



## MEMORANDUM

**To:** Development Review and Regulations Committee

**From:** Candice E. Perkins, AICP, Senior Planner *CEP*

**Subject:** August Meeting and Agenda

**Date:** August 16, 2010

The Frederick County Development Review and Regulations Committee (DRRC) will be meeting on Thursday, August 26, 2010 at 7:00 p.m. in the **first floor conference room (purple room)** of the County Administration Building, 107 North Kent Street, Winchester, Virginia. The DRRC will discuss the following agenda items:

### AGENDA

- 1. Telecommunication facilities.** Discussion on revisions to the Frederick County Zoning Ordinance to revise §165-204.19B to permit the Board of Supervisors to waive the monopole tower requirement.
- 2. Recreation and Conference Commercial District (RCC District).** Discussion on revisions to the Frederick County Zoning Ordinance for a new zoning district to implement the Commercial Recreation land use designation of the Comprehensive Policy Plan.
- 3. Inundation Zones.** Discussion on revisions to the Frederick County Subdivision Ordinance to include provisions for dam break inundation zones as mandated by the Code of Virginia.

Please contact this office if you will not be able to attend the meeting. Thank you.

*Access to this building is limited during the evening hours. Therefore, it will be necessary to enter the building through the rear door of the four-story wing. I would encourage Committee members and interested citizens to park in the County parking lot located behind the new addition or in the joint Judicial Center parking lot and follow the sidewalk to the back door of the four-story wing.*

CEP/bhd  
Attachments

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## **Item #1: Telecommunication Facilities**

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Staff has been directed to draft an amendment to the Zoning Ordinance to revise the waiver provision for lattice style telecommunication facilities. The Zoning Ordinance (§165-204.19B) currently requires all new commercial telecommunication towers to be monopole-type construction. The Planning Commission is provided with an opportunity to waive that requirement when the tower is located outside the Urban Development Area and is not adjacent to properties that are identified historic sites. The proposed ordinance amendment would allow the Board of Supervisors to waive the monopole requirement.

Staff is requesting a recommendation from the DRRC on this proposed ordinance amendment. This recommendation will be forwarded to the Planning Commission and Board of Supervisors.

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**Attachments: 1. Proposed Changes to §165-204.19B.**

Article II  
SUPPLEMENTARY USE REGULATIONS, PARKING, BUFFERS, AND  
REGULATIONS FOR SPECIFIC USES

Part 204 – Additional Regulations for Specific Uses

§ 165-204.19 Telecommunication facilities, commercial.

B. The following standards shall apply to any property in which a commercial telecommunication facility is sited, in order to promote orderly economic development and mitigate the negative impacts to adjoining properties:

- (2) Monopole-type construction shall be required for new commercial telecommunication towers. The ~~Planning Commission~~ *Board of Supervisors* may allow lattice-type construction for new telecommunication towers when existing or planned residential areas will not be impacted and when the site is not adjacent to identified historical resources. ~~that are located outside the Urban Development Area and are not adjacent to properties that are identified historic sites.~~

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## **Item #2: Draft RCC Zoning District**

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Through the 2009 Comprehensive Policy Plan Amendment process, the Frederick County Board of Supervisors endorsed the evaluation of an amendment to the Comprehensive Plan to include the property that is home to the Rock Harbor Golf Course. An amendment to the Round Hill Land Use Plan was ultimately approved by the Board of Supervisors in July of 2010. The amendment to the plan had two primary goals - first, to establish a new area of land use that would specifically promote the recreational attributes of the area in conjunction with the open spaces associated with the existing Rock Harbor Golf Course (commercial recreation land use), and second, to create a well-designed Conference Facility integrated with limited commercial land uses with an orientation to the Golf Course and future Route 37 interchange, and limited accessory membership residential land use to sustain the viability of the Rock Harbor Golf Course.

To implement the new Commercial Recreation land use designation, a new zoning district has been drafted that is termed the Recreation and Conference Commercial District (RCC District). If the DRRC is supportive of this ordinance amendment, staff will forward it to the Planning Commission and Board of Supervisors for their consideration.

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**Attachments: 1. Proposed RCC District Requirements and Definitions**

**2. Round Hill Land Use Plan - Round Hill Commercial Recreation Land Use**

**Recreation and Conference Commercial District (RCC District)**

**Intent.**

**Recreation and Conference Commercial District (RCC District).** The intent of this district is to implement the Commercial Recreation land use designation of the Comprehensive Policy Plan. The RCC District is designed to provide areas for carefully planned commercially driven recreational land uses which take advantage of existing recreational amenities and enhances the economic development opportunities of the area through conference facilities, lodging, commercial activities, and a limited amount of accessory membership residential opportunities. Special care shall be taken in the approval of RCC developments to ensure that necessary infrastructure, facilities, roads and improvements are available or provided to support the RCC District development. Specific objectives of this district include:

1. Provide for a balance of land uses that promote the recreational component as the primary land use.
2. Assurance that all land uses are integrated and compatible and that adverse impacts on surrounding properties and facilitates are avoided.
3. The RCC District shall be located in close proximity (within 1 mile) of Route 37 and contain a major open space component.
4. The RCC District should promote energy efficient and sustainable design and development, including achieving LEED certification, or certification from a similar program, as a project.
5. Areas of impervious surface in conjunction with the development should be minimized and alternative irrigation techniques should be promoted.
6. Innovative water and sewer design to this project is necessary in order to create a more sustainable community.

**Permitted Uses.**

The following uses are permitted in the RCC District:

<b>Permitted Uses.</b>	<b>Standard Industrial Classification (SIC)</b>
Restaurants	5812
Hotels and motels	701
Organization hotels and lodging	704
Public Golf Courses	7992
Golf driving ranges	7999
Conference/Convention Facilities	---
Banquet/Event Facilities	---
Accessory Retail	---
Accessory Residential Uses	---

Business signs	---
Signs allowed in § 165-201.06B	---
Freestanding building entrance signs	---
Multi-tenant complex signs	---
Electronic message signs	---

**Development Standards.**

- A. **Minimum Use Percentages.** A RCC Development shall have the following minimum/maximum percentages of uses. These percentages shall not be modified.
  - 1) **Recreational Land Uses.** A RCC Development shall contain a golf course as the primary recreational component. The golf course shall be a minimum 36-hole golf course.
  - 2) **Commercial Uses.** A maximum of 30% of the gross land area of the RCC District development may be devoted to commercial uses.
  - 3) **Open Space.** A minimum of 60% of the gross land area of the RCC District development shall be devoted to open space (the primary recreational land use may be included in this area).
  - 4) **Residential Use.** A maximum of 10% of the gross land area of the RCC District development may be devoted to accessory membership residential uses.

**General regulations.**

- A. **Size.** A RCC District shall contain a minimum core area of 100 acres. Once the core acreage has been established, additional contiguous parcels may be added to the RCC District so long as the minimum open space percentage is maintained for the entire RCC District.
- B. **Lot Size.** Within a RCC District, individual uses shall not have a minimum lot size.
- C. **Subdivision.** A RCC District Development may not contain individual residential parcels and may not include condominium options for residential uses. Accessory membership residential uses within a RCC District must be developed as one parcel that is owned and operated by one entity that offers rental options for the accessory membership residential uses. Commercial uses shall only be established on existing parcels of record, no new parcels shall be permitted. The boundaries of existing parcels may be modified internal to the project or, preferably, consolidated.
- D. **Public Utilities.** A RCC District shall be served by public water and sewer.
- E. **Residential density.** Maximum gross density for accessory membership residential uses shall not exceed 8 units per acre.

- F. Dimensional and intensity requirements. The following dimensional and intensity requirements shall be applicable for all development within the RCC District:

**RCC District Requirements**

Minimum front yard setback on primary and arterial highways (feet)	50
Minimum front yard setback on collector or minor streets (feet)	35
Side yard setbacks (feet – perimeter boundary)	50
Rear yard setbacks (feet – perimeter boundary)	50
Maximum Floor area to lot area ratio (FAR)	1.0
Maximum Commercial/Recreational Building Height (Feet - Primary)	60
Maximum Commercial/Recreational Building Height (Feet - Accessory)	20

- G. Accessory Membership Residential Uses.

- 1) **Accessory membership residential uses within a RCC District must be developed as one parcel that is owned and operated by one entity that offers rental options for the accessory membership residential uses.**
- 2) Permitted accessory residential uses may consist of the following: single family detached, single family attached, multiplex and garden apartment units. Such accessory dwellings shall meet the following:
  - a) Single-family detached and single-family attached residential structures shall have an average lot area of 3,000 square feet per dwelling unit.
    - i. Setback from parking areas: 20 feet.
    - ii. Building separation: 20 feet.
    - iii. Minimum off-street parking shall be two spaces per unit.
    - iv. Maximum principal building height: 35 feet.
  - b) Multiplex and garden apartment units shall have an average lot area of 1,000 square feet per dwelling unit.
    - i. Setback from parking areas: 20 feet.
    - ii. Building separation: 30 feet.
    - iii. Minimum off-street parking shall be two spaces per unit.
    - iv. Maximum principal building height: 40 feet.
- 3) All other dimensional requirements shall be as outlined in Part 402 - RP (Residential Performance) District.

**Use Limitations.**

- A. **Parking.** Parking within a RCC District shall be in accordance with § 165-202.01.
- B. **Buffering and Screening.** Buffers and screening shall be provided in accordance with § 165-203.02. Land uses contained within a RCC District shall not be required to provide buffers from other uses contained within the RCC District.
- C. **Signage.** Signage within a RCC District shall be in accordance with §165-201.06; however, no freestanding signage shall be permitted along Route 37.
- D. **Sidewalks and Trails.** Continuous sidewalks shall be provided along both sides of all public and private streets within a RCC district. All planned bike trails as identified in the Comprehensive Plan shall be provided along any road within a RCC district. In addition, trails shall be provided along one side of all arterial and collector roads within a RCC District. Trails shall be a minimum of 10 feet wide and have a paved surface.
- C. **Private Streets.** A partial or complete network of private streets may be permitted within a RCC District upon approval by the Board of Supervisors at the time of rezoning. However, roads or streets depicted on the Frederick County Eastern Road Plan shall be public and dedicated to Frederick County for eventual acceptance into the Virginia Department of Transportation secondary road system. When private streets are permitted, the location of all private streets must be shown on the Master Development Plan and shall meet the vertical base requirements of the Virginia Department of Transportation for the projected traffic volume.

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**ARTICLE I  
GENERAL PROVISIONS, AMENDMENTS, AND CONDITIONAL USE PERMITS**

**Part 101 – General Provisions**

**§ 165-101.02. Definitions and word usage.**

**Conference/Convention Facilities** – An enclosed structure designed to accommodate large gatherings for business or professional conferences, seminars, training sessions, large meetings, exhibitions, and a range of leisure activities. Conference/Conventions may be a primary use or may be constructed in conjunction with a hotel.

**Banquet/Event Facility** – A use in which the principle function is hosting private parties at which food and beverages are served to groups of people, and which has facilities for the preparation of food, or which provides facilities for food through a caterer. Banquet/Event facilities may be an ancillary component of other uses such as, but not limited to: restaurants, hotels, conference/convention facilities and similar uses.

**Round Hill Community  
Land Use Plan 2007**

(Adopted by the Board of Supervisors on November 14, 2007)

**Recreation and Conference Commercial Community  
(Rock Harbor) Amendment**

Adopted by the Board of Supervisors on June 23, 2010

Through the 2009 Comprehensive Policy Plan Amendment process, the Frederick County Board of Supervisors endorsed the evaluation of an amendment to the Comprehensive Plan to include the property that is home to the Rock Harbor Golf Course. The following land use policy, along with the updated land use map, is the resulting amendment and is known as the Rock Harbor Amendment to the Round Hill Land Use Plan.

**Guiding Principles**

The amendment to the plan has two primary goals - first, to establish a new area of land use that would specifically promote the recreational attributes of this area in conjunction with the open spaces associated with the existing Rock Harbor Golf Course, and second, to create a well-designed Conference Facility integrated with limited commercial land uses with an orientation to the Golf Course and future Route 37 interchange, and limited accessory membership residential land use to sustain the viability of the Rock Harbor Golf Course. The goals of the Plan seek to enable the development of land uses which will provide economic development, tourism, and entertainment benefits to the Community and to Frederick County, and further promote the Rock Harbor Golf Course.

The addition of Rock Harbor area to the Round Hill Land Use Plan creates a third distinct area of land use for the Round Hill Community which will join with the Community's other two distinct areas; the long established Round Hill Rural Community Center focused around Round Hill Road (Route 803), and the developing commercial and medical support area along Route 50 (Northwestern Pike).

The Rock Harbor area of the Round Hill Land Use Plan is west of, and adjacent to, the West Jubal Early Land Use Plan. The addition of this area will promote a connectivity of land uses and access between the two important land use plans with a focus on the future West Jubal Early Interchange. This plan also encompasses the area of existing quarry operation, providing recognition to this very important area of Extractive Manufacturing and guidance with regards to future development adjacent to the quarry. Additional protections in the form of distance and buffering should be provided for any new land uses on the Rock Harbor Golf Course,

particularly for any accessory membership residential land uses.

Like the other two areas, this plan seeks to link to the community by providing access to efficient roads, multi-purpose trails and sidewalks, and public water and sewer for the benefit of both the residents of this Community and those adjacent citizens who may work or recreate in the area. As with previous versions of the Round Hill Community Land Use Plan, a key goal of this plan is to provide public sewer and water access for the existing residents of the Round Hill community.

## **Land Use**

### ***Round Hill Commercial Recreation Land Use***

The intent of the Commercial Recreation land use designation shall be to provide for carefully planned, commercially driven recreational land uses which take advantage of existing recreational amenities (36-hole golf course) and enhances the economic development opportunities of the area through conference facilities, lodging, commercial activities, and a limited amount of accessory membership residential opportunities.

Growth and development of this area should be carefully planned to take advantage of the existing commercial recreation land uses, Rock Harbor Golf Course, the close proximity of the Winchester Medical Center, and the adjacent areas of planned land use.

The Commercial Recreation land use designation is envisioned to have a balance of land uses that promote the recreational component as the primary land use. The recreational component should be located in close proximity (within one mile) of an existing Route 37 Interchange and contain a major open space component. Compatible commercial ventures such as conference facilities, lodging opportunities, restaurants, and limited accessory retail would also be appropriate in this setting. The Robinson Property shall contain only the compatible commercial ventures component of the land use designation as identified above. Development of the Robinson Property should only occur at the same time as, or in conjunction with, the Rock Harbor project.

#### **Balance of land uses**

**Recreational** – 36-hole golf course (minimum # of holes)

**Open Space** – 60 percent of land area (minimum area including golf course)

**Commercial** – 30 percent of land area (maximum area)

This area of commercial shall include a conference facility.

**Accessory membership residential** – 10 percent of land area (maximum area)

The introduction of the accessory residential land uses may occur prior to the development of the commercial land uses and the Conference Facility.

It is recommended that the regulations guiding the development of the commercial recreation area promote the balance of land uses identified above that are owned and operated by the Rock Harbor Golf Course without further subdivision of the property.

### **Community Facilities**

In order to promote high quality, low impact design, the commercial recreation land use designation should promote energy efficient design and development, including achieving LEED certification, or certification from a similar program, as a project. Areas of impervious surface in conjunction with the development should be minimized and alternative irrigation techniques should be promoted.

Innovative water and sewer design to this project is necessary due to the limited resources available to the County. Alternative approaches with regards to water resources and reuse of water and wastewater should be provided with this project. This project should provide additional resources to the community and facilitate the provision of water and sewer resources to the Round Hill Community, in particular to the existing residents, rather than detract from the FCSA's ability to provide these resources.

It is essential to ensure that the infrastructure and the necessary community facilities are provided in a timely and coordinated manner in order to enable the successful implementation of the land use plan. Therefore, it is expected that the commercial recreation land use application is developed with public water and sewer infrastructure and this application participates in the regional planning and infrastructure development needs of the Round Hill Community. This participation may include infrastructure improvements that exceed those generated solely by this project but are designed to advance the needs of the Round Hill Community.

### **Design**

High quality building designs and materials are expected. An objective of this plan is to create an attractive, functional commercial area and to prevent the creation of a typical commercial strip, from the perspective of a new interchange on Route 37. Unattractive development along Route 37 frontage should be avoided. From this perspective, the golf course and future conference and lodging facilities should be preserved and be the prominent features. Additional commercial and residential land uses should be avoided directly adjacent to Route 37. The recreational viewshed should be promoted with the golf course and future conference facilities highly visible. This may include a linear area of open space adjacent to Route 37 (500 feet distance). This area of open space should not be extended to the area surrounding the proposed interchange, which is an area where appropriately designed development is anticipated.

### **Transportation**

The County's Eastern Road Plan and the Win-Fred Metropolitan Planning Organization (MPO) 2030 Transportation Plan calls for Route 37 Jubal Early Interchange improvement. This project

has been endorsed through recent rezoning approvals. This land use plan will ultimately provide direct access to the Route 37 interchange at this location. Access to the Round Hill Community to the North is also encouraged and may be established prior to the completion of the Jubal Early Interchange if supported by an approved TIA (Transportation Impact Analysis). Notwithstanding this, the development of this property should participate in the implementation of the Route 37 interchange to the extent that it is warranted as a primary transportation focus.

A new multi-purpose trail system is planned through the Round Hill Community to serve the area and provide access and connectivity with the West Jubal Early Community. The location shown on the plan is general, with the precise location of the trail connection remaining flexible. However, access should provide a connection generally from west of Route 37 to east of Route 37 as depicted on the map. It would be preferable to have the trail connectivity located on the proposed sewer infrastructure parallel to the north of the railroad tracks. This should occur in conjunction with the construction of the interchange, if possible, and under the existing Abrams Creek and Rail Bridge. At a minimum, bicycle and pedestrian awareness should be incorporated into the design and signage of the interchange. Trail connectivity to West Jubal Early Land Use Plan and the City of Winchester Green Circle is very important.

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### **Item #3: Dam Break Inundation Zones**

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In 2008, the Virginia General Assembly adopted legislation (HB 837) to address development in dam break inundation zones of state-regulated dams. The bill directs developers to assist dam owners with required upgrades and requires additional disclosure and notification procedures for dam owners. The requirements apply only to proposed development downstream of a dam for which a dam break inundation zone map is on file with the County as of the time of the official submission of a plan to the County. The Code of Virginia mandates that localities include these requirements in their subdivision ordinances. Therefore, staff has prepared revisions to Chapter 144 – Subdivision of land (Articles I, II, IV, VI, V) to accommodate these requirements.

#### **Process**

Proposed developments within mapped dam break inundation zones of state-regulated impoundments must be identified on all subdivision design plans, sketch plans and plat submissions. In addition, when any part of the land proposed for subdivision lies in a mapped dam break inundation zone, the final plat for the proposed development must reflect the inundation zone.

When a proposed development is identified as being located in a dam break inundation zone, the County will notify the dam owner and, within 10 days of submission, forward a copy of the plan to the Virginia Department of Conservation and Recreation (DCR) for review. DCR will notify the dam owner and the County of its determination within 45 days of receipt of the plan. If the County has not received a determination from DCR within 45 days, DCR is deemed to have no comments. If DCR determines that the proposed development will change the spillway design flood standards of the impounding structure, the development cannot be approved unless it is modified so that it does not change the spillway design flood standards, or the developer contributes payment for the necessary upgrades to the impounding structure. If the developer chooses to contribute payment for the upgrades, the developer must submit an engineering study and a contract-ready cost estimate to DCR for necessary upgrades to the impounding structure. The developer must pay 50% of the contract ready costs for the necessary upgrades to an impounding structure attributable to the development or subdivision, together with administrative fees not to exceed 1% of the total amount of the payment required or \$1,000, whichever is less, to the Dam Safety, Flood Prevention and Protection Assistance Fund managed by DCR prior to final approval of the Subdivision or Site Plan. When the need for upgrades to an impounding structure is identified during review of a subdivision design plan or plat, the approval of the plan or plat will not be issued until the required engineering study, cost estimate and payment for the upgrades are received.

Following completion of construction, the developer must provide the dam owner and the County with all information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone.

### **Dams Subject to State Code**

All dams in Virginia are subject to the Dam Safety Act and Dam Safety Regulations unless specifically excluded. A dam is excluded if it:

- is less than six feet high;
- has a maximum capacity less than 50 acre-feet and is less than 25 feet in height;
- has a maximum capacity of less than 15 acre-feet and is more than 25 feet in height;
- is used primarily for agricultural purposes and has a maximum capacity of less than 100 acre-feet or is less than 25 feet in height ( if the use or ownership changes, the dam may be subject to regulation);
- is owned or licensed by the federal government;
- is operated for mining purposes under 45.1-222 or 45.1-225.1 of the *Code of Virginia*;
- is an obstruction in a canal used to raise or lower water levels;
- The height of a dam is defined as the vertical distance from the streambed at the downstream toe to the top of the dam;
- The maximum capacity of a dam is defined as the maximum volume capable of being impounded at the top of the dam.

If the DRRC is supportive of this ordinance amendment, staff will forward it to the Planning Commission and Board of Supervisors for their consideration.

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**Attachments: 1. Proposed changes to §144-1, 2, 9, 23, 35, 36, 37, 39,  
2. State Code References**

Chapter 144 – SUBDIVISION OF LAND

ARTICLE I

Intent

§ 144-1. Intent.

This chapter is intended to establish subdivision standards to assist in the orderly, efficient and integrated development of land. *These standards shall:*

1. ~~These standards shall~~ Promote appropriate development practices, ensure conformance with Frederick County's Comprehensive Plan and County Code and provide for the public's health, safety, convenience, comfort, prosperity and general welfare.
2. ~~These standards shall~~ Guide public and private actions to ensure that adequate and efficient systems are provided for transportation, water, sewerage, fire protection, drainage, erosion control, recreation, open space and other public services and utilities to promote the development of an economically sound and stable community.
3. *Promote safety from fire, flood, failure of impounding structures and impacts within dam break inundation zones, panic, and other dangers.*
4. ~~This chapter shall~~ Provide for reasonable survey standards to ensure proper subdivision layout, appropriate recordation of all land divisions, legal descriptions, monument placement on urban land and appropriate procedures and standards for land development.

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ARTICLE IV

Subdivision Review Procedures

§ 144.9. General procedure.

- A. All land divisions shall require the submittal of a subdivision plat for review and approval prior to recordation. Unless specifically exempted, all residential subdivisions and their associated amenities shall be required to submit a subdivision design plan for review and approval prior to final plat approval.
- B. *During the review process for any preliminary sketch, subdivision design plan, or plat, the county shall review the potential impacts of mapped dam break inundation zones in accordance with the provisions of state law.*

ARTICLE V  
Design Standards

§ 144-23. Environmental requirements; floodplain development; wetlands; dam break inundation zones.

D. Dam Break Inundation Zones.

- A. For any development proposed within the boundaries of a dam break inundation zone that has been mapped in accordance with state law, the locality shall, as part of a subdivision plan or plat review :
- 1) Review the dam break inundation zone map on file with the locality for the affected impounding structure,
  - 2) Notify the dam owner, and
  - 3) Within 10 days forward a request to the Department of Conservation and Recreation to make a determination of the potential impacts of the proposed development on the spillway design flood standards required of the dam.
- B. No land shall be subdivided within the boundaries of a mapped dam break inundation zone unless such division complies with the provisions of state law. If the State Department of Conservation and Recreation determines that the plan of development would change the spillway design flood standards of the impounding structure, and the proposed subdivision would allow development of three or more residential dwelling units, the County shall not permit the subdivision unless:
1. The subdivider agrees to alter the plan of development so that it does not alter the spillway design flood standard required of the impounding structure; or
  2. The subdivider submits an approved engineering study in conformance with the Virginia Soil and Water Conservation Board's standards under the Virginia Dam Safety Act and the Virginia Impounding Structure Regulations and makes the appropriate payment under state law related to the necessary upgrades to the affected impounding structure and administrative fees pursuant to § 15.2-2243.1 of the Code of Virginia.
- C. The developer or subdivider shall provide the dam owner and all affected localities with information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone following completion of the development.
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ARTICLE VI  
Plan Requirements

§ 144-35. Preliminary sketches.

The following items shall be shown on the preliminary sketch unless waived by the Subdivision Administrator:

K.     *The location and potential impacts of mapped dam break inundation zones in accordance with the provisions of the Code of Virginia.*

§ 144.36. Subdivision design plan contents.

LL.    *The location and potential impacts of mapped dam break inundation zones in accordance with the provisions of the Code of Virginia.*

LL. MM. Other information necessary to ensure that all requirements of the Frederick County Code have been met.

§ 144.37. Final plats.

BB.    *The location and potential impacts of mapped dam break inundation zones in accordance with the provisions of the Code of Virginia.*

§ 144.39. Minor rural subdivisions.

A plat for a minor rural subdivision shall be prepared by a certified professional engineer or land surveyor and shall contain the following information:

B.       The actual plat of the subdivision shall contain at least the following information:

(11)   *The location and potential impacts of mapped dam break inundation zones in accordance with the provisions of the Code of Virginia.*

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ARTICLE II  
Definitions

§ 144-2. Definitions and Word Usage.

*Dam break inundation zone -The area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.*

Impounding structure - A man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes:

(i) all dams that are twenty-five feet or greater in height and that create an impoundment capacity of fifteen acre-feet or greater, and

(ii) all dams that are six feet or greater in height and that create an impoundment capacity of fifty acre-feet or greater. The term "impounding structure" shall not include: (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (b) dams owned or licensed by the United States government; (c) dams operated primarily for agricultural purposes which are less than twenty-five feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to § 45.1-222 or § 45.1-225.1 of the Code of Virginia; or (e) obstructions in a canal used to raise or lower water.

§ 10.1-606.2. Mapping of **dam break inundation** zones.

A. An owner of an impounding structure shall prepare a map of the **dam break inundation** zone for that impounding structure in accordance with criteria set out in the Virginia Impounding Structure Regulations (4VAC 50-20). Existing maps prepared by the locality in accordance with these regulations may be used for this purpose.

B. All maps prepared in accordance with subsection A shall be filed with the Department of Conservation and Recreation and with the offices with plat and plan approval authority or zoning responsibility designated by the locality for each locality in which the **dam break inundation** zone resides.

C. Owners of impounding structures may be eligible for matching grants of up to 50 percent from the State Safety, Flood Prevention and Protection Assistance Fund and other sources of funding available to the Director to assist in the development of **dam break inundation** zone maps and for conducting incremental damage assessments in accordance with the Virginia Impounding Structure Regulations.

D. All properties identified within the **dam break inundation** zone shall be incorporated by the locality into the dam safety emergency action plan of that impounding structure so as to ensure the proper evacuation of persons downstream and other affected persons or property owners in the event of an emergency condition at the impounding structure.

(2008, c. 491.)

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Legislative Information System

§ 10.1-606.3. Requirement for development in **dam break inundation** zones.

A. For any development proposed within the boundaries of a **dam break inundation** zone that mapped in accordance with § 10.1-606.2, the locality shall, as part of a preliminary plan review to § 15.2-2260, or as part of a plan review pursuant to § 15.2-2259 if no preliminary review has been conducted, (i) review the **dam break inundation** zone map on file with the locality for the affected impounding structure, (ii) notify the dam owner, and (iii) within 10 days forward a request to the Department of Conservation and Recreation to make a determination of the potential impacts of proposed development on the spillway design flood standards required of the dam. The Department shall notify the dam owner and the locality of its determination within 45 days of the receipt of the request. Upon receipt of the Department's determination, the locality shall complete the review in accordance with § 15.2-2259 or 15.2-2260. If a locality has not received a determination within 45 days of the Department's receipt of the request, the Department shall be deemed to have no comments, and the locality shall complete its review. Such inaction by the Department shall not affect the Board's authority to regulate the impounding structure in accordance with this article.

If the Department determines that the plan of development would change the spillway design flood standards of the impounding structure, the locality shall not permit development as defined in § 10.1-606.2 or redevelopment in the **dam break inundation** zone unless the developer or subdivider agrees to the plan of development so that it does not alter the spillway design flood standard required of the impounding structure or he contributes payment to the necessary upgrades to the affected impounding structure pursuant to § 15.2-2243.1.

The developer or subdivider shall provide the dam owner and all affected localities with information necessary for the dam owner to update the **dam break inundation** zone map to reflect any new development within the **dam break inundation** zone following completion of the development.

The requirements of this subsection shall not apply to any development proposed downstream for which a **dam break inundation** zone map is not on file with the locality as of the time of the submission of a development plan to the locality.

B. The locality is authorized to map the **dam break inundation** zone in accordance with criteria set forth in the Virginia Impounding Structure Regulations (4VAC 50-20) and recover the costs of such mapping from the owner of an impounding structure for which a **dam break inundation** zone map is not on file with the locality and a map has not been prepared by the impounding structure owner.

C. This section shall not be construed to supersede or conflict with the authority granted to the Department of Mines, Minerals and Energy for the regulation of mineral extraction activities in the Commonwealth as set out in Title 45.1. Nothing in this section shall be interpreted to permit the impairment of a vested right in accordance with § 15.2-2307.

(2008, c. 491.)

§ 15.2-2243.1. Payment by developer or subdivider.

A. If the Department of Conservation and Recreation determines that a plan of development proposed by a developer or subdivider is wholly or partially within a **dam break inundation** zone and would not meet the spillway design flood standards of an impounding structure pursuant to § 10.1-606.3, a locality shall require, prior to its final approval of a subdivision or development, that a developer or subdivider submit an engineering study in conformance with the Virginia Soil and Water Conservation Board's standards under the Virginia Dam Safety Act (§ 10.1-604 et seq.) and the Virginia Impounding Structure Regulations (4 VAC 50-20). The study shall provide a contract-ready cost estimate for necessary upgrades. The Department of Conservation and Recreation shall verify that the study conforms with the Board's standards. Following receipt of a study, the Department shall have 15 days to determine if the study is complete. The Department shall notify the developer or subdivider of any specific deficiencies that cause the study to be determined to be incomplete. Following a determination that a study is complete, the Department shall notify the developer or subdivider of its approval or denial within 15 days. Any decision shall be communicated in writing and shall state the reasons for any disapproval.

B. Following the completion of the engineering studies in accordance with subsection A, and prior to development within the **dam break inundation** zone, a locality shall require that a developer or subdivider of land pay 50 percent of the contract-ready costs for necessary upgrades to an impounding structure attributable to the development or subdivision, together with administrative fees not to exceed one percent of the total amount of payment required or \$1,000, whichever is less. Necessary upgrades shall not include costs associated with routine operation, maintenance, and repair, nor shall necessary upgrades include repairs or upgrades to the impounding structure not made necessary by the proposed development or subdivision.

C. Where a payment under subsection B is required, such payment shall be made by the developer or subdivider in accordance with the following provisions:

1. A locality may elect to receive such payment. Upon receipt, payments shall be kept in a separate account by the locality for each individual improvement project until such time as they are expended on the improvement project; however, any funds not committed by the dam owner within six years of deposit shall be refunded to the developer or subdivider. The locality may issue an extension of an additional four years for the use of the funds if the dam owner shows that sufficient progress has been made to justify the extension and the extension is approved by the Virginia Soil and Water Conservation Board prior to the expiration of the six-year period. Should the locality be unable to locate the developer or subdivider following a period of 12 months and the exercise of due diligence, the funds shall be deposited in the Dam Safety, Flood Prevention and Protection Assistance Fund for the provision of grants and loans. Any locality maintaining an account in accordance with this section may charge an administrative fee, not to exceed one percent of the total amount of payment received or \$1,000, whichever is less.

2. If the locality elects not to receive such payment, any payments shall be made to the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § 10.1-603.19:1. The funds shall be held by the Virginia Resources Authority for each improvement project until such time as they are expended on the improvement project; however, any funds not committed by the dam owner within six years of deposit shall be refunded to the developer or subdivider. The Board may issue an extension of an additional four years for the use of the funds if the dam owner shows that sufficient progress is made. Should the Department of Conservation and Recreation be unable to locate the developer or subdivider following a period of 12 months and the exercise of due diligence, the funds shall be deposited in the Dam Safety, Flood Prevention and Protection Assistance Fund for the provision of grants and loans.

loans. The Virginia Resources Authority shall not have any liability for the completion of any project associated with the moneys they manage in the Dam Safety, Flood Prevention and Protection Fund.

D. No locality shall be required to assume financial responsibility for upgrades except as an owner of an impounding structure.

E. The owner of the impounding structure shall retain all liability associated with upgrades in accordance with § 10.1-613.4.

(2008, c. 491.)

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