



Agenda Date: 4/19/2005  
Agenda Placement: 9E

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Susan Ingalls for Robert Westmeyer - County Counsel  
County Counsel  
**REPORT BY:** Susan Ingalls, Paralegal , 259-8152  
**SUBJECT:** First Reading of Ordinance Adding Chapter 1.30 to Provide for Indemnification of County for Land Use Approvals

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### **RECOMMENDATION**

First reading and intention to adopt an ordinance adding a new Chapter 1.30 to Title 1 of the Napa County Code Providing for the Indemnification of the County for Land Use Approvals.

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **EXECUTIVE SUMMARY**

The proposed ordinance codifies existing administrative practice requiring applicants for discretionary land use approvals (such as a conditional use permit and associated environmental document) to execute an indemnification agreement as part of the application package. It does not apply to permits that may be issued administratively, such as building permits. The indemnity requires the applicant to defend and indemnify the County in the event legal challenges are brought to challenge the County's issuance of the permit and related CEQA determination, and pay any attorneys fees that may be awarded in the action. This type of indemnity requirement is common in many jurisdictions and authorized by state law.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

This ordinance would codify the County's current administrative practice of requiring applicants for discretionary land use approvals to defend and indemnify the County in the event a legal challenge is brought to void their project approval or set aside the CEQA determination. The indemnification covers any attorney fee award that may be made in the court challenge. The indemnification provisions track those authorized by Government Code section 66474.9 pertaining to divisions of land under the Subdivision Map Act. They are also consistent with the Attorney General's opinion in 85 Ops.Atty.Gen. 21, which held these requirements were appropriate in the land use context under the general police powers held by the county. As the applicant is the party who derives the benefits of the project approval, it is appropriate they should bear any expenses that may arise in defending it.

If an applicant fails or refuses to sign the indemnification agreement, the land use application will be deemed incomplete. In the event that an applicant refuses to pay the county any amount owed pursuant to the indemnification requirements, enforcement of the indemnification, if need be, will be through legal action. The County would be entitled to recover costs and attorneys' fees in that action.

The ordinance is consistent with similar requirements imposed, by among others, Sonoma, Mendocino, Placer, and San Diego counties. Also attached for informational purposes is a copy of the proposed agreement itself, which will be adopted by resolution at the final reading of the ordinance.

**SUPPORTING DOCUMENTS**

- A . Tracked Ordinance
- B . Indemnification Agreement

CEO Recommendation: Approve

Reviewed By: Lorenzo Zíalcita