RECOMMENDED ACTION AND JUSTIFICATION:

Resolution authorizing Chairman to sign future indemnification agreements.

Resolution No. 04-346 was originally passed to provide authority for the Chairman to sign certain indemnity agreements. The intent was at that time to allow signature of indemnity agreements, including those under County Code Section 16.36. This Ordinance has subsequently been amended to somewhat modify the process and in order to maintain procedural continuity it is recommended that the Board readopt the Resolution noting in the record that it is specifically applicable to the revised indemnity provisions of the subdivision chapter of the County Code.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors adopted Resolution No. 04-346 on July 20, 2004 authorizing the Chairman to sign indemnification agreements for discretionary projects.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? ( ) Yes ( ) No Current FY Cost: $
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded
Amount in Budget: $
Additional Funding Needed: $
Source:
Internal Transfer
Unanticipated Revenue
Transfer Between Funds
Contingency
( ) General ( ) Other

Annual Recurring Cost: $
List Attachments, number pages consecutively
Res. 04-346

Clerk's Use Only:
Res. No. Ord. No. 845
Vote - Ayes: Noes: Absent:
Approved
( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date: 
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By:
Deputy

County Administrative Officer:
✓ Requested Action Recommended
No Opinion
Comments:

CAO:
RECOMMENDED ACTION AND JUSTIFICATION:

Adopt resolution:

1) Approving standard format for indemnification agreements;
2) Authorizing Chairman to sign future indemnification agreements for discretionary projects; and
3) Authorizing Chairman to sign the indemnification agreement for Paul R. DiTomaso, required as condition of approval for Land Division Application No. 2003-233

The proposed indemnification agreement format has been approved for legal sufficiency. When executed, the agreements will ensure that legal costs for defending the County’s action(s) to approve private discretionary projects are paid for by the project applicant, should the County’s action(s) be challenged in a court of law.

The indemnification agreement was required on the DiTomaso project, based upon the level and type of public controversy on the environmental determination.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Revise standard format for agreement.
Negative action would result in no indemnification agreement for projects.

Financial Impact? ( ) Yes (X) No Current FY Cost: $ Annual Recurring Cost: $  
Budgeted in Current FY? ( ) Yes ( ) No ( ) Partially Funded  
Amount in Budget: $  
Additional Funding Needed: $  
Source: Attachments:
  
Internal Transfer  
Unanticipated Revenue 4/5’s vote  
Transfer Between Funds 4/5’s vote  
Contingency 4/5’s vote  
( ) General ( ) Other

CLERK’S USE ONLY:
Res. No. 04-546-1  
Vote – Ayes: 5  
Absent:  
Noes: 0  
( ) Minute Order Attached  
( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date:  
Attest: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California  
By: ________________  
Deputy

COUNTY ADMINISTRATIVE OFFICER:
( ) Requested Action Recommended  
( ) No Opinion  
Comments:  

Revised Dec. 2002
AGREEMENT OF INDEMNITY

THIS AGREEMENT is entered into between the County of Mariposa (County) and ______________________ (Developer) and effective upon the ____ day of ______________ 2004.

WHEREAS, Developer has filed applications with the County for the approval of certain land use entitlements (the Requested Entitlements) for a development project known as ______________________ (Project), which were the subject of public hearings; and

WHEREAS, the County has concluded the preparation of various environmental documents, staff reports, exhibits, approvals and other entitlements and decisions pertaining to the Requested Entitlements; and

WHEREAS, the various Project approvals will inure to the substantial economic benefit of the Developer; and

WHEREAS, the Developer is willing to assist the County in the event that a legal challenge is filed against approvals granted by the County for the Project;

NOW, THEREFORE, County and Developer agree as follows:

1. Developer agrees to defend, indemnify, and hold harmless the County and its agents, officers, officials, and employees (the Indemnified Parties) from any claim, action, or proceeding against the Indemnified Parties to attack, set aside, void, or annul the Requested Entitlements and/or certification of CEQA review approved by County or its officers, officials, agents or employees concerning the Requested Entitlements and other proceedings, or to impose personal liability against such officers, officials, agents or employees resulting from their involvement in any and all proceedings or actions taken by County in connection with the processing of the Requested Entitlements, specifically including but not limited to any claim for damages, attorney fees, costs of court, or expenses of litigation claimed by or awarded to any party from County in such litigation (the Indemnity Obligations).

2. County agrees that it shall promptly notify Developer of any claim, action or proceedings giving rise to an Indemnity Obligation. In addition, County shall reasonably cooperate in the defense of an Indemnity Obligation. Developer may select counsel, having sufficient qualifications and experience to provide such defense, subject to Board of Supervisors approval.

3. Notwithstanding the foregoing, the County reserves the right, at its sole discretion to elect to participate in the defense of any such claim, action, or proceeding, with counsel of its own choosing, provided that it shall bear its own attorney’s fees and costs for such counsel.

4. Developer shall not settle any of the claims against an Indemnified Party without such party’s written consent. Indemnified Party shall not unreasonably withhold its consent to settlement of such claim, action or proceeding, provided, however, no Indemnified Party shall be
required to consent to any settlement of such claim, action or proceeding that imposes any financial liability upon such party unless Developer agrees to fully assure, pay and discharge such liability and includes in any settlement agreement that they will be fully paid and discharged by Developer. Any settlements shall be approved by the Board of Supervisors of County as required by law.

5. County and Developer agree to mediate any dispute or claim arising between them out of this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this section applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney’s fees even if they would otherwise be available to that party in any such action.

6. County and Developer agree that any dispute or claim in law or equity arising between them out of this Agreement which is not settled through mediation shall be submitted to nonbinding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 10 years of CEQA and/or land use experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In any action, proceeding or arbitration proceeding, the prevailing party shall be entitled to reasonable attorney’s fee and costs from the nonprevailing party, except as provided in Section 5.

7. Developer’s obligations under this Agreement shall survive the termination of this Agreement.

COUNTY OF MARIPosa

DEVELOPER

GARRY R. PARKER, Chairman
Mariposa County Board of Supervisors

Date:

Date:

ATTEST:

APPROVED AS TO FORM:

MARGIE WILLIAMS
Clerk of the Board

THOMAS P. GUARINO
County Counsel
AGREEMENT OF INDEMNITY

THIS AGREEMENT is entered into between the County of Mariposa (County) and Paul R. DiTomaso (Developer) and effective upon the 4th day of June 2004.

WHEREAS, Developer has filed applications with the County for the approval of certain land use entitlements (the Requested Entitlements) for a development project known as Land Division Application No. 2003-233 (Project), which were the subject of public hearings; and

WHEREAS, the County has concluded the preparation of various environmental documents, staff reports, exhibits, approvals and other entitlements and decisions pertaining to the Requested Entitlements; and

WHEREAS, the various Project approvals will inure to the substantial economic benefit of the Developer; and

WHEREAS, the Developer is willing to assist the County in the event that a legal challenge is filed against approvals granted by the County for the Project;

NOW, THEREFORE, County and Developer agree as follows:

1. Developer agrees to defend, indemnify, and hold harmless the County and its agents, officers, officials, and employees (the Indemnified Parties) from any claim, action, or proceeding against the Indemnified Parties to attack, set aside, void, or annul the Requested Entitlements and/or certification of CEQA review approved by County or its officers, officials, agents or employees concerning the Requested Entitlements and other proceedings, or to impose personal liability against such officers, officials, agents or employees resulting from their involvement in any and all proceedings or actions taken by County in connection with the processing of the Requested Entitlements, specifically including but not limited to any claim for damages, attorney fees, costs of court, or expenses of litigation claimed by or awarded to any party from County in such litigation (the Indemnity Obligations).

2. County agrees that it shall promptly notify Developer of any claim, action or proceedings giving rise to an Indemnity Obligation. In addition, County shall reasonably cooperate in the defense of an Indemnity Obligation. Developer may select counsel, having sufficient qualifications and experience to provide such defense, subject to Board of Supervisors approval.

3. Notwithstanding the foregoing, the County reserves the right, at its sole discretion to elect to participate in the defense of any such claim, action, or proceeding, with counsel of its own choosing, provided that it shall bear its own attorney’s fees and costs for such counsel.

4. Developer shall not settle any of the claims against an Indemnified Party without such party’s written consent. Indemnified Party shall not unreasonably withhold its consent to settlement of such claim, action or proceeding, provided, however, no Indemnified Party shall be required to consent to any settlement of such claim, action or proceeding that imposes any
financial liability upon such party unless Developer agrees to fully assume, pay and discharge such liability and includes in any settlement agreement that they will be fully paid and discharged by Developer. Any settlements shall be approved by the Board of Supervisors of County as required by law.

5. County and Developer agree to mediate any dispute or claim arising between them out of this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this section applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney’s fees even if they would otherwise be available to that party in any such action.

6. County and Developer agree that any dispute or claim in law or equity arising between them out of this Agreement which is not settled through mediation shall be submitted to nonbinding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 10 years of CEQA and/or land use experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In any action, proceeding or arbitration proceeding, the prevailing party shall be entitled to reasonable attorney’s fee and costs from the nonprevailing party, except as provided in Section 5.

7. Developer’s obligations under this Agreement shall survive the termination of this Agreement.

COUNTY OF MARIPOSA

GARRY R. PARKER, Chairman
Mariposa County Board of Supervisors

Date: 7-22-04

DEVELOPER

PAUL R. DI TOMASO

Date: 6-23-04

ATTEST:

MARGIE WILLIAMS
Clerk of the Board

APPROVED AS TO FORM:

THOMAS P. GUARINO
County Counsel