



# ALERT

## REBUILDING POST-SANDY PART 2: QUANDARY ADDRESSED; NEXT STEPS

By Thomas Daniel McCloskey, Carl A. Maio and Henry L. Kent-Smith

In our last Alert, we advised those property owners disaffected by Superstorm Sandy to take heed of the new “Advisory Base Flood Elevations” (ABFEs) that were released by the Federal Emergency Management Administration (FEMA) on December 15, 2012. Specifically, we focused on the quandary posed by application of the ABFEs to those property owners in designated flood hazard zones seeking to repair and rebuild their homes or commercial buildings in the aftermath of the storm where a “substantially damaged” determination had been made and issued, or was pending and expected, from the construction code official or other representatives of the engineering departments of a municipality.

Congress is on the brink of formally approving the “Sandy Relief” package. Once acted upon by the Senate this coming Monday, January 28, 2013, and thereafter signed into law by President Obama, the bill will yield an allocation and quick infusion of as much as \$30 billion to New Jersey for post-Sandy recovery and rebuilding efforts. It is anticipated that approximately 15 percent of that sum will likely be allocated for FEMA-sanctioned “Hazard Mitigation Grant Program” (HMGP) funding through the state to communities and, through them, to property owners seeking relief or financial assistance to rebuild in accordance with the new standards.

As a result, rather than wait the 18 to 24 month period anticipated for FEMA to issue new “Flood Insurance Rate Maps” (FIRMS) for the new flood hazard areas (which will be used to set flood insurance premiums) and that will incorporate revised Base Flood Elevations (BFEs) based on the ABFEs, the Christie Administration announced

yesterday, January 24, 2013, that it will be adopting the recently released ABFE maps as the new **statewide** standard for rebuilding. Specifically, on January 24, 2013, Commissioner Bob Martin of the New Jersey Department of Environmental Protection (NJDEP) issued a “Statement of Imminent Peril to Public Health, Safety and Welfare Mandating Adoption of Amendments to the Existing Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 by Emergency Procedures.” The NJDEP simultaneously released its proposed “Emergency Rule Amendments” and “Concurrent Proposed Amendments” to the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The proposed rule amendments will now proceed through public hearing and the formal rule-making process under the Administrative Procedures Act, and the “Official Version” of each will be that which is accepted (approved) for publication by the Office of Administrative Law to be published in the February 19, 2013 New Jersey Register.

**Note, however, that “Emergency Rule Amendments” insofar as they require compliance with FEMA’s recently released ABFE’s, took effect immediately on January 24, 2013. As the NJDEP Commissioner noted, in pertinent part, in his statement:**

Recognizing the potential for severe weather events, and the need to timely rebuild damages structures within New Jersey’s coastal communities on a monumental scale, emergency regulations are necessary to facilitate the repair, reconstruction and elevation of structures in flood hazard areas. These emergency amendments provide options to utilize 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 for New Jersey's coast.** The amendments also incorporate FEMA mapping issued as final (effective) that is developed in partnership with the Department such that it depicts the Department's flood hazard area design elevation and floodway limit; allow flood-proofing measures to be used instead of elevating structures in certain limited situations; and ensure consistency between the Department's standards for elevating buildings in the flood hazard area with the building standard of the Uniform Construction Code promulgated by the Department of community Affairs. These amendments will help minimize flood damage potential throughout the flood hazard areas of the State and help protect New Jersey's residents from the deleterious impacts of flooding.

I therefore find that an imminent peril exists to the health, safety and welfare of the citizens of this State that justifies the adoption of emergency regulations pursuant to N.J.S.A. 52:14B-4(c). **These emergency rules will ensure that buildings and other structures rebuilt in our battered coastal communities in the wake of Superstorm Sandy are constructed, reconstructed and repaired to resist future severe flood events in accordance with the best available flood mapping and other standards incorporated in this emergency adoption, thereby mitigating future flood damage and protecting New Jersey's lives and property.**

See also the Second Statement from Governor's Office "[Governor Christie Outlines Regulations to Allow Residents and Businesses to Rebuild Faster, Stronger and Safer from Hurricane Sandy.](#)"

Accordingly, we again advise property owners to exercise caution and patience. The quandary previously raised has now been definitively addressed at the state level, and yet this clear lesson continues: before attempting to rebuild, it is absolutely **imperative** that property and business owners consult their legal, engineering and construction professionals, in conjunction with their local government officials, to determine the local building code, permit, and mandatory elevations requirements, as well as methodologies that are approved for repairing, retrofitting and/or rebuilding. Further, several rebuilding and retrofitting techniques and methodologies have been developed, and others are currently under development, that will meet the intent and expectations of the new emergency rules, the proposed rule amendments (once adopted) and FEMA requirements. Understanding those methodologies and the costs associated with them is critically important to any decision property owners must make.

As we urged before and reiterate, only through proper professional guidance can the disaffected property owner avoid unwittingly punching a fast-track ticket for a ride to an economic no man's land. At the very least, with such guidance, property owners are now better positioned to make informed decisions on whether to rebuild, determine what (if any) economic resources will be available to attain compliance at the new standards, determine what the economic consequences will be in the absence of such compliance, or, worst case, retreat.

If you have any questions regarding the subject matter of this Alert please feel free to contact Thomas Daniel McCloskey at 609.896.457 or [tmccloskey@foxrothschild.com](mailto:tmccloskey@foxrothschild.com), Henry L. Kent-Smith at 609.896.4584 or [hkent-smith@foxrothschild.com](mailto:hkent-smith@foxrothschild.com), or Carl A. Maio at 215.918.3616 or [camaio@foxrothschild.com](mailto:camaio@foxrothschild.com).



Fox Rothschild LLP  
ATTORNEYS AT LAW

Attorney Advertisement

© 2013 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact [marketing@foxrothschild.com](mailto:marketing@foxrothschild.com) for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.