FEMA POLICY: GUIDANCE FOR PARTICIPATING COMMUNITIES ON SATISFYING NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOODPLAIN DEVELOPMENT PERMIT REQUIREMENTS

FEMA Policy #XXX-XX

BACKGROUND

This policy is for FEMA Headquarters, Regional program staff, field staff at the Joint Field Offices (JFO), and communities participating in the NFIP.

SUPERSESSION

This policy does not supersede any existing policy.

PURPOSE

This policy addresses questions about floodplain permitting of development activities occurring in the Federal Emergency Management Agency’s (FEMA) designated Special Flood Hazard Areas (SFHA). Through this guidance, a community can ensure compliance with FEMA’s National Flood Insurance Program (NFIP) regulations and their local floodplain management regulations, while potentially reducing the administrative burden associated with the floodplain development permitting of certain types of low-to-no impact development. This guidance does not intend to address other permits associated with a building code, or other local, state, or federal permits, and only applies to floodplain development permitting requirements to enroll in, and maintain eligibility for, the NFIP.

NFIP REQUIREMENTS

Title 44 Code of Federal Regulations (CFR)

60.3 (b)(1): A permit is required for all proposed construction or other development in the community, including the placement of manufactured
homes, so that it may determine whether such construction or other
development is proposed within floodprone areas.

59.1. Definitions: “Development” means 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.

Eligibility for enrollment and continued participation in the NFIP require communities
to adopt and enforce regulations that include both a broad definition of development
and require all development proposals in the SFHA obtain a permit.

A community should ensure that its permitting system(s) is designed to require
permits for ALL proposals that meet the definition of development in the SFHA,
including temporary development. A community must regulate activities beyond
building projects, including but not limited to:

- Filling, paving, grading, and land clearing
- Excavation, dredging, mining and drilling
- Storage of materials and/or equipment
- Repairs or improvements to existing buildings
- Stream crossings
- Recreational vehicles
- Temporary development

In some low-to-no impact situations, the permit requirement can be satisfied if the
community follows a Review, Assess, and Document (RAD) process. (See Figure 1)

Review, Assess, and Document
A NFIP participating community is meeting the minimum requirement to permit all
development in the floodplain in instances where an authorized community official:

- Reviews the proposed development,
- Assesses the proposed development and determines what,
  floodplain management requirements apply, and,
- Documents that determination in some way, or permits the
development.
In these instances, a community would be in compliance with the NFIP requirements because they documented their evaluation or permitted the development. The review and assessment process should be well documented to ensure there is no possibility of a misunderstanding that results in non-compliant development or a substantial improvement.

The RAD process is similar to the process a local community official uses to evaluate and document whether a structure is located in a SFHA. A community official should record supporting documentation for their determination that a proposal did not trigger any of their local floodplain management regulations beyond the permit requirement.

Where a review is conducted of proposed development and it is determined that no locally adopted floodplain regulations are applicable beyond the requirement to obtain a permit, documentation of this determination would satisfy the NFIP requirement to permit all development in the SFHA.

A community may choose to identify their own RAD process to review, assess, and document development in the SFHA. The community should work with FEMA Regional staff and their NFIP State Coordinating Office to develop this process. Once agreed on by the community, State Coordinator, and the FEMA Regional Office, the community must clearly communicate that their process is being implemented and all development in the SFHA has met the permit requirement. The community must record this process and all permit documentation in perpetuity.
Project Requirements

If a community finds that a proposed project does not trigger any of the community’s floodplain management regulations beyond the permit requirement, the community may apply the RAD process to fulfill the NFIP requirement to permit all development in the SFHA. These projects tend to have low-to-no impact on flood risk, such as replacing or installing a mailbox or planting a flower garden.

When the floodplain administrator applies the RAD process to a low-to-no impact development, the local floodplain administrator has satisfied the permitting requirements of the community’s floodplain management regulations.

The community may document a proposed project individually (e.g., a spreadsheet, log sheet or note to file that contains a project description, address, elevations, etc.), or the community may assess classes of activities. In both cases, the community must maintain this documentation in perpetuity. This protects the community because documentation will provide evidence if the project is subsequently altered from its original plan or an enforcement action becomes necessary.

Reviewing Classes of Activities with Limited Impacts

The community has the discretion to exempt obviously insignificant activities from the permit requirement. The RAD process allows a community to identify classes of activities that would not trigger any of the community’s floodplain management regulations beyond the initial development permit requirement. A community may determine that these classes of activities represent a type of development that can fulfill the permit requirement without an individually issued permit. A class of activities may be determined compliant with the permit requirement if the project type:

- Is NOT located in a FEMA designated floodway. (44 CFR Section 60.3(d)(3)) or in a Zone AE without floodway. (60.3(c)(10))
- Does NOT alter or change flood carrying capacity of water courses or man-made or natural protective barriers. (60.3(b)(6&7) and 60.3(e)(7))
- Does NOT contribute to substantial improvement, nor is it determined to be a substantial improvement. (59.1)
- Does NOT increase flood damage and/or increase exposure to flood hazards. (60.3(b)(4)).
- Is NOT new construction. (59.1)
- Does NOT trigger any requirement found in the local floodplain management regulations.

As with an individually evaluated development proposal, the community should document the reasons any given class of activity does not trigger any of the community’s floodplain management regulations beyond the permit requirement. This documentation should be reviewed by the Regional office as part of the community’s floodplain management administrative procedures either when the
administrative procedure is initially developed by the community or during routine compliance contacts between the Region and the community.

Communities are discouraged from listing types of low-to-no impact development within the SFHA in their adopted floodplain regulations. Not only could such a list result in a potential violation, become outdated, and be misinterpreted, it would also serve to limit the community’s authority to administer and enforce their floodplain regulations.

For more information on developing a process for reviewing, assessing and documenting floodplain development, contact your FEMA Regional Office and NFIP State Coordinating Office. Contact information may be found at the following web links:

- FEMA Regional Offices - [https://www.fema.gov/regional-contact-information](https://www.fema.gov/regional-contact-information)

Roy E. Wright
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Date
ADDITIONAL INFORMATION

REVIEW CYCLE
FEMA Policy, [insert FEA #], Guidance for Participating Communities on Satisfying National Flood Insurance Program (NFIP) Floodplain Development Permit Requirements, will be reviewed, reissued, revised, or rescinded within four years of the issue date.

AUTHORITIES
A. National Flood Insurance Act of 1968 as amended
B. Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988
C. Flood Disaster Protection Act of 1973, as amended

REFERENCES
A. Title 44, Code of Federal Regulations (C.F.R.) 59.1. Definitions;
B. 44 CFR 60.3(b)(1). Floodplain management criteria for flood prone areas;
C. 44 CFR 59.22. Prerequisites for the sale of flood insurance.

DEFINITIONS

59.1. Definitions: "Development" means 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.

MONITORING AND EVALUATION
Monitoring will take place throughout implementation of the policy. An evaluation will take place during community contacts and visits to determine if any adjustments need to be made to the policy.

QUESTIONS
Direct questions to FEMA-Floodplain-Management-Division@fema.dhs.gov