

Attachment B

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County of Monterey

Condition of Approval and Mitigation Monitoring and Reporting Program

Revised December 3, 2014

I. ESTABLISHMENT OF PROGRAM AND PURPOSE

The County of Monterey routinely applies a variety of conditions to projects requiring environmental review and discretionary approvals ~~when such projects are approved by the appropriate~~ Appropriate ~~authority~~ Authority with jurisdiction to consider such matters. Such conditions (“~~Conditions of Approval~~”) include, but are not limited to, mitigation measures identified in a mitigated negative declaration (“MND”) or an environmental impact report (“EIR”) prepared pursuant to the California Environmental Quality Act (Public Resources Code ~~Section~~ 21000 et seq., “CEQA”) and other conditions, both standard and unique, that are not mitigation measures (collectively “Conditions of Approval”).

In addition, the CEQA Guidelines ~~in~~ (Title 14, Chapter 3, Section 15000 *et seq.*, of the California Code of Regulations,) contain provisions for local agencies’ monitoring and reporting of mitigation measures imposed on projects for which a MND or an EIR has been prepared and adopted or certified. On December 5, 2000 the Monterey County Board of Supervisors adopted Ordinance No. 04087, thereby incorporating into the Monterey County Code the existing State CEQA Guidelines as they may be amended from time to time. Ordinance No. 04087, codified at Chapter 16.70 of the Monterey County Code, became effective on January 5, 2001.

There is hereby established a this Condition of Approval and Mitigation Monitoring and Reporting Program (“Program”) for discretionary land use permits that are approved with mitigation measures. This Program applies to all conditions of approval for such permits, including mitigation measures as well other conditions of approval that are imposed for reasons other than CEQA mitigation. This Program does not apply to discretionary land use approvals that have no mitigation measures, for example, projects which do not rely upon a MND or EIR for environmental review. The Program is designed to provide for tracking, monitoring, enforcement and reporting upon Conditions of Approval, and fulfills the requirements of CEQA and the CEQA Guidelines for monitoring and reporting of implementation of mitigation measures imposed under CEQA. The Program also provides detailed procedures to be followed by County departments. This Program is intended to direct monitoring and enforcement of project-specific Conditions of Approval and to set forth the responsibilities of County departments for various aspects of monitoring, reporting, and enforcement to ensure full compliance with Conditions of Approval.

II. IMPLEMENTATION RESPONSIBILITIES

A. Planning Department

~~The~~ Resource Management Agency (RMA)–~~Planning Department~~ (“Planning”), through the Director of Planning (“Director”) and his or her ~~duly appointed subordinates~~ designees shall have the primary responsibility for implementation, compliance and enforcement of this Program.

A Condition of Approval Program Supervisor (“CAPS”) within Planning may assist the Director in implementing this Program. The CAPS shall be primarily responsible for the annual reporting required under the Program as described in Section III.E.

The County may charge reasonable fees to project applicants to recover the cost of the Program in accordance with state law. Such fees shall be imposed to recover the costs of implementation and enforcement of Conditions of Approval that require field inspection, continuous or long-term monitoring, or the preparation and/or review of reports by County staff. Any such fees shall be approved by the Board of Supervisors before being imposed.

B. Responsibility of Other County Land Use Departments

All departments, officials, and employees of the County involved in processing, reviewing, recommending, or approving applications for permits or land use entitlements for projects for which Conditions of Approval are proposed and adopted, including but not limited to RMA-Planning, the Department of RMA- Public Works (“DPW”), Parks Department, Economic Development Department, Redevelopment and Housing Department, RMA-Environmental Services, RMA-Building Services and the Environmental Health Bureau (“EHB”) of the Health Department (collectively “Responsible Departments”), shall implement, enforce, and assist the Director in implementing and enforcing the provisions of this Program as set forth herein. The CAPS shall coordinate and oversee Responsible Departments’ implementation of the Program. Responsible Departments shall timely prepare the verifications described in Section II.B. Each Responsible Department shall report to the Director regarding every approved project’s compliance with conditions of approval and CEQA mitigation measures imposed, as provided herein. The Monterey County Water Resources Agency is not a department of the County, but shall be requested to assist the Director in the implementation and enforcement of the Program. Other special districts within the Monterey County, for example fire districts, may also be requested to assist in the implementation and enforcement of the Program (collectively “Advisory Agencies”).

Where particular Conditions of Approval recommended by a Responsible Department are imposed, the recommending Responsible Department shall be primarily responsible for ensuring any Condition of Approval is fully implemented in accordance with the procedures and timelines, if any, specified in the ~~Conditions of Approval or a Condition of Approval Implementation Plan~~ Condition of Approval/Mitigation Monitoring and Reporting Plan (as ~~defined~~ described in Section III.A.3, below) adopted at the time of project approval. County will request the Advisory Agencies to verify implementation of the conditions they recommended and to follow the procedures required of the Responsible Departments.

Any modification of a Condition of Approval or a mitigation measure identified in a MND or EIR must be reviewed by the Responsible Department that recommended it, and approved by the Appropriate Authority (as ~~used~~ allowed by in Monterey County Code) ~~that approved the project and adopted the EIR or MND~~. Notice of hearing on such proposed modification shall be provided in the same manner as the notice required for consideration of the original project and shall be posted on the County’s electronic database.

To verify compliance with a Condition of Approval, the Responsible Department which

recommended the Condition of Approval and which was given the responsibility to monitor and report on condition compliance, shall fill out a “Verification of Condition Compliance/Non-Compliance Form” (“VCCNCCCF”) by completing the Comment Log in the County’s electronic database for permit tracking, Accela Automation (“Accela”). Accela shall include a condition compliance report viewable to the public. The electronic form in the Accela database shall serve as the CCF. A copy of the ~~VCCNC-CCF form template~~ is attached. The ~~VCCNC-CCF~~ shall specify the project name and number, and condition/ mitigation measure number, as well as provide a description of the mitigation measure or condition of approval, the date the mitigation measure or condition was satisfied, how it was satisfied, and the County employee or officer of the Responsible Department who deemed the condition satisfied. The Responsible Department completing the ~~VCCNC-CCF~~ shall promptly ~~forward a copy of the~~ enter a copy of the VCCNCCCF to Planning, along with the supporting documentation, into the Accela Documents module, which shall ~~enter a print copy of the VCCNC in its official files and an electronic version in the County’s electronic database (described in III.E).~~ Each Responsible Department shall maintain a hardcopy file for each project for which that department has recommended a Condition of Approval. The file shall contain a paper copy of the CCF for each condition of approval and the documentation upon which it relied to support the CCF’s conclusion. A copy of the ~~VCCNC~~ shall also be filed in the originating Responsible Department’s project file.

In the event the project applicant has not fully complied or refuses to comply with a Condition of Approval within the scheduled or reporting deadline(s) specified in the Conditions of Approval ~~or MMRP~~, or within a reasonable time if no timeline is specified, the Responsible Department that recommended the Condition of Approval shall promptly fill out a ~~VCCNC-CCF~~ by completing the Comment Log in Accela which provides detailed information about the Condition of Approval and the basis for finding that the applicant has failed to comply with it. The Responsible Department shall promptly ~~forward upload~~ enter a copy of the ~~VCCNC-CCF~~ to in the Accela Documents module and notify Planning, through the ~~project planner assigned~~ Planning staff or the CAPS, ~~and~~ The Responsible Department shall keep in its project file the CCF and the document upon which it relied to support the VCCNCCCF’s conclusion. RMA-Planning shall then decide which of the actions specified in Section III.D.2 herein shall be taken by the Director or other authorized enforcement official.

In the event any type of action pursuant to Section III.D.2, including a ~~Code~~ code enforcement action, is taken by the Director or other authorized enforcement official ~~pursuant to the VCCNC~~, all documentation associated with corrective enforcement shall be incorporated in Planning’s Code Enforcement’s official project files and shall be placed on the County’s electronic database (described in III.E). The files shall reflect the final action taken by the County to achieve compliance with ~~this Program~~ the Conditions of Approval. Nothing in this Program, however, requires the County to release documents that it is not otherwise legally required to disclose.

For any project upon which mitigation measures have been imposed, prior to the issuance of any permit for the project, whether discretionary or ministerial, the Responsible Department shall verify in writing, in the form of a ~~VCCNC-CCF~~ that the project is currently in compliance with all applicable Conditions of Approval.

The Responsible Department completing the ~~VCCNC~~ shall promptly forward the

~~VCCNC to the Program Coordinator (described in II.C) who shall enter a print copy of the VCCNC in its official files and an electronic version in the County's database (described in III.E). A copy of the VCCNC shall also be filed in the originating Responsible Department's project file. Each Responsible Department shall maintain a file for each project for which that department has recommended a Condition of Approval. The file shall contain all communications, records, written VCCNCs and documents pertaining to each project's compliance with the Conditions of Approval.~~

~~C. Program Oversight.~~

~~The County shall designate a senior official with oversight responsibility for the Program ("Program Coordinator"). The Program Coordinator shall have authority over Responsible Departments with respect to the Program, and shall ensure that the program is implemented and followed and that all Responsible Departments are cooperating in the implementation and enforcement of the Program. The Program Coordinator shall be responsible for ensuring that Responsible Departments timely prepare the written verifications described in II.B. The Program Coordinator shall also be primarily responsible for the annual reporting required under the Program as set forth below.~~

~~D.C. Distribution and Availability.~~

The Director shall provide a copy of this Program with the attached Agreement to Implement a Mitigation Monitoring and/or Reporting Plan to County staff, project applicants, attorneys, consultants working on behalf of project applicants, and any member of the public requesting a copy. Planning may consider other means of making this Program available to the public. Copies of these documents shall also be available to the public at the Planning Department's public counter and on the County's electronic database (described in Section III.E.D).

~~E.D. Electronic Database.~~

The County shall use its best efforts to expand its ~~the~~ electronically stored database, Accela Automation, (electronic database "Accela") by November 12, 2012 for tracking compliance with Conditions of Approval so that such electronically stored information or documentation is more readily and easily accessible by the public and usable by the public for the purpose of tracking Condition of Approval compliance with Conditions of Approval for any specific project. Such database shall include ~~copies~~ the ability to generate a condition compliance report and view copies of any ~~VCCNCs~~ CCFs. ~~and eCopies of any supporting written verifications issued~~ documentation pursuant to Section II.B shall, in addition to being kept in hard copy, be made available in Accela unless infeasible. "Infeasible" means that the document has some feature, such as a unique size or magnitude that would make electronic storage technologically difficult or would render the document hard to read if stored electronically. If electronic storage is infeasible, the document shall be retained in hard copy with a note in Accela indicating where the document is kept. ~~and shall also provide notice to the public of any enforcement action pursuant to section III.D.2 and of any proposed action to modify Conditions of Approval for a project. If approval is required by the Board of Supervisors for such expansion of Accela, within three weeks of the completion of a proposal for expansion of the database,~~

County staff shall place a proposal for the expansion of such an electronic database on the Board of Supervisors agenda for consideration of approval of the expansion by the Board.

F.E. Revisions.

~~Any revisions to this Program shall be submitted to the Board of Supervisors for approval.~~ Any revision to this program shall be presented to the Board of Supervisors, for action at a noticed public hearing, and shall not be placed on the Consent Calendar. At least ten (10) days prior to action on a revision of this Program by the Board of Supervisors, notice of the proposed action shall be posted on the County's ~~electronic database~~ website along with a description of how the public can obtain a paper copy of the proposed action and the related staff report.

III. PROCEDURES.

A. Procedures to ensure that proposed Conditions of Approval are imposed as enforceable conditions at the time of project approval.

1. Findings and Conditions of Approval.

Findings and Conditions of Approval recommended by Responsible Departments, and approved by any County decision-making body, shall be in accordance with the ~~current format for~~ Monterey County RMA-Planning and Building Department Standard Conditions of Approval, the format for Monterey County RMA-Planning Findings and Evidence, and, where applicable, shall conform to the requirements for a mitigation, monitoring and reporting program as set forth in CEQA (Public Resources Code section 21081.6) and its guidelines (~~Cal. Code Regs. section~~ CEQA Guidelines section 15097).

2. Agreement ~~for to~~ Implementation of ~~Conditions~~ a Condition of Approval Mitigation Monitoring and Reporting Plan.

Each applicant for an approved project that includes Conditions of Approval shall be required to enter into an Agreement with the County to implement the a Condition of Approval/Mitigation Monitoring and/or Reporting Plan ~~Conditions of Approval~~ ("Agreement") and the ~~Condition of Approval Implementation Plan~~ more fully described below. A copy of the Agreement form is attached. The Resource Management Agency-Director of Planning shall have authority to execute the Agreement on behalf of the County. For projects that are directly undertaken by the County (such as those listed in CEQA Guidelines section 15378(a)(1)) and that are subject to mitigation measures stemming from a MND or EIR, the County is not required to enter into an Agreement but shall monitor implementation of mitigation measures.

3. Contents of a Condition of Approval ~~Implementation~~ Mitigation Monitoring and Reporting Plan.

A Condition of Approval/Mitigation Monitoring and Reporting Plan ~~Condition of Approval Implementation Plan~~ ("Plan") shall be included in every Agreement and shall list every Condition of Approval approved for a project. The Plan shall be prepared by Planning staff with

assistance from Responsible Departments that recommend specific conditions and/or mitigation measures (consistent with Section III.B), and shall be incorporated within the report recommending project approval to the decision-making body. Each Condition of Approval shall be clearly written and include the following, as applicable:

a. A schedule for implementation of each Condition of Approval. If a Condition of Approval requires continuous or frequent (e.g. annual/daily) monitoring, the frequency and duration of required monitoring shall be specified (e.g. for five years/during construction);

b. The objective or standard or used to quantify measure used to determine the adequacy of the Condition of Approval compliance with the condition (e.g., a threshold adopted by a state or regional agency, General Plan policy, Monterey County Code or regulation);

c. Identification of the person, consultant, or agency responsible for carrying out the field inspection, monitoring of a mitigation measure, or preparation of a report on the status of a Condition of Approval or final approval. Consultants assigned to the task of monitoring or reporting shall be on the County's list of Approved Consultants or shall be a State-licensed professionals (registered civil engineer, etc.); and

d. The Responsible Department that will carry out the implementation, monitoring, and reporting tasks required under each Condition of Approval imposed; ~~and~~

e. ~~If a consultant is assigned the task of monitoring or reporting, the consultant's area of expertise (e.g. licensed engineer, certified arborist) shall be specified in the Plan. Consultants shall be qualified professionals, and their qualifications shall be presented to County staff as soon as they are selected by the project applicant.~~

B. Procedures to ensure compliance with the mitigation monitoring and reporting requirements of CEQA.

1. If the Director or his or her ~~duly appointed subordinate~~ designee determines that a project is not categorically exempt from CEQA and will require certification of an EIR or adoption of an MND, Planning staff shall:

a. Provide a copy of this Program to the ~~applicant~~ Applicant or his or her agent; and

b. Work with the CAPS and the Responsible Department to ensure that mitigation measures developed by any consultant(s) or by County staff are adequately and clearly written to mitigate significant impacts to the environment to the extent feasible. Measures shall be written so that the effectiveness can be monitored and quantified, and the mitigation measure can be enforced.

2. The CAPS, assigned Planning staff, and appropriate Responsible Departments staff shall, as appropriate, attend project scoping meetings, or meetings specially

convened for the particular project, including Interagency Review (IAR) and Development Review Committee (DRC), to provide guidance and direction on working with the requirements of Public Resources Code §section 21081.6 and CEQA Guidelines, § section 15097.

3. The CAPS, assigned Planning staff, and appropriate Responsible Departments shall work with consultants and responsible agencies, as required, to ensure coordinate compliance with this Program.

4. ~~Projects with an Initial Study~~ ies, for a projects that results in an MND or ~~with an EIR requiring certification,~~ shall be reviewed by ~~appropriate~~ Planning staff and the appropriate Responsible land use Department staff and, as necessary, by the Office of County Counsel to determine that the mitigation measures are enforceable before recommending the project to the Appropriate Authority.

5. The County shall provide training to ~~those~~ Planning staff and staff ~~responsible in Responsible Departments, for the preparation of a Plan, and/or agencies/or individuals and consultants who either prepare,~~ monitor, or report on compliance with mitigation measures ~~or must provide field inspections, monitoring or the preparation and/or review of reports related to Public Resources Code §section 21081.6 and CEQA Guidelines, § section 15097.~~ The County shall maintain a record of the training provided.

C. Procedures to ensure that a Plan is imposed and adopted at the time of project approval for projects that have mitigation measures.

1. No recommendation for approval shall be delivered to an Appropriate Authority for any project requiring a Plan unless a copy of the Plan is attached.

2. Planning staff shall ensure that any final resolution an Appropriate Authority approving a project for which Conditions of Approval have been adopted contains language ~~which~~ that specifies adoption of a Plan.

D. Procedures to ensure that Conditions of Approval incorporated into a Plan are fully and consistently enforced through agreement or other acceptable and legal measures.

1. No project subject to this Program for which Conditions of Approval are recommended shall be presented to any Appropriate Authority unless the Conditions of Approval include a condition requiring the project applicant to agree to enter into an Agreement, except as provided in Section III.A.2. The Agreement shall be executed and recorded by the applicant no later than sixty (60) ~~30~~ days after project approval or prior to the issuance of the first ministerial permit or commencement of construction on the project, whichever event occurs first. In no event shall an applicant be deemed to have fully satisfied all Conditions of Approval of a project unless an Agreement has been executed and recorded.

2. ~~If a VCCNC-CCF is prepared because~~ identifies that an applicant ~~fails~~ has failed to comply with any adopted Condition of Approval or a Plan, Planning staff shall immediately notify the applicant in writing, and request to meet and confer over the alleged failure to comply. The applicant and appropriate County staff shall meet and confer within 30 days of the notice. If construction is on-going on a project for which the meet and confer process

has been invoked, ~~Planning~~ RMA Staff shall issue a "Stop Work Order" that shall be effective at least during the meet and confer process. If the alleged failure to comply is resolved during the meeting and confer process, any "Stop Work Order" may be lifted at such time as the remedial action is completed or the County indicates in writing that the failure to comply condition no longer exists. If the alleged failure to comply is not resolved pursuant to the meet and confer process, any "Stop Work Order" shall continue in effect, and the County shall issue a "Notice of Violation," other notice of County's intent to pursue a Code Enforcement action, and/or shall take other action designed to enforce the applicant's obligations pursuant to the Conditions of Approval or Plan. If construction is not on-going and the Director finds reasonable cause to believe a violation exists, the Director is authorized to take such measures as deemed necessary or expedient to enforce and secure compliance as authorized under Monterey County Code Titles 1, 19, 20, and 21, as applicable.

E. Annual Reports.

The ~~Program Coordinator~~ CAPS shall ~~cause the preparation of~~ prepare an annual report ("Annual Report") that reports on the status of Plan compliance for all projects for which a Plan has been approved in the previous calendar year ~~that includes mitigation measures identified in an MND or EIR.~~ The Annual Report shall report on the number of projects approved with mitigation measures, any enforcement action pursuant to ~~section~~ Section III.D.2, training provided pursuant to Section III.B.5, and ~~of any proposed action to modify Conditions of Approval for a project~~ in the previous calendar year. The Annual Report shall be presented to the Board of Supervisors at a noticed public hearing, but shall not be placed on the Consent Calendar. At least 10 days prior to action on the annual report by the Board of Supervisors, notice of the hearing at which the report will be presented will shall be posted on the County's web-site and electronic database, along with a description of how the public can obtain a paper copy of the annual report and the related staff report. ~~The report shall be available on the County's web site no later than the close of business the Thursday prior to the Board meeting at which it will be presented.~~

F. Effective Date.

This Condition of Approval and Mitigation Monitoring and Reporting Program, as adopted by the Board of Supervisors on January 24, 2012 by Resolution No. 12-021 and amended by the Board of Supervisors on _____ by Resolution No. _____, shall go into effect on January 1, 2015 ("Effective Date") and shall govern condition compliance on or after the Effective Date.

Attachments: 1) ~~Agreement for Implementation of Conditions of Approval~~ Agreement to Implement a Condition of Approval/Mitigation Monitoring and Reporting Plan
2) ~~VCCNC CCF form~~ template

~~Adopted by the Board of Supervisors on January 24, 2012 in Resolution No. 12-021~~