

**From:** Medash, Kyle <Kyle.Medash@vermont.gov>  
**Sent:** Friday, December 27, 2024 1:57 PM  
**To:** Keith Osborne <koborne@richmondvt.gov>  
**Cc:** vclarke@gmavt.net <vclarke@gmavt.net>; Swanberg, Ned (he/ki) <Ned.Swanberg@vermont.gov>  
**Subject:** RE: FHOD Revisions

Hi Keith,

Hope you're enjoying the holiday season. Had a chance to dig into this and discuss with the other FPMs and there are several things that we believe FEMA is likely not going to approve from an NFIP perspective. From a zoomed out view, I think we need to better define the word structure and development to be in line with the FEMA definitions/DEC model bylaw: "Structure" means a walled and roofed building, as well as a manufactured home, including gas or liquid storage tanks. I think most of the language you've included as structures might be better defined as simply "development".

"Development" (from DEC model) - means any human-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.

The language around structures specifically included for recreation boxes you in to permitting all these things so specifically, where in reality you could just call a structure an actual structure, and then everything else - pavilions, picnic tables, signs, trash bins, etc. is considered "development" and required to meet the "all development" criteria (6.8.16) – anchored, made of flood resistant materials, adequate drainage, elevating/protecting utilities, etc.

"Incidental Structures" is a red flag, because we're basically saying that anything under 150 sq ft. is exempt from permitting where a lot of these examples would need to be permitted in accordance w/ NFIP – and likely considered permissible provided it meets "all development" criteria.

"open air recreational structure" and "playground equipment" is also too specific – I think that can qualify as all development and be permitted accordingly.

The Nonconforming structures and uses section is also overly specific. In essence, important to identify that a structure is nonconforming but it is still required to be in compliance with the current bylaw in regard to future development or improvement (essentially permit requirements for a nonconforming structure would be the same as any structure in the floodplain). Access and fencing independent from the structure would be reviewed as all development. Our model language on nonconformities is included below.

#### Non-Conforming Structures and Uses

1. A nonconforming structure in the FHO District/Flood Hazard Area that has been substantially damaged or destroyed may be reconstructed in its original location only if it is rebuilt to comply with all requirements of the National Flood Insurance Program and this bylaw;
2. Nonconforming structures and uses shall be considered abandoned where the structures or uses are discontinued for more than 12 months. An abandoned structure shall not be permitted for re-occupancy unless brought into compliance with this bylaw. An abandoned use shall not be permitted unless brought into compliance with this bylaw.

Happy to have a chat – I didn't make any edits to your draft since this seemed a higher-level content review. I've included Ned Swanberg on this email as he is better in tune with bylaw updates and FEMA required language – it looks like we are both available on 1/7 between 9-2 if there is a time in there that works for you. Here is a link [to municipal assistance page](#) that includes our model bylaws, I do think that most or all of what you are trying to achieve on the Green would be permissible under the model, specifically the flood hazard area section. River corridors may be more limiting in some cases but you don't have to include those. Please let me know if you are available on the 7<sup>th</sup>.

Respectfully,

**Kyle Medash** | Western Floodplain Manager

Vermont Agency of Natural Resources | Department of Environmental Conservation

Watershed Management Division, Rivers Program

271 North Main Street, Suite 215 | Rutland, VT 05701-2423