



MARIPOSA COUNTY

Planning • 209-966-5151



RESOLUTION - ACTION REQUESTED 2013-521

MEETING: November 19, 2013

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Indemnification Agreement for Camp Wawona Building Permit

RECOMMENDATION AND JUSTIFICATION:

Approve an Indemnification Agreement for Camp Wawona Artificial Turf Field Building Permit No. 30631, and Authorize the Board of Supervisors Chair to Sign the Agreement.

Building Permit No. 30631 was submitted for "fine grading of existing athletic field and installation of synthetic turf" on APN 010-280-009.

The indemnification agreement required for the Board's approval actions in 2007 does not include subsequent permits.

The turf project is consistent with the approved Conditional Use Permit for the camp. The turf project could also be approved pursuant to the Wawona Town Plan provisions for legally established non-conforming uses.

The building permit will be subject to all routine processing requirements, including noticing of NPS as required for projects in Wawona.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors adopted Resolutions 07-524 and 07-525 and Ordinance 1043, certifying an Environmental Impact Report (EIR) and approving a Specific Plan/Zoning Amendment and Conditional Use Permit for the Camp Wawona Redevelopment Project on November 6, 2007.

Mariposa County prevailed in Superior and Appellate Courts in legal challenges filed against the CEQA determination for the project.

A challenge against the National Park Service's actions relative to this project is ongoing.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Not approving and executing indemnification agreement will mean that the project

proponent is not obligated to assist the County in the event a legal challenge is filed against the Turf Project.

FINANCIAL IMPACT:

Recommended action results in no financial impact.

ATTACHMENTS:

131108 Indemnification Agreement (PDF)

CAO RECOMMENDATION

Requested Action Recommended


Rick Benson, County Administrative Officer

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: John Carrier, District V Supervisor

AYES: Lee Stetson, Merlin Jones, Janet Bibby, John Carrier

EXCUSED: Kevin Cann

AGREEMENT OF INDEMNITY

THIS AGREEMENT is entered into between the County of Mariposa (County) and the Central California Conference of Seventh Day Adventists (CCCSDA) (Developer) and effective upon the 14th day of November 2013; and

WHEREAS, Developer has filed an application with the County requesting approval of Building Permit No. 30631 (the "Turf Permit") allowing the resurfacing of the existing Camp Wawona athletic field with artificial turf (the "Project"); and

WHEREAS, the County has evaluated Developer's application for the Turf Permit and supporting exhibits and has determined that the Turf Permit is requested for the purpose of maintaining the usability of the existing athletic field;

WHEREAS, the Turf Permit will inure to the 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 the Turf Permit 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 Turf Permit approved by County or its officers, officials, agents or employees concerning the Turf Permit 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 Turf Permit, 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 County approval, which approval shall not be unreasonably withheld.
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 attorneys' fees 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



Lee Stetson, Chairman
Mariposa County Board of Supervisors



Ramiro Cano, President
Central California Conference of Seventh-day
Adventists

Date: 11-19-13

Date: 11-6-2013

APPROVED AS TO FORM:



STEVEN W. DAHLEM
COUNTY COUNSEL