIVE COPY OF DEVELOPMENT AGREEMENT.

23 Section 1001. Archive Copy. The Clerk of the Board of Supervisors shall maintain an

24 archive copy of all development agreements, including all incorporated exhibits. The archive copy shall

25 include all subsequent approvals granted pursuant to the development agreement and a record of each

26 annual or special review conducted on the development agreement. The Planning Director shall provide

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1 the Clerk of the Board with copies of all exhibits incorporated in all development agreements including
2 copies of all subsequent approvals granted pursuant to such development agreements.

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