In Post-Sandy Moves, New Jersey Adopts FEMA Flood Maps in Emergency Rule

NYC Follows with Executive Order on Flood Elevation Standards

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On January 24, in a move designed to speed recovery from Superstorm Sandy, New Jersey adopted new advisory base flood elevation maps issued by the Federal Emergency Management Agency (FEMA) to aid in recovery from the storm, and amended its flood hazard rules to apply the new maps to the rebuilding efforts. On January 31, New York City Mayor Michael Bloomberg signed Executive Order 230, also acknowledging the new FEMA maps and allowing for those in the hardest-hit areas to proceed with rebuilding notwithstanding conflicts with certain current zoning restrictions.

FEMA had been in the process of restudying areas of the New Jersey and New York coastline when the devastating storm hit. The pre-existing maps were old and outdated. While the new maps had not yet been submitted to local and state officials for review and comment, or formally adopted by FEMA, the agency decided to release the maps on an advisory basis. In mid-December 2012, FEMA released the advisory maps for many of the New Jersey coastal areas affected by the flooding. Last week, FEMA began releasing the advisory maps for New York.

New Jersey adopted the advisory maps by way of emergency rulemaking and adoption by the New Jersey Department of Environmental Protection (DEP). The rule amends the state's Flood Hazard Area Control Act, under which DEP had already adopted new regulations in 2007 that had imposed a significantly more stringent regulatory scheme for development in flood hazard areas, and for obtaining permits for that development.

Flood hazard areas (New Jersey's regulatory term for a flood plain) are determined by reference to 100 year floods plus an additional allowance.

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DEP has determined that in a majority of cases, the FEMA advisory maps show the 100 year flood elevations to be higher than the maps that have been in use, and that in certain cases, the new elevations are significantly higher.

There is a general prohibition against development within a particular part of the flood hazard area known as the floodway, and significant constraints in the area known as the flood fringe, such as that structures must be built at certain elevations in order to ensure the safety of the structure and its occupants.

In the emergency rule, DEP provides for the use of the FEMA advisory maps to determine the required design flood elevations for reconstruction and for new construction. Among other things, the rule also allows those who are reconstructing or elevating their buildings to at least one foot above that elevation to do so by application of a so-called "permit-by-rule" rather than having to apply for, pay for, and wait for an individual permit before commencing work. There is also allowance in certain cases for so-called "wet" flood-proofing of portions of non-residential buildings. The rule presents additional conditions for construction of new buildings, and for substantial improvement of existing habitable buildings that have been damaged by fire, flood or other natural disaster.

In the New York City Executive Order, the City noted that in abiding by the new FEMA design flood elevation standards for rebuilding, home and business owners would be facing conflicts with current zoning height restrictions, and that current zoning laws would limit reconstruction and continuation of retail and other non-conforming uses in residential districts. The City also observed that it would take too much time to adopt amendments to the zoning laws to allow for a speedy recovery effort. Thus, for the most flood-prone areas of the City, the Mayor suspended certain height and other restrictions to foster rebuilding efforts.

New Jersey, New York City and FEMA officials also expressed hopes that in following the new standards, business and residential owners would be able to limit their costs for obtaining future Federal flood insurance.

For additional information, please contact the author of this Alert and Chair of our Environmental Department, **David B. Farer.**