MARIPOSA COUNTY ORDINANCE NO. 587

AN ORDINANCE AMENDING TITLE 17 OF
THE MARIPOSA COUNTY CODE, TO PROVIDE
FOR DEVELOPMENT AGREEMENTS

THE BOARD OF SUPERVISORS of Mariposa County does ordain as
follows:

SECTION I: Title 17 of the Mariposa County Code (Zoning) is
amended by the addition of Chapter 17.07 to read as follows:
(see attachment)

SECTION II: This Ordinance shall become effective thirty
(30) days from the date of final passage pursuant to Government
Code Section 25123.

PASSED AND ADOPTED this 5th day of October, 1982, by the
Board of Supervisors of Mariposa County by the following vote:

AYES: Taber, Barrick, Moffitt, Erickson
NOES: None
EXCUSED: Dalton
ABSTAINING: None

WILLIAM H. MOFFITT, Chairman
Board of Supervisors

ATTEST:

ELLEN BRONSON, County Clerk and
Ex Officio Clerk of the Board

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

RICHARD K. DENHALTER, County Counsel
Chapter 17.07

DEVELOPMENT AGREEMENTS

Sections:

17.07.020 Authority.
17.07.030 Limitation.
17.07.040 Initiation.
17.07.050 Qualification of applicant.
17.07.060 Application.
17.07.070 Fees.
17.07.080 Withdrawal of application.
17.07.090 Form of agreement.
17.07.100 Review of application.
17.07.110 Transmittal to the planning commission--Public hearing.
17.07.120 Report of the planning commission.
17.07.130 Hearing by board of supervisors.
17.07.140 Approval of development agreement.
17.07.150 Required notice of public hearing.
17.07.160 Initiation of amendment or cancellation.
17.07.170 Recordation.
17.07.180 Agreement file.
17.07.190 Periodic review.
17.07.200 Procedure for periodic review.
17.07.210 Hearing by board of supervisors--Modification or termination following periodic review.

17.07.010 Purpose. This article is adopted for the purpose of providing a means of processing development permits which give a development project proponent reasonable assurance that a project can be carried out to its conclusion and the County of Mariposa can be assured that all reasonable on-site or off-site improvements and other conditions of project approval are constructed or carried out to the satisfaction of the county.

17.07.020 Authority. This article is adopted pursuant to the Government Code Sections 65864 through 65869.5.

17.07.030 Limitation. Unless otherwise expressed in this code, the provisions in this article are the exclusive procedures and rules relating to development agreements. In the event of conflict, these provisions shall prevail over any other provisions in this code.

17.07.040 Initiation. A development agreement may be initiated by:
   A. An application of one or more qualified applicants as defined in Section 17.07.050.
   B. By resolution of intention of the board of supervisors.
   C. By resolution of intention of the planning commission, with approval of the board of supervisors.
17.07.050 Qualification of applicant. Only a qualified applicant or his authorized agent may file an application pursuant to this article. A qualified applicant is a person who (which) has a legal or an equitable interest in the real property which is the subject of the development agreement. Such interest must be such that the applicant has or will have control of the use of the property during the proposed term of the agreement. The planner/grantsman may require an applicant to submit proof of his (its) interest in the real property and of the authority of the agent, if any, designated to act for the applicant. The planner/grantsman may require an applicant or agent to submit a title report from a reputable title insurance company or other evidence to verify the legal or equitable interest of the applicant in the property.

17.07.060 Application. A. Application for a development agreement shall be made in writing to the planning office on a form prescribed by the planner/grantsman.

B. In addition to the information required by subsection A of this section, the planner/grantsman may require a qualified applicant to submit such additional information and supporting data as he considers necessary to process the application.

17.07.070 Fees. For the purpose of defraying the expense involved in connection with an application, the board of supervisors may establish by resolution a schedule of fees. The schedule of fees shall be available in the planning office and on file in the office of the county clerk.

17.07.080 Withdrawal of application. An applicant may withdraw an application filed pursuant to this article at any time prior to board action on the application. Any fee required for processing the application shall not be returned or refunded to the applicant.

17.07.090 Form of agreement. A. The agreement shall contain all the matters required by Government Code Section 65865.2, and such other matters as the board determines to be appropriate.

B. The agreement shall be drafted on paper 8 1/2 inches by 11 inches and all attached exhibits shall be of a size to permit recording of the document pursuant to Section 17.07.170.

C. The county counsel shall prepare a standard form of agreement, which when adopted by the board, shall be used as the base document for each development agreement. Changes and additions to the standard form shall be made as individual circumstances dictate. An applicant may suggest modification to the standard form.

17.07.100 Review of application. A. The planning staff shall accept it for filing if it is complete and
accurate.

B. The planning staff shall review the application and shall prepare a staff report and recommendation to the planning commission with regard to the proposed agreement.

C. The county counsel shall prepare a draft agreement and forward the same to the planning director.

17.07.110 Transmittal to the planning commission—
Public hearing. The planner/grantsman shall transmit the application and the draft agreement to the planning com-
mission for a public hearing when all of the necessary reports and recommendations are complete. Notice of the public hearing shall be given as provided in Section 17.07.150. The application for a development agreement may be considered concurrently with other discretionary permits or approvals for the project.

17.07.120 Report of the planning commission. After the planning commission has held a public hearing, it shall render its decision in the form of a written report and recommendation to the board of supervisors. The report and recommendation shall include proposed findings on the matters stated in 17.07.130(C).

17.07.130 Hearing by the board of supervisors.
A. Upon receipt of the recommendation and report of the planning commission, the board of supervisors shall hold a public hearing. Notice of the public hearing shall be given as provided in Section 17.07.150.

B. After the board has held a public hearing, it may approve, modify and approve, or disapprove the development agreement. It may, but need not, refer matters not pre-
viously considered by the planning commission to the plan-
ning commission for a report and recommendation. The planning commission may, but need not, hold a public hearing on matters referred to it by the board.

C. The board shall not approve the development agree-
ment unless it finds that the agreement:

1. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;

2. Is compatible with the uses authorized in and the regulations prescribed for, the land use zone(s) in which the real property is located;

3. Is in conformity with public convenience, general welfare and good land use practices;

4. Will not be detrimental to the health, safety and general welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the county as a whole;

5. Will not adversely affect the orderly devel-
opment of property or the preservation of property values;

6. Is consistent with the provisions of Govern-
ment Code Sections 65864 through 65869.5.
D. The agreement may provide that the rules, regulations and official policies governing the permitted uses of land, density, design, improvement and construction standards or any one of these, shall be those rules, regulations and official policies in force at the date of execution of the agreement.

17.07.140 Approval of development agreement. If the board of supervisors approves the development agreement, it shall adopt an ordinance approving the agreement and directing the chairman of the board to execute the agreement after the effective date of the ordinance.

17.07.150 Required notice for public hearings.
A. Notice of public hearings required by this article shall be given as provided in Sections 65854, 65854.5 and 65856 of the Government Code, in addition to such other notice as may be required for other actions to be considered concurrently with the development agreement.
B. The notice requirements referred to in subsection A of this section are as required by the laws existing at the time of adoption of this article (Government Code Sections 65854, 65854.5, 65856 and 65867). If state law is amended to prescribe a different notice requirement, notice shall be given in that manner.
C. The failure of any person to receive notice required by law of any hearing as required by this article shall not affect the authority of the board to enter into a development agreement.

17.07.160 Initiation of amendment or cancellation.
A. Any party to a development agreement may propose an amendment to or cancellation of the agreement in whole or in part.
B. Except as otherwise provided in this section and in Section 17.07.200, the procedure for proposing and adopting an amendment to, or a cancellation in whole or in part of, the development agreement shall be the same as the procedure for entering into an agreement in the first instance. However, if the county initiates a proposed amendment to or a cancellation in whole or in part of the agreement, the county shall first give written notice to each party other than the county who executed the agreement of its intention to initiate such proceedings, not less than thirty (30) days in advance of giving public notice of the hearing to consider such amendment or cancellation.
C. Any amendment to the development agreement which does not relate to the duration of the agreement, permitted uses of the property, density or intensity of use, height or size of proposed buildings, provisions for reservation or dedication of land, or to any conditions, terms, restrictions and requirements relating to subsequent discretionary actions related to design, improvement and construction standards and specifications, or any other condition or covenant relating to the use of the property shall not require a
noticed public hearing before the parties may execute an amendment to the agreement.

17.07.170 Recordation. Within ten (10) days after the effective date of a development agreement, or any modification or the cancellation thereof, the clerk of the board shall have the agreement, the modification or the notice of cancellation recorded with the county recorder.

17.07.180 Agreement file. The county clerk shall be the official custodian of the agreement file. Said file shall include an executed copy of the agreement and the originals of all exhibits, reports of periodic review, amendments, modifications or cancellation, to the agreement.

17.07.190 Periodic review. A. The planning commission shall not less than once every twelve (12) months from the effective date of the development agreement review the same for compliance with its terms and conditions.

B. The planner/grantsman shall begin the review proceedings by giving notice of the periodic review of the development agreement to each party to the agreement other than the county. He shall give such mailed notice at least fifteen (15) days in advance of the time at which the matter will be considered by the planning commission.

17.07.200 Procedure for periodic review. A. The planning commission shall conduct a public hearing at which time the party or parties to the agreement, other than the county, must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue shall be upon such party or parties.

B. The planning commission shall determine upon the basis of substantial evidence whether or not, for the period under review, there has been compliance in good faith with the terms and conditions of the agreements.

C. After the public hearing, the planning commission shall render its determination in the form of a report to the board of supervisors. If the planning commission determines that there has not been compliance in good faith with the terms and conditions of the agreement, the commission may include in its report a recommendation for the modification or termination of the agreement.

17.07.210 Hearing by board of supervisors—Modification or termination following periodic review. A. The board shall place the report of the commission on its agenda at the second regularly scheduled board meeting following the planning commission meeting at which the report was made.

B. If the planning commission reports that there has been compliance in good faith with the terms and conditions of the agreement for the period under review, the board shall accept the report for filing and shall not take any further action unless:

   1. The board, on its own motion, votes to set the
matter for hearing; or

2. An appeal is filed from the determination of
the planning commission.

C. If the planning commission reports that there has
not been compliance in good faith with the terms and con-
ditions of the agreement for the period under review, the
board shall hold a public hearing to consider the report and
recommendation of the commission.

D. Whenever the commission report is scheduled for
hearing, notice of such hearing shall be given, as provided
in Section 17.07.150. Such notice shall provide:
1. The time and place of the public hearing;
2. A statement that the planning commission has
or has not determined that there has not been compliance in
good faith with the terms and conditions of the agreement
for the period under review;
3. A statement that the board of supervisors may
terminate or modify the agreement at the conclusion of the
hearing.

E. At the conclusion of the public hearing, the board
may refer the matter to the planning commission for a fur-
ther report and recommendation, or it may make a final
determination on whether or not there has been compliance in
good faith with the terms and conditions of the agreement.
If the board finds and determines, on the basis of sub-
stantial evidence, that there has not been compliance in
good faith with the terms and conditions of the review, the
board may terminate the agreement or the board may modify
the agreement and impose those conditions which it considers
necessary and appropriate to protect the interests of the
county. Any court action or proceeding to attack, review,
set aside, void or annul the final determination by the
board shall be commenced within sixty (60) days from the
date upon which a final determination is made, as set forth
in Section 17.07.190."