

# USER'S GUIDE TO DRAFT DEVELOPMENT TITLE UPDATE

*February 2, 2021*

In December 2016, the Board of Supervisors adopted the 2035 General Plan, establishing the policy direction for the County's evolution and growth. General Plan policies address community development; public facilities and services; public health and safety; and natural and cultural resources - all of which directly or indirectly affect the County's Development Title and the zoning and subdivision regulations within it. Under California law, the County's zoning regulations must be consistent with the General Plan, and subdivisions cannot be approved that are not consistent with the General Plan.

The Community Development Element of the 2035 General Plan establishes land use designations and describes the intended land uses and development intensities for each designation. These must be translated into use regulations and development standards for the zones established in the Development Title and shown on the Zoning Map. Similarly, the transportation and mobility section of the Public Facilities and Services Element advances the concept of "complete streets", serving all modes of travel, not just the automobile, which has a direct bearing on street design standards in the Subdivision Regulations.

The Development Title Regulations and the Zoning Map are the key documents that implement the 2035 General Plan, and they must be updated to be consistent with the General Plan. To this end, under direction of the Board of Supervisors, the County's Community Development Department embarked on an 18-month effort to update the Development Title. Consultant assistance was provided by Dyett & Bhatia, Urban and Regional Planners. A County Staff Technical Advisory Committee and the Planning Commission provided policy direction and oversight during the Update. An outreach program, including community open houses and stakeholder interviews, ensured that concerns about current regulations and procedures and how General Plan policies would be implemented were heard and addressed. The project's website (<https://www.sjcdtupdate.org/>) was created as a portal for sharing documents and meeting information for those interested in following the Update effort.

The updated Development Title will provide the basis for development decisions by a Zoning Administrator, the Planning Commission, and the Board of Supervisors. It expresses the County's expectations for future land use and will be a key tool for guiding new development so that it is consistent with and implements the General Plan. The goal is to improve the quality of life in San Joaquin County for all residents.

The existing Development Title was comprehensively updated in the 1990s, and, although it has been amended subsequently, it is not fully consistent with the current General Plan and with federal and State law. Therefore, some of the regulations must be revised to implement General Plan policies and new legal requirements. Streamlining the development review process also is a Board priority for the update; this will help meet the County's goals for economic development and reduce costs to applicants. Finally, portions of the Zoning Map must be updated to be consistent with the land use designations established in the current General Plan.

## **PURPOSE AND OBJECTIVES**

The Development Title Update is intended to ensure that the Title:

- Is progressive and comprehensive, utilizing best practices from other codes;
- Provides for balanced land use and orderly growth to promote a diverse economic base, livable communities, strong agriculture, and sound resource management;
- Is consistent with the 2035 General Plan;
- Allows for flexibility in the application of standards to specific sites, where needed and appropriate;
- Is logically organized, easy to read and understand, and can be quickly updated to respond to changing market and socio-economic conditions;
- Responds to federal and State land use and housing law;
- Supports the County's agricultural economy and agri-tourism;
- Provides standards and incentives for affordable housing; and
- Streamlines the permitting process for development projects.

The regulations have been updated to include objective standards that will minimize the need for interpretations and streamline the approval process, as State law requires. The newly created position of Zoning Administrator will enable many permits that used to go to the Planning Commission to be decided at the County staff level.

## **ORGANIZATION OF THE DEVELOPMENT TITLE UPDATE**

With the Development Title the proposed regulations are organized into eight series, as follows:

- **100 Series: Introductory Provisions** establishes the overall organization and applicability of the regulations. This series also establishes the purpose of the Development Title, the authority for its establishment, and rules for construction of language and for measurements, such as height, lot width, and floor area, that are applicable throughout the ordinance.
- **200 Series: Base Zones** specifies the land use and development standards for each of the base zones, which correspond to the land use designations in the General Plan. Each zone has a purpose statement, a list of allowed use types specifying whether the use type is allowed

by-right or the level of discretionary review required, development standards applicable to those uses, supplemental regulations addressing any additional concerns, and references to administrative chapters that specify details on permitting procedures. The base zones series has chapters for Residential Zones, Commercial Zones, Industrial Zones, Agricultural Zones, and the Airport, Mixed Use, and Public Facilities Zones.

- **300 Series: Master Plans, Special Purpose Plans, Specific Plans, and Planned Development** updates existing regulations for master plans, special purpose plans, specific plans, and planned development. The Zoning Map will show areas subject to specific plans. The specific plans themselves are not codified in this Series; they are available for reference at County offices. The current procedures for Special Purpose Plans have been largely carried forward, with additional detail added on the contents of these plans and required findings for their approval. Procedures for the PD Planned Development zone have been streamlined and now can be used for a variety of land uses, rather than just for residential development. Separate development standards for residential PDs were eliminated in order to provide more design flexibility and reduce development costs.
- **400 Series: Additional Use and Development Regulations** includes provisions that apply in some or all zones, including standards for site development, covering a broad range of topics, including fencing and yards, height exceptions, building projections into setback areas, screening, and small rooftop solar installations. It also has chapters for accessory dwelling units, affordable housing, landscaping, lighting, noise, nonconforming uses and structures, parking and loading, signs, and wireless communications facilities. Standards for specific uses are now grouped together in one chapter for easy reference.
- **500 Series: Subdivision Regulations** includes updated provisions to conform to the Subdivision Map Act and best practices. Parkland dedication requirements have been streamlined, and new standards established, so case-by-case determinations are no longer needed. The current provisions for Lot Line Adjustments have been expanded and clarified, so they will be easier to implement.
- **600 Series: Infrastructure Standards and Financing** includes technical updates, including provisions now required by State law. For roadways the functional classification system is now consistent with the General Plan, New sections on sidewalks and bikeways have been added. The County's separate fees for infrastructure financing have been maintained, but the general provisions for establishing these fees have been expanded and consolidated.
- **700 Series: Supplemental Development Regulations** updates current provisions related to agricultural grading and excavation, agricultural mitigation, agricultural preserves and Williamson Act contracts, flood hazards, historic preservation, mitigation monitoring and reporting required by the California Environmental Quality Act, natural resources, and waterways and wetlands. These have been edited for readability and conformity to the new format. A new chapter establishes provisions for to support existing and future agri-tourism opportunities in the County.
- **800 Series: Administration and Permits** consolidates the administrative provisions for the Development Title. It lists the responsibilities of all decision makers and includes a

“common procedures” section that establishes requirements applicable to all types of permits and approvals. This will streamline the approval process. Also included are procedures for General Plan amendments, Development Title text and Zoning Map amendments, agricultural and quarry excavation, evacuation plans, flood variances, and enforcement. For streamlining purposes, an Administrative Use Permit procedure has been created for projects that need not go to the Planning Commission.

- **900 Series, General Terms** is a reference section for the Development Title. This series contains two main parts: definitions and use classifications (also known as “use types”). The updated use classifications simplify the current list of use types and add new use types. The definitions are mainly drawn from the current code, supplemented by new terms used in Development Title. Like terms are grouped together, so all flood-related terms, for example, can be easily found.

## THE ZONES

### Base Zones

The updated Development Title contains 25 base zones to implement the land use designations established in the General Plan. The correspondence between each of the zones and the General Plan land use designations is shown in Table 1. The land use regulations and development intensity/density and height standards are essentially the same as established for the General Plan designations. The existing ARM Agricultural Resource Management zone was eliminated because they are not needed to implement the General Plan.

<b>TABLE 1: CORRESPONDENCE BETWEEN BASE ZONES AND GENERAL PLAN</b>		
<i>Zone Designator</i>	<i>Full Name – Zoning District</i>	<i>General Plan Land Use Designation(s)</i>
<b>Residential Zones</b>		
R-R	Rural Residential	Rural Residential
R-VL	Very Low Density Residential	Very Low Density Residential
R-L	Low Density Residential	Low Density Residential
R-M	Medium Density Residential	Medium Density Residential
R-MH	Medium-High Density Residential	Medium-High Density Residential
R-H	High Density Residential	High Density Residential
<b>Commercial Zones</b>		
C-L	Limited Commercial	Neighborhood Commercial
C-N	Neighborhood Commercial	Neighborhood Commercial
C-C	Community Commercial	Community Commercial
C-O	Office Commercial	Office Commercial
C-G	General Commercial	General Commercial
C-FS	Freeway Service Commercial	Freeway Service Commercial
C-RS	Rural Service Commercial	Rural Service Commercial

<b>TABLE I: CORRESPONDENCE BETWEEN BASE ZONES AND GENERAL PLAN</b>		
<i>Zone Designator</i>	<i>Full Name – Zoning District</i>	<i>General Plan Land Use Designation(s)</i>
C-R	Commercial Recreation	Commercial Recreation
C-X	Crossroads Commercial	Crossroads Commercial
<b>Industrial Districts</b>		
I-L	Limited Industrial	Limited Industrial
I-G	General Industrial	General Industrial
I-P	Industrial Park	Limited Industrial
I-T	Truck Terminals	Truck Terminals
I-W	Warehouse	Limited Industrial
<b>Agricultural Zones<sup>1</sup></b>		
A-G	General Agriculture	General Agriculture
A-L	Limited Agriculture	Limited Agriculture
A-U	Agriculture-Urban Reserve	Agriculture-Urban Reserve
<b>Other Zones</b>		
P-F	Public Facilities	Public Facilities
M-X	Mixed Use	Mixed Use
AP-X	Airport Multi-Use	Airport Multi-Use
<p>1. An AI Agricultural Industry Zone has been proposed and was reviewed separately by the Planning Commission and the Board of Supervisors; it has been adopted but is not yet effective. It will be added once it becomes effective.</p>		

## Land Use Regulations

The tables of land use regulations for the zones were revised to make several substantive changes:

- A ministerial Zoning Clearance process will be required for certain permitted uses to ensure that the standards of this Title are met;
- Discretionary review will be based on Administrative Use Permits, Conditional Use Permits, and Temporary Use Permits rather than just Use Permits, Improvement Plans, and Site Approvals;
- Additional limitations on certain use are presented as notes to the land use tables rather than as separate regulations located elsewhere in the Title; and
- New use regulations have been added to implement General Plan policies or respond to County staff or stakeholder concerns or Planning Commission direction.

Uses that are prohibited in the groupings of zones are not included in the tables, so they are now shorter and easier to use. A master table of land use regulations in all the zones is included for reference in the Appendix to the Development Title.

## **Development Standards**

Additional graphics have been added to the current tables for development standards, and new standards respond to General Plan policies and concerns raised by County staff and stakeholders. The basic standards for lots, density/intensity, building heights, and setbacks have been largely carried forward, with technical adjustments requested by County staff to allow flexibility in site development and eliminate restrictive provisions. The lot coverage standard has been dropped to allow for additional flexibility in site design.

In the Residential zones, the new standards include:

- Standards for new building types to expand housing opportunities. These include small-lot single family subdivisions, bungalow courts, and townhouses.
- Small duplexes would be allowed in the Low Density Residential (R-L) zone provided the combined floor area for the two units together does not exceed 2,500 square feet. This change allows for both “stick-built” and manufactured housing at a scale consistent with larger homes and is unlikely to create adverse impacts on surrounding uses.
- Opportunities to build two units on residential lots and to have urban lot splits in urban areas and urban clusters, as required by Senate Bill 9, enacted in 2021.

In the Commercial zones, the existing standards are largely carried forward, with only minor adjustments in dimensional standards to provide more development flexibility and avoid the need for a variance or exception. This will streamline development review and reduce development costs. Similarly, in the Industrial and Agricultural zones, the proposed additions modify existing requirements to reduce development costs and streamline the review process. Finally, in the Airport, Mixed Use, and Public Facilities zones, the only changes are technical in nature to allow for more development flexibility.

## **Master Plans, Special Purpose Plans, Specific Plans, and Planned Development**

The 300 Series carries forward current provisions for Master Plans, Special Purpose Plans, and Specific Plans, with technical editing and details on what is required to be submitted for approval, required findings, and provisions for Planned Development. The Planned Development regulation were expanded to include a broad range of uses; they also distinguish the PD rezoning from a PD Plan, which would be approved separately and administered by the Zoning Administrator, meaning the Board of Supervisors would not approve minor amendments to the PD plan and individual projects that are consistent with the plan. These approvals would be handled by the Zoning Administrator, and only a Zoning Clearance would be required to submit plans for a building permit for projects that are consistent with a PD Plan.

## **COUNTYWIDE AND SPECIAL PURPOSE REGULATIONS**

The proposed Development Title includes development standards that apply countywide, such as site development standards and regulations for accessory structures, fences, projections into setbacks, recycling and trash enclosures, screening, and visibility at driveways and intersections. Flood hazard regulations will be updated by the Department of Public Works and incorporate changes requested by FEMA. The Public Review Draft also includes updated regulations for signs, which were revised to be consistent with State and federal law and with standards in peer communities.

Highlights of key changes addressed are presented below.

### **Accessory Dwelling Units**

The Development Title Update includes refined regulations for accessory dwelling units (ADUs) which implement State law. The most notable changes from the ordinance adopted by the Board in January, 2021 are that the maximum height of an ADU has been increased to be the same as a single family dwelling, and there is no longer a limit on the floor area that can be in an ADU based on square footage although other standards will limit the overall size. Standards exterior architectural details also were eliminated, but size limits for junior ADUs were retained as required by State law. To be consistent with these regulations, the updated Development Title eliminates provisions for Second Dwelling Units as they will no longer be needed.

### **Affordable Housing Programs and Incentives**

Current provisions for density bonuses and other development incentives for affordable housing were carried forward, revised, and reorganized so that their format is consistent with other chapters.

- Amendments were made to conform to current State law. Density bonus ratios were revised, and affordable units must be dispersed within and architecturally compatible with market-rate projects whenever feasible. Affordable units must be available concurrently with market-rate units to ensure equitable implementation of the County's Density Bonus program.
- The term of affordability was changed, consistent with State law, to ensure that units will be affordable for 55 years instead of 30.
- Parking requirements for affordable, senior, and special needs housing and for projects within one half mile of transit were reduced to lower the costs of affordable housing.

### **Agri-Tourism**

The General Plan calls for supporting existing and future agri-tourism opportunities in the County to support the local economy. The basic idea is to enable ranchers and farmers to offer agricultural experiences, such as farm and barn tours, cooking classes, picnic days, or volunteer

programs to participate in farm or ranch operations, as a way of getting people to visit the ranch or farm and learn about how its run and what its products are.

Agricultural homestays also can be made available under the California Agricultural Homestay Bill without the restrictions that might otherwise apply to an Accessory Short-Term Rental or Bed & Breakfast Lodging. The bill exempts farms and ranching operations that offer overnight stays from the more stringent requirements of operating a commercial restaurant, and they can offer meals anytime. To qualify for overnight stays, the farms and ranches must produce agricultural products as their primary source of income. Additionally, farmers are limited to six guest rooms and 15 visitors a night. Lastly, an off-site directional signage program is offered for eligible agricultural businesses, which can help people find not only wineries but also farms offering agricultural homestays and agricultural experiences.

### **Historic Preservation**

The provisions for historic districts and landmarks in the 700 Series are based on General Plan policies and best practices in peer jurisdictions. A Historic Preservation Commission is created, as called for in the General Plan. Certificates of Appropriateness will be required for alterations and additions to historic resources and for development within designated historic districts. Finally, this chapter adopts the State Historic Building Code by reference, which will give owners of historic properties more flexibility in undertaking adaptive reuse projects and maintaining their buildings.

### **Lighting and Illumination**

The lighting and illumination regulations are new and implement General Plan policies; they include minimum standards to control lighting. All fixtures must be fully shielded, meaning they cannot cast light onto neighboring property. Standards for uses with specific needs, such as outdoor playing fields, outdoor display areas, and gas stations, also are included. The overall objective is to prohibit glare from unshielded fixtures and reduce the unnecessary illumination of adjacent properties (“light trespass”) and the use of energy.

### **Noise**

The updated noise regulations implement General Plan policies on noise and reflect best practices in peer jurisdictions; they specifically consider the various aspects of noise exposure that are most critical to residents: where, when, and how long. The Zoning Administrator may require an acoustical study and noise attenuation measures as a condition of approval. Noise walls are to be used only if no other feasible design-related noise mitigation is feasible.

### **Nonconforming Provisions**

Regulations for nonconforming uses, structures, and lots now distinguish between incompatible nonconforming uses that are detrimental to public health, safety, and general welfare, and other nonconformities that are economically productive and compatible with surrounding development despite being inconsistent with the use regulations and with any applicable specific plan. Additions to current regulations include:



- Provisions for exemptions, including specific repairs and improvements that may be needed for safety or to address environmental hazards or conservation of resources;
- Recognition that nonconforming site features, such as inadequate parking or landscaping, projections above height limits, or nonconforming yards, should not cause a use or structure to be classified as nonconforming;
- An allowance for minor additions to nonconforming structures to be allowed with an Administrative Use Permit; and
- Flexibility for the Zoning Administrator to approve reconstruction of a damaged or destroyed structure without having to meet the standards of an applicable specific plan.

### **Parking and Loading**

The updated regulations eliminate excessive and costly parking requirements and allow for more efficient use of parking facilities through shared parking and common area parking. Alternative parking plans may be approved by the Planning Commission. Parking requirements can be reduced for historically significant buildings, such as those in the Lockeford, Acampo, and Banta communities. Parking exceptions are included for certain commercial uses that are less than 1,500 square feet in size.

The updated Title revises and expands the development standards to address various aspects of parking area design, including parking space dimensions, handicap parking, maneuvering aisles, surfacing, striping, landscaping, lighting, separation from buildings, screening, circulation, alternative designs, and maintenance. The regulations require a minimum percentage of the parking area to be landscaped and establish requirements for minimum planter dimensions and size, layout, landscaped islands, landscaped buffers, trees, protection of vegetation, and clearance. These changes will reduce development costs and get “right-sized” parking facilities.

### **Signs**

The County’s sign regulations have been revised to be less restrictive, reflecting “best practices” in the Central Valley as well as State and federal law. The updated regulations include an expanded list of exempt signs and dimensional standards for building signs, freestanding signs, directional signs, and temporary signs. They also provide for new forms of signage, such as digital message centers and electronic displays. As required by federal law, the regulations are “content neutral” with standards related to “time, place, and manner” that do not abridge the freedom of speech. They allow for message substitution and changes in sign copy with no County review. Time, place, and manner restrictions include restrictions on the square footage of a sign, how a sign’s message may be displayed, where a sign may be located, how tall it can be, and the manner in which a sign is illuminated.

The updated regulations establish rules and standards for temporary and portable signs, banners, and pennants that will allow reasonable and appropriate signage, while avoiding sign clutter that detracts from the appearance of individual communities and shopping districts. Specific standards are included for real estate and subdivision signs and for vehicle dealerships. Portable

signs in the public right-of-way would require an encroachment permit and they must leave a 4-foot pedestrian clear zone free of obstruction.

Owners of new billboards will be required to remove old billboards, on a one-for-one square foot basis for display area, to avoid a proliferation of off-premises signage in the highway corridors. In Sacramento County, a similar rule has been adopted, but the removal ratio is four square feet of existing billboard display area for each square foot of new display space. The billboard spacing standards have been modified to allow billboard within 500 feet of each other (Sacramento County, for example, only requires 300 feet between billboards), but requires 2,500 feet between digital display billboards (the same standard used in Sacramento County).

Finally, the master sign program requirements have been expanded, so they would apply to large projects and to shopping centers. Approval of a master sign program also can be requested for individual projects, where applicants want to achieve a unique identity with distinctive signage that may not be possible with the standards that otherwise would apply. With Zoning Administrator approval, a master sign program can permit exceptions to the standards on the number, height, and size of individual signs that otherwise would apply.

### **Standards for Specific Uses**

The updated Development Title consolidates provisions for specific uses that are scattered throughout the Development Title into one chapter so that they are easier to find and administer. New standards are proposed for: Animal Keeping; Automobile Sales and Services; Community Assembly; Convenience Markets; Drive-In and Drive-Through Facilities; Family Day Care; Nurseries; Outdoor Dining and Seating; Outdoor Sales; and Renewable Energy. They will implement General Plan policies on land use compatibility.

### **Supplemental Development Regulations**

The supplemental development regulations in the 700 Series are simply a reorganization and updating of current provisions for agricultural mitigation, agricultural preserves, flood hazards, mitigation monitoring and reporting, natural resources, and Williamson Act contracts.

The regulations for grading have been significantly expanded, building on regulations adopted by peer counties for construction grading and drainage. They now include general requirements for all grading, specific requirements for reclamation projects, annual inspection reports, performance guarantees, and updated development standards for agricultural excavation and quarry excavation. The Zoning Administrator is given permitting authority for construction grading, shared in some cases with the Director of Public Works.

Finally, the tree regulations that apply to private property, which were in the Natural Resources regulations of the Development Title, were moved to the 400 Series as they apply countywide rather than to specific geographic areas.

### **Two-Unit Developments on Single Family Lots**

To provide more affordable housing, Senate Bill 9, approved by the Governor in September 2021, requires that the County ministerially approve a two-unit development on a single-family lot in a R-L Zone that meets specified standards. The lot must be within an urbanized area or urban cluster, as designated by the Census Bureau, and cannot be in certain areas, such as on prime farmland or farmland of statewide importance, in flood or fire hazard areas, in a designated historic district, on wetlands or a hazardous waste with, or within an earthquake fault zone. It also cannot destroy more than 25 percent of an existing home or affect rent-controlled housing.

The minimum size of the residential units must be 800 square feet. One-bedroom dwelling units cannot exceed 850 square feet of gross floor area, and the combined square footage of dwelling units in a two-unit project can exceed not exceed 2,400 square feet (2,000 square feet on urban lot split lots). Outdoor living area must be provided, and required interior setbacks are reduced to four feet. One off-street parking space must be provided for each unit, unless the lot is located within one-half mile of a high-quality transit corridor or major transit stop or there is a car share vehicle located within one block of the parcel.

### **Water-Efficient Landscaping**

The updated Development Title includes landscaping requirements consistent with the Model Water Efficient Landscape Ordinance (MWELo) issued by the State Department of Water Resources, which must be adopted by local jurisdictions. The County already has prepared the required forms for the MWELo, and these are now referenced in the Development Title. New development projects with 500 square feet or more of landscape areas are subject to these regulations. A streamlined review option is available for smaller projects with less than 2,500 square feet and for projects that use recycled water.

For all other projects, detailed landscape plan documentation, planting standards, water efficiency and irrigation requirements, and reporting and monitoring provisions are required. s.

The new regulations also include:

- Specific standards for various types of buffers and bufferyard types.
- Specific standards for parking areas, turf areas, and unused areas.
- General landscaping standards, including rules for plant selection to minimize water use, a native plant preference, and design and installation requirements.
- Requirements for the number of trees to be provided for various land use types, including street trees.
- Post-installation irrigation scheduling and reporting requirements also are established. These include an irrigation audit report.

The Zoning Administrator may modify these requirements where an alternative would result in an equal or greater amount of landscaping without increased water use. The State's Model Water-efficient Landscape Ordinance includes a sample worksheet to do all of the required

calculations; this will be posted on the County’s website in Microsoft Excel format or in other interactive form to make it easy to use.

## **Wireless Communications Facilities**

The County’s regulations for wireless communications facilities were adopted in 1997 and have not been amended since then. During this time period, significant federal and State legislation has been passed, and administrative rules issued that impose strict limits on local governments’ ability to regulate wireless communications facilities. Local governments still have land use authority over these facilities but only in the context of the rules and time limits imposed, and if they are not followed, projects must be “deemed approved.”

The basic idea underpinning State and federal and State law is to remove regulatory barriers and accelerate deployment of broadband wireless communications facilities and fifth generation or “5G” services. Federal law imposes a number of constraints on the ability of local agencies to use zoning and building regulations to regulate wireless telecommunications facilities on private property and in the public right-of-way and expressly preempts any state or local law that has the effect of prohibiting or unduly burdening telecommunications. The Federal Telecommunications Act of 1996 preserves local zoning authority over decisions regarding the placement, construction, and modification of wireless facilities so long as it does not (1) unreasonably discriminate among providers of functionally equivalent services, or (2) prohibit or have the effect of prohibiting the provision of personal wire services and subject to a number of procedural requirements. Importantly, applications for new wireless communications facilities cannot be denied solely because one or more existing carriers serve an area. The rationale for allowing more competition among service providers is that Congress sought to improve service quality and lower prices for consumers and businesses using wireless services.

The Federal Communications Commission (FCC) established “presumptively reasonable periods”—referred to as “shot clocks”—for local action: 90 days for collocation requests, and 150 days for other requests. Local authorities also may not regulate siting based on radiofrequency (RF) emissions but may require that facilities comply with FCC RF standards.

Following on federal law, California enacted two substantive provisions to streamline the process even further. First, in 2006, the Legislature added Section 65964 to the Government Code, thereby limiting local governments’ ability to require escrow deposits, although performance bonds could still be required, and to limit the duration of a permit approval. Time periods of less than 10 years are presumed to be unreasonable.

In 2017, Section 65850.6 was added to the Government Code to require that “colocation facilities” that are put on existing wireless communications facilities have to be allowed as-of-right if the facility to which they are being attached was approved with a discretionary permit,

meaning a use permit or similar approval, and CEQA clearance was obtained.<sup>1</sup> This approval must be granted even if there is a substantial change in the physical dimensions of the wireless communications facilities, the only limitation being that the existing facilities cannot be completely replaced with a new facility.

Finally, the FCC has set limits on what local governments can charge carriers when leasing public facilities for cell use. It set “safe harbor” fees that jurisdictions should use to avoid the challenge that they are materially inhibiting deployment of wireless facilities.

In the Development Title Update, new regulations include specific provisions for co-location, camouflaging, and “stealth” facilities and provisions that allow modification or waiver of standards when necessary to meet documented service needs. Definitions are expanded, including specific terms used in the U.S. Code and the Code of Federal Regulations (CFR). The Update also establishes authority for the County to lease utility poles and other facilities for colocation; the revenues the result from such leasing programs can be substantial. Regulations in the Development Title can be directly correlated with federal requirements for “eligible facilities requests” and what constitutes an “eligible support structure” and “substantial change.” Minor collocation projects on private land or in the public right-of-way that do not involve a substantial change must be approved ministerially. Similarly, under State law, projects that are a collocation on a WCF that was approved through a discretionary permitting process and also have CEQA clearance (an EIR, negative declaration or mitigated negative declaration) have to be approved ministerially. The “shot clock” time limits must be observed, or a project will be “deemed approved.”

Separate permitting for the California Government Code requirements for colocation facilities on existing wireless communications colocation facilities also are included. These are different from the federal requirements and may involve a substantial change to the existing facility.

The County’s current development standards are largely respected, but a specific procedure was added to allow the Planning Commission to approval exceptions that would not require the specific variance findings (e.g., the hardship must relate to physical conditions, unique and special circumstances on the site itself; that wireless service area and economics cannot be considered).

## **SUBDIVISION REGULATIONS AND INFRASTRUCTURE STANDARDS**

In the 500 and 600 Series, the revised Subdivision Regulations and Infrastructure Standards implement the General Plan and the Bicycle Master Plan and reflect recent amendments to State law. Much of the County’s current requirements has been retained, with technical revisions and

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<sup>1</sup> Interestingly, federal law refers to “collocation,” while California law uses the term “colocation facility.” The definition for each term is included in the Development Title Update, with a note that “collocation” includes colocation facilities, as defined in the Government Code.

additions to ensure compliance with the Subdivision Map Act and the General Plan and respond to stakeholders' concerns.

### **General Provisions; Common Procedures; Maps Required**

Responsibilities for administration of the subdivision regulations are defined and a set of common procedures established to streamline the process. Current provisions are largely carried forward. The General Provisions were expanded, with additions related to the application of the regulations and exceptions, clarifying requirements relative to the Map Act. New sections address interpretations and severability. The definitions also have been expanded to include all relevant terms and correct citations to the Map Act and other State codes and regulations.

The Update also allows for extensions of approvals of tentative maps for an additional 24 months, rather than the current limit of 12 months, and for extensions of 48 months in certain circumstances. These changes are required by Senate Bill 9, approved by the Governor in September, 2021.

### **Reservations and Dedications**

Only minor additions to the current regulations are proposed; these implement Map Act requirements on parkland dedication and use of fees collected. Fees may now be used for park improvements that may be outside the boundaries of the subdivision if certain specific conditions are met. The County also must use fees collected within five years or return the money to owners of record of lots in the subdivision.

Another new section explicitly allows the County to enter into joint or shared use agreements to provide access to park and recreation facilities for residents of new subdivisions, giving added flexibility to meet the standards, which may facilitate infill development.

### **Infrastructure Improvement Standards**

The updated Development Title adds detail on frontage improvements, pedestrian ways, bikeways, trails, street trees, storm drainage, water supply, utilities, fire hydrants, walls and fences, and off-site improvements. The Street Design Standards have been modified to reflect the multi-modal street design concepts in the General Plan and the Complete Streets Act. The proposed regulations also would explicitly allow these standards to be modified by a specific plan and for infill development.

Sidewalks must have a minimum pavement width of five feet, with the design approved at the time of approval of a development project. Sidewalks in the public right-of-way may be eliminated if other pedestrian ways are approved by the Director of Public Works to provide access to each parcel. The Director also can approve an alternative subdivision roadway design, with reduced right of way widths to promote more walking within neighborhoods.

A new section on bikeways is proposed to implement the General Plan and the County Bikeways Master Plan. Where a development project adjoins a planned Class I bikeway, a developer will be required to dedicate and improve bike paths for the use of residents of a subdivision, and an

on-street bikeway, as part of the standard street cross-section, built to the standards set forth in the California Highway Design Manual and the County's Improvement Standards.

Also included are bikeway design standards. In some areas, road widening for on-street Class II and Class III bikeways, also known as Bike Lanes and Bike Routes, may be required in lieu of separated Bike Paths. Right-of-way widths may be adjusted to accommodate bikeways when required, consistent with the Bicycle Master Plan. Finally, developers may be required to dedicate land for bikeways for use by residents of a subdivision in accord with State law.

Finally, a new section establishes explicit authority to promote energy conservation and solar access through the design of subdivisions. Attention to lot size and configuration can facilitate orientation of structures to take advantage of solar access, provide more shade, or capitalize on prevailing breezes for natural cooling.

## **DEVELOPMENT IMPACT FEES FOR INFRASTRUCTURE FINANCING**

Currently, the County has established several separate fees for infrastructure financing in Division 12. These have been incorporated into the updated Development Title, but procedures have been consolidated to avoid duplication. This is proposed because all the fees, except for parkland dedication, are based on the authority to levy these fees set out in the Mitigation Fee Act, in the section on Fees for Development Projects. Provisions for parkland dedication and in lieu fees have been moved to the chapter on dedications and reservations; authority for these fees was established by the Quimby Act, not the Mitigation Fee Act.

Technical amendments to the current Title include:

- Establishing a limit on the maximum percentage of the fees to be available for administration, which would be a limit set by the Board on a case-by-case basis as it adopts and amends these fee schedules;
- Basing fees for residential development on a per square foot basis, rather than per unit;
- Allowing for development projects to pay the required fees at the time of issuance of a certificate or occupancy or final inspection, as provided for in the Government Code;
- Simplifying the reporting requirements for school facilities financing for smaller projects; and
- Clarifying requirements for a Nexus Report, including additional detail now required by the Mitigation Fee Act. The required finding of a reasonable relationship, a "nexus," would be made in the Board resolutions that establish fees, with background material as needed for these resolutions. It is confusing to refer to a Nexus Report for Capital Facilities but be silent on this for the other fees as all fees should have the same factual and legal basis.

## **LOT LINE ADJUSTMENTS**

In the chapter on lot line adjustments, criteria and procedures are added for reviewing and approving lot line adjustments. These will be made by the Zoning Administrator in consultation with the County Surveyor. A timeline is established to ensure timely compliance.

The procedure current used in Napa County has been refined and incorporated into the Development Title update. Napa County was involved in significant litigation on lot line adjustments, so their procedure has been well-thought out as a consequence.<sup>2</sup> The key issue is whether sequential lot line adjustments can be permitted. The Court determined that these provisions are consistent with the Subdivision Map Act's exclusion of lot line adjustments from the requirements of the Map Act.

The proposed process for lot line adjustments is ministerial, meaning there is no discretionary review. It would require a finding of consistency with General Plan density limitations and not allow new lots to be created with a lot line adjustment that do not meet the basic dimensional standards for lots in the applicable zone where the property is located. These revisions will strengthen the review process for lot line adjustments by providing greater clarity on what the County expects in terms of submittals and how decisions will be made.

### **URBAN LOT SPLITS**

To provide more affordable housing, Senate Bill 9 also requires the County to ministerially approve a parcel map for an urban lot split in a R-L Zone that meets certain requirements, including that the urban lot split would not require the demolition or alteration of rent-controlled housing nor be located within a designated historic district or on the State Historic Resources Inventory.

The County can establish objective zoning standards, which are proposed in the Update, as long as those standards would not physically preclude construction of two units with at least 800 square feet in floor area. Applicant would have to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified.

### **ADMINISTRATIVE PROCEDURES**

In the 800 Series, the proposed regulations establish uniform procedures that are common to the application and processing of a variety of different permits, including zoning clearances, use permits, and variances. They also establish procedures for ensuring that all permits or licenses issued by the County conform to the Development Title. A new zoning clearance process will require Staff review of applications for building permits, business licenses, and other entitlements to ensure that the proposed use or structure is permitted by right or conforms to the requirements and conditions of any discretionary approval granted under these regulations. The table below summarizes the proposed permits and approval actions, advisory bodies, decision-making bodies, and appeal bodies.

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<sup>2</sup> Sierra Club vs. Napa County Board of Supervisors, Court of Appeals, Frist Appellate District, April 20, 2012



<b>PROPOSED PERMITS AND TYPES OF APPROVAL ACTIONS</b>				
<i>Application or Action Type</i>	<i>Notice &amp; Hearing</i>	<i>Advisory Body</i>	<i>Decision Maker</i>	<i>Appeal Body</i>
<b>Type One: Ministerial Actions</b>				
Zoning Clearance	No	N/A	Zoning Administrator	Not applicable
Grading Permit	No	N/A	Zoning Administrator	Not applicable
Minor Changes to an Approved Permit	No	N/A	Zoning Administrator	Not applicable
<b>Type Two: Discretionary Quasi-Judicial Actions</b>				
Administrative Use Permits	Yes	N/A	Zoning Administrator	Planning Commission
Conditional Use Permits	Yes	Planning Director	Planning Commission	Board of Supervisors
Waiver of Standards	Yes	N/A	Zoning Administrator	Planning Commission
Major Permit Modifications	Yes	N/A	Planning Commission	Board of Supervisors
Subdivision Maps	Yes	Planning Commission	Board of Supervisors	
Temporary Use Permits	Yes	N/A	Zoning Administrator	Planning Commission
Variances	Yes	Planning Director	Planning Commission	Board of Supervisors
<b>Type Three: Discretionary Legislative Actions</b>				
General Plan Text and Map Amendments	Yes	Planning Commission	Board of Supervisors	Superior Court
Development Title and Map Amendments	Yes	Planning Commission	Board of Supervisors	Superior Court
Planned Development Zones	Yes	Planning Commission	Board of Supervisors	Superior Court
Special Purpose Plans	Yes	Planning Commission	Board of Supervisors	Superior Court
Specific Plans	Yes	Planning Commission	Board of Supervisors	Superior Court
Development Agreements	Yes	Planning Commission	Board of Supervisors	Superior Court

The majority of the material in this Series is drawn from the existing Title and State law. Procedures for conducting preliminary review, requirements for written findings, and procedures for public hearings are included and, where they are already covered in the Development Title, only technical editing was necessary.

Public notice provisions have been revised and strengthened to meet all applicable state laws. A robust notice system assists all parties involved – neighbors, project sponsors, community

organizations, and the like – to be informed about proposals and to voice their concerns if any. The current notification process for projects goes beyond the basic requirements of the Government Code (a 300-foot radius around the project) and has been expanded from current requirements. Public hearing notification has also been updated.

Finally, there is a ‘one-stop’ section on appeals. It has procedures that must be followed, notice requirements, and standards of review.

### **Use Permits**

The proposed regulations establish three types of use permits: 1) Administrative Use Permits, to be approved by the Zoning Administrator, 2) Conditional Use Permits, which require Planning Commission approval; and 3) Temporary Use Permits, which also can be approved by the Zoning Administrator. The Zoning Administrator will be able to permit temporary uses that are not listed as permitted in in the base zones with time limits specified for them.

### **Variances**

The proposed regulations expand upon current provisions, clarifying certain requirements. The variance process is distinct from the procedure for granting a waiver of dimensional standards in that the approval of a variance is intended to apply only to those circumstances where an owner is denied equitable use of property due to physical conditions that are unique to the subject property or a small area. The Development Title update adds State law provisions with respect to parking and open space variances and makes clear that economic hardship is not a grounds for granting a variance and that use variances are prohibited.

### **Waivers**

The proposed regulations add new provisions that provide an alternate means of granting relief from the regulatory requirements. They will make it easier to ensure compliance with State and federal law, including the Americans with Disabilities Act, the Federal Fair Housing Act, and the Federal Religious Land Use and Institutionalized Persons Act, which require that the County provide a process for approving reasonable accommodations of certain protected groups and uses. The update authorizes the Zoning Administrator to grant minor waivers or modifications to yard, building height, fence height, landscaping, and other development standards when doing so is consistent with the purposes of the Development Title, the General Plan, and any applicable specific plan.

### **Zoning Map, Zoning Text, and General Plan Amendments**

Provisions for Zoning Map amendments, Development Title text amendments, and General Plan amendments are included that incorporate the Government Code’s specific procedures governing these legislative decisions. They emphasize the supremacy of the General Plan as the underlying basis for all land use and development policies and regulations.

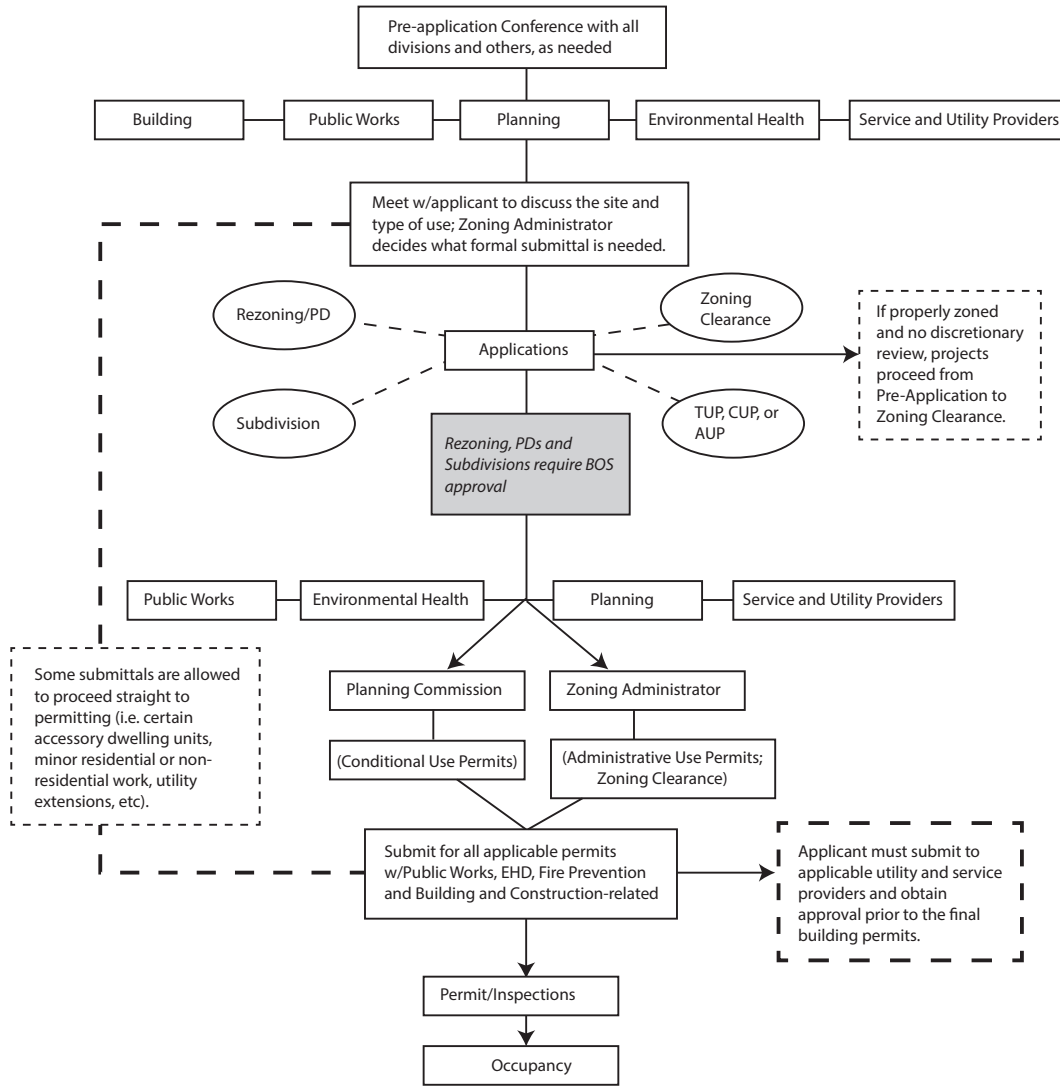
### **Appeals, Enforcement and Judicial Review**

Current provisions have been expanded to provide additional detail and clarity on when judicial review can be sought.

## **SUMMARY OF PROPOSED STREAMLINING PROCESS**

The flow chart on the next page illustrates how the development review process would be streamlined with the Development Title Update. A “counter check-in” with County staff or the voluntary pre-application conference would allow applicants to ask questions about the permit approval process and the information needed for applications. Then, with the proposed common procedures for filing an application and determining its completeness, applications can be processed efficiently. If no discretionary review is required, then the applicant can go directly to the building permit stage. And, as noted earlier, certain use permits will be processed as Administrative Use Permits or Temporary Use Permits with only a Zoning Administrator approval required.

**FIGURE I: PROPOSED STREAMLINING FOR DEVELOPMENT REVIEW**



**NEXT STEPS**

The proposed Development Title Update will be the subject of community meetings and stakeholder briefings and then advertised public hearings by the Planning Commission and the Board of Supervisors. The Board will act on the Development Title Update after receiving a Planning Commission recommendation and public input.

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