



NELSON COUNTY PLANNING COMMISSION

Meeting Agenda: April 27, 2016

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

- **7:00 – Meeting Convenes / Call to Order**
- **Review of meeting minutes:** March 23rd 2016
- **Public Hearing Items:**
 - N/A
- **Other Agenda Items:**
 - Rural Long Range Transportation Plan:

Staff from Thomas Jefferson Planning District Commission (TJPDC) will present information regarding RLRP planning efforts to the Commission and solicit PC discussion and comment.
 - Proposed Amendments to Zoning Ordinance Article 10 – General Floodplain District (FP):
(referral made at 12/8/2015 BOS meeting; review continued from 3/23/2016 PC meeting)

Review by the Planning Commission for consideration of possible amendments to Article 10 (General Floodplain District FP)
- **Other Business** *(as determined by Planning Commission members / as applicable)*
- **Adjournment**
- **Next Meeting:** May 25, 2016 | 7:00pm

NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
March 23, 2016

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

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

Call to Order: Chair Proulx called the meeting to order at 7:01 P. M. in the General District Courtroom, County Courthouse, Lovingson.

Approval of Minutes – February 24th (Work Session) & February 24th, 2016:

Commissioner Harman made the following motion:

I move that the meeting minutes and Work Session minutes from the February 24th, 2016 be approved; the vote 5-0 with Commissioner Allen abstaining.

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

Mr. Padalino provided background information regarding the proposed amendments. He noted that the Board of Supervisors (BOS) referred the proposed amendments to the Planning Commission (PC) for review for a public hearing and recommendation. He concluded by identifying the two (2) Sections that would be amended 18-3-1 and 18-3-10 (as noted in the Staff Report dated March 14, 2016 – see attached).

Chair Proulx opened the public hearing at 7:05PM. No comments were given, the public hearing was closed.

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

- Commissioner Russell questioned why a “contractors’ yard” is not permissible by-right as it is in Industrial M-2 District? Chair Proulx noted that “yard” indicates an outdoor use, and the “Statement of intent” for the M-1 District includes the following: “It is expected that uses in this district be to be operated from within a building.”
- Chair Proulx noted that the word “outside” could be added to “equipment yard” for clarity.
- Commissioner Goad indicated that the SUP (18-3-10) is for equipment only. He suggested that the proposed amendments be modified to include “materials.”
- Mr. Bruguere stated that he believes “storage yard” needs to be defined, including listing all the types of materials that would be allowed in a storage yard.
- Commissioner Allen felt that it does not need to be defined, because it may be difficult to proactively determine all appropriate uses, and because that issue could be addressed on a case-by-case basis during the Special Use Permit review process.

The Commissioners recommended modifications to the proposed amendments as follows:

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

18-3-10: Replace (proposed) “Contractors’ equipment storage yard” with “Contractors’ outside equipment yard, which may include storage of materials.”

Commissioner Goad made the following motion:

I move to recommend approval of the proposed amendments 18-3-10 to include (“Contractors’ outside equipment yard, which may include storage of materials”), and 18-3-1 as advertised in the public hearing. Commissioner Allen provided the second; the vote 4-2 with Commissioner Russell and Mr. Bruguere voting against the motion.

Other Agenda Items:

**1. Proposed Amendments to Zoning Ordinance Article 10 - (General Floodplain District FP):
(referral made at 12/8/2015 BOS meeting; PC review continued from 2/24/2016 PC meeting)**

Mr. Padalino noted this is a continued meeting of the referred amendments regarding Article 10 – (General Floodplain District FP). He further noted that Mr. Charley Banks, National Floodplain Insurance Program (NFIP) Coordinator for Virginia Department of Conservation & Recreation (DCR), was in attendance for the purpose of assisting the PC review process.

Mr. Padalino then explained that the existence of Nelson County’s Floodplain Ordinance is a function of Nelson County being a voluntary participant in the NFIP. Participating localities in the NFIP must codify floodplain management regulations into the zoning ordinance (and similar regulations exist in the building code, and are administered and enforced by the Building Official). He also noted that, although the NFIP is a federal program, it has always been set up to be administered and enforced through local zoning ordinances; and that this arrangement continues to this day.

Mr. Padalino then noted that County staff reviewed the Ordinance with the assistance of the Virginia DCR, including an “audit” by DCR staff as requested by the County Administrator. Based on that audit, DCR staff provided a set of recommendations which can be grouped into two (2) general categories (as noted in the Staff Report dated March 14, 2016 – see attached): “regular standards” or minimum requirements, and “higher standards.” In total, DCR staff recommended twelve (12) new standards to be included in Nelson County’s Floodplain Ordinance. Mr. Padalino stated that Nelson County staff initially drafted proposed amendments which contain six (6) of DCR’s twelve (12) recommendations.

Mr. Padalino further noted that the County should be actively considering how any amendments to the Floodplain Ordinance could provide the added benefit of improving the County’s ability to participate in what is called the Community Rating System (CRS). He then briefly explained that the CRS is a voluntary program that rewards localities that have floodplain management regulations, and that one of the primary rewards is a reduction in flood insurance premiums for property owners Countywide. He further explained that the CRS provides higher rewards for those localities with more stringent protections for the floodplains and other special flood hazard areas. Mr. Padalino then shared additional details contained in a June 10th email from Mr. Charles Kline, former DCR Floodplain Planner (as noted in the Staff Report dated March 14, 2016 – see attached).

Mr. Padalino concluded his staff report by providing an updated overview of amendments by issue and by affected sections (as detailed in the Staff Report dated March 14, 2016 – see attached):

- Amendments intended to bring existing ordinance into compliance with model ordinance;
- Increase freeboard from existing 12” requirement to 18” requirement;
- Define “critical facilities” and prohibit them in all Special Flood Hazard Areas (SFHA);
- Restrict “hazardous materials” and fuels in all Special Flood Hazard Areas;

- Limit land uses in the Floodway to only non-structural uses;
- Modify the requirements for when the Base Flood Evaluation needs to be identified and included on subdivision plats; and
- Restrict the placement of fill in all Special Flood Hazard Area (SFHA).

Planning Commissioners, County Staff, and Mr. Banks then discussed the proposed floodplain amendments and provided the following questions/comments/concerns:

1. Mr. Bruguere noted that the SFHA is also in the floodplain and structures are currently prohibited. Mr. Padalino noted that was incorrect; and he explained that structures are not entirely prohibited and that a Special Use Permit (SUP) could potentially be issued by the Board of Zoning Appeals (BZA) for such structures. Mr. Padalino added that the proposed amendment would entirely prohibit structures from being constructed within any Floodway, which is a high-risk area designated within certain floodplains.
2. Commissioner Russell asked if the SFHA is identified on the FEMA maps. Mr. Padalino noted that it is, and that the SFHA is a general designation which contains multiple subcategories such as floodplain, floodway, and others.
3. Commissioner Goad asked how extensive the cost savings would be for property owners with flood insurance policies if the six (6) proposed recommendations are adopted. Mr. Padalino and Mr. Banks referred to the CRS program materials; and disclaimed that the CRS program benefits are calculated by multiple factors, and not just by the number of higher standards contained in the Floodplain Ordinance.
4. Mr. Bruguere noted that he feels only the minimum requirements need to be done, and that the volume of proposed amendments is ridiculous. In response to comments about the large amount of proposed new text, Mr. Padalino estimated that about 85% of the proposed amendments (shown in colored ink in the staff report) are necessary in order to be compliant with the minimum requirements contained in the “model ordinance,” and were explicitly identified by DCR staff. He clarified that the proposed “higher standards” represent only a small portion of the proposed new text.
5. Commissioner Russell asked if subdivision lots being treated different than individual lot; and if so, why isn’t a lot in a subdivision subject to the same regulations? Mr. Padalino noted that perhaps it is because a subdivision inherently suggests a concentration of structures, improvements, and land uses – and thereby represents more potential risk to flood damage, which thereby creates a greater need for analysis and floodplain management.

Commissioner Russell then noted that the BZA is the board that one goes to if they have a floodplain issue or appeals a floodplain decision by Mr. Padalino in Nelson County. She asked Mr. Charley Banks if this is the standard practice in the state, and who decides what board is the final appeal for a floodplain issue. Mr. Banks indicated that, in his work assisting localities across the Commonwealth, he does see BZA the most. He added that the County is the one that would specify which board hears those decisions. He further noted that the use of the term Special Use Permit is not a common practice, and that it is typically known as a Variance. Mr. Padalino added that the County’s Ordinance closely reflects the state model ordinance, except that both terms “SUP” and “Variance” are used. He identified Section 10-22 from the Ordinance as a useful reference. The Commissioners agreed that having both terms is confusing, and that staff should evaluate options for modifying the language to more closely reflect the model ordinance terminology.

Mr. Charley Banks: Mr. Banks noted that he enjoys going out to communities that participate in the NFIP. He indicated that there are 290 Virginia communities participating. He congratulated Nelson County on working on

their floodplain ordinance. He further noted that Mr. Charles Kline was the DCR staff member who initially worked with Mr. Padalino to make suggestions for amending the ordinance.

Mr. Banks stated that, around 2010, FEMA was quite adamant that Virginia's model ordinance be brought up to their [federal] standard. He noted that Virginia's model ordinance didn't contain absolutely all of the federal requirements at that time – but after going through that revision process with FEMA, Virginia now has a model floodplain ordinance that contains everything required by FEMA. He added that the Virginia model ordinance is actually “a little bit better” than what FEMA requires. Mr. Banks then explained that the model ordinance is provided to Virginia localities with the hope that the communities will have ordinances that are improved. He further noted that the minimum regulations contained in the model ordinance are required in order for FEMA to approve a local floodplain ordinance – and enacting an ordinance that goes above and beyond that would make it safer for the community.

Mr. Banks then discussed conducting a workshop on the floodplain program and offering maps and other information to those that live in the floodplain area(s), which could include: what to do if one is in the SFHA and do not believe they are; what steps to take to get an elevation certificate and letter of map amendment from FEMA (if it qualifies); and ways to determine the approximate BFE's for the A Zones. Mr. Banks concluded by discussing the CRS details.

The ~~Commissioner~~ Commissioners had the following questions/concerns/comments:

1. Are the savings only on new construction or on all buildings? Mr. Banks noted that the potential savings on insurance premiums would be for all policy holders within a locality participating in the CRS.
2. If all the amendments were adopted (outlined in the Staff Report, dated March 14, 2016 – see attached) how would Nelson County rank in the CRS? Mr. Banks noted that would have to be evaluated by a CRS representative, and that the contents of the floodplain ordinance are one of multiple ways to earn points and improve a community's rating.
3. Chair Proulx indicated that she likes the idea of having a workshop. Mr. Banks noted that he would be happy to work with the County if they are interested.
4. Commissioner Russell noted that currently the Zoning Ordinance allows the BZA to seek outside advice, but it does not specify who pays for it. She believes the Telecommunications Ordinance does specify that the cost will be shared between the County and the applicant. She would like that to be considered as an addition to the Ordinance.

Mr. Padalino noted that he would follow up with Mr. Banks and the County Attorney to see what issues (if any) there would be to remove SUP from the BZA language.

The Commissioners decided to continue the discussion of the proposed floodplain amendments at next month's meeting. They thanked Mr. Banks for his time.

2. 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

Mr. Padalino stated that these are two Class C Communication Tower Permits. He noted that these are not new facilities, but are existing tower facilities; and due to the details of the proposed equipment upgrade, they are not eligible for administrative review/approval.

Mr. Padalino noted that Comm. Tower Permit #2016-01 is a facility called CV821: Greenfield. He showed maps of the subject property's location and characteristics. The parcel is identified as Tax Map Parcel #22-A-60C1, and is zoned Agricultural (A-1). It contains a 50' x 50' lease area. Mr. Padalino showed photos of the site. He noted that this application involves a proposed height addition to the existing tower: it would go from 120' (current approval height) to 132' (proposed height), or a 12' increase or 10% increase. He added that under the County's Tower Ordinance, that proposed additional height is considered a non-substantial increase. He then showed excerpts from the Site Plan provided by the applicant.

Mr. Padalino noted that Comm. Tower Permit #2016-02 is a facility that is called CV822: Lodebar in Stoney Creek. He showed maps and photos of the subject property's location and characteristics. He showed excerpts from the Site Plan provided by the applicant.

Mr. Padalino concluded by discussing the various aspects of these applications such as the Class C Tower Permit process vs. (administrative) Tower Permit Amendments process; balloon test and photo simulations; and Planning Commission review procedures and responsibilities (as noted in the Staff Report dated March 14, 2016 – see attached).

Commissioner Russell noted that the County's Zoning Ordinance only allows towers up to 130' and defines tower height to include the lightning rod. She then noted that the ordinance does allow for a 10% increase, but she does not believe the increase should go over the maximum tower height that is permissible by definition. She believes this "violates the spirit of the ordinance." She also noted that she is unhappy with the photo simulations of the tower that is located across the Rockfish Presbyterian Church. In comparing the two pictures, "it does not look as though one is ten feet taller than the other one when you look at the foliage." She added that the location of this facility is very prominent and on a highly travelled tourist area on Route 151. She further noted that Mr. Padalino stated that in the BOS minutes, the tower was approved as a "stealth facility" and she is not clear what that is and does not believe it is a "stealth facility." She concluded by noting she does not have an issue with the tower on Hearthstone Lane [CV822], but does have an issue with the Greenfield tower [CV821]. She noted that the Greenfield tower is a very prominent location from one part of Route 151, and that another ten feet of height will make a big difference. She noted that she would personally like to have a public hearing, which would allow people to know this proposal is before the County.

Chair Proulx asked the applicant to address the Commission's questions, including questions about whether or not the proposed height could be reduced to 130'.

Debbie Balsler: Ms. Balsler stated that she is the Site Acquisitions Manager at NTELOS located in Waynesboro. She noted that, "one of the reasons or the main reasons we cannot go any lower is that the owner of the tower (APEX) has leased the space below us to Verizon. They have contracted with them to put their antennas below us." She further noted that the LTE antennas are longer than the existing antennas (about 8'), so they cannot go into Verizon's lease space, which is why they are requesting to go higher.

Commissioner Russell asked if it would be possible for them to accommodate 130' instead of 132'. Ms. Balsler noted that she does not know, but that she could go back to the engineers to see if it could be decreased. She indicated that, "with the LTE upgrade, other additional things that we are adding to the tower that we didn't have to add to the tower before are remote radio heads. So with the high speed data, they are actually putting the radio heads at the top of the tower." She further explained that this allows for faster high speed data and better in-building coverage for cell phones. Ms. Balsler noted that there are seven (7) remote radio heads that go in between the antennas and the microwave dish.

Ms. Balsler then noted that, “with LTE’s we can no longer use the telephone line, we have to have fiber to every site in order to do that. We cannot get fiber to the Lodebar site on Hearthstone [CV822], so we have to microwave from CV821 on 151 to Hearthstone [CV822] to get fiber. That’s the only way the LTE will work – if we have fiber. We have existing fiber today on 151; and we’ll just microwave back to the Lodebar site.”

The ~~Commissioner~~ Commissioners and Staff noted that there are two (2) issues: the height (132’ versus 130’), and whether or not to hold a public hearing. Mr. Padalino noted that it is at the discretion of the Commission if they wanted to hold a public hearing (referenced Section 20-13, Item B). Commissioner Russell noted that she is more concerned with the profile with a 10’ increase. She is more interested in the public being aware of this and having an opportunity to speak about the increase. Mr. Padalino stated that, “it is my understanding that maximum height is for new facilities, and we don’t have local control over these non-substantial increases.”

Mr. Bruguere asked if the lightning rod is included in the total height. Ms. Balsler noted that 2’ of the height is the lightning rod. Mr. Bruguere asked if the lightning rod could be reduced to be in compliance. Ms. Balsler stated that the lightning rod could be reduced.

Commissioner Russell made the following motion:

I make a motion that the Planning Commission recommend to the Board of Supervisors approve application for a communication tower permit #2016-01 by NTELOS to modify an existing tower at location CV821 located at 5029 Rockfish Valley Highway with the stipulation that the tower must be a maximum of 130’ including all antennas and lightening rod. Commissioner Goad provided the second; the vote 6-0.

Commissioner Russell made the following motion:

I make a motion that the Planning Commission recommend that the Board of Supervisors approve communication tower permit #2016-02 made by NTELOS for a existing tower CV822 accessible at 266 Hearthstone Lane in Nellysford to modify an existing tower. Commissioner Harman provided the second; the vote 6-0.

Adjournment:

Commissioner Allen made a motion to adjourn at 9:26pm; vote 6-0.

Respectfully submitted,

Stormy V. Hopkins
Secretary, Planning & Zoning

Memorandum

To: Nelson Planning Commission
From: Wood Hudson – TJPDC, Senior Planner
Date: April 20, 2016
Re: 2016 Rural Long Range Transportation Planning Effort

Purpose: To inform Nelson Planning Commission members on current Rural Long Range Transportation Planning activities in Nelson County and solicit feedback from the commission. TJPDC staff is asking the Planning Commission to review the attached map and project list and provide feedback on the inclusion and exclusion of transportation projects in Nelson County. Planning Commission recommendations will help shape the plan update.

Background: Several years ago, VDOT partnered with the 20 Planning District Commissions with rural transportation programs. The effort focused on developing Long Range Transportation Plans for rural areas of the State, to complement the transportation plans in urbanized areas (MPOs). Overall, the RLRP was intended to serve several functions, including to:

- Identify transportation deficiencies and recommendations;
- Assist with comprehensive plan updates and traffic impact studies (Chapter 527);
- Evaluate the effects of land use and development on the surrounding network;
- Establish programming of transportation improvements; and,
- Provide content and guidance for statewide transportation plans.

Summary: Since the RLRP was last adopted in 2010, staff recently began the process for a 5-year update. This effort will include several improvements from the previous version, bringing additional value to the document. Specifically, the plan will serve as a valuable tool that helps our member localities navigate through the changing environment of State statutes and dwindling transportation funds. The rural communities, already at a disadvantage for funding, will need to be better prepared than ever before to compete for these limited resources. This plan will be dedicated to that purpose.

The TJPDC has been working with local planning staff and VDOT through the Rural Technical Committee to develop and apply a project evaluation methodology that is aligned with those being employed by the State's HB2 process. At this juncture staff is bringing a draft of the project list.

Before proceeding with the plan, staff will be soliciting feedback from the local planning commissions. To best interact with these officials, staff went into these meetings with a blank slate, letting the commissioners dictate their needs.

Actions: At this time, staff is looking for feedback on the attached draft project lists, feedback on the process and if there are additional local priorities that need to be included in the project lists. If any Commissioners have questions or comments about this project, please contact me at whudson@tjpd.com or (434)979-7310 x101.

Attachment 1:

Project List and Map

The map below highlights the status of transportation projects being considered for inclusion in the 2016 RLRP. Projects from the 2010 plan were re-evaluated along with additional priority areas that were identified by the evaluation process. Projects fall into one of three categories.

- 1- New projects. These projects address a newly identified transportation deficiency such as safety or congestion.
- 2- Existing projects for visioning list. These projects were included in the 2010 RLRP but don't overlap with any current priority areas (based on TJPDC analyses to date). These projects will be moved from the recommendations section of the plan to the 'visioning list' section
- 3- Existing projects to be included. These are projects that were identified in the 2010 RLRP and overlap with current priority areas and will be included in the recommendations section of the 2016 plan.

RLRP Projects Map

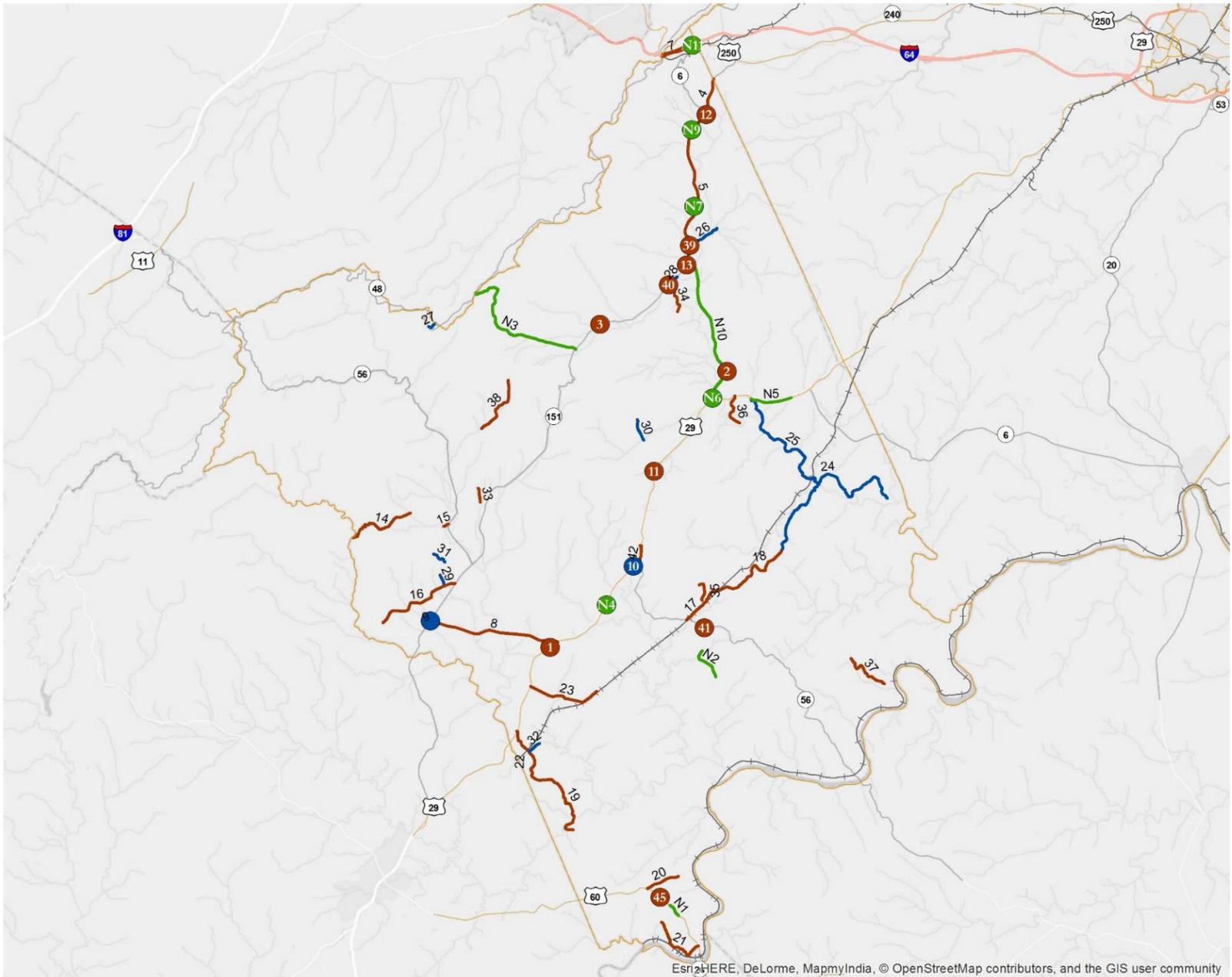


Figure 1: Existing Projects Remaining

MAP KEY	LOCATION INFORMATION	Map Code	RECOMMENDATION -- PLAN DOCUMENT TEXT
24	VA 151 at VA 6	2	Deficiency with low priority; Continue to monitor for potential improvements.
25	VA 6 from VA 6 South to VA 6 North	4	Long-term widen road to increase capacity and address geometric deficiencies (including full-width lanes and shoulders).
26	VA 151 (Rockfish Valley Hwy) at VA 635 (Greenefield Road)	2	Local Priority. Short-term study intersection to identify safety improvements.
27	VA 635 (Cold Creek Road) from VA 6/VA 151 to VA 633	7	Local Priority. Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
28	VA 151 at VA 6/VA 638	2	Deficiency with low priority; Continue to monitor for potential improvements.
29	VA 151 from VA 6 North to Albemarle County Line	4	Long-term widen road to increase capacity and address geometric deficiencies (including full-width lanes and shoulders).
30	VA 250 from Augusta County Line to Albemarle County Line	4	Long-term widen road to increase capacity and address geometric deficiencies (including full-width lanes and shoulders).
31	I-66 from Augusta County Line to Albemarle County Line	4	Long-term widen road to six lanes to increase capacity and accommodate existing and future travel demand.
32	US 29 (Thomas Nelson Highway) at VA 775 (Anderson Lane/Lewis Lane)	2	Short-term improve signage; Long-term consider closing median opening and installing rumble strips.
43	US 29 BUS (Front Street) from US 29 North to US 29 South	5	Mid-term improve intersection to address sight distance deficiency and install sidewalks.
44	VA 56 Extension	5	Mid-term study extension of Rt 56 to Rt 29 to create safer intersection.

Figure 2: New Projects

MAP KEY	LOCATION INFORMATION	Map Code	RECOMMENDATION -- PLAN DOCUMENT TEXT
N1	VA 60 (Richmond Hwy) from (Robertson Ln) to (Payne Place)	5	
N2	VA 647 (Findlay Mtn Rd) from VA 722 (Williamstown Rd) to 0.39mi NW of Snow Hill Ln	5	
N3	VA 664 (Beach Grove Road) from VA 151 (Patrick Henry Hwy) to Blue Ridge Pkwy	4	
N4	US 29 (Thomas Nelson Hwy) at VA 741 Drumheller Orchard Ln	2	
N5	US 29/VA 6 (Thomas Nelson Hwy) from VA 617 (Rockfish River Rd) to VA 779 (Mosby Ln)	5	
N6	VA 6 (River Rd) at US 29 (Thomas Nelson Hwy)	2	

N7	VA 6/VA 151 (Rockfish Valley Hwy) at VA 784 (Bland Wade Ln)	2	
N9	VA 6/VA 151 (Rockfish Valley Hwy) at VA 640 (Tanbark Dr)	2	
N10	VA 6 (River Rd) from VA 151 (Rockfish Valley Hwy) to US 29 (Thomas Nelson Hwy)	5	
N11	US 250 (Rockfish Gap Tpk) at VA 6 (Afton Mtn Rd)	2	

Figure 3: Long Range Visioning List projects

MAP KEY	LOCATION INFORMATION	Map Code	RECOMMENDATION -- PLAN DOCUMENT TEXT
1	VA 666 (Dickie Road) from VA 827 to VA 679 West	7	Long-term reconstruct road to address geometric deficiencies (10-foot lanes).
2	VA 676 (Clay Pool Road) from VA 778 to VA 151	7	Long-term reconstruct road to address geometric deficiencies (10-foot lanes).
3	VA 705 from VA 676 to 0.5 Mi. North of VA 676	5	Mid-term repave roadway.
4	VA 780 from VA 674 to End State Maintenance	5	Mid-term repave roadway.
5	VA 666 (Jonesboro Road) from VA 679 East to VA 56 South	7	Long-term reconstruct road to address geometric deficiencies (11-foot lanes).
6	VA 681 from 0.1 Mi. North of VA 666 to VA 769	5	Mid-term repave roadway.
7	VA 151 (Patrick Henry Hwy) at VA 56 (Tye Brook Hwy)	2	Mid-term improve intersection to address sight distance deficiency.
8	VA 151 from VA 151 to VA 56	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
9	VA 56 from VA 151 to US 29	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
10	US 29 at VA 655	2	Local Priority. Short-term improve signage; Mid-term lengthen turn lanes.
11	VA 665 (Wilson Hill Road) from US 29 North to VA 655	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
12	VA 739 from VA 657 to US 29 South	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
13	VA 658 (Tye River Road) from VA 721 to VA 739	7	Long-term reconstruct road to address geometric deficiencies (11-foot lanes).
14	VA 622 from VA 739 to 0.5 Mi. North of VA 739	5	Mid-term repave roadway.
15	VA 626 (Cabell Road) from US 60 to VA 606 South	7	Long-term reconstruct road to address geometric deficiencies (10-foot lanes).
16	US 60 (Richmond Hwy) at VA 622 (Allen's Creek Road)	2	Local Priority. Mid-term improve intersection to address sight distance deficiency.
17	VA 656 from US 60 to VA 622	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
18	VA 680 from 0.515 Mi. North VA 699 to 3.043 Mi. North VA 699	5	Mid-term repave roadway.
19	VA 814 from Blue Ridge Parkway to Augusta County Line	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
20	VA 151 (Rockfish Valley Hwy) at VA 627 (Spruce Creek Lane)	2	Local Priority. Long-term reconstruct intersection to improve horizontal and vertical curves.
21	VA 613 from VA 612 to 1.0 Mi. South of VA 612	5	Mid-term repave roadway.
22	VA 151 (Rockfish Valley Hwy) at VA 613 (Rodes Farm Drive)	2	Local Priority. Mid-term improve intersection to address sight distance deficiency.
23	VA 151 from VA 613 to 0.050 miles N. VA 613	4	Mid-term reconstruct road to address geometric deficiencies.
33	VA 756 from VA 623 to End State Maintenance	5	Mid-term repave roadway.
34	VA 828 from US 29 to End State Maintenance	5	Mid-term repave roadway.
35	VA 6 West (River Road) at VA 634 (Old Roberts Mountain Lane)	2	Local Priority. Short-term improve signage; Mid-term add turn lanes.
36	VA 617 (Rockfish River Road) from VA 639 South to US 29	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
37	VA 639 (Laurel Road/Rockfish River Road) from VA 643 to VA 800	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
38	VA 639 (Laurel Road) from VA 719 to VA 643	7	Long-term reconstruct road to address geometric deficiencies (11-foot lanes).
39	VA 639 (Craigtown Road) from VA 56 East to VA 719	7	Long-term reconstruct road to address geometric deficiencies (including full-width lanes and shoulders).
40	VA 694 from VA 649 to End State Maintenance	5	Mid-term repave roadway.
41	VA 56 (James River Road) at VA 647 (Findlay Mountain Road)	2	Mid-term improve intersection to address sight distance deficiency.
42	US 29 (Thomas Nelson Highway) at Business 29 (Callohill Drive/Front Street)	2	Short-term modify signal timing and improve signage and pavement markings.
45	VA 604 from VA 626 to 2.0 Mi. West of VA 626	5	Mid-term repave roadway.

Map Code Key

- 1: Operation Deficiency (Intersection)**
- 2: Safety Deficiency (Intersection)**
- 3: Both Deficiencies (Intersection)**
- 4: Operation Deficiency (Segment)**
- 5: Safety Deficiency (Segment)**
- 6: Both Deficiencies (Segment)**
- 7: Geometric Deficiency**
- 8: Others**



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:

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

Deleted:

Deleted: Planning and Zoning Director

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.

Deleted: Planning and Zoning Director

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 [CBK5]: 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.

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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.

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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:

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- 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.

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

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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:

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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.

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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.

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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