

SECTION 35 DEVELOPMENT AGREEMENTS

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3501 Intent

These regulations establish criteria, standards, and procedures that assure certain development rights while maintaining quality development; adequate infrastructure; and the general health, safety, and welfare of current and future Douglas County citizens and businesses. Development Agreements are enabled by C.R.S. § 24-68-101.

3502 Development Agreement Option

Procedures and criteria for the vesting of property rights at site improvement plan are established in Section 34 of this Resolution and at final plat in the Douglas County Subdivision Resolution. These regulations provide for a vesting of property rights at a stage other than site improvement plan or final plat approval through a development agreement as provided herein.

3503 Criteria

Development agreements, which vest property rights at a stage other than site improvement plan or final plat approval, for a period longer than three (3) years are permitted only for those land use plans or approvals that meet the following criteria:

- 3503.01 The approved development is consistent with the goals and policies of the Douglas County Comprehensive Master Plan.
- 3503.02 The approved development includes commitments that provide the County and the development with supplemental facilities or benefits which cannot be required through existing County regulations, standards, or policies.
- 3503.03 The approved development provides for establishment and implementation of site-design standards and/or enhancements which exceed existing County regulations, standards or policies.
- 3503.04 The approved development warrants an extended vesting period due to the relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions.

3504 Procedure

- 3504.01 The applicant shall submit the required information to the Planning Division.
- 3504.02 Once the submittal is determined complete, staff will forward the proposal to the Board for review at a work session.
- 3504.03 Following the Board's review, the staff planner will review the comments with the applicant, prepare a staff report for the Board and notify the applicant of the hearing date and time.

- 3504.05 The applicant shall be responsible for posting a notice on the property and publishing a notice in the newspaper, prior to the Board hearing, in compliance with the public notice requirements in 3508 herein.
- 3504.06 The Board shall evaluate the development agreement, staff report, and public testimony, and shall approve, conditionally approve, table for further study, or deny the development agreement. The Board's decision shall be based on the evidence presented and compliance with adopted standards, regulations, and policies.

3505 Submittal Requirements

- 3505.01 Proof of ownership that includes an updated or current title insurance policy or title commitment no more than thirty days old from the date of application.
- 3505.02 A notarized letter of authorization from the landowner permitting a representative to process the application.
- 3505.03 A notarized statement of consent to proceed with the proposed agreement, executed by all owners who have fee title to land subject to the proposed development agreement.
- 3505.04 A narrative description of compliance with the threshold criteria in 3503 herein.
- 3505.05 A draft agreement in compliance with the General Agreement Requirements as provided in 3506 herein.

3506 General Agreement Requirements

The following are required provisions of all proposed development agreements.

3506.01 Compliance with Land-Use Regulations

The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by a local government, including, but not limited to building, fire, plumbing, electrical, and mechanical codes.

3506.02 Relationship to the Development Guide and Plan.

When the subject land is zoned PD, the Development Guide and Plan, including all provisions and commitments therein, as approved by the Board shall be incorporated by reference into the Development Agreement, as if set forth in full.

3506.03 Effects of Rezoning or Major Amendments to the Development Guide or Plan.

Major amendments or rezonings, as defined by this Resolution, shall not extend the term of the Development Agreement unless amended with the same formality as the original Development Agreement; however, the Board shall have the right to modify the Development Agreement to the extent of which the major amendment or rezoning affects the Agreement.

3506.04 Binding Affect

The Development Agreement shall be recorded and run with the title to the land and be binding upon and inure to the benefit of the owners, heirs, successors, and assigns.

3506.05 Effect of Annexation

A vested property right established while one local government has jurisdiction over all or part of the land included within the Development Agreement shall be effective against any other local government which may subsequently obtain or assert jurisdiction over such land.

3506.06 Time Limit

The duration of a development agreement shall be the sole discretion of the Board. An extension to the duration of a development agreement may be granted by the Board based on satisfactory performance.

3506.07 Specific Performance

Noncompliance with the terms of the development agreement shall result in a written notice, by the County to the landowner, of a breach or default. The landowner shall have 60 days after receipt of such notice in which to cure any breach or default. The County shall have the right to pursue all legal remedies to enforce the agreement, including filing an action for specific performance or terminating the agreement.

3506.08 Amendments or Termination

Except as otherwise provided in 3506.03 and 3506.07 herein, the development agreement may be amended or terminated by mutual consent of the parties to the agreement or their successors in interest, following the public notice and public hearing procedures required for approval of the agreement.

3506.09 Monetary Liability of County

Although C.R.S. § 24-68-101 et. seq. provides for monetary damages in the event of breach or default by the County, the landowner's sole remedy

hereunder shall be the equitable remedy of specific performance or injunctive relief.

3506.10 Right to Cure

Prior to any action against the County for breach of a development agreement, the landowner shall give the County a 60-day written notice of any claim by the landowner of a breach or default by the County.

3506.11 Outside Causes

The County shall not be responsible for and the landowner shall have no remedy against the County if development is prevented or delayed for reasons beyond the control of the County.

3506.12 Hazards

Nothing in a development agreement or otherwise shall require the County to approve any land use where a natural or manmade hazard exists on, or in the immediate vicinity of, the proposed area of use, whether or not such natural or manmade hazard could reasonably have been discovered at the time of approval of the development, provided that such hazards are not, or cannot be, corrected and pose a serious threat to the public health, safety, and welfare.

3506.13 Services

Proof of adequate services, including water, sewer, transportation, and school capacity must be provided to the County as a prerequisite to approval at subdivision and site plan. Adequate services shall be as defined by the Board pursuant to adopted County regulations, standards, and polices, as amended.

3506.14 Benefits to Landowner

3506.14.1 No Downzoning - The Board shall not initiate any zoning action to reduce the maximum number of residential units or acres or to reduce the total gross acres for commercial, business, or industrial use of the approved development, except as provided in 3506.01, 3506.12, and 3506.13 herein.

3506.14.2 Residential Units and Acres - The landowner shall have the right to substantially develop the total number of residential units, and the right to substantially use the total gross acres for residential, as set forth on the development plan and permitted by the development guide or other applicable regulations, except as provided in 3506.01, 3506.12, and 3506.13 herein.

3506.14.3 Commercial Acres and Density - The landowner shall have the right to substantially use the total gross acres for commercial and industrial uses as set forth for the development and the right to substantially develop the gross floor area for commercial and industrial uses as is permitted by the development guide and other applicable regulations, except as provided in 3506.01, 3506.12, and 3506.13 herein.

3506.14.4 Development Timing - The landowner shall have the right to develop the approved development in such order and at such a rate and at such a time as the market dictates within the structure of this agreement.

3506.15 Benefit to the County

The applicant shall provide a list of additional benefits which support the decision to enter into a development agreement assigned to the County for review by the Board in review of the application.

3506.16 Hold Harmless

The applicant shall agree to and shall indemnify and save harmless the County against any and all claims, damages, actions or causes of action, and expenses to which it may be subjected by reason of any work done or omission made by the applicant, its agents, officers, or employees, in connection with, arising out of, or resulting from the performance of this agreement as set forth in this agreement.

3506.17 Severability

If any provision of a development agreement shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality, or enforceability of any other provision of the agreement.

3507 Amendment of Agreement

In the event a Development Agreement is amended, the amendment shall not act as an extension of the Development Agreement unless the County explicitly agrees to such extension in the amendment.

3508 Enforcement

Unless the law otherwise requires, Development Agreements shall be enforceable only by specific performance. A failure to abide by the terms of the development agreement shall result in a forfeiture of vested property rights.

3509 Referendum

Adoption of a Development Agreement is a legislative act and is subject to referendum.

3510 Public Notice Requirements (Amended 03/28/01)

The applicant is responsible for public notification. The degree of accuracy required for the information contained in these public notices shall be that of substantial compliance with the provisions of this section. Substantial compliance for these public notices shall be determined by the Board of County Commissioners.

3510.01 Posted Notice (Amended 03/28/01)

At least 14 days prior to the Board hearing the applicant shall post a notice on the land under consideration. The notice shall consist of at least one sign facing each abutting public or private street open for travel, within 10 feet of the lot line abutting such street, placed on posts at least four feet above ground level. In the event the staff planner determines a sign cannot be placed abutting such street and be visible from such street or that there is no abutting public or private street open for travel, the staff planner may require an alternate location for a sign. Additional signs may be required by the staff planner. Each sign shall measure not less than 3' x 4'. Letter size shall be a minimum of three inches high, and a minimum of six inches high for the sentence that reads, "For more information call Douglas County Planning at 303-660-7460.". The notice shall read:

**NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF COUNTY
COMMISSIONERS**

This land shall be considered for a Development Agreement thereby vesting property rights. The public hearing is *(date)*, at *(time)*, in the Commissioners' Hearing Room, 100 Third Street, Castle Rock, Co. For more information call Douglas County Planning at 303-660-7460.

File No./Name: _____

An affidavit of sign posting shall be submitted for the file in the Planning Division at least 7 days prior to the hearings. The sign(s) shall be photographed by the applicant and attached to the affidavit as follows:

(attach photo here)
 (Sign lettering must be legible in photo)

I, _____ (print name of applicant/representative/person posting sign), attest that the above sign was posted on (date) abutting (name of street).

_____ (signature) File No./Name _____

STATE OF COLORADO)
) ss.
 COUNTY OF _____)

Acknowledged before me this ___ day of _____, 20__ by _____ as _____.

My commission expires: _____

Witness my hand and official seal

 Notary Public

The sign shall be removed by the applicant within two weeks following the final decision by the Board or withdrawal of the application.

3510.02 Published Notice (Amended 03/28/01)

At least 14 days prior to the Board hearing, the applicant shall:

- Publish a notice in at least one publication of a daily or a weekly legal newspaper of general circulation, printed or published in whole or in part in Douglas County.
- Provide a publisher's affidavit of said published notice to the Planning Division at least 7 days prior to the hearing. The notice shall read:

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS

A public hearing will be held on (date), at (time), in the Commissioners' Hearing Room, 100 Third Street, Castle Rock, Co, concerning a Development Agreement thereby vesting property rights. (Provide a general description of the agreement.) The property is located approximately (distance and direction from nearest major intersection). For more information call Douglas County Planning at 303-660-7460.
 File No./Name: _____

3511 Post Approval Actions

- 3511.01 No later than 14 days following approval, the applicant shall publish a notice of the Development Agreement approval and creation of a vested property right, in a newspaper of general circulation within Douglas County. The applicant shall provide an affidavit of such published notice to the Planning Division, within 15 days of publishing. The notice shall read:

NOTICE

Notice is hereby given that on *(date)* the Douglas County Board of County Commissioners approved a Development Agreement for the property located approximately *(distance and direction from nearest major intersection)* and may have created a vested property right pursuant to Colorado law. *(Provide a general description of the agreement.)* Such approval is subject to all rights of judicial review.

Failure by the applicant to provide such notice renders the Development Agreement null and void.

Any approval shall be subject to judicial review. The period of time permitted by law for the exercise of such rights shall begin on the date of publication of such notice.

- 3511.02 Within 30 days of approval by the Board, the applicant shall submit a copy the approved Development Agreement to the Planning Division for recordation, and the appropriate recordation fee, or the approval of the Development Agreement shall be void. The Development Agreement shall become effective upon recordation.

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