

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

## **FEMA Policy #XXX-XX**

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### **BACKGROUND**

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

### **SUPERSESSSION**

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**

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#### ***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*

30 homes, so that it may determine whether such construction or other  
31 development is proposed within floodprone areas.

32 **59.1. Definitions:** "Development" means any man-made change to  
33 improved or unimproved real estate, including but not limited to buildings  
34 or other structures, mining, dredging, filling, grading, paving, excavation or  
35 drilling operations or storage of equipment or materials.

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

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

- 45 • Filling, paving, grading, and land clearing
- 46 • Excavation, dredging, mining and drilling
- 47 • Storage of materials and/or equipment
- 48 • Repairs or improvements to existing buildings
- 49 • Stream crossings
- 50 • Recreational vehicles
- 51 • Temporary development

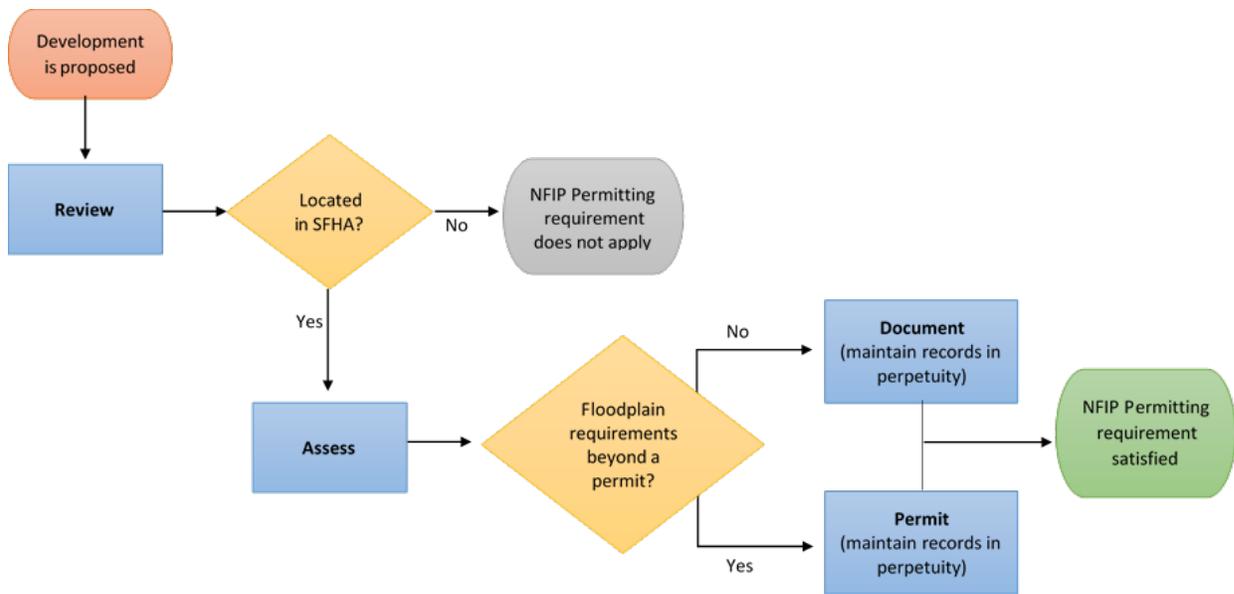
52 In some low-to-no impact situations, the permit requirement can be satisfied if the  
53 community follows a **Review, Assess, and Document (RAD)** process. (See Figure 1)

#### 54 **Review, Assess, and Document**

55 A NFIP participating community is meeting the minimum requirement to permit all  
56 development in the floodplain in instances where an authorized community official:

- 57 • **Reviews** the proposed development,
- 58 • **Assesses** the proposed development and determines what,  
59 floodplain management requirements apply, and,
- 60 • **Documents** that determination in some way, or permits the  
61 development.

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Figure 1. The Review, Assess, and Document (RAD) process flowchart.

66 In these instances, a community would be in compliance with the NFIP requirements  
67 because they documented their evaluation or permitted the development. The  
68 review and assessment process should be well documented to ensure there is no  
69 possibility of a misunderstanding that results in non-compliant development or a  
70 substantial improvement.

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

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*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 satisfied the NFIP requirement to permit all development in the SFHA.*

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

89

90 **Project Requirements**

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

96

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

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

107

108 **Reviewing Classes of Activities with Limited Impacts**

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

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- 118 • Is NOT located in a FEMA designated floodway. (44 CFR Section 60.3(d)(3))  
119 or in a Zone AE without floodway. (60.3(c)(10))
- 120 • Does NOT alter or change flood carrying capacity of water courses or man-  
121 made or natural protective barriers.(60.3(b)(6&7) and 60.3(e)(7))
- 122 • Does NOT contribute to substantial improvement, nor is it determined to be a  
123 substantial improvement. (59.1)
- 124 • Does NOT increase flood damage and/or increase exposure to flood hazards.  
125 (60.3(b)(4)).
- 126 • Is NOT new construction. (59.1)
- 127 • Does NOT trigger any requirement found in the local floodplain management  
128 regulations.

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129 As with an individually evaluated development proposal, the community should  
130 document the reasons any given class of activity does not trigger any of the  
131 community’s floodplain management regulations beyond the permit requirement.  
132 This documentation should be reviewed by the Regional office as part of the  
133 community’s floodplain management administrative procedures either when the

134 administrative procedure is initially developed by the community or during routine  
135 compliance contacts between the Region and the community.

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

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

- 146 • FEMA Regional Offices - [https://www.fema.gov/regional-contact-](https://www.fema.gov/regional-contact-information)  
147 [information](https://www.fema.gov/regional-contact-information)
- 148 • NFIP State Coordinating Offices -  
149 [http://www.floods.org/index.asp?menuID=274&firstlevelmenuID=185&](http://www.floods.org/index.asp?menuID=274&firstlevelmenuID=185&siteID=1)  
150 [siteID=1](http://www.floods.org/index.asp?menuID=274&firstlevelmenuID=185&siteID=1)

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153 Insurance and Mitigation

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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 floodprone areas*;
- C. 44 CFR 59.22. *Prerequisites for the sale of flood insurance*.

### DEFINITIONS

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**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.

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### 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](mailto:FEMA-Floodplain-Management-Division@fema.dhs.gov)