

Attachment A



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

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

Adopted Resolution No. 14-364 to:

- a. Adopt the Condition of Approval and Mitigation Monitoring and Reporting Program ("Program"), attached hereto as Exhibit A.
- b. The Program shall not be substantially changed, revised, or modified, unless such change, revision, or modification is submitted to and approved by the Board of Supervisors.
- c. 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 on this 16th day of December 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter

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 77 for the meeting on December 16, 2014.

Dated: December 23, 2014
File Number: 14-1346

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. 14-364)
Resolution of the Monterey County Board of)
Supervisors to amend 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 2012 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 desires to revise the 2012 Mitigation Monitoring and Reporting Program; and

WHEREAS, the amendments to the Program are intended to provide greater clarity and more detailed guidance to all County land use departments involved in monitoring and reporting on condition compliance and establish procedures for use of a County electronic database to monitor condition compliance; 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, pursuant to the settlement agreement in the above-referenced litigation filed by SOPC, County staff duly notified the attorney for SOPC of the proposed amendments, met and conferred with the SOPC, and made modifications as result of that consultation; and

WHEREAS, a public hearing on the proposed amendments to the Program was duly noticed and held by the Board of Supervisors on December 16, 2014.

County of Monterey

Condition of Approval and Mitigation Monitoring and Reporting Program

Revised December 15, 2014

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 (hereinafter “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

Resource Management Agency (RMA)-Planning (“Planning”), through the Director of

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 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).

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 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

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" 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 resolved pursuant to the meet and confer process, the document showing the result of the meet and confer will be made available for public inspection in the Accela database, if such a document -- such as correspondence from a Responsible Department to the applicant -- exists and if the document is not exempt from disclosure under the Public Records Act. 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 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. 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

When Recorded, Return To:

Monterey County
Resource Management Agency - Planning
Attn: **Planner's Name**
168 West Alisal, 2nd Floor
Salinas, CA 93901
(831) 755-5025

Space above for Recorder's Use

**AGREEMENT TO
IMPLEMENT A CONDITION OF APPROVAL/MITIGATION MONITORING AND
REPORTING PLAN**

IN ACCORDANCE with Section 21081.6 of the California Public Resources Code, and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations, this Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter called "COUNTY"), and **Property Owner(s) Name** (hereinafter called "OWNER"), upon the following facts and circumstances:

A. The County of Monterey routinely applies a variety of conditions to projects requiring discretionary approvals when such projects are approved by the appropriate 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 Environmental Impact Report ("EIR") prepared pursuant to the California Environmental Quality Act (Public Resources Code 21000 et seq., "CEQA"), and other conditions, both standard and unique, that are not mitigation measures.

B. OWNER is the owner of certain real property described in "Exhibit A", attached hereto and made a part hereof, hereinafter referred to as the subject property.

C. On **Hearing Date**, pursuant to County Resolution No. **Resolution Number***, subject to the conditions listed therein, the **Hearing Body** adopted a Mitigated Negative Declaration/certified an EIR approving a **Entitlement***, File No. **Permit Number***, and adopted a Condition of Approval/Mitigation Monitoring and Reporting Plan (hereinafter called the "the Plan"). The Plan is attached hereto as "Exhibit B" and incorporated herein by reference. Resolution No. **Resolution Number*** is on file in Resource Management Agency - Planning.

D. As required by the California Environmental Quality Act, the OWNER agrees to implement the Plan.

E. OWNER has reviewed the County of Monterey's Condition of Approval/Mitigation Monitoring and Reporting Plan.

NOW, THEREFORE, in consideration of the COUNTY'S above-referenced adoption of a Mitigated Negative Declaration/certification of an EIR and approval of a **Entitlement***, File No. **Permit Number***, OWNER agrees as follows:

5. Interpretation. It is agreed by the parties that this AGREEMENT has been arrived at through negotiation and neither party is to be deemed the party which prepared this AGREEMENT for the purposes of California Civil Code Section 1654.
6. Amendments. This AGREEMENT may be amended only by a written document signed by the parties.
7. Recordation. Upon execution of this AGREEMENT, the parties shall cause recordation thereof with the Monterey County Recorder's Office.
8. Mitigation Monitoring Fee. Upon execution of this AGREEMENT, the OWNER shall pay a mitigation monitoring fee of \$XXXX.XX for projects having XX to XX mitigation measures, pursuant to the Board of Supervisors' adopted fee schedule.
9. Legal Fees. If suit is commenced on this AGREEMENT, the prevailing party shall be entitled to reasonable attorney, accountant and professional fees and costs incurred.

IN WITNESS WHEREOF, the party(ies) hereto have executed this Agreement on the day and year set out opposite his/her/their respective signature(s).

Owner(s):

Dated: _____

By: _____
(Signature)

(Print or Type Name and Title)

By: _____
(Signature)

(Print or Type Name and Title)

COUNTY OF MONTEREY

Date: _____ By: _____

Mike Novo, Director
Resource Management Agency - Planning

STATE OF CALIFORNIA }
 }
COUNTY OF MONTEREY }

On _____ before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

APPROVED AS TO FORM:

Charles J. McKee, County Counsel

BY: _____, Deputy County Counsel
Print Name

Date: _____ By: _____
Deputy County Counsel

Revised 09-09-2014