

DRAFT VERSION II

**Policy relating to the reconstruction of structures damaged by 2016 Chimney Fires
(2-28-17)**

As a result of the Chimney Fires of 2016, certain privately owned structures were damaged or destroyed in and around the Nacimiento Reservoir. Certain of these structures were constructed within the Monterey County Water Resources Agency (MCWRA) floodage easements at or below elevation 825 (NGVD 29) ("Floodage Easement"). Owners of private property subject to the Floodage Easement and officials of San Luis Obispo County (SLO County) have requested assistance from the MCWRA in processing requests for the reconstruction of these structures. MCWRA is willing to cooperate with SLO County in processing requests for reconstruction of these fire-damaged structures, on the terms and conditions set forth in this Policy.

The MCWRA BOS must approve an encroachment permit for reconstruction of any structures within the Floodage Easement and an agreement and covenant, as described in this Policy. The BOS may delegate to the BOD or General Manager the authority to approve, execute, and issue an encroachment permit and an agreement and covenant for reconstruction of any structures within the Floodage Easement under this Policy. Any encroachment easement and agreement so issued shall contain or satisfy, at minimum, the following conditions.

- A. An encroachment easement or permission to build will only be considered to replace a structure that was built in conformance with use and construction permits validly issued by SLO County.
- B. An encroachment easement or permission to build will only be considered to replace a structure used for single family residential or vacation purposes, and structures associated with and appurtenant to single family residential or vacation usage. Non-residential structures and structures used in connection with, or for, non-residential purposes and uses (e.g., commercial and industrial) will not be approved under this Policy.
- C. A structure substantially damaged or destroyed as a result of the Chimney Fires will be considered for reconstruction in the Floodage Easement so long as the new construction is elevated above the 100-year base flood elevation, and meets the other conditions and criteria of this policy.
- D. No intensification of pre-existing use will be allowed; the rebuilt structure can be no greater in its footprint or square footage than the structure being replaced.
- E. To facilitate the review of the encroachment permit application, the MCWRA will require the applicant to provide the following information:
 - 1. Plans showing the nature, location, dimensions, and elevation of the area in question; existing and proposed structures; and the location of the foregoing;
 - 2. Proposed elevations referenced to NAVD 1988, of the lowest floor, including basement, of all structures;
 - 3. A hydrologic and hydraulic analysis prepared by a registered civil engineer to determine the base flood elevation for the property.

- F. Based on the preliminary site plan prepared by Cal Shasta representatives, all of the structures in question are located within the FEMA Special Flood Hazard Area, Zone A of the Nacimiento Reservoir, as shown on FEMA Flood Insurance Rate Map 060304-0325G dated 11/16/2012. Therefore, for the purposes of this Policy and the building requirements of SLO County, the rebuilt structure shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation; shall be designed to include flood vents and flood resistant materials for any construction below the base flood elevation; and, shall provide the MCWRA and SLO County officials a FEMA Elevation Certificate, based on finished construction, completed by a registered civil engineer or licensed surveyor that the structure has been constructed in accordance with the terms of the Policy and SLO County floodplain development regulations.
- G. Cal Shasta shall enter into an agreement in the form of a covenant running with the land agreeing to defend and indemnify MCWRA, the County of Monterey and SLO County harmless from any and all claims for allowing the structure to be built or rebuilt, including any damage relating to flood or operation/maintenance activities.
- H. The agreement and covenant running with the land shall contain the terms and conditions of this Policy, with the specific covenant of the property owner and owner's successors to abide by the restrictions imposed by this Policy, and associated with the use and maintenance of the land. Lessees and tenants of record shall be required to execute and record an agreement subordinating their interest to the agreement, covenant and encroachment permit.
- I. The agreement and covenant shall constitute a lien on the property for the faithful satisfaction of all the terms and conditions of this Policy and include a subordination clause to ensure that Cal Shasta has signed an agreement with actual lease holders who are subject to the terms of this Policy.
- J. Property owners will discontinue any uses and structures in Floodage Easement after an amortization period to be specified in the encroachment easement. Owners will discontinue the use without any action notice or notice by MCWRA or SLO County. The amortization period will approximate the reasonable useful life of the rebuilt structure, as determined in the sole discretion of MCWRA. Under no circumstances shall the amortization period exceed xx years (e.g., 25 to 40 years). Structures reconstructed under this Policy shall be maintained and in good repair, but under no circumstances shall any structure be subsequently rebuilt or replaced again for any reason (i.e. fire, flood, etc.).
- K. Applicants for reconstruction of structures under this Policy shall pay the fees to MCWRA for the review of reconstruction requests (e.g., permit application, preparation of covenant), and any costs associated with the review and processing of requests. Those costs are listed in Exhibit 1 to this Policy, and may be updated annually to reflect increases in the cost of living index for XXX.

This policy will be effective upon adoption. However, permits will not be considered for review or granted until and unless the Board of Supervisors of SLO County adopts a resolution directing its officials to refer any request for construction or reconstruction on property subject to the Floodage Easement to the General Manager of MCWRA. In its resolution, SLO County shall

require that applicants comply with the conditions of the provisions of this Policy prior to receiving a use or construction or reconstruction permit within the Floodage Easement.

Exhibit 1: Policy Re Reconstruction of Fire Damaged Structures, Schedule of Fees (xx-xx-17)

Reconstruction of structures—Floodage Easement ver.3 2-28-17