

Attachment B

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 16.16 OF THE MONTEREY COUNTY CODE RELATING TO
REGULATIONS FOR FLOODPLAINS IN MONTEREY COUNTY**

County Counsel Summary

This ordinance amends Chapter 16.16 of the Monterey County Code to ensure alignment with federal and state law for continued participation in the National Flood Insurance Program, and to reflect the change in the responsible agency from the Monterey County Water Resources Agency to the County of Monterey, Housing and Community Development Department.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations

A. Ordinance Number 5139, adopted October 6, 2009, amended Monterey County Code Chapter 16.16, Regulations For Floodplains in Monterey County, in its entirety and is the codified ordinance currently in effect.

B. In January 2019, the County of Monterey entered into a Memorandum of Understanding with the Monterey County Water Resources Agency to have the former Resource Management Agency, now Housing and Community Development, assume responsibility related to floodplain management and other associated duties.

C. On November 18, 2021, the California Department of Water Resources on behalf of the Federal Emergency Management Agency met with staff from the Monterey County Housing and Community Development Department through a Community Assistance Visit to evaluate how the County is administering its floodplain management program under the National Flood Insurance Program and the California Building Code.

D. The California Department of Water Resources identified certain sections of Monterey County Code Chapter 16.16 that need to be updated to ensure alignment with federal and state law for continued participation in the National Flood Insurance Program, and to reflect the change in the responsible agency from the Monterey County Water Resources Agency to the County of Monterey, Housing and Community Development Department.

SECTION 2. Subsection FFF of Section 16.16.020 of the Monterey County Code is amended to read as follows:

FFF. "Substantial improvement(s)" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. A "substantial improvement" is considered to occur if, within any consecutive ten-year period, the

cumulative value of all improvements, modifications, and additions equals or exceeds fifty (50) percent of the market value of the structure. For purposes of applying the referenced ten-year period, the Monterey County Housing and Community Development Department shall begin tracking the cumulative value of all improvements on the effective date of the ordinance amending this Chapter.

This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. This term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

SECTION 3. Section 16.16.030 of the Monterey County Code is amended to read as follows:

A. **Lands to Which this Chapter Applies.** This Chapter shall apply to all Special Flood Hazard Areas (100-year floodplain) within the jurisdiction of Monterey County, as identified on Flood Insurance Rate Maps, and areas within two hundred (200) feet of a river or within fifty (50) feet of a watercourse.

B. **Basis for Establishing the Special Flood Hazard Areas.** The Special Flood Hazard Areas identified by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "The Flood Insurance Study for the County of Monterey" dated January 30, 1984 (revised September 27, 1991), and in the accompanying Flood Insurance Rate Map (FIRM), together with all subsequent amendments and revisions, are hereby adopted by reference and declared to be a part of this Chapter. The Flood Insurance Study and maps are on file at the Monterey County Housing and Community Development Department offices in Salinas, California. The Special Flood Hazard Areas identified by the above study and maps constitute the minimum area subject to this Chapter. These areas may be expanded, and new areas may be added pursuant to studies initiated by the Monterey County Housing and Community Development Department, approved by the Board of Supervisors, and approved by FEMA in accordance with established FEMA procedures, or otherwise as provided by FEMA.

C. **Compliance.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Failure to comply with the provisions of this Chapter or any of its requirements (including conditions and safeguards established in connection with conditions) shall constitute a violation. Nothing herein shall prevent the County of Monterey from taking such lawful action as is necessary to prevent or remedy any violation. In the event of a violation,

the County may, in its discretion, take such enforcement action as is authorized by the Monterey County Code in addition to all other remedies and actions available under law.

D. Abrogation and Greater Restrictions. This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or County land use plans. However, where this Chapter and another chapter, easement, covenant, deed restriction or County land use plan conflict or overlap, whichever imposes the more stringent flood protection restrictions shall prevail.

E. General applicability. These regulations, in conjunction with the California Building Code, provide minimum requirements for development located in flood hazard areas, including the subdivision of land; filling, grading and other site improvements; installation of utilities; installation, placement and replacement of manufactured homes; placement of recreational vehicles; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; certain building work exempt from permit under the Building Code; and flood control projects.

F. Interpretation. In the interpretation and application of this Chapter, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the County of Monterey; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

G. Warning and Disclaimer of Liability. The degree of flood protection required by this Chapter is considered reasonable and necessary for regulatory purposes and is based on scientific and engineering considerations. Large floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the County of Monterey, the Monterey County Housing and Community Development Department, or any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that may result because of reliance on this Chapter, or any administrative decision lawfully made thereunder.

H. Severability. This Chapter and the various parts thereof are hereby declared to be severable. Should any section of this Chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

SECTION 4. Section 16.16.040 of the Monterey County Code is amended to read as follows:

A. Designation of the Floodplain Administrator. The Chief of Building of the Monterey County Housing and Community Development Department is hereby appointed to administer, implement, and enforce this Chapter by reviewing proposed development permit applications and making recommendations to the County decision-maker in accordance with the provisions of this Chapter.

B. Permits. In administering this Chapter, the County shall incorporate the regulations contained in this Chapter into the existing land use permit approval process. A separate independent permit will not be required. The permit issuing official shall be that person, official, or body designated by County regulations to act on the particular land use permit application or, in the case of an appeal, the Board of Supervisors. Upon application for a permit for building, use, grading, sanitary sewage system, water system, or other permit, the permit issuing official or other employee responsible for review of such applications, shall review the submitted application to determine whether the site of the proposed development is within a Special Flood Hazard Area. If the proposed development is within a Special Flood Hazard Area, the application shall be referred to the Monterey County Housing and Community Development Department for review.

C. Master Special Permit.

1. Notwithstanding any other provision of this Chapter, riverbank protection, riparian vegetation trimming or removal, or channel modification activities which are consistent with a master special permit granted to the Monterey Peninsula Water Management District, may be undertaken, provided that each such activity is either (a) undertaken pursuant to a River Work Permit as provided by the Rules and Regulations of the Monterey Peninsula Water Management District, or (b) has been declared exempt from the River Work Permit process in accord with Rule 126 B of the Monterey Peninsula Water Management District Rules and Regulations. The authority to approve such river work pursuant to a master special permit as set forth in this Section, by operation of this Chapter, is delegated to the Monterey Peninsula Water Management District upon approval of the master special permit by the Monterey County Planning Commission pursuant to this Section.

2. The master special permit granted to the Monterey Peninsula Water Management District for the purpose of channel restoration may be based upon a temporary alternate stream gradient from that specified in this Chapter to achieve channel restoration where the reason for the alternate gradient is supported by substantial evidence, and where the gradient recognizes both flood control and erosion control concerns.

D. Duties and Responsibilities of the Floodplain Administrator. The Floodplain Administrator shall review all development permit applications for new construction, substantial improvements, construction of prefabricated buildings, placement of mobile homes, and other development which is located in a Special Flood Hazard Area. The Floodplain Administrator shall then recommend to the permit issuing official that the pertinent floodplain regulations

contained in this Chapter be applied as conditions of the permit. Specifically, the Floodplain Administrator, or his or her designee, shall:

1. Review all development permit applications to determine that the permit requirements of this Chapter have been satisfied;
2. Review all development permit applications to determine if all other required State and Federal permits have been obtained;
3. Review all development permit applications to determine that the site is reasonably safe from flooding;
4. Review all development permit applications to determine if the proposed development adversely affects the flood capacity of the Special Flood Hazard Area. For purposes of this Chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one (1) foot at any point, until such time as a regulatory floodway is designated;
5. Review all proposals for the development of five (5) parcels or more to assure that the flood discharge exiting the development after construction is equal to or less than the flood discharge at the location prior to development; and
6. Review all development permit applications to determine if the proposal is a "substantial improvement". The Monterey County Housing and Community Development Department shall maintain permit records and review them before any permit is issued.

E. Information Required. To facilitate the review of development permit applications, the County may require the applicant to provide additional information. As a minimum, the following information is required:

1. Plans showing the nature, location, dimensions, and elevation of the area in question; existing and proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing;
2. Proposed elevation referenced to NAVD 1988, of the lowest floor (including basement) of all structures; in Zone AO, the elevation of existing grade and proposed elevation of the lowest floor of all structures;
3. Proposed elevation, referenced to NAVD 1988, to which any structure will be floodproofed;
4. Certification by a registered civil engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 16.16.050.C.3; and

5. Description of the extent to which any river or watercourse, will be altered or relocated as a result of proposed development.

F. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 16.16.030.B, Basis for Establishing the Special Flood Hazard Areas, the Monterey County Housing and Community Development Department shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state, or other source, in order to administer Section 16.16.050.

G. Information to be Obtained and Maintained. The Monterey County Housing and Community Development Department shall obtain and maintain for public inspection and make available as needed the following:

1. Certification required by Section 16.16.050.C.1 and C.2 (lowest floor elevations);
2. Certification required by Section 16.16.050.C.3 (elevation or floodproofing of nonresidential structures);
3. Certification required by Section 16.16.050.J (floodway encroachments);
4. Certification required by Section 16.16.050.L (coastal construction standards); and
5. A record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

H. Notification of Other Agencies.

1. Alteration of Rivers or Watercourses.

a. The Monterey County Housing and Community Development Department shall notify adjacent communities and the California Department of Water Resources prior to any alteration or relocation of a river or watercourse and submit evidence of such notification to the Federal Emergency Management Agency.

b. The County of Monterey shall require, and the applicant shall demonstrate, that the flood carrying capacity of the altered or relocated portion of the river or watercourse is maintained.

2. Base Flood Elevation Changes Due To Physical Alterations.

a. Within six (6) months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

b. All LOMR's for flood control projects shall be approved prior to the issuance of building permits. Building permits must not be issued based on a Conditional Letter of Map Revision (CLOMR). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

I. Interpretation of FIRM Boundaries. The Monterey County Housing and Community Development Department shall make interpretations, where needed, as to the exact location of the boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given an opportunity to appeal the interpretation as provided in Section 16.16.070.

J. Maintenance of Flood Protection Measures. The maintenance of any and all flood protection measures, such as levees, dikes, dams or reservoirs, will be required of the property owner or public agency where such measures provide protection. If these measures are privately owned, an operation or maintenance plan will be required of the owner to be on file with the Housing and Community Development Department.

K. Hazard Mitigation Plan. The Monterey County Housing and Community Development Department shall review all proposals for new development in the Special Flood Hazard Area for consistency with Monterey County's General Plan. Before approval, The Monterey County Housing and Community Development Department shall:

1. Determine if the proposed development is in or affects a known floodplain;
2. Inform the public of the proposed activity;
3. Determine if there is a practicable alternative or site for the proposed activity;
4. Identify the impact of the activity on the floodplain; and
5. Provide a plan to mitigate the impact of the activity.

L. Remedial Action. The County, in consultation with the Floodplain Administrator, may take action to remedy violations of this Chapter as specified in Section 16.16.030.C.

M. Inspections. Development for which a permit for floodplain development is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the California Building Code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the Building Code or other ordinances shall not be valid.

1. Inspections of development other than buildings and structures. The Floodplain Administrator shall make or cause to be made, inspections of all development other than buildings and structures that is authorized by issuance of a permit for floodplain development under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine when development is undertaken without issuance of a permit.

2. Inspections of manufactured homes installations. The Floodplain Administrator shall make or cause to be made, inspections of installation and replacement of manufactured homes in flood hazard areas authorized by issuance of a permit for floodplain development under these regulations. Upon installation of a manufactured home and receipt of the required elevation certification the Floodplain Administrator shall inspect the installation or have the installation inspected.

3. Buildings and structures. The Building Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit, in accordance with the California Building Code.

4. Lowest floor elevation. Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in the California Building Code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.

5. Final inspection. Prior to the final inspection, certification of the elevation required in the California Building Code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.

SECTION 5. Subsection (H) of Section 16.16.050 of the Monterey County Code is amended to read as follows:

H. Standards for Manufactured Homes.

1. All manufactured homes to be placed or substantially improved on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision

upon which a manufactured home has incurred “substantial damage” as the result of a flood, shall:

a. Within Zones A, AH, and AE on the community’s Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one-foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b. Within Zones V and VE on the community’s Flood Insurance Rate Map, meet the requirements of Section 16.16.050.L.

2. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A, AH, AE, V, and VE on the community’s Flood Insurance Rate Map that are not subject to the provisions of Subsection 16.16.050 H.1. will be securely fastened to an adequately anchored foundation system to resist flotation, collapse and lateral movement, and be elevated so that either the:

a. Lowest floor of the manufactured home is at a minimum of one (1) foot above the base flood elevation; or

b. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade.

3. Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor and verified by the Monterey County Housing and Community Development Department to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

SECTION 6. Subsection (K) of Section 16.16.050 of the Monterey County Code is amended to read as follows:

K. Setbacks. A setback of two hundred (200) feet from the top of the bank of a river and fifty (50) feet from the top of the bank of a watercourse will be established where encroachment will be prohibited unless it can be proven to the satisfaction of the Monterey County Housing and Community Development Department that:

1. The proposed development will not significantly reduce the capacity of existing rivers or watercourses or otherwise adversely affect any other properties by increasing stream velocities or depths, or diverting the flow; and

2. The proposed new development will be safe from flow related erosion and will not cause flow related erosion hazards or otherwise aggravate flow related erosion hazards.

SECTION 7. Section 16.16.060 of the Monterey County Code is amended to read as follows:

A. Established Procedure.

1. Applications for variances from the requirements of this Chapter shall be made in accordance with established procedures for the development permit to which the floodplain regulations were applied. The appropriate authority to consider the variance application shall be that person, official, or body designated by County regulations to act on the particular land use permit application.

2. Those aggrieved by the decision of the appropriate authority may appeal such decision to the Board of Supervisors as provided for by this Chapter.

3. In passing upon such applications, the County shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and the following factors:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger of life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system, and streets and bridges.

4. Generally, variances may be issued for new construction and substantial improvements to be erected on an existing lot of record contiguous to or surrounded by lots with existing structures constructed below the base flood level provided Subsection 16.16.050 K and factors listed in subsections a. through k. of Subsection 16.16.060 A.3 have been fully considered.

5. Upon consideration of the factors listed in Subsection 16.16.060 A.3 and the purposes of this Chapter, the County may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.

6. The Monterey County Housing and Community Development Department shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances.

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section.

2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result, taking into account existing and proposed construction and development.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this Chapter. For example, in the case of variances to an elevation requirement, this means the County of Monterey need not grant permission for the applicant to build at grade, or to an elevation the applicant proposes, but only to that elevation which the County of Monterey believes will both provide relief and preserve the integrity of the local ordinance.

4. Variances shall only be issued upon:

a. A showing of good and sufficient cause such as renovation, rehabilitation, reconstruction, economic or social desirability of the proposed

structure(s), lots of record existing prior to the adoption of this Chapter, or compatibility with applicable land use plans in the area. Variances issued for economic considerations, aesthetics or because variances have been used in the past, are not good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship (as defined in Section 16.16.020, Definitions, of this Chapter) to the applicant; or

c. A determination that the granting of a variance will not result in any increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing law or ordinances, taking into account existing and proposed construction and development.

5. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of Subsections 16.16.060 B.1 through B.4, are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety and does not create a public nuisance.

6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. This notice shall be recorded in such a manner that it appears in the chain of title of the affected parcel of land.

7. Agricultural structures. A variance is authorized to be issued for the construction or substantial improvement of agricultural structures that are not elevated or dry floodproofed, provided the requirements of this Section are satisfied and all the following are met:

a. A determination has been made that the proposed agricultural structure is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.

b. Has low damage potential.

c. Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.

d. Complies with the wet floodproofing construction requirements as follows:

- 1) Anchored to resist flotation, collapse, and lateral movement;
- 2) When enclosed by walls, walls have flood openings that comply with the flood opening requirements of ASCE 24, Chapter 2;
- 3) Flood damage-resistant materials are used below the base flood elevation; and
- 4) Mechanical, electrical, and utility equipment are elevated above the base flood elevation.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 9. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

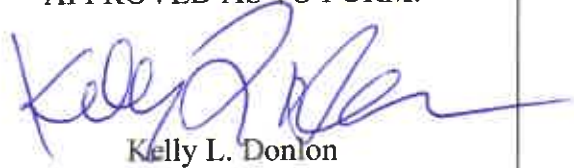
Chair, Luis A. Alejo
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:



Kelly L. Donlon

Assistant County Counsel