

TABLED

Cherokee Council House

Cherokee, (NC)
FEB 06 2020

ORDINANCE NO. 127 (2020)

WHEREAS, Tribal Council passed Ordinance No. 2 (2019) containing laws essential for the accreditation of the Tribe's Public Health Department; and

WHEREAS, as part of the public health law initiative there are other chapters of the Tribal Code that require updating in order to ensure accuracy in cross-referencing, language use and to reflect changes that would support efficiencies in the current government structure; and

WHEREAS, these proposed changes are the result of the collaborative efforts of the tribal programs that would benefit from the changes proposed.

NOW THEREFORE BE IT ORDAINED in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapter 143 shall be amended as set forth in Exhibit A.

BE IT FURTHER ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by: Office of the Attorney General for the Division of Public Health and Human Services

EXHIBIT A

Chapter 143 - BUILDING CODES AND FLOOD CONTROL

ARTICLE I. - IN GENERAL

1 Sec. 143-1. - Plan review by the Business Committee.

2 The Tribal Business Committee shall review and approve all construction, structural alterations and
3 beautification plans for all business enterprises located on the Cherokee Indian Reservation. One copy of
4 plans and specifications shall be filed with the Committee prior to approval.

5 (a) The Business Committee ~~and the Realty Office of the Cherokee Indian Agency~~ will review and
6 approve or disapprove plans for construction and beautification of business sites. Before any
7 construction or major alteration of business places is done, plans for same must be approved by
8 the Business Committee.

9 (b) Any person or firm violating the provisions of this chapter shall be subject to a fine of \$500.00.

10

11 Sec. 143-2. - Flood control—Standards for modifications.

12 Any construction or improvements proposed in a location that has a flood hazard must be designed
13 and carried out in compliance with article II of this chapter.

14 Sec. 143-3. - Reserved.

15 Sec. 143-4. - Upgrade of water system in floodplain.

16 The Tribal ~~Council upon the recommendation of the Divisions of Operations and Agriculture and~~
17 ~~Natural Resources Business Committee~~ shall ~~authorize require~~ new or replacement water systems and
18 sanitation systems ~~be designated~~ to minimize infiltration of floodwater into the systems and discharges
19 from the systems into floodwaters, and require on-site disposal systems be located so as to avoid
20 impairment or contamination during flooding.

Sec. 143-5. - Reserved.

Sec. 143-6. - Building code.

(a) The Eastern Band of Cherokee Indians adopts the North Carolina State Building Code, which shall apply to all construction on the Cherokee Indian Reservation, as set forth below.

(b) The North Carolina State Building Code provisions apply to:

(1) All commercial construction of any size, cost, type or purpose, regardless of whether it is new construction, addition, or renovation, and regardless of whether humans will occupy it; and

(2) For residential structures, the construction, alteration, repair, use, occupancy, prefabrication, or maintenance of, or any addition to, detached one- and two-family dwellings and one-family townhouses not more than three stories in height, and their accessory structures, provided those accessory structures have any dimension greater than 12 feet.

(c) *Exceptions.* Specific exceptions, to which the North Carolina State Building Code shall not apply, are the following construction activities conducted for residential structures:

(1) Fences;

(2) Structures, such as barns, garages, tool sheds, pre-fabricated buildings, that do not contain sleeping quarters or are not inhabitable by humans,

(3) Additions or renovations that cost under \$5000.00, whether or not habitable by humans;

- (4) Driveways and concrete slabs;
- (5) Additions, repairs, or maintenance that do not impact on load-bearing walls;
- (6) Repairs to roofs;
- (7) Pre-fabricated buildings already bearing evidence of inspection by applicable governmental authorities;

For commercial structures, the North Carolina State Building Code shall not apply to the mere repair or maintenance of an existing commercial building or accessory structure.

- (c1) Tribal members shall not be required to obtain an engineering certification for a structure built on pilings, provided that none of the pilings is taller than four feet from the ground to the floor sills, and that the structure is built in compliance with standard specifications developed by the Tribal building inspector in consultation with a certified engineer. The Tribal building inspector is authorized and directed to develop such standard specifications within 90 days of the effective date of this subsection, and make them available to tribal members seeking to build a structure in compliance with this subsection.
- (d) Other codes and regulations applicable. All electrical wiring, HVAC and plumbing to any structure, whether residential or commercial, and of any size, cost, type or purpose, is subject to all Tribal, state and federal laws and required inspections relating to wiring, HVAC or plumbing, regardless of whether the North Carolina State Building Code applies.
- (e) Building permits. No construction project to which the North Carolina State Building Code applies may begin prior to the issuance of a building permit. Persons proposing projects for which this chapter is applicable shall obtain a permit from the Tribal building inspector according to rules adopted by the Division of Operations and C.C. Chapter 150. The ~~Division building inspector~~ is authorized to set requirements and procedures, that are consistent with this chapter and the North Carolina State Building Code, for the issuance of permits. ~~Those requirements and procedures, and any changes thereto, shall be submitted to the Business Committee, which is empowered to approve or reject them based on their reasonableness and adherence to this chapter and the North Carolina State Building Code.~~
- (f) The ~~Division of Operations Tribal Business Committee shall be consulted concerning the rules adopted that set is empowered to and shall enact, after consultation with the building inspector,~~ a fee schedule establishing charges for the issuance of building permits. ~~The schedule may be revised from time to time at the committee's discretion.~~
- (g) An applicant for a building permit shall provide evidence of the approval of his project by the Business Committee to the building inspector at the time he applies for the permit. No permit application shall be accepted and no permit shall issue prior to Business Committee approval of the project to which the application relates.
- (h) Fees ~~established by the Business Committee pursuant to subsection (f)~~ must be paid, and evidence of payment provided to the building inspector's office, prior to issuance of a building permit within the Qualla Boundary. The following categories of projects are exempt from paying the fee, but not from obtaining a permit:
 - (1) Residential construction projects to which the North Carolina State Building Code applies;
 - (2) Construction projects of the Tribal government, except for projects of the Tribal Gaming Commission, Tribal Bingo Enterprise, Tribal Casino Gaming Enterprise, Cherokee Boys Club, Tribal Health Enterprise, any other Tribal enterprise, or corporations organized as non-profits under Chapter 55A; or
 - (3) Fees for Qualla Housing Authority projects are covered by an annual transfer from its budget to the building inspector's office, in an amount to be determined by the Business Committee after consultation with the building inspector, finance department and Qualla Housing Authority.

- (i) Payment of fees. Payment of building permit fees shall be made to and collected by the finance department, which shall provide satisfactory evidence of the payment made, in accordance with its policies, to the payor at the time of payment.
- (j) Certificate of occupancy. All Tribal and North Carolina State Building Code requirements shall be met by applicants throughout the building process, and applicants shall make their construction site available to the Tribal building inspector for the 14-step building inspection process administered by the Tribal building inspector. The building inspector shall conduct this inspection on all such residential construction projects, and shall issue a certificate of occupancy to applicants who pass this inspection.
- (k) Native stone and stone masons.
 - (1) As part of the building code adopted in this section, all commercial construction on Tribal owned lands for which the Tribe is a contracting party and which includes stone work, shall be required to use native stone and native stone masons that is supplied from Tribal owned lands and approved for the project, on the contract that is being let for bid, provided that:
 - a. Adequate supplies of native stone can be supplied to meet scheduling requirements of the project in question; and
 - b. The native stone is competitive in kind, quality and price when compared to stone from sources off of the Tribal owned lands;
 - (2) Persons or businesses providing or delivering stone to projects described in this subsection shall provide documentation to the building inspector as to whether the stone provided is native to and supplied from Tribal owned lands.
 - (3) The Tribe and contractors shall make all reasonable efforts to include the building inspector in the early stages of project design or construction to help ensure that native stone is used.
 - (4) In this subsection, "Tribe" means the government of the Eastern Band of Cherokee Indians including, but not limited to, all of its divisions, programs, enterprises and business entities. The Tribal building inspector is responsible for enforcing this requirement.
 - (5) In this subsection, "Native Stone" means stone that is located on Tribal owned lands and "Native Stone Mason(s)" mean members of the Eastern Band of Cherokee Indians that are certified according to Chapter 92 of the Cherokee Code and/or licensed with the Tribe.
 - (6) Stone masons certified under the Tribal Business Preference law, chapter 92, Cherokee Code, shall be given the first option to bid on and contract for jobs described in subsection (1), pursuant to chapter 92, Cherokee Code.

Sec. 143-7. - Hazardous and condemned structures.

To meet the special requirements of the Eastern Band of Cherokee Indians for rehabilitation or removal of hazardous or condemned structures, the following provisions are adopted applicable to residential structures, and to the extent that the North Carolina State Building Code contains provisions inconsistent with the following, those North Carolina provisions are not applicable.

For rehabilitation or removal of hazardous or condemned structures that are non-residential, the North Carolina State Building Code applies. In applying that Code to any rehabilitation or removal activities on the Qualla Boundary, references to "city" or "county" shall mean "Tribe" or "Tribal", as best fits the context, references to "city council" or its county equivalent shall mean "Division of Operations Tribal Business Committee", references to "Code Enforcement Official" shall mean "Tribal Building Inspector", and offenses referred to as Class 1 Misdemeanors shall be classified as misdemeanors with up to 30 days confinement and fines of up to \$1000.00

For structures that are of mixed residential and non-residential use, the Tribal Building Inspector shall, in his discretion, select the procedure that is best suited to preservation of the safety of life and property in the particular situation.

All dwellings, apartment houses, rooming houses or buildings or structures used as such which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relationship to human life, or which in relationship to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment are severely in contemplation of this section, unsafe buildings. No such unsafe building shall be constructed or change ownership or occupancy unless and until such time that the provisions of this Code have been met and appropriate approval obtained for such construction or change in ownership or occupancy from the Tribal building inspector. Failure to obtain said approval shall be a violation of this article and shall make the owner of the dwelling, apartment house, rooming house or building or structure used as such liable to the penalties hereinafter set forth. All such buildings sought to be constructed or as shall become vacant shall be immediately subject to the following procedure:

- (a) Prior to constructing or re-occupying any dwelling, the owner-occupant must apply for and obtain permission from the office of the Tribal building inspector. If the person desires to construct a dwelling unit, said permission shall be in the form of a building permit. If the person desires to reoccupy a vacated dwelling or occupy a new dwelling, said permission shall be in the form of a certificate of occupancy.
- (b) Reserved.
- (c) The "certificate of occupancy" of a vacated building. Prior to a change in the occupancy of any dwelling, the prospective occupant must obtain a certificate of occupancy. Upon application by the prospective occupant for said certificate, the Tribal building inspector shall order an inspection of the appropriate premises for the purpose of assessing what repairs, if any, are necessary to meet the minimum requirements of the Code. The inspection shall be made as soon as practical in order that the interested parties have an opportunity to ascertain whether the dwelling in question is worth the expense of any required repairs. The office of the Tribal building inspector shall assist the individual in every reasonable way in his inquiry about materials and labor for any required repairs. All repairs must be inspected and approved before a certificate of occupancy may be issued and before the applicant can occupy the dwelling.
- (d) Should any individual, once notified, fail to petition for the above described permits or should the office of the Tribal building inspector refuse to issue said permit upon a finding that the building or structure or portion thereof is unsafe, unsanitary or unfit for human habitation, then in that event, the Tribal building inspector shall, in accordance with the established procedure for legal notices, give the owner, agent, or person in control of such building or structure, written notice stating the defects thereof. This notice shall require the owner within a stated time either to complete specified repairs or improvements or to demolish and remove the building or structure or portion thereof.
- (e) The Tribal building inspector shall cause to be posted at each entrance to such building a notice:

"THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE TRIBAL BUILDING INSPECTOR."

Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation, or their agents, or other servants, to remove such notice without written permission of the Tribal building inspector, or for any person to enter the building except for the purpose of making the required repairs or of demolishing same.

- (f) The owner, agent, or person in control shall have the right, except in cases of emergency, to appeal from the decision of the Tribal building inspector, as provided hereinafter, and to [appeal the decision according to procedures under Chapter 150, the Administrative Procedures Act](#). ~~appear before the Tribal Business Committee at a specified time and place to show cause why he should not comply with said notice.~~

- (g) In case the owner, agent or person in control cannot be found within the stated time limit, or, if such owner, agent or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, the Tribal building inspector, after having ascertained the cost, shall cause such building or structure or portion thereof, to be demolished, secured, or required to remain vacant.
- (h) Costs incurred under paragraph 103.2(d) shall be charged to the owner of the premises if this person can be located; or this owner may himself cause the repairs or demolition to be carried out, provided that this repair or demolition shall be completed within a period to be stated by the Tribal building inspector. If the owner cannot be located or ascertained within 90 days, the demolition of the structure shall be financed by the Eastern Band of Cherokee Indians.

Sec. 143-7A. - Criminal penalties.

Whenever in this Code any act is prohibited or the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of any such provision of this Code shall be punishable by a fine of not more than \$50.00 or by imprisonment for not more than 30 days. Each day any violation of this Code continues shall constitute a separate offense. Whenever the penalties of this section are sought to be imposed, the violator shall be brought before the Cherokee court for a speedy trial.

Sec. 143-7B. - Civil enforcement.

Willful failure or refusal to comply with this Code may shall also constitute grounds for civil penalties, termination of the violator's ~~traders permit or other~~ business license, and/or termination of the violator's lease, after notice and a hearing ~~before the Tribal Business Committee~~.

Sec. 143-8. - Electrical code.

The Eastern Band of Cherokee Indians adopts the National Electrical Code which shall apply to all construction and buildings on the Cherokee Indian Reservation.

Sec. 143-9. - Tribal Inspectors.

- (a) The position of Housing Inspector is hereby created within the Department of Public Infrastructure and Facilities within the Division of Operations. The duties of the Inspector shall be to inspect all housing and buildings, in accordance with all applicable codes and ordinances and to recommend and seek means whereby housing standards may be upgraded on the Reservation.
- (b) The position of Electrical Inspector is hereby created. The duties of the Inspector shall be to inspect the electrical installation and service all housing and buildings in accordance with all applicable codes and ordinances.
- (c) The position of Electrical Inspector is hereby authorized to be performed by an individual who performs electrical inspection services for any of the five county governments in which Cherokee trust lands are located, so long as such person or such position has been approved by written contract approved and executed by the Principal Chief for the Tribe. Such contracted individual shall have all powers and authority delegated to the Electrical Inspector by the Tribal Building Code.

Sec. 143-10. - Fire prevention.

- (a) The Cherokee Fire Department is authorized to inspect or to cause to be inspected as often as deemed necessary or appropriate all commercial buildings, structures, and premises within the jurisdiction of the Eastern Band of Cherokee Indians for the purposes of ascertaining and causing to be corrected any condition which may cause fire or explosion, endanger life from fire or explosion, or any violations of the provisions of this section.
- (b) The Eastern Band of Cherokee Indians shall enforce fire prevention through the Cherokee Code by adoption by reference of the code known as and entitled, the Fire Prevention Code as adopted by the North Carolina Building Code Council. Amendments to codes and standards adopted by

reference herein which are adopted and published by the North Carolina Building Code Council shall be effective on the trust lands of the Eastern Band of Cherokee Indians at the time such amendments become a part of the North Carolina Fire Prevention Code. The provisions of the Fire Prevention Code shall apply to all commercial construction projects and commercial buildings on the Cherokee Indian Reservation.

- (c) The Cherokee Fire Department is authorized and empowered to adopt such policies, and the Division of Operations is empowered to adopt public rules and regulations according to C.C. Chapter 150 that may be necessary and desirable for the programs created and/or administered by the Division. Such rules and regulations shall be in effect in all Tribal services areas. ~~and shall be in substantial compliance with C.C. Chapter 150.~~ The Fire Chief shall be considered the local authority having jurisdiction wherever adopted fire and building codes reference this position.
- (d) The Fire Marshal and qualified employees of the Cherokee Fire Department shall be considered Fire Code Officials and are authorized to enforce the provisions of the Fire Prevention Code and shall have the authority to render interpretations of this code.
- (e) Fire code officials shall conduct plan reviews for all new commercial construction projects on the Cherokee Indian Reservation and Tribal owned trust lands. The Fire Marshal will consult with the Project Manager and the Building Inspections Department to ensure discrepancies identified during plans review are corrected prior to construction.
- (f) Fire code officials shall conduct inspections of new commercial facilities and perform acceptance testing of all fire protection systems. Fire code officials shall approve all fire protection features and systems prior to a certificate of compliance or a certificate of occupancy being issued by the Building Inspections Department.
- (g) The fire code official is authorized to require and issue operational permits for all operations as described in Section 105 of the North Carolina Fire Prevention Code, including the following:
 - i. Amusement buildings;
 - ii. Carnivals and fairs;
 - iii. Explosives;
 - iv. Fireworks displays;
 - v. Hot works operations;
 - vi. Tents and temporary membrane structures exceeding 400 square feet;
- (h) The Fire Marshal is authorized to establish an inspection schedule and ensure inspections are conducted for all commercial facilities and businesses operating on the Qualla Boundary and Tribal Trust Property.
- (i) Commercial property/business owners are expected to correct violations identified by the Fire Code Official(s) within a timely manner as determined by the Fire Code Official. Serious violations which Fire Code Officials determine to be an immediate fire hazard or are immediately dangerous to life or health shall be corrected on the spot. If the hazard cannot be corrected on the spot, the Fire Code Official has the authority to authorize disconnection of utility service to the building, structure, system or process to eliminate immediate hazard(s).
- (j) The Fire Marshal has full authority to impose a fine of up to \$500.00 per violation. Payments of fines by person(s) or entity(ies) found to be in violation shall be made to the Tribal finance office.
- (k) The office of Attorney General shall be authorized to collect any fines or civil penalties remaining unpaid after 60 days' notice by civil action in the Cherokee court.
- (l) The Tribal Business Committee shall be authorized to deny, suspend or terminate a violator's ~~traders permit or other~~ business license based on failure or refusal to pay the assessed fire or civil penalty, after giving notice and an opportunity to be heard.

(m) —The decision of the Business Committee may be appealed to the Cherokee Tribal Court; provided, however, that the Court's review shall be limited to whether the decision of the Business Committee was an abuse of discretion.

Sec. 143-11. - Mobile homes.

The following action shall be required before a mobile home may be delivered to the Cherokee Indian Reservation for use as a residence:

- (a) The site must be investigated and approved by the Division of Operations according to rules setting standards for mobile home sites. ~~Indian Health Service.~~
- (b) The occupant must obtain a permit from the Division of Operations. ~~Tribal Business Committee~~ before a mobile home may be brought onto the Reservation or before a mobile home may be relocated within the Reservation. The permit shall include, but not be limited to, requirement of a site evaluation ~~by the Bureau of Indian Affairs~~, confirmation of ingress and egress by the Tribal Realty Department. ~~Roads Commission~~, review of flood and archaeological status by the Department of Tribal ~~Environmental Office~~, and obtaining a building permit from the building inspector.
- (c) The occupant shall comply with all rules and regulations applicable to installation of water or sewer services by the Division of Operations. ~~Indian Health Service.~~
- (d) The Tribal building inspector is empowered to enforce the provisions of this section, including ordering removal of non-compliant mobile homes and/or ordering Tribal utilities to cut off water and/or sewer services to non-compliant mobile homes.

ARTICLE II. - FLOOD DAMAGE PREVENTION

Sec. 143-12. - Findings of fact.

- (a) The flood prone areas within the jurisdiction of the Eastern Band of Cherokee Indians are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

Sec. 143-13. - Purpose.

The purpose of this article is to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (a) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (b) Require that uses vulnerable to floods, including facilities that 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 floodwaters;
- (d) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (e) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 143-14. - Objectives.

The objectives of this article are to:

- (a) Protect human life, safety, 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 losses and interruptions;
- (e) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (f) Minimize damage to private and public property due to flooding;
- (g) Make flood insurance available to the community through the National Flood Insurance Program;
- (h) Maintain the natural and beneficial functions of floodplains;
- (i) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (j) Ensure that potential buyers are aware that property is in a special flood hazard area.

(Ord. No. 217, 5-8-2010)

Sec. 143-15. - Definitions.

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

Accessory structure (appurtenant structure) means a structure 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. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this article.

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100- year) flood based on future-conditions hydrology.

Area of shallow flooding means a designated Zone AO or AH on a community's flood insurance rate map (FIRM) with base flood depths determined to be from one to three feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard. See "Special flood hazard area (SFHA)."

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

Base flood elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal, state, or other source using FEMA approved engineering methodologies. This elevation, when combined with the freeboard, establishes the regulatory flood protection elevation.

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

Building. See "Structure."

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Design Flood See "Regulatory Flood Protection Elevation."

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, excavation or drilling operations, or storage of equipment or materials.

Development Activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Disposal means, as defined in N.C.G.S. § 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Elevated building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

Existing building and existing structure means any building and/or structure for which the "start of construction" commenced before date the community's first floodplain management ordinance was adopted.

Existing manufactured home park or manufactured home 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) was completed before the original effective date of the floodplain management regulations adopted by the community.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood boundary and floodway map (FBFM) means an official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are

delineated. This official map is a supplement to and shall be used in conjunction with the flood insurance rate map (FIRM).

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the special flood hazard areas have been defined as zone A.

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood insurance rate map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Flood insurance study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

Flood prone area. See "floodplain."

Flood zone means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain administrator is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain development permit means any type of permit that is required in conformance with the provisions of this article, prior to the commencement of any development activity.

Floodplain management means the operation of an overall program of corrective and preventive 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.

Floodplain management regulations means this article and other zoning laws, subdivision regulations, building codes, health regulations, special purpose specifications, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood-resistant material means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Floodway means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, 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 (1) foot.

Floodway encroachment analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

Freeboard means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation (BFE) plus the freeboard establishes the regulatory flood protection elevation.

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

Hazardous waste management facility means, as defined in N.C.G.S. ch. 130A, article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the secretary of interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the secretary of 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;
- (c) Individually listed on a local inventory of historic landmarks in communities with a certified local government (CLG) program; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a certified local government (CLG) program.

Certified local government (CLG) programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway

- delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light Duty Truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons;
or
- (c) Available with special features enabling off-street or off-highway operation and use.

Lowest adjacent grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.

Manufactured home means a structure, 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 "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

~~*Mean sea level* means, for purposes of this article, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NGVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.~~

New construction means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Non-Conversion Agreement means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed

with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

Non-encroachment area 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 as designated in the flood insurance study report.

Post-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial flood insurance rate map.

Pre-FIRM means construction or other development which the "start of construction" occurred before the effective date of the initial flood insurance rate map.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

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

Recreational vehicle (RV) means a vehicle, which 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 temporary living quarters for recreational, camping, travel, or seasonal use.

(e) Is fully licensed and ready for highway use.

(For the purpose of this ordinance, "Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.)

Reference level is the top of the lowest floor for structures within special flood hazard areas designated as Zone A1-A30, AE, A, A99 or AO.

Regulatory flood protection elevation means the "base flood elevation" plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In special flood hazard areas where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

Remedy a violation means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

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

Salvage yard means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Solid waste disposal facility means any facility involved in the disposal of solid waste, as defined in NCGS § 130A-290(a)(35).

Solid waste disposal site means, as defined in N.C.G.S. § 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in subsection 143-16(b) of this article.

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

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial damage means damage of any origin sustained by a structure during any one-year period 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. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-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 combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost 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 correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Article 4 Section E of this ordinance.

Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more

restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

Temperature Controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

Variance is a grant of relief from the requirements of this article.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 143-17 and 143-18 is presumed to be in violation until such time as that documentation is provided.

Water surface elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

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.

Sec. 143-16. - General provisions.

(a) *Lands to which this article applies.* This article shall apply to all special flood hazard areas within the jurisdiction of the Eastern Band of Cherokee Indians and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

(b) The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated April 19th, 2010 for the Eastern Band of Cherokee Indians and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Eastern Band of Cherokee Indians are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

Basis for establishing the special flood hazard areas. The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for the Eastern Band of Cherokee Indians dated April 19, 2010 which are adopted by reference and declared to be a part of this article.

(Reference: The initial flood insurance rate maps for the Eastern Band of Cherokee Indians, County Unincorporated Area, dated May 17TH, 1989.)

(c) *Floodplain development permit.* A floodplain development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas. Persons proposing projects for which this chapter is applicable shall obtain a permit from the Division of Agriculture and Natural Resources according to rules adopted by the Division of Agriculture and Natural Resources and C.C. Chapter 150. The Division is authorized to set requirements and procedures, that are consistent with this chapter and the National Floodplain Insurance program, for the issuance of permits. See subsection 143-16(b).

(d) *Compliance.* No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.

- (e) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and others conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) *Interpretation.* In the interpretation and application of this article, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) *Warning and disclaimer of liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Eastern Band of Cherokee Indians or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.
- (h) *Penalties for violations.* Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Eastern Band of Cherokee Indians from taking such other lawful action as is necessary to prevent or remedy any violation.

Sec. 143-17. - Administration.

- (a) *Designation of floodplain administrator.* The Division of Agriculture and Natural Resources shall provide for a Tribal Environmental Regulatory Specialist, hereinafter referred to as the "Floodplain Administrator", ~~is hereby appointed to administer and to administer and~~ implement the provisions of this article.
- (b) Application Floodplain development application, permit and certification requirements.
 - (1) *Application requirements.* Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
 - a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in subsection 143-16(b), or a statement that the entire lot is within the special flood hazard area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 143-16(b);
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in section 143-16(b);

- (v) The base flood elevation (BFE) where provided as set forth in subsections 143-16(b), 143-17(c) or 143-18(d);
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - (vii) The certification of the plot plan by a registered land surveyor or professional engineer.
- b. Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
- (i) Elevation in relation to ~~mean-sea-level~~ North American Vertical Datum (hereafter "NAVD") 1988 of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to NAVD 1988 mean-sea-level to which any non-residential structure in zone AE, A or AO will be flood-proofed; and
 - (iii) Elevation in relation to NAVD 1988 mean-sea-level to which any proposed utility systems will be elevated or flood-proofed.
- c. If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- d. A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:
- (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 143-18(b)(4)c. when solid foundation perimeter walls are used in zones A, AO, AE, AH and A1-30A99.
- e. Usage details of any enclosed areas below the lowest floor.
- f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- g. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
- h. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of subsection 143-18(b), subsections (6) and (7) of this article are met.
- i. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (2) *Permit requirements.* The floodplain development permit shall include, but not be limited to:
- a. A complete description of the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
 - b. The special flood hazard area determination for the proposed development in accordance with available data specified in subsection 143-16(b).

- c. The regulatory flood protection elevation required for the reference level and all attendant utilities.
- d. The regulatory flood protection elevation required for the protection of all public utilities.
- e. All certification submittal requirements with timelines.
- f. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of subsection 143-18 (f), have been met, as applicable.
- g. The flood openings requirements, if in zones A, AO, AE, AH or A1-30A99.
- h. Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
- i. A statement, that all materials below BFE/RFPE must be flood resistant materials.

(3) *Certification requirements.*

a. Elevation certificates:

- (i) An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- (ii) An elevation certificate (FEMA Form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- (iii) A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

b. Floodproofing certificate.

(i) If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean-sea-level NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a

professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a ~~certificate~~ Certificate of Compliance/Occupancy.

- (ii) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- c. If a manufactured home is placed within zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of subsection 143-18(b)(3)b.
- d. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- e. Certification exemptions. The following structures, if located within zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
- (i) Recreational vehicles meeting requirements of subsection 143-18(b)(6)a.;
 - (ii) Temporary structures meeting requirements of subsection 143-18(b)(7); and
 - (iii) Accessory structures less than 150 square feet meeting requirements of subsection 143-18(b)(8).

(4) Determinations for existing buildings and structures

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Inspector, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

(d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

(c) Duties and responsibilities of the Administrator. The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this article have been satisfied.
- (2) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of subsection 143-18(f) are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with the provisions of subsection 143-17(b)(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with the provisions of subsection 143-17(b)(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of subsection 143-17(b)(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of subsection 143-17(b)(3) and subsection 143-18(b)(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When base flood elevation (BFE) data has not been provided in accordance with the provisions of subsection 143-16(b), obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to subsection 143-18(d)(2)b., in order to administer the provisions of this article.

- (12) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with the provisions of subsection 143-16(b), obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this article.
 - (13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard area is above the base flood elevation (BFE), advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
 - (14) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
 - (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local article and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
 - (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
 - (17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
 - (18) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
 - (19) Follow through with corrective procedures of subsection 143-17(d).
 - (20) Review, provide input, and make recommendations for variance requests.
 - (21) Maintain a current map repository to include, but not limited to, ~~the historical and effective~~ FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of subsection 143-16(b) of this article, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.
 - (22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).
- (d) *Corrective procedures.*
- (1) *Violations to be corrected.* When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

- (2) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - a. That the building or property is in violation of the floodplain management regulations;
 - b. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - c. That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
 - (3) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the flood damage prevention article, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
 - (4) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
 - (5) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.
- (e) *Variance procedures.*
- (1) The Tribal Business Committee as established by the Tribal Council of the Eastern Band of Cherokee Indians, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this article.
 - (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in Chapter 7A of the North Carolina General Statutes.
 - (3) Variances may be issued for:
 - a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - b. Functionally dependent facilities if determined to meet the definition as stated in subsection 143-15 of this article, provided provisions of subsection 143-17(e)(9)b., c., and e. have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - c. Any other type of development, provided it meets the requirements of this Section.
 - (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location as defined under section 143-15 of this article as a functionally dependent facility, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. 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.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this article.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for variances:
- a. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or articles.
 - b. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances shall only be issued prior to development permit approval.
 - e. Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create

nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or article.

- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.
 - a. The use serves a critical need in the community.
 - b. No feasible location exists for the use outside the special flood hazard area.
 - c. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - d. The use complies with all other applicable federal, state and local laws.
 - e. The Eastern Band of Cherokee Indians has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

Sec. 143-18. - Provisions for flood hazard reduction.

(a) *General standards.* In all special flood hazard areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities equipment shall be located at or above the RFPE or designed and/or located so as and installed to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevationthe occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

a. Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

b. Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designated to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- ~~(8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article.~~

(98) Nothing in this article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this article and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

(409) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in subsection 143-17(e)(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 143-17(e)(3).

(410) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(421) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(432) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(443) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(454) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(465) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation (BFE) shall apply.

(b) *Specific standards.* In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in subsection 143-16(e), or subsection 143-18(d), the following provisions, in addition to the provisions of subsection 143-18(a), are required:

(1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 143-15 of this article.

(2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the ~~regulatory~~ ~~Flood~~ ~~Protection~~ ~~Elevation~~, as defined in section 143-15 of this article. Structures located in A, AE, AO, AH and A1-30A99 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the ~~regulatory~~ ~~Regulatory Flood Protection Elevation~~ are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO zones, the floodproofing elevation shall be in accordance with subsection 143-18(g)(2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such

certification shall be provided to the Floodplain Administrator as set forth in subsection 143-17(b)(3), along with the operational plan and the inspection and maintenance plan.

(3) *Manufactured homes.*

- a. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in section 143-15 of this article.
- b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to N.C.G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- c. All enclosures or skirting below the lowest floor shall meet the requirements of subsection 143-18(b)(4).
- d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(4) *Elevated buildings.* Fully enclosed area, of new construction or substantially improved structures, which are below the lowest floor:

- a. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(b) Shall not be temperature-controlled or conditioned:

bc. —Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation; and

ed. Shall include, in zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

- (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
- (ii) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
- (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
- (iv) The bottom of all required openings shall be no higher than one foot above the adjacent grade;
- (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

- (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

e. Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.

(5) *Additions/improvements.*

- a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
~~A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.~~
- b. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage 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. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
 - (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

(ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

- (6) *Recreational vehicles.* Recreational vehicles shall either:
- a. ~~Be on-site for fewer than 180 consecutive days and 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 has no permanently attached additions); or Temporary Placement~~
 - (i) Be on site for fewer than 180 consecutive days; or
 - (ii) 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 has no permanently attached additions.)
 - b. Meet Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.
- (7) *Temporary nonresidential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:
- a. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 - b. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - d. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - e. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- (8) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
- a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - b. Accessory structures shall not be temperature-controlled;
 - c. Accessory structures shall be designed to have low flood damage potential;
 - d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - e. Accessory structures shall be firmly anchored in accordance with the provisions of subsection 143-18(a)(1);
 - f. All service facilities such as electrical shall be installed in accordance with the provisions of subsection 143-18(a)(4); and
 - g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection 143-18(b)(4)(c).

An accessory structure with a footprint less than 150 square foot or that is a minimal investment of \$3,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of subsection 143-18 (b)(2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 143-17 (b)(3).

(9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- a. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
- b. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
- c. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
- d. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - (i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other Development.

- a. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.
- b. Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- c. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other

side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 143-17(b)(3).

(c) Reserved.

(d) *Standards for floodplains without established base flood elevations.* Within the special flood hazard areas designated as approximate zone A and established in subsection 143-16(b), where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of subsection 143-18(a), shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:

a. When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this article and shall be elevated or floodproofed in accordance with standards in subsection 143-18(a) and (b).

b. When floodway or non-encroachment data is available from a federal, state, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of subsection 143-18(b) and (f).

c. All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference in accordance with subsection 143-16(b) and utilized in implementing this article.

d. When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation, as defined in subsection 143-15. All other applicable provisions of subsection 143-18(b) shall also apply.

(e) *Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.* Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of subsection 143-18(a) and (b); and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of 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.

- (f) *Floodways and non-encroachment areas.* Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in subsection 143-16(b). The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in subsection 143-18(a) and (b), shall apply to all development within such areas:
- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - b. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
 - (2) If subsection 143-18(f)(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.
 - (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - a. The anchoring and the elevation standards of subsection 143-18(b)(3); and
 - b. The no encroachment standard of subsection 143-18(f)(1).
- (g) *Standards for areas of shallow flooding (zone AO).* Located within the special flood hazard areas established in subsection 143-16(b), are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to subsection 143-18(a) and (b), all new construction and substantial improvements shall meet the following requirements:
- (1) The reference level shall be elevated at least as high as the depth number specified on the flood insurance rate map (FIRM), in feet, plus a freeboard of two feet, above the highest adjacent grade; or at least four feet above the highest adjacent grade if no depth number is specified.
 - (2) Nonresidential structures may, in lieu of elevation, be floodproofed to the same level as required in subsection 143-18(g)(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with subsection 143-17(b)(3) and subsection 143-18(b)(2).
 - (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- (h) *Standards for areas of shallow flooding (zone AH).* Located within the Special Flood Hazard Areas established in 143-16(b), are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:
- (1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Sec. 143-19. - Legal status provisions.

- (a) *Effect on rights and liabilities under the existing flood damage prevention article.* This article in part comes forward by re-enactment of some of the provisions of the flood damage prevention article enacted 5-17-1989 amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention article of the Eastern Band of Cherokee Indians enacted on April 19, 2010, as amended, which are not reenacted herein are repealed.
- (b) *Effect upon outstanding floodplain development permits.* Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this article; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this article.
- (c) *Severability.* If any section, clause, sentence, or phrase of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this article.
- (d) *Effective date.* This ordinance shall become effective upon ratification by the principal chief.

Secs. 143-20—143-33. - Reserved.

ARTICLE III. - ALARM SYSTEMS

Sec. 143-34. - Purpose.

The purpose of this article is to provide for and promote the health, safety and welfare of the general public and to require alarm system users and alarm system monitoring companies to properly maintain and use alarm systems in order to reduce unnecessary police and fire responses to false alarms. The obligation of complying with the requirements of this article, and liability for failing to do so, is placed upon the parties responsible for owning, operating, monitoring, or maintaining automatic alarm systems.

Sec. 143-35. - Definitions.

As used in this article, the following terms have the meanings indicated unless the context clearly requires another interpretation:

Alarm dispatch request means a notification to a law enforcement agency that an alarm, either manual or automatic has been activated at a particular alarm site.

Alarm system means a device or series of devices, including, but not limited to, systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual or electronic signal indicating an alarm condition and intended to summon law enforcement service. "Alarm system" does not include an alarm installed on a vehicle or person unless the vehicle or personal alarm is permanently located at a site.

Alarm system monitoring company means any individual, partnership, corporation, or other form of association, that engages in the business of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing or monitoring an alarm system in an alarm site.

Alarm system user means the person having or maintaining a property, burglary, robbery, fire, smoke, sprinkler system flow or panic alarm. It means only a subscriber when the system is connected to an alarm system monitoring company.

Duress alarm means a silent alarm system signal generated by the manual activation of a device intended to signal a life threatening situation or a crime in progress requiring law enforcement response.

False alarm means the activation of an alarm when:

- (1) There is no evidence of a crime or other activity on the premises that would warrant a call for immediate police or fire assistance or investigation, and
- (2) No individual who was on or near the premises or who viewed a video communication from the premises, called for the dispatch or confirmed a need for immediate police or fire response.

Fire alarm means a signal initiated by a device such as a manual fire alarm box, automatic fire detector, waterflow switch, smoke detector, or other device whose activation is indicative of the presence of a fire or a fire signature.

Holdup alarm means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

License means a license issued by the North Carolina Alarm Systems Licensing Board to an alarm company to sell, install, monitor, repair, or replace alarm systems.

Monitoring means the process by which an alarm company receives signals from an alarm system and relays an alarm dispatch request to the Police Department for the purpose of summoning law enforcement response to the alarm site.

Property alarm or *burglary alarm* means any system, device, or mechanism for detection and reporting of any unauthorized entry or attempted entry or property damage upon property protected by the system which may be activated by sensors or other techniques, and when activated, automatically transmits a telephone message, emits an audible or visible signal that can be heard or seen by persons outside the protected premises, or transmit a signal beyond the protected premises.

Robbery alarm or *panic alarm* means any system, device, or mechanism activated by an individual on or near the premises, to alert others that a robbery or any other crime is in progress, or that the user is in need of immediate assistance or aid in order to avoid injury or serious bodily harm, which meets the following criteria: The system is installed on property; it is designed to be activated by an individual for the purpose of summoning assistance to the premises; it transmits a telephone message or emits an audible, visible, or electronic signal that can be heard, seen or received by persons outside the protected premises; and it is intended to summon police or fire assistance to the premises.

System subscriber means any person, corporation, or other business entity that purchased or contracted with an alarm system monitoring company for any alarm system.

Sec. 143-36. - Registration.

- (a) No alarm user shall operate, or cause to be operated an alarm system without a valid alarm registration issued by the Chief of Police or by his designee. A separate registration is required for each alarm site.
- (b) The annual fee for a registration or registration renewal for an alarm site shall be \$50.00. The initial annual registration fee must be submitted to the Chief of Police or his designee within five days after the alarm installation or alarm takeover.
- (c) Upon receipt of a completed application form and the alarm registration fee, the Chief of Police shall register the applicant unless the applicant has:
 - (1) Failed to pay a fine assessed under section 143-39; or
 - (2) Had an alarm registration for the alarm site suspended or revoked, and the violation causing the suspension or revocation has not been corrected.
- (d) Each alarm registration application must include the following information:

- (1) The name, complete address (including apt. #), and telephone numbers of the person who will be the registration holder and be responsible for proper maintenance and operation of the alarm system and payment of fees assessed under this article;
 - (2) The classification of the alarm site as either residential (includes houses, mobile homes, apartments, etc.) or commercial;
 - (3) For each alarm system located at the alarm site, the classification of the alarm system, i.e., burglary, holdup, duress, or other, for each purpose whether audible or silent;
 - (4) Mailing address if different from the alarm site;
 - (5) Any dangerous or special conditions present at the alarm site;
 - (6) Name and telephone numbers of at least two individuals who are able and have agreed to receive notification of an alarm activation at any time; respond to the alarm site within 30 minutes; and upon request can grant access to the alarm site and deactivate the alarm system if such becomes necessary;
 - (7) Type of business conducted at the alarm site;
 - (8) Signed certification from the alarm user stating:
 - a. The date of installation, conversion, or takeover of the alarm system, whichever is applicable;
 - b. The name, address, and phone number of the alarm company performing the alarm system installation, conversion, or alarm system takeover and responsible for providing repair service to the alarm system;
 - c. The phone number of the alarm company monitoring the alarm system if different from the installing alarm company;
 - d. That a set of written operating instructions for the alarm system, including written guidelines on how to avoid false alarms, have been left with the applicant; and
 - e. That the alarm company has trained the applicant in proper use of the alarm system, including instructions on how to avoid false alarms.
 - (9) A statement that law enforcement's response may be based on factors such as: availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, etc.
- (e) Any false statement of a material fact made by an applicant for the purpose of obtaining an alarm registration shall be sufficient cause for refusal to issue a registration.

Sec. 143-37. - Duties of the alarm user.

- (a) An alarm user shall:
 - (1) Maintain the premises and the alarm system in a manner that will minimize or eliminate false alarms;
 - (2) Make every reasonable effort to respond or cause a representative to respond to the alarm system's location within 30 minutes when notified by the Police Department to deactivate a malfunctioning alarm system, to provide access to the premises, or to provide alternative security for the premises; and
 - (3) Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report.
- (b) An alarm user shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of an alarm site will sound for no longer than ten minutes after being activated.

- (c) An alarm user shall not use automatic voice dialers.
- (d) An alarm user shall maintain at each alarm site a set of written operating instructions for each alarm system.
- (e) An alarm user shall have a properly licensed alarm company inspect the alarm system after two false alarms in a 12-month period from the date of registration issuance or renewal. After four false alarms within a 12-month period from the date of registration issuance or renewal the alarm user must have a properly licensed alarm company modify the alarm system to be more false alarm resistant or provide additional user training as appropriate. Anyone installing, servicing or modifying an alarm system shall complete and follow the installers' false alarm prevention checklist provided in section 143-43.

Sec. 143-38. - Duties of alarm system monitoring companies; verification process.

- (a) Every person, firm, association, corporation, or business that engages in or holds itself out as engaging in an alarm systems business within the territory of the Eastern Band of Cherokee Indians must be licensed by the North Carolina Alarm Systems Licensing Board and in addition shall:
 - (1) Register with the Cherokee Chief of Police, pay a \$100.00 registration fee, present proof of license, and certificate of liability insurance with the following minimum coverage: \$50,000.00 for bodily injury or death of one person as a result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his employment, subject to aid limit for one person, \$100,000.00 because of bodily injury or death of two or more persons as the result of the negligent act or acts of the principal insured or his agent operating in the course and scope of his or her agency; \$20,000.00 because of injury to or destruction of property of others as the result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his or her agency. A current certificate of insurance shall be maintained on file with the Chief of Police at all times;
 - (2) Provide the Chief of Police current and correct information about the nature of its property alarms, burglary alarms, robbery alarms, fire alarms, and panic alarms and its method of monitoring its program for preventing false alarms, its maintenance and testing procedures and frequencies, and its method of disconnecting audible alarms, as the Police Chief may require by rule;
 - (3) Maintain a current list of all subscribers' names and the associated protected premises it serves, which list shall be accessible to the Chief of Police or designee at all times;
 - (4) Use control panels tested for conformance to the Security Industry Association (SIA) Control Panel Standard - Features for False Alarm Reduction;
 - (5) After completion of the installation, the alarm system monitoring company shall review with the alarm user the customer false alarm prevention checklist provided in section 143-44.
 - (6) Attempt to verify through an established verification process every alarm signal, except a duress or holdup alarm activation before requesting a law enforcement response to an alarm system site to prevent false alarms from resulting in unnecessary police and/or fire dispatches;
 - (7) Ensure that all alarm users of alarm system equipped with a duress or holdup alarm are given adequate training as to the proper use of the duress or holdup alarm;
 - (8) Contact the alarm user when an alarm dispatch request is made; and
 - (9) When the Chief of Police reports that there appears to have been a false alarm at a subscriber's premises, work cooperatively with the subscriber and the Chief of Police in order to determine the cause thereof and prevent recurrences.
- (b) For purposes of this section, a verification process is an independent method of determining that a signal from an automatic alarm system reflects a need for immediate police and/or fire assistance or investigation. The verification process shall not take more than five minutes calculated from the time that the alarm signal is received by the alarm system monitoring company until a decision is made

whether to call for police and/or fire dispatch. The means of verification must include one or more of the following:

- (1) The establishment of voice communication with an authorized person at or near the premises who may indicate whether or not need for immediate police and/or fire assistance or investigation exists;
 - (2) A feature that permits the alarm system user or a person authorized by the user to send a special signal to the alarm system monitoring company that will cancel an alarm immediately after it has been sent and prevent the monitoring company calling for a police and/or fire dispatch;
 - (3) The installation of a video system that provides the alarm system monitoring company, when the signal is received, with the ability to ascertain that activity is occurring which warrants immediate police and/or fire assistance or investigation;
 - (4) A confirmation that a signal reflects a need for immediate police and/or fire assistance or investigation either by the alarm system user, a person at or near the premises, or an alternate response agency made before dispatching police; or
 - (5) An alternate system that the Chief of Police or designee determines has or is likely to have a high degree of reliability.
- (c) Violation of this Subsection by an individual, firm, association, corporation or business that engages in or holds itself out as engaging in an alarm systems business shall result in a fine of \$200.00 for the first violation and \$500.00 for all subsequent violations.

Sec. 143-39. - Fines.

- (a) An alarm user shall be subject to fines, warnings, and suspension or revocation of registration depending on the number of false alarms emitted from an alarm system within a 12-month period from the date of registration or renewal based upon the following schedule:

# of False Alarms	Fines
1	\$ 0.00
2	50.00
3	100.00
4 or more	200.00

- (b) In addition, any person operating a nonregistered alarm system will be subject to a \$200.00 fine for each false alarm, in addition to any other fines.
- (c) If cancellation occurs prior to law enforcement arriving at the scene, this is not a false alarm for the purpose of fines and no fines will be assessed.

Sec. 143-40. - Suspension.

- (a) The Chief of Police may suspend alarm response if it is determined that:

- (1) The alarm user had four or more false alarms in a 12-month period and the alarm user has failed to submit a written certification from an alarm system monitoring company that the alarm system has been inspected and repaired/modified (if necessary) by the alarm system monitoring company;
 - (2) There is a false statement of a material fact in the application for a registration; or
 - (3) The alarm user has failed to make timely payment of a fine or fee assessed under this article.
- (b) Notification: The Chief of Police shall notify the alarm user in writing whenever it is determined that response has been suspended. A description of the appeals procedure shall be included in this notification.

Sec. 143-41. - Appeals.

An alarm user may appeal the assessment of a fine or a suspension by filing a written appeal the to the Chief of Police and such appeal shall conform to the due process requirements of C.C. Chapter 150, to the Executive Director of Community Services within ten days after receipt of the fine or notice of suspension, setting forth the reasons for the appeal. An appeal fee of \$25.00 will accompany the appeal by the alarm user. The filing of an appeal with the Executive Director of Community Services stays assessment of the fine or suspension until the Executive Director makes a final decision.

Sec. 143-42. - Sovereign immunity.

Registration of an alarm system is not intended to, nor will it, create a contract, duty or obligation either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By registering an alarm system, the alarm user acknowledges that police response may be based on factors such as: availability of police officers, priority of calls, weather conditions, traffic conditions, and emergency conditions staffing levels.

Sec. 143-43. - Installer false alarm prevention program checklist.

Anyone installing, servicing or modifying an alarm system shall complete and follow the installers' false alarm prevention checklist provided in this section.

YES	NO		
_____	_____	1.	If a duress feature was installed, I thoroughly explained it.
_____	_____	2.	I confirmed that the control panel has been programmed so that:
_____	_____		(a) It will not transmit more than two alarm signals from the same zone until manually restored at the premises.
_____	_____		(b) It will delay at least fifteen seconds before initiating dialing on intrusion alarm signals.
_____	_____		(c) It has adequate delay time on entry/exit doors (delay of 45 seconds or more is recommended).

_____	_____		(d) A cancel code can be entered by the customer to cancel accidental alarms.
_____	_____	3.	I verified that police and fire panic buttons cause a siren or speaker to sound and that medical panic buttons cause an audible signal.
_____	_____	4.	I verified that the keypad(s) emit sufficient sound to inform occupants when an entry/exit door sensor has been triggered.
_____	_____	5.	I installed and tested standby/backup power.
_____	_____	6.	I reviewed the "Customer False Alarm Prevention Checklist" with the customer.
_____	_____	7.	I determined whether the customer had special telephone features, such as call waiting, and took appropriate steps to allow proper control panel dialing and monitoring center verification.
_____	_____	8.	I made sure the control panel was properly grounded.
_____	_____	9.	I made sure that all door and window contacts were properly selected, installed and tested. I considered loose fitting doors and windows, whether wide gap contacts were needed, and steel doors and windows. I followed the manufacturer's installation instructions.
_____	_____	10.	I made sure all glass breakage sensors were properly selected, installed and tested. I gave consideration to pets, on site noises and the general environment. I followed the manufacturer's installation instructions.
_____	_____	11.	All motion type detectors were properly selected, properly installed and tested. I gave consideration to pets, sunlight, other heat sources, and harsh environments. I followed the manufacturer's installation instructions.

Please explain if you answered "No" to any of the above items:

Installation Technician

Printed Name

Signature

Date

(Ord. No. 161, 2-14-2002)

Sec. 143-44. - Customer false alarm prevention program checklist.

After completion of the installation, the alarm system monitoring company shall review with the alarm user the customer false alarm prevention checklist provided in this section.

CUSTOMER FALSE ALARM PREVENTION CHECKLIST

YES	NO	(Check one)
___	___	I have been trained in the proper operation of the system.
___	___	I have been given a summary operating sheet.
___	___	I have been given the security system operating manual.
___	___	I know how to cancel an accidental alarm activation.
___	___	I have the cancellation code.
___	___	I know how to turn off motion detectors while leaving other sensors on.
___	___	I know how to test the system, including the communication link with the monitoring center.
___	___	I understand the length of delay time on designated entry/exit doors and I believe this will provide sufficient time to get in and out of the premises.
___	___	I have the alarm company phone number to request repair service or to ask questions about the alarm system.
___	___	I have been offered the option of training/no dispatch period.
___	___	I understand that indoor pets can cause false alarms and I will contact my alarm company to adjust the system if I acquire any additional indoor pets.
___	___	I know where the main control panel and transformer are located.

_____	_____	I have received an alarm sheet which describes how the alarm company will communicate with me in the event of various alarm signals.
_____	_____	I understand the importance of keeping my emergency contact information updated and I know how to do this.
_____	_____	I understand the importance of immediately advising the alarm company if my phone number changes (including area code changes)
_____	_____	I understand the importance of any other changes to my telephone service such as call waiting or a fax line.
_____	_____	I have been made aware of the alarm ordinance that governs the operation of the system and I will comply with all applicable requirements.
_____	_____	I will advise the alarm company if I do any remodeling (such as extensive painting, moving walls, doors, or windows)
_____	_____	I understand that certain building defects (such as loose fitting doors or windows, rodents, inadequate power, and roof leaks) can cause false alarms. I will correct these defects as I become aware of them.
_____	_____	The alarm company has given me written false alarm prevention techniques to help me prevent false alarms.
_____	_____	I understand it is my responsibility to prevent false alarms and I understand it is critical and my responsibility to assure that all users of the system (such as residents, employees, guests, cleaning people, and repair people) are trained on the proper use of the system.

ALARM COMPANY	CUSTOMER
_____	_____
Print name of representative	Print name
_____	_____

Signature	Signature

Title	
_____	_____
Date	Date

Secs. 143-45—143-59. - Reserved.

ARTICLE IV. - DANGEROUS BUILDINGS

Sec. 143-60. - Title.

This article shall be known and cited as the "Dangerous Buildings Code."

Sec. 143-61. - Definitions.

As used in this article, the following words and terms shall have the following meanings stated herein:

Dangerous buildings means any building or structure, residential or otherwise, that has one or more of the following defects or is in one or more of the following conditions:

- (1) A portion of the building or structure is damaged by fire, wind, flood or other cause so that the structural strength or stability of the building or structure is appreciably less than it was before the catastrophe and does not meet the minimum requirements of the North Carolina State Building Code, C.C. sections 143-6(a) and 143-7.
- (2) A part of the building or structure is likely to fall, become detached or dislodged, or collapse, and injure persons or damage property,
- (3) A portion of the building or structure has settled to such an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by the North Carolina State Building Code, C.C. sections 143-6(a) and 143-7.
- (4) The building or structure, or a part of the building or structure because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.
- (5) The building or structure, or part of the building or structure, is manifestly unsafe for the purpose for which it is used.
- (6) The building or structure is damaged by fire, wind or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their

danger, or becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful or immoral act.

- (7) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or otherwise, is unsanitary or unfit for human habitation, is in a condition that the health officer of the county determines is likely to cause sickness or disease, or is likely to injure the health, safety or general welfare of people living in the dwelling.
- (8) A building or structure is vacant, dilapidated and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.
- (9) A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not publicly offered for sale by the owner and meets any of the following conditions:
 - a. It appears to the Building Inspector that the building, structure or grounds are not properly maintained, appears to be an attractive nuisance to children, or is in such dilapidated condition as to contribute to blight, disease or vagrancy or otherwise constitutes a public nuisance.
 - b. A secondary dwelling of the owner that is regularly unoccupied for a period of time of 180 consecutive days or longer each year, it appears to the Building Inspector that the building, structure or grounds are not properly maintained, appears to be an attractive nuisance to children, or is in such dilapidated condition as to contribute to blight, disease or vagrancy or otherwise constitutes a public nuisance.

Enforcing agency means the Division of Operations as delegated to the Tribal Building Inspector's Office and/or such other official(s) or agency as may be designated by the Tribal Council to enforce this article.

Sec. 143-62. - Prohibition of dangerous buildings.

Any owner or agent keeping or maintaining any building or part thereof which is a dangerous building as defined in C.C. section 143-61 shall be unlawful.

Sec. 143-63. - Notice of dangerous building and hearing.

- (a) *Notice requirement.* Notwithstanding any other provisions of this article, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.
- (b) *Parties entitled to notice.* The notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the possessory holding as defined in C.C. 45-1.
- (c) *Contents of notice.* The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building and state that the person to whom the notice is directed shall have the opportunity at the hearing to show cause why the Hearing Officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained.
- (d) *Service of notice.* The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown at the Eastern Band of Cherokee Indians Enrollment Office. If a notice is served upon a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least ten working days before the date of the hearing included in the notice.

Sec. 143-64. - Dangerous building hearing officer and duties, hearing procedures and enforcement order.

- (a) ~~Appointment of a Hearing officer. Rules approved by the Division of Operations shall be consistent with Chapter 150 and provide for a~~ The Hearing Officer shall be appointed by the Tribal Council to hear from owners of buildings sited as unsafe or dangerous, serve at their pleasure. The Hearing Officer shall be a person who has expertise in housing matters, including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as a Hearing Officer.
- (b) ~~Filing dangerous building notice with hearing officer.~~ The enforcing agency is the Division of Operations shall file a copy of the notices of the dangerous condition of any building with the hearing officer.
- (c) *Hearing testimony and decision.* At a hearing prescribed by this article, the Hearing Officer shall take testimony of the enforcing agency, the property owner, and any interested party. Not more than five working days after completion of the hearing, the Hearing Officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained.
- (d) *Compliance with hearing officer order.* If the Hearing Officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the Hearing Officer shall so order, fixing a time in the order for the owner, agent, or lessee to comply with the order. If the building is a dangerous building under C.C. subsection 143-61(a), the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building, including, but not limited to, the maintenance of lawns, trees and shrubs.
- (e) *Noncompliance with Hearing Officer order/request to enforce order.* If the owner agent or lessee fails to appear or neglects or refuses to comply with the order issued under C.C. subsection 143-64(d), the Hearing Officer may enforce such orders the Tribal Court under rules adopted by the Division. shall file a report of the finding and a copy of the order with the Tribal Council not more than five working days after noncompliance by the owner and request that necessary action be taken to enforce the order. A copy of the findings and order of the Hearing Officer shall be served on the owner, agent or lessee in the manner prescribed in C.C. subsection 143-63(d).

~~Sec. 143-65. — Enforcement hearing before the tribal council.~~

~~The Tribal Council shall fix a date not less than 30 calendar days after the hearing prescribed in C.C. subsection 143-64(d) for a hearing on the findings and order the Hearing Officer and shall give notice to the owner, agent and lessee in the manner prescribed in C.C. 143-63(d) of the time and place of the hearing. At the hearing, the owner, agent or lessee shall be given the opportunity to show cause why the order should not be enforced. The Tribal Council shall approved, disapprove or modify the order. If the Tribal Council approves or modifies the order, the Tribal Council shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent or lessee shall comply with the order within 60 calendar days after the date of the hearing under C.C. section 143-65. In the case of an order of demolition, if the Tribal Council determines that the building or structure has been substantially destroyed by fire, wind, flood or other natural disaster and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent or lessee shall comply with the order of demolition within 21 calendar days after the date of the hearing under C.C. section 143-65.~~

Sec. 143-66. - Implementation and enforcement of remedies.

- (a) *Implementation of order by Tribal Council.* In the event of the failure or refusal of the owner or party in interest to comply with orders of the enforcing agency or the decision of Tribal Council or court orders, the Division of Operations may Tribal Council may, in its discretion, contract for the demolition, make safe or maintaining the exterior of the building or structure or grounds adjoining the building or structure.
- (b) *Reimbursement of costs.* The costs of the demolition, of making the building safe, or of maintain the exterior of the building or structure or grounds adjoining the building or structure, incurred by the Eastern Band of Cherokee Indians to bring the property into conformance with the Article shall be

reimbursed to the Eastern Band of Cherokee Indians by the owner or party in interest in whose name the property appears.

- (c) *Notice of costs.* The owner or party in interest in whose name the property appears on the possessory holding as described in C.C. § 45-1 shall be notified by the Tribal Operations Program Manager of the amount the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, by first class mail at the address shown at the Eastern Band of Cherokee Indians Enrollment Office.
- (d) *Voluntary assignment for unpaid costs.* The owner or party in interest may enter into a voluntary assignment agreement for all or party of the amount scheduled disbursement in accordance with C.C. subsection 16C-5(e).
- (e) *Court judgment for unpaid costs.* Costs incurred by The Eastern Band of Cherokee Indians for may bring action against the owner or party in interest of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure shall be deemed a debt to the Tribe. The Eastern Band of the Cherokee Indians shall garnish the owner's per capita distribution in the amount of the judgment obtained pursuant to C.C. subsections 16C-5(d)(2) and (3).

Sec. 143-67. - Penalties for nonconformance with order.

A person who fails or refuses to comply with an order approved or modified by the Tribal Council under C.C. section 143-65 within the time prescribed shall be found responsible for a civil infraction punishable by a fine not to exceed \$500.00. Each day that a violation shall continue shall constitute a separate offense. Additionally, the provisions of this article may also be enforced by suit for injunction, damages or other appropriate legal action.

Sec. 143-68. - Appeal of Tribal Council Decision.

~~Appeals of decisions or orders issued by the enforcing agency may be appealed according to Chapter 150. An owner aggrieved by any final decision or order of the Tribal Council, as applicable, under C.C. section 143-65 may appeal the decision or order to the Cherokee Court by filing a petition for review within 20 calendar days from the date of the decision. The petitioner shall serve the petition and a copy of the transcript of the Tribal Council hearing on all parties. The standard of review by the Cherokee Court shall be as follows:~~

- ~~(1) — Review of the record for errors of law;~~
- ~~(2) — Ensure that procedures specified by law or ordinance are followed;~~
- ~~(3) — Ensure that appropriate due process rights are protected including the right to offer evidence, cross-examine witnesses and inspect documents;~~
- ~~(4) — Ensure that the decision is supported by competent, material and substantial evidence in the whole record; and~~
- ~~(5) — Ensure that the decision is not arbitrary and capricious.~~

Sec. 143-69. - Severability.

The provisions of this article are declared to be severable and if any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by the Cherokee Court, it shall not affect the remainder of this article which shall continue in full force and effect.

(Ord. No. [683](#), 9-28-2017)