



Monterey County

Board of Supervisors
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

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Public hearing to consider amending the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program.

Planning File No: REF190003

Project Location: Countywide

CEQA Action: Not a Project per CEQA Guidelines Section 15378(b)(5)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a resolution to amend the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program (see **Attachment 1** for the draft resolution and proposed amended Program)

SUMMARY:

Staff is proposing modifications to the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program ("Program"), as previously amended and adopted by the Board of Supervisors on February 14, 2017. The purpose of the Program is to establish County procedures to track, monitor, enforce, and report on the status of compliance with mitigation measures and conditions of approval that the County has placed on land use permits as conditions of project approval. Throughout 2018 and 2019, County Counsel, County Resource Management Agency staff, and representatives of Save Our Peninsula Committee (SOPC) have had continued discussions to improve the Program. As a result, staff is proposing amendments that clarify the procedures, enhance the feasibility of the reporting requirements, provide for accountability and transparency, and tailor the requirements to better achieve its purpose. SOPC and County worked cooperatively on these proposed revisions. The proposed Program as amended ("the 2019 Program") is attached to the draft resolution at Attachment 1.

DISCUSSION:

Background:

When a local agency adopts mitigation measures as conditions of approval of a land use project, the California Environmental Quality Act (CEQA) requires the agency to adopt a program to monitor or report on those mitigation measures to ensure that the mitigation measures are implemented. (Pub. Res. Code §21081.6; CEQA Guidelines §15097.) On October 9, 2001, in response to a Settlement Agreement between Ed Leeper, the Save Our Peninsula Committee (SOPC), and the County of Monterey, the Board of Supervisors adopted a Mitigation Monitoring and Reporting Program ("Procedures") delineating procedures for monitoring and tracking mitigation measures which were conditions of approval on land use projects approved by the County. (Resolution No. 01-391)

In response to a 2011 settlement agreement in a second lawsuit filed by Save Our Peninsula Committee and with the goal of improving its mitigation monitoring and reporting procedures under CEQA, on January 24, 2012, the County adopted the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program (“Program”), replacing the prior Procedures with more detailed procedures. (Resolution No. 12-021).

The second amendment to the Program was adopted in 2014 and included the electronic tracking of conditions of approval and clarifications regarding the applicability of the program to discretionary land use entitlements approved with mitigation measures. The 2014 update also included revised instructions for administration and implementation of the Program (Resolution No. 14-363).

On February 14, 2017, the Board of Supervisors again approved a third amendment to the Program to include requirements for staff training, tracking, and reporting of conditions of approval and status of permittees’ compliance with mitigation measures. (See **Attachment 2** to review Resolution No. 17-049 and the attached 2017 Amended Program).

Proposed Amendment:

Since the Board amended the Program in 2017, RMA staff has been in continued discussions with County Counsel and SOPC in an effort to implement the Program, clarify ambiguities, and improve the Program. As a result, staff is recommending the fourth proposed amendment to the Program. The proposed 2019 Program is intended to provide clarifications to the Program and to better facilitate the Program’s implementation. It also updates the terminology to correspond to RMA’s reorganization. The primary substantive revisions include the following:

- 1) Creates subsection addressing and clarifying Responsible Department’s condition compliance verification responsibilities (Section II.B.I);
- 2) Updates training requirements (Section III.B.6); and
- 3) Updates procedures for the following:
 - a) the Responsible Departments’ Annual Reports (Section II.B.2);
 - b) RMA’s Annual Report to the Board of Supervisors (Section III.E); and
 - c) Procedures for verification of compliance with pre-filing conditions of approval prior to final map recordation (Section III.F).

(See **Attachment 1 - Exhibit A** for the 2019 Program and **Attachment 3** for the redlined 2017 Program).

Clarification of Responsible Departments’ Condition Compliance Verification Process (Section II.B.I)

The 2019 Program elucidates the Responsible Departments’ responsibilities and timing for tracking compliance with conditions of approval, clarifying that the requirement to complete the Condition Compliance Form (CCF) is triggered “when a project applicant who has received a land use entitlement seeks to have the County determine that the applicant has satisfied and complied with Conditions of Approval.” The amendments exempt projects if the project proponent is not presently pursuing the project after entitlement for various reasons including but not limited to:

- a. Project approvals that expired, including tentative map approvals which have expired, and where no final map was filed;
- b. Projects which are in litigation and not being pursued by the project applicant during the

pendency of the litigation;

c. Project entitlements which are on appeal to the California Coastal Commission during the pendency of the appeal; and

d. Dormant or “inactive” subdivisions (subdivider not pursuing condition compliance).

Updated Training Requirements (Section III.B.6)

The existing Program requires RMA and County Counsel to train land use department staff on how to comply with the Program requirements for condition compliance verification, among other matters. The 2019 Program augments the training requirements and increases the occurrence of training from once every two years to annual training and will require RMA staff to provide informal training to newly hired planners within 60 days from the date of hire.

Updated Procedures for Responsible Departments’ Annual Reports (Section II.B.2)

The 2019 Program more clearly distinguishes the annual report to be completed by each Responsible Departments - now called the “Responsible Department’s Annual Report”-from the “Annual Report” which RMA must provide annually to the Board of Supervisors. The amendments clarify the Responsible Department’s Annual Report’s submittal date, report contents, and the types of projects subject to report and create a certification process so that each department or division is accountable for the certification of the status of condition compliance, as discussed below:

- The submittal date of the Responsible Departments’ Annual Report has changed from September of the reporting year, to the end of January of the following calendar year to allow a complete report of the projects approved with MND or EIR in the prior calendar year and to provide the Responsible Departments sufficient time to submit their Annual Reports.

- The process for the Responsible Departments’ Annual Report has been revised to include the following process: 1) The Condition of Approval Program Supervisor (CAPS) within RMA will provide a project list to the departments; 2) The department will certify the status of condition compliance for the projects on the list, and the department head (or in the case of RMA, the division head) must sign a certification form verifying status of applicable projects’ condition compliance and the department’s compliance with the Program requirements for completing the CCF forms and uploading supporting documentation into the County’s database; (See Attachment 2 to the 2019 Program for the Department’s Certification Form and -Attachment 5 to the 2019 Program for a sample of the Condition Compliance Certification Report). The revised contents to the updated Report directly reinforce the Program’s intent to ensure the Responsible Departments monitor, report, and enforce project-specific Conditions of Approval/Mitigation Measures, and it simplifies the Departments’ Annual Report by not requiring all Condition Compliance Forms (CCF) and supporting documentation of each applied Condition of Approval/Mitigation Measure be attached to the Report.

- In addition to requiring report on prior year projects, the 2017 Program required report on certain older projects, that is, “projects for which an EIR was certified where the Plan has not been fully implemented, or in the case of subdivision, where the final map has not yet been filed.” This category was hard to implement because it was unclear and potentially too broad, and it became the subject of much discussion between SOPC and County. Ultimately, SOPC and County staff agreed upon proposed amendments in an effort to accomplish the purpose while making the requirement clear and

feasible. Per the proposed amendment, in addition to reporting on projects approved in the prior calendar year that had relied on a MND or EIR (“Calendar Year Projects”), the Responsible Departments will also be required to report on the status of condition compliance for a selected list of older projects (“Older Projects”). The Condition of Approval Program Supervisor would select those Older Projects based on two criteria summarized as: 1) the project’s proponent decided to move forward on condition compliance for an approved significant project that had been approved based on an EIR and was previously dormant/on hold; and/or 2) subdivisions which have ongoing or unmet conditions after the filing of the final map and for which the public has raised concerns during the prior year.

Revised Procedures for the Annual Report to the Board of Supervisors (Section III.E)

The 2019 Program revises the Annual Report to the Board of Supervisors submittal date, the type of projects subject to report, and the noticing requirements as discussed below:

- The submittal date of the Annual Report to the Board of Supervisors will change from January to April of the following calendar year to ensure the CAPS has sufficient time to compile the Program’s annual project list, receive all the Responsible Departments’ Annual Reports by the end of January, and prepare the report to be presented to the Board of Supervisors.

- The contents of the report are still similar to what was required under the 2017 Program (i.e. Summary Chart, Responsible, Departments’ Annual Report and Training Documentation); however, the type of information provided in these documents has been updated as discussed below:

 - The summary chart of the listed projects will also include Calendar Year projects as well as a subset of the list of Older Projects (see Section II.B.2 discussion above for the Older Project list criteria).

- The noticing requirements for the Annual Report to the Board of Supervisors has also been updated to require an advanced 10-day notice within a generally circulated newspaper instead of on the County’s webpage. This noticing update was made to be consistent with the current County noticing requirements.

Updated Procedures to Ensure that Pre-filing Conditions of Approval are Fully Met Prior to Final Map Recordation (Section III.F)

The 2019 Program revises Section III.F, entitled “*Procedures to Ensure Pre-filing Conditions of Approval are Met Prior to Final Map*” by requiring the staff report presented to the Board of Supervisors for approval of a final subdivision map to include signed forms from each Responsible Department certifying the departments’ verification that the applicant for the final map has complied with the department’s applicable pre-filing conditions of approval, completed the CCF forms, and uploaded the supported documentation into the Accela database. (see **Attachment 4 to the 2019 Program** for a template of the Responsible Department’s Certification for Pre-Filing Conditions of Approval). This process enhances accountability of each land use department/division for verifying compliance with conditions and creates another check in the process to ensure compliance with all conditions required to be met prior to filing a final subdivision map have in fact been met before the final map is presented to the Board of Supervisors for acceptance.

PROGRAM NOTICING REQUIREMENTS

Pursuant to Section II.E of the 2017 Program, the notice for the proposed 2019 Program Amendment was posted on the County’s website on July 11, 2019, at least ten (10) days prior to the July 23, 2019 Board of Supervisors’ hearing date. The County also published the notice of the hearing in the Monterey County Weekly. The notice includes a description of how the public can obtain a paper copy of the proposed action and the related staff report.

Pursuant to the 2019 Program, any future revisions to the Program would require notice of public hearing to be posted in a newspaper of general circulation instead of the County website at least ten (10) days prior to the hearing date.

OTHER AGENCY INVOLVEMENT:

RMA Planning staff has been assigned as the lead agency for this Program. RMA worked with County Counsel and SOPC on the proposed amendments to the Condition of Approval and Mitigation Monitoring and Reporting Program. Responsible Departments, which are the departments/agencies/divisions of RMA that apply Conditions of Approval/Mitigation Measures, all contribute to condition compliance and mitigation monitoring, tracking and reporting as required under the Program’s existing and proposed procedures.

FINANCING:

Funding for staff time associated with this project is included in the FY 2018-19 and FY 2019-2020 Adopted Budgets for RMA-Planning, Fund 001, Appropriation Unit RMA001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Board of Supervisors FY 2018-19 and FY 2019-20 Strategic Initiatives include objectives to improve efficiency and effectiveness of County services (Administration). The proposed Program amendment improves the monitoring and accountability of condition compliance in accordance with all applicable policies and regulations and therefore directly implements the Board’s Strategic Initiative.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Reviewed by: Brandon Swanson, RMA Interim Chief of Planning

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and Community Development

The following attachments are on file with the Clerk of the Board:

- Attachment 1 - Draft Resolution
- Attachment 2 - COA&MMRP adopted on February 14, 2017 (Res. No. 17-049)
- Attachment 3 - Redlined 2017 COA&MM Reporting Program

cc: Front Counter Copy; Save Our Peninsula Committee (Richard Rosenthal; Mike Weaver); Carl P. Holm, Director of RMA; Leslie J. Girard, Chief Assistant County Counsel; Wendy Strimling, Senior Deputy County Counsel; Brandon Swanson, Acting Chief of Planning; The Open Monterey Project (Molly Erickson); LandWatch (Michael DeLapa, Executive Director); Project File REF190003