

LRP 2012-00002:C

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 22 OF THE SAN LUIS OBISPO COUNTY CODE,
THE LAND USE ORDINANCE, CHAPTER 22.14 AND ARTICLE 8. RELATING TO FLOOD
HAZARD COMBINING DESIGNATION AREAS

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Section 22.14.060 of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended as follows:

22.14.060 – Flood Hazard Area (FH)

- A. **Purpose and applicability Statutory Authorization.** The Legislature of the state of California has in Government Code Sections 65302, 65560 and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health safety and general welfare of its citizenry. Therefore, the Board of Supervisors of the County of San Luis Obispo does hereby adopt the following flood plain management regulations. The Flood Hazard (FH) combining designation is applied to areas where terrain characteristics would present new developments and their users with potential hazards to life and property from potential inundation by a 100-year frequency flood or within coastal high hazard areas. These standards are also intended to minimize the effects of development on drainage ways and watercourses. The areas of special flood hazard identified by the Federal Insurance Administration, through the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for San Luis Obispo County," dated July 18, 1985, with an accompanying flood insurance rate maps, and any subsequent revisions to the flood insurance rate maps or flood area boundary maps, are hereby adopted and incorporated into this Title by reference as though they were fully set forth here. The flood insurance study is on file in the County Public Works office.
- B. **Applicability of flood hazard standards.** All uses proposed within a FH combining designation are subject to the standards of this Section, except:
1. **Temporary uses.** With the approval of the ~~County Engineer~~ Director of Public Works, the Planning and Building Director may authorize construction or placement of a temporary structure or use within a Flood Hazard area pursuant to the required land use permit without meeting these standards, provided that the structure or use will ~~not be in place from October 15, to April 15. be removable in times of imminent flooding (such as structures or machinery on semi-trailers.~~
 2. **Emergency work.** Emergency work may be undertaken where necessary to preserve life or property. Within 48 hours after commencement of such work, the Director of

Public Works shall be notified and an application filed with the Department in compliance with the provisions of Subsection C.

3. **Existing uses.** The continuance, operation, repair, or maintenance of any lawful use of land existing on the effective date of this Title is permitted. Any expansion or alteration of an existing structure or use, or grading of a site, shall be conducted in accordance with all applicable provisions of this Title.

C. Flood hazard area permit and processing requirements. Drainage plan approval is required where any portion of the proposed site is located within a Flood Hazard combining designation, in addition to all other permits required by this Title, state and Federal law. In addition to the information called for in Section 22.52.110 (Drainage Plan Required) the drainage plan shall include:

1. Federal Insurance Administration flood data, including base flood elevations, flood hazard areas and floodway locations.
2. In areas where water surface elevation data has not been provided by the Federal Insurance Administration, a normal depth analysis or other equivalent engineering analysis that identifies the location of the floodway and demonstrates to the satisfaction of the Director of Public Works that the structure will not be located within the floodway or be subject to inundation by the 100-year storm. The following information is required to determine the flood elevation and the location of the floodway, except where waived or modified by the Director of Public Works:
 - a. Plans drawn to scale showing the location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the floodway.
 - b. Typical valley cross-sections showing the normal channel of the stream, elevation of the land areas adjoining each side of the channel, cross-sections of areas to be occupied by the proposed development, and high-water information sufficient to define the 100-year storm flood profile level.
 - c. A profile showing the slope of the bottom of the channel or flow line of the stream.
 - d. Any previously determined flood data available from any state, federal or other source.

D. Construction standards. New structures or any substantial improvement ~~or any repair of substantial damage~~ to an existing structure (including manufactured homes) ~~where the value proposed is more than 50 percent of the market value of that existing structure before start of construction of the new structure or any improvement, and prior to the damage requiring the repair~~ are subject to the following construction standards. Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to the “before damaged condition” would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term

includes structures which have incurred substantial damage regardless of the actual repair work performed. This The market value of the structure can be determined by the assessment roll or by a current appraisal. The appraisal shall be completed by an appraiser with a “Certified General License” issued by the State Office of Real Estate Appraisal and shall determine full market value of the existing site improvements based on the Uniform Standards of the Professional Appraisal Practices as published by the Appraiser Standards Board of the Appraisal Foundation. The term substantial improvement does not include any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the Chief Building Official and are the minimum necessary to assure safe living conditions or any alteration of historic structure, provided that the alteration will not preclude the structures continued designation as historic structure.

1. **Construction, general:** For the purpose of determining insurance rates, structures and any subsequent improvements to such structures for which the “start of construction” as defined in Article 8, commenced on or after the effective date of an initial Flood Insurance Rate Map (FIRM) or after December 31, 1974, whichever is later are deemed new construction. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
 - a. No construction or grading shall limit the capacity of the floodway or increase flood heights on existing structures unless the adverse effect of the increase is rectified to the satisfaction of the Director of Public Works. In no case shall flood heights be increased above that allowed under the Federal Flood Insurance Program.
 - b. Structures shall be anchored to prevent collapse, lateral movement or flotation that could result in damage to other structures or restriction of bridge openings and narrow sections of the stream or river.
 - c. Service facilities such as electrical and heating equipment shall be floodproofed or constructed at minimum of one-foot above the 100-year storm flood profile level for the site.
 - d. Water supply and sanitary sewage systems shall be designed to minimize infiltration of flood waters into the system and discharge from systems into flood waters.
 - e. On-site waste disposal systems shall be located to avoid their being impaired or contaminated during flooding.
 - f. All buildings or structures shall be located landward of mean high tide.
 - g. Whenever a watercourse is to be altered or relocated, the flood carrying capacity within the altered or relocated portion of the water course shall be maintained. The Department shall notify adjacent communities and the Department of Water Resources and ~~evidence of such notification shall be sent to the Federal Insurance Administration.~~ the Federal Emergency Management Agency. This

notification shall include evidence that the flood carrying capacity shall be maintained.

- (1) Within six months of information becoming available or project completion, whichever comes first, and the base flood elevation changes due to physical alterations caused by the project, the Floodplain Administrator or County Engineer shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter Of Map Revision (LOMR).
 - (2) All LOMR's for flood control projects shall be approved prior to the issuance of building permits. Building permits shall not be issued based on Conditional Letters Of Map Revision (CLOMRS). Approved CLOMRS 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 flood plain management requirements are based on current data.
- h. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria:
- (1) A minimum of two openings on different sides of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
 - (2) The bottom of all openings shall be no higher than one foot above grade.
 - (3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
 - (4) Buildings with more than one enclosed area must have openings on exterior walls of each area to allow flood water to directly enter.
- i. On the basis of structural plans and the depth analysis, the lowest floor of all structures shall be constructed at a minimum of one-foot above the 100-year storm flood profile level. Within any AO zone on the Flood Insurance Rate maps, this elevation shall be determined by adding one foot to the depth number specified. If no depth is specified, structures shall be elevated a minimum of two feet above adjacent natural grade.
- j. Non-residential construction shall either be elevated in conformance with Subsection D.1.i, or together with attendant utility and sanitary facilities, be elevated a minimum of two feet above the highest adjacent grade and be

floodproofed to a minimum of one-foot above the 100-year storm flood profile level. Examples of floodproofing include, but are not limited to:

- (1) Installation of watertight doors, bulkheads, and shutters.
- (2) Reinforcement of walls to resist water pressure.
- (3) Use of paints, membranes, or mortars to reduce seepage through walls.
- (4) Addition of mass or weight to structure to resist flotation.
- (5) Armor protection of all fill materials from scour and/or erosion.

k. All structures subject to inundation shall use flood resistant materials up to one foot above base flood elevation.

2. **Storage and processing.** The storage or processing of materials that in time of flooding are buoyant, flammable, or explosive; that could be injurious to human, animal, or plant life; or that may unduly affect floodway capacity or unduly increase flood heights is not permitted. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

3. **Coastal High Hazard areas.:** The following requirements shall apply to new structures or any improvement / repair to an existing structure as specified in Subsection D., in areas identified as having special flood hazards extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity waters including coastal and tidal inundation or tsunamis as established on the maps identified in subsection A.:

- a. All buildings or structures shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.
- b. All new construction and other development shall be located on the landward side of the reach of mean high tide.
- c. All buildings or structures shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.
- d. Fill shall not be used for structural support of buildings.

- e. Man-made alteration of sand dunes that would increase potential flood damage is prohibited.
- f. The Planning and Building Director and/or the Public Works Director shall obtain and maintain the following records.
 - (1) Certification by a registered engineer or architect that a proposed structure complies with Subsection D.3.a
 - (2) The elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings or columns) of all buildings and structures, and whether such structures contain a basement.

4. Certification of compliance. The following certifications shall be filed with the Building Official prior to final building inspection:

- a. Upon completion of any structure within a FH combining designation, compliance with elevation requirements shall be certified by a registered civil engineer or a licensed land surveyor. Such certification shall include as a minimum the elevation of the lowest floor. If the structure has been floodproofed in conformance with Subsection D.1.j, the certification shall include the elevation to which the structure has been floodproofed. These records shall be maintained by the Public Works Director for public inspection and made available as needed. Elevations shall be based on the National Geodetic Vertical Datum of 1929.
- b. Where floodproofing is used, a registered civil engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood.
- c. Compliance with the structural design requirements within Coastal High Hazard Areas stated in Subsection D.3. shall be certified by a registered civil engineer, or architect.

5. Exceptions to construction standards. The standards of this Section may be waived or modified by the Board of Supervisors through the variance procedure set forth in Code of Federal Regulations, Title 44, Chapter 1, Section 60.6, instead of through the adjustment process in Section 22.70.030. Requests for such waivers or modifications shall be filed with County Public Works for processing. ~~Procedures for the granting of variances under Title 44 are available from County Public Works.~~

Variances may be issued for new construction, substantial improvement and other proposed new development to be erected on a lot of one half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the other procedures of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

Attachment 1E

- a. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of this ordinance are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance. Variances may be issued for the repair or rehabilitation of historic resources, as defined by Section 22.14.080, upon a determination that the proposed repair or rehabilitation will not preclude the resources continued designation as a historic resource and the variance is the minimum necessary to preserve the historic character and design of the resource. Upon consideration of the factors of this ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Section.
- b. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- c. 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 ordinance.
- d. If a variance is granted, the Board of Supervisors Resolution will act as written notice that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as 25 dollars for 100 dollars of insurance coverage, and that such construction below the base flood level increases risks to life and property.
- e. The Floodplain Administrator or Public Works Director will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in in the biennial report submitted to FEMA.
- f. When considering a request for a variance, the Board of Supervisors shall consider all technical evaluations, all relevant factors, standards specified in all other Sections of this Title, and the following:
 - (1) Danger that materials may be swept onto other lands to the injury of others.
 - (2) Danger to life or property due to flooding or erosion damage
 - (3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property.
 - (4) Importance of the services provided by the proposed facility to the community.
 - (5) Necessity to the facility of a waterfront location, where applicable.

- (6) Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (7) Compatibility of the proposed use with existing and anticipated development.
- (8) Relationship of the proposed use to the comprehensive plan and floodplain management plan for that area.
- (9) Safety of access to the property in time of flood for ordinary and emergency vehicles.
- (10) Expected flood heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
- (11) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

g. A Variance shall be approved only where the following findings can be made:

- (1) Showing of good and sufficient cause; and,
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance, cause fraud and victimization of the public, or conflict with existing local laws or ordinance.

E. Disclaimer of Liability. The degree of flood protection required by this Section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Section does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Section shall not create liability on the part of San Luis Obispo County, any officer or employee thereof, the State of California or the Federal Emergency Management Agency, for any flood damages that result from reliance on this Section or any administrative decision lawfully made hereunder.

F. Land Divisions in the Flood Hazard Combining Designation. Land divisions and lot line adjustments are prohibited within the Flood Hazard Combining Designation where they create new building areas within the 100 year flood hazard zone, unless a Flood Hazard Plan identifying construction constraints is approved by the Director of Public Works prior to approval.

G. Abrogation and Greater Restrictions. This Section is not intended to repeal, abrogate, or impair any existing easements, covenant, or deed restrictions. Where this Section and other ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION 2: Article 8 of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended by adding the following new definitions as follows:

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Special Flood Hazard: The land in a flood plain within a community subject to a 1 percent or greater chance of flooding in any given year the area may be designated as Zone A on the Flood Hazard Boundary Maps. After detailed rate making has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase "area of special flood hazard".

Start of Construction: For the purposes of Section 22.14.060, start of construction includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

SECTION 3. This project is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects which have the potential for causing a significant effect on the environment (Government Code 15061(b)(3)). It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment because no new development is authorized, no increase in density will occur, no change in allowed uses is proposed or authorized and no physical change to the environment will occur. Therefore the activity is not subject to CEQA.

SECTION 4. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5: Before the expiration of 15 days after the adoption of this ordinance by the San Luis Obispo County Board of Supervisors, it shall be published once in a newspaper of general

circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 20____, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM:

RITA L. NEAL
County Counsel

By:

Deputy County Counsel

Dated: