

FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE I

STATUTORY CONSTITUTIONAL AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

SECTION A. STATUTORY CONSTITUTIONAL AUTHORIZATION

Under its inherent authority and the authority vested it by the Constitution of the Chitimacha Tribe of Louisiana, the Chitimacha Tribal Council hereby adopts the following Flood Damage Prevention Ordinance designed to promote the public health, safety, and general welfare of the Tribe and its members.

~~The Legislature of the State of Louisiana has in statute LRS 38:84 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the {governing body} of {local community name}, Louisiana, does ordain as follows:~~

SECTION B. FINDINGS OF FACT

(1) The flood hazard areas located on the of {Chitimacha Reservation/Charentonlocal community name} are subject to periodic inundation, which results in potential loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(3) This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59-78, as amended, so as to establish the Tribe’s eligibility in the National Flood Insurance Program.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;

- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) ~~Ensure that tribal members are notified that property is located in flood area. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and~~
- (7) ~~Ensure that those who occupy an area of special flood hazard assume responsibility for their actions. Insure that potential buyers are notified that property is in a flood area.~~

SECTION D. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development, which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

ARTICLE 2

DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

ALLUVIAL FAN FLOODING - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

APPURTENANT STRUCTURE – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

AREA OF FUTURE CONDITIONS FLOOD HAZARD – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

AREA OF SHALLOW FLOODING - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - is the land in the floodplain 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 Map (FHBM). After detailed rate-making has been completed in preparation for publication of the FIRM, 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, V1-30, VE or V.

BASE FLOOD - means the flood having a 1 percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year – also called the Base Flood.

BASEMENT - means any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FEATURE - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

EXISTING CONSTRUCTION - ~~means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before April 19, 2017, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."~~

~~means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."~~

Commented [PL1]: Insert the date that the Ordinance will be effective under Tribal law (i.e. the date approved by the Tribal Council).

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before ~~June, 2018, the effective date of the floodplain management regulations adopted by a community.~~

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; ~~and-~~
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION STUDY – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM) - means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

FLOOD INSURANCE RATE MAP (FIRM) - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) – see Flood Elevation Study

FLOODPLAIN OR FLOOD-PRONE AREA - means any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPLAIN MANAGEMENT - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY – see Regulatory Floodway

FUNCTIONALLY DEPENDENT USE - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE - means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(4) Individually listed on a local inventory ~~of~~ historic places or cultural resources in communities with historic or cultural resource preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary ~~of the~~ of the Interior; ~~or~~

(b) Directly by the Secretary of the Interior in states without approved programs; or

(c) The Chitimacha Tribe of Louisiana, including the Tribal Historic Preservation Office for the Chitimacha Tribe of Louisiana.

LEVEE - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

MANUFACTURED HOME - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

MANUFACTURED HOME PARK OR SUBDIVISION - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL - means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after ~~the effective date of an initial FIRM or after December 31, 1974~~ July, 2018, ~~whichever is later~~, and includes any subsequent improvements to such structures. 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.

NEW MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

RECREATIONAL VEHICLE - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

RIVERINE – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SPECIAL FLOOD HAZARD AREA – see Area of Special Flood Hazard

START OF CONSTRUCTION - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement 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 of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of 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 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.

STRUCTURE – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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 "start of construction" of the improvement. This term includes structures, which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) 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 formally adopted~~ by ~~the local code enforcement official~~ [Chitimacha Tribal Council](#) and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

VARIANCE – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

VIOLATION - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION - means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 3

GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all areas of special flood hazard within the [jurisdiction of {local community name}-exterior boundaries of the Chitimacha Reservation or otherwise within the jurisdiction of the Chitimacha Tribe of Louisiana.](#)

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for [{St. Mary Parish Unincorporated Areas from the FIS Title}](#)," dated [{July, 2018date of latest FIS}](#), with accompanying Flood Insurance Rate Maps (FIRM) dated [{July, 2018date of latest FIRM index}](#), and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

SECTION D. COMPLIANCE

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers [granted under State statutes which may be exercised by the Chitimacha Tribe of Louisiana.](#)

SECTION G. WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater

floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance 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 ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. NON-WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Chitimacha Tribe of Louisiana, or any of its agencies, departments, agents, officials or employees.

ARTICLE 4

ADMINISTRATION

SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The {Chief Administrative Officer list position or title of the appointed Floodplain Administrator – i.e., Code Enforcement Officer} of the Tribe is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

SECTION B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.

(2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review, approve or deny all applications for development permits required by adoption of this ordinance.

(4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the

Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Department of Transportation and Development, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

SECTION C. PERMIT PROCEDURES

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B (2);

(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

(e) Maintain a record of all such information in accordance with Article 4, Section (B) (1).

(2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

- (a) The danger to life and property due to flooding or erosion damage;
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (c) The danger that materials may be swept onto other lands to the injury of others;
- (d) The compatibility of the proposed use with existing and anticipated development;
- (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

SECTION D. VARIANCE PROCEDURES

(1) The ~~Appeal Board, as established by the community-~~Chitimacha Tribal Council shall hear and render judgment on requests for variances from the requirements of this ordinance.

(2) The ~~Appeal Board~~Tribal Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

(3) ~~Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.~~The decision of the Tribal Council shall be final.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) 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, or any list maintained and certified by the Chitimacha Tribe of Louisiana without regard to the procedures set forth in the remainder of this ordinance.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this ordinance, the ~~Appeal Board~~ Tribal Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Article 1, Section C).

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in 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 local laws or ordinances.

(c) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the 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.

(11) Variances may be issued by ~~a community~~ the Tribe for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article 4, Section D (1)-(9) are met, and (ii) 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.

ARTICLE 5

PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

SECTION B. SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B (8), or (iii) Article 5, Section C (3), the following provisions are required:

(1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit

a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C (1) a., is satisfied.

(2) **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which 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 minimum criteria:

(a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than 1 foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) **Manufactured Homes** -

(a) Require that all manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the bottom of the

longitudinal structural I beam of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(i) the bottom of the longitudinal structural I beam of the manufactured home is at or above the base flood elevation, or

(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS

(1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this ordinance.

(2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this ordinance.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B (8) of this ordinance.

(4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

SECTION D. SEVERABILITY

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION E. PENALTIES FOR NON COMPLIANCE

(1) Any structure constructed, altered, repaired or maintained in violation of this Ordinance is hereby declared to be a nuisance per se and the Chitimacha Tribe of Louisiana may institute proceedings in the Chitimacha Tribal Court for the purposes of restraining any violation of any provisions of this Ordinance.

(2) Violations of this Ordinance by failure to comply with any of its requirements (including any violations of conditions or safeguards established in connection with conditions) shall also be punishable by a fine to be determined by the Chitimacha Tribal Court not to exceed one thousand dollars (\$1,000.00).

(3) Violations of this Ordinance by failure to comply with any of its requirements (including any violations of conditions or safeguards established in connection with conditions) may also result in the offender losing the privilege to participate in the National Flood Insurance Program.

(4) It shall be the duty of all architects, contractors, subcontractors, builders and other persons having charge of the erecting, altering, changing, or remodeling of any building or structure, including mobile homes, before beginning or undertaking any such work to see that a proper permit has been granted and that such work does not conflict with and is not a violation of the terms of this Ordinance; and any such architect, builder, contractor or other person doing or performing such work of erecting, repairing, altering, changing, or remodeling without such permit having been issued or in violation of, or in conflict with, the terms of this Ordinance shall be punishable in the same manner and to the extent as the owner of the premises or the person or persons for whom such buildings are erected, repaired, altered, changed or remodeled in violation of this Ordinance and shall be held accountable for such violation.

(5) Each day that a violation is permitted to exist shall constitute a separate offense. The imposition of any fine shall not exempt the offender from compliance with the requirements of this Ordinance.

~~No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$ _____ or imprisoned for not more than _____, or both, for each violation. Each day the violation continues shall be deemed a new violation. In addition, the violator shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent {community name}~~

~~from taking such other lawful action as is necessary to prevent or remedy any violation.~~

SECTION F. ENFORCEMENT PROCEEDINGS IN TRIBAL COURT

(1) Jurisdiction: The Chitimacha Tribal Court shall have jurisdiction over any person alleged to have committed a violation of this Ordinance.

(2) Initiating Enforcement Action in Tribal Court: The Chitimacha Tribe of Louisiana, acting through its Chief Administrative Officer or a person designated by the Chief Administrative Officer, may initiate a proceeding in Chitimacha Tribal Court according to the following procedures:

(a) The Chief Administrative Officer must serve the alleged offender with a citation that includes:

(i) The name and address of the party being cited;

(ii) The provision of this Ordinance allegedly violated;

(iii) A brief description of the violation; and

(iv) The relief requested.

(b) The Chief Administrative Officer shall file proof of service, the citation, and any evidence that may support the citation, with the Chitimacha Tribal Court. The Chief Administrative Officer shall serve the summons issued by the Chitimacha Tribal Court at least seven days prior to the hearing date identified in the summons.

(c) At any time before the hearing held by the Chitimacha Tribal Court on a citation, the Chief Administrative Officer may amend the citation and the relief requested therein, provided that the amended citation is served on the alleged offender and filed with the Chitimacha Tribal Court.

(d) At any time before the Chitimacha Tribal Court makes a final decision on the offenses alleged in the citation, the Chief Administrative Officer may in his or her discretion withdraw the citation, which shall result in the citation being dismissed with prejudice. Said withdraw must be in writing, filed with the Chitimacha Tribal Court, and served on the alleged offender.

(3) Proceedings for Tribal Court Enforcement Action: A proceeding initiated in the Chitimacha Tribal Court shall be held in accordance with the following:

(a) No later than seven days after the citation is filed, the Clerk of Court must place the matter on for hearing and issue a summons that identifies the date, time, and place of the

hearing. The Clerk of Court shall notify the Chief Administrative Officer that the summons has been issued within three days of its issuance. The hearing shall be scheduled no less than fourteen and no more than thirty days from the day the summons was issued. The summons must include a statement notifying the alleged offender that failure to appear at the time, date, and place identified in the summons may result in default judgment against him or her and an award by the Chitimacha Tribal Court for the relief requested in the citation.

(b) The alleged offender is not required to file an answer. Unless the alleged offender affirmatively admits an allegation, he or she shall be presumed to have denied all allegations in the citation.

(c) At the hearing before the Chitimacha Tribal Court:

(i) the Chitimacha Rules of Evidence shall not apply, but the Chitimacha Tribal Court may in its discretion issue an order governing the admission or non-admission of evidence at the hearing, provided that said order is issued and served on the parties not less than seven days prior to the hearing; and

(ii) the alleged offender may answer the citation, all alleged offenses therein, and confront any witness or evidence submitted by the Tribe against him or her.

(d) Upon review of the record and any testimony provided at the hearing, the Chitimacha Tribal Court shall issue a final order that decides whether any violation alleged in the citation was committed by the alleged offender. If a violation was committed, the order shall grant any relief that is authorized by this Ordinance and requested by the Chief Administrative Officer in the citation. If a violation was not committed, the final order shall dismiss the citation with prejudice. The Chitimacha Tribal Court shall serve the final order on the parties no later than seven days after the final order is issued.

(4) Appeals under this Section F: The Chitimacha Court of Appeals shall have jurisdiction to hear an appeal from a final order issued by the Chitimacha Tribal Court pursuant to Section F of this Ordinance, subject to the following:

(a) Only the Chief Administrative Officer or the party named in a citation may appeal a final order issued by the Chitimacha Tribal Court. Notice of the Appeal must be filed no later than thirty days after the date the final order was issued.

(b) The Clerk of Court for the Chitimacha Tribal Court shall transmit the record underlying the Chitimacha Tribal Court's final order to the Court of Appeals no later than fourteen days after the date the Notice of the Appeal was filed. The Chitimacha Court of Appeals shall accept the record that the Chitimacha Tribal Court relied on to issue its final order, except that the Chitimacha Court of Appeals may set aside any finding made by the Chitimacha Tribal Court that is unsupported by the evidence.

(c) After receiving the Notice of the Appeal, the Chitimacha Court of Appeals shall issue a briefing schedule establishing the deadlines for filing briefs and the oral argument date, if any. In order to set a briefing schedule, the Chitimacha Court of Appeals may schedule a conference.

(d) The Chitimacha Court of Appeals' jurisdiction under this Section F is limited to determining whether the final order is arbitrary and capricious or contrary to this Ordinance or the Constitution of the Chitimacha Tribe of Louisiana.

(e) Upon reviewing the record and hearing oral arguments, if any, the Chitimacha Court of Appeals shall issue a decision. The Chitimacha Court of Appeals may only decide as follows:

(i) If the Chitimacha Court of Appeals concludes that the final order is arbitrary and capricious or contrary to the applicable law, it may modify the final order, in which case the order is final and not subject to further review, or it may reverse and remand the final order to the Chitimacha Tribal Court for further proceedings.

(ii) If the Chitimacha Court of Appeals concludes that the final order is not arbitrary and capricious and is not contrary to the applicable law, it shall affirm the final order.

SECTION G. ADMINISTRATIVE ENFORCEMENT OF VIOLATIONS

(1) The Chitimacha Tribe of Louisiana, through its Chief Administrative Officer, in his or her discretion, may enforce a potential violation under this Section G notwithstanding the enforcement procedures identified in Section F.

(2) The Chief Administrative Officer may investigate alleged violations of this Ordinance and, if warranted and based on said investigation, issue and serve on the alleged offender a written citation that includes:

(a) The name and address of the party being cited;

(b) The provision of this Ordinance allegedly violated;

(c) A brief description of the violation;

(d) The evidence relied on to support the decision;

(e) The penalty proposed; and

(f) The date and time that the party can meet with the Chief Administrative Officer to respond to the citation.

(3) The alleged offender shall have an opportunity to contest the allegations in the citation by meeting in-person with the Chief Administrative Officer. At this in-person meeting, the alleged offender may contest the allegations in the citation and submit any evidence he or she deems appropriate. The in-person meeting shall be scheduled no earlier than seven days and no later than thirty days after the date of the citation's service.

(4) The Chief Administrative Officer shall keep a record of all evidence used to support or contest the citation.

(5) After the in-person meeting required under Section G(3), the Chief Administrative Officer shall issue a written final order that either dismisses the citation with prejudice or determines that the alleged offender violated the Ordinance and describes the justification for that determination. The Chief Administrative Officer shall serve the final order on the party named in the citation no later than seven days after the final order is issued.

(6) If the Chief Administrative Officer issues a final order determining that a person violated this Ordinance, the offender shall not be entitled to the privileges and benefits afforded under the National Flood Insurance Program until the offender cures or remedies the violation, as determined by the Chief Administrative Officer. Such a final order may not impose any other penalty. Nothing in this Section G(6) shall preclude or otherwise limit the Chief Administrative Officer's authority to enforce a violation of this Ordinance under Section F.

(7) Appeals under this Section G: The Chitimacha Tribal Court shall have jurisdiction to hear an appeal from a final order issued by the Chief Administrative Officer pursuant to Section G of this Ordinance, subject to the following:

(a) Only the party named in a citation may appeal a final order issued by the Chief Administrative Officer. Notice of the Appeal must be filed no later than thirty days after the date the final order was issued.

(b) The Chief Administrative Officer shall transmit the record underlying the final order to the Chitimacha Tribal Court no later than fourteen days after the date the Notice of the Appeal was filed. The Chitimacha Tribal Court shall accept the record that the Chief Administrative Officer relied on to issue its final order, except that the Chitimacha Tribal Court may set aside any finding made by the Chief Administrative Officer that is unsupported by the evidence or may augment the record if the appellant can demonstrate by clear and convincing evidence that relevant evidence was excluded from the record transmitted under this Subparagraph G(7)(b).

(c) After receiving the Notice of the Appeal, the Chitimacha Tribal Court shall issue a briefing schedule establishing the deadlines for filing briefs and the oral argument date, if any. In order to set a briefing schedule, the Chitimacha Tribal Court may schedule a conference with the parties.

(d) The Chitimacha Tribal Court’s jurisdiction under this Section G is limited to determining whether the final order is arbitrary and capricious or contrary to this Ordinance or the Constitution of the Chitimacha Tribe of Louisiana.

(e) Upon reviewing the record and hearing oral arguments, if any, the Chitimacha Tribal Court shall issue a decision. The Chitimacha Tribal Court may only decide as follows:

(i) If the Chitimacha Tribal Court concludes that the final order is arbitrary and capricious or contrary to the applicable law, it may modify the final order, in which case the order is final and not subject to further review, or it may reverse and remand the final order to the Chief Administrative Officer for further proceedings.

(ii) If the Chitimacha Tribal Court concludes that the final order is not arbitrary and capricious and is not contrary to the applicable law, it shall affirm the final order.

SECTION FH. CERTIFICATION OF ADOPTION

This Flood Damage Prevention Ordinance is adopted as of July , 2018.

APPROVED: _____
(community official)

PASSED: _____
(adoption date)

ORDINANCE BECOMES EFFECTIVE: _____
(effective date)

I, the undersigned, {Jacqueline Juncaname of certifying official}, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the {Chitimacha Tribe of Louisiana governing body}, at a regular meeting duly convened on {date}.

Signature of Certifying Official

{Chitimacha Tribe of Louisiana community name}

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