

ATTACHMENT 3: MONTECITO LUDC ORDINANCE AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-2, THE SANTA BARBARA COUNTY MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE BY AMENDING DIVISION 35.2, MONTECITO ZONES AND ALLOWABLE LAND USES, DIVISION 35.7, MONTECITO PLANNING PERMIT PROCEDURES, DIVISION 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION, AND DIVISION 35.10, GLOSSARY, TO IMPLEMENT NEW REGULATIONS AND DEVELOPMENT STANDARDS REGARDING EXEMPTIONS FROM PERMITTING FOR STRUCTURES THAT HAVE BEEN DAMAGED OR DESTROYED DURING A DEBRIS FLOW EVENT OR OTHER NATURAL EVENT RESULTING IN A SIGNIFICANT CHANGE IN TOPOGRAPHY OR ALTERATION OF DRAINAGE FEATURES.

18ORD-00000-00005

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Subsection B.5, Exempt activities and structures, Damaged or destroyed structure, of Section 35.420.040, Exemptions from Planning Permit Requirements, of Chapter 35.420, Development and Land Use Approval Requirements, to read as follows:

- 5. Damaged or destroyed structure.** The replacement or restoration of a conforming structure damaged or destroyed by a disaster, as determined by the Director in consultation with the Flood Control District as applicable.
 - a. The replaced or restored structure shall comply with all requirements of the applicable zone (including permitted uses), shall be for the same use, shall be in the same general footprint location, and shall not exceed the floor area, height, or bulk of the destroyed structure by more than 10 percent, or 250 square feet, whichever is less. For the purposes of this Subsection B.5, bulk is defined as total interior cubic volume as measured from the exterior surfaces of the structure.
 - b. If the structure was damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features (e.g., creeks, streams, waterways, etc.) located on the lot on which the replaced or restored structure would be located, the replaced or restored structure may be relocated on the lot to meet applicable setbacks from top-of-bank and reduce flood hazards, as long as the structure otherwise complies with Subsection 5.a above and with applicable policies of the Comprehensive Plan.

- c. If the structure was damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features located on the lot on which the replaced or restored structure would be located, the replaced or restored structure may exceed the height of the destroyed or damaged structure (as measured from the post-event grade to peak roof height) by more than 10 percent if necessary to comply with the base flood elevation that exists for the lot after the debris flow or other event. In no case shall the height of the structure, as measured from the lowest, finished floor to the highest part of the structure, excluding chimneys, vents, and noncommercial antennas, exceed the equivalent height of the damaged or destroyed structure by more than 10 percent or exceed the height of the applicable zone.
1. For the purposes of this Subsection 5.c, post-event grade is defined as the existing grade on the lot at the time of application submittal.
- b.d. Except as provided in Subsection B.5.d.(1), below, if the Director determines that the exterior design or specifications are proposed to be changed, then the restored or replaced structure shall require Design Review in compliance with [Section 35.472.070 \(Design Review\)](#).
- (1) If a structure has been damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features located on the lot on which the replaced or restored structure would be located, the restored or replaced structure, even if relocated on the lot or increased in height, shall not require Design Review unless the exterior design or specifications of the replaced or restored structure are substantially different from the prior structure(s), as determined by the Director.

SECTION 2:

DIVISION 35.7, Montecito Planning Permit Procedures, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Subsection C, Exceptions to Design Review requirements, of Section 35.472.070, Design Review, of Chapter 35.472, Permit Review and Decisions, to read as follows:

- C. Exceptions to Design Review requirements.** Design Review approval shall not be required for the following:
1. Decks.
 2. Fences, gates or walls six feet or less and gateposts of eight feet or less in height; however, fences, gates, gateposts and walls that are integral to the structure (e.g., are connected to the structure or form a courtyard adjacent to the structure) shall be included as part of the Design Review of a new structure or a remodeling or an addition to a structure requiring Design Review in compliance with this Section.
 3. Hot tubs, spas, and swimming pools.
 4. Interior alterations.

5. Solar panels.
6. Other exterior alterations determined to be minor by the Director.
7. Residential second units; however approval from the Montecito Board of Architectural Review Chairperson, or designee, is required unless the residential second unit would only require exterior alterations to an existing structure that are determined to be minor by the Director.
8. The replacement or restoration of structures that were damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features (e.g., creeks, streams, waterways, etc.) located on the lot on which the damaged or destroyed structures were located; unless the exterior design or specifications of the replaced or restored structure are substantially different from the prior structure(s), as determined by the Director.

SECTION 3:

DIVISION 35.9, Montecito Land Use and Development Code Administration, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Subsections E, Damage, of Section 35.491.020, Nonconforming Uses of Land and Structures, of Chapter 35.491, Nonconforming Uses, Structures, and Lots, to read as follows:

E. Damage. This Section identifies the standards for allowing the continuation of a nonconforming use in a structure or other development that is damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs.

1. Non-residential uses.

a. Damage 75 percent or more. If structure or other development dedicated to a non-residential nonconforming use is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, then the nonconforming use shall be discontinued and the damaged structure or other development thereafter used only in compliance with regulations of the zone in which it is located, unless allowed to continue by the Montecito Commission, in compliance with [Section 35.472.100 \(Hardship Determination\)](#).

b. Damage less than 75 percent.

- (1) Except as provided below in Subsection E.1.b.(2), if the damage caused by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs is less than 75 percent of the replacement cost of the total structure before the damage, as determined by the Director, the structure or other developments may be restored to the same or lesser size and in the same general footprint location.

(2) **Damage caused by debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features.** If the damage caused by debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features (e.g., creeks, streams, waterways, etc.) of the lot on which the nonconforming use occurs is less than 75 percent of the replacement cost of the total structure before the damage, as determined by the Director, then:

(a) The restored or replaced structure may be relocated on the lot as necessary to comply with applicable setbacks from top-of-bank and to reduce flood hazards, as long as the structure complies with the setback requirements of the applicable zone and with the applicable policies of the Comprehensive Plan.

(b) The height of the structure may exceed the height of the destroyed or damaged structure if necessary to comply with the base flood elevation that exists for the lot following a debris flow or other catastrophic event, as long as the structure complies with the height requirements of the applicable zone. However, the height of the structure as measured from the lowest, finished floor to the highest part of the structure, excluding chimneys, vents and noncommercial antennas, shall not exceed the equivalent height of the damaged or destroyed structure.

(3) The nonconforming use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged or intensified.

2. Residential uses.

a. Structures Except as provided in Subsection E.2.b, below, structures dedicated to nonconforming residential dwelling uses (e.g., one-family, two-family, and multi-family units, and second residential units) that are damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs may be reconstructed to the same or lesser size and in the same general footprint location.

b. **Damage caused by debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features.** If the structure is damaged or destroyed by a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features, then:

(1) The restored or replaced structure may be relocated on the lot if necessary to comply with applicable setbacks from top-of-bank and to reduce flood hazards, as long as the structure complies with the setback requirements of the applicable zone and with the applicable policies of the Comprehensive Plan.

(2) The height of the structure may exceed the height of the destroyed or damaged structure if necessary to comply with the base flood elevation that exists for the lot following a debris flow or other catastrophic event,

as long as the structure complies with the height requirements of the applicable zone. However, the height of the structure as measured from the lowest, finished floor to the highest part of the structure, excluding chimneys, vents and noncommercial antennas, shall not exceed the equivalent height of the damaged or destroyed structure.

- c. ___ The nonconforming residential dwelling use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged, expanded, or intensified (e.g., increase in gross floor area, increase in the number of bedrooms).
- 3. Reconstruction shall commence within 24 months.** The restoration of a nonconforming use allowed in compliance with Subsection E.1 (Non-residential uses) and Subsection E.2 (Residential uses) above, shall commence within 24 months of the time of damage and be diligently carried out to completion.
- a. The 24-month time limit may be extended by the Director for a maximum of 12 months for good cause, provided a written request, including a statement of reasons for the time extension request, is filed with the Department before the expiration of the 24-month period.
- b. If the restoration of the nonconforming use does not commence within 24 months or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.
- 4. Applicability of permit requirements.**
- a. **Exempt from the Development Code permit requirements.**
- (1) Except as provided in Subsection E.4.a(2), below, the The restoration or reconstruction of a structure or other development dedicated to a nonconforming use that is damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs shall be exempt from the permit requirements of this Development Code only if the structure or other development complies with the provisions of this Chapter and if the structure or other development conforms to the specifications documented to exist before the damage or destruction.
- (2) The relocation of a structure and/or a change to its finished floor elevation following a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features may be allowed if the Director, in consultation with the Flood Control District, determines the relocation or change in the finished floor elevation to be necessary to comply with applicable setbacks from top-of-bank and to reduce flood hazards, and the structure complies with the provisions of this Chapter and applicable policies of the Comprehensive Plan.
- (3) ___ Full compliance with applicable Building Code provisions is still required.
- b. **Design Review required.** If Except as provided in Subsection E.4.b(1), below, if the Director determines that the exterior design or specifications are proposed to be changed or the footprint of the structure is relocated, then the replaced or

restored structure shall be subject to the provisions of [Section 35.472.070 \(Design Review\)](#) if the structure is otherwise subject to Design Review.

(1) If a structure has been damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features located on the lot on which the replaced or restored structure would be located, the restored or replaced structure, even if relocated on the lot or increased in height, shall not require Design Review unless the exterior design or specifications of the replaced or restored structure are substantially different from the prior structure(s), as determined by the Director.

c. **Subject to Development Code permit requirements.** If Except as allowed herein, if the structure or other development is proposed to be altered from the original specifications, as determined by the Director, then the reconstruction or restoration shall be subject to all applicable permit requirements of this Development Code.

SECTION 4:

DIVISION 35.9, Montecito Land Use and Development Code Administration, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Subsection B, Damage, of Section 35.491.030, Nonconforming Structures, of Chapter 35.491, Nonconforming Uses, Structures, and Lots, to read as follows:

B. Damage. This Section identifies the standards for allowing the reconstruction or restoration of a nonconforming structure that is damaged by earthquake, fire, flood, vandalism or other calamity beyond the control of the owner of the structure.

~~1. Coastal Zone.~~

~~a. One-family dwellings. Nonconforming one-family dwellings that are damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure may be reconstructed to the same or lesser size in the same general footprint location.~~

~~b. Structures other than one-family dwellings.~~

~~(1) Damage 75 percent or more. A nonconforming structure that is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, may not be reconstructed unless allowed by the Montecito Commission, in compliance with [Section 35.472.100 \(Hardship Determinations\)](#).~~

~~(2) Damage less than 75 percent. Where a nonconforming structure, other than a one-family dwelling, is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of less than 75 percent of the replacement cost of the~~

~~total structure before the damage, as determined by the Director, the structure may be reconstructed to the same or lesser size in the same general footprint location.~~

- 21. Inland area.** Nonconforming structures that are damaged or destroyed by earthquake, fire, flood, or other natural disaster may be reconstructed to the same or lesser size in the same general footprint location except that if a nonconforming structure is damaged by a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features (e.g., creeks, streams, waterways, etc.), then:
- a. The restored or replaced structure may be relocated on the lot if necessary to comply with applicable setbacks from top-of-bank and to reduce flood hazards, as long as the structure complies with the setback requirements of the applicable zone and with the applicable policies of the Comprehensive Plan.
 - b. The height of the structure may exceed the height of the destroyed or damaged structure if necessary to comply with the base flood elevation that exists for the lot following a debris flow or other catastrophic event, as long as the structure complies with the height requirements of the applicable zone. However, the height of the structure as measured from the lowest, finished floor to the highest part of the structure, excluding chimneys, vents and noncommercial antennas, shall not exceed the equivalent height of the damaged or destroyed structure.
- 32. Hotel reconstruction.** Any portion of an existing hotel that is damage or destroyed may be replaced with new construction of the identical size of that damaged or destroyed on the same site and in the same general location ~~except that if an existing hotel structure is damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features, then:~~
- a. The structure may be relocated on the lot if necessary to meet applicable setbacks from top-of-bank and reduce flood hazards, provided the structure complies with the setback requirements of the applicable zone and with the applicable policies of the Comprehensive Plan.
 - b. The height of the structure may exceed the height of the destroyed or damaged structure if necessary to comply with the base flood elevation that exists for the lot following a debris flow or other catastrophic event, as long as the structure complies with the height requirements of the applicable zone. However, the height of the structure as measured from the lowest, finished floor to the highest part of the structure, excluding chimneys, vents and noncommercial antennas, shall not exceed the equivalent height of the damaged or destroyed structure.
- 43. Reconstruction shall commence within 24 months.**
- a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.

b. Extensions.

- (1) **Initial time extension.** The 24-month time limit may be extended by the Director one time for a maximum of 24 additional months for good cause, provided a written request, including a statement of the reasons for the request, is filed with the Department before the expiration of the initial 24-month period.
 - (2) **Additional time extension.**
 - (a) In addition to an extension granted by the Director in compliance with Subsection B.4.b.(1), above, the Director may extend the time limit for good cause a second time for a maximum of 36 additional months, provided:
 - (i) An application for the extension, including a statement of the reasons for the request, is filed with the Department in compliance with [Chapter 35.470 \(Permit Application Filing and Processing\)](#) either prior to the expiration of a time extension allowed under Subsection B.4.b.(1), above, or within the 180 days following the expiration of said time extension.
 - (ii) Notice of the application for the time extension shall be provided in compliance with [Section 35.496.050 \(Land Use Permits\)](#).
 - (iii) The Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the time limit as extended in compliance with Subsection B.4.b.1), above.
 - (b) The action of the Director to approve, conditionally approve, or deny the application to extend the time limit in compliance with Subsection B.4.b.(2)(a), above, is final subject to appeal in compliance with [Chapter 35.492 \(Appeals\)](#).
- c. If the reconstruction or restoration of the structure does not commence within 24 months, or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

54. Applicability of permit requirements.

a. Exempt from Development Code permit requirements.

- (1) The Except as provided in Subsection B.5.a.(1), below, the restoration of a nonconforming structure that is damaged by earthquake, fire, flood, vandalism or other calamity beyond the control of the owner of the structure shall be exempt from the permit requirements of this Development Code only if the structure complies with the provisions of this Section and if the structure conforms to the specifications documented to exist before the damage or destruction, as determined by the Director.

- (2) The relocation of a structure and/or a change to its finished floor elevation following a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features may be allowed if the Director, in consultation with the Flood Control District, determines the relocation and/or change in the finished floor elevation to be necessary in order to comply with applicable setbacks from top-of-bank and to reduce flood hazards, and the structure complies with the provisions of this Chapter and applicable policies of the Comprehensive Plan.
 - (3) Full compliance with applicable Building Code provisions is still required.
- b. **Design Review required.** ~~If~~ Except as provided in Subsection B.5.b.1, below, if the Department determines that the exterior design or specifications are proposed to be changed or the footprint of the structure is relocated, the restored structure shall be subject to the provisions of [Section 35.472.070 \(Design Review\)](#).
- (1) If a structure has been damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features located on the lot on which the replaced or restored structure would be located, the restored or replaced structure, even if relocated on the lot or increased in height, shall not require Design Review unless the exterior design or specifications of the replaced or restored structure are substantially different from the prior structure(s), as determined by the Director.
- c. **Subject to Development Code permit requirements.** Except as allowed herein, if ~~if~~ the structure is proposed to be altered from the original specifications, as determined by the ~~Department~~Director, then the restoration shall be subject to all applicable permit requirements of this Development Code.

SECTION 5:

DIVISION 35.10, Glossary, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Section 35.500.020, Definitions of Specialized Terms and Phrases, of Chapter 35.500, Definitions, to add new definitions of “Base Flood Elevation” and “Debris Flow” to read as follows:

Base Flood Elevation. The computed elevation to which floodwater is anticipated to rise during the base flood, which is a flood having a one percent chance of being equaled or exceeded in any given year. This is the regulatory standard also referred to as the “100-year flood.” Base Flood Elevations (BFEs) are shown on Flood Insurance Rate Maps (FIRMs) which may be supplemented by studies for other areas which allow implementation of Chapter 15A of the County Code and which are recommended to the board of directors by the floodplain administrator and on the flood profiles. The BFE is the regulatory requirement for the elevation or flood-proofing of structures.

Debris Flow. A saturated mass of loose particles, including rock, earth, and other debris, that

travels down a slope and often into creek and/or stream channels.

SECTION 6:

All existing section references contained in Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, are hereby revised and renumbered as appropriate to reflect the revisions enumerated above.

SECTION 7:

Except as amended by this Ordinance, Divisions 35.2, 35.7, 35.9 and 35.10 of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 8:

This ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the *Santa Barbara News-Press*, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2018, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

DAS WILLIAMS, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST:

MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By  _____
Deputy County Counsel