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Floodplain Communicator Summer 2021

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Floodplain Communicator



New Jersey National Flood Insurance Program Coordinator's Office

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Figure 1: From Top: Before and After Elevation Pictures of Bay Head Yacht Club. During Superstorm Sandy, this historic structure had more than 3 feet of water on its first floor. With private funding, the Bay Head Yacht Club was elevated 8.5 feet. There was no change in the building footprint or the aerial coverage of the water as a result of the elevation.

Welcome!

Welcome to the summer edition of the Floodplain Communicator, published by New Jersey's National Flood Insurance Program Coordinator's Office! If you have not already, please update your subscriber preferences page and answer the questions in our survey. This will help us provide you with information tailored to your interests or location. Follow this link to [update your subscriber preferences page](#).

Two Remaining Trainings from the DEP

During the past couple of months, the DEP has been offering a series of trainings on Administering a Floodplain Ordinance, the Local Design Flood Elevation Worksheet and on the Model Flood Damage Prevention Permit. There are two remaining trainings being offered through New Jersey Association of Floodplain Managers on the Local Design Flood Elevation Worksheet and the Model Flood Damage Prevention Permit. If you are already a member, follow the links below for training descriptions and how to register. If you are not a member and are interested in becoming one, [follow this link](#).

- [July 16th 12:00 nm - NJAFM Model Flood Damage Prevention Permit Roll Out](#)

[July 30th 12:00 pm - NJAFM Local Design Flood Elevation Worksheet Training](#)

- [July 30th 12:00 pm - NJAFM Local Design Flood Elevation Worksheet Training](#)

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Post Superstorm Sandy Increased Cost of Compliance Deadline

The October 29, 2021 deadline for utilizing Increased Cost of Compliance funds to mitigate structures that were substantially damaged during Superstorm Sandy is fast approaching. ICC funds are available to National Flood Insurance Program policy holders after flood events in which insured structures experienced damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. In 2012, the deadline for using the \$30,000 in ICC funds was six years but was extended to nine years to the October 29, 2021 deadline.

By the 2021 deadline, property owners should have submitted their required documentation, including an elevation certificate for the elevated structure, to their insurance adjuster for reimbursement. Owners of non-residential property may also use ICC funds to floodproof structures and would also have to provide a floodproofing certification. In instances where property is bought as part of a Sandy buyout program, the ICC funds may be assigned to the buyout program or municipality to fund structure demolition. Another extension of the statewide FEMA ICC deadline for Sandy-damaged properties is considered unlikely.

Increased Cost of Compliance Extension and Fraud Issues

Property owners who have applied for Increased Cost of Compliance benefits and cannot complete mitigation work and pass final inspection before the October 29, 2021 deadline, can request a waiver of the date of completion from their insurance carrier, but must provide documentation as to the reasons why a waiver should be granted.

Property owners may not transfer or assign ICC benefits to another party, such as through a sales transaction, unless the prospective buyer is the local community or the state and is purchasing the property under a FEMA-funded buy-out program.

The insurance carrier may also take action after the October 29, 2021 date if concealment or fraud is suspected. According to page 14 of the Standard Flood Insurance Policy found in Appendix A of the [2021 FEMA NFIP Insurance Manual](#) policies can be voided, have no legal force or effect, cannot be renewed, and cannot be replaced by a new NFIP policy if a policy owner, another insured policy owner, or an insurance agent has at any time:

1. Intentionally concealed or misrepresented any material fact or circumstance;
2. Engaged in fraudulent conduct; or
3. Made false statements; relating to this policy or any other NFIP insurance.

In fraud or concealment has been committed, policies can be declared void as of the date of any wrongful acts. Fines, civil penalties and imprisonment under applicable Federal laws may also be pursued.

More information on the ICC process is available on [FEMA's Increased Cost of Compliance website](#).

New Jersey's Office of the State Comptroller also has established a [Sandy Fraud Prevention Hotline](#) to report any suspicion of fraudulent activity, theft, waste, bribes or kickbacks, and unethical or illegal conduct. Tips can be submitted anonymously through this hotline at 1-855-OSC-TIPS (1-855-672-8477) or to

comptrollertips@osc.state.nj.us. All communications will be kept confidential.

Temporary Certificate of Occupancy Deadline

Owners of structures that were repaired for temporary occupation under a Temporary Certificate of Occupancy issued by the local Construction Official pursuant to the Uniform Construction Code must adhere to the timeline listed in the Temporary Certificate of Occupancy under which "occupation" could be maintained before mitigating their structure unless an extension of the timeline was requested from the Construction Official. If a Temporary Certificate of Occupancy has been issued for a substantially damaged property that has not been mitigated to meet Federal, State, and local regulations and has not received a final Certificate of Occupancy, the property should be sold "as is" pending the completion of the deferred mitigation activities.

Substantial Damage Determinations and Floodplain Permit Requirements After October 29, 2021

The passing of the Increased Cost of Compliance deadline does not affect the Floodplain Administrator's substantial damage determination. Substantial damage determination records and correspondence, like all other floodplain management records, are the responsibility of the local Floodplain Administrator and must be kept in perpetuity by the National Flood Insurance Program community. Communities should consult legal counsel to determine the legality of providing public access to substantial damage letters of unmitigated properties.

Prior to the passing of the October 29, 2021 ICC deadline, owners of unmitigated substantially damaged structures should be notified by the Floodplain Administrator in a certified letter that they must consult with the local Construction Official and Floodplain Administrator if the structure will not be mitigated by the deadline. This letter should reference the initial substantial damage letter and request that the property owner negotiate and finalize a reasonable and achievable compliance schedule with both the Floodplain Administrator and the Construction Official prior to the ICC deadline. The date of this letter should be memorialized in the violations section of the community's flood damage prevention permit. (For an example of a violations section, please see the [Model Flood Damage Prevention permit](#)).

After the deadline, the structure will be considered in violation of the community's Flood Damage Prevention Ordinance unless a mutually agreed upon, reasonable and achievable compliance schedule outlining mitigation milestones towards achieving a final Certificate of Occupancy and final sign-off on the Flood Damage Prevention Permit. A reasonable compliance schedule outlines the end date by which the property owner's compliance plan for structure mitigation results in either the elevation, demolition, floodproofing/retrofitting, or relocation of the structure and all applicable permit documentation supporting mitigation completion has been received and approved by both the Floodplain Administrator and the Construction Official. An achievable compliance schedule should identify milestones for the finalization of plans for site development activities (i.e. activities related to demolition, structure modification, site redevelopment, and structure relocation including any State-required certifications by a registered design professional), the receipt of all identified and applicable Federal, State, and local permits, project construction and/or demolition completion dates, and project closeout documentation submissions. The compliance schedule proposal should also include a certification that the property owner has the funds available to complete the proposed project milestones by the compliance schedule end date. Both the Construction Official and the Floodplain Administrator will evaluate and provide comments on the proposed compliance schedule as part of the negotiation process and work with the property owner to finalize the compliance schedule. It is recommended that communities consider developing a template to include with their certified letters to guide property owners in providing the information necessary for negotiating a reasonable and achievable compliance schedule.

If a reasonable and achievable compliance schedule cannot be negotiated and implemented before the October 29, 2021 deadline and/or compliance schedule milestones are not achieved after the October 29, 2021 deadline, the property will be considered in violation of the community's Flood Damage Prevention Ordinance and the municipality can take actions under N.J.S.A 40:49-5 or through N.J.A.C. 5:23, as applicable to address structure mitigation. The Flood Damage Prevention Permit should remain open until the structure is mitigated.

As applicable to all structures with violations of NFIP regulations, if a community has undertaken all enforcement actions available through local and State authorities to achieve compliance, and the violation has not been corrected, the community may, as a last resort, request that the structure be declared uninsurable through Section 1316

of the National Flood Insurance Act of 1968.

Variations to Post-Superstorm Sandy Substantial Damage Determinations

By National Flood Insurance Program regulation, variations to a community's substantial damage regulations contained in the community's Flood Damage Prevention Ordinance may only be given to elevation and floodproofing mitigation requirements structures that qualify for State and Federally listed structures at the discretion of the local Floodplain Administrator. More information on this topic is available below in the [Historic Structures, Adaptation Planning, and Mitigation Guidance for Historic Properties](#) section of this Newsletter. Variations for hardship under the NFIP must be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations for non-historic structures, physical handicaps, personal preferences, or the disapproval of one's neighbors cannot qualify as an exceptional hardship under the NFIP because these problems can be resolved through other means without the granting of a variance.

Substantial damage and improvement determinations are a statutorily-required duty of a local Floodplain Administrator as part of a community's agreement to enforce the National Flood Insurance Program regulations 44 CFR 59 and 60. However, variations related to a Floodplain Administrator's substantial damage decision-making may be appealed to the body, generally a Planning or Zoning Board, designated to hear variations (or sometimes referred to as appeals) in the local Flood Damage Prevention Ordinance. For efficiency after Superstorm Sandy, some appeal bodies with extensively damaged areas also established a working group to make recommendations to the appeal body. To guide these determinations and inform appeal bodies on the particulars of assessing damage and determining market valuation after any event triggering 50% substantial damage thresholds, FEMA has provided extensive guidance in the [Substantial Improvement / Damage Desk Reference Guide \(FEMA P-758 – May 2010\)](#).

Recently, some purchasers or owners of substantially damaged properties have contested Superstorm Sandy-related Substantial Damage Determinations to their local Floodplain Administrator. Generally, these requests have centered around how market valuation was determined. Because these determinations appeal a Floodplain Administrator's decision-making, this request should be made to the appeal body as a formal variance. Depending upon the municipality's established post-Sandy substantial damage process and the opinion of legal counsel, the appeal body can decide to either hear or decline the variance request. If a request to hear the variance is granted, it is recommended that the appeal body also require documentation from the applicant including but not limited to the type, cost, and extensiveness of repairs performed after Superstorm Sandy including the fair market cost of labor to fully evaluate the percentage of substantial improvement to the structure based upon the contested market value. The Floodplain Administrator should also provide a recommendation for approval or denial to the appeal body which may include but is not limited to the substantial damage process in place at the time, the market valuation used, the value of all construction permits obtained, an evaluation of Ordinary Maintenance and Minor Work projects performed under the Uniform Construction Code (see N.J.A.C. 5:23-1.4 with specific conditions listed as 2.7 and 2.17A), an evaluation of labor costs, tax assessment photographs, and the high water marks on and damage to nearby structures.

It should also be noted that FEMA's Substantial Damage / Substantial Improvement Desk Reference Guide states that *"an owner may appeal the use of assessed value, but the burden of proof can be placed upon the applicant who can be required to submit an independent professional property appraisal that is prepared by a qualified appraiser."* Because of the time elapsed and the technical nature of determining a valuation dating back to 2012, it is suggested that appeal bodies also request a report from the municipality's appraiser.

Enforcement of Substantial Damage and Improvement of Abandoned or Neglected Flood-Damaged Properties

In situations where structures were abandoned and/or not habitable after the Superstorm Sandy, market valuation of these properties significantly declined due to neglect and these structures were and can be sold for prices significantly lower than nearby habitable but non-elevated structures. Increases or decreases in a structure's market value from 2012 to 2021 values also do not affect the substantial damage determination issued after Superstorm Sandy for these structures because determinations were made using the valuation data just prior to the time of damage.

All construction work on these structures must be evaluated by the Floodplain Administrator to ensure that the only improvements undertaken are those to correct existing violations of State or local health, sanitation, or code enforcement officials which are the minimum necessary to assure safe living conditions. The determination of a "minimum necessary improvement for safe living conditions" must be made jointly by the local Floodplain Administrator and the local Construction Official. Work not related to habitability including that allowed pursuant to a Temporary Certificate of Occupancy does not eliminate the requirement that the substantially damaged structure be mitigated as required by the property's substantial damage letter.

Property owners and prospective property owners should be advised that the Floodplain Administrator is statutorily required to review improvement costs for substantial improvement thresholds during the issuance of a Flood Damage Prevention permit including items that constitute Ordinary Maintenance and Minor Work under the Uniform Construction Code. The list of regulated improvements includes but is not limited to replacements of roofing, siding, interior finishes, kitchen cabinet, plumbing fixtures and piping, HVAC and air conditioning equipment, exhaust fans, built-in appliances, and electrical wiring. The [FEMA Substantial Improvement / Damage Desk Reference Guide \(FEMA P-758 – May 2010\)](#) can be consulted for a more inclusive list and definition of what improvements must be evaluated.

A system for consistent enforcing and recordkeeping is key to managing substantially damaged properties and limiting unmitigated properties from being passed along to unsuspecting new owners. Documenting unsafe living conditions and regularly assessing corresponding declines in structure market value after a flood event from mold, decay, or abandonment with the tax assessor helps enforce the mitigation regulations necessary for communities to successfully adapt to climate change and rising sea levels. This consistent enforcement and valuation reassessment can deter property speculators from disputing local substantial improvement cost determinations and, more importantly, from profiting from an unmitigated property that is susceptible to repeat flooding at the expense of the new property owner. It also requires speculators and prospective owners to consider the cost of mitigation as a cost of ownership. If the property is determined to be an unsafe structure, the community may also follow the process prescribed in the Uniform Construction Code, N.J.A.C. 5:23-2.32 to require structure repair by the property owner, and if necessary, perform the repairs and seek recovery through a construction lien.

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Figure 2: This image shows an historic house that was damaged during Superstorm Sandy. While preserving historic structures for future generations is so important many towns in New Jersey, this particular structure was unable to be saved. Source: NJ HPO/FEMA

Introducing a Substantial Damage Plan Template for NFIP Communities

The DEP's new Substantial Damage Plan Template for NFIP Communities is a plan that everyone hopes will "sit on a shelf" and never be needed. However, [New Jersey's Climate Change Resilience Strategy](#), predicts a 50% chance of a 1.4 foot increase in sea level rise by 2050 and predicts more frequent, more intense precipitation events that will redefine the 100 year/1% annual chance base flood event. Implementing a Substantial Damage Plan clarifies substantial damage and improvement decision-making and provides a path forward after a disaster. It also helps communities assist property owners with consistent communication and predictable floodplain management practices that can speed recovery after a flood event.

Substantial damage planning was a requirement of FEMA's grant with the DEP to focus on improving compliance statewide. It has also been introduced as a new opportunity for communities to participate in FEMA's [Community Rating System](#). This plan was developed with

for earning points in [FEWAS Community Rating System](#). This plan was developed with the advice and review by interested floodplain administrators, planners, engineers, and public sector stakeholders. Four meetings were held with this group to gather knowledge from past experiences and identify useful resources that may not have been available after disasters in the past. Drafts of the template were also shared for comment.

The sections of the plan follow the steps of the Community Rating System credit for the development of a Substantial Damage Management Plan, but the plan was written to be utilized by any community and not just ones in the Community Rating System. These sections include assessing the community's vulnerability to substantial damage, assembling a team for the management of substantially damaged properties, identifying post-event actions the community can take, building a property database, identifying pre-event actions for the community to prepare, and a schedule for plan implementation and updates.

As mentioned, this plan can be used by communities in the Community Rating System and those that are not. The towns will need to fill out this template, create a database and maps of the special flood hazard area, and adapt sections, letters, and other materials to fit their community's specific needs. Community Rating System communities will need to do an annual review of the plan, update it, and share with elected officials in order to maintain the credit being offered. It is recommended that towns not in this program do the same review, updates and sharing of the plan so that they can be educated and prepared.

A link to download the New Jersey Substantial Damage Management Plan Template can be found on [the DEP Bureau of Flood Engineering website here](#) under the category 'Local Floodplain Management Resources'.

The DEP would like to acknowledge the stakeholders who participated in this process and provided comments on document drafts: Robert Austin, Christine Bell, Ryan Bryski, Garret Byma, Neil Byrne, Dennis Dayback, Scott Duell, Paul Dietrich, Bill Doolittle, Jason Fenn, Louis Rico Fischer, Tom Flynn, Vito Gadaleta, Jim Galantino, Hector Gonzalez, Pamela Hilla, Chanelle LaCross, Marianne Luhrs, Jennifer McCulloch, Paul Osman, Tanya Rohrbach, Jim Rutala, Jillian Stokley, Edward Striedl, Christopher Testa, Rosa Torres Verges, Courtney Wald-Wittkop, Dana Webb, and Jamison Zimmerman.

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Figure 2: This image was taken during the elevation of the Bay Head Yacht Club, an historic structure, after it was substantially damaged during Superstorm Sandy.

Historic Structures, Adaptation Planning, and Mitigation Guidance for Historic Properties

Nearly 400 years of development along New Jersey's waterways and floodplains can be experienced by visiting New Jersey's historic districts and historic structures. The pictures of the Bay Head Yacht Club elevation project at the beginning of this newsletter and above illustrates the importance of preserving unique water-dependent architectural styles in a way that enhances economic development, reduces flood risk, and reduces flood insurance premiums. When historic structures in special flood hazard areas are substantially damaged by flood, fire, or other hazard, they must be

mitigated by elevating, retrofitting, buyouts, or relocations just like other structures in a floodplain. When severe damage or future risk make elevation or retrofitting structurally impossible, historic structures should be saved for future generations by pursuing a combination of a buyout and relocations to higher ground. Demolition of historic structures should be reserved only for those structures too damaged to be saved or relocated.

When full mitigation is not an option, only structures that qualify for listing on Federal and State registries can be given a variance according to National Flood Insurance Program and Uniform Construction Code rules. Unfortunately, partial mitigation activities will not significantly lower insurance premiums for any structure that receives a variance because the flood risk has not been fully mitigated.

With the increased frequency, intensity, and duration of precipitation events and a 50% probability of 1.4 feet of sea level rise by 2050, many of New Jersey's historic structures are even more vulnerable to flood risk than when they were constructed. Many of these properties are publicly owned. Municipalities should consider developing an adaptation plan for their historic structures as part of a comprehensive Historic Preservation Master Plan Element and to avoid future flood damage and to reduce insurance premiums. Municipalities should also consider allocating or setting aside mitigation funding annually to implement their historic structure adaptation plans.

To assist owners of historic properties, [DEP's Historic Preservation Office](#) has developed a two-volume guidance document to better inform adaptation planning. [The Flood Mitigation Guide for Historic Properties](#) explains the mitigation options available to local planners, local officials, and historic preservation advocates so they can make informed choices. [The Elevation Design Guidelines for Historic Properties](#) provides guidance to members of local historic preservation commissions and private homeowners on how historic properties elevations can be accomplished in a manner that is sensitive to the character of those properties. This volume also contains illustrated case studies of the elevation of different historic property types found in NJ.

[The DEP's Office of Historic Preservation website](#) provides additional historic preservation resources including [LUCY](#), New Jersey's Cultural Resources GIS viewer, which can be consulted to identify listed properties.

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Verifying the Mitigation of Repetitive Loss and Severe Repetitive Loss Properties

FEMA has a new process in place for submitting any corrections that a community needs to make to its repetitive loss list, using the Repetitive Loss Update Worksheet, also known as the AW-501. It can be downloaded from the FEMA website. Historically, CRS communities submitted to the Insurance Services Office, Inc. (ISO) corrections to their repetitive loss properties, such as duplicate listings, address corrections, verified mitigation efforts, and incorrect community identification numbers. ISO is no longer processing these corrections, as FEMA has brought this task in house. All corrections are now to be sent directly to FEMA at NFIPUnderwritingMailbox@fema.dhs.gov.

Below is guidance as outlined in the Flood Insurance Manual. Documentation required to correct or update a property's prior loss information includes but is not limited to the following:

- **Invalid Loss History Association**—Documentation that shows:
 - Incorrectly linked addresses and/or losses; or
 - A second address added to a Property Locator Record.
- **Property Value Updates**—The property value is based on market value, which must be shown on one of the following documents:
 - Property tax assessment; or
 - Property appraisal.
- **Mitigation Action**
 - Elevation Certificate based on finished construction of the new or improved building;
 - Color photographs of the building before the improvement;

- Color photographs of the building after the improvement;
- Photographs of the flood vents/openings (if applicable);
- Source of funding for the mitigation action (state, local, or individual);
- Demolition permit (if the building was demolished and rebuilt);
- Building permit (if the building was elevated or rebuilt); and
- In Zone B, C, or X, a signed statement from a community official that shows mitigation was approved by the community.

Required documents should be mailed to:

NFIP Bureau and Statistical Agent, Attn: Underwriting
8400 Corporate Drive, Suite 350
Hyattsville, Maryland 20785,

or sent via email to NFIPUnderwritingMailbox@fema.dhs.gov.

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Obtaining Severe Repetitive Loss and Repetitive Loss Data for your Municipality

If a local Floodplain Administrator is interested in obtaining a copy of their community's RL and SRL properties to begin this process or to use the list for planning purposes, a request must be made in writing on the municipality's letterhead and signed by the mayor. The municipality will be required to sign an Information Sharing Access Agreement with FEMA to protect Personally Identifiable Information associated with this list. For more information on this, please contact the Region II Insurance Representative, [Marianne Luhrs](#).

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