

TITLE 9

DIVISION 23: DEVELOPMENT ORDINANCE FOR NON-RESIDENTIAL AND RESIDENTIAL PROJECTS

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CHAPTER 1: APPLICATIONS

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§ 92301.00 AUTHORITY FOR ADOPTION

These regulations are adopted pursuant to Article 11, Section 7 of the California Constitution and Government Code Section 65864, et seq.

§ 92301.01 PURPOSE; LIMITATION ON APPLICABILITY; FINDINGS

- A. The purpose of this ordinance is to establish the procedures and requirements mandated by Article 2.5 of Chapter 4 of the Government Code for the consideration of development agreements.
- B. This ordinance, and the authority granted hereunder to enter into development agreements, is applicable only to those projects designed and constructed solely as non-residential projects.

- C. Notwithstanding anything herein to the contrary, the Planning Commission shall not consider the adoption of, nor shall the Board of Supervisors approve, any development agreement if the non-residential project to which the development agreement pertains is located within a sphere of influence established or under consideration by the Local Agency Formation Commission at the time the development agreement is to be considered by the Planning Commission pursuant to §92303 et seq.
- D. The County takes notice that the Legislature, in passing the state development agreement law, found and declared that:
 - 1. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.
 - 2. Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.
 - 3. The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

§ 92301.02 FORMS AND INFORMATION

- A. The Planning Director shall prescribe the form for each application, notice and document provided for or required under these regulations for the preparation, review and implementation of development agreements.
- B. The Planning Director may require an applicant to submit such information and supporting data as the Planning Director considers necessary to process the application.

§ 92301.03 FEES

The application shall be accompanied by a deposit of \$1,000. The cost of processing of the application shall be billed to the applicant on a time and materials basis. Non-residential projects processed and billed on a time and materials basis do not require an additional deposit. In the event this amount proves insufficient, the Planning Director may require that additional fees be submitted. Such additional fees shall not exceed the estimated reasonable costs of processing the application. In the event the fees collected exceed the actual costs of processing the application, the excess amount shall be refunded upon the conclusion of proceedings.

§ 92301.04 QUALIFICATION AS AN APPLICANT

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. Applicant includes authorized agent. The Planning Director shall require an applicant to submit proof of his/her interest in the real property and of the authority of the agent to act for the applicant. Such proof may include a preliminary title report issued by a title company licensed to do business in the State of California evidencing the requisite interest of the applicant in the real property. Before processing the application, the Planning Director may obtain the opinion of county counsel as to the sufficiency of the applicant's interest in the real property to enter into the development.

§ 92301.05 PROPOSED FORM OF AGREEMENT

Each application shall be accompanied by the form of development agreement proposed by the applicant. If the Planning Director has approved a standard form of development agreement, this requirement shall be met by utilizing such standard form and including specific proposals for changes in or additions to the language of the standard form.

§ 92301.06 FILING OF APPLICATION

- A. The application for a development agreement shall be submitted no later than one week prior to the meeting of the Environmental Evaluation Committee required by the County's procedures implementing the California Environmental Quality Act on the non-residential project to which the development agreement pertains. No application for a development agreement shall be accepted after this meeting.
- B. The application for a development agreement shall be submitted at the same time as the application for the non-residential project to which the development agreement pertains. No application for a development agreement shall be accepted after the application for the non-residential project to which the development agreement pertains has been deemed complete.
- C. Notwithstanding subsection A & B of this section to the contrary, an application for a development agreement may be submitted on any non-residential project that has not received a final approval as of the date the ordinance codified in this division becomes effective; provided, that such application for such nonresidential project has been deemed complete by the planning director prior to such date.

§ 92301.07 REVIEW OF APPLICATION

The Planning Director shall endorse on the application the date of receipt, shall review the application, and shall reject it if incomplete or inaccurate. If the application is complete, the Planning Director shall accept it for filing. The Planning Director shall determine any additional requirements necessary to complete the development agreement on the basis of the application as filed. After receiving all required information, the Planning Director shall prepare a report and recommendation as to whether or not the development agreement as proposed, or in amended form, is consistent with the general plan, any applicable specific plan, and the provisions of these regulations.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 2: REQUIREMENTS

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§ 92302.04	CONSTRUCTION CODES

§ 92302.00 CONTENTS

A proposed development agreement shall include the following:

- A. A legal description of the property subject to the development agreement.
- B. The duration of the development agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.
- C. Conditions, terms, restrictions, and requirements for subsequent County discretionary actions, provided that such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the development agreement.
- D. The estimated time when construction will be commenced and completed, including, if appropriate, a phasing plan.
- E. Public benefits in accordance with Section 92302.01.

§ 92302.01 PUBLIC BENEFITS

A development agreement shall provide for public benefits in addition to any exaction's already forthcoming through project approval. A development agreement shall include one or more of the following public benefits:

- A. Provisions which substantially advance the objectives of an adopted redevelopment plan;
- B. Payment of the fees set out below per non-residential unit and comprised of the following components:
 1. General plan maintenance fee of two hundred fifty dollars (\$250.00) per non-residential unit;
 2. Sheriff mitigation fee per existing ordinance for each non-residential unit.
 3. Fire mitigation fee per existing ordinance for each non-residential unit.

Such fees shall be payable prior to the issuance of building permits.

- C. Any fees required pursuant to subsection B of this section shall be adjusted during the term of the development agreement to match any adjustments of such fees by the board of supervisors.
- D. A development agreement shall not exempt a nonresidential project from any subsequently adopted development exaction, including any air quality mitigation fee, except to the extent

that such subsequently adopted fee fulfills the same purposes as the fees required pursuant to this section.

§ 92302.02 TERM

- A. The maximum term of a development agreement shall be ten (10) years from the date of the approval of the commercial project to which it pertains. The term of a development agreement may be for less than the maximum term. A development agreement having an initial term of less than ten years may be extended for an additional period not to exceed a total of ten years from the date of approval of the commercial project to which it pertains. Any request for extension shall be noticed and processed in the same manner as an application for a development agreement.
- B. Notwithstanding subsection A., the Board of Supervisors may extend the term of a development agreement beyond the initial term for one additional ten year (maximum) period, upon making findings in support thereof.
- C. Notwithstanding subsection A., the Board of Supervisors may at the time of initial project approval may grant on a case by case basis a specific initial term, upon making findings in support thereof.
- D. At the end of the term of the development agreement, the development agreement shall terminate for all purposes and the non-residential project that was the subject of the development agreement shall be subject to all laws, rules and regulations applicable to such projects and/or uses.

§ 92302.03 RESERVATION OF RIGHTS

- A. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement shall be those rules, regulations, and official policies in force at the time of execution of the agreement.
- B. A development agreement shall not prevent the County, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent the County from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.
- C. A development agreement shall not prevent the County from modifying or suspending the provisions of the development agreement if the Board of Supervisors finds that the failure of the County to do so would place residents of the County in a condition dangerous to their health or safety or both.
- D. A development agreement shall apply only to a project as that project is described in an environmental analysis certified, adopted or approved by the County at or before the time the County enters into the development agreement. A development agreement shall not apply to a project or portions of a project not encompassed by the project description in the County's environmental analysis.

§ 92302.04 CONSTRUCTION CODES

A development agreement shall contain the acknowledgement of the possibility of changes in the Uniform building, plumbing, mechanical, electrical, fire and grading codes, as implemented by the County, during the term of the agreement and shall provide that any amendments shall apply to the non-residential project subject to the development agreement.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 3: NOTICE AND HEARING

- § 92303.00 DUTY TO GIVE NOTICE
- § 92303.01 REQUIREMENTS FOR FORM AND TIME OF NOTICE OF INTENTION TO CONSIDER ADOPTION OF DEVELOPMENT AGREEMENT
- § 92303.02 FAILURE TO RECEIVE NOTICE
- § 92303.03 RULES GOVERNING CONDUCT OF HEARING
- § 92303.04 IRREGULARITY IN PROCEEDINGS

§ 92303.00 DUTY TO GIVE NOTICE

The Planning Director shall give notice of intention of the Planning Commission to consider adoption of a development agreement, and the Clerk of the Board shall give notice of intention of the Board of Supervisors to consider adoption of a development agreement.

§ 92303.01 REQUIREMENTS FOR FORM AND TIME OF NOTICE OF INTENTION TO CONSIDER ADOPTION OF DEVELOPMENT AGREEMENT

- A. Form of Notice. The notice of intention to consider adoption of a development agreement shall contain:
 - 1. The date, time and place of the hearing;
 - 2. The identity of the hearing body;
 - 3. A general explanation of the matter to be considered including a general description of the location of the real property that is the subject of the hearing; and
 - 4. Such other information required by law or which the Planning Director or Clerk considers necessary or desirable.
- B. Time and Manner of Notice. Notice shall be given at least 10 days prior to the public hearing in all the following ways:
 - 1. Publication. Publication once in a newspaper of general circulation, published and circulated in the County.
 - 2. Mailing. Mailing of the notice to all persons shown on the latest equalized assessment roll and any update as owning real property within 300 feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than 1,000, the Planning Director or Clerk may, in lieu of mailed notice, provide notice by placing a display advertisement of at least one-eighth page in a newspaper of general circulation in the County.
 - 3. Notification of Applicant. Mailing or delivery of the notice to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.
 - 4. Notification of Affected Local Agencies. Mailing or delivery of the notice to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the subject property, whose ability to provide those facilities and services may be significantly affected by the proposed development agreement.
- C. Declaration of Existing Law. The notice requirements referred to in subsections A. and B. are declaratory of existing law (Govt. Code §§ 65867, 65090 and 65091). If state law prescribes a different notice requirement, notice shall be given in that manner. The notices required by

this Section are in addition to any other notices required by law for other actions to be considered concurrently with the development agreement.

§ **92303.02 FAILURE TO RECEIVE NOTICE**

The failure of any person or entity to receive notice given pursuant to these regulations shall not affect the authority of the County to enter into a development agreement.

§ **92303.03 RULES GOVERNING CONDUCT OF HEARING**

The public hearing shall be conducted as nearly as may be in accordance with the procedural standards adopted under Government § 65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity to be heard. The applicant shall have the burden of proof on all issues that the public hearing on a proposed development agreement.

§ **92303.04 IRREGULARITY IN PROCEEDINGS**

Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding concerning a development agreement. No action, inaction, or recommendation by the County or the Board of Supervisors or County administrative agencies or officials on a development agreement shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 4: STANDARDS OF REVIEW, FINDINGS AND DECISION

- § 92304.00 HEARING AND RECOMMENDATION BY PLANNING COMMISSION
- § 92304.01 HEARING AND DECISION BY THE BOARD OF SUPERVISORS
- § 92304.02 APPROVAL OF DEVELOPMENT AGREEMENT

§ 92304.00 HEARING AND RECOMMENDATION BY PLANNING COMMISSION

All development agreements shall be considered at a public hearing before the Planning Commission. At the conclusion of the hearing the Planning Commission shall make a recommendation in writing to the Board of Supervisors. This recommendation shall include the Commission's determinations as to whether the proposed development agreement:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located;
- C. Is in conformity with and will promote public convenience, general welfare and good land use practice;
- D. Will not be detrimental to the health, safety and general welfare;
- E. Will not adversely affect the orderly development of property or the preservation of property values;
- F. Will provide significant public benefits.

This recommendation shall also include the Commission's reasons for its recommendation.

§ 92304.01 HEARING AND DECISION BY THE BOARD OF SUPERVISORS

Upon receipt of the recommendation of the Planning Commission, the Clerk of the Board shall set the proposed development agreement for hearing by the Board of Supervisors. After the Board of Supervisors completes its public hearing it may approve, modify or disapprove the recommendation of the Planning Commission. A development agreement shall not be approved unless the Board finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. The decision of the Board shall be final.

§ 92304.02 APPROVAL OF DEVELOPMENT AGREEMENT

Development agreements shall be approved by ordinance. The ordinance shall refer to and incorporate by reference the text of the development agreement. Within ten days after the ordinance approving a development agreement takes effect, the Chairman of the Board shall execute the development agreement on behalf of the County.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 5: RECORDATION

§ 92305.00 RECORDATION OF DEVELOPMENT AGREEMENT,
AMENDMENT OR CANCELLATION

§ 92305.00 RECORDATION OF DEVELOPMENT AGREEMENT, AMENDMENT OR CANCELLATION

- A. Within ten days after the County executes a development agreement, the Clerk of the Board shall record with the County Clerk/Recorder a copy of the agreement, which shall describe the land subject thereto.
- B. If the parties to the development agreement or their successors in interest amend or cancel the development agreement as provided in Chapter 6 of these regulations and Government Code Section 65868, or if the County terminates or modifies the development agreement as provided in Chapter 8 of these regulations and Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the development agreement, the Clerk of the Board shall have notice of such action recorded with the County Clerk/Recorder.
- C. From and after the time of the recordation required by this Section, notice shall be imparted as provided by the recording laws of the State of California. The burdens of the development agreement shall be binding upon, and the benefits of the development agreement shall inure to, all successors in interest to the parties to the development agreement.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 6: AMENDMENT OR CANCELLATION BY MUTUAL CONSENT

- § 92306.00 AMENDMENT OR CANCELLATION BY MUTUAL CONSENT
- § 92306.01 PROCEDURE

§ 92306.00 AMENDMENT OR CANCELLATION BY MUTUAL CONSENT

Any party, or successor in interest, to a development agreement may propose an amendment or cancellation, in whole or in part, of the development agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided under Chapter 8 of these regulations and Government Code Section 65865.1.

§ 92306.01 PROCEDURE

The procedure for proposing and adoption of an amendment or cancellation, in whole or in part, of a development agreement shall be the same as for entering into the development agreement in the first instance. However, if the County initiates a proposed amendment or cancellation of the development agreement, it shall first give written notice by mail to the property owner of its intention to initiate such proceedings not less than thirty days prior to the giving of public notice of hearing to consider the amendment or cancellation.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 7: REVIEW

- § 92307.00 PERIODIC REVIEW
- § 92307.01 SPECIAL REVIEW
- § 92307.02 PROCEDURE

§ 92307.00 PERIODIC REVIEW

The Planning Director shall review a development agreement annually, on or before the anniversary date of the recordation of the development agreement, in order to ascertain the good faith compliance by the property owner with the terms of the development agreement. The property owner shall submit an Annual Monitoring Report, in a form acceptable to the Planning Director, within thirty days after written notice from the Planning Director. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the development agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the Board of Supervisors.

§ 92307.01 SPECIAL REVIEW

The Board of Supervisors may order a special review of compliance with a development agreement at any time. The Planning Director shall conduct such special reviews.

§ 92307.02 PROCEDURE

- A. During either a periodic review or a special review, the property owner shall be required to demonstrate good faith compliance with the terms of the development agreement. The burden of proof on this issue shall be on the property owner.
- B. Upon completion of a periodic review or a special review, the Planning Director shall submit a report to the Board of Supervisors setting forth the evidence concerning good faith compliance by the property owner with the terms of the development agreement and his/her recommended finding on that issue.
- C. If the Board finds on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the development agreement, the review shall be concluded.
- D. If the Board finds on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the development agreement, the Board may modify or terminate the development agreement as provided in Chapter 8 of these regulations.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR NON-RESIDENTIAL PROJECTS

CHAPTER 8: MODIFICATION OR TERMINATION

- § 92308.00 PROCEEDINGS UPON MODIFICATION OR TERMINATION
- § 92308.01 HEARING ON MODIFICATION OR TERMINATION
- § 92308.02 ENFORCEMENT
- § 92308.03 APPEAL BY PARTY OTHER THAN COUNTY

§ 92308.00 PROCEEDINGS UPON MODIFICATION OR TERMINATION

If, upon a finding under Section 92307.02(D), the County determines to proceed with modification or termination of a development agreement, the County shall give written notice to the property owner of its intention to do so. The notice shall contain:

- A. The time and place of the hearing;
- B. A statement as to whether or not the County proposes to terminate or to modify the development agreement; and,
- C. Such other information as the County considers necessary to inform the property owner of the nature of the proceeding including the grounds upon which the proceedings are based.

§ 92308.01 HEARING ON MODIFICATION OR TERMINATION

At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. The property owner shall be required to demonstrate good faith compliance with the terms and conditions of the development agreement. The burden of proof on this issue shall be on the property owner. If the Board finds, based upon substantial evidence, that the property owner has not complied in good faith with the terms or conditions of the agreement, the Board may terminate or modify the development agreement and impose such conditions as it deems necessary to protect the interests of the County. The decision of the Board of Supervisors is final.

§ 92308.02 ENFORCEMENT

Unless amended, canceled, modified, suspended or terminated pursuant to this ordinance, or unless otherwise allowed by this ordinance, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable or specific plan, zoning, subdivision, or building regulation adopted by the County which alters or amends the rules, regulations or policies specified in effect at the time the development agreement is executed by the County.

§ 92308.03 APPEAL BY PARTY OTHER THAN COUNTY

Any party to a development agreement, other than the County, seeking to bring an action to enforce the development agreement pursuant to section 92308.02 shall first appeal all matters to be raised in the action to the Board of Supervisors. The appeal shall be commenced by the filing of a written statement of issues by the Party appealing setting out in detail the basis for the appeal. The statement shall be filed with the Clerk of the Board and Planning Director. The Board of Supervisors shall hold a hearing on the issues raised in the statement no later than forty-five days after the statement has been filed with the Clerk of the Board and Planning Director.

The Board of Supervisors shall make findings on all matters raised in the appeal. The party shall not commence an action to enforce the development agreement until after the Board of Supervisors has issued its findings. The Board of Supervisors shall issue its findings no later than fifteen days after the hearing on the appeal.

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CHAPTER 9: STATE OR FEDERAL LAW

§ 92309.00 MODIFICATION OR SUSPENSION BY STATE OR FEDERAL LAW

§ 92309.00 MODIFICATION OR SUSPENSION BY STATE OR FEDERAL LAW

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

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CHAPTER 10: APPROVED DEVELOPMENT AGREEMENTS

§ 92310.00	APPROVED DEVELOPMENT AGREEMENTS
§ 92310.01	FINDINGS; MESQUITE REGIONAL LANDFILL
§ 92310.02	APPROVAL
§ 92310.03	STATUTE OF LIMITATIONS
§ 92310.04	CODIFICATION
§ 92310.05	AMENDMENT

§ 92310.00 APPROVED DEVELOPMENT AGREEMENTS

A development agreement is a legislative act which shall be approved by ordinance. All approved development agreements shall be codified by amendment of this Chapter 10.

§ 92310.01 FINDINGS, MESQUITE REGIONAL LANDFILL

The Board hereby finds that the Development Agreement by and between the County of Imperial and Arid Operations Inc., Gold Fields Mining Corporation, Western Waste Industries, and SP Environmental Systems relating to the development known as Mesquite Regional Landfill (the "Development Agreement"), a copy of which is attached to this Ordinance as Exhibit 1, and hereby incorporated into this Ordinance for all purposes by this reference, has been recommended by the County Planning Director as being consistent with the County's General Plan and the provisions of Division 23 of Title 9 of the Codified Ordinances of the County ("the Ordinances") and has been recommended by the County Planning Commission that it:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the General Plan;
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located;
- C. Is in conformity with and will promote public convenience, general welfare and good land use practice;
- D. Will not be detrimental to the health, safety and general welfare;
- E. Will not adversely affect the orderly development of property or the preservation of property values;
- F. Will provide significant public benefits.

The Board hereby concurs in these recommendations and specifically finds that the provisions of the Development Agreement are consistent with the County's General Plan. The Board hereby further finds that the underlying development subject to full and proper environmental review under NEPA/CEQA, resulting in the certification of an EIS/EIR on September 6, 1995, which review encompassed the Development Agreement. Findings regarding same are contained in Board of Supervisors Resolution 090695-2.g. and the adoption of this Ordinance is based on those findings.

§ 92310.02 APPROVAL

Pursuant to the authorization provided in Section 65864 et seq. of the Government Code of the State of California and the Ordinances, the Board hereby approves the Development Agreement. The Board hereby authorizes the Chairman of the Board to execute the Developers Agreement on behalf of the County.

§ 92310.03 STATUTE OF LIMITATIONS

No action or proceeding (“Action”) may be brought by a person, public agency, or public or private corporation partnership, association, organization or other business or non-business entity other than the parties to the Development Agreement or their successors, to attack, review, interpret, set aside, void, or annul all or any part of the Development Agreement or the decision of the County of Imperial to approve and execute the Development Agreement, unless the Action is commenced and service made on the County of Imperial within 120 days from the County’s adoption of this Ordinance.

§ 92310.04 CODIFICATION

This Ordinance shall be codified as required by Section 92310.00 of the Ordinances.

§ 92310.05 AMENDMENT

A. FINDINGS

The Board hereby finds that the Development Agreement by and between the County of Imperial and Arid Operations Inc., Gold Fields Mining Corporation, Western Waste Industries and SP Environmental Systems relating to the development known as Mesquite Regional Landfill, as approved in Ordinance No. 1165, and as amended herein:

1. Is consistent with the objectives, policies, general land uses and programs specified in the General Plan;
2. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located;
3. Is in conformity with and will promote public convenience, general welfare, and good land use practice;
4. Will not be detrimental to the health, safety and general welfare;
5. Will not adversely affect the orderly development of property or the preservation of property values; and
6. Will provide significant public benefits.

Copies of the Development Agreement approved by Ordinance No. 1165, and the amendments hereto approved by this Ordinance, are attached thereto as Exhibit 1, and are hereby incorporated by reference.

The Board hereby further finds that the underlying development project to which the amended Development Agreement relates was subject to full and proper environmental review under the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”), resulting in the certification of an Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) on September 6, 1995, and in the certification of an Addendum to the Final EIR on September 2, 1996, which review encompassed the amended Development Agreement. Findings regarding same are contained in Board of Supervisors Resolution No. 090695-2.g. and 96-122, and the adoption of this Ordinance is based on those findings.

The Board hereby further finds that the Development Agreement, as amended, complies with Division 23 of Title 9 to the Codified Ordinances of the County of Imperial, as adopted in Ordinance No. 1158. The Board finds that, for the reasons set forth in the Development Agreement, it is reasonable and appropriate that the Board extend the term of the Development Agreement beyond ten (10) years.

B. APPROVAL

Pursuant to the authorization provided in Section 65865 et seq. of the Government Code of the State of California and the Ordinances, the Board hereby approves the amendments to the Development Agreement, a copy of which appears as Exhibit 1 to this Ordinance. The Board hereby authorizes the Chairman of the Board to execute the amendments to the Development Agreement on behalf of the County. These amendments shall be understood and interpreted in accordance with the Development Agreement approved by the Board in Ordinance No. 1165.

C. STATUTE OF LIMITATIONS

No action or proceeding (“Action”) may be brought by a person, public agency, or public or private corporation, partnership, association, organization or other business or non-business entity other than the parties to the amended Development Agreement or their successors to attack, review, interpret, set aside, void, or annul all or any part of the amended Development Agreement or the decision of the County of Imperial to approve and execute the amended Development Agreement, unless the Action is commenced and service made on the County of Imperial within 120 days from the adoption of this Ordinance.

D. CODIFICATION

This Ordinance shall be codified as required by Section 92310.00 of the Ordinances.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 11: APPLICATIONS

§ 92311.00	AUTHORITY FOR ADOPTION
§ 92311.01	PURPOSE; LIMITATION ON APPLICABILITY; FINDINGS
§ 92311.02	FORMS AND INFORMATION
§ 92311.03	FEES
§ 92311.04	QUALIFICATION AS AN APPLICANT
§ 92311.05	PROPOSED FORM OF AGREEMENT
§ 92311.06	FILING OF APPLICATION
§ 92311.07	REVIEW OF APPLICATION

§ 92311.00 AUTHORITY FOR ADOPTION

These regulations are adopted pursuant to Article 11, Section 7 of the California Constitution and Government Code Section 65864, et seq.

§ 92311.01 PURPOSE; LIMITATION ON APPLICABILITY

- A. The purpose of this ordinance is to establish the procedures and requirements mandated by Article 2.5 of Chapter 4 of the Government Code for the consideration of development agreements.
- B. This ordinance, and the authority granted hereunder to enter into development agreements, is applicable only to those projects designed and constructed solely as residential projects. Residential projects include single family housing projects, residential cooperatives or condominiums and residential apartment complexes.

§ 92311.02 FORMS AND INFORMATION

- A. The Planning Director shall prescribe the form for each application, notice and document provided for or required under these regulations for the preparation, review and implementation of development agreements.
- B. The Planning Director may require an applicant to submit such information and supporting data as the Planning Director considers necessary to process the application.

§ 92311.03 FEES

The application shall be accompanied by a fee of \$1,000 to cover processing costs. Residential projects processed and billed on a time and materials basis do not require an additional deposit. In the event this amount proves insufficient, the Planning Director may require that additional fees be submitted. Such additional fees shall not exceed the estimated reasonable costs of processing the application. In the event the fees collected exceed the actual costs of processing the application, the excess amount shall be refunded upon the conclusion of proceedings.

§ 92301.04 QUALIFICATION AS AN APPLICANT

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. Applicant includes authorized agent. The Planning Director shall require an applicant to submit proof of his/her interest in the real property and of the authority of the agent to act for the applicant. Such proof may include a preliminary title report issued by a title company licensed to do business in the State of California evidencing the requisite interest of the applicant in the real property. Before processing the application, the

Planning Director may obtain the opinion of County Counsel as to the sufficiency of the applicant's interest in the real property to enter into the development agreement.

§ 92311.05 PROPOSED FORM OF AGREEMENT

Each application shall be accompanied by the form of development agreement proposed by the applicant. If the Planning Director has approved a standard form of development agreement, this requirement shall be met by utilizing such standard form and including specific proposals for changes in or additions to the language of the standard form.

§ 92311.06 FILING OF APPLICATION

- A. The application for a development agreement shall be submitted no later than one week prior to the meeting of the Environmental Evaluation Committee required by the County's procedures implementing the California Environmental Quality Act on the residential project to which the development agreement pertains. No application for a development agreement shall be accepted after this meeting.
- B. The application for a development agreement shall be submitted at the same time as the application for the residential project to which the development agreement pertains. No application for a development agreement shall be accepted after the application for the residential project to which the development agreement pertains has been deemed complete.
- C. Notwithstanding subsection A & B of this section to the contrary, an application for a development agreement may be submitted on any residential project that has not received a final approval as of the date the ordinance codified in this division becomes effective; provided, that such application for such residential project has been deemed complete by the planning director prior to such date.

§ 92311.07 REVIEW OF APPLICATION

The Planning Director shall endorse on the application the date of receipt, shall review the application, and may reject it if incomplete or inaccurate. If the application is complete, the Planning Director shall accept it for filing. The Planning Director shall determine any additional requirements necessary to complete the development agreement on the basis of the application as filed. After receiving all required information, the Planning Director shall prepare a report and recommendation as to whether or not the development agreement as proposed, or in amended form, is consistent with the general plan, any applicable specific plan, and the provisions of these regulations.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS

CHAPTER 12: REQUIREMENTS

§ 92312.00	CONTENTS
§ 92312.01	PUBLIC BENEFITS
§ 92312.02	TERM
§ 92312.03	RESERVATION OF RIGHTS
§ 92312.04	CONSTRUCTION CODES

§ 92312.00 CONTENTS

A proposed development agreement shall include the following:

- A. A legal description of the property subject to the development agreement.
- B. The duration of the development agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.
- C. Conditions, terms, restrictions, and requirements for subsequent County discretionary actions, provided that such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the development agreement.
- D. The estimated time when construction will be commenced and completed, including a phasing plan.
- E. Public benefits in accordance with Section 92312.01.

§ 92312.01 PUBLIC BENEFITS

A development agreement shall provide for public benefits in addition to any exaction's already forthcoming through project approval. A development agreement shall include one or more of the following public benefits:

- A. Provisions which substantially advance the objectives of an adopted redevelopment plan.
- B. Payment of the fees set out below per residential unit and comprised of the following components:
 - 1. General Plan Maintenance Fee of \$250.00 per Residential Unit
 - 2. Sheriff Mitigation Fee Per Existing Ordinance for each Residential Unit.
 - 3. Fire Mitigation Fee per Existing Ordinance for each Residential Unit.

Such fees shall be payable prior to the issuance of building permits.

- C. Fees required pursuant to Subsection B. above shall be adjusted during the term of the development agreement to match any adjustments of such fees by the Board of Supervisors.
- D. A development agreement shall not exempt a residential project from any subsequently adopted development exaction, including any air quality mitigation fee, except to the extent that such subsequently adopted fee fulfills the same purposes as the fees set forth in Subsection 92312.01 B.

§ 92312.02 TERM

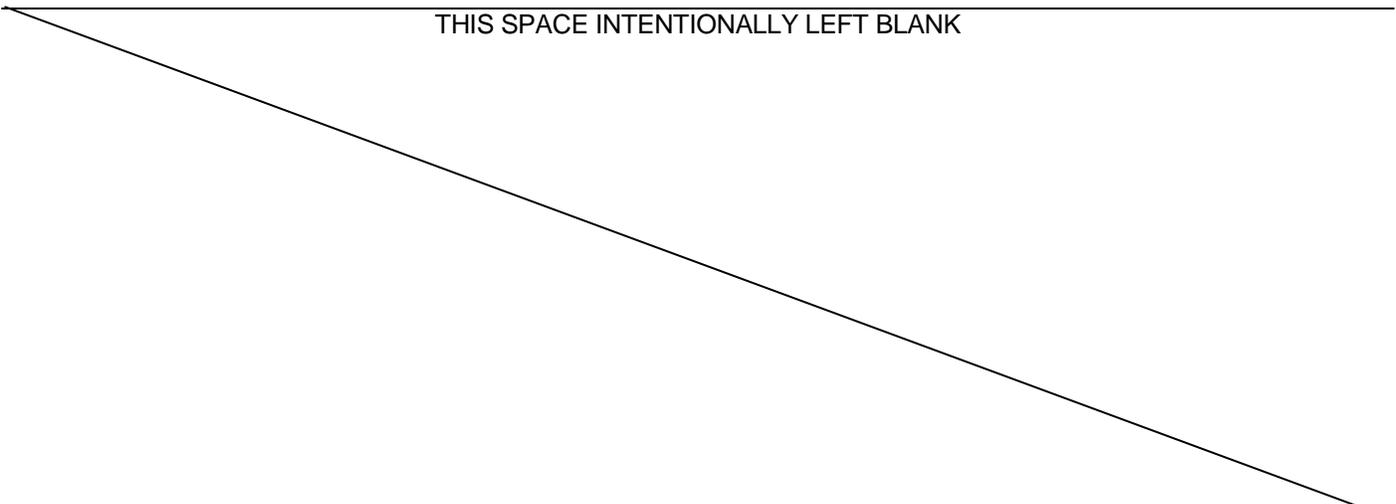
- A. The maximum term of a development agreement shall be ten (10) years from the date of the approval of the commercial project to which it pertains. The term of a development agreement may be for less than the maximum term. A development agreement having an initial term of less than ten years may be extended for an additional period not to exceed a total of ten years from the date of approval of the residential project to which it pertains. Any request for extension shall be noticed and processed in the same manner as an application for a development agreement.
- B. Notwithstanding subsection A., the Board of Supervisors may extend the term of a development agreement beyond the initial term for one additional ten year (maximum) period, upon making findings in support thereof.
- C. Notwithstanding subsection A., the Board of Supervisors may at the time of initial project approval may grant on a case by case basis a specific initial term, upon making findings in support thereof.
- D. At the end of the term of the development agreement, the development agreement shall terminate for all purposes and the residential project that was the subject of the development agreement shall be subject to all laws, rules and regulations applicable to such projects and/or uses.

§ 92312.03 RESERVATION OF RIGHTS

Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent the County, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent the County from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

§ 92312.04 CONSTRUCTION CODES

A development agreement shall acknowledge the possibility of changes in the County's building, plumbing, mechanical, electrical, fire and grading codes during the term of the agreement and shall provide that any code amendments relating to construction or grading standards and specifications shall apply to the residential project subject to the development agreement.



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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 13: NOTICE AND HEARING

- § 92313.00 DUTY TO GIVE NOTICE
- § 92313.01 REQUIREMENTS FOR FORM AND TIME OF NOTICE OF INTENTION TO CONSIDER ADOPTION OF DEVELOPMENT AGREEMENT
- § 92313.02 FAILURE TO RECEIVE NOTICE
- § 92313.03 RULES GOVERNING CONDUCT OF HEARING
- § 92313.04 IRREGULARITY IN PROCEEDINGS

§ 92313.00 DUTY TO GIVE NOTICE

The Planning Director shall give notice of intention of the Planning Commission to consider adoption of a development agreement, and the Clerk of the Board shall give notice of intention of the Board of Supervisors to consider adoption of a development agreement.

§ 92313.01 REQUIREMENTS FOR FORM AND TIME OF NOTICE OF INTENTION TO CONSIDER ADOPTION OF DEVELOPMENT AGREEMENT

- A. FORM OF NOTICE. The notice of intention to consider adoption of a development agreement shall contain:
 - 1. The date, time and place of the hearing;
 - 2. The identity of the hearing body;
 - 3. A general explanation of the matter to be considered including a general description of the location of the real property that is the subject of the hearing; and
 - 4. Such other information required by law or which the Planning Director or Clerk considers necessary or desirable.
- B. TIME AND MANNER OF NOTICE. Notice shall be given at least 10 days prior to the public hearing in all the following ways:
 - 1. Publication. Publication once in a newspaper of general circulation, published and circulated in the County.
 - 2. Mailing. Mailing of the notice to all persons shown on the latest equalized assessment roll and any update as owning real property within 300 feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than 1,000, the Planning Director or Clerk may, in lieu of mailed notice, provide notice by placing a display advertisement of at least one-eighth page in a newspaper of general circulation in the County.
 - 3. Notification of Applicant. Mailing or delivery of the notice to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.
 - 4. Notification of Affected Local Agencies. Mailing or delivery of the notice to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the subject property, whose ability to provide those facilities and services may be significantly affected by the proposed development agreement.
- C. DECLARATION OF EXISTING LAW. The notice requirements referred to in subsections (a) and (b) are declaratory of existing law (Govt. Code §§ 65867, 65090 and 65091). If state law prescribes a different notice requirement, notice shall be given in that manner. The notices

required by this Section are in addition to any other notices required by law for other actions to be considered concurrently with development agreement.

§ **92313.02 FAILURE TO RECEIVE NOTICE**

The failure of any person or entity to receive notice given pursuant to these regulations shall not affect the authority of the County to enter into a development agreement.

§ **92313.03 RULES GOVERNING CONDUCT OF HEARING**

The public hearing shall be conducted as nearly as may be in accordance with the procedural standards adopted under Government § 65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity to be heard. The applicant shall have the burden of proof on all issues at the public hearing on a proposed development agreement.

§ **92313.04 IRREGULARITY IN PROCEEDINGS**

Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding concerning a development agreement. No action, inaction, or recommendation by the County or the Board of Supervisors or County administrative agencies or officials on a development agreement shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 14: STANDARDS OF REVIEW, FINDINGS AND DECISION

- § 92314.00 HEARING AND RECOMMENDATION BY PLANNING COMMISSION
- § 92314.01 HEARING AND DECISION BY THE BOARD OF SUPERVISORS
- § 92314.02 APPROVAL OF DEVELOPMENT AGREEMENT

§ 92314.00 HEARING AND RECOMMENDATION BY PLANNING COMMISSION

All development agreements shall be considered at a public hearing before the Planning Commission. At the conclusion of the hearing the Planning Commission shall make a recommendation in writing to the Board of Supervisors. This recommendation shall include the Commission's determinations as to whether the proposed development agreement:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located;
- C. Is in conformity with and will promote public convenience, general welfare and good land use practice;
- D. Will not be detrimental to the health, safety and general welfare;
- E. Will not adversely affect the orderly development of property or the preservation of property values;
- F. Will provide significant public benefits.

This recommendation shall also include the Commission's reasons for its recommendation.

§ 92314.01 HEARING AND DECISION BY THE BOARD OF SUPERVISORS

Upon receipt of the recommendation of the Planning Commission, the Clerk of the Board shall set the proposed development agreement for hearing by the Board of Supervisors. After the Board of Supervisors completes its public hearing it may approve, modify or disapprove the recommendation of the Planning Commission. A development agreement shall not be approved unless the Board finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. The decision of the Board shall be final.

§ 92314.02 APPROVAL OF DEVELOPMENT AGREEMENT

Development agreements shall be approved by ordinance. The ordinance shall refer to and incorporate by reference the text of the development agreement. Within ten days after the ordinance approving a development agreement takes effect, the Chairman of the Board shall execute the development agreement on behalf of the County.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 15: RECORDATION

§ 92315.00 RECORDATION OF DEVELOPMENT AGREEMENT,
AMENDMENT OR CANCELLATION

§ 92315.00 RECORDATION OF DEVELOPMENT AGREEMENT, AMENDMENT OR
CANCELLATION

- A. Within ten days after the County executes a development agreement, the Clerk of the Board shall record with the County Recorder a copy of the agreement, which shall describe the land subject thereto.
- B. If the parties to the development agreement or their successors in interest amend or cancel the development agreement as provided in Chapter 16 of these regulations and Government Code Section 65868, or if the County terminates or modifies the development agreement as provided in Chapter 18 of these regulations and Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the development agreement, the Clerk of the Board shall have notice of such action recorded with the County Recorder.
- C. From and after the time of the recordation required by this Section, notice shall be imparted as provided by the recording laws of the State of California. The burdens of the development agreement shall be binding upon, and the benefits of the development agreement shall inure to, all successors in interest to the parties to the development agreement.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 16: AMENDMENT OR CANCELLATION BY MUTUAL CONSENT

- § 92316.00 AMENDMENT OR CANCELLATION BY MUTUAL CONSENT
- § 92316.01 PROCEDURE

§ 92316.00 AMENDMENT OR CANCELLATION BY MUTUAL CONSENT

Any party, or successor in interest, to a development agreement may propose an amendment or cancellation, in whole or in part, of the development agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided under Chapter 18 of these regulations and Government Code Section 65865.1.

§ 92316.01 PROCEDURE

The procedure for proposing and adoption of an amendment or cancellation, in whole or in part, of a development agreement shall be the same as for entering into the development agreement in the first instance. However, if the County initiates a proposed amendment or cancellation of the development agreement, it shall first give written notice by mail to the property owner of its intention to initiate such proceedings not less than thirty days prior to the giving of public notice of hearing to consider the amendment or cancellation.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 17: REVIEW

- § 92317.00 PERIODIC REVIEW
- § 92317.01 SPECIAL REVIEW
- § 92317.02 PROCEDURE

§ 92317.00 PERIODIC REVIEW

The Planning Director shall review a development agreement annually, on or before the anniversary date of the recordation of the development agreement, in order to ascertain the good faith compliance by the property owner with the terms of the development agreement. The property owner shall submit an Annual Monitoring Report, in a form acceptable to the Planning Director, within thirty days after written notice from the Planning Director. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the development agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the Board of Supervisors.

§ 92317.01 SPECIAL REVIEW

The Board of Supervisors may order a special review of compliance with a development agreement at any time. The Planning Director shall conduct such special reviews.

§ 92317.02 PROCEDURE

- A. During either a periodic review or a special review, the property owner shall be required to demonstrate good faith compliance with the terms of the development agreement. The burden of proof on this issue shall be on the property owner.
- B. Upon completion of a periodic review or a special review, the Planning Director shall submit a report to the Board of Supervisors setting forth the evidence concerning good faith compliance by the property owner with the terms of the development agreement and his/her recommended finding on that issue.
- C. If the Board finds on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the development agreement, the review shall be concluded.
- D. If the Board finds on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the development agreement, the Board may modify or terminate the development agreement as provided in Chapter 18 of these regulations.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 18: MODIFICATION OR TERMINATION

- § 92318.00 PROCEEDINGS UPON MODIFICATION OR TERMINATION
- § 92318.01 HEARING ON MODIFICATION OR TERMINATION

§ 92318.00 PROCEEDINGS UPON MODIFICATION OR TERMINATION

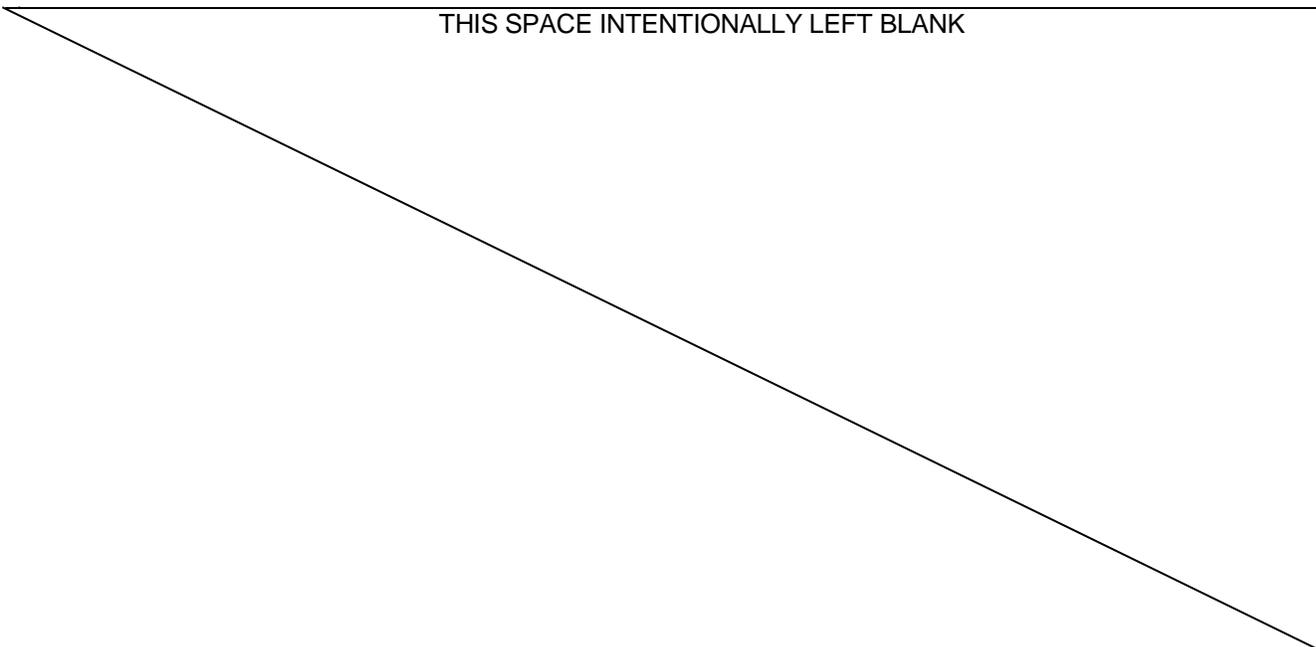
If, upon a finding under Section 92317.02(D), the County determines to proceed with modification or termination of a development agreement, the County shall give written notice to the property owner of its intention to do so. The notice shall contain:

- A. The time and place of the hearing;
- B. A statement as to whether or not the County proposes to terminate or to modify the development agreement; and,
- C. Such other information as the County considers necessary to inform the property owner of the nature of the proceeding.

§ 92318.01 HEARING ON MODIFICATION OR TERMINATION

At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. The property owner shall be required to demonstrate good faith compliance with the terms and conditions of the development agreement. The burden of proof on this issue shall be on the property owner. If the Board finds, based upon substantial evidence, that the property owner has not complied in good faith with the terms or conditions of the agreement, the Board may terminate or modify the development agreement and impose such conditions as it deems necessary to protect the interests of the County. The decision of the Board of Supervisors is final.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

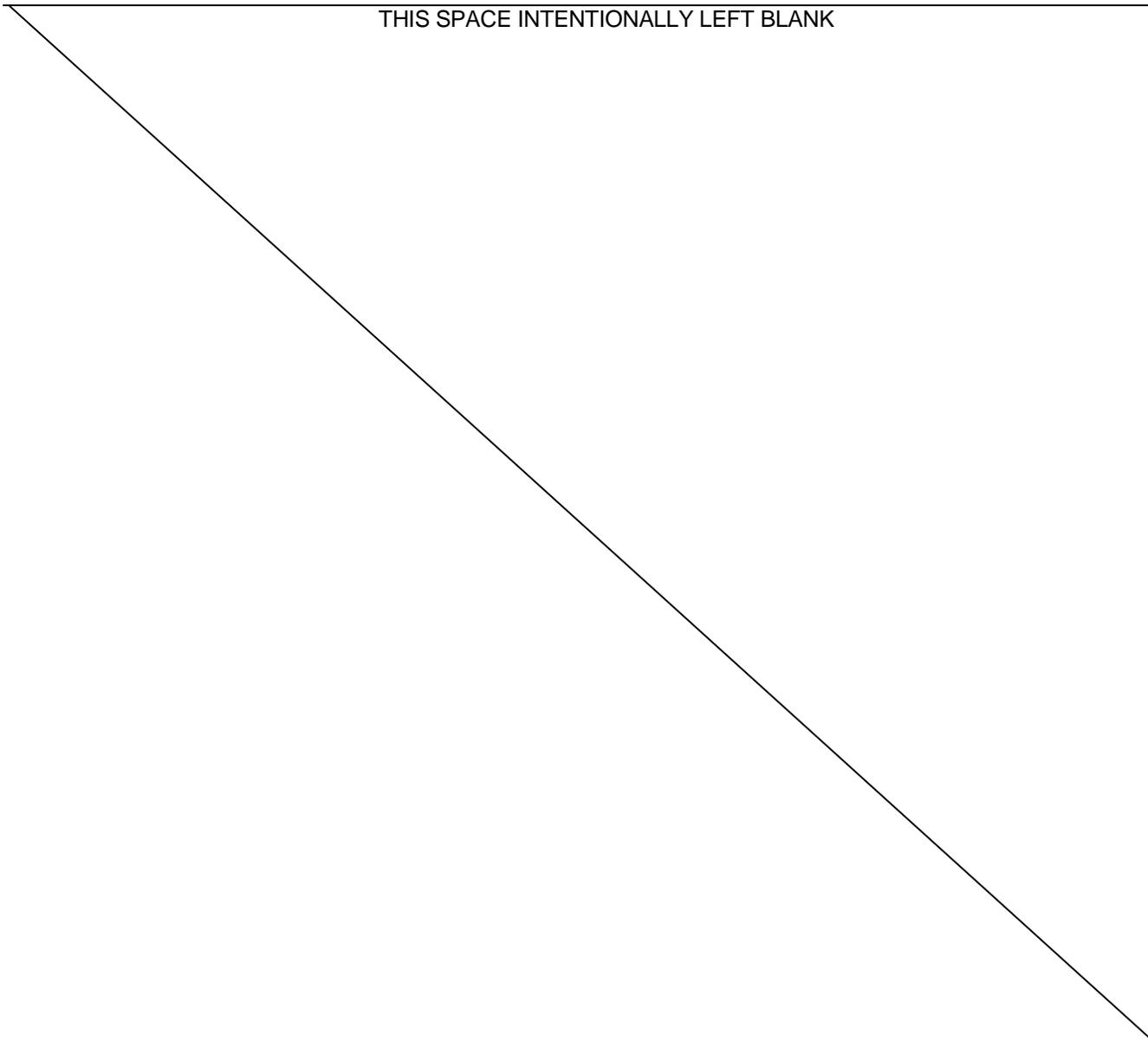
CHAPTER 19: STATE OR FEDERAL LAW

§ 92319.00 MODIFICATION OR SUSPENSION BY STATE OR FEDERAL LAW

§ 92319.00 MODIFICATION OR SUSPENSION BY STATE OR FEDERAL LAW

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

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TITLE 9

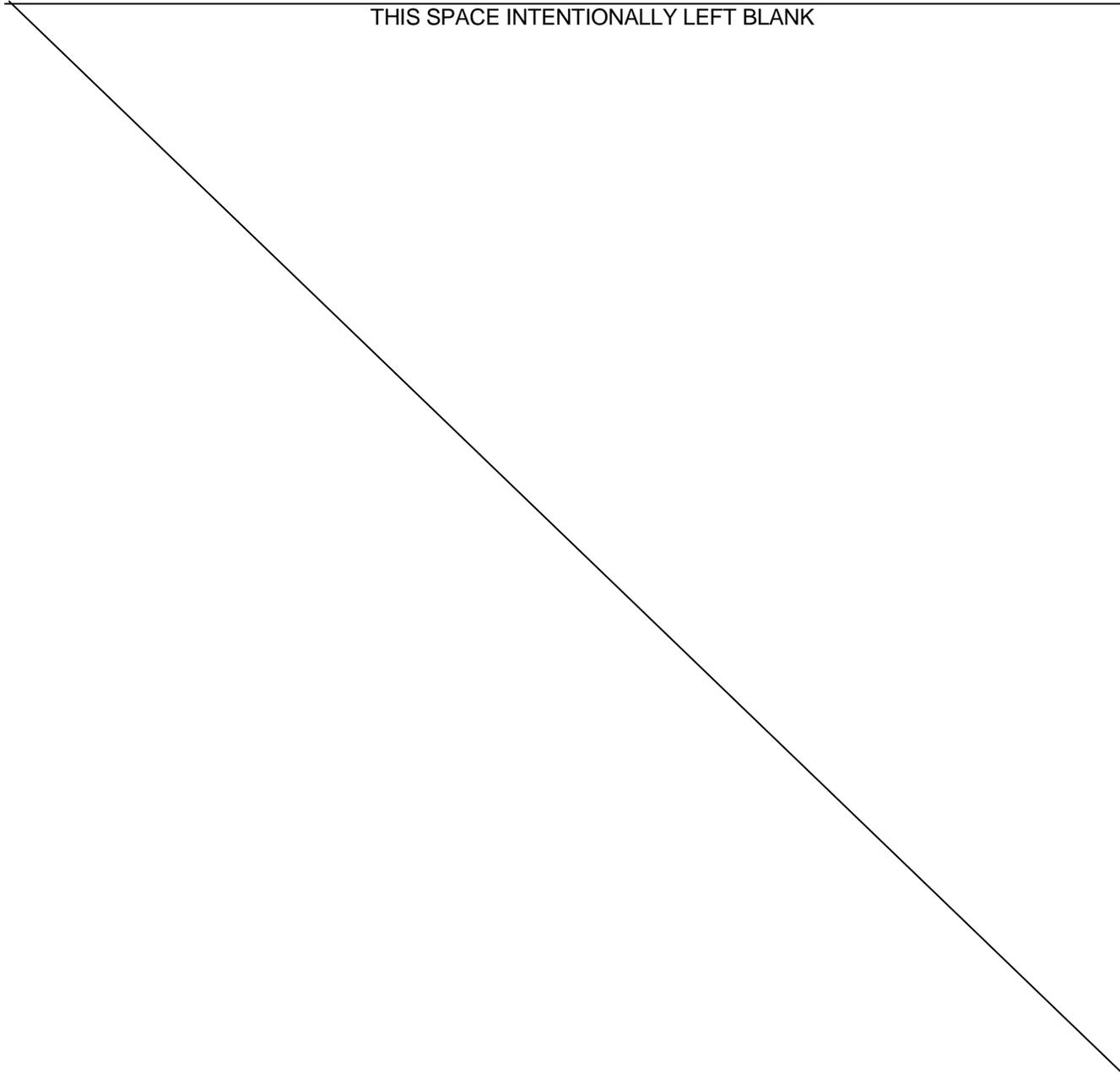
DIVISION 23: DEVELOPMENT AGREEMENTS FOR RESIDENTIAL PROJECTS

CHAPTER 20: APPROVED DEVELOPMENT AGREEMENTS

§ 92320.00 APPROVED DEVELOPMENT AGREEMENTS.

Pursuant to the authorization provided in Section 65864 et seq. of the Government Code of the state of California and the County of Imperial Codified Ordinances, the board approves the development agreement, and the first amendment made thereto. The board authorizes the chairperson of the board to execute the development agreement, and the first amendment made thereto, on behalf of the county 101 Ranch Specific Plan.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 21: APPLICATIONS

§ 92321.00	AUTHORITY FOR ADOPTION
§ 92321.01	PURPOSE – LIMITATION ON APPLICABILITY – FINDINGS
§ 92321.02	FORMS AND INFORMATION
§ 92321.03	FEES
§ 92321.04	QUALIFICATION AS AN APPLICANT
§ 92321.05	PROPOSED FORM OF AGREEMENT
§ 92321.06	FILING OF APPLICATION
§ 92321.07	REVIEW OF APPLICATION

§ 92321.00 AUTHORITY FOR ADOPTION.

These regulations are adopted pursuant to Article 11, Section 7 of the California Constitution and Government Code Section 65864, et seq.

§ 92321.01 PURPOSE--LIMITATION ON APPLICABILITY--FINDINGS.

- A. The purpose of this division is to establish the procedures and requirements mandated by Article 2.5 of Chapter 4 of the Government Code for the consideration of development agreements.
- B. This division, and the authority granted hereunder to enter into development agreements, is applicable only to those projects designed and constructed solely as mixed-use projects. Mixed-use projects include at least 10% nonresidential uses combined with residential uses.
- C. Notwithstanding anything herein to the contrary, the Planning Commission may consider the adoption of, and the Board of Supervisors may approve, any development agreement if the mixed-use project to which the development agreement pertains is located within a sphere of influence established or under consideration by the Local Agency Formation Commission at the time the development agreement is to be considered by the Planning Commission pursuant to Section 92323.00.
- D. The County takes notice that the legislature, in passing the state development agreement law, found and declared that:
 1. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public;
 2. Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development;
 3. The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

§ **92321.02 FORMS AND INFORMATION.**

- A. The Planning & Development Services Director shall prescribe the form for each application, notice and document provided for or required under these regulations for the preparation, review and implementation of development agreements.
- B. The Planning & Development Services Director may require an applicant to submit such information and supporting data as the Planning & Development Services Director considers necessary to process the application.

§ **92321.03 FEES.**

The application shall be accompanied by a deposit of one thousand dollars (\$1000.00), unless there is an existing time and materials project that the cost may be billed against. The cost of processing of the application shall be billed to the applicant on a time and materials basis. Projects processed and billed on a time and materials basis do not require an additional deposit. However, if the time and materials account is not current, an application shall not be accepted. In the event this amount proves insufficient, the Planning & Development Services Director may require that additional fees be submitted. Such additional fees shall not exceed the estimated reasonable costs of processing the application. In the event the fees collected exceed the actual costs of processing the application, the excess amount shall be refunded upon the conclusion of proceedings.

§ **92321.04 QUALIFICATION AS AN APPLICANT.**

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. Applicant includes authorized agent. The Planning & Development Services Director shall require an applicant to submit proof of his or her interest in the real property and of the authority of the agent to act for the applicant. Such proof may include a preliminary title report issued by a title company licensed to do business in the State of California evidencing the requisite interest of the applicant in the real property. Before processing the application, the Planning & Development Services Director may obtain the opinion of County Counsel as to the sufficiency of the applicant's interest in the real property to enter into the development.

§ **92321.05 PROPOSED FORM OF AGREEMENT.**

Each application shall be accompanied by the form of development agreement proposed by the applicant. If the Planning & Development Services Director has approved a standard form of development agreement, this requirement shall be met by utilizing such standard form and including specific proposals for changes in or additions to the language of the standard form.

§ **92321.06 FILING OF APPLICATION.**

- A. The application for a development agreement shall be submitted no later than three (3) weeks prior to the meeting of the Environmental Evaluation Committee required by the County's procedures implementing the California Environmental Quality Act on the project to which the development agreement pertains. No application for a development agreement shall be accepted after this meeting.
- B. The application for a development agreement shall be submitted at the same time as the application for the project to which the development agreement pertains. No application for a development agreement shall be accepted after the application for the project to which the development agreement pertains has been deemed complete.
- C. Notwithstanding subsection A & B of this section to the contrary, an application for a development agreement may be submitted on any mixed-use project that has not received a final approval as of the date the ordinance codified in this division becomes effective; provided, that such application for such project has been deemed complete by the Planning & Development Services Director prior to such date.

§ **92321.07 REVIEW OF APPLICATION.**

The Planning & Development Services Director shall endorse on the application the date of receipt, shall review the application, and shall reject it if incomplete or inaccurate. If the application is complete, the Planning & Development Services Director shall accept it for filing. The Planning & Development Services Director shall determine any additional requirements necessary to complete the development agreement on the basis of the application as filed. After receiving all required information, the Planning & Development Services Director shall prepare a report and recommendation as to whether or not the development agreement as proposed, or in amended form, is consistent with the general plan, any applicable specific plan, and the provisions of these regulations.

§ **92321.08 APPROVAL**

Pursuant to the authorization provided in section 65864 et seq. Of the government code of the state of California and the County of Imperial codified ordinances, the Board approves the development agreement and the first amendment made thereto. The Board authorizes the chairperson of the Board to execute the development agreement, and the first amendment made thereto, on behalf of the County Rancho Los Lagos Specific Plan.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 22: REQUIRMENTS

§ 92322.00	CONTENTS
§ 92322.01	PUBLIC BENEFITS
§ 92322.02	TERM
§ 92322.03	RESERVATION OF RIGHTS
§ 92322.04	CONSTRUCTION CODES

§ 92322.00 CONTENTS.

A proposed development agreement shall include the following:

- A. A legal description of the property subject to the development agreement;
- B. A concise statement on why the development agreement is requested, including why it is needed and what the benefits are to both parties;
- C. The duration of the development agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes;
- D. Conditions, terms, restrictions, and requirements for subsequent County discretionary actions, provided that such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the development agreement;
- E. The estimated time when construction will be commenced and completed, including, if appropriate, a phasing plan;
- F. Public benefits in accordance with Section 92322.01.

§ 92322.01 PUBLIC BENEFITS.

A development agreement shall provide for public benefits in addition to any exaction's already forthcoming through project approval. A development agreement shall include one or more of the following public benefits:

- A. Provisions which substantially advance the objectives of an adopted redevelopment plan;
- B. Payment of all development impact fees
- C. Any fees required pursuant to subsection B of this section shall be adjusted during the term of the development agreement to match any adjustments of such fees by the Board of Supervisors.
- D. A development agreement shall not exempt a mixed-use project from any subsequently adopted development exaction, including any air quality mitigation fee, except to the extent that such subsequently adopted fee fulfills the same purposes as the fees required pursuant to this section.

§ 92322.02 TERM.

- A. The maximum term of a development agreement shall be ten (10) years from the date of the approval of the commercial/residential project to which it pertains. The term of a development agreement may be for less than the maximum term. A development agreement having an initial

term of less than ten years may be extended for an additional period not to exceed a total of ten years from the date of approval of the commercial/residential project to which it pertains. Any request for extension shall be noticed and processed in the same manner as an application for a development agreement.

- B. Notwithstanding subsection A., the Board of Supervisors may extend the term of a development agreement beyond the initial term for one additional maximum ten year (maximum) period, upon making findings in support thereof.
- C. Notwithstanding subsection A., the Board of Supervisors may at the time of initial project approval may grant on a case by case basis a specific initial term, upon making findings in support thereof.
- D. At the end of the term of the development agreement, the development agreement shall terminate for all purposes and the commercial/residential project that was the subject of the development agreement shall be subject to all laws, rules and regulations applicable to such projects and/or uses.

§ **92322.03 RESERVATION OF RIGHTS.**

- A. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement shall be those rules, regulations, and official policies in force at the time of execution of the agreement.
- B. A development agreement shall not prevent the County, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent the County from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.
- C. A development agreement shall not prevent the County from modifying or suspending the provisions of the development agreement if the Board of Supervisors finds that the failure of the County to do so would place residents of the County in a condition dangerous to their health or safety or both.
- D. A development agreement shall apply only to a project as that project is described in an environmental analysis certified, adopted or approved by the County at or before the time the County enters into the development agreement. A development agreement shall not apply to a project or portions of a project not encompassed by the project description in the County's environmental analysis.

§ **92322.04 CONSTRUCTION CODES.**

A development agreement shall contain the acknowledgement of the possibility of changes in the Imperial County building, plumbing, mechanical, electrical, fire and grading codes during the term of the agreement and shall provide that any amendments shall apply to the project subject to the development agreement.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 23: NOTICE AND HEARING

- § 92323.00 DUTY TO GIVE NOTICE
- § 92323.01 REQUIREMENTS FOR FORM AND TIME OF NOTICE OF INTENTIONS TO CONSIDER ADOPTION OF DEVELOPMENT AGREEMENT
- § 92323.02 FAILURE TO RECEIVE NOTICE
- § 92323.03 RULES GOVERNING CONDUCT OF HEARING
- § 92323.04 IRREGULARITY IN PROCEEDINGS

§ 92323.00 DUTY TO GIVE NOTICE.

The Planning & Development Services Director shall give notice of intention of the planning commission to consider adoption of a development agreement, and the Clerk of the Board shall give notice of intention of the Board of Supervisors to consider adoption of a development agreement.

§ 92323.01 REQUIREMENTS FOR FORM AND TIME OF NOTICE OF INTENTION TO CONSIDER ADOPTION OF DEVELOPMENT AGREEMENT.

- A. Form of Notice. The notice of intention to consider adoption of a development agreement shall contain:
 - 1. The date, time and place of the hearing;
 - 2. The identity of the hearing body;
 - 3. A general explanation of the matter to be considered including a general description of the location of the real property that is the subject of the hearing; and
 - 4. Such other information required by law or which the Planning & Development Services Director or clerk considers necessary or desirable.
- B. Time and Manner of Notice. Notice shall be given at least ten (10) days prior to the public hearing in all the following ways:
 - 1. Publication: publication once in a newspaper of general circulation, published and circulated in the County.
 - 2. Mailing: mailing of the notice to all persons shown on the latest equalized assessment roll and any update as owning real property within three hundred (300) feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than one thousand (1,000), the Planning & Development Services Director or clerk may, in lieu of mailed notice, provide notice by placing a display advertisement of at least one-eighth page in a newspaper of general circulation in the County.
 - 3. Notification of applicant: mailing or delivery of the notice to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.
 - 4. Notification of affected local agencies: mailing or delivery of the notice to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the subject property, whose ability to provide those facilities and services may be significantly affected by the proposed development agreement.
- C. Declaration of Existing Law. The notice requirements referred to in subsections A and B of this section are declaratory of existing law (Govt. Code Sections 65867, 65090 and

65091). If state law prescribes a different notice requirement, notice shall be given in that manner. The notices required by this section are in addition to any other notices required by law for other actions to be considered concurrently with the development agreement.

§ **92323.02 FAILURE TO RECEIVE NOTICE.**

The failure of any person or entity to receive notice given pursuant to these regulations shall not affect the authority of the County to enter into a development agreement.

§ **92323.03 RULES GOVERNING CONDUCT OF HEARING.**

The public hearing shall be conducted as nearly as may be in accordance with the procedural standards adopted under Government Code Section 65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity to be heard. The applicant shall have the burden of proof on all issues that the public hearing on a proposed development agreement.

§ **92323.04 IRREGULARITY IN PROCEEDINGS.**

Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding concerning a development agreement. No action, inaction, or recommendation by the County or the Board of Supervisors or County administrative agencies or officials on a development agreement shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, "error") as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 24: STANDARDS OF REVIEW, FINDINGS AND DECISION

- § 92324.00 HEARING AND RECOMMENDATION BY PLANNING COMMISSION
- § 92324.01 HEARING AND DECISION BY THE BOARD OF SUPERVISORS
- § 92324.02 APPROVAL OF DEVELOPMENT AGREEMENT

§ **92324.00 HEARING AND RECOMMENDATION BY PLANNING COMMISSION.**

All development agreements shall be considered at a public hearing before the planning commission. At the conclusion of the hearing the planning commission shall make a recommendation in writing to the Board of Supervisors. This recommendation shall include the commission's determinations as to whether the proposed development agreement:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located;
- C. Is in conformity with and will promote public convenience, general welfare and good land use practice;
- D. Will not be detrimental to the health, safety and general welfare;
- E. Will not adversely affect the orderly development of property or the preservation of property values;
- F. Will provide significant public benefits.

This recommendation shall also include the commission's reasons for its recommendation.

§ **92324.01 HEARING AND DECISION BY THE BOARD OF SUPERVISORS.**

Upon receipt of the recommendation of the planning commission, the Clerk of the Board shall set the proposed development agreement for hearing by the Board of Supervisors. After the Board of Supervisors completes its public hearing it may approve, modify or disapprove the recommendation of the planning commission. A development agreement shall not be approved unless the board finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. The decision of the board shall be final.

§ **92324.02 APPROVAL OF DEVELOPMENT AGREEMENT.**

Development agreements shall be approved by ordinance. The ordinance shall refer to and incorporate by reference the text of the development agreement. Within ten (10) days after the ordinance approving a development agreement takes effect, the chairperson of the board shall execute the development agreement on behalf of the County.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 25: RECORDATION

§ 92325.00 RECORDATION OF DEVELOPMENT AGREEMENT, AMENDMENT OR CANCELLATION

§ 92325.00 RECORDATION OF DEVELOPMENT AGREEMENT, AMENDMENT OR CANCELLATION.

- A. Within ten (10) days after the County executes a development agreement, the Clerk of the Board shall record with the County clerk/recorder a copy of the agreement, which shall describe the land subject thereto.
- B. If the parties to the development agreement or their successors in interest amend or cancel the development agreement as provided in Chapter 28 of these regulations and Government Code Section 65868, or if the County terminates or modifies the development agreement as provided in Chapter 28 of these regulations and Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the development agreement, the Clerk of the Board shall have notice of such action recorded with the County clerk/recorder.
- C. From and after the time of the recordation required by this section, notice shall be imparted as provided by the recording laws of the state of California. The burdens of the development agreement shall be binding upon, and the benefits of the development agreement shall inure to, all successors in interest to the parties to the development agreement.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 26: AMENDMENT OR CANCELLATION BY MUTUAL CONSENT

§ 92326.00 ALLOWED WHEN
§ 92326.01 PROCEDURE

§ **92326.00** ALLOWED WHEN.

Any party, or successor in interest, to a development agreement may propose an amendment or cancellation, in whole or in part, of the development agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided under Chapter 28 of these regulations and Government Code Section 65865.1.

§ **92326.01** PROCEDURE.

The procedure for proposing and adoption of an amendment or cancellation, in whole or in part, of a development agreement shall be the same as for entering into the development agreement in the first instance. However, if the County initiates a proposed amendment or cancellation of the development agreement, it shall first give written notice by mail to the property owner of its intention to initiate such proceedings not less than thirty (30) days prior to the giving of public notice of hearing to consider the amendment or cancellation.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 27: REVIEW

- § 92327.00 PERIODIC REVIEW
- § 92327.01 SPECIAL REVIEW
- § 92327.02 PROCEDURE

§ **92327.00 PERIODIC REVIEW.**

The Planning & Development Services Director shall review a development agreement annually, on or before the anniversary date of the recordation of the development agreement, in order to ascertain the good faith compliance by the property owner with the terms of the development agreement. The property owner shall submit an annual monitoring report, in a form acceptable to the Planning & Development Services Director, within thirty (30) days after written notice from the Planning & Development Services Director. The annual monitoring report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the development agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the Board of Supervisors.

§ **92327.01 SPECIAL REVIEW.**

The Board of Supervisors may order a special review of compliance with a development agreement at any time. The Planning & Development Services Director shall conduct such special reviews.

§ **92327.02 PROCEDURE.**

- A. During either a periodic review or a special review, the property owner shall be required to demonstrate good faith compliance with the terms of the development agreement. The burden of proof on this issue shall be on the property owner.
- B. Upon completion of a periodic review or a special review, the Planning & Development Services Director shall submit a report to the Board of Supervisors setting forth the evidence concerning good faith compliance by the property owner with the terms of the development agreement and his or her recommended finding on that issue.
- C. If the board finds on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the development agreement, the review shall be concluded.
- D. If the board finds on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the development agreement, the board may modify or terminate the development agreement as provided in Chapter 28 of these regulations.

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DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 28: MODIFICATION OR TERMINATION

§ 92328.00	PROCEEDINGS UPON MODIFICATION OR TERMINATION
§ 92328.01	HEARING ON MODIFICATION OR TERMINATION
§ 92328.02	ENFORCEMENT
§ 92328.03	APPEAL BY PARTY OTHER THAN COUNTY

§ 92328.00 PROCEEDINGS UPON MODIFICATION OR TERMINATION.

If, upon a finding under Section 92327.02(D), the County determines to proceed with modification or termination of a development agreement, the County shall give written notice to the property owner of its intention to do so. The notice shall contain:

- A. The time and place of the hearing;
- B. A statement as to whether or not the County proposes to terminate or to modify the development agreement; and
- C. Such other information as the County considers necessary to inform the property owner of the nature of the proceeding including the grounds upon which the proceedings are based.

§ 92328.01 HEARING ON MODIFICATION OR TERMINATION.

At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. The property owner shall be required to demonstrate good faith compliance with the terms and conditions of the development agreement. The burden of proof on this issue shall be on the property owner. If the board finds, based upon substantial evidence, that the property owner has not complied in good faith with the terms or conditions of the agreement, the board may terminate or modify the development agreement and impose such conditions as it deems necessary to protect the interests of the County. The decision of the Board of Supervisors is final.

§ 92328.02 ENFORCEMENT.

Unless amended, canceled, modified, suspended or terminated pursuant to this division, or unless otherwise allowed by this division, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable or specific plan, zoning, subdivision, or building regulation adopted by the County which alters or amends the rules, regulations or policies specified in effect at the time the development agreement is executed by the County.

§ 92328.03 APPEAL BY PARTY OTHER THAN COUNTY.

Any party to a development agreement, other than the County, seeking to bring an action to enforce the development agreement pursuant to Section 92308.02 shall first appeal all matters to be raised in the action to the Board of Supervisors. The appeal shall be commenced by the filing of a written statement of issues by the party appealing setting out in detail the basis for the appeal. The statement shall be filed with the Clerk of the Board and Planning & Development Services Director. The Board of Supervisors shall hold a hearing on the issues raised in the statement no later than (45) forty-five days after the statement has been filed with the Clerk of the Board and Planning & Development Services Director.

The Board of Supervisors shall make findings on all matters raised in the appeal. The party shall not commence an action to enforce the development agreement until after the Board of Supervisors has issued its findings. The Board of Supervisors shall issue its findings no later than fifteen (15) days after the hearing on the appeal.

TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 29: STATE OR FEDERAL LAW

§ 92329.00 MODIFICATION OR SUSPENSION BY STATE OR FEDERAL LAW

§ **92329.00** **Modification or suspension by state or federal law.**

In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the development agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. (Prior code § 92329.00)

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TITLE 9

DIVISION 23: DEVELOPMENT AGREEMENTS FOR MIXED-USE PROJECTS

CHAPTER 30: APPROVED DEVELOPMENT AGREEMENTS

§ 92330.00 GENERALLY

§ **92330.00** **GENERALLY.**

A development agreement is a legislative act which shall be approved by ordinance. All approved development agreements shall be codified by amendment of this chapter. (Prior code § 92330.00)

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