



Vermont Emergency Management  
Department of Public Safety  
103 South Main Street  
Waterbury, VT 05671-2101  
[www.vemvt.com](http://www.vemvt.com)

toll free 800-347-0488  
phone 802-244-8721  
fax 802-241-5556

September 13, 2012

Paul Ford  
Regional Administrator  
FEMA Region I  
90 High Street  
Boston, MA 02110

Re: Town of Woodford (FIPS 003-85675-00)  
FEMA 4022-DR-VT - FEMA Determinations – PWs 01912 and PW 01919

Dear Mr. Ford:

Please find attached the Town of Woodford's request for FEMA to make public the underlying bases for assigning a value of \$0 to PW 01919 and de-obligating funds in PW 01912. FEMA has not provided notice of final determination regarding these PWs to the State and Applicant-Town. However, because of the considerable delay in FEMA's response to the State and Towns regarding debris removal, we have encouraged the Town to investigate its opportunity for appeal.

As the Town of Woodford explains in its letter, the above-mentioned PWs do not provide a rationale for zero funding of 01919 and de-obligation of funds in 01912. That is to say, the PW fails to provide explanation and analysis of how the policy cited, in concert with the facts, forms the basis for denying the requested assistance. PW 01919 merely states in a "Note" that "This PW is for \$0.00 . . . under the jurisdiction of another Federal Agency." Likewise, PW 01912 briefly alludes to "falling under the jurisdiction of another Federal agency, the NCRS." Despite the fact that the Town desires to appeal these PWs, without disclosure of FEMA's reasoning for its actions, the applicant's hands are tied relative to an appeal. FEMA has not provided adequate notice or process with regard to these projects.

As you know, the State and the Joint Field Office have been actively engaged in discussions throughout the summer about debris removal assistance. We understand our mutual aim is to address the scope and character of the work done by towns so we can resolve and provide much needed assistance. However, as the attached indicates, because of FEMA's continued delay and failure to notify the Town of Woodford of the status of its applications and the basis for any denials, the Town cannot be certain of how to preserve its appeals rights or when to assert them.

Relative to each of the aforementioned PWs, I am requesting that an amendment be written which describes in detail the reason for FEMA's assignment of value. Alternatively, in this case FEMA may

choose to provide the State with a letter(s) which describes in detail the basis for each of FEMA's determinations. Consistent with 44 CFR 206.206 and 206.200, upon our receipt of these documents we shall provide notice to the Town of Woodford. Upon the Town's receipt of State notice, consistent with 44 CFR 206.206, the time limits for any appeal of these matters shall begin. Absent this, we remain of the belief that, relative to the aforementioned PWs, FEMA has yet to provide sufficient notice of any determination which would trigger the appeal process.

I appreciate your cooperation.

Sincerely,



Ben Rose  
Public Assistance Officer  
Vermont Emergency Management

Encls. Town of Woodford Letter and attachments

Cc: Ryan Thurber, Town of Woodford  
Jeb Spaulding, Secretary of Administration, Governor's Authorized Representative

Town of Woodford,VT  
1391 Vermont Route 9  
Woodford, VT 05201-9410

RECEIVED

SEP 13 2012

September 7, 2012

Ben Rose  
Public Assistance Officer  
Vermont Emergency Management  
Department of Public Safety  
103 South Main Street  
Waterbury, Vermont 05671-2101

Re: Town of Woodford (FIPS 003-85675-00)  
FEMA 4022-DR-VT - FEMA Determinations – PWs 01919 and 01912

Dear Ben:

As a result of Tropical Storm Irene the Town of Woodford undertook certain work described in the above-captioned PWs. Specifically, this included the following work adjacent to and for the protection of the Woodford Town Hall: sediment removal and woody debris removal for the City Stream, Bolles Brook, and Walloomsac Roaring Branch River (PW 01919 Cat B); and woody debris removal from the Walloomsac Roaring Branch River and City Stream (PW 01912 Cat A). These two PW's include a scope of work that at the time and in the judgment of Town leadership posed an imminent threat to public and private infrastructure.

We understand these PWs have been completed. However, the Town has yet to receive official notice of a final determination. I am both alarmed at the lack of process and the failure of FEMA to provide any basis whatsoever for denying eligibility. Noting the delay in resolving this matter, the Town asks that the State move quickly to transmit this letter to FEMA to preserve the Town's right to appeal.

The situation confronting the Town of Woodford for PW 01919 is that FEMA simply made determinations that the work described was valued at \$0, because it was "ineligible." Similarly in PW 01912 the *Scope of Work* states no more than: Sites 1 and 3 are not considered, merely alleging the location "adjacent to private property, falling under the jurisdiction of another Federal agency." There is not a single fact--let alone anything amounting to an explanation--in the *Damage Description and Dimensions* or *Scope of Work* sections of either of the PWs, in support of or relating to private property or the responsibility of other federal agencies in this work.

Moreover, FEMA never provided the State of Vermont as Grantee or the Town of any factual basis for this determination of ineligibility. While we have become aware of a July 12, 2012, letter from FEMA

Federal Coordinating Officer, James N. Russo, to Sue Minter, the State's Recovery Officer for Tropical Storm Irene (copy attached), that letter is a general discussion of debris and wreckage removal from rivers relating to three unidentified Vermont towns. The letter is not specific to the Town of Woodford or the aforementioned PWs, amounting to only a general discussion of FEMA policy.

Because there is no statement from FEMA specifying the basis for its determinations of ineligibility for the aforementioned PWs, let alone a rational basis, the Town of Woodford is confronted with a significant problem. Specifically, while the Town of Woodford believes that its work in each of the two subject PWs is eligible, it can't file an appeal because FEMA has not articulated any reasons for declaring the Town's work to be ineligible. By failing to articulate a basis for its notice of ineligibility FEMA makes a focused complaint impossible—effectively denying us *due process*.

From the Town of Woodford's viewpoint, FEMA has failed to provide any comprehensible determination of ineligibility in PWs 01919 and 01912. Not only does the Town not have an understanding of what determination it should appeal, any Federal Court reviewing FEMA's actions in this matter could never defer to FEMA's judgment, because FEMA has offered no reasonable basis for its determinations in these matters. Separately, a Federal Court would likely have little difficulty issuing a writ of mandamus, compelling FEMA to do its job (i.e., offering bases for its determinations) in this instance.

Related to this matter and also of significant concern is the lack of notice both of PW determinations and of appeal rights. Both the FEMA-State agreement and 44 CFR 206.200 suggest that FEMA's notices of determinations should be made to the Grantee/State, who would then advise the sub-grantee. In addition to mere regulatory compliance, this would seem consistent with the requirements for reasonable grants management.

As you know, FEMA's inadequate process and arbitrary denial of assistance in this matter are frustrating the Town and its leadership to no end. Therefore, the Town of Woodford is requesting that you demand: (1) FEMA provide detailed explanations for its beliefs that the above-captioned PWs are ineligible; and (2) that the appeals filing clock will not begin to run until we receive proper written notice of such. Until such explanations are received, the Town of Woodford shall remain of the opinion that it has not received adequate notice of a FEMA determination which would support or require an appeal. Should FEMA disagree, we believe such will constitute a determination of adequacy of notice to be immediately contested in one of a couple available forums.

Again, we appreciate your help and cooperation in this matter.

Sincerely,

Ryan Thurber  
Woodford Selectboard Chair

Encl: James N. Russo Letter

U.S. Department of Homeland Security  
Joint Field Office  
30 Allen Martin Drive  
Essex Junction, VT 05452



FEMA

July 12, 2012

Ms Sue Minter  
Irene Recovery Officer  
Agency of Administration, State of Vermont  
109 State Street  
Montpelier, VT 05609

Re: Debris in Streams

Dear Ms Minter:

You have asked whether FEMA may provide Public Assistance grant funding under major disaster declaration FEMA-4022-DR to three Vermont towns for debris removal from streams. We have examined both FEMA's and the National Resource Conservation Service's authorities, as well as recent appeal decisions regarding removal of debris from streams under the circumstances described during Vermont's response to Tropical Storms Irene and Lee.

Sections 403 and 407 of the Stafford Act authorize FEMA to provide grant assistance for removal of debris and wreckage resulting from a major disaster from publicly and privately owned waters when necessary to eliminate an immediate threat to lives, public health, and safety; eliminate immediate threats of significant damage to improved public or private property; or ensure the economic recovery of the affected community to the benefit of the community-at-large. The debris and wreckage must be the direct result of the Presidentially declared major disaster and located in the designated disaster area, and the applicant must have the legal responsibility to remove the debris or wreckage.

FEMA may not, however, fund debris removal activities which another federal agency has specific authority to fund. The reason for this prohibition is that FEMA would potentially "augment" that agency's appropriations if FEMA provided assistance for debris removal to an applicant when that other federal agency had more specific authority.

As FEMA may not fund activities which NRCS has specific authority to fund under the Emergency Watershed Protection (EWP) Program, eligibility determinations regarding debris removal from streams and other wetlands must be made on a case-by-case basis in coordination with the state and NRCS.

The NRCS has authority to provide assistance, through its Emergency Watershed Protection (EPW) Program, to implement emergency measures, including debris removal, where a sudden impairment of a watershed threatens life or property as determined by the State Conservationist. The NRCS regulations specifically describe the Program's objective as "to assist sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed." As the regulations expound, "EWP Program technical and financial assistance may be made available to a qualified sponsor . . . upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State Conservationist." Such assistance "includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements." The federal cost-share for EWP projects is 75%, which may be increased to 90% in prescribed circumstances.

The regulations give NRCS broad discretion in deciding which projects to fund, stating "NRCS may determine that a measure is not eligible for assistance for any reason, including economic and environmental factors or technical feasibility." The EWP Program regulations also set forth criteria for eligible projects and impose various constraints regarding what sorts of projects NRCS will fund. One of these key constraints is that the NRCS will not provide funding for activities undertaken by a sponsor before the signing of an agreement between NRCS and the sponsor.

Current FEMA policy prohibits the provision of Public Assistance funding for debris removal in streams if the work falls under the specific authority of NRCS under the EWP Program. Therefore, FEMA is prohibited from providing Public Assistance to any of the three towns for debris removal that would have been eligible under the EWP had the town signed an agreement with or otherwise sought pre-approval from NRCS before beginning the work.

FEMA has previously dealt with a similar situation this past year in responding to a second appeal submitted by a Florida applicant under major disaster FEMA-1545-DR. Under that major disaster, the Sunshine Water Control District (applicant) applied for Public Assistance funding for removal of 707 trees that Hurricane Frances blew into the water control system maintained by the District. FEMA denied the application on two grounds, one of which was the fact that the debris removal costs were reimbursable under the EWP. The case file for this matter included a letter in which NRCS informed the applicant that it had performed the eligible work before the execution of a project agreement with NRCS. Due to this procedural oversight, NRCS denied funding and determined the completed work ineligible for reimbursement.

Regarding this NRCS determination, the applicant argued to FEMA that it is impossible for jurisdictions to enter into agreements with NRCS before initiating debris removal work, and that FEMA should grant the applicant an exception. In response, the second appeal response letter stated "FEMA does not provide disaster assistance funding when another federal agency has specific authority to fund the disaster recovery work." Therefore, the second appeal response letter concluded, "the requested debris removal costs are not eligible for funding under the FEMA Public Assistance Program."

If you wish to appeal this determination, you may do so through the VOAT (Grantee) to FEMA Region I, Regional Administrator. In accordance with 44CFR §202.206, your appeal must be in writing within 60 days from the receipt of this notification and shall contain documented justification supporting your provisions in Federal law, regulation or policy with which you believe our action was inconsistent.

In future events, since National Resource Conservation Service's authorities clearly place the responsibility for federal reimbursement in the Emergency Watershed Protection Program, I would recommend an immediate request for NRCS assistance. FEMA can assist, if necessary, to provide immediate, short-term support through the mission assignment process, to enable immediate mobilization of NRCS technical assistance under direct federal assistance. Additionally, working with NRCS to develop a standard sponsor request for assistance will expedite the processes.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Russo", written over a vertical line.

James N. Russo  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4022-DR-VT

## Johnson, Harriet

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**From:** Johnson, Harriet  
**Sent:** Wednesday, September 19, 2012 11:01 AM  
**To:** Landry, Mark  
**Cc:** 'Jonathan M. Hoyes'  
**Subject:** EHP supplemental information  
**Attachments:** New Map.doc; VSH Special Considerations Sheet.xlsx

Please find the attached supplemental attachments to the EHP request for Berlin.

Harriet Johnson | Agency of Administration  
109 State Street | Montpelier, VT 05609-0201  
ph: 802.828.3322 | fax: 802.828.3320

FEDERAL EMERGENCY MANAGEMENT AGENCY  
**SPECIAL CONSIDERATIONS QUESTIONS**  
 FEMA            4022            DR            VT

1. APPLICANT'S NAME VT Department of Building & General Services	2. FIPS NUMBER <b>000-US9QN-00</b>	3. DATE 07/26/12
4. PROJECT NAME Vermont State Hospital in Berlin	5. LOCATION Fisher Road, Berlin, VT	

**Form must be filled out - for each project.**

1. Does the damaged facility or item of work have insurance and/or is it an insurable risk? (e.g., buildings, equipment, vehicles, etc.)

Yes     No     Unsure                      Comments \_\_\_\_\_

Applicant's Insurance Policy is on file with the FEMA Insurance Specialist.

2. Is the damaged facility located within a floodplain or coastal high hazard area, or does it have an impact on a floodplain or wetland?

Yes     No     Unsure                      Comments \_\_\_\_\_

Proposed Vermont State Hospital Location - Zone C, Map 5001060008B

3. Is the damaged facility or item of work located within or adjacent to a Coastal Barrier Resource System Unit or an Otherwise Protected Area?

Yes     No     Unsure                      Comments \_\_\_\_\_

\_\_\_\_\_

4. Will the proposed facility repairs/reconstruction change the pre-disaster condition? (e.g., footprint, material, location, capacity, use or function)

Yes     No     Unsure                      Comments Project at a new location.

\_\_\_\_\_

5. Does the applicant have a hazard mitigation proposal or would the applicant like technical assistance for a hazard proposal?

Yes     No     Unsure                      Comments 406 Hazard Mitigation achieved through Codes.

"406 Hazard Mitigation cannot be applied to an Alternate Project", FEMA PA Digest, pg. 5

6. Is the damaged facility on the National Register of Historic Places or the state historic listing? Is it older than 50 years? Are there more, similar buildings near the site?

Yes     No     Unsure                      Comments WSOC located in Historic District

"Donor" Facilities within the WSOC not yet identified.

7. Are there any pristine or undisturbed areas on, or near, the project site? Are there large tracts of forestland?

Yes     No     Unsure                      Comments Will be determined by Vermont's Act 250 process

\_\_\_\_\_

8. Are there any hazardous materials at or adjacent to the damaged facility and/or item of work?

Yes     No     Unsure                      Comments Will be determined by Vermont's Act 250 process

\_\_\_\_\_

9. Are there any other environmentally or controversial issues associated with the damaged facility and/or item of work?

Yes     No     Unsure                      Comments Will be determined by Vermont's Act 250 process

\_\_\_\_\_

Draw a Shape Cancel



Drawing Sub-Locality / Neighborhood

200 ft

Contributed by in1926, Cody, Christine and others

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**FEMA**

September 24, 2012

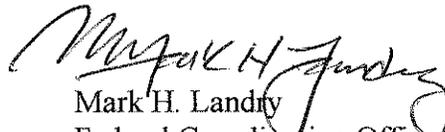
Mr. Jeb Spaulding  
State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201

Dear Mr. Spaulding:

This letter acknowledges your request dated September 5, 2012, requesting Notification for a FEMA Environmental and Historic Preservation Review, regarding the Vermont State Hospital in Berlin, Vermont. You specifically asked that FEMA provide findings and notify the state of conditions as EHP related reviews are completed.

Peter Thomas, our EHP Lead has met with Micaela Tucker, Mike Kuhn and your consultant to discuss the Vermont State Hospital, and begin the needs assessment. The environmental assessment is currently under development by the State's Consultant and FEMA. You will be notified once the assessment has been completed. If you have any questions or concerns, please do not hesitate to contact me. Thank you

Sincerely,

  
Mark H. Landry  
Federal Coordinating Officer  
FEMA 4022-DR-VT



**FEMA**

September 26, 2012

Mr. Jeb Spaulding  
State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201

Dear Mr. Spaulding:

This letter acknowledges your request dated August 30, 2012, regarding The State's Intent to seek re-consideration of Temporary Relocation Assistance Eligibility for Displaced Department of Human Resources Functions under FEMA 4022-DR-VT.

Your requests are under review and you will be notified once a decision has been made. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Landry".

Mark H. Landry  
Federal Coordinating Officer  
FEMA 4022-DR-VT



**FEMA**

September 26, 2012

Mr. Jeb Spaulding  
State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201

Dear Mr. Spaulding:

This letter acknowledges your request dated August 30, 2012, requesting a twelve-month extension of eligibility for temporary relocation of displaced agencies and departments located at the Waterbury State Office Complex through Sept 1, 2013, for FEMA 4022-DR-VT.

Your request is being reviewed, and you will be notified once a decision has been made. Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Mark H. Landry".

Mark H. Landry  
Federal Coordinating Officer  
FEMA 4022-DR-VT



**FEMA**

September 26, 2012

Mr. Jeb Spaulding  
State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201

Dear Mr. Spaulding:

This letter acknowledges your request dated August 30, 2012, regarding Improved/Alternate Project Grant Eligibility and Completion Deadline for Facilities at the Waterbury State Office Complex for FEMA 4022-DR-VT. You specifically requested an extension of time, on behalf of sub-grantee, BGS from September 2, 2012 to September 2, 2013 and second, you requested that the time for completion of improved projects be reasonably extended to reflect the delay in completing the initial project worksheets.

Your requests are under review and you will be notified once a decision has been made. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Landry".

Mark H. Landry  
Federal Coordinating Officer  
FEMA 4022-DR-VT



FEMA

September 27, 2012

Mr. Jeb Spaulding  
Secretary of the Administration  
Agency of Administration  
109 State Street  
Montpelier, VT 05609-0201

Re: *Request for Extension to the Eligible Period of Assistance for Temporary Facilities of Various State Agencies at the Waterbury State Office Complex – FEMA-4022-DR*

Dear Secretary Spaulding:

I am responding to your letter of August 30, 2012, in which you requested an extension until September 1, 2013, for the eligible period of assistance for temporary facilities for essential services of various departments of the Agency of Human Resources, Agency of Natural Resources, and Agency of Agriculture, Food and Markets. These agencies originally performed these essential services at the Waterbury State Office Complex (WSOC) at the time of Tropical Storm Irene, but were forced to move those services as a result of the storm.

The Federal Coordinating Officer informed the State Coordinating Officer via a letter dated January 19, 2012, of which state agencies and departments at the WSOC were eligible and ineligible applicants for temporary relocation under major disaster declaration FEMA-4022-DR. Through letters dated January 26 and March 3, 2012, I informed you that FEMA would provide an estimate of up to twelve months (September 3, 2011, to September 2, 2012) in the initial temporary relocation Project Worksheets for the agencies/departments that are eligible applicants for temporary relocation.

The FEMA Joint Field Office staff has been working closely with the grantee and applicants and expects to have Project Worksheets (PWs) for basic repairs for each building at the WSOC completed by October 15, 2012. FEMA will then incorporate the appropriate special considerations into each PW, including but not limited to codes and standards, hazard mitigation measures, and floodplain management compliance. Once finalized and obligated, FEMA will work with the grantee and applicants to identify any and all alternate and improved projects for buildings at the WSOC within 90 days.

Based on this projected schedule, I have determined to extend the eligible period of assistance to March 1, 2013, for temporary facilities for essential services of the departments of the Agency of Human Resources, Agency of Natural Resources, and Agency of Agriculture, Food and Markets that you identified in Attachment A of your August 30, 2012, letter. I will instruct the Federal Coordinating Officer to include the new period of performance estimate in the scope of work for each of the Category B temporary relocation PWs for these departments/agencies.

OCT 4 2012

Mr. Jeb Spaulding  
September 27, 2012  
Page 2 of 2

It is important to recognize that this letter does not constitute an eligibility determination of any and all costs incurred by the State for the temporary relocation of these departments and agencies. FEMA will—during the preparation of the project worksheets—evaluate all costs reported by the applicant for the temporary relocation pursuant to federal law, regulations, and FEMA policy.

You may request additional extensions pursuant to Section VII(C) of FEMA Recovery Policy No. 9523.3 and 44 C.F.R. § 206.204(d) as the grantee and applicants further develop their particular requirements for restoring each damaged building in which the essential services were originally performed and the associated timelines for completing the work. I ask that you submit any and all future requests for time extensions to my office no later than 30 days before the expiration of the eligible period of assistance to provide sufficient time for a review of the request.

Sincerely,



Paul F. Ford

Acting Regional Administrator  
FEMA Region I

PFF:twS

Enclosures

- (1) Letter from Jeb Spaulding, Secretary of the Administration, to Don R. Boyce, Regional Administrator re: *Temporary Relocation of Facilities at the Waterbury State Office Complex – Major Disaster Declaration FEMA-4022-DR* (Aug. 30, 2012) (with attachments)



FEMA

October 2, 2012

Mr. Jeb Spaulding  
Governor's Authorized Representative  
Secretary of the Administration  
State of Vermont  
Agency of Administration  
109 State Street  
Montpelier, VT 05609

*Re: Extending Timelines for Submitting Requests for Alternate Projects and Completing Improved Projects for Facilities at the Waterbury State Office Complex – Major Disaster Declaration FEMA-4022-DR*

Dear Secretary Spaulding:

I am responding to your letter of August 30, 2012, in which you made two requests. First, you requested that I extend the timelines for the grantee to request alternate projects under the Public Assistance Program for facilities at the Waterbury State Office Complex (WSOC). Second, you requested that I extend the project completion deadlines for improved projects under the Public Assistance Program for facilities at the WSOC.

***Request 1 – Extending the Timelines for Requesting an Alternate Project***

You requested that I extend the timelines for the grantee to request alternate projects under the Public Assistance Program for facilities at the WSOC until September 2, 2013. FEMA updated and published Recovery Policy 9525.13 on August 22, 2008,<sup>1</sup> which removed the previous requirement for a grantee to submit requests for alternate projects within 12 months of the Kickoff Meeting. Because there are no set timelines for the grantee to request alternate projects, there is no need to approve your extension request.

There are, however, several limitations on the ability to request and complete alternate projects that I wanted to bring to your attention. First, the grantee must request and FEMA must approve all alternate projects before construction begins.<sup>2</sup> For example, moving forward on acquisition and non-destructive planning and design activities would not need prior approval by FEMA. However, FEMA would need to approve improved projects involving demolition, deconstruction, and construction involving a different size, location, footprint, or function than the original project before the subgrantee begins the work.

<sup>1</sup> FEMA Recovery Policy No. 9525.13, *Alternate Projects* (Aug. 22, 2008).

<sup>2</sup> 44 C.F.R. § 206.203(d)(2).

Second, following approval by FEMA, the subgrantees must complete the alternate projects within the required project completion deadlines.<sup>3</sup> Therefore, I strongly recommend that the grantee submit alternate project requests to FEMA with sufficient time for FEMA to complete its review and for the subgrantee to complete the alternate project before the completion deadline.

***Request 2 – Extending the Project Completion Deadlines for Improved Projects***

You requested that I “reasonably extend” the timelines for completing improved projects for facilities at the WSOC in order to reflect the delay in completing the initial project worksheets. The project completion timeline for permanent work is 18 months after a major disaster is declared.<sup>4</sup> Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the grantee may extend this deadline for an additional 30 months on a project by project basis.<sup>5</sup> As you are still within the initial 18 month period following the date of major disaster declaration FEMA-4022-DR and you have the authority under certain circumstances to extend project completion deadlines for an additional 30 months, your request for an extension is premature. You can resubmit a request for a time extension beyond the grantee’s authority for an individual improved project when you are closer to the end of the 48-month period.<sup>6</sup>

I want to bring to your attention several additional considerations concerning improved projects. First, a subgrantee must obtain approval from the State for an improved project before the start of construction. Second, the grantee must submit and FEMA must approve any improved project that results in a significant change from the pre-disaster configuration of the facility prior to construction.

We remain committed to continue to work closely with the State in the development of alternate and improved project requests, and stand ready to assist in any way to further the recovery of the State. Please contact me if you have any questions or concerns.

Sincerely,

  
for Mark H. Landry  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4022-DR-VT

cc: Ross Nagy, State Coordinating Officer

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<sup>3</sup> 44 C.F.R. § 206.204.

<sup>4</sup> 44 C.F.R. § 206.204(c)(1).

<sup>5</sup> 44 C.F.R. § 206.204(c)(2).

<sup>6</sup> 44 C.F.R. § 206.204(d).



**FEMA**

October 11, 2012

Mr. Jeb Spaulding  
Governor's Authorized Representative  
Secretary of the Administration  
Agency of Administration  
109 State Street  
Montpelier, VT 05609-0201

Re: *Request for Extension to the Eligible Period of Assistance for Temporary Facilities of Various State Agencies at the Waterbury State Office Complex – FEMA-4022-DR*

Dear Secretary Spaulding:

I am following up with you concerning my letter of September 27, 2012, in which I responded to your request for a time extension for the period of eligibility for temporary facilities for various State agencies at the Waterbury State Office Complex. In this letter, I informed you that I had determined to extend the eligible period of assistance to March 1, 2013, for temporary facilities of certain departments of several state agencies.

Unfortunately, the first and fourth paragraphs of my letter incorrectly refer to the "Agency of Human Resources" when it should have referred instead to the "Agency of Human Services." As such, I wanted to correct these typographical errors in order to clarify the scope of the extension that I approved on September 27, 2012. Specifically, I have approved an extension to the eligible period of assistance to March 1, 2013, for temporary facilities for essential services of the departments of the Agency of Human Services, Agency of Natural Resources, and Agency of Agriculture, Food, and Markets that you identified in Attachment A of your August 30, 2012, letter.

The Federal Coordinating Officer (FCO) had previously determined that the Department of Human Resources was ineligible for temporary relocation assistance on January 19, 2012. I have not changed, amended, or in any way superseded or rescinded that decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul F. Ford", written over a circular stamp or seal.

Paul F. Ford  
Acting Regional Administrator  
FEMA Region I

PFF:tws

Enclosure

OCT 15 2012



**FEMA**

October 17, 2012

Mr. Jeb Spaulding  
Governor's Authorized Representative  
Secretary of the Administration  
Agency of Administration  
109 State Street  
Montpelier, VT 05609-0201

Re: *Notice of Intent to Seek Reconsideration of Temporary Relocation Assistance for the Department of Human Resources – FEMA-4022-DR*

Dear Secretary Spaulding:

I am responding to your letter of August 30, 2012, in which you notified the Regional Administrator of the State of Vermont's intent to seek reconsideration of the Federal Coordinating Officer's (FCO) determination on January 19, 2012, that the Department of Human Resources was ineligible for temporary relocation assistance. Following my review of your letter and documentation on this matter, I have concluded that I will not reconsider the FCO's determination.

First, the deadline for submitting an appeal has expired. A grantee or subgrantee may appeal a decision by FEMA regarding eligibility for, from, or amount of Public Assistance under the Stafford Act.<sup>1</sup> The grantee must submit the appeal in writing directly to FEMA and an applicant must submit an appeal through the grantee within sixty days after receipt of notice of the action that is being appealed.<sup>2</sup> The FCO notified the grantee that the Department of Human Resources was ineligible for temporary relocation assistance on January 19, 2012, and the deadline for submitting an appeal was March 19, 2012. The grantee has never submitted an appeal of this decision. Therefore, the Stafford Act and FEMA regulations prohibit FEMA from considering the grantee's appeal of the FCO's determination.

Second, even if the appeal period were open, I would have concluded that the FCO's determination on January 19, 2012, was consistent with federal law, regulation, and FEMA policy. Section 403(a)(3)(D) of the Stafford Act authorizes FEMA to provide Public Assistance for temporary facilities for schools and other essential community services that are essential to saving lives and protecting and preserving property or public health and safety.<sup>3</sup> FEMA has

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<sup>1</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, § 423 (1974) (codified as amended at 42 U.S.C. § 5189a); 44 C.F.R. § 206.206.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* § 403(a)(3)(D) (codified as amended at 42 U.S.C. § 5170b(a)(3)(D)).

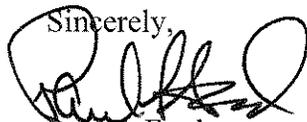
OCT 19 2012

Mr. Jeb Spaulding  
October 17, 2012  
Page 2 of 2

provided guidance on determining eligibility for and duration of temporary facility assistance pursuant to Section 403(a)(3)(D) under FEMA Recovery Policy No. 9523.3.<sup>4</sup>

RP 9523.3 provides that “eligible public facilities” include facilities for police, fire protection/emergency services, medical care, education, libraries, utilities, and other essential community services.<sup>5</sup> State or local government administrative and support facilities essential to the operation of such facilities are also eligible.<sup>6</sup> Here, the Department of Human Resources does not provide essential community services—such as a police, fire, medical care, education, or utility service—and the State never offered information demonstrating that the Department performed functions essential to the operation of such facilities.

I want to clarify that the grantee and applicants should submit all requests for the reconsideration of a Public Assistance eligibility determination to Mark Landry, the FCO. The FCO will only reconsider such determinations when the grantee or applicant submits the request before the appeal period has expired for that determination. In addition, the submission of a request for reconsideration does not delay or otherwise extend the 60-day appeal period.

Sincerely,  


Paul F. Ford  
Acting Regional Administrator  
FEMA Region I

PFF:tw

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<sup>4</sup> FEMA Recovery Policy No. 9523.3, *Provision of Temporary Relocation Facilities* (Dec. 14, 2010) [hereinafter RP 9523.3].

<sup>5</sup> *Id.* § VII(A)(1).

<sup>6</sup> *Id.*



**FEMA**

October 25, 2012

Via First Class Mail

Mr. Lawrence W. Mires  
Administrative Officer  
Vermont Housing & Conservation Board  
58 East State Street  
Montpelier, VT 05602

Mr. Jeb Spaulding  
Governor's Authorized Representative  
Secretary of the Administration  
Agency of Administration  
109 State Street  
Montpelier, VT 05609-0201

Re: *Property Acquisition and Relocation for Open Space, Conveyance of a Conservation Easement to the Vermont Housing & Conservation Board by Municipalities in Vermont Major Disaster Declaration FEMA-4022-DR*

Dear Mr. Mires and Secretary Spaulding:

I am responding to Mr. Mires' letter of August 22, 2012, in which he requested that the Federal Emergency Management Agency (FEMA) approve the Vermont Housing & Conservation Board as a transferee of a conservation easement by various Vermont municipalities in property acquired for open space purposes with funds from the Hazard Mitigation Grant Program (HMGP) under major disaster declaration FEMA-4022-DR. Mr. Mires also included in his letter a copy of proposed conservation easement template entitled "Grant of Development Rights, Conservation Restrictions and Public Access Easement" and requested approval of this template.

I am approving the Vermont Housing & Conservation Board as a transferee of a conservation easement in property acquired for open space uses by a Vermont municipality with funds from the HMGP under FEMA-4022-DR. The federal regulation at 44 C.F.R. § 80.19(b)(2) provides that a subgrantee may convey an interest in property acquired for open space use with HMGP funds only to a public entity or a qualified conservation organization. Pursuant to 10 V.S.A. § 311, the Vermont Housing & Conservation Board is a "public instrumentality exercising essential governmental functions" and the exercise by the Board of its powers are held to "be the performance of an essential governmental function of the state." Based on this enabling statute, I have determined that the Vermont Housing & Conservation Board is a "public entity" under 44 C.F.R. § 80.19(b). In addition, the federal regulation at 44 C.F.R. § 80.19(b)(1) provides that any request for a subsequent transfer of any interest in property acquired for open space use must

OCT 29 2012

“include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of [section 80.19].” Mr. Mires included such a statement in his letter of August 22, 2012, which provided that “The Vermont Housing and Conservation Board hereby acknowledges and agrees to be bound by 44 CFR Section 80.19 and understands that if there is any conflict between the provisions of the VCHB Easement and FEMA Deed Restrictions or FEMA Rules, the FEMA Deed Restrictions and Rules will apply.”

In addition to approving the Vermont Housing & Conservation Board as a transferee, I have determined that conservation easement template provided by Mr. Mires complies with Section 404(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5170c(b)) (“Stafford Act”), 44 C.F.R. pt. 80, and the FEMA Model Deed Restrictions so long as you make the following two changes to the template.

First, you will need to add a new paragraph II(1) to the template that reads as follows: “The Town shall comply with the requirements, terms, and conditions of Section 404(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5170c(b)), 44 C.F.R. pt. 80, and the FEMA Deed Restrictions.” Pursuant to 44 C.F.R. § 80.19(b)(4), any subsequent conveyance by a municipality of any property interest in property acquired for open space use with HMGP funds must “reference and incorporate the original deed restrictions providing notice of the conditions in [section 80.19]...” Including the new language at paragraph II(1) will ensure clear compliance with the requirements of 44 C.F.R. § 80.19(b)(4).

Second, you will need to delete paragraph VI(1) (“Delegation of Stewardship”) of the template. Paragraph VI(1) provides that the Vermont Housing & Conservation Board can delegate its authority under the conservation easement to approve activities or acts to be undertaken by a municipality on the property acquired for open space use with HMGP funds. I am only authorizing the Vermont Housing & Conservation Board as the transferee of the conservation easement, and the ability to delegate such authority would exceed the scope of this approval and run afoul of the requirements of 44 C.F.R. § 80.19. If a municipality wants to grant a conservation easement to an entity other than the Vermont Housing & Conservation Board, then it should submit such a request through the grantee to FEMA.

I want to clarify that FEMA Region I only evaluated the conservation easement template for its consistency with the Stafford Act, 44 C.F.R. pt. 80, and the FEMA Model Deed Restrictions, and did not evaluate this template for its validity, enforceability, or consistency with other federal or state laws and regulations.

Lastly, I want to note that each municipality—after acquiring its property interest using HMGP funding—must follow the procedures under 44 C.F.R. pt. 80 for seeking approval from the Regional Administrator before conveying any interest in the property. This process should be relatively straightforward in the case where the municipality wants to convey a conservation easement to the Vermont Housing & Conservation Board, as I have already pre-approved the Board as a transferee and have no objections to the conservation easement template so long as you amend the template as described above. My staff can also review a municipality’s request to

Mr. Lawrence W. Mires and Mr. Jeb Spaulding

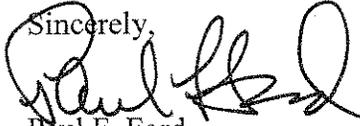
October 25, 2012

Page 3

grant a conservation easement to the Vermont Housing & Conservation Board as part of its original application for HMGP project funding in order to help expedite the review process.

Please contact Dean Savramis, the Mitigation Division Director, at (617) 956-7564 if you have any questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul F. Ford". The signature is fluid and cursive, with a large initial "P" and "F".

Paul F. Ford

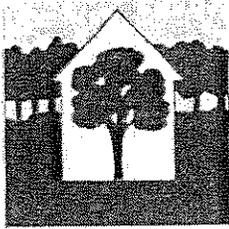
Acting Regional Administrator

FEMA Region I

**Enclosure**

Letter from Lawrence W. Mires, Administrative Officer, Vermont Housing & Conservation Board, to Richard Verville, FEMA Region I re: *HMGP and VCHB Easement* (Aug. 22, 2012)

# Vermont Housing & Conservation Board



58 East State Street  
Montpelier  
Vermont 05602

TEL 802 828 3250  
FAX 802 828 3203  
WEB [www.vhcb.org](http://www.vhcb.org)

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Gustave Seelig  
Executive Director

22 August 2012

Richard Verville, Mitigation Branch  
DHS/FEMA Region 1  
99 High Street, 6<sup>th</sup> Floor  
Boston, MA 02110

Re: HMPG and VHCB Easement

Dear Mr. Verville,

A number of property acquisitions in Vermont will soon be funded through FEMA's Hazard Mitigation Grant Program (HMGP). The state proposes to provide the 25% local match share through funds provided from the Vermont Housing & Conservation Board (VHCB). The State of Vermont proposes to require some municipalities (approximately 12-15 parcels with the greatest conservation value) that receive funds under the Hazard Mitigation Grant Program to convey a Grant of Development Rights, Conservation Restrictions and Public Access Easement to the Vermont Housing and Conservation Board which VHCB will monitor and enforce (hereinafter "VHCB Easement"). So, pursuant to 44 CFR Part 80.19(b), the State of Vermont hereby asks for FEMA's written approval of the template VHCB Easement attached hereto as well as approval of VHCB as transferee.

We also offer the following information on VHCB's qualifications as the easement holder:

1. VHCB is a public instrumentality of the State of Vermont which exists by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 VSA 311. VHCB provides grants and loans to eligible entities for projects which fulfill the dual goals of creating affordable housing for Vermonters and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands. VHCB currently holds more than 800 conservation easements on properties throughout the state. They are monitored annually by VHCB staff and interns and, for conserved farms, our nonprofit farmland conservation partners, Vermont Land Trust and Upper Valley Land Trust.
2. For each FEMA property, VHCB will prepare a Baseline Documentation Report ("BDR") that shows through maps, photographs and narrative description the location and physical condition of the property before the easement is signed by the municipality and recorded in the land records. VHCB staff will work with municipalities in developing the BDRs.
3. Monitoring of each VHCB Easement will be the responsibility of VHCB's Stewardship Coordinator and will involve visits to the property and personal contact with the appropriate municipal employee, official or volunteer at



least once very every 3 years. VHCB will make every reasonable effort to monitor the FEMA Easements annually.

4. The VHCB Easement incorporates the FEMA Deed Restrictions as well as all applicable provisions of 44 CFR Part 80 on FEMA Property Acquisition and Relocation for Open Space. It requires the town to dedicate and maintain the property in perpetuity as open space for the conservation of natural floodplain functions and allows the town to use the property for community activities and public recreation, provided that those activities are consistent with the primary purpose of the VHCB Easement.
5. The VHCB Easement will be perpetual in duration, prohibits the Town from transferring the property without the prior written approval of VHCB, FEMA, and the State of Vermont and, in Section VI, contains the easement language required by FEMA , 44 CFR Part 80.19
6. The Vermont Housing and Conservation Board hereby acknowledges and agrees to be bound by 44 CFR Section 80.19 and understands that if there is any conflict between the provisions of the VHCB Easement and FEMA Deed Restrictions or FEMA Rules, the FEMA Deed Restrictions and Rules will apply.

In our view, the HMGP property requirements pertaining to acquisitions and those additional measures proposed by VHCB are in accordance and are mutually compatible.

If you have any questions about VHCB or the template VHCB Easement, please call me, Lawrence W. Mires, at 802-828-5072 or VHCB General Counsel, James M. Libby, Jr., at 802-828-3252.

Thank you for your timely consideration of this matter.

Sincerely,



Lawrence W. Mires  
Administrative Officer

Enclosure: VHCB Easement

**GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS  
and PUBLIC ACCESS EASEMENT**

**WHEREAS**, the Vermont Housing and Conservation Board (the "Board") is a public instrumentality of the State of Vermont existing by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. §311 (the "Act"), which assists municipalities to conserve and protect Vermont's agricultural land, historic properties, important natural areas and recreational lands;

**WHEREAS**, the **NAME OF TOWN** owns a certain tract of land situated in the **NAME OF TOWN**, County of \_\_\_\_\_, State of Vermont being more particularly described in Schedule A attached hereto and incorporated herein ("Protected Property").

**WHEREAS**, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of disaster relief funds under § 5170c, **Hazard Mitigation Grant Program**, including the acquisition and relocation of structures in the floodplain

**WHEREAS**, the **Hazard Mitigation Grant Program** provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

**WHEREAS**, the State of Vermont has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA") and has entered into a mitigation grant program Grant Agreement with FEMA making it a mitigation grant program grantee.

**WHEREAS**, the Protected Property is located in **NAME OF TOWN** and **NAME OF TOWN** participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of this Grant;

**WHEREAS**, the terms of the **Hazard Mitigation Grant Program** and applicable federal law (including but not limited to 44 C.F.R. Part 80) require that the **NAME OF TOWN** agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

**WHEREAS**, when **NAME OF TOWN** acquired the Protected Property, **NAME OF TOWN** agreed to and recorded in the land records **NAME OF TOWN** certain deed restrictions which are perpetual in duration and meet the FEMA program requirements concerning the acquisition of property for open space ("FEMA Deed Restrictions");

WHEREAS, the FEMA Deed Restrictions require that **NAME OF TOWN** dedicate and maintain the Protected Property in perpetuity as open space for the conservation of natural floodplain functions. The FEMA Deed Restrictions allow the following uses, parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping; unimproved, unpaved parking lots; buffer zones; and other uses and structures consistent with FEMA guidance for open space acquisition entitled "Hazard Mitigation Assistance, requirements for Property Acquisition and Relocation for Open Space".

WHEREAS, the State of Vermont has decided to supplement the FEMA Deed Restrictions by this Grant of Development Rights, Conservation Restrictions and Public Access Easement which consists of covenants on the part of the **NAME OF TOWN** to do or refrain from doing, severally and collectively, the various acts set forth below.

WHEREAS, if there is any conflict between this Grant and the FEMA Deed Restrictions, the FEMA Deed Restrictions shall control.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that the **NAME OF TOWN**, a municipality of the State of Vermont, on behalf of its successors and assigns (hereinafter "Town"), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the **Vermont Housing and Conservation Board**, a public instrumentality of the State of Vermont existing by virtue of 10 V.S.A. §311, with an address of 58 East State Street, Montpelier, Vermont, 05602, and its respective successors and assigns (hereinafter "VHCB") the development rights and a perpetual conservation easement and restrictions (all as more particularly set forth below) in a certain tract of land (hereinafter "Protected Property") situated in the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of Vermont, said Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to the VHCB shall include all development rights except those specifically reserved by the Town herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The conservation easement and restrictions hereby conveyed to the VHCB consists of covenants on the part of the Town to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land forever.

## **I. Purposes of the Grant: Management Plan**

1. Town and VHCB acknowledge that the Purposes of this Grant are as follows (hereafter "Purposes of this Grant"):

(a) As a primary purpose to conserve and protect the natural floodplain function of the Protected Property as an undeveloped area along with and its natural value for horticultural, silvicultural, wildlife and open space purposes for present and future generations; and

(b) As a secondary purpose to provide opportunities for appropriate recreational, educational, scientific and community activities on the Protected Property, provided that all activities and uses are consistent with the FEMA Deed Restrictions and the primary purpose of this Grant.

2. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:

### **(a) LIST OF ATTRIBUTES RELATED TO PROJECT**

Town and VHCB recognize the Purposes of this Grant and share the common goal of conserving these values of the Protected Property by the conveyance of conservation restrictions, and development rights, to prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with the Purposes of this Grant. VHCB accepts such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations.

3. Town will develop a Management Plan for the Protected Property (hereafter "Management Plan"). The Management Plan shall provide for the use and management of the Protected Property in a manner which is consistent with applicable law and the Purposes of this Grant. Prior to the final adoption of each Management Plan and any amendments thereto, Town shall: (a) secure appropriate public input from Town residents; and (b) provide VHCB with a copy of each such Management Plan (as well as, any subsequent revisions, amendments or updates) in a timely manner.

## **II. Restricted Uses of Protected Property.**

The restrictions hereby imposed upon the Protected Property and the acts which Town shall do or refrain from doing, are as follows:

1. The Protected Property shall, in addition to conservation of natural floodplain functions, be used for agricultural, educational, habitat conservation, horticultural, natural area, open space, non-motorized recreation and scientific purposes only. No residential, commercial, industrial, or mining activities, no driveways, roads, or utility lines shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property. Notwithstanding this section, structures permitted under FEMA Deed Restrictions are allowed on the Protected Property.

2. Except for snowmobiling, there shall be no operation of motorized vehicles for recreational purposes on the Protected Property. Motorized vehicles may be used by the Town for management of the Protected Property (including, but not limited to the management of vegetation, woods, fields, riparian buffers, wildlife and recreational access) and emergencies.

3. There shall be no disturbance of the surface, including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, unless necessary to conserve the natural floodplain functions of the Protected Property. In no case shall surface mining of subsurface oil, gas or other minerals be permitted. There shall be no manipulation or alteration of natural watercourses, lakeshores, wetlands, water levels and/or flow or other water bodies, unless necessary to conserve the natural floodplain functions of the Protected Property. The placement, collection or storage of trash, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted. However, the temporary storage of trash in receptacles for periodic off-site disposal shall be permitted.

4. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of VHCB, is not or is not likely to be consistent with the Purposes of this Grant. Town and VHCB acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. VHCB, therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

5. Town shall not give, grant, sell, convey, subdivide, transfer, mortgage, pledge, lease or otherwise encumber the Protected Property without the prior written consent of VHCB, FEMA and the State of Vermont.

### **III. Permitted Uses of the Protected Property.**

Notwithstanding the foregoing, Town shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for non-motorized, pedestrian recreational purposes (including, but not limited to, bird watching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking and wildlife observation) consistent with the Purposes of this Grant and allowed by the Management Plan. Notwithstanding this section, snowmobiling may be permitted in the sole discretion of the Town.

2. The right to create and maintain footpaths for walking and other pedestrian recreational, educational, or scientific research activities within and across the Protected Property.

3. The right to conduct community, entertainment, educational, cultural or sporting events on the Protected Property together with the right to erect tents and other temporary structures for such events.

4. The right to use the Protected Property to conduct all activities allowed by the Management Plan (including, but not limited to the management of vegetation, woods, fields, riparian buffers, wildlife, community gardens and recreational access), provided such activities are reasonably necessary to carry out the Purposes of this Grant.

5. The right to construct, maintain, repair, replace and use minor structures on the Protected Property, provided that such structures (a) are allowed by the FEMA Deed Restrictions; b) shall not have any access roads or drives; utility services or facilities, waste disposal systems or plumbing; c) do not obstruct the natural and beneficial functions of the floodplain; and (d) are consistent with this Grant.

#### **IV. Public Access.**

Town covenants and agrees that the Protected Property shall be available to the general public for all types of non-commercial, non-motorized, dispersed recreational and educational purposes (including, but not limited to, birdwatching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking, and wildlife observation) consistent with the Purposes of this Grant. Notwithstanding the foregoing, Town may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, to protect natural function of the floodplain and natural habitats or to protect the public health or safety (including, but not limited to, the right to permit, regulate or prohibit hunting).

#### **V. Enforcement of the Restrictions.**

VHCB shall make reasonable efforts from time to time to assure compliance by Town with all of the covenants and restrictions herein. In connection with such efforts, VHCB may make periodic inspection of the Protected Property, and for such inspection and enforcement purposes, VHCB shall have the right of reasonable access to the Protected Property. In the event that VHCB becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, VHCB shall notify the Town of such event or circumstance of non-compliance and demand corrective action by Town sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition.

Failure by the Town to cause discontinuance, abatement or such other corrective action as may be demanded by the VHCB within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the VHCB to bring an action in a court of competent jurisdiction to enforce the terms of this Grant. If the court determines that the Town has failed to comply with this Grant, Town shall reimburse the VHCB for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that VHCB initiates litigation and the court determines that the Town has not failed to comply with this Grant and that the VHCB has initiated litigation without reasonable cause or in bad faith, then VHCB shall reimburse Town for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.

The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitle VHCB to seek equitable relief, including, but not limited to, injunctive relief, as the Court deems just. The remedies described herein are in addition to, and not in

limitation of, any other remedies available to the VHCB at law, in equity, or through administrative proceedings. No delay or omission by the VHCB in the exercise of any right or remedy upon any breach of Town shall impair the VHCB's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

## VI. Miscellaneous Provisions.

1. Delegation of Stewardship. Where Town is required, as a result of this Grant, to obtain the prior written approval of the VHCB before commencing an activity or act, and where the VHCB has designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of the VHCB.

2. Applicable Law. It is hereby agreed that the construction of any structures or improvements or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes, and regulations of the NAME OF TOWN, as well as, the State of Vermont and the United States.

3. Baseline Documentation Report. It is further agreed that the Protected Property is accurately depicted and described in the \_\_\_\_\_ Baseline Documentation Report ("BDR") signed by the Town on or about the date of this Grant and held by VHCB. VHCB may use the BDR in monitoring and enforcing this Grant, but is not limited to the use of the BDR to show a change of conditions.

4. Proceeds from Eminent Domain. In the event that legal rights in the Protected Property, or any part thereof, are extinguished or condemned by eminent domain or other legal proceedings, VHCB shall be entitled to twenty five percent (25%) of the proceeds. This percentage represents the relative contribution of VHCB to the State of Vermont FEMA Hazard Mitigation Program. VHCB shall use any such proceeds to preserve undeveloped and open space land in order to protect the agricultural, educational, scientific, forestry and natural resources of the state through non-regulatory means.

5. Rerecording of Grant. VHCB shall be entitled to rerecord this Grant, or to record a notice making reference to the existence of this Grant, in the NAME OF TOWN Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

6. Hazardous Substances. Town warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

7. Amendment. This Grant may be amended or modified only if such amendment or modification is consistent with the Purposes of this Grant and the FEMA Deed Restrictions. Any amendment or modification must be mutually agreed upon by the Town, VHCB, State of Vermont and FEMA, comply with all applicable laws and regulations, and be signed and duly recorded.

8. Conveyance or Lease. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to and comply with the FEMA Deed

Restrictions, 44 CFR Part 80 and the conservation easement, restrictions and obligations described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity.

9. Reversionary Interest. If the Vermont Housing and Conservation Board ceases to exist, VHCB's interest in this Grant shall revert to the State of Vermont.

10. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont and the United States of America. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable. Invalidation of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said VERMONT HOUSING AND CONSERVATION BOARD, its respective successors and assigns, to their own use and behoove forever, and the said NAME OF TOWN, for itself and its successors and assigns, does covenant with the said VHCB, its successors and assigns, that until the ensembling of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those of record, not intending hereby to reinstate any interest or right terminated or superseded by this Grant, operation of law, abandonment or 27 V.S.A. Ch. 5, Subch. 7; and it hereby engages to warrant and defend the same against all lawful claims whatever, except as aforesaid.

NAME OF TOWN, has caused this Grant to be executed by its duly authorized agent on this \_\_\_\_ day of \_\_\_\_\_, 2012.

Town:

\_\_\_\_\_  
Its Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_, Vermont, on this \_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared \_\_\_\_\_, duly authorized agent of NAME OF TOWN, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of NAME OF TOWN.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its Duly Authorized Agent

**SCHEDULE A**  
**PROTECTED PROPERTY**

TO BE COMPLETED by TOWN'S ATTORNEY

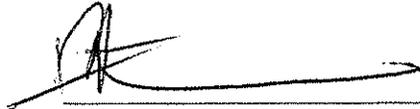
STATE OF VERMONT  
EXECUTIVE DEPARTMENT  
EXECUTIVE ORDER NO. 11-12

[Declaration of State of Emergency – Storm Sandy]

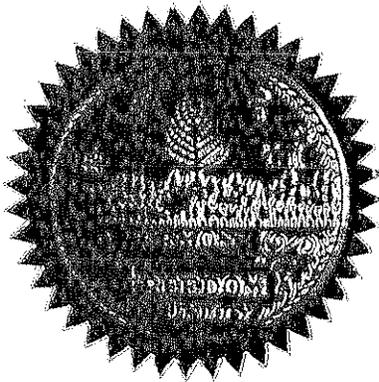
As of October 28, 2012, a state of emergency exists within the State due to Storm Sandy. The State of Vermont, through its various agencies, is taking steps to prepare for the anticipated storm.

NOW, THEREFORE, I, Peter Shumlin, pursuant to the authority vested in me as Governor of the State of Vermont by the Vermont Constitution, Chapter II, § 20 and 20 V.S.A. §§ 8, 9 do hereby declare a state of emergency for the State of Vermont. I further order and direct activation of the Vermont State Emergency Operations Plan and authorize the use of state resources to protect the public and to alleviate hardship and suffering of citizens and communities impacted by the emergency event.

Dated this 29th day of October 2012,



Peter Shumlin  
Governor



Executive Order #11-12

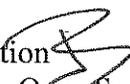


**State of Vermont**  
**Agency of Administration**  
**Office of the Secretary**  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201  
[www.adm.state.vt.us](http://www.adm.state.vt.us)

[phone] 802-828-3322  
[fax] 802-828-3320

*Jeb Spaulding, Secretary*

**MEMORANDUM**

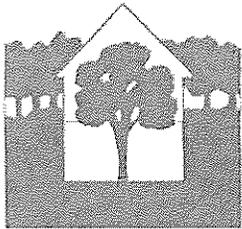
TO: Paul Ford through Mark Landry  
FROM: Jeb Spaulding, Secretary of Administration   
RE: Property Acquisition and Relocation for Open Space, Conveyance of a Conservation Easement to the Vermont Housing and Conservation Board by Municipalities in Vermont Major Disaster Declaration FEMA-4022-DR  
DATE: October 31, 2012

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Please find attached letter from Lawrence Mires of the Vermont Housing and Conservation Board regarding Property Acquisition and Relocation for Open Space, Conveyance of a Conservation Easement.

Thank you for your prompt attention to this important matter. This will enable us to utilize state funds, as appropriate, to match federal funds enabling homeowner buyouts in areas vulnerable to further flooding.

**Vermont  
Housing &  
Conservation  
Board**



58 East State Street  
Montpelier  
Vermont 05602

TEL 802 828 3250  
FAX 802 828 3203  
WEB [www.vhcb.org](http://www.vhcb.org)

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Gustave Seelig  
Executive Director

30 October 2012

Mr. Paul F. Ford  
Acting Regional Administrator  
FEMA Region I  
99 High Street  
Boston, MA 02110

*Re: Property Acquisition and Relocation for Open Space, Conveyance of a Conservation Easement to the Vermont Housing & Conservation Board by Municipalities in Vermont Major Disaster Declaration FEMA-4022-DR*

Dear Mr. Ford:

This will respond to your letter of October 29, 2012. We understand that you have approved the proposed conservation easement template attached to the letter to Richard Verville from Lawrence Mires dated August 22, 2012, provided that:

1. VHCB add a new paragraph II(1) to the template to ensure compliance with 44 CFR 80.19(b)(4) with the language provided on page 2 of the letter;
2. VHCB delete paragraph VI(1) on delegation of stewardship from the template;
3. After acquiring its property interest using HMGP funding, each municipality must follow the procedures under 44 CFR Part 80 for requesting approval from the Regional Administrator before conveying the conservation easement to VHCB. FEMA staff will review the request as part of its original application for HMGP project funding in order to help expedite the review process.

FEMA's conditions are acceptable to VHCB and the State of Vermont, and changes have been made to the easement template reflecting those conditions. I enclose the revised easement template with this letter.

Sincerely,

Lawrence W. Mires  
Administrative Officer

**Enclosure**

Final easement template reflecting FEMA conditions



**GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS  
and PUBLIC ACCESS EASEMENT**

**WHEREAS**, the Vermont Housing and Conservation Board (the "Board") is a public instrumentality of the State of Vermont existing by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. §311 (the "Act"), which assists municipalities to conserve and protect Vermont's agricultural land, historic properties, important natural areas and recreational lands;

**WHEREAS**, the **NAME OF TOWN** owns a certain tract of land situated in the **NAME OF TOWN**, County of \_\_\_\_\_, State of Vermont being more particularly described in **Schedule A** attached hereto and incorporated herein ("Protected Property").

**WHEREAS**, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of disaster relief funds under § 5170c, **Hazard Mitigation Grant Program**, including the acquisition and relocation of structures in the floodplain

**WHEREAS**, the **Hazard Mitigation Grant Program** provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

**WHEREAS**, the State of Vermont has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA") and has entered into a mitigation grant program Grant Agreement with FEMA making it a mitigation grant program grantee.

**WHEREAS**, the Protected Property is located in **NAME OF TOWN** and **NAME OF TOWN** participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of this Grant;

**WHEREAS**, the terms of the **Hazard Mitigation Grant Program** and applicable federal law (including but not limited to 44 C.F.R. Part 80) require that the **NAME OF TOWN** agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

**WHEREAS**, when **NAME OF TOWN** acquired the Protected Property, **NAME OF TOWN** agreed to and recorded in the land records **NAME OF TOWN** certain deed restrictions which are perpetual in duration and meet the FEMA program requirements concerning the acquisition of property for open space ("FEMA Deed Restrictions");

**WHEREAS**, the FEMA Deed Restrictions require that **NAME OF TOWN** dedicate and maintain the Protected Property in perpetuity as open space for the conservation of natural floodplain functions. The FEMA Deed Restrictions allow the following uses, parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping; unimproved, unpaved parking lots; buffer zones; and other uses and structures consistent with FEMA guidance for open space acquisition entitled “Hazard Mitigation Assistance, requirements for Property Acquisition and Relocation for Open Space”.

**WHEREAS**, the State of Vermont has decided to supplement the FEMA Deed Restrictions by this Grant of Development Rights, Conservation Restrictions and Public Access Easement which consists of covenants on the part of the **NAME OF TOWN** to do or refrain from doing, severally and collectively, the various acts set forth below.

**WHEREAS**, if there is any conflict between this Grant and the FEMA Deed Restrictions, the FEMA Deed Restrictions shall control.

**NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS**, that the **NAME OF TOWN**, a municipality of the State of Vermont, on behalf of its successors and assigns (hereinafter “Town”), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the **Vermont Housing and Conservation Board**, a public instrumentality of the State of Vermont existing by virtue of 10 V.S.A. §311, with an address of 58 East State Street, Montpelier, Vermont, 05602, and its respective successors and assigns (hereinafter “VHCB”) the development rights and a perpetual conservation easement and restrictions (all as more particularly set forth below) in a certain tract of land (hereinafter “Protected Property”) situated in the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of Vermont, said Protected Property being more particularly described in **Schedule A** attached hereto and incorporated herein.

The development rights hereby conveyed to the VHCB shall include all development rights except those specifically reserved by the Town herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The conservation easement and restrictions hereby conveyed to the VHCB consists of covenants on the part of the Town to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land forever.

**I. Purposes of the Grant; Management Plan**

1. Town and VHCB acknowledge that the Purposes of this Grant are as follows (hereafter "Purposes of this Grant"):

(a) As a primary purpose to conserve and protect the natural floodplain function of the Protected Property as an undeveloped area along with and its natural value for horticultural, silvicultural, wildlife and open space purposes for present and future generations; and

(b) As a secondary purpose to provide opportunities for appropriate recreational, educational, scientific and community activities on the Protected Property, provided that all activities and uses are consistent with the FEMA Deed Restrictions and the primary purpose of this Grant.

2. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:

**(a) LIST OF ATTRIBUTES RELATED TO PROJECT**

Town and VHCB recognize the Purposes of this Grant and share the common goal of conserving these values of the Protected Property by the conveyance of conservation restrictions, and development rights, to prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with the Purposes of this Grant. VHCB accepts such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations.

3. Town will develop a Management Plan for the Protected Property (hereafter "Management Plan"). The Management Plan shall provide for the use and management of the Protected Property in a manner which is consistent with applicable law and the Purposes of this Grant. Prior to the final adoption of each Management Plan and any amendments thereto, Town shall: (a) secure appropriate public input from Town residents; and (b) provide VHCB with a copy of each such Management Plan (as well as, any subsequent revisions, amendments or updates) in a timely manner.

**II. Restricted Uses of Protected Property.**

The restrictions hereby imposed upon the Protected Property and the acts which Town shall do or refrain from doing, are as follows:

1. The Town shall comply with the requirements, terms and conditions of Section 404(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288(1974) [codified as amended at 42 U.S.C. 5170c(b)], 44 CFR Part 80 and the FEMA Deed Restrictions.

2 The Protected Property shall, in addition to conservation of natural floodplain functions, be used for agricultural, educational, habitat conservation, horticultural, natural area, open space, non-motorized recreation and scientific purposes only. No residential, commercial, industrial, or mining activities, no driveways, roads, or utility lines shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property. Notwithstanding this section, structures permitted under FEMA Deed Restrictions are allowed on the Protected Property.

3. Except for snowmobiling, there shall be no operation of motorized vehicles for recreational purposes on the Protected Property. Motorized vehicles may be used by the Town for management of the Protected Property (including, but not limited to the management of vegetation, woods, fields, riparian buffers, wildlife and recreational access) and emergencies.

4. There shall be no disturbance of the surface, including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, unless necessary to conserve the natural floodplain functions of the Protected Property. In no case shall surface mining of subsurface oil, gas or other minerals be permitted. There shall be no manipulation or alteration of natural watercourses, lakeshores, wetlands, water levels and/or flow or other water bodies, unless necessary to conserve the natural floodplain functions of the Protected Property. The placement, collection or storage of trash, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted. However, the temporary storage of trash in receptacles for periodic off-site disposal shall be permitted.

5. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of VHCB, is not or is not likely to be consistent with the Purposes of this Grant. Town and VHCB acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. VHCB, therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

6. Town shall not give, grant, sell, convey, subdivide, transfer, mortgage, pledge, lease or otherwise encumber the Protected Property without the prior written consent of VHCB, FEMA and the State of Vermont.

### **III. Permitted Uses of the Protected Property.**

Notwithstanding the foregoing, Town shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for non-motorized, pedestrian recreational purposes (including, but not limited to, bird watching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking and wildlife observation) consistent with the Purposes of this Grant and allowed by the Management Plan. Notwithstanding this section, snowmobiling may be permitted in the sole discretion of the Town.

2. The right to create and maintain footpaths for walking and other pedestrian recreational, educational, or scientific research activities within and across the Protected Property.

3. The right to conduct community, entertainment, educational, cultural or sporting events on the Protected Property together with the right to erect tents and other temporary structures for such events.

4. The right to use the Protected Property to conduct all activities allowed by the Management Plan (including, but not limited to the management of vegetation, woods, fields, riparian buffers, wildlife, community gardens and recreational access), provided such activities are reasonably necessary to carry out the Purposes of this Grant.

5. The right to construct, maintain, repair, replace and use minor structures on the Protected Property, provided that such structures (a) are allowed by the FEMA Deed Restrictions; b) shall not have any access roads or drives, utility services or facilities, waste disposal systems or plumbing; c) do not obstruct the natural and beneficial functions of the floodplain; and (d) are consistent with this Grant.

**IV. Public Access.**

Town covenants and agrees that the Protected Property shall be available to the general public for all types of non-commercial, non-motorized, dispersed recreational and educational purposes (including, but not limited to, birdwatching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking, and wildlife observation) consistent with the Purposes of this Grant. Notwithstanding the foregoing, Town may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, to protect natural function of the floodplain and natural habitats or to protect the public health or safety (including, but not limited to, the right to permit, regulate or prohibit hunting).

**V. Enforcement of the Restrictions.**

VHCB shall make reasonable efforts from time to time to assure compliance by Town with all of the covenants and restrictions herein. In connection with such efforts, VHCB may make periodic inspection of the Protected Property, and for such inspection and enforcement purposes, VHCB shall have the right of reasonable access to the Protected Property. In the event that VHCB becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, VHCB shall notify the Town of such event or circumstance of non-compliance and demand corrective action by Town sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition.

Failure by the Town to cause discontinuance, abatement or such other corrective action as may be demanded by the VHCB within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the VHCB to bring an action in a court of competent jurisdiction to enforce the terms of this Grant. If the court determines that the Town has failed to comply with this Grant, Town shall reimburse the VHCB for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments

ordered by such court. In the event that VHCB initiates litigation and the court determines that the Town has not failed to comply with this Grant and that the VHCB has initiated litigation without reasonable cause or in bad faith, then VHCB shall reimburse Town for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.

The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitle VHCB to seek equitable relief, including, but not limited to, injunctive relief, as the Court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to the VHCB at law, in equity, or through administrative proceedings.

No delay or omission by the VHCB in the exercise of any right or remedy upon any breach of Town shall impair the VHCB's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

#### **VI. Miscellaneous Provisions.**

1. Applicable Law. It is hereby agreed that the construction of any structures or improvements or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes, and regulations of the **NAME OF TOWN**, as well as, the State of Vermont and the United States.

2. Baseline Documentation Report. It is further agreed that the Protected Property is accurately depicted and described in the \_\_\_\_\_ Baseline Documentation Report ("BDR") signed by the Town on or about the date of this Grant and held by VHCB. VHCB may use the BDR in monitoring and enforcing this Grant, but is not limited to the use of the BDR to show a change of conditions.

3. Proceeds from Eminent Domain. In the event that legal rights in the Protected Property, or any part thereof, are extinguished or condemned by eminent domain or other legal proceedings, VHCB shall be entitled to twenty five percent (25%) of the proceeds. This percentage represents the relative contribution of VHCB to the State of Vermont FEMA Hazard Mitigation Program. VHCB shall use any such proceeds to preserve undeveloped and open space land in order to protect the agricultural, educational, scientific, forestry and natural resources of the state through non-regulatory means.

4. Rerecording of Grant. VHCB shall be entitled to rerecord this Grant, or to record a notice making reference to the existence of this Grant, in the **NAME OF TOWN** Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

5. Hazardous Substances. Town warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.



6. Amendment. This Grant may be amended or modified only if such amendment or modification is consistent with the Purposes of this Grant and the FEMA Deed Restrictions. Any amendment or modification must be mutually agreed upon by the Town, VHCB, State of Vermont and FEMA, comply with all applicable laws and regulations, and be signed and duly recorded.

7. Conveyance or Lease. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to and comply with the FEMA Deed Restrictions, 44 CFR Part 80 and the conservation easement, restrictions and obligations described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity.

8. Reversionary Interest. If the Vermont Housing and Conservation Board ceases to exist, VHCB's interest in this Grant shall revert to the State of Vermont.

9. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont and the United States of America. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable. Invalidation of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said VERMONT HOUSING AND CONSERVATION BOARD, its respective successors and assigns, to their own use and behoove forever, and the said NAME OF TOWN, for itself and its successors and assigns, does covenant with the said VHCB, its successors and assigns, that until the ensealing of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those of record, not intending hereby to reinstate any interest or right terminated or superseded by this Grant, operation of law, abandonment or 27 V.S.A. Ch. 5, Subch. 7; and it hereby engages to warrant and defend the same against all lawful claims whatever, except as aforesaid.

NAME OF TOWN, has caused this Grant to be executed by its duly authorized agent on this \_\_\_\_ day of \_\_\_\_\_, 2012.

**Town:**

\_\_\_\_\_  
Its Duly Authorized Agent

**STATE OF VERMONT**  
**COUNTY OF \_\_\_\_\_, SS.**

At \_\_\_\_\_, Vermont, on this \_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared \_\_\_\_\_, duly authorized agent of NAME OF TOWN, and he/she

acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of NAME OF TOWN.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

\_\_\_\_\_ By: \_\_\_\_\_  
Date Its Duly Authorized Agent

**SCHEDULE A**  
**PROTECTED PROPERTY**

TO BE COMPLETED by TOWN'S ATTORNEY



**Vermont Emergency Management**  
**Department of Public Safety**  
103 South Main Street  
Waterbury, VT 05671-2101  
[www.vemvt.com](http://www.vemvt.com)

toll free 800-347-0488  
phone 802-244-8721  
fax 802-241-5556

November 2, 2012

Paul Ford  
Regional Administrator  
FEMA Region I  
90 High Street  
Boston, MA 02110

*Through:* Mark Landry  
FEMA Deputy Federal Coordinating Officer  
Essex Junction Joint Field Office  
30 Allen Martin Drive  
Essex Junction, VT 05452

*Re:* *Debris Removal from Streams, FEMA-4022-DR, Project Worksheets 03094, 03095, 03096, 01912, 01919, 03156, 03157, 03158, 3159, 03160.*

Dear Mr. Ford:

On October 19<sup>th</sup> FEMA headquarters informed Vermont's Congressional delegation that it had reversed its position on eligibility of several critical town debris removal projects in Vermont related to Tropical Storm Irene. Specifically, FEMA informed the delegation that it would reconsider TS Irene projects to clean up debris in the storm's aftermath as eligible and no longer as the responsibility of other federal agencies, such as the Natural Resources Conservation Service. In the ensuing days, Vermont and the towns expected, and in fact were assured, that FEMA would issue a clarifying official statement explaining how Region I and the JFO would proceed with regard to these projects. To date, no such statement or guidance has been forthcoming.

Yesterday the State was made aware of amended guidance on Recovery Policy 9523.5 *Debris Removal from Waterways* dated October 30, 2012. This reinterpretation of the policy is apparently a direct result of the developments related to Tropical Storm Irene debris. However, that policy amendment does not provide guidance to the Vermont towns that have pending appeals on this very issue. It is unclear whether or to what extent the policy is retroactive to Vermont's projects or which, if any, of FEMA's previous decisions about TS Irene debris remain in force.

Thus, on behalf of the State of Vermont and the Towns of Bennington, Rockingham and Woodford, I am writing to insist that FEMA provide a clear and concrete process for resolving and obligating the public assistance funding for which these towns are eligible.

In order to provide towns with effective guidance, my office requests that FEMA provide clarity on a number of fronts. First, the State requests that FEMA toll any current appeal deadlines and provide an explanation of how the recent headquarters guidance will apply to the PWs now being appealed. Of course the best path forward some eight months after many of these PWs were issued is to issue new PWs, working in concert with the Towns, or to version the PWs under the policy in effect.

Second, we request that regardless of the process Region I outlines, the Towns be afforded a reasonable period—preferably 60 days—to comply and full rights to appeal the forthcoming PW determinations. Finally, the State expects that these towns will at minimum have an opportunity to offer additional facts and documentation in support of eligibility under the current policy interpretation.

We request that your office respond to this letter within 15 days. Towns have appeals coming due which are now rendered moot. Moreover, these towns have been waiting eight months for resolution to this problem, putting them in financial straits. The State also advises that official notice to the town-applicants of FEMA's recently stated position are being held pending an answer from Region I on the issues outlined above.

Sincerely,



Ben Rose  
Public Assistance Officer  
Vermont Emergency Management

Cc: The Honorable Patrick Leahy, U.S. Senator for Vermont  
The Honorable Bernie Sanders, U.S. Senator for Vermont  
The Honorable Peter Welch, U.S. Representative for Vermont  
Secretary of Administration, Jeb Spaulding, Governor's Authorized Representative for  
FEMA-4022-DR



**FEMA**

November 6, 2012

Ross Nagy  
State Coordinating Officer  
103 S. Main Street  
Waterbury, VT 05671

Micaela Tucker  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609

*Re: Request for Critical Action Determinations Concerning the Restoration of Various Facilities at the Waterbury State Office Complex, FEMA-4022-DR*

Dear Mr. Nagy and Ms. Tucker:

I am responding to Ms. Tucker's memorandum of May 14, 2012, in which she requested that the Federal Emergency Management Agency (FEMA) determine that the restoration of various facilities at the Waterbury State Office Complex (WSOC) under FEMA-4022-DR are "critical actions" under 44 C.F.R. pt. 9.

## **I. Background**

### **A. Major Disaster Declaration FEMA-4022-DR and State's Request for Critical Action Determinations**

The Waterbury State Office Complex (WSOC), located in the Village of Waterbury and bounded by the Winooski River, houses numerous state agencies and supporting functions in 47 buildings across a 117-acre campus. Tropical Storm Irene impacted the State of Vermont from August 27 to September 2, 2011, and the storm's high winds and heavy rains caused the Winooski River to overtop its banks and flood various facilities at WSOC. The President declared a major disaster (FEMA-4022-DR) for the State of Vermont as a result of Tropical Storm Irene on September 1, 2011. The declaration and its subsequent amendments authorized, *inter alia*, Public Assistance for all counties in Vermont.

Tropical Storm Irene damaged various facilities at the WSOC that are owned and operated by the State, including the Vermont Agriculture Laboratory, the Agency of Natural Resources laboratory, and various facilities of the Agency of Human Services. With respect to the Agency of Human Services, the following departments and agencies of the Agency of Human Services are housed in various facilities at the WSOC: Department of Disability, Aging and Independent Living; Department of Children and Families; Department of Mental Health, which includes the

Vermont State Hospital; Department of Corrections; and the offices of the Secretary of the Agency of Human Services.

In a memorandum dated May 14, 2012, Ms. Tucker submitted a request to the Federal Coordinating Officer that he determine that the restoration under the Public Assistance Program under FEMA-4022-DR of the damaged facilities of the Agency of Human Services, the Vermont Agriculture Laboratory, and the Agency of Natural Resources laboratory were “critical actions” under 44 C.F.R. pt. 9.

### **B. Executive Order 11988 and 44 C.F.R. pt. 9**

Executive Order 11988 requires federal agencies to minimize or avoid activity that adversely affects floodplains.<sup>1</sup> Because many Public Assistance projects are located in floodplains, FEMA must review proposed projects for compliance with Executive Order 11988. FEMA implements the Executive Order through its regulations at 44 C.F.R. pt. 9.<sup>2</sup> Under the implementing regulations, FEMA must evaluate the potential effects of any FEMA action in a floodplain and consider alternatives to avoid adverse effects.

The regulations describe a specific, 8-step process for conducting floodplain management reviews before approval of Public Assistance or other funding.<sup>3</sup> For most projects located in the special flood hazard area, FEMA must perform the 8-step process to determine if it is practicable to avoid restoration in the floodplain.<sup>4</sup> If a practicable alternative exists outside the floodplain (including alternative sites, actions, and the “no action” alternative), FEMA must locate the action at the alternative site.<sup>5</sup> The decision to require the relocation of a facility outside the floodplain, however, does not meet the criteria as a federal code or standard under 44 C.F.R. § 206.226(d). Therefore, FEMA would not fund the relocation beyond the eligible repair or replacement costs at the original location unless relocation was required by the Regional Administrator pursuant to 44 C.F.R. § 206.226(g). If a practicable alternative does not exist outside the floodplain, the floodplain must itself be a practicable location in order to carry out the action.<sup>6</sup> FEMA must implement certain mitigative actions if it determines to carry out an action that affects or is in a floodplain.<sup>7</sup>

The minimum floodplain of concern for “critical actions” is the 500-year floodplain. A critical action is an action for which even a slight chance of flooding is too great.<sup>8</sup> Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities, such as: (1) those which produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; (2) hospitals and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and

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<sup>1</sup> Exec. Order No. 11988, *Floodplain Management* (May 24, 1977).

<sup>2</sup> The regulations at 44 C.F.R. pt. 9 also implement Executive Order 11990 (Protection of Wetlands).

<sup>3</sup> 44 C.F.R. § 9.6.

<sup>4</sup> The 8-step process is not required for most projects where disaster damage is less than \$5000. In addition, the review is not required for Public Assistance Categories A and B projects (“emergency work”), except for projects involving disposal of debris in special flood hazard areas or wetlands. 44 C.F.R. § 9.5(c).

<sup>5</sup> 44 C.F.R. §§ 9.6(b), 9.9.

<sup>6</sup> 44 C.F.R. § 9.9.

<sup>7</sup> 44 C.F.R. § 9.11.

<sup>8</sup> 44 C.F.R. § 9.4.

storm events; (3) emergency operation centers, or data storage center which contain records or services that may become lost or inoperative during flood and storm events; and (4) generating plants, and other principal points of utility lines.<sup>9</sup>

## II. Discussion

FEMA typically completes its review under 44 C.F.R. pt. 9 for Public Assistance projects after the scope of work for a Project Worksheet has been completed and forwarded to the FEMA environmental and historic preservation staff for review. Here, the scope of work under the Project Worksheets for the damaged facilities in question has not been completed.

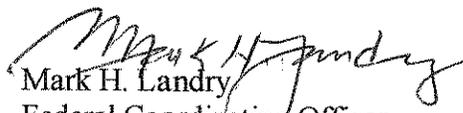
Notwithstanding, I am responding to the State's request for a determination because I understand that the State needs this input for its decision-making for recovery plans at the WSOC.

I have determined that the restoration of the Brooks Building and Annex (Old Storehouse) are critical actions under 44 C.F.R. § 9.4(b) because either building is likely to contain inpatients who may not be sufficiently mobile to avoid the loss of life or injury during flood events. As such, my staff will apply the 500-year floodplain when evaluating the Project Worksheets for the restoration of these facilities under 44 C.F.R. pt. 9. With respect to the other facilities of the Agency of Human Services, the Vermont Agriculture Laboratory, and the Agency of Natural Resources laboratory, I have determined that the repairs to these other facilities are not critical actions.

## III. Conclusion

I recommend FEMA and State Public Assistance staff continue to work diligently towards restoring damaged facilities at the WSOC in a manner that includes sound floodplain management practices and maximizes eligible Section 406 Hazard Mitigation funding. If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Mark H. Landry  
Federal Coordinating Officer  
FEMA-DR-4022-VT

cc: Jeb Spaulding, Governor's Authorized Representative

Enclosure:

- (1) Memorandum from Micaela Tucker, Assistant Attorney General, to James N. Russo, Federal Coordinating Officer et al. re: *Tropical Storm Irene (FEMA-4022-DR-VT) Critical Actions at the Waterbury State Office Complex* (May 14, 2012)

---

<sup>9</sup> 44 C.F.R. § 9.4.

MEMORANDUM

Office of the Attorney General

**TO:** James N. Russo, Federal Coordinating Officer, FEMA  
Timothy Barnett, Infrastructure Branch Chief, FEMA  
Bob O'Sullivan, Operations Chief, FEMA  
Charlotte Stewart, OCC Legal Advisor, FEMA

**FROM:** Micaela Tucker, Assistant Attorney General

**DATE:** May 14, 2012

**SUBJECT:** Tropical Storm Irene (FEMA-4022-DR-VT)  
Critical Actions at Waterbury State Office Complex

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**Background**

In an effort to ensure that governments and communities can continue to operate and protect health and safety during a crisis, Congress and the President have provided that *critical structures and facilities* will be created or restored to a standard that will avoid interruption by flooding. E.O. 11988, May 24, 1977; National Flood Insurance Act of 1968 (as amended Pub. L. 90-488); 42 U.S.C. §§ 5121-5207. These regulations reflect a concern that the impacts of floods on human safety, health and welfare for many activities must be minimized by placing the facility in a flood free area. The emphasis is on finding alternatives outside the floodplain whenever practicable and development of measures to mitigate unavoidable impacts.

A FEMA Project with potential impacts to or within a floodplain is a critical action where "even a slight chance of flooding is too great." 44 CFR §9.4 (defining critical action). For critical actions, FEMA is mandated to look at floodplains and consider mitigation measures per E.O. 11988. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., critical action floodplain. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

- (a) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;
- (b) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) Such as generating plants, and other principal points of utility lines.

FEMA may require mitigation of the hazard or relocation of a critical facility before agreeing to provide funding for restoration of the facility. (See Public Assistance Guide 322, p. 136).

FEMA may provide funding to an applicant to permanently relocate within the flood hazard area when relocating outside the area is not feasible so long as the relocation is shown to lessen future damages and is cost effective.

**Is the recovery of AHS functions a *critical action* as defined by 44 CFR §9.4, *Critical Action*?**

Recovery of the AHS administrative and departmental offices is a critical action. The Agency of Human Services (AHS) consists of the following departments located at the WSOC: Department of Disability, Aging and Independent Living (DAIL), Department of Children and Families (DCF), Department of Mental Health (DMH), Vermont State Hospital (VSH) (part of DMH), Department of Corrections (DOC) and the AHS Secretary's office. The Department of Children and Families includes child protective services functions and economic services coordination. The Department of Mental Health includes the legal offices overseeing court ordered hospitalizations. The Department of Disabilities, Aging and Independent Living provides coordination of care for vulnerable and mentally handicapped adults in the community. And the Dept. of Corrections oversees the state's corrections facilities and programs as well as coordinating facility use and transfer of inmates.

The Department of Mental Health Central Office serves as an Emergency Operations Center, thus falls under § 9.4 as a critical action. The Department of Mental Health, Legal office is the custodian of all medical evaluations, court records and disposition records for placed patients at the Vermont State Hospital. Because these are unique records, recovery of DMH legal facilities is a critical action. The Vermont State Hospital administration likewise holds unique and original medical records for patients as well as housing the Emergency Operations Center for the State Hospital system. In a disaster, disruption of these services would put the health and safety of the communities served at risk. Therefore the services provided by the AHS qualify these facilities as critical actions.

AHS is in the floodplain and as a critical action therefore eligible for mitigation under E.O. 11988. Vermont's Option B recovery plan for the WSOC will return AHS functions with critical facilities protected against a 500 year flood. The State of Vermont proposes that a benefit cost analysis will show the plans for

recovery of the Agency of Human Services administration is cost effective under 44 C.F.R. § 206.226.

**Is the Ag Lab a *critical action* as defined by 44 CFR §9.4, *Critical Action*?**

The Vermont Agriculture Laboratories (Ag Lab) provide a variety of analytical and diagnostic agricultural testing which include the following laboratories: Animal Health Laboratory, Central Dairy Testing Laboratory, Feed and Fertilizer Laboratory, Meat Inspection Laboratory, Molecular Biology Laboratory, Pesticide Analysis Laboratory. All sections of the Ag Lab are approved by their Federal counterparts to do the official analysis for the interstate shipment of animals, dairy products, meats, animal feeds and fertilizers.

Because the testing done at the Ag Lab provides a critical function (element) in ensuring food safety for the masses and; disruption of the testing performed at the Ag Lab would have an immediate impact upon the process that ensures the safety of food and dairy products produced and consumed in the State of Vermont and for out of state shipment, it can therefore be reasoned the Ag Lab meets the definition of the first sentence of §9.4 for *Critical Action*.

The Pesticide Analysis Laboratory provides critical services for the Agrichemical Management section to ensure safety of the public from the misuse of pesticides thereby it can be reasoned the Ag Lab meets the definition of the first sentence of §9.4 for *Critical Action*. The Ag Lab uses and stores dangerous chemicals which meets the definition of 44 CFR §9.4 *Critical Action*, (a). The Ag Lab stores test results (records) that may become lost and; provides testing services which could be interrupted in a flood event which meet the criteria of 44 CFR §9.4 *Critical Action*, (d).

In a disaster, disruption of these services would put the health and safety of the communities served at risk. Furthermore possible exposure of volatile materials make any risk of flooding unacceptable. Therefore the services provided and materials stored by the Agricultural Lab qualify these facilities as critical actions.

**Is the Agency of Natural Resources laboratory a *critical action* as defined by 44 CFR §9.4, *Critical Action*?**

The Agency of Natural Resources (ANR) Waterbury labs' testing was critical to each of their missions and obligations under state and federal law to protect human health and the environment. The laboratory supported the Waste Management (WMD), Air Pollution Control (APCD), and Water Quality Divisions (now known as the Watershed Management Division). The LaRosa Laboratory was

severely damaged due to flooding from Tropical Storm Irene, and the functions needed to be relocated in order to avoid disruption of essential services.

Among the critical functions were *E. coli* testing of water samples, air pollution sampling, and diagnostic testing of fish and wildlife diseases, all of which would be a continuing need in Vermont immediately post-disaster.

ANR performed testing for *Escherichia coli* (*E. coli*) analyses of state lakes, ponds, rivers, and streams. *E. coli* is a bacterium that is almost always associated with human or animal feces. Its presence in water means that other disease-causing microorganisms may be present as well. ANR lab contained metals, volatile organic compounds (VOCs), and total petroleum hydrocarbons (TPH) analyses. Finally the Air Pollution Control Division Laboratory Space used the laboratory to facilitate its monitoring of air particulates at various locations throughout the state. Data collected at these stations was used by Department of Environmental Conservation and the Department of Health to issue, if necessary, health advisories due to poor air quality.

In a disaster, disruption of these services would put the health and safety of the communities served at risk. Furthermore possible exposure of volatile materials make any risk of flooding unacceptable. Therefore the services provided and materials stored by the ANR lab qualify these facilities as critical actions.

**U.S Department of Homeland Security**  
FEMA Joint Field Office  
30 Allen Martin Drive  
Essex Junction, VT 05452



**FEMA**

November 15, 2012

Jeb Spaulding  
Governor's Authorized Representative  
Secretary of Administration, State of Vermont  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201

Re: Request for FEMA Environmental and Historic Preservation Review for the Vermont State Hospital  
FEMA-4022-DR-VT

Dear Secretary Spaulding:

This correspondence is in response to your September 5, 2012, request on behalf of the Vermont Department of Building and General Services (Applicant) for FEMA to perform an Environmental and Historic Preservation (EHP) review of the proposed Vermont State Hospital facility in Berlin, VT. FEMA is currently formulating Project Worksheets (PWs) for eligible Tropical Storm Irene damages at the Waterbury State Office Complex (WSOC). The Applicant has indicated their intention to apply funding from the WSOC towards the construction of the new Vermont State Hospital. The request for EHP review has been submitted by the Applicant to satisfy mandated FEMA review requirements and identify any conditions for anticipated alternate or improved projects.

Upon review of the submitted documentation, the FEMA EHP staff has concluded that there are no historic buildings or structures, known archaeological sites, or endangered species that would be affected by the proposed new construction. Further, there would be no adverse affects on groundwater, wildlife and fisheries, farmland, migratory birds, wild and scenic rivers, or on low income or minority populations. The proposed project will not encroach on a FEMA mapped floodplain or other flood prone area. However, other potential site-specific issues exist and must be addressed to maintain funding eligibility. These issues have been identified in the attached Environmental Assessment (EA) and associated Finding of No Significant Impact (FONSI).

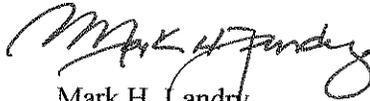
Any FEMA funding for the proposed scope of work is contingent upon the Applicant satisfying all of the FEMA EHP conditions. These conditions stipulate that the work must be limited to the designated scope of work and must be conducted in compliance with all Federal, State, and local regulations regarding erosion control, storm water management, permitting, and notification requirements. The attached FONSI contains the conclusions and conditions for the proposed new construction.

Jeb Spaulding, Secretary  
Page 2

Please note that this review pertains only to the proposed new construction at the Fisher Road site in Berlin as it relates to federal EHP requirements. **This transmittal does not provide approval, funding or otherwise, for anticipated alternate or improved projects associated with the WSOC.** Any Applicant driven proposal to fund the proposed new facility in Berlin with a FEMA PW must be formally submitted to FEMA as a Request for an Alternate or Improved Project. The funding request must also address the demise or disposition of the contributing facility which will also be reviewed and conditioned in accordance with FEMA EHP requirements.

Please inform the applicant of this information regarding the review of the proposed Vermont State Hospital and do not hesitate to contact me with any questions or concerns.

Sincerely,



Mark H. Landry  
Federal Coordinating Officer  
FEMA 4022-DR-VT

Enclosures



# FEMA

## FINDING OF NO SIGNIFICANT IMPACT

### **BERLIN STATE-RUN PSYCHIATRIC HOSPITAL BERLIN, VERMONT FEMA-4022-DR-VT**

As a result of damages caused by Tropical Storm Irene between August 27 and September 2, 2011, the President declared a major disaster for the State of Vermont under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This major disaster declaration, referenced as FEMA-4022-DR-VT, authorizes the Federal Emergency Management Agency (FEMA) to provide Public Assistance to local governments, state agencies and eligible private non-profit organizations in all Vermont counties. The State of Vermont has applied for assistance under the Public Assistance Program to relocate the function of the state-run psychiatric hospital from the Waterbury State Office Complex to a new facility to be constructed in Berlin, VT.

In accordance with 44 C.F.R. § 10.9, FEMA prepared an Environmental Assessment (EA) pursuant to Section 102 of the National Environmental Policy Act (NEPA) of 1969, as implemented by the regulations promulgated by the President's Council on Environmental Quality (40 CFR Parts 1500-1508). The purpose of the EA is to analyze the potential environmental impacts of the proposed project, and to determine whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI). In the EA process, FEMA considered two alternatives, a No Action Alternative, and the Proposed Action Alternative, to relocate the facility to a new state hospital at the Fisher State Road site in Berlin, VT.

The proposed action alternative, to construct a new Vermont State Hospital in Berlin, VT will maintain the same pre-disaster functions of mental health services that were provided in the pre-disaster facilities. Major conceptual elements of the new construction alternative include:

- A one story approximately 47,400 square foot facility with a capacity of 25 patients, to include patient rooms, a kitchen, dining room, exercise areas, nurse stations, seclusion rooms, exam rooms, as well as support and administration functions for the hospital;
- Ancillary site facilities, including: lighting, a driveway, approximately 101 parking spaces, sidewalks, fencing, electrical, water, and sewer services;
- Site clearing and preparation, and the installation of necessary infrastructure;
- Removal of five existing residential and commercial structures, and one outbuilding, all built in the 1970's, deemed to have no historic significance by FEMA and the State Historic Preservation Officer.

FEMA evaluated this proposed project as described in the EA for any potential significant adverse impacts to existing terrestrial resources (geology, soils, vegetation,

wildlife, threatened and endangered species), aquatic resources (floodplains, wetlands, groundwater), cultural resources, land use and zoning, infrastructure (utilities, traffic and parking, potable water, wastewater, stormwater), potential hazards (air quality/emissions, noise, asbestos, structural debris, fuel tanks, hazardous waste and seismic safety), socio-economic issues, climatic change and cumulative effects.

## **FINDINGS**

Based on input and consultation with Federal and State resource agencies, other identified sources documented in the attached EA, town officials, local residents and in accordance with the FEMA regulations (44 C.F.R. Part 10) for environmental considerations, and executive orders on floodplains (Executive Order 11988), wetlands (Executive Order 11990) and environmental justice (Executive Order 12898), FEMA finds that the proposed project as defined in the EA will have no significant impact on the natural or human environment. As a result of this Finding of No Significant Impact, an EIS will not be prepared and the proposed project with prescribed conditions may proceed. If a change in the scope of work occurs, the State and FEMA must be notified to evaluate if the proposed change would alter the potential impacts on the environment. Under most situations, however, the modification or addition of one or more elements of the construction plan will not alter the findings of this EA.

## **CONDITIONS**

The Department of Buildings and General Services (BGS), acting for the State of Vermont, shall comply with all prescribed conditions set forth in the EA, including but not limited to the following conditions. Failure to comply with these conditions may jeopardize the receipt of Federal funding.

1. If human remains are discovered during the course of project implementation, BGS shall immediately stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm until FEMA concludes consultation with BGS, the State Historic Preservation Officer, and the Vermont Agency of Transportation (grantee for FEMA funds). These parties shall consult to determine the appropriate disposition of the remains in accordance with applicable laws of the State of Vermont, including *13 VSA 3761* (Unauthorized Removal of Human Remains), *13 VSA 3764* (Cemeteries and Monuments – Grave Markers and Historic Tablets) and *18 VSA 5212* (Permit to Remove Dead Bodies).
2. BGS shall secure and comply with the terms of their Wastewater and Potable Water Supply Permit and their National Pollutant Discharge Elimination System (NPDES) Construction General Permit 3-9020. BGS shall follow US Green Building Council (USGBC) criteria for LEED Gold standards for stormwater management design and abide by the terms of the Vermont Erosion Control Handbook.
3. BGS shall develop and implement a Construction Site Waste Management plan. The plan shall incorporate measures such as notification to the U.S.

Environmental Protection Agency and Vermont Department of Health prior to building demolition and establish protocols for compliance with the Vermont Solid Waste Rules and the Vermont Underground Storage Tank Rules. Hazardous materials used in construction of the new facility must be managed (stored, used, transported, and disposed of) in accordance with federal, state, and local hazardous waste, hazardous material, and hazardous substance requirements. If hazardous substances are released to the project area during construction, these federal, state, and local requirements must be followed in response and cleanup.

4. BGS shall comply with the terms of the Berlin Zoning and Building Permits. BGS shall follow all conditions imposed by the local Zoning and Development Review Board, all State Agencies, and all codes and standards, including, but not limited to, construction, demolition, transportation, potable water, wastewater, stormwater, air quality, hazardous material (including asbestos), erosion control, and parking standards.
5. BGS shall comply with Air Source Registration requirements (if required), secure a New Source and Operating Permit (if required), abide by air pollution control regulations such as the National Emission Standards for Hazardous Air Pollution (NESHAPS), and incorporate dust management procedures construction, such as site wet down procedures.
6. Construction vehicles and equipment will be stored on site during project construction and appropriate signage will be posted on affected roadways. All construction activities will be performed using qualified personnel and in accordance with the standards specified in Occupational Safety and Health Administration regulations.
7. Construction will take place only during normal business hours and all equipment will meet local, State and federal noise regulations.

Approved:



Nov. 13, 2012

Jack Sullivan,  
Regional Environmental Officer,  
FEMA Region 1

Final Environmental Assessment

**Middlesex Temporary  
Secure Residential Facility**

Washington County, VT

**FEMA-4022-DR-VT**

*November 2012*



**FEMA**

Department of Homeland Security  
Federal Emergency Management Agency  
Region 1  
99 High Street  
Boston, MA 02110

Prepared for:

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FEMA Region I  
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Prepared by:

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**ENVIRONMENTAL ASSESSMENT  
MIDDLESEX SECURE RESIDENTIAL FACILITY  
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## Acronyms and Abbreviations

ANR	Agency for Natural Resources
APCD	Air Pollution Control Division
BMP	Best Management Practice
BGS	Vermont Department of Buildings and General Services
CAP	Consulting Archeology Program
CEQ	Council on Environmental Quality
CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CMS	Centers for Medicare and Medicaid Services
CWA	Clean Water Act
DEC	Vermont Department of Environmental Conservation
DHP	Division for Historic Preservation
DMH	Department of Mental Health
EA	Environmental Assessment
EO 11990	Protection of Wetlands
EO 11988	Floodplain Management
EO 12898	Environmental Justice for Low Income and Minority Populations
EO 13045	Protection of Children from Environmental Health Risks and Safety Risks
EIS	Environmental Impact Statement
EO	Executive Order
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FONSI	Finding of No Significant Impact
GIS	Geographic Information System
JCAHO	Joint Committee on Accreditation of Health Care Organizations
LEED	Leadership in Energy and Environmental Design
MGSC	State of Vermont Middlesex General Services Center
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollution
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NPDES	National Pollutant Discharge Elimination System
NPL	National Priority List
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NWI	National Wetlands Inventory
PA	Public Assistance
RCRA	Resource Conservation and Recovery Act
SHPO	State Historic Preservation Officer
USGBC	U.S. Green Building Council
USDA	U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service
VSH	Vermont State Hospital
VELCO	Vermont Electric and Power Company
WMD	Waste Management Division
WSOC	Waterbury State Office Complex

## **1.0 INTRODUCTION**

As a result of damages caused by Tropical Storm Irene between August 27 and September 2, 2011, the President declared a major disaster for the State of Vermont under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This major disaster declaration, referenced as FEMA-4022-DR-VT, authorizes the Federal Emergency Management Agency (FEMA) to provide Public Assistance (PA) to local governments, state agencies and eligible private non-profit organizations in all Vermont counties.

In response to Irene and the flooding within the Waterbury State Office Complex (WSOC), the State of Vermont took immediate action to relocate patients housed in the Vermont State Hospital (VSH) on the WSOC campus to alternate facilities around the state. As part of its overall patient care plans, the State of Vermont's Department of Buildings and General Services (BGS) has applied for assistance under the PA Program to temporarily relocate the function of seven (7) beds of the state-run psychiatric hospital from the Waterbury State Office Complex to a temporary, secure residential facility to be constructed in Middlesex, VT.

FEMA has prepared this Environmental Assessment (EA) to meet its environmental review responsibilities under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality's (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508), and FEMA's implementing regulations (44 C.F.R. Part 10). FEMA is also using the EA to document compliance with other applicable federal laws and executive orders for which FEMA has a responsibility for inter-agency consultation, including: the Endangered Species Act (ESA); the Magnuson-Stevens Fishery Conservation and Management Act (MSA); the National Historic Preservation Act (NHPA); Executive Order (EO) 11988, Floodplain Management; EO 11990, Protection of Wetlands; and EO 12898, Environmental Justice.

The purpose of this EA is to analyze potential environmental impacts from the proposed project, and to determine whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI). Based on the analysis provided in this draft EA, and if no significant public or agency comments are received on this Draft EA, FEMA may determine that the project will not significantly affect the human or natural environment and issue a Finding of No Significant Impact.

### **1.1 Disaster Background and Overview**

Tropical Storm Irene struck on August 27, 2011 and caused the most severe flooding since the record flood of November 1927. Waterbury was one of the most severely damaged communities. Flood waters from the Winooski River reached an elevation of 428.5 feet above mean sea level, which is 2.5 feet above the 100-year flood level established by FEMA for the WSOC site. The flooding and loss of power required the evacuation of VSH patients during the disaster to other mental health facilities around the state. As of October, 2012, patients continue to be treated and housed elsewhere.

The former VSH facility at the WSOC provided services to a variety of patients with different needs. Some patients were in crisis, requiring acute care, diagnosis and short-term treatment; others

were stabilized, but were not ready to move back into the community. In the latter category, several of the high acuity long-term patients requiring 24-hour supervision have been housed at the Springfield State Correctional Facility (Charlie Unit). This arrangement was taken as an essential short-term measure to move patients out of danger, but was never intended as more than a short-term solution for patient housing. Recently all but one of these patients has been moved to other community based settings. There are other individuals currently housed in acute care hospitals that no longer need acute care and would be more appropriately housed in a secure residential setting. Individuals with psychiatric problems that are moderate to severe in complexity remain at high risk for return and therefore need secure inpatient services and an intermediate level of support between acute/state hospital settings and community-based services.

This situation compounds the crisis faced by those in need of acute care. Vermont's private medical institutions continue to bear the brunt of the lost VSH capacity for new acute psychiatric patients. New voluntary and involuntary patients seeking treatment have few in-patient options because temporary capacity has been exceeded. As a result acute psychiatric patients wait longer than necessary in emergency rooms which have neither the staff nor the facilities to provide them appropriate care.

The Department of Mental Health proposes to develop a temporary seven (7)-bed secure residential treatment facility (hereafter referred to as "Middlesex Site" in this document) to serve the remaining Charlie Unit patients at Springfield and other non-acute patients who require this level of care, but are in acute care beds. This temporary facility will be created using two modular units on property the state owns in Middlesex. This parcel, located close to the I89 interchange, currently encompasses the State of Vermont Middlesex General Services Center (MGSC) and the Vermont State Police Middlesex Barracks. These existing facilities provide a parking lot and roadway system. BGS seeks assistance to operate this facility for at least 12 months, but for as long as three years. This facility would allow the Springfield Charlie Unit to be returned to the Department of Corrections and would relieve the pressure on private hospital emergency rooms awaiting in-patient acute care beds.

## **1.2 Purpose and Need**

Since the closing of the 54-bed VSH, there have not been enough hospital beds to care for everyone who needs psychiatric care. People currently wait long periods in hospital emergency rooms and sometimes are turned away due to the lack of beds. Currently, patients have been distributed throughout the State in hospitals and facilities that previously cared for other mental health patients. This has put a tremendous amount of pressure on the State's ability to care for the mental health community.

In the State's efforts to relieve some of these pressures, the State has looked at a number of options including, but not limited to, renovations of existing facilities, development of new facilities, and utilization of existing facilities as temporary hospitals until the new state hospital facilities are completed. These options were reviewed and approved by the Administration and Legislature. Accordingly, the Department of Mental Health (DMH) and BGS have worked collaboratively to pursue the development of this temporary facility, until the construction of a permanent 25 bed facility in Berlin, VT has been completed.

## **2.0 ALTERNATIVES CONSIDERED**

The State of Vermont considered several alternative sites to temporarily house patients in Windsor, St. Albans, Waterbury and Barre. A combination of prohibitive cost and distance from the original hospital's location ultimately ruled these options out.

### **2.1 Alternatives Analyzed and Dismissed**

The first location considered was a small unit on the grounds of the Windsor Correctional Facility. After a review of the renovation costs and the limited space, this location was deemed unsuitable even for a temporary facility.

The State then began considering the possibility of modular units at several locations. The first was on the grounds of the St. Albans Northwest State Correctional Facility, at 3649 Lower Newton Road. This is a 160 acre parcel hosting a 252 bed correctional facility within about a 23-acre fenced-in area. BGS representatives met with the select board to discuss the possibility of placing the 7 bed secure residential treatment facility there. It would have been possible, but the site has limited sewage capability and the location was far from ideal. Ultimately, the site was ruled out due to commute distance for staff. These options would have required the hiring of new staff, as current staff would have rejected such a commute. Having experienced staff was deemed imperative for this facility.

The next location considered was at the site of the long running "flea market" on Route 2 in Waterbury. This would have been ideal for staff, and the town of Waterbury was supportive. However, the property owner would not lease, only sell, and the asking price was almost double the assessed value of the property, making the acquisition cost of the property prohibitive.

An established community care home in Barre, was identified as a potential site for relocating patients. This facility is a 12-bed, assisted-care home currently in operation with eight (8) patients living there. The owners were eager to sell, but the asking price was approximately \$2 million. The owners were not willing to negotiate a lease agreement, and acquiring this property would have been a permanent solution to a temporary problem. After a review of the property and a needs assessment of the DMH, this location was not deemed an appropriate solution.

In further review, BGS re-examined possible state owned sites, which led to the identification of the Middlesex site, which is ideally situated, cost effective and environmentally non-intrusive, as described below.

### **2.2 Alternatives Further Evaluated**

#### **2.2.1 No Action Alternative**

Under the No Action Alternative, DMH would continue to operate the current network of facilities in an attempt to provide the services formerly provided by the VSH. High acuity long-term patients will remain under-served and inappropriately housed in acute care beds and

facilities across the state. This alternative results in improperly served patients and a shortage of available beds for new and incoming patients with acute needs.

### 2.2.2 Proposed Alternative

The State of Vermont intends to install a 6,000 +/- square foot facility, consisting of two prefabricated modular units, to house up to seven (7) mental health patients in order to alleviate a critical deficiency of mental health beds. Maximum dimensions of the assembled units are 80' long x 86' wide x 15' high. The facility will be located on state-owned land adjacent to the MGSC at 1078 Route 2, Middlesex, VT. The Vermont State Police barracks is situated nearby (Appendices A-Site Plan and D-Photographs).

This facility is intended to be temporary in nature, i.e., not to exceed three (3) years. It will be removed once a new 25-bed permanent replacement facility in Berlin has been permitted, built, and has begun to operate for a period of up to six (6) months. There are only a few adjoining residential neighbors as the location is currently a designated Industrial District. Site improvements needed for the installation of the temporary building will be minor. The facilities of the adjacent MGSC would be utilized for parking. Installation of double septic tanks and a leach field will provide sewage capacity. A well drilled on site and a connecting water line will provide potable water.

The State has reviewed several alternative locations and determined that this is the most feasible. Any impact will be of short duration and minor in nature.

### 3.0 AFFECTED ENVIRONMENTS AND POTENTIAL IMPACTS OF THE ALTERNATIVES CONSIDERED

In the following section, the *No Action Alternative* consists of the continued operation of the current network of facilities scattered around the State of Vermont in an attempt to provide the services formerly provided by the VSH in Waterbury. No environmental impacts are anticipated to directly result from such undertakings and will not be addressed in the following analysis.

The *Proposed Alternative* is to build a temporary seven-bed facility on state owned land at 1078 Route 2, Middlesex, VT. This structure will consist of two modular buildings; minor improvements to the infrastructure will provide water, electricity, and sewage disposal (Appendix A). The life expectancy of this facility will not exceed three (3) years. As such, the long term impacts on the environment, as analyzed in the following pages, will be controlled and minor.

#### 3.1 Summary of Effects

Table 3-1 summarizes the effects described and analyzed in this chapter (Affected Environments and Potential Impacts of the Alternatives Considered). Levels of potential effect are defined as follows:

- \* Negligible: The resource area would not be affected, or changes would be non-detectable or if detected, effects would be slight and local. Impacts would be well below regulatory limits.
- \* Minor: Changes to the resource would be measurable, although the changes would be small and localized. Impacts would be within or below regulatory limits. Mitigation measures may be necessary to reduce potential effects.
- \* Moderate: Changes to the resource would be measurable and have localized and potentially regional scale impacts. Impacts would be within or below regulatory limits, but historical conditions would be altered on a short-term basis. Mitigation measures may be necessary to reduce potential effects.
- \* Major: Changes would be readily measurable and would have substantial consequences on a local and potentially regional level. Impacts would exceed regulatory limits. Mitigation measures to offset the effects would be required to reduce impacts, although long-term changes to the resource would be possible.

Table 3-1.

## PROJECT ALTERNATIVES: SUMMARY OF POTENTIAL EFFECT, COORDINATION AND MITIGATION APPLIED

Affected Environment/ Resource Area	Alternatives	IMPACT				Agency Coordination/ Permits	Mitigation/BMPs	Comments
		Negligible	Minor	Moderate	Major			
Geology	No Action	X						
	Proposed Site	X						No impacts to unique or protected geology.
Soils	No Action	X						
	Proposed Site		X				Site has been previously altered with fill, destroying the integrity of previously prime agricultural soil.	Lamoine Silt Loam, on site, is listed as prime agricultural soil.
Vegetation	No Action	X						
	Proposed Site	X						No removal of sensitive plant species
Wildlife	No Action	X						
	Proposed Site	X						Only the potential for limited, short-term disruption to wildlife patterns during construction.
Threatened and Endangered Species	No Action	X						
	Proposed Site	X						No federally-listed or state-listed threatened or endangered species in or near project area.
Floodplains	No Action	X						
	Proposed Site	X						Project is not located within a floodplain; no impact on floodplains or flooding.
Wetlands	No Action	X						
	Proposed Site	X						No effects on wetlands
Archaeological Resources	No Action	X						

Table 3-1.

PROJECT ALTERNATIVES: SUMMARY OF POTENTIAL EFFECT, COORDINATION AND MITIGATION APPLIED

Affected Environment/ Resource Area	Alternatives	IMPACT				Agency Coordination/ Permits	Mitigation/BMPs	Comments
		Negligible	Minor	Moderate	Major			
	Proposed Site	X				SHPO concurred in a determination of No Historic Properties Affected.		Field inspection and sub-surface coring on 10/5/2012 revealed that topography had been heavily modified in construction of softball field
Historic Buildings	No Action	X						
	Proposed Site	X				SHPO concurred in a determination of No Historic Properties Affected.		Review of maps from 1873 and 1921 reveals no record of historic structures on this site.
Land Use and Zoning	No Action	X						
	Proposed Site	X				Middlesex Zoning Permit, Fire Safety Construction Permit	The Middlesex Site has been designed to comply with the Middlesex zoning ordinance	A Zoning Application for the project was filed September 10, 2012, and was approved
Utilities	No Action	X						
	Proposed Site		X			Wastewater System and Potable Water Supply Permit. State Transient Non-Community Water System (TNC) Permit. State compliance determination for energy standards.	Erosion and dust control during installation of the leach field.	1500 gallon septic tank and leach field will be installed. Well will be drilled to provide water for the facility. Electricity will be brought to location by installation of temporary electrical poles.
Traffic and Parking	No Action	X						

Table 3-1.

## PROJECT ALTERNATIVES: SUMMARY OF POTENTIAL EFFECT, COORDINATION AND MITIGATION APPLIED

Affected Environment/ Resource Area	Alternatives	IMPACT				Agency Coordination/ Permits	Mitigation/BMPs	Comments
		Negligible	Minor	Moderate	Major			
	Proposed Site		X				Traffic impact assessment found that the proposed site would not have a significant impact.	Traffic patterns will change due to staff, visitor, and patient trips. Parking will be shared with existing facility.
Stormwater	No Action	X						
	Proposed Site		X			Stormwater Discharge General Permit 3-9015. Construction General Permit 3-9020.		Project may result in a minor increase in impervious area from the current level of development. Any runoff will be tied in with existing stormwater management at the MGSC building and compliance with 3-9015 and 3-9020 permits.
Air Quality	No Action	X						
	Proposed Site		X				Compliance with applicable air pollution control regulations.	Dust is not expected to occur during site preparation and assembly of prefabricated units.
Noise	No Action	X						
	Proposed Site		X				Construction hours may be restricted to day light hours. Construction equipment will comply with federal noise requirements.	There may be a temporary increase in noise during construction, otherwise noise levels will remain about the same as under current uses.
Hazardous Waste	No Action	X						
	Proposed Site	X						No hazardous waste at, or will be generated by the proposed site.
Seismic Safety	No Action	X						

Table 3-1.

PROJECT ALTERNATIVES: SUMMARY OF POTENTIAL EFFECT, COORDINATION AND MITIGATION APPLIED

Affected Environment/ Resource Area	Alternatives	IMPACT				Agency Coordination/ Permits	Mitigation/BMPs	Comments
		Negligible	Minor	Moderate	Major			
	Proposed Site	X						Site is low risk for damaging earthquakes.
Environmental Justice	No Action	X						
	Proposed Site	X				An Assisted Living and Therapeutic Community Residences Permit		No disproportionate impacts to minority or low-income populations will occur.
Climate Change	No Action	X						
	Proposed Site	X						Size and temporary nature of the facility result in no measurable change.

## 3.2 Terrestrial and Biological Resources

Terrestrial resources combine to form a mosaic landscape. Factors related to geology, soils, vegetation and wildlife are considered during project development to determine if one or more actions could adversely affect one or multiple resources or offset the balance among them.

### 3.2.1 Geology

#### *3.2.1.1 Affected Environment*

Underlying bedrock geologic features significantly affect regional and local topographic variability, forest type, and wildlife habitat. The Middlesex site sits on the Stowe Formation, which is primarily fine-grained, well-foliated, magnetite-chlorite-albite-sericite-quartz phyllite and schist (Appendix B). Bedrock outcrops are rare and extractive quarries are not located nearby. There are no unique or protected geologic resources or geologic hazards in the project vicinity.

#### *3.2.1.2 Environmental Consequences*

None identified.

### 3.2.2 Soils

#### *3.2.2.1 Affected Environment*

Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture (USDA) recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland. The Farm Protection Policy Act (7 USC 4201) states, "the purpose of the Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses."

The soil classification for the Middlesex site, according to the National Resource Conservation Service (NRCS) on-line soil database, is primarily Lamoine Silt Loam (Appendix B). The parent material consists of clayey glacio-lacustrine deposits; soil drainage is classified as somewhat poorly drained. Soils at the southeast edge of the site are classified as Colton gravelly loamy sand. The parent material of this soil is sandy and gravelly glacio-fluvial deposits; soils are excessively drained.

#### *3.2.2.2 Environmental Consequences*

Colton gravelly loamy sand is not among the State's listed prime agricultural soils.

Lamoine Silt Loam is listed as prime agricultural soil. However, indigenous soils within the proposed area of the new facility have been extensively modified by grading and filling to create a softball field. When the State Archives building was constructed in an adjacent portion of this parcel, materials were re-deposited in the area of the ball field; other material was later brought in from off site. This activity would have destroyed the integrity of the Lamoine Silt Loam, no longer making it usable as prime agriculture soil.

Setting up the units will result in minimal amounts of ground disturbance. Steps to alleviate erosion and dust control will not be necessary.

### 3.2.3 Vegetation

#### 3.2.3.1 *Affected Environment*

The site consists primarily of an athletic playing field surrounded by lawns, mowed fields, and parking areas. Adjacent portions of the property are occupied with state office buildings (Appendix D-Photographs).

#### 3.2.3.2 *Environmental Consequences*

No disturbance or degradation of sensitive plant communities or habitats will occur; no conflicts with applicable federal, state, or local regulations protecting native vegetation are anticipated.

### 3.2.4 Wildlife

#### 3.2.4.1 *Affected Environment*

There are currently no lakes or fish bearing streams located on the property. Small mammals may live on this developed property and game animals may pass through it. The natural functions of the site will not be significantly altered as a result of the proposed development.

#### 3.2.4.2 *Environmental Consequences*

Short-term phases of construction and the temporary nature of the secured residential facility will have no significant long-term effect on wildlife habitat.

### 3.2.5 Threatened and Endangered Species

#### 3.2.5.1 *Affected Environment*

The Vermont Department of Environmental Conservation (DEC) maintains a Geographic Information System (GIS) database for data of environmental interest and makes this data available through environmental interest mapping tools. The database was queried for wetlands, both state- and federally-listed rare, threatened and endangered species, and significant habitats. The resulting Environmental Interest Map is presented in Appendix B. The U.S. Fish and Wildlife Service (USFWS) maintains a list of federally-listed rare, threatened, and endangered species (Appendix B).

#### 3.2.5.2 *Environmental Consequences*

Per the VT Agency of Natural Resources' (ANR) Natural Resource Atlas and U.S. Fish and Wildlife Service Table, no federally- or state-listed rare, threatened, or endangered species are present in the project area.

## 3.3 **Aquatic Resources**

### 3.3.1 Floodplains

#### 3.3.1.1 *Affected Environment*

Executive Order 11988 Floodplain Management directs federal agencies to assume leadership in avoiding direct or indirect support of development in the 100 year floodplain. FEMA's National Flood Insurance Program (NFIP) publishes maps that identify areas at risk from flooding based on a 100-year and 500-year storm event.

#### *3.3.1.2 Environmental Consequences*

The project is not located within a designated floodplain as shown on the FEMA Flood Insurance Map, Panel Number 5001140011B, effective as of May 3, 1982 (Appendix B).

### **3.3.2 Wetlands**

#### *3.3.2.1 Affected Environment*

Executive Order 11990 Protection of Wetlands requires federal agencies to avoid adverse impacts to wetlands to the extent possible. Section 404 of the Clean Water Act (CWA) establishes a wetland permit program administered by the U.S. Army Corps of Engineers. The Vermont Wetland Rules identify significant wetlands and regulate activities in and near these wetlands.

#### *3.3.2.2 Environmental Consequences*

A query of the VT ANR Natural Resource Atlas, as well as an on-site review, do not indicate that any wetlands are present.

## **3.4 Cultural Resources**

Cultural resources include properties of historical, cultural, and/or archaeological significance. The National Historic Preservation Act (NHPA) of 1966 defines a historic property as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register". Criteria for listing a property on the National Register of Historic Places (NRHP) are found at 36 C.F.R. Part 60. Two types of historic properties may be associated with the proposed Middlesex site; archaeological resources and historic buildings.

### **3.4.1 Archaeological Resources**

#### *3.4.1.1 Affected Environment*

Native American communities have lived in present-day Vermont for approximately 11,000 years. Archaeological sites have been identified along the Winooski River and in its tributary drainages dating from the initial period of human migration into Vermont following retreat of the glaciers. Several prehistoric Native American sites have been identified close to the confluence of the Mad and Winooski River at lower elevations to the south of the project area. An archaeological survey conducted for a storage facility and golf practice range just to the west of the state-owned parcel did not identify archaeological evidence of former use.

#### *3.4.1.2 Environmental Consequences*

On October 5, 2012, Peter Thomas, FEMA Historic Preservation Specialist, and Scott Dillon, Staff Archaeologist, Vermont Division for Historic Preservation, conducted a field inspection of the proposed site, currently a constructed softball field. A heavily modified topography was observed. Land to the east of the ball field is some five feet higher than the field itself; a steep cut-bank and drainage ditch are evident along the east edge of the field. The ball field itself is

essentially level. At its western and southern edges, it then drops approximately six feet onto a mowed lawn. Fill slopes are roughly 45% (Appendix D-Photographs 1-4).

A soil corer was used to evaluate the underlying stratigraphy. Cores consistently exhibited a thin organic horizon of dark grayish brown silt loam near the surface, underlain by a grayish brown silt loam with ferric mottling, indicating relatively poor drainage. Evidence of mixing was visible in a few places; materials are fairly unconsolidated and no clearly developed B horizon was noted, both indicators of recent deposition. Given the lack of streams and known sites in the immediate area, coupled with poor drainage and the heavily modified condition of the indigenous soil, it was concluded that the probability of encountering a significant archaeological site that would meet the criteria for listing on the NRHP is extremely low. FEMA and SHPO concurred in a determination of No Historic Properties Affected (Appendix C).

### 3.4.2 Historic Buildings

#### 3.4.2.1 *Affected Environment*

A review of the map of Middlesex in Beers' *Atlas of Washington County, VT* (1873) and the USGS 15 Minute *Montpelier Quadrangle* (1921) indicates that two nineteenth-century farmsteads have existed to either side of the state-owned property for over a hundred years and continue to exist in these locations adjacent to a remnant of old Route 2. The current segment of Route 2 adjacent to the state-owned parcel has been substantially raised and widened (Appendices B-Historic Maps and D-Photographs 7-10).

#### 3.4.2.2 *Environmental Consequences*

Based on the map review, there is no indication that an early historic site with the potential to contain significant archaeological deposits exists within the proposed construction site. No evidence of a site was identified in the field. FEMA and SHPO concurred in a determination of No Historic Properties Affected (Appendix C).

## 3.5 Land Use and Zoning

### 3.5.1 *Affected Environment*

This area is zoned as an Industrial District by the Town for Middlesex. The site plan was submitted to the Town for review on September 10, 2012. The larger site contains several state-owned buildings. Adjacent properties contain residential homes and small barns (Appendix D-Photographs 1-10).

### 3.5.2 *Affected Environment*

The facility has been designed to comply with the Town of Middlesex zoning ordinance. The project will follow the zoning and design review process specified by the Town. A zoning application for the project was filed September 10, 2012 and accepted (Appendix E). The application was updated with the most recent plan for the facility during the review process, ensuring the project will be consistent with existing land use and the local land use and development requirements.

## 3.6 Infrastructure

### 3.6.1 Utilities

#### *3.6.1.1 Affected Environment*

Although the installation of the temporary facility is planned for a pre-developed site, most of its utilities will be newly developed because the existing utilities are sized for the current site uses (Appendix A-Site Plan).

A 1500 gallon septic tank will be installed on the edge of the temporary building footprint. From the septic tank, a 4" PVC sewer force main will be run to a float tank of approximately 440 gallons and then to an area next to the existing leach field of the MGSC building. A new primary leach field for this temporary facility will be installed and will consist of: 4 trenches, each 52' long x 4' wide, at a distance of 4' apart. A secondary leach field of the same size (as required by septic system standards), will be designed for placement next to the new primary leach field. However, this secondary leach field will not be constructed unless and until the new primary leach field fails.

To provide water to the facility, a well will be drilled at the rear of the temporary structures. Electricity will be temporarily brought to this site through the installation of overhead lines that begin near the MGSC building. These lines and poles will be temporary and only in place during the life of the facility.

#### *3.6.1.2 Environmental Consequences*

The installation of one septic tank and a float tank next to the modular units and a primary leach field adjacent to existing leach fields for the existing buildings will be the most invasive component of the infrastructure. As these areas consist of fill and are previously disturbed, there will be no major impact on the surrounding environment. This project requires a Vermont Wastewater System and Potable Water Supply Permit (WW permit) from the State and full compliance with permit conditions will ensure minimal environmental impact.

The fresh-water well to be drilled will be consistent with the uses of other industrial buildings on site and in the area, and does not represent a significant impact to the environment. The facility will require a Transient Non-Community Water System (TNC) permit, and full compliance will ensure minimal environmental impact.

The installation of temporary electrical poles to provide power to the facility will not cause any significant impact to the surrounding environment. Once plans have been fully developed, BGS will seek a determination of compliance for consistency with Vermont Energy Standards.

Installation of the utilities and septic tank will result in only minor soil disturbances. Installation of the leach field and connecting trench of the pipe will require both erosion and dust control measures.

### 3.6.2 Traffic and Parking

#### *3.6.2.1 Affected Environment*

This location is served by a major highway, State Route 2, and is immediately adjacent to the interstate exit, making this location ideal for the purposes intended.

Site features such as the access road, circulation road and some of the parking requirements will be accommodated by the existing site features. The facility will operate with a total of 40 employees, covering 3 shifts per day. Shift changes will occur from 6:30-7:00 AM, 2:30-3:00 PM, and 10:30-11:00 PM. In addition, the facility will generate a limited number of non-employee related trips including patient arrivals and departures, patient visitors, and patient representatives. The shift changes do not occur during the peak hour for traffic in the vicinity of the facility. The arrival and departure times for the 8:00 AM to 4:30 PM workers do occur during the peak hour 7:15-8:15 AM and 4:30-5:30 PM peak hours.

### *3.6.2.2 Environmental Consequences*

The Vermont Agency of Transportation uses a threshold of 75 peak hour trips to require a traffic study. Given that there are a total of only 40 employees assigned to this facility, the estimated increase in peak hour trips is well below this threshold.

### **3.6.3 Stormwater**

#### *3.6.3.1 Affected Environment*

Vermont administers the federal Clean Water Act (CWA) and the Vermont Water Quality Regulations. Surface water runoff may increase minimally due to a minimal increase in impervious area from the current level of development. Water quality is protected by compliance with the conditions of discharge permits issued by the Vermont Department of Conservation. Under Vermont regulations, a “Stormwater Discharge from New Development and Redevelopment General Permit 3-9015” is required for discharges of stormwater from new development projects equal to or greater than one (1) acre or discharge from expansion or redevelopment of an existing impervious surface. Under the CWA a “Construction General Permit 3-9020” is also required for stormwater runoff from earth disturbance activity covering one or more acres of land.

#### *3.6.3.2 Environmental Consequences*

Potential adverse effects from a minimal increase in impervious area will be mitigated by the on-site stormwater management system already installed as part of the MGSC building. In addition, compliance with the conditions listed in the “Stormwater Discharge from New Development and Redevelopment General Permit” and the “Construction General Permit 3-9020” will address off-site conveyance of stormwater and mitigate water quality impacts during construction.

## **3.7 Potential Hazards**

### **3.7.1 Air Quality**

#### *3.7.1.1 Affected Environment*

Air quality in Vermont is regulated by the Air Pollution Control Division (APCD) of the Vermont Agency of Natural Resources. APCD enforces both state and federal air quality regulations

including the Clean Air Act of 1990 and Amendments, and the Vermont Air Pollution Control Regulations (VT ANR, 2012).

Subchapter IV of the regulations sets out the requirements for Classification of Air Contaminant Sources, and source registration and operating permits and Subchapter V sets forth requirements for Review of New Contaminant Sources. Section 5-401 of the Regulations classifies fuel burning installations based on the fuel source (VT APCD Regulations, 2011).

#### *3.7.1.2 Environmental Consequences*

Compliance with the air pollution regulations will protect air quality.

### *3.7.2 Noise*

#### *3.7.2.1 Affected Environment*

There may be a temporary increase in noise during site preparation and assembly of the modular units that will be constructed off site, otherwise noise levels will remain about the same as under current uses.

#### *3.7.2.2 Environmental Consequences*

Temporary increase in noise during construction will be mitigated by limitation of operating hours for construction to daylight hours. No permanent increase in ambient noise will occur as a result of construction or operation of the temporary facility.

### *3.7.3 Hazardous Waste*

#### *3.7.3.1 Affected Environment*

Hazardous materials are regulated by both the federal and state governments. The two main laws that pertain to hazardous materials are CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) and RCRA (Resource Conservation and Recovery Act).

CERCLA was enacted in 1980 and amended in 1986. It was created to regulate activity on closed and abandoned hazardous waste sites, provide and determine liability for releases of hazardous materials at abandoned sites, and provide a funding mechanism for the cleanup of hazardous waste sites. CERCLA also established the National Priority List (NPL) which is a database of sites with known or suspected releases of hazardous materials (U.S. EPA, 2010). RCRA was enacted in 1976 and amended in 1984 and regulates and generation, transportation, storage, and disposal of hazardous materials (U.S. EPA, 2010a). It also set up a framework for the designation and classification of hazardous materials. In Vermont, RCRA generators are regulated by the Vermont Department of Environmental Conservation Waste Management Division (VT WMD).

#### *3.7.3.2 Environmental Consequences*

There are no CERCLA hazardous waste sites in the Town of Middlesex. No state hazardous waste sites are identified on the Middlesex site. The contiguous parcel, currently occupied by the Vermont State Archives, had a hazardous waste site that was closed in 2007. This site at one point had concerns about toxic materials leeching into the groundwater, but in 2001, a change was made so that water discharge and waste streams from photo-processing and print shop areas no longer

go to the septic system, but to an evaporator. Two underground storage tanks (#1814 and #446) are also located on this parcel; both were installed in 1989 and currently identified as being in good condition by the VT Agency of Natural Resources (Appendix B – Figure 8).

#### 3.7.4 Seismic Safety

##### *3.7.4.1 Affected Environment*

Executive Order 12699 directs federal agencies to incorporate cost-effective seismic safety measures in all new buildings that are constructed, leased, assisted, or regulated by the federal government.

##### *3.7.4.2 Environmental Consequences*

The area around Middlesex, Vermont, has relatively low risk for damaging earthquakes, so concern about seismic activity for this proposed project are low.

### **3.8 Socioeconomic Issues**

#### *3.8.1 Affected Environment*

EO 12898 is the Executive Order regarding Environmental Justice in Minority Populations. This requires federal agencies, departments, and their contractors to consider any potentially disproportionate human health or environmental risks to minority or low income populations posed by their activities, policies, or programs.

EO 13045 Protection of Children from Environmental Health Risks and Safety Risks requires agencies to identify and assess health and safety risks that may disproportionately affect children, and ensure that an agency's activities, policies, programs and standards address disproportionate risks to children.

#### *3.8.2 Environmental Consequences*

Based on 2010 Census, the population of Washington County is 98.1% white; 1.2% black or African American; 1.0 % American Indian or Alaska native; 1.1% Asian; and 0.4% other. There is not a significant minority of poor populations in Washington County. The median family income is \$66,968. 3.3% of the population receives cash public assistance; and 8.8% of the population is eligible for food stamps. 78.9% of the population is 18 years of age or older. Thus construction of the temporary secure residential facility in the Town of Middlesex will not have a disproportionate effect on minority or poor populations, or children and youth. An Assisted Living and Therapeutic Community Residences Permit will be obtained from the Agency of Human Services once detailed floor plans have been developed that demonstrate space allocation for all patients.

### **3.9 Climate Change**

#### *3.9.1 Affected Environment*

The CEQ has issued a draft NEPA guidance document encouraging federal agencies to improve their consideration of the effects on greenhouse gas emissions and climate change in their evaluations of proposals subject to NEPA documentation (CEQ 2010).

### *3.9.2 Environmental Consequences*

No mitigation measures related to climate change are specifically proposed for the project alternatives and none are required due to the temporary nature of this facility and its limited impacts on greenhouse gas emissions and climate change.

## **3.10 Cumulative Effects**

Cumulative effects are those that result from the incremental effect of the Alternative Actions when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other action (40 C.F.R. 1508.7).

### *3.10.1 Affected Environment*

The DMH is under legislative mandate to replace the former VSH at the WSOC. The current temporary system is not practical, nor sustainable. The proposed temporary replacement facility will help alleviate the burden currently on the mental health facilities throughout the state, while providing appropriate care for acuity long-term patients.

In the wake of the Irene flooding, other providers have stepped up to serve the current residents of the hospital, but none of these providers are prepared to care for those patients indefinitely. The VSH served the highest need patients in the system, so called “Level I” patients. These patients tend to be the hardest to care for, typically because of challenging behaviors. They are the patients most likely to be aggressive or violent, and do not fare well in crowded environments with other patients.

### *3.10.2 Environmental Consequences*

No Action Alternative - The current No Action Alternative is unsustainable. The lack of capacity has required the state to seek alternative placements for many people in need of service and has resulted in people who request hospital services being turned away. Based on information derived from the DMH, every month since the flood, 10-20 people have had to be held in emergency rooms awaiting a bed in a psychiatric hospital. Until sufficient temporary and permanent facilities can open and relieve the pressure on the State’s mental healthcare needs, the State’s mental health system remains in crisis.

Proposed Alternative - Construction of the secure residential facility at the Middlesex Site would provide seven (7) beds for long term patients in need of a stable care environment. Such patients would otherwise be underserved in the State’s health care system. At the same time, the availability of acute care beds that are currently being occupied by those proposed for relocation to Middlesex would increase proportionately. Thus, the cumulative impact from construction of the Middlesex Facility would be positive.

## 4.0 AGENCY COORDINATION AND PERMITS

All required state and local permits will be obtained prior to commencement of construction activities at the site. These permit requirements include:

- *Local Zoning Permit*: issued September 26, 2012; will become effective October 26, 2012.
- A *Wastewater System and Potable Water Supply* permit was issued by the Agency for Natural Resources on October 18, 2012 (#WW-5-6211).
- *Storm Water Permit*: the application will be submitted by October 24, 2012.
- *Department of Public Safety {Fire Safety Division} – Construction permit*: the application will be submitted once detailed floor plans have been developed.
- *Agency of Human Services: Assisted Living and Therapeutic Community Residences Permit*: The application will be submitted once detailed floor plans have been developed.
- *Vermont Energy Standards Compliance*: a determination of compliance with the standards will be requested once plans are fully developed.

## 5.0 PUBLIC INVOLVEMENT

Public involvement with the proposed action was initiated through the Town of Middlesex's Local Zoning Permit application process. BGS applied for the local Zoning Permit on September 10, 2012.

- The Notice of Application was advertised in the *Times Argus* on September 11, 2012 and then again on September 17, 2012.
- The Notice of Application was physically posted at Town offices in two conspicuous places beginning on September 11, 2012 and remained in place for 30 days.
- A public hearing on the permit application was conducted on September 26, 2012.
- BGS received a Notice of Issuance on September 26, 2012 after the public hearing and posted it at the project location on September 27, 2012. This Notice of Issuance shall stay in place until October 26, 2012 at which time if there are no appeals it will become effective.

The Proposed Action and the availability of the Draft EA were publicized in a Public Notice in *The Times Argus* and *The Waterbury Record* on October 26, 2012. Hard copies of the draft EA were made available for public review at the Town Clerk's Office in Middlesex and the Kellogg-Hubbard Public Library in Montpelier; digital versions were posted on the FEMA, VEM and DMH websites before October 26. No substantive comments were received during the subsequent 15-day comment period that closed on November 9, 2012. Only this paragraph of the Draft EA has been updated prior to becoming the Final EA. The initial Public Notice will serve as the final Notice.

## **6.0 LIST OF PREPARERS**

This document was prepared by:

Peter Thomas, FEMA Environmental Advisor

Erin Kizer, FEMA Environmental Specialist

Sharla Azizi, FEMA Historic Preservation Specialist

Lydia Kachadoorian, FEMA Region I Deputy REO

## 7.0 REFERENCES

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2012 at [http://maps.vermont.gov/imf/sites/ANR\\_NATRESViewer/jsp/launch.jsp](http://maps.vermont.gov/imf/sites/ANR_NATRESViewer/jsp/launch.jsp)

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Management Division, Vermont Department of Environmental Conservation.

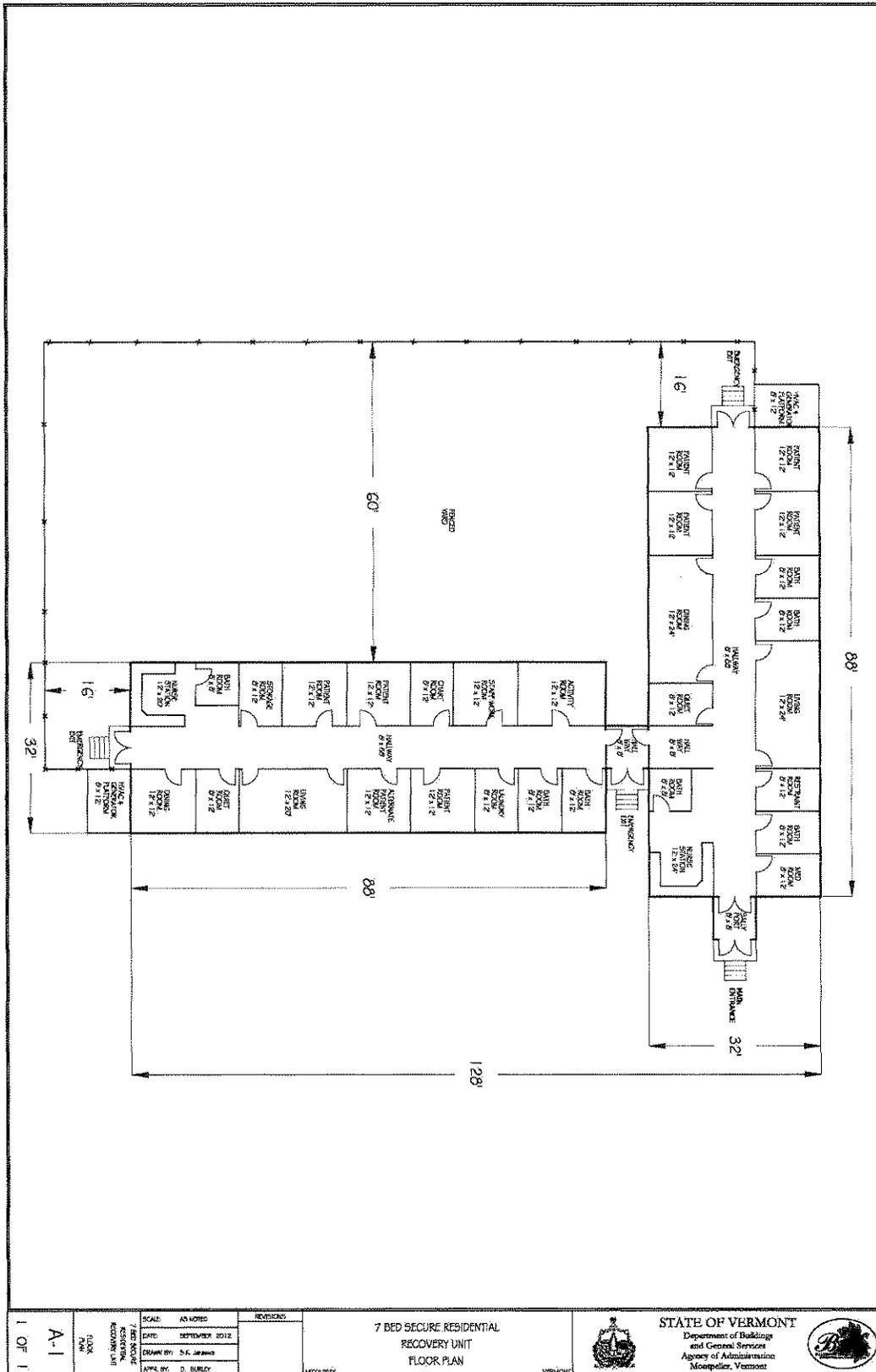
VTDEC, 2005. Groundwater Protection Rule and Strategy. Chapter 12, Environmental Protection  
Rules. February 14, 2005. Rule Number 04P-039.

## 8.0 APPENDICES

Appendix A	Site Plan, Maps and Aerial Photographs
Appendix B	Environmental Interest Maps <ol style="list-style-type: none"><li>1. Bedrock Geology</li><li>2. USDA Soil Survey</li><li>3. Endangered Species</li><li>4. Critical Habitat</li><li>5. List of Federal Threatened and Endangered Species</li><li>6. Floodplain Map – FIRMettes</li><li>7. Historic Maps</li><li>8. Hazards Map</li></ol>
Appendix C	SHPO Correspondence
Appendix D	Photographs
Appendix E	Zoning Application and Permit

**Appendix A Site Plan, Location Map  
and Aerial Photograph**





1 OF 1	A-1	SCALE: AS SHOWN
		DATE: SEPTEMBER 2012
		DRAWN BY: S.K. JARVIS
		APP. BY: D. BURLY

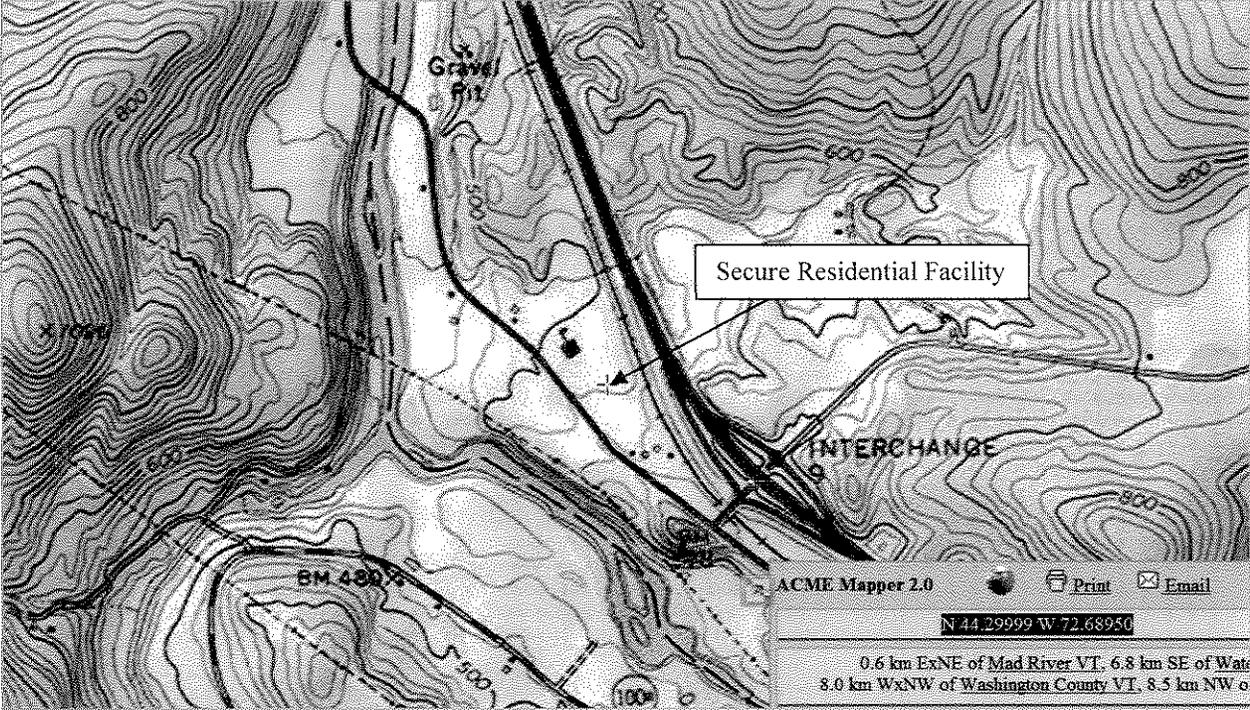
7 BED SECURE RESIDENTIAL  
RECOVERY UNIT  
FLOOR PLAN

STATE OF VERMONT  
Department of Buildings  
and General Services  
Agency of Administration  
Montpelier, Vermont

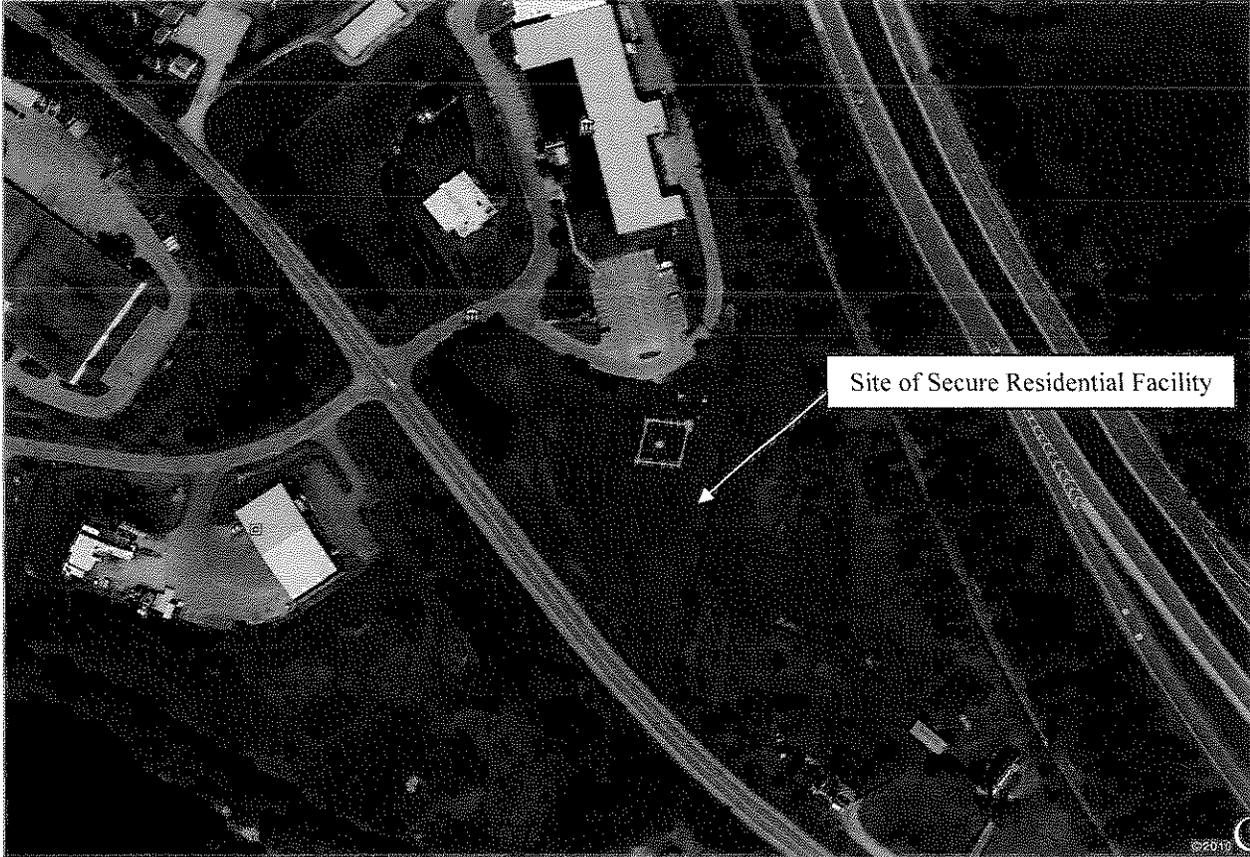



Site Plan 2

Secure Residential Facility Department of Mental Health  
Route 2, Middlesex, VT  
N 44.29999 W -72.68950



Location Map



Aerial Photograph

## **Appendix B Environmental Interest Maps**

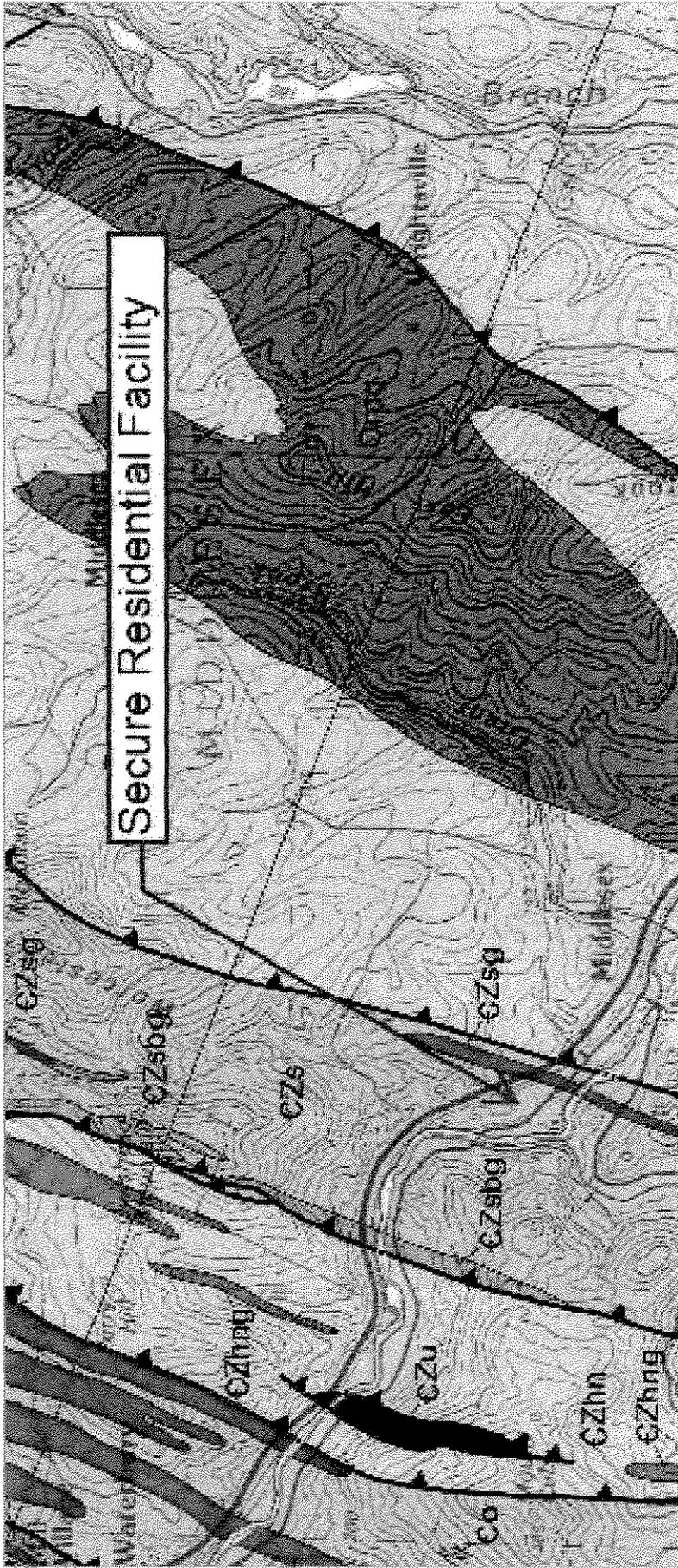
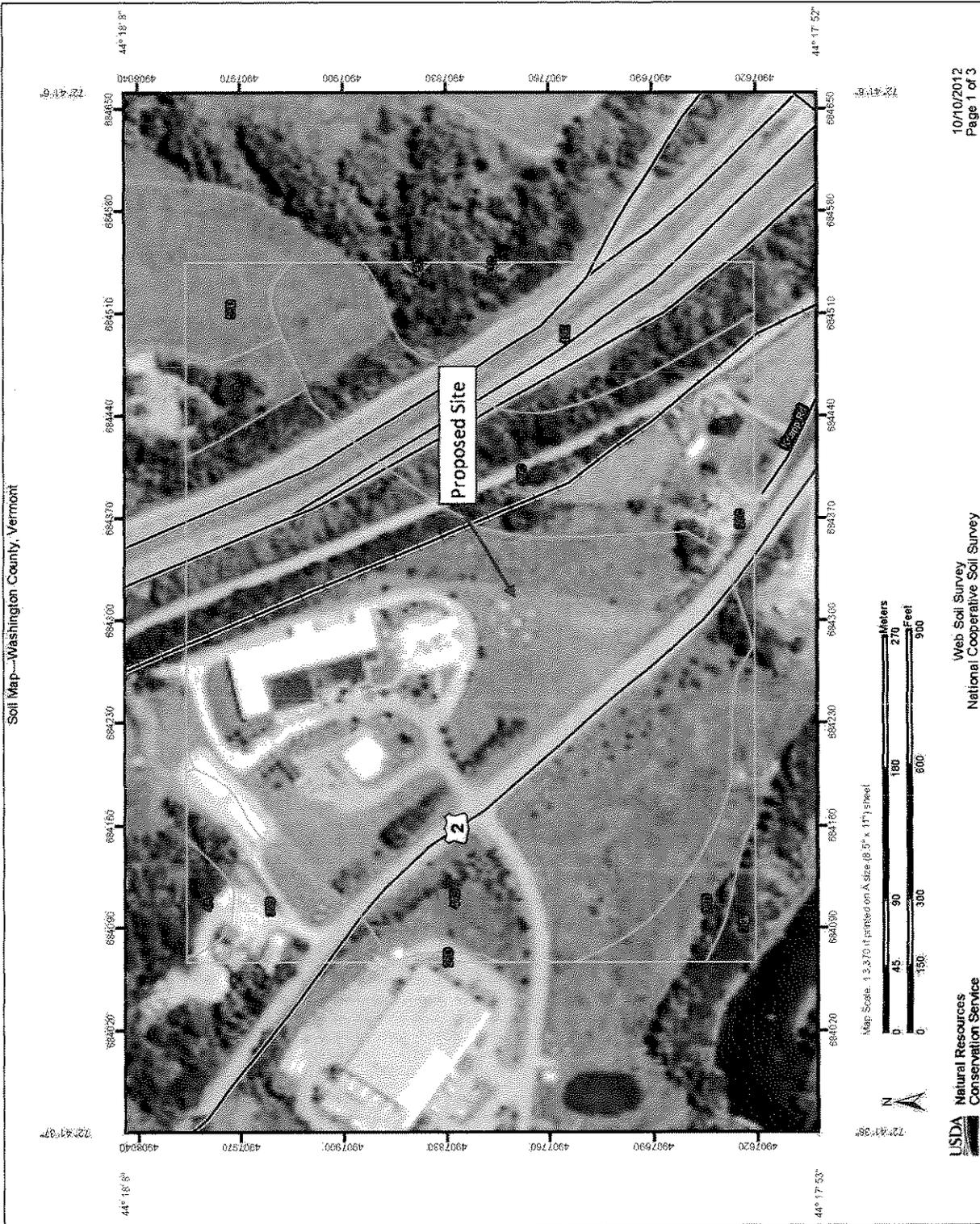


Figure 1. Bedrock Geologic Map of Vermont, 2011

CZs: Schist and phyllite member—Predominantly fine-grained, lustrous, well-foliated, silvery-green, grayish-green, grayish-green, and bright-green, quartz-ribbed and -knotted, magnetite-chlorite (biotite)-albite (plagioclase)-sericite (muscovite)-quartz phyllite and schist. Locally richly garnetiferous and biotite-flecked schist ( CZsgt) at higher grades; areas rich in metadiabase dikes shown by overprint and symbol ( CZsd)



### MAP LEGEND

- Area of Interest (AOI)
  - Area of Interest (AOI)
- Soils
  - Soil Map Units
- Special Point Features:
  - Blowout
  - Borrow Pit
  - Clay Spot
  - Closed Depression
  - Gravel Pit
  - Gravelly Spot
  - Landfill
  - Lava Flow
  - Marsh or swamp
  - Mine or Quarry
  - Miscellaneous Water
  - Perennial Water
  - Rock Outcrop
  - Saline Spot
  - Sandy Spot
  - Severely Eroded Spot
  - Sinkhole
  - Slide or Slip
  - Sodic Spot
  - Spill Area
  - Stony Spot
- Very Stony Spot
- Wet Spot
- Other
- Special Line Features
  - Gully
  - Short Steep Slope
  - Other
- Political Features
  - Cities
  - Streams and Canals
- Water Features
  - Streams and Canals
- Transportation
  - Rails
  - Interstate Highways
  - US Routes
  - Major Roads
  - Local Roads

### MAP INFORMATION

Map Scale: 1:3,370 if printed on A size (8.5" x 11") sheet.  
 The soil surveys that comprise your AOI were mapped at 1:20,000.

**Warning: Soil Map may not be valid at this scale.**  
 Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service  
 Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>  
 Coordinate System: UTM Zone 18N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Washington County, Vermont  
 Survey Area Date: Version 15, Jan 19, 2010  
 Date(s) aerial images were photographed: 8/21/2003

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Figure 2b Soil Types

## Map Unit Legend

Washington County, Vermont (VT023)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
4A	Sunny silt loam, 0 to 2 percent slopes	0.5	1.0%
26B	Adams loamy fine sand, 3 to 8 percent slopes	1.0	2.1%
26C	Adams loamy fine sand, 8 to 15 percent slopes	0.6	1.4%
26D	Adams loamy fine sand, 15 to 25 percent slopes	1.6	3.4%
26E	Adams loamy fine sand, 25 to 60 percent slopes	0.4	0.9%
39B	Colton gravelly loamy sand, 3 to 8 percent slopes	2.1	4.6%
39C	Colton gravelly loamy sand, 8 to 15 percent slopes	7.8	17.1%
43C	Salmon very fine sandy loam, 8 to 15 percent slopes	0.1	0.1%
43E	Salmon very fine sandy loam, 25 to 50 percent slopes	4.8	10.4%
44B	Lamoine silt loam, 3 to 8 percent slopes	25.9	56.8%
55B	Nicholville silt loam, 3 to 8 percent slopes	1.0	2.2%
<b>Totals for Area of Interest</b>		<b>45.6</b>	<b>100.0%</b>

Figure 2c. Soil Types

U.S. Department of Homeland  
Security  
Joint Field Office  
30 Allen Martin Drive  
Essex, VT 05451



FEMA

December 10, 2012

Mr. Ben Rose  
Public Assistance Officer  
Vermont Emergency Management  
Department of Public Safety  
103 South Main Street  
Waterbury, Vermont 05671-2101

Re: Town of Rockingham, DR-4022-VT, Request for Additional Information  
PW # 3156 - Saxton R. Bank Stabilization near Moore's Field  
PW # 3157 - Woody Debris Saxton River @ Dump Corner  
PW # 3158 - Woody Debris Saxton River & Steve Moore Field  
PW # 3159 - Gravel Removal Saxton R, near Moore's Field  
PW # 3160 - Woody Debris Saxton R, above Barbers Bridge

Dear Mr. Rose:

This letter is in reference to the five Project Worksheets (PWs) listed above which address work performed in the Saxton River following Tropical Storm Irene by the Town of Rockingham. As stated in FEMA's letter to Jeb Spaulding dated November 16, 2012, we are reviewing each of the PW's in light of the finding that the Natural Resources Conservation Service (NRCS) does not have specific authority to fund the work in question. Accordingly, our review is intended to ensure that the scopes of work are accurately reflected in each PW and to evaluate the eligibility of that work in context with the Public Assistance Program.

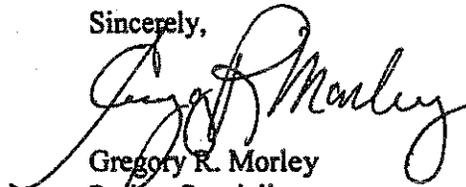
As indicated in the discussions of eligibility in the respective "Zero PWs", the ineligibility determinations considered several criteria in addition to the NRCS issue, that will have to be addressed. The evaluation of eligibility will, in large part, be based on the degree to which the work was completed to address an immediate threat. In accordance with 44 CFR Section 206.225(a)(3), "Emergency protective measures must (i) Eliminate or lessen immediate threats to lives, public health or safety; or (ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective." An immediate threat, as defined by 44 CFR Section 206.221(c), means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

In order to evaluate whether the work in question meets the "immediate threat" criteria, we request that documentation be provided for each of the areas covered by the referenced PWs that will demonstrate that the presence of the disaster related debris posed an immediate threat to improved property. It must also identify the specific nature of the threat to improved public/private property or to lives, public health and safety that predicated the protective measures and that the Applicant had the legal responsibility to address or remove such a threat per 44 CFR 206.223(a)(3).

This information should include a narrative summary with supporting information which could include drawings, profiles, cross sections and elevation / station data that illustrates the location and quantities of material removed along this reach of the river and what portion of that material required removal, or placement to accommodate a flood-stage resulting from a flood event with a 5 year recurrence interval as determined by the U.S. Geological Survey. A qualitative approach to assessing such an immediate threat could be to identify those sites along the river that threatened human health and safety, or improved property, after the Irene flood crest receded and the river flow approximated that of a 5-year flood. Protective measures taken to address improved property in these cases would nonetheless be limited to those that were cost effective (e.g. the cost of the protective measure should not exceed the repair cost of potential damage being avoided.)

Should you have any questions after reviewing this, please do not hesitate to contact me.

Sincerely,



Gregory R. Morley  
Project Specialist

Email Copy: Thad Leugemors (VEM/SAIC)  
Sterling Bridges, FEMA PAO  
Brian Minns, FEMA DPAO

# Attachment 4

Public Assistance Eligibility Determination – Woody Debris Removal in the Saxton River  
Between Barber’s Park Bridge and Hall’s Bridge, Town of Rockingham, Project Worksheet  
3160, FEMA-4022-DR

Town of Rockingham  
and  
Bellows Falls Village Corporation

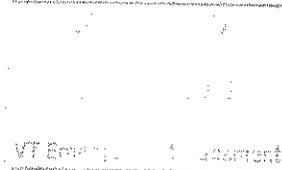


Post Office Box 370  
Bellows Falls, Vermont 05101

(802) 463-3964  
Fax (802) 463-1228

January 8, 2013

Ben Rose, Public Assistance Officer  
Vermont Emergency Management  
Department of Public Safety  
103 South Main Street  
Watnury, VT 05671-2101



Re: FEMA-4022-DR-VT PW's 3156, 3157, 3158, 3159 & 3160

Dear Ben:

Listed below are the five narratives from the Town of Rockingham. Sections 1 and 2 of each narrative is general information that pertains to all of the narratives. Section 3 of each narrative pertains to that specific narrative.

- PW 3156: Moore Bank Stabilization
- PW 3157: Dump Corner Debris
- PW 3158: Moore Debris Removal
- PW 3159: Moore Gravel Removal
- PW 3160: Barbers Park Debris

The Town of Rockingham has additional administrative and engineering time that is not included in the original PW's that we will be submitting upon approval of these PW's. Please let me know if there is any additional information that you need.

Sincerely,

*Everett Hammond*

Everett T. Hammond, P.E.  
FEMA Project Manager

cc: Tim Cullenen (Municipal Manager)  
Chip Stearns (Finance Director)

01/04/13

Town of Rockingham, Vermont  
PW3160: Barbers Park Debris Removal

- I. A Typical 5 year event in Vermont
  - a. **Flow:** On the average of every 2-3 years the Town is concerned about flooding of road and properties along Rte #121 as a result of the ice out in the spring. The Town strongly felt that the debris deposits presented an imminent threat to public and private improved property in the event of a hard rain during much less than a five year flooding event.
  - b. **Duration:** The duration of the average high flow of the Saxtons River after a storm event is 24 hours. After this period of time the peak flows have usually receded to a lesser level of concern.
  - c. **Velocity:** The velocity of the Saxtons River between the Westminster/Rockingham Town line and west of dump corner depends on the gradient and section of the river. The average velocity is 9 miles/hour with a minimum of 3.6mph at section D-D and a maximum of 11.3 mph at section E-E.
  - d. **Sediment Movement:** Sediment is transported during each significant storm event that caused the waters to muddy. This can be as often as 3-6 times per year. Sediment is transported from Grafton, Athens Windham and points in Rockingham down the Saxtons River at speeds in excess of 10 mph to be settled out in 3 primary locations:
    - Rockingham/Westminster Town Line (Section A-A)
    - Barbers park (Section D-D)
    - Dump Corner (Section R-R)
  - e. **Erosion:** During a typical 5 year event there is no noticeable erosion along the Saxtons River in Rockingham, VT. Hurricane Irene has resulted in a change to this erosion pattern as there are 6 locations that were effected by hurricane Irene:
    - Rte #121 west of the Westminster/Rockingham town line – this section has been repaired and is listed in PW 3156 - Moores Bank Stabilization
    - Rte #121 west of the Barbers Park Bridge - 3 homes were lost in this location and the bank is eroding with every minor storm.
    - Saxtons River Wastewater Treatment Plant (opposite bank) – there is a major section of bank that continues to erode
    - Saxtons River Fire Station – This bank has been repaired by NRCS funding before losing a section of the Fire Station
    - Rte #121 @ dump corner – this section was repaired by FHWA funds

- **Rte #121 @ Leach Road – this was a major washout that was repaired by FHWA funds**
  - f. **Damming: During a typical 5 year event there has been no noticeable damming along the Saxtons River in Rockingham, VT. Hurricane Irene would have resulted in a change to this damming if the woody debris and sediment debris was not removed.**
  - g. **Ice Dams: As indicated in a. On the average of every 2-3 years the Town is concerned about flooding of road and properties along Rte #121 as a result of the ice out in the spring. The Town strongly felt that the ice out in the spring would be further constricted by wood and sediment debris deposits that presented an imminent threat to public and private improved property each spring.**
2. **Work completed to protect against the 5 year event**
- a. **Debris Removal: After Hurricane Irene it was immediately noticeable that there would be problems in the spring of 2012 when the high spring run-off hit causing the ice to jam up by being locked in with downed logs and root balls. These ice jams would be even further complicated with the sediment debris in sections of the river. Mike Hindes (Highway Supervisor), Everett Hammond (Engineer) and Tim Cullenen (Town Manager) discussed what should be done to alleviate the situation. Everett Hammond contacted the Vermont River Management Engineer Todd Menees for approval prior to removal. It was determined that the woody debris from the Saxtons River from the Westminster/Rockingham Town Line to dump corner would be removed. It was also decided that the woody debris around the McBride Bridge would be removed. Jeff Kirkland (contract FEMA employee) later decided that the woody debris from the Leach Brook along Leach Road should be removed.**  
  
**The debris along the Williams River was also discussed, however it was decided that this river did not warrant any debris removal except for removal of the remains of the debris from the 1870 historic covered bridge.**
  - b. **Sediment Removal: In addition to the woody debris removal there was great concern that the sediment deposited in the Saxtons River would exacerbate flooding in the spring. Mike Hindes (Highway Supervisor), Everett Hammond (Engineer) and Tim Cullenen (Town Manager) also discussed the sediment deposits and determined it essential to remove the sediment as soon as possible so that it is removed prior to winter. This would help prevent potential flooding caused by the spring run-off. Everett Hammond contacted the Vermont River Management Engineer Todd Menees for approval prior to removal.**

- c. **Channel Armoring:** The bottom (cannel) of the Saxtons River appeared stable throughout the length of the Saxtons River with the exception of head cutting that would occur in the Barbers Park and Leach Road locations.
  - d. **Channel Movement:** The Saxtons River west of Steve Moores residence had serious bank erosion that was heading in the direction of a section of Rte #121 and Steve Moores house.
  - e. **Bank Armoring:** four out of the six areas along the Saxtons River in need of bank armoring were repaired:
    - Rte #121 west of the Westminster/Rockingham town line – this section was repaired and is listed in PW 3156 - Moores Bank Stabilization
    - Rte #121 west of the Barbers Park Bridge - A section of the Saxtons River west of the Barbers park Bridge has not been completed and is in need of stabilization..
    - Saxtons River wastewater Treatment Plant (opposite bank) – there is a major section of bank that continues to erode. This section of the river should also be looked at as stabilization has not been completed.
    - Saxtons River Fire Station – this section was repaired by NRCS
    - Rte #121 @ dump corner – this section was repaired by FHWA
    - Rte #121 @ Leach Road – this section was repaired by FHWA
3. **Property Protected from the work performed by PW 3160:**
- a. **What would be damaged/how:** Without the woody debris that was removed from the Saxons River the following locations would be further damaged.
    - The Hall Covered Bridge
    - The Barbers Park Bridge
    - Barbers Park Road
    - Rte #121
  - b. **Where would water go:** Due to the gravel deposits above Barbers Park Road there is a very good chance that the course of the Saxtons River could wash out a section of Barbers Park Road and Rte #121 along the old bridge abutment and the 3 houses that were destroyed.
  - c. **Potential damage:** The damage that could have been caused to the Hall Bridge is app. \$100,000. The damage that could still be caused to Barbers Park Road and Rte #121 if additional river sediment is not removed is app. \$200,000 - \$500,000.

- d. **Legal authority:** The work was reviewed with Todd Menees, Vermont River Management Engineer and was authorized as per VT Statute Title 10, chapter 41.

## SUMMARY

As a consequence of heavy rains and flooding caused by Tropical Storm Irene, the health and safety of individuals and property located in and around The Town of Rockingham were threatened. At Saxtons River between The Hall Bridge and Baber's Park Bridge, described in PW 3160, flooding caused Saxtons River to overflow its banks causing woody debris to become entrained in the stream flow. The debris accumulated within the river's channel, around bridges, and on the land immediately adjacent to the river.

Immediately following the declared disaster-incident, the Town's manager, engineer, and highway supervisor determined those locations where work was needed to abate disaster-related damages which placed both the health and safety of the public and improved property in imminent danger. This specifically included the flooding of highway Route 121 which parallels the Saxtons River at distances from 50' to 350', plus the potential of flood damage to homes and property located near Saxtons River.

Importantly, the Town's concerns resulted from its recognition of the fact that it was September and empirical knowledge dictated that unless storm-related debris was immediately removed from the river, normal winter ice formation followed by the spring thaw and normal seasonal precipitation would result in wide-spread flooding . . . without the necessity of another disaster-incident, whether declared or undeclared. This fact was also recognized by the Governor of Vermont, who advised The Town of Rockingham and other similarly affected communities to undertake the protection immediately. (See Exhibit 2)

The Town strongly felt that the debris deposits presented an imminent threat to public and private improved property in the event of a hard rain much less a five year flooding event. Vermont experiences, on average, a more than 20% chance of spring flooding (5 year flood) yearly due to ice jams and snow melt caused by spring thaws and/or heavy rains in the spring. (See Exhibit 3) These facts, which have not been refuted by FEMA, clearly meet FEMA's immediate threat criteria as detailed on Page 66 of its Public Assistance Guide (FEMA 322, June 2007), which states:

“ . . . ‘immediate threat’ describes imminent danger of the threat of additional damage or destruction from an event that could reasonably be expected to occur within 5 years. . . For a flood, the immediate threat exists if a 5-year flooding event could cause damage or threaten lives, public health, and safety. This is not a flood that necessarily happens within 5 years, but a flood that has a 20 percent chance of occurring in any given year.”

The debris contractor was managed and monitored by Town officials who made every effort to avoid egress onto private property. The bulk of the debris was located in the Saxtons River. In order to access that debris the contractor had to create an access through private property to the river. With the permission of Jane Bristol, her field was used as a Temporary Debris Relocation Site (TDRS). With the permission of the Town Fire Warden and Jane Bristol, the debris was burned in the field with any remains hauled away. Once the river was accessed debris removal required the ability to move equipment along the banks of the river. This, in turn, required clearance and removal of debris to facilitate such movement. Further, debris located in the river in many instances consisted of trees of 40 foot lengths which were partially in the river, but extended over the river's bank onto private property.

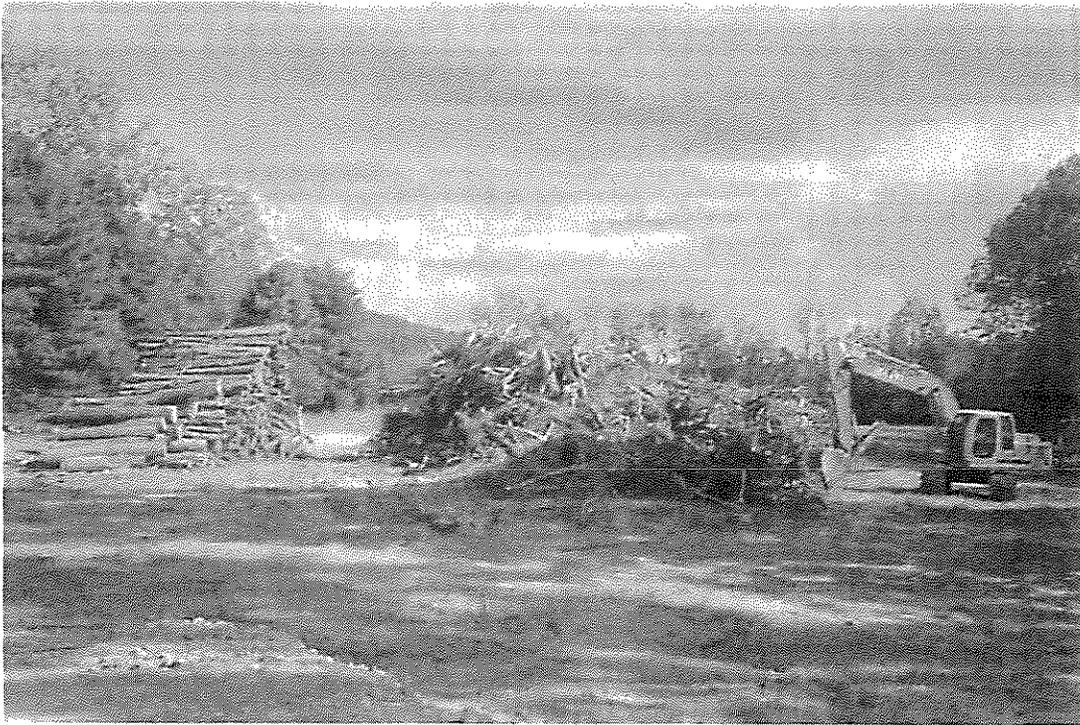
Attached is the National Flood Insurance Program (NFIP) – Flood Insurance Rate Maps (FIRM) for the Saxtons River in the Town of Rockingham (Windham County, VT). This map has been marked up to show problem areas and the location of PW's 3156, 3157, 3158, 3159 and 3160.



Barbers Park River Debris cleanup: View from the Hall Bridge looking East



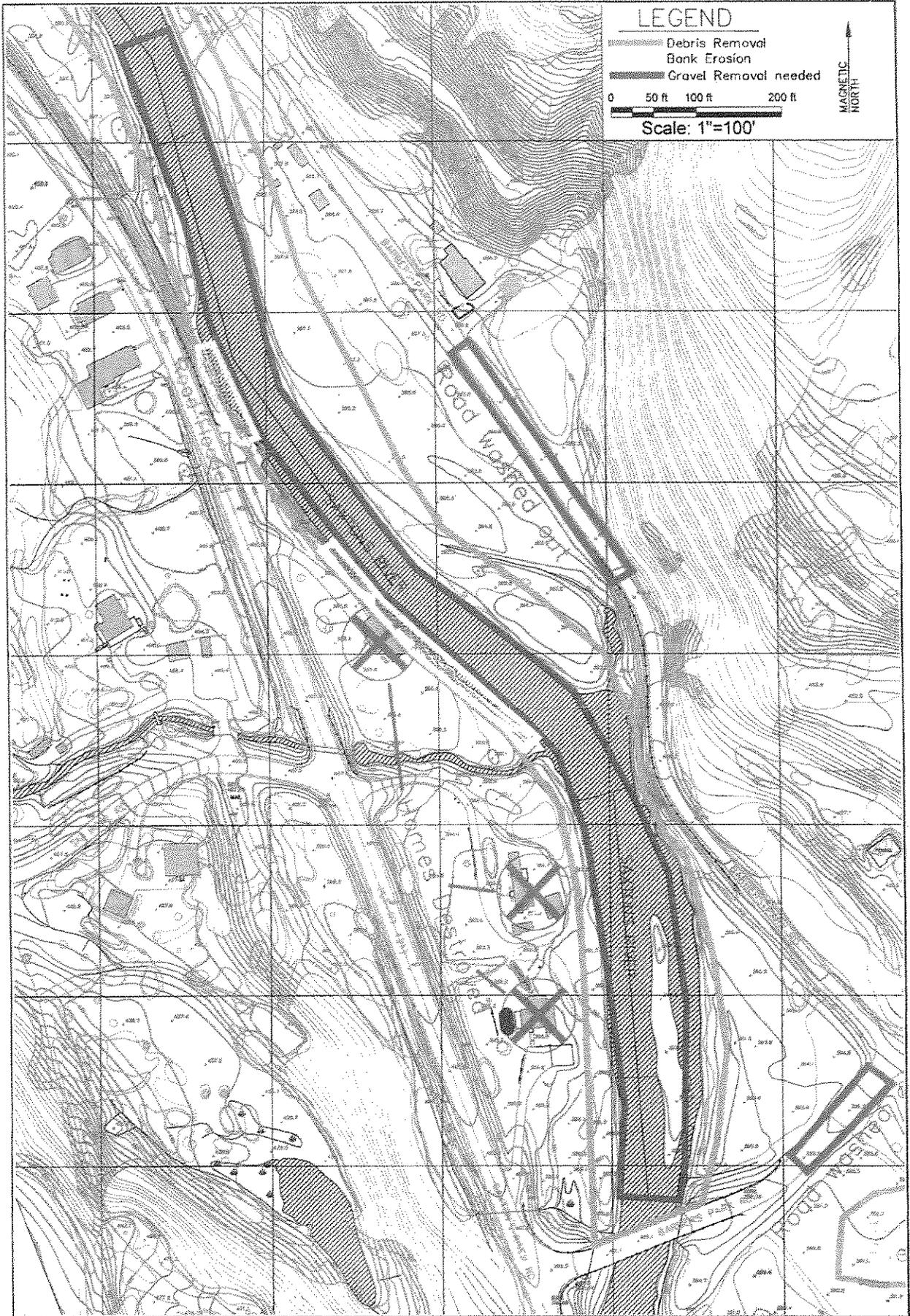
Barbers Park River Debris cleanup: View from the Hall Bridge looking East



Barbers Park River Debris pile



Barbers Park River Debris burning



**LEGEND**

- Debris Removal
- Bank Erosion
- Gravel Removal needed

0 50 ft 100 ft 200 ft

Scale: 1"=100'



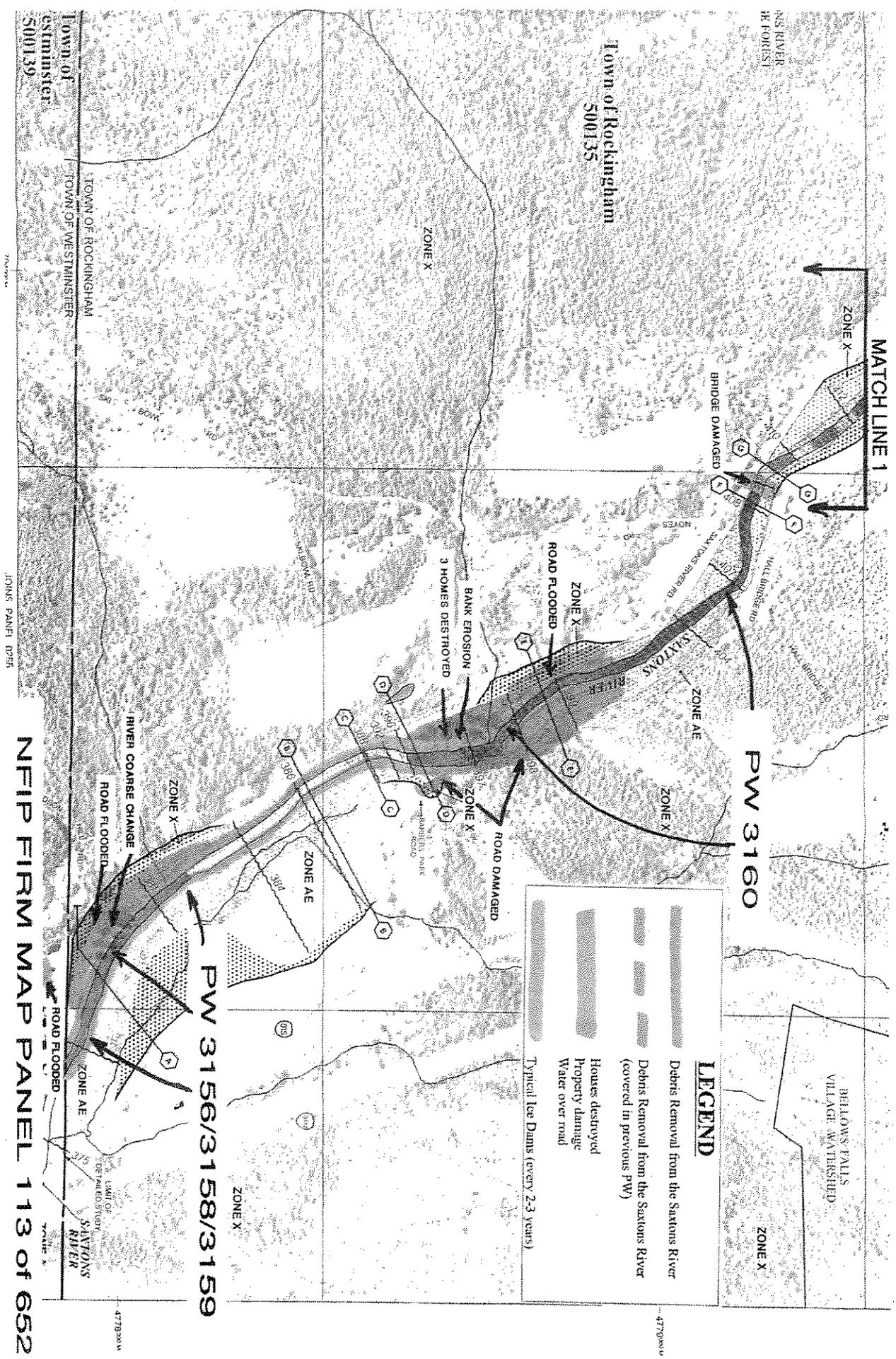
**Town of Rockingham**  
**Highway Department**  
 P.O. Box 370  
 Bellows Falls, VT 05101

**PW 3160**

revised	Description	Date

**1**

Project No. \_\_\_\_\_  
 Scale 1"=100'  
 Date 01/08/2013



NS RIVER  
RE FOREST

Town of Rockingham  
500135

TOWN OF WESTMINSTER  
500139

MATCH LINE 1

PW 3160

PW 3156/3158/3159

NEIP FIRM MAP PANEL 113 of 652

**LEGEND**

-  Debris Removal from the Saxtons River
-  Debris Removal from the Saxtons River (covered in previous PW)
-  Houses destroyed
-  Property damage
-  Water over road
-  Typical Ice Dams (every 2-3 years)

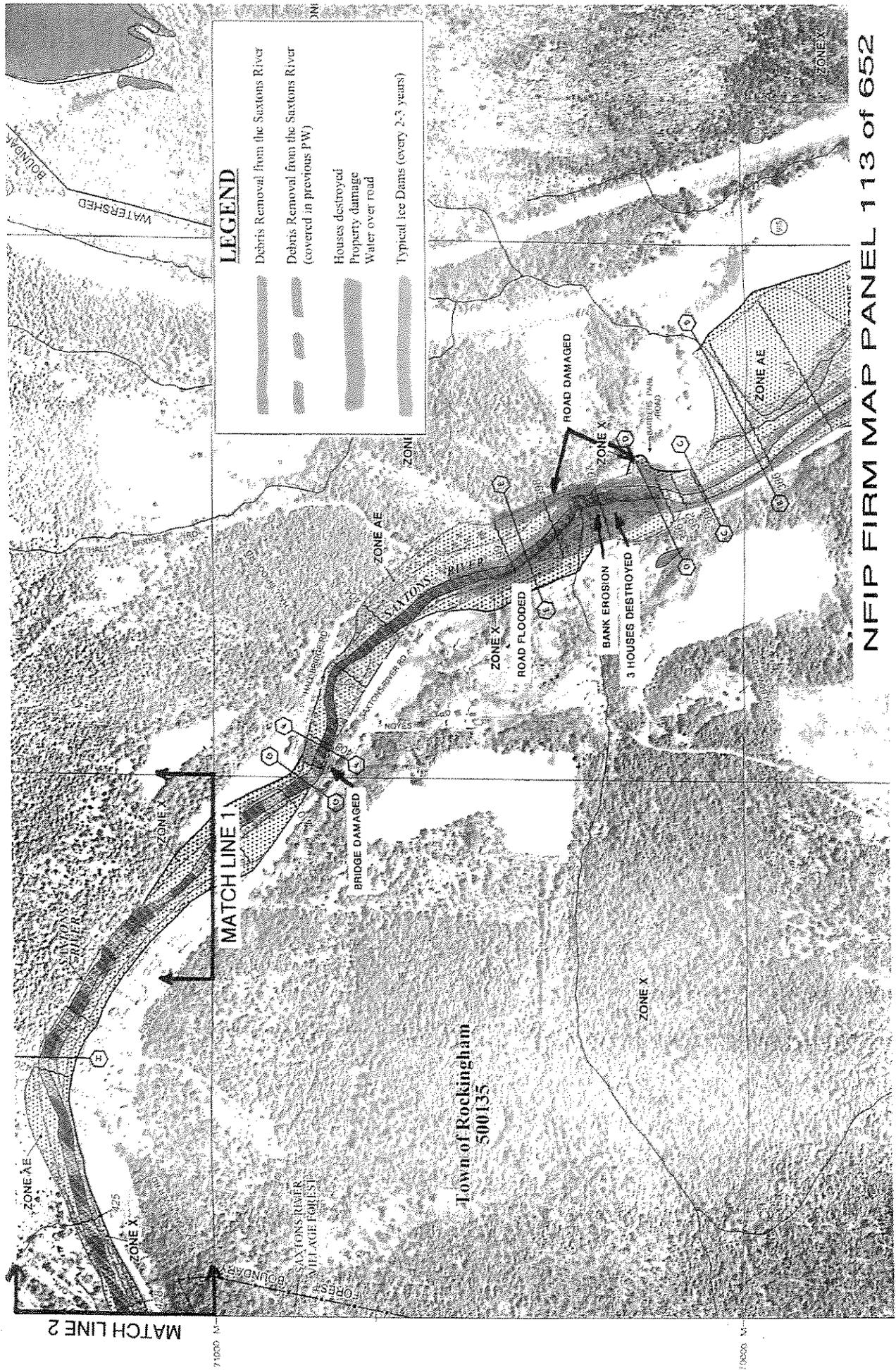
BELLOWS FALLS  
VILLAGE WATERSHED

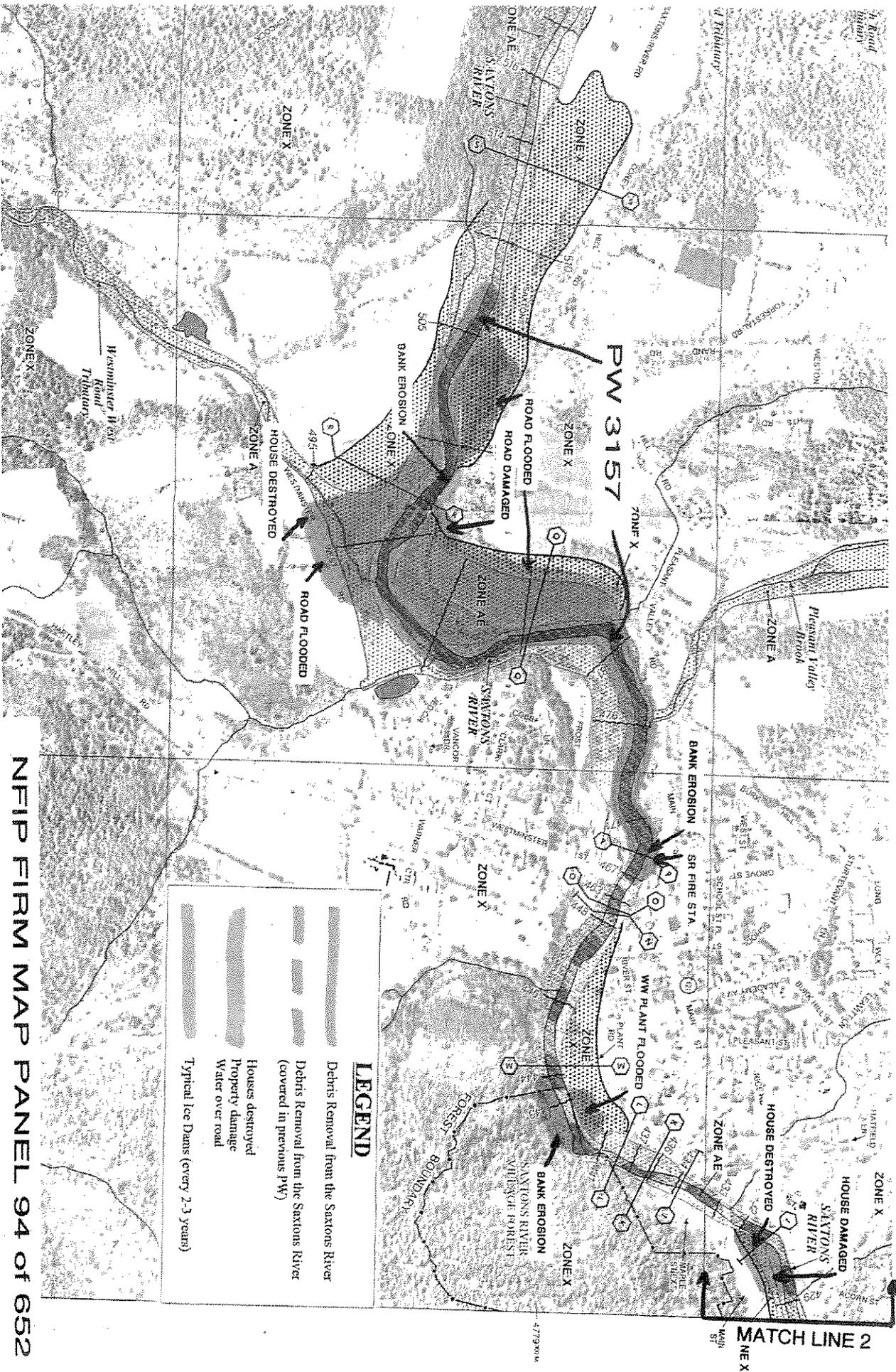
72679000

JOHNS PANEL 0275

4773000

4773000







Vermont Department of Environmental Conservation  
Watershed Management Division  
1 National Life Drive, Main 2  
Montpelier VT 05620-3522  
www.watershedmanagement.vt.gov

Agency of Natural Resources

[phone] 802-828-1535  
[fax] 802-828-1544

January 9, 2013

**VIA EMAIL AND FIRST CLASS MAIL**

Ben Rose  
Public Assistance Officer  
Vermont Emergency Management  
Department of Public Safety  
103 S. Main St.  
Waterbury, VT 05671-2101

**In re: PA-01-VT-4022 -- Post flood debris clearing in Vermont rivers as an emergency measure to address imminent threats to public property.**

Dear Mr. Rose:

As Program Manager of the Vermont DEC River Management Program for the past 3 years and State River Scientist for the 10 years prior, I have been responsible for developing fluvial geomorphologic science for application in Vermont's management and engineering of rivers in both emergency and non-emergency applications. Engineers reporting to me have worked with Vermont municipalities, Vermont Emergency Managers, and FEMA over several decades to apply the latest science in addressing flood-related imminent threats and achieving hazard mitigation opportunities. In my capacity as State River Scientist, I developed a peer-reviewed stream geomorphic assessment program and oversaw the assessment of over 1,700 miles of Vermont Rivers to understand stream adjustments and the erosion and depositional processes which occur primarily as a result of flood events. I offer the following verification for debris clearing activities approved by the River Management Program after Tropical Storm Irene in conjunction with FEMA's Public Assistance Program.

***Channel Blockage and the 5 year Event***

Many Vermont villages and associated public infrastructure are situated on and around streams where they flow out of mountainous valleys into wider river valleys. When streams under flood conditions go through such abrupt changes in gradient, stream power drops, and the large volume of sediment and debris being tumbled downstream begins to deposit within the channel. In larger events the debris from landslides and streambed erosion may fill and nearly close-off long lengths of stream channel downstream.

Braided channels form rapidly when massive amounts of sediment and debris begin to deposit on channel and valley bottoms, sending flood flows into adjacent areas of the floodplain (referred to as river avulsions). The flowages of a braided channel are not slow and spread thin as would be typical on floodplains, but rather are concentrated flows with significant depth, slope and velocity. Head cuts form (backwards or upstream-directed stream bed erosion) where the braided flows reenter the original channel, often eroding and forming entirely new river channels. In these debris deposition zones, the potential for meander cut-offs and river avulsions will threaten miles of valley bottom infrastructure during a flood, and during subsequent floods where channel blockages have not been cleared.

In the context of emergency work (applied to all types of flood-related threats), FEMA's Public Assistance Guide states that an "immediate threat exists if a 5-year flooding event could cause damage or threaten lives, public health, and safety." The implication is that at a water stage associated with the 5-year flood, having a 20% chance of occurring in a given year, you would reasonably begin to experience significant threats to people and public infrastructure in an affected area. With good topographic data, hydrology, and an open channel cross-section, one could reasonably model the potential areas of inundation and stream bank erosion that would be experienced during a 5-year event.

Unless the river has avulsed and cut a whole new channel, the stage of the next 5-year flood event in an adjacent floodplain will be significantly higher where the river has no access to a pre-flood channel that has become filled with sediment and debris. When channels and adjacent floodplains become filled, the stage and flow path of the next 5-year flooding event is higher than that predicted based on inundation alone. A combination of historic flood records, field observations of flood and erosion patterns during the current event, and topographic information would be needed to predict the target recovery level to protect against a damaging event that has a 20% chance of occurring each year. Professional judgment is required to safeguard damaged areas in steep, sediment-rich systems from future damages originating from debris jams, sediment dams, channel avulsions, and bank erosion.

The challenge of obtaining topographic data during emergency operations may be moot however because of the mode in which channel filling and any subsequent imminent threats may exist in mountainous valleys. Vermont has highly dynamic mountain watersheds. The classic image of a floodplain as a broad, flat, unconfined inundation zone with low velocity overbank flow is the exception in Vermont. In contrast, Vermont's mountain valleys often have confined (narrow) floodplains with high stream power and erosive velocities. When the 5-year flood event is flowing out-of-channel, there will be some inundation-related damage, but the imminent threats to lives, public health, and safety will occur predominately as a result of concentrated, high velocity flows that erode away structures in a path only restricted by the sides of the valley or other hardened terraces.

In the very narrow valleys, such as exist in the Irene-impacted towns of Rockingham or Woodford, Vermont, overbank flows that may be associated with 5-year flood events, would threaten all infrastructure or improved public property between the natural or constructed valley walls.

#### *Post-Irene Emergency Work in Bennington, VT*

Bennington, VT is an example of a community built on a debris deposition zone (called an alluvial fan, in this case). During Tropical Storm Irene a large amount of woody debris and an estimated 550,000 cubic yards of sediment were deposited over 3.5 miles of the Roaring Branch in a heavily developed and densely populated section of Bennington between the Route 9 Bridge and Harmon Road. Woody debris and between 3 and 8 feet of sediment filled the channel and bridge openings. Sediment deposition filled the channel and elevated flood waters to the top of the USACE flood control levee designed for a 120-year flood.

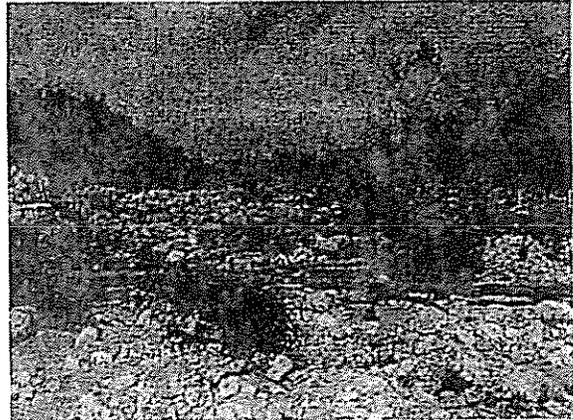
If the Town had taken no action to clear sediment and debris from the Roaring Branch after Irene, and flood flows from Tropical Storm Lee (10 days after Irene) or another flood were to enter the valley, the river would have avulsed over the levees and berms, inundating and eroding lands and structures far removed from where the river originally left the channel. The Roaring Branch, filled as it was after Irene, represented an imminent threat to most of the public property in the town, including schools and other public building and miles of public roads and bridges. Given the history of Roaring Branch debris flowage during floods, a full avulsion of the river in Bennington would be catastrophic.

If the Town of Bennington had acted to clear only that sediment and debris in the channel immediately adjacent to bridges or other infrastructure (within 200 ft./yds.), due to limitations in the FEMA Public Assistance Program, the full risks and imminent threats, described above for the do-nothing alternative, would have persisted. If channel clearing had been limited to the near vicinity of the 5 bridges within the village area, then miles of the

Roaring Branch would have remained filled with large sediments and woody debris. A 5 yr flood (with a 20% chance of occurring in any given year), would bring even more sediment and debris into the valley, and the Roaring Branch would have avulsed destroying hundreds of structures, many miles of road, bridges, and utility infrastructure.

From experience, the Town acted in the public interest to address the imminent threats facing the community. Woody debris was removed and disposed of, and sediment excavation was performed to remove 278,480 cubic yards of material, or 50 % of the total sediment deposition, to reduce flood risks due to loss of channel conveyance capacity and address the imminent threats to life and property. The Roaring Branch debris removal was closely coordinated with the Vermont Agency of Natural Resources. The project was authorized under the Vermont Stream Alteration Permit and the U.S. Army Corps of Engineers Vermont General Permit.

Bennington worked with fluvial geomorphologists and state river engineers to clear a channel and floodplain cross-section in a manner necessary, and in combination with bank stabilization, to address imminent threats posed by not only by the flows of a 5 year storm but the sediment/debris load of the river under such flood conditions. After repeated failures and damages when post-flood river work involved only the trenching of a channel through the deepening debris, HEC-RAS river modeling was used to show the need to bench the channel with a floodplain area to reduce velocities, bank erosion, sediment loading, and bridge backwater conditions. Without floodplain benching and allowance for future flood debris storage, the imminent threats posed by the Roaring Branch flooding and river avulsions would have remained.

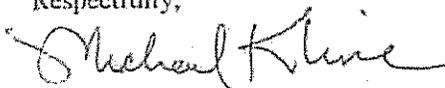


Typical post-flood sediment dam and debris jam on the Roaring Branch.

While this example focusses on the work performed in Bennington, the sediment and debris deposition and channel blockages cleared by other Vermont communities after Irene was also important in addressing imminent threats to public infrastructure and property. Deposition zones, where emergency measures are required after a disaster, vary in size in direct relationship with the watershed size, upstream debris sources, and the change in stream power necessary to transport the debris.

In conclusion, where there are public structures or infrastructure down-valley of river depositional zones, they remain threatened if, up-valley, channels remains filled with debris and there is a high likelihood of river avulsions during the next flood. In Vermont, municipalities and State River Management Engineers must evaluate lengths of river, upstream from the infrastructure itself, and create flood conveyance through depositional areas. Debris blockages pose imminent dangers, threaten property, or threaten the economies of a community when high velocity, erosive flood waters flow out of their channel due to debris blockages.

Respectfully,



Michael Kline  
Vermont DEC Rivers Program Manager

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cc. **Barry Cahoon, P.E., DEC River Management Engineer**  
**Todd Menees, P.E., DEC River Management Engineer**  
**Pete LaFlamme, Director, Watershed Management Division**  
**David Mears, Commissioner, Department of Environmental Conservation**  
**Thad Leugemors, PMP, Deputy Public Assistance Officer**  
**Micaela Tucker, Vermont Office of the Attorney General**  
**Ross Nagy, Deputy Director, Vermont Division of Emergency Management**  
**Roy Schiff, Milone and MacBroom, Inc.**



Emergency Management and Homeland Security  
Department of Public Safety  
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Waterbury, VT 05671-2101  
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Toll free 800-347-0488  
phone 802-244-8721  
fax 802-241-5556

Mr. Sterling Bridges  
Infrastructure Branch Director  
FEMA JFO  
30 Allen Martin Drive  
Essex Junction, VT 05452



RECEIVED

1/10/13

Jan. 10, 2013

RE: RFIs for Rockingham PWs 3156, 3157, 3158, 3159, and 3160

Dear Sterling,

I am pleased to submit the attached materials in response to Greg Morley's request for information letter of Dec. 10, 2012.

Sincerely,

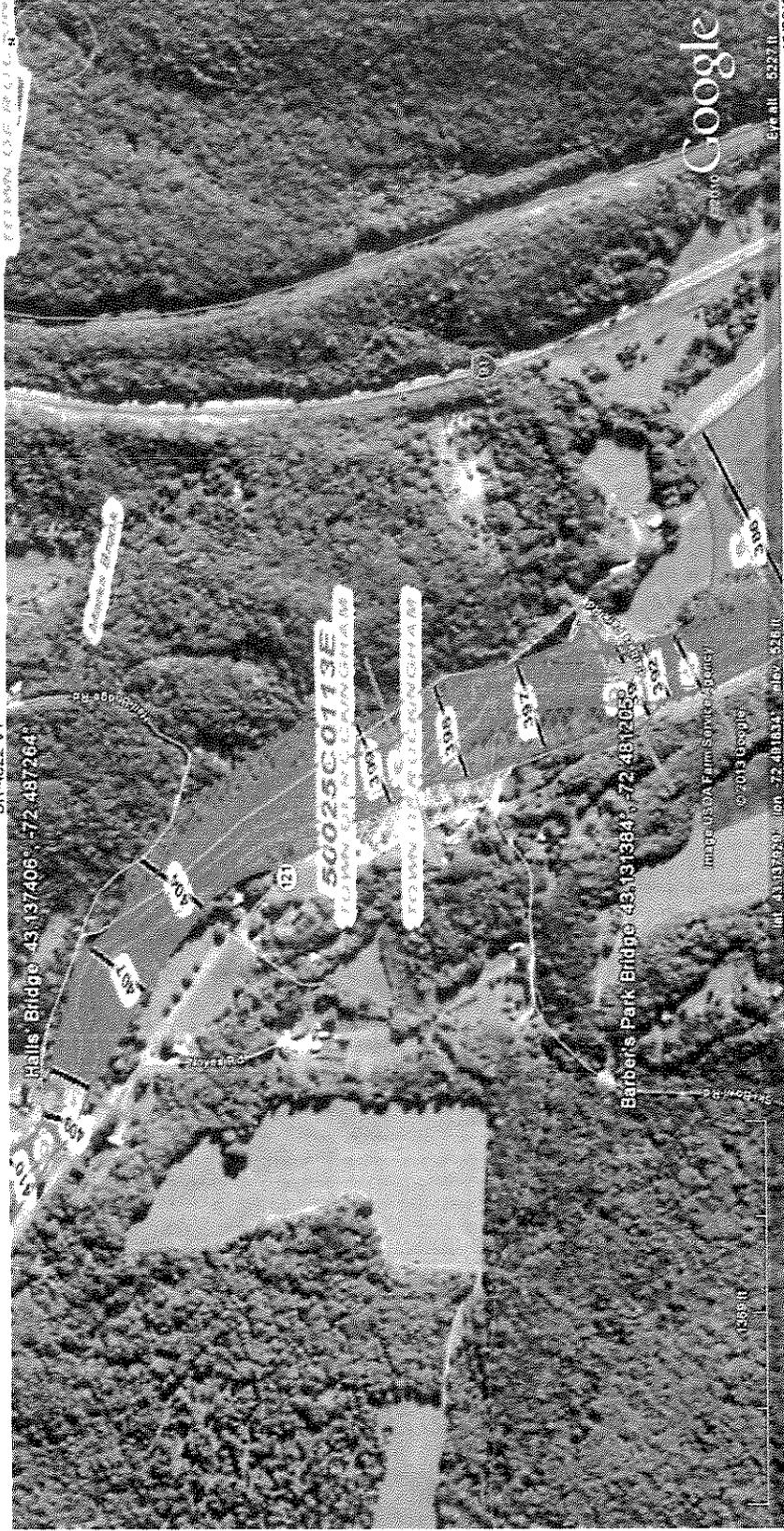
Ben Rose  
Public Assistance Officer

Cc: Thad Leugemors  
Brian Minns, FEMA DPAO  
Everett Hammond, Town of Rockingham  
Tim Cullenen, Rockingham Municipal Manager

# Attachment 5

Public Assistance Eligibility Determination – Woody Debris Removal in the Saxton River  
Between Barber’s Park Bridge and Hall’s Bridge, Town of Rockingham, Project Worksheet  
3160, FEMA-4022-DR

Figure 3 - NFIP Flood Insurance Overlay  
Barber's Park Debris Removal from Saxton River  
Rockingham, VT  
DR-4022-VT



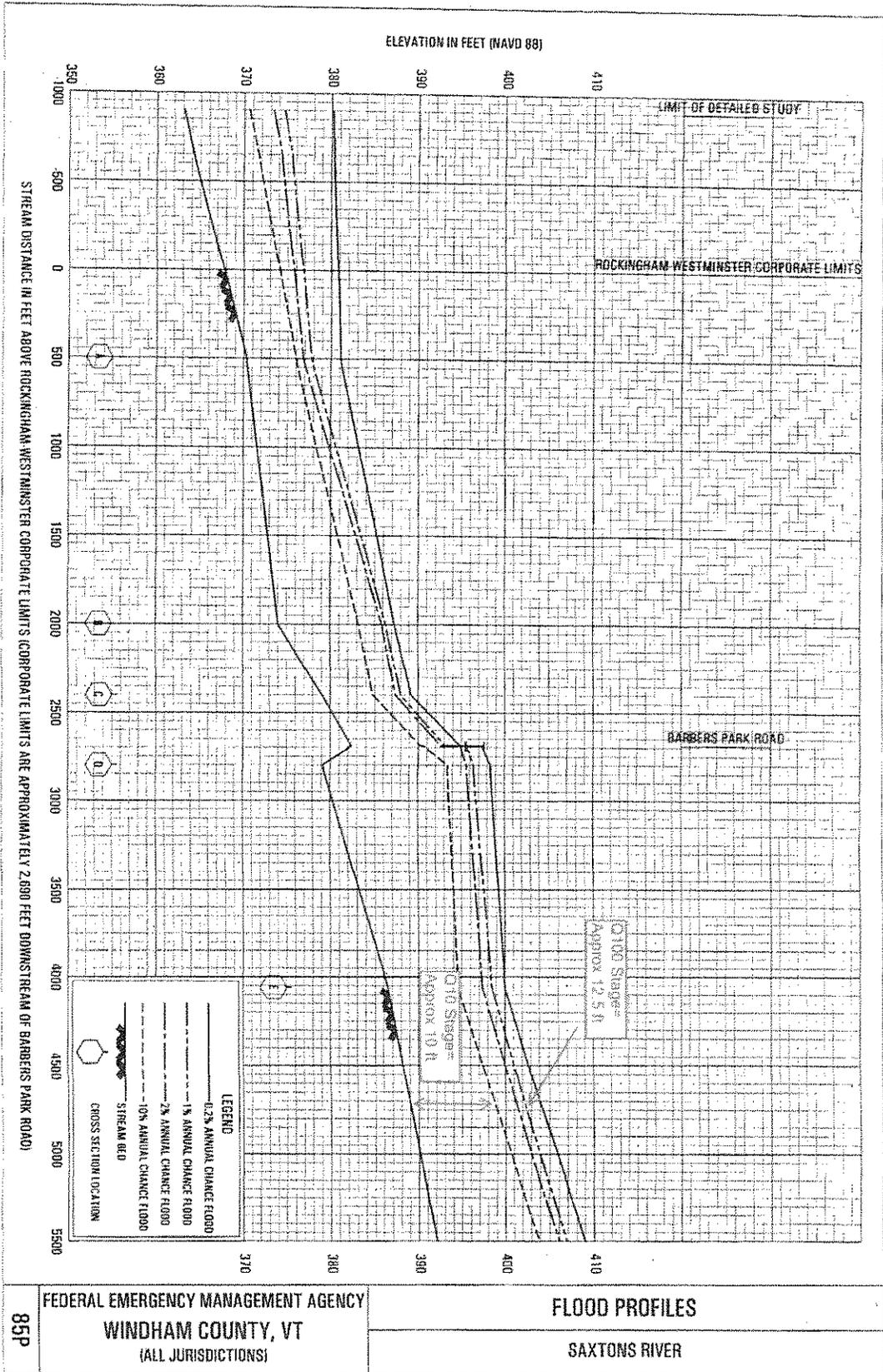


Figure 4 - JEPF Profile Test Site  
 Barber's Park Dams Removal from Saxton River  
 Rockingham, VT  
 DR-4022-VT

# Attachment 6

Public Assistance Eligibility Determination – Woody Debris Removal in the Saxton River  
Between Barber’s Park Bridge and Hall’s Bridge, Town of Rockingham, Project Worksheet  
3160, FEMA-4022-DR



FEMA

October 2, 2012

Mr. Ross Nagy  
State Coordinating Officer  
Vermont Emergency Management Agency  
103 South Main Street  
Waterbury, VT 05671

*Re: Timelines for Requesting and Completing Alternate and Improved Projects under Major Disaster Declaration FEMA-4022-DR-VT*

Dear Mr. Nagy:

I am responding to the request at our meeting on September 24, 2012, to clarify the timelines for requesting and completing alternate and improved projects under FEMA-4022-DR.

***Timelines for Requesting Alternate and Improved Projects***

FEMA updated and published Recovery Policy 9525.13 on August 22, 2008,<sup>1</sup> which removed the previous requirement for a grantee to submit requests for alternate projects within 12 months of the Kickoff Meeting. As such, there is no longer a 12-month deadline for requesting an alternate project. The grantee must, however, request and FEMA must approve all alternate projects before construction begins.<sup>2</sup>

There are also no set timelines for requesting an improved project. A subgrantee must, however, obtain approval from the grantee for an improved project prior to the start of construction. The grantee must also request and FEMA must approve any improved project that results in a significant change from the pre-disaster configuration of the facility prior to construction. For example, moving forward on acquisition and non-destructive planning and design activities would not need prior approval by FEMA. Conversely, FEMA would need to approve an improved project involving demolition, deconstruction, and construction involving a different size, location, footprint, or function than the original project before the subgrantee begins the work.

***Project Completion Deadlines for Alternate and Improved Projects***

The project completion timeline for permanent work—which includes both alternate and improved projects—is 18 months after a major disaster is declared.<sup>3</sup> Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the grantee may extend this deadline for an additional 30 months on a project by project basis.<sup>4</sup> The grantee

<sup>1</sup> FEMA Recovery Policy No. 9525.13, *Alternate Projects* (Aug. 22, 2008).

<sup>2</sup> 44 C.F.R. § 206.203(d)(2).

<sup>3</sup> 44 C.F.R. § 206.204(c)(1).

<sup>4</sup> 44 C.F.R. § 206.204(c)(2).

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Ms. Sue Minter  
September 28, 2012  
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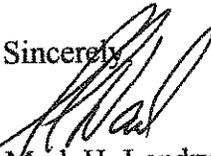
may submit a request to extend the deadlines beyond its authority to FEMA pursuant to 44 C.F.R. § 206.204(d).

***Conclusion***

I strongly recommend that the grantee submit alternate and improved project requests to FEMA with sufficient time for FEMA to complete its review and for the subgrantee to complete the alternate or improved project within the project completion deadlines. We are committed to assisting the State and applicants to develop the required paperwork to support the successful completion of alternate and improved projects, including visits with applicants and our State partners to assess feasibility and assemble packets. I cannot overstate the advantages of getting this process completed quickly to allow required reviews with the resources currently present at the JFO.

We remain committed to assist to further the recovery of the State of Vermont. Please contact me if you have any questions or concerns.

Sincerely,

  
for Mark H. Landry  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4022-DR-VT

cc: Ms Sue Minter, State Recovery Director



State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201  
[www.adm.state.vt.us](http://www.adm.state.vt.us)

[phone] 802-828-1354  
[fax] 802-828-3322

*Sue Minter, Irene Recovery Officer*

September 21, 2012

Bank of America  
Property Claims Department  
P.O. Box 7953  
Van Nuys, CA 91409-7953

Re: EXCEPTION REQUEST regarding APPLICATION OF FLOOD INSURANCE PROCEEDS  
**Loan Number 871186767**, 114 Wheeler Road, Brandon, VT 05733

Dear Bank of America:

I am writing this letter on behalf of Linda Bunn and Mary McManus, the owners of 114 Wheeler Road in Brandon, Vermont, who have asked Bank of America to release \$4,626.75 of their flood insurance settlement funds from escrow so that they money can be used to cover their next five mortgage payments.

In my position as Vermont's Irene Recovery Officer, one of the main issues I face is helping Irene survivors get back into safe and permanent housing. Many homeowners here in Vermont saw their homes substantially damaged by Tropical Storm Irene on August 28, 2011. And for a significant number of homeowners, repair of their homes was not a reasonable option. When a home is situated in a floodway, prior to making repairs, a homeowner is required to take remedial measures, including elevation of the entire structure, to comply with flood hazard regulations. And in spite of these mitigation efforts, many homes would be likely to flood again. For that reason, the State of Vermont, working with localities across the State, has applied for funding from FEMA's Hazard Mitigation Grant Program (HMGP) to purchase such homes for their pre-disaster value. These homeowners will then be able to pay off the remaining balance of their mortgages on homes that are completely uninhabitable and to be able to invest in replacement housing.

Linda and Mary's house was so severely damaged by Irene that the Town of Brandon and the State Hazard Mitigation Project Selection Committee determined that the house should be razed and the land turned into park space. If granted final approval by FEMA, this means that Linda and Mary will, through a combination of the FEMA HMGP money, receive the full pre-disaster value of their home. The likelihood of FEMA approval is extremely high. We expect a response from FEMA before the end of October and for homeowners like Linda and Mary to reach the closing table in early 2013.

Linda and Mary no longer reside in the 114 Wheeler Road property. It is not going to be repaired. These two elderly women cannot afford to make a mortgage payment and cover rent on their current home. Given the likelihood that they will be able to pay off their mortgage in full early next year, thanks to HMGP, it seems



September 21, 2012

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reasonable to release their flood insurance funds from escrow to cover their mortgage payments until the buy-out is complete. The alternatives are bleak: (1) two elderly women go hungry in order to make their mortgage payment; or, (2) Linda and Mary do not make payments, Bank of America forecloses on the property, Bank of America takes title to an irreparably damaged and hazardous property, Bank of America is stuck with a deficiency that is not collectable, and lastly, that these two ladies will see their credit ruined.

Note that the FEMA offer will value the property with an effective date for the appraisal just prior to the date of damage. FEMA policy states that only the owner at the time of the damaging event can get pre-damage value. If a bank forecloses on the on the property before the offer is made, the bank can receive an offer but that offer would be at current market value, in its damaged state, and not the pre-disaster assessed value. In our experience, it is often more financially advantageous to both the owner and the bank to postpone foreclosure action and await the FEMA pre-disaster valuation offer for the property.

Thank you for your consideration of this request. Again, Linda and Mary are only asking Bank of America to use \$4,626.75 of their flood insurance proceeds to cover their mortgage payments for the next five months. If you need any additional information or have any questions about this request, please feel free to contact me at 828-3333.

I sincerely hope that you will be able to help these two Vermonters by approving this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sue Minter', with a long horizontal flourish extending to the right.

Sue Minter  
Irene Recovery Officer



**State of Vermont**  
**Agency of Administration**  
**Office of the Secretary**  
Pavilion Office Building  
109 State Street  
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[fax] 802-828-3322

*Sue Minter, Irene Recovery Officer*

September 21, 2012

Nancy Meinhard  
Selectboard Chair  
P.O. Box 48  
Wardsboro, Vermont 05355

Dear Nancy:

I am writing in response to your September 12<sup>th</sup> letter to Governor Shumlin regarding ongoing issues with FEMA.

I share your increasing frustration with the eligibility determinations from FEMA which have been, in the view of the Irene Recovery Office, narrowly interpreted for many town projects, as well as for the state as a whole. I want you to know that we are working as hard as we know how, and at every level that we can think of, to redress the unfortunate ineligibility determinations around the ANR standards.

As you may know, FEMA is required to provide public assistance for the repair or replacement of bridges and culverts with upgraded structures that comply with adopted, uniformly applied applicable pre-disaster standards. We believe that ANR's standard – which towns must adhere to -- should be recognized by FEMA as a state standard eligible for FEMA assistance. The state has issued two appeals to FEMA regarding this matter on behalf of all affected towns. The first appeal challenged the FEMA memo which served as the basis for the ineligibility determinations. The second appeal, regarding the Townshend Dam Road culvert, directly challenged an ineligibility determination to stand as a precedent case for other towns similarly affected. We await FEMA decision on this matter and request, weekly, a conclusion to the waiting period which continues to cause distress to many affected towns.

We have also been working with our Congressional delegation (copied here), who have worked hard to bring this issue to the highest levels of FEMA in Washington. Should our appeal be denied at Region 1, we intend to bring our appeal to FEMA headquarters in Washington. In coordination with our Congressional Delegation we also helped to host a Vermont/ Irene tour for two staff members of the U.S. Senate Appropriations Committee who came to Vermont last month. Senator Leahy is on this committee which oversees FEMA's budget in the Senate. Among other issues, we raised the ineligibility determinations for bridges and culverts on several occasions with the delegation from Washington, and visited several towns to highlight the specific problem.

I regret that you believe, as stated in your letter, that "State agencies have seemed ... unwilling to aggressively challenge FEMA's Determinations..." From my personal standpoint, the state has been working diligently and



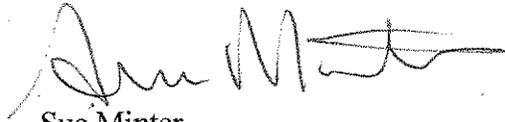
September 21, 2012

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aggressively to advocate for towns caught in this situation. This office will continue to press forward on this matter, in coordination with our Congressional Delegation, as well as on many other issues of FEMA eligibility determinations.

Thank you for reaching out. I have also heard from, and spoken with Rep. John Moran - another strong advocate for his towns - who I am copying on this response. Please know that the Irene Recovery Office is working hard to be an ally for sub-applicants, and to support town needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Sue Minter", with a long horizontal flourish extending to the right.

Sue Minter

Irene Recovery Officer

cc: Patricia Coates, Office of Congressman Welch  
David Weinstein, Office of Senator Sanders  
Tom Berry, Office of Senator Leahy  
Rep. John Moran  
David Mears, Commissioner, Department of Environmental Conservation  
Ben Rose, Public Assistance Officer  
Jeb Spaulding, Secretary, Agency of Administration