

NFIP Irrigation & Drainage Permit Guidance



NFIP Background

Prior to the creation of the NFIP in 1968:

- Flood insurance coverage was not available
- No flood risk mapping program
- No standards for floodplain management
- Escalating costs to taxpayers for flood disaster relief



Idaho Statewide 7-9-2019

NFIP Coverage	\$1,618,462,700
NFIP Claims since 1978	\$9,270,402
Total Claims since 1978	1,036
Total Policies (current)	6,177
Policies in the SFHA	3,163
Policies Not in the SFHA	3,014



<u>Disaster</u>	<u>Date</u>	<u>Presidential Declaration for FLOOD since 1968</u>
4443	6/12/2019	Severe Storms, Flooding, Landslides, & Mudslides
4342	10/7/2017	Flooding
4333	8/27/2017	Flooding, Landslides, & Mudslides
4313	5/18/2017	Severe Storms, Flooding, Landslides, & Mudslides
4310	4/21/2017	Severe Winter Storms & Flooding
1987	5/20/2011	Flooding, Landslides, & Mudslides
1927	7/27/2010	Severe Storms & Flooding
1781	7/31/2008	Flooding
1630	2/27/2006	Severe Storms & Flooding
1592	7/6/2005	Heavy Rains & Flooding
1177	6/13/1997	Flooding
1154	1/4/1997	Severe Storms/Flooding
1102	2/11/1996	Storms/Flooding
697	2/16/1984	Ice Jams, Flooding
505	6/6/1976	Dam Collapse (Teton Dam)
415	1/25/1974	Severe Storms, Snowmelt, Flooding
324	3/2/1972	Severe Storms, Extensive Flooding

**17 flood disasters
since the NFIP**



Disaster	Date	Presidential Declaration for FLOOD before NFIP
186	12/31/1964	Heavy Rains & Flooding
143	2/14/1963	Floods
120	2/14/1962	Floods
116	6/26/1961	Floods
76	5/27/1957	Floods
55	4/21/1956	Floods

**6 major flood disasters
before the NFIP**



Purposes of the NFIP

- Make flood insurance available in Communities that participate in the NFIP
- Identify & map flood hazard areas
- Provide a framework for floodplain management regulations



NFIP Community Participation

To join NFIP, communities submit to FEMA:

- A Resolution of Intent to “maintain in force ... adequate land use & control measures” & to cooperate with FEMA; &
- Their adopted floodplain management regulations consistent with 44CFR§59.1 & §60.3
- & any higher regulatory standards in state law



NFIP Regulations

Communities **must adopt & enforce ordinances** that meet or exceed NFIP criteria

NFIP criteria ensures that new buildings, critical facilities, & infrastructure, etc. will be protected from flood levels shown on the Flood Insurance Rate Map (FIRM)



Role of NFIP Participating Community

- Issue or deny floodplain development permits
- Inspect all development to ensure compliance with their ordinance
- Maintain records of floodplain development
- Help residents obtain info on flood hazards, floodplain map data, flood insurance, & proper construction methods, etc.



NFIP Development Definition

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.



Floodplain Development Permits

Floodplain Development Permits **must be issued prior to any development** within a designated floodplain.

Any man-made alteration to a site including: fill, grading, excavation, accessory structures, utility & road construction, bridges, etc.



Duties & Responsibilities of the FPA

Review all floodplain development applications & issue permits for all proposed development within SFHA

44CFR §60.3(a)(1)

SFHA includes the Floodway



Duties & Responsibilities of the FPA

Review all proposed development within SFHA to assure that all necessary **Local, State, & Federal permits** have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. (i.e. USACE or EPA Permits)



Maintain Permit Documents in Perpetuity

Permanently maintain all records that pertain to the administration of this ordinance & make these records available for public inspection.



**Title 44 of the Code of Federal
Regulations
§59.1 & §60.3**

VS.

Idaho Code §46-1021 & §46-1022



44 CFR §59.1

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**.



44 CFR §60.3(a)(1)

... Minimum standards for communities are as follows: ...

Require permits 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 flood-prone areas;



TITLE 46
MILITIA AND MILITARY AFFAIRS
CHAPTER 10
STATE DISASTER PREPAREDNESS ACT
§46-1021 & §46-1022



46-1021 DEFINITIONS. As used in this act:

(1) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures, or the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of mobile homes; mining, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of materials; specifically including the construction of dikes, berms and levees. The term "development" does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.



46-1021 DEFINITIONS. As used in this act:

The term "development" does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.



46-1022. LOCAL GOVERNMENTS MAY ADOPT FLOODPLAIN ZONING ORDINANCES.

Subject to the availability of adequate mapping and data to properly identify the floodplains, if any, within its jurisdiction, each local government is encouraged to adopt a floodplain map and floodplain management ordinance which identifies these floodplains and which requires, at a minimum, that any development in a floodplain must be constructed at a flood protection elevation and/or have adequate floodproofing. The local government may regulate all mapped and unmapped floodplains within its jurisdiction. Nothing in this act shall prohibit a local government from adopting more restrictive standards than those contained in this chapter. Floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations. If not otherwise exempt from approval, a flood control district's conduct of a "flood fight," as defined in section 42-3103, Idaho Code, shall not require prior local government approval provided all such approvals are obtained within a reasonable time after the imminent flooding event has ended.

46-1022. LOCAL GOVERNMENTS MAY ADOPT FLOODPLAIN ZONING ORDINANCES.

Floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.



TITLE 42
IRRIGATION AND DRAINAGE —
WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES



42-1202 MAINTENANCE OF DITCH

The owners or persons in control of any ditch, canal or conduit used for irrigating purposes shall maintain the same in good order and repair, ready to deliver water by the first of April in each year, and shall construct the necessary outlets in the banks of the ditches, canals or conduits for a proper delivery of water to persons having rights to the use of the water.

History: [(42-1202) 1899, p. 380, sec. 16; reen. R.C. & C.L., sec. 3307; C.S., sec. 5655; I.C.A., sec. 41-1102.]



42-1203 MAINTENANCE OF EMBANKMENTS

The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water. ...

History: [(42-1203) 1899, p. 380, sec. 22; reen. R.C. & C.L., sec. 3308; C.S., sec. 5656; I.C.A., sec. 41-1103; am. 2012, ch. 274, sec. 1, p. 772.]



Development Example in the Floodplain



Development Example in the Floodplain



Development Example in the Floodplain



Development Example in the Floodplain



Idaho Department of

Water Resources



Maintenance Example in the Floodplain



Maintenance Example in the Floodplain



FEMA

FEMA verbally informed Idaho that the language in 46-1021 & 46-1022 is not compliant with 44CFR §59.1 & §60.3

FEMA verbally said they could suspend the State of Idaho from the NFIP

FEMA requested Idaho define: operation, cleaning, maintenance & repair

FEMA requested Idaho develop guidance for permitting irrigation work in the SFHA or amend the statute to remove the irrigation exemption



Potential Remedies Identified

- Define: operation, cleaning, maintenance & repair
- Develop guidance that can be distributed to the community & the irrigation entities
- Create a permit template for communities to use
- Develop an Irrigation Floodplain Ordinance that cities & counties may adopt (pending)
- Remove irrigation exemption language from the State Statutes



Workgroup Established

The work group worked with FEMA in an attempt to address FEMA's concerns & come up with a workable solution

Participants:

Association of Idaho Cities
Idaho Association of Counties
Idaho Department of Water Resources
Idaho Office of Emergency Management
Idaho Water Users Association
Nampa-Meridian Irrigation District



Irrigation Guidance & MOA

Acronyms & Definitions:

GIFD: General Irrigation Floodplain Development Permit

OCMR: Operation, Cleaning, Maintenance, or Repair of irrigation & drainage ditches & works

MOA: Memorandum of Agreement



Irrigation Guidance & MOA

FEMA advised the State of Idaho that its statutory definition of “development” is not consistent with Federal law, & that a blanket exclusion of OCMR related activities could result in some development activity going unpermitted. The Guidance clarifies permitting requirements for irrigation & drainage development activities in SFHAs by discussing:



Irrigation Guidance & MOA

Operation – The regular & reoccurring performance of typical work by an irrigation or drainage entity including, but not limited to: the delivery or drainage of water, measurement of water, & adjustment of irrigation & drainage works (opening/closing gates), & all related appurtenances.



Irrigation Guidance & MOA

Cleaning - Mowing, cutting, or burning of weeds, trees & other nuisance growth, including algae growth, application of pesticides as permitted, removal of beaver dams, & removal of trash or other debris whether floating, lodged or otherwise obstructing the conveyance of water flow through channels & works.



Irrigation Guidance & MOA

Maintenance - The act of ongoing upkeep of existing structures required to keep channels in a condition adequate to support the conveyance of irrigation & drainage water (this does not include the complete replacement or substantial replacement of an existing structure).

Maintenance is further defined as the care or upkeep of channels, works, appurtenances, easements, utility corridors and property; to keep in an existing state, specified state of repair, & efficiency; return to a former condition, elevation, place, & position; to preserve from failure or decline; or repair or renovate so as to return it to its original condition. Maintenance does not include dredging as defined herein.



Irrigation Guidance & MOA

Repair - The restoration to good or sound conditions of any part of an existing structure, channel, channel bank, or service road for the purpose of maintenance (this does not include the complete replacement or substantial replacement of an existing structure). Repair does not include dredging as defined herein.



Irrigation Guidance & MOA

GIFD permit is nothing more than a letter or notice from the local FPA to an irrigation/drainage entity documenting the activities or projects that qualify as GIFD.

Issuance of a GIFD permit requires coordination between the irrigation entity & the FPA.

A GIFD permit ensures a community complies with both NFIP regulations & its own ordinances while reducing the administrative burden of permitting irrigation & drainage development activities.



Irrigation Guidance & MOA

Operation does not include pushing up diversions, gravel bars, or installing check dams.

Cleaning does not include the removal of sedimentation (dredging).

Maintenance does not include dredging as defined herein.

Repair does not include dredging as defined herein.



Irrigation Guidance & MOA - RAD

**Review
Assess
Document**



Irrigation Guidance & MOA - RAD

Review: FPA reviews all irrigation & drainage entity activities or projects only within the SFHA. The FPA may meet with individual irrigation entities, or entities may submit a written description of activities to the FPA. The list of activities or projects may be annual or ongoing, & may extend up to five years.

Changes to the activities in the approved permit will require another review & additional permit.



Irrigation Guidance & MOA - RAD

Assess: FPA assesses activities & determines what level of floodplain permitting, if any, may be needed for the described activities.



Irrigation Guidance & MOA - RAD

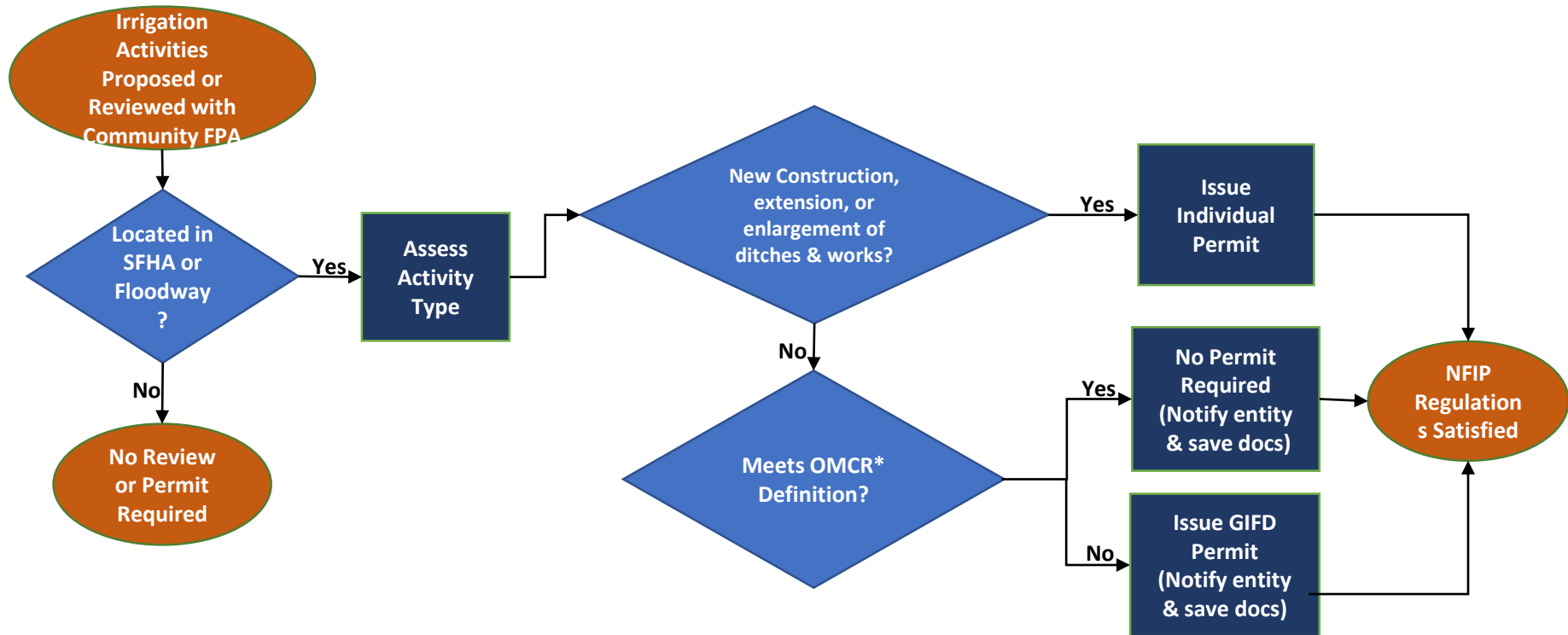
Document: FPA sends a notice of determination to the entity advising which activities require no permit, a GIFD permit, or an individual permit. Activities that can be covered by a GIFD permit are simply noted & approved in the notice of determination. The notice of determination becomes the GIFD permit for those qualifying activities. The FPA shall maintain a copy of all proposed project activities, notice of determinations/GIFD permits, & any related documents & correspondence.



Irrigation Guidance & MOA - RAD

NFIP IRRIGATION and DRAINAGE PERMIT PROCESS FLOWCHART

Including Operation, Cleaning, Maintenance & Repair (OMCR) of Irrigation & Drainage Works



* Refer to OCMR definitions in IDWR NFIP Irrigation and Drainage Permit Guidance



Irrigation Guidance & MOA

Also available:

Frequently Asked Questions (FAQ) & responses to assist FPAs & water users with implementation of the Guidance, &

A list of training opportunities to assist communities & irrigation/drainage entities with Guidance implementation.



Irrigation Guidance & MOA

IDWR encourages:

FPA's to share & discuss the Guidance with appropriate community officials & staff, including elected officials, &

FPA's & irrigation entities implement this guidance immediately, or as soon as practicable.

Implementation should not require any change to community floodplain ordinances.



Irrigation Guidance & MOA - FAQs

Q. Who determines whether or not any permit, including a GIFD or individual permit, is necessary for irrigation & drainage activities within the SFHA or regulatory floodway?

A. The local community FPA makes the determination based upon annual or periodic coordinated meetings with irrigation/drainage entities to review planned activities or projects within the SFHA or regulatory floodway. A written notice of determination (letter or email) is sent to the entity documenting which activities do not require any permit, which activities qualify as GIFD, & those activities that may require an individual floodplain development permit. A notice of determination that identifies qualifying GIFD activities serves as the GIFD permit



Irrigation Guidance & MOA - FAQs

Q. Is there a GIFD permit application form?

A. No. An irrigation/drainage entity may submit a plan, list or outline that documents the planned activities or projects for a period of up to five years.



Irrigation Guidance & MOA - FAQs

Q. Is there an actual paper or digital document issued for a GIFD permit?

A. No. The FPA may issue a written letter or email to the irrigation/drainage entity documenting the proposed activities or projects that qualify as GIFD. The written notice serves as the GIFD permit. The FPA shall save the written notice & all related documents as a permanent record of decision or permit.



Irrigation Guidance & MOA - FAQs

Q. Can a GIFD permit cover multiple activities or projects?

A. Yes. Multiple activities or projects located within the SFHA or regulatory floodway that qualify as GIFD may be grouped together under one GIFD permit.



Irrigation Guidance & MOA - FAQs

Q. Does a GIFD permit have an expiration date or limited term?

A. Yes. GIFD permits may be issued for up to five years.



Irrigation Guidance & MOA - FAQs

Q. What happens if an irrigation entity has a new or unforeseen GIFD project that was not included in the multi-year GIFD permit?

A. When the irrigation entity or FPA identify a new project or activity that may qualify as GIFD, the FPA should document the activity qualifies as GIFD & send notice to the entity of that decision. The notice becomes an additional GIFD permit. The FPA shall save a copy of the notice & any related documentation.



Questions? & NFIP Contacts

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