



## Frequently Asked Land Use Permitting Questions Post Superstorm Sandy Updated July 2nd, 2013

Most of the recovery and repair activities public agencies, businesses, and homeowners need to conduct as a result of the damages inflicted by Superstorm Sandy can be accomplished without submitting a permit application to the Division of Land Use Regulation. This document answers common questions and is intended to facilitate a speedy and productive recovery from the impacts of Superstorm Sandy.

---

### Quick Information Guide

More detailed questions and answers start on page 3

**What is the flood hazard area emergency rule?** In order to better protect lives and property following Superstorm Sandy and other major recent flooding events, the state has adopted emergency amendments to New Jersey's Flood Hazard Area Control Act rules that set minimum elevation standards for the reconstruction of houses and buildings in areas that are in danger of flooding. If your property was not substantially damaged, you do not need to take any action now.

**Who does the emergency rule apply to?** The rule applies to new construction and those property owners whose properties were substantially damaged or are starting new construction. A structure is considered substantially damaged if the cost of restoration equals or exceeds 50 percent of the market value of the structure prior to the damage. Recent congressional action resulted in significant changes to National Flood Insurance Program rates. Flood insurance costs, which are outside the control of the state, are likely to be much lower for those who elevate using the state's elevation standards.

**What does the emergency rule do?** The rule, adopted by emergency action on Jan. 24, requires new and reconstructed buildings to be elevated in accordance with the best available flood mapping. This will help protect people and property during future floods. The emergency rule also adopts a new permit-by-rule so that people reconstructing and elevating buildings utilizing the state's elevation standard will not need to secure a permit from the Department of Environmental Protection, nor pay the fee typically charged for a Flood Hazard Area permit. This will save them time and money while spurring quicker recovery from Sandy.

**What are the new elevation standards?** Buildings that are being constructed, reconstructed or elevated, as well as buildings that are substantially damaged, will have to build or elevate to the highest available state or FEMA elevation level. In most cases, this will be the ABFE or the Work Map elevation, as described below. In addition, Flood Hazard Area Act rules, in effect since 2007, require the lowest floor of each building in flood hazard areas to be constructed at least one foot above this elevation.

**What are ABFEs?** FEMA had been remapping the floodplain along New Jersey's coastline for two years when Sandy hit. FEMA's previous maps were outdated and did not always accurately show the potential for flooding. In order to support and guide New Jersey's recovery efforts, FEMA released its new mapping in December on an advisory basis. These maps are referred to as Advisory Base Flood Elevation (ABFE) maps.

**What are Work Maps?** FEMA has recently released new Work Maps for Atlantic, Hudson, Monmouth and Ocean Counties, which include wave height calculations that had not been previously completed when the ABFEs were released. FEMA expects to release work maps for additional coastal counties this year. Since these work maps replace the ABFE maps, people planning to construct, reconstruct or elevate a building should now use the flood elevation and zone designation shown on the work maps.

**How do I view the ABFE maps and Work Maps?** To learn more about ABFE and Work Maps, and to view the maps for New Jersey, visit: <http://www.region2coastal.com/sandy/abfe>

**Will the ABFEs and Work Maps change?** FEMA anticipates some changes to these maps for both elevations and zones, and has already issued new work maps for several counties as discussed below. The ABFEs and Work Maps currently reflect the most accurate modeling, topographic maps and scientific data available. FEMA plans to release updated flood maps for many counties over the next several months, which will further fine-tune coastal flood elevations. The regulatory process to finalize the maps could take up to two years. DEP will continue to work with FEMA to provide input on these maps.

**If the ABFEs are only advisory, why is the state incorporating the use of these maps now as the basis for elevation standards?** In many cases, existing FEMA flood maps were significantly outdated. Many were more than two decades old. The ABFE and Work Maps, which are the precursor to final flood maps, will better protect property and lives and provide consistency and predictability during rebuilding. They will make coastal areas stronger and more resilient. Consistency and predictability will allow rebuilding to occur much more quickly so lives affected by Sandy can return to normal. Without this action, residents may have reconstructed with inadequate safety standards, exposing them to substantially higher flood insurance rates when FEMA adopts its final maps.

**Do I have to elevate my home and/or build to new construction standards?** You are required to elevate and/or meet new construction standards if your house is located in a flood zone and was declared substantially damaged by your local floodplain administrator or is new construction. You have no legal obligation to elevate if your home was not substantially damaged.

**What is the definition of substantial damage?** Substantial damage means damage of any origin sustained by a structure in which the cost of restoration of the structure to its condition before damage would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**If I have to elevate my house, will the state or federal governments help finance the work?** Yes. FEMA can provide up to \$30,000 to cover the Increased Cost of Compliance (ICC) with federal, state and local regulations if you have federal flood insurance. In addition, the Christie Administration intends to provide grants to homeowners with substantially damaged homes to help them offset some of the costs of elevation, mitigation and renovation, and intends to announce in the spring the mechanism for such grants. In order to access any additional funding, FEMA requires property owners reconstruct using the best available data.

**Will the emergency regulation affect my flood insurance rates?** The ABFEs and Work Maps do not affect insurance rates. Your rates could increase when FEMA adopts its final flood maps. If you do not meet its elevation standards, which are likely to be close to the ABFEs and Work Maps, your rates could increase even more significantly.

**Are there benefits to elevating?** Yes. You will better protect your house and its contents and you will likely pay lower flood insurance rates in the future than if you do not elevate. Some people may find that the long-term insurance savings alone can offset the cost of raising a house.

**If my home is determined to be substantially damaged, can I still live in it until I elevate?** FEMA allows homeowners to live in structures that are deemed substantially damaged for up to four years if they take temporary measures to make homes habitable pending elevation. The determination of habitability must be made by the local construction official.

**Do I have to elevate my house and/or build to new construction standards if my municipality does not pass an ordinance adopting the ABFEs or Work Maps?** Yes, if your municipality declares your house substantially damaged and it is located in a flood hazard area, you are required to elevate and/or build to new construction standards. The DEP is encouraging municipalities to pass an ordinance adopting the ABFEs and Work Maps because this will make your town eligible for Increased Cost of Compliance assistance and other federal mitigation aid. The DEP will be providing municipal officials with a model ordinance so they can adopt the ABFEs and Work Maps as the new elevation standard.

**If I have to rebuild, how do I get started?** You should talk to your municipal floodplain administrator to see if your house is substantially damaged. You should also contact your municipality to see what kind of local approval you may need and what construction standards you have to build to. In addition to the DEP's elevation standards, buildings in flood zones must meet Uniform Construction Code standards that are regulated by the New Jersey Department of Community Affairs (DCA) and implemented at the local level.

**Will I need a state permit to reconstruct or elevate my building?** The DEP regulates building elevations through its Flood Hazard Area Control Act rules. Under the emergency Flood Hazard Area Control Act rule just adopted, you are eligible for what is known as a permit-by-rule (effectively an automatic permit) as long as the lowest floor is elevated to at least one foot above the state's design flood elevation and provided the building stays within its original footprint. Slight variations in size and location can sometimes be allowed. You will still need to secure local construction permits. A state Coastal Area Facility Review Act (CAFRA) permit is not needed if you reconstruct in place.

**What should I know before rebuilding?** It is very important that you carefully document any repair or reconstruction project to ensure you have a record of all activities from inception to completion. Photographs and other forms of documentation should be kept before, during, and after construction. Retain all receipts, bills, surveys and construction plans. These items will help document the history of your project should you need to do so for FEMA assistance or insurance reimbursement.

**What's the difference between FEMA's Zone A and Zone V?** Both zones lie within FEMA's 100-year floodplain. Zone V applies only in tidal floodplains and denotes hazards associated with storm-induced waves of at least three feet in height. Construction standards in the V-zone are more stringent in order to account for the increased risk of damage from storm surges.

**What do I do if I don't agree with FEMA's V-zone designation or flood elevation?** While there is no appeal process for the ABFEs or Work Maps, you may appeal FEMA mapping as part of the agency's review process when flood maps are formally proposed. If you don't want to wait, you may hire an engineering consultant to calculate your design flood elevation or V-zone designation. You should note that a detailed, site-specific analysis is expensive and may not result in significant changes. Doing this independent analysis will not protect you from higher insurance premiums if the final flood map elevations are higher than the elevation you build to.

**I was previously in a V-zone following the December 2012 release of the ABFEs. I am no longer in a V-zone under the new Work Maps but I am still in a flood zone. Do I still have to elevate?** Yes, any person planning to construct, reconstruct, or elevate a building in a flood hazard area, as well as any person with a building that is substantially damaged, must set or elevate the lowest floor of the building at least one foot above the flood elevation shown on the work maps. The change from V- zone to A- zone means that FEMA has determined that the wave height at your property, previously estimated to be greater than 3 feet, was recently calculated to be less than 3 feet. This change in zone designation means that you may be able to construct a masonry foundation, such as a crawl space, below the lowest floor of the building rather than elevate the building on pilings. Foundation types and other construction standards are established in New Jersey's Uniform Construction Code, which is adopted by the Department of Community Affairs and administered through your local construction official.

**Should I wait to see if the ABFE or Work Maps change before rebuilding?** Deciding when to rebuild is entirely up to you. DEP will continue to provide input as FEMA continues to develop final flood maps.

**What happens when FEMA finalizes the flood maps?** Your flood insurance premiums are likely to increase, in some cases significantly, depending on how your building's floor elevation compares to FEMA's final flood elevation. The higher you elevate now, the lower your premiums will be in the future. For example, reconstructing or elevating a \$250,000 building in an A-zone so that its lowest floor is three feet above FEMA's final flood elevation will cost an estimated \$376 a year to insure, based on FEMA actuarial tables. In comparison, the same building situated three feet below this elevation could cost \$7,204 a year to insure.

---

## Detailed Information

### Flooding

#### 1. What is a flood hazard area?

Flooding occurs when low-lying land adjacent to a waterbody, such as a stream, river, bay or the ocean, is periodically inundated by water. Land and structures that are subject to flooding are described as lying in a "flood plain" or a "flood hazard area." FEMA in many places maps the extent (elevation) of the 100-year flood, which is a flood that has a one percent chance of occurring in a given year. Land designated by FEMA as Zone A or Zone V lies within the 100-year flood plain. Zone V applies only in tidal flood hazard areas and denotes additional hazards associated with storm-induced waves. The State of New Jersey also maps the extent of flooding in many communities. Both FEMA and State flood mapping are described in more detail below.

There are two types of flooding that occur in New Jersey: fluvial and tidal. Fluvial flooding occurs when the rate of rainfall or snowmelt exceeds the rate of infiltration to the ground and the excess water, called runoff, moves across the ground surface toward the lowest section of the watershed. As runoff enters stream channels, stream levels increase. If the rate of runoff is high enough, water in the stream overflows the banks and flooding of land outside the channel occurs. Tidal flooding results when a tidal surge inundates communities near tidal waters during storm events and is generally exacerbated by the lunar cycle and wind.

## **2. Why regulate development in flood hazard areas?**

New Jersey periodically experiences severe flood events due to its climate, topography and location along the Atlantic seaboard. Given the State's dense population and extensive level of existing development within flood hazard areas, this periodic flooding causes severe, repetitive and deleterious social and economic impacts. Flooding has and continues to be the most frequent, destructive and costly natural hazard in New Jersey and is responsible for the large majority of disaster-related damage reported within the State. According to the 2011 State Hazard Mitigation Plan, floods present the highest natural disaster risk to the State with a high expectation of property damage and a near certainty of severe flooding.

It is well documented that flooding causes major social disruptions due to the need to relocate flood victims and provide emergency services to affected residents, which necessarily diverts emergency personnel from other essential tasks, as well as the long-term social, economic and emotional impact on residents as a result of damaged or destroyed homes, schools, businesses and infrastructure upon which residents rely. Flooding also presents significant health risks and results in prolonged interruptions to private businesses, reduced access to emergency care and interruption of essential government functions. Improperly built structures can furthermore experience severe and repetitive flood damage, which threatens public safety and results in economic loss and adverse social impacts. Significant damage can also result from collapsed structures and improperly secured structures and materials that are carried along by floodwaters.

## **3. What are FEMA ABFEs and Work Maps?**

FEMA in many places maps the extent (elevation) of the 100-year flood, which is a flood that has a one percent chance of occurring in a given year. Over the past several years, FEMA has been undertaking a comprehensive remapping of tidal flood elevations along New Jersey's eastern waterfront. FEMA's flood elevation models for many coastal communities were developed decades ago using various methodologies that resulted in a patchwork of flood insurance rate maps with a variety of flood elevations. Many people who constructed a building with its lowest floor at the 100-year flood elevation shown on FEMA's existing flood maps discovered during Sandy that their building lies below the actual 100-year flood elevation.

In order to support and guide our recovery efforts and to help communities to be more resilient to future storms, FEMA made its most current mapping publicly available in December 2012. Advisory Base Flood Elevations (ABFEs) are now available for the eastern waterfront of Atlantic, Bergen, Burlington, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union Counties. In the majority of cases, these advisory flood maps indicate that the 100-year flood elevation is approximately one to four feet higher than previously mapped by FEMA, and in some places as much as eight feet higher. In limited cases, the ABFE is lower than the previously mapped flood elevation.

Additionally, the state and FEMA anticipated changes to ABFE maps as the federal flood insurance mapping process progressed. As such, FEMA has recently released new Work Maps for Atlantic, Hudson, Monmouth and Ocean Counties. These work maps include even newer flood data and replace the ABFE maps for these counties. They include wave height calculations that had not been previously completed when the ABFEs were released. FEMA expects to release work maps for additional coastal counties this year. Since these work maps replace the ABFE maps, people planning to construct, reconstruct or elevate a building should now use the flood elevation and zone designation shown on the work maps. (Note: In rare circumstances in which the flood elevation on any FEMA Flood Insurance Rate Map (FIRM) in effect for a particular area is higher than the work map or ABFE, the higher elevation on the effective map governs.)

**Note:** On 1/24/13, DEP adopted emergency regulations that require new and reconstructed habitable buildings to be elevated so that the lowest floor of the building is at least one foot above either the new ABFE (or Work Map if one exists) or the elevation on FEMA's effective FIRMs, whichever elevation is higher. Once FEMA finalizes its analysis of the coast and officially adopts these elevations, then these adopted FEMA maps will become the State standard for construction in tidal flood hazard areas.

#### **4. What's the difference between Zone A and Zone V on a FEMA map?**

In addition to flood elevations, FEMA flood maps in tidal areas indicate the relative height of waves that a property or community will likely experience during a coastal flood. Areas within Zone V are expected to experience wave heights of at least three feet, while areas within Zone A are expected to experience wave heights of less than three feet. A subset of Zone A in tidal areas is known as a Coastal A-Zone, within which waves during a flood will be between one and a half and three feet high.

Due to the relatively high hazard to construction in Zone V, special floodplain management requirements generally apply, including the requirement that many buildings be elevated on piles or columns (see the State's Uniform Construction Code at N.J.A.C. 5:23). These construction standards are administered by the State's Department of Community Affairs through each municipal floodplain administrator and construction official. Also, while DEP and DCA do not have additional construction standards or permitting requirements in Coastal A-Zones, it is recommended that buildings in Coastal A-Zones be constructed using V-Zone construction standards. Contact your local floodplain administrator and construction official for further guidance.

#### **5. Is the State incorporating Zone V shown on FEMA's advisory flood maps?**

Yes, in addition to incorporating FEMA's latest flood elevations, the State will use FEMA's latest mapping to determine the location of Zone V. DEP's coastal rules in many cases prohibit new development in Zone V. However, the repair or reconstruction of damaged structures in the same location is not regulated by the coastal rules and is authorized under the new flood hazard area emergency rules in accordance with the expanded permit-by-rule at N.J.A.C. 7:13-7.2(a)3. Whereas DEP's flood hazard area rules set the elevation that buildings must adhere to, DEP's coastal rules determine whether new Zone V development is permissible. Also, construction in Zone V is generally subject to special building requirements under the State's Uniform Construction Code at N.J.A.C. 5:23. Construction codes, as well as guidance on [accessing Flood Zone maps through FEMA's website](#), can be obtained from the New Jersey Department of Community Affairs at: [www.state.nj.us/dca/divisions/codes](http://www.state.nj.us/dca/divisions/codes).

#### **6. I don't agree with the advisory base flood elevation or V-Zone designation on my property. Who do I talk to?**

Since FEMA's ABFE and Work Maps have not yet been formally adopted by FEMA, individuals seeking a permit from DEP who do not agree with an advisory base flood elevation, Work Map elevation or Zone V designation can hire an engineering consultant to compute the design flood elevation at a specific site under an application for a flood hazard area verification. (See Option 2 in the FAQ entitled "How can I determine the design flood elevation at my property?" for more detail.) If DEP agrees with the submitted analysis, the State will use the computed flood elevation at that site for any Land Use permit, unless and until FEMA formalizes a different flood elevation as described below.

It should be noted that calculating flood elevations is relatively data and labor-intensive, and can be costly depending on the scope of the study, but can sometimes result in more finely-tuned flood elevations at a given site. However, FEMA's new mapping represents the best available and most accurate flood elevations along New Jersey's eastern waterfront. Therefore, a detailed, site-specific analysis, while sometimes helpful, is unlikely to produce a significantly different flood elevation. Additionally, the calculated flood elevation approved by DEP will not affect flood insurance rates. Flood insurance rates are established by FEMA and are based on FEMA flood elevations and zones, not State flood mapping or Land Use approvals. For these reasons, most people rely on State or FEMA flood mapping to determine flood elevations and zone designations, since the cost of performing flood calculations is not generally offset by lower construction costs. However, the option to calculate flood elevations is available to prospective applicants.

After FEMA finalizes its coastal wave height analysis, the maps will be formally proposed in the Federal Register. At that time, interested parties will be invited to present data in support of revising the proposed (preliminary) mapping. Communities and private individuals will therefore have an opportunity to raise concerns regarding the base flood elevations and zone designations during the Federal review process. FEMA is currently undertaking this process and anticipates completion by 2014 or 2015. Once FEMA officially adopts these maps, they will automatically be incorporated as a Department delineation. A person seeking to challenge the effective FEMA flood elevation after its adoption must use the process set forth at N.J.A.C. 7:13-13.4 to amend the Department delineation, and must also adhere to FEMA's map amendment process.

#### **7. How do the ABFE maps affect my flood insurance premiums?**

The ABFE and Work Maps will not have an immediate impact on your flood insurance premiums. Flood insurance rates are set by FEMA and are based on the effective base flood elevation at your property and FEMA's zone designation. After FEMA completes its coastal flood mapping, the maps will be formally proposed in the Federal Register and will

eventually become adopted as effective maps once FEMA has reviewed and responded to all data submitted in support or opposition to the proposed mapping. Once these maps become effective, your flood insurance premium may at that time change based on your Zone designation and flood elevation.

Flood insurance premiums are a function of the elevation of the lowest habitable floor of a building in comparison with the 100-year flood elevation mapped by FEMA on its effective flood insurance rate maps. Different insurance rates furthermore apply in Zone A and Zone V. A building with a lowest floor above the 100-year flood elevation is at less risk of flooding, and thus can be insured at a lower rate, than a building with a lowest floor below the 100-year flood elevation. Each incremental increase in the elevation of the floor of a building above the 100-year flood elevation results in an incremental decrease in the relative risk of flood damage to the building and in the corresponding flood insurance rate. Each incremental decrease in building elevation below the flood elevation has the opposite effect – risk of flood damage increases and likewise the flood insurance rate will increase. For more information regarding flood insurance rates contact FEMA.

A significant factor influencing construction and reconstruction within flood hazard areas is the rising cost of flood insurance. Under the Biggert-Waters National Flood Insurance Reform Act of 2012, long-term changes to the National Flood Insurance Program have been adopted which are likely to increase rates overall to more accurately reflect the flood risk to buildings in flood hazard areas. Individuals are therefore strongly encouraged to consider long-term insurance costs when undertaking reconstruction or elevation of damaged buildings. A relatively small investment to reconstruct the lowest floor of a building an additional foot or two higher today may translate into significant future flood insurance savings. As an example, FEMA flood insurance rates for a typical private residence with differing floor elevations are shown in the table below, as well as the number of years needed to reclaim the initial investment of constructing the lowest floor at a higher elevation:

Flood Insurance Rates for  
\$250,000 Residential Building Coverage  
(Contents Not Covered)  
FEMA flood insurance rates for AE-Zone\* published October 2012

Lowest Floor Elevation	Annual Insurance Premium	Premium Compared to a Building with a Lowest Floor at 100-Year Flood Elevation	Time to Reclaim Added Cost of Elevating**
3 feet above	\$376	72% savings	1.9 to 11.4 years
2 feet above	\$448	67% savings	1.4 to 8.2 years
1 foot above	\$660	51% savings	0.9 to 5.4 years
At 100-year flood	\$1,359	NA	
1 foot below	\$4,527	233% increase	
2 feet below	\$5,924	336% increase	
3 feet below	\$7,204	430% increase	
4 feet below	\$9,551	603% increase	

\*An "AE-Zone" is a type of A-Zone in which FEMA provides a base flood elevation. Most buildings along the coast that are in an A-Zone lie within an AE-Zone.

\*\*Time to reclaim added cost of elevating based on a construction cost of \$250,000 with an increase of between 0.25 percent and 1.5 percent for each foot above the FEMA 100-year flood elevation.

As illustrated by the table above, individuals have a significant incentive to construct the lowest floor of buildings well above the 100-year flood elevation, as the long-term savings in flood insurance premiums will substantially offset the added cost of higher construction.

As illustrated by the table above, individuals have a significant incentive to construct the lowest floor of buildings well above the 100-year flood elevation, as the long-term savings in flood insurance premiums will substantially offset the added cost of higher construction.

**Note:** a wet flood-proofed building, while sometimes permissible for non-residential buildings under DEP rules, may result in extremely high flood insurance rates. Please consult FEMA or your insurance provider for more information.

## 8. What is the State's design flood elevation?

The flood hazard area design flood elevation, also referred to as the "design flood elevation" or DFE, is the peak elevation that water will reach during the flood that is regulated by DEP. The DFE is determined differently depending on whether flooding is tidal or fluvial and in consideration of the availability of any State or FEMA flood mapping for a given community. The Flood Hazard Area Control Act (FHACA) rules present six different methods to determine the DFE under N.J.A.C. 7:13-3.

The State has mapped the extent of the DFE along more than 2,500 miles of New Jersey's waters. These State maps are referred to as Department delineations, and a complete list of these maps is included in Appendix 2 of the Flood Hazard Area Control Act (FHACA) rules. While the DFE shown on these maps is equal to the 100-year flood elevation in tidal areas, the DFE is at least one foot higher than the 100-year flood elevation in fluvial areas. Copies of Department delineations can be obtained by calling (609) 292-2296.

FEMA has also mapped the extent of the 100-year flood in many communities. When using these maps, the DFE is equal to the 100-year flood elevation in tidal areas and is one foot higher than the 100-year flood elevation in fluvial areas. Effective FEMA maps can be viewed at: [www.msc.fema.gov](http://www.msc.fema.gov).

**Example:** The DFE is measured in feet from sea level (see below). If the DFE on my property is 15 and the ground elevation is 12, then my property will experience 3 feet of flooding during DEP's design flood.

It is also important to know which sea level measurement (datum) that a flood map is based on. Most recent flood maps use the North American Vertical Datum (NAVD) of 1988 as sea level. However, older flood maps and some recent maps use the National Geodetic Vertical Datum of 1929 (NGVD) as sea level. The 1929 datum is roughly one foot below the 1988 datum. So a map showing a flood elevation of 10 feet NGVD would be equal to approximately 9 feet NAVD. It is important that your property survey, elevation certificate and flood mapping source use the same datum; otherwise, the severity of the depth of flooding on site could be underestimated. You can convert from one datum to another at a given location and altitude at the following website: [www.ngs.noaa.gov/cgi-bin/VERTCON/vert\\_con.prl](http://www.ngs.noaa.gov/cgi-bin/VERTCON/vert_con.prl).

**Note:** The FHACA rules require the lowest floor of habitable buildings in flood hazard areas to be constructed at least one foot above the DFE or, in limited cases, a non-residential building can be flood-proofed.

## 9. How can I determine the design flood elevation at my property?

The emergency FHACA rules present **three options** for determining the DFE:

**Option one:** The DFE at a site can be based on State or FEMA flood mapping as follows (if such mapping is available for your community):

**Step 1:** Find the DFE shown on a Department delineation for your site.

**Step 2:** Find the FEMA 100-year flood elevation for your site. Use the newest effective FEMA map for your community, or use the advisory base flood elevation (ABFE) or any newly proposed flood elevation published by FEMA such as a Work Map, if these elevations are higher. If your site is in a fluvial area, add one foot to the FEMA 100-year elevation (fluvial DFE=FEMA+1).

**Step 3:** Use the DFE determined from the Department delineation under Step 1, or the DFE determined from FEMA mapping under Step 2, whichever elevation is higher.

**Example 1:** I want to determine the DFE on my site along Arthur Kill, which is tidal. The Department delineation shows a DFE of 10, the effective FEMA map shows a 100-year elevation of 8, the ABFE is 11, and there is no proposed FEMA map. Since 11 is the highest elevation, use 11.

**Example 2:** I want to determine the DFE on my site along Wickecheoke Creek, which is fluvial. The Department delineation shows a DFE of 165, the effective FEMA map shows a 100-year flood elevation of 164.5 (which translates to a DFE of 165.5, since in fluvial areas, the DFE=FEMA+1), and there is no ABFE or proposed FEMA map. Since 165.5 is the higher elevation, use 165.5.

**Example 3:** I want to determine the DFE on my site along Barnegat Bay, which is tidal. There is no Department delineation. The effective FEMA map shows a 100-year elevation of 10, the ABFE is 8, and there is no proposed FEMA map. Since 10 is the higher elevation, use 10.

**Option two:** Except for the newly adopted Delaware River flood maps in Hunterdon, Warren and Sussex Counties, a prospective applicant or other interested party can hire an engineering consultant to compute the DFE at a site or in a community using the calculation methods set forth in the FHACA rules at N.J.A.C. 7:13-3. A person seeking to challenge the DFE shown on the new Delaware mapping can use the process set forth at N.J.A.C. 7:13-13.4.

As noted above, calculating flood elevations is relatively data and labor-intensive, and can be costly depending on the scope of the study, but can sometimes result in more finely-tuned flood elevations at a given site. However, FEMA's ABFEs and Work Maps represent the best available and most accurate flood elevations along New Jersey's eastern waterfront. Therefore, a detailed, site-specific analysis, while sometimes helpful, is unlikely to produce a significantly different flood elevation. Additionally, the calculated flood elevation approved by DEP will not affect flood insurance rates. For these reasons, most people rely on State or FEMA flood mapping, since the cost of performing flood calculations is not generally offset by lower construction costs. For more information on calculating flood insurance rates contact FEMA. **Note:** In cases where no State or FEMA mapping is available, a person seeking to build in a flood hazard area is sometimes required to calculate the DFE. See N.J.A.C. 7:13-3.6.

**Option three:** In absence of State and FEMA flood mapping, the DFE can be approximated in some cases using the method set forth at N.J.A.C. 7:13-3.5.

## Emergency Rule

### 10. What is the flood hazard area emergency rule?

DEP adopted emergency flood hazard area regulations on 1/24/13 to facilitate the reconstruction, relocation and elevation of buildings damaged by Sandy. The adopted amendments:

- Enable the use of the best available flood elevation data to determine the flood hazard area design flood elevation for a given site, including FEMA's recently released advisory flood maps and Work Maps for New Jersey's coast;
- Incorporate FEMA mapping issued as final (effective) that is developed in partnership with DEP such that it depicts DEP's flood hazard area design flood elevation and floodway limit;
- Allow flood proofing measures to be used instead of elevating structures in certain, limited situations; and
- Ensure consistency between DEP's standards for elevating buildings in flood hazard areas with the building standards of the Uniform Construction Code promulgated by the Department of Community Affairs at N.J.A.C. 5:23.

DEP has determined that these amendments are necessary in view of the significant adverse social, economic and environmental impacts of recent storms, including Superstorm Sandy and Tropical Storm Irene, and because DEP determined that certain aspects of the FHACA rules were likely to impede activities that must be undertaken to alleviate such adverse impacts. The emergency rule can be viewed at [www.nj.gov/dep/docs/20130124flood-hazard-emergency-rule.pdf](http://www.nj.gov/dep/docs/20130124flood-hazard-emergency-rule.pdf).

### 11. Who is affected by the flood hazard area emergency rule?

Any person who is constructing a new building, reconstructing a substantially damaged building or elevating a building in a flood hazard area is affected by the emergency rule. The emergency rule sets higher elevations for a building's lowest floor in most coastal communities. See the FAQ entitled "How can I determine the design flood elevation at my property?" for information on determining the elevation at which your new, reconstructed or elevated building must be constructed.

### 12. I applied to Land Use for a flood hazard area permit (or a coastal permit) and it was declared complete for review prior to the adoption of the flood hazard area emergency rule. Is my project grandfathered?

Yes. The emergency FHA rules were adopted on 1/24/13. Any flood hazard area or coastal permit application that was complete for review prior to 1/24/13 is not subject to its requirements, including the newly incorporated flood elevations. However, FEMA is currently in the process of finalizing and adopting its ABFEs along the coastline, and it is



unlikely that the adopted elevations will significantly differ from the ABFEs. People planning construction in flood hazard areas should therefore be aware of the potential consequences of ignoring the new mapping.

For example, in a particular location, the effective FEMA map may depict a 100-year flood elevation of 8, while the ABFE is 11. A person who submitted a complete flood hazard area or coastal application prior to 1/24/13 can receive a permit to construct the building using the effective FEMA elevation of 8 (which means it must have a lowest floor elevation of at least 9). However, once the ABFE of 11 is adopted, likely in 2014, the lowest floor of the building will be two feet below the effective base flood elevation. This can result in significantly high flood insurance rates for the lifetime of the structure. The building will furthermore be subject to higher levels of flooding than it was constructed to endure. For these reasons, DEP strongly recommends that the lowest floor of all buildings be constructed in accordance with the requirements of the emergency FHA rules adopted on 1/24/13.

### **13. I received a Land Use permit two years ago to build a house. Do the new emergency rules affect it?**

No. The flood hazard area emergency rules do not affect any previous approvals. However, in cases where a person has received a permit for a building but has not yet begun construction, DEP strongly recommends that the lowest floor be constructed in accordance with the requirements of the emergency rules. In order to facilitate this, DEP will not require a modification or revision of the issued permit in cases where a permittee intends to amend construction to meet the requirements of the emergency rules. Note that modifying the design or location of an approved building will likely require local approval and that a change in designation from Zone A to Zone V will have certain design implications under the Uniform Construction Code.

### **14. What is the coastal emergency rule?**

On April 16, 2013 DEP adopted emergency amendments to the Coastal Permit Program Rule (N.J.A.C. 7:7) and Coastal Zone Management Rules (N.J.A.C. 7:7E). The amendments expedite the rebuilding of coastal communities and related industries, promote strategies that will ensure a more resilient coast, and help facilitate the recovery of the coastal ecosystem. The emergency rule:

- Expedites the rebuilding of residential and commercial developments;
- Facilitates the renovation or reconstruction of existing marinas and construction of new marinas;
- Promotes the restoration of New Jersey's shellfish aquaculture industry;
- Ensures the maintenance of engineered beaches and dunes and the creation of living shorelines;
- Facilitates the removal of sand and other materials, as well as the availability of dredge material disposal/placement areas.

DEP has determined that these amendments are necessary in view of the significant adverse social, economic and environmental impacts of recent storms, including Superstorm Sandy and Tropical Storm Irene, and because DEP determined that certain aspects of the coastal rules were likely to impede activities that must be undertaken to alleviate those adverse impacts. The emergency rule can be viewed at <http://www.nj.gov/dep/rules/proposals/20130416a.pdf>.

### **15. I applied to Land Use for a coastal permit and it was declared complete for review prior to the adoption of the coastal area emergency rule. Is my project grandfathered?**

Yes. The emergency coastal area rules were adopted on April 16, 2013. Any coastal permit application that was complete for review prior to April 16, 2013 is not subject to the coastal area emergency rule requirements. However, if your pending application now qualifies for a permit-by-rule under the emergency rule, then you may request a withdrawal of your application. Unfortunately, the DEP cannot refund fees for withdrawn applications.

## **Emergency Permits**

### **16. What is an emergency permit, and how do I obtain one?**

An emergency permit is an authorization issued by DEP when immediate action is needed to undertake work that will protect public health, safety, welfare and the environment. Most of the recovery and repair activities public agencies, businesses, and homeowners need to conduct as a result of the damages inflicted by Superstorm Sandy can be accomplished without submitting a permit application to the Division of Land Use Regulation. However, other construction activities along the coast and in flood hazard areas generally require a permit from the Division of Land Use Regulation prior to construction. In certain cases, DEP may determine that the time needed to issue a permit

using conventional means may result in an unsafe condition that can harm the environment or threaten people or property. In such a case, individuals can seek an emergency permit.

A person seeking an emergency permit must demonstrate that there is an imminent threat to public health, safety, welfare or property, or a significant degradation to the environment, if the work is not immediately begun. Since emergency permits are issued on a site-by-site basis, we suggest you contact us at (609) 292-2953 for information on how to apply for an emergency permit. An emergency permit is usually issued verbally by DEP, and then followed-up by a letter that explains what is authorized and how the permittee must conduct the work. Once DEP issues an emergency permit, work can generally start immediately. Once work is completed, the permittee must obtain a permit from DEP using conventional means in order to demonstrate that all emergency work was completed as authorized.

It is important to note that an emergency permit is not intended to be used as an alternative to obtaining a formal written authorization from DEP or to circumvent the statutory review process when no emergency condition exists. Emergency permits are reserved only for those cases where immediate action is warranted to avoid or prevent ongoing or potential harm to people, property or the environment. In non-emergency situations, DEP can sometimes expedite the review of a permit application. More information is available at: [www.nj.gov/dep/landuse/emergency.html](http://www.nj.gov/dep/landuse/emergency.html).

## Permits-by-Rule

### 17. What is a permit-by-rule, and how do I obtain one?

A permit-by-rule is a free, automatic Land Use permit for minor construction activities, provided they are undertaken exactly as described in DEP's regulations. No application to DEP is required to obtain a permit-by-rule. DEP's coastal rules have 21 permits-by-rule and DEP's flood hazard area rules have 47 permits-by-rule. Most of the recovery and repair activities public agencies, businesses, and homeowners need to conduct as a result of the damage inflicted by Superstorm Sandy can be accomplished under the authority of one or more permits-by-rule.

For example, a person reconstructing a building that was substantially damaged by Sandy is exempt from the CAFRA permitting requirements provided the building is reconstructed within its original footprint. Furthermore, reconstruction or elevation of a building is eligible for a flood hazard area permit-by-rule provided certain conditions are met as follows (see at N.J.A.C. 7:13-7.2(a)3):

- The footprint of the building is not increased by more than 300 square feet;
- The lowest floor of the building is reconstructed or elevated to be at least one foot above the flood hazard area design flood elevation (DFE);
- The area below the lowest floor is not used for habitation and remains open to floodwaters (such as construction on pilings or an enclosure with flood vents);
- The building is not expanded or relocated closer to any regulated water or within a floodway;
- If the building is relocated, it is either moved outside any riparian zone or situated within an area where previous development or disturbance has occurred; and
- Certain limitations are met on the cutting and replanting of vegetation within a riparian zone.

## Debris Removal

### 18. Do I need a permit to remove debris that washed up during Sandy?

Debris removal does not require a Land Use permit. However, private property owners are encouraged to first contact their municipality to see if a plan for debris removal has been implemented. Note: debris that is removed must be staged, transported, recycled and/or disposed of in accordance with appropriate solid waste and recycling regulations. If debris is removed from special areas such as wetlands, best management practices should be utilized, such as avoiding removal of trees and placement of protective marsh matting, to minimize temporary disturbances. For more information see: [www.nj.gov/dep/special/hurricane-sandy/debris.htm](http://www.nj.gov/dep/special/hurricane-sandy/debris.htm).

## Sand Removal and Replacement

### 19. Do I need a permit to remove sand from my property and what can I do with it?

Sand may be removed from roadways, parking areas, structures and businesses without a Land Use permit. We recommend you coordinate with your municipality for guidance on proper sand disposal.

## **20. Does the municipality need a permit to put the sand on the beach?**

Sand removed from roadways, structures and private property can be used to re-establish beach and dune systems provided the municipality has a valid beach and dune maintenance permit from DEP. Communities without a beach and dune maintenance permit can apply for an emergency permit (see FAQ above). Note that all sand placed back on the beach should be screened to remove any debris or solid waste.

## **Land Replacement**

### **21. Do I need a permit to replace portions of my property that eroded away during Sandy?**

Except for streambank or shoreline stabilization activities, placing clean fill back where your land has eroded away does not require a permit. However, dredging the eroded material within the adjacent waterway does require a permit. If you wish to dredge eroded material from a waterway, we recommend you apply for an emergency permit. New shoreline stabilization structures also require a Land Use permit, but typically do not qualify for an emergency permit. It is recommended that you obtain a permit for these structures under the normal permitting process.

## **Dredging (Non-Marina)**

### **21. My bulkhead failed as a result of Superstorm Sandy. Do I need a permit to dredge the material from the waterway and place back on my property?**

The coastal emergency rules contain a new coastal general permit for the dredging of material from a waterway at a residential or commercial development site. The material must have been deposited as a result of the failure of a legally existing bulkhead as a consequence of a storm event for which the Governor declared a State of Emergency. This general permit allows for the removal of this material from the waterway and its placement on the upland portion of the site from which it came. The general permit requires that the volume and extent of material to be dredged is limited to that which resulted from the failed bulkhead. The dredged material must be placed on the upland portion of the lot and dewatered as necessary within a temporary dewatering area. In addition, all debris contained within the dredged material must be removed, and properly disposed. Further, the material must be capped with a six-inch layer of clean fill and stabilized. A 25 foot buffer must be maintained from any wetlands. Please refer to N.J.A.C. 7:7-7.33 for more information.

### **22. I live on a man-made lagoon and want to dredge sand that was deposited as a result of Superstorm Sandy.**

The coastal emergency rules contain a new coastal general permit for the dredging of sand from a man-made lagoon. The material must have been deposited as a result of a storm event for which the Governor declared a State of Emergency. This general permit requires that the material to be dredged is sand. The dredged material must be placed on the upland portion of the lot and dewatered as necessary within a temporary dewatering area. In addition, all debris contained within the dredged material must be removed, and properly disposed. Further, the material must be capped with a six-inch layer of clean fill and stabilized. A 25 foot buffer must be maintained from any wetlands. Please refer to N.J.A.C. 7:7-7.32 for more information.

### **23. I want to implement a sediment sampling plan for sampling in a water area as part of dredging or dredged material management activity or as part of a remedial investigation of a contaminated site, what type of permit do I need?**

The coastal emergency rules contain a new permit-by-rule (PBR #21) for sediment sampling performed in a water area for the purpose of characterizing the physical and chemical composition of sediments in two instances:

- when performed as part of a dredging or dredged material management activity; or
- when performed as part of a remedial investigation of a contaminated site.

This permit-by-rule does not authorize sediment sampling within tidal or freshwater wetland areas. Please refer to N.J.A.C. 7:7-7.2(a)21 for more information.

**24. I want to rehabilitate and use an existing dredged material management area. Do I need a CAFRA permit?**

No. The coastal emergency rules have clarified the DEP's interpretation of the statutory intent of CAFRA, including its interpretation of various terms appearing in the Act as it applies to particular forms of development. The rehabilitation and use of an existing dredged material management area within the same footprint is not development as defined under CAFRA, and therefore does not require a CAFRA permit. However, you may require other permits from the Department such as a Freshwater Wetlands permit. If you are looking to rehabilitate an existing dredged material management area, you are encouraged to contact the Division or apply for a Jurisdictional Determination.

## **BUILDINGS**

### **Building Repair**

**21. Do I need a permit to replace the windows and siding on my house or building?**

A Land Use permit is not required for replacing windows, siding, roofs, or other general repairs you may conduct to the exterior or interior of your home or building. However, if your building has suffered substantial damage or your repairs constitute a substantial improvement, as determined by your municipal floodplain administrator, your building will need to be elevated (see guidance on elevating buildings below).

**22. What is a Substantial Damage?**

"Substantial damage" means damage to a structure in which the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the structure's market value before the damage occurred. If your building has suffered substantial damage as determined by your municipal floodplain administrator, your building will need to be elevated (see guidance on elevating buildings below).

**23. What is a Substantial Improvement?**

"Substantial improvement" means 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 as determined before the start of construction of the improvement. This term includes structures that have sustained substantial damage regardless of the actual repair work performed. If you intend to undertake a substantial improvement, as determined by your municipal floodplain administrator, your building will need to be elevated (see guidance on elevating buildings below).

### **Building Reconstruction**

**24. Do I need a permit to reconstruct my habitable building that was impacted by Sandy?**

**Within the Coastal Area:** A CAFRA permit is not required, provided all reconstruction takes place within the original footprint of the building and the reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law. In addition, the Department has amended the existing permit-by-rule for the voluntary reconstruction of a non-damaged, currently habitable residential or commercial development to omit the requirement that the development has to be non-damaged and the reconstruction is voluntary. The revised permit-by-rule allows for the reconstruction of any, damaged or non-damaged residential or commercial development provided it complies with all municipal, State and Federal requirements. Please refer to N.J.A.C. 7:7-7.2(a)7 for more information. Further, the coastal emergency rules contain a new permit-by-rule allowing for relocation or expansions of residential or commercial development provided the relocation or expansion occurs laterally or landward and expansions do not exceed 400 square feet. Please refer to N.J.A.C. 7:7-7.2(a)8 for more information. Because the CAFRA area and the flood hazard area overlap, please see the section concerning the flood hazard area for more information.

**Within the flood hazard area:** Most structures flooded by Sandy lie within a flood hazard area. If a damaged structure is located within a flood hazard area, then reconstruction falls under the jurisdiction of the Flood Hazard Area Control Act. Reconstruction, relocation or elevation of a lawfully existing buildings and other structures can automatically qualify for a permit-by-rule under N.J.A.C. 7:13-7.2(a)3. No further flood hazard area approval is required, provided all work is designed and constructed in accordance with these permits-by-rule (See the FAQ for permits-by-rule). Otherwise, formal flood hazard area permits will be required. Keep in mind that all reconstructed habitable buildings must be elevated at least one foot above the State's design flood elevation. (See guidance on elevating buildings below.)

**25. Do I need a permit to reconstruct a non-habitable building or appurtenant structure (such as a porch, deck, gazebo, boardwalk, shed, public restroom, sign, fence, pool, garage and/or driveway) that was impacted by Sandy?**

**Within CAFRA Area:** A CAFRA permit is not required provided all reconstruction takes place within the original footprint of the building and the reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law. A relocation of the footprint laterally or landward which does not enlarge the original footprint, may be possible where the DEP determines in writing that such relocation will result in less environmental impact than the in place reconstruction of the development. Because the CAFRA area and the flood hazard area overlap, please see the section concerning the flood hazard area for more information.

**Outside CAFRA Area:** For properties outside of the CAFRA area, a coastal permit is not required to reconstruct within the same footprint provided the development is located more than 100 feet from the mean high water line. If reconstruction is located within 100 feet of the mean high water line, a coastal permit is required. In limited cases an emergency permit can be obtained. However, reconstruction of non-habitable structures does not typically qualify for an emergency permit unless it can be demonstrated that there is an imminent threat to lives or property or a significant degradation to the environment if the structure is not immediately reconstructed. Because properties outside of the CAFRA area may be within the flood hazard area, please see the section concerning the flood hazard area below for more information.

**Within the flood hazard area:** Most structures flooded by Sandy lie within a flood hazard area. If a damaged structure is located within a flood hazard area, then reconstruction falls under the jurisdiction of the Flood Hazard Area Control Act. Reconstruction, relocation or elevation of lawfully existing non-habitable buildings and other structures can automatically qualify for an permit-by-rule under N.J.A.C. 7:13-7.2(a)1, (a)3 and/or (b)6. No further flood hazard area approval is required, provided all work is designed and constructed in accordance with these permits-by-rule.

## **Elevating a Building**

**26. Is a permit required to elevate a building?**

No CAFRA permit is required, provided all construction takes place within the original footprint of the building. However, if the building is in a flood hazard area, then you must either qualify for a flood hazard area permit-by-rule at N.J.A.C. 7:13-7.2(a)3 or you must obtain a flood hazard area general permit or individual permit.

**27. How high do I have to elevate my building?**

The flood hazard area rules require the lowest floor of habitable buildings in flood hazard areas to be constructed at least one foot above the design flood elevation (DFE). See above FAQ for guidance on how to determine the DFE at your site.

**28. What is considered the lowest floor of a building?**

The "lowest floor" is simply the bottom floor of a building, including a basement or any other enclosed area, which is or may be used for permanent or temporary occupation by humans. An unfinished enclosure, such as a crawl space, entryway and/or garage serving a private residence, which is useable solely for building access, storage and/or parking, is not considered the lowest floor of a building, provided that such enclosure is constructed in compliance with all applicable design standards of the FHACA rules at N.J.A.C. 7:13-11.5(n), (o) and (p).

**29. If I elevate my building, can I keep my basement?**

No, basements are not permitted under the flood hazard area rules. A basement is an enclosed area having a floor that lies below ground on all sides. If you elevate your building, you must fill in your basement so that its floor at a minimum matches the ground on at least one side. However, you can have a crawl space or similar enclosure beneath the lowest floor of your building, provided it is useable solely for building access, storage and/or parking, and provided the enclosure is constructed in compliance with N.J.A.C. 7:13-11.5(n), (o) and (p). Note that, if you do not fill in your basement, your flood insurance provider will likely assume that your basement is your building's lowest floor, and assess your flood insurance premium accordingly. Flood insurance premiums in such a case could be more than \$10,000 a year.

**30. My municipality has not adopted the ABFEs or Work Maps into their ordinance. Do I still need to elevate my structure and build to the applicable standards?**

Yes. If your structure sustained substantial damage, or you are proposing substantial improvement, and you are located within Zone A or Zone V on the ABFE mapping or Work Maps (where available), then you would need to build to the standards in the flood hazard area emergency rule and the Uniform Construction Code which is applied by the local flood plain administrator. However, if your municipality has adopted elevation standards that are more stringent than State regulations, then you would be required to meet municipal standards.

## **Flood-Proofing**

### **31. What is the difference between dry flood-proofing and wet flood-proofing?**

"Flood-proofing" refers to measures applied to a building that are intended to prevent or provide resistance to displacement, buoyancy and damage from flooding up to a certain elevation, so as to eliminate or reduce potential flood damage to the building and its contents. Only non-residential buildings are permitted to be flood-proofed under DEP's flood hazard area rules. The lowest floor of residential buildings must instead be elevated at least one foot above the design flood elevation. There are two types of flood-proofing:

Dry flood-proofing refers to measures that prevent floodwaters from entering a building. A non-residential building that cannot feasibly be elevated at least one foot above the design flood elevation can be dry flood-proofed. Dry flood-proofing generally includes making the building watertight through sealing openings, installing waterproof doors and windows, or sealing walls with waterproof coatings, impermeable membranes and/or a supplementary layer of masonry or concrete. Dry flood proofing also includes making the building strong enough to resist flood forces so that walls don't buckle and the building doesn't become buoyant during a flood event.

Wet flood-proofing refers to measures that allow floodwaters to enter a building, and thereby balance hydrostatic pressure on the structure during a flood. A non-residential building that cannot feasibly be dry flood-proofed can be wet flood-proofed. Wet flood-proofing generally includes using flood-resistant materials, protecting mechanical and utility equipment, and using openings or breakaway walls. A garage or crawl space with flood vents is an example of a wet flood-proofed area. Note: although wet flood-proofing is allowable in limited circumstances, it may have significant ramifications on flood insurance costs.

### **32. Can I flood-proof my private residence?**

No. Only non-residential buildings are permitted to be flood-proofed under DEP's flood hazard area rules. The lowest floor of residential buildings must instead be elevated at least one foot above the design flood elevation. However, a wet flood-proofed enclosure below the lowest floor of a house or duplex, such as a garage or crawl space with flood vents, is permitted under N.J.A.C. 7:13-11.5(n), (o) and (p).

## **Infrastructure Repair**

### **33. Is a permit needed for emergency roadway repair?**

A permit is not required for emergency roadway repair. Roadways and associated infrastructure such as sidewalks, guardrails, and road beds may be repaired, replaced or stabilized within their preexisting footprints (in-kind repair or replacement). DEP issued [Administrative Order No. 2012-13](#) on 11/3/12 that waives certain DEP permit requirements for State, County and Municipal agencies from DEP's formal permit procedures.

### **34. Is a permit needed for utility replacement and repair?**

A permit is not required for utility replacement or repair. Utility lines, outfall structures and stormwater management facilities may be repaired, replaced or stabilized within their preexisting footprints (in-kind repair or replacement). DEP issued [Administrative Order No. 2012-13](#) on 11/3/12 that waives certain DEP permit requirements for State, County and Municipal agencies from DEP's formal permit procedures.

## **Boardwalk and Dune Walkovers**

### **35. Does the municipality need a permit to replace or repair a boardwalk or dune walkover structure?**

A permit is not required to repair or replace boardwalks and dune walkovers that legally existed prior to Superstorm Sandy provided they are built in the same location and footprint. If the municipality wishes to expand the footprint of the boardwalk or dune walkover, then a permit would be required. Likewise, if a municipality wishes to construct shore stabilization structures adjacent to their boardwalk or dune walkover, then a permit would be required.

## **Beach Structures**

### **37. Does the municipality need a permit to replace or reconstruct legally existing structures on the beach (i.e. gazebos, pavilions)?**

In the CAFRA zone, a permit is not required to replace or reconstruct legally existing structures on the beach provided the structure is reconstructed in the same footprint. Outside of the CAFRA zone, a permit is required for the reconstruction of legally existing structures on a beach unless the structure is greater than 100 feet from the mean high water line.

## **Docks, Pilings, Boatlift and Bulkhead Repairs**

### **36. Does a municipality need a permit to replace/rebuild or elevate those bulkheads damaged?**

DEP issued [Administrative Order No. 2012-13](#) on November 3, 2012 that waives certain DEP permit requirements for State, County and Municipal agencies from DEP's formal permit procedures. Repair or reconstruction of a bulkhead or similar shoreline stabilization structure on public property may qualify for the Administrative Order. In addition, authorization from the Army Corps of Engineers may be required for any work below the mean high water line.

### **38. Do I need a permit to place sand fencing to create or sustain a dune?**

The coastal emergency rules contain a new permit-by-rule for the placement of sand fencing in order to create or sustain a dune, provided there is no grading or excavation of the dune. In addition, the sand fencing must be placed on the landward side of the dune, parallel to the mean high water line, and cannot prevent public access to the beach. Please refer to N.J.A.C. 7:7-7.2(a)16 for more information.

### **38. Do I need a permit to replace or repair my dock, pilings, boat lift or bulkhead at my residential property?**

A permit is not required for any dock, pilings, boat lift or bulkhead that legally existed prior to Superstorm Sandy if they are repaired or replaced in the same location and footprint. The DEP has amended its regulations to allow for the reconstruction and elevation of a bulkhead without the need for a permit as long as the new bulkhead is the same length and width as the previous legally existing bulkhead. If the bulkhead being replaced is a low profile bulkhead, as defined in N.J.A.C. 7:7, then the elevation of the bulkhead would require an Individual Waterfront Development permit. If the replacement of the dock, pilings, boatlift or bulkhead requires reconfiguration of the structures or alterations of their dimensions than a Coastal General Permit or Individual Waterfront Development permit will be needed.

If the replacement of your dock includes the conversion of a fixed pier to a floating dock, a permit is not required. The DEP has amended its regulations for exemption activities (N.J.A.C. 7:7-2.3(d)6) to allow for the replacement of legally existing docks with the same dimensions measures by length and width. However, if the dock is crossing wetlands then it must be replaced with the same dimensions (width, length and height) in order to be exempt.

Please be advised that authorization from the Army Corps of Engineers may be required for any work below the mean high water line.

### **40. Do I need a permit to replace or repair my dock, pilings, boat lift or bulkhead at my non-residential property?**

Yes, a permit is required for any work below the mean high water line at a commercial, industrial or public property with the exception of marinas (See Marina FAQ for more information). DEP also issued [Administrative Order No. 2012-13](#) on November 3, 2012 that waives certain DEP permit requirements for State, County and Municipal agencies from DEP's formal permit procedures. Repair or reconstruction of a bulkhead or similar shoreline stabilization structure on public property may qualify for the Administrative Order. In addition, authorization from the Army Corps of Engineers may be required for any work below the mean high water line.

## **Aquaculture Activities**

### **47. Do I need a permit for certain new aquaculture activities?**

The DEP has created three new permits-by-rule for the placement of land-based upwellers and raceways, and the placement of predator screens and oyster spat attraction devices or shellfish cages in an area subject to a valid

shellfish lease pursuant to N.J.S.A. 50:1-23. To qualify for a permit-by-rule, the activity must meet certain standards and criteria. If the activity does not meet the criteria for a permit-by-rule, it may meet the criteria for a general permit. Please refer to N.J.A.C. 7:7-7.2(a)17, 18 and 19 for more information.

The DEP has established two new general permits for aquaculture activities. The first one is for commercial aquaculture activities which authorizes the construction and/or placement and maintenance of shellfish aquaculture equipment, including floating upwellers, shellfish rafts, racks and bags, lantern nets, and cages and the second general permit is for the placement of shell within shellfish lease areas. Please refer to N.J.A.C. 7:7-7.35 and 7.36 for more information.

## **Living Shorelines**

### **48. Do I need a permit to construct a living shoreline?**

The DEP has amended the coastal general permit for habitat creation and enhancement (Coastal General Permit 29) to include living shoreline activities conducted by specific State and Federal agencies, as well as living shoreline research projects conducted by a college or university. The DEP has amended the general permit to facilitate the establishment of a living shoreline that is one acre in size or less, unless the applicant is a Federal or State agency that demonstrates that a larger project size is necessary to satisfy the goals of the project. Please refer to N.J.A.C. 7:7-7.29 for more information.

## **Marinas**

### **44. What type of permit do I need to replace/rebuild or elevate a bulkhead at my legally existing marina?**

The DEP has amended its regulations to allow for the reconstruction and elevation of a bulkhead without the need for a permit as long as the new bulkhead is the same length and width as the previous legally existing bulkhead. If the bulkhead being replaced is a low profile bulkhead, as defined in N.J.A.C. 7:7, than the elevation of the bulkhead would require an Individual Waterfront Development permit. In addition, authorization from the Army Corps of Engineers may be required for any work below the mean high water line.

### **45. Do I need a permit to reconfigure my dock, wharf, or piers at a legally existing marina?**

The coastal emergency rules contain a new permit-by-rule for the reconfiguration of any legally existing dock, wharf, or pier located at a legally existing marina, provided these structures are not located within shellfish habitat, submerged vegetation habitat (SAV), or wetlands. The reconfiguration cannot result in structures located outside the area covered by an existing Tidelands instrument. In addition, the reconfiguration may not increase the number of boat slips, hinder navigation, or increase the total linear footage of docks or piers in the marina. Further, the docking structures must be configured in a way to minimize the water area covered and provide a minimum of 4 feet from all property lines. Please refer to N.J.A.C. 7:7-7.2(a)15 for more information.

### **46. What type of permit do I need to construct and/or install a pumpout facility and/or a pumpout support facility?**

The DEP has a new permit-by-rule for the construction and/or installation of a pumpout facility and/or pumpout support facility at a marina, boat yard, boat sales facility, yacht club, restaurant, boat ramp, or other waterfront facilities. The pumpout must discharge to a municipal or regional treatment plant, where practicable, or to a subsurface sewage disposal system or holding tank, with the waste being removed by a licensed septage hauler. Please refer to N.J.A.C. 7:7-7.2(a)12 for more information.

### **47. What type of permit do I need to construct support facilities at a legally existing and operating marina?**

The Department has amended existing coastal general permit 13 to allow storage buildings to be considered support facilities. In addition, the amended general permit reduces the setback requirement for buildings from 100 feet to 15 feet from a shore protection structure and 25 feet from the mean high water line where no shore protection structures are present. This amended general permit also provides that a Treatment Works Approval for a sewer line must be obtained only when required under the DEP rules governing Treatment Works Approvals at N.J.A.C. 7:7-14A. The amended general permit also eliminates the requirement to comply with the riparian zone rule. Please refer to N.J.A.C. 7:7-7.13 for more information.

### **48. Do I need a permit to dredge accumulated sand at my marina?**

The coastal emergency rules contain a new coastal general permit for dredging of material from a marina that was deposited as a result of a storm event for which the Governor declared a State of Emergency. This activity can be conducted under this general permit provided that the material is sand, or where the material is not sand, it is



temporarily disposed of in an existing upland confined disposal facility (CDF) located on the marina property until a final placement site is determined. In addition, the water depth in the area post-dredging cannot exceed the water depth prior to the storm event. Also, the area to be dredged is limited to the extent in which the material was deposited as a result of the storm event. Please refer to N.J.A.C. 7:7-7.34 for more information.

### **38. Do I need a permit to replace or repair any of the docks, pilings, boat lifts or bulkhead at my marina?**

A Land Use permit is not required for all structures listed above that legally existed prior to Superstorm Sandy if they are repaired or replaced in the same location and footprint. A Waterfront Development permit would be required if you are reconfiguring your docks. A land use permit is not required for the replacement of fixed docks that service pleasure vessels with floating docks provided they are in the same location and footprint. Note: These activities may require authorization from the Army Corps of Engineers.

A CAFRA permit is not required to fill sink holes or replace eroded material located upland of a bulkhead. If your marina is located along a tidal waterway, but outside of the CAFRA jurisdictional area this activity would be regulated by DEP. At this time you can apply for an emergency permit to fill any sink holes or replace eroded material located landward of your existing bulkhead and an Upland Waterfront Development permit would be required.

### **41. What type of development will trigger public access at my marina?**

- If a marina has no existing on-site public access and proposed activities include reconstruction, renovation and repair but no expansion, then no public access is required.
- If a marina conducts reconstruction with expansion, but it is less than 50% cumulative increase of impervious coverage, and there is no current public access on-site, then no public access is required.
- If a beach exists at a marina, then any type of reconstruction activity would require public access to the beach and use of the beach shall be provided.
- Any existing public access at a marina shall be maintained. If it is necessary to impact the existing public access in order to perform the proposed activities, equivalent public access shall be provided onsite.
- For a full copy of the recently adopted Public Access Rule visit: (need to include the link to the rule) or contact DEP at (609) 292-2953.

---

## **Tidelands FAQs as Related to Superstorm Sandy and Related Storm Events**

### **If my dock and/or other water structures were destroyed during the storm event and I intend to rebuild them, what steps do I need to take?**

No action is required for legally existing structures that are rebuilt in-place. If you wish to add structures or rebuild in a new location or configuration, you will need to submit a Tidelands license modification application. This application must include a current property survey and proof of an approved DEP Land Use permit.

### **If I obtain an approval (permit, emergency permit, etc.) from Land Use Regulation to replace my damaged bulkhead with a waterward bump out resulting in additional fill, what are the Tidelands requirements?**

A Tidelands license is required for a bulkhead extension. The fees associated with licensing bulkhead extensions are based on upland values and are, therefore, usually higher than the fees for docks and other water structures. These costs can be SIGNIFICANT and may offset any construction cost savings you may have gained as a result of selecting to extend the bulkhead.

You do have the option to purchase a bulkhead extension by way of a Tidelands grant. The cost of a grant also depends on the market value of the property. Once a grant is obtained, the bulkhead extension would no longer require a Tidelands license. **However, if you replace the bulkhead in the legally existing location, no license or grant would be required.**

### **If I do not intend to rebuild my dock and/or other water structures, what steps do I need to take?**

Assuming there is no licensable bulkhead on the property and the **entire** structure (this includes pilings) has been removed, the Tidelands license and its associated fees will be terminated upon request. To cancel the license, please

submit current photos documenting the absence of the dock and/or other water structures along with a written cancellation request to NJDEP Bureau of Tidelands Management, P.O. Box 420 Mail Code 501-02B, Trenton, NJ 08625-0420.

**If I currently have a license for a bulkhead extension and/or fill area and it no longer exists due to the storm events, what steps do I need to take if I plan to restore my property to its condition prior to the storm event?**

As long as the reconstructed bulkhead and/or fill area was legally existing prior to the storm events and is replaced in the same location it occupied before the storm event, no action is required. If the reconstructed bulkhead and/or fill area is placed in a different location, please contact the Technical Support Center at (609) 777-0454 to obtain information regarding permitting and tidelands requirements.

**If the size of my property has increased due to the storm event (due to sand deposition in front of your property), is this additional land area still claimed by the State of New Jersey?**

Yes. The state still lays claim to these lands as they existed prior to the storm event. An act of avulsion, which is defined as the loss or gain of lands bordering on the seashore by a sudden or violent action of the elements, does not in any way alter any rights of ownership.

**If the size of my property has decreased due to the storm event (due to wash out), does the State now take ownership of the now tidally flowed area?**

No. Since this water was created as a result of avulsion, the State does not claim ownership. The property owner maintains all rights of ownership that existed prior to the storm events and has the right to restore the land to its pre-storm condition.

**Will I be able to have my license expedited to allow for construction/reconstruction?**

Yes, the processing of all license and lease applications can be expedited as necessary. If you would like the Bureau to expedite your application, please call (609) 292-2573 or submit a request in writing to NJDEP Bureau of Tidelands Management, P.O. Box 420 Mail Code 501-02B, Trenton, NJ 08625-0420.

**How can I obtain copies of pertinent license information which may assist me in rebuilding, such as property surveys and license maps?**

In accordance with the Open Public Records Act, NJDEP makes its public records available through formal requests to the Department's Office of Record Access. Requests may be submitted in writing to NJDEP Office of Record Access, 401 East State Street, P.O. Box 420 Mail Code 401-06Q, Trenton, NJ 08625-0420 or online at [www.state.nj.us/dep/opra/opraform.html](http://www.state.nj.us/dep/opra/opraform.html).

**Are license holders that have been affected by the storm events still required to pay their annual Tidelands license fee?**

Yes, the yearly Tidelands license fees are still due. The Bureau of Tidelands Management acknowledges that many properties have been affected by the storm; however the state is obligated under N.J.S.A. 13 to collect rent on on all state occupied lands.