



GUIDE FOR CITIZENS AND MUNICIPALITIES

Order relating to the declaration
of a Special Planning Zone in the territory
of 210 municipalities affected by the floods
that occurred in spring 2017

This document was produced by the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT) with the collaboration of the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC) and the Ministère de la Sécurité publique (MSP).

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Context

Exceptional floods occurred in spring 2017 in many Québec municipalities. The flood waters affected 278 municipalities, flooded over 5,300 residences and forced the evacuation of more than 4,000 people and the closing of many roads. These events made it necessary to deploy special interventions to support the people, businesses and municipalities affected in order to facilitate the return to normal life as quickly as possible.

Considering the scope of these floods, the Gouvernement du Québec had to take a position quickly on the follow-up it intends to provide to the event, in order to prevent a similar situation from recurring.

Thus, the Government published, in the *Gazette officielle du Québec* of June 23, 2017, a draft Order in view of declaring a Special Planning Zone (SPZ) in the territory of certain local municipalities affected by the floods that occurred in April and May 2017.

The Act respecting land use planning and development (ALUPD), which confers the power on the Government to adopt an SPZ by order, stipulates that the Minister responsible for the application of this Act, or his representative, shall hold a consultation on the content of the draft order before it is adopted.

Public consultation meetings thus were held, on July 10, 2017, in the 15 regions of Québec affected by the spring 2017 floods. A total of 17 meetings were held and over 2,100 people participated.

This consultation on the draft order and the pursuit of the work by the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT), the Ministère de la Sécurité publique (MSP) and the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC) revealed the importance of introducing some amendments at the order stage in order to facilitate the application of the provisions of the SPZ.

Thus, an order relating to the declaration of a Special Planning Zone in the territory of 210 municipalities affected by the floods that occurred in spring 2017 was adopted by the Gouvernement du Québec on July 19, 2017.

This SPZ provides for the uniform application of certain standards contained in the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains (PPLRLZF) in the territory of the municipalities concerned by rules with a view to harmonization of its application. It also provides for accountability obligations for municipalities. Moreover, it establishes two mechanisms that will give the municipalities the possibility of applying to the Minister of Municipal Affairs and Land Occupancy for exemptions in order to authorize the exceptional reconstruction of certain buildings in floodplain zones.

Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains

The PPLRLZF was established by order in December 1987. Since then, it has been amended in 1991, 1996, 2005, 2008, 2014 and 2017 to solve various problems.

The PPLRLZF, pertaining to the Environment Quality Act (EQA), defines the rules applicable to works and structures in the littoral zone of watercourses and lakes, on lakeshores and riverbanks, and in floodplains. These measures must be integrated into the land use development plans (LUDP) of the regional county municipalities (RCM) and the bylaws of the local municipalities. They limit the development of structures, works and undertakings in these environments.

In addition to protecting Québec's lakes and watercourses, the PPLRLZF seeks to ensure human safety and the protection of property in the floodplain.

Essentially, the PPLRLZF prohibits all structures, all reconstruction of buildings considered to be destroyed due to flooding, all undertakings and all works (except for certain exceptions) within high-velocity floodplain zones (0-20 years). It subjects structures and undertakings to the application of immunization measures in low-velocity floodplain zones (20-100 years).

A littoral zone means the part of lakes and watercourses that extends from the high water line to the centre of the water body.

A high-velocity floodplain zone means the zone that can be flooded during a flood with a recurrence of 0 to 20 years (also known as a "0-20-year zone").

A low-velocity floodplain zone means the zone that can be flooded during a flood with a recurrence of 20 to 100 years (also known as a "20-100-year zone").

Immunization of a structure or an undertaking means the application of measures with a view to providing the necessary protection to avoid damage that could be caused by a flood (see Annex 1 of the PPLRLZF).¹

¹ This document is available on the MDDELCC website at the following address:
<http://www.mddelcc.gouv.qc.ca/eau/rives/>

Special Planning Zone

What is a Special Planning Zone?

Under section 158 of the Act respecting land use planning and development (ALUPD), an SPZ is created for the purpose of solving a development or environmental problem, the urgency or seriousness of which, in the Government's opinion, warrants its intervention. In particular, the order must contain a description of the perimeter of the area to which it applies, a statement of the objectives pursued, and the land use planning and development bylaws applicable. An SPZ is declared by order and substitutes for the local and regional planning and development bylaws

The municipalities concerned by the draft order

A total of 210 municipalities are covered by the draft order out of the 278 municipalities that were affected by the spring 2017 floods. The draft order does not cover the 66 flooded municipalities that do not have floodplain zone maps. In addition, the municipalities of Saint-Jean-sur-Richelieu and Otterburn Park are excluded from this draft order, given that they are already covered by the order that established an SPZ in the territory of four RCMs in Montérégie.

For the 66 municipalities flooded in 2017 that do not have floodplain zone maps,² the Government will use the powers conferred on it by the ALUPD to require the production of such maps and their integration into the bylaws.

Perimeter of application

The perimeter of application of the SPZ corresponds to the part of the territory of the 210 local municipalities concerned that is located in a high-velocity floodplain zone (0-20-year zone) or in a floodplain without distinguishing between the high-velocity zones and the low-velocity floodplain zones (20-100-year zones), as determined in one of the following documents:

- the land use and development plan (LUDP) of the RCMs in the territory containing their respective territories;
- an interim control by-law (ICB) adopted by one of the RCMs in the territory containing their respective territories;
- the urban planning bylaws of the local municipalities concerned.

² Flood elevation: elevation of the water level for a given flood flow.

Objectives of the establishment of a Special Planning Zone

The following objectives are pursued by the establishment of an SPZ:

- ensure the application of the PPLRLZF;
- adequately manage the flood risks in a context of climate change, particularly by the reduction of the number of citizens and properties exposed to future floods;
- allow the reconstruction of destroyed or severely damaged buildings in certain exceptional circumstances and on certain conditions;
- ensure that all the municipalities and disaster victims affected by flooding are subject to uniform standards.

Land use planning and development standards applicable in the Special Planning Zone

- Prohibited in the littoral zone are all structures, undertakings and works, excluding the interventions set out in paragraph 3.3 of the PPLRLZF.
- In high-velocity floodplain zones (0-20 years) and in floodplains identified without distinguishing between the high-velocity and low-velocity floodplain zones, all structures are prohibited, including reconstruction of undertakings or structures destroyed by a flood, all undertakings and all works, excluding interventions set out in paragraphs 4.2.1 and 4.2.2 of the PPLRLZF and those authorized by a municipality for exceptional cases based on an exemption granted by the Minister of Municipal Affairs and Land Occupancy.
- The structures and undertakings resulting in major works in the 0-20-year floodplain zone, particularly for repair of buildings that have lost less than 50% of their value established on the basis of the new construction cost,³ will have to be produced in compliance with the immunization rules set out in Annex 1 of the PPLRLZF.
- The municipal land use planning and development bylaws that are not incompatible with the controls set out in this order remain applicable within the perimeter of the Special Planning Zone.

Appraisal of buildings

- **Reconstruction** means repair work, the cost of which represents more than half (50%) of the value of the building. This value corresponds to the new cost of a structure. **Repair** means other repair work.
- No private undertaking or private structure may be repaired or reconstructed unless its condition has been appraised by a person designated by the Minister of Public Security or by a person, designated by the property owner or by the municipality, who has professional

³ The draft order published in the Gazette officielle du Québec on June 23, 2017 provided that the property value of a building was used to determine the notion of reconstruction. In the order, an amendment was made to provide that the new cost of a structure will serve to determine the notion of reconstruction. This amendment will make it possible to use a uniform and more equitable measure for the citizens concerned.

expertise in the damage assessment field. Moreover, the municipality responsible for authorizing work relating to the repair or reconstruction of such an undertaking or structure is bound by the opinion of the damage assessment expert or the person designated by the Minister of Public Security regarding the necessary repair work.

Exemption for exceptional reconstruction of certain buildings in the 0-20-year floodplain zone

The Special Planning Zone provides for two mechanisms with the aim of allowing municipalities to submit exemption applications to the Minister of Municipal Affairs and Land Occupancy to allow exceptional reconstruction of certain buildings in a floodplain zone. Thus, individual and collective exemptions may be authorized by the MAMOT according to specific procedures.

Individual exemption

- The municipalities may apply to the Minister of Municipal Affairs and Land Occupancy, on an exceptional basis, for an exemption allowing the reconstruction of certain buildings in a floodplain zone. In the case of principal residences, these exceptional cases must be submitted by a municipality, by resolution of the municipal council, and concern residences that suffered damage appraised between 50% and 65% of their new construction cost.
- Before ruling on the municipality's application, the Minister of Municipal Affairs and Land Occupancy will consult the Minister of Sustainable Development, Environment and the Fight Against Climate Change, who will constitute a committee of independent experts to obtain a recommendation. To formulate its recommendation, the committee must account for:
 - the exceptional nature of the application, which may signify, in particular, that an application concerns:
 - a building of heritage, historical, cultural, architectural or recreational tourism interest;
 - a structure or an undertaking, the use of which is related to a contiguous watercourse or water body and which is of interest to the community;
 - the impacts of the exemption on the objectives of the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains;
 - any other criterion determined by the Minister of Sustainable Development, Environment and the Fight Against Climate Change.
- The Minister of Sustainable Development, Environment and the Fight Against Climate Change transmits the recommendation of the committee of independent experts to the Minister of Municipal Affairs and Land Occupancy, who is bound to act on it and inform the municipality concerned, including the applicable conditions if the application is accepted.

Collective derogation

The SPZ provides for the possibility for a municipality to submit to the Minister of Municipal Affairs and Land Occupancy an application for an exceptional collective exemption for the reconstruction of several principal residences within the same sector affected by the floods.

The sector identified by a municipality to be covered by such an exemption will have to meet a certain number of urban planning criteria. In particular, it must:

- be bounded by apparent physical limits, such as natural or man-made constraints (e.g. an industrial park or the highway system);
- be characterized by the continuity and homogeneity of the activities found there and by a dominant residential function;
- present a minimum net residential density of 10 dwellings per hectare;
- include 15 or more principal residences that cannot be reconstructed because they were damaged more than 50%;
- correspond to the context in which the principal residences that cannot be reconstructed are located along three or more streets;
- be located within an urbanization perimeter and be served by an aqueduct and sewer network;
- be in a situation where the undamaged or repairable residences constitute at least 50% of all the residences in the sector before the floods.

The municipality's application, adopted by resolution of the municipal council, must be addressed to the Minister of Municipal Affairs and Land Occupancy. The Minister will have 30 days to render his decision. The MDDELCC and the MSP will be consulted in this regard.

The order also provides that the municipality will have to include, in its application for exemption, a special intervention plan in case of flooding for the sector covered by the exemption.

Finally, the order provides that the Minister may establish other conditions to be respected by the municipality or the owner, particularly in order to add requirements in terms of immunization work to protect the sector concerned against eventual floods.

Additional immunization measures for principal residences that may be reconstructed exceptionally

The order provides the principal residences that can be reconstructed after an individual or collective exemption obtained from the Minister of Municipal Affairs and Land Occupancy must be covered by additional immunization measures over and above those set out in Annex 1 of the PPLRLZF. Thus, for these residences:

- no habitable room, such as a bedroom or a living room, shall be developed in a basement;
- no major component of a mechanical system of the building, such as an electrical, plumbing, heating or ventilation system, may be installed in a basement, unless it must be located there, by its nature;
- a basement must be finished, if applicable, with water-resistant materials.

Term of the Special Planning Zone

The land use planning and development controls set out in the SPZ cease to have effect 18 months after the order comes into force.

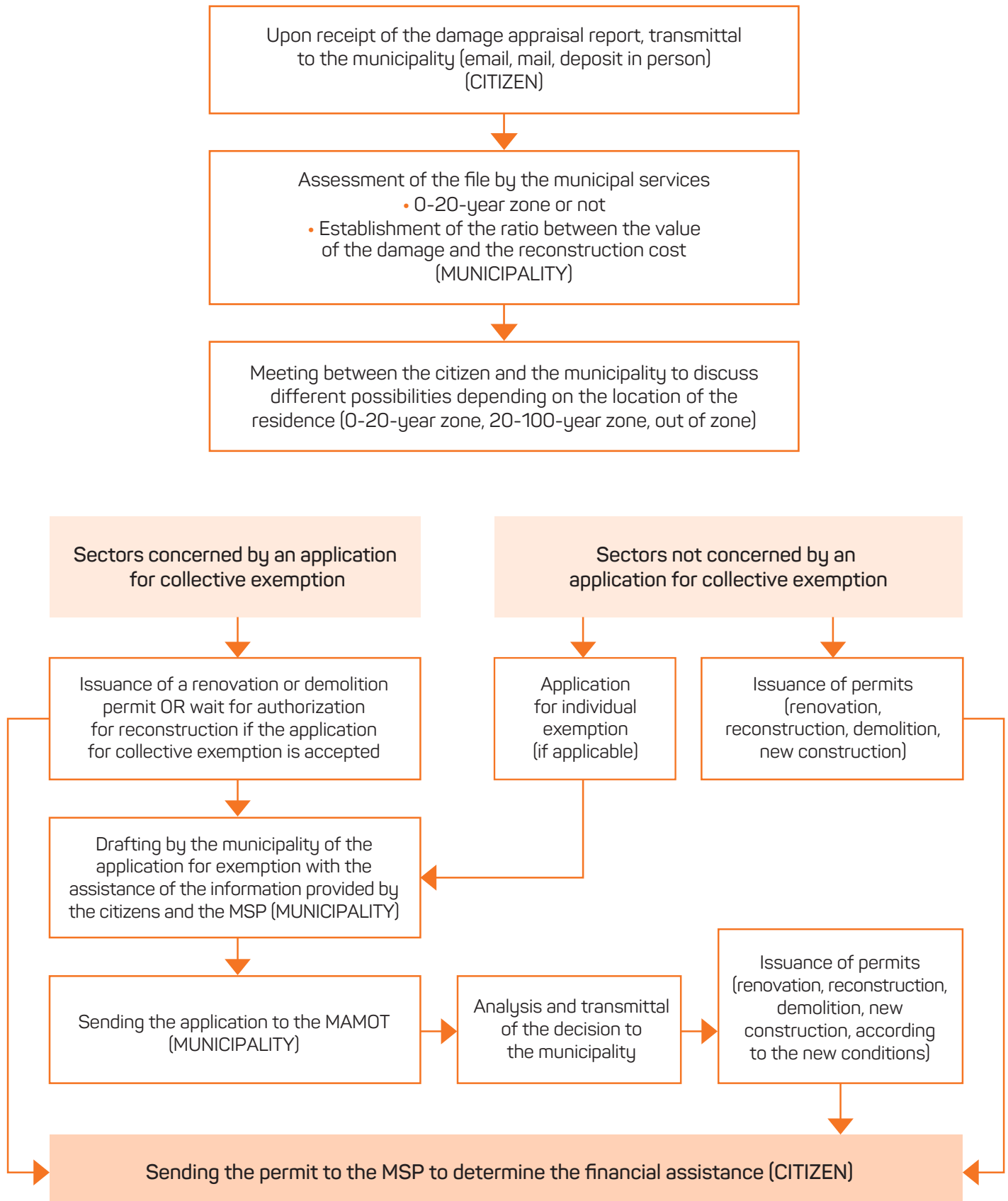
Follow-up and accountability

Each local municipality included in the SPZ must provide the Minister of Sustainable Development, Environment and the Fight Against Climate Change, not later than 60 days after the date when the land use planning and development controls provided for in this order cease to have effect, with a report on its administration, which must describe the construction and subdivision permits issued, the inspections conducted and the offences against the urban development controls set out in this order.

Authority responsible for administration of the Special Planning Zone

The order provides that each local municipality covered by the SPZ is designated as the authority responsible for administration of these controls concerning the part of their respective territory found within the perimeter of application of the SPZ.

PROCEDURE CONCERNING CITIZEN DISASTER VICTIMS



Requests for information

Special Planning Zone (SPZ)

Information concerning the Special Planning Zone can be obtained from the regional directorates of the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT). To obtain the contact information of the regional directorates (directions régionales), go to the MAMOT website at the following address: <http://www.mamot.gouv.qc.ca/ministere/directions-regionales/>

Protection of Lakeshores, Riverbanks, Littoral Zones and Floodplains

Information concerning the protection of lakeshores, riverbanks, littoral zones and floodplains can be obtained from the regional directorates of the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC). To obtain the contact information of the regional directorates (directions régionales), go to the MDDELCC website at the following address:

http://www.mddelcc.gouv.qc.ca/ministere/rejoindr/adr_reg.htm

Financial Assistance Program

For more information about the Financial Assistance Program for disaster victims, go to the website of the Ministère de la Sécurité publique at the following address:

www.securitepublique.gouv.qc.ca.

Annex

Frequently Asked Questions

1. Why was an order adopted to institute a Special Planning Zone?

- In April and May 2017, an exceptional spring flood caused major flooding in the territory of many local municipalities. These floods caused major damage to many residences and other buildings for which repair and reconstruction work is envisioned.
- The Government considers this is a development problem, the severity of which justifies its intervention.
- For the Government, it is important the work in floodplain zones be carried out in accordance with the normative framework described in the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains (chapter Q-2, r. 35).
- The declaration of an SPZ in the municipalities concerned will also allow the deployment of uniform rules. These rules concern the appraisal of the flooded buildings, particularly by introducing a definition of “total loss”. They also concern reconstruction in 0-20-year floodplain zones, excluding the littoral zone, for exceptional cases and on certain conditions. The SPZ makes it possible to provide for obligations for the municipalities regarding follow-up and accountability.

2. What standards will apply for citizens whose residence was flooded in 2017?

- Zone of application of the SPZ – High-velocity floodplain zone (0-20 years, or 0-100 years if no distinction is provided between high-velocity and low-velocity floodplain zones in the municipal bylaws)
 - Reconstruction and new constructions prohibited, except if currently authorized under the PPLRLZF;
 - Possible repair of a building that is not a total loss, i.e. for which the damage is appraised at less than 50% of the new construction cost of the building;
 - Application of the immunization measures set out in the PPLRLZF;
 - In the littoral zone, the PPLRLZF imposes additional constraints, such as the prohibition of reconstruction and filling.
- These standards apply to all structures, including reconstruction of undertakings or structures destroyed by a flood, all undertakings and all works, excluding the interventions provided for in paragraphs 4.2.1 and 4.2.2 of PPLRLZF and those authorized under the mechanism provided for exceptional cases.

3. How can citizens know if their residence is located in a 0-20-year floodplain zone and if it is covered by the Special Planning Zone?

- Citizens must address their municipality. The municipal bylaws determining the floodplain zones and the applicable provisions may be consulted at the municipality's office.

4. Will it be possible for a citizen to reconstruct his damaged residence if it overlaps the 0-20-year and 20-100-year floodplain zones and if the damage following the floods is appraised at between 50% and 65% of the new construction cost of the building?

- Under the order, it will not be possible to reconstruct this residence in the part of the floodplain zone located in the high-velocity floodplain zone (0-20-year zone).
- If this proves possible, the owner would have to choose to move his residence into the 20-100-year zone located on his land. Such reconstruction should result in immunization work on the building under the PPLRLZF.
- In the case of reconstruction of such a principal residence in the 20-100-year zone, the municipality could apply for an exemption according to the mechanism provided and in accordance with the provisions set out in the order.

5. Will it be possible for citizens to repair their residence in the 0-20-year floodplain zone?

- It will be possible to repair a residence in the 0-20-year zone for which the damage will represent less than 50% of its new construction cost. However, major works on a structure or an undertaking must involve immunization of the entire structure or undertaking.

6. What works are considered "major"?

- The PPLRLZF does not define the "major" character of the works. It is up to the municipality to define this within its bylaws. For example, the replacement or reconstruction of the foundation of a building are generally considered to be major works. Thus, they require immunization of the building as a whole.

7. When can certain citizens reconstruct their principal residence destroyed by flooding and located in the 0-20-year zone?

- In principle, no reconstruction of a residence destroyed over 50% may be authorized in the 0-20-year zone.
- However, the order provides for two mechanisms by which the Minister of Municipal Affairs and Land Occupancy may grant an exemption to the municipality so that it exceptionally can authorize the reconstruction of certain residences.
- The citizen must have obtained all the necessary permits and authorizations from his municipality.
- From that time on, the citizen may reconstruct his residence.
- The applications for exemption must be filed by the municipalities with the MAMOT within 18 months after the order comes into force.

8. What are the immunization measures stipulated in the order for reconstruction in exceptional cases?

- As set out in the order, the following immunization rules must be respected. These rules are set out in Annex 1 of the PPLRLZF:
 - No opening (window, cellar window, door, garage, etc.) may be lower than the 100-year-flood elevation;
 - No ground floor is allowed at a level that is lower than the 100-year-flood elevation;
 - Drains must have a non-return valve;
 - For any structure or part of a structure built below the 100-year-flood level, a study must show the structure's resistance to flooding and must include calculations relating to:
 - waterproofing;
 - structural stability;
 - reinforcement necessary;
 - seepage water pumping capacity; and
 - resistance of the concrete to compression and tension;
 - Filling of the land should be restricted to protecting the area immediately around the reconstruction and not extend to the entire landsite; the average slope downward from the top of the fill next to the protected structure or undertaking, should not be less than 33⅓% (vertical-to horizontal ratio of 1:3).

- Additional immunization measures are also applicable for the reconstruction of principal residences:
 - no habitable room, such as a bedroom or a living room, shall be developed in a basement;
 - no major component of a mechanical system of the building, such as an electrical, plumbing, heating or ventilation system, may be installed in a basement, unless it must be located there, by its nature;
 - a basement must be finished, if applicable, with water-resistant materials.

