



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF THE COMMISSIONER

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January 13, 2014

Timothy P. Crowley, Director  
U.S. Department of Homeland Security  
FEMA Region II  
Mitigation Division  
36 Federal Plaza, Room 1307  
New York, NY 10278-0002

Re: FEMA Comments on NJDEP Emergency Rulemaking

Dear Director Crowley:

This is in response to your letter dated October 10, 2013, which was received by the State on November 29, 2013, expressing concerns regarding certain recent amendments to New Jersey's Flood Hazard Area Control Act (FHACA) rules. These amendments were adopted through emergency rulemaking on January 24, 2013, to facilitate the safe and responsible recovery of the State's coastal areas after the widespread devastation of Superstorm Sandy.

The State has been working closely with FEMA and our local communities over the past year to facilitate sustainable recovery. One major collaborative accomplishment has been the above-referenced emergency rulemaking, in which NJDEP incorporated FEMA's best available flood data as presented in its advisory flood maps, as well as the subsequently released work maps and anticipated preliminary maps. This emergency rulemaking was a step forward during an exceptionally challenging time for our State in the wake of Sandy and was done to promote the health, safety and welfare of our residents and to foster intergovernmental cooperation. We look forward to such continued collaboration with FEMA and, in the spirit of this cooperation, invite you to reach out to us when questions arise regarding the State's building requirements as well as when opportunities present themselves to enhance our existing regulatory structure. We furthermore support FEMA's ongoing efforts to clarify its minimum standards as reflected in your recent correspondence.

In your letter, you express concern that New Jersey's FHACA rules are not consistent with the minimum standards established by FEMA under the National Flood Insurance Program (NFIP). However, as detailed below, the requirements of the FHACA rules are applied in concert with New Jersey's Uniform Construction Code ("UCC") which regulations incorporate NFIP standards. In all cases, these standards together meet or exceed the minimum standards of the NFIP for buildings.

The UCC, is overseen by the New Jersey Department of Community Affairs (NJDCA) and administered locally by municipal construction officials. As noted in your letter, the UCC is largely based on the International Code Series, the flood provisions of which are deemed by FEMA to be consistent with the minimum NFIP requirements for buildings. Given that all new, reconstructed, modified, substantially damaged and substantially improved buildings in New Jersey's flood hazard areas must meet the requirements of both the FHACA rules and the UCC, the more stringent standards of these requirements will always apply. Therefore, all new, reconstructed, modified, substantially damaged and substantially improved buildings in New Jersey meet or exceed the minimum standards of the NFIP.

Your letter also expresses concern that NJDEP's emergency rulemaking incorporates the use of wet flood-proofing for certain non-residential buildings that cannot feasibly be elevated or dry flood-proofed, which is not permitted under the NFIP. While elevating or dry flood-proofing buildings in many cases offers the best level of flood mitigation, it has been the State's experience that some buildings cannot possibly or practically be elevated or dry flood-proofed. This is of particular import in urban areas such as Hoboken and Jersey City, where a number of conjoined, multi-story buildings of stone or masonry construction were damaged during Superstorm Sandy. As there does not appear to be any economically viable method to elevate or dry flood-proof such buildings, the alternative of wet flood-proofing buildings was incorporated into the FHACA rules, in limited cases when no other feasible flood mitigation option is available. It should be noted that the State has on previous occasions invited FEMA to work together to develop alternate solutions in these limited cases where wet flood-proofing appears to be the only viable option.

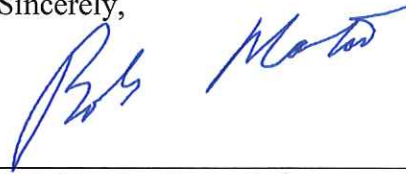
Additionally, previous correspondence from your office has noted that the minimum elevation for the lowest floor of Zone V buildings is measured differently under the FHACA rules and the UCC. Specifically, the definition of the lowest floor of a building under the FHACA rules refers to the top or walking surface of the floor, while the UCC refers to the lowest horizontal structural member of Zone V buildings. However, as noted above, all buildings in New Jersey's flood hazard areas are subject to both the FHACA rules and the UCC. Therefore, the more stringent of these rules will govern construction and minimum NFIP standards will in all cases be equaled or exceeded.

However, given FEMA's concerns as reflected in your correspondence, and in order to reduce potential confusion by the State's residents and implementing officials, NJDEP, in coordination with NJDCA, is reviewing its regulations, including the FHACA rules, to ensure consistency with the UCC and minimum standards of the NFIP..

In the same vein, and to address concerns previously raised by your office, it is important to note that NJDCA recently proposed regulatory amendments to the UCC. These amendments make specific reference to the need to comply with the requirements for flood resistant construction where the local flood plain administrator has made a finding that the proposed work constitutes a substantial improvement. This should help reduce confusion among residents and implementing officials and further ensure consistency with the minimum standards of the NFIP.

We appreciate FEMA's continuing commitment to the safety of New Jersey's residents and look forward to future discussions to further intergovernmental cooperation for the benefit of our constituents.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Martin", is written above a horizontal line.

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Bob Martin, Commissioner  
Department of Environmental Protection

Cc:

Jerome Hatfield, FEMA  
Bill McDonald, FEMA  
Roy Wright, FEMA  
Marc Ferzan, GORR  
Richard E. Constable, III, DCA