

# Attachment A

This page intentionally left blank.

## ATTACHMENT A - DISCUSSION

Fire Recover Guidelines for the 2020 River, Carmel, and Dolan Fires are designed to balance the desires of property owners with the need for good land use and hazard mitigation planning. The result is a streamlined process for an applicant that ensures rebuilding occurs consistent with the regulatory system and minimizes future risks to residents.

The following matrix summarizes the central provisions of the Fire Rebuild Guidelines for the River, Carmel, and Dolan Fires.

<b><u>Fire Rebuild Summary Matrix</u></b>	<b>Permitted or Legal Non-Conforming</b>	<b>Unpermitted</b>
<b>Insured</b>	<ul style="list-style-type: none"><li>• Expedited with Special Handling</li><li>• No Fees Upfront</li><li>• Eligible for Fee Waiver with Insurance Claim Rejection Letter</li></ul>	<ul style="list-style-type: none"><li>• Expedited with Special Handling</li><li>• No Fees Upfront</li><li>• <b>NOT</b> Eligible for Fee Waiver</li><li>• No penalty fee for work done without a permit</li></ul>
<b>Uninsured</b>	<ul style="list-style-type: none"><li>• Expedited with Special Handling</li><li>• No Fees Upfront</li><li>• Eligible for Fee Waiver with Uninsured Status Letter</li></ul>	<ul style="list-style-type: none"><li>• Expedited with Special Handling</li><li>• No Fees Upfront</li><li>• <b>NOT</b> Eligible for Fee Waiver</li><li>• No penalty fee for work done without a permit</li></ul>

### **Actions Being Taken by Staff**

We envision using all current regulations and these guidelines, at the direction of the Board of Supervisors, to address both the needs of homeowners and land management issues in the fire area.

Each land use department has committed to accelerating the permit process for replacement or repair permits for damaged or destroyed residences and related infrastructure. We have had detailed discussions with representatives of the permit reviewing agencies – RMA (Planning, Development Services, Public Works, Environmental Services) and Environmental Health Bureau - to address what needs to be done to provide an effective accelerated process for building permits to replace legal structures and infrastructure that were destroyed or damaged. Staff also intends to expedite permits for structures where no permits are on file, provided the proposed design meets regulatory requirements.

### **Structures with No Permits on File**

In cases of unpermitted structures, we may discover that the supporting water system and sewage disposal system were also not permitted, the access to the property and related grading were not permitted or reviewed for adequacy by the fire agency, and/or related fees were not paid, including payment of school fees. Consistent with the suggested guiding principles stated later in this discussion, staff recommends that unpermitted structures both be ineligible for fee waivers and need to demonstrate that they meet all regulatory requirements. Fee waiver consideration should be reserved for those owners who have already been through the permit process or had legal non-conforming structures. Where there are unpermitted structures, we recommend the following:

1. Allow property owners to rebuild structures under the proposed guidelines.
2. To encourage voluntary action to permit formerly un-permitted development, staff could offer priority processing through the regular County permit process separate from the Recovery Team. This should be separate in order to best utilize special resources for legal and legal non-conforming conditions.

Based on our experience, staff recommends the following fundamental principles as the basis for considering post-disaster land use policies for this event, and these may be useful for others in the future:

Any special policies providing procedural and monetary relief should only apply to structures and infrastructure (e.g. roads, wells, spring boxes, etc.) that were legal, as defined below, at the time of the disaster. As always, County staff will work with owners of unpermitted structures to permit replacement of their residences, but such structures should be addressed in the context of the normal permit process, with the exception that we would expedite the permit process. The general goal for any such policies should be to allow for replacement for legal structures on a parcel, wherever possible, unless the site has been rendered unbuildable, or there is an alternative practical location on the property that can significantly reduce the impacts to sensitive resources or exposure of occupants to future safety risks. There are some instances where rebuilding is simply not possible due to the property, because of the disaster, no longer being a safe building location.

### **“Legal Structure” Defined**

“Legal Structure” means that the structure was either built and inspected with a building permit issued by the County or was a structure that existed prior to the County requiring building permits (a legal non-conforming structure). Information to address this question is readily available within existing records of several County Departments or agencies; however, not all records exist for permits issued since building permit requirements began in the 1950’s. Some structures affected by the fires may not be shown in the County system. The County would

determine if a damaged structure is legal. By standards of law and due process, the presumption is the structure is legal unless staff finds evidence the building was constructed without proper permits or approvals.

### **Fee Waivers**

The question of permit fees is one that always arises following a disaster. Generally, fees associated with permits to rebuild fall into two basic categories – impact fees and permit fees. Impact fees, such as for schools and roads, can run into many thousands of dollars. However, in most cases, impact fees would not be charged for rebuilding a permitted structure where impact fees had already been paid. Such projects are generally exempt unless additional square footage or bedrooms beyond what had previously existed are being added as part of the reconstruction. The logic for this exemption is that the in-kind rebuilding does not create new impacts to public infrastructure, nor new demands on public facilities since the dwellings were already in existence.

Permit fees, on the other hand, typically do apply, since the staff work involved to process a permit application and inspect a structure is virtually the same regardless of whether the application is for the original permit or a permit to replace a structure. In addition, insurance will generally cover the permit fees as part of the rebuilding costs. If not borne by the applicant, the unfunded work associated with processing and inspecting these replacement buildings must be borne by the County General Fund. In other counties with similar situations, fees have either been waived (Riverside, San Diego, and El Dorado Counties) or reduced (Santa Cruz County).

Staff recommends that permit fees should be waived for the reconstruction of units in the following categories, unless insurance would provide for coverage of County fees without adversely affecting the construction reimbursement amount:

- Replacement structures must meet the following criteria:
  - conform to all applicable zoning requirements; and
  - proposed for the same use as the destroyed structure; and
  - do not exceed the floor area, height, or bulk of the destroyed structure by more than 10%; and
  - Either site the destroyed structure in substantially the same location on the affected property or relocate the building site in a manner that better meets LCP policies and would meet all Coastal Implementation Plan requirements.

Any fees owed to the County for replacement of permitted or legal non-conforming structures shall not be subject to up-front payment. Any fee waiver would include all appurtenant permits, such as tree removal for hazardous trees, grading, well permits, septic permits, encroachment permits, address numbering applications, slope exceptions, temporary power, temporary occupancy, and any other County permits that might be needed. The fee waiver would not include a waiver of any environmental documents needed to rebuild or repair structure(s) for a

property owner who has chosen to 1) relocate their building site, or 2) increase the structure size, beyond that described above.

### **Proposed Special Approaches to Facilitate Fire Rebuilding**

In addition to the general policies discussed above, staff has reviewed the range of specific issues that may arise from rebuilding in the area affected by the fire; this process also included input from the various reviewing agencies. As a result of those discussions, the following issues have been identified.

The County currently has a waiver process to remove trees that pose hazard to life or structures. Certain species of trees recover well from fire (e.g.; oaks and redwoods), and no real potential hazard exists until/unless there is a structure on the property. Therefore, staff has included guidelines as part of the application to address requests for removing trees and/or vegetation. In addition, the application form includes a request for a planting/restoration plan that takes fuel modification into account as well as management of the forest resources.

New or replacement homes are typically required to prepare detailed evaluations of geologic and soils issues as part of the building permit process. The conclusions of such reports often impact the building site location as well as the design of the house and foundation. Geologic or geotechnical reports may have already been completed for some of the sites as part of earlier permits. This will provide important baseline information for rebuilding on these and other properties. Staff will need to work closely with owners to determine where this information will need to be supplemented. The focus of this overall effort will be to define a safe, practical building site, while minimizing the level of additional technical studies.

Homes that were destroyed by the fire may be located within a FEMA-designated Special Flood Hazard Area (SFHA). Substantially damaged homes located in a SFHA are required to be constructed in accordance with *Regulations for Floodplains in Monterey County*, Chapter 16.16 of the County Code. As defined in the regulations, “substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. In this case, County staff will need to work closely with the applicant to ensure their home is designed and constructed in compliance with County floodplain regulations.

For potable water and sewage disposal infrastructure, Monterey County Health Department, Environmental Health Bureau (EHB) will review each impacted property on a case- by-case basis to assure the protection of public health; but at the same time making every effort to process permits as quickly as possible. Legal Structures that are being replaced by like structures or being repaired will be allowed to reconnect to existing On-site Wastewater Treatment Systems (OWTS), assuming that no public health threat is identified. In addition, EHB will work with disaster victims to establish short-term interim public health protection measures as needed to allow reoccupation of their property during the recovery period. EHB’s goals are both to protect public health and assist disaster victims to recover from the fire in the shortest possible time.

Rebuilding of a fire-damaged OWTS will not be considered a “new” OWTS under the Monterey County Local Agency Management Plan (LAMP). Any OWTS destroyed by the fires that was legally constructed (permitted) prior to adoption of the LAMP may be built back to the same size, specifications, and standards at the time which the system was permitted (i.e.: like-for-like).

### **Sunset Provision**

In the context of adopting any special policies in response to a disaster, consideration should also be given to including sunset provisions to ensure that rebuilding permits processed under special rules are issued in a timeframe that is reasonable for owners, but does not result in applications being made under special rules decades after the event has occurred. Past events have demonstrated that it can take years to get things in order, especially when the property was not insured. Staff is recommending that these guidelines sunset approximately five years from the date of adoption.

Staff is also recommending authorizing the Director of the Resource Management Agency to extend the five-year timeframe should rebuilding efforts require additional time beyond what can be currently anticipated. The Director’s authority authorizes him or her to extend the guidelines’ applicability to a date no later than September 15, 2030.

This recommendation is a preemptive measure designed to provide flexibility and responsiveness to fire victims should additional time be needed to finish rebuilding efforts. This will allow staff to continue working with rebuild applicants who have demonstrated due diligence in rebuilding without delaying progress by needing to return to the Board of Supervisors to continue under the rebuild authority.

Additionally, it is foreseeable that the remote location of the fire may impede rebuild efforts more than can presently be anticipated. The added flexibility with the sunset date will help staff expeditiously accommodate this unknown resulting in more responsiveness to fire victims.

### **Coordinating with Property Owners**

Following the Board’s consideration of this report and adoption of the proposed guidelines, staff will meet with affected property owners to discuss the various issues regarding rebuilding, including the option of temporary occupancy. Staff will assemble a team that will be on call to address affected property owners’ questions and concerns and to assist them with the application process. This team will also oversee the expedited process to address any issues that could delay an application’s processing.

This page intentionally left blank