

## GUIDANCE FOR CODE OFFICIALS – DEP PRIOR APPROVALS AND OTHER ISSUES

**DEP Flood Rules** - On January 24, the Governor announced an emergency rule amending DEP's Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. Here is some very basic information on what these rules do and do not say.

- They effectively require use of the Advisory Base Flood Elevations (ABFE's) for anyone seeking to construct or to elevate a house right now.
- Elevation above base flood is required for new construction and for homes determined by the local floodplain administrator to be substantially damaged; these rules do not require the elevation of all existing buildings as they stand.
- In the case of homes determined to be substantially damaged, owners have up to four years to elevate the house. Owners are allowed to undertake work to render the house habitable in the meantime. As always, this work is subject to the requirements of the Uniform Construction Code, including the issuance of permits for any work undertaken to make a house habitable and inspections of this work. It is important to track these occupied houses to ensure that the requirement to elevate (a condition of the floodplain administrator's prior approval) ultimately is met.
- The DEP rules allow owners to elevate an existing house under a "permit by rule" (an automatic permit) as long as the building footprint is not increased by more than 300 square feet. Owners do not need to go to DEP to obtain a permit for a house that legally existed before Sandy.
- The rules DO NOT impact the need to obtain UCC permits.
- Below are links to a question and answer document posted on the DEP website and to the full text of the emergency rule itself:  
<http://www.state.nj.us/dep/special/hurricane-sandy/docs/abfes-faq-20130207.pdf>  
<http://www.nj.gov/dep/docs/20130124flood-hazard-emergency-rule.pdf>

***A note on "reconstruction"*** - *The DEP rules use the term "reconstruct," but the definition used in the DEP rules is different from the definition found in the Uniform Construction Code (UCC.) The DEP definition, as amended by the emergency rule, is below for your information. It includes some of the definition of substantial improvement/substantial damage from the National Flood Insurance Program rules. Reconstruction requires elevation, but it is allowed under the "permit by rule" provisions and does not require a separate DEP approval or permit.*

*"Reconstruct" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which 50 percent or greater of the structure is replaced and/or the size, shape or location of the structure is altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the reconstruction to the market value of the building as determined before the start of construction; where the percentage of replacement is 50 percent or greater, such reconstruction shall also constitute a substantial improvement as defined in this section. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being reconstructed to the total area of the structure.*

**DEP Coastal Area Facility Review Act (CAFRA)** – A State Coastal Area Facility Review Act (CAFRA) permit is not needed to reconstruct in place in the CAFRA area. A person may request a written determination from the DEP, which includes the submittal of an application, fee and specific information. A relocation of the footprint of the development laterally or landward which does not enlarge the footprint may also be exempt from CAFRA if the DEP determines that such relocation will result in less environmental impact than the in place reconstruction of the development. In this case, written approval from the DEP is required. (The full text of the CAFRA exemption for the reconstruction of a development damaged or destroyed in whole or in part, by fire, storm, natural hazard or act of God (N.J.A.C. 7:7-2.1(c)3), is included at the bottom of this document for your information. "Development" is defined very broadly in the DEP rules.)

**UCC Fees for Elevating an Existing House** - The elevation of an existing house is categorized as an addition under the rehabilitation subcode because it brings about an increase in the mean height of the highest roof of the structure. For additions, the fee typically is calculated based on volume. This does not necessarily make sense when the "addition" consists of pilings. For purposes of doing the fee calculation, the elevation of an existing house should be treated the same as the site construction associated with premanufactured construction and should be computed as a unit rate per \$1,000 based on the estimated cost of the work. In this case, the cost of the work should be limited to the construction of the pilings and should exclude the cost of lifting the house and placing it on the pilings. Again, this is similar to what is done for a premanufactured unit. The cost does not include the cost of moving the unit into place.

**Historic Preservation** - Projects receiving FEMA Public Assistance and Hazard Mitigation Grant Program funds will require review under Section 106 of the National Historic Preservation Act. The review will be conducted by FEMA in consultation with the New Jersey Historic Preservation Office. This review is a condition of the receipt of federal funding. It is NOT a Uniform Construction Code prior approval, however, it is useful for code officials to know something about this in order to inform the owners of historic buildings in the community. FEMA's rules (the National Flood Insurance Program rules) provide some flexibility on projects that affect buildings that are listed on, or eligible for listing on, the National Register of Historic Places. Online maps of New Jersey's historic resources are available at <http://depnet/gis/geoweb2.htm>. For help in using the online mapping, or for questions about the Section 106 review process, contact the Historic Preservation Office at 609-292-0061.

*Excerpt from DEP CAFRA Rules:*

*N.J.A.C. 7:7-2.1(c)3. The reconstruction of any development which was legally existing on and damaged subsequent to July 19, 1994 that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:*

- i. The enlargement or relocation of the footprint of the development; or*
- ii. An increase in the number of dwelling units or parking spaces within the development.*
- iii. A relocation landward or laterally may qualify for the exemption at (c)3 above if the Department determines, in writing, that such a relocation would result in less environmental impact than the in place reconstruction of damaged or destroyed development.*
- iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (f)2 below.*
- v. An increase in the area covered by buildings and/or asphalt or concrete pavement.*