Section 4.13 Protected Public Uses

(A) In accordance with the Act [§4413(a)], the following public facilities or uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening requirements, and only to the extent that such regulations do not have the effect of excluding, or interfering with the intended use or function:

(1) State or community owned and operated institutions and facilities;

(2) Public and private schools and other educational institutions certified by the Vermont Department of Education;

(3) Churches and other places of worship, convents, monasteries, and parish houses;

(4) Public and private hospitals;

(5) Regional solid waste management facilities certified by the state (under 10 V.S.A. Chapter 159);

(6) Hazardous waste management facilities for which a notice of intent to construct has been received by the state (under 10 V.S.A. §6606a).

(B) Reasonable provision has been made for siting of the above public facilities and uses within specified zoning districts, as summarized in Table 4.1. Such facilities of uses must meet applicable district requirements, and may be subject to site plan review under Section 5.4 or conditional use review under Section 5.5; however, associated conditions of approval shall not exceed allowed regulation, as specified in the Act and Subsection (A).

(C) In accordance with the Act [§4413(b)], public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from municipal land use regulations.

TABLE 4.1
PROTECTED PUBLIC USES

Facility	Specified District(s)
Public and private hospitals	All Districts
Regional solid waste management facilities certified by the State [10 V.S.A Chapter 159]	Zone B (see Sanitary Landfill)
Hazardous waste management facilities for which a notice of intent to construct has been received under state law [10 V.S.A. §6606(a)]	Zone B (see Transfer Station)
State or community owned and operated institutions and facilities	All Districts (see Public Facility/Utility)
Public and private schools and other educational institutions certified by the Vermont Department of Education	Zone A & Zone C (see School)
Churches and other places of worship, convents and parish houses	Zone A & Zone C (see Place of Worship)

Section 4.14 Telecommunications Facilities

(A) **Purposes**. The purpose of this section is to protect the public health, safety and general welfare of the Town of East Montpelier while accommodating the communication needs of residents and businesses in order to:

(1) Preserve the character and appearance of the Town of East Montpelier while allowing adequate wireless telecommunications services to be developed.

(2) Protect the scenic, historic, environmental, and natural resources of the Town of East Montpelier.

(3) Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.

(4) Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers and sites, where possible and appropriate.

(5) Facilitate the provision of wireless telecommunications services to the residences and businesses of the Town of East Montpelier.

(6) Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.

(7) Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals and childcare facilities.

(B) **Consistency with Federal Law**. In accordance with federal law, particularly the Telecommunications Act of 1996, these regulations shall not be interpreted in a manner that would:

(1) Prohibit or have the effect of prohibiting the provision of wireless telecommunications services;

(2) Unreasonably discriminate among providers of functionally equivalent services; or

(3) Regulate wireless telecommunications services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

(C) **Applicability**. Telecommunications facilities shall include all facilities subject to licensing or regulation by the FCC, including towers, associated accessory structures, buildings and/or equipment, except as specifically exempted under Subsection (D). New, modified or expanded telecommunication facilities, except as specified for small scale facilities under Subsection (E), may be allowed in designated zoning districts as conditional uses subject to review under Section 5.5 and the requirements of this section. However:

(1) A new tower shall not be permitted unless it is found by the Development Review Board that the equipment planned for the proposed tower cannot be accommodated on an existing approved tower, building or structure;

(2) No towers are allowed within the exclusion areas identified in Subsection I; and

(3) The board can hire qualified person(s) to conduct an independent technical review of applications filed under this section and can require the applicant to pay for all reasonable costs thereof.

(D) **Exemption**

(1) The following wireless telecommunications facilities are exempt from the requirements of this section: police, fire, ambulance, other emergency dispatch, and television antennas for home use. No FCC-licensed wireless telecommunications facility shall be considered exempt from these regulations for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.

(2) The following freestanding structures: amateur (ham) radio, citizens-band radio, and residential-use radio dispatch antennas, are permitted uses, subject to district setback requirements and height requirements [Section 3.6]. The setback distance will be equal to the distance designated for the district, or the height of the tower, whichever is greater. A permit may be issued by the Zoning Administrator only after confirmation that the structure will meet setback and height requirements for the district in which it will be located. Antennas over 50 feet are subject to conditional use review under Section 3.6 (B).

(E) **Permitted & Prohibited Locations**

(1) Wireless telecommunications towers or facilities may be permitted as conditional uses upon compliance with the provisions of this Bylaw in the following zoning districts:

(a) Zone A – Commercial District

(b) Zone B – Industrial District
(c) Zone C – Residential-Commercial District
(d) Zone D – Rural Residential-Agricultural District
(e) Zone E – Agricultural-Forest Conservation District

(2) Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation may not be located in any of the following locations:

(a) Closer than 75 feet or the height of the tower horizontally, including antennas and other vertical appurtenances (except in the case of a tower requiring guy wire anchors which must not be closer than 2 times the height of the tower horizontally), whichever is greater, to the boundary of the property on which the tower is located; to any structure existing at the time of the application which is used as either a primary or secondary residence, or to any other building except as provided in Subsection (F); to any existing road right-of-way; to any river or perennial stream; to a State or Federally designated wetland; or to any known archeological site.
(b) The habitat of any rare or endangered species as listed by the State of Vermont.
(c) Within 500 feet horizontally from any Historic district or property eligible to be listed on the National Register of Historic Places.
(d) Closer than 1,000 feet horizontally to any structure existing at the time of the application which is the property of any school.
(e) Within 2,000 feet horizontally of a designated scenic road or highway.

(F) **Small Scale Facilities**. The placement of wireless telecommunications antennas, repeaters or microcells on existing buildings, structures, roofs or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the Development Review Board as a conditional use under Section 5.5. In addition to the application materials required for conditional use approval, applicants for the placement of small scale facilities shall provide:

(1) A final site and building plan.

(2) A report prepared by a licensed mechanical or structural engineer indicating the structure's suitability for the wireless telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.

(3) For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.

(4) A deposit in the amount of $1,500.00 to be applied toward the costs of an independent technical assessment of the application, as provided for in Subsection 7.8 (C) of these regulations. The applicant shall pay any costs in excess of the deposit; any unused portion of the deposit will be returned to the applicant.

(5) No such device, however, may be located closer than 50 feet to an existing residence.

(G) **Application Requirements for Telecommunications Facilities Not Covered Under Subsection F Above**. An applicant must be a wireless telecommunications service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Zoning Administrator at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation. No construction, alteration, modification (including the installation of antennas for new uses) or installation of any wireless telecommunications tower or facility shall commence without a conditional use approval by the Development Review Board. In addition to information otherwise required in Section 5.3, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

(1) The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.

(2) The name, address and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.

(3) The names and addresses of the record owners of all abutting property and the names and addresses of the landowner, facility operator, and the wireless service providers.

(4) A report from the appropriate qualified engineers that:

(a) Describes the facility height, design and elevation (a licensed structural engineer for this section).
(b) Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas (a radiofrequency engineer for this section).
(c) Describes the tower's proposed capacity, including the number, height and type(s) of antennas that the applicant expects the tower to accommodate (a licensed structural engineer for this section).
(d) Demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within 5 miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the residents and businesses of the Town of East Montpelier. The documentation shall include, for each facility site of proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
(e) Demonstrates that the applicant has analyzed the feasibility of using "repeaters" or microcells in conjunction with all facility sites listed in compliance with Subsection (D) (above) to provide coverage to the Town of East Montpelier.
(f) Describes potential changes to those existing facilities of sites in their current state that would enable them to provide adequate coverage.
(g) Describes the output frequency, number of channels, sector orientation and power output per channel, as appropriate for each proposed antenna.
(h) Includes a written five-year plan for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs, if applicable, as well as plans for additional development and coverage within the Town.
(i) Provides assurance that, at the proposed site, the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio frequency exposure. The Development Review Board may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards and requirements on an annual basis at unannounced times.
(j) Includes other information required by the Development Review Board that is necessary to evaluate the request.
(k) Includes an engineer's stamp and registration, where appropriate.

(5) A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.

(6) For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure (to be provided to the Zoning Administrator at the time an application is submitted).

(7) To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.

(8) A copy of the application or draft application for an Act 250 permit, if applicable.

(9) A deposit in the amount of $1,500.00 to be applied toward the costs of an independent technical assessment of the application, as provided for in Subsection 7.8 (C).

(10) The permit application shall be signed under the pains and penalties of perjury.

(H) **Site Development Plan Requirements for Wireless Telecommunications Facilities**. Telecommunications facilities, excluding small facilities allowed under Subsection (F), are subject to conditional use approval under Section 5.5. In addition to the application requirements set forth in Section 5.2, site development plans for wireless telecommunications facilities shall include the following supplemental information:

(1) Location map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two (2) mile radius of the proposed facility site.

(2) Vicinity map showing the entire vicinity within a 2,500 foot radius of the facility site, including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights-of-way needed for access from a public way to the facility.

(3) Propose site plans of the entire development, drawn at a minimum scale of one (1) inch equals fifty (50) feet, indicating all improvements including landscaping, utility lines, guy wires, screening and roads.

(4) Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.

(5) Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

(6) In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.

(7) Construction sequence and time schedule for completion of each phase of the entire project.

(I) **Collocation Requirements**. An application for a new wireless telecommunications facility shall not be approved unless the Development Review Board finds that the facilities planned for the proposed structure cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

(1) The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.

(2) The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.

(3) The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radiofrequency exposure.

(4) Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably, or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.

(5) Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

(6) There is no existing or approved tower in the area in which coverage is sought.

(7) Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at carrying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate a minimum of four antennas when overall permitted height allows.

(J) **Access Roads and Above Ground Facilities**. Where the construction of new wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within forest or forest fringe areas, and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character of beauty of the area. The Development Review Board may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same, and where maintenance personnel can reasonably access the facility site on foot.

(K) **Tower and Antenna Design Requirements**. Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.

(1) Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth designs, including those which imitate natural features, may be required in visually sensitive locations.

(2) In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall not be more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Development Review Board that the additional height is necessary to provide adequate coverage in the Town of East Montpelier or to accomplish collocation of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.

(3) Towers, antennas and any necessary support structures shall be designed to avoid having an undue adverse aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:

(a) The period of time during which the proposed tower would be viewed by the traveling public on a public highway;
(b) The frequency of the view experienced by the traveling public;
(c) The degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
(d) Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
(e) The distance of the proposed tower from the view point, and the proportion of the facility that is visible above the skyline;
(f) The sensitivity or unique value of a particular view affected by the proposed tower;
(g) Significant disruption of a viewshed that provides context to a historic or scenic resource.

The Board shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Board may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.

(4) All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than specified in Subsection (E)(2).

(5) The area around the tower and telecommunications facilities shelter(s) shall be completely fenced and gated for security to a height of eight feet. No permanently installed ladders shall reach below 12 feet above the ground.

(6) Ground-mounted equipment or antennas, as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

(L) **Amendments to Existing Wireless Telecommunications Facility Permit**. An alteration or addition to any wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

(1) Change in the number of buildings or facilities permitted on the site;

(2) Addition or change of any equipment resulting in greater visibility or structural windloading or weight load, or additional height of the tower, including profile of additional antennas, not specified in the original application.

(M) **Tower Lighting**. Unless required by the Federal Aviation Administration (FAA), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting, or another location selected.

(N) **Signage**. A sign no greater than two (2) square feet indicating the name of the telecommunications facility owner(s) and a 24-hour emergency telephone number, either local or toll-free, shall be posted adjacent to the entry gate. In addition, radio frequency radiation (RFR) warning signs, and the federal tower registration plate, where applicable, shall be posted on the fence or as specified by federal or state requirements. No Trespassing signs may be posted at the discretion of the telecommunications facility owner(s). No commercial signs or lettering shall be placed on the facility.

(O) **Noise Generated by Facility**. The Development Review Board may impose conditions to minimize the effect of noise from the operation of machinery or equipment upon adjacent properties.

(P) **Temporary Wireless Telecommunication Facilities**. Any wireless telecommunications facility designed for temporary use is subject to the following:

(1) Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Development Review Board after site plan approval.

(2) Temporary facilities are permitted for no longer than five days use during a special event.

(3) The maximum height of a temporary facility is 50 feet from grade.

(4) Temporary facilities must comply with all applicable portions of these regulations.

(Q) **Continuing Obligations**. Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding radiofrequency exposure, and provide the basis for his or her representations. In addition, the report shall include names and addresses of the landowner, facility operator, and wireless service providers.

(R) **Facility Removal**. Abandoned, unused, obsolete, or noncompliant towers or facilities governed under this bylaw shall be removed as follows:

(1) The owner of a facility/tower shall annually, on January 15, file a declaration with the Zoning Administrator certifying the continuing safe operation of every facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.

(2) Abandoned or unused towers or facilities shall be removed within 180 days of abandonment or of cessation of operations at the site unless a time extension is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of the abandonment or of cessation of operations at a site, the municipality shall notify the owner and may remove the tower of facilities. Costs of removal shall be assessed against the property or tower owner.

(3) Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of a notice of violation at the site, unless a time extension or negotiated solution is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.

(4) An owner who has failed to file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.

(5) The applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of East Montpelier and acceptable to the Board, to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.

(S) **Maintenance Requirements**. The applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the facility, the Town of East Montpelier may undertake such maintenance at the expense of the applicant or landowner.

(T) **Insurance Requirements**. The facility owner shall maintain adequate insurance on all facilities and present a certificate of insurance annually on January 15.