

MONTEREY COUNTY WATER RESOURCES AGENCY

Policy Relating to the Reconstruction of Structures Damaged by the 2016 Chimney Fire

1. As a result of the Chimney Fires of 2016, certain structures located on real property owned by Cal Shasta Club, Inc. ("Cal Shasta") in and around the Nacimiento Reservoir were damaged or destroyed ("Impacted Structures"). The Impacted Structures were constructed within the Monterey County Water Resources Agency's ("MCWRA") floodage easement recorded on August 6, 1957, as Instrument No. 12326 of Official Records of San Luis Obispo County, at or below elevation 825 (NGVD 29) ("Floodage Easement"), and are subject to said Floodage Easement. The owners of the Impacted Structures (each an "Owner" and collectively, the "Owners") and officials of San Luis Obispo County ("SLO County") have requested the cooperation of the MCWRA in processing requests for the reconstruction or replacement of the Impacted Structures. MCWRA is willing to cooperate with the Owners and SLO County in processing requests for reconstruction or replacement of the Impacted Structures on the terms and conditions set forth in this Policy.
2. The MCWRA Board of Supervisors gives the General Manager of MCWRA authority to enter into encroachment agreements ("Agreement") with Cal Shasta, as record owner of the land subject to the Floodage Easement, and Owners, as owners of the Impacted Structures which were constructed on the land subject to the Floodage Easement, for the reconstruction or replacement of Impacted Structures ("New Structures").
3. Any Agreement entered into pursuant to this Policy shall include and be subject to all of the following conditions:
 - 3.1 Cal Shasta and Owner must acknowledge MCWRA's Floodage Easement.
 - 3.2 Owners acknowledge that the California Department of Water Resources Division of Safety of Dams ("DSOD") and the Federal Energy Regulatory Commission ("FERC") regulate MCWRA's operation of the Lake Nacimiento Dam and Reservoir.
 - 3.3 The New Structure shall be used solely for single family residential or vacation purposes, and for ancillary structures that are associated with and appurtenant to single family residential or vacation usage, all subject to Paragraph 3.3 herein. Commercial, industrial, recreational and other non-residential structures and their appurtenant structures not used for or ancillary to residential structures are not eligible for an Agreement under this Policy.
 - 3.4 The New Structure shall be constructed no lower than the elevation where the Impacted Structure was constructed. There shall be no intensification of pre-existing use, and the New Structure can be no greater in its footprint or square footage than the Impacted Structure.
 - 3.5 All persons with any interest in or right to occupy the New Structure will discontinue use of the New Structure upon the Owner's receipt of written notice from MCWRA that the New Structure substantially interferes with MCWRA's rights under the Floodage

Easement. Cal Shasta and Owner reserve the right to contest MCWRA's conclusion that a New Structure "substantially interferes" with MCWRA's rights under the Floodage Easement.

3.6 The New Structure shall be maintained and kept in good repair. No New Structure shall be subsequently rebuilt or replaced again (i.e., fire, flood, etc.) without the express and written permission of the MCWRA. MCWRA shall not unreasonably withhold its permission to rebuild or replace a New Structure that is subsequently damaged or destroyed.

3.7 Each Agreement shall include a covenant running with the land that Cal Shasta and Owner agree to waive and release MCWRA and the County of Monterey for all activities consistent with the Floodage Easement. Cal Shasta and Owner must agree that MCWRA's employees, officers, agents, or assigns, and the County of Monterey's employees, officers, agents, or assigns (collectively "Released Parties") will not be held liable or responsible in any way for any injury, death, or other damages to Cal Shasta or Owner, or Owner's family, heirs, or assigns that may occur as a result of MCWRA's reasonable exercise of any of its rights under the Floodage Easement. Cal Shasta and Owner must expressly and unconditionally assume all risks and dangers known or unknown, foreseen or unforeseen, and relating to or incidental to constructing the New Structure within the Floodage Easement and any activity associated therewith.

3.8 Each Agreement shall include a covenant running with the land that Cal Shasta and Owner agree to hold harmless, defend and indemnify MCWRA, the County of Monterey, and SLO County from any and all claims arising out of MCWRA's adoption and implementation of this Policy, and/or SLO County's issuance of any permit pursuant to this Policy to allow construction of the New Structure, which hold harmless and indemnification shall include property damage and personal injury resulting from, arising out of, and relating to inundation or MCWRA's operation or maintenance activities within the Floodage Easement, excepting property damage and personal injury or death resulting from operation of vehicles and equipment within the Floodage Easement. Also, neither Cal Shasta nor Owner shall be liable or otherwise indemnify for the negligent acts of MCWRA or the County of Monterey, or the agents, officers or employees of MCWRA or the County of Monterey.

4. Cal Shasta or the Owner will be responsible for recording the Agreement once it is fully executed with the San Luis Obispo Clerk-Recorder's Office, and returning a copy of the file stamped recorded Agreement to MCWRA with ten (10) business days of the Agreement's recording.

5. Cal Shasta shall amend its Basic Supplementary Operational Rules and Regulations to include the terms and conditions of this Policy, assuring that its current members, future members, and members' successors have notice of and understand that they are required to abide by the conditions imposed by this Policy.

6. Each Agreement shall constitute a lien on the Cal Shasta property for the faithful satisfaction of all the terms and conditions of this Policy.

7. This Policy will be effective upon adoption by the MCWRA Board of Supervisors.

PASSED AND ADOPTED on this _____ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSENT:

Luis A. Alejo, Chair
Monterey County Board of Supervisors

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____ for the meeting on _____.

Dated:

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

By _____
Deputy