

# IN THE BOARD OF SUPERVISORS

County of San Luis Obispo, State of California

\_\_\_\_\_day \_\_\_\_\_, 20\_\_

PRESENT: Supervisors

ABSENT:

## RESOLUTION NO. \_\_\_\_\_

### RESOLUTION DENYING A VARIANCE AND EXCEPTION WAIVING CERTAIN CONSTRUCTION STANDARDS OF THE LAND USE ORDINANCE IN A FLOOD HAZARD AREA

The following resolution is now offered and read:

**WHEREAS**, the County of San Luis Obispo, State of California has been duly requested by Robert and Melanie Tucker to grant a variance waiving certain construction standards on a thirteen acre parcel (APN 034-551-025) located near the community of Atascadero on the banks of the Salinas River; and

**WHEREAS**, Land Use Ordinance Section 22.14.060.D.5 allows the Board of Supervisors to waive or modify the Construction Standards through the exception procedure set forth in the Code of Federal Regulations, Title 44, Chapter 1, Section 60.6; and

**WHEREAS**, the findings that the Federal Emergency Management Agency requires for granting of a variance and our discussion of those findings follow:

1. Variances must pertain to a piece of property and are not personal in nature.

*The property in question is a thirteen acre portion of the Rancho Asuncion, Atascadero & Adjacent Lands (Book A of Maps, page 1), owned by Robert and Melanie Tucker (the applicants). In April 2012, a Code Enforcement Case (COD2012-00677) was initiated for an un-permitted metal building. Later in April 2012, a building permit was applied for to rectify the Code Enforcement Case (PMT2012-01817). Review of this permit resulted in the determination that the structure was in the Flood Hazard Zone and that this triggered compliance requirements with County Ordinances for construction in Flood Hazard Zones. The waiver would be for the structure identified in PMT2012-01817 only.*

2. Variances shall not be issued within any designated Regulatory Flood Way if any increase in flood levels during the base flood discharge would result.

*This site is within the Regulatory Floodway and therefore this waiver should not be granted.*

3. A determination that the granting of the variance will not result in increased flood heights.

*The applicant has not determined whether this construction will result in increased flood heights, but such an increase is considered likely by the County.*

4. The variance will not cause additional threats to public safety or create nuisances.

*The County believes that this structure will likely become debris during a flooding event and will create a nuisance and a threat to public safety.*

5. The variance will not result in extraordinary public expense.

*Beyond this hearing process, it will not involve public expense.*

6. The variance will not cause fraud on nor victimization of the public.

*It will not cause fraud on nor victimization of the public.*

7. The variance will not result in conflict with existing local laws or ordinances.

*The granting of this variance will not conflict with other local laws or ordinances.*

8. A determination that the variance is the minimum necessary to afford relief.

*The variance is the minimum necessary to afford relief.*

9. Lots should generally be limited to a lot size of one-half acre or less. Experience indicates that for lots greater than one-half acre, a structure can be elevated on fill at or above the base flood elevation without causing measurable adverse drainage impacts on surrounding properties. But, per the Code of Federal Regulations 60.6, deviations from the above grounds may occur.

*This variance is not being requested to alleviate adverse drainage impacts on surrounding properties; it is to permit an existing as-built construction that does not comply with the National Flood Insurance Program requirements and local ordinances.*

10. Good and Sufficient Cause. Good and sufficient cause means that by granting a variance there is substantial and legitimate benefit to be achieved by numerous other citizens or the community as a whole.

*As this variance is for a commercial facility, the granting of this waiver will be of benefit to a portion of the community (their existing and potential customers).*

11. A determination that failure to grant the variance would result in exceptional hardship to the applicant.

*Per FEMA, the applicant has the burden to prove unnecessary hardship, including: loss of all beneficial or productive use, deprivation of any reasonable return on the property, property rendered valueless, inability to develop property in compliance with regulations, reasonable use cannot be made with regulations. The proof must be compelling and reasons for granting the variance extraordinary. As this property has an*

*existing legally permitted dwelling, which is outside of the Flood Hazard Zone, and therefore has a productive use, Staff sees no hardship other than financial if this waiver is denied. As a result, this finding cannot be made.*

**WHEREAS**, based on the above findings, the Director of Public Works has duly recommended that the Board of Supervisors deny a variance waiving the construction standards outlined in Land Use Ordinance Section 22.14.060 for the existing improvements near the community of Atascadero under Building Permit PMT2012-01817.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the requirements of Land Use Ordinance Section 22.14.060 not be waived.
2. That the denial of the variance waiving the construction standards is based upon the findings of fact and determinations set forth above.
3. That the County Clerk be and is hereby authorized and directed to record a copy of the resolution, in the office of the County Recorder, of the County of San Luis Obispo.

Upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAINING:

the foregoing Resolution is hereby adopted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Chairperson of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL  
County Counsel

By:   
Deputy County Counsel

Dated: August 15, 2013

STATE OF CALIFORNIA,        }  
County of San Luis Obispo,    }    ss.

I, \_\_\_\_\_, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
County Clerk and Ex-Officio Clerk of the Board  
of Supervisors

By \_\_\_\_\_  
Deputy Clerk.