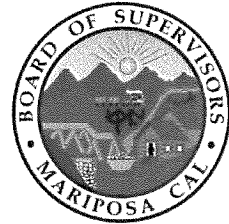




MARIPOSA COUNTY

Planning · 209-966-5151



RESOLUTION - ACTION REQUESTED 2018-427

MEETING: August 28, 2018
TO: The Board of Supervisors
FROM: Sarah Williams, Planning Director
RE: Resolution Approving Indemnification Agreement Ordinance

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution Approving County Code Amendment No. 2018-085, Adding Chapter 18.06 Indemnification Agreements to Mariposa County Code; County of Mariposa, Project Proponent. The recommended action includes findings, including an environmental determination. The purpose of the recommended action is to codify the practice of applying indemnification agreement requirements to conditions of approval on discretionary projects in Mariposa County.

See the Project Staff Report for additional information (staff report is prepared for this MT Packet Item 8509 and MT Packet Item 8510).

BACKGROUND AND HISTORY OF BOARD ACTIONS:

May 8, 2018: Resolution No. 2018-209 initiating process to codify the proposed text.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives: Amend text.

No action would result in no change to County Code, Title 18. The proposed regulatory provisions would not be available to the county.

FINANCIAL IMPACT:

No impact

ATTACHMENTS:

180828 Board Staff Report Updated (DOC)

Att. 1 Draft Board Resolution (DOC)

Att. 2 Draft NOE (DOC)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Kevin Cann, District IV Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Kevin Cann

EXCUSED: Miles Menetrey

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS**

Resolution
No 2018-427

**A Resolution Approving County Code Amendment No. 2018-085, a
Project Adding Chapter 18.06 (Indemnification Agreements) to Title
18, Miscellaneous Land Use Regulations, Mariposa County Code**

WHEREAS, indemnification agreements are designed to ensure that taxpayers in local jurisdictions are not liable for costs associated with legal challenges to government action on private development projects; and

WHEREAS, Section 66474.9 of state Government Code specifically allows local agencies in California to require the execution of indemnification agreements by subdividers as a condition of approval on tentative, parcel and final map applications; and

WHEREAS, Chapter 16.36 (Indemnification Agreements) of Title 16, Subdivisions, Mariposa County Code, allows for the application of indemnification agreements to subdivision projects consistent with state Government Code, and

WHEREAS, Opinion No. 01-701 issued by the state Attorney General's office on February 4, 2002, regarding whether a local agency can require an applicant for a coastal development permit to execute an indemnification agreement, stated that it is in the agency's "police power" granted by the California Constitution to require the applicant to bear the costs of legal action on the issuance of the permit; and

WHEREAS, that opinion is widely viewed as applying to local agency action on all discretionary development permits; and

WHEREAS, indemnification agreements are widely employed by local agencies in the state of California, including Mariposa County, for a myriad of discretionary development projects; and

WHEREAS, although state Government Code contains a specific provision allowing local agencies to require indemnification agreements as conditions of approval for subdivision projects, Government Code is silent on the application of such agreements to other types of development projects, although it is in a local agency's general police power to do so; and

WHEREAS, while Mariposa County is consistent with other local agencies in the state of California in the application of indemnification agreements, it is the desire of Mariposa County to ensure that the ability to require such agreements for all discretionary development projects is clearly stated in County Code; and

WHEREAS, on the 8th day of May, 2018, the Board of Supervisors adopted Resolution No. 2018-209, initiating a County Code amendment for this project, which is known as County Code Amendment No. 2018-085; and

WHEREAS, a duly noticed Board of Supervisors public hearing on the project was scheduled for the 28th day of August, 2018; and

WHEREAS, a Staff Report packet was prepared pursuant to California Government code, Mariposa County Code, and local administrative procedures; and

WHEREAS, the Board did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report packet and testimony presented by the public.

NOW BE IT THEREFORE RESOLVED THAT, the Board of Supervisors does hereby approve County Code Amendment No. 2018-085; an ordinance to add Chapter 18.06 to Title 18 – Miscellaneous Land Use Regulations, Mariposa County Code. Amendment text is included as Exhibit 1.

BE IT THEREFORE FURTHER RESOLVED THAT, project approval is based on the following findings supported by substantial evidence in the public record:

1. **Finding:** The amendment is in the general public interest, and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

Evidence: The amendment promotes the general public health, safety, peace, and welfare. The amendment is in the general public interest in that it indemnifies Mariposa County against legal action on decisions made on discretionary development projects. It defends, indemnifies, and holds harmless Mariposa County and its agents, officers, and employees from and against any and all claims, actions, or proceedings against Mariposa County or its agents, officers, or employees to attack, set aside, void, or annul the Project or any prior or subsequent development approvals regarding the Project or Project condition imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning the said Project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the Project, including any claim for private attorney fees claimed by or awarded to any party from the County. The amendment codifies a practice utilized by local agencies throughout the state of California.

2. **Finding:** The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long term guide for county development and a short term basis for day-to-day decision making.

Evidence: The amendment is consistent with the Mariposa County General Plan. It codifies a practice already used in Mariposa County, which is allowable under the “police power” as granted to local agencies under the state Constitution to require project applicants to bear the costs of legal action on the issuance of the permit. The amendment will provide a long term guide for county development and a short term basis for day-to-day decision making by ensuring that there is specific code in place that can be referenced in project conditions of approval and if there be a dispute regarding the propriety of requiring indemnification agreements for projects in addition to those specifically allowed by state code for subdivisions. The amendment will help provide county decision makers and project applicants with a clear guide regarding the basis for the application of conditions of approval for development projects.

3. **Finding:** That amendment conforms to the requirements of state law and county policy.

3. **Finding:** That amendment conforms to the requirements of state law and county policy.

Evidence: This project has been processed in accordance with State law and county policy, including consultation with applicable local and state agencies, and public noticing. The ability to require indemnification agreements is allowed under the “police power” granted to local agencies under the California Constitution.

4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County General Plan.

Evidence: There are no goals, policies and standards in the county’s General Plan with which this amendment would be inconsistent.

5. **Finding:** County Code Amendment No. 2018-085 is not subject to the California Environmental Quality Act (CEQA) pursuant to General Rule Exemption; Section 15061(b)(2), CEQA Guidelines. The amendment codifies a practice currently utilized in Mariposa County and which is allowed under the California Constitution.

BE IT THEREFORE FINALLY RESOLVED THAT, the Board of Supervisors directs staff to file a Notice of Exemption for the project.


ON MOTION BY Supervisor Cann, seconded by Supervisor Jones, this resolution duly passed and adopted this 28th day of August 2018 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN

NOES: NONE

ABSTAINED: NONE

EXCUSED: MENETREY


Rosemarie Smallcombe, Chair
Mariposa County Board of Supervisors

ATTEST:


René La Roche
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

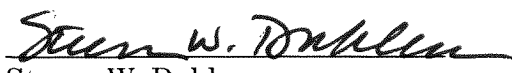

Steven W. Dahlem
County Counsel

Exhibit 1

CHAPTER 18.06

INDEMNIFICATION AGREEMENTS

Sections:

- 18.06.010 Purpose.
- 18.06.020 Authority.
- 18.06.030 Agreement form.
- 18.06.040 Notification.
- 18.06.050 County participation.

18.06.010 Purpose.

This chapter is enacted to ensure the taxpayers of the County of Mariposa do not pay legal costs associated with private projects.

18.06.020 Authority.

As a condition for a land use entitlement or issuance of any development permit (hereafter referred to as "Project"), an Owner or Applicant shall provide an indemnity agreement that defends, indemnifies, and holds harmless Mariposa County and its agents, officers, and employees from and against any and all claims, actions, or proceedings against Mariposa County or its agents, officers, or employees to attack, set aside, void, or annul the Project or any prior or subsequent development approvals regarding the Project or Project condition imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning the said Project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the Project, including any claim for private attorney fees claimed by or awarded to any party from the County. The agreement will be on a form and in a format approved by the County of Mariposa. Any requirement for an indemnity agreement may be appealed pursuant to the Mariposa County Appeals Procedures.

18.06.030 Agreement form.

The indemnification agreement shall be executed on a form approved as to legal form and sufficiency by Mariposa County Counsel.

18.06.040 Notification.

In the event of any claim, action, or proceeding against Mariposa County as described in section 18.06.020, Mariposa County shall promptly notify the Owner, Applicant or permit holder of such claim, action, or proceeding and Mariposa County shall fully cooperate with the Owner, Applicant or permit holder in the defense of the action.

18.06.050 County participation.

Nothing contained in this chapter shall prohibit Mariposa County from participating in the defense of any claim, action, or proceeding if Mariposa County bears its own attorney's fees and costs and Mariposa County defends the action in good faith.

FILED

AUG 28 2018

**MARIPOSA COUNTY
NOTICE OF EXEMPTION**

KEITH M. WILLIAMS

MARIPOSA COUNTY CLERK

Karen M. Herman

KAREN M. HERMAN

**TO: County Clerk, County of Mariposa
P.O. Box 247
Mariposa, CA 95338**

**FROM: Mariposa County
Planning Department
P.O. Box 2039
Mariposa, CA 95338**

Project Title: County Code Amendment No. 2018-085

Project Address: Applies countywide

Project Parcels: N/A

Description

of Project: Adds Chapter 18.06 – *Indemnification Agreements* to Title 18 – *Miscellaneous Land Use Regulations*, Mariposa County Code to codify the requirement that project applicants for private development projects in Mariposa County defend, indemnify, and hold harmless Mariposa County and its agents, officers, and employees from and against any and all claims, actions, or proceedings against Mariposa County or its agents, officers, or employees to attack, set aside, void, or annul the Project or any prior or subsequent development approvals regarding the Project or Project condition imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning the said Project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the Project, including any claim for private attorney fees claimed by or awarded to any party from the County.

Name of Public Agency Approving Project: Mariposa County Board of Supervisors

Name of Proponent Carrying Out Project: Mariposa County

Exempt Status: General Rule Exemption; Section 15060(c)(2) and Section 15061(b)(3)

Reason Why Project Is Exempt: This project is not subject to the California Environmental Quality Act (CEQA) pursuant to General Rule Exemption; Section 15061(b)(2), CEQA Guidelines. The amendment codifies a practice currently utilized in Mariposa County and which is allowed under the California Constitution.

Lead Agency Contact Person: Sarah Williams, Planning Director
Phone Number: (209) 742-1215

Mariposa County Board of Supervisors

By



Sarah Williams
Planning Director

8/28/18

Date



State of California - Department of Fish and Wildlife
2018 ENVIRONMENTAL FILING FEE CASH RECEIPT
 DFW 753.5a (Rev. 01/03/18) Previously DFG 753.5a

Print **Start Over** **Finalize&Email**

RECEIPT NUMBER:
 22 — 8/28/2018 — 018
 STATE CLEARINGHOUSE NUMBER (If applicable)

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY.

LEAD AGENCY Mariposa County Planning Department	LEAD AGENCY EMAIL swilliams@mariposacounty.org	DATE 8/28/2018
COUNTY/STATE AGENCY OF FILING Mariposa	DOCUMENT NUMBER 2018-085	

PROJECT TITLE
County Code Amendment No. 2018-085

PROJECT APPLICANT NAME Mariposa County Board of Supervisors	PROJECT APPLICANT EMAIL swilliams@mariposacounty.org	PHONE NUMBER (209) 472-1215
-----------------------------------------------------------------------	----------------------------------------------------------------	---------------------------------------

PROJECT APPLICANT ADDRESS PO Box 2039	CITY Mariposa	STATE CA	ZIP CODE 95338
-------------------------------------------------	-------------------------	--------------------	--------------------------

PROJECT APPLICANT (Check appropriate box)

Local Public Agency
 School District
 Other Special District
 State Agency
 Private Entity

CHECK APPLICABLE FEES:

<input type="checkbox"/> Environmental Impact Report (EIR)	\$3,168.00	\$	0.00
<input type="checkbox"/> Mitigated/Negative Declaration (MND)(ND)	\$2,280.75	\$	0.00
<input type="checkbox"/> Certified Regulatory Program document (CRP)	\$1,077.00	\$	0.00

- Exempt from fee
 Notice of Exemption (attach)
 CDFW No Effect Determination (attach)
 Fee previously paid (attach previously issued cash receipt copy)

<input type="checkbox"/> Water Right Application or Petition Fee (State Water Resources Control Board only)	\$850.00	\$	0.00
<input type="checkbox"/> County documentary handling fee		\$	0.00
<input type="checkbox"/> Other		\$	

PAYMENT METHOD:

Cash
 Credit
 Check
 Other

TOTAL RECEIVED \$ 0.00

SIGNATURE <i>X Karen M Herman</i>	AGENCY OF FILING PRINTED NAME AND TITLE Karen M. Herman, Deputy County Clerk, County of Mariposa
--------------------------------------	------------------------------------------------------------------------------------------------------------



State of California - Department of Fish and Wildlife

2018 ENVIRONMENTAL FILING FEE CASH RECEIPT

DFW 753.5a (Rev. 01/03/18) Previously DFG 753.5a

NOTICE

Each project applicant shall remit to the county clerk the environmental filing fee before or at the time of filing a Notice of Determination (Pub. Resources Code, § 21152; Fish & G. Code, § 711.4, subdivision (d); Cal. Code Regs., tit. 14, § 753.5). Without the appropriate fee, statutory or categorical exemption, or a valid No Effect Determination issued by the California Department of Fish and Wildlife (CDFW), the Notice of Determination is not operative, vested, or final, and shall not be accepted by the county clerk.

COUNTY DOCUMENTARY HANDLING FEE

The county clerk may charge a documentary handling fee of fifty dollars (\$50) per filing in addition to the environmental filing fee (Fish & G. Code, § 711.4, subd. (e); Cal. Code Regs., tit. 14, § 753.5, subd. (g)(1)). A county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied (Gov. Code, § 54985, subd. (a)).

COLLECTION PROCEDURES FOR COUNTY GOVERNMENTS

Filing Notice of Determination (NOD):

- Collect environmental filing fee or copy of previously issued cash receipt. *(Do not collect fee if project applicant presents a No Effect Determination signed by CDFW. An additional fee is required for each separate environmental document. An addendum is not considered a separate environmental document. Checks should be made payable to the county.)*
- Issue cash receipt to project applicant.
- Attach copy of cash receipt and, if applicable, previously issued cash receipt, to NOD.

If the project applicant presents a **No Effect Determination** signed by CDFW, also:

- Attach No Effect Determination to NOD *(no environmental filing fee is due)*.

Filing Notice of Exemption (NOE) *(Statutorily or categorically exempt project (Cal. Code Regs., tit. 14, §§ 15260-15285, 15300-15333))*

- Issue cash receipt to project applicant.
- Attach copy of cash receipt to NOE *(no environmental filing fee is due)*.

Within 30 days after the end of each month in which the environmental filing fees are collected, each county shall summarize and record the amount collected on the monthly State of California Form No. CA25 (TC31) and remit the amount collected to the State Treasurer. Identify the remittance on Form No. CA25 as "Environmental Document Filing Fees" per Fish and Game Code section 711.4.

The county clerk shall mail the following documents to CDFW on a monthly basis:

- ✓ A photocopy of the monthly State of California Form No. CA25 (TC31)
- ✓ CDFW/ASB copies of all cash receipts (including all voided receipts)
- ✓ A copy of all CDFW No Effect Determinations filed in lieu of fee payment
- ✓ A copy of all NODs filed with the county during the preceding month
- ✓ A list of the name, address and telephone number of all project applicants for which an NOD has been filed. If this information is contained on the cash receipt filed with CDFW under California Code of Regulations, title 14, section 753.5, subdivision (e)(6), no additional information is required.

DOCUMENT RETENTION

The county shall retain two copies of the cash receipt (for lead agency and county clerk) and a copy of all documents described above for at least 12 months.

RECEIPT NUMBER

- # The first two digits automatically populate by making the appropriate selection in the County/State Agency of Filing drop down menu.
- # The next eight digits automatically populate when a date is entered.
- # The last three digits correspond with the sequential order of issuance for each calendar year. For example, the first receipt number issued on January 1 should end in 001. If a county issued 252 receipts for the year ending on December 31, the last receipt number should end in 252. CDFW recommends that counties and state agencies 1) save a local copy of this form, and 2) track receipt numbers on a spreadsheet tabbed by month to ensure accuracy.

DO NOT COMBINE THE ENVIRONMENTAL FEES WITH THE STATE SHARE OF FISH AND WILDLIFE FEES.

Mail to:

California Department of Fish and Wildlife
Accounting Services Branch
1416 9th Street, 12th Floor, Suite 1215
Sacramento, California 95814