

Attachment A

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Monterey County Board of Supervisors

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1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Resolution No.: 17-049

Upon motion of Supervisor Phillips, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

Adopted Resolution No. 17-049 amending the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program ("Program").

PASSED AND ADOPTED on this 14th day of February 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams


NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on February 14, 2017.

Dated: February 23, 2017
File ID: 17-0155

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By  Deputy

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No.: 17-049

Resolution of the Monterey County Board of)
Supervisors amending the County of Monterey)
Condition of Approval and Mitigation)
Monitoring and Reporting Program.....)

WHEREAS, the California Environmental Quality Act (Public Resources Code section 21000 et seq., "CEQA") and its implementing regulations in Title 14 of the California Code of Regulations commencing at Section 15000 et seq., "CEQA Guidelines") requires public agencies approving projects based upon a mitigated negative declaration or an EIR to adopt a monitoring or reporting program designed to ensure compliance with mitigation measures imposed as conditions of project approval; and

WHEREAS, on October 9, 2001, in compliance with a settlement of litigation, the Board of Supervisors adopted Resolution No. 01-391, "Resolution Adopting a Mitigation Monitoring and Reporting Program for the County of Monterey In Accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines," adopting departmental CEQA procedures to ensure the implementation of mitigation monitoring and reporting requirements under CEQA; and

WHEREAS, Save Our Peninsula Committee ("SOPC") filed litigation in 2011 alleging that the County was not complying with its obligations under the prior settlement and under CEQA (SOPC v. County of Monterey (Monterey County Superior Court Case No. M110694); and

WHEREAS, the County and SOPC reached a settlement of that litigation whereby the County would revise its Mitigation Monitoring and Reporting Program; and

WHEREAS, on January 24, 2012, in compliance with the settlement of that litigation, the County adopted a revised Condition of Approval and Mitigation and Monitoring and Reporting Program; and

WHEREAS, with the goal of improving its compliance with CEQA, its related mitigation monitoring and reporting procedures, and the ability of the public to review and monitor compliance with CEQA and its own procedures, the County revised the 2012 Mitigation Monitoring and Reporting Program on December 16, 2014; and

WHEREAS, following a review of 10 projects for condition of approval and mitigation measure compliance, RMA staff and County Counsel are proposing additional amendments crafted with participation of SOPC to further improve the Program; and

WHEREAS, these amendments generally require additional training and internal reporting to ensure tracking of condition and mitigation measure compliance, and closer monitoring of on-going (post final map recordation) conditions and mitigation measures; and

WHEREAS, the amendments to the Program are an administrative activity of the County that will not result in direct or indirect physical changes in the environment and are therefore not a project under CEQA, pursuant to CEQA Guidelines section 15378 (b)(5); and

WHEREAS, a public hearing on the proposed amendments to the Program was duly noticed and held by the Board of Supervisors on February 14, 2017;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Monterey as follows:

1. The revised Condition of Approval and Mitigation Monitoring and Reporting Program ("Program"), attached hereto as Exhibit A, is hereby adopted.
2. A copy of this Resolution and the Program shall be forwarded by the Clerk of the Board of Supervisors to RMA-Planning, RMA-Public Works, RMA-Environmental Services, the Parks Department, the Economic Development Department, and the Environmental Health Bureau of the Health Department, the Monterey County Water Resources Agency, and the Fire Districts with jurisdiction within the unincorporated areas of Monterey County.

PASSED AND ADOPTED upon motion of Supervisor Phillips, seconded by Supervisor Salinas carried this 14th day of February 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting on February 14, 2017.

Dated: February 23, 2017
File Number: 17-0155

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By

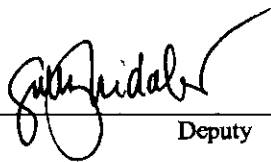

Deputy

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County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program Revised February 14, 2017

I. ESTABLISHMENT OF PROGRAM AND PURPOSE

The County of Monterey routinely applies a variety of conditions to projects requiring environmental review and discretionary approval by the Appropriate Authority with jurisdiction to consider such matters. Such conditions 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 (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 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. 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.

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 (“Exempt Projects”). Although Exempt Projects are not subject to this Program, the County of Monterey shall monitor compliance with the conditions of approval applied to Exempt Projects per the procedures set forth in Section II.F below.

II. IMPLEMENTATION RESPONSIBILITIES

A. Planning Department

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Resource Management Agency (RMA)-Planning ("Planning"), through the Director of Planning ("Director") and his or her 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 CAPS shall provide a semi-annual Report to the Director reporting on the implementation of the program.

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 for reimbursement of actual 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. On larger projects where an outside consultant is hired to undertake condition compliance and report to the County, the Applicant shall pay all costs associated with the outside consultant.

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, RMA- Public Works ("PW"), Parks Department, Economic Development 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. On or before the end of September of each year, each Responsible Department shall submit an annual report ("Annual Report") to the Director and to County Counsel certifying that Conditions of Approval (including mitigation measures) have been verified and that the CCF and supporting documentation has been entered into Accela, 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 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 Condition of Approval/Mitigation Monitoring and Reporting Plan (as 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

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approved by the Appropriate Authority as allowed by Monterey County Code). 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 shall fill out a "Condition Compliance Form" ("CCF") 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 CCF template is attached. The 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 CCF shall promptly enter a copy of the CCF, along with the supporting documentation, into the Accela Documents module. 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.

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 within a reasonable time if no timeline is specified, the Responsible Department that recommended the Condition of Approval shall promptly fill out a 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 enter a copy of the CCF in the Accela Documents module and notify Planning, through the assigned Planning staff or the CAPS. The Responsible Department shall keep in its project file the CCF and the document upon which it relied to support the CCF'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 enforcement action, is taken by the Director or other authorized enforcement official, all documentation associated with corrective enforcement shall be incorporated in Code Enforcement's official files. The files shall reflect the final action taken by the County to achieve compliance with 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 CCF that the project is currently in compliance with all applicable Conditions of Approval.

C. Distribution and Availability.

The Director shall provide a copy of this Program with the attached Agreement to

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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 II.D).

D. Electronic Database.

The County shall use the electronic database, Accela Automation, ("Accela") 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 compliance with Conditions of Approval for any specific project. Such database shall include the ability to generate a condition compliance report and view copies of any CCFs. Copies of any supporting 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. If approval is required by the Board of Supervisors for 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.

E. Revisions.

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 website along with a description of how the public can obtain a paper copy of the proposed action and the related staff report.

F. Procedures for Exempt Projects.

As defined in Section I, Exempt Projects are discretionary land use approvals that have no mitigation measures, for example, projects which do not rely upon a MND or EIR for environmental review. Notwithstanding their exemption from this Program, if an Exempt Project is approved with conditions of approval, then the Responsible Department shall monitor compliance with such conditions. The Responsible Department shall complete the CCF form and enter it into Accela for each condition of approval of an Exempt Project, indicating whether and how the condition has been met. 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 condition of approval, or within a reasonable time if no timeline is specified, the Responsible Department shall complete the CCF describing the basis for finding, that the applicant has failed to comply with the condition and shall enter the CCF into Accela. The Responsible Department shall, unless it is infeasible to do so, make available in Accela the documentation upon which the CCF determination was made and, if such documentation exists in hard copy, shall also maintain hard copy of such documentation in the Department's files. If a CCF identifies that an applicant has

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failed to comply with a condition of approval of an Exempt Project, the Responsible Department shall take such steps as are feasible, within the determination of the Department, to obtain compliance with the condition and/or notify Code Enforcement.

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 format for Monterey County RMA-Planning 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 (CEQA Guidelines section 15097).

2. Agreement to Implement 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 to Implement a Condition of Approval/Mitigation Monitoring and/or Reporting Plan ("Agreement"). 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/Mitigation Monitoring and Reporting Plan.

A Condition of Approval/Mitigation Monitoring and Reporting 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 used to quantify compliance with the condition (e.g., a threshold adopted by a state or regional agency, General Plan policy, Monterey

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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 professional (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.

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

1. If the Director or his or her 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 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. On or before the end of September of each year, each Responsible Department shall submit an annual report (Annual Report) to the Director and to County Counsel certifying that Conditions of Approval (including mitigation measures) have been verified and that the CCF and supporting documentation has been entered into Accela.

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

5. Initial Studies, for projects that result in an MND or an EIR requiring certification shall be reviewed by Planning staff and the appropriate Responsible 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.

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6. The County shall provide training to Planning staff and staff in Responsible Departments, who prepare, monitor, or report on compliance with mitigation measures related to Public Resources Code section 21081.6 and CEQA Guidelines section 15097. The County shall maintain a record of the training provided. A new training manual along with a training program shall be developed by the RMA and County Counsel and provided within 120 days of the approval of this Program to the Director and to Responsible Departments. The training program shall emphasize how to determine when a condition has been fully implemented and how the CCF and supporting documentation are to be promptly entered into the Accela Document module. Training programs shall be undertaken within 60 days of the training manual's availability and shall be conducted every 2 years. An attendance sheet shall be filled out for each training session. The attendance sheets shall be maintained by RMA and shall be public records.

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 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) 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 CCF identifies that an applicant 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, 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" maybe 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

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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 CAPS shall 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 and those projects for which an EIR was certified where the Plan has not been fully implemented or, in the case of a subdivision, where the final map has not yet been filed. The Annual Report shall report on the number of projects approved with mitigation measures, any enforcement action pursuant to Section III.D.2, training provided pursuant to Section III.B.5, and 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 on or before the end of January of each year, beginning in January of 2018, but shall not be placed on the Consent Calendar. The Annual Report for the 2016 calendar year will be presented by the end of June, 2017. At least 10 days prior to action on the annual report by the Board of Supervisors, notice of the hearing shall be posted on the County's website along with a description of how the public can obtain a paper copy of the annual report and the related staff report.

F. Procedures to Ensure that Pre-filing Conditions of Approval are Fully Implemented Prior to Filing Final Map.

The Director or its designated representative shall review the Program to ensure that all pre-filing Conditions of Approval have been fully implemented and signed off consistent with the terms and conditions of the Program prior to filing of a Final Subdivision Map. The Director or its designated representative shall verify compliance by filling out a CCF by completing the comment log in the County's electronic data base for permit tracking, Accela Automation. The Director or its designated representative shall represent to the Board of Supervisors in the Staff Report to the Board regarding the Request for Recording Final Map that all pre-filing Conditions of Approval have been fully implemented, and attach a copy of the CCF verifying as such to the Staff Report.

G. Procedures to Ensure that Post-filing Conditions of Approval are Fully Implemented After Filing Final Map.

The Director or its designated representative shall ensure that post-filing Conditions of Approval and on-going Conditions of Approval that survive the filing of the Final Subdivision Map will be monitored by the appropriate Responsible Department noted in II.B, above. Copies of all required on-going status reports will be sent to the CAPS.

H. Effective Date.

This Revised Condition of Approval and Mitigation Monitoring and Reporting Program, shall go into effect immediately upon adoption by the Board of Supervisors ("Effective Date") and shall govern condition compliance on or after the Effective Date.

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- Attachments:
- 1) Agreement to Implement a Condition of Approval/Mitigation Monitoring and Reporting Plan
 - 2) CCF template