

**ARTICLE I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

**Section A. Constitutional Authority.**

Under the authority vested it by the Constitution of the Prairie Island Indian Community, the Community Council (also referred to as the “Tribal Council”) hereby adopts the following Flood Damage Prevention Ordinance and Floodplain Management Regulations designed to promote public health, safety; and general welfare of its members.

**Section B. Findings of Fact.**

1. The flood hazard areas located on the Prairie Island Indian Community Reservation are subject to periodic inundation which results in potential loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions, in an area of special flood hazard, that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.
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 community’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 from the hazards of flooding;
2. Minimize expenditure of 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 Tribe;
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 an in area of special flood hazard;

6. Help provide for the sound use and development of an area of special flood hazard so as to minimize areas scarred by floods;
7. Ensure that Community Members are notified that property is located in an area of special flood hazard; and
8. Ensure that those who occupy an area of special flood hazard assume responsibility for their actions.

#### **Section D. Methods of Reducing Flood Losses.**

In order to accomplish its purposes, this Ordinance includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural floodplains, streams, channels, and natural protective barriers which help accommodate or channel flood waters;
4. Controlling, filling, grading, dredging, and other development which may increase erosion or flood damage; and
5. Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

#### **Section E. Effective Date.**

This Ordinance shall become effective upon the date of its adoption by the Prairie Island Indian Community Tribal Council.

#### **ARTICLE II. DEFINITIONS.**

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

**Accessory Structure** (Appurtenant structure) means a structure, which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**Addition** (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

**Appeal** means a request for a review of the interpretation of any provision of this Ordinance or a request for a variance.

**Area of Special Flood Hazard** is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year.

**Base Flood** means the flood having a one-percent chance of being equaled or exceeded in any given year (also called the “100-year flood”). Base Flood is the term used throughout this Ordinance.

**Basement** means that portion of a building having its floor sub-grade (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 the supporting foundation system.

**Building** *see* **Structure**

**Crawlspace** means an enclosed area below the base flood elevation and as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters.

**Critical Facility** means a facility for which even a slight chance of flooding might be too great. Critical Facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

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

**Elevated Building** means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), and shear walls.

**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing Construction** means any structure for which the “start of construction” commenced before February 16, 2011.

**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) are completed before the effective date of February 16, 2011.

**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 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:

- a. The overflow of inland or tidal waters;
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Boundary and Floodway Map (FBFM)** means the official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

**Flood Insurance Rate Map (FIRM)** means an official map of a community, on which FEMA has delineated the areas of special flood hazard, the regulatory floodway, and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** is the official hydraulic & hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FFBM (where applicable) and the water surface elevation of the base flood.

**Floodplain** means any land area susceptible to flooding.

**Floodplain Management** means the operation of an overall program of corrective and preventative measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Flood Damage Prevention Ordinance (FDPO) or Floodplain Management Regulations** means this Ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power, which control development in flood-prone areas. This term describes federal or tribal regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**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 one foot.

**Floodway Fringe** means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

**Functionally Dependent Facility** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales or service facilities.

**Hardship** (as related to variances of this Ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Prairie Island Indian Community Tribal Council requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest Adjacent Grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a building.

**Increased Cost of Construction (ICC)** means the cost to repair a substantially damaged building that exceeds the minimum repair cost and cost that is required to bring a substantially damaged building into compliance with the local Flood Damage Prevention Ordinance (FDPO). ICC Insurance coverage is provided in a standard (NFIP) flood insurance policy.

**Lowest Adjacent Grade** means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

**Lowest Floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, 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 non-elevation design standards of this Ordinance.

**Manufactured Home** means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**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.

**Market Value** means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value), or adjusted assessed values.

**Mean Sea Level** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this Ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD).

**National Geodetic Vertical Datum (NGVD)** as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

**New Construction** means any structure for which the “start of construction” commenced after February 16, 2011. The term also 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 this Ordinance as adopted by the Prairie Island Indian Community Tribal Council.

**North American Vertical Datum (NAVD) of 1988**--The vertical control datum established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988. It replaces the National Geodetic Vertical Datum of 1929.

**Obstruction** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard, or change the direction and or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

**Public Safety and Nuisance** means anything that is injurious to safety or health of an entire community or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin.

**Recreational Vehicle** means a vehicle that is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a 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 one foot.

**Repetitive Loss** means flood-related damages sustained by a structure on two separate occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damages, on the average, equaled or exceeded 25% of the market value of the building at the time of such flood event.

**Special Flood Hazard Area (SFHA)**(*see Area of Special Flood Hazard*) means an area having special flood hazard and shown on a Flood Hazard Boundary Map (FHBM), or FIRM as Zone A, AE, AH, or AO.

**Start of Construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For 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 a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

**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 damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures, which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a building required to comply with existing health, sanitary, or safety code violations which have been identified prior to permit issuance, and which are solely necessary to assure safe living conditions; or
- b. Any alterations of a “historic structure,” provided that the alteration would not preclude the structure’s continued designation as a “historic structure.”

**Substantially improved existing Manufactured Home Parks or Subdivisions** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvements commenced.

**Variance** is a grant of relief from the requirements of this Ordinance, which permits construction in a manner that would otherwise be prohibited by this Ordinance.

**Violation** means the failure of a structure of other development to be fully compliant with this Ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**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.

### **ARTICLE III. GENERAL PROVISIONS.**

#### **Section A. Lands to Which This Ordinance Applies.**

This Ordinance shall apply to all areas of special flood hazard within the exterior boundaries of the Prairie Island Indian Community reservation or otherwise within the jurisdiction of the Prairie Island Indian Community.

#### **Section B. Basis for Establishing the Areas of Special Flood Hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Goodhue County, Minnesota and unincorporated areas, dated September 25, 2009, and the Flood Insurance Rate Map (FIRM) Panel Numbers 27049C0040E, 27049C0045E, 27049C0065E, 27049C0160E and other supporting data, and any revision thereto, are adopted by reference, and declared to be a part of this Ordinance. The Prairie Island Indian Community reservation (NFIP Community Number 270903) is located on the Mississippi River and the Mississippi overflow channel through Clear Lake and Goose Lake, between cross-sections AM through AX on FIRM Panel Numbers 0160, 0045, 0065, and 0040 of



the Flood Boundary and Floodway Map for Goodhue County and is dated September 25, 2009. The Flood Insurance Study and FIRM maps are on file with the Tribal Secretary, Prairie Island Indian Community Tribal Council, Prairie Island Indian Community, 5636 Sturgeon Lake Road, Welch, Minnesota 55089.

### **Section C. Establishment of Development Permit.**

A development permit shall be required in conformance with the provisions of this Ordinance prior to the commencement of any development activities.

### **Section D. Compliance.**

1. No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations. Violations 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 be punishable by a fine not to exceed one thousand dollars (\$1000).
2. 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 person for whom such buildings are erected, repaired, altered, changed or remodeled in violation of this Ordinance and shall be held accountable for such violation.
3. Any building or structure, including mobile homes, erected or being erected, constructed, altered, repaired, converted or maintained, or any building or structure, including mobile homes, or land use in violation of this Ordinance or other regulations made under the authority of the Prairie Island Indian Community is hereby declared to be a nuisance per se and the Prairie Island Indian Community may institute proceedings for the purposes of restraining any violation of any of the provisions of this Ordinance.
4. 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.

### **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 conflict or overlap, whichever imposes the more stringent regulations shall prevail.

### **Section F. Interpretation.**

In the interpretation and application of the 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, which may be exercised by the Prairie Island Indian Community.

### **Section G. Warning and Disclaimer of Liability.**

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of special flood hazard 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 Prairie Island Indian Community or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

### **Section H. Non-Waiver of Sovereign Immunity.**

Nothing in the Title shall be construed as limiting, waiving or abrogating, the sovereignty or the sovereign immunity of the Prairie Island Indian Community, or any of its agencies, departments, agents, officials or employees.

## **ARTICLE IV. ADMINISTRATION.**

### **Section A. Designation of the Tribal Floodplain Management Administrator.**

The Tribal Council is hereby charged with the administration and implementation of this Ordinance by granting or denying development permit applications in accordance with its provisions. The Tribal Council may delegate the administration and implementation of this Ordinance to the Tribal Engineer and/or other appropriate staff.

## **Section B. Establishment of Development Permits.**

A development permit shall be obtained before any new construction or development begins within any area of special flood hazard as established in Article III, Section B of this Ordinance.

Application for a development permit shall be made on forms furnished by the Tribal Council and may include, but not be limited to:

Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
3. Certification from a registered professional engineer or architect that the flood-proofing methods for any non-residential structure meet the flood-proofing criteria in Article V, Section B.2;
4. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

## **Section C. Duties and Responsibilities of the Tribal Floodplain Management Administrator.**

Duties of the Tribal Council shall include, but not be limited to:

1. Permit Review
  - (a) Review all development permits to assure that the permit requirements of this Ordinance have been satisfied;
  - (b) Review all development permits to determine that all necessary permits have been obtained from all tribal, federal, state or local governmental agencies from which prior approval is required;
  - (c) Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purpose of this Ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated developments will not increase the water surface elevation of the base flood more that one foot at any point.
2. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with this Ordinance, the Tribal Council shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any tribal, federal, state, or other source as criteria for requiring that new construction, substantial improvement, or other development in Zone A are administered in accordance with Article V, Section B.

3. Information to be Obtained and Maintained

- (a) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (b) For all new or substantially improved flood-proofed structures:
  - (i) Verify and record the actual elevation (in relation to mean sea level) to which the structure has been flood-proofed;
  - (ii) Maintain the flood-proofing certifications required in Article IV, Section B.
- (c) Maintain for public inspection all records pertaining to the provision of this Ordinance.

4. Alteration of Watercourses

- (a) Notify adjacent communities prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article VI, Section B.

**ARTICLE V. PROVISIONS FOR FLOOD HAZARD REDUCTION**

**Section A. General Standards**

In all areas of special flood hazard the following provisions are required:

1. New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
2. Manufactured homes shall be anchored to prevent 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 standard shall be in addition to and consistent with applicable tribal requirements for resisting wind forces;
3. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
4. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
5. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems: and discharges from the systems into flood waters;
8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
9. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this Ordinance, shall meet the requirements of “new construction” as contained in this Ordinance; and
10. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this Ordinance, shall be undertaken only if said non-conformity is not furthered, extended or is replaced with a building that is in compliance with this Ordinance.

### **Section B. Specific Standards**

In all areas of special flood hazard where base flood elevation data have been provided, as set forth in Article III, Section B, the following provisions are required.

1. Residential Construction. New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than **two (2) feet** or more above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure,

openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of Article V, Section B.3.

2. Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than **two (2) feet** or more above the level of the base flood elevation. Buildings located in all A-Zones may be flood-proofed in lieu of being elevated provided that all areas of the building at or below an elevation two feet above the base flood elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capacity of resisting hydrostatic and hydrodynamic loads and the effect or buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Article IV, Section B.3.
3. Elevated Buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevations shall be designed to preclude finished living space and designed to allow for entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
  - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect to meet the following minimum criteria:
    - (i) Provide a minimum of two openings, on a minimum of two walls, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (ii) The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade); and
    - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
  - (b) Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
  - (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
  - (d) Where elevation requirements exceed **seven (7) feet** above the highest adjacent grade, a copy of the legally recorded deed restriction prohibiting

the conversion of the area below the lowest floor to a use or dimension contrary to the building's originally approved design, shall be presented as a condition of issuance of the final Certificate of Occupancy.

4. Standards for Manufactured Homes and Recreational Vehicles.

- (a) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision, or in all substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.
- (b) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:
  - (i) The lowest floor of the manufactured home is elevated no lower than **two (2) feet** or more above the level of the base flood elevation; or
  - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than **thirty-six (36) inches** in height above the ground.
  - (iii) The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, any manufactured home placed or substantially improved must meet the standards of Article V, Section B.4(b)(i) and (iii), are met.
- (c) All recreational vehicles placed on sites must either:
  - (i) Be fully licensed and ready for highway use (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); or
  - (ii) Be on the site for fewer than an 180 consecutive days; or
  - (iii) Meet all the requirements for new construction, including anchoring and elevation requirements of Article V, Section B.4(a) and (b)(i) and (iii) above.

5. Floodways. Located within the areas of special flood hazard established in Article III, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply:
  - (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;
  - (b) If Article V, Section B.5(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V.
  - (c) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article V, Section A.2, and the elevation standards of Article V, Section B.1 and the encroachment standards of Article V, Section B.5(a), are met.
  - (d) Floodplain developments shall maintain the floodplain carrying capacity of the channel and the adjoining floodplain of any tributary water course or drainage system where a floodway or other encroachment limit has not been specified on a FIRM.

### **Section C. Standards for Subdivision Proposals**

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), greater than fifty lots or five acres, whichever is less.

### **Section D. Critical Facilities**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities



constructed within the SFHA shall have the lowest floor elevated **three (3) feet** or more above the level of the base flood elevation at the site. Flood proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided at all critical facilities to the extent possible.

## **ARTICLE VI. VARIANCE PROCEDURES.**

### **Section A. Designation of Variance and Appeals Board**

The Prairie Island Indian Community Tribal Council as established by the Constitution of the Prairie Island Indian Community shall hear and decide appeals and requests for variances from requirements of this Ordinance.

### **Section B. Duties of Variance and Appeals Board**

The Prairie Island Indian Community Tribal Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Tribal Council in the enforcement or administration of this Ordinance. Any person aggrieved by the decision of the Tribal Council may appeal such decisions to the Prairie Island Indian Community Tribal Court. The decision shall be upheld unless the Court finds it was arbitrary and impulsive.

### **Section C. Variance Procedures**

In passing upon such applications, the Prairie Island Indian Community Tribal Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance; and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding and erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Upon consideration of the factors of Section C.1-11 and the purposes of this law, the Prairie Island Indian Community Tribal Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this law.

#### **Section D. Conditions for Variances**

1. Variances shall only be issued when there is:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship; and
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3. Any applicant seeking a variance shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (See Article V, Section B.5 - Floodways).
4. The Tribal Council shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency.

#### **Section E. Variance Notification**

1. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of insurance will be commensurate with the increase risk from the reduced lowest floor elevation.

2. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Tribal Council in the Prairie Island Indian Community Land Records and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
3. The Tribal Council will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

#### **Section F. Historic Structures**

Variances may be issued for the repair or rehabilitation of structures listed on the National Registers of Historic Places (as maintained by the U.S. Department of the Interior) or the state Inventory of Historic Places 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 to preserve the historic character and design of the structure.

#### **Section G. Special Conditions**

Upon consideration of the factors listed in Article VI, and the purposes of this Ordinance, the Prairie Island Indian Community Tribal Council may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this Ordinance.

#### **Section H. No-Impact Certification Within the Floodway**

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

#### **ARTICLE VII. SEVERABILITY.**

If any section, clause, paragraph, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional for any competent reason, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

#### **ARTICLE VIII. EFFECTIVE DATE OF ORDINANCE.**

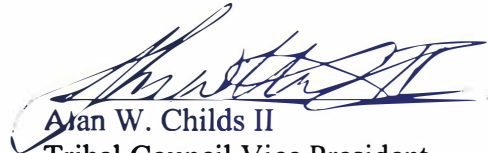
This Flood Damage Prevention Ordinance is adopted as of February 16, 2011.

#### **ARTICLE IX. RESERVED FOR FUTURE USE.**

**ARTICLE X. CERTIFICATION.**

We, the undersigned members of the Prairie Island Indian Community Tribal Council, do hereby certify that the foregoing Prairie Island Indian Community Flood Damage Prevention Ordinance was duly presented, approved and adopted by Prairie Island Indian Community Tribal Council Resolution No. 11-02-16-25 with a vote of 5 For, 0 Against, 0 Abstentions and 0 Absent at a duly called meeting of the Prairie Island Indian Community Tribal Council on February 16, 2011.

  
Victoria Winfrey  
Tribal Council President


  
Alan W. Childs II  
Tribal Council Vice President

  
Edward Buck  
Tribal Council Secretary

  
Johnny Johnson  
Tribal Council Treasurer

  
Ronald Johnson  
Tribal Council Assistant Secretary/Treasurer

**ATTESTED:**  
  
Edward Buck, Tribal Council Secretary  
Prairie Island Indian Community Tribal Council

This instrument was drafted by:  
  
Philip R. Mahowald  
General Counsel  
Prairie Island Indian Community  
5636 Sturgeon Lake Road  
Welch, MN 55089

Subscribed and sworn to before me on  
this 16 day of February, 2011.

  
Notary Public

