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

Resolution No. 22-311

Resolution to revise the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program. (REF220013/Countywide)

WHEREAS, the California Environmental Quality Act (Public Resources Code section 21000 et seq., "CEQA") requires that a Mitigation Monitoring and Reporting Plan be adopted for every land use project approved subject to mitigation measures; and

WHEREAS, the California Environmental Quality Act and its implementing regulations at Title 14 of the California Code of Regulations commencing at Section 15000 et seq., ("CEQA Guidelines") were adopted by the State of California to provide administrative procedures to implement CEQA; and

WHEREAS, the County of Monterey has adopted local guidelines for implementing the mitigation monitoring pursuant to the California Environmental Quality Act by ordinance of the Board of Supervisors (Ordinance No. 04087) (Monterey County CEQA Guidelines); and

WHEREAS, the Monterey County CEQA Guidelines incorporate the same provisions of the California Environmental Quality Act for mitigation monitoring that require adoption of a program for monitoring or reporting on mitigation measures which have been imposed as conditions of approval on land use projects to ensure that mitigation measures and project revisions identified in an EIR or Mitigated Negative Declaration have been implemented; and

WHEREAS, in response to a Settlement Agreement between Ed Leeper, the Save Our Peninsula Committee and the County of Monterey in 2000, the Board adopted procedures for a County of Monterey Mitigation Monitoring and Reporting Program ("Procedures") on October 9, 2001; and

WHEREAS, 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 and the ability of the public to review and monitor County's compliance with CEQA and its own procedures, the County adopted the Condition of Approval and Mitigation Monitoring and Reporting Program on January 24, 2012, (Resolution No. 12-021) ("Program"), which replaced the previously adopted Procedures; and

WHEREAS, the Program included the requirement to prepare annual reports relating to the status of compliance with mitigation measures, any related code enforcement actions, and any proposed action to modify conditions of approval for land use projects approved in the previous calendar year; and

WHEREAS, the County further amended the Program on December 6, 2014, by Board of Supervisors' Resolution No. 14-364 in attempt to improve upon the Program; and

WHEREAS, on February 14, 2017, the Program was again amended by Board of Supervisors' Resolution No. 17-049 ("Amended Program") with the intent to improve upon the Program; and

WHEREAS, with the goal of streamlining the reporting process and the intent to clarify the Program, the County further amended the Program on July 23, 2019, by Board of Supervisors' Resolution No. 19-270. The Program, as amended last in 2019, is the current Program in effect; and

WHEREAS, Section II.E of the Program requires that any revision to the Program be presented to the Board of Supervisors at a noticed public hearing with notice ten days prior; and

WHEREAS, notice of the April 19, 2022, public hearing at the Board of Supervisors on the Annual Report was published in the *Monterey County Weekly* on April 7, 2022, and emailed to interested parties who requested notice of the hearing; and

WHEREAS, the revision to the Program is to allow for records retention to be in electronic format. Documentation of condition compliance will continue to be accessible on public records database (currently Accela citizen access portal) but will no longer be retained in hard copies as well; and

WHEREAS, the proposed revision to the Program includes updating the name of the Housing and Community Development Department from the former Resource Management Agency;

WHEREAS, Program revisions are attached as Exhibit A and is incorporated herein by reference; and

WHEREAS, Program revision is not a project under California Environmental Quality Act CEQA Guidelines section 15378(b)(5) because it is an administrative activity that will not result in direct or indirect physical changes in the environment; and

WHEREAS, the Board of Supervisors held a duly noticed public hearing on April 19th, 2022 on the Program revision, at which time all persons had the opportunity to appear and be heard.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Monterey does hereby amend the Condition of Approval and Mitigation Monitoring and Reporting Program to all-electronic records management.

PASSED AND ADOPTED on this 19th day of April 2022, by roll call vote:

AYES: Supervisors Alejo, Lopez, Askew and Adams
NOES: None
ABSENT: Supervisor Phillips
(Government Code 54953)

I, Valerie Ralph, 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 82 for the meeting April 19, 2022.

Dated: August 2, 2022
File ID: 22-335
Agenda Item No.: 42

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Julian Lorenzana, Deputy

County of Monterey
Condition of Approval and Mitigation Monitoring and Reporting Program
Revised April 19, 2022

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, CEQA and 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 on mitigation measures imposed on projects for which a MND or an EIR has been prepared and adopted or certified. (Pub. Res. Code §21081.6; Cal. Code Regs., tit. 14, §15097.) 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 on 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. Housing and Community Development -- Planning

The Planning section of Housing and Community Development (HCD)- Planning ("Planning" or HCD-Planning"), through the Chief 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. While preserving County's discretion over managing staff and allocating resources, the County recognizes the importance of devoting staff resources to carry out this Program to ensure the implementation of mitigation measures imposed as conditions of approval on discretionary land use entitlements.

The County may charge reasonable fees to project applicants to recover the cost of the Program in accordance with state law. Such fees may 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

1. Condition Compliance Verification

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: Planning, Engineering Services, Environmental Services, Building Services and Housing of HCD; and the Environmental Health Bureau ("EHB") of the Monterey County 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 Director or the CAPS acting under the Director's supervision shall coordinate and oversee Responsible Departments' implementation of the Program. Responsible Departments shall timely prepare the verifications described in Section II.B. The Monterey County Water Resources Agency is not a department of the County but may be requested to assist the Director in the implementation and enforcement of the Program as applicable. 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 (including any 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 allowed by Monterey County Code.

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 Condition of Approval, the Responsible Department which recommended the Condition of Approval shall complete a "Condition Compliance Form" ("CCF") (see template at **Attachment 2**, attached hereto) in the County's electronic database for permit tracking, Accela Automation ("Accela"). The Responsible Department completing the CCF shall promptly enter a copy of the CCF, along with the supporting documentation, into the Accela Documents module.

Prior to the issuance of any permit (e.g, construction permit) for an approved project upon which mitigation measures have been imposed, the Responsible Department must verify that the applicable Conditions of Approval have been met. The method of verification shall be completion of the CCF as set forth above.

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.

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. HCD-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. After the issue is resolved, the CCF shall be updated to reflect the outcome.

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. After the issue is resolved, the CCF shall be updated to reflect the outcome. Nothing in this Program, however, requires the County to release documents that it is

not otherwise legally required to disclose.

The Program requirements for verification of condition compliance may be adapted to situations in which the project proponent is not pursuing a project after entitlement, for example, due to litigation, administrative appeals to the California Coastal Commission, owner's decision not to pursue the project, or other such circumstances. The adaptations to Program requirements include, without limitation, the following:

a. Verification of condition compliance is not required for project approvals that expired, including tentative map approvals which have expired, where no final map was filed.
b. Verification of condition compliance is not required for projects which are in litigation and not being pursued by the project applicant during the pendency of the litigation.
c. Verification of condition compliance is not required for project entitlements which are on appeal to the California Coastal Commission during the pendency of the appeal.
d. For dormant subdivisions, the Responsible Department may identify the subdivision as "dormant" or "inactive," and need not address the status of each condition until the subdivision becomes active. "Dormant" or "inactive" subdivisions are those meeting the following criteria: 1) the tentative map approval has not expired and a final map has not yet been filed but the subdivider did not actively pursue condition compliance in the prior calendar year; and 2) the tentative map approval has not expired and the subdivider previously filed a phased final map, but one or more future final map phases remain, which future phases subdivider did not actively pursue in the prior calendar year.

2. Responsible Department's Annual Report

On or before the end of January of each year, each Responsible Department shall submit an annual report ("Responsible Department's Annual Report") to the Director and to County Counsel. The Responsible Department's Annual Report shall certify the status of their Conditions of Approval (including mitigation measures) for projects approved in the preceding calendar year that relied upon an EIR or MND ("calendar year projects") and for selected older projects. (See template for Responsible Department certification at **Attachment 3** attached hereto). The Responsible Department's Annual Report will not include projects which were denied in the prior calendar year. The CAPS' selection of older projects for inclusion in the Responsible Department's Annual Report shall focus on projects that meet one of the following criteria: a) the project applicant previously received a land use entitlement for a significant project in reliance on certification of an EIR and, in the prior calendar year, the holder of that entitlement sought to have the County determine that the applicant has satisfied and complied with Conditions of Approval; and b) subdivision projects for which the public has raised concerns during the prior calendar year to HCD-Planning about compliance with ongoing or unmet conditions after the filing of the final map.

CAPS shall transmit the list of the calendar year projects and selected older projects to the Responsible Departments for the purpose of Responsible Departments' Annual Report.

Responsible Department's Annual Report shall include and certify the status of applicable Conditions of Approval (including mitigation measures) of the calendar year and selected older projects and verify that the status of the applicable conditions has been recorded on the CCF and that the supporting documentation has been timely entered into Accela for the identified projects, utilizing the Responsible Department certification. (See template at **Attachment 3**.) For the selected older projects that meet criterion "b" above (subdivision projects with ongoing or unmet conditions after the filing of the final map), the Responsible Departments' Annual Report will be limited to reporting only on the status of applicable previously unmet or on-going conditions, not conditions which have already been previously met. Responsible Departments will transmit that certification to the CAPS. The Responsible Departments' certifications will be kept in CAPS's electronic file for the upcoming Annual Report to the Board.

C. Distribution and Availability.

As part of the application process for a discretionary land use entitlement, the Director shall provide a copy of this Program with the attached template for the Agreement to Implement a Mitigation Monitoring and/or Reporting Plan (or electronic link to the Program and attachments) to County staff, project applicants and/or applicants' attorneys as applicable, 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 or similar system, ("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.1 shall 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.

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 published in a newspaper of general circulation 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 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.

Conditions of Approval recommended by Responsible Departments, and approved by any County decision-making body, shall, where applicable, 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"), in the same or substantially the same form as the template for the Agreement attached hereto as **Attachment 1.** The Chief of Planning shall have authority to execute the Agreement on behalf of the County. The Agreement shall be recorded. 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 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 or qualified professional (e.g., 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 statutorily or 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 measures are enforceable through permit conditions, agreements, or other legally binding instruments.

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), Development Review Committee (DRC), or equivalent interdepartmental staff meeting, 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 January of each year, each Responsible Department shall submit the Responsible Department's Annual Report to the Director and to County Counsel in accordance with Section II.B.2 above.

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

5. Initial Studies for projects that result in proposed adoption of a MND or certification of an EIR, shall be reviewed by Planning staff and the appropriate Responsible Department staff and, as necessary or feasible, by the Office of County Counsel to determine that the mitigation measures are clearly written and are enforceable through permit conditions, agreements, or other legally binding instruments before recommending the project to the Appropriate Authority.

6. The County shall provide training to Planning staff and staff in Responsible Departments, who prepare, monitor, or report on compliance with mitigation measures pursuant to Public Resources Code section 21081.6 and CEQA Guidelines section 15097. The County shall maintain a record of the training provided. A training program shall be developed by HCD-Planning and County Counsel and provided to the Director and to Responsible Departments. The training program shall emphasize how to write mitigation measures in a manner that is clear and enforceable through permit conditions, agreements, or other legally binding instruments, how to determine when a condition has been fully implemented, when and how to complete a CCF, and how to enter the CCF and supporting documentation promptly into the Accela Document module in accordance with this Program. The training program shall also include the procedures for Responsible Departments to verify and certify the status of Conditions of Approval for purposes of the Responsible Department's Annual Report and procedure for Responsible Department's Certification of Pre-filing Conditions of Approval for final maps. Training programs shall be conducted annually. Attendance shall be taken for the annual training session. The attendance documentation shall be maintained by HCD and shall be public records. Additionally, HCD staff shall provide training on the Program requirements to newly hired planners within HCD within 60 days of the start of their employment.

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 Condition of Approval/Mitigation Monitoring and Reporting Plan unless a copy of the Plan is attached.

2. Planning staff shall ensure that any final resolution for 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, HCD 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 with the 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 Report to the Board of Supervisors

1. The CAPS shall prepare an annual report ("Annual Report") that reports on the status of Plan compliance for all projects approved in the calendar year just ended ("calendar year projects") which relied on an EIR or MND. The Annual Report will include the following: 1) a summary chart of the listed projects and the status of condition compliance for each such project; and 2) the Responsible Department's Annual Reports which include a signed letter from each department verifying compliance with the Program and the department's Condition Compliance Certification Report for each of the listed projects. The Annual Report to the Board need not include copies of the underlying individual CCFs for the projects that are the

subject of the Annual Report. Each Responsible Department shall maintain the CCFs and the supporting documentation in accordance with Section II.B.1.

For the calendar year projects, the Annual Report shall report, in a sum and substance, 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. If the approved project is on appeal to the California Coastal Commission (CCC) or other governmental body, the summary chart need identify only that the project is on appeal and need not report on the status of condition compliance. If the approved project is in litigation, the summary chart need only identify that the project is "in litigation" until the litigation is resolved and need not report on the status of condition compliance. The Annual Report will not include projects which were denied or extended in the calendar year just ended.

2. Additionally, each year, the CAPS may include in the Annual Report, in sum and substance, a summary of the status of compliance with applicable ongoing or previously unmet conditions for the selected "older projects" that were the subject of the Responsible Department's Annual Report (see Section II.B.2 above.) The CAPS, in consultation with County Counsel, may choose to report on a subset of these older projects in the Annual Report to the Board of Supervisors in a given year.

3. The Annual Report shall be presented to the Board of Supervisors at a noticed public hearing on or before the end of April of each year, beginning in April of 2020, and shall not be placed on the Consent Calendar. At least 10 days prior to the hearing on the Annual Report by the Board of Supervisors, notice of the hearing shall be published in a newspaper of general circulation along with a description of how the public can obtain an electronic copy of the Annual Report and the related staff report.

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

The Director or its designated representative shall review the Program to ensure that all applicable pre-filing Conditions of Approval have been fully met and signed off consistent with the terms and conditions of the Program prior to filing of a Final Subdivision Map. The Director or his or her designated representative shall verify compliance by ensuring each Responsible Department has certified compliance with its department's pre-filing Conditions of Approval. The Director or his or her designated representative shall represent to the Board of Supervisors in the staff report to the Board regarding the request for approving a Final Map that all pre-filing Conditions of Approval have been fully implemented. Specifically, the staff report will include a signed form from each Responsible Department certifying the department's compliance with the applicable Conditions of Approval and attach a copy of the Responsible Department's Condition Compliance Certification Report. (See sample at **Attachment 5** attached hereto.) Each Responsible Department shall be responsible for verifying that its department's pre-filing Conditions of Approval have been met. (See template at **Attachment 4** attached hereto.)

G. Procedures to Ensure that Post-filing Conditions of Approval are Fully

Implemented After Filing Final Map.

The Director or his or her 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 and that are not yet met will be monitored by the appropriate Responsible Department. The Responsible Departments shall report on the status of these on-going Conditions of Approval as part of the Responsible Department's Annual Report if requested by 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.

Attachments:
1) Agreement to Implement a Condition of Approval/Mitigation Monitoring and Reporting Plan
2) CCF template
3) Template for Responsible Department's Certification for Annual Report
4) Template for Responsible Department's Certification for Pre-filing Conditions of Approval
5) Sample Condition Compliance Certification Report

EXHIBIT A

ATTACHMENT 1

ATTACHMENT 1

When Recorded, Return To:
COUNTY OF MONTEREY HOUSING &
COMMUNITY DEVELOPMENT - PLANNING
ATTN: [**PLANNER'S NAME**]
1441 SCHILLING PLACE, SOUTH 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 ("AGREEMENT") is made by and between the County of Monterey, a political subdivision of the State of California ("COUNTY"), and **Property Owner(s) Name** ("OWNER"), upon the following facts and circumstances:

A. COUNTY routinely applies 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 section 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. **XX-XXX**, subject to the conditions listed therein, the **[APPROVING 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 ("the Plan"). The Plan is attached hereto as "Exhibit B" and incorporated herein by reference. Resolution No. **XX-XXX** is on file in Housing and Community Development – Planning.

D. As required by CEQA, OWNER agrees to implement the Plan.

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

NOW, THEREFORE, in consideration of 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:

1. Condition of Approval/Mitigation Monitoring and Reporting Plan. OWNER hereby agrees to implement the Plan attached hereto as "Exhibit B".

TEMPLATE

1.01 Cost of Monitoring and/or Reporting. At OWNER's sole cost and expense, OWNER shall be responsible for the monitoring and/or reporting as may be required by the Plan.

1.02 Alternative Mitigation Measure(s). If, for any reason, any mitigation measure specified in the Plan cannot be implemented due to factors beyond the control of OWNER and/or COUNTY, the Chief the Planning may, after good faith negotiation with OWNER, recommend substitution of another mitigation measure at a noticed public hearing before the decision-making body which originally approved the Permit herein.

2. Binding Effect. This AGREEMENT shall be construed as a covenant running with the land and shall bind and benefit COUNTY, its successors and assigns, and OWNER and its successors in interest.

3. Failure to Implement Mitigation Measures/Conditions of Project Approval. The parties acknowledge that if OWNER fails to comply with any adopted Condition of Approval and/or the Plan, Planning Staff shall immediately notify OWNER 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 ongoing on a project for which the meet-and-confer process has been invoked, Planning 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 meet-and-confer process, any "Stop Work Order" may be lifted when either the remedial action is completed or 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 COUNTY shall issue a "Notice of Violation" or other notice of COUNTY's intent to pursue a Code Enforcement action, and/or take other action to enforce OWNER's obligations pursuant to the Conditions of Approval or the Plan. The parties further acknowledge that OWNER's obligations under this AGREEMENT are unique and that, in the event of a breach of this AGREEMENT by OWNER, the remedy of damages or any other remedy may be inadequate to fulfill this AGREEMENT's purpose. Therefore, the parties agree that, in addition to any other remedies available to COUNTY, COUNTY shall be entitled to the remedy of specific performance. If exercised, the specific performance remedy shall be cumulative not inclusive, and shall be in addition to any other remedy available to any of the other parties.

4. Severability. Should any provision of this AGREEMENT be found invalid or unenforceable, such determination shall not affect the validity and enforceability of any other provision of this AGREEMENT.

5. Interpretation. It is agreed by the parties that this AGREEMENT has been arrived at through negotiation. Consequently, neither party is to be deemed the party that prepared this AGREEMENT for 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 County of Monterey Recorder's Office.

TEMPLATE

8. Mitigation Monitoring Fee. Upon execution of this AGREEMENT, OWNER shall pay COUNTY 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: _____

Owner Name* dated [DATE]

By: _____
(Signature)

_____
(Print or Type Name and Title)

TEMPLATE

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons, signing on behalf of a corporation, partnership, trust, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Public Law Book.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF MONTEREY)

On _____ before me, _____, a 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 _____

(Seal)

TEMPLATE

COUNTY OF MONTEREY

Date: _____ By: _____

Erik V. Lundquist, Director
County of Monterey Housing and Community Development Department

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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:
[NAME], County Counsel

By: _____
[TITLE]

_____
(Print or Type Name)

TEMPLATE

ATTACHMENT 2

Attachment 2

Monterey County

Condition Compliance Form

File No: PLNXXXX
Project Name: PROJECT NAME
Condition Number: CONDITION #
Condtion Name: [CONDITION NAME]
Responsible Department: PLANNING
Current Condition Status: MET

Text of Condition/Mitigation Monitoring Measure:
[ENTER TEXT HERE]

Compliance or Monitoring Action to be Performed:
[ENTER TEXT HERE]

Verification of Compliance/Non-Compliance:
[ENTER TEXT HERE]

Attach Evidence of Compliance (field visits, letters, e-mails, phone calls, reports, etc.)

TEMPLATE

ATTACHMENT 3

ATTACHMENT 3

MONTEREY COUNTY
HOUSING AND COMMUNITY DEVELOPMENT
Erik V. Lundquist, AICP, Director

HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

(831)755-5025
www.co.monterey.ca.us

RESPONSIBLE DEPARTMENTS' ANNUAL REPORT FOR PROJECTS APPROVED WITH CONDITIONS OF APPROVAL AND MITIGATION MEASURES

Date: _____

To: [NAME] Chief of Planning
[NAME], Deputy County Counsel

From: [NAME OF RESPONSIBLE DEPARTMENT LEADER], [TITLE]

Subject: Annual Report Pursuant to County of Monterey Condition of Approval and Mitigation Monitoring Program.

In accordance with Section II.B.2 of the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program ("Program") adopted by the Monterey County Board of Supervisors Resolution No. 19-270, a list of land use projects (the "Project List") was provided to the [AGENCY/DEPARTMENT-GROUP]. The Program requires the Responsible Departments to submit an Annual Report to the Chief of Planning and to County Counsel on the projects included in the project list to verify the status of condition compliance. [AGENCY/DEPARTMENT-GROUP] staff reviewed the Project List and confirmed that the set included in **Attachment 1** is complete for [AGENCY/DEPARTMENT-GROUP]'s responsibility to the Program in [YEAR]. Condition Compliance Certification Reports included in **Attachment 2** provides the listed projects' conditions of approval/mitigation measures (COA/MMs) and current statuses as noted in Accela. Accordingly, [AGENCY/DEPARTMENT-GROUP] staff has reviewed each COA/MM listed and made any necessary corrections to the report and in Accela. Staff has verified, through initialing, the current status of each COA/MM.

CERTIFICATION
On behalf of Monterey County [AGENCY/DEPARTMENT-GROUP], I hereby certify that the [AGENCY/DEPARTMENT-GROUP] COA/MMs identified in the adopted Mitigated Negative Declaration or certified Environmental Impact Report pursuant to the California Environmental Quality Act for the projects included in the Project List have been verified as indicated in the attached Condition Compliance Certification Reports. All applicable Condition Compliance Forms (CCFs) and supporting documentation have been submitted into the County's electronic database: Accela Automation, also known as "Accela" and are available for the public to review.

Respectfully,

_____
[SIGNATURE OF RESPONSIBLE DEPARTMENT LEADER], [TITLE]

TEMPLATE

ATTACHMENT 4

ATTACHMENT 4

MONTEREY COUNTY
HOUSING AND COMMUNITY DEVELOPMENT
Erik V. Lundquist, AICP, HCD Director

HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

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Salinas, California 93901-4527

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DEPARTMENT/AGENCY CONDITIONS OF APPROVAL & MITIGATION MEASURES
COMPLIANCE CERTIFICATION FORM

PLN######
[PROJECT NAME]
HCD - PLANNING

Date: [MONTH, DAY, YEAR]

To: [NAME], Chief of Planning

From: [RESPONSIBLE DEPT. STAFF NAME], [TITLE]

Subject: Certifying Compliance with Applicable Conditions of Approval and Mitigation Measures for Project: PLN###### – [PROJECT NAME]

In accordance with the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program, (adopted by the Monterey County Board of Supervisors Resolution No. XX-XXX), [AGENCY/DEPARTMENT AND GROUP] has submitted the attached Condition Compliance Certification Report that lists all [AGENCY/ DEPARTMENT AND GROUP] Conditions of Approval for the following proposed final map: PLN###### (approved on [DATE] by the County of Monterey [APPROVING BODY], Resolution No. XX-XXX).

I hereby certify that the applicant for the final map has complied with the Planning conditions of approval and/or mitigation measures required to be met prior to the filing of the final map and that staff has entered the corresponding Condition Compliance Form(s) and supporting documentation into the County's electronic database: Accela Automation, also known as "Accela." If conditions have requirements that apply prior to the final map as well as after the filing of the applicable final map, the condition is met for purposes of the filing of this final map but is listed as "partially met" in Accela to reflect that later compliance actions are also required by the condition.

_____ _____

[RESPONSIBLE DEPARTMENT LEADER NAME, AGENCY/ DEPARTMENT AND GROUP] [DATE]

CC: Erik V. Lundquist, AICP, HCD - Director

Attachment: HCD - Planning Condition Compliance Certification Report for PLN######

SAMPLE

ATTACHMENT 5

Attachment 5

Condition Compliance Certification Report

PLNXXXX

[PROJECT NAME FINAL MAP]

Public Works Department

Condition	Condition Title	Status	Status Comment	Staff Initial
19.	PW0015 – UTILITY'S COMMENTS	Met		XX
20.	PW0031 - PARCEL MAP	Met		XX
21.	PW0036 - EXISTING EASEMENTS AND ROW	Met		XX
22.	PW0045 – COUNTYWIDE TRAFFIC FEE	Partially Met	Met for Parcel Map Recordation Only.	XX
23.	PW0043 - REGIONAL DEVELOPMENT IMPACT FEE	Partially Met	Met for Parcel Map Recordation Only.	XX

SAMPLE