Legislation Details (With Board Report)

File #:	22-335	**Name:**	Annual Condition Compliance
Type:	General Agenda Item	**Status:**	Agenda Ready
File created:	4/11/2022	**In control:**	Board of Supervisors
On agenda:	4/19/2022	**Final action:**	4/19/2022
Title:	Public hearing to consider accepting the 2021 Annual Report pursuant to the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program (REF220001) and to consider amending the Condition of Approval and Mitigation Monitoring and Reporting Program to all-electronic records management (REF220013) CEQA Action: Not a Project per California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5). Planning File No: REF220001 and REF220013 Project Location: Countywide		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Board Report, 2. Attachment A - Draft Resolution to accept the 2021 Annual Report, 3. Attachment B - Condition of Approval and Mitigation Monitoring and Reporting Pro, 4. Attachment C - Draft Resolution to amend the County of Monterey Condition of App, 5. Attachment D - REDLINE Version of Exhibit A COAMMRP adopted July 23, 2019, 6. Item No. 42 - PowerPoint presentation, 7. Completed Board Order Item No. 42, 8. Completed Resolution Item No. 42, 9. Completed Board Order Item No. 42 (REVISED), 10. Completed Resolution Item No. 42 (A), 11. Completed Revised Resolution Item No. 42 (A), 12. Completed Resolution Item No. 42 (B)		

Date	Ver.	Action By	Action	Result
4/19/2022	1	Board of Supervisors	adopted as amended	Pass

Public hearing to consider accepting the 2021 Annual Report pursuant to the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program (REF220001) and to consider amending the Condition of Approval and Mitigation Monitoring and Reporting Program to all-electronic records management (REF220013)

CEQA Action: Not a Project per California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5).

Planning File No: REF220001 and REF220013

Project Location: Countywide

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt two resolutions to:

a. Accept the 2021 Annual Report pursuant to the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program (**Attachment A**); and
b. Amend the Condition of Approval and Mitigation Monitoring and Reporting Program to all-electronic records management (**Attachment C**).

SUMMARY:

Annual Report - Pursuant to Section III.E of the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program ("Program"), staff has prepared the 2021 Annual Report **(Attachment B)** that provides a status of compliance with conditions and mitigations for all projects approved in the 2020

calendar year which relied on an Environmental Impact Report or Mitigated Negative Declaration, and status of condition compliance for selected older projects approved prior to 2021.

The Planning Section of Housing and Community Development, through the Chief of Planning, has primary responsibility for implementation, compliance and enforcement of the Condition of Approval and Mitigation Monitoring and Reporting Program. A planner within HCD serves as the Condition of Approval Program Supervisor ("CAPS") who assists the Chief of Planning in implementing the Program. Planning worked collaboratively with County Counsel in communications with Save Our Peninsula Committee (SOPC) in the revision of the Program in 2019.

Several sections with the HCD Community Development Department including Environmental Services, Engineering Services (representing Public Works) and Planning as well as other units and agencies including HCD Housing, County Environmental Health Bureau, Monterey County Regional Fire District, and also Pebble Beach Community Services District and the Cypress Fire Protection District contributed to the condition compliance and mitigation monitoring tracking and reporting in the 2021 Annual Report. Day-to-day staff reporting is done by filling out a "Condition Compliance Form" ("CCF") in Accela Automation, the County's permit tracking database, for each Condition of Approval and by providing the status, background information and documents as applicable in Accela. To prepare the documentation for this Annual Report, a representative of each department/agency reviews the CCFs then generates and initials a "Responsible Department's Condition Compliance Certification Report" ("Certification Report"), describing the status of each Condition of Approval listed in the Responsible Department's report. The department/agency/division head then signs a certification form that certifies the information for the purpose of Annual Reporting.

Proposed amendment - On Tuesday, March 1, 2022, the Board of Supervisors approved a revision to the Records Retention Schedule for HCD Planning which effectively shifted HCD records management from hardcopy and electronic file retention to an all-electronic file system (Reso. No. 22-041). This change has multiple benefits including procedurally and environmentally. HCD suggests that the same changes be made for condition compliance monitoring and reporting purposes. The change will allow permit holders to submit all documentation of compliance with conditions of approval in electronic format or hard copy. This will reduce the amount of printing and simplify record keeping. Currently the Program document, Exhibit A to the COAMMRP Resolution, requires that changes to the administration of the Program be made by Board decision in a publicly noticed hearing. Therefore, the Condition of Compliance Program Supervisor has prepared a draft Resolution to update the Program text in Exhibit A sections II. Implementation Responsibilities and III. Procedures. The recommended edits are specified in the discussion section of this staff report.

DISCUSSION:
On October 9, 2001, the Board of Supervisors adopted a Mitigation Monitoring and Reporting Program (Reso. No. 01-391) delineating procedures for monitoring and tracking mitigation measures required by the County for land use projects in compliance with the California Environmental Quality Act (CEQA). The Program was amended in 2012, 2014, 2017 and most recently in 2019 (Reso. No. 19-270, available on the HCD website as a PDF and shown with redline edits in **Attachment D**).

The Annual Report
Prior to the 2019 amendment to the Program, the Resource Management Agency "RMA" (now reorganized as two separate departments, Housing & Community Development "HCD" and Public Works Parks & Facilities "PWPF") staff and County Counsel had extensive discussions with Save Our Peninsula Committee "SOPC" regarding implementation of the Program, including what should be reported on in the Annual Report to the Board of Supervisors. The 2019 amendment to the Program required changes to the contents of the Annual Report such that Certification Reports certify the status of each project's Condition of Approval and Mitigation

Measure being reported on. The groups that are responsible for the mitigation monitoring of certain conditions of approval and/or mitigation measures are found within groups listed above (Environmental Services, Engineering Services, Planning, Housing, County Environmental Health Bureau, Fire Districts) which are called the "Responsible Departments" in the Program. Responsible Department staff initial the Certification Reports for their conditions on a project in the Annual Report after verifying that CCFs are documented and in place; therefore, CCFs are not required to be reproduced in full in the Annual Report.

The 2021 Annual Report (**Attachment B**) is required to be prepared and presented to the Board of Supervisors at a noticed public hearing pursuant to Section III.E of the Program. The Program specifies that the Annual Report will report on land use projects approved in the prior calendar year that relied on an EIR or MND ("calendar year projects") and also report on older, previously approved land use projects ("older projects"). Older projects reported on include certain unmet conditions on subdivision projects or ongoing conditions selected by the CAPS for reporting. The criteria for selection of older projects or their conditions are: a) the project applicant previously received a land use entitlement for a significant project in reliance on an EIR, and in the prior calendar year, the permittee was actively working on condition compliance; and b) subdivisions for which the public has raised concerns during the prior calendar year to HCD about compliance with on-going or unmet conditions after the filing of the final map. (Program, Section II. B.1.)

The 2021 Annual Report contains a total of 32 projects as selected by the CAPS. The project list includes:

- Thirty projects approved by the County in 2021 which relied on Environmental Impact Report or Mitigated Negative Declaration; and
- Two older land use projects.

The 2021 Annual Report presents the condition compliance status of these projects in detail. As described above, it includes the Responsible Departments' Project List and Certification Report summarizing that Department's conditions for each project. The Annual Report also provides evidence of Program training completed by staff within the Responsible Departments.

The Certification Reports contain lists of conditions, their statuses, and initials by responsible staff to affirm that proper documentation and monitoring of the condition has been performed. In a few instances, the list of conditions in the initial Certification Report submitted by Responsible Departments to the Chief of Planning in late January were missing some conditions, although the CCFs and documentation were in place in Accela. These omissions were corrected in the preparation of the Annual Report. The Responsible Department Reports within the Annual Report include additional Certification Reports which include the omitted conditions. (These additions can be discerned by the initial of the departmental signatory on the lower right corner of the page.)

There were two older projects with conditions that were not met for the 2020 Annual Report and the CAPS, in consultation with County Counsel, decided to follow up on them in the 2021 Annual Report. As indicated in the Environmental Services Department Report, representatives of both permit holders, Cañada Woods and Pasadera, submitted the required documentation for compliance in a timely manner.

Specific recommended edits to the Program
Edits to the program are proposed to allow the opportunity to receive and store condition compliance documents in electronic format, to update relevant Department names, and to make other minor clarifications. The A red-line version of Exhibit A is also attached (**Attachment D**) showing the changes proposed to the existing program language. In brief, the following sentences are proposed to be removed from Section II of the Program:

"Each Responsible Department shall maintain a hardcopy file for each project for which that department

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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." And

"The Responsible Department shall keep in its project file the CCF and the document upon which it relied to support the CCF's conclusion." - struck from the seventh paragraph.

Other minor changes include, in subsection B.2. Responsible Department's Annual Report, second paragraph:

The Responsible Departments' certifications will be kept in ~~RMA~~ CAPS's electronic file for the upcoming Annual Report to the Board.

In subsection D. Electronic Database, strike ", in addition to being kept in hard copy,"

In section III. Procedures, subsection B.6, "~~An a~~Attendance ~~sheet~~ shall be ~~filled out~~ taken for the annual training session. The attendance ~~sheets~~ documentation shall be maintained by ~~RMA~~HCD and shall be public records."

In the first paragraph of subsection E.1., "The Annual Report to the Board need not include ~~hard copy~~ copies of the underlying individual CCFs for the projects that are the subject of the Annual Report. Each Responsible Department shall maintain ~~a hard copy file with the paper copy of the~~ CCFs and the supporting documentation in accordance with Section II.B.1."

In subsection E.3., "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 ~~paper~~ electronic copy of the Annual Report and the related staff report."

Two other minor changes are proposed to the Program. It is proposed that the word "shall" be changed to "may" as it relates to involvement of the Water Resources Agency (WRA) in the annual report. WRA has transitioned land use review entirely to HCD and is not always involved in condition compliance. The other change is to remove reference to the process for amendments to conditions. The condition amendment process is governed by the zoning code and CEQA and not by the Program. This change does not result in an actual change to process.

To bring the Program document into conformance with the reorganization of Resource Management Agency (RMA) to HCD and Public Works, Facilities and Parks, all instances of Resource Management Agency and RMA are corrected to Housing and Community Development and HCD except as indicated above, Land Use and Community Development Division, Planning, or Planning Department are corrected to HCD - Planning in the Resolution and Exhibit A, and group names for Responsible Departments are updated to the current alignments.

ENVIRONMENTAL REVIEW:
This report 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.

OTHER AGENCY INVOLVEMENT:
County Counsel

County Environmental Health Bureau
Public Works Facilities and Parks
Monterey County Regional Fire District
Pebble Beach Community Services District
Cypress Fire Protection District

FINANCING:
Funding for staff time associated with this annual report is included in the FY21-22 Adopted Budget for HCD Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:
Monitoring condition compliance in accordance with all applicable policies and regulations provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:
__ Economic Development
_X Administration
__ Health & Human Services
__ Infrastructure
__ Public Safety

Prepared by: Mary Israel, Senior Planner
Reviewed by: Craig Spencer, Chief of Planning
Approved by: Erik V. Lundquist, AICP, HCD Director

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

Attachment A - Draft Resolution to accept the 2021 Annual Report

Attachment B - Condition of Approval and Mitigation Monitoring and Reporting Program 2021 Annual Report, including:

- 2021 Project Summary Chart
- 2021 Responsible Departments' Reports
- Program Training Sign-In Sheets from August 12 and 26, 2021

Attachment C - Draft Resolution to amend the County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program

- Exhibit A Amended Program and attachments 1-5

Attachment D - Redline version of Exhibit A "County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program," adopted July 23, 2019, demonstrating proposed amendment to the text.

cc: Front Counter Copy; Save Our Peninsula Committee (Richard Rosenthal; Mike Weaver); Erik V. Lundquist, Director of HCD; Leslie J. Girard, Chief County Counsel; Brian Briggs, Deputy County Counsel; Craig Spencer, Chief of Planning; The Open Monterey Project (Molly Erickson); LandWatch (Michael DeLapa, Executive Director); Project Files REF220001 and REF220013