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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

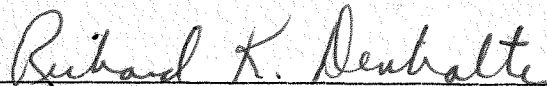
ABSTAINING: None


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

1 "Chapter 17.07

2 DEVELOPMENT AGREEMENTS

3 Sections:

- 4 17.07.020 Authority.
5 17.07.030 Limitation.
6 17.07.040 Initiation.
7 17.07.050 Qualification of applicant.
8 17.07.060 Application.
9 17.07.070 Fees.
10 17.07.080 Withdrawal of application.
11 17.07.090 Form of agreement.
12 17.07.100 Review of application.
13 17.07.110 Transmittal to the planning commission--
14 Public hearing.
15 17.07.120 Report of the planning commission.
16 17.07.130 Hearing by board of supervisors.
17 17.07.140 Approval of development agreement.
18 17.07.150 Required notice of public hearing.
19 17.07.160 Initiation of amendment or cancellation.
20 17.07.170 Recordation.
21 17.07.180 Agreement file.
22 17.07.190 Periodic review.
23 17.07.200 Procedure for periodic review.
24 17.07.210 Hearing by board of supervisors--Modifica-
25 tion or termination following periodic
26 review.

16 17.07.010 Purpose. This article is adopted for the
17 purpose of providing a means of processing development
18 permits which give a development project proponent reason-
19 able assurance that a project can be carried out to its
20 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.

21 17.07.020 Authority. This article is adopted pursuant
to the Government Code Sections 65864 through 65869.5.

22 17.07.030 Limitation. Unless otherwise expressed in
23 this code, the provisions in this article are the exclusive
24 procedures and rules relating to development agreements. In
the event of conflict, these provisions shall prevail over
any other provisions in this code.

25 17.07.040 Initiation. A development agreement may be
26 initiated by: A. An application of one or more qualified
applicants as defined in Section 17.07.050.

27 B. By resolution of intention of the board of super-
visors.

28 C. By resolution of intention of the planning commis-
sion, with approval of the board of supervisors.

1 17.07.050 Qualification of applicant. Only a quali-
2 fied applicant or his authorized agent may file an appli-
3 cation pursuant to this article. A qualified applicant is a
4 person who (which) has a legal or an equitable interest in
5 the real property which is the subject of the development
6 agreement. Such interest must be such that the applicant
7 has or will have control of the use of the property during
8 the proposed term of the agreement. The planner/grantsman
9 may require an applicant to submit proof of his (its) interest
10 in the real property and of the authority of the agent, if
11 any, designated to act for the applicant. The planner/
12 grantsman may require an applicant or agent to submit a
13 title report from a reputable title insurance company or
14 other evidence to verify the legal or equitable interest of
15 the applicant in the property.

9 17.07.060 Application. A. Application for a devel-
10 opment agreement shall be made in writing to the planning
11 office on a form prescribed by the planner/grantsman.

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

13 17.07.070 Fees. For the purpose of defraying the
14 expense involved in connection with an application, the
15 board of supervisors may establish by resolution a schedule
16 of fees. The schedule of fees shall be available in the
17 planning office and on file in the office of the county
18 clerk.

17 17.07.080 Withdrawal of application. An applicant may
18 withdraw an application filed pursuant to this article at
19 any time prior to board action on the application. Any fee
20 required for processing the application shall not be re-
21 turned or refunded to the applicant.

20 17.07.090 Form of agreement. A. The agreement shall
21 contain all the matters required by Government Code Section
22 65865.2, and such other matters as the board determines to
23 be appropriate.

22 B. The agreement shall be drafted on paper 8 1/2
23 inches by 11 inches and all attached exhibits shall be of a
24 size to permit recording of the document pursuant to Section
25 17.07.170.

24 C. The county counsel shall prepare a standard form of
25 agreement, which when adopted by the board, shall be used as
26 the base document for each development agreement. Changes
27 and additions to the standard form shall be made as indi-
28 vidual circumstances dictate. An applicant may suggest
29 modification to the standard form.

27 17.07.100 Review of application. A. The planning
28 staff shall accept it for filing if it is complete and

1 accurate.

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

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

7 17.07.110 Transmittal to the planning commission--
8 Public hearing. The planner/grantsman shall transmit the
9 application and the draft agreement to the planning com-
10 mission for a public hearing when all of the necessary
11 reports and recommendations are complete. Notice of the
12 public hearing shall be given as provided in Section
13 17.07.150. The application for a development agreement may
14 be considered concurrently with other discretionary permits
15 or approvals for the project.

16 17.07.120 Report of the planning commission. After
17 the planning commission has held a public hearing, it shall
18 render its decision in the form of a written report and
19 recommendation to the board of supervisors. The report and
20 recommendation shall include proposed findings on the
21 matters stated in 17.07.130(C).

22 17.07.130 Hearing by the board of supervisors.

23 A. Upon receipt of the recommendation and report of
24 the planning commission, the board of supervisors shall hold
25 a public hearing. Notice of the public hearing shall be
26 given as provided in Section 17.07.150.

27 B. After the board has held a public hearing, it may
28 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.

1 D. The agreement may provide that the rules, regu-
2 lations and official policies governing the permitted uses
3 of land, density, design, improvement and construction
4 standards or any one of these, shall be those rules, regu-
5 lations and official policies in force at the date of
6 execution of the agreement.

7 17.07.140 Approval of development agreement. If the
8 board of supervisors approves the development agreement, it
9 shall adopt an ordinance approving the agreement and direct-
10 ing the chairman of the board to execute the agreement after
11 the effective date of the ordinance.

12 17.07.150 Required notice for public hearings.

13 A. Notice of public hearings required by this article
14 shall be given as provided in Sections 65854, 65854.5 and
15 65856 of the Government Code, in addition to such other
16 notice as may be required for other actions to be considered
17 concurrently with the development agreement.

18 B. The notice requirements referred to in subsection
19 A of this section are as required by the laws existing at
20 the time of adoption of this article (Government Code
21 Sections 65854, 65854.5, 65856 and 65867). If state law is
22 amended to prescribe a different notice requirement, notice
23 shall be given in that manner.

24 C. The failure of any person to receive notice required
25 by law of any hearing as required by this article shall not
26 affect the authority of the board to enter into a develop-
27 ment agreement.

28 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 con-
sider 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

1 noticed public hearing before the parties may execute an
2 amendment to the agreement.

3 17.07.170 Recordation. Within ten (10) days after the
4 effective date of a development agreement, or any modifi-
5 cation or the cancellation thereof, the clerk of the board
6 shall have the agreement, the modification or the notice of
7 cancellation recorded with the county recorder.

8 17.07.180 Agreement file. The county clerk shall be
9 the official custodian of the agreement file. Said file
10 shall include an executed copy of the agreement and the
11 originals of all exhibits, reports of periodic review,
12 amendments, modifications or cancellation, to the agreement.

13 17.07.190 Periodic review. A. The planning com-
14 mission shall not less than once every twelve (12) months
15 from the effective date of the development agreement review
16 the same for compliance with its terms and conditions.

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

23 17.07.200 Procedure for periodic review. A. The
24 planning commission shall conduct a public hearing at which
25 time the party or parties to the agreement, other than the
26 county, must demonstrate good faith compliance with the
27 terms of the agreement. The burden of proof on this issue
28 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 com-
mission 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

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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 conditions 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 further 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 substantial 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."