



## **CITY OF MONTPELIER**

# **RIVER HAZARD AREA REGULATIONS**

**Adopted January 3, 2018  
Interim changes January 8, 2020**

Department of Planning & Community Development  
City of Montpelier  
39 Main Street  
Montpelier, VT 05602

802-223-9506

## **RIVER HAZARD AREA REGULATIONS SEPARATED FROM ZONING**

### **ADOPTED / AMENDMENTS**

January 8, 2020 (interim)  
January 3, 2018

### **EFFECTIVE**

January 8, 2020  
January 24, 2018

## **HISTORY OF THE FLOOD HAZARD AREA REGULATIONS IMBEDDED IN ZONING**

### **ADOPTED AMENDMENTS RELATED TO FHA**

January 26, 2011  
May 14, 2008  
June 14, 2006  
August 21, 2002  
October 26, 1994  
January 25, 1989  
April 24, 1985  
September 26, 1984  
November 23, 1983  
January 27, 1982  
January 27, 1975

### **EFFECTIVE DATE**

January 26, 2011  
May 14, 2008  
June 14, 2006  
September 11, 2002  
November 16, 1994  
February 15, 1989  
May 15, 1985  
October 17, 1984  
December 14, 1983  
February 10, 1982  
March 4, 1975

### **ADOPTED**

October 24, 1973

### **EFFECTIVE**

October 31, 1973

## **HISTORY OF MAP AMENDMENTS**

### **AMENDED**

January 8, 2020 (River Corridor amendment)  
January 3, 2018 (Add River Corridor)  
March 19, 2013 (FHA only)

### **ORIGINAL FLOOD HAZARD AREA MAPS**

February 17, 1982

### **PREPARED BY:**

City of Montpelier Planning Commission  
City of Montpelier Conservation Commission  
and

Mike Miller, AICP CFM Director of Planning & Community Development

## TABLE OF CONTENTS

<b>Part 1. General Provisions .....</b>	<b>1</b>
<b>Chapter 100 Legal Framework.....</b>	<b>1</b>
§101 Where does the city get authority to adopt these regulations?.....	1
§102 Why is the city adopting these regulations?.....	1
§103 What do these regulations include? .....	1
§104 How do these regulations effect other regulations, permits, and covenants? .....	2
§105 Does the issuance of an approval under these regulations remove the need to get other permits? .....	2
§106 Do decisions made under these regulations apply to the property or the owner of the property? .....	2
§107 Are violations of these regulations a criminal or a civil offense? .....	2
§108 What if a court rules a portion of these regulations is unconstitutional? .....	2
§109 Is the city or its municipal officials liable in the event of damage?.....	2
<b>Chapter 110 Adoption, Amendment, and Repeal .....</b>	<b>3</b>
§111 What process is used to adopt, amend, or repeal these regulations? .....	3
§112 When do these regulations take effect? .....	3
<b>Chapter 120 Applicability .....</b>	<b>3</b>
§121 What areas are covered by these regulations?.....	3
§122 What activities require review and approval under these regulations?.....	3
§123 What effect do these regulations have on development in existence prior to adoption?.....	3
§124 If an application is made while these regulations are being adopted or revised, which regulations are applied?.....	4
§125 If an application is made while the River Corridor map is being changed, which map applies? .....	4
§126 If an application is made while the FIRM maps are being changed, which maps are applied? .....	4
<b>Chapter 130 Miscellaneous Provisions .....</b>	<b>4</b>
§131 How are days counted when computing time? .....	4
 <b>Part 2. Administration .....</b>	 <b>5</b>
<b>Chapter 200 Administrative Officer .....</b>	<b>5</b>
§201 Who is responsible for the administration of these regulations? .....	5
§202 Who appoints or removes the Administrative Officer? .....	5
§203 Can the Administrative Officer hold any other office in the city?.....	5
§204 What duties and powers does the Administrative Officer have? .....	5
<b>Chapter 210 Development Review Board.....</b>	<b>6</b>
§211 Who appoints or removes members of the Development Review Board?.....	6
§212 What powers does the Development Review Board have?.....	6
§213 How shall the Development Review Board conduct its business? .....	6
<b>Chapter 220 Fees.....</b>	<b>7</b>
§221 Who sets fees associated with any permit or hearing? .....	7
§222 What costs can be included in any fee?.....	7
§223 Can the City charge applicants for technical reviews of applications? .....	7
§224 When do fees need to be paid? .....	7

§225 Where can the fee schedule be viewed? .....	7
<b>Chapter 230 Posting and Recording Requirements .....</b>	<b>7</b>
§231 How are permits and decisions posted? .....	7
§232 Who else is required to receive copies of permits and decisions? .....	8
§233 What items need to be recorded in the land records? .....	8
§234 How are the above items recorded in the land records? .....	8
§235 How are the DRB minutes and decisions recorded? .....	9
§236 What records shall the Administrative Officer maintain? .....	9
<b>Part 3. Appeals, Waivers, and Variances .....</b>	<b>10</b>
<b>Chapter 300 Appeals of a Decision of the Administrative Officer .....</b>	<b>10</b>
§301 Who can appeal a decision of the Administrative Officer? .....	10
§302 What is the deadline for appeal of a decision of the Administrative Officer? .....	10
§303 What is required in a notice of appeal? .....	10
§304 Is a fee required to file an appeal? .....	10
§305 Under what circumstances can the DRB reject an appeal? .....	10
§306 Does the DRB have a time limit for hearing an appeal? .....	10
§307 How will the public hearing be warned? .....	11
§308 What rules must be followed during the public hearing? .....	11
§309 How will the Development Review Board issue its decision? .....	12
§310 Can the Development Review Board decision be appealed? .....	12
<b>Chapter 320 Waivers .....</b>	<b>12</b>
§321 Can certain requirements in these regulations be waived? .....	12
§322 What is the purpose for allowing waivers? .....	13
§323 What is the process for applying for a waiver? .....	13
§324 What are the standards that need to be met in order to receive a waiver? .....	13
<b>Chapter 330 Variances .....</b>	<b>13</b>
§331 If an application cannot meet the requirements of these regulations, can a variance be applied for? .....	13
§332 What is the purpose for allowing variances? .....	13
§333 What is the process for applying for a variance? .....	14
§334 What are the standards that need to be met in order to receive a variance? .....	14
§335 If a variance is issued are there any conditions that are applied? .....	16
<b>Chapter 340 Appeals of Development Review Board Decisions .....</b>	<b>16</b>
§341 Who can appeal a decision of the DRB? .....	16
§342 Is there a deadline for filing an appeal to the Environmental Court? .....	16
§343 What is required in a notice of appeal? .....	16
§344 How much is the fee for filing an appeal? .....	17
§345 How does someone file an appeal to the Environmental Court? .....	17
§346 Can other interested persons join the appeal after it has been filed? .....	17
<b>Part 4. Violations and Enforcement .....</b>	<b>18</b>
<b>Chapter 400 Violations and Enforcement .....</b>	<b>18</b>
§401 What constitutes a violation of this ordinance? .....	18
§402 Who is responsible for investigating complaints and enforcing violations? .....	18
§403 How are violations discovered? .....	18
§404 When filing a complaint, what information must be included? .....	18

§405 How shall the Administrative Officer handle complaints? .....	19
§406 Can the Administrative Officer enter private property to investigate complaints? .....	19
§407 What is required in the notice of violation?.....	19
§408 If a violation is found, does a property owner have a period of time to respond or to correct the violation? .....	19
§409 What if the property owner cannot fix the violation within seven days?.....	19
§410 What if a property owner fails to fix a violation? .....	20
§411 What if the violation occurred a long time ago and was never identified?.....	21
§412 Do notices of violation need to be recorded? .....	21
<b>Part 5. Development Review Procedures .....</b>	<b>22</b>
<b>Chapter 500 River Hazard Area Development Permit Procedures .....</b>	<b>22</b>
§501 Are permits required for all development in the River Hazard Area?.....	22
§502 What activities are included in the definition of development? .....	22
§503 What information is required in an application for a River Hazard Area Development permit?.....	23
§504 How will an applicant know if they have submitted sufficient information with their application? .....	24
§505 How much time does the Administrative Officer have to act on a permit application? .....	24
§506 What happens if the Administrative Officer fails to act on a permit application within thirty days? .....	24
§507 What is the process for Vermont Agency of Natural Resources review of the application?.....	25
§508 What determinations need to be made by the Administrative Officer regarding the application? .....	25
§509 What are the standards that need to be met in order for the Administrative Officer to approve an application?.....	26
§510 If the applicant cannot meet some requirement in these regulations, can a variance be applied for? .....	26
§511 What if the applicant is applying for a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) associated with the application? .....	26
§512 How shall the Administrative Officer make his or her decision on the application?.....	26
§513 Are there any conditions attached to River Hazard Area Development permits? .....	27
§514 If the permit is approved, when will it be effective? .....	27
§515 Can the Administrative Officer decision be appealed? .....	28
§516 How long is the River Hazard Area Development permit valid for? .....	28
§517 What happens to a project that has a permit that is deemed expired? .....	28
§518 What if a permit was issued based on incorrect information?.....	29
<b>Chapter 520 Certificate of River Hazard Compliance Procedures .....</b>	<b>29</b>
§521 Is it legal to use a structure or land without a Certificate of River Hazard Compliance being issued? .....	29
§522 What information is required in an application for a Certificate of River Hazard Compliance?.....	29
§523 How will an applicant know if they have submitted sufficient information with	

their application? .....	29
§524 How much time does the Administrative Officer have to act on a certificate application? .....	30
§525 What happens if the Administrative Officer fails to act on an application within thirty days? .....	30
§526 How shall the Administrative Officer make his or her decision on the application? .....	30
§527 If the certificate is approved, when will it be effective? .....	31
§528 Can the Administrative Officer's decision be appealed? .....	31
<b>Part 6. Determinations .....</b>	<b>32</b>
<b>Chapter 600 Flood Hazard District Determinations .....</b>	<b>32</b>
§601 How does the Administrative Officer determine the boundaries of the Flood Hazard Area district and any sub-districts? .....	32
§602 What if a building is only partly in the Flood Hazard Area? .....	32
§603 What if a property owner believes the FEMA FIRM map is incorrect and believes that their building is outside the Flood Hazard Area? .....	32
<b>Chapter 610 River Corridor District Determinations.....</b>	<b>32</b>
§611 How does the Administrative Officer determine the River Corridor district boundaries and any sub-district boundaries? .....	32
§612 What if a building is only partly in the River Corridor? .....	33
<b>Chapter 620 Non-conforming Structure Determination .....</b>	<b>33</b>
§621 What are non-conforming structures? .....	33
§622 How do non-conforming structures come into existence? .....	33
§623 How are non-conforming structures in the Flood Hazard Area handled? .....	33
§624 How are non-conforming structures in the River Corridor handled?.....	34
<b>Chapter 630 Substantial Improvement/Damage Determination.....</b>	<b>35</b>
§631 What does substantial improvement mean? .....	35
§632 What does substantial damage mean? .....	35
§633 How is substantial improvement/damage calculated?.....	35
§634 Are there improvements that don't count towards 'substantial improvement'? .....	36
§635 What happens if the project will substantially improve a structure?.....	36
§636 What happens in the case of an addition to a non-conforming structure?.....	36
§637 What happens if the project will involve a structure that has been substantially damaged? .....	37
§638 Are there rules to be met if the structure is not substantially improved/damaged? .....	37
<b>Chapter 640 Base Flood (and Design Flood) Elevation Determination .....</b>	<b>37</b>
§641 Who is responsible for determining the base flood elevation? .....	37
§642 How accurate do base flood elevation measurements need to be?.....	38
§643 Are elevation certificates required for all applications? .....	38
§644 The regulations discuss Design Flood Elevations. What are they? .....	38
<b>Part 7. Specific Use &amp; Structure Provisions.....</b>	<b>39</b>
<b>Chapter 700 General Uses &amp; Structures Review Criteria .....</b>	<b>39</b>
§701 How are uses generally regulated? .....	39
<b>Chapter 710 Specific Uses &amp; Structures Review Criteria .....</b>	<b>39</b>

§711 Accessory structure .....	39
§712 Alteration of a watercourse .....	41
§713 Fuel tanks .....	41
§714 Manufactured (mobile) homes.....	41
§715 Manufactured (mobile) home parks .....	42
§716 Mining, Dredging, Filling, Grading, Paving, Excavation and Drilling.....	42
§717 Public infrastructure.....	43
§718 Recreational vehicles .....	43
§719 Subdivisions .....	43
<b>Part 8. Flood Hazard Area &amp; River Corridor Standards .....</b>	<b>45</b>
<b>Chapter 800 Flood Hazard Area District &amp; Sub-District Standards .....</b>	<b>45</b>
§801 Flood Hazard Area .....	45
§802 Zone-A district regulations .....	46
§803 Zone AE- Floodway sub-district regulations .....	47
§804 Zone AE-Floodway Fringe sub-district regulations .....	47
<b>Chapter 810 River Corridor Regulations.....</b>	<b>49</b>
§811 River Corridor.....	49
<b>Part 9. Letters of Map Amendment and Revision.....</b>	<b>50</b>
<b>Chapter 900 Letters of map amendment and revision .....</b>	<b>50</b>
§901 General Information Regarding LOMAs, LOMR-Fs, and LOMRs .....	50
§902 LOMAs and CLOMAs .....	51
§903 LOMR-F and CLOMR-F .....	51
§904 LOMR and CLOMR.....	52
<b>Part 10. Definitions.....</b>	<b>53</b>
<b>Chapter 1000 Interpretation of definitions.....</b>	<b>53</b>
§1001 Interpretation of definitions.....	53

NOTE: Throughout these regulations are references to enabling language in statute. They appear as [§4404] at the end of a provision. Anyone interested in viewing the enabling rules can examine them at referenced section of Title 24 of the Vermont Statutes Annotated.

River Hazard Area Regulations for the City of Montpelier (2020)



## **PART 1. GENERAL PROVISIONS**

### **Chapter 100. Legal Framework**

#### **Section 101 Where does the City get authority to adopt these regulations?**

101.A These River Hazard Area regulations are established as authorized in Title 24 of the Vermont Statutes Annotated (hereinafter abbreviated V.S.A.) §4402(9).

101.B These regulations have been enacted in accordance with the provisions of §4424(2) of the Vermont Municipal and Regional Planning and Development Act (24 V.S.A. Chapter 117 hereinafter referred to as "the Act") and the Charter of the City of Montpelier.

#### **Section 102 Why is the City adopting these regulations?**

102.A The City is adopting these regulations for the following reasons:

- (1) To detail the simplest possible procedures that will allow the City to develop in a manner that is consistent with the general policies outlined in the Master Plan Montpelier, Vermont;
- (2) To minimize and prevent loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding and erosion hazards;
- (3) To ensure the design and construction of development in the River Hazard Areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a Flood Hazard Area or that minimizes the potential for fluvial erosion and loss or damage to life and property in a River Corridor;
- (4) To manage all Flood Hazard Areas designated pursuant to 10 V.S.A. §753;
- (5) To make the City of Montpelier as well as its residents and property owners eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.
- (6) To further the purposes of the Act described under 24 V.S.A. §4302 and to be in accordance with the policies set forth therein. [§4401]

#### **Section 103 What do these regulations include?**

103.A These regulations include:

- (1) This text;
- (2) The most recent Flood Insurance Rate Maps, (hereinafter referred to as the FIRM)

maps) as published by the Federal Emergency Management Agency (hereinafter FEMA) that pertain to the City of Montpelier and any corresponding FEMA Flood Insurance Studies; and

- (3) The City of Montpelier River Corridors Map adopted in conjunction with this text.

**Section 104 How do these regulations effect other regulations, permits, and covenants?**

104.A These regulations shall not repeal, abrogate, or impair any other land use controls including but not limited to statutes, regulations, rules, ordinances, permits, easements, deed restrictions, and covenants.

104.B The provisions of these regulations, however, shall be minimum requirements and shall therefore take precedence over any concurrent and less restrictive controls. [§4413(c)]

**Section 105 Does the issuance of an approval under these regulations remove the need to get other permits?**

105.A The issuance of a permit under these regulations does not relieve the applicant from the obligation of obtaining any other local permits or necessary approvals by local, state, or federal law.

**Section 106 Do decisions made under these regulations apply to the property or the owner of the property?**

106.A All permits and decisions in these regulations are made with respect to property location and these permits and decisions run with the property.

106.B Enforcement of violations of these regulations is applied to the owner of the property where the violation occurs and said violations will run with the property.

**Section 107 Are violations of these regulations a criminal or a civil offense?**

107.A Violations of these regulations shall be considered a civil offense for the purposes of enforcement through the Judicial Bureau.

**Section 108 What if a Court rules that a portion of these regulations is unconstitutional?**

108.A The provisions of these regulations are severable, therefore, if a court of competent jurisdiction holds any provision or the application thereof to any person or circumstance unconstitutional or invalid, the remainder of these regulations shall not be affected.

**Section 109 Is the City or its municipal officials liable in the event of damage?**

109.A These regulations do not imply that land outside of the areas covered by these regulations will be free from flood or fluvial damages.

109.B These regulations shall not create liability on the part of the City of Montpelier, or any municipal official or employee thereof, for any flood or fluvial damages that result from the reliance on these regulations, or any administrative decision lawfully made hereunder.

## **Chapter 110. Adoption, Amendment, and Repeal**

### **Section 111 What process is used to adopt, amend, or repeal these regulations?**

111.A These regulations may be adopted, amended, or repealed according to the requirements and procedures established in the Act for preparation of bylaws (§4441) and adoption of bylaws (§4442).

### **Section 112 When do these regulations take effect?**

111.A These regulations shall be effective twenty one (21) days after adoption (by majority vote of the City Council) and shall remain in effect until repealed or amended in accordance with the Act. [§4442(c)(1)]

## **Chapter 120. Applicability**

### **Section 121 What areas are covered by these regulations?**

121.A These regulations shall apply **only** to areas identified as:

- (1) *Areas of special flood hazard* (hereinafter referred to as the Flood Hazard Area) on the Washington County, Vermont FIRM Maps; and
- (2) *River Corridors* as identified on the City of Montpelier River Corridors Map. [§4411(b)(3)(G)]

121.B The Flood Hazard Areas and River Corridors shall collectively be referred to as River Hazard Areas.

### **Section 122 What activities require review and approval under these regulations?**

122.A Unless specifically exempted herein, development (as defined in Part 5 of these regulations) shall not commence within the River Hazard Area except in compliance with these regulations. [§4449(a)(1)]

### **Section 123 What effect do these regulations have on development in existence prior to adoption?**

123.A All uses and structures legally in existence as of the effective date of these regulations are allowed to continue indefinitely.

123.B Any subsequent development related to pre-existing structures and uses shall be subject to applicable requirements of these regulations.

**Section 124 If an application is made while these regulations are being adopted or revised, which regulations are applied?**

124.A Once the public notice for the first public hearing of the City Council is published, applications shall be administered in accordance with the provisions laid out in §4449(d) of the Act.

**Section 125 If an application is made while the River Corridor map is being changed, which map applies?**

125.A The current River Corridor map remains in effect until the proposed map is under consideration by the City Council through the normal amendment process laid out in Chapter 110.

125.B Applications made during the amendment process, therefore, follow the rules laid out in Section 124.

**Section 126 If an application is made while the FIRM maps are being changed, which maps are applied?**

126.A Any amended FIRM maps and flood insurance studies shall become effective on the effective date printed on the maps and studies.

- (1) FIRM maps and other official amendments to the maps (e.g. Letters of Map Amendments) will update automatically without action by the City Council.

126.B The maps that are in effect at the time of application are used throughout the application process.

## **Chapter 130. Miscellaneous Provisions**

**Section 130 How are days counted when computing time?**

130.A Where an event is required or permitted by these regulations to occur before, on, or after a specified period of time measured from another event, the first day shall not be counted and the final day shall be counted in calculating the period. [§4303a]

## **PART 2. ADMINISTRATION**

### **Chapter 200. Administrative Officer**

#### **Section 201 Who is responsible for the administration of these regulations?**

201.A These regulations shall be administered by the River Hazard Area Administrative Officer, hereinafter referred to as the Administrative Officer. [§4448(a)]

201.B In the absence, disability, or conflict of interest of the Administrative Officer, an acting Administrative Officer may be appointed to administer these regulations. [§4448(b)]

- (1) An acting Administrative Officer shall be treated the same as the Administrative Officer with respect to these regulations and shall fulfill all responsibilities and adhere to all limitations laid out herein.

#### **Section 202 Who appoints or removes the Administrative Officer?**

202.A The Administrative Officer shall be appointed and may be removed by the City Manager in accordance with the City Charter §1007.

#### **Section 203 Can the Administrative Officer hold any other office in the City?**

203.A The Administrative Officer may hold any other office in the municipality except for membership on the Development Review Board.

#### **Section 204 What duties and powers does the Administrative Officer have?**

204.A The Administrative Officer has the duty to manage and enforce these regulations literally and shall not have the power to permit any development that is not in conformance with these regulations. [§4448(a)]

204.B The Administrative Officer shall have the power to hear and decide applications for River Hazard Area Development permits under Chapter 500 of these regulations [§4449(a)(1)].

204.C The Administrative Officer shall have the power to hear and decide applications for Certificates of River Hazard Compliance under Chapter 520 of these regulations. [§4449(a)(2)]

204.D The Administrative Officer has the duty to investigate complaints and has the power to pursue violations of these regulations through procedures set forth under Chapter 400 of these regulations. [§4452]

204.E The Administrative Officer should provide forms required to obtain any municipal permit or other municipal authorization required under these regulations or any other regulations or ordinances that relate to the regulation of development within the City of Montpelier. [§4448(c)]

204.F The Administrative Officer has the duty to inform any person applying for a River Hazard Area Development permit that the person should contact the Regional Permit Specialist employed by the Vermont Agency of Natural Resources in order to assure timely action on any related state and federal permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state and federal permits. [§4448(c)]

- (1) The Administrative Officer has the power to require applicants to submit a Vermont Agency of Natural Resources Project Review Sheet within the application process in order to assure timely action on any related state and federal permits.

204.G The Administrative Officer is responsible for any other duties as assigned within these regulations which may not be specifically outlined above.

## **Chapter 210 Development Review Board**

### **Section 211 Who appoints or removes members of the Development Review Board?**

211.A The members of the Development Review Board, hereinafter abbreviated DRB, shall be appointed and may be removed by the City Council in accordance with the City Charter §806.

### **Section 212 What powers does the Development Review Board have?**

212.A The DRB shall have all powers set forth in the Act to administer the provisions of these regulations, including, but not limited to, the power to:

- (1) Consider decisions of the Administrative Officer upon appeal under Chapter 300 of these regulations. [§4460(e)(10)]
- (2) Consider requests for a waiver under Chapter 320 of these regulations. [§4460(e)(6)]
- (3) Consider requests for a variance under Chapter 330 of these regulations. [§4460(e)(11)]

### **Section 213 How shall the Development Review Board conduct its business?**

213.A The DRB shall adopt rules of procedure and perform its functions in conformance with the Act [§4461] and Vermont's Open Meeting Law [1 V.S.A. §§310-314].

213.B The DRB shall keep minutes of its proceedings, showing the vote of each member upon each question and shall keep records of its examinations and other official actions.

213.C For each case heard and decided, the DRB shall make written findings of fact and conclusions of law.

## **Chapter 220. Fees**

### **Section 221 Who sets fees associated with any permit or hearing?**

- 221.A The City Council may prescribe reasonable fees to be charged with respect to the administration of these regulations and for the administration of development reviews. [§4440(b)]
- 221.B The City Council may establish reasonable fees for filing of notices of appeal and for other acts as it deems proper. [§4440(c)]
- 221.C The fee schedule may be altered or amended only by resolution of the City Council.

### **Section 222 What costs can be included in any fee?**

- 222.A These fees may include the costs of posting and publishing notices and holding public hearings and the cost of conducting periodic inspections during the installation of public improvements. [§4440(b)]
- 222.B An applicant may be charged the cost of the recording fees as required by law. [§4449(c)(2)]

### **Section 223 Can the City charge applicants for technical reviews of applications?**

- 223.A The fee schedule may include a process and provisions that require applicants to pay for reasonable costs of an independent technical review of their applications. [§4440(d)]

### **Section 224 When do fees need to be paid?**

- 224.A As established in the fee schedule, these fees may be payable by the applicant upon submission of the application or prior to issuance of the permit. [§4440(b)]
- 224.B For appeals and variances, the payment of the fee shall be a condition for filing the notice. [§4440(c)]

### **Section 225 Where can the fee schedule be viewed?**

- 225.A The schedule of fees shall be posted in the offices of the Municipal Clerk and Administrative Officer.

## **Chapter 230. Posting and Recording Requirements**

### **Section 231 How are permits and decisions posted?**

- 231.A Notice of the issuance of a River Hazard Area Development permit, Certificate of River Hazard Compliance, or decision by the DRB, must be posted on a form prescribed by the City within view of the public right of way most nearly adjacent to the subject property until the time

for appeals has passed. [§4449(b)(2)]

231.B Within three (3) days following the issuance of a River Hazard Area Development permit, Certificate of River Hazard Compliance, or decision by the DRB, the Administrative Officer shall post a copy of the permit or approval in the City Clerk's Office until the expiration of the appeal period. [§4449(b)(2)]

231.C Each posting shall contain a statement of the period of time within which an appeal may be taken and a description as to where a full description of the project and approval can be found. [§4449(b)]

### **Section 232 Who else is required to receive copies of permits and decisions?**

232.A Within three (3) days following the issuance of a River Hazard Area Development permit the Administrative Officer shall deliver a copy of the permit to the City Assessor. [§4449(b)(1)]

### **Section 233 What items need to be recorded in the land records?**

233.A The following issuances shall be recorded in the City land records:

- (1) River Hazard Area Development permits including all associated approvals (including variances);
- (2) Certificate of River Hazard Compliance;
- (3) Results of any appeals;
- (4) Notices of violation; and
- (5) Notices of denial of an application. [§4449(c)(1)(A)]

### **Section 234 How are the above items recorded in the land records?**

234.A Within thirty (30) days after the issuance of any of the items listed above, the Administrative Officer shall deliver the original, or a legible copy, of the issuance to the City Clerk for recording in the municipal land records. [§4449(c)(1)]

234.B Any issuance delivered for recording shall list:

- (1) As grantor, the owner of record title to the property at the time of issuance;
- (2) As grantee, the municipality issuing the permit, certificate, or notice – i.e. *the City of Montpelier*;
- (3) The municipal office where the original, or a true, legible copy of the issuance may be examined;
- (4) Whether an appeal of such issuance was taken; and



- (5) The tax map lot number or other description identifying the lot. [24 V.S.A. §1154(c)]

**Section 235 How are the DRB minutes and decisions recorded?**

235.A The DRB minutes and decisions shall be maintained in the City Clerk’s Office together with all other records of the DRB. [§4461(a)]

**Section 236 What records shall the Administrative Officer maintain?**

236.A The Administrative Officer shall maintain a record of development including:

- (1) A file of a copy of any municipal permits, which have been submitted to the City Clerk for recording in the land records, in a location where all municipal land use permits shall be kept. [§4449(c)(1)(B)]
- (2) Copies of all evidence presented, public notices, hearing minutes, findings of fact and other material collected by the Administrative Officer or DRB in the process of reviewing an application.
- (3) For any permits issued within the Flood Hazard Area:
  - a. A record of all permits issued;
  - b. A copy of all elevation certificates;
  - c. Any FEMA Letters (LOMA, LOMR, or LOMR-F) associated with the permit;
  - d. All flood proofing certifications required under these regulations; and
  - e. All variance actions, including justification for their issuance.

## **PART 3. APPEALS, WAIVERS, AND VARIANCES**

### **Chapter 300. Appeals of a Decision of the Administrative Officer**

#### **Section 301 Who can appeal a decision of the Administrative Officer?**

301.A The applicant or an interested person may appeal any decision or act taken by the Administrative Officer. [§4465]

#### **Section 302 What is the deadline for appeal of a decision of the Administrative Officer?**

302.A A written notice of appeal must be filed with the DRB within fifteen (15) days of the act or decision [§4465].

#### **Section 303 What is required in a notice of appeal?**

303.A A notice of appeal shall be in writing and include [§4466]:

- (1) The name and address of the appellant;
- (2) A brief description of the decision or act with respect to which the appeal is taken;
- (3) A reference to applicable regulation provisions;
- (4) The relief requested by the appellant; and
- (5) The alleged grounds why such relief is believed proper under the circumstances.

#### **Section 304 Is a fee required to file an appeal?**

304.A If a fee has been established under Chapter 220 of these regulations, then payment of that fee is required for filing the notice of appeal. [§4464(a)(3)]

#### **Section 305 Under what circumstances can the DRB reject an appeal?**

305.A The DRB may reject an appeal if the DRB determines that the issues raised by the appellant have been decided in an earlier appeal or involve substantially or materially the same facts by, or on behalf of, the same appellant. [§4470(a)]

- (1) In these cases the DRB may make their decision without a hearing but shall render a decision and findings of fact within ten (10) days of the filing of the notice of appeal. [§4470(a)]

#### **Section 306 Does the DRB have a time limit for hearing the appeal?**

306.A The DRB shall hold a public hearing within sixty (60) days of receiving a notice of appeal. [§4468]

**Section 307 How will the public hearing be warned?**

307.A The Administrative Officer shall provide public notice not less than fifteen (15) days prior to the date of the public hearing.

306.B The public notice shall include the date, place, and purpose of such hearing.

307.C The public notice shall be:

- (1) Mailed to the appellant and applicant;
- (2) Published in a newspaper of general circulation in the City;
- (3) Posted in three or more public places within the municipality including;
  - a. the City Clerk's Office; and
  - b. Within view from the public right of way most nearly adjacent to the property for which the application is made; and
- (4) Provided to the owners of all properties adjoining the property subject to development without regards to the public right of way.
  - a. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceedings is a prerequisite to the right to take any subsequent appeal.
  - b. The Administrative Officer is responsible for notifying adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service. [§§4464, 4468]

**Section 308 What rules must be followed during the public hearing?**

308.A All hearings of an appeal shall be open to the public.

308.B In any hearing, there shall be an opportunity for each person wishing to establish status as an interested person (as defined in Part 10) to demonstrate that the criteria set forth in the definition are met.

308.C The DRB shall keep a written record of the name, address, and participation of the persons. [§4461(b)]

308.D Any interested person may appear and be heard in person or be represented by an agent at the public hearing. [§4468]

308.E The rules of evidence applicable at any hearing under appeal shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies [§4468]. These rules of evidence are found in 3 V.S.A. §810.

- 308.F In most cases the Administrative Officer is the defendant in the appeal before the DRB. In those cases the Administrative Officer must not act as a staff member during the hearing or deliberations.
- 308.G Any hearing may be adjourned by the DRB from time to time, pending submission of additional information, provided, however, that the date and place of the next hearing shall be announced at the hearing. [§§4468, 4464(b)(1)]
- 308.H The DRB should close the hearing promptly after all parties have submitted requested information.

**Section 309 How will the Development Review Board issue its decision?**

- 309.A The DRB decision shall be issued within forty-five (45) days after the close of the hearing and a failure of the DRB to issue a decision within the required period shall be deemed approval.
- (1) Applicants wishing to exercise their right to have an application deemed approved shall appeal the lack of action by the DRB to the Environmental Court.
- 309.B The decision must be in writing and shall include a statement of the factual bases on which the DRB has made its conclusions and a statement of conclusions. [§4464(b)(1)]
- 309.C In rendering a decision in favor of the applicant, the DRB may attach reasonable conditions and safeguards, as it deemed necessary to implement the purposes of the Act, these regulations, and the municipal plan then in effect. [§4464(b)(2)]
- 309.D Copies of the DRB decision shall be sent to the appellant and applicant (both by certified mail), every interested person who was heard at the hearing and the Administrative Officer.
- 309.E The DRB decision will be posted and recorded in accordance with Chapter 230 of these regulations.

**Section 310 Can the Development Review Board decision be appealed?**

- 310.A Appeals from the decisions of the DRB may be made to the Environmental Court, as per Chapter 340. [§4771]

**Chapter 320. Waivers**

**Section 321 Can certain requirements in these regulations be waived?**

- 321.A An applicant may request a waiver for regulations that expressly allow for waivers.
- 321.B Each regulation that allows a waiver shall establish standards that must be met in order to receive approval of the request.

**Section 322 What is the purpose for allowing waivers?**

322.A In order to create an efficient process, these River Hazard Area regulations were designed to allow permits to be issued administratively.

322.B Waivers are allowed in order to provide some flexibility in meeting standards but this flexibility requires a more careful review to ensure public safety is not threatened and that neighborhoods are not unduly affected.

**Section 323 What is the process for applying for a waiver?**

323.A Waivers shall follow the same procedures as appeals which are described in Chapter 300.

323.B Applicants for a waiver shall provide sufficient information to demonstrate compliance with the requirements established in the specific waiver provisions.

**Section 324 What are the standards that need to be met in order to receive a waiver?**

324.A Waiver standards are contained under the sections where the specific waiver provisions are established.

**Chapter 330. Variances**

**Section 331 If an application cannot meet the requirements of these regulations, can a variance be applied for?**

331.A An applicant may request relief from a provision(s) of these River Hazard Area Regulations through the granting of a variance by the DRB. [§4469]

331.B Variances to allow uses that are not allowed in the applicable district are not permissible.

**Section 332 What is the purpose for allowing variances?**

332.A The purpose of a variance is to address a hardship, related to the physical characteristics of a particular lot, which hampers the owner from enjoying the same property rights accorded to others in the River Hazard Area district.

332.B An applicant cannot request rights that have not been accorded to all others in the same district; in no case, therefore, shall the DRB grant a variance for a use which is not allowed in the respective district.

332.C Because a variance results in a deviation from the City Plan and regulations, variances are allowed only in narrow circumstances.

**Section 333 What is the process for applying for a variance?**

333.A Variances are treated as appeals therefore an application for a variance shall follow the procedures established in Chapter 300. [§§4465, 4466]

**Section 334 What are the standards that need to be met in order to receive a variance?**

334.A General structures and renewable energy structures are considered under separate standards with regards to variances. [§4469]

- (1) Standards for general structures are described under section 334.C below.
- (2) Standards for renewable energy structures are described under section 334.D below.

334.B Regardless of the type of structure, every variance of flood hazard requirements in the Flood Hazard Area must also meet flood hazard variance standards [44 CFR, Section 60.6].

- (1) The flood hazard variance standards are described under section 334.E below.

334.C For general structures, **all** of the following standards must be met [§4469]:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the River Hazard Area regulation in the neighborhood or district in which the property is located; **and**
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the River Hazard Area regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property; **and**
- (3) That the unnecessary hardship has not been created by the applicant; **and**
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; **and**
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the River Hazard Area regulation and from the city plan.

334.D For a structure which is primarily a renewable energy resource structure, **all** of the following standards must be met [§4469]:

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable

renewable energy resource structure in conformance with these regulations; **and**

- (2) That the hardship was not created by the appellant; **and**
- (3) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable resources, nor be a detriment to the public welfare; **and**
- (4) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the River Hazard Area regulations and from the city plan.

334.E Regarding variance requests of any flood hazard requirement in the Flood Hazard Area, **all** of the following standards must be met in addition to above standards in sections 334.C and 334.D as applicable:

- (1) For projects within the regulatory Floodway, that during the base flood discharge, the variance will not result in increased flood levels.
- (2) For parcels of one-half acre or less in size which are also contiguous to and surrounded by parcels with existing structures constructed below the base flood elevation, the following variance standards apply:
  - a. Demonstration of good and sufficient cause;
  - b. Determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - c. Determination that the granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimize the public, or conflict with other local ordinances; and
  - d. That the variance, if approved, is the minimum necessary, considering the flood hazard, to afford relief.
- (3) While the granting of variances is generally limited to a parcel size of less than one-half acre in size (see subsection (2) above), deviations from that limit may occur. However, as the parcel size increases beyond one-half acre, the technical justification for issuing a variance increases.
- (4) For variances necessary to allow for the conduct of a functionally dependent use the following standards apply:
  - a. The standards identified in subsection (2); and
  - b. Determination that 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.

**Section 335 If a variance is approved for a flood hazard requirement, are there any conditions that are applied?**

335.A In addition to any other conditions the DRB may attach through the procedures established in Section 309.C, every permit issued with any variance of flood hazard requirements shall state:

“This development is not in conformance with the Flood Hazard Area regulations established by the City of Montpelier to protect the health, safety and welfare of the occupants and/or property. This development will be maintained at the risk of the owner. The issuance of this variance to develop in the Flood Hazard Area will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and may increase risks to life and property in the event of a flood.”

**Chapter 340. Appeals of Development Review Board Decisions**

**Section 341 Who can appeal a decision of the Development Review Board?**

341.A An interested person who has participated in the local regulatory proceeding under these regulations may appeal a decision of the DRB to the Environmental Court. [§4471]

- (1) Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.
- (2) Appeals to Environmental Court must be taken in accordance with the provisions of Vermont Rules of Civil Procedure (V.R.C.P.) 76a and Vermont Rules of Appellate Procedures (V.R.A.P.) 3 and 4.

**Section 342 Is there a deadline for filing an appeal to the Environmental Court?**

342.A Any appeal must be filed within thirty (30) days following the date of the signed DRB decision. [V.R.A.P. 4]

**Section 343 What is required in a notice of appeal?**

343.A A notice of appeal shall be in writing and include [§4471]:

- (1) The name of the party appealing.
- (2) What board made the decision being appealed (e.g. the DRB).
- (3) The nature of the decision under appeal (e.g. variance request or appeal of Administrative Officer decision).



- (4) A reference to the specific provisions of the regulation.
- (5) The relief requested by the appellant.
- (6) The signature of the appellant or attorney.

**Section 344 How much is the fee for filing an appeal?**

344.A The filing fee is established by V.R.C.P. 76 (e). At the time of the development of these regulations, the fee for filing an appeal with the Environmental Court is \$150.

**Section 345 How does someone file an appeal to the Environmental Court?**

345.A The notice of the appeal shall be filed by certified mail with fees to the Environmental Court and mailing a copy to the Administrative Officer who shall supply a list of interested persons to the appellant within five (5) working days. [§4471(c)]

345.B Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. [§4471(c)]

**Section 346 Can other interested persons join the appeal after it has been filed?**

346.A If any one or more of those persons are parties to the appeal but wish to join the appeal, they shall be granted leave by the court to intervene in the case by filing a motion. [§4471(c)]

## **PART 4. VIOLATIONS AND ENFORCEMENT**

### **Chapter 400 Violations and Enforcement**

#### **Section 401 What constitutes a violation of this ordinance?**

- 401.A The commencement or continuation of any development which is not in conformance with the provisions of these regulations shall constitute a violation.
- 401.B Violations of these regulations shall be prosecuted in accordance with the Act. [§§4451, 4452]

#### **Section 402 Who is responsible for investigating complaints and enforcing violations?**

- 402.A Whether through direct observation, written or oral complaint, site visit, or notification of violation from the landowner, the discovery of an alleged violation must be pursued by the Administrative Officer.
- 402.B The Administrative Officer is required, by law, to enforce all violations of these regulations. [§4448(a)]

#### **Section 403 How are violations discovered?**

- 403.A The Administrative Officer may become aware of potential violations by:
- (1) Written complaint of any person who believes that a violation of these regulations has occurred;
  - (2) Discovery through the normal course of doing his or her duties (e.g. through inspections for certificates of compliance);
  - (3) Information obtained by other city and state officials in the course of their duties (e.g. assessor identifies new structures on property);
  - (4) Any other legal means whereby the Administrative Officer has a reasonable belief that a violation has occurred.

#### **Section 404 When filing a complaint, what information must be included?**

- 404.A The complaint shall state fully the causes and basis for the alleged violation.
- 404.B Written complaints must include the name of the complainant.
- (1) Anonymous complaints may or may not be investigated by the Administrative Officer at his or her discretion. Someone wishing to remain anonymous must state a reason to remain so.

**Section 405 How shall the Administrative Officer handle complaints?**

405.A The Administrative Officer shall properly record such complaint, investigate within a reasonable time, and take action as appropriate in accordance with these regulations.

**Section 406 Can the Administrative Officer enter private property to investigate complaints?**

406.A The Administrative Officer may not enter upon any private property, for purposes of inspection and investigation, except by permission of the landowner or per a search warrant duly issued by a court [13 V.S.A. §4701].

**Section 407 What is required in the notice of violation?**

407.A The warning notice shall state:

- (1) That a violation exists;
- (2) That the alleged offender has an opportunity to cure the violation within the seven (7) day period;
- (3) That the alleged offender has the right to appeal the notice of violation to the DRB within fifteen (15) days from the date the notice was sent; and
- (4) That the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) day period.

**Section 408 If a violation is found, does a property owner have a period of time to respond or to correct the violation?**

408.A No action may be brought under this section unless the alleged offender has had at least seven (7) working-day notice by certified mail that a violation exists and has failed to satisfactorily respond or correct the alleged violation [§4451(a)].

408.B Because State statute allows for fifteen (15) days to appeal the notice of violation, the City will generally not pursue enforcement until the property owner's appeal rights have expired.

408.C Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of these regulations after the seven (7) day notice period and within the next succeeding twelve (12) months.

**Section 409 What if the property owner cannot fix the violation within seven days?**

409.A Where a landowner is cooperating with the Administrative Officer in finding a cure for the violation, the Administrative Officer has the authority to enter written agreements to resolve violations.

- (1) The Administrative Officer is under no obligation to enter into any agreement; informal resolutions are not required under statute and are provided by the City of Montpelier as an amicable means of resolving violations.
- (2) At a minimum, any agreement shall:
  - a. Be in writing and be signed by both the violator and administrator.
  - b. Must establish a timeline for curing the violation.
  - c. Give written authorization that will allow the Administrative Officer to inspect the premises upon completion (or by the agreed upon date of completion) to ensure compliance.
- (3) The Administrative Officer is prohibited from making any agreement allowing a violation to continue even if the violation is minimal, inadvertent, and/or the violator agrees to pay a fine [§4448(a)].
- (4) Acceptable reasons for providing time to cure a violation may include winter weather (e.g. landscaping may not be possible until spring).

**Section 410 What if a property owner fails to fix a violation?**

410.A Where a property owner fails to remedy the situation within the 7-day period or the timetable agreed to under an informal resolution, the Administrative Officer, in the name of the City of Montpelier, shall bring appropriate action to enforce the provisions of these regulations [§4451].

410.B Each day that a violation is continued after the initial seven (7) day notice shall constitute a separate offense.

410.C Enforcement may be by any means allowed under §4454 including, but not limited to:

- (1) The Administrative Officer may issue a Municipal Complaint and pursue enforcement before the Judicial Bureau in accordance with the provisions of 24 V.S.A. §1974a and §1977 with penalties as prescribed below:
  - a. First offence. A first offence of these regulations shall be punishable by a fine of \$100. The waiver fee shall be \$75.
  - b. Subsequent offences. Any subsequent offences of the same provision of the regulations within a 12 month period shall be punishable by a fine of \$200. The waiver fee shall be \$150.
- (2) The Administrative Officer may notify the City Attorney of the violation who will take action in Environmental Court or Superior Court, as appropriate, with penalties as prescribed below:
  - a. Any person who violates these regulations shall be fined not more than the amount prescribed under the Act [§4451(a)] which at the time of the development of these regulations is \$100 per day.
- (3) After all legal means to remedy the violation have been exhausted and the structure is still in violation, FEMA is authorized to deny flood insurance to the property

provided the community declares the property to be in violation of the regulations. The Administrative Officer shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. The declaration shall consist of:

- a. The name of the property owner and address or legal description of the property sufficient to confirm identity or location.
- b. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance.
- c. A clear statement that the public body (i.e. the Administrative Officer) making the declaration has the authority to do so and a citation of that authority.
- d. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance.
- e. A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

**Section 411 What if the violation occurred a long time ago and was never identified?**

411.A The City shall observe any limitations on enforcement proceedings related to municipal permits and approvals as set forth in the Act [§4454] including the following:

- (1) An enforcement action relating to any municipal land use permit must be instituted within fifteen (15) years of the date of when the alleged violation first occurred and not thereafter.
- (2) The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.
- (3) No enforcement proceeding may be instituted to enforce an alleged violation of a permit or certificate which received final approval after July 1, 1998, unless the permit or certificate or a notice of the permit or certificate was recorded in the land use records of the City of Montpelier as required by the Act. [§4454(b)]
- (4) Nothing in this section shall prevent any enforcement proceeding by the City of Montpelier under any other authority it may have, including, but not limited to, the City's authority under Title 18 relating to abatement and removal of a public health risk or hazard. [§4454(c)]

**Section 412 Do notices of violation need to be recorded?**

412.A The Administrative Officer shall meet the posting and recording requirements of Chapter 230 which shall include the following:

- (1) Notices of violation shall be recorded in the municipal land records.
- (2) When violations are cured and any related assessed penalties are paid, the Administrative Officer shall record a notice of violation removal in the municipal land records.

## **PART 5. DEVELOPMENT REVIEW PROCEDURES**

### **Chapter 500 River Hazard Area Development Permit Procedures**

#### **Section 501 Are permits required for all development in the River Hazard Area?**

501.A Development shall not commence in the River Hazard Area without a River Hazard Area Development permit issued by the Administrative Officer.

#### **Section 502 What activities are included in the definition of development?**

502.A Development means any human-made change to improved or unimproved real estate including but not limited to:

- (1) Construction, reconstruction, improvement, relocation, and placement of buildings and other structures;
- (2) Mining, dredging, filling, grading, paving, excavation and drilling operations;
- (3) The outdoor storage of equipment or materials;
- (4) Any change in use of any structure or land or part thereof;
- (5) The division of a parcel containing lands within the River Hazard Area into two or more parcels including boundary line adjustments.

502.B The following activities are not included in the definition of development and are therefore exempt from regulation:

- (1) Normal maintenance and repair of an existing structure.
- (2) Minor internal improvements to existing structures.
  - a. Minor internal improvements are any development within an existing structure which does not otherwise require a zoning permit or building permit, and the cost of such improvement is less than \$500 in value.
- (3) The demolition of structures.
- (4) Farming including:
  - a. Accepted agricultural and best management practices (AAPs, BMPs) as defined by the Commissioner of Agriculture, Food, and Markets. [§4413(d)]
  - b. The construction or alteration of farm structures however shall meet setbacks required by these regulations, unless specifically waived by the Commissioner. Written notification, including a sketch plan showing the proposed structure and associated setback distances

from road rights-of-way, property lines, and surface waters, and any waiver from the state, shall be made to the Administrative Officer prior to construction, as required under the AAPs. [§4413(d)]

- (5) Forestry including:
  - a. Accepted management practices for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation. [§4413(d)]
- (6) Power generation and transmission facilities that are regulated under 30 V.S.A. §248 by the Vermont Public Service Board.
- (7) Wireless telecommunications facilities that are regulated under 30 V.S.A. §248a by the Vermont Public Service Board.
- (8) Hunting, fishing, and trapping as specified under 24 V.S.A. §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs.

**Section 503 What information is required in an application for a River Hazard Area Development permit?**

503.A The applicant shall apply for a permit on a form provided by the Administrative Officer and shall submit the application with any required fees (see Chapter 220).

503.B The applicant has the burden to provide sufficient information with the application to demonstrate compliance with these regulations.

503.C In general, permit applications in the River Hazard Area should include the following:

- (1) A sketch map showing the distance of all features of the proposed development from the nearest flooding water body and from the nearest boundary of the River Hazard Area District or Sub-district.
- (2) All existing and proposed grade elevations where grades are proposed to be altered.
- (3) Within the Flood Hazard Area, the elevation, in relation to mean sea level, of the lowest floor, including the basement, of any new or substantially improved structures.
- (4) When applicable, the elevation to which any new or substantially improved structures will be flood proofed.
- (5) When applicable, either a determination by the State of Vermont Floodplain Coordinator or certification from a licensed professional engineer that the flood proofed structure meets the flood proofing criteria of these regulations.

503.D The Administrative Officer may require applicants to submit a Vermont Agency of Natural Resources Project Review Sheet to assure that no other state or federal permits are required

in conjunction with the application.

- (1) The Vermont Agency of Natural Resources Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal.
- (2) The identified permits, or letters indicating that such permits are not required, shall be submitted with the Project Review Sheet to the Administrative Officer.
- (3) Where final determinations have not been made by State or Federal agencies, the Administrative Officer may condition River Hazard Area Development permits to require that development in conjunction with the permit cannot begin until remaining determinations are submitted to the Administrative Officer.

**Section 504 How will an applicant know if they have submitted sufficient information with their application?**

504.A The Administrative Officer shall, within seven (7) days, review the application to determine completeness.

504.B A complete application will include sufficient information for the Administrative Officer to make a determination of compliance and any applicable fees.

- (1) If the Administrative Officer finds the application incomplete, the Administrator shall notify the applicant in writing of all additional information or fees required.
- (2) If the Administrative Officer finds the application complete, the Administrator shall record on the application the date on which the determination was made.
- (3) The Administrative Officer may request additional information after an application has been determined to be complete if the Administrative Officer finds that additional information is needed to determine compliance with these regulations.

**Section 505 How much time does the Administrative Officer have to act on a permit application?**

505.A Within thirty (30) days after the submission of a complete application, the Administrative Officer must act on the application. [§4448(d)]

- (1) Acting on the application involves a documented action on the proposal, such as approving or denying the application, including referrals to state agencies required under the Act and referring applications to the DRB for consideration.

**Section 506 What happens if the Administrative Officer fails to act on a permit application within thirty days?**

506.A If the Administrative Officer fails to act within the thirty (30) day period, a permit shall be deemed issued on the 31st day. [§4448(d)]



506.B Applicants wishing to exercise their right to have an application deemed approved shall appeal the lack of action by the Administrative Officer to the Environmental Court.

**Section 507 What is the process for Vermont Agency of Natural Resources review of the application?**

507.A Once the Administrative Officer has received a complete application for any new construction or substantial improvement, the Administrative Officer shall forward a copy of the application and all supporting materials to the State NFIP Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. [§4424(2)(D)]

507.B For applications involving the alteration or relocation of a watercourse the Administrative Officer shall forward a copy of the application and all supporting materials to adjacent communities and to the Stream Alteration Engineer at the Vermont Agency of Natural Resources, River Management Section.

507.C The Administrative Officer shall not approve or deny an application within the River Hazard Area until after either thirty (30) days have elapsed following the forwarding or the Agency delivers comments on the application.

**Section 508 What determinations need to be made by the Administrative Officer regarding the application?**

508.A The Administrative Officer shall make the following determinations regarding each application:

- (1) Flood Hazard Area District Determination. The Administrative Officer shall determine if the proposal is within the Flood Hazard Area district and, if so, which sub-district(s) the proposal is located in. [See Chapter 600]
- (2) River Corridor District Determination. The Administrative Officer shall determine if the proposal is within the River Corridor district and, if so, which sub-district(s) the proposal is located in. [See Chapter 610]
- (3) Non-conforming structure. Where an existing building is being improved, a determination of whether the building is non-conforming. [See Chapter 620]
- (4) Substantial Improvement/Damage Determination. The Administrative Officer shall determine the following regarding existing buildings being improved or that have been damaged:
  - a. For existing buildings found to be non-conforming under subsection (3) above, the Administrative Officer shall determine if the proposed development constitutes a substantial improvement.
  - b. For any existing building found to be damaged by any cause, the Administrative Officer shall determine if the proposed development will repair a substantially damaged structure. [See Chapter 630].

- (5) Base Flood Elevation (BFE) Determination. If applicable, the Administrative Officer will review the BFE(s) provided by the applicant. [See Chapter 640]

**Section 509 What are the standards that need to be met in order for the Administrative Officer to approve an application?**

509.A The following standards must be met in order for the Administrative Officer to approve an application:

- (1) Specific Use & Structure Provisions: Where applicable, an application must meet the standards established in Part 7.
- (2) Flood Hazard Area District Standards: For applications determined to be within the Flood Hazard Area, the Administrative Officer shall determine if the proposal meets the Flood Hazard Area District & Sub-District Standards (Chapter 800) and any other criteria as required under NFIP. Applications shall:
  - a. Meet the District Review Criteria of Section 801; and
  - b. Meet the applicable Sub-District Review Criteria including:
    - i. Where development in Zone A is proposed, the regulations in Section 802 shall be applied to review the application.
    - ii. Where development in Zone AE is proposed within the Floodway sub-district, the regulations in Section 803 shall be applied to review the application.
    - iii. Where development in Zone AE is proposed within the Floodway Fringe but outside of the Floodway, the regulations in Section 804 shall be applied to review the application.
- (3) River Corridor District Standards: For applications determined to be within the River Corridor, the Administrative Officer shall determine if the proposal meets the River Corridor District & Sub-district standards (Chapter 810).

**Section 510 If the applicant cannot meet some requirement in these regulations, can a variance be applied for?**

510.A Applicants are allowed to apply for a variance as outlined in Chapter 330.

**Section 511 What if the applicant is applying for a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) associated with the application?**

511.A Where a proposal requires a LOMA, LOMR-F, or LOMR, that the proposal shall receive the Letters of Map Amendment or Revision as outlined in Part 9.

**Section 512 How shall the Administrative Officer make his or her decision on the application?**

512.A A River Hazard Area Development permit shall be issued by the Administrative Officer only in accordance with the Act [§4449(a)(1)] and these regulations.

512.B If the Administrative Officer finds the proposal as set forth in the application is in conformance with the provisions of these regulations, the Administrative Officer shall approve the River Hazard Area Development permit.

- (1) If the permit is approved, the Administrative Officer shall notify the applicant, in writing, of the approval stating the effective date of the permit.

512.C If the Administrative Officer finds the proposal as set forth in the application is not in conformance with the provisions of these regulations, the Administrative Officer shall deny the River Hazard Area Development permit application.

- (1) If the permit is denied, the Administrative Officer shall notify the applicant in writing, stating the reasons for denial and shall contain a statement of the period of time within which an appeal may be taken.

512.D The Administrative Officer will post and record the permit or denial in accordance with Chapter 230 of these regulations.

### **Section 513 Are there any conditions attached to River Hazard Area Development permits?**

513.A Except as described below in Section 513.B, there is hereby established a condition on all approvals of River Hazard Area Development permits issued stating that the applicant, upon completion of development, shall apply for a Certificate of River Hazard Compliance and submit to the Administrative Officer a copy of the FEMA NFIP Elevation Certificate or other as-built documentation as appropriate.

513.B A Certificate of River Hazard Compliance is not required for permits issued for non-substantial improvements in the Flood Hazard Area where the improvements are only being tracked for cumulative substantial improvement calculations.

- (1) For example, a non-substantial renovation of a third floor kitchen in the Flood Hazard Area requires a permit but will not require a Certificate of River Hazard Compliance because the kitchen improvements are tracked only as a measure of substantial improvement of the entire structure. On the other hand non-substantial improvements below the DFE for a garage will require the permit and certificate of compliance because the garage renovations are material to the flood hazard regulations.
- (2) The Administrative Officer shall determine at the time of issuance of the permit whether a Certificate of River Hazard Compliance will be required.

### **Section 514 If the permit is approved, when will it be effective?**

514.A The effective date of permits which did not require DRB approval or a decision on appeal is fifteen (15) days from the date of issuance of the River Hazard Area Development permit.

514.B The effective date of permits which required DRB approval or involved an appeal of a decision

of the Administrative Officer is thirty (30) days from the decision of the DRB or fifteen (15) days from the issuance of the River Hazard Area Development permit, whichever date is latest.

514.C No permit shall take effect until the time for appeal has passed.

514.D In the event an appeal is filed, the permit shall not take effect until the DRB has heard the appeal and decided that the permit should be issued, whereupon it shall take effect after final adjudication of said appeal [§4449(a)(3)].

**Section 515 Can the Administrative Officer decision be appealed?**

515.A Appeals of decisions of the Administrative Officer are handled by the process outlined in Chapter 300.

**Section 516 How long is a River Hazard Area Development permit valid for?**

516.A A River Hazard Area Development permit is valid for two years therefore development must be completed within two years from the effective date of the zoning permit unless:

- (1) prior to the zoning permit's expiration, the applicant requests and receives an extension from the Administrative Officer of not more than twelve months.

516.B A permit in which the deadline has lapsed without completion shall be deemed expired and not valid.

516.C Once development is complete and a Certificate of River Hazard Compliance issued, a permit shall not expire and will run with the property (see Section 106).

**Section 517 What happens to a project that has a permit that is deemed expired?**

517.A Where a permit has been deemed expired, an applicant is required to apply for a new permit if development is to be commenced or, in the case of incomplete projects, continued.

517.B In the case of partially completed projects, the Administrative Officer shall determine if the project, as developed, complies with the requirements of the permits.

- (1) An incomplete project, for example, may have had a foundation poured at or above the DFE and then only partly completed construction of the structure. That project may not violate the conditions of the original River Hazard Area Development Permit but the structure could not be used until the project is completed.
- (2) If appropriate, the Administrative Officer may find the incomplete development in violation of these regulations and an enforcement action may be taken.
  - a. For example, a shed partially built in the Flood Hazard Area which was proposed to be tied down with straps was not completed and therefore the straps never attached. The partial structure would constitute a violation and must be removed or anchored to prevent

flotation.

**Section 518 What if a permit was issued based on incorrect information?**

518.A Any River Hazard Area Development permit issued based on material inaccuracies or misrepresentations in an application or in any supporting documentation to an application shall be null and void; and any associated development activity commenced under such permit shall constitute a violation of these regulations subject to enforcement.

**Chapter 520 Certificate of River Hazard Compliance Procedures**

**Section 521 Is it legal to use a structure or land without a Certificate of River Hazard Compliance being issued?**

521.A Where a Certificate of River Hazard Compliance has been required under a River Hazard Area Development permit, it shall be unlawful to use, occupy, or permit the use or occupancy of any land or structure, or part thereof, developed unless a Certificate of River Hazard Compliance has been obtained.

**Section 522 What information is required in an application for a Certificate of River Hazard Compliance?**

522.A The applicant shall apply for a certificate on a form provided by the Administrative Officer and shall submit the application with any required fees (see Chapter 220).

522.B The applicant has the burden to provide sufficient information with the application to demonstrate compliance with the permit or these regulations as applicable.

522.C In addition to any other information provided, applications for a Certificate of River Hazard Compliance shall include all as-built elevation and flood proofing certificates as required under the associated permit.

**Section 523 How will an applicant know if they have submitted sufficient information with their application?**

523.A The Administrative Officer shall, within seven (7) days, review the application to determine completeness.

523.B A complete application will include sufficient information for the Administrative Officer to make a determination of compliance and any applicable fees.

- (1) If the Administrative Officer finds the application incomplete, the Administrative Officer shall notify the applicant in writing of all additional information or fees required.

- (2) If the Administrative Officer finds the application complete, the Administrative Officer shall record on the application the date on which the determination was made.
- (3) The Administrative Officer may request additional information after an application has been determined to be complete if the Administrative Officer finds that additional information is needed to determine compliance with these regulations.

**Section 524 How much time does the Administrative Officer have to act on a certificate application?**

524.A Within thirty (30) days after the submission of a complete application, the Administrative Officer must act on the application [§4448(d)].

- (1) Acting on the application involves a documented action on the proposal, such as approving or denying the application and referring applications to the DRB for consideration.

**Section 525 What happens if the Administrative Officer fails to act on an application within thirty days?**

525.A If the Administrative Officer fails to act within the thirty (30) day period, a permit shall be deemed issued on the 31st day [§4448(d)].

525.B Applicants wishing to exercise their right to have an application deemed approved shall appeal the lack of action by the Administrative Officer to the Environmental Court.

**Section 526 How shall the Administrative Officer make his or her decision on the application?**

526.A A Certificate of River Hazard Compliance shall be issued by the Administrative Officer only in accordance with the Act [§4449(a)(1)] and these regulations.

526.B If the Administrative Officer finds the project as constructed is in conformance with the associated permit and provisions of these regulations, the Administrative Officer shall approve the Certificate of River Hazard Compliance.

- (1) If the certificate is approved, the Administrative Officer shall notify the applicant, in writing, of the approval stating the effective date of the certificate.

526.C If the Administrative Officer finds the project as constructed is not in conformance with the associated permit and provisions of these regulations, the Administrative Officer shall deny the Certificate of River Hazard Compliance application.

- (1) If the certificate is denied, the Administrative Officer shall notify the applicant in writing, stating the reasons for denial and shall contain a statement of the period of time within which an appeal may be taken.

526.D The Administrative Officer will post and record the certificate in accordance with Chapter 230 of these regulations.

**Section 527 If the certificate is approved, when will it be effective?**

527.A No certificate shall take effect until the time for appeal has passed.

527.B In the event an appeal is filed, the certificate shall not take effect until the DRB has heard the appeal and decided that the permit should be issued, whereupon it shall take effect after final adjudication of said appeal [§4449(a)(3)].

514.C The effective date of a certificate which did not require DRB approval or a decision on appeal is fifteen (15) days from the date of issuance of the Certificate of River Hazard Compliance.

514.D The effective date of certificates which required DRB approval or involved an appeal of a decision of the Administrative Officer is thirty (30) days from the decision of the DRB or fifteen (15) days from the issuance of the Certificate of River Hazard Compliance, whichever date is latest.

**Section 528 Can the Administrative Officer's decision be appealed?**

528.A Appeals of decisions of the Administrative Officer are handled by the process outlined in Chapter 300.

## **PART 6. DETERMINATIONS**

### **Chapter 600 Flood Hazard Area District Determinations**

#### **Section 601 How does the Administrative Officer determine the boundaries of the Flood Hazard Area district and any sub-districts?**

601.A The Administrative Officer shall determine the boundaries of the designated Flood Hazard Area, including the location of sub-district boundaries, by visual inspection of the FIRM map or by scaling distances on the FIRM map, as appropriate.

601.B When the Administrative Officer cannot definitely determine the location of a district or sub-district boundary line by the above rule, the Administrative Officer shall determine the boundary line in question based upon surveys provided by the applicant and/or other evidence including input from the State Department of Environmental Conservation.

#### **Section 602 What if a building is only partly in the Flood Hazard Area?**

602.A When determining whether an existing or proposed structure is in or out of a Flood Hazard Area, the entire structure including all additions shall be considered to be within the Flood Hazard Area if any portion of the structure is within the Flood Hazard Area.

602.B Regarding Floodways, only the portion of the structure in the Floodway sub-district is considered in the Floodway.

602.C Where one structure is attached to another through a covered breezeway or similar connection, it is a separate structure and not an addition.

#### **Section 603 What if a property owner believes the FEMA FIRM map is incorrect and believes that their building is outside of the Flood Hazard Area?**

603.A Where an applicant believes the property or structure in question is outside of the Flood Hazard Area and therefore not subject to these regulations, the applicant may request a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR), as applicable, from FEMA (see Part 9 of these regulations).

(1) Until a LOMA or LOMR is received, the applicant is considered to be within the Flood Hazard Area.

### **Chapter 610 River Corridor District Determinations**

#### **Section 611 How does the Administrative Officer determine the River Corridor district and sub-district boundaries?**

611.A The Administrative Officer shall determine the boundaries of the River Corridor, including the location of sub-district boundaries, by visual inspection of the River Corridor map or by



scaling distances on the River Corridor map, as appropriate.

611.B When the Administrative Officer cannot definitely determine the location of a district or sub-district boundary line by the above rule, the Administrative Officer shall determine the boundary line in question based upon surveys provided by the applicant and/or other evidence including input from the State Department of Environmental Conservation.

### **Section 612 What if a building is only partly in the River Corridor?**

612.A When determining whether an existing or proposed structure is in or out of a River Corridor, the entire structure including all additions shall be considered to be within the River Corridor if any portion of the structure is within the River Corridor.

612.B Where one structure is attached to another through a covered breezeway or similar connection, it is a separate structure and not an addition.

## **Chapter 620 Non-conforming Structure Determination**

### **Section 621 What are non-conforming structures?**

621.A Any legal structure or part thereof, which is not conforming to the provisions of these regulations concerning any structural requirements (including such things as lowest floor elevation) shall be deemed a non-conforming structure. [§4412(7)]

### **Section 622 How do non-conforming structures come into existence?**

622.A Non-conforming structures exist as a result of construction prior to adoption of regulations (i.e. pre-FIRM structures), construction under an earlier set of less restrictive regulations, construction under some exemption from these regulations (e.g. farm structures), or through a variance issued at any time.

### **Section 623 How are structures that are considered non-conforming with regards to the Flood Hazard Area requirements handled?**

623.A Any non-conforming structure within the Flood Hazard Area is allowed to exist indefinitely, but shall be subject to the following provisions:

- (1) A non-conforming structure that is proposed to be substantially improved must have the entire structure brought into compliance with these regulations (see Chapter 630 on substantial improvements).
- (2) A non-conforming structure that has been demolished, destroyed, or substantially damaged which is proposed for redeveloped must be redeveloped in accordance with these regulations [§4424(2)] (see Chapter 630 regarding substantial damage).
- (3) A non-conforming structure shall not be moved without being brought into compliance with these regulations.

- (4) Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure provided that such action does not qualify as a substantial improvement or substantial damage of the structure and that such action does not increase the degree of non-conformance.
- (5) All additions to non-conforming structures shall be developed in accordance with these regulations (see Chapter 630 regarding substantial improvements).
- (6) Where an individual mobile home lot in an existing mobile home park is vacated, the lot shall not be considered discontinued or abandoned even if either the lot or park is non-conforming. Replacement mobile homes shall be regulated per Sections 714 and 715 of these regulations.
- (7) Where an application proposes non-substantial improvements or involve non-substantial damage, the development shall meet the requirements in Section 637.
- (8) Other non-conformities (e.g. storage of materials) shall not be increased in area except by bringing the entire non-conformity into conformance with the regulations.
  - a. Where such non-conformity is abandoned (as defined by the City of Montpelier Zoning Regulations) the use shall not be resumed.
  - b. Where such non-conformity exists as an accessory to a primary use (e.g. exterior storage of materials to a retail store), the elimination of the non-conformity can be required as a condition of approval for an expansion or alteration of the primary use.

**Section 624 How are structures that are considered non-conforming with respect to the River Corridor handled?**

624.A Any non-conforming structure within the River Corridor is allowed to exist indefinitely, but shall be subject to the following provisions:

- (1) Additions to nonconforming structures are permitted provided all additions are, when combined, less than 500 square feet larger than the footprint of the structure at the time of the adoption of these regulations and does not increase the degree of non-conformance.
- (2) A non-conforming structure that suffers substantial damage shall not be repaired or replaced except in conformance with these regulations (see Chapter 630 for information regarding substantial damage).
- (3) A non-conforming structure shall not be moved without being brought into compliance with these regulations.
  - a. Where a structure in the River Corridor cannot be moved out of the River Corridor because land is not available or reasonably developable, the applicant may request a waiver to allow placement of the building in the location that would represent the minimum waiver necessary to afford relief and located such that the structure

will not alter the essential character of the neighborhood.

- (4) Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure provided that such action does not qualify as repair of a substantially damaged structure and that such action does not increase the degree of non-conformance.
- (5) Other non-conformities (e.g. storage of materials) shall not be increased in area except by bringing the entire non-conformity into conformance with the regulations.
  - a. Where such non-conformity is abandoned (as defined by the City of Montpelier Zoning Regulations) the use shall not be resumed.
  - b. Where such non-conformity exists as an accessory to a primary use (e.g. exterior storage of materials to a retail store), the elimination of the non-conformity can be required as a condition of approval for an expansion or alteration of the primary use.

## **Chapter 630 Substantial Improvement/Damage Determinations**

### **Section 631 What does substantial improvements mean?**

631.A Substantial improvement means any repair, reconstruction, or improvement of a nonconforming structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction.

631.B This term includes structures which have incurred "repetitive loss" or "substantial damage", regardless of the amount of actual work performed.

### **Section 632 What does substantial damage mean?**

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

### **Section 633 How is substantial improvement/damage calculated?**

633.A The following shall apply when calculating substantial improvements:

- (1) Unless stricter rules are described in this section, FEMA NFIP guidance such as the *NFIP Substantial Improvement/ Substantial Damage- Desk Reference* (P-758) shall be used to guide calculation of market value of structure and costs.
- (2) Where one building is attached to another through a covered breezeway or similar connection, the two buildings are considered separate and substantial improvement/damage calculations shall be made for each structure independently.
- (3) All open River Hazard Area Development Permits shall be counted cumulatively with new applications to determine if a substantial improvement of a structure has

occurred.

- (4) In general the City of Montpelier shall use the assessed value of the structure, adjusted by the City's Current Level of Assessment, as the default value of the structure.
  - a. The value of the land should not be included in the valuation of the structure.

**Section 634 Are there improvements that don't count towards 'substantial improvement'?**

634.A The term 'substantial improvement' does not include the following:

- (1) The cost of improvements of a structure to correct existing violations of state and local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;
- (2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
  - a. The Administrative Officer may require from the applicant a Section 106 report, prepared by a qualified professional, to demonstrate compliance with this provision.
  - b. This exemption does not apply to additions (i.e. expansions of building footprint) to historic structures which must be built in compliance with these regulations.

**Section 635 What happens if a project will substantially improve a structure?**

635.A Where an application proposes to make a substantial improvement to an existing structure, that structure shall be brought into conformance with these regulations.

- (1) For example, a structure with the lowest floor below DFE may be required to elevate the structure.
- (2) Where one structure is attached to another through a covered breezeway or similar connection, it is a separate structure and not an addition. Therefore, substantial improvement of a structure would require the elevation of the structure and all additions but not separate structures.

**Section 636 What happens in the case of an addition to a non-conforming structure?**

636.A Where an applicant proposes to add a lateral addition to an existing structure, the addition must be compliant with the requirements of these regulations. The non-substantial improvement exemption applies to existing structures on their existing footprints.

- (1) For example, a non-substantial addition to an existing building must still be elevated to DFE even though the existing building will not be required to be elevated.

**Section 637 What happens if the project will involves a structure that is substantially damaged?**

637.A Where a substantially damaged structure is proposed for redevelopment, that structure shall be brought into conformance with these regulations.

- (1) For example a building with the lowest floor below DFE which has been substantially damaged may be required to elevate the building during reconstruction.

**Section 638 Are there rules to be met if the structure is not substantially improved/damaged?**

638.A Where a proposal is determined to be a non-substantial improvement/damage, only the improvement will be reviewed for conformance with these regulations.

- (1) For example, if replacement of electrical panels, HVAC, or fuel systems are found to be non-substantial improvements, those improvement would still need to be compliant with those provisions in Part 8. Replacement of damaged sheetrock below DFE must be replaced with flood resistant materials.
- (2) The applicant may seek a waiver to this provision under Chapter 320 of these regulations. Applicants for a waiver must meet the following:
  - a. The applicant shall demonstrate just cause for not meeting the requirement (e.g. cost is unduly burdensome or technically not feasible).
  - b. The applicant shall demonstrate that the proposal will not leave in place serious health and safety risks (e.g. leaving an electrical panel in a basement subject to flooding) and that any remaining risks are mitigated (e.g. electrical outlets to sump pumps are elevated as high as possible and GFI protected).
  - c. The applicant shall demonstrate that the risk of property damage is minimized (e.g. a furnace below DFE may not be a safety risk but should be elevated to the greatest extent possible to minimize risk of damage).

**Chapter 640 Base Flood Elevation & Design Flood Elevation Determination**

**Section 641 Who is responsible for determining the base flood elevations?**

641.A In all instances the applicant is required to determine their base flood elevations.

641.B The base flood elevation shall be determined based upon the following rules:

- (1) Determining Base Flood Elevations in AE Zone. In areas where base flood elevations

have been provided by FEMA (i.e. Zones A1-A30, AE, and AH), the base flood elevations in the Flood Insurance Study and accompanying maps (of most recent date) shall be used to administer the provisions of these regulations.

- a. Base flood elevations should be determined using the methodology laid out in the NFIP Flood Plain Management Requirements- Desk Reference.
  - b. Determinations shall be made based on the highest base flood elevation, within the Flood Hazard Area, for the structure in question. A building, therefore, which has a BFE at the north end of 530.5 feet and a BFE of 532.1 feet at the south end of the building, will have a BFE of 532.1 for the entire building.
- (2) Determining Base Flood Elevations in A Zone. In areas where base flood elevations have not been provided by FEMA (i.e. in A Zones) it is the applicant's responsibility to develop the base flood elevation at the site.
- a. The applicant shall develop the base flood elevations using information from FEMA or from other State or federal agencies. All base flood elevations must be approved by the State Department of Environmental Conservation.
  - b. Where an application for a subdivision or mobile home park has a portion of the subdivision or manufactured home park within the Flood Hazard Area, the applicant shall provide base elevation data.
  - c. A Letter of Map Revision (LOMR) from FEMA may be required to establish the base flood elevation (see Part 9 of these regulations).

**Section 642 How accurate do base flood elevation measurements need to be?**

642.A Base flood elevations shall be made to tenths of a foot (minimum accuracy).

**Section 643 Are elevation certificates required for all applications?**

643.A Elevation certificates may be required during the application process to determine if the proposed development will be in compliance with these regulations.

643.B Elevation certificates are required of all new, substantially improved, and flood proofed structures permitted after the effective date of these regulations.

**Section 644 The regulations discuss Design Flood Elevations. What are they?**

644.A Design Flood Elevations (herein abbreviated DFE) are equivalent to the base flood elevation plus any freeboard.

644.B Freeboard requirements in the City of Montpelier are 2 feet.

- (1) For example, a site with a base flood elevation of 520.1 feet will have a DFE of 522.1 feet.

## **PART 7. SPECIFIC USE & STRUCTURE PROVISIONS**

### **Chapter 700 General Uses & Structures Review Criteria**

#### **Section 701 How are uses generally regulated?**

- 701.A These regulations do not usually differentiate between specific uses (e.g. single family dwelling, retail, or light industrial) but these regulations do differentiate between non-residential structures and residential structures.
- 701.B There are certain uses or activities that are exceptions to the above generalization based on state or federal law. These specific uses are described below in Chapter 710.
- 701.C See the City of Montpelier Zoning Regulations regarding abandoned uses, non-conforming uses, accessory apartments, child care facilities, residential care and group homes, home occupations, public facilities, and other specifics where such detail is not provided within these regulations.

### **Chapter 710 Specific Uses & Structures Review Criteria**

#### **Section 711 Accessory Structures**

- 711.A Accessory structures are included under the general definition of structure and are therefore subject to all river hazard area regulations pertaining to structures.
- (1) Accessory structures within the Flood Hazard Area district shall meet the requirements in Sections 711.B and 711.C.
  - (2) Accessory structures within the River Corridor district shall meet the requirements in Sections 711.D and 711.E.
- 711.B An accessory structure within the Flood Hazard Area may be wet-proofed (Section 804.A(3)) rather than elevated or dry-proofed when the structure:
- (1) Represents a minimal investment;
  - (2) Meets the requirements below in 711.C; and
  - (3) Complies with all other applicable regulations in this regulation.
- 711.C Accessory structures in the Flood Hazard Area must meet the following requirements:
- (1) Accessory structures shall not be used for human habitation and the building shall only be used for parking and/or storage;
  - (2) Accessory structures shall be designed to have low flood damage potential and be

constructed of flood resistant materials below the DFE;

- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters in and out (refer to technical bulletin 1-93 for more information about required openings standards);
- (4) Accessory structures shall be adequately anchored to resist flotation, collapse, and lateral movement'
- (5) All structure utilities (such as electrical and heating) shall be elevated or floodproofed.

711.D An accessory structure within the river corridor may be permitted provided it is not for human habitation and the following:

- (1) Accessory structures with a footprint less than 150 square feet in size may be permitted provided the project meets both of the following:
  - a. The new structure is not within 50 feet of a stream or river bank; and
  - b. The applicant acknowledges the inherent risk to property by developing in the river corridor.
- (2) Accessory structures with a footprint less than 480 square feet in size may be permitted provided the project meets all of the following:
  - a. The new structure is not within 50 feet of a stream or river bank;
  - b. The new structure is not closer to the river or stream than the existing principal structure; and
  - c. The applicant acknowledges the inherent risk to property by developing in the river corridor.
- (3) Accessory structures with a footprint greater than, or equal to, 480 square feet in size may be permitted if the project meets all of the following:
  - a. The new structure is not within 50 feet of a stream or river bank;
  - b. The new structure is not closer to the river or stream than the existing principal structure;
  - c. The new structure is of low-value (i.e. less than \$10,000), is used for storage of low-value contents, and is not used for storage of chemicals, explosives, flammable liquids, or other hazardous or toxic materials; and
  - d. The applicant acknowledges the inherent risk to property by developing in the river corridor.
- (4) Applicants may request a waiver from the provisions of subsections 711.D(2)(b) and/or 711.D(3)(b). Applications for such a waiver request shall show the following:
  - a. The site or lot characteristics make siting a similar structure in conformance with the requirement either not possible or not practicable; and
  - b. The waiver is the minimum necessary for the project.
  - c. Where the Development Review Board approves a waiver, the



Development Review Board may condition such approval including by limiting:

- i. the size of structures;
- ii. the number of structures; and/or
- iii. the location of structures within the River Corridor.

### **Section 712 Alteration of a Watercourse**

712.A The alteration or relocation of a portion of a watercourse within the River Hazard Area is prohibited unless part of an overall plan (adopted by the municipality) involving river restoration, flood mitigation, or other public purpose.

- (1) In these instances, an application for the alteration or relocation may be approved only if the flood carrying capacity within the altered or relocated portion of a watercourse is maintained or increased as certified by a professional engineer.
- (2) Applicant should consult with the Agency of Natural Resources concerning additional permits that may be required with this type of activity.

### **Section 713 Fuel Storage Tanks**

713.A All fuel storage tanks (e.g. liquid propane, diesel, home heating fuel, kerosene, etc.) in the Flood Hazard Area shall be placed at or above the DFE or be securely anchored to prevent flotation; Storage tanks may be placed underground if securely anchored as certified by a qualified professional.

- (1) Fuel storage tanks located below DFE must have all filler pipes and vents located at or above the DFE.

713.B All fuel storage tanks (e.g. liquid propane, diesel, home heating fuel, kerosene, etc.) are prohibited in the River Corridor except as below.

- (1) Fuel storage tanks to serve existing structures are allowed provided the tanks are located no closer to the stream than the existing structure.

### **Section 714 Manufactured (Mobile) Homes**

714.A No provision of these regulations shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. [§4412(1)(B)]

714.B Within these regulations, mobile homes and manufactured homes are synonymous.

714.C New and replacement manufactured homes shall meet foundation and installation requirements in FEMA P-85 Protecting Manufactured Homes from Floods and Other Hazards and be elevated to DFE.

### **Section 715 Manufactured (Mobile) Home Parks**

- 715.A Manufactured home parks are prohibited in the River Hazard Area.
- 715.B In existing manufactured home parks, manufactured homes shall be treated the same as conventional housing except that manufactured homes shall demonstrate that they meet the foundation and installation requirements of Section 714.C.
- 715.C An evacuation plan for any existing manufactured home parks indicating alternate vehicular access and escape routes shall be filed with the State Civil Defense Office. (See §1910.3(b)(8) of the Federal Register)

### **Section 716 Mining, Dredging, Filling, Grading, Paving, Excavation, and Drilling**

- 716.A Mining within the River Hazard Area is prohibited unless part of an overall plan (adopted by the municipality) involving river restoration, flood mitigation, or other public purpose.
- 716.B Dredging within a portion of a watercourse within the River Hazard Area is prohibited unless part of an overall plan (adopted by the municipality) involving river restoration, flood mitigation, or other public purpose.
- (1) Applicant should consult with the Agency of Natural Resources concerning additional permits that may be required with this type of activity.
- 716.C Filling within the River Hazard Area shall meet the following requirements:
- (1) Filling is not permitted within the River Corridor nor in the Floodway subdistrict of the Flood Hazard Area except as provided in Section 803.
  - (2) Filling may be permitted within the Floodway Fringe sub-district (see Section 804) provided the fill is properly compacted, graded, and, where appropriate, re-vegetated.
    - a. For additional information consult Technical Bulletin 10-01 *Ensuring that structures built on fill in or near special flood hazard areas are reasonably safe from flooding.*
  - (3) Where an applicant wishes to remove a property or part thereof from the Floodway Fringe sub-district of the Flood Hazard Area by elevating the natural grade (adding fill in the Flood Hazard Area) the applicant shall provide a CLOMR-F or LOMR-F, as appropriate to the project.
    - a. See Part 9 for additional information on Letters of Map Amendment and Revision.
- 716.D Grading within the River Hazard Area shall reduce the exposure to existing and proposed development of flood and erosion hazards.
- 716.E Paving may be permitted in the River Hazard Area with special rules for paving within the Floodway.

- (1) As development in Floodways cannot result in any increase in flood levels (0.00 feet) during the occurrence of the base flood (see Section 803), any paving in the Floodway shall be completed using a "mill and fill" approach or other method that will not result in increased flood levels.

716.F Excavation may be permitted in the River Hazard Area provided the excavation reduces the exposure to flood and erosion hazards.

716.G Except for water wells, drilling wells within the River Hazard Area is prohibited.

- (1) Regulation of public and private domestic water wells are pre-empted by the State of Vermont Department of Environmental Conservation. Applicants to Vermont DEC for well construction shall notify the state if a well is proposed within the River Hazard Area.

### **Section 717 Public Infrastructure**

717.A Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or crossing are permitted in the River Hazard Area provided they are part of an overall plan (adopted by the municipality).

717.B Public and private stream crossings (bridges and culverts) must be designed and built to pass 100 year flood event (Q-100).

717.C Public utilities may be placed underground where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

### **Section 718 Recreational Vehicles**

718.A Storage or use of recreational vehicles is prohibited in the River Hazard Area.

### **Section 719 Subdivisions**

719.A The subdivision of land within the River Hazard Area is allowed only if it can be demonstrated by the applicant that each parcel created will have some permissible use.

- (1) Each new parcel, for instance, shall have sufficient areas outside of the Floodway or River Corridor which is suitable for development.

719.B No subdivision shall be approved where dryland access is not available for emergency service vehicles.

719.C Where a parcel in a subdivision is not intended for future development (e.g. sale to a land trust for conservation purposes) the subdivision may be permitted provided the permit clearly reflects that the parcel is for conservation purposes only.

719.D An evacuation plan for any existing subdivisions indicating alternate vehicular access and

escape routes shall be filed with the State Civil Defense Office. (See §1910.3(b)(8) of the Federal Register)

719.E All subdivision proposals shall:

- (1) be consistent with the need to minimize flood damage within flood-prone areas;
- (2) have all public and private utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
- (3) adequately drain the site to reduce exposure to flood hazards.
  - a. Applicants shall submit a site plan that accounts for local drainage from and onto adjoining properties and that protects the buildings (or proposed building sites) from local drainage flows (see FEMA 511 Reducing Damage from Localized Flooding - Chapter 4).

## **PART 8. FLOOD HAZARD AREA & RIVER CORRIDOR STANDARDS**

### **Chapter 800 Flood Hazard Area District & Sub-District Standards**

#### **Section 801 Flood Hazard Area**

801.A Note regarding state and federal requirements. Except as limited by state law (24 V.S.A. §4413), the mandatory provisions of state and federal law for continued City participation in the NFIP are hereby adopted by reference and shall be applied in the review of any development in this district.

801.B Development required to meet Flood Hazard Area standards shall be reasonably safe from flooding. As such, regardless of sub-district, the following requirements apply:

- (1) Standard. Development shall be designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
  - a. In shallow flooding and low velocity flows, normal construction practices should suffice for anchoring structures to their foundations and for foundation design. The anchoring and foundation plan shall be reviewed by the City Building Inspector with a recommendation provided to the Administrative Officer.
  - b. In higher velocity areas (where flows are faster than 5 feet per second) or in deeper flooding (where flood depths are more than 3.0 feet) certification from a licensed architect or engineer is required stating "the structure is anchored adequate to prevent flotation, collapse and lateral movement during the base flood" and that "the foundation is adequately protected against hydrodynamic and hydrostatic forces and protected against erosion and scour."
  - c. There are specific anchoring requirements for manufactured homes (See Section 714).
- (2) Standard. Development shall be constructed of material resistant to flood damage.
  - a. Development below DFE shall meet the requirements in FEMA Technical Bulletin 2 Flood Damage-Resistant Materials Requirements.
  - b. The City also enforces the Vermont Building Code which incorporates ASCE 24 Flood Resistant Design and Construction therefore those standards may be used to demonstrate compliance with this requirement.
- (3) Standard. Development shall be constructed by methods and practices that minimize flood damage.
  - a. The City enforces the Vermont Building Codes which will cover most standard development practices. Special situations should consult appropriate FEMA documents for guidance such as:
    - i. FEMA P-259, Engineering Principles and Practices for

- Retrofitting Flood-Prone Residential Structures;
      - ii. FEMA 102, Floodproofing Non-Residential Structures;
      - iii. FEMA P-312, Homeowners Guide to Retrofitting.
- (4) Standard. Development shall be constructed with electrical, heating, ventilation, plumbing, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - a. Development involving utilities shall meet the requirements in appropriate FEMA documents such as FEMA 348, Protecting Building Utilities from Flood Damage.
- (5) Standard. Development sites shall be adequately drained to reduce exposure to flood hazards.
  - a. Building sites should be graded to create positive drainage away from buildings.
  - b. The lowest floor of buildings should be at least one foot higher than the street (see FEMA 511 Reducing Damage from Localized Flooding - Chapter 4).
  - c. Conformance with the stormwater requirements within the Montpelier Unified Development Regulations may be used as evidence to meet the drainage requirements (See Section 3006).
- (6) Standard. Water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
  - a. Development of water utilities shall meet the requirements in appropriate FEMA documents such as FEMA 348, Protecting Building Utilities from Flood Damage.
- (7) Standard. 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.
  - a. Development of sanitary sewer utilities shall meet the requirements appropriate FEMA documents such as FEMA 348, Protecting Building Utilities from Flood Damage.
- (8) Standard. On-site disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
  - a. Regulation of on-site septic systems are pre-empted by the State of Vermont Department of Environmental Conservation. Applicants to Vermont DEC for an on-site disposal permit shall notify the state of the presence of flood hazards.

## **Section 802 Zone A- Sub-District Regulations**

802.A All development required to meet Flood Hazard Area standards in Zone A shall meet the following:

- (1) Requirement. Development within Zone A shall meet the requirements of development within the Zone AE- Floodway Sub-District (Section 803) unless and until the applicant provides a hydrologic and hydraulic analyses to delineate the Zone A into Floodway and Floodway Fringe sub-districts.
  - a. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a professional engineer.
  - b. Once delineated into Floodway and Floodway fringe sub-districts, those provisions shall apply.

### **Section 803 Zone AE-Floodway Sub-District Regulations**

803.A Requirement. Development within the Floodway is prohibited except as outlined below.

803.B Requirement. Development within the Floodway sub-district shall not be approved unless the applicant provides a hydrologic and hydraulic analysis, performed by a registered engineer in accordance with standard engineering practices, certifying that the proposed development:

- (1) Will not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood; and
- (2) Will not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

803.C Requirement. The hydrologic and hydraulic analysis in Section 803.B may be waived by the Administrative Officer under the following conditions:

- (1) Where the proposed development does not increase the exterior dimensions (i.e. footprint) of an existing structure, development may be approved without a hydrologic and hydraulic analysis.
- (2) Utilities may be placed underground and the hydrologic and hydraulic analyses may be waived by the Administrative Officer, where a registered professional engineering certifies that there will be no change in grade and the utilities will be adequately protected from erosion and scour.

803.D Requirement. Where development has met the requirements in Section 803.B or Section 803.C to allow development in the Floodway, the development is also required to meet the regulations in Section 804.

803.E Requirement. Landfilling, parking recreational vehicles (See Section 718), junkyards, and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials are strictly prohibited within the Floodway.

### **Section 804 Zone AE-Floodway Fringe Sub-District Regulations**

804.A Requirement. Development within the Floodway Fringe is regulated based on the

classification of use- either residential or non-residential:

- (1) Residential structures. All development of residential structures including manufactured homes shall meet the following:
  - a. The lowest floor, including basement, of all new and substantially improved structures shall be elevated at or above the DFE. This can be achieved in one of three ways:
    - i. Elevated on fill. This is typical for slab construction or where structures are to be placed at grade and tied down. This is not an appropriate technique for primary structures due to the risk of scour and erosion undermining the structure.
    - ii. Elevated on piles, posts, piers or columns. This technique is typically used in areas with high velocity.
    - iii. Elevated on walls or a crawlspace. The third technique is to build on solid walls (i.e. slab on stem wall foundation or elevate building over crawlspace).
  - b. Unless stricter rules are described in this section, FEMA NFIP guidance such as the NFIP Flood Plain Management Requirements- Desk Reference and FEMA 54- Elevated Residential Structures shall be used to guide design and construction considerations.
  
- (2) Non-Residential structures. All development of non-residential structures shall meet one of the following:
  - a. Elevation. Non-residential structures shall be elevated as required above (Section 8.04.A(1)). This is the preferred alternative for all structures.
  - b. Dry-proofing. Non-residential structures, together with their attendant utilities and sanitary facilities, which are proposed to be dry-proofed shall be designed to be watertight below the DFE with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
    - i. A permit for a structure proposed to be dry-proofed shall not be issued until a registered engineer or architect has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
    - ii. While dry-proofing is not the preferred alternative, it is many times the most appropriate solution for non-conforming non-residential buildings.
  - c. Unless stricter rules are described in this section, FEMA NFIP guidance such as the NFIP Flood Plain Management Requirements- Desk Reference and FEMA 102- Floodproofing Non-Residential Structures shall be used to guide design and construction considerations.
  
- (3) Fully enclosed areas below lowest floor. All development which has fully enclosed



areas that are below base flood elevation may be permitted provided:

- a. These areas are solely used for parking vehicles, storage, or structure access.
  - b. These areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a registered engineer or architect and include the following minimum criteria:
    - i. A minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
    - ii. The bottom of all openings shall be no higher than 1 foot above grade.
    - iii. Openings may be equipped with screens, louvers, valves, or other coverings provided that they permit the automatic entry and exit of floodwaters.
- (4) Storage of materials and equipment. Storage of materials shall meet the following:
- a. Junkyards are strictly prohibited from the Floodway Fringe.
  - b. Other than fuel tanks (see Section 713), storage of floatable, hazardous, or toxic materials is prohibited from the Floodway Fringe.
  - c. Equipment stored in the Floodway Fringe should be limited to low damage items that will not suffer flood damage or equipment that can be conveniently moved. Floatable items shall be contained within a structure or fenced area to prevent escape.

## **Chapter 810 River Corridor Regulations**

### **Section 811 River Corridor District**

811.A Requirement. Development within the River Corridor is prohibited unless expressly allowed elsewhere in these regulations or as outlined below:

- (1) At grade accessory structures such as patios, parking lots, driveways, and sidewalks may be permitted.
- (3) Fences may be permitted provided the fence is no closer than 25 feet to the top of bank.
- (4) Any new, replacement or substantially improved foundations must have a registered engineer or architect design the foundation and certify that the design and proposed methods of construction are in accordance with Vermont Building Codes, the Vermont Residential Codes, or ASCE 24.

## **PART 9 LETTERS OF MAP AMENDMENT AND REVISION**

### **Chapter 900 Letters of Map Amendment and Revision**

#### **Section 901 General Information Regarding LOMAs, LOMR-Fs, & LOMRs**

901.A As a part of FEMA's responsibility in implementing the NFIP, three procedures have been established to address critical components of the program. The three types of applications each have separate procedures for proposed and existing scenarios. The six Letters are:

- (1) **Letter of Map Amendment (LOMA).** A letter from FEMA stating that an existing structure or parcel of land that has not been elevated by fill would not be inundated by the base flood. This is generally used for existing properties where it is believed that the FIRM map is incorrectly drawn therefore a structure or piece of land is mapped as being in the Flood Hazard Area but upon review by a surveyor or engineer it is found to be above the base flood elevation.
- (2) **Conditional Letter of Map Amendment (CLOMA).** A letter from FEMA stating that a proposed structure that is not to be elevated by fill would not be inundated by the base flood if built as proposed. This is used in similar situations as a LOMA except that it involves proposed rather than existing structures or pieces of land.
- (3) **Letter of Map Revision based on Fill (LOMR-F).** A letter from FEMA stating that an existing structure or parcel of land that has been elevated by fill would not be inundated by the base flood. This is generally required after an area in the Flood Hazard Area has been filled, in accordance with FEMA construction standards, resulting in land that is now above the base flood elevation.
- (4) **Conditional Letter of Map Revision based on Fill (CLOMR-F).** A letter from FEMA stating that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. This is generally required by applicants seeking to fill in the Flood Hazard Area to make it suitable for development.
- (5) **Letter of Map Revision (LOMR).** A letter from FEMA officially revising the current FIRM map to show changes to the flood plains, Floodways, or flood elevations.
- (6) **Conditional Letter of Map Revision (CLOMR).** A letter from FEMA commenting on whether a proposed project, if built as proposed, would meet minimum NFIP standards or proposed hydrology changes. Similar to LOMR requests, these are generally used with proposed changes to BFE determinations.

901.B It is the responsibility of the applicant to secure all required Letters from FEMA. Information provided herein should not be interpreted to be the rules that FEMA will use. Always contact FEMA for full details.

**Section 902 LOMAs and CLOMAs**

902.A Where FEMA approves a LOMA the proposal or structure shall no longer be considered to be within the Flood Hazard Area and therefore no longer is required to meet the Flood Hazard Area provisions of these River Hazard Area Regulations.

902.B All LOMAs and CLOMAs, including final elevation certificates, shall be recorded by the Administrative Officer according to Chapter 230.

**Section 903 LOMR-F and CLOMR-F**

903.A Not all fill requires a LOMR-F. Only applications where the developer proposes to use fill to remove the structure from the Flood Hazard Area is required to receive a LOMR-F.

903.B Filing CLOMR-F and LOMR-F applications. As a part of the CLOMR-F application, the Community Acknowledgement Form (Form 3) must be included. The Administrative Officer is required to sign this form and may, at his or her discretion, request comments from the DRB prior to returning the form to the applicant.

- (1) Applicants are hereby informed that local requirements may be stricter than those required by FEMA. Where an application for a CLOMR-F or LOMR-F is requested which does not meet the stricter local requirements, the Administrative Officer shall make such comments on the Form and return the application to the applicant.

903.C **IMPORTANT NOTES REGARDING CLOMA-F and LOMA-F.** Approval of a CLOMA-F or LOMA-F is not a substitute for a River Hazard Area Development permit. Approval of a CLOMA-F or LOMA-F is evidence in an application for a River Hazard Area Development permit. A River Hazard Area Development permit is required prior to any filling of the Flood Hazard Area.

- (1) Once a CLOMR-F is approved by FEMA, a local application may be made to place fill in the Flood Hazard Area. The Administrative Officer shall review the CLOMR-F to ensure it meets the local regulations regarding filling of the Flood Hazard Area. Once the applicant has received the River Hazard Area Development permit, then the applicant may fill the Flood Hazard Area as described in the permit.
- (2) Upon completion of the filling, the applicant must apply for the LOMR-F from FEMA prior to any applications to develop the filled site. As a part of the application for the LOMR-F, an elevation certificate is required.
- (3) Once FEMA approves the LOMR-F the proposal shall no longer be considered to be within the Flood Hazard Area and therefore no longer is required to meet the provisions of these Flood Hazard Area Regulations.

903.D All LOMR-Fs and CLOMR-Fs, including final elevation certificates, shall be recorded by the Administrative Officer according to Chapter 230.

## **Section 904 LOMR and CLOMR**

- 904.A The City of Montpelier will require an application for a CLOMR prior to any application for a LOMR. These are letters from FEMA officially revising the current FIRM map to change floodplain and Floodway delineations or to alter or set base flood elevations at a location. The applicant will still be required to meet all provisions of this regulation in pursuit of the CLOMR or LOMR.
- 904.B Filing CLOMR and LOMR applications. As a part of the CLOMR application, the Community Acknowledgement Form (Form 3) must be included. The Administrative Officer is required to sign this form and may, at his or her discretion, request comments from the DRB prior to returning the form to the applicant.
- (1) Applicants are hereby informed that local requirements may be stricter than those required by FEMA. Where an application for a CLOMR or LOMR is requested which does not meet the stricter local requirements, the Administrative Officer shall make such comments on the Form and return the application to the applicant.
- 904.C A permit cannot be issued for a project where a lower base flood elevation is proposed by a CLOMR until the final LOMR has been issued. A permit can be issued for the portion of the project not dependent on the changes that will result from the LOMR and condition the full permit upon receipt of the final LOMR.

## **PART 10. DEFINITIONS**

### **Section 1001 Interpretation of Definitions**

1001.A For the purpose of these regulations, the terms below shall have the following meanings unless a different meaning clearly appears from the context. Where a term is not defined herein, the definitions of the NFIP program and 44 CFR §59.1 may be applied.

- (1) AAP is abbreviation for Accepted Agricultural Practices as defined by the Commissioner of Agriculture.
- (2) Accessory Structure is a structure which is: 1) detached from and clearly incidental and subordinate to the principal use of structure on a parcel, 2) located on the same parcel as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages (two car detached garages and smaller), garden and tool sheds, play houses, and above ground swimming pools.
- (3) Accessory Use is a use which is customarily incidental and subordinate to the principal use of the lot or parcel of land, is located on the same lot or parcel as the primary use and is clearly related to the principal use.
- (4) Act means the Vermont Planning and Development Act 24 V.S.A., Chapter II7.
- (5) Adjoining Landowner means any person owning land contiguous to the proposed development including land separated by a road or road right of way.
- (6) Administrative Officer shall mean the River Hazard Area Administrative Officer, or the assistant Administrative Officer appointed in accordance with the provisions of Chapter 200 of these regulations.
- (7) Area of special flood hazard is the same as Flood Hazard Area.
- (8) Base flood means a flood having a one percent chance of being equaled or exceeded in any given year (100 year flood).
- (9) Base Flood Elevation (BFE) is the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.
- (10) Basement means any area of a structure having its floor elevation below ground level on all sides.
- (11) BFE is an abbreviation for Base Flood Elevation
- (12) BMP is abbreviation for Best Management Practices as defined by the Commissioner of Agriculture.

- (13) Building means a structure, not readily moveable, consisting of a roof supported by columns or walls intended for the shelter or enclosure of persons, animals, or personal property including any storage tanks.
- (14) City means the City of Montpelier.
- (15) Demolished means the intentional deconstruction of a structure.
- (16) Design Flood Elevation (DFE) is the regulatory flood elevation adopted by the community that is the base flood elevation, at a minimum, and may include any additional freeboard as adopted by the community. (See section 644).
- (17) Destroyed means the unintentional loss of a structure.
- (18) Development means any human-made change to improved or unimproved real estate including but not limited to:
- a. Construction, reconstruction, relocation, and placement of buildings and other structures;
  - b. Mining, dredging, filling, grading, paving, excavation and drilling operations;
  - c. The outdoor storage of equipment or materials;
  - d. Any change in use from residential to non-residential (or vice versa) of any structure or land or part thereof;
  - e. The division of a parcel containing lands within the Flood Hazard Area into two or more parcels including boundary line adjustments.
- (19) DFE is the abbreviation for Design Flood Elevation. (See section 644).
- (20) DRB is abbreviation for the City of Montpelier Development Review Board.
- (21) Farming means (10 V.S.A. §6001(22)):
- a. the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural or orchard crops; or
  - b. the raising, feeding, or management of livestock, poultry, fish, or bees; or
  - c. the operation of a greenhouse; or
  - d. the production of maple syrup; or
  - e. the on-site storage, preparation and sale of agricultural products or wastes produced on the farm; or
  - f. the on-site production of fuel or power from agricultural products or wastes produced on the farm; or
  - g. the raising, feeding, or management, of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.
- (22) Farm structure is a building for housing livestock, raising horticultural or agronomic

plants, or carrying out other practices associated with farming but excluding a dwelling for human habitation [§4413(d)].

- (23) FBFM is abbreviation for Flood Boundary and Floodway Map.
- (24) FEMA is abbreviation for Federal Emergency Management Agency.
- (25) Fill means any placed material that changes the natural grade or increases the elevation of a structure on a site.
- (26) FIRM is abbreviation for Flood Insurance Rate Map.
- (27) Flood means (a) a general and temporary condition of partial or complete inundation of normally dry land from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding 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 the 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 abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.
- (28) Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, and mudslide (i.e. mudflow) - related erosion areas having special hazards have been designated as Zones A, M, and/or E.
- (29) Flood Hazard Area is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Area Map. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, AI-30, AE or A99. The term "flood hazard area" is synonymous in meaning with the terms "area of special flood hazard" and "special flood hazard area".
- (30) Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- (31) Flood insurance study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.
- (32) Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their

contents.

- (33) Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Also referred to as the regulatory Floodway.
- (34) Forestry is the use and management of woodlands for purposes of timber production, harvesting, and management for commercial, wildlife and/or conservation purposes. This definition specifically excludes permanent sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products; but may include, as accessory uses, portable sawmills and equipment used on-site in association with timber harvesting activities.
- (35) Functionally dependent use is a use that must be located or carried out close to water- such as a docking or port facility necessary for unloading of cargo or passengers, shipbuilding and ship repair.
- (36) Historic structure means any structure that is:
- (a) listed individually in the National Register of Historic Places 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 district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
  - (c) individually listed on the Vermont Register of Historic Places; or
  - (d) individually listed on a local inventory of historic places in communities with preservation programs that have been certified either:
    - i. by an approved state program as determined by the Secretary of the Interior; or
    - ii. directly by the Secretary of the Interior in states without approved programs.
- (37) Interested Person means anyone meeting the definition of the term as set forth in the Act [§4465(b)]. The definition includes the following:
- a. A person owning title or property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by law who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
  - b. The municipality in which the plan or a regulation of which is at issue in an appeal brought under this chapter or any municipality which adjoins such municipality.
  - c. A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act



taken under the regulation, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or regulation of the municipality.

- d. Any ten (10) persons who may be any combination of voters or real property owners within a municipality listed in subdivision (b) above who, by signed petition to the DRB, the regulations of which is at issue in any appeal brought under the Act, allege that the relief requested by a person under the Act, if granted will not be in accordance with the policies, purposes or terms of the plan or regulation of that municipality. This petition to the DRB must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
  - e. Any department and administrative subdivision of the state owning property or any interest therein within a municipality listed in subdivision (b) of this subsection, and the agency of commerce and community development.
- (38) Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicle, building access, or storage in an area other than a basement area is not considered a structure'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 Section 60.3 of the Federal Register.
- (39) Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain 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.
- (40) Manufactured home park means a parcel of land containing two or more manufactured homes for use as residences.
- (41) Minor internal improvement is any development within an existing structure which does not otherwise require a zoning permit or building permit, and the cost of such improvement is less than \$500 in value.
- (42) New construction under these regulations means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.
- (43) NFIP is abbreviation for National Flood Insurance Program.
- (44) Parcel is any contiguous piece of land in single ownership and not divided by a public or private highway, with defined boundaries created by an act of subdivision.

- (45) Permit is same as River Hazard Area Development permit.
- (46) Public Highways means any state highway and any class 1, 2, 3, or 4 city highway.
- (47) Recreational vehicle means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.
- (48) Regulatory Floodway in the City of Montpelier *See Floodway*
- (49) Repetitive loss means flood-related damage sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.
- (50) Special Flood Hazard Area *See Flood Hazard Area*
- (51) Start of construction includes substantial improvement and means the date the building permit was issued provided the actual start on construction or repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, 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 roads and/or walkways; nor does it include excavation for a basement, footing, 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, regardless whether that alteration affects the external dimension of the building.
- (52) Structure means an assembly of materials for occupancy or use, including but not limited to, a walled and roofed building, a gas or liquid storage tank (either above or below the ground), other buildings, manufactured home, billboard, sign, wall, or fence.
- (53) Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred (See Chapter 630).
- (54) Substantial improvement means any repair, reconstruction, or improvement of a

nonconforming structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction (See Chapter 630).

- (55) Violation means the failure of any development to be fully compliant with these regulations including any failure to provide documentation of a required elevation certificate, certificate of compliance, or any other certificate or other evidence of compliance required under these regulations.
- (56) V.S.A. is abbreviation for Vermont Statutes Annotated.

**Section 1002 Additional Definitions**

1002.A As a result of NFIP requirements, these regulations must define certain words or phrases which do not appear in these regulations. These words or phrases are listed below with their definitions.

- (1) Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of roads, and either final site grading or the pouring of concrete pads) is completed before October 31, 1973.
- (2) Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of roads, and either final site grading or pouring of concrete pads).
- (3) New manufactured home park or subdivision means a manufactured home park or subdivision for 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 roads, and either final grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the community.