ARTICLE VI
FLOOD HAZARD DISTRICT
AN OVERLAY DISTRICT

Section 600: Statutory Authorization

To effect the purposes of 10 V.S.A. Chapter 32, and in accord with the Vermont Planning and Development Act 24 V.S.A. Chapter 117, there are hereby established Flood Hazard Area Regulations for the Town of Wilmington.

Section 601: Statement of Purpose

It is the purpose of these regulations to promote the public health, safety, and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in flood hazard areas, and to minimize losses due to flooding by:

A. Restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities;

B. Requiring that uses vulnerable to floods be protected against flood damage at the time of initial construction;

C. Rendering the state, municipalities and individuals eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

Section 602: Lands to Which These Regulations Apply

A. These regulations apply for development in all areas in the Town of Wilmington identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

B. The base flood elevations and floodway limits (Zones A1—A3O, AE, and AH) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

C. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program, ("Zone A") the base flood elevation and floodway information available from State or Federal agencies or other sources shall be obtained and reasonably utilized to administer the provisions of these regulations.

D. If there is an area that is a potential floodway that has not been mapped, no new construction, substantial improvements, or other development shall be Permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Section 603: Development Permit Required

A Permit is required, to the extent authorized by State law, for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional Use approval is required for all uses, except those defined as Permitted Uses in Section 610, prior to being Permitted by the Zoning Administrator. Such development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, and public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Section 604: Interpretation of Flood Hazard Area Boundaries

The Zoning Administrator shall determine the boundaries of the designated flood hazard area by scaling distances on the National Flood Insurance Maps of the Federal Emergency Management Agency.

Section 605: Permitted Uses

The following open space uses shall be Permitted within flood hazard areas to the extent that they are not prohibited by any other ordinance or regulation and provided that they do not require the erection of structures, storage of materials and equipment, importing fill from outside the flood hazard area, do not obstruct flood flows and will not increase the flood level within the floodway during the occurrence of the base flood or increase off-site damage potential.

A. Agricultural Uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry.
B. Recreational uses, such as parks, campsites, picnic grounds, golf courses and boat launching sites.
C. Residential uses, such as lawns, gardens, unpaved areas and play areas.

Section 606: Conditional Uses

Except for the Permitted Uses as defined by Section 610, all other uses listed for the zoning district that fall within any designated flood hazard area may be Permitted only upon the granting of a Conditional Use Permit by the Development Review Board.

Section 607: Permit Application Procedures

A. All zoning Permit applications shall be submitted to the Zoning Administrator, on forms furnished by him/her, who shall determine whether or not the proposed development is located within the Flood Hazard Area by the procedure established in Section 603.

B. If the proposed use is a Permitted Use as defined in Section 610, a Permit shall be issued by the Zoning Administrator.

C. Requests for all other uses will be referred to the Development Review Board.

Section 608: Conditional Use Application Requirements

Application submission requirements shall include:

A. Two (2) copies of plans drawn to scale showing the nature, location, dimensions and elevations of, and distance between, the body of water and the proposed construction or land development.

B. Existing and proposed structures including the elevation of the lowest habitable floor including basement and confirmation as to whether such structure contains a basement.

C. Proposed fill and/or storage of materials.

D. Proposed flood proofing measures and the level to which any structure will be flood-proofed.

E. The relationship of the proposal to the location of the channel.

F. The extent of the flood hazard area and the base flood elevation utilizing the best information available.

G. For all subdivision and development which requires a Permit under Sections 602 & 603 and which involves more than 50 lots or 5 acres, whichever is the lesser, the base flood elevation for that portion that lies within Zone A.

Section 609: Review Procedures

A. Upon receipt of an application and plans, the Zoning Administrator shall transmit one copy to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424.

B. In accordance with 24 V.S.A. § 4424, no Permit may be granted prior to the expiration of a period of thirty (30) days following the mailing of a report to the Agency under item (A) above.

C. In riverine situations, the Development Review Board shall notify adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section at least 30 days prior to approval of any alteration or relocation of a watercourse and submit copies of such notification to the Administrator of the National Flood Insurance Program. In granting its approval, the Board shall be assured that the flood carrying capacity of the altered or relocated portion of any watercourse is maintained.

D. Proposed development shall be reviewed by the Zoning Administrator or the Development Review Board to assure that all necessary Permits have been received from those government agencies from which approval is required by Federal, State or Municipal law.

Section 610: Development Standards

Before a Permit may be granted, the Development Review Board shall require the following standards:

A. Floodway and Floodway Fringe Areas:

1. Floodway Areas
   a. Development within the regulatory floodway, as determined by Section 602, is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood.
   b. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

2. Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)
   a. <u>All Development</u> - All development shall be reasonably safe from flooding and:
      i. designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,
      ii. constructed with materials resistant to flood damage,
      iii. constructed by methods and practices that minimize flood damage, and
      iv. constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

B. <u>Residential Development</u>:
   1. New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation.
   2. Manufactured homes to be placed and existing manufactured homes to be substantially improved that are:
      a. located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement during the occurrence of the base flood.
      b. located in an existing manufactured home park, where elevating a replacement home to or above base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.

C. Non-Residential Development:

1. New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities be designed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
2. A Permit for a building proposed to be flood-proofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

D. Subdivisions: Subdivisions (including manufactured home parks) shall be designed to assure:

1. such proposals minimize flood damage within the flood-prone area,
2. public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
3. adequate drainage is provided to reduce exposure to flood hazards.

E. Enclosed Areas Below the Lowest Floor:

1. Enclosed areas below the lowest floor which are subject to flooding shall be used solely for parking of vehicles, building access, or storage.
2. New construction and existing buildings to be substantially improved with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
3. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they Permit the automatic entry and exit of floodwaters.

F. Recreational Vehicles: Recreational Vehicles placed on sites with special flood hazard areas shall either:
1. be on the site for fewer than 180 consecutive days, or
2. be fully licensed and ready for highway use, or
3. be Permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in section B.2. (ii).

G. Accessory Structures: A small accessory building that represents a minimal investment need not be elevated to the base flood elevation provided the building meets the following requirements:
1. The structure must only be used for parking or storage,

2. The structure shall be designed to have low flood damage potential, OR The structure must have the FEMA required openings to allow floodwaters in and out;
3. The structure must be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters, OR The structure must be constructed using flood resistant materials below the base flood elevation;
4. The structure shall be firmly anchored to prevent flotation, collapse, and lateral movement; and
5. All building utility equipment including electrical and heating must be elevated or flood-proofed.

H. Water Supply Systems: New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

I. Sanitary Sewage Systems: New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

J. On-Site Waste Disposal Systems: On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

K. Watercourse Carrying Capacity: The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.

L. Securing floatables: All floatables in any district and in an area which has historically flooded and all Flood Fringe Areas shall be raised above the Base Flood Elevation (BFE) or firmly secured so as to ensure they are not dislodged in the event of a flood. This includes but is not limited to propane, oil and gas tanks, chemicals, explosives, flammable liquids, toxic or hazardous materials. While hay bales and logs are protected Agricultural and Silviculture industries in Vermont, conformity with this provision is encouraged.

Section 611: Administration and Variances

A. The provisions of these Regulations shall be administered as provided by §§ 4440-4471 of 24 V.S.A. Chapter 117, as amended.

B. The Zoning Administrator shall:
   1. Maintain a record of all Permits issued for development in areas of special flood hazards.
   2. Maintain a record of the elevation (consistent with the datum of the elevation of the NFIP maps) of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement.
   3. Maintain a record of the elevation (consistent with the datum of the elevation of the NFIP maps) to which the structure was flood-proofed.
   4. Maintain a record of all flood-proofing certifications required under these regulations.
   5. Maintain a record of all variance actions, including justification for their issuance.

C. Variances shall be granted by the Development Review Board only:
   1. In accordance with the provisions of 24 V.S.A. § 4469; and

2. In accordance with the criteria for granting variances found in 44 CFR, § 60.6, of the National Flood Insurance Program regulations.

D. The Development Review Board shall notify the applicant that:
   1. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to the amounts as high as $25 for $100 of insurance coverage, and
   2. Such construction below the base flood elevation increases risk of life and property.

E. The Development Review Board shall:
   1. Maintain a record of all variance actions, including justification for their issuance, and
   2. Report such variances issued to the Federal Insurance Administrator.

Section 612: Warning of Disclaimer of Liability

A. These regulations do not imply that areas outside the flood hazard area or land uses Permitted within such districts will be free from flooding or flood damages.

B. These regulations shall not create liability on the part of the Town of Wilmington, any town official or employee thereof for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

Section 613: Validity and Severability

If any portion of this ordinance is held unconstitutional or invalid by a competent court, the remainder of this ordinance shall not be affected.

Section 614: Precedence of Bylaw

The provisions of this bylaw shall not in any way impair or remove the necessity of compliance with any other applicable ordinances, bylaws or regulations. Where this bylaw imposes a greater restriction, the provisions of this bylaw shall take precedence.

Section 615: Enforcement and Penalties

It shall be the duty of the Zoning Administrator to enforce the provisions of this ordinance. Whenever any development occurs contrary to these flood hazard area regulations, the Zoning Administrator, in his/her discretion, shall institute appropriate action in accordance with the provisions of 24 V.S.A. §1974 or pursuant to 24 V.S.A. § 4451 or 24 V.S.A. § 4452 to correct the violation. No action may be brought unless the alleged offender has had at least a seven-day warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days.

If the structure is still noncompliant after the opportunity to cure has passed, the Zoning Administrator shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The declaration shall consist of: (a) the name of

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

Section 620: Flood Hazard Area Definitions

Area of Special Flood Hazard: The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AO, AR/AH, AR/A, VO or V1-30, VE, or V. For purposes of these regulations, the term "area of special flood hazard area" is synonymous in meaning with the phrase "special flood hazard area".

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year

Base Flood Elevation (BFE): The height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

Cumulative Substantial Improvement: Any combination of repairs, reconstruction, rehabilitation, addition, alteration or other improvements of a structure, during any (one) year period, in which the cumulative cost equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Existing manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood: (a) A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Floodplain: Any land area susceptible to being inundated by water from any source (see definition of "flood").

Flood Insurance Rate Map (FIRM): Official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood-proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot **at any point**.

Floodway Fringe: The remaining portion of the flood hazard areas excluding the floodway.

Historic Structures: Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) By an approved state program as determined by the Secretary of the Interior or (ii) Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor: The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, **new construction** means structures for which the **start of construction** commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the Town of Wilmington.

Recreational Vehicle: A vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Riverine: involving a river.

Start of Construction: includes substantial improvement, and means the date the building Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the Permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance purposes, means: (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (b) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws. For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Violation: The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.