



NCA 21-009

CLASSIFICATION: #28. LANDS AND MINERALS

A LAW OF THE MUSCOGEE (CREEK) NATION CREATING A NEW CHAPTER 11, ENTITLED "FLOODPLAINS" IN MCNCA TITLE 28 "LAND AND MINERALS"

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. Findings. The National Council finds that:

A. The flood hazard areas of Creek, Hughes, Mayes, McIntosh, Muskogee, Okfuskee, Okmulgee, Rogers, Seminole, Tulsa and Wagoner Counties of the State of Oklahoma are subject to periodic inundation, which results in 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 public health, safety and the general welfare of the Nation.

B. 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, flood-proofed or otherwise protected from flood damage.

C. There is a need for a Floodplain Ordinance for the Muscogee (Creek) Nation to address the issues created by flood hazards and properly ensure the public health, safety and general welfare of the Nation.

SECTION TWO. NEW LAW. The following new law shall be codified in Title 28 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

TITLE 28. LAND AND MINERALS

CHAPTER 11. FLOODPLAIN ACT

**SUBCHAPTER 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE
AND METHODS**

§ 11-101. Short title and codification

This Act shall be known and may be cited as the Muscogee (Creek) Nation Floodplain Act (hereinafter the "Act") and shall be codified as Chapter 11 in Title 28, "Land and Minerals" of the Muscogee (Creek) Nation Code Annotated.

§ 11-102. Purpose

The purpose of these statutes is to promote the public health, safety and general welfare of the Nation and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric telephone and sewer lines, streets and bridges located in floodplains;
- F. 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
- G. Insure that potential buyers are notified that property is in a flood area.

§ 11-103. Methods of Reducing Flood Losses

In order to accomplish its purposes; these statutes use the following methods:

- A. 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;

B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

D. Control filling, grading, dredging and other development which may increase flood damage; and

E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

SUBCHAPTER 2. DEFINITIONS

§ 11-201. 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 these statutes in this Act its most reasonable application.

A. "Accessory Structure" means a structure which is on the same parcel of property as the principle structure and the use of which is incidental to the use of the principle structure (such as garages and storage sheds).

B. "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.

C. "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.

D. "Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater alluvial chance of flooding to an average depth of one to three 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.

E. "Area of Special Flood Hazard" means the land in the floodplain within a community subject to a one 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 ratemaking has been completed in preparation for publication of the FIRM. Zone A usually is refined into Zones A, AE, AH, AO or A1-99.

F. "Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

G. "Base Flood Elevation" means the elevation in feet above mean sea level of the 1% chance flood as defined as the base flood defined above.

H. "Basement" means any area of the building having its floor sub-grade, or below ground level on all sides.

I. "Board" means the Oklahoma Water Resources Board.

J. "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.

K. "Development" means any man-made change in 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.

L. "Elevated Building" means a non-basement building: 1) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor elevated above the ground level by means of pilings, column, (posts and piers), or shear walls parallel to the floor of the water; and 2) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D. "Elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

M. "Existing Construction" means for the purpose 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."

N. "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 the effective date of the floodplain management Regulations adopted by a community.

O. "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).

P. "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; or 2) the unusual and rapid accumulation or runoff of surface waters from any source.

Q. "Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

R. "Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency containing flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

S. "Floodplain Administrator" means a person accredited by the Board or a nationally or locally recognized floodplain management organization and designated to administer and implement laws and regulations relating to the management of the floodplains.

T. "Floodplain or Flood-Prone Area" means any land area susceptible to being inundated by water from any source (see definition of flood or flooding).

U. "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.

V. "Floodplain Management Regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, or 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.

W. "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 areas 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.

X. “Flood Proofing” means any combination of structural and non-structured 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.

Y. “Floodway (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.

Z. “Functionally Dependent Use” means a use that 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.

AA. “Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

BB. “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 the Interior; or 4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either: a) by an approved state program as determined by the Secretary of the Interior; or b) directly by the Secretary of the Interior in states without approved programs.

CC. “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.

DD. "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.

EE. "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 44 CFR § 60.3 of the National Flood Insurance Program Regulations.

FF. "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".

GG. "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.

HH. "Mean Sea Level" means for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

II. "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, 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.

JJ. "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.

KK. "Recreational Vehicle" means a vehicle which is: 1) built on a single chassis; 2) 400 square feet or less when measured at the largest horizontal projections; 3) designed to be self-propelled or permanently towable by a light duty truck; and 4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

LL. "Special Flood Hazard Area" – see Area of Special Flood Hazard.

MM. "Start of Construction" means (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 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 foundation. Permanent construction does not include land preparation, such as cleaning, 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.

NN: "Structure" means a walled and roofed building, including a gas or liquid storage tank that is principally above the ground, as well as a manufactured home.

OO. "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

PP. "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 includes structures that have included "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 by the local code enforcement official and which are the minimum necessary conditions; or 2) any alteration of a "historic structure" provided that the alteration would not preclude the structure's continued designation as a "historic structure."

QQ. "Variance" means a grant of relief to a person from the requirement of these statutes or ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by these statutes. (For full requirements see 44 CFR § 60.6 of the National Flood Insurance Program Regulations).

RR. "Violation" means the failure of a structure or other development to be fully compliant with this community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §§60.3(b)(5), (c)(4), (c)(10), or (d)(3) is presumed to be in violation until such time as that documentation is provided.

SS. "Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

SUBCHAPTER 3. GENERAL PROVISIONS

§ 11-301. Lands to which these Statutes Apply

These floodplain management statutes shall apply to all areas of special flood hazard within the reservation of the Muscogee (Creek) Nation.

§ 11-302. Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard where applicable for Muscogee (Creek) Nation as identified by the Federal Emergency Management Agency in the current scientific and engineering reports entitled:

A. the "Flood Insurance Study (FIS) for Creek County, Oklahoma and Incorporated Areas," dated May 18, 2009, with accompanying Flood Insurance Rate Map (FIRM) dated May 18, 2009, and any revisions thereto;

B. the "Flood Insurance Study (FIS) for Hughes County, Oklahoma and Incorporated Areas," dated May 16, 2019, with accompanying Flood Insurance Rate Map (FIRM) dated May 16, 2019, and any revisions thereto;

C. the "Flood Insurance Study (FIS) for Mayes County, Oklahoma and Incorporated Areas," dated September 13, 2019, with accompanying Flood Insurance Rate Map (FIRM) dated September 13, 2019, and any revisions thereto;

D. the "Flood Insurance Study (FIS) for McIntosh County, Oklahoma and Incorporated Areas," dated May 16, 2019, with accompanying Flood Insurance Rate Map (FIRM) dated May 16, 2019, and any revisions thereto;

E. the "Flood Insurance Study (FIS) for Muskogee County, Oklahoma and Incorporated Areas," dated February 4, 2011, with accompanying Flood Insurance Rate Map (FIRM) dated February 4, 2011, and any revisions thereto;

F. the Estimated Base Flood Elevation data for Okfuskee County as published online at <http://webapps.usgs.gov/infrm/estBFE>;

G. the "Flood Insurance Study (FIS) for Okmulgee County, Oklahoma and Incorporated Areas," dated January 6, 2011, with accompanying Flood Insurance Rate Map (FIRM) dated January 6, 2011, and any revisions thereto;

H. the "Flood Insurance Study (FIS) for Rogers County, Oklahoma and Incorporated Areas," dated September 30, 2016, with accompanying Flood Insurance Rate Map (FIRM) dated September 30, 2016, and any revisions thereto;

I. the "Flood Insurance Study (FIS) for Seminole County, Oklahoma and Incorporated Areas," dated July 18, 2011, with accompanying Flood Insurance Rate Map (FIRM) dated July 18, 2011, and any revisions thereto;

J. the "Flood Insurance Study (FIS) for Tulsa County, Oklahoma and Incorporated Areas," dated May 2, 2019, with accompanying Flood Insurance Rate Map (FIRM) dated May 2, 2019, and any revisions thereto; and

K. the "Flood Insurance Study (FIS) for Wagoner County, Oklahoma and Incorporated Areas," dated September 30, 2016, with accompanying Flood Insurance Rate Map (FIRM) dated September 30, 2016, and any revisions thereto;

Are hereby adopted by reference and declared to be a part of this ordinance.

§ 11-303. Establishment of Development Permit

A Development Permit shall be required to ensure conformance with the provisions of these floodplain management statutes.

§ 11-304. Compliance

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

§ 11-305. Abrogation and Greater Restrictions

These statutes are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these statutes and another ordinance, easement, covenant, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall apply.

§ 11-306. Interpretation

In the interpretation and application of this Act, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under Muscogee (Creek) Nation Law.

§ 11-307. Warning and Disclaimer of Liability

The degree of flood protection required by these statutes 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. These statutes do 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. These statutes 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 these statutes or any administrative decision lawfully made hereunder.

SUBCHAPTER 4. ADMINISTRATION

§ 11-401. Designation of the Floodplain Administrator

The Muscogee (Creek) Nation Principal Chief shall designate the Emergency Management Manager to the position of Floodplain Administrator to administer and implement the provisions of these statutes and other appropriate sections of 44 CFR § 60.1, et seq. (National Flood Insurance Program Regulations) pertaining to floodplain management.

§ 11-402. Duties & Responsibilities of the Floodplain Administrator

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

- A. Maintain and hold open for public inspection all records pertaining to the provisions of these statutes.
- B. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.

C. Review, approve, or deny all applications for development permits required by adoption of these statutes.

D. 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 Act Amendments of 1972, U.S.C. § 1251, *et seq.*), from which prior approval are required.

E. 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.

F. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, the Oklahoma Water Resources Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

G. Assure that the flood carrying within the altered or relocated portion of any watercourse is maintained.

H. When base flood elevation data has not been provided in accordance with §11-302 of this chapter, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data and flood way date available from a Federal, State, or other source, in order to administer the provisions of Subchapter 5.

I. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones AI-A30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect or the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

J. Under the provisions of 44 CFR § 65.12 of the National Flood Insurance Program Regulations, a community may approve certain development in Zones AI-30 AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

K. Become certified and retain certification by a nationally or locally recognized floodplain management organization.

L. After a disaster or other type of damage occurrence to structures in Reservation, determine if the residential & non-residential structures & manufactured homes have been substantially damaged and enforce the substantial improvement requirement.

§ 11-403. Permit Procedures

A. Application for a 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:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
3. A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of §11-502.(B) of this chapter;
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
5. Maintain a record of all such information in accordance with § 11-402.A of this chapter.

B. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of these statutes and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
6. 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;

7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damages, for the proposed use; and
10. The relationship of the proposed use to the comprehensive plan for that area.

§ 11-404. Variance Procedures

A. The Appeal Board, as established by the National Council, shall hear and render judgment on requests for variances from the requirements of these statutes. The Appeal Board shall consist of the members of the National Council *Land, Natural Resources, and Cultural Preservation Committee*. Upon review of the appeal, which shall consist of permitting the applicant to present his/her position as well as allowing the Floodplain Administrator to present his/her position, the Appeal Board shall make a decision to either reverse or uphold the request for a variance. A decision shall be made by the Appeal Board within a reasonable amount of time.

B. The Appeal Board 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 these statutes.

C. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision to the courts established by the Nation.

D. 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.

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

F. Variances may be issued for new construction and substantial improvements 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, providing the relevant factors in §11-403.B of this chapter have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

G. Upon consideration of the factors noted above and the intent of these statutes, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of these statutes (§ 11-102).

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

I. 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 structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

J. Prerequisites for granting variances:

1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
2. Variances shall only be issued upon:
 - a. Showing a good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. 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, regulations or ordinances.
3. A written notice will be provided to any person granted a variance to build a structure below the base flood elevation. This notice will inform the variance applicant that the cost of flood insurance will be commensurate with the increased risk resulting from permitting the structure to be built lower than the base flood elevation.

K. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

1. The criteria outlined in § 11-404.A-I are met; and
2. 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.

L. Any person seeking a variance shall file a petition with the Appeal Board, accompanied by a filing fee of Twenty-Five Dollars (\$25.00). All appeals must be in writing and provided to the Appeal Board at least five (5) days in advance of an LNC Committee Meeting.

SUBCHAPTER 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

§ 11-501. General Standards

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

A. 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;

B. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

C. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

D. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are located at or above the base flood elevation plus one foot so as to prevent water from entering or accumulating within the components during conditions of flooding;

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

F. 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 floodwaters; and

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

§ 11-502. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) §11-302; (ii) § 11-402.H; or (iii) § 11-503(C) of this chapter, the following provisions are required:

A. 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 plus one foot. 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 § 11-403.A.1 is satisfied.

B. 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 plus one foot or together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one foot the structure is water tight 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. The Floodplain Administrator shall maintain a record of all flood proofing certifications that includes the specific elevation (in relation to mean sea level) to which each structure has been flood proofed.

C. Enclosures – new construction and substantial improvements, with fully enclosed areas below the lowest flood 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 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:

1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
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 floodwaters.

D. Manufactured Homes –

1. Require that all manufactured homes to be placed within Zone A on a community's FHBM or 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.
2. Require that manufactured homes that are placed or substantially improved within Zones AI-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 plus one foot and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
3. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones AI-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (D) of this section be elevated so that either:
 - a. The bottom of the longitudinal structural I-beam of the manufactured home is at or above the base flood elevation plus one foot; and
 - b. Elevated on reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement to support the manufactured home chassis.

E. Recreational Vehicles – Require that recreational vehicles placed on sites within Zones AI-30, AH, and AE on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use; or

3. Meet the permit requirements of § 11-403.1 of this chapter, and the elevation and anchoring requirements for “manufactured homes” in paragraph D of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

F. Accessory Structure –

1. Structure is low valued and represents a minimal investment.
2. Structure shall be small and not exceed 600 square feet in size.
3. Structure shall be unfinished on the interior.
4. Structure can be used only for parking and limited storage.
5. Structure shall not be used for human habitation (including work, sleeping, living, cooking, or restroom areas).
6. Service facilities such as electrical and heating equipment must be elevated to or above the BFE or flood proofed.
7. Structure is constructed and placed on building site so as to offer the minimum resistance to the flow of floodwaters.
8. Structure is designed to have low flood damage potential, i.e. constructed with flood resistance materials.
9. Structure firmly anchored to prevent flotation, collapse, and lateral movement.
10. Floodway requirements must be met in the construction of the structure.
11. Openings to relieve hydrostatic pressure during a flood shall be provided below the BFE.
12. Structure is to be located so not to cause damage to adjacent and nearby structures.

§ 11-503. Standards for Subdivision Proposals

A. All Subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Subchapter 1 of these statutes.

B. All proposals for the development of subdivisions including the placement of manufactures home parks and subdivisions shall meet Development Permit requirements of §11-303; Subchapter 4, § 11-403; and the provisions of Subchapter 5 of these statutes.

C. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise

provided pursuant to Subchapter 3, § 11-302 or Subchapter 4, § 11-402(H) of these statutes.

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

E. 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.

§ 11-504. Standards for Areas of Shallow Flooding (AO/AH Zones)

Located within the areas of special flood hazard established in Sub-Chapter 3, § 11-302, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flows may be evident. Such flooding is characterized by ponding or sheet flow. Therefore, the following provisions apply:

A. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation plus one foot or the highest adjacent grade at least as high as the depth number specified in feet plus one foot on the community's FIRM (at least two feet plus one foot freeboard if no depth number is specified).

B. All new construction and substantial improvements of **non-residential** structures:

1. Have the lowest floor (including basement) elevated to or above the base flood elevation plus one foot or the highest adjacent grade at least as high as the depth number plus one foot specified in feet on the community's FIRM (at least two feet plus one foot freeboard if no depth number is specified), or
2. Together with attendant utility and sanitary facilities be designed so that below the specified base flood depth plus one foot in an AO Zone, or the Base Flood Elevation plus one foot in an AH Zone, the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Sub-Chapter 4, § 11-403.(A)(1), are satisfied.
4. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

§ 11-505. Floodways

Floodways located within areas of special flood hazard established in § 11-302 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, potential projectiles and erosion potential, the following provisions shall apply:

A. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

B. If Sub-Chapter 5, § 11-505.A, above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sub-Chapter 5.

C. Under the provisions of 44 CFR Chapter I, 44 CFR § 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

§11-506. Severability

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

SUBCHAPTER 6. PENALTIES FOR NONCOMPLIANCE

§ 11-601. Failure to Comply

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Act and other applicable statutes/Regulations. Violation of the provisions of this Act by failure to comply with any

of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor.

§ 11-602. Violations or Citation issued by the Building Code Inspector or Tribal Officer

Any person who fails to comply with any or all of the requirements or provisions of this Act or who fails or refuses to comply with any notice, order of direction of the Building Code Inspector or any other authorized employee of the Muscogee (Creek) Nation (in a code enforcement capacity) shall be guilty of a summary offense and, upon conviction, shall pay a fine to the Muscogee (Creek) Nation of not less than Twenty-Five Dollars (\$25.00) nor more than Six Hundred Dollars (\$600.00) plus costs of prosecution. In default of such payment, all property of person shall be impounded until violator appears in Tribal Court to have property released. The violator shall be removed by force off tribal land until their appearance in Tribal Court. Each day during which any violation of this Act continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Act. The imposition of a fine or penalty for any violation of, or noncompliance with, this Act shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations and noncompliances within a reasonable time.

§ 11-603. Violations or Civil Citation issued by the Zoning Officer or Tribal Official

Any person who fails to comply with any or all of the requirements or provisions of this Act or who fails or refuses to comply with any notice, order of direction by the Zoning Officer or Tribal Official shall be guilty of a Civil Offense and upon conviction, shall pay a civil fine to the Muscogee (Creek) Nation of not less than Five Hundred Dollars (\$500.00) plus the costs of prosecution. Each day during which any violation of this Act continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Act. The imposition of a fine or penalty for any violation of, or noncompliance with, this Act shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time.

§ 11-604. Right to Appeal

Any person who fails to comply with any or all of the requirements or provisions of this Act or who fails or refuses to comply with any notice, order of direction of the Zoning Officer or any other authorized employee of the Muscogee (Creek) Nation shall be given notice that they have the right to appeal, within thirty (30) days of receiving such notice.

§ 11-605. Public Nuisance

Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Act, may be declared by the Muscogee (Creek) Nation to be a public nuisance and abatable as such.

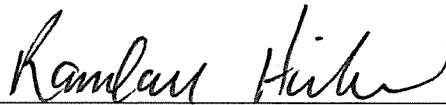
§ 11-606. Other Action

Nothing herein contained shall prevent the Muscogee (Creek) Nation from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION THREE. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 27th day of **February, 2021.**

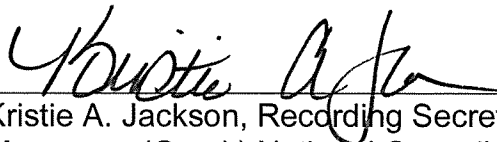
IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Randall Hicks, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

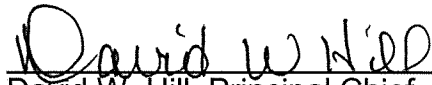
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with **Sixteen** members attending this meeting on the 27th day of **February, 2021** and that the above is in conformity with the provisions therein adopted by a vote of 15 in favor, 0 against and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Kristie A. Jackson, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 9th day of March, 2021 to the above Law, **NCA 21-009** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



David W. Hill, Principal Chief
Muscogee (Creek) Nation

