

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM**  
3.39  
(ID # 5928)

**MEETING DATE:**

Tuesday, December 12, 2017

**FROM :** TLMA-PLANNING:

**SUBJECT:** TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: Revised Indemnification Agreement Process for Land Use Permits and Subdivision Projects

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Revised Indemnification Agreement in form and process to be included in the application materials for Land Use Permits and Subdivision Projects; and
2. Authorize the Assistant TLMA Director or his/her designee to execute and implement the above referenced Indemnification Agreement process on behalf of the County

**ACTION:**

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**MINUTES OF THE BOARD OF SUPERVISORS**

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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$1,260.00	\$0	\$1,260.00	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS:</b> County allocation of General Fund -100%			<b>Budget Adjustment:</b> None	
			<b>For Fiscal Year:</b> 2017/2018	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

On March 24, 2015, the Board of Supervisors approved a template indemnification agreement for Land Use Permits and Subdivision Projects and authorized the Planning Director to administer the indemnification agreements (agenda item 3-35). Land use permits and subdivision projects are routinely the subject of litigation challenging the County’s approval and associated environmental documents. The intent of the indemnification agreement is to protect County funds from being used to finance defending against judicial challenges regarding private development projects and to clarify to property owners that they are responsible to bear the expense of defending against any such legal challenges. Since June of 2015, fully executed indemnification agreements have been administered for most land use entitlement discretionary applications, except applications that are considered minor in nature, such as lot line adjustments, parcel mergers and map extensions of time.

The Planning Department and County Counsel have coordinated efforts to streamline the indemnification agreement process with the objective of complying with the Board of Supervisors’ direction and minimizing project delays due to the process. However, in the almost two and a half years since the Board’s approval of the Indemnification Agreement some applicants have experienced delays and increased costs due to the current process.

In the interest of making Riverside County more “Business Friendly”, on August 29, 2017, the Board of Supervisors gave direction to the Transportation and Land Management Agency (TLMA) to work with County Counsel to reform or eliminate the burdensome Indemnification Agreement process and report back to the Board within 120 days.

Given the Board of Supervisors’ direction, the Planning Department and County Counsel re-examined the process of administering indemnification agreements and evaluated options to update the process. As part of that re-examination, County Counsel surveyed other counties regarding their indemnification processes. Of the 23 counties that responded, 18 counties include the indemnification agreement provisions in the project application or require a separate indemnification agreement, as well as include the indemnification obligation in a condition of project approval. The City of Riverside also includes an indemnification agreement paragraph in the project application and requires signatures of both the property owner and the applicant on the indemnification paragraph.

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**POLICY:**

As approved by the Board, indemnification agreements with specific terms concerning a property owner's obligation to defend and indemnify the County in the event a judicial challenge is commenced against a private land use project, continues to be a prudent practice to help protect public funds from being used to pay litigation costs and expenses associated with private development.

Similar to the City of Riverside and several other counties, the Planning Department and County Counsel now recommend including the indemnification agreement provisions in the land use application, instead of requiring a separate agreement as currently done. The attached indemnification agreement provisions have been streamlined as part of the land use application package and property owners will be required to sign the indemnification agreement provisions in the application when submitting the application. The Planning Department will administer the agreement. The application will also include the signature requirements for the application so that property owners will be put on notice of the requirements and additional documentation that will be required at the time of application so as to verify that the person signing on behalf of a corporate entity or trust has authority to submit the application and bind the property owner. That verification also includes the requirement to submit a Preliminary Title report for the subject property(ies). Additionally, the attached, updated indemnification condition of approval will be added to all discretionary land use cases.

Given the complexity of some ownership structures, the Assistant TLMA Director or designated staff will have the discretion to consult with County Counsel to verify that that the party signing the indemnification agreement has authority to do so. Also, the Assistant TLMA Director may waive the requirement for a Preliminary Title Report if it can be shown to the satisfaction of the Assistant TLMA Director that the property owner(s) has owned the property consistently for at least the last five years.

**EXCEPTIONS:**

This policy does not apply to applications submitted for the following discretionary approvals:

- Lot Line Adjustments
- Parcel Mergers
- Extensions of Time
- Permits for detached accessory buildings, guest quarters and second unit permits that do not require environmental assessments
- Crowing Fowl permits
- Large family Daycare Permits

**IMPACT ON CITIZENS AND BUSINESSES:**

The Board's approval of this revised indemnification agreement form and process will protect public funds from being used to pay litigation costs and expenses associated with private development by properly passing that responsibility to the property owners who benefit for the

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land use permit or subdivision approvals. Further, the less burdensome indemnification agreement process will provide a more streamlined path for applicants during the entitlement process.

**SUPPLEMENTAL:**

**ADDITIONAL FISCAL INFORMATION:**

N/A

**CONTRACT HISTORY AND PRICE REASONABLENESS:**

Not applicable; this work was completed by County staff.

**ATTACHMENTS:**

- A. Indemnification Agreement Provisions To Be Included In Land Use Application
- B. Standard Indemnification Agreement Condition of Approval

  
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Melissa Noone, Associate Management Analyst

12/4/2017

  
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Gregory F. Priamos, Director County Counsel

11/30/2017

**INDEMNIFICATION AGREEMENT REQUIRED FOR ALL PROJECTS**

*(This page to be included in its entirety on land use entitlement application)*

The owner(s) of the property, at their own expense, agree to defend, indemnify and hold harmless the County of Riverside and its agents, officers, and employees from and against any lawsuit, claim, action, or proceeding (collectively referred to as "proceeding") brought against the County of Riverside, its agents, officers, attorneys and employees to attack, set aside, void, or annul the County's decision to approve any tentative map (tract or parcel), revised map, map minor change, reversion to acreage, conditional use permit, public use permit, surface mining permit, WECS permit, hazardous waste siting permit, temporary outdoor event permit, plot plan, substantial conformance, revised permit, variance, setback adjustment, general plan amendment, specific plan, specific plan amendment, specific plan substantial conformance, zoning amendments, and any associated environmental documents. This defense and indemnification obligation shall include, but not limited to, damages, fees and/or costs awarded against the County, if any, and cost of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by applicant, property owner, the County, and/or the parties initiating or bringing such proceeding.

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Property Owner(s) Signature(s)

Date

If the property is owned by multiple owners, the paragraph above must be signed by each owner. Attach additional sheets, if necessary.

If the property owner is a corporate entity, Limited Liability Company, partnership or trust, the following documentation must also be submitted with this application:

- If the property owner is a limited partnership, provide a copy of the LP-1, LP-2 (if an amendment) filed with the California Secretary of State.
- If the property owner is a general partnership, provide a copy of the partnership agreement documenting who has authority to bind the general partnership and to sign on its behalf.
- If the property owner is a corporation, provide a copy of the Articles of Incorporation and/or a corporate resolution documenting which officers have authority to bind the corporation and to sign on its behalf. The corporation must also be in good standing with the California Secretary of State.
- If the property owner is a trust, provide a copy of the trust certificate.
- If the property owner is a Limited Liability Corporation, provide a copy of the operating agreement for the LLC documenting who has authority to bind the LLC and to sign on its behalf.

If the signing entity is also a corporate entity, Limited Liability Company, partnership or trust, the above documentation must also be submitted with this application. For any out of State legal entities, provide documentation showing registration with the California Secretary of State.

In addition to the above, provide a copy of a Preliminary Title Report for the property subject to this application. The Preliminary Title Report must be issued by a title company licensed to conduct business in the State of California and dated less than six months prior to the date of submittal of this application. The Assistant TLMA Director may waive the requirement for a Preliminary Title Report if it can be shown to the satisfaction of the Assistant TLMA Director that the property owner(s) has owned the property consistently for at least the last five years.

If the application is for a plot plan for a Wireless Communication Facility, the property owner(s) and the cellular service provider must sign the indemnification paragraph above. If the application is for a plot plan for a wireless communication co-location, only the co-locating service provider needs to sign the indemnification paragraph above.

## **UPDATED INFORMATIONAL CONDITION OF APPROVAL FOR ALL PROJECTS**

The applicant/permittee or any successor-in-interest shall defend, indemnify, and hold harmless the County of Riverside or its agents, officers, and employees (COUNTY) from the following:

- (a) any claim, action, or proceeding against the COUNTY to attack, set aside, void, or annul an approval of the COUNTY, its advisory agencies, appeal boards, or legislative body concerning the [INSERT ALL APPLICATIONS FOR APPROVAL THAT APPLY] or its associated environmental documentation; and,
  - (b) any claim, action or proceeding against the COUNTY to attack, set aside, void or annul any other decision made by the COUNTY concerning the [INSERT ALL APPLICATIONS FOR APPROVAL THAT APPLY], including, but not limited to, decisions made in response to California Public Records Act requests; and
- (a) and (b) above are hereinafter collectively referred to as "LITIGATION."

The COUNTY shall promptly notify the applicant/permittee of any LITIGATION and shall cooperate fully in the defense. If the COUNTY fails to promptly notify the applicant/permittee of any such LITIGATION or fails to cooperate fully in the defense, the applicant/permittee shall not, thereafter, be responsible to defend, indemnify or hold harmless the COUNTY.

The obligations imposed by this condition include, but are not limited to, the following: the applicant/permittee shall pay all legal services expenses the COUNTY incurs in connection with any such LITIGATION, whether it incurs such expenses directly, whether it is ordered by a court to pay such expenses, or whether it incurs such expenses by providing legal services through its Office of County Counsel.

Payment for COUNTY's costs related to the LITIGATION shall be made on a deposit basis. Within thirty (30) days of receipt of notice from COUNTY that LITIGATION has been initiated against the Project, applicant/permittee shall initially deposit with the COUNTY's Planning Department the total amount of Twenty Thousand Dollars (\$20,000). Applicant/permittee shall deposit with COUNTY such additional amounts as COUNTY reasonably and in good faith determines, from time to time, are necessary to cover costs and expenses incurred by the COUNTY, including but not limited to, the Office of County Counsel, Riverside County Planning Department and the Riverside County Clerk of the Board associated with the LITIGATION. To the extent such costs are not recoverable under the California Public Records Act from the records requestor, applicant/permittee agrees that deposits under this section may also be used to cover staff time incurred by the COUNTY to compile, review, and redact records in response to a Public Records Act request made by a petitioner in any legal challenge to the Project when the petitioner is using the Public Records Act request as a means of obtaining the administrative record for LITIGATION purposes. Within ten (10) days of written notice from COUNTY, applicant/permittee shall make such additional deposits.