



NELSON COUNTY PLANNING COMMISSION

Meeting Agenda: March 23, 2016

General District Courtroom, 3rd Floor, Nelson County Courthouse, Lovingston

- **7:00 – Meeting Convenes / Call to Order**
- **Review of meeting minutes:** February 24th (Work Session) and February 24th, 2016
- **Public Hearing Items:**
 - Proposed Amendments to Zoning Ordinance Regarding “Uses – Permitted by Special Use Permit Only” in Limited Industrial (M-1) District
Consideration of amendments to Zoning Ordinance Article 18 (“Limited Industrial M-1”) that were initially referred to the Planning Commission by the Board of Supervisors on January 12, 2016.
- **Other Agenda Items:**
 - Proposed Amendments to Zoning Ordinance Article 10 – General Floodplain District (FP): (*referral made at 12/8/2015 BOS meeting; review continued from 2/24/2016 PC meeting*)
Review by the Planning Commission for consideration of possible amendments to Article 10 (General Floodplain District FP)
 - **Class C Tower Permit Applications (Equipment Upgrades) / nTelos Wireless:**
 - Comm. Tower Permit #2016-01 / 5029 Rockfish Valley Hwy (CV821) / TM Parcel #22-A-60
 - Comm. Tower Permit #2016-02 / 266 Hearthstone Lane (CV822) / TM Parcel #WPOA Open Space
- **Other Business** (*as determined by Planning Commission members / as applicable*)
- **Adjournment**
- **Next Meeting:** April 27, 2016 | 7:00pm

**NELSON COUNTY PLANNING COMMISSION
WORK SESSION
February 24, 2016**

Present: Chair Philippa Proulx, Commissioners Mike Harman, Linda Russell, Robert Goad and Tommy Bruguere (Board of Supervisors Liaison)

Absent: Commissioner Mary Kathryn Allen

Staff Present: Tim Padalino, Director of Planning & Zoning and Stormy Hopkins, Secretary

Chair Proulx called the Work Session to order at 6:00 P. M. in the General District Courtroom, County Courthouse, Lovington.

Chair Proulx began the work session on proposed Temporary Events amendments by asking Mr. Padalino about correspondence from Mr. Stu Mills, Executive Director of the Rockfish Valley Community (RVCC), which Mr. Padalino provided via email on the day of the meeting. Mr. Padalino noted that he received the original correspondence that day; forwarded it to Chair Proulx for her direction on how to incorporate Mr. Mills' comments into the meeting; and proceeded to briefly explain the details contained in the letter. (See attached – dated February 23, 2016) Mr. Padalino also noted that he provided a brief reply to Mr. Mills' correspondence, and indicated that the RVCC still has twenty-three (23) days to appeal the zoning determination regarding the RVCC which precipitated Mr. Mills' letter.

Mr. Padalino then identified four (4) unresolved issues with the current version of the proposed amendments, as stated in the Staff Report (see attached – dated February 16, 2016). He noted that these issues stemmed from public comment, including comments given by the Planning Commission (PC) as well as members that spoke during the last public hearing. Issues/concerns that were discussed by the PC and Mr. Padalino are as follows:

1. The concept of limiting the hours of conduct (found in some of the Definitions; Out-of-Doors Accessory Uses; limitations set for Category 1, Category 2, and Category 3 Events). The questions of compliance, and consequences for non-compliance, were discussed and Commissioners noted that it could be dealt with during the renewal process and prior compliance would be considered per proposed Section 24-3.
2. The concept of creating correlation between the maximum number of people allowed to attend certain events and the size of the property.
3. Recommendation to consider decreasing the number of acres associated with different categories of a Farm Winery or Bona Fide Agricultural Operation, because there are not many farms in the County that are over 250 acres.
4. Under 4-1 Uses – Permitted by right: Social Temporary Event “discernable noise” (page 6) needs to be changed to include reference to the County’s Noise Ordinance.
5. Recommendations to modify the chart which establishes the “maximum number of properly-permitted non-exempt Temporary Events which may be conducted in a calendar year on the same subject property,” as follows:
 - a. Add a row in the chart to include properties between 100-250 acres, which would not include any Category 3 event permits (per the proposed definitions in Section 24-1).
 - b. Add a row in the chart that would allow for an eligible property that is not a Farm Winery or Bona Fide Agricultural Operation that is less than 250 acres.
 - c. Add a row in the chart that would include any eligible property(s) zoned A-1 with an aggregate acreage equal to or greater than 250 acres.

- d. Category 3 should not be included (in the chart) for anything less than 250 acres (per the proposed definitions in Section 24-1); change number from two (2) to zero (0).
- e. Add language that provides applicants the opportunity to formally request for additional Temporary Event Permits from the Board of Supervisors (BOS), above and beyond the number established in the chart in proposed Section 24-3-C.

The Commissioners and Mr. Padalino then worked to draft changes to the proposed amendments as follows:

4-1 Uses – Permitted by right:

Social Temporary Event, provided that there are no more than fifty such events in a calendar year and that the event complies with the County Noise Ordinance

24-3-C The maximum number of properly-permitted non-exempt Temporary Events which may be conducted in a calendar year on the same subject property, or on properties contiguous to or adjacent to the subject property if under the same ownership or control as the subject property, is limited as specified in the following chart. Event promoters and/or property owners may formally request approval to conduct additional Temporary Events, beyond the limits specified in the following chart, at a public hearing conducted by the Board of Supervisors.

Type of Property	Category 1	Category 2	Category 3
Eligible property(s) zoned A-1, B-1, B-2, or SE-1 with an aggregate acreage of less than 250 acres*	8	4	0
Farm Winery or Bona Fide Agricultural Operation, the aggregate acreage of which is less than 100 acres*	12	6	0
Farm Winery or Bona Fide Agricultural Operation, the aggregate acreage of which is equal to or greater than 100 acres but less than 250 acres*	16	8	0
Any eligible property(s) zoned A-1 with an aggregate acreage equal to or greater than 250 acres*	16	8	4
<i>*Contiguous parcels under the same or different ownership or control may be aggregated to attain the minimum acreage.</i>			

Adjournment: Chair Proulx closed the Work Session meeting at 7:10 P.M.

Respectfully submitted,

Stormy V. Hopkins
 Secretary

**NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
February 24, 2016**

Present: Chair Philippa Proulx, Commissioners Mike Harman, Linda Russell, Robert Goad and Tommy Bruguiere (Board of Supervisors Liaison)

Absent: Commissioner Mary Kathryn Allen

Staff Present: Tim Padalino, Director of Planning & Zoning and Stormy Hopkins, Secretary

Call to Order: Chair Proulx called the meeting to order at 7:10 P. M. in the General District Courtroom, County Courthouse, Lovingson.

Mr. Padalino noted that regarding the proposed amendments for "Temporary Events..." that he had forgotten to correct the spelling of "promotor" to "promoter" (page 5 – Section 24-3-D/Item 1 – see attached proposed amendments dated 12/17/2015).

Mrs. Hopkins asked that the recording tape be changed before continuing the meeting. Afterwards, Chair Proulx continued the meeting.

Approval of Minutes – November 18, 2015:

Commissioner Russell noted that on page 5, number 7 needs to reflect to delete "Home Occupations A&B and".

Commissioner Goad made the following motion:

I move to approve the November 18th, 2015 meeting minutes; the vote 3-0 with Commissioner Harman and Mr. Bruguiere abstaining.

1. Zoning Ordinance Amendments: "Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses":

The Commissioners and Mr. Padalino continued their discussion from the preceding work session, regarding the proposed amendments to special events regulations. The changes discussed during the regular meeting include the recommendation to include the following provision:

24-3-F After formal approval of a Temporary Event Permit, and in the event of unforeseen circumstances outside of the event promoter's control or causation, the Planning & Zoning Director has the authority to formally approve modifications to the Temporary Event Permit and/or the various event plans specified in the preceding subsection, in consultation with the applicable law enforcement and regulatory agencies and with the event promoter(s).

Commissioner Harman made the following motion:

I move that the Planning Commission recommend approval to the Board of Supervisors of Article 24 "Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses" as discussed at the February 24th, Work Session.

The following suggestions were noted to add to Commissioner Harman's above motion:

Mr. Padalino noted that the PC should consider adding a statement to the motion that these recommended amendments would also affect other Articles (such as 4, 8, 8A, and 8B). Commissioner Russell also noted that these recommendations are a response to a referral from the BOS to review temporary events and

recommend amendments, and noted that a public hearing was conducted by the PC on January 27th as required by law.

Commissioner Harman modified his motion to include Commissioner Russell's comments; and then decided to withdraw his previous motion. After further discussion, the following changes were noted:

4-1 Uses – Permitted by right:

Social Temporary Event, provided that there are no more than fifty such events in a calendar year and that the event complies with the County Noise Ordinance

Remove “*Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit*” from the following sections:

8-1 Uses – Permitted by right

8A-1 Uses – Permitted by right

Remove the following sections:

8-1a Uses – Permitted by Special Use Permit Only:

Festival Grounds

8A-1a Uses – Permitted by Special Use Permit Only:

Festival Grounds

Commissioner Goad made the following motion:

I move that the PC recommends the addition of Article 24 to the Zoning Ordinance and the amendments of Articles 4, 8, 8A, and 8B as revised at the February 24th Work Session and approved at the February 24, 2016 Planning Commission meeting. Commissioner Harman provided the second; the vote 5-0.

Approval of Minutes – December 16, 2015:

Commissioner Harman made the following motion:

I move that the Planning Commission meeting minutes of December 16, 2015 be approved; the vote, 4-0 with Mr. Bruguiere abstaining.

Approval of Minutes – January 27, 2016:

Commissioner Harman made the following motion:

I move that the meeting minutes of January 27th be approved. Commissioner Goad provided the second; the vote, 4-0 with Commissioner Russell abstaining.

Other Agenda Items:

1. Referral of amendments from BOS – Article 18 (Limited Industrial District M-1):

Mr. Padalino noted that this issue is a referral from the Board of Supervisors (BOS) regarding all Limited Industrial (M-1) properties Countywide. He further noted that the M-1 District provides for less intensive uses than the Industrial District (M-2). Mr. Padalino then summarized the issue by explaining that the use in question (as stated in the Staff Report dated February 16th – see attached) is whether “Contractors’ equipment storage yard

or plant, or rental of equipment commonly used by contractors” should be permissible by-right; permissible only with a Special Use Permit (SUP); or not permissible at all. Mr. Padalino recommended that it be made permissible as a Special Use in M-1. He noted that this would provide an opportunity for M-1 property owners to conduct this use, but it would not be a guaranteed property right. He concluded by noting that this would allow both the PC and the BOS to make an evaluation on a case-by-case basis, where the details of the subject property and the proposed project (such as scale, scope, and operational details) could be reviewed for appropriateness.

The Commissioners and Staff discussed the use and provided the following questions/comments/concerns:

1. Mr. Bruguire noted that the “rental of equipment commonly used by contractors” should be separated, because he feels it is more of a business use (as opposed to industrial use). He made reference to various equipment rental locations in Augusta County (along Rt. 250), and suggested checking the zoning of those areas.
2. Mr. Padalino suggested modifying Section 18-3-1 to read “Contractors equipment storage yard or plant, or any other permissible use requiring outside storage or displays.” Commissioner Russell disagreed, noting that she prefers the idea of having “any use requiring outside storage or displays” remain a separate provision. Mr. Padalino noted it could be done either way, but indicated he believes the word “permissible” needs to be inserted in connection with “any use requiring outside storage or displays.”

The Commissioners recommended changes to the proposed amendments as follows:

1. Amend Section 18-3 (“Uses – Permitted by Special Use Permit only.”) as follows:

18-3-1: Replace “Any use requiring outside storage or displays” with “Any by-right use or permissible accessory use requiring outside storage or displays”

18-3-10: Replace “*Reserved for future use*” with “Contractors’ equipment storage yard”

Commissioner Russell made a motion for Staff to advertise for public hearing for the March meeting. Commissioner Harman provided the second; the vote 5-0.

2. Referral of amendments from BOS – Article 10 (General Floodplain District FP):

It was decided that the PC would discuss the proposed amendments in detail at next month’s regular meeting, when Mr. Charley Banks from Virginia Department of Conservation & Recreation was expected to be in attendance.

Adjournment:

Commissioner Harman made a motion to adjourn; vote 5-0.

Respectfully submitted,

Stormy V. Hopkins
Secretary, Planning & Zoning

Please publish Thurs. March 10 and Thurs. March 17 in The Nelson County Times:

**LEGAL NOTICE
NOTICE OF PUBLIC HEARING**

In accordance with Volume 3A, Title 15.2, Counties, Cities and Towns, of the Code of Virginia, 1950, as amended, and pursuant to §15.2-107, §15.2-2204, §15.2-2285, §15.2-2310, and §15.2-4307, the Nelson County Planning Commission hereby gives notice that a Public Hearing will start at 7:00 p.m., **Wednesday, March 23rd** in the **General District Courtroom** on the third floor of the Nelson County Courthouse located at 84 Courthouse Square, Lovingson, for the following:

Public Hearing

1. Consideration of Proposed Amendments to Zoning Ordinance Regarding “Uses – Permitted by Special Use Permit Only” in Limited Industrial (M-1) District

Consideration of amendments to Zoning Ordinance Article 18 (“Limited Industrial M-1”) that were initially referred to the Planning Commission by the Board of Supervisors on January 12, 2016. The full text of the proposed amendments is available for public inspection at the Planning & Zoning office; a descriptive summary of the proposed amendments is as follows:

ARTICLE 18. LIMITED INDUSTRIAL M-1

Amend Section 18-3 (“Uses – Permitted by Special Use Permit only.”) as follows:

18-3-1: Replace “Any use requiring outside storage or displays” with “Any by-right use or permissible accessory use requiring outside storage or displays”

18-3-10: Replace “*Reserved for future use*” with “Contractors’ equipment storage yard”

Following the hearing, the Planning Commission may vote to forward the amendments to the Board of Supervisors with a recommendation for adoption, or with a recommendation for adoption with modifications, for review and action by the Board, which may adopt a resolution or ordinance to approve, modify, or reject an item. The Board of Supervisors must first conduct a properly-advertised public hearing before taking a vote to adopt, reject, or adopt with modification the proposed amendments.

Copies of the above files are available for review in the Dept. of Planning & Zoning office, 80 Front Street, Lovingson, Virginia, Monday through Friday, 9:00 a.m. to 5:00 p.m. Telephone inquiries may also be directed to the Dept. of Planning & Zoning, (434) 263-7090, or toll free at 888-662-9400, selections 4 and 1. Nelson County does not discriminate on the basis of handicapped status in admission or access to its programs and activities. Accommodation will be made for handicapped persons upon advance request.



To: Chair and Members, Nelson County Planning Commission
From: Tim Padalino | Planning & Zoning Director
Date: March 14, 2016
Subject: **Public Hearing for Proposed ZO Text Amendments Referred by BOS – Article 18, Limited Industrial District (M-1)**

On January 12th, the Nelson County Board of Supervisors (BOS) acted to refer to the Planning Commission (PC) a possible text amendment to Zoning Ordinance Article 18 (“Limited Industrial District M-1”) for PC review and recommendations. The referral is in connection with a specific use which is currently provided for in the Industrial (M-2) District, but which is not currently provided for in the Limited Industrial (M-1) District. The PC review is to determine what (if any) amendments might be appropriate, inclusive of the proper advertising and conducting of a public hearing; and to provide formal recommendations back to the BOS in the allotted time.

Specifically, the BOS referral and requested review are essentially a question of whether the following use (below) should be permissible in the Limited Industrial District M-1, or not; and if so, whether it should be permissible by-right or only permissible as a special use –

“Contractors’ equipment storage yard or plant, or rental of equipment commonly used by contractors”

This use is not further defined in Article 2, Definitions. As noted above, this use is currently permissible by-right in the Industrial District (M-2), pursuant to Zoning Ordinance Article 9, Section 1-12; and is currently not provided for (and therefore not permissible) in Limited Industrial District (M-1).

Please also consider the “Statement of intent” for the Limited Industrial (M-1) District:

“This district is intended to provide for and encourage limited industries to locate and/or expand in order to foster development of the local economy. These industries are generally light industrial which are office oriented or oriented toward the manufacturing, processing, assembly, warehousing and/or distributing of goods and materials which are dependent upon previously prepared raw materials refined or processed elsewhere. It is expected that uses in this district be to be operated from within a building.”

During the January 27th and February 24th PC meeting, the Commission reviewed and discussed several possible policies. At the February 24th meeting, the PC directed staff to advertise for a public hearing regarding the following proposed amendments:

Amend Section 18-3 (“Uses – Permitted by Special Use Permit only.”) as follows:

- 18-3-1: Any **by-right use or permissible accessory** use requiring outside storage or displays
- 18-3-10: ~~Reserved for future use~~ **Contractors’ equipment storage yard**

These recommended amendments would clarify an existing provision (18-3-1) and would establish the use in question as a “special use” (18-3-10). Please note the following:

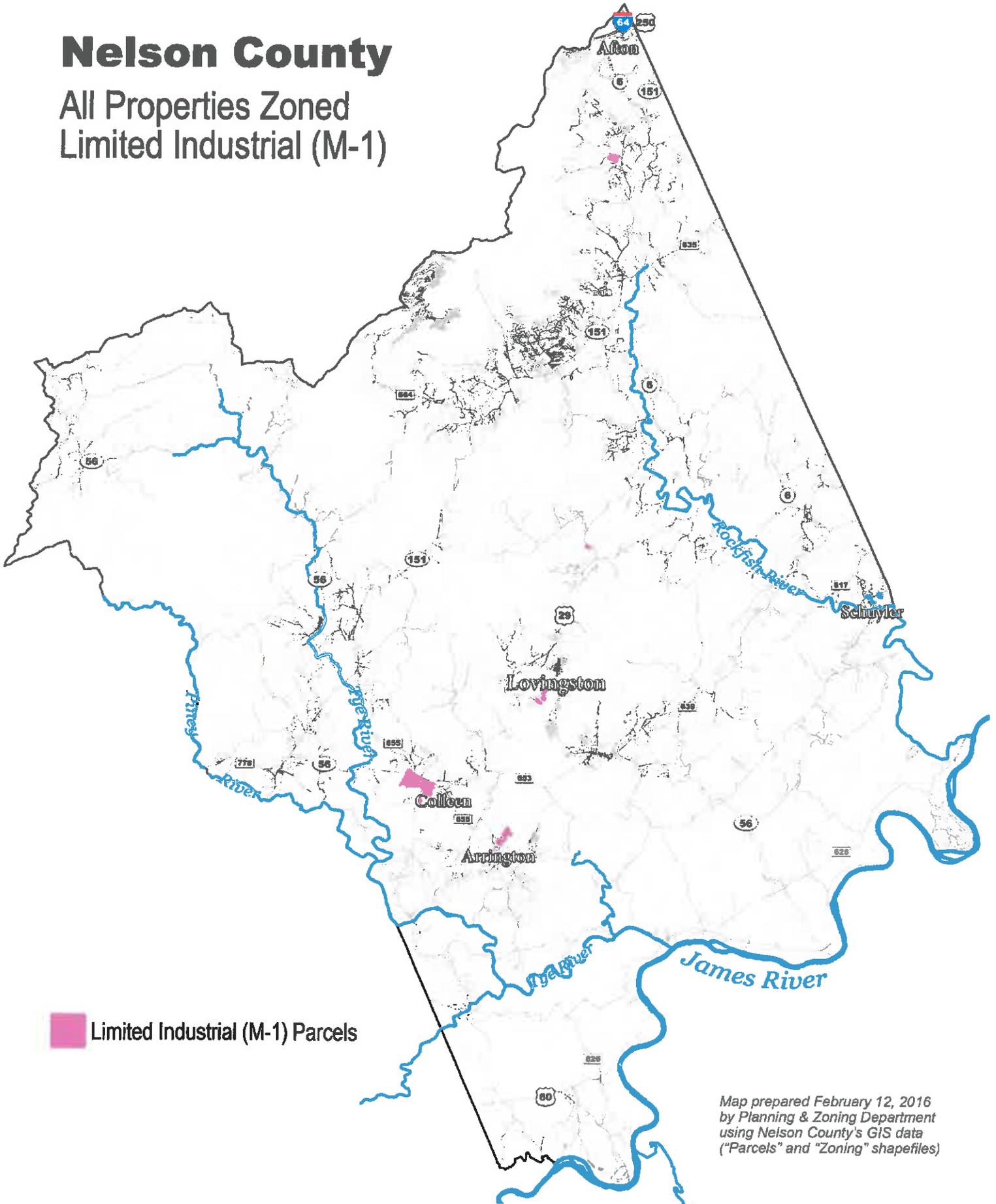
- The PC specifically requested that the clause, “...rental of equipment commonly used by contractors” be left out, due to concerns about that component of the provision being a commercial or business use (and not an industrial use).
- The PC gave consideration to the proposed use being established as a by-right use; but after reviewing the issue in detail, the PC decided to advertise for a public hearing for amendments that would provide “contractors equipment storage yard” as a special use in M-1.
- The PC indicated that regulating this land use as a “special use” is the most appropriate policy, and would strike the appropriate balance between providing for the use, but require case-by-case review and (ultimately) a determination by the BOS. Further, this would:
 - provide for the land use in question to be permissible on a case-by-case basis – but only after public input is solicited during public hearings conducted by the PC and BOS, and only if the BOS votes to approve a specific SUP request;
 - give M-1 property owners (or their authorized agents) the opportunity to request County approval to conduct the use in question, but would not guarantee the property owner the right to use M-1 property for that land use (as it would be if it were made a “Use – permissible by-right”);
 - allow for the details and context of each case to be reviewed individually; and
 - allow the BOS to make case-by-case decisions about establishing conditions to any SUP approval, if the Board were to determine that there were property-specific or project-specific reasons for doing so

Finally, staff have prepared a countywide map and corresponding chart which identify all properties currently zoned Limited Industrial (M-1), as recorded in the County’s GIS database.

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the Planning Commission’s public hearing for these proposed amendments on March 23rd. Thank you very much for your time and attention to this important subject.

Nelson County

All Properties Zoned
Limited Industrial (M-1)



 Limited Industrial (M-1) Parcels

Map prepared February 12, 2016
by Planning & Zoning Department
using Nelson County's GIS data
("Parcels" and "Zoning" shapefiles)

Limited Industrial (M-1) Zoning:	Address / Area:
6-A-102A	20 HEDGE LN
6-A-102B	HEDGE LN
6-A-102C	47 MILL LN
6-A-102D	47 MILL LN
21-4-1	1368 ROCKFISH VALLEY
45-A-33	60 DAVIS CREEK LN
45-A-35	DAVIS CREEK LN
57-A-34B	JAMES RIVER RD
58A-1	THOMAS NELSON HWY
58A-1-13	FRONT ST
58A-2-15	THOMAS NELSON HWY
58A-2-16	THOMAS NELSON HWY
58A-2-17	THOMAS NELSON HWY
58A-2-18	THOMAS NELSON HWY
58A-1-21	THOMAS NELSON HWY
58A-1-22	THOMAS NELSON HWY
58A-2-22A	THOMAS NELSON HWY
66-A-36	COOPERATIVE WAY
66-A-36A	461 STAGE RD
66-A-36B	100 MOTORCYCLE RUN
66-A-36C	3660 TYE BROOK HWY
66-A-36D	TYE BROOK HWY
66-A-36E	TYE BROOK HWY
66-A-36F	TYE BROOK HWY
66-A-36H	495 COOPERATIVE WAY
66-A-36J	COOPERATIVE WAY
67-A-23	THOMAS NELSON HWY
67-A-27	THOMAS NELSON HWY
67-A-27A	THOMAS NELSON HWY
75-2-7A	TYE BROOK HWY
76-2-1C	3415 THOMAS NELSON HWY
76-A-3	37 COOPERATIVE WAY
76-A-4A	STAGE ROAD
76-A-4B	236 COOPERATIVE WAY
76-A-4C	THOMAS NELSON HWY
77-3-1	3721 ARRINGTON RD
77-3-2	COLD STORAGE LN
77-5-16	COLD STORAGE LN
77-12-3	ARRINGTON RD
77-12-4	COLD STORAGE LN
77-12-5	COLD STORAGE LN
77-A-3A	49 COLD STORAGE LN
77-A-5	2705 ARRINGTON RD
77-A-6	2651 ARRINGTON RD
77-A-46	ARRINGTON RD



To: Chair and Members, Nelson County Planning Commission
From: Tim Padalino | Planning & Zoning Director
Date: March 14, 2016
Subject: Continued PC Review of (**UPDATED**) Zoning Ordinance Amendments – Article 10 (“General Floodplain District FP”) ... *(see pp. 3-5 for updates)*

Issue Overview:

The Nelson County Zoning Ordinance contains provisions for floodplain management and land use regulations within Article 10, “General Floodplain District FP.”

Purpose of Floodplain Ordinance:

Referred to as the County’s “Floodplain Ordinance,” this set of regulations contained in the Zoning Ordinance is the local (municipal) manifestation of federal floodplain management regulations. In order for properties in any given locality to be eligible for flood insurance policies through the National Flood Insurance Program (NFIP), the local government must adopt, administer, and enforce a Floodplain Management Program [including a Floodplain Ordinance that is compliant with minimum requirements, as specified in the “model ordinance”].

As explained to me on January 12, 2015 by Mr. Charley Banks, NFIP Coordinator for Virginia Department of Conservation & Recreation (DCR): the National Floodplain Insurance Program is a voluntary program, stemming from Chapter 44 of the Code of Federal Regulations, which enables localities to opt-in to the FEMA floodplain management program (in order for property owners to be eligible to obtain federally-subsidized flood insurance). Participation in the NFIP is critical for property owners; hence, most localities (including Nelson County) voluntarily participate in the NFIP.

Mr. Banks also explained that being in the NFIP means that the participating locality must codify floodplain management regulations into their local zoning ordinance (and similar regulations are also placed in the building code and enforced by the building official). He stated that the NFIP – a federal program – was initially set up to be administered and enforced through local zoning ordinances; and that this arrangement of local administration and local authority remains in effect.

Mr. Banks emphasized that for all localities participating in the NFIP, the local government has the authority and the responsibility to enforce their codified floodplain management regulations.

Review of Floodplain Ordinance:

County staff recently reviewed the Floodplain Ordinance with the assistance of Virginia DCR. That review, which included an “audit” of the existing Nelson County Floodplain Ordinance as well as an introduction to “higher standards” information produced by DCR, led to the recommendation of numerous amendments, as summarized in this staff report (see pages 3-5).

More specifically, Mr. Charles Kline, (former) Floodplain Program Planner for DCR, reviewed the existing ordinance and provided recommendations in an email dated June 10th. Mr. Kline’s recommendations can generally be grouped into two categories, as follows:

- recommendations for how the existing ordinance should be amended to properly contain the regular standards (“minimum requirements”) as specified in the “Example Floodplain Management Ordinance” dated February 2015 (a.k.a. “model ordinance”); and
- recommendations for how the existing ordinance could be amended to include some of the higher standards contained in the “Guidance for Local Floodplain Ordinances in VA” document prepared by DCR’s Dam Safety and Floodplain Program in February 2014.

In total, Mr. Kline recommended twelve (12) new standards to be included in the Floodplain Ordinance. After reviewing and discussing all of those recommendations, County staff recommend adopting six (6) of them as explained in this report (see page 3) and as shown in the attached amended ordinance (draft dated March 14, 2016).

Floodplain Ordinance and “Community Rating System” Program:

Please also note the (potential) connection between a locality’s adoption and enactment of higher standards for Floodplain Management, and eligibility for participation in the “Community Rating System.”

Specifically, Mr. Kline noted in his June 10th email that, “Enacting even a few of these higher standards would also make Nelson County a great candidate for participation in the Community Rating System (CRS). CRS is a program for communities that already run a compliant NFIP program and go above and beyond. The more they do for managing their floodplains, the more points they receive. The more points they receive, the more money their citizens can save on flood insurance premiums. Citizens also receive a line item in their insurance bill showing these savings.” Mr. Kline also provided a hypothetical scenario showing potential savings on flood insurance premiums, depending on how many higher standards Nelson County incorporated into the Floodplain Ordinance.

Although participation in the CRS is a somewhat separate issue and process, the County should carefully consider the potential values and benefits in possible CRS participation (and thus

possible cost savings on flood insurance premiums) while considering whether or not to adopt higher floodplain management standards into the Floodplain Ordinance.

Summary of Review Process:

August 11, 2015	Staff presented proposed (draft) amendments to BOS
December 8	BOS voted to refer amendments to PC
January 27, 2016	PC received referred amendments
February 24	PC continues review
March 23	VA DCR staff attend PC meeting to assist with policy review/amendment process
(?)	PC conducts public hearing
March 27	Deadline for PC to provide BOS with recommendations (per ZO §16-2-2)
May 6	Deadline for PC to provide BOS with recommendations (per VA Code §15.2-2285)

UPDATED Overview of Amendments by Issue and by Affected Section(s):

(*) Amendments intended to bring existing ordinance into compliance with model ordinance:

- There are numerous amendments identified by Mr. Kline which are relatively minor, and which are intended to ensure that the ordinance satisfies all applicable “minimum requirements” as contained in the state model ordinance. These include:
 - adding a statement about the authority of the county to have a floodplain management program and floodplain ordinance;
 - adding a section specifying the administration of the floodplain ordinance;
 - creating consistency with the model ordinance by replacing “Planning & Zoning Director” title with “Floodplain Administrator” title throughout the ordinance;
 - revising or introducing definitions as contained in the model ordinance “Glossary;” and
 - several other instances of similar “housekeeping” updates.
- *Affected sections – please see:*
 - 10.1 “Purpose”
 - 10.7 “Definitions”
 - 10.13-A “Permit and Application Requirements – Permit requirement.”
 - 10.13-C “Permit and Application Requirements – Site plans and permits applications.”
 - 10.15-C “Specific Standards – Elevated Buildings”
 - 10.24 “Administration”
 - 10.25 “Enactment”

A. Increase freeboard from existing 12” requirement to 18” requirement:

- This would require the lowest floor (including basement) of any new construction or substantial improvement to be located a minimum of 1.5 feet above the Base Flood Elevation. This would be an increase from the existing requirement of 1 foot minimum.
- *Affected sections – please see:*
 - 10.15-A “Specific Standards – Residential Construction”
 - 10.15-B “Specific Standards – Non-Residential Construction”

B. Define “critical facilities” and prohibit them in all Special Flood Hazard Areas (SFHA):

- This would prohibit the placement of critical facilities – such as emergency services and rescue squads, schools, medical facilities, hazardous materials and fuel storage, and other uses, structures, and improvements – within all Special Flood Hazard Areas.
- *Affected sections – please see:*
 - 10.7 “Definitions”
 - 10.14-L “General Standards”
 - 10.15-E “Specific Standards – Higher Standards and Critical Facilities”
 - 10.22-M “Variances and Special Use Permits”

C. Restrict “hazardous materials” and fuels in all Special Flood Hazard Areas:

- This would entirely prohibit the storage of certain hazardous materials within any SFHA; and would restrict the storage of other hazardous materials (including gasoline, petroleum products, and natural gas) for any time period longer than thirty (30) days.
- *Affected sections – please see:*
 - 10.14-M “General Standards”
 - 10.15-F “Specific Standards – Higher Standards and Hazardous Materials”
 - 10.22-N “Variances and Special Use Permits”

D. Limit land uses in the Floodway to only non-structural uses:

- This would prohibit any and all structures from being located within the Floodway, but would allow other non-structural uses within the portion of the floodplain designated as Floodway. The Floodway is, “the designated area of the floodplain required to carry and discharge flood waters” and is generally the lowest area in the middle of the floodplain which actually conveys surface waters.
- *Affected sections – please see:*
 - 10.17 “Permitted Uses in the Floodway District”

E. Modify the requirements for when the Base Flood Elevation needs to be identified and included on subdivision plats:

- This would change the threshold for when applicants need to identify and include the Base Flood Elevation (BFE) on a plat of division. Currently, this BFE information needs to be included for subdivisions containing more than fifty lots or more five acres, whichever is lesser. Specifically, the recommended amendments would alter the threshold as follows:
 - Include the BFE if there are more than eleven (11) lots; and
- Affected sections – please see:
 - 10.20-D “Standards for Subdivision Proposals”

F. Restrict the placement of fill in all Special Flood Hazard Area (SFHA):

- This would prohibit certain fill materials from being placed within any designated SFHA, and would only allow for locally-borrowed mineral materials to be used as fill within an SFHA (and would still be subject to the existing requirement that a Special Use Permit be obtained prior to placing any such fill in a SFHA).
- Affected sections – please see:
 - 10.14-N “General Standards”

Summary & Conclusion:

Please review this staff report, and the accompanying (UPDATED) proposed amendments (showing “track changes” and “comments”), for the March 23rd PC meeting. Please note that Mr. Charley Banks, NFIP Coordinator for Virginia DCR, will be in attendance to assist the Planning Commission. Please also note the information contained in the “Summary of Review Process” (see page 3) regarding the PC’s deadline for formally providing recommendations to the BOS.

Additionally, copies of informational materials provided by DCR can be provided for your reference. Please share with Planning & Zoning staff any request(s) you may have regarding:

- VA DCR recommendations stemming from the “audit” (provided in February PC packet);
- the “Example Floodplain Management Ordinance” (model ordinance) dated Feb. 2015;
- the “Guidance for Local Floodplain Ordinance in VA” document, which includes information about “Higher Standards” in Section XII; or
- detailed information regarding the “Community Rating System” program.

Please contact with me any questions you may have regarding the information contained in this report, or regarding the issue of floodplain management in general. Thank you for your attention to this important topic and for your participation in this ongoing amendment process.

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March 14, 2016

ARTICLE 10. GENERAL FLOODPLAIN DISTRICT FP

ORDINANCE NO.

AN ORDINANCE AMENDING APPENDIX A OF THE CODE OF THE COUNTY OF NELSON, VIRGINIA; THE ZONING ORDINANCE OF NELSON COUNTY, VIRGINIA, BY ESTABLISHING FLOODPLAIN DISTRICTS; BY REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT; AND BY PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCES.

BE IT ENACTED AND ORDAINED BY THE COUNTY OF NELSON, VIRGINIA, as follows:

10.1 *Purpose.*

This ordinance is adopted pursuant to the authority granted to localities by Va. Code §15.2 – 2280. The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and necessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage.
- D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

10.2 *Applicability.*

These provisions shall apply to all lands within the jurisdiction of Nelson County and identified as being in the 100-year floodplain by the Federal Insurance Administration.

10.3 *Compliance and liability.*

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations, which apply to uses within the jurisdiction of this ordinance.

Comment [CBK1]: Need citation of statutory authority – see Model Ordinance 1 1.

Need section for administration – see Model Ordinance Article 2.

FEMA reviewers will need to see adoption date and date ordinance went into effect as well as signatures of officials certifying this adoption. See Model Ordinance Article VII.

Comment [TMP2]: Statutory authority cited (15.2-2280); Administration is proposed Section 10 24; Enactment clause is proposed Section 10 25.

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- B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or that land uses permitted within such district will be free from flooding or flood damages.
- C. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Floodplain Administrator.
- D. This ordinance shall not create liability on the part of Nelson County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

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10.4 *Abrogation and greater restrictions.*

This ordinance supersedes any ordinance currently in effect in flood prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

10.5 *Severability.*

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect and for this purpose, the provisions of this ordinance are hereby declared to be severable.

10.6 *Penalties.*

- A. Any person who fails to comply with any of the requirements or provisions of this ordinance or directions of the Floodplain Administrator or any other authorized employee of Nelson County shall be guilty of a misdemeanor and subject to the penalties as provided in Section 15-2 of the Zoning Ordinance.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action of equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this ordinance shall not excuse the violation or noncompliance to permit it to continue, and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this ordinance may be declared by the Board of Supervisors to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

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10.7 *Definitions*

For the purpose of this Article, words and terms are defined as follows:

Comment [CBK3]: Include definitions from model ordinance glossary.

Appurtenant or accessory structure: Accessory structures not to exceed 200 sq. ft.

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

Base Flood Elevations (BFE): The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

Basement: Any area of the building having its floor sub-grade (below ground level) on all sides.

Board of Zoning Appeals: The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this ordinance, and to review and approve Special Use Permits (as appropriate) as explicitly specified in this ordinance.

Building: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or equipment of any kind.

Critical facilities: Structures, improvements, or uses that, by virtue of their importance to the community and/or their sensitivity to the risks of flooding, are prohibited from being located within any Special Flood Hazard Area. Critical facilities include but are not limited to: emergency services and rescue squads, schools, medical facilities, senior care centers, evacuation centers, hazardous materials or fuel storage, and other similar improvements and uses. See 10.14 and 10.15.

Development: 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.

Drop-down Fence: A fence design that gives way under the pressure of flood flows to lay flat on the ground, and which can be re-erected after the flood.

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

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

Existing construction: For the purposes of determining rates, structures for which the "start of construction" commenced before August 1, 1978. "Existing construction" may also be referred to as "existing structures."
O2010-4

Existing manufactured home park or subdivision: 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.
O2010-4

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Expansion to an existing manufactured home park or subdivision: 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). **O2010-4**

Flood or flooding:

- (a) A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) the overflow of inland or tidal waters; or
 - (2) the unusual and rapid accumulation or runoff of surface waters from any source; or
 - (3) mudslides (i.e. mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in (a) (1) of this definition.

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Flood-prone area: Any land area susceptible to being inundated by water from any source.

Flood Insurance Rate Map (FIRM): An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Deleted: Insurance Administrator

Flood Insurance Study (FIS): a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards,

Deleted: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain:

- (a) A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- (b) An area subject to the unusual and rapid accumulation or runoff of surface water from any source.

Flood-proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: 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 at any point within the community,

Deleted: The designated area of the floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this ordinance, the floodway shall be capable of accommodating a flood of the 100-year magnitude.

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate 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, bridge openings, and the hydrological effect of urbanization in the

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watershed.

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) by an approved state program as determined by the Secretary of the Interior; or
 - (2) directly by the Secretary of the Interior in states without approved programs.

Hydrologic and Hydraulic Engineering Analysis: Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letters of Map Change (LOMC): A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Conditional Letters of Map Revision.

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements

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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.

Lowest adjacent grade: the lowest natural elevation of the ground surface next to the walls of a structure.

Lowest floor: 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 storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Manufactured home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured home park/subdivision: A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale. **O2010-4**

New construction: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after August 1, 1978 (the effective date of the initial FIRM) and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. Such structure is also referred to as "post-FIRM." **O2010-4**

New manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community. **O2010-4**

Post-FIRM structures: A structure for which construction or substantial improvement occurred after August 1, 1978.

Pre-FIRM structures: A structure for which construction or substantial improvement occurred on or before August 1, 1978.

Recreational vehicle: A vehicle which is:

- (a) built on a single chassis;
- (b) four hundred (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.

Deleted: A structure subject to federal regulations which is transportable in one or more sections, is eight (8) body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on site, is built on a permanent chassis, is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required facilities, and includes the plumbing, heating, air conditioning and electrical system contained in the structure.

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Repetitive Loss Structure: A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

Severe repetitive loss structure: A structure that:

- (a) is covered under a contract for flood insurance made available under the NFIP; and
- (b) has incurred flood related damage –
 - (i) for which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
 - (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

Shallow flooding area: A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Special flood hazard area: The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 10.8.A.1 of this ordinance. **O2010-4**

Start of construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for 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 the alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **O2010-4**

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its predamaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed. The

Deleted: This term includes structures, which have incurred "structural damage" regardless of the actual repair work performed.

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term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "historic structure," provided that the alteration will not preclude the structures continued designation as a "historic structure."
- (3) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement, as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

Suspended cable fence: A steel cable or chain suspended across the waterway between two secured posts. From the cable a fence made of galvanized chain, chain mesh, galvanized mesh or prefabricated fencing or netting is attached. The suspended cable remains taut during the flood while the flood gate fence remains flexible and rises with the flow. Some variations of the flood gate fence have foam or plastic floats at the bottom of the fence to aid in flotation on the surface of the flood flow.

Violation: 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 this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse: 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.

Deleted: Code of Federal Regulations, Title 44: Emergency Management and Assistance, Part 60-Criteria For Land Management and Use, Subpart A-Requirements for Land Management Regulations, Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5)

10.8 Establishment of Floodplain Districts

A. Description of districts.

1. *Basis of districts.* The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps (FIRM) for Nelson County, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 18, 2010 and any subsequent revisions or amendments thereto.

The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

2. The Floodway District is delineated, for purposes of this ordinance, using the

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criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100)-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.

3. The Special Floodplain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided.
4. The Approximated Floodplain District shall be those areas identified as an A or A99 Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the one hundred (100)-year floodplain boundary has been approximated. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Flood Plain Information Reports, U.S. Geological Survey Flood-prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the governing body.

B. *Overlay concept.*

1. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
2. Any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
3. In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

- 10.9 *Official Zoning Map.* The boundaries of the floodplain districts are established as shown on the Flood Insurance Rate Map dated June 18, 2010 which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.
- 10.10 *District boundary changes.* The delineation of any of the floodplain districts may be revised by the Board of Supervisors where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change.

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However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

10.11 *Interpretation of district boundaries.* Initial interpretations of the boundaries of the floodplain districts shall be made by the Floodplain Administrator. Should a dispute arise concerning the boundaries of any of the districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

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10.12 *Submitting Technical Data.* A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but no later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

10.13 *Permit and Application Requirements.*

A. *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a Special Use Permit. Such development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (*VA USBC*) and the Nelson County Subdivision Ordinance. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws, and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.

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Comment [TMP4]: These revisions include language taken directly from model ordinance dated Feb 2015

Comment [CBKS]: Needs to include permit review to ensure development is 'reasonably safe from flooding'

B. *Alteration or relocation of watercourse.* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia State Water Control Board, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.

C. *Site plans and permits applications.* All applications for Special Use Permit for development in the floodplain district and all building permits issued for the floodplain shall incorporate the information contained in subparagraph 1., 2., 3., 4., and 5., and the Floodplain Administrator may require the applicant to furnish any and all of the following information in subparagraphs 6. through 8. As deemed necessary for determining the suitability of the particular site for the proposed use, the following is required:

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1. Eight (8) copies of a site plan drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the flood protection elevation.
2. For structures to be elevated, the elevation of the lowest floor (including basement).
3. For structures to be flood proofed (nonresidential only), the elevation to which the structure will be flood proofed.
4. The elevation of the 100-year flood.
5. Topographic information showing existing and proposed ground elevations.
6. A typical valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.
7. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
8. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.

Deleted: Plans in triplicate

10.14 *General Standards*

The following provisions shall apply to all permits:

- A. New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
- B. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State anchoring requirements for resisting wind forces.
- C. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- D. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- E. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- G. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- H. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions A. – H. above, in all special flood hazard areas, these additional provisions shall apply:

- I. Prior to any proposed alteration or relocation of any channels or of any watercourse,

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stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administrator.

- J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- K. Fences shall be installed parallel to a waterway. When a fence crosses a waterway, it shall be designed as a drop-down fence or a suspended cable fence.
- L. No Special Use Permit or Variance shall be granted for any proposed critical facilities as defined by this ordinance within any Special Flood Hazard Area (SFHA). See 10.15-E.
- M. No Special Use Permit or Variance shall be granted for the storage of hazardous materials for any time period longer than 30 days within any SFHA. See 10.15-F.
- N. No Special Use Permit or Variance shall be granted for the placement of any non-native fill materials (such as fly ash or other waste by-products) within the SFHA. Only locally-borrowed mineral materials may be used as fill within the SFHA, and all such uses must first obtain the necessary permit approval as required by this ordinance.

10.15 Specific Standards

In all special flood hazard areas where Base Flood Elevations have been provided in the Flood Insurance Study or generated according to Section 10.18, the following provisions shall apply:

- A. **Residential Construction**
New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated **eighteen (18) inches** or more above the Base Flood Elevation.
- B. **Non-Residential Construction**
New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured/mobile home) shall have the lowest floor, including basement, elevated **eighteen (18) inches** or more above the Base Flood Elevation. Buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood-proofed, shall be maintained by the **Floodplain Administrator**.
- C. **Elevated Buildings – Space Below the Lowest Floor**
Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

Comment [CBK6]: RECOMMENDED
Increase freeboard to at least 18 inches

Deleted: one foot

Comment [CBK7]: RECOMMENDED
Increase freeboard to at least 18 inches

Deleted: one foot

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Comment [CBK8]: Recommend changing to "Space Below the Lowest Floor" to avoid confusion. See Model Ordinance 4.3C

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1. 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);
2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. Include, in Zones A, AO, AE, and A1-30, measures 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 the following minimum design criteria:
 - a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding;
 - b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;
 - d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade;
 - e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions;
 - f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Standards for Manufactured Homes and Recreational Vehicles

1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in Section 10.13 A. and B. and Section 10.15 A.
2. All recreational vehicles placed on sites must either:
 - a. be on the site for fewer than 180 consecutive days;
 - b. 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,
 - c. meet all the requirements for manufactured homes in Section 10.13 and Section 10.15 D.

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In addition, the following higher standards which go beyond National Flood Insurance Program minimum requirements shall apply to all Special Flood Hazard Areas, pursuant to 44 CFR 60.1(d):

E. Higher Standards and Critical Facilities.

For some activities and uses, even a slight chance of flooding poses too great a threat to public health, safety, and welfare. Critical facilities, as defined in this ordinance, are examples of such activities and uses which require special regulation. Therefore, critical facilities are prohibited from being constructed or operated within a SFHA. The following list of critical facilities provides examples of uses or improvements which are prohibited:

1. Structures or facilities that produce, use, store, or transport highly volatile, flammable, explosive, toxic, and/or water-reactive materials.
2. Hospitals, nursing homes, or other housing likely to have occupants who may not be sufficiently capable of avoiding injury or death during a flood.
3. Police stations, fire departments, rescue squads, and/or emergency operations centers and equipment storage facilities which are needed for flood response activities before, during, and after a flood.
4. Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

Comment [TMP9]: This clause ("or transport") was added to these recommendations by staff and is not explicitly listed in the VA DCR "Guidance for Local Floodplain Ordinances in VA" document.

F. Higher Standards and Hazardous Materials.

Some items and products are extremely hazardous and vulnerable to flood conditions, and would pose an unacceptable risk to public health, safety, and welfare during flooding. Therefore, the following hazardous materials are prohibited as follows:

1. The storage of Acetone, Ammonia, Benzene, Calcium carbide, Carbon disulfide, Celluloid, Chlorine, Hydrochloric acid, Magnesium, Nitric acid, Oxides of nitrogen, Phosphorus, Potassium, Prussic acid, Sodium, and/or Sulfur is prohibited in any and all SFHA.
2. The storage of Acetylene gas containers, Storage tanks, Lumber/buoyant items, Gasoline, Charcoal/coal dust, Petroleum products, and/or Natural gas for any time period longer than 30 days is prohibited in any and all SFHA.

Comment [TMP10]: This specific hazardous material ("Natural gas") was added to these recommendations by staff and is not explicitly listed in the VA DCR "Guidance for Local Floodplain Ordinances in VA" document.

10.16 *Standards for the Floodway District*

The following provisions shall apply within the Floodway District:

- A. Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

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Development activities which increase the water surface elevation of the base flood may be allowed, provided that the property owner first applies and obtains the following:

1. Receives an endorsement from the State's Floodplain Program Engineer;
 2. Receives a Special Use Permit from The Nelson County Board of Zoning Appeals for a conditional Flood Insurance Rate Map and floodway revision; and
 3. Receives the approval of the Federal Emergency Management Agency.
- B. If Section 10.19 is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article.
- C. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

10.17 *Permitted Uses in the Floodway District.* The following non-structural uses and activities are permitted, provided they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials or equipment:

Deleted: and

- A. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming area, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.
- C. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas;
- D. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas, airport landing strips, etc.
- E. Flood warning aids and water measurement devices.

10.18 *Standards for the Special Floodplain District*

The following provisions shall apply within the Special Floodplain District:

Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the Flood Insurance Rate Map, unless it is demonstrated 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 Nelson County.

Development activities in Zones A1-30, AE, and AH, on the Nelson County's Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided the property owner first applies, with the Nelson County Board of Zoning Appeal's endorsement, for a conditional Flood Insurance Rate Map revision, and receives the

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approval of the Federal Emergency Management Agency.

10.19 Standards for Approximated Floodplain

The following provisions shall apply with the Approximated Floodplain District:

The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available.

Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analyses for any development.

When such base flood elevation data is utilized, the lowest floor shall be elevated to one foot above the base flood elevation. During the permitting process, the Floodplain Administrator shall obtain:

1. the elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,
2. the elevation (in relation to mean sea level) to which the structure has been flood-proofed if the structure has been flood-proofed in accordance with the requirements of this article

10.20 Standards for Subdivision Proposals

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- D. Base Flood Elevation data shall be provided for subdivision proposals and other development proposals (including manufactured home parks and subdivisions) that exceed eleven lots or five acres, whichever is the lesser.

10.21 Design criteria for utilities and facilities.

- A. *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private

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package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

- B. *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- C. *Drainage facilities.* All storm facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites. The Board of Supervisors may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate large, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- D. *Utilities.* All utilities, such as gas lines, electrical and telephone systems being placed in flood prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- E. *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

10.22 Variances and Special Use Permits

Variances and Special Use Permits shall be issued by the Board of Zoning Appeals upon:

- A. A showing of good and sufficient cause;
- B. Determination by the Board of Zoning Appeals that failure to grant the variance would result in exceptional hardship to the applicant; and
- C. Determination by the Board of Zoning Appeals that the granting of such Variance or Special Use Permit will not result in:
 - 1. Unacceptable or prohibited increases in flood heights;
 - 2. Additional threats to public safety;
 - 3. Extraordinary public expense;
 - 4. Nuisances being created;
 - 5. Fraud or victimization of the public; or
 - 6. Conflict with local laws or ordinances.

While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

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Variations may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for Variations and Special Use Permits, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No Special Use Permit or Variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the Base Flood Elevation (BFE).
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. No Special Use Permit or Variance shall be granted for any proposed critical facility within any Special Flood Hazard Area (SFHA) as established by 10.14 and 10.15-E.
- N. No Special Use Permit or Variance shall be granted for any proposed hazardous materials within any SFHA as established by 10.14 and 10.15-F.
- O. Such other factors which are relevant to the purposes of this ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a Special Use Permit or Variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Special Use Permits or Variations shall be issued only after the Board of Zoning Appeals has determined that Special Use Permit or Variance will be the minimum required to provide relief from any hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a Special Use Permit or Variance, in writing, that the issuance of a Special Use Permit or Variance to construct a structure below the

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Base Flood Elevation: (a) increases the risks to life and property; and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all Special Use Permits or Variance actions, including justification for the issuance of a Special Use Permit or Variance. Any Special Use Permit or Variance which is issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

10.23 Existing Structures in Floodplain Districts

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions but which is not in conformity with these provisions may be continued subject to the following conditions:

- A. Existing structures in the Floodway District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the Base Flood Elevation.
- B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or flood-proofed to the greatest extent possible.
- C. The modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of fifty (50) percent or more of its market value, shall be undertaken only in full compliance with the provisions of this ordinance and the Virginia Uniform Statewide Building Code.

O2010-003

10.24 Administration.

A. Designation of the Floodplain Administrator. The Nelson County Planning & Zoning Director (or authorized designee) shall be designated as the Floodplain Administrator and is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

1. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the chief executive officer for Nelson County.
2. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
3. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

B. Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

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1. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
2. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
3. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
4. Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
6. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
7. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
8. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
9. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
10. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for Nelson County, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
11. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - a. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
 - b. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
12. Enforce the provisions of these regulations, investigate violations, issue notices of

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- violations or stop work orders, and require permit holders to take corrective action.
13. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
14. Administer the requirements related to proposed work on existing buildings:
- a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
 - b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
15. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.
16. Notify the Federal Emergency Management Agency when the corporate boundaries of Nelson County have been modified and:
- a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
 - b. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
17. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
18. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).
- C. Use and Interpretation of FIRMs. The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use

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and interpretation of FIRMs and data:

1. Where field surveyed topography indicates that adjacent ground elevations:
 - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
 - b. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
 2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
 3. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
 4. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
 5. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
 - a. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 - b. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 3.1.A.3, and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
 - c. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
- D. Jurisdictional Boundary Changes. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended

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regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

- E. *District Boundary Changes.* The delineation of any of the Floodplain Districts may be revised by Nelson County where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed LOMR is a record of this approval.
- F. *Interpretation of District Boundaries.* Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.
- G. *Submitting Model Backed Technical Data.* A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.
- H. *Letters of Map Revision.* When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision. Example cases:
- Any development that causes a rise in the base flood elevations within the floodway.
 - Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.

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- Alteration or relocation of a stream (including but not limited to installing culverts and bridges) 44 Code of Federal Regulations §65.3 and §65.6(a)(12)

10.25 Enactment.

Enacted and ordained this day of , 20 . This ordinance, number of Nelson
County, Virginia, shall become effective upon passage.

Signature

Title

Attested

APPENDIX A - ZONING

March 14, 2016

ARTICLE 10. GENERAL FLOODPLAIN DISTRICT FP

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A OF THE CODE OF THE COUNTY OF NELSON, VIRGINIA: THE ZONING ORDINANCE OF NELSON COUNTY, VIRGINIA, BY ESTABLISHING FLOODPLAIN DISTRICTS; BY REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT; AND BY PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCES.

BE IT ENACTED AND ORDAINED BY THE COUNTY OF NELSON, VIRGINIA, as follows:

10.1 *Purpose.*

This ordinance is adopted pursuant to the authority granted to localities by Va. Code §15.2 – 2280. The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and necessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage.
- D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

10.2 *Applicability.*

These provisions shall apply to all lands within the jurisdiction of Nelson County and identified as being in the 100-year floodplain by the Federal Insurance Administration.

10.3 *Compliance and liability.*

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations, which apply to uses within the jurisdiction of this ordinance.

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- B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or that land uses permitted within such district will be free from flooding or flood damages.
- C. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Floodplain Administrator.
- D. This ordinance shall not create liability on the part of Nelson County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

10.4 *Abrogation and greater restrictions.*

This ordinance supersedes any ordinance currently in effect in flood prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

10.5 *Severability.*

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect and for this purpose, the provisions of this ordinance are hereby declared to be severable.

10.6 *Penalties.*

- A. Any person who fails to comply with any of the requirements or provisions of this ordinance or directions of the Floodplain Administrator or any other authorized employee of Nelson County shall be guilty of a misdemeanor and subject to the penalties as provided in Section 15-2 of the Zoning Ordinance.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action of equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this ordinance shall not excuse the violation or noncompliance to permit it to continue, and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this ordinance may be declared by the Board of Supervisors to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

10.7 *Definitions*

For the purpose of this Article, words and terms are defined as follows:

Appurtenant or accessory structure: Accessory structures not to exceed 200 sq. ft.

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

Base Flood Elevations (BFE): The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

Basement: Any area of the building having its floor sub-grade (below ground level) on all sides.

Board of Zoning Appeals: The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this ordinance, and to review and approve Special Use Permits (as appropriate) as explicitly specified in this ordinance.

Building: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or equipment of any kind.

Critical facilities: Structures, improvements, or uses that, by virtue of their importance to the community and/or their sensitivity to the risks of flooding, are prohibited from being located within any Special Flood Hazard Area. Critical facilities include but are not limited to: emergency services and rescue squads, schools, medical facilities, senior care centers, evacuation centers, hazardous materials or fuel storage, and other similar improvements and uses. See 10.14 and 10.15.

Development: 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.

Drop-down Fence: A fence design that gives way under the pressure of flood flows to lay flat on the ground, and which can be re-erected after the flood.

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

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

Existing construction: For the purposes of determining rates, structures for which the "start of construction" commenced before August 1, 1978. "Existing construction" may also be referred to as "existing structures."
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Existing manufactured home park or subdivision: 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.
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Expansion to an existing manufactured home park or subdivision: 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). **O2010-4**

Flood or flooding:

- (a) A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) the overflow of inland or tidal waters; or
 - (2) the unusual and rapid accumulation or runoff of surface waters from any source; or
 - (3) mudslides (i.e. mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in (a) (1) of this definition.

Flood-prone area: Any land area susceptible to being inundated by water from any source.

Flood Insurance Rate Map (FIRM): An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS): a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain:

- (a) A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- (b) An area subject to the unusual and rapid accumulation or runoff of surface water from any source.

Flood-proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: 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 at any point within the community.

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate 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, bridge openings, and the hydrological effect of urbanization in the

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watershed.

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) by an approved state program as determined by the Secretary of the Interior; or
 - (2) directly by the Secretary of the Interior in states without approved programs.

Hydrologic and Hydraulic Engineering Analysis: Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letters of Map Change (LOMC): A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Conditional Letters of Map Revision.

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements

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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.

Lowest adjacent grade: the lowest natural elevation of the ground surface next to the walls of a structure.

Lowest floor: 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 storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Manufactured home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured home park/subdivision: A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale. **O2010-4**

New construction: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after August 1, 1978 (the effective date of the initial FIRM) and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. Such structure is also referred to as "post-FIRM." **O2010-4**

New manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community. **O2010-4**

Post-FIRM structures: A structure for which construction or substantial improvement occurred after August 1, 1978.

Pre-FIRM structures: A structure for which construction or substantial improvement occurred on or before August 1, 1978.

Recreational vehicle: A vehicle which is:

- (a) built on a single chassis;
- (b) four hundred (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.

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Repetitive Loss Structure: A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

Severe repetitive loss structure: A structure that:

- (a) is covered under a contract for flood insurance made available under the NFIP; and
- (b) has incurred flood related damage –
 - (i) for which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
 - (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

Shallow flooding area: A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Special flood hazard area: The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 10.8.A.1 of this ordinance. **O2010-4**

Start of construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for 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 the alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **O2010-4**

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its predamaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed. The

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term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "historic structure," provided that the alteration will not preclude the structures continued designation as a "historic structure."
- (3) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement, as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

Suspended cable fence: A steel cable or chain suspended across the waterway between two secured posts. From the cable a fence made of galvanized chain, chain mesh, galvanized mesh or prefabricated fencing or netting is attached. The suspended cable remains taut during the flood while the flood gate fence remains flexible and rises with the flow. Some variations of the flood gate fence have foam or plastic floats at the bottom of the fence to aid in flotation on the surface of the flood flow.

Violation: 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 this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse: 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.

10.8 *Establishment of Floodplain Districts*

A. *Description of districts.*

1. *Basis of districts.* The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps (FIRM) for Nelson County, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 18, 2010 and any subsequent revisions or amendments thereto.

The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

2. The Floodway District is delineated, for purposes of this ordinance, using the

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criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100)-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.

3. The Special Floodplain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided.
4. The Approximated Floodplain District shall be those areas identified as an A or A99 Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the one hundred (100)-year floodplain boundary has been approximated. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Flood Plain Information Reports, U.S. Geological Survey Flood-prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the governing body.

B. *Overlay concept.*

1. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
2. Any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
3. In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

10.9 *Official Zoning Map.* The boundaries of the floodplain districts are established as shown on the Flood Insurance Rate Map dated June 18, 2010 which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

10.10 *District boundary changes.* The delineation of any of the floodplain districts may be revised by the Board of Supervisors where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change.

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However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

- 10.11 *Interpretation of district boundaries.* Initial interpretations of the boundaries of the floodplain districts shall be made by the Floodplain Administrator. Should a dispute arise concerning the boundaries of any of the districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.
- 10.12 *Submitting Technical Data.* A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but no later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.
- 10.13 *Permit and Application Requirements.*
- A. *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a Special Use Permit. Such development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (*VA USBC*) and the Nelson County Subdivision Ordinance. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws, and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.
 - B. *Alteration or relocation of watercourse.* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia State Water Control Board, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.
 - C. *Site plans and permits applications.* All applications for Special Use Permit for development in the floodplain district and all building permits issued for the floodplain shall incorporate the information contained in subparagraph 1., 2., 3., 4., and 5., and the Floodplain Administrator may require the applicant to furnish any and all of the following information in subparagraphs 6. through 8. As deemed necessary for determining the suitability of the particular site for the proposed use, the following is required:

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1. Eight (8) copies of a site plan drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the flood protection elevation.
2. For structures to be elevated, the elevation of the lowest floor (including basement).
3. For structures to be flood proofed (nonresidential only), the elevation to which the structure will be flood proofed.
4. The elevation of the 100-year flood.
5. Topographic information showing existing and proposed ground elevations.
6. A typical valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.
7. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
8. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.

10.14 *General Standards*

The following provisions shall apply to all permits:

- A. New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
- B. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State anchoring requirements for resisting wind forces.
- C. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- D. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- E. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- G. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- H. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions A. – H. above, in all special flood hazard areas, these additional provisions shall apply:

- I. Prior to any proposed alteration or relocation of any channels or of any watercourse,

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stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administrator.

- J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- K. Fences shall be installed parallel to a waterway. When a fence crosses a waterway, it shall be designed as a drop-down fence or a suspended cable fence.
- L. No Special Use Permit or Variance shall be granted for any proposed critical facilities as defined by this ordinance within any Special Flood Hazard Area (SFHA). See 10.15-E.
- M. No Special Use Permit or Variance shall be granted for the storage of hazardous materials for any time period longer than 30 days within any SFHA. See 10.15-F.
- N. No Special Use Permit or Variance shall be granted for the placement of any non-native fill materials (such as fly ash or other waste by-products) within the SFHA. Only locally-borrowed mineral materials may be used as fill within the SFHA, and all such uses must first obtain the necessary permit approval as required by this ordinance.

10.15 *Specific Standards*

In all special flood hazard areas where Base Flood Elevations have been provided in the Flood Insurance Study or generated according to Section 10.18, the following provisions shall apply:

A. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated eighteen (18) inches or more above the Base Flood Elevation.

B. Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured/mobile home) shall have the lowest floor, including basement, elevated eighteen (18) inches or more above the Base Flood Elevation. Buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood-proofed, shall be maintained by the Floodplain Administrator.

C. Elevated Buildings – Space Below the Lowest Floor

Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

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1. 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);
2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. Include, in Zones A, AO, AE, and A1-30, measures 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 the following minimum design criteria:
 - a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding;
 - b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;
 - d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade;
 - e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions;
 - f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Standards for Manufactured Homes and Recreational Vehicles

1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in Section 10.13 A. and B. and Section 10.15 A.
2. All recreational vehicles placed on sites must either:
 - a. be on the site for fewer than 180 consecutive days;
 - b. 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,
 - c. meet all the requirements for manufactured homes in Section 10.13 and Section 10.15 D.

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In addition, the following higher standards which go beyond National Flood Insurance Program minimum requirements shall apply to all Special Flood Hazard Areas, pursuant to 44 CFR 60.1(d):

E. Higher Standards and Critical Facilities.

For some activities and uses, even a slight chance of flooding poses too great a threat to public health, safety, and welfare. Critical facilities, as defined in this ordinance, are examples of such activities and uses which require special regulation. Therefore, critical facilities are prohibited from being constructed or operated within a SFHA. The following list of critical facilities provides examples of uses or improvements which are prohibited:

1. Structures or facilities that produce, use, store, or transport highly volatile, flammable, explosive, toxic, and/or water-reactive materials.
2. Hospitals, nursing homes, or other housing likely to have occupants who may not be sufficiently capable of avoiding injury or death during a flood.
3. Police stations, fire departments, rescue squads, and/or emergency operations centers and equipment storage facilities which are needed for flood response activities before, during, and after a flood.
4. Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

F. Higher Standards and Hazardous Materials.

Some items and products are extremely hazardous and vulnerable to flood conditions, and would pose an unacceptable risk to public health, safety, and welfare during flooding. Therefore, the following hazardous materials are prohibited as follows:

1. The storage of Acetone, Ammonia, Benzene, Calcium carbide, Carbon disulfide, Celluloid, Chlorine, Hydrochloric acid, Magnesium, Nitric acid, Oxides of nitrogen, Phosphorus, Potassium, Prussic acid, Sodium, and/or Sulfur is prohibited in any and all SFHA.
2. The storage of Acetylene gas containers, Storage tanks, Lumber/buoyant items, Gasoline, Charcoal/coal dust, Petroleum products, and/or Natural gas for any time period longer than 30 days is prohibited in any and all SFHA.

10.16 *Standards for the Floodway District*

The following provisions shall apply within the Floodway District:

- A. Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

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Development activities which increase the water surface elevation of the base flood may be allowed, provided that the property owner first applies and obtains the following:

1. Receives an endorsement from the State's Floodplain Program Engineer;
 2. Receives a Special Use Permit from The Nelson County Board of Zoning Appeals for a conditional Flood Insurance Rate Map and floodway revision; and
 3. Receives the approval of the Federal Emergency Management Agency.
- B. If Section 10.19 is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article.
- C. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

10.17 *Permitted Uses in the Floodway District.* The following non-structural uses and activities are permitted, provided they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials or equipment:

- A. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming area, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.
- C. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas;
- D. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas, airport landing strips, etc.
- E. Flood warning aids and water measurement devices.

10.18 *Standards for the Special Floodplain District*

The following provisions shall apply within the Special Floodplain District:

Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the Flood Insurance Rate Map, unless it is demonstrated 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 Nelson County.

Development activities in Zones A1-30, AE, and AH, on the Nelson County's Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided the property owner first applies, with the Nelson County Board of Zoning Appeal's endorsement, for a conditional Flood Insurance Rate Map revision, and receives the

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approval of the Federal Emergency Management Agency.

10.19 *Standards for Approximated Floodplain*

The following provisions shall apply with the Approximated Floodplain District:

The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available.

Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator .

The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analyses for any development.

When such base flood elevation data is utilized, the lowest floor shall be elevated to one foot above the base flood elevation. During the permitting process, the Floodplain Administrator shall obtain:

1. the elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,
2. the elevation (in relation to mean sea level) to which the structure has been flood-proofed if the structure has been flood-proofed in accordance with the requirements of this article

10.20 *Standards for Subdivision Proposals*

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- D. Base Flood Elevation data shall be provided for subdivision proposals and other development proposals (including manufactured home parks and subdivisions) that exceed eleven lots or five acres, whichever is the lesser.

10.21 *Design criteria for utilities and facilities.*

- A. *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private

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package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

- B. *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- C. *Drainage facilities.* All storm facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites. The Board of Supervisors may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate large, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- D. *Utilities.* All utilities, such as gas lines, electrical and telephone systems being placed in flood prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- E. *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

10.22 *Variations and Special Use Permits*

Variations and Special Use Permits shall be issued by the Board of Zoning Appeals upon:

- A. A showing of good and sufficient cause;
- B. Determination by the Board of Zoning Appeals that failure to grant the variance would result in exceptional hardship to the applicant; and
- C. Determination by the Board of Zoning Appeals that the granting of such Variance or Special Use Permit will not result in:
 - 1. Unacceptable or prohibited increases in flood heights;
 - 2. Additional threats to public safety;
 - 3. Extraordinary public expense;
 - 4. Nuisances being created;
 - 5. Fraud or victimization of the public; or
 - 6. Conflict with local laws or ordinances.

While the granting of variations generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variations may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

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Variations may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for Variations and Special Use Permits, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No Special Use Permit or Variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the Base Flood Elevation (BFE).
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. No Special Use Permit or Variance shall be granted for any proposed critical facility within any Special Flood Hazard Area (SFHA) as established by 10.14 and 10.15-E.
- N. No Special Use Permit or Variance shall be granted for any proposed hazardous materials within any SFHA as established by 10.14 and 10.15-F.
- O. Such other factors which are relevant to the purposes of this ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a Special Use Permit or Variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Special Use Permits or Variations shall be issued only after the Board of Zoning Appeals has determined that Special Use Permit or Variance will be the minimum required to provide relief from any hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a Special Use Permit or Variance, in writing, that the issuance of a Special Use Permit or Variance to construct a structure below the

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Base Flood Elevation: (a) increases the risks to life and property; and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all Special Use Permits or Variance actions, including justification for the issuance of a Special Use Permit or Variance. Any Special Use Permit or Variance which is issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

10.23 *Existing Structures in Floodplain Districts*

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions but which is not in conformity with these provisions may be continued subject to the following conditions:

- A. Existing structures in the Floodway District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the Base Flood Elevation.
- B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or flood-proofed to the greatest extent possible.
- C. The modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of fifty (50) percent or more of its market value, shall be undertaken only in full compliance with the provisions of this ordinance and the Virginia Uniform Statewide Building Code.

O2010-003

10.24 *Administration.*

- A. *Designation of the Floodplain Administrator.* The Nelson County Planning & Zoning Director (or authorized designee) shall be designated as the *Floodplain Administrator* and is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:
 1. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the chief executive officer for Nelson County.
 2. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
 3. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.
- B. *Duties and Responsibilities of the Floodplain Administrator.* The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

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1. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
2. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
3. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
4. Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
6. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
7. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
8. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
9. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
10. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for Nelson County, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
11. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - a. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
 - b. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
12. Enforce the provisions of these regulations, investigate violations, issue notices of

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- violations or stop work orders, and require permit holders to take corrective action.
13. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
 14. Administer the requirements related to proposed work on existing buildings:
 - a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
 - b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
 15. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.
 16. Notify the Federal Emergency Management Agency when the corporate boundaries of Nelson County have been modified and:
 - a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
 - b. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
 17. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
 18. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).
- C. *Use and Interpretation of FIRMs.* The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use

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and interpretation of FIRMs and data:

1. Where field surveyed topography indicates that adjacent ground elevations:
 - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
 - b. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
 2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
 3. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
 4. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
 5. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
 - a. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 - b. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 3.1.A.3. and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
 - c. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
- D. *Jurisdictional Boundary Changes.* The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended

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regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

- E. *District Boundary Changes.* The delineation of any of the Floodplain Districts may be revised by Nelson County where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed LOMR is a record of this approval.
- F. *Interpretation of District Boundaries.* Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.
- G. *Submitting Model Backed Technical Data.* A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.
- H. *Letters of Map Revision.* When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision. Example cases:
- Any development that causes a rise in the base flood elevations within the floodway.
 - Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.

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- Alteration or relocation of a stream (including but not limited to installing culverts and bridges) *44 Code of Federal Regulations §65.3 and §65.6(a)(12)*

10.25 Enactment.

Enacted and ordained this ___ day of _____, 20____. This ordinance, number _____ of Nelson County, Virginia, shall become effective upon passage.

Signature

Title

Attested



DEPARTMENT OF
PLANNING & ZONING

PLANNING COMMISSION
BOARD OF ZONING APPEALS

To: Chair and Members, Nelson County Planning Commission
From: Tim Padalino | Planning & Zoning Director
Date: March 15, 2016
Subject: PC Review of Class C Communication Tower Permits #2016-01 & #2016-02 (NTELOS / Ms. Jessie Wilmer)

Summary of Class C Communication Tower Permit #2016-01

<u>Site Address / Location:</u>	CV821: Greenfield / 5029 Rockfish Valley Highway / Nellysford / Central District
<u>Tax Parcel(s):</u>	#22-A-60C1
<u>Parcel Size:</u>	N/A (no record)
<u>Zoning:</u>	Agricultural (A-1)
<u>Applicants:</u>	Ms. Jessie Wilmer, Senior Site Acquisition Specialist, NTELOS
<u>Request:</u>	Review and Approval of Class C Communication Tower Permit #2016-01
▪ <i>Completed Application Received On:</i> February 19 th , 2016	

Summary of Class C Communication Tower Permit #2016-02

<u>Site Address / Location:</u>	CV822: Lodebar / 266 Hearthstone Lane / Nellysford / Central District
<u>Tax Parcel(s):</u>	#11I – “WPOA – Open Space”
<u>Parcel Size:</u>	N/A (open space area within Wintergreen Master Plan)
<u>Zoning:</u>	Residential Planned District (RPC)
<u>Applicants:</u>	Ms. Jessie Wilmer, Senior Site Acquisition Specialist, NTELOS
<u>Request:</u>	Review and Approval of Class C Communication Tower Permit #2016-02
▪ <i>Completed Application Received On:</i> February 19 th , 2016	

On February 19, the Dept. of Planning & Zoning received two (2) Class C Communication Tower Permit applications from Ms. Jessie Wilmer of NTELOS. The applications request approval(s) for proposed equipment upgrades at two existing communication facilities in the Nellysford area; the proposed upgrades involve equipment replacement and additions, as well as increased tower height at CV821.

Specifically, the application materials include the following submittals:

- Class C Communication Tower Permit applications (#2016-01 and #2016-02);
- Application narrative(s) (dated February 9);
- Photo simulations showing proposed equipment on existing towers; and
- Site Plans depicting details of existing facilities, proposed modifications to lease areas, and proposed modifications to equipment to include new antennas, new microwave dishes, and proposed new pipe mounts (dated January 25 and February 3)

Subject Property Location and Characteristics:

Class C Communication Tower Permit #2016-01 -

This subject property is a parcel in Nellysford with frontage on Rockfish Valley Highway; it is identified as Tax Map Parcel #22-A-60C1, and is zoned Agricultural (A-1). County land records contained in the ProVal system do not specify the acreage of this property.

This subject property currently contains a 50' x 50' lease area with an E911 address of 5029 Rockfish Valley Highway. There is an existing entrance from VA-151, and a 20' wide access easement between the entrance and the lease area.

Class C Communication Tower Permit #2016-02 -

This subject property is a parcel in Stoney Creek identified as Tax Map Parcel #11I – “Wintergreen Property Owners Association – Open Space,” and is zoned Residential Planned Community (RPC). County land records contained in ProVal do not specify the acreage of this large, irregular property.

This subject property currently contains a 15' x 40' lease area with an E911 address of 622 Hearthstone Lane. The lease area is accessed from Hearthstone Lane via an existing gravel drive.

Review Process Overview:

- December 2, 2015 – pre-application meeting
- February 19th – applications submitted
- March 23rd – PC introduction and initial review
- April 27th – PC public hearing (optional – TBD; see Z.O. 20-13-B)
- (?) – BOS review, public hearing, and action (TBD)

Site Plan Review Committee Comments:

These applications have not been referred to the Site Plan Review Committee, as these permits are associated with existing permitted tower facilities – and (in the Director’s opinion) do not constitute a change in use or otherwise require interagency review. The majority of changes would occur on the tower, and the modifications to the lease area would be minor in nature.

- **VDOT:** Not applicable.
- **VDH:** Not applicable.
- **Nelson County Building Official:** No review to date. Construction activity within lease areas typically requires a Building Permit and/or Land Disturbing Activity Permit; to be determined.
- **TJSWCD:** No review to date. An approved Erosion & Sediment Control Plan may be necessary; this will be determined and (if necessary) addressed during the issuance of a Building Permit. That process does not occur until after the zoning review process is finished.

Staff Commentary on Permit Review Process:

Please carefully consider the following comments on various aspects of these applications:

A. Class C Tower Permit process vs. (administrative) Tower Permit Amendments process –

Please note that P&Z staff routinely review and approve “Tower Permit Amendment” applications administratively, pursuant to Z.O. 20-17-A (“Tower Permit Amendments”). However – because these proposed facility upgrades involve the installation of microwave dishes, and because the original approved permits did not include approval for microwave dishes – these proposed equipment upgrade projects are not eligible for the administrative Tower Permit Amendment permit process (per the “Policy” outlined in Z.O. 20-17-A-1).

This determination was previously communicated to the applicant in an email dated December 8, 2015, stated as follows:

“The proposed introduction of a microwave dish would, in my opinion, substantially deviate from the terms of the original approval. Therefore, under the current definitions and regulations in the Communication Tower Ordinance, you’ll need to prepare and submit application pursuant to Z.O. 20-13 (“Application and Procedure for Approval of a Class C Communication Tower Permit”).”

B. Balloon test and photosimulations –

Please also note that, in my review of these applications to determine their completeness, I have also determined that the balloon test requirement is not applicable for these two applications. Although Class C Communication Tower Permit applications require that a balloon test be scheduled and conducted (per Z.O. 20-13-D), this requirement was established in contemplation of new tower facilities. Consider the following language in Z.O. 20-13 (“Application and Procedure for Approval of a Class C Communication Tower Permit”), Section D:

“[20-13]-D. Balloon Test. For any proposed tower requiring a Class C Communication Tower Permit, a balloon test shall be conducted...” (emphasis added)

Because these two applications are associated with existing, permitted tower facilities, I previously directed the applicant to simply prepare photo simulations of the proposed new equipment on the existing tower (which is the ultimate purpose of conducting a balloon test for new tower facilities), pursuant to Z.O. 20-13-D-4. This determination was previously communicated to the applicant in an email dated December 8, 2015, stated as follows:

“As we briefly discussed during our meeting last week, some of the requirements in 20-13 may not apply in this specific scenario. For example, regarding the balloon test requirement in 20-13-D, you may be able to simply prepare photosims of the existing facility which graphically depict the proposed new equipment, in lieu of conducting the balloon test in order to create photosims.

In other words, the balloon test requirement is clearly devised for applications involving the installation of an entirely new communication tower facility. As such [...] it is my opinion that 20-13-D-1, -2, and -3 seem illogical – and 20-13-D-4 is the only requirement in that section which clearly remains a requirement...”

C. Planning Commission review process & public hearing(s) –

Finally, please also note that under the new Tower Ordinance (enacted in 2014), the Planning Commission is not required to conduct a public hearing for Class C Communication Tower Permit applications. Z.O. 20-13 (“Application and Procedure for Approval of a Class C Communication Tower Permit”), Section B contains the following language:

“Upon receipt by the Planning and Zoning Director of a Complete Application, the Planning Commission shall conduct a review of the application to determine whether the proposed communication tower is substantially in accord with the Comprehensive Plan and communicate its determination together with any additional recommendations to the Board of Supervisors. In connection with any such determination, the Planning Commission may, and at the direction of the Board of Supervisors shall, hold a public hearing, after notice as required by Section 15.2-2204 of the Code of Virginia. [...]”

Therefore, the PC may conduct a public hearing for these two proposed equipment upgrade projects, if it is determined to be necessary. However, the PC may also simply, “conduct a review of the application to determine whether the proposed communication tower is substantially in accord with the Comprehensive Plan,” and “communicate its determination together with any additional recommendations to the Board of Supervisors” without conducting a public hearing, if this is acceptable to the Commission.

Staff Evaluation & Recommendation:

The Planning & Zoning Director’s opinion is that the requested Class C Communication Tower Permit applications (#2016-01 “CV821 – Greenfield” and #2016-02 “CV822 – Lodebar”), as detailed in the application materials, seem to be acceptable relative to the criteria contained in Z.O. 20-13-F (“Factors considered in granting a Class C Communication Tower permit”).

This opinion is heavily influenced by the fact that these applications are associated with existing permitted tower facilities. Independent of that fact, my conclusion is that the proposed equipment upgrade projects (and permissible minor increase in height for CV821) – as detailed in the application materials, and specifically as depicted in the photosims – are acceptable relative to Z.O. 20-2 (“Purpose”), Z.O. 20-13-F (“Factors considered in granting a Class C Communication Tower permit”), and the Nelson County Comprehensive Plan.

I therefore recommend that the PC recommend approval of these applications to the BOS.

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the March 23rd Planning Commission review of Class C Communication Tower Permits #2016-01 and #2016-02. Thank you very much for your time and attention to these two applications.



February 9, 2016

County of Nelson
Department of Planning & Zoning
Attn: Tim Padalino
80 Front Street
Lovingston, VA 22949

RE: NTELOS Wireless Application for Equipment Upgrades
CV821 Greenfield - 5029 Rockfish Valley Highway, Nellysford
CV822 Lodebar - 266 Hearthstone Lane, Nellysford

Dear Mr. Padalino:

Virginia PCS Alliance, L.C. ("NTELOS") requests the consideration of Nelson County to upgrade its existing telecommunications equipment on two (2) existing personal wireless service facilities in the County located at 5029 Rockfish Valley Highway and 266 Hearthstone Lane, Nellysford.

NTELOS is in the process of enhancing its existing 3G voice and data network by replacing old network equipment with 4G/LTE (Long Term Evolution) equipment that will provide improved call performance, expanded coverage, faster downloads and stronger indoor signals. The current 3G voice and data network utilizes the 1900 MHz spectrum only. Because of a unique partnership that NTELOS has with Sprint, NTELOS is able to have diverse spectrum available for its use. The proposed NTELOS 4G/LTE upgrades will use a tri-band system that will: 1) repurpose old Nextel spectrum (800 MHz spectrum) for increased coverage and better in-building coverage, 2) use Clearwire spectrum (2.5 GHz spectrum) for increased data capacity and 3) continue to use the existing Sprint/NTELOS spectrum (1900 MHz spectrum). By using this tri-band system, NTELOS and Sprint customers will have LTE enhancement, improved call quality and diverse data capacity. In addition to upgrading our current network of sites, NTELOS is also adding sites to increase capacity in saturated areas.

CV821 Greenfield - 5029 Rockfish Valley Road, Nellysford (Tax Parcel: 22-A-50)

NTELOS constructed this 120' monopole tower in 2009 and sold the tower to Pegasus-Sunsar Towers, LLC. Currently, NTELOS has (3) panel antennas located at the 117' radiation center (flush mounted) along with a small temporary microwave dish at the 111' radiation center. With this proposal, NTELOS is proposing to remove the existing tower equipment and replace it with (3) tri-band panel antennas at the 125' radiation center (10' above the current height of the tower - total above ground height 130') that will support multiple spectrum capabilities for 4G/LTE services along with (7) remote radio head amplifiers just below the proposed antennas. The proposed new antennas are proposed to be pipe mounted above the height of the tower only - the tower will not be extended, only the antennas. A new 2' diameter microwave dish is proposed at the 114' radiation center. Because of the prior zoning approval to only allow for flush mounted antennas, NTELOS cannot fit all its equipment within the allotted tower lease space, therefore we need to mount antennas above the current height of the tower. Another carrier (Verizon Wireless) has leased space direction below NTELOS on this tower. NTELOS is proposing to upgrade its

existing base station cabinets within the existing ground space. No expansion on the ground is required. Attached are photo simulations and site plan drawings of the NTELOS proposal.

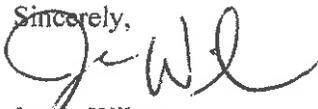
CV822 Lodebar – 266 Hearthstone Lane, Nellysford (WPOA – Open Space)

NTELOS is currently installed on this 130' monopole tower at the 125' radiation center with (3) flush mounted panel antennas. NTELOS constructed this 130' tower in 2009 and sold the tower to GrainComm I, LLC. Currently, NTELOS has (3) panel antennas located at the 125' radiation center (flush mounted) along with a small temporary microwave dish at the 119' radiation center. With this proposal, NTELOS is proposing to remove the existing tower equipment and replace it with (3) tri-band panel antennas at the 125' radiation center that will support multiple spectrum capabilities for 4G/LTE services along with (7) remote radio head amplifiers just below the proposed antennas. A new 2' diameter microwave dish is proposed at the 115' radiation center. No additional antenna height is requested at this site. NTELOS is proposing to upgrade its existing base station cabinets within the existing ground space. No expansion on the ground is required. Attached are photo simulations and site plan drawings of the NTELOS proposal.

With the increased data capacity needed for 4G/LTE services, Ethernet backhaul fiber is required at every cell tower site to provide data services. Ethernet fiber is currently available along Rt. 151 with Verizon (wireline) to provide backhaul to the CV821 Greenfield tower, however, there is not Ethernet fiber available at the CV822 Lodebar site located on mountain ridge west of Stoney Creek. With this application, in addition to the 4G/LTE antenna upgrade proposed by NTELOS at each site, we are also requesting to add 2' licensed microwave dishes to each site to provide Ethernet backhaul via microwave to CV822 Lodebar. CV821 Greenfield will be the host site and CV822 Lodebar is the target site.

The proposed equipment upgrades by NTELOS are compatible with the existing character of the existing wireless facility and the upgrade will have no visual impact on the surrounding area than its current scenario. This proposal will deliver a much improved customer communications experience and will serve the public health and safety needs to the community by providing increased wireless voice capabilities and improved high speed data services to this area of Nelson County. I look forward to receiving your comments regarding this proposal. Please feel free to contact me if you need additional information.

Sincerely,



Jessie Wilmer
NTELOS
Sr. Site Acquisition Specialist
(540) 241-5060
wilmerj@nelos.com



PERMIT APPLICATION:
 Nelson County Department of Planning & Zoning

TO THE ZONING ADMINISTRATOR: Class C Tower Permit # 2016-01
application type application number

1. The undersigned hereby petitions the Planning Commission and/or Board of Supervisors for approval of the following (check appropriate box):

- Rezoning from _____ to _____
- Subdivision – Preliminary
- Subdivision – Final
- Major Site Plan
- Minor Site Plan
- Conditional Rezoning from _____ to _____
- Site Plan – Preliminary (optional)
- Site Plan – Final
- Special Use Permit
- Other: Wireless Application Class C

- Pursuant to Article 20, Section 13 of the Nelson County Zoning Ordinance.
- Pursuant to Section _____, Subsection _____ of the Nelson County Subdivision Ordinance.

Reason(s) for request: Upgrade equipment by Ntelos Wireless on existing 120' tower. Install antennas above tower by 10' (130' total) and install 2' microwave dish.

(Please use reverse or attach additional sheet if more space is needed.)

2. Applicant(s) and Property Owner(s):
 (Please provide names of applicants and property owners and indicate applicable title; if applicant is not the property owner, please show relationship, i.e. lessee, contract purchaser, etc.)

Applicant Property Owner Name: Ntelos Wireless - Jessie Wilmer
 Mailing Address: 1150 Shenandoah Village Drive, Waynesboro Va 22980
 Telephone # (540) 241-5000 E-mail Address: wilmerj@ntelos.com
 Relationship (if applicable): Tenant on existing tower

Applicant Property Owner Name: Frieda Kier, Jacquelin Kier + Mary White
 Mailing Address: 301 Yount Ave, Staunton, Va 24401
 Telephone # (540) 880-4902 E-mail Address: _____
 Relationship (if applicable): Lessor

(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) info.)

3. Location and Characteristics of Subject Property:

- a. Address of property (specific location, route numbers, street names, voting district, etc.):
5029 Rockfish Valley Highway, Nellysford
- b. Official tax map number: 22-4-6001
- c. Acreage of property: _____
- d. Present use: Telecommunications tower facility
- e. Present zoning classification: A1
- f. Zoning classification of surrounding properties: A-1

4. Names of Adjacent Property Owners: Frida Kier, Jacqueline Kier, Russell + Kelly Kennedy, Russell Kennedy III

5. Affidavit: The undersigned applicant(s) and/or property owner(s) certifies that this application and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the applicant(s) and/or property owner(s) gives permission for members of the Planning Commission, Board of Supervisors, and County Staff to visit and view the subject property.

Signature: J Wilmer Printed Name: Jessica Wilmer
 Signature: _____ Printed Name: _____

(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)

6. Additional information: *(Please attach separate sheet for additional details, explanations, etc.)*

7. Please note: In the event of cancellation or postponement at your request after the initial newspaper advertisement for this application, an additional fee will apply for re-advertisement (determined by the actual cost of the ad). This fee will not apply in cases of Planning Commission or Board of Supervisors deferment.

***** TO BE COMPLETED BY PLANNING & ZONING STAFF *****

- Completed application and fee (\$ 2,000.00) received on Feb. 19, 2016
- Hearing Notice published on _____
- Planning Commission action: Date of Meeting / Hearing: _____
Recommendation: _____
- Board of Supervisors action: Date of Hearing: _____ Date of Decision: _____
Action: _____



GREENFIELD CV821

5029 Rockfish Valley Hwy
Nellysford, VA 22938

**EQUIPMENT CHANGE OUT
SIMULATION**

View from southwest of site



Existing View



GREENFIELD CV821

5029 Rockfish Valley Hwy
Nellysford, VA 22938

**EQUIPMENT CHANGE OUT
SIMULATION**

View from southwest of site



OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("Agreement") dated June 19, 2009, is between FRIEDA D. KIER, JACQUELINE KIER, AND MARY BARBARA WHITE ("Owner") and VIRGINIA PCS ALLIANCE, L.C., a Virginia limited liability company, d/b/a NTELOS ("Company").

In consideration of the Option Consideration, as hereinafter defined, the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Company agree as follows:

1. GRANT OF OPTION. Owner hereby grants to Company, its successors and assigns, the exclusive and irrevocable right and option ("Option") to lease the following:

check appropriate box(es):

- [X] Real property comprised of approximately Two Thousand Five Hundred (2,500) square feet of land (50' x 50')
[] Building interior space comprised of approximately square feet
[] Building exterior space for attachment of antennas
[] Building exterior space for placement of equipment
[] Tower antenna space
[] Space required for cable runs to connect equipment and antennas

in the location(s) shown on Attachment "A" ("Leased Property"), together with non-exclusive easements across the real property and improvements thereon owned by Owner as described on Attachment "B" ("Owner's Property") for (i) unrestricted access, ingress and egress to and from the Leased Property seven (7) days a week, twenty-four (24) hours a day and (ii) installation, location, operation and maintenance of utilities including, without limitation, telephone and electric utilities (collectively, "Easements").

2. OPTION CONSIDERATION. In consideration of the Option, Company shall pay to Owner the sum of [redacted] ("Option Consideration") within thirty (30) business days of this Agreement being executed by both Owner and Company.

3. OPTION PERIOD. The term of the Option shall commence on June 1, 2008, and shall terminate at 11:59 p.m. (eastern time) on May 31, 2009 ("First Option Period"); provided, however, that Company shall have the right to extend the First Option Period to

11:59 p.m. (eastern time) on May 31, 2010 (the "Second Option Period") by giving Owner written notice thereof ("Extension Notice") in accordance with the provisions of paragraph 13 before the expiration of the First Option Period and by paying to Owner, simultaneously with giving the Extension Notice to Owner, an extension fee of [redacted] ("Extension Fee").

4. FEASIBILITY TESTS, ACCESS AND PERMITS DURING OPTION PERIOD.

A. Feasibility Tests; Access. During the Option Period, Company and its agents, contractors and employees shall be entitled to free access, ingress and egress to and from the Owner's Property including, without limitation, the Site for the purposes of inspecting the Owner's Property and performing tests, studies, assessments, examinations and surveys (collectively, "Feasibility Tests"), at Company's expense, to determine the suitability and feasibility of the Site for Company's intended use and communications facilities.

B. Permits. During the Option Period, Company, at Company's expense, shall have the right to seek and obtain all licenses, permits and approvals including, without limitation, land use permits and variances, required or deemed necessary by Company, in Company's sole discretion, for Company's intended use of the Site and the installation and operation of Company's communications facilities.

5. EXERCISE OF OPTION. At any time prior to the expiration of the Option Period, Company may exercise the Option by giving Owner written notice ("Exercise Notice") that Company desires to lease the Site. Any Exercise Notice given by Company shall be in accordance with paragraph 13. Upon the giving of the Exercise Notice (the "Exercise Date"), (i) this Agreement shall be deemed for all purposes a legally enforceable lease between Owner, as lessor, and Company, as lessee, (ii) Owner hereby leases and demises the Leased Property to Company and grants the Easements to Company, and (iii) the Option Consideration and Extension Fee, if paid, shall be credited against the rent payable by Company pursuant to paragraph 8.

Owner Initials [Handwritten Signature]
Company Initials [Handwritten Signature]

6. **MEMORANDUM OF OPTION.** Simultaneously with the execution of this Agreement, Owner shall duly execute and deliver a Memorandum of Option in the form of Attachment "C" for recording in the official records of the city or county in which the Site is located. Company shall pay the cost of recording the Memorandum of Option.

7. **LEASE TERM.** The initial lease term shall be for five (5) years beginning on the Exercise Date.

8. **RENT** shall be paid annually in advance beginning on the Exercise Date and on each anniversary thereof. If Company has not commenced the installation of Company's communications facilities on the Site as of the Exercise Date, the annual rent shall be Fifty and 00/100 Dollars (\$50.00) from the Exercise Date until the first day of the month following the commencement of installation of Company's communications facilities on the Site. The annual rent shall be _____

_____ partial years prorated, (i) as of the Exercise Date, if Company has commenced the installation of Company's communications facilities on the Site as of the Exercise Date, or (ii) as of the first day of the month following the commencement of the installation of Company's communications facilities on the Site, if Company commences the installation of Company's communications facilities on the Site after the Exercise Date. Within thirty (30) days of the date that Company commences installation of Company's communications facilities on the Site, Company shall notify Owner, in writing, of the date Company commenced such installation and shall pay any increased pro rata rental amount. The annual rent for each and every extension period shall be the annual rent in effect for the final year of the prior term or extension period, as applicable, increased by twenty percent (20 %).

9. **EXTENSION OF LEASE TERM.** Company shall have the right to extend the lease term for nine (9) additional, successive five (5) year extension periods upon the terms and conditions set forth in this Agreement except that the provisions relating to the Option shall not be applicable to any extension periods. The lease term shall be automatically extended for the next successive extension period unless Company notifies Owner in writing of Company's intention not to extend prior to the commencement of the next, successive extension period.

10. **USE.** Throughout the lease term, as may be extended, the Site may be used by Company (its sublessees and/or licensees) for (i) installing, removing, replacing, maintaining and operating communications facilities including, without limitation, personal communications service, cellular, paging, radio, cable and other communications facilities, which may include, without limitation, antenna arrays, dishes, cables, wires, equipment shelters and buildings, electronics equipment, generators, fuel tanks, accessories and, if the Site includes real property, communications towers and (ii) such other uses as permitted by law. Further, throughout the lease term, as may be extended, Company (its sublessees and/or licensees) shall have the right to conduct Feasibility Tests on the Site and Owner's Property to determine the suitability of the Site for Company's (its sublessees' and/or licensees') intended uses and communications facilities.

11. **APPROVALS AND UTILITIES.** Throughout the lease term, as may be extended, Company, at Company's expense, shall be responsible for (i) obtaining all licenses, permits and other approvals required by any federal, state or local authority for

Company's (its sublessees' and/or licensees') use of the Site and/or operation of the communications facilities (collectively, "Approvals") and (ii) paying for all utilities consumed by Company (its sublessees and/or licensees) at the Site. Owner agrees to cooperate with Company (its sublessees and/or licensees) in obtaining and/or maintaining, at no expense to Owner and at no additional expense to, or consideration from Company (its sublessees and/or licensees), such Approvals and utility services and easements required for Company's (its sublessees' and/or licensees') proposed use of the Site and/or operation of the communications facilities, including, without limitation, the execution and notarization of, and delivery to Company or the applicable utility company within five (5) business days of Owner's receipt thereof, all documents required for such Approvals, utility services and easements.

12. **PERSONAL PROPERTY.** The communications facilities, equipment, improvements, fixtures, and personal property of Company (its sublessees and/or licensees) on the Site shall be and remain the personal property of Company (its sublessees and/or licensees) even though some or all of it may be physically attached to the land. Company shall remove all personal property of Company (its sublessees and/or licensees) from the Site upon expiration or termination of this Agreement, and the Site shall be restored to its original condition, reasonable wear and tear excepted. Notwithstanding the foregoing, Company shall not be required (but may at Company's option) to remove any building or tower foundation, concrete pads, or underground cables or wires upon the expiration or termination of this Agreement.

13. **NOTICES.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if delivered by messenger at the address of the intended recipient, or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient at the address set forth on Attachment "D" or at such other address as the intended recipient may have specified by written notice to the sender in accordance with the requirements of this paragraph. Any such notice, request or demand so given shall be deemed given on the day of deposit in the United States Mail. Notices may be given by an agent on behalf of Owner or Company. Either Owner or Company may change its or add addresses for purposes of this paragraph by giving thirty (30) days prior notice in accordance with this paragraph.

14. **ASSIGNMENT; SUBLEASE; LICENSE.** Company shall have the right, without notice to or consent of Owner, to (i) assign and transfer all or any part of this Agreement and (ii) sublease and/or license all or any portion of the Site, its communications facilities and/or any improvements on the Site. Upon the assignment of all of Company's interest in this Agreement, Company shall be released from all obligations and liabilities arising under this Agreement on and after the date of such assignment. Company shall pay to Owner fifteen percent (15%) of any rent paid to Company by any sublessee or licensee of Company on the Site, within thirty (30) days of Company's receipt thereof. Notwithstanding the foregoing, Company shall have no obligation to pay to Owner (i) any portion of any up-front, lump sum payments or fees received by Company from a sublessee or licensee of Company to compensate Company for Company's costs to construct the tower and associated tower improvements on the Site or (ii) any portion of the rent paid by Company, as a sublessee or licensee, to a third party assignee of Company if Company assigns

this Agreement to a third party and Company simultaneously subleases or licenses back from such third party assignee a portion of the Site in a sale-leaseback or similar type transaction.

15. TERMINATION AFTER COMMENCEMENT OF LEASE TERM. Company may terminate this Agreement at any time after the commencement of the lease term without further liability if Company determines, in Company's sole and absolute discretion, that (i) all Approvals and/or any easements required for Company's intended use or to operate the communications facilities cannot be obtained, (ii) any Approval or easement is cancelled, withdrawn or terminated or expires or lapses, (iii) Owner does not have legal and sufficient ownership of the Site or authority to enter into this Agreement, (iv) the Owner's Property contains or is suspected to contain a Hazardous Substance, as defined in paragraph 17, (v) the status of title to the Site is unacceptable, (vi) Company is unable to obtain a nondisturbance agreement pursuant to paragraph 19.H., (vii) based on the results of any Feasibility Tests, whether conducted prior to or after the commencement of the lease term, as may be extended, the Site is not suitable for Company's communications facilities or intended use, (viii) Company no longer desires to operate its communications facilities on the Site for technological reasons, or (ix) the Site is no longer suitable for the Company's purposes. Upon termination, all prepaid rent shall be retained by Owner.

16. INDEMNITY. Owner and Company each indemnifies the other against and holds the other harmless from any and all liability, damage, loss, expense, cost, penalty and fee, including reasonable attorney's fees, arising out of the use, ownership and/or occupancy of the Site or Owner's Property by such indemnifying party. This indemnity shall not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this paragraph 16 shall survive the expiration or termination of the Option Period, as may be extended, the lease term, as may be extended, and this Agreement.

17. HAZARDOUS SUBSTANCES. Owner represents and warrants that (i) no portion of the Site constitutes protected wetland or any similar environmentally critical area, (ii) no Hazardous Substances are located in, upon or under the Owner's Property and (iii) no petroleum products are now or (to the best of Owner's knowledge) have in the past been stored (whether in tanks or otherwise) on or under the Owner's Property. For purposes of this provision, "Hazardous Substances" include any substance identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Owner represents and covenants to Company that Owner will not cause, and Company represents and covenants to Owner that Company will not cause, contamination of the Owner's Property by any Hazardous Substances. Each party to this Agreement agrees to indemnify and hold harmless the other from any damage, claim, loss, cost, liability or expense (including without limitation, cost of cleanup or fines, reasonable attorneys fees, and court or administrative proceedings) incurred by the other on account of contamination of the Owner's Property by any Hazardous Substance caused by the indemnifying party. Further, Owner agrees to indemnify and hold harmless Company from any damage, claim, loss, cost, liability or expense (including, without limitation, cost of cleanup or fines, reasonable attorneys fees and court or administrative proceedings) incurred by Company on account of any misrepresentation or breach of any warranty made by Owner. The indemnity obligations under this paragraph shall survive the expiration or termination of the Option

Period, as may be extended, the lease term, as may be extended, and this Agreement.

18. CONFIDENTIALITY. Except in the event of a default by Company, Owner shall not disclose the financial terms of this Agreement without the prior written consent of Company. Owner acknowledges and agrees that Owner's disclosure of the financial terms of this Agreement could cause irreparable damage and harm to Company, and, upon any such disclosure, Company shall be entitled to any and all remedies available at law or in equity, including, without limitation, injunctive relief.

19. MISCELLANEOUS.

A. Throughout the lease term, as may be extended, Company, upon paying the rent, shall peaceably and quietly have, hold and enjoy the Site. Throughout the lease term, as may be extended, Owner shall not cause or permit any use of Owner's Property or Site which interferes with or impairs the operation of the communications facilities or quality of the communication services being rendered by Company (its sublessees and/or licensees) from the Site, nor shall Owner have unsupervised access to the Site. Throughout the Option Period, Owner shall not cause or permit any use of Owner's Property or the Site which would interfere with or impair Company's proposed intended use of the Site or proposed operation of communications facilities on the Site.

B. Owner represents and warrants that Owner has full authority to enter into and sign this Agreement and that Owner owns the Site.

C. This Agreement contains all agreements, promises, and understandings between the Owner and Company and may be signed in counterparts, which shall constitute one (1) and the same document. All Attachments are incorporated by reference.

D. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and Company.

E. The substantially prevailing party in any action or proceeding in court or arbitration (the identity of which shall be determined by the tribunal in such action or proceeding) to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys fees and other reasonable enforcement costs and expenses from the other party.

F. Except as expressly limited herein, Owner and Company shall each have such remedies for the default of the other party as provided at law or in equity following written notice of such default and the failure to cure such default within thirty (30) days of the giving of such notice; provided, however, the non-defaulting party may not pursue such remedies if the defaulting party commences to cure the default within such thirty (30) days and continuously proceeds with due diligence to fully cure the default. Additionally, if Owner is in default under this Agreement, Company shall have the right, but not the obligation, to cure such default and offset the costs of curing such default against any rent payable by Company under this Agreement.

G. Owner, at no expense to Owner and at no additional expense to or consideration from Company, agrees to execute, notarize and deliver within five (5) business days of the Exercise

Date to Company for recording a Memorandum of Lease in the form of Attachment "E" for recording in the official records of the city or county in which the Site is located. Company shall pay the cost of such recording.

H. If a deed of trust, mortgage or other encumbrance affects Owner's Property, Owner, at no expense to Owner and at no additional expense to or consideration from Company, agrees to cooperate with Company in obtaining a nondisturbance agreement providing that Company's possession, use and enjoyment of the Site and its rights under this Agreement shall not be disturbed if Company is not in default under this Agreement after the expiration of all applicable cure periods. Owner agrees to execute, notarize and deliver to Company within five (5) business days of receipt thereof any such nondisturbance agreement.

I. Company shall pay all personal property taxes on its Communications Facilities, and Owner shall pay all real property taxes assessed against the Owner's Property including, without limitation, the Site, except Company shall reimburse Owner the amount of any increase in real estate taxes levied against the Site attributable to the Communications Facilities. Company shall reimburse Owner the amount of such increased real estate taxes within thirty (30) days after written demand thereof by Owner, accompanied by copies of each tax bill, service bill and/or assessment that is the basis for the demand and written evidence of payment by Owner.

J. Owner covenants and agrees that, throughout the Option Period and lease term, as may be extended, the Owner will not use any portion of the Owner's Property for the provisions of wireless communications or communications towers. Owner agrees that the foregoing covenant shall run with the title to the Owner's Property, shall be binding upon Owner's successors and assigns, is commercially reasonable, and shall not be an undue burden on Owner or Owner's Property.

K. Owner represents and warrants that, throughout the Option Period and the lease term, as may be extended, the Owner's Property, including, without limitation, the Site, and all improvements thereon shall be in compliance with all laws, codes and regulations of all federal, state and local governmental or quasi-governmental authorities (collectively, "Governmental Laws"). Subject to Owner's compliance with the terms of this paragraph 19.K., Company agrees that any improvements constructed on the Site by Company and the operation of Company's communications facilities on the Site shall be in compliance with all Governmental Laws.

L. Owner waives any lien rights it may have concerning Company's equipment and facilities at the Site which are deemed Company's personal property and not fixtures. Further, Owner agrees that the Company's equipment and facilities at the Site shall be exempt from any execution, sale, levy, attachment or distress by Owner for any rent or other amounts due or to become due to Owner and that the Company's equipment and facilities at the Site may be removed at any time.

M. This Agreement shall be interpreted according to the laws of the state in which the Site is located.

N. This Agreement is not considered a binding offer or agreement until signed by Company.

O. All references in this Agreement to "days" shall mean calendar days, and all references in this Agreement to "business days" shall mean weekdays on which national banks are open for business.

20. ADDITIONAL TERMS.

A. Access Road. Company's vehicles shall use the area designated as the access road on Attachment "A" (the "Access Road") and shall not be entitled to use other portions of Owner's Property.

B. No Hunting on Owner's Property. Company, its agents, employees, invitees, lessees, sublessees and others shall specifically be prohibited from hunting on Owner's Property.

C. Fuel Tanks. If Company elects to have a fuel tank at the Site, then Company shall advise Owner if the tank is to be underground or above ground and shall comply with all environmental regulations regarding fuel tanks. In the event of leakage from any fuel tank located on the Site, then Company shall indemnify and hold harmless Owner, their heirs, successors and assigns, from any and all liability arising from said discharge.

IN WITNESS WHEREOF, the parties have executed this Agreement:

OWNER:

Frieda D. Kier, Jacqueline Kier and Mary Barbara White

By: Frieda D. Kier
Name: Frieda D. Kier
Title: Owner
Address: 216 Yount Ave.
Staunton, VA 24401
Date: 6-17-08

By: Jacqueline D. Kier
Name: Jacqueline Kier
Title: Owner
Address: 301 Yount Ave
Staunton, VA 2440
Date: 6-17-08

By: Mary Barbara White
Name: Mary Barbara White
Title: Owner
Address: 3724 Lacy Blvd.
Falls Church, VA 22041
Date: 6-7-08

COMPANY:

Virginia PCS Alliance, L.C.
By: R. L. McAvoy
Name: R. L. McAvoy
Title: Vice President
Address: 1150 Shenandoah Village Drive
Waynesboro, Virginia 22980
Date: 6/17/08



(<http://www.nelsoncounty-va.gov/>)



-78.835735, 37.911407



February 9, 2016

County of Nelson
Department of Planning & Zoning
Attn: Tim Padalino
80 Front Street
Lovingson, VA 22949

**RE: NTELOS Wireless Application for Equipment Upgrades
CV821 Greenfield – 5029 Rockfish Valley Highway, Nellysford
CV822 Lodebar – 266 Hearthstone Lane, Nellysford**

Dear Mr. Padalino;

Virginia PCS Alliance, L.C. ('NTELOS') requests the consideration of Nelson County to upgrade its existing telecommunications equipment on two (2) existing personal wireless service facilities in the County located at 5029 Rockfish Valley Highway and 266 Hearthstone Lane, Nellysford.

NTELOS is in the process of enhancing its existing 3G voice and data network by replacing old network equipment with 4G/LTE (Long Term Evolution) equipment that will provide improved call performance, expanded coverage, faster downloads and stronger indoor signals. The current 3G voice and data network utilizes the 1900 MHz spectrum only. Because of a unique partnership that NTELOS has with Sprint, NTELOS is able to have diverse spectrum available for its use. The proposed NTELOS 4G/LTE upgrades will use a tri-band system that will: 1) repurpose old Nextel spectrum (800 MHz spectrum) for increased coverage and better in-building coverage, 2) use Clearwire spectrum (2.5 GHz spectrum) for increased data capacity and 3) continue to use the existing Sprint/NTELOS spectrum (1900 MHz spectrum). By using this tri-band system, NTELOS and Sprint customers will have LTE enhancement, improved call quality and diverse data capacity. In addition to upgrading our current network of sites, NTELOS is also adding sites to increase capacity in saturated areas.

CV821 Greenfield – 5029 Rockfish Valley Road, Nellysford (Tax Parcel: 22-A-60)

NTELOS constructed this 120' monopole tower in 2009 and sold the tower to Pegasus-Sunsar Towers, LLC. Currently, NTELOS has (3) panel antennas located at the 117' radiation center (flush mounted) along with a small temporary microwave dish at the 111' radiation center. With this proposal, NTELOS is proposing to remove the existing tower equipment and replace it with (3) tri-band panel antennas at the 125' radiation center (10' above the current height of the tower – total above ground height 130') that will support multiple spectrum capabilities for 4G/LTE services along with (7) remote radio head amplifiers just below the proposed antennas. The proposed new antennas are proposed to be pipe mounted above the height of the tower only – the tower will not be extended, only the antennas. A new 2' diameter microwave dish is proposed at the 114' radiation center. Because of the prior zoning approval to only allow for flush mounted antennas, NTELOS cannot fit all its equipment within the allotted tower lease space, therefore we need to mount antennas above the current height of the tower. Another carrier (Verizon Wireless) has leased space direction below NTELOS on this tower. NTELOS is proposing to upgrade its

existing base station cabinets within the existing ground space. No expansion on the ground is required. Attached are photo simulations and site plan drawings of the NTELOS proposal.

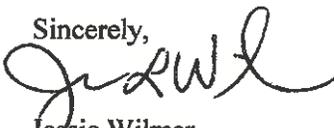
CV822 Lodebar – 266 Hearthstone Lane, Nellysford (WPOA – Open Space)

NTELOS is currently installed on this 130' monopole tower at the 125' radiation center with (3) flush mounted panel antennas. NTELOS constructed this 130' tower in 2009 and sold the tower to GrainComm I, LLC. Currently, NTELOS has (3) panel antennas located at the 125' radiation center (flush mounted) along with a small temporary microwave dish at the 119' radiation center. With this proposal, NTELOS is proposing to remove the existing tower equipment and replace it with (3) tri-band panel antennas at the 125' radiation center that will support multiple spectrum capabilities for 4G/LTE services along with (7) remote radio head amplifiers just below the proposed antennas. A new 2' diameter microwave dish is proposed at the 115' radiation center. No additional antenna height is requested at this site. NTELOS is proposing to upgrade its existing base station cabinets within the existing ground space. No expansion on the ground is required. Attached are photo simulations and site plan drawings of the NTELOS proposal.

With the increased data capacity needed for 4G/LTE services, Ethernet backhaul fiber is required at every cell tower site to provide data services. Ethernet fiber is currently available along Rt. 151 with Verizon (wireline) to provide backhaul to the CV821 Greenfield tower, however, there is not Ethernet fiber available at the CV822 Lodebar site located on mountain ridge west of Stoney Creek. With this application, in addition to the 4G/LTE antenna upgrade proposed by NTELOS at each site, we are also requesting to add 2' licensed microwave dishes to each site to provide Ethernet backhaul via microwave to CV822 Lodebar. CV821 Greenfield will be the host site and CV822 Lodebar is the target site.

The proposed equipment upgrades by NTELOS are compatible with the existing character of the existing wireless facility and the upgrade will have no visual impact on the surrounding area than its current scenario. This proposal will deliver a much improved customer communications experience and will serve the public health and safety needs to the community by providing increased wireless voice capabilities and improved high speed data services to this area of Nelson County. I look forward to receiving your comments regarding this proposal. Please feel free to contact me if you need additional information.

Sincerely,



Jessie Wilmer
NTELOS
Sr. Site Acquisition Specialist
(540) 241-5060
wilmerj@ntelos.com



PERMIT APPLICATION:

Nelson County Department of Planning & Zoning

TO THE ZONING ADMINISTRATOR: Class C Tower Permit # 2016-02
application type application number

1. The undersigned hereby petitions the Planning Commission and/or Board of Supervisors for approval of the following (check appropriate box):

- | | |
|---|--|
| <input type="checkbox"/> Rezoning from _____ to _____ | <input type="checkbox"/> Conditional Rezoning from _____ to _____ |
| <input type="checkbox"/> Subdivision – Preliminary | <input type="checkbox"/> Site Plan – Preliminary (optional) |
| <input type="checkbox"/> Subdivision – Final | <input type="checkbox"/> Site Plan – Final |
| <input type="checkbox"/> Major Site Plan | <input checked="" type="checkbox"/> Special Use Permit |
| <input type="checkbox"/> Minor Site Plan | <input checked="" type="checkbox"/> Other: <u>Wireless Application class C</u> |

- Pursuant to Article 20, Section 13 of the Nelson County Zoning Ordinance.
 Pursuant to Section _____, Subsection _____ of the Nelson County Subdivision Ordinance.

Reason(s) for request: Upgrade equipment by Ntelos Wireless on existing 130' tower. Install antennas at same location and install 2' microwave dish.

(Please use reverse or attach additional sheet if more space is needed.)

2. Applicant(s) and Property Owner(s):

(Please provide names of applicants and property owners and indicate applicable title; if applicant is not the property owner, please show relationship, i.e. lessee, contract purchaser, etc.)

Applicant Property Owner Name: Ntelos Wireless - Jessie Wilmer
Mailing Address: 1150 Shenandoah Village Drive Waynesboro, Va 22580
Telephone # (540) 241-5000 E-mail Address: wilmerj@ntelos.com
Relationship (if applicable): Tenant on existing tower

Applicant Property Owner Name: Wintergreen POA - Curtis Sheets
Mailing Address: PO Box 587, Nellysford, Va 22958
Telephone # (540) 480-3184 E-mail Address: curtissheets@gmail.com
Relationship (if applicable): lessor

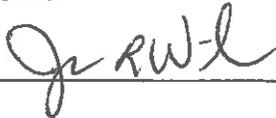
(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) info.)

3. Location and Characteristics of Subject Property:

- a. Address of property (specific location, route numbers, street names, voting district, etc.):
266 Hearnston Lane, Nellysford
- b. Official tax map number: N/A - WPOA Open Space
- c. Acreage of property: _____
- d. Present use: Telecommunications tower
- e. Present zoning classification: N/A RPC
- f. Zoning classification of surrounding properties: RPC

4. Names of Adjacent Property Owners: Agua Wintergreen Valley Utility, Paul Freed, Jonathan Hawkins, WPOA, Howard Hawkins

5. **Affidavit:** The undersigned applicant(s) and/or property owner(s) certifies that this application and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the applicant(s) and/or property owner(s) gives permission for members of the Planning Commission, Board of Supervisors, and County Staff to visit and view the subject property.

Signature:  Printed Name: Jessica Wilmer
 Signature: _____ Printed Name: _____

(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)

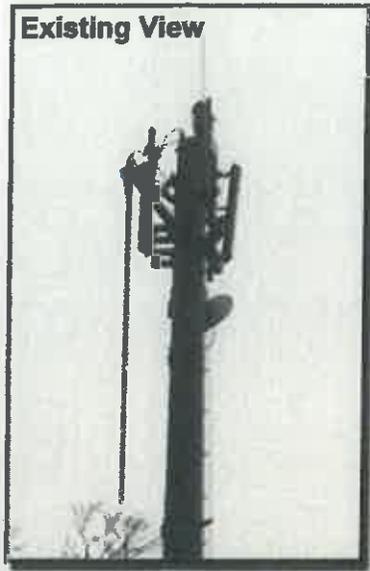
6. **Additional information:** *(Please attach separate sheet for additional details, explanations, etc.)*

7. **Please note:** In the event of cancellation or postponement at your request after the initial newspaper advertisement for this application, an additional fee will apply for re-advertisement (determined by the actual cost of the ad). This fee will not apply in cases of Planning Commission or Board of Supervisors deferment.

***** TO BE COMPLETED BY PLANNING & ZONING STAFF *****

- Completed application and fee (\$ 2,000.00) received on Feb. 19, 2016
- Hearing Notice published on _____
- Planning Commission action: Date of Meeting / Hearing: _____
Recommendation: _____
- Board of Supervisors action: Date of Hearing: _____ Date of Decision: _____
Action: _____

Existing View



LODEBAR GRAIN CV822

266 Heatherstone Lane
Nellysford, VA 22938

**EQUIPMENT CHANGE OUT
SIMULATION**

View from southwest of site



Existing View



LODEBAR GRAIN CV822

266 Heatherstone Lane
Nellysford, VA 22938

**EQUIPMENT CHANGE OUT
SIMULATION**

View from south of site



OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("Agreement") dated July 30, 2008 is between WINTERGREEN PROPERTY OWNERS ASSOCIATION, INC., a Virginia non-stock corporation ("Owner") and VIRGINIA PCS ALLIANCE, L.C., a Virginia limited liability company, d/b/a NTELOS ("Company").

In consideration of the Option Consideration, as hereinafter defined, the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Company agree as follows:

1. **GRANT OF OPTION.** Owner hereby grants to Company, its successors and assigns, the exclusive and irrevocable right and option ("Option") to lease the following:

check appropriate box(es):

- Real property comprised of approximately six hundred (600) square feet of land (15' x 40')
- Building interior space comprised of approximately square feet
- Building exterior space for attachment of antennas
- Building exterior space for placement of equipment
- Tower antenna space
- Space required for cable runs to connect equipment and antennas

in the location(s) shown on Attachment "A" ("Leased Property"), together with non-exclusive easements across the real property and improvements thereon owned by Owner as described on Attachment "B" ("Owner's Property") for (i) unrestricted access, ingress and egress to and from the Leased Property seven (7) days a week, twenty-four (24) hours a day and (ii) installation, location, operation and maintenance of utilities including, without limitation, telephone and electric utilities (collectively, "Easements"). The Leased Property and Easements are collectively referred to herein as the "Site". Owner and Company agree that the Site may be surveyed by a licensed surveyor and/or shown on construction drawings prepared by a licensed engineer, at Company's expense. Such survey and/or construction drawings shall then replace Attachment "A" and become a part hereof and shall control the description of the Site if a discrepancy exists between the description contained in this paragraph 1 and the survey and/or construction drawings, provided that the Site shall be shown at the same approximate location.

2. **OPTION CONSIDERATION.** In consideration of the Option, Company shall pay to Owner the sum of [REDACTED] ("Option Consideration") within thirty (30) business days of this Agreement being executed by both Owner and Company.

3. **OPTION PERIOD.** The term of the Option shall commence on July 1, 2008, and shall terminate at 11:59 p.m. (eastern time) on June 30, 2009 ("First Option Period"); provided, however, that Company shall have the right to extend the First Option Period to 11:59 p.m. (eastern time) on June 30, 2010 (the "Second Option Period") by giving Owner written notice thereof ("Extension Notice") in accordance with the provisions of paragraph 13 before

the expiration of the First Option Period and by paying to Owner, simultaneously with giving the Extension Notice to Owner, an extension fee of [REDACTED] ("Extension Fee"). The First Option Period and the Second Option Period are collectively referred to herein as the "Option Period". Company may exercise the Option at any time during the Option Period in accordance with paragraph 5.

4. FEASIBILITY TESTS, ACCESS AND PERMITS DURING OPTION PERIOD.

A. **Feasibility Tests; Access.** During the Option Period, Company and its agents, contractors and employees shall be entitled to free access, ingress and egress to and from the Owner's Property including, without limitation, the Site for the purposes of inspecting the Owner's Property and performing tests, studies, assessments, examinations and surveys (collectively, "Feasibility Tests"), at Company's expense, to determine the suitability and feasibility of the Site for Company's intended use and communications facilities. The Feasibility Tests may include, without limitation, surveys, soils tests, environmental assessments, radio wave propagation measurements, and other activities related to the use and development of the Site.

B. **Permits.** During the Option Period, Company, at Company's expense, shall have the right to seek and obtain all licenses, permits and approvals including, without limitation, land use permits and variances, required or deemed necessary by Company, in Company's sole discretion, for Company's intended use of the Site and the installation and operation of Company's communications facilities. Owner, at no expense to Owner and at no additional expense to, or consideration from Company, agrees to cooperate with Company and take all actions and execute, notarize and deliver to Company within five (5) business days of Owner's receipt thereof, all documents that Company determines are reasonably necessary for Company to obtain such permits, approvals, rezoning or change or variance in the land use classification, provided that such actions to be taken and documents to be signed do not materially change the terms of the Agreement.

5. **EXERCISE OF OPTION.** At any time prior to the expiration of the Option Period, Company may exercise the Option by giving Owner written notice ("Exercise Notice") that Company desires to lease the Site. Any Exercise Notice given by Company shall be in accordance with paragraph 13. Upon the giving of the Exercise Notice (the "Exercise Date"), (i) this Agreement shall be deemed for all purposes a legally enforceable lease between Owner, as lessor, and Company, as lessee, (ii) Owner hereby leases and demises the Leased Property to Company and grants the Easements to Company, and (iii) the Option Consideration and Extension Fee, if paid, shall be credited against the rent payable by Company pursuant to paragraph 8. If Company does not exercise the Option during the Option Period, this Agreement shall terminate, the Option Consideration and Extension Fee, if paid, shall be retained by Owner, and Owner and Company shall have no further liability to one another under this Agreement.

6. **MEMORANDUM OF OPTION.** Simultaneously with the execution of this Agreement, Owner shall duly execute and deliver

improvements on the Site, without notice to or consent of Owner and without having to pay any additional or further consideration to Owner. Owner shall have the right to sublease or license real property within Owner's Property to any sublessee or licensee of Company who subleases or licenses space on Company's communications tower for sublessee's or licensee's ground communications equipment.

15. TERMINATION AFTER COMMENCEMENT OF LEASE TERM. Company may terminate this Agreement at any time after the commencement of the lease term without further liability if Company determines, in Company's sole and absolute discretion, that (i) all Approvals and/or any easements required for Company's intended use or to operate the communications facilities cannot be obtained, (ii) any Approval or easement is cancelled, withdrawn or terminated or expires or lapses, (iii) Owner does not have legal and sufficient ownership of the Site or authority to enter into this Agreement, (iv) the Owner's Property contains or is suspected to contain a Hazardous Substance, as defined in paragraph 17, (v) the status of title to the Site is unacceptable, (vi) Company is unable to obtain a nondisturbance agreement pursuant to paragraph 19.H, (vii) based on the results of any Feasibility Tests, whether conducted prior to or after the commencement of the lease term, as may be extended, the Site is not suitable for Company's communications facilities or intended use, (viii) Company no longer desires to operate its communications facilities on the Site for technological reasons, or (ix) the Site is no longer suitable for the Company's purposes. Upon termination, all prepaid rent shall be retained by Owner.

16. INDEMNITY. Owner and Company each indemnifies the other against and holds the other harmless from any and all liability, damage, loss, expense, cost, penalty and fee, including reasonable attorney's fees, arising out of the use, ownership and/or occupancy of the Site or Owner's Property by such indemnifying party. Such indemnity includes, without limitation, Company's obligation to indemnify owner against third party claims for personal injury or death if such injury or death results from Company's use or occupancy of the Site or Owner's Property. This indemnity shall not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this paragraph 16 shall survive the expiration or termination of the Option Period, as may be extended, the lease term, as may be extended, and this Agreement.

17. HAZARDOUS SUBSTANCES. Owner represents and warrants that (i) no portion of the Site constitutes protected wetland or any similar environmentally critical area, (ii) no Hazardous Substances are located in, upon or under the Owner's Property and (iii) no petroleum products are now or (to the best of Owner's knowledge) have in the past been stored (whether in tanks or otherwise) on or under the Owner's Property. For purposes of this provision, "Hazardous Substances" include any substance identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Owner represents and covenants to Company that Owner will not cause, and Company represents and covenants to Owner that Company will not cause, contamination of the Owner's Property by any Hazardous Substances. Each party to this Agreement agrees to indemnify and hold harmless the other from any damage, claim, loss, cost, liability or expense (including without limitation, cost of cleanup or fines, reasonable attorneys fees, and court or administrative proceedings) incurred by the other on account of contamination of the Owner's Property by any Hazardous Substance caused by the indemnifying party. Further, Owner agrees to indemnify and hold harmless

Company from any damage, claim, loss, cost, liability or expense (including, without limitation, cost of cleanup or fines, reasonable attorneys fees and court or administrative proceedings) incurred by Company on account of any misrepresentation or breach of any warranty made by Owner. The indemnity obligations under this paragraph shall survive the expiration or termination of the Option Period, as may be extended, the lease term, as may be extended, and this Agreement.

18. INTENTIONALLY DELETED.

19. MISCELLANEOUS.

A. Throughout the lease term, as may be extended, Company, upon paying the rent, shall peaceably and quietly have, hold and enjoy the Site. Throughout the lease term, as may be extended, Owner shall not cause or permit any use of Owner's Property or Site which interferes with or impairs the operation of the communications facilities or quality of the communication services being rendered by Company (its sublessees and/or licensees) from the Site, nor shall Owner have unsupervised access to the Site. Throughout the Option Period, Owner shall not cause or permit any use of Owner's Property or the Site which would interfere with or impair Company's proposed intended use of the Site or proposed operation of communications facilities on the Site.

B. Owner represents and warrants that Owner has full authority to enter into and sign this Agreement and that Owner owns the Site.

C. This Agreement contains all agreements, promises, and understandings between the Owner and Company and may be signed in counterparts, which shall constitute one (1) and the same document. All Attachments are incorporated by reference.

D. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and Company.

E. The substantially prevailing party in any action or proceeding in court or arbitration (the identity of which shall be determined by the tribunal in such action or proceeding) to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys fees and other reasonable enforcement costs and expenses from the other party.

F. Except as expressly limited herein, Owner and Company shall each have such remedies for the default of the other party as provided at law or in equity following written notice of such default and the failure to cure such default within thirty (30) days of the giving of such notice; provided, however, the non-defaulting party may not pursue such remedies if the defaulting party commences to cure the default within such thirty (30) days and continuously proceeds with due diligence to fully cure the default. Additionally, if Owner is in default under this Agreement, Company shall have the right, but not the obligation, to cure such default and offset the costs of curing such default against any rent payable by Company under this Agreement.

G. Owner, at no expense to Owner and at no additional expense to or consideration from Company, agrees to execute, notarize and deliver within five (5) business days of the Exercise Date to Company for recording a Memorandum of Lease in the form of Attachment "E" for recording in the official records of the

city or county in which the Site is located. Company shall pay the cost of such recording.

H. If a deed of trust, mortgage or other encumbrance affects Owner's Property, Owner, at no expense to Owner and at no additional expense to or consideration from Company, agrees to cooperate with Company in obtaining a nondisturbance agreement providing that Company's possession, use and enjoyment of the Site and its rights under this Agreement shall not be disturbed if Company is not in default under this Agreement after the expiration of all applicable cure periods. Owner agrees to execute, notarize and deliver to Company within five (5) business days of receipt thereof any such nondisturbance agreement.

I. Company shall pay all personal property taxes on its communications facilities, and Owner shall pay all real property taxes assessed against the Owner's Property including, without limitation, the Site.

J. INTENTIONALLY DELETED.

K. Owner represents and warrants that, throughout the Option Period and the lease term, as may be extended, the Owner's Property, including, without limitation, the Site, and all improvements thereon shall be in compliance with all laws, codes and regulations of all federal, state and local governmental or quasi-governmental authorities (collectively, "Governmental Laws"). Subject to Owner's compliance with the terms of this paragraph 19.K., Company agrees that any improvements constructed on the Site by Company and the operation of Company's communications facilities on the Site shall be in compliance with all Governmental Laws.

L. Owner waives any lien rights it may have concerning Company's equipment and facilities at the Site which are deemed Company's personal property and not fixtures. Further, Owner agrees that the Company's equipment and facilities at the Site shall be exempt from any execution, sale, levy, attachment or distress by Owner for any rent or other amounts due or to become due to Owner and that the Company's equipment and facilities at the Site may be removed at any time.

M. This Agreement shall be interpreted according to the laws of the state in which the Site is located.

N. This Agreement is not considered a binding offer or agreement until signed by Company.

O. All references in this Agreement to "days" shall mean calendar days, and all references in this Agreement to "business days" shall mean weekdays on which national banks are open for business.

20. ADDITIONAL TERMS.

A. Tower Space. Owner reserves the right but not the obligation to locate one (1) 100MHz antenna ("Owner's Antenna") on Company's telecommunications tower (the "Tower") within the Site. At such time as Owner desires to locate Owner's Antenna on the Tower, Owner shall notify Company in writing of its desire to locate such antenna along with the plans and specifications for Owner's Antenna, including, without limitation, the height and installation specifications and a list of all frequencies licensed to the Owner by the Federal Communications Commission ("FCC"). Company shall review the written request within thirty (30)

business days of receipt thereof and respond back to Owner with its approval and/or conditions to the written request.

B. Installation Of Owner's Antenna On The Tower. Upon Owner's receipt of written approval from Company, Owner, at Owner's expense, shall purchase and provide Company with Owner's Antenna, as well as coaxial cables, connectors, jumpers and associated equipment ("Owner's Tower Equipment") required to install Owner's Tower Equipment on the Tower. Within ten (10) business day of the completion of installation of Owner's Tower Equipment, Owner shall provide written approval/acceptance in the form of Attachment "F" of said installation to Company or Owner shall provide Company in writing detailed reasons for not approving. If Owner fails to do so, then the installation of the Owner's Tower Equipment will be deemed approved. Owner, at Owner's expense, shall pay all costs for Company to install Owner's Tower Equipment within thirty (30) business days of receipt of Company's invoice.

IN WITNESS WHEREOF, the parties have executed this Agreement:

OWNER:

Wintergreen Property Owners Association, Inc.

By: _____

Name: _____

Title: _____

Tax No.: _____

Address: _____

Date: _____

Russell B. Otis
Russell B. OTIS
B. Director
54-1048868
P.O. Box #47 587
Nellysford, VA 22958
7/16/08

COMPANY:

Virginia PCS Alliance, L.C.

By: _____

Name: R. L. McAvoy

Title: Vice President

Address: 1150 Shenandoah Village Drive
Waynesboro, Virginia 22980

Date: _____

R. L. McAvoy
R. L. McAvoy
1/31/08



(<http://www.nelsoncounty-va.gov/>)

