



AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL

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ORDINANCE NO. 21  
AMENDMENT NO. 1

FLOODPLAIN MANAGEMENT ORDINANCE  
FOR THE  
AGUA CALIENTE INDIAN RESERVATION

SECTION 1.0  
STATUTORY AUTHORIZATION,  
FINDINGS OF FACT, AND  
PURPOSE AND METHODS

- 1.1 STATUTORY AUTHORIZATION.** The Tribal Council of the Agua Caliente Band of Cahuilla Indians ("Tribal Council") is the legally recognized elected governing body of the Agua Caliente Band of Cahuilla Indians ("Tribe"), a federally recognized Indian tribe. This Floodplain Management Ordinance ("Ordinance") is enacted under the inherent sovereign authority of the Tribe and pursuant to Article V (Powers of the Tribal Council), paragraphs a, b, g, and l of its Constitution and Bylaws, as amended, as well as pursuant to any applicable delegations of federal authority to the Tribe for treatment as a state, or otherwise, under federal law.
- 1.2 FINDINGS OF FACT.**
- A. The flood hazard areas of the Agua Caliente Indian Reservation ("Reservation") are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare of the Tribe and its members.
  - B. These flood losses are typically caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazard increase flood heights and velocities, which also contributes to the above identified flood losses.
- 1.3 STATEMENT OF PURPOSE.** It is the purpose of this Ordinance to promote the public health, safety, and general welfare of the Tribe and its members, and to minimize public and private losses due to flood conditions in specific areas by providing provisions designed to:
- A. Protect human life and health;
  - B. Minimize expenditure of public money for costly flood control projects;



- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers and lessees are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**1.4 METHODS OF REDUCING FLOOD LOSSES.** In order to reduce losses from floods, this Ordinance includes methods designed to:

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Control filling, grading, dredging, and other development which may increase flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

**SECTION 2.0  
DEFINITIONS**

Except where specifically defined in this Section, all words used shall carry their customary meanings, as defined and explained in any current edition of Webster's Unabridged Dictionary. Where doubt exists concerning the dictionary definition, the Chief Planning & Development Officer will make the final decision.



**A zone** – See "Special flood hazard area".

**Accessory structure** – Means a structure that is either:

1. Solely for the parking of no more than 2 cars; or
2. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

**Accessory use** - Means a use which is incidental and subordinate to the use of the parcel of land on which it is located.

**Alluvial fan** - Means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

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

**Appeal** - Means a request for a review of the Floodplain Administrator's interpretation of any provision of this Ordinance.

**Area of shallow flooding** - Means a designated AO, AH, AR/AO, AR/AH, or VO zone on the FIRM with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** - See "Special flood hazard area."

**Base flood** - Means a flood, which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this Ordinance

**Base flood elevation (BFE)** - Means the elevation shown on the FIRM for the AE, AH, A1-30, VE, and V1-V30 zones that indicates the water surface elevation resulting from a flood has a one percent or greater chance of being equaled or exceeded in any given year.

**Basement** - Means any area of the building having its floor subgrade (i.e., below ground level) on all sides.

**Building** - See "Structure."



**Community** – A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**Conditional Letter of Map Revision** – Means FEMA’s comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevation, or the Special Flood Hazard Area. The letter does not revise an effective National Flood Insurance Program map, it indicates whether the project, if built as proposed, would be recognized by FEMA.

**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.

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

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

**Expansion to an existing manufactured home park or subdivision** - Means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Federal Emergency Management Agency (FEMA)** - Means the agency responsible for administering the National Flood Insurance Program.

**Flood, flooding, or flood water** - Means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows) - see “Mudslides.”
2. The condition resulting from flood-related erosion - see “Flood-related erosion.”

**Flood Boundary and Floodway Map (FBFM)** - Means the official map on which FEMA has delineated both the areas of special flood hazards and the floodway.



**Flood Insurance Rate Map (FIRM)** - Means the official map on which FEMA has delineated special flood hazard areas, the base flood elevations, and the risk premium zones applicable to the community.

**Flood Insurance Study** - Means the official report provided by FEMA that includes flood profiles, the FIRM, the FBFM, and the water surface elevation of the base flood.

**Floodplain or flood-prone areas** - Means any land area susceptible to being inundated by floodwaters from any source - see "Flooding."

**Floodplain Administrator** - The individual appointed to administer and enforce the floodplain management regulations, further specified in Section 4.2.

**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 Ordinance and other zoning ordinances or resolutions, subdivision regulations, building codes, health regulations, special purpose ordinances or resolutions (such as grading and erosion control) and other applications of police power, which control development in flood-prone areas. 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 risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins (1-93, 3-93, and 7-93).

**Floodway** - Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway."

**Floodway fringe** - Means the area of the floodplain on either side of the "Regulatory Floodway," where encroachment may be permitted.

**Fraud and victimization** - Means that the variance granted must not cause fraud, or victimization of, the public. In examining this requirement, the Tribal Council will consider the fact that every newly constructed building adds to government responsibilities and can remain a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject to increased risk of flood damage, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.



**Governing body** - Means the local governing unit that is empowered to adopt and implement regulations to provide for the public health, safety, and general welfare of its citizenry.

**Hardship** – Means the exceptional hardship that would result from a failure to grant the requested variance. The Tribal Council requires that the variance be exceptional, unusual, and peculiar in nature to the subject property. Mere economic or financial hardship alone is not exceptional; inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** - Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic structure** - Means any structure that is:

1. Listed individually in the National Register of Historic Places or preliminarily determined as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined as contributing to the historical significance of a registered historic district;
3. Individually listed on a Tribal inventory of historic places or Tribal registry of historic places; or
4. Individually listed on a local inventory of historic places.

**Land Use Agreement** – Means an agreement between the Tribe and a local jurisdiction, designating the local jurisdiction as the Tribe's agent over specified land use matters within an agreed upon area of the Reservation.

**Letter of Map Revision (LOMR)** – Means FEMA's modification to an effective Flood Insurance Rate Map, or Flood Boundary and Floodway Map, or both officially revising them.

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

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

**Lowest floor** - Means the lowest floor of the lowest enclosed area, including basement, which is:





1. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation design requirements including, but not limited to:
  - A. The flood openings standard in Section 5.1.C.3.;
  - B. The anchoring standards in Section 5.1.A.;
  - C. The construction materials and methods standards in Section 5.1.B.; and
  - D. The standards for utilities in Section 5.2.
2. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "basement" definition). This prohibition includes below-grade garages and storage areas.

**Manufactured home** – Means a structure transportable in one or more sections which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "Manufactured home" does not include a recreational vehicle.

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

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

**Mudslide (i.e. mudflow) prone area** - Means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

**National Flood Insurance Program (NFIP)** – Means the federal program of flood insurance coverage and floodplain management.

**New construction** - For floodplain management purposes, means structures for which the start of construction commenced on or after the effective date of floodplain management regulations adopted by the Tribe, and includes any subsequent improvements to such structures.

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



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

**One-hundred-year flood or 100-year flood** - See "Base flood."

**Principal structure** - Means a structure used for the principal use of the property as distinguished from an accessory use.

**Program deficiency** - Means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

**Public safety and nuisance** – As related to Section 6, Variance Procedures, of this Ordinance, means that the granting of a variance must not result in anything which is injurious to 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** – Means a vehicle which is:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory floodway** - See "Floodway."

**Remedy a violation** - Means to bring the structure or other development into compliance with federal 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 the ordinance 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.





**Sheet flow area** - See "Area of shallow flooding."

**Special flood hazard area (SFHA)** - Means an area having special flood, mudflow, or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

**Start of construction** - Includes substantial improvement and other proposed new development 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 from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for 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 a building, whether or not that alteration affects the external dimensions of the building.

**Structure** - Means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

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

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

1. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

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



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

**Water surface elevation** - Means the height, in relation to the North American Vertical Datum (NGVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Watercourse** - Means a lake, river, creek, stream, wash, arroyo, 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.

### SECTION 3.0 GENERAL PROVISIONS

- 3.1 LANDS TO WHICH THIS ORDINANCE APPLIES.** This Ordinance shall apply to all lands within the Reservation not subject to or outside the scope of a Land Use Agreement that are subject to the Tribe's regulatory jurisdiction for the purposes set forth herein and that are identified by FEMA to be within an area of special flood hazard.
- 3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.** The areas of special flood hazard identified by FEMA in the "Flood Insurance Study (FIS) for Riverside County and all Incorporated Areas," dated August 28, 2008, with accompanying FIRMs and FBFMs, dated August 28, 2008 and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this Ordinance. The FIS and attendant mapping is the minimum area of applicability of this Ordinance and may be supplemented by studies for other areas which allow implementation of this Ordinance and which are recommended to the Tribal Council by the Floodplain Administrator. The study, FIRMs and FBFMs are on file at the Riverside County Public Works office and Agua Caliente Band of Cahuilla Indians Tribal Administration Plaza.
- 3.3 COMPLIANCE.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall be subject to a fine in the amount of one hundred dollars (\$100.00) per each day the violation persists or the possible revocation of any development permit granted pursuant to this Ordinance plus any other civil or administrative remedies provided by law. Nothing herein shall prevent the Tribal Council from taking such lawful action as is necessary to prevent or remedy any violation.
- 3.4 ABROGATION AND GREATER RESTRICTIONS.** This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions.



However, where this Ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**3.5 INTERPRETATION.** In the interpretation and application of this Ordinance, all provisions shall be:

- A. Considered as minimum requirements.
- B. Liberally construed in favor of the governing body.
- C. Deemed neither to limit nor repeal any other powers granted under federal statutes.

**3.6 WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the Tribe, Tribal Council, any officer or employee thereof, or FEMA, for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

**3.7 SEVERABILITY.** If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

#### **SECTION 4.0 ADMINISTRATION**

**4.1 ESTABLISHMENT OF A DEVELOPMENT PERMIT.** A development permit shall be obtained before any construction or other development begins, including manufactured homes, within any area of special flood hazard established in Section 3.2. Application for a development permit shall be made on forms furnished by the Floodplain Administrator and shall be accompanied by a fee in such amount as to defray the costs incidental to the Tribe's review of the application. In addition to any other information required by the Tribe, the applicant shall provide the following information, which may include, but not be limited to:

- A. Plans in duplicate, drawn to scale, showing:



1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
  2. Proposed locations of water supply, sanitary sewer and utilities;
  3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
  4. Location of the regulatory floodway when applicable;
  5. Base flood elevation information as specified in Section 3.2. or Section 4.3.B.;
  6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and
  7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as detailed in FEMA Technical Bulletin TB 3-93.
- B. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the applicable floodproofing criteria located in Section 5.1.C.2.
- C. For a crawl-space foundation, location, and total net area of foundation openings as required in Section 5.1.C.3. of this Ordinance and detailed in FEMA Technical Bulletins 1-93 and 7-93.
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- E. All appropriate certifications listed in Section 4.3.D.

**4.2 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.** The Chief Planning & Development Officer or his/her designee is hereby appointed to administer, implement, and enforce this Ordinance by granting or denying development permits in accordance with the provisions stipulated in the Tribal Land Use Ordinance.

**4.3 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.** The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

- A. **Permit Review.** Review all applications for development permits to determine that:
1. Permit requirements of this Ordinance have been satisfied;



2. All other applicable state and federal permits have been obtained;
  3. The site is reasonably safe from flooding; and
  4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this Ordinance, adversely affects means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point within the Reservation.
  5. All Letters of Map Revisions (LOMR's) for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.
- B. **Review and Use of any Other Base Flood Data.** When base flood elevation data has not been provided in accordance with Section 3.2., the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer Section 5. Any such information shall be submitted to the Tribal Council for adoption.
- C. **Notification of Other Agencies.** In alteration or relocation of a watercourse:
1. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation.
  2. Submit evidence of such notification to the Federal Emergency Management Agency.
  3. Assure that the flood carrying capacity within the altered relocated portion of said watercourse is maintained.
  4. Base Flood Elevation changes due to physical alterations:
    - a. Within 6 months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit, or assure that the permit applicant submits, technical or scientific data to FEMA for a Letter of Map Revision (LOMR).
    - b. All LOMR's for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on Conditional



Letters of Map Revision (CLOMRs). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

5. Changes in community boundaries:
  - a. Notify FEMA in writing whenever the community boundaries have been modified and include a copy of a map of the community clearly delineating the new boundaries.
- D. **Documentation of Floodplain Development.** Obtain and maintain for public inspection and make available as needed the following:
  1. Certification required by Section 5.1.C.1. (floor elevations);
  2. Certification required by Section 5.1.C.2. (elevation or floodproofing of nonresidential structures);
  3. Certification required by Section 5.1.C.3. (wet floodproofing standard);
  4. Certification of elevation required by Section 5.3.B. (subdivision standards);
  5. Certification required by Section 5.6. (floodway encroachments); and
  6. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.
- E. **Map Determinations.** Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.
- F. **Remedial Action.** Take action to remedy violations of this Ordinance as specified in Section 3.3.
- G. **Biennial Report.** Complete and submit Biennial Report to FEMA.
- H. **Planning.** Assure the Tribal Land Use Ordinance is consistent with floodplain management objectives herein.





- 4.4 APPEALS.** The Tribal Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.

## **SECTION 5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION**

- 5.1 STANDARDS OF CONSTRUCTION.** In all areas of special flood hazards the following standards are required:

**A. Anchoring**

1. All new construction and substantial improvements of structures, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

**B. Construction Materials and Methods.** All new construction and substantial improvement of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials and utility equipment resistant to flood damage for areas below the base flood elevation;
2. Using methods and practices that minimize flood damage;
3. With electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
4. Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

**C. Elevation and Floodproofing.** (See Section 2 definitions for new construction, substantial damage and substantial improvement.)

1. Residential construction, all new or substantial improvements of residential structures, shall have the lowest floor, including basement:
  - a. In AE, AH, A1-30 zones, elevated at least two feet above the base flood elevation.
  - b. In an AO zone, elevated above the highest adjacent grade to a height two feet above the depth number specified in feet on the FIRM, or elevated at



least four feet above the highest adjacent grade if no depth number is specified.

- c. In an A zone, without BFE's specified on the FIRM (unnumbered A zone), elevated at least two feet above the base flood elevation; as determined under Section 4.3.A.
- d. In all other Zones, elevated to or above the base flood elevation.

Upon completion of the structure, the elevation of the lowest flood including basement shall be certified by a registered professional engineer or surveyor, or verified by the community building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

- 2. Nonresidential construction shall either be elevated to conform with Section 5.1.C.1. or together with attendant utility and sanitary facilities.
  - a. Be floodproofed below the elevation recommended under Section 5.1.C.1. so that the structure is watertight with walls substantially impermeable to the passage of water.
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - c. Be certified by a registered professional engineer or architect that the standards of Section 5.1.C.1. are satisfied. Such certification shall be provided to the Floodplain Administrator.
- 3. All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet the following minimum criteria:
  - a. For non-engineered openings:
    - 1. Have a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - 2. The bottom of all openings shall be no higher than one foot above grade;
    - 3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and



4. Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter; or
  - b. Be certified by a registered civil engineer or architect.
4. Manufactured homes shall also meet the standards in Section 5.4.

## **5.2 STANDARDS OF UTILITIES.**

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
  1. Infiltration or flood waters into the systems.
  2. Discharge from the systems into flood waters.
- B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

## **5.3 STANDARDS OF SUBDIVISIONS AND OTHER PROPOSED DEVELOPMENT.**

- A. All new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is the lesser, shall:
  1. Identify the special flood hazard areas and base flood elevation.
  2. Identify the elevations of proposed structure(s) and pad(s).
  3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a letter of map revision based on fill (LOMR-F) to the Floodplain Administrator:
    - a. Lowest floor elevation;
    - b. Pad elevation;
    - c. Lowest adjacent grade.
- B. All subdivision proposals shall be consistent with the need to minimize flood damage.



- C. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- D. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

#### **5.4 STANDARDS FOR MANUFACTURED HOMES**

- A. All manufactured homes that are placed or substantially improved, within Zones A1-30, AH and AE on the community's FIRM, on sites located:
  - 1. Outside of a manufactured home park or subdivision.
  - 2. In a new manufactured home park or subdivision.
  - 3. In an expansion to an existing manufactured home park or subdivision.
  - 4. In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.
- B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, AE, on the community's FIRM that are not subject to the provisions of Section 5.4.A. will be elevated so that either the:
  - 1. Lowest floor of the manufactured home is at least two feet above the base flood elevation; or
  - 2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

#### **5.5 STANDARDS FOR RECREATIONAL VEHICLES**

- A. All recreational vehicles placed on sites with Zones A1-30, AH and AE on the community's FIRM will:



1. Be on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the permit requirements of Section 4 of this Ordinance and the elevation and anchoring requirements for manufactured homes in Section 5.4.A.

**5.6 FLOODWAYS.** Located within areas of special flood hazard established in Section 3.2. are areas designated as floodways. Since floodways are an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvement, and other new development unless certification by a registered professional engineer or architect is provided demonstrating that encroachment shall not result in any increase in (the base) flood elevation during the occurrence of the base flood discharge; and
- B. If Section 5.6 A. is satisfied, all new construction, substantial improvement and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Section 5.

**5.7 GARAGES AND LOW COST ACCESSORY STRUCTURES.**

- A. Attached garages.
  1. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of flood waters. See Section 5.1.C.3. Areas of the garage below the BFE must be constructed with flood resistant materials. See Section 5.1.B.; or
  2. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6
- B. Detached garages and accessory structures.
  1. "Accessory structures" used solely for parking (2 car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 2, may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:



- a) Use of the accessory structure must be limited to parking or limited storage;
  - b) The portions of the accessory structure located below the BFE must be built using flood-resistant materials;
  - c) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
  - d) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;
  - e) The accessory structure must comply with floodplain encroachment provisions in Section 5.6.; and
  - f) The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with Section 5.1.C.3.
2. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 5.1.

## SECTION 6.0 VARIANCE PROCEDURE

**6.1 NATURE OF VARIANCES.** The issuance of a variance pursuant to this Ordinance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. Variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual, that complying with the requirements of this Ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristic(s) must be unique to the property and not be shared by adjacent parcels. The unique characteristic(s) must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the Tribal Council to help protect the residents of the Reservation from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in this Ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this Ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.





## 6.2 APPEAL BOARD

- A. Variance applications shall be administered by the applicable jurisdictions that have Land Use Agreements with the Tribe.
- B. In the event that the variance application(s) is not administered in accordance with the criteria set forth in Section 6.2.A. or are outside the jurisdiction of those Land Use Agreements, the following shall prevail. In passing upon requests for variances, the Tribal Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance, and the:
1. Danger that materials may be swept onto other lands to the injury of others;
  2. Danger of life and property due to flooding or erosion damage;
  3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
  4. Importance of the services provided by the proposed facility to the community;
  5. Necessity to the facility of a waterfront location, where applicable;
  6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  7. Compatibility of the proposed use with existing and anticipated development;
  8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
  10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
  11. Costs of providing governmental services during and after flood conditions, including but not limited to, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water, and transportation infrastructure.
- C. Any applicant to whom a variance is granted shall be given a written notice informing them that:

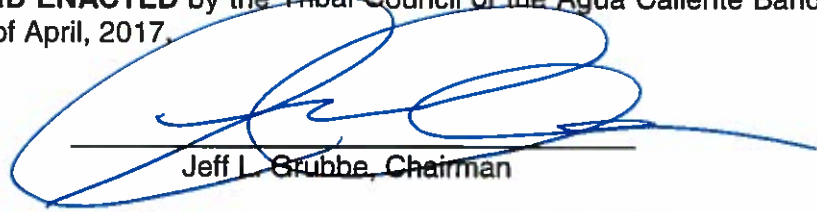
1. Constructing a structure below the base flood level will result in increased premium rates for flood insurance coverage to offset the increased flood risk; and
  2. Such construction below the base flood level increases risks to life and property. It is recommended that a copy of the notice shall be recorded by the Floodplain Administrator in the County Recorder's Office and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- D. The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.

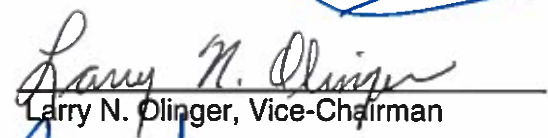
### **6.3 CONDITIONS FOR VARIANCES**

- A. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 4 and 5 of this Ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification(s) required for issuing the variance increase.
- B. Variances may be issued for the repair or rehabilitation of historic structures (as defined in Section 2 of this Ordinance) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard to afford relief. Minimum necessary means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the Tribal Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the Tribal Council believes will both provide relief and preserve the integrity of the local Ordinance.
- E. Variances shall only be issued upon a:
1. Showing of good and sufficient cause;

2. Determination that failure to grant the variance would result in exceptional hardship (as defined in Section 2 of this Ordinance) to the applicant; and
  3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 2 – see public safety or nuisance), cause fraud or victimization (as defined in Section 2) of the public, or conflict with existing local laws or ordinances.
- F. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Sections 6.2.A. through 6.2.E. are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.
- G. Upon consideration of the factors of Section 6.1.C. and the purposes of this Ordinance, the Tribal Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.

**BE IT ADOPTED AND ENACTED** by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 4<sup>th</sup> day of April, 2017.

  
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Jeff L. Grubbe, Chairman

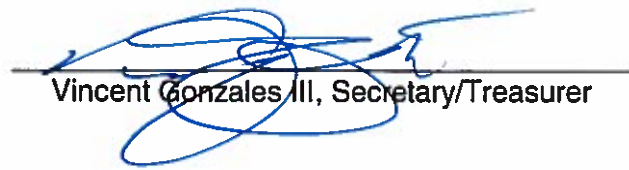
  
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Larry N. Olinger, Vice-Chairman

  
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Vincent Gonzales III, Secretary/Treasurer

  
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Reid D. Milanovich, Member

  
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Anthony W. Purnel, Member

I, the undersigned, the Acting Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of 5 members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 4<sup>th</sup> day of April 2017; that the foregoing ordinance was duly adopted at such meeting by the affirmative roll call vote of 4-0-0 and that said ordinance has not been rescinded or amended in any way.

  
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Vincent Gonzales III, Secretary/Treasurer