

**DRAFT -- Sections 204.C (Community Resource Overlay District)  
and 813.D (Cluster Development)**

*NOTE: This material has **not** been checked for inconsistencies or redundancies with respect to existing sections of the zoning code. If the Community Resource Overlay District section is incorporated, the Cluster Development section must also be included unless the CROD section is modified to omit references to Cluster Development.*

204.C. Community Resource Overlay District

1. Purpose. The District is designed to promote the conservation of community resources while providing greater flexibility and creativity in the design of residential developments than would otherwise be possible following conventional zoning and subdivision practice. This purpose shall be accomplished by allowing for clustering of residential units on a portion of a tract at a higher density on certain portions of the tract than would be allowed by the underlying zoning district, while designating a specified separate portion of the tract corresponding with identified conservation values as open space upon which use limitations shall be applied. Due to the unique and irreplaceable character of Montpelier's natural environment and potential impact of development on that environment, development under this District is subject to a greater degree of scrutiny in order to:
  - a. Protect lands characterized by streams, wetlands, floodways, shorelines, aquifer recharge areas, wellheads, prominent hilltops, visual ridgelines, steep slopes, viewsheds, scenic resources, primary agricultural soils, forest, meadows, wildlife corridors, winter deer yards, threatened and endangered species habitat, natural areas, trails, and historic, cultural, archeological, and recreational sites.
  - b. Maintain Montpelier's small city character and unique beauty by protecting the natural resources which contribute to its attractiveness; and
  - c. Focus development toward areas with more public access and services and away from environmentally sensitive areas while encouraging the continuation of traditional land uses and maximizing open publicly accessible green space.
2. Overlay Regulations. The special regulations of the overlay are in addition to the regulations of the underlying zone(s).
3. Overlay Defining Criteria and Boundaries. The Community Resource Overlay is hereby defined as those areas of the City designated as "Land Conservation" areas on the Future Land Use Plan in the Municipal Plan. Where uncertainty exists as to the exact location of the Overlay boundary lines, the Planning Commission shall be the final authority as to location.
4. Permitted Uses.

- a. Agriculture
  - b. Forestry (no clear cutting)
  - c. Outdoor recreation (no structures)
  - d. Customary Home Occupations (in existing dwellings)
5. Conditional Uses.
- a. All other permitted or conditional uses listed for the underlying zone, unless otherwise specifically exempted from review under Section 204.C.9 below.
  - b. All subdivisions shall be approved in accordance with the Montpelier Subdivision Regulations and Section 204.C.6 below.
6. Conditions for approval. Upon receipt of an application for development under the Overlay, the Board shall authorize a committee to review it and make recommendations which may improve the development and maximize the conservation of community resources. The committee shall include representatives knowledgeable about community resources from the Conservation Commission, the Planning Commission, the Department of Parks and Recreation, and a professional ecologist or landscape architect approved by the City. Applications under the Overlay may also submit an application for Cluster Development (Section 813.D) and this may be considered concurrent with the application for development under the Overlay. All proposals for development under the overlay must:
- a. Be consistent with the Municipal Plan;
  - b. Allow only uses which are consistent with the existing and permitted uses within the original underlying districts.
  - c. Have been subject to a City approved Community Resource Inventory, described in Section 204.C.7, within the past ten (10) years, unless significant changes, such as logging or storm damage, have occurred since completion of that Inventory, in which case the property shall again be inventoried.
7. Community Resource Inventory Method. When reporting the results of the Community Resource Inventory, data to be included is to be collected using the methods articulated for each of the categories described in Section 204.C.8. Where appropriate, actual maps of the community resources on the property with footprints of the existing and proposed development should be included in the final report. Also to be included in the report are all appropriate comments and recommendations regarding locations and implementation of the proposed development, including possible solutions to the potential diminishment

of community resources discovered in the assessment. Sections “a” through “m” of the Inventory (as described in Section 204.C.8) shall be completed by an consulting ecologist, and Section “n” shall be completed by a landscape architect. Both professionals completing the Inventory shall be approved by the Conservation Commission. The persons completing the Inventory shall submit to the Development Review Board the completed Inventory along with recommendations regarding location and implementation of the proposed development. A copy shall also be submitted to the committee authorized by the Development Review Board [or Community Resource Committee comprised of representatives knowledgeable about community resources from the Conservation Commission, the Planning Commission, the Department of Parks and Recreation, and a professional ecologist or landscape architect] for final review and recommendations to the Board. The Board shall duly consider the recommendations of both the [Committee] and the Inventory report when reviewing the development proposal.

8. Community Resource Inventory Categories. The report shall examine, but not be limited to, all categories listed here, and shall report all relevant information and data related to those resource areas:
  - a. Riparian Areas. Stream and lake buffer zones as shown on the appropriate GIS data layer available at the Department of Planning and Community Development or the Vermont Department of Fish and Wildlife.
  - b. Wildlife Corridors. *[refer to recent map from Kris Hammer]* Some information may be obtained from the Vermont Department of Fish and Wildlife, but primarily this data may be obtained from any Natural Resource Inventory previously conducted by the City by a duly qualified consulting ecologist approved by the City. If such Inventory has not been previously conducted on the property, a consulting ecologist approved by the city must conduct this survey on the property.
  - c. Deer Wintering Yards. As shown on the appropriate GIS data layer available at the Department of Planning and Community Development or the Vermont Department of Fish and Wildlife.
  - d. Rare and Endangered Wildlife Habitat. Some information may be obtained from the Vermont Department of Fish and Wildlife, but primarily this data may be obtained from any Natural Resource Inventory previously conducted by the City or by a duly qualified consulting ecologist approved by the City. If such Inventory has not been previously conducted on the property, a consulting ecologist approved by the city shall conduct this survey on the property. The Inventory shall assess the possible presence of species listed on the State endangered species list under {10 VSA Chapter 123 Section 5401}, or species determined to be an endangered species under the federal Endangered Species Act, as well as species considered unusual in Montpelier and natural communities

unusual in Montpelier.

- e. Prime Agricultural Soils. As identified on the appropriate GIS data layer available at the Department of Planning and Community Development and the Vermont Department of Agriculture.
- f. Aquifer recharge areas and wellheads. As identified on the appropriate GIS data layer available at the Department of Planning and Community Development and the Vermont Department of Natural Resources.
- g. Publicly Accessible Trail Links to the Trail Networks. Identified on the Open Space Network map in the Municipal Plan or a projected trails map from the Montpelier Department of Parks and Recreation.
- h. Recreation Corridors. *[a map produced by Geoff Beyers, or perhaps combine this with category "g" above]*
- i. Other Recreational Values. The landowner or the Department of Parks and Recreation would be the most likely sources of information concerning past or potential future uses of the property for such recreational activities as sledding, skiing, birdwatching, etc.
- j. Cultural Information. The landowner will identify any community assets such as "village greens" or other open space sometimes used for community events.
- k. Historic Information. As identified by the landowner and the Vermont Division of Historic Preservation.
- l. Archeological Information. As identified by the landowner and the Vermont Division of Historic Preservation.
- m. Forest Lands and Meadows. May be assessed through inspection of the aerial photos of Montpelier available at the Department of Planning and Community Development and by verification on the ground.
- n. Visual Ridgeline, Prominent Hilltop, Skyline, and Panoramic Views Assessment. The undeveloped ridges and hilltops of Montpelier are one of the city's principal scenic qualities and contribute significantly to the maintenance and enjoyment of its unique character, primarily as viewed from primary traffic corridors. It is in the public good and welfare to protect this visual resource by preserving and conserving Montpelier's ridges, hilltops, and important panoramic viewpoints from unregulated land development. This assessment is to be incorporated into the Community Resource Inventory.

- (i) Exemption of Certain Lands. If development on the property to be inventoried would not be visible at any time of year from any of the Primary Traffic Corridors or Major Viewpoints defined below, or if the highest elevation of that development will be no higher than 600 feet above sea level [*this number needs to be evaluated, especially along Elm Street*], the property is exempt from Visual Ridgeline, Prominent Hilltop, Skyline, and Panoramic Views Assessment.
  
- (ii) Primary Traffic Corridors. When visitors and residents enter Montpelier via the primary thoroughfares, the visual ridgelines and hilltops visible from those roads and streets affect the viewer's general impression of the city, and it is important to preserve as much of that favorable character of the city as possible. The primary traffic corridors are hereby defined as:
  - (a) Memorial Drive,
  - (b) River Street,
  - (c) Berlin Street from Main Street to River Street,
  - (d) Main Street from Memorial Drive to the roundabout,
  - (e) State Street from Main Street to Bailey Avenue,
  - (f) and Elm Street.
  
- (ii) Major Viewpoints. The following viewpoints offer notable panoramic views of Montpelier and its surrounding mountains:
  - (a) River Views. Bridges offer the best opportunities for viewing the rivers and surrounding hilltops and ridges, as well as the statehouse in some cases. Most notable are the Main Street Bridge and the Granite Street Bridge.
  - (b) Hubbard Park Tower. The tower offers a nearly 360 degree view that includes Camel's Hump and the Worcester Range in the distance, portions of downtown and much of its surroundings.
  - (c) Sabin's Pasture. The high meadow offers dramatic views of College Hall and the Statehouse dome with a backdrop of distant mountains. The view extends about 180 degrees with the view to the west being the most dramatic portion.
    - (d) North Street. Just below the City line, a high meadow permits views toward downtown Montpelier. It is a classic view

showing the city with spires nestled in the valleys of the Winooski and North Branch valleys.

(e) Berlin Street. Heading west from Wheelock Street a sequence of views includes Sabin's pasture and Vermont College to the north, and the Worcester Range and Bolton Mountain in the distance, the Winooski River and the Statehouse with its golden dome and green backdrop.

(iv) Determination of Visual Ridgeline, Hilltop or Skyline Disruption. The determination of visibility shall be made in a two-step process:

(a) GIS Viewshed Analysis. Using the Montpelier Development Planning and Community Development's GIS Viewshed Analysis capabilities, make a preliminary determination as to the possibility that the proposed land development will be visible from at least two vantage points on the Primary Traffic Corridors defined above, those two vantage points being separated by at least 500 feet. Exact location of the vantage points should be established on the ground using a GPS and the data entered into the Viewshed Analysis Program. Such determination shall also assess whether the highest elevation of such development might disrupt the skyline as viewed from the vantage points. The applicant shall reimburse the City for any expense incurred in such analysis.

(b) Street Observation. By placing helium balloons or tall poles at the highest elevations of the proposed development, determine whether the proposed land development will be visible from at least two vantage points on the Primary Traffic Corridors, those two vantage points being separated by at least 500 feet. The ground determination is not to be limited to the exact same points used in the Viewshed Analysis above. Such visual determination shall also assess whether the highest elevation of such development will disrupt the skyline as viewed from the vantage points, and the possibility that trees to be removed by the development might be interfering with the visibility of the balloons in this analysis.

(v) Determination of Panoramic Views Disruption. The determination of view disruption shall be made by ground observations from the viewpoints stated in the Major Viewpoints list defined above. This should be done at the same time as Step (b) of the Determination of Visual Ridgeline, Hilltop or Skyline Disruption procedure stated above. The degree to which the proposed development would interfere with the panoramic view or the skyline as observed from those Viewpoints is to be noted.

- (vi) Reporting Visual Ridgeline, Hilltop, Skyline or Panoramic Views Disruption. Include a report of the results of the above assessments to the Development Review Board and the [Community Resource Committee] if the analysis indicates that the highest elevation of the proposed land development will exceed 600 feet above sea level [*verify the validity of this number along Elm Street*], or that the highest elevation will be visible from the vantage points of the above described analyses, or that the highest elevation will disrupt the skyline as viewed from those points. The report shall also indicate the extent to which the proposed development would be visible to a passing motorist, including the length of time during which the proposed development might be viewed by a motorist, the frequency of the view of the proposed development as experienced by a motorist, the degree to which the proposed development will disrupt the skyline, as well as distances from the vantage points used in the above analyses.

- 9. Protection of Open Space. At least sixty percent (60%) of the qualifying land area shall be set aside as perpetual open space including street and road rights of way. The open space required herein shall be registered in the deed and shall run with the land and be enforceable against future structural development by all future owners. Ownership of the open space shall be:
  - a. By the City of Montpelier; or
  - b. By a land or conservation trust; or
  - c. By a private owner with a permanent conservation easement for protection of the natural resources thereon; or
  - d. By a homeowner's association meeting the requirements of the Montpelier Subdivision Ordinance.
- 10. Supplemental Overlay Standards – Permitted Uses. All permitted uses shall be reviewed by the Development Review Board, including review and recommendations by the committee authorized under Section 204.C.6, to determine compliance with the standards set forth in Section 204.C.11.
  - a. Forestry. Forest management activities designed as pre-development site preparation activities may include, but are not limited to, road and driveway construction, excavation related to the upgrade and conversion of logging roads to development roads or driveways, clearing and/or grading for house-sites and septic, or related work. Where a land owner fails to submit pre-development plans for review, the Board may direct the manner in which the site will be

restored or re-vegetated prior to development and/or limit development to a portion of the property which best meets the standards of this Section 204.C. All such activities shall meet all applicable state regulations, and shall, at minimum, comply with *Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont*, published by the Vermont Department of Forests, Parks & Recreation. Clear cutting of more than three (3) acres, whether for timber or for development, shall be approved by the Board.*[review this relative to conditional uses]*

- b. Agriculture. Clearing farm land in the undeveloped areas of this overlay for agricultural operations is permitted provided they are stumped and adequate soil erosion controls put in place and soils improvement are made. Such clearing of forest shall be part of an agricultural management plan, and where a land owner fails to submit pre-development plans and an agricultural management plan for review, the Board may direct the manner in which the site will be restored or re-vegetated.
  - (i) Residence. One residence for the owners, occupants, or employees engaged in farming operations on the parcel of land and necessary farm out building may be constructed on the site, provided they meet all the requirements of the underlying district. Every effort shall be made to retain trees larger than six (6) inches in diameter around the residence and out buildings and in the buffer areas specified by the regulations applied to the underlying district.
  - (ii) Subdivision. Areas clear-cut under this section shall not be subdivided or further developed before ten years after the clearing.

11. Supplemental Overlay Standards – Conditional Uses. When reviewing applications for conditional uses within the Overlay, the Board shall find that the proposed development complies with the following:

- a. Sewage Disposal. Where city sewer is available, it shall be used. Otherwise proposed septic systems shall be designed by a professional Vermont-licensed engineer, or a Certified Site Technician, who shall certify that the proposed system complies with the *Vermont Department of Environmental Conservation's Small Scale Wastewater Treatment and Disposal Rules*, as amended.
- b. Access. Access roads, including the conversion of logging roads to private roads or driveways, and utility corridors, shall:
  - (i) Use or share existing accesses and rights-of-way where feasible;
  - (ii) Remove trees only to the extent essential for construction;

- (iii) Take into consideration existing contours and, to the extent practical, follow linear features (e.g., tree lines, stone walls);
  - (iv) Be located to minimize stream and wetland crossings;
  - (v) Avoid to the extent practical, the fragmentation of community resources, wildlife corridors and habitat and other natural and scenic resources as identified in the Community Resource Inventory and the Municipal Plan; and
  - (vi) Be of sufficient width and design to ensure adequate access and maneuverability for emergency response vehicles.
- c. Stormwater & Erosion Control. All development, including grading, clearing and construction of driveways, shall provide for the preservation of natural drainage systems, retention of native topsoil, stabilization of steep slopes and the prevention of erosion and consequent sedimentation of wetlands, streams and watercourses. Stormwater management of the site shall use an integrated approach to deal with water flow rate, water quality protection, and downstream channel protection. All stormwater management practices shall be designed to utilize the natural drainage system in a manner to minimize the need for maintenance. In addition, the Board may require:
- (i) The submission and implementation of a stormwater management and erosion control plan that outlines the measure and practices used to control stormwater runoff at a site during and after construction. It shall be prepared by a Vermont licensed engineer in accordance with the *Vermont Stormwater Management Manual*, as amended;
  - (ii) The establishment of a building envelope, which shall define the extent of construction, clearing and yard area;
  - (iii) The identification and implementation of specific erosion control measures during and after construction which, at a minimum, incorporate the standards and specifications set forth in the *Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites*, as amended; and/or
  - (iv) The establishment of undisturbed, naturally vegetated buffer areas in addition to the minimum requirements set forth in Section [reference some other section of the code] to protect streams, wetland and other fragile features. The Board may require the submission of a buffer management plan to ensure that riparian vegetation will be maintained and/or established within the stream setback to protect water quality and wildlife habitat.

- d. **Location of Structures.** The placement of structures and associated development in appropriate locations is the most effective strategy for avoiding or minimizing adverse impacts to scenic and natural features. To the extent practical given site conditions and topography, structures should not be visible from town streets or roads and/or state highways, with particular consideration to the Primary Traffic Corridors defined in Section 204.C.8.n.(ii), and should avoid impacting streams, wetlands, floodways, shorelines, aquifer recharge areas, wellheads, prominent hilltops, visual ridgelines, panoramic views, scenic resources, primary agricultural soils, meadows, wildlife corridors, winter deer yards, threatened and endangered species habitat, trails, natural areas, recreational resources, and cultural, historic, and archeological sites. The Board may, through site investigation or based on recommendations by the committee authorized in Section 204.C.6 using the Community Resource Inventory, determine that some features not hereby specified shall be considered, including areas of unstable or shallow soils and/or soil types that are generally unsuitable for development and/or on-site septic disposal.
- e. **Determination of Development Visibility.** In considering the location of proposed structures and associated clearing and tree cutting, the Development Review Board shall determine whether the development has a high potential to be visible from city streets or roads or other important viewpoints. In determining potential visibility, the Board shall duly consider the results of the Visual Ridgeline, Prominent Hilltop, Skyline, and Panoramic Views Assessment (Section 204.C.8.n.) of the Community Resource Inventory and the comments and recommendations of the committee authorized under Section 204.C.6., and may also conduct site visits. In the event the Board determines that proposed development is likely to be visible from major city streets or roads or other important viewpoints due to the location of the proposed development relative to the configuration of the parcel or the physical terrain, the Board shall apply the standards set forth in Section 204.C.11.f. Should the Board find that the proposed development will not be visible or will be minimally visible and pose a negligible potential to disrupt the scenic qualities of the site, the standards set forth in Section 204.C.11.f. shall not apply.
- f. **Development Visible from Public Streets and Roads and Important Viewpoints.** Proposed development determined by the Development Review Board to have a high potential for visibility from public streets or roads or other important viewpoints in accordance with Section 204.C.11.e, and based on the recommendations of the Community Resource Inventory described in Section 204.C.7 and the committee authorized in Section 204.C.6, shall meet the following standards:
- (i) **Clearing and Landscaping.** On wooded sites, existing forest cover shall be maintained adjacent to proposed structures to interrupt the facade of

buildings, provide a forested backdrop to structures, and/or soften the visual impact of new development as viewed from city streets or roads or from important viewpoints. The Board, based on recommendations by the committee authorized in Section 204.C.6, shall consider the location of proposed structures relative to existing vegetation, especially vegetation indicated by the Community Resource Inventory to constitute part of a critical wildlife habitat or a natural community rare in Montpelier, and may require adjustment as to the location of the development as well as additional planting and/or limit the amount of clearing to provide screening or buffering and/or maintain a forested backdrop. A landscaping plan to address the maintenance of remaining and proposed vegetation may be required. Such a plan shall address specific measures to ensure the survival and, if necessary, replacement of designated trees during or after site development and the installation of all site improvements.

- (ii) **Building Height.** The highest point of any structure shall not visually interrupt a visual ridgeline, prominent hilltop, skyline or panoramic view as assessed in the Community Resource Inventory using methods and criteria in Section 204.C.8.m.
- (iii) **View Openings.** In addition to the information described in Section 204.C.11.f.(i), a landscaping plan may also include specific proposals for creating views from the site. Such plan should be limited to the careful clearing of narrow view corridors and/or the pruning of understory branches to maintain the forest canopy adjacent to proposed structures.
- (iv) **Cluster Development.** In order to minimize visual impacts, preserve green space and minimize impacts on community resources, all developments under the Community Resource Overlay shall employ Cluster Development as described in Section 204.D.
- (v) **Building Design.** Projects determined by the Development Review Board to have a high potential for visibility, in accordance with Section 204.C.11.f, shall submit proposed building elevations for review by the Board. In reviewing the proposed building design, the Board shall find that:
  - (a) Proposed structures will not stand in contrast to surrounding landscape patterns and features or serve as a visual focal point;
  - (b) The scale and massing of proposed structures is designed to minimize the visual impacts and blend with the surrounding landscape;

- (c) Building materials and fenestration will minimize winter-time visibility, reflectivity and night-time lighting impacts; and
  - (d) Offsite lighting impacts are minimized; the use of reflective materials and outdoor lighting fixtures mounted in excess of 12 feet above grade should be avoided, and only cut-off lighting fixtures should be used.
- g. Land Subdivision/Forest Fragmentation. Subdivisions resulting in the creation of a lot with any portion of a designated building envelope located within the Community Resource Overlay shall be subject to review under the Montpelier Subdivision Regulations and the following standards. In considering proposed subdivisions the Development Review Board shall duly consider the results of the Community Resource Inventory and the recommendations of the committee authorized under Section 204.C.6, and in consideration thereof may require the following:
  - (i) Wildlife Habitat. Parcel boundaries and building envelopes shall be located and configured to minimize adverse impacts on critical wildlife habitat, including wildlife travel corridors, identified by the Community Resource Inventory described in Section 204.C.8, the Municipal Plan, and the Vermont Department of Fish and Wildlife. Methods for avoiding adverse impacts include, but may not be limited to, the following:
    - (a) Concentrating development (e.g., through clustering, Section 813.D) on those portions of the site that will have the least impact on identified habitat;
    - (b) Locating development to avoid identified natural communities and critical wildlife habitat, including wildlife corridors, winter deer yards, threatened and endangered species habitat and other critical habitats;
    - (c) Designated suitable areas of open space to encompass land associated with identified important natural communities and critical wildlife habitat; and
    - (d) Establishing buffer areas fo adequate size to ensure the protection of important natural communities and critical habitat.
  - (ii) Forest Management. Parcel boundaries and building envelopes shall be located and configured to minimize adverse impacts to productive forest and to support ongoing forest management. Productive forest includes large (50+ acres) tracts of forest, parcels contiguous to other large,

undeveloped tracts that have either been protected through public or private land conservation initiatives, and parcels that possess unique or fragile features and/or exceptional recreational resources. Methods for avoiding such adverse impacts include, but may not be limited to, the following:

- (a) Designing subdivisions to allow ongoing forest management of the parcel after subdivision;
- (b) Avoiding the unnecessary fragmentation of distinct timber stands by parcel boundaries, especially those with a high resource value, and providing access for forest management or recreation if appropriate;
- (c) Designating suitable areas of open space to land associated with productive forest land and recreation resources (e.g., trail corridors for public access); and
- (d) Preparation of a forest management plan, emphasizing practices of renewable management with no clear-cutting of parcels greater than three acres, prepared by a qualified professional forester.

## 12. Supplemental Conditional Use Application Requirements.

- a. **Basic Requirements.** In addition to the application materials required for conditional use review under Section *[an existing section of the zoning code not included here]*, all applicants for conditional uses in accordance with Section 204.C.6 shall submit a sketch map, drawn to scale, depicting the following features:
  - (i) Existing and proposed property boundaries; the location of all existing and proposed development, including structures, streets, roads and driveways, walls and fence lines, and utility corridors;
  - (ii) The location of Community Resources articulated in the Community Resource Inventory (Section 204.C.7), including but not limited to streams, wetlands, floodways, shorelines, aquifer recharge areas, wellheads, steep slopes, visual ridgelines, prominent hilltops, panoramic views, primary agricultural soils, meadows, wildlife corridors, winter deer yards, threatened and endangered species habitat, natural communities rare in Montpelier, trails, potential trail corridors, recreational sites, and historic, cultural, and archeological sites;
  - (iii) A general indication of existing forest cover (type and location), and proposed clearing, tree cutting and landscape plans;

- (iv) The location of surface waters and existing and proposed drainage patterns; and
    - (v) Where city sewer is not available, wastewater disposal plans, including soils data and disposal system design prepared by a professional Vermont-licensed engineer or certified site technician.
  - b. Additional Requirements. The Development Review Board may require additional information and studies as needed to ensure compliance with the standards set forth in Section 204.C.11. Such additional information might include:
    - (i) Building elevations and footprints;
    - (ii) Stormwater management and erosion control plan prepared by a Vermont licensed engineer;
    - (iii) Road, street, and driveway profiles; geometry and construction schematics;
    - (iv) Detailed tree cutting and landscaping plan;
    - (v) Grading plan (showing proposed areas of cut and fill);
    - (vi) Environmental impact assessment (analysis of potential environmental impacts and proposed mitigation measures); and
    - (vii) Forest management plan.
- 13. Compliance & Enforcement. Approvals issued for development within the Community Resource Overlay shall be enforced in accordance with Section *[an existing section of the zoning code not included here]*. All conditions of approval, including those regarding restrictions on tree cutting and forest management, shall run with the land and be enforceable against all future owners. Any alteration to an approved conditional use in this Overlay, including changes to an approved tree cutting, landscaping or forest management plan, shall require the prior approval of the Development Review Board unless otherwise specified by the Board.
- 14. Exemptions. Notwithstanding the standards and procedures set forth above, the following development activities are specifically exempted from review under this section:
  - a. The alteration or expansion of a single family dwelling in existence prior to the approval of this provision by the Montpelier City Council, provided such

alteration or expansion does not increase the total aggregate floor area of the building in excess of twenty- five percent (25%) of the total floor area in existence as of the approval of this provision;

- b. The construction of an accessory structure, provided such accessory structure does not exceed 150 square feet or 12 feet in height.

#### 813.D Cluster Development.

1. Purpose. Cluster Development is intended to encourage flexibility in residential development design by permitting mixed housing types which may be grouped on lots of reduced dimensions to allow for a more economic provision of street and utility network, to protect environmentally sensitive areas and to encourage the preservation and recreational use of open space in harmony with the natural terrain, scenic qualities, wetlands, winter deer yards, threatened and endangered species habitat, farmland, visual ridgelines, prominent hilltops, steep slopes, viewsheds, and other outstanding land features. The remaining land in the tract which is not built upon is to be reserved as permanently protected open space. The protection of the open space shall be registered in the deed and shall run with the land and be enforceable against future structural development by all future owners.
2. Permitted Structures and Uses. All residential uses including single family dwellings, multi-family dwellings and manufactured housing.
3. Zoning. Cluster Development shall be allowed in all residential zoning districts, and shall conform to all provisions of those districts except for the allowances provided in this section or under the Community Resource Overlay District, Section 204.C.7.
4. Density Increases. Notwithstanding other provisions of this ordinance relating to minimum lot size, lot width and setback in single family detached developments, the Development Review Board, in reviewing proposed residential development, and in order to best fulfill the intent and spirit of this Section, may modify said provisions related to minimum lot size, lot width and setback, to permit innovative approaches to housing and environmental design.
  - a. Minimum Lot Size:
    - (i) Character of the Land. The total number of dwelling units to the acre shall remain at the same overall density as required in the underlying zone, except that area computations shall not include road right of ways, public or private, and, if applicable, shall take into account the provisions of the Community Resources Overlay District (Section 204.C). The

minimum lot size of each dwelling unit within the Cluster Development shall be determined by the Development Review Board based upon the character of the land involved, the type of housing proposed and the need for adequate on-site sewage disposal, as determined by the standards of the *Vermont Department of Environmental Conservation's Small Scale Wastewater Treatment and Disposal Rules*, as amended.

(ii) Reduction of Lot Size Requirements:

(a) Outside the Community Resource Overlay. The Development Review Board may reduce lot area requirements by not more than fifty (50) percent, but only if a net area at least equal to the cumulative lot size reduction is maintained as common or public land.

(b) Under the Community Resource Overlay District. The Board, using recommendations from the committee authorized under Section 204.C.6, may reduce lot area requirements by more than fifty (50) percent, but only by the minimum percentage necessary to facilitate the preservation of key community resources. This is allowed only if a net area at least equal to the cumulative lot size reduction is maintained as common or public land as provided under Section 204.C.9.

b. Setback Reductions. Minimum frontage and setback requirements within a Cluster Development shall be determined by the Development Review Board based on the type of housing proposed and maintaining adequate access and separation for fire protection purposes. Further considerations for setbacks are:

(i) Outside the Community Resource Overlay. The Development Review Board may reduce lot width and front setback requirements by no more than fifty (50) percent and reduce side and rear setbacks without a percentage limitation.

(ii) Under the Community Resource Overlay. The Development Review Board, using recommendations from the committee authorized under Section 204.C.6, may reduce lot width and setback requirements by more than fifth (50) percent, but only by the minimum percentage necessary to facilitate the preservation of key community resources. Side and rear setbacks may be reduced without limitation.

c. Density Bonus. The Board, in consultation with the Conservation Commission and Department of Parks and Recreation, may award an increased density bonus under one of the following two conditions:

(i) Outside the Community Resource Overlay District. The Board may award a density bonus of up to twenty percent (20%) if it deems that the open space conserved by the development will preserve or enhance connectivity for wildlife and enhance public access for recreation.

(ii) Under the Community Resource Overlay District. The Board may award a density bonus of up to thirty-five percent (35%) if it deems that the open space conserved by the development will preserve or enhance Community Resources, as defined by the Community Resources Inventory under Section 204.C.7, as well as connectivity for wildlife and enhance public access for recreation.

- d. Variance. The modification of requirements under this section shall not require a variance and no finding of undue hardship shall be required.
5. Open Space or Common Land. The land area not used for individual lots, construction of building and roads shall be permanently protected, using a conservation easement or other suitable legal instrument, as open space or common land for the purposes of recreation, conservation, park or public easement or forestry or agriculture. The open space or common land or any portion of it shall be held, managed and maintained by the developer until it is protected in one or more of the following ways:
- a. The space is owned by a homeowner's association meeting the requirements of the Montpelier Subdivision Ordinance, set up by the developer and made a part of the deed or agreement for each lot or dwelling unit, running with the land and enforceable against future structural development by all future owners; or
  - b. The space is owned by the City of Montpelier; or
  - c. The space is owned by a land or conservation trust; or
  - d. The development rights are owned by a land or conservation trust.
6. Management of Open Space. All agreements, deed restrictions, organizational provision for a homeowner's association and any other method of management of the common land shall be established prior to approval.
7. Visibility of Open Space. The open space of a Cluster Development shall be visible from a City street or state road whenever possible.
8. Building Separations. No single family dwelling shall be closer than 30 feet to another dwelling, no duplex shall be closer than 40 feet to another dwelling, and no multi-family dwelling shall be closer than 50 feet to another dwelling [*Note: the numbers are open to adjustment by the Planning Commission.*]

9. Perimeter Setback. No structure may be located closer than 100 feet from the perimeter of the designated open space.
10. Procedure. Subdivision approval by the Development Review Board is required for all Cluster Developments. A Cluster Development proposal shall be processed concurrently with the required subdivision application.
11. Review Criteria. The Development Review Board, in consultation with the Conservation Commission, shall not approve any Cluster Development unless it shall make the following findings:
  - a. Approval of the Cluster Development would result in a more desirable environment than would be possible through a conventional subdivision which strictly conforms with the requirements of the underlying zone.
  - b. The proposed Cluster Development would result in a more desirable environment than would be possible through a conventional subdivision which strictly conforms with the requirements of the underlying zone.
  - c. The location, size, nature and topography of the open areas make them suitable for use as common areas for park, recreational purposes, conservation purposes, buffer areas and/or agricultural purposes.
  - d. The proposed Cluster Development plan will develop the property in harmony with the natural environment by concentrating the development on those parts of the property which have the least natural limitation to accommodate development and by protecting those parts of the property which are environmentally sensitive such as, but not limited to, wetlands, flood plains, aquifer recharge areas, wellheads, meadows, steep slopes, visual ridgelines, prominent hilltops, stream buffers, important panoramic viewpoints, winter deer yards, wildlife corridors, and threatened and endangered species habitat.
  - e. The Cluster Development shall conform with the standards outlined above and the Municipal Plan.
  - f. The Cluster Development proposal complies with all requirements of the Subdivision Regulation (Section *[an existing section of the zoning code not included here]*) and all requirements of this zoning ordinance not addressed in this Section.