

# ENVIRONMENTAL REVIEW RECORD

## Tier 1 of a 2-Step Tiered Environmental Assessment

### Project/Activity Information, Executive Summary, Determinations, and Certification:

Project Name: New Jersey Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program and Small Rental Properties Program

Project Description: Assist single-family homeowners and owners of small rental properties (1 to 4 residential units within a building) in achieving safe and compliant housing that meets minimum property standards through reconstruction, rehabilitation, elevation and mitigation.

Types of properties targeted: Single-family homes and small rental properties (1 to 4 units in a building)

Project Location: Ocean County

Project Funding Program: Community Development Block Grant Disaster Recovery (CDBG-DR)

Project Loan or Grant Number: B-13-DS-34-0001

Project Total Development Cost (provide best estimate): \$1.8 billion

Project HUD assistance: \$670,000,000

Grant Recipient: N.J. Department of Community Affairs (DCA)

[24 C.F.R. 58(a)(5)]

Grant Recipient's Address: 101 South Broad Street, PO Box 800, Trenton, NJ 08625-0800

Project Representative: Stacy Bonaffons, Assistant Commissioner, Sandy Recovery

Project Representative's Telephone Number: (609) 292-3647

Responsible Entity (RE): N.J. Department of Community Affairs

[24 C.F.R. 58.2(a)(7)]

Certifying Official: Commissioner Richard E. Constable, III

[24 C.F.R. 58.2(a)(2)]

### **Statement of Purpose and Need for the Proposed Action**

[40 C.F.R. 1508.9(b)]

The State of New Jersey was included in the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) program pursuant to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2, approved January 29, 2013). On October 29 2012, Superstorm Sandy made landfall over the New Jersey coast. The storm surge inundated and severely affected the State's shoreline from Cape May to Raritan Bay, along the Hudson River, and on the estuaries connecting to Raritan Bay and Newark Bay. Other overland flooding, wind damage and an ensuing snowstorm further damaged these communities as well as other communities throughout New Jersey. In particular, communities within Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties suffered substantial real estate and public infrastructure damage. These nine counties were identified by HUD as the most impacted and distressed counties within New Jersey. This environmental assessment addresses activities in Ocean County only.

The purpose of the proposed action is to assist residents and owners of small rental properties in Ocean County whose homes or rental properties were damaged or destroyed by Superstorm Sandy and the subsequent snowstorm. The project is needed to help provide adequate housing for residents of these homes and small rental properties.

### **Description of the Proposed Action**

(Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 C.F.R. 58.32, 40 C.F.R. 1508.25])

The State of New Jersey is proposing to use CDBG-DR funds to assist single-family homeowners and owners of small rental properties (1 to 4 residential units within a building) in achieving safe and compliant housing that meets minimum property

standards through reconstruction, rehabilitation, elevation and mitigation. Funds will be provided through the Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program and the Small Rental Properties Program.

The best available data suggests that 14,315 homes and small rental properties in Ocean County may seek funding through these programs. Both the funding and the number of assisted homeowners could increase substantially.

In the initial phase of the RREM Program, 70 percent of the funds will be allocated to low-to-moderate income (LMI) households. Funds available for the RREM Program will be capped at \$150,000 per residential structure. The program will prioritize homeowners within the nine most impacted counties; first priority will be given to homeowners whose homes suffered “substantial damage” as determined by New Jersey floodplain managers. The funds will be made available as grant awards to eligible homeowners for activities necessary to restore their storm-damaged homes.

In the initial phase of the Small Rental Properties Program, 100 percent of the funds will be allocated to LMI households. Grants will be capped at \$50,000 per residential unit. The program will prioritize rental properties that were significantly damaged during the storm. Priority will be given to owners wishing to rehabilitate their properties, properties serving special needs populations, and properties in need of remediation for mold. Although the Small Rental Properties Program may provide funds to owners of rental units with more than four units, this environmental assessment covers only rental properties with up to four units.

The RREM and Small Rental Properties Programs will fund activities necessary to restore storm-damaged homes, including rehabilitation, reconstruction, elevation and/or other mitigation activities within the disturbed area of the previously developed parcel.

Reconstruction is to assist owners of homes and small rental properties that were so severely damaged as a result of the storm that repair is not feasible or would not be cost effective. When applicable, the completed reconstructed home will be built to the 2009 Residential International Code and will meet the energy efficiency guidelines of the U.S. Environmental Protection Agency (EPA)’s Energy STAR program.

Rehabilitation is to assist owners of homes and small rental properties that were damaged as a result of the storm, but not so severely damaged that reconstruction is required. The rehabilitation must result in a housing unit that meets minimum property standards, the State of New Jersey’s Uniform Construction Code, and the HUD Office of Community Planning and Development’s Green Building Retrofit checklist, when applicable.

Elevation and mitigation are to assist owners of homes and small rental properties whose properties were affected by the storm, but who do not request reconstruction or

rehabilitation aid. Elevation activities would involve, for non-historic structures, raising the building to at least one foot above the highest applicable State or Federal Emergency Management Agency (FEMA) elevation level. Mitigation would involve structural and non-structural measures meant to limit the impacts of future natural disasters.

The above project description applies to the overall project. DCA as the Responsible Entity has determined that this project will be reviewed in a tiered environmental assessment. The specific addresses of homes and small rental properties to be rehabilitated, reconstructed, elevated or mitigated are not known at this time because the owner identification process is ongoing. Therefore, under 24 CFR 58.15 (Tiering) and 24 CFR 58.32 (Project Aggregation), DCA will use a tiered approach in combining similar work into geographic as well as functional aggregation packages for the environmental review.

The following Environmental Assessment (EA) serves as the Tier 1 environmental compliance document for the proposed RREM Program and a portion of the Small Rental Properties Program, as explained above, for Ocean County. Applying the tiering rule gives DCA the ability to aggregate work on individual project sites into categories of activities having similar geographic and/or functional environmental attributes.

Documentation of site-specific environmental issues requiring individual evaluation or additional agency consultation will be compiled separately. Site-specific review is also referred to as "Tier 2 EA Review." No reconstruction, rehabilitation, elevation or mitigation work on properties will begin until both the broad and site-specific levels of environmental review have been completed and the proposed work has been found to be in compliance.

Thus, the EA, as prepared for DCA, is essentially a two-step, tiered process, per 24 CFR 58.15.

### **Existing Conditions and Trends**

(Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 C.F.R. 58.40(a)])

More than 63,000 housing units within the nine most impacted counties sustained flood damage greater than one foot. This is approximately 3 percent of the total housing stock within those counties. Nearly 50 percent of these impacted households are LMI. Approximately 14,315 of properties within Ocean County sustained considerable damage from Superstorm Sandy. Many homeowners and owners of small rental properties, LMI and non-LMI, do not have the resources to repair, reconstruct, elevate or mitigate their properties. In the absence of the proposed project, the damaged properties will continue to deteriorate, which will do further harm to the communities in which the properties are located.

## **Alternatives to the Proposed Action**

### Alternatives and Project Modifications Considered

[24 C.F.R. 58.40(e), 40 C.F.R. 1508.9]

(Identify and discuss all reasonable alternative courses of action that were considered and were not selected, such as alternative sites, designs, or other uses of the subject site(s). Describe the benefits and adverse impacts to the human environment of each alternative, in terms of environmental, economic, and design contexts, and the reasons for rejecting each alternative. Also, finally discuss the merits of the alternative selected.)

Small residential buildings close to the shore are an integral part of the shore culture, and the shore culture is an important component of the culture of the State of New Jersey. The shore culture supports the shore economy, which is critical to the economic health of the state. If the homes damaged and destroyed by Superstorm Sandy were reconstructed away from the shore, the shore culture and economy would be severely damaged, and the cost would be far greater than the cost of repairing and rebuilding in the existing developed parcel. This alternative was therefore rejected. Concentrating shore redevelopment in high-rise buildings in the less vulnerable shore areas would also be prohibitively expensive and would damage the traditional culture of the shore. For these reasons, this alternative was also rejected.

### No Action Alternative

[24 C.F.R. 58.40(e)]

(Discuss the benefits and adverse impacts to the human environment of not implementing the no action alternative.)

The only practicable alternative on a programmatic level would be the No Action Alternative, which would mean that applicants would not receive grant awards under the RREM Program or the Small Rental Properties Program. As a result, housing recovery, and the recovery of the New Jersey Shore as a whole, would be substantially delayed. Because the applicants would not be provided financial assistance to elevate their homes and small rental properties, their properties would be more vulnerable to future flooding. Therefore, the No Action Alternative would neither address the State's need for safe, decent, and affordable housing, nor would it require homes within the floodplain to be elevated to the highest standard for flood protection. As a result, the No Action Alternative was rejected.

## **Summary of Findings & Conclusions**

Based upon completion of this environmental assessment, environmental review of the proposed project indicates there will be no significant changes to existing environmental conditions across the impact categories implemented by HUD in response to the

National Environmental Policy Act of 1969, with the possible exception of the subject areas listed below. Based on the completion of this environmental assessment, the following subject areas require site-specific analysis before it can be concluded that a specific proposed project activity would have no significant environmental impacts on an individual site. These authorities are referenced under HUD's regulations at 58.5:

- Historic Preservation (36 CFR Part 800);
- Floodplain Management and Flood Insurance (24 CFR 58.5(b) and 24 CFR 58.6);
- Wetlands Protection (EO 11990);
- Coastal Zone Management Act (Sections 307 (c), (d));
- Endangered Species Act (50 C.F.R.402; 16 USC 1531 et seq.);
- Toxic Chemicals and Gases, Hazardous Materials, Contamination, and Radioactive Substances (24 C.F.R. 58.5(i)(2)(i));
- Siting of HUD-Assisted Projects near Hazardous Operations (24 C.F.R. 51C)
- Airport Clear Zones and Accident Potential Zones (24 CFR 51D)

### **Conditions for Approval**

(List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts or other relevant documents as requirements. [24 C.F.R. 58.40(d), 40 C.F.R. 1505.2(c)])

The following mitigation measures are required as conditions for approval of the project:

#### **General**

1. Acquire all required federal, state and local permits prior to commencement of construction and comply with all permit conditions.
2. If the scope of work of a proposed activity changes significantly, the application for funding must be revised and resubmitted for reevaluation under the National Environmental Policy Act.

#### **Historic Preservation**

3. All activities must comply with Section 106 of the National Historic Preservation Act per the implementing regulations 36 CFR Part 800. Compliance with Section 106 is achieved through the procedures set forth in the Programmatic Agreement among the Federal Emergency Management Agency, the New Jersey State Historic Preservation Officer, the New Jersey State Office of Emergency Management, the Advisory Council on Historic Preservation, the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge Munsee Band of Mohicans, as signed onto by the New Jersey Department of Community Affairs.
4. In the event that archeological deposits, including any Native American pottery, stone tools, bones, or human remains, are uncovered, the project shall be halted and the applicant shall stop all work immediately in the vicinity of the discovery and take reasonable measures to avoid or minimize harm to the finds. All archeological findings will be secured and access to the sensitive area restricted. The applicant

will inform FEMA immediately and FEMA will consult with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and Tribes and work in sensitive areas cannot resume until consultation is completed and appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act (NHPA).

### **Floodplain Management and Flood Insurance**

5. All proposed reconstruction, repair, elevation and mitigation of substantially damaged structures in the 100-year floodplain must adhere to the most recent elevation requirements in accordance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).
6. All structures funded by the RREM Program and the Small Rental Properties Program, if in, or partially in, the 100-year floodplain shown on the latest FEMA flood maps, must be covered by flood insurance and the flood insurance must be maintained for the economic life of the structure [24 CFR 58.6(a)(1)]. This means no funding can be provided in municipalities not participating in or suspended from participation in the National Flood Insurance Program. In the nine counties included in the RREM and Small Rental Properties Programs, this includes the following municipalities in the following counties:
  - Bergen County: Alpine, Cliffside Park, and Englewood Cliffs
  - Hudson County: Union City
  - Monmouth County: Freehold and Shrewsbury
  - Union County: Winfield
7. No funding will be provided to any person who previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance, but failed to obtain and maintain the insurance [24 CFR 58.6(b)].
8. In the case of “Coastal High Hazard” areas (“V” or “VE” Zones on the latest (most recent) FEMA-issued Maps), adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR Part 60.3 (e) as required by HUD Regulation 24 CFR Part 55.1 (c)(3).

### **Wetlands Protection and Water Quality**

9. Implement and maintain erosion and sedimentation control measures sufficient to prevent deposition of sediment and eroded soil in onsite and offsite wetlands and waters and to prevent erosion in onsite and offsite wetlands and waters.
10. Minimize soil compaction by minimizing project activities in vegetated areas, including lawns.

### **Noise**

11. Outfit all equipment with operating mufflers
12. Comply with the applicable local noise ordinance

## **Air Quality**

13. Use water or chemical dust suppressant in exposed areas to control dust
14. Cover the load compartments of trucks hauling dust-generating materials
15. Wash heavy trucks and construction vehicles before they leave the site
16. Reduce vehicle speed on non-paved areas and keep paved areas clean
17. Retrofit older equipment with pollution controls
18. Establish and follow specified procedures for managing contaminated materials discovered or generated during construction
19. Employ spill mitigation measures immediately upon a spill of fuel or other hazardous material
20. Obtain an air pollution control permit to construct and a certificate to operate for all equipment subject to N.J.A.C. 7:27-8.2(c). Such equipment includes, but is not limited to, the following:
  - a. Any commercial fuel combustion equipment rated with a maximum heat input of 1,000,000 British Thermal Units per hour or greater to the burning chamber (N.J.A.C. 7:27-8.2(c)1);
  - b. Any stationary storage tank for volatile organic compounds with a capacity of 2,000 gallons and a vapor pressure of 0.02 pounds per square inch or greater (N.J.A.C. 7:27-8.2(c)9);
  - c. Any tank, reservoir, container, or bin with capacity in excess of 2,000 cubic feet used for storage of solid particles (N.J.A.C. 7:27-8.2(c)10); and
  - d. Any stationary reciprocating engine with a maximum rated power output of 37 kW or greater, used for generating electricity, not including emergency generators (N.J.A.C. 7:27-8.2(c)21).

(Note: One or two family dwellings and dwellings of six or less family units, one of which is owner occupied, are exempt pursuant to NJSA 26:2C-9.2.)

21. Minimize idling and ensure that all on-road vehicles and non-road construction equipment operated at or visiting the project site comply with the applicable smoke and "3-minute idling" limits (N.J.A.C. 7:27-14.3, 14.4, 15.3 and 15.8).
22. Ensure that all diesel on-road vehicles and non-road construction equipment used on or visiting the project site use ultra-low sulfur fuel (<15 ppm sulfur) in accordance with the federal Non-road Diesel Rule (40 CFR Parts 9, 69, 80, 86, 89, 94, 1039, 1051, 1065, 1068).
23. Operate, if possible, newer on-road diesel vehicles and non-road construction equipment equipped with tier 4 engines, or equipment equipped with an exhaust retrofit device.

## **Hazardous Materials**

24. All activities must comply with applicable federal, state, and local laws and regulations regarding asbestos, including but not limited to the following:
  - National Emission Standard for Asbestos, standard for demolition and renovation, 40 CFR 61.145



- National Emission Standard for Asbestos, standard for waste disposal for manufacturing, fabricating, demolition, and spraying operations, 40 CFR 61.150
  - NJAC 7:26-2.12—Generator requirements for disposal of asbestos containing waste materials
  - New Jersey Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.
25. Applicant must comply with all laws and regulations concerning the proper handling, removal and disposal of hazardous materials (e.g. asbestos, lead-based paint) or household waste (e.g. construction and demolition debris, pesticides/herbicides, white goods).
26. All activities must comply with applicable federal, state, and local laws and regulations regarding lead-based paint, including but not limited to HUD's lead-based paint regulations in 24 CFR Part 35 Subparts B, H, and J.
27. All residential structures must be free of mold attributable to Superstorm Sandy.
28. Radon testing and/or mitigation, as described below, is required for structures not in one of the following categories:
- Structures in municipalities NJDEP classifies as having low radon potential
  - Structures with unenclosed air space between the entire lowest floor and the ground
  - Structures that have been evaluated by a radon professional and found to require neither testing nor mitigation to ensure that radon is below the standards of 4 picocuries per liter of air and 0.02 working levels, based on a physical inspection of the property, the characteristics of the buildings, and other valid criteria. The radon professional must meet the qualifications in the HUD Office of Multifamily Development Radon Policy, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=13-07ml.pdf>, and must be a certified radon mitigation specialist under NJAC 7:28-27.

Reconstructed homes that are not in one of these three exempt categories must incorporate the radon-resistant construction techniques listed in NJAC 5:23-10.4.

Homes to be rehabilitated that are not in one of the exempt categories must be tested for radon in accordance with accepted standards and the certification requirements in NJAC 7:28-27, and the testing must be documented. If the radon level is below the standards of 4 picocuries per liter of air and 0.02 working levels, no further action is required. If the radon level is at or above either of the standards, radon mitigation measures must be implemented and the home must be retested to ensure that radon levels below the standards have been achieved.

29. Comply with all laws, regulations, and industry standards applicable to aboveground and underground storage tanks, including the New Jersey underground storage tank regulations at NJAC 7:14B.
30. Storage tanks below the base flood elevation must be watertight and must be anchored to resist floatation and lateral movement during a storm surge or other flood.

### **Sole Source Aquifers**

31. Comply with all laws, regulations, and industry standards.
32. Storage tanks below the base flood elevation must be watertight and must be anchored to resist floatation and lateral movement during a storm surge or other flood
33. The total impervious area of a parcel must not be increased significantly. In general, an increase in impervious area of more than 30% will be considered significant. The threshold of significance may be greater than 30% for parcels on which the current impervious area is unusually low, and may be less than 30% for parcels on which the current impervious area is unusually high.

### **Wild and Scenic Rivers**

34. Comply with any conditions specified by NJDEP and the National Park Service for protection of the Great Egg Harbor River and Menantico Creek, designated Wild and Scenic Rivers.

### **Additional Studies Performed**

(Summarize and attach all special studies performed to support the environmental assessment analysis.)

None

**Finding**

[24 CFR 58.40(g)]

Finding of No Significant Impact  
(The project will not result in a significant impact on the quality of the human environment)

Finding of Significant Impact  
(The project may significantly affect the quality of the human environment)

**Environmental Review Preparer's Information**

Environmental Preparer's name, title, and organization (printed or typed):

Bob Martin, Commissioner, New Jersey Department of Environmental Protection

Environmental Preparer's signature: \_\_\_\_\_

Date: 5/21/2013

**Responsible Entity, Representative's Information/Certification**

Responsible Entity, Representative's name, title, and organization (printed or typed):

Richard E. Constable, III, Commissioner, New Jersey Department of Community Affairs

Responsible Entity, Representative's signature: \_\_\_\_\_

Date: 5-21-13

**Tier 1 Environmental Assessment Level Statutory Checklist (ref.: 24 C.F.R. 58.5 – Related Federal laws and authorities)**

(Tier 1 of a tiered environmental review focuses on a targeted geographic area to address and analyze those environmental impacts related to the proposed project activities that might occur on a typical site within the geographic area. For each listed statute, executive order (E.O.), or regulation, record the determinations made. Summarize all reviews and consultations completed as well as any applicable permits or approvals obtained. Attach supporting evidence that all required actions have been accomplished. Summarize any conditions or mitigation measures required. Then, state a determination of compliance or consistency.)

The New Jersey Department of Environmental Protection (NJDEP) has developed a HUD Disaster Relief Screening Profile that will be used to conduct an initial screening of each site and proposed activities through a desktop assessment. The application developed for the Tier 2 desktop review of sites is built on the NJDEP’s web based environmental mapping tool, NJ-GeoWeb. NJ-GeoWeb enables non-GIS users to view and query geospatial data sets. Examples of existing GeoWeb profiles available to the public can be found at <http://www.state.nj.us/dep/gis/geoweb splash.htm>.

For the Tier 2 site-specific reviews, a custom GeoWeb profile was developed that includes data layers associated with the Tier 2 Site-Specific Review Checklist (See Appendix A). The review layers include such data sets as the flood zones, wetlands, piping plover habitats, areas where there are no above-ground historic properties as identified jointly by FEMA and the State Historic Preservation Officer (SHPO), and others. The sites will be pre-screened against these review layers and will produce an attribute table associated with each site. In addition, a search tool has been developed for locating the parcels on the map that allows a reviewer to zoom to a particular parcel being reviewed. The user can then turn on any of the GIS layers needed for the review of each parcel. Further, maps for each parcel can be saved electronically as pdf. files, as can any of the tabular information created, so that a complete record can be maintained supporting the Tier 2 desktop analysis for each site. This desktop analysis will help identify when consultation with other agencies is required, if a site inspection is required and any required actions needed to demonstrate compliance with each listed statute, executive order (E.O.), or regulation.

Factors	Summary of consultations, supporting documentation, determinations, & mitigation measures
<b>Historic Preservation</b> [36 C.F.R. Part 800]	The New Jersey Department of Community Affairs has signed on to the Programmatic Agreement (PA) with FEMA, the New Jersey State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge Munsee Band of Mohicans (Refer to Appendix C for the PA). The PA exempts from further

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historic preservation review projects in areas surveyed by the joint FEMA-SHPO survey team and found to contain no historic aboveground properties in accordance with 36 CFR 800.4(d)(1), provided there is no ground disturbance of archaeological resources. The PA finds that the proposed activities on properties in these areas will have “no effect on historic properties (refer to Stipulations II and VII.A in the PA in Appendix B).

The PA also provides an exemption from further review for the proposed activities on buildings or structures less than 48 years of age, provided the proposed activities substantially conform to the original footprint or are performed in previously disturbed soils, and the buildings or structures are not in or adjacent to a historic district (refer to Tier I allowance II.A and Tier II allowance VII.A in Appendix B of the PA).

The PA and any and all future amendments will be adopted/utilized to complete the Section 106 review.

Consultation with the SHPO will be required for properties that are listed on the National Register, properties that are 48 years of age or older and are outside of the GIS-mapped “no historic aboveground properties” areas, and properties on which the proposed activities require disturbance of previously undisturbed soil. The consultation process for these properties is set forth in the PA with expedited timelines and allowance for use of Standard Treatment Measures to resolve adverse effects without execution of a project-specific Memorandum of Agreement.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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**Floodplain Management**

[24 C.F.R. Part 55, E.O. 11988]

**New Jersey Flood Hazard Area Control Act**

[N.J.S.A. 58:16A-50 et seq., N.J.A.C. 7:13]

For those residential properties located in flood zones mapped by FEMA in Ocean County, DCA has made the decision there is no practicable alternative to providing CDBG-DR assistance to homeowners and owners of small rental properties for the reconstruction, rehabilitation, elevation and mitigation of their properties in these zones.

Prior to making this decision, DCA completed an 8-step analysis of the long- and short-term adverse impacts associated with the continued occupancy of the floodplain, and considered whether there were any practicable alternatives to providing CDBG-DR assistance in the floodplain (refer to Appendix D).

As a condition of receiving CDBG-DR assistance, property owners who rebuild will have to build to the highest available State or FEMA elevation level. In addition, the Flood Hazard Area Control Act rules, in effect since 2007, require the lowest floor of each building in flood hazard areas to be constructed at least one foot above this elevation. In accordance with National Flood Insurance Program

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(NFIP) regulations, elevation requirements will be considered on a case-by-case basis for historic structures that are listed on the National Register of Historic Places, determined eligible for listing on the National Register, determined to contribute to a historic district, listed on the state inventory of historic places, or listed on the inventory of historic places of a community with a certified historic preservation program (see definition of historic structure in 44 CFR 59.1).

All proposed reconstruction and improvement or repair of substantially damaged structures [as defined in 44 CFR 59.1 and 24 CFR 55.2(b)(8), “substantial improvement”] in the floodplain must adhere to the most recent elevation requirements in accordance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).

### **Tier 2- Site-Specific Review for Individual Properties in the 100-Year Floodplain:**

NJDEP establishes standards for floor elevations for buildings constructed and fill placed in the floodplain through its Flood Hazard Area Control Act rules. The amended Flood Hazard Area Control Act rule, adopted on January 24, 2013, includes a new permit-by-rule (effectively an automatic permit) that allows people reconstructing and elevating buildings in accordance with the State’s elevation standard to proceed with construction without the need for a formal permit application or review process provided they build in accordance with the standards of the permit-by-rule found at N.J.A.C. 7:13-7.2(a)(3). If the standards of the permit-by-rule are exceeded, either a general permit or an individual permit would be required.

NJDEP has the following elevation requirements regarding rehabilitation, reconstruction and elevation of housing structures:

- All residential property owners located in tidal floodplains who rebuild their properties will have to build the lowest floor to at least one foot above the best available (most recent) base flood; and
- All residential property owners located in non-tidal floodplains that have to rebuild because their property is substantially damaged will have to build the lowest floor to at least one foot above the State design flood elevation, which will result in a lowest floor that is at least two feet above FEMA’s BFE.

In the case of “Coastal High Hazard” areas (“V” or “VE” Zones on the latest (most recent) FEMA-issued Maps), adhere to construction standards, methods and techniques requiring a registered

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professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR 60.3(e) as required by HUD Regulation 24 CFR 55.1(c)(3).

Placement of fill in the floodplains of nontidal rivers and streams is prohibited under the Flood Hazard Area Control Act rules, and activities involving fill in these areas would not be eligible for funding.

Rehabilitation, reconstruction, elevation and/or other mitigation activities will occur within the disturbed area of the previously developed parcel. No reconstruction or repair will involve development in previously undisturbed areas.

Properties located within a FEMA-delineated floodway are not eligible for funding assistance. If the property is in the 100-year floodplain, impacts to the floodplain will be mitigated through the Flood Hazard Area Control Act rules as discussed above.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance assessment.**

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**Wetlands Protection**

[E.O. 11990]

**NJ Wetlands Act of 1970**

[N.J.S.A. 13:9A, N.J.A.C. 7:7E]

**NJ Freshwater Wetlands Protection Act**

[N.J.S.A. 13:9B, N.J.A.C. 7:7A]

Project activities involving repair, reconstruction and/or elevation of single-family homes and small rental property structures (1 to 4 units in a building) in the original footprint or outside the footprint in the disturbed area of the previously developed parcel would most likely not result in permanent direct or indirect impacts to wetlands. However, in the Tier 2 process, NJDEP will evaluate available information and, if warranted, a site inspection will be conducted by a trained wetlands professional to ensure that wetlands are not impacted by the proposed action. Any activity that would adversely affect coastal or freshwater wetlands would not be eligible for funding.

If temporary disturbance to wetlands is required, an 8-step analysis of the long- and short-term adverse impacts associated with the temporary impacts to wetlands must be performed to determine whether there are any practicable alternatives to providing CDBG-DR assistance in the wetland.

Best management practices for erosion and sediment control will be implemented (see Conditions for Approval).

Repair, reconstruction and/or elevation of structures located over waters of the United States require a United States Army Corps of Engineers (USACE) permit under the Rivers and Harbors Appropriation Act of 1899, regardless of whether the project results in discharge of fill to the water. Any project that is not consistent with the Rivers and Harbors Appropriation Act of 1899 would not be

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funded.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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**Coastal Zone Management Act**

[Sections 307 (c), (d)]

In response to the 1972 passage of the federal Coastal Zone Management Act, New Jersey developed and received federal approval for New Jersey's Coastal Management Program (CMP), which addresses the complex coastal ecosystem as a whole, integrating goals and standards for protection and enhancement of natural resources, for appropriate land use and development, and for public access to and use of coastal resources.

**NJ Coastal Area Facility Review Act**

[N.J.S.A. 13:19-1 et seq., N.J.A.C. 7:7E]

The Coastal Zone Management rules, N.J.A.C. 7:7E, represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. These rules are used to review permit applications submitted under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.; the Waterfront Development Law, N.J.S.A. 12:5-3; and the Wetlands Act of 1970, N.J.S.A. 13:9A. The Coastal Permit Program rules, N.J.A.C. 7:7, establish the procedures by which NJDEP reviews permit applications and appeals from permit decisions under the CAFRA Act, Waterfront Development Law and the Wetlands Act of 1970.

**NJ Waterfront Development Law**

[N.J.S.A. 12:5-3, N.J.A.C. 7:7E]

The CMP authority under CAFRA applies to the construction of any development defined in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1 that is being constructed within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4). The CMP authority under the Waterfront Development Law applies to the filling or dredging of, or placement or construction of structures, pilings or other obstructions in, any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the area regulated under CAFRA, as explained in N.J.A.C. 7:7-2.3.

It is anticipated that most properties will be located in either the CAFRA zone or the Upland Waterfront Development area. (Refer to Appendix E) In accordance with the Coastal Permit Program rules (N.J.A.C. 7:7) and the Coastal Zone Management rules (N.J.A.C. 7:7E), for actions that stay within the existing footprint, within the CAFRA zone, the CZM review is concluded.

NJDEP will evaluate the potential impacts to the coastal zone on a site-specific basis.

Only those projects that are determined to be consistent with N.J.A.C. 7:7 and 7:7E will be funded.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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**Sole Source  
Aquifers**

[40 C.F.R. Part 149]

All or a portion of the following sole-source aquifers are in the nine counties included in this project:

- Buried Valley aquifer in southeastern Morris and western Essex Counties;
- New Jersey Coastal Plain aquifer system;
- Ramapo River basin aquifer system; and
- Brunswick Shale and Sandstone Aquifer of the Ridgewood Area, New Jersey

Of particular relevance is the New Jersey Coastal Plain aquifer system, which underlies the entire southern half of the state, including all of Ocean County. (Refer to map in Appendix F).

The proposed project would have no effect on sole source aquifers. A memorandum of understanding between EPA and HUD states that the following activities would not create a significant hazard to public health and do not require review for potential impact to sole source aquifers (see Appendix F):

- Construction of individual new residential structures containing from one to four units
- Rehabilitation of residential units

All activities that would occur under the Rehabilitation, Reconstruction, Elevation and Mitigation Program and the Small Rental Properties Program are included in one of these two categories. However, the large number of properties involved creates the potential for cumulative impact to sole source aquifers. Project activities have the potential to compact soil and increase impervious surface area, which would reduce aquifer recharge. Residential underground and aboveground storage tanks containing liquid petroleum products have the potential to contaminate groundwater if they leak. Flooding can displace aboveground tanks and cause them to leak. Floodwater can enter the vent pipes of underground tanks, displacing their contents and creating the potential for contamination of groundwater. Therefore, as recommended by EPA, contractors will be required to implement the following mitigation measures:

- The total impervious area of a parcel must not be increased significantly. In general, an increase in impervious area of more than 30% will be considered significant. The threshold of significance may be greater than 30% for parcels on which the current impervious area is unusually low, and may be less than 30% for parcels on which the current impervious area is unusually high.

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- Comply with all laws, regulations, and industry standards.
  - Storage tanks below the base flood elevation must be watertight and must be anchored to resist floatation and lateral movement during a storm surge or other flood.

These mitigation measures are included in the Conditions for Approval under Sole Source Aquifers. With implementation of these measures, the proposed project would have no significant adverse impact on sole source aquifers.

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**Endangered Species Act**

[50 C.F.R. Part 402; 16 USC 668 et seq.; and 16 USC 703 et seq.]

The proposed project is in compliance. The Endangered Species Act (ESA), as amended, and its implementing regulations provide federal agencies with a mandate to conserve threatened and endangered (T&E) species and ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a T&E species in the wild, or destroy or adversely modify its critical habitat.

The environmental review must consider potential impacts of the HUD-assisted project to T&E species and, for animals, critical habitats. The review must evaluate potential impacts not only to any listed, but also to any proposed or candidate, endangered or threatened species and critical habitats. Projects that affect T&E species or critical habitats require consultation with the Department of the Interior, U.S. Fish and Wildlife Service (USFWS) and/or the Department of Commerce, National Marine Fisheries Service (NMFS), in compliance with the procedure of Section 7 of the ESA. The ESA authority applies to both construction and conversion activities.

Based on examination of NJDEP data and USFWS – New Jersey Field Office (NJFO) data, NJDEP’s Division of Fish and Wildlife – Endangered and Nongame Species Program (ENSP) and the State Forestry Services – Natural Heritage Program (NHP) determined the potential presence of seven federally listed T&E animal species and six federally listed plant species in the nine-county area in which work will be conducted (refer to Appendix G). A table of listed animal species by potential county occurrence for different habitat types is provided below. Critical habitat is not designated by the USFWS or NMFS for any of the listed species occurring in the nine-county area.

SPECIES	Bog Turtle ( <i>Glyptemy mühlenbergii</i> ) (T)	Piping Plover ( <i>Charidrius melodus</i> ) (T)	Indiana Bat ( <i>Myotis sodalist</i> ) (E)	Northeastern Beach Tiger Beetle ( <i>Cicindela dorsalis dorsalis</i> ) (T)	Red Knot ( <i>Calidris canutus rufa</i> ) (C)	Atlantic Sturgeon ( <i>Acipenser oxyrinchus</i> ) (E)	Shortnose Sturgeon ( <i>Acipenser brevirostrum</i> ) (E)
HABITATS	Emergent wetlands	Beaches and dunes	Forests and woodlands	Beaches and dunes	Beaches and tidal flats	Major rivers and Atlantic Ocean	Major rivers and Atlantic Ocean
COUNTY							
Atlantic		X			X	X	X
Bergen			X			X	X
Cape May		X			X	X	X
Hudson						X	X
Essex			X			X	X
Middlesex	X		X			X	X
Monmouth	X	X		X	X	X	X
Ocean	X				X	X	X
Union	X		X			X	X

E= Endangered, T = Threatened, C= Candidate

The bald eagle (*Haliaeetus leucocephalus*), though no longer listed under the ESA, continues to be protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. ENSP has documented bald eagle nests in seven of the nine counties (none are known from Union or Essex Counties).

Six plant species that are listed, proposed or candidate endangered or threatened plant species may occur in the nine-county area in which proposed activities would be conducted. These plant species include Hirst's panic grass (*Panicum hirstii*), Knieskern's beaked-rush (*Rhynchospora knieskernii*), swamp pink (*Helonias bullata*), sea-beach amaranth (*Amaranthus pumilus*), sensitive joint-vetch (*Aeschynomene virginica*) and small whorled pogonia (*Isotria medeoloides*).

Actions subject to the ESA include "actions directly or indirectly causing modifications to the land, water, or air" (40 CFR 402.02, definition of *action*, item d). Given that the proposed activities include reconstruction, rehabilitation and/or elevation within the disturbed area of previously developed parcels, they are generally not the type of activities to which the ESA applies.

Based on the habitat associations for T&E animal and plant species potentially occurring in the vicinity of possible work sites, ENSP (for wildlife) and NHP (for plants) have concluded that the proposed

activities are not likely to affect any of the protected species with the exception of piping plover. For this species there is no risk of direct adverse impacts to these wildlife or their habitats, however, there is a slight risk that the activities may result in adverse impacts from disturbance from human activity and/or noise if this species inhabits suitable habitats near the work sites.

Refer to Appendix G for agency consultation.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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<b>Wild &amp; Scenic Rivers Act</b> [Sections 7 (b), (c)]	The proposed project is in compliance. The Wild and Scenic Rivers Act created the National Wild and Scenic Rivers System in 1968 to protect selected rivers in a free-flowing condition and to recognize their importance to our cultural and natural heritage (16 U.S.C. 1271). The Act prohibits federal support for activities such as the construction of dams or other on-stream activities that would harm a designated river's free-flowing condition, water quality, or outstanding resource values.
<b>NJ Coastal Zone Management Rules</b> [N.J.A.C. 7:7E-3.46]	<p>The National Park Service reviews activities within a designated river that have the potential for direct and adverse effect on the values for which a river was designated. In addition, provisions of the act have been incorporated into New Jersey's Coastal Zone Management Rules at N.J.A.C. 7:7E-3.46. Development within a quarter mile of a designated river segment that would have a direct and adverse effect on any "outstandingly remarkable resource value" of a designated river is prohibited. Specific standards apply to construction of docks, piers, moorings, shoreline stabilizations, linear development, communication and cell towers, bridges, and culverts.</p> <p>New Jersey has 262.7 river miles designated as segments of the National Wild and Scenic Rivers System, including portions of the Delaware River, Great Egg Harbor River, Maurice River, and Musconetcong River. Designated rivers also include specific segments of tributaries to these rivers as referenced in the Act. There are no designated Wild and Scenic rivers found within Ocean County.</p> <p>The proposed activities will be reviewed by NJDEP's Coastal Zone Management Program under the Division of Land Use Regulation. Proposed activities require review by the National Park Service only if they would disturb the bed or bank of a designated river (see email correspondence in Appendix H).</p> <p>The proposed activities will not result in significant adverse impacts to the values for which the Great Egg Harbor River, the designated tributaries of the Great Egg Harbor River, or the Manumuskin River were designated. The proposed activities will be confined to existing residential lots, and will not disturb the bed or banks of these rivers. Implementation of best management practices for erosion and sediment control and management of hazardous substances will</p>

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prevent introduction of sediment and contaminants into the rivers.

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### **Air Quality**

[Clean Air Act, Sections 176(c) & (d), & 40 C.F.R. Parts 6, 51, 90 & 93]

The proposed project is in compliance. Emissions associated with the project are estimated to be well below the threshold when compared to the federal General Conformity Rule de minimis thresholds.

#### General Conformity Clean Air Act Requirements:

Section 176(c) of the Clean Air Act (CAA) requires a federal agency that funds any activity in a nonattainment or maintenance area to conform to the State Implementation Plan (SIP).

Conforming to a SIP means that an action will not:

- Cause or contribute to a new violation of any standard in any area;
- Increase the frequency or severity of any existing violation of any standard in any area; or
- Delay timely attainment of any standard or any required interim emission reduction or other milestones in any area.

EPA's federal General Conformity regulation (40 CFR Part 90) implements the CAA. The General Conformity Rule requires that the direct and indirect air emissions from an action are identified. The identified air emissions in the nonattainment area are compared to the de minimis levels in the regulation to determine compliance. If the emissions from the action are below the de minimis levels, the action complies with the CAA.

The General Conformity Rule would apply to this project in Ocean County since the nine-county project area is in nonattainment for certain National Ambient Air Quality Standards (NAAQS).

#### Air Quality in New Jersey

##### Ozone

The State of New Jersey is in nonattainment for the 2008 8-hour Ozone federal standard of 75 parts per billion (ppb). New Jersey is associated with two multi-state nonattainment areas (the Northern New Jersey/New York/Connecticut nonattainment area and the Southern New Jersey/Philadelphia nonattainment area). On April 30, 2012, EPA issued final area designations for the 75 ppb 8-hour Ozone NAAQS. Both of New Jersey's nonattainment areas have

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been classified as being “marginal” ozone nonattainment areas. Since New Jersey is in nonattainment for ozone, the requirements of the federal General Conformity regulation would apply to this action.

Six of the nine counties that are eligible to receive funding for the proposed project are in the Northern New Jersey/New York/Connecticut nonattainment area; these counties are Bergen, Essex, Hudson, Monmouth, Middlesex, and Union. The remaining three counties eligible to receive funding are in the Southern New Jersey/Philadelphia nonattainment area; these counties are Ocean, Atlantic and Cape May.

#### *Fine Particulate Matter (PM<sub>2.5</sub>)*

EPA designated 13 counties in New Jersey to be in nonattainment for the annual and 24-hour fine particulate matter (PM<sub>2.5</sub>) federal standards. EPA designated New Jersey’s nonattainment areas to be the Northern New Jersey-New York- Long Island nonattainment area and the Southern New Jersey Philadelphia-Wilmington nonattainment area. Six of the nine counties eligible for funding are in New Jersey’s Northern New Jersey-New York-Long Island (NY-NJ-CT) nonattainment area; these counties are Bergen, Essex, Hudson, Middlesex, Monmouth and Union. The other three counties eligible for funding (Ocean, Atlantic, and Cape May) are located in a PM<sub>2.5</sub> attainment area; therefore the requirements of the federal General Conformity regulation do not apply to these three counties.

#### Assessment of Emission Sources for the Proposed Project

The direct emissions associated with this action are assumed to be from land-based mobile sources that will be used during the reconstruction, rehabilitation, elevation and mitigation activities. These sources are assumed to include: plate compactors, loaders, backhoes, cranes, tractors, and excavators. It is assumed that there are no or minimal indirect emissions associated with this action.

#### Emission Methodology

The methodology used to estimate the air emissions associated with the proposed activities includes fuel use for residential construction and the average pollutant emissions factors for the equipment used for construction from the most recent version of EPA’s Nonroad model. The general methodological approach consists of the following steps:

- 1) Utilize national data that relates residential housing spending to diesel fuel usage from "Evaluation of Methodologies to Estimate Nonroad Mobile Source Usage," prepared by Sierra Research for the EPA Office of Mobile Sources, Report No. SR93-03-02, March 19, 1993, Table 7-4 on page 7-6.
- 2) Convert the diesel fuel usage factor to gallons of fuel per million dollars of current residential construction spending.
- 3) Utilize emission factors from EPA's Nonroad model in terms of annual tons of pollutant per million gallons of nonroad diesel fuel to determine the estimation of pollutant emissions per million dollars of construction spending.
- 4) Apply the emission factors to the projected spending for the DCA Sandy rebuilding project.

See Appendix I for more details regarding the methodology used to estimate the air emissions.

Air Emissions Assessment

The proposed project would occur approximately from April 2013 through April 2015. Annual air emissions were estimated for 2014, as a worst case scenario, since this would represent a full year of construction activity. The estimated annual air emissions for 2014 are presented below.

Estimated VOC, NO<sub>x</sub> and PM<sub>2.5</sub> Emissions Associated with the Proposed Project

<b>Nonattainment Area</b>	<b>VOC (tons/year)</b>	<b>NO<sub>x</sub> (tons/year)</b>	<b>PM<sub>2.5</sub> (tons/year)</b>	<b>SO<sub>2</sub> (tons/year)</b>
Ozone Northern	4	34	NA	NA
Ozone Southern	4	34	NA	NA
PM <sub>2.5</sub> Northern	NA	34	4	0.09
General Conformity De Minimis Levels	50	100	100	100

The estimated annual air emissions for ozone (Oxides of Nitrogen [NO<sub>x</sub>] and Volatile Organic Compounds [VOCs]) for 2014 were compared to the de minimis levels for a "marginal" ozone nonattainment area in the federal General Conformity regulation.

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The de minimis levels for a “marginal” nonattainment area are 100 tons per year for NO<sub>x</sub> and 50 tons per year for VOCs.

The estimated annual air emissions for PM<sub>2.5</sub> for 2014 were compared to the de minimis levels in the federal General Conformity regulation. The de minimis levels for PM<sub>2.5</sub> and precursors (SO<sub>2</sub>, and NO<sub>x</sub>) are 100 tons per year.

A comparison of the estimated annual air emissions for 2014 associated with the proposed project to the de minimis levels in the federal General Conformity regulation for ozone (NO<sub>x</sub> and VOCs) and PM<sub>2.5</sub> indicates that that the estimated annual air emissions for 2014 are below the de minimis levels for ozone and PM<sub>2.5</sub>. Since the estimated annual air emissions for 2014 are below the de minimis levels, the project is presumed to conform and a conformity determination is not required.

EPA’s General Conformity Training Module states, “The degree of detail in the emissions analysis for determining if the emissions are below the de minimis levels depends upon how close the total emissions are to the de minimis levels. If the emissions are significantly below the de minimis levels, only the rough but conservative estimates are needed.”

The air emissions estimates for this action are conservative in nature because they assume all of the CDBG-DR funds will be used for construction activities. The calculated air emissions may be overestimated since certain real estate transactions are exempt from general conformity requirements.

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**Farmland Protection Policy Act**

[7 C.F.R. Part 658]

The housing sites involved in the proposed project are “land already in or committed to urban development” within the meaning of 7 CFR 658.2(a), and are therefore not farmland for purposes of the Farmland Protection Policy Act.

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**Environmental Justice**

[E.O. 12898]

The proposed project is in compliance. The proposed activities would encourage people in the areas most affected by Superstorm Sandy to continue living where they live now. In general, those areas have proven vulnerable to flooding. Other pre-existing environmental conditions would continue under the proposed project. However, the primary effects of the proposed project would be to improve the condition of the housing, making it more durable, energy-efficient and safe from mold, asbestos and other health and safety impacts. The program would also enhance health and safety by making many homes less vulnerable to flooding by strengthening them and elevating them above the flood level.

Low- to moderate-income households would receive 70% of the proposed RREM Program initial funding and 100% of the Small Rental Properties Program initial funding. Between 50% and 60% of



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households are LMI households. Low- to moderate-income households would therefore be disproportionately encouraged to continue living where they live now and to continue to experience whatever environmental problems they are currently experiencing. However, this is only because LMI households and communities would receive a disproportionately large share of the benefits of the project. The net effect on LMI people would not be disproportionately adverse. Therefore, the proposed project would comply with Executive Order 12898.

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**HUD  
Environmental  
Standards**

**Summary of consultations, supporting documentation,  
determinations, & mitigation measures**

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**Noise  
Abatement &  
Control**

[24 C.F.R. Part  
51B]

The proposed project is in compliance. Per HUD directive, 24 C.F.R. Part 51B is not applicable to a disaster recovery program, including reconstruction, rehabilitation, elevation and mitigation that meets the requirements for exclusion in 24 CFR 51.101(a)(3). That regulation states that HUD noise policy does not apply to “assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.” The proposed reconstruction, rehabilitation, elevation and mitigation of housing without substantially increasing the existing footprints would restore housing substantially as it existed prior to Superstorm Sandy.

See Appendix J for e-mail correspondence from Danielle Schopp, Director, HUD Office of Environment and Energy

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**Toxic  
Chemicals &  
Gases,  
Hazardous  
Materials,  
Contamination,  
& Radioactive  
Substances**

[24 C.F.R.  
58.5(i)(2)(i)]

HUD policy requires that the proposed site and adjacent areas be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants of the property or conflict with the intended utilization of the property. In order to identify sites near the proposed project location that have hazardous materials, contamination, toxic chemicals, gases and radioactive substances as specified in 24 CFR 58.5(i), a review of NEPAAssist, or NJDEP's Geoweb will be conducted for each site. Both are area web-based application tools. NEPAAssist draws environmental data from EPA's Geographic Information System (GIS) database. The NEPAAssist review includes an examination of EPA's Superfund List (CERCLIS), National Priorities List (NPL), Toxics Release Inventory, Brownfields, Air Facility Systems, and Hazardous Waste (RCRA) databases. Geoweb draws environmental data from NJDEP's GIS database which includes the databases searched by NEPAAssist.

All solid waste materials must be managed and transported in accordance with the state's solid and hazardous waste rules.

**Radon**

It is HUD policy that all occupied structures proposed for inclusion in HUD-funded programs be free of radioactive substances that could affect the health of the occupants. EPA recommends that homes be remediated if the radon concentration is 4 picocuries per liter of air or more (Radon—Basic Information, <http://www.epa.gov/radon/aboutus.html>). The Radon Hazard Subcode of New Jersey's Uniform Construction Code defines 4 picocuries per liter or 0.02 working levels of radon as an elevated concentration.

Elevated concentrations of radon are unlikely under certain circumstances. In the RREM and Small Rental Properties Programs, no radon testing or mitigation of homes will be required for the following categories of structures:

- Structures in municipalities NJDEP classifies as having low radon potential;
  - Structures with unenclosed air space between the entire lowest floor and the ground; and
  - Structures that have been evaluated by a radon professional and found to require neither testing nor mitigation to ensure that radon is below the standards of 4 picocuries per liter of air and 0.02 working levels, based on a physical inspection of the property, the characteristics of the buildings, and other valid criteria. The radon professional must meet the qualifications in the HUD Office of Multifamily Development Radon Policy, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=13-07ml.pdf>, and must be a certified radon mitigation specialist under NJAC 7:28-27.
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Reconstructed homes that are not in one of these three exempt categories must incorporate the radon-resistant construction techniques listed in NJAC 5:23-10.4.

Homes to be rehabilitated that are not in one of the exempt categories must be tested for radon in accordance with accepted standards and the certification requirements in NJAC 7:28-27, and the testing must be documented. If the radon level is below the standards of 4 picocuries per liter of air and 0.02 working levels, no further action is required. If the radon level is at or above either of the standards, radon mitigation measures must be implemented and the home must be retested to ensure that radon levels below the standards have been achieved.

### **Asbestos, Lead-Based Paint, and Mold**

It is HUD policy that all occupied structures proposed for inclusion in HUD-funded programs be free of hazardous materials that could affect the health of the occupants. Structures to be reconstructed or rehabilitated in the RREM and Small Rental Properties Programs may include lead-based paint and materials containing asbestos. These are hazardous materials that could affect the health of residents.

All activities must comply with applicable federal, state, and local laws and regulations regarding asbestos, including but not limited to the following:

- National Emission Standard for Asbestos, standard for demolition and renovation, 40 CFR 61.145;
- National Emission Standard for Asbestos, standard for waste disposal for manufacturing, fabricating, demolition, and spraying operations, 40 CFR 61.150;
- NJAC 7:26-2.12—Generator requirements for disposal of asbestos containing waste materials; and
- New Jersey Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.

The New Jersey Superstorm Sandy Demolition Guidance Document available at <http://twp.berkeley.nj.us/docs/PR/2013/DEM%20GUIDE.pdf> contains guidance on asbestos management.

All activities must comply with applicable federal, state, and local laws and regulations regarding lead-based paint, including but not limited to, HUD's lead-based paint regulations in 24 CFR Part 35 Subparts B, H, and J. In general, these regulations apply to housing constructed prior to 1978.

Mold can also have an adverse effect on human health, and is a very common problem in houses that have been flooded. Mold should not be a problem in houses that are demolished and reconstructed, but could remain in rehabilitated housing if steps are not taken to eliminate mold during the rehabilitation. All residential structures funded under

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the RREM and Small Rental Properties Programs must be free of mold attributable to Superstorm Sandy.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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**Siting of HUD-Assisted**

**Projects near Hazardous**

**Operations**

[24 C.F.R. Part 51C]

The definition of “HUD-assisted project” at 24 CFR 51.201 is predicated on whether the project increases the number of people exposed to hazardous operations. Therefore, the environmental review for grants to reconstruct, rehabilitate, elevate, or mitigate housing that existed prior to the disaster is not required to apply the acceptable separation distance (ASD) standards in 24 CFR Part 51C where the number of dwelling units is not increased and the activities are limited to the existing footprint. (Refer to email correspondence from Danielle Schopp in Appendix J.)

An ASD analysis is required if the number of dwelling units increases and if the building footprint changes, potentially bringing the structure closer to an aboveground tank containing a flammable or explosive substance.

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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**Airport Clear Zones & Accident Potential Zones**

[24 C.F.R. Part 51D]

The restrictions on construction and major rehabilitation of structures in runway protection zones (formerly called runway clear zones) apply to civil airports (24 CFR 51.303). Civil airports are defined as commercial service airports designated in the Federal Aviation Administration’s National Plan of Integrated Airport Systems (NPIAS) (24 CFR 51.301(c)). The only New Jersey airports listed as commercial service airports in the current NPIAS are Newark Liberty International Airport in Essex and Union Counties and Atlantic City International Airport in Atlantic County. Runway protection zones extend up to half a mile from the ends of runways along flight paths, and become wider as distance from the runway increases. There are no civil airport runway protection zones in Ocean County and are therefore not relevant to the proposed project.

HUD regulations also include restrictions on construction and major rehabilitation in clear zones and accident potential zones associated with runways at military airfields (24 CFR 51.303). The only military airfield in New Jersey with clear zones and accident potential zones subject to these restrictions is Joint Base McGuire-Dix-Lakehurst (JBMDL). The clear zones and accidental potential zones at the McGuire component of JBMDL are in Burlington County and Ocean County. The zones at the Lakehurst component of JBMDL are in three municipalities in Ocean County: Jackson Township, Manchester Township, and Lakehurst Borough. (See maps in Appendix L).

**Please refer to Tier 2: Site-Specific Project Review form for each individual property for compliance documentation.**

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**Additional Statutory Authorities Not Listed in 24 CFR 58.5**

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**Fish and Wildlife Coordination Act**  
 [16 U.S.C. 661-666c]      The Fish and Wildlife Coordination Act applies to impounding, diverting, deepening, or otherwise controlling or modifying a stream or other body of water. The proposed activities would be limited to work on residential structures within previously developed lots. They would not modify any stream or body of water. Therefore, the Fish and Wildlife Coordination Act does not apply to the proposed project.

**Magnuson-Stevens Fishery Conservation and Management Act**  
 [16 U.S.C. 1801 et seq.]      The Magnuson-Stevens Fishery Conservation and Management Act applies to ocean fish, including ocean fish that spawn in fresh water or in estuaries (anadromous fish). The act requires protection of “essential fish habitat,” defined as habitat fish need for spawning, breeding, feeding, or growth to maturity.  
 New Jersey is on the Atlantic Ocean, and also contains numerous streams and estuaries used for spawning by the river herring, an anadromous fish (NJDEP, Locations of Anadromous American Shad and River Herring During Their Spawning Period in New Jersey’s Freshwaters Including Known Migratory Impediments and Fish Ladders, 2005, <http://www.state.nj.us/dep/fgw/pdf/anadromouswaters.pdf>).  
 Implementation of best management practices for erosion and sediment control and management of hazardous substances will prevent introduction of sediment and contaminants into the habitat of ocean fish, including anadromous fish such as river herring. The proposed project will not have a significant adverse impact on fish protected under the Magnuson-Stevens Fishery Conservation and Management Act.

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**Environmental Assessment Checklist (ref.: Environmental Review Guide HUD CPD 782, 24 C.F.R. 58.40, 40 C.F.R. 1508.8 & 1508.27)**

(Evaluate the significance of the effects of the proposal on the character, features, and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a finding of impact. **Impact Codes:** (1) – No impact anticipated; (2) Potentially beneficial; (3) Potentially adverse; (4) – Requires mitigation; (5) – Requires project modification. Note names, dates of contact, telephone numbers, and page references. Attach additional materials as needed.)

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<b><u>LAND DEVELOPMENT</u></b>	<b>Code</b>	<b>Summary of consultations, supporting documentation, determinations, &amp; mitigation measures</b>
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<b>Conformance with Comprehensive Plans &amp; Zoning</b>	1	The proposed project would replace, rehabilitate, elevate or mitigate existing or recently demolished homes consistent with current local plans and zoning ordinances. Contractors will obtain appropriate permits.
<b>Compatibility &amp; Urban Impact</b>	1	The proposed reconstruction, rehabilitation, elevation and mitigation of existing homes, would maintain current land use, and would therefore be compatible with existing land use. Because the proposed project would not increase the number of homes from pre-storm numbers, it would not have an urbanizing effect.
<b>Slope</b>	1	Any problems involving slopes on the proposed work sites were addressed when the homes were built. Therefore, existing slopes are not expected to cause problems for the proposed project.
<b>Soil Suitability</b>	1	Any issues regarding unsuitable soils on the sites were addressed when homes were first constructed. Therefore, unsuitable soils are not expected to cause problems for the proposed project. If unsuitable soils have caused structural problems for any of the existing or previous homes on the project sites, this would generally be addressed during the local permitting process.
<b>Hazards &amp; Nuisances Including Site Safety</b>	1	It is not anticipated that the sites of the homes proposed for reconstruction, rehabilitation, elevation or mitigation would present unusual hazards or nuisances beyond those that would be remedied or reduced by the proposed project.
<b>Energy Consumption</b>	1	Some energy would be consumed in implementing the proposed project; however, the project would not expand the housing stock relative to conditions prior to Superstorm Sandy, and would therefore not increase long-term energy consumption.
<b>Noise – Contribution to community noise levels</b>	4	The proposed activities would cause temporary increases in noise levels at nearby residences. Noise impacts would be mitigated to the extent feasible (see Conditions for Approval).
<b>Air Quality – Effects of ambient air quality on project &amp; contribution to community pollution levels</b>	4	There would be temporary, unavoidable increases in community air pollution levels during the proposed activities. Air quality impacts would be mitigated to the extent feasible (see Conditions for Approval). The completed project would not have an adverse impact on air quality in the affected communities. Existing ambient air quality would have no effect on the proposed project.

<b>Environmental Design</b> – Visual quality – coherence, diversity, compatible use & scale	2	The proposed project would assist in reconstruction, rehabilitation, elevation and mitigation of existing or recently demolished homes. The proposed work would improve visual quality relative to current conditions and would have little effect relative to conditions before the storm. The proposed project would not have significant impacts on visual coherence, diversity, or compatibility of use or scale.
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<b><u>SOCIOECONOMIC</u></b>	<b>Code</b>	<b>Summary of consultations, supporting documentation, determinations, &amp; mitigation measures</b>
<b>Demographic Character Changes</b>	1	The proposed project would help restore the previous demographic character of the affected neighborhoods by assisting homeowners and tenants of small rental properties in returning to their homes and neighborhoods.
<b>Displacement</b>	1	The proposed project would not displace any residents or businesses. The project would allow residents displaced by Superstorm Sandy to return to their homes.
<b>Employment &amp; Income Patterns</b>	2	The proposed project would help restore the previous employment and income patterns of the affected neighborhoods by assisting displaced residents in returning to their homes. The proposed project will provide a temporary boost to the construction industry and may temporarily increase employment.

<b><u>COMMUNITY FACILITIES AND SERVICES</u></b>	<b>Code</b>	<b>Summary of consultations, supporting documentation, determinations, &amp; mitigation measures</b>
<b>Educational Facilities</b>	1	The proposed project would help people return to their homes and would therefore tend to restore local school-age populations to pre-storm levels.
<b>Commercial Facilities</b>	2	The proposed project would tend to restore the demand for commercial services in the affected neighborhoods to pre-storm levels.

<b>Health Care</b>	1	The proposed project would not expand the housing stock or the number of residents relative to conditions prior to Superstorm Sandy, and would therefore not increase demand on health care relative to pre-storm conditions.
<b>Social Services</b>	1	The proposed project would help people return to their homes, and would therefore tend to restore the demand on social services to pre-storm levels.
<b>Solid Waste</b>	3	The proposed project would result in generation of substantial quantities of remodeling, demolition and construction waste. Ocean County has intra-state waste flow similar to Cape May. Assume worst case scenario that 1,288,350 cubic yards will go to the Ocean County landfill, this will impact the estimated remaining capacity of 14.3 million yards by 9%. The state has the authority, during the pendency of the Emergency, to suspend waste flow, or the counties may choose to as well. The State may consider exercising this option for Ocean County.  Refer to Appendix K for the Department's Demolition Guidance Document.
<b>Waste Water</b>	1	The proposed project would not expand the housing stock relative to conditions prior to Superstorm Sandy, and would therefore not increase demand on waste water systems relative to pre-storm conditions. All publicly owned and operated waste water systems in the project area are in operation and available to provide service. Any private individual septic systems damaged by Superstorm Sandy are not in service and will be repaired as part of the project with oversight by the applicable health department.
<b>Storm Water</b>	4	All municipalities within the project area are required by applicable permits to manage stormwater runoff from construction activities and municipal separate storm sewer systems (MS4 regulations, N.J.A.C. 7:14A et seq.). The proposed project will result in temporary soil disturbances during construction on the project sites. Implementation of best management practices and the requirement of stormwater discharge permits with oversight by local soil conservation districts will minimize any potential short-term impacts (see Conditions for Approval).
<b>Water Supply</b>	1	The proposed project would not expand the <b>housing</b> stock relative to conditions prior to Superstorm Sandy, and would therefore not increase demand on water supply. All publicly owned and operated



		drinking water supplies in the project area are in operation and available to provide service to their existing customers. The proposed project is for in-kind replacement, rehabilitation, elevation and mitigation of existing individual housing structures. It is expected that all housing units will utilize the water supplies available prior to Superstorm Sandy.
<b>Public Safety</b> - Police	1	The proposed project would not expand the housing stock relative to conditions prior to Superstorm Sandy, and would therefore not increase demand for police protection.
<b>Public Safety</b> - Fire	2	The proposed project would replace, repair, elevate or mitigate damaged homes. Unrepaired structures pose a potential fire risk and the program would assist in removing the potential hazards.
<b>Public Safety</b> - Emergency Medical	1	The proposed project would not expand the housing stock relative to conditions prior to Superstorm Sandy, and would therefore not increase demand on emergency medical services.
<b>Open Space, Recreation, and Cultural Facilities</b>	1	The proposed project of reconstruction, rehabilitation, elevation and mitigation of housing on property that previously contained housing would have no impact on open space or recreational facilities. The project would also have no effect on cultural facilities.
<b>Transportation</b>	1	The proposed project would not impact transportation. There would be a minor and temporary increase in construction traffic.
<b>Water Resources</b>	4	The proposed project would not pose a significant threat to ground water or other water resources. The project is consistent with the applicable regulations for Wetlands Protection, Coastal Zone Management, Floodplain Management and Sole Source Aquifers, which are protective of water resources of the State (see above findings). Mitigation measures would be implemented to avoid or minimize any potential temporary impacts (see Conditions for Approval).
<b>Surface Water</b>	4	The proposed project would not pose a significant threat to surface water. The project does not include any work in surface waters and there will be no new discharges to surface water. Any impacts will be temporary during construction and effectively managed using required mitigation measures (see Conditions for Approval).
<b>Unique Natural Features &amp; Agricultural Lands</b>	1	The proposed project would have no effect on unique natural features or agricultural land. None of the proposed activities would occur on agricultural land.

Manahawkin Bottomland Hardwood Forest in Ocean County is listed on the National Registry of Natural Landmarks. It is a mature bottomland hardwood forest dominated by sweetgum, red maple and black gum. It is one of the finest remaining examples of bottomland hardwood forest in the northern Atlantic Coastal Plain biophysiographic province. Designated: 1976. Ownership: State.

The proposed project will not impact this State owned Natural Landmark.

<b>Vegetation &amp; Wildlife</b>	1	The activities associated with the proposed project are not expected to generate long-term adverse impacts on vegetation or wildlife. The proposed project would result in the reconstruction, rehabilitation, elevation and mitigation of residences. Activities would be limited to the disturbed area of the previously developed parcel. Therefore, any impacts to vegetation and wildlife are expected to be the same or less than pre-storm impacts.
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<b><u>OTHER FACTORS</u></b>	<b>Code</b>	Summary of consultations, supporting documentation, determinations, & mitigation measures
<b>Flood Disaster Protection Act [Flood Insurance]</b> [24 CFR 58.6(a)]	1	Most of the properties proposed for reconstruction, rehabilitation, elevation and mitigation are in the 100-year floodplain. Flood insurance will have to be obtained for all properties in the 100-year floodplain shown the effective FEMA Flood Insurance Rate Map, before they receive funding. In compliance with 24 CFR 58.6(b), no funding will be provided to any person who previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance, but failed to obtain and maintain the insurance (see Conditions for Approval).
<b>Coastal Barrier Resources Act/Coastal Barrier Improvement Act</b> [24 CFR 58.6(c)]	1	The nine designated units of the Coastal Barrier Resources System in New Jersey are uninhabited. The 12 “otherwise protected areas” associated with the Coastal Barrier Resources System in New Jersey are also uninhabited. Therefore, no project activities would occur on designated coastal barriers or in “otherwise protected areas,” and the proposed project would have no impact on coastal barrier resources.  Refer to Appendix M for documentation.
<b>Airport Runway Clear Zone or Clear Zone</b>	1	The runway protection zones (formerly called runway clear zones) at airports subject to 24 CFR 58.6

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**Disclosure**

[24 CFR 58.6(d)]

contain no residential structures. The clear zones at military airfields subject to 24 CFR 58.6 are also uninhabited. Therefore, the proposed project would not include any structures in runway protection zones or clear zones.

Refer to Appendix L for documentation.

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**Attachments:****List of Sources, Agencies, and Persons Consulted**

[40 C.F.R. 1508.9(b)] (List and attach all evidence of inquiries and responses received at all stages of consultation and analysis.)

FAA, National Plan for Integrated Airport Systems, 2013-2017. Accessed April 9, 2013: [http://www.faa.gov/airports/planning\\_capacity/npas/reports/media/2013/npas2013Narrative.pdf](http://www.faa.gov/airports/planning_capacity/npas/reports/media/2013/npas2013Narrative.pdf).

Google Earth Pro aerial imagery.

John H. Chafee Coastal Barrier Resources System, New Jersey map. Accessed April 9, 2013: <http://www.fws.gov/CBRA/Maps/Locator/NJ.pdf>. (Appendix M)

Joint Base McGuire-Dix-Lakehurst Joint Land Use Study for Counties of Ocean and Burlington, April 2009. Prepared for Ocean County, NJ, by Paulus, Sokolowski, and Sartor, LLC, et al. Accessed April 9, 2013: [http://www.planning.co.ocean.nj.us/jlus/JLUS\\_Report\\_Apr\\_2009.pdf](http://www.planning.co.ocean.nj.us/jlus/JLUS_Report_Apr_2009.pdf).

McGuire Air Force Base Air Installation Compatible Use Zone Study, August 2009. Accessed April 10, 2013: <http://www.jointbasemdl.af.mil/shared/media/document/AFD-100407-042.pdf>.

National Park Service, National Registry of Natural Landmarks. Accessed April 9, 2013: [www.nature.nps.gov/nnl/docs/NNLRegistry.pdf](http://www.nature.nps.gov/nnl/docs/NNLRegistry.pdf).

National Park Service, Partnership Wild & Scenic Rivers, Northeast Regional Office. Paul Kenney, email correspondence, April 4, 2013. (Appendix H)

New Jersey Department of Community Affairs (NJDCA), Areawide Compliance Process, Executive Order 11988 – Floodplain Management, Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties, New Jersey.

NJDCA, Community Development Block Grant Disaster Recovery Action Plan, March 2013. Accessed April 10, 2013: <http://nj.gov/dca/announcements/pdf/CDBG-DisasterRecoveryActionPlan.pdf>.

New Jersey Department of Environmental Protection (NJDEP), Division of Fish and Wildlife, Locations of Anadromous American Shad and River Herring During Their Spawning Period in New Jersey's Freshwaters Including Known Migratory Impediments and Fish Ladders, March 2005. Accessed May 16, 2013: <http://www.state.nj.us/dep/fgw/pdf/anadromouswaters.pdf>.

NJDEP, Natural & Historic Resources, Historic Preservation Office. Letter from Daniel D. Saunders, Deputy State Historic Preservation Officer, April 9, 2013. (Appendix C)

NJDEP, New Jersey Geological and Water Survey, Digital Geodata Series, DGS98-6 Sole-Source Aquifers of New Jersey. Accessed April 10, 2013: <http://www.njgeology.org/geodata/dgs98-6.htm>. (Appendix F)

Port Authority of New York and New Jersey (PANYNJ), Aviation Department, Aviation Planning Division. Newark Liberty International Airport Airport Layout Plan, 1997.

PANYNJ Aviation Department. Newark Liberty International Airport map, 2011.

Federal Aviation Administration (FAA) - Harrisburg ADO. Atlantic City International Airport (ACY) Runway Protection Zone Map and ACY Runway Protection Zone Summary, April 13, 2013. (Appendix L)

Programmatic Agreement Among the Federal Emergency Management Agency, the New Jersey State Historic Preservation Officer, the New Jersey State Office of Emergency Management, the Advisory Council on Historic Preservation, the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge Munsee Band of Mohicans as a Result of Hurricane Sandy. (Appendix C)

Sierra Research for Office of Mobile Sources, U.S. Environmental Protection Agency. Report No. SR93-03-02, Evaluation of Methodologies to Estimate Nonroad Mobile Source Usage, March 19, 1993. Accessed April 10, 2013: <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=9100UR51.txt>.

United States Environmental Protection Agency (EPA), 1997 PM<sub>2.5</sub> Standards—Region 2 State Designations. Accessed April 5, 2013: [www.epa.gov/pmdesignations/1997standards/final/region2desig.htm](http://www.epa.gov/pmdesignations/1997standards/final/region2desig.htm).

EPA, 2008 Ground-level Ozone Standards—Round 2 Final Designations, April 2012. Accessed April 5, 2013: [www.epa.gov/ozonedesignations/2008standards/final/region2f.htm](http://www.epa.gov/ozonedesignations/2008standards/final/region2f.htm).

EPA, Basic Information. Accessed April 5, 2013: [www.epa.gov/air/genconform/background.html](http://www.epa.gov/air/genconform/background.html).

EPA, General Conformity Training Manual. Accessed April 5, 2013: [www.epa.gov/air/genconform/training/files/General\\_Conformity\\_Training\\_Manual.pdf](http://www.epa.gov/air/genconform/training/files/General_Conformity_Training_Manual.pdf).

United States Department of Housing and Urban Development. Danielle Schopp, Director, Office of Environment and Energy, email correspondence, March 18, 2013. (Appendix J)

United States Fish and Wildlife Service (USFWS), New Jersey Field Office, Federally Listed and Candidate Species Occurrences in New Jersey by County and Municipality. Accessed March 4, 2013: [www.fws.gov/northeast/njfieldoffice/pdf/munlist.pdf](http://www.fws.gov/northeast/njfieldoffice/pdf/munlist.pdf). (Appendix G)

USFWS, Official Coastal Barrier Resources System Maps. Accessed April 9, 2013: <http://www.fws.gov/CBRA/Maps/>.

Wild and Scenic Rivers Act, Sections 3 and 5 (16 USC 1274 and 1276).

## **Appendices**

**Appendix A** Tier 2 Site-Specific Review Form

**Appendix B** Sensitive Land Use Areas Map

**Appendix C** Historic Preservation

**Appendix D** Floodplain Management

**Appendix E** Coastal Zone Management Act

**Appendix F** Sole Source Aquifers

**Appendix G** Endangered Species Act

**Appendix H** Wild and Scenic Rivers Act

- Appendix I** Air Quality
- Appendix J** Noise Abatement and Control and Siting of HUD-Assisted Projects near Hazardous Operations
- Appendix K** Demolition Guidance Document
- Appendix L** Airport Clear Zones and Accident Potential Zones
- Appendix M** Coastal Barrier Resources Act/Coastal Barrier Improvement Act

## **Appendix A**

### Tier 2 Site-Specific Review Form

# Tier 2: Site Specific Review New Jersey RREM and Small Rental Properties Programs

(5-18-13)

(Intended for use following CEST and EA level tier 1 environmental reviews conducted for rehabilitation, reconstruction, elevation and mitigation of residential structures with 1 to 4 units)

Date Submitted to DCA	
Date of Desktop Review	
Date of Field Inspection Time In: Time Out:	
Name of Reviewer and Contact information	
Name of Inspector	
DCA Grant Number	B-13-DS-34-0001
Applicant's Name	
Activity Location (address)	
Activity Description	<p><b>Note: Throughout this annotated form, explanatory language is in blue font.</b></p> <p><b>Introduction for all activities:</b></p> <p>A Tier 1 Environmental Assessment (EA) was completed for New Jersey's Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program and Small Rental Properties program. This is the site specific review for activities eligible under this program.</p> <ul style="list-style-type: none"> <li>• <b>For rehabilitation:</b></li> </ul> <p>The proposed activity is rehabilitation of the (insert number)-unit residential structure at the address listed above. The structure was damaged as a result of Superstorm Sandy. The structure was constructed in (insert year). Renovations would include addressing storm-related damage and bringing the property up to current minimum property standards and compliance with applicable ADA requirements. All activities would be limited to the disturbed area of the previously developed lot.</p> <p>A map showing the location of the proposed activity is provided in Appendix A. (Attach map from DEP NJ GeoWeb screening tool)</p> <ul style="list-style-type: none"> <li>• <b>For reconstruction of an existing building:</b></li> </ul> <p>The proposed activity is reconstruction of the (insert number)-unit residential structure at the address listed above. The structure was damaged as a result of Superstorm Sandy. The structure was constructed in (insert year). The existing structure would be demolished and replaced with a new (insert number)-</p>



unit residential structure. The lowest occupied floor of the new structure would be elevated at least 1 foot above the highest applicable 100-year flood level determined using the best available data. All activities would be limited to the disturbed area of the previously developed lot.

**The sentence regarding elevation above the 100-year flood level should be removed from the description if the new structure would be entirely outside the 100-year floodplain. If the structure is in a nontidal 100-year floodplain, “1 foot” should be changed to “2 feet”.**

A map showing the location of the proposed activity is provided in Appendix A. ([Create map from DEP NJ-GeoWeb screening tool.](#))

- **For reconstruction on a lot from which the previous building has already been removed:**

The proposed activity is reconstruction of the previously demolished ([insert number](#))-unit residential structure at the address listed above. The structure was damaged as a result of Superstorm Sandy. The structure was constructed in ([insert year](#)). The structure previously on the site would be replaced with a new ([insert number](#))-unit residential structure. The lowest occupied floor of the new structure would be elevated at least 1 foot above the highest applicable 100-year flood level using ([insert method such as pilings](#)). All activities would be limited to the disturbed area of the previously developed lot.

**The sentence regarding elevation above the 100-year flood level should be removed from the description if the new structure would be entirely outside the 100-year floodplain. If the structure is in a nontidal 100-year floodplain, “1 foot” should be changed to “2 feet”.**

A map showing the location of the proposed activity is provided in Appendix A. ([Create map from DEP NJ-GeoWeb screening tool.](#))

- **For elevation of an existing building:**

The proposed activity is elevation of the ([insert number](#))-unit residential structure at the address listed above. The structure was damaged as a result of Superstorm Sandy. The structure was constructed in ([insert year](#)). The lowest occupied floor of the structure would be elevated at least 1 foot above the highest applicable 100-year flood level by ([insert elevation method such as pilings](#)). All activities would be limited to the disturbed area of the previously developed lot.

A map showing the location of the proposed activity is provided in Appendix A. ([Create map from DEP NJ-GeoWeb Screening tool.](#))

- **For mitigation:**

The proposed activity is mitigation to reduce the vulnerability to natural disasters of the ([insert number](#))-unit residential structure at the address listed above. The structure was damaged as a result of Superstorm Sandy. The structure was constructed in ([insert year](#)). Mitigation would include ([briefly describe the](#)

	<p><a href="#">proposed mitigation</a>). All activities would be limited to the disturbed area of the previously developed lot.</p> <p>A map showing the location of the proposed activity is provided in Appendix A. (<a href="#">Create map from DEP GeoWeb screening tool.</a>)</p>
Finding of Tier 2 Review	<p><b>Choose one of the following:</b></p> <p><input type="checkbox"/> The proposed activity complies with environmental requirements for funding.</p> <p><input type="checkbox"/> The proposed activity does not comply with environmental requirements for funding because (<a href="#">provide reason such as permanent impact to a wetland or inconsistency with the coastal program</a>).</p> <p><input type="checkbox"/> A finding cannot be made without (<a href="#">describe missing information or documentation</a>).</p>

## Site Specific Findings

### 1. Historic Preservation

(36 CFR Part 800)

- Project area is located entirely within a mapped “green zone” where there are no above-ground historic properties as identified jointly by FEMA and NJHPO windshield surveys, and no ground disturbance is proposed outside of the previously developed area of the lot.
- If yes, concurrence was provided for: Name of town \_\_\_\_\_; Date: \_\_\_\_\_; HPO project #: \_\_\_\_\_ **(Review concluded)**
- Project area is not located entirely within a mapped “green zone”, but is comprised entirely of an activity listed in the Tier I or Tier II Programmatic Allowance specified in the Programmatic Agreement.
- Activity meets Tier I Programmatic Allowance # \_\_\_\_\_
- Activity meets Tier II Programmatic Allowance # \_\_\_\_\_ **(Requires SOI qualified professional)**
- Name of SOI Qualified Professional(s):** \_\_\_\_\_
- Activity involves a National Historic Landmark.
- NJHPO and National Park Service NHL Program Manager notified and provided appropriate project documentation
- Project activity is proposed for buildings or structures less than 48 years of age, and proposed activities substantially conform to the original footprint or would be performed in previously disturbed soils, and the buildings or structures are not in or adjacent to a historic district. **(Review concluded)**
- Proposed activity does not meet any of the above circumstances, and requires full Section 106 review of the entire undertaking (Standard Project Review under Stipulation II.C. of the Programmatic Agreement).
- Consultation completed with NJHPO to identify appropriate consulting parties, including federally recognized tribes, that need to be part of the Section 106 consultation process.
- Historic Buildings and Structures**
- No historic properties 48 years or older in area of activity. **(Review Concluded)**
- Building or structure 48 years or older in project area and activity not exempt from review.
- Determination of No Historic Properties Affected (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Are project conditions required?

No **(Review Concluded)**

Yes. Attach conditions. **(Review Concluded)**

Determination of Historic Properties Affected (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Property a National Historic Landmark and National Park Service was provided early notification during the consultation process. If not, explain in comments.

No Adverse Effect Determination (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Are project conditions required?

No **(Review Concluded)**

Yes. Attach conditions. **(Review Concluded)**

Adverse Effect Determination (FEMA/NJDCA (HUD) finding/SHPO/THPO concurrence on file)

Resolution of Adverse Effect completed

Standard Treatment Measures applied, letter on file

MOA on file

Are project conditions required?

No **(Review Concluded)**

Yes. Attach conditions. **(Review Concluded)**

#### **Archaeological Resources**

Project affects only previously disturbed soils as defined on page 33 of the Programmatic Agreement. **(Review Concluded)**

Project affects undisturbed soils.

Project area has no potential for presence of archeological resources.

Determination of no historic properties affected (FEMA/NJDCA (HUD) finding/SHPO/THPO concurrence or consultation on file). **(Review Concluded)**

Project area has potential for presence of archeological resources

Determination of no historic properties affected (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Are project conditions required?

No **(Review Concluded)**

Yes. Attach conditions. **(Review Concluded)**

Determination of historic properties affected

NR eligible resources not present (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Are project conditions required?

No **(Review Concluded)**

Yes. Attach conditions. **(Review Concluded)**

NR eligible resources present in area of activity. (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

No Adverse Effect Determination (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Are project conditions required?

No (**Review Concluded**)

Yes. Attach conditions. (**Review Concluded**)

Adverse Effect Determination (FEMA/NJDCA (HUD) finding and SHPO/THPO concurrence on file)

Resolution of Adverse Effect completed.

Standard Treatment Measures applied

MOA on file)

Are project conditions required?

No (**Review Concluded**)

Yes. Attach conditions. (**Review Concluded**)

## 2. Floodplain Management and Flood Insurance

(EO 11988, 24 CFR Part 55, and 24 CFR 58.6)

The proposed site is (check only one of the following):

Not in a 100-year floodplain (A and V zones). Attach appropriate floodplain map showing site location. (Complies with EO 11988, 24 CFR Part 55, and 24 CFR 58.6. Analysis complete.)

In a 100-year floodplain (A and V zones) and not in a National Flood Insurance Program (NFIP) participating community. Attach appropriate floodplain map showing site location. **Does not comply** with EO 11988, 24 CFR Part 55, and 24 CFR 58.6 because required flood insurance is not obtainable. (Analysis complete.)

**The following municipalities in the 9 most impacted counties are not NFIP participating communities: Cliffside Park Boro, Englewood Cliffs Boro, Alpine Boro, Union City, Shrewsbury Twp., Freehold Boro, Winfield Twp. If activity is in one of these communities check the second box above.**

In a 100-year floodplain (A and V zones) and in a NFIP-participating community. Is the activity in a floodway?

Yes. **Does not comply** with EO 11988, 24 CFR Part 55, and 24 CFR 58.6. Attach appropriate floodplain map showing site location. (Analysis complete)

No. The activity:

Is known to be exempt from the 8-step floodplain management decision making process under 24 CFR 55.12(b)(2). Explain basis for concluding that this exemption applies. Attach appropriate floodplain map. **Complies** with EO 11988, 24 CFR Part 55, and 24 CFR 58.6. Activity requires the following type of FHACA permit:

Permit-by-rule (PBR)

General permit (GP)

Individual permit (IP)

**Repair, reconstruction, modernization, or improvement of residential structures with 1 to 4 units is exempt if either of the following is true (24 CFR 55.12(b)(2)):**

- The cost is less than 50% of the market value of the structure before it was damaged and the number of units in the structure is not increased (24 CFR 55.2(b)(8)(i)).**
- The activity would bring the structure into compliance with existing state or local health, sanitary or safety code specifications and is solely necessary to assure safe living conditions (24 CFR 55.2(b)(8)(ii)(A)).**

**In the absence of other work, elevation should qualify for exemption under the second bullet item above. If insufficient information is available to establish the applicability of either bullet item, the activity is not known to be exempt, and one of the next two items should be checked.**

- Is not known to be exempt from the 8-step floodplain management decision making process but is adequately covered by the 8-step process completed for rehabilitation, reconstruction, elevation, and mitigation under the RREM and Small Rental Properties programs. Substantial improvement actions will be elevated to the best available (most recent) flood elevation plus at least 1 foot. **Complies** with EO 11988, 24 CFR Part 55, and 24 CFR 58.6. Explain basis for conclusion. Attach appropriate floodplain map. Activity requires the following type of FHACA permit:
  - Permit-by-rule (PBR)
  - General permit (GP)
  - Individual permit (IP)
  
- Is not known to be exempt from the 8-step floodplain management decision making process and is not adequately covered by the 8-step process completed for rehabilitation, reconstruction, elevation, and mitigation under the RREM and Small Rental Properties programs. Prepare site-specific supplement to 8-step process. Substantial improvement actions will be elevated to the best available (most recent) flood elevation plus at least 1 foot. Activity **complies** with EO 11988, 24 CFR Part 55, and 24 CFR 58.6. Activity requires the following type of FHACA permit:
  - Permit-by-rule (PBR)
  - General permit (GP)
  - Individual permit (IP)

**An activity is not adequately covered by the programmatic 8-step process if it would not comply with a requirement listed in the 8-step document or it would involve special circumstances not addressed in the 8-step document. The fundamental requirements are flood insurance, elevation to at least 1 foot above the 100-year flood level (2 feet in nontidal floodplains), not building or rebuilding in a floodway, and, if applicable, compliance with the special requirements for V zones. Flood insurance is required only if the structure is in the 100-year floodplain (A or V zone) shown on the effective FIRM. Flood insurance is not required if the structure is in the 100-year floodplain shown on an ABFE map or a preliminary FIRM, but not in the 100-year floodplain shown on the effective FIRM.**

**If a parcel is partly in the 100-year floodplain and partly outside it, and the structure could be reconstructed inside or outside the floodplain, that is a special circumstance not addressed in the 8-step document. If the structure is rebuilt, it should be rebuilt outside the floodplain.**

### 3. Wetlands Protection

(EO 11990 and Clean Water Act, especially Section 404)

Are coastal or freshwater wetlands on or adjacent to the site?

- No. Document the determination. Attach appropriate Wetland map. (Analysis complete)
- Yes. Would the activity affect the wetlands?

**Work in wetlands, including operation of equipment in wetlands, would obviously affect the wetlands. Best management practices should prevent impact to adjacent wetlands.**

- No. Outside wetland and no effect on wetlands. Explain why wetlands would not be affected and attach appropriate wetland map. **Compliance met.** (Analysis complete)

**In most cases, the explanation will be a lack of nearby wetlands, implementation of best management practices, or a combination. A site inspection by a trained wetlands professional may be necessary for this determination.**

- Yes. Possible adverse effect associated with constructing in or near wetlands. Would the effect be permanent or temporary?

**If the wetlands would be filled, paved, or built upon, the effect would be permanent. Effects of operating equipment on wetlands should be temporary. A site inspection by a trained wetland professional is required to confirm wetlands will be adversely affected.**

- Permanent. Explain basis for conclusion. **Activity is not in compliance.** (Analysis complete)
- Temporary. Describe the impact on wetlands and the status of the 8-step process for determining no practical alternative pursuant to Executive Order 11990. Explain the process for securing a permit for modifications to wetland areas pursuant to Section 404 of the Clean Water Act.

**Temporary impacts to wetlands require the 8-step process to be completed. The activity is not in compliance unless the 8-step process is completed for the activity. A State Freshwater Wetland permit or a Coastal Wetland Permit would also be required.**

- 8-step process complete?

- No. **Activity not in compliance.**

- Yes. Describe the outcome of the 8-step process.

- Activity in compliance** with EO 11990 and the Clean Water Act. Explain basis for conclusion and describe the permitting process and mitigation measures. Attach supporting documentation. (Analysis complete).

- Activity not in compliance** with EO 11990 and the Clean Water Act. Explain basis for conclusion. Attach supporting documentation (Analysis complete).

#### 4. Coastal Zone Management Act

(Sections 307 (c), (d))

Is the site in the Coastal Area Facility Review Act (CAFRA) zone; the Upland Waterfront Development area or the New Jersey Meadowlands District?

- No. Attach map (Analysis complete)
- Yes. (Go to section corresponding to applicable area below)
- Site is within the New Jersey Meadowlands District** (Project requires consistency determination from the NJ Meadowlands Commission). Attach map. (Analysis complete)
- Site is within the Coastal Area Facility Review Act (CAFRA) boundary**
- A.** Is the structure located within the existing footprint of the building?
- Yes. Project is not regulated and therefore, consistent with CZM. Attached documentation. (Analysis complete)
- No. Go to B in this section.
- B.** Is the residential structure containing less than 25 dwelling units located more than 150 feet from the mean high waterline of a tidal water or the inland limit of a beach or dune, whichever is more landward?
- Yes. Project is not regulated and therefore, consistent with CZM. Attach documentation. (Analysis complete)
- No. Go to C in this section.
- C.** Is the residential structure of less than 3 dwelling units behind intervening development? Note that intervening development means there is a development between the site and the waterway.
- Yes. Project is not regulated and therefore, consistent with CZM. Attach documentation. (Analysis complete)
- No. Coastal permit required. What type of coastal permit is required?
- PBR
- GP
- IP
- Site is within the Upland Waterfront Development Area.**
- A.** Is the structure located within the existing footprint of the building?
- Yes. Project is not regulated and therefore, consistent with CZM. Attached documentation. (Analysis complete)
- No. Coastal permit required. What type of coastal permit is required?
- PBR
- GP
- IP

#### 5. Sole Source Aquifers

(40 CFR Part 149)

Not applicable. Compliance determined in tier 1 environmental assessment.

## 6. Endangered Species Act

(16 USC 1531 et seq., 50 CFR Part 402)

Based on desktop review, could the proposed activity affect piping plovers?

No. Explain finding and attach map. (Analysis complete)

**The DEP GeoWeb screening map depicts areas where work may affect piping plovers. Initial findings of no potential for impact should be based on the mapping.**

**Work sites within areas where effects could occur require review by an NJDEP Endangered and Non-game Species Program (ENSP) biologist.**

Yes. Based on examination by an ENSP biologist of additional information regarding the site and current piping plover nesting activity and habitat conditions, it has been determined that (check only one of the following):

Piping plovers would not be affected by the any eligible activity on the previously developed portions of the site. Explain finding and attach supporting documentation. (Analysis complete)

**The supporting documentation will normally be the report from the ENSP biologist that reviewed the site.**

Piping plovers may be affected by the proposed activity. Consultation with USFWS is required.

Consultation with USFWS resulted in a determination that (check only one of the following):

The proposed activity including appropriate measures to avoid adverse impacts, would not adversely affect piping plovers. Explain how this conclusion was reached. Describe required mitigation measures. Attach supporting documentation. Activity is in compliance. (Analysis complete)

The proposed activity would adversely affect the piping plover. Explain how this conclusion was reached. Attach supporting documentation. Activity is not in compliance. (Analysis complete)

## 7. Wild & Scenic Rivers Act

(Sections 7(b), (c))

Not applicable. Compliance determined in tier 1 environmental assessment.

## 8. Air Quality

(Clean Air Act, Sections 176 (c) & (d), & 40 C.F.R. Part 6, 51, & 93)

Not applicable. Compliance determined in tier 1 environmental assessment.

## 9. Farmland Protection Policy Act

(7 C.F.R. Part 658)

Not applicable. Compliance determined in tier 1 environmental assessment.

## 10. Environmental Justice

(E.O. 12898)

Not applicable. Compliance determined in tier 1 environmental assessment.



## 11. Toxic Chemicals and Gases, Hazardous Materials, Contamination, and Radioactive Substances

(24 CFR Part 58.5(i)(2))

Do any of the following apply to the subject property? (1) Property is within 3000' of a Hazardous Waste facility that handles hazardous materials or toxic substances. (2) Property is within 3000' of a landfill, hazardous waste or solid waste cleanup site(s). (3) Property is listed on a State or Federal Hazardous Waste sites data base and is presently under analysis or remediation. (4) During site reconnaissance of subject property and adjoining properties, inspector has observed recognized environmental conditions (RECs).

**REC explanation: Site conditions indicate that the subject property is contaminated or likely contaminated via the release of on-site or off-site hazardous substances or petroleum products.**

**During the site reconnaissance, the subject property and adjoining properties are visually inspected for RECs, such as:**

- **UST vent or fill pipes**
- **Corroded ASTs, drums or containers**
- **Pits, ponds, lagoons, pools of hazardous substances or petroleum products**
- **Mounds of rubble, garbage, or solid waste**
- **Distressed vegetation**
- **Surface staining**
- **Faulty septic systems**
- **Ground water monitoring or injection wells**
- **Proximity to sensitive receptors (wetlands, floodplains, critical habitats, etc.)**
- **Structure(s): present and former uses**

**Note any obstacles to identification of RECs.**

- No. Explain findings and attach critical distance (CD) map showing absence of or non-threatening hazardous facilities, or toxic cleanup sites within 3000' of subject property, and that no RECs have been observed during site reconnaissance. (Analysis complete)

**Screening for toxics is completed by an in-house or consulting Environmental Professional (EP) that meets the qualifications per the ASTM E 1527-05 ESA standard, which would uphold EPA's AAI rule. Secondly, Tier 2 screening for toxics shall include but is not limited to broad-researched conditions such as site observations, analysis of State and Federal HW and SW sites data bases, 3000' Radius searches for landfills, HW and SW sites, on a site specific basis.**

- Yes. Explain findings and attach CD map delineating the presence of hazardous facilities or toxic cleanup sites of concern that suggest that the subject property is contaminated or is likely contaminated. Without submittal of specific site assessment information (ASTM phase 1 ESA, phase 2 ESA, or vapor intrusion investigative study), site will be considered as not being in compliance with HUD's 24 CFR 58.5(i)(2) site contamination regulation and Phase I Threshold policy. If this information exists it must be submitted to NJDEP for review.

**Assessment information must be supported by an ASTM E 1527-05 phase I ESA, phase 2 ESA, and/or an ASTM vapor encroachment screening (VES) report (for landowner liability protection). Findings must indicate that the site is not contaminated or that any REC findings or actual site contamination have been addressed and remediated appropriately.**

## 12. Siting of HUD-Assisted Projects near Hazardous Operations

(24 CFR Part 51, Subpart C)

Would the proposed activity expand or move the footprint of the residential structure that was on the site at the time of Superstorm Sandy?

No. **In compliance.** Identify source of information. (Analysis complete)

**In most cases the source of information will be the grant application.**

Yes. Would the modified structure be less than the acceptable separation distance (ASD) from a stationary aboveground storage tank (AST) that is within 1 mile of the subject property and holds an explosive or combustible substance? Note: ASTs of 100 gallons or less that hold "common liquid fuels" such as fuel oil, kerosene, and gasoline are exempt from the ASD requirements, and cannot cause the answer to this question to be Yes. However, this exemption does not apply to compressed fuel gases such as propane, so it is possible that a stationary compressed fuel gas tank of 100 gallons or less could cause the answer to this question to be Yes.

**Additional explanation of ASD analysis is provided below.**

No. **In compliance.** Explain finding. (Analysis complete)

Yes. Describe the information used in calculating the Acceptable Separation Distance (ASD) and attach a map showing the location of the tank relative to the subject property. Describe any feasible mitigation measures per 24 CFR 51.205, or other verifiable information that is pertinent to compliance with the ASD standard. If no mitigation measures are feasible the activity is **not in compliance** with the applicable HUD environmental standard, 24 CFR Part 51C.

**Requires use of Google Earth or like tool for desktop search for large ASTs within 1 mile plus a field reconnaissance of subject property and surrounding properties.**

**Common liquid fuels include fuel oil, gasoline, diesel fuel, and kerosene. Other flammable or explosive substances include propane and other fuel gases. If the type of substance in a tank cannot be determined, it must be assumed to contain a flammable or explosive substance that is not a common liquid fuel.**

**The ASD is determined using HUD's Acceptable Separation Distance Electronic Assessment Tool, <http://www.hud.gov/offices/cpd/environment/asdcalculator.cfm>. The information required to use the tool depends on the type of tank involved. For diked tanks, it is not necessary to know the volume of the tank, but the dimensions of the diked area must be estimated. This can be done using Google Earth.**

**For tanks holding ordinary fuel gases such as propane, which are always pressurized, only the volume of the tank must be determined. Information at the following link can be used to determine the volume of a tank if at least one of its dimensions is known: <http://www.missiongas.com/lpgastankdimensions.htm>.**

**A tank holding a cryogenic liquid such as liquid natural gas may or may not be diked. If it is, the dimensions of the diked area must be estimated. If it is not diked, the volume of the tank must be estimated.**

**The ASD Electronic Assessment Tool calculates three ASDs for pressurized tanks containing ordinary fuel gas: blast overpressure, thermal radiation for people, and thermal radiation for buildings. The blast overpressure ASD is not calculated for unpressurized tanks because they are not subject to explosion. The activity must comply with all applicable ASDs.**

**The ASD for thermal radiation for people is the longest. Blast overpressure can be mitigated with a blast wall, but this approach is generally not feasible for thermal radiation because the maximum thermal radiation comes from a fireball well above the tank.**

## 13. Coastal Barrier Resource Act/Coastal Barrier Improvement Act

(24 CFR 58.6(c))

Not applicable. Compliance determined in Tier 1 environmental assessment.

#### 14. Airport Clear Zones and Accident Potential Zones

(24 CFR Part 51, Subpart D)

Is the proposed activity site in one of the three Ocean County municipalities containing the accident potential zones associated with the Lakehurst component of Joint Base McGuire-Dix-Lakehurst: Jackson Township, Manchester Township, or Lakehurst Borough?

- No. (Analysis complete)
- Yes. Is the proposed activity site in an accident potential zone associated with the Lakehurst component of Joint Base McGuire-Dix-Lakehurst?
  - No. Identify source of information. (Analysis complete)  
**Whether the response is no or yes, the source of information will be maps of the Lakehurst accident potential zones.**
  - Yes. Identify source of information. Select one of the following:
    - Under 24 CFR 51.302 and 303(b), activities of the type proposed are fundable in accident potential zones at Lakehurst. (Analysis complete)
    - Under 24 CFR 51.302 and 303(b), activities of the type proposed are not fundable in accident potential zones at Lakehurst. The proposed activity cannot be funded. (Analysis complete)

**The regulation states that “HUD policy is to discourage the provision of any assistance, subsidy or insurance for projects and actions in the Accident Potential Zones. To be approved, projects must be generally consistent with the recommendations in the *Land Use Compatibility Guidelines For Accident Potential Zones* chart contained in DOD Instruction 4165.57.” The DOD instruction is available at <http://www.dtic.mil/whs/directives/corres/pdf/416557p.pdf>. The land use compatibility chart indicates that the only residential land use compatible with accident potential zones is single-family homes on lots of half an acre or more in APZ-II, the outer accident potential zone. The compatibility standards apply not only to new construction but to substantial rehabilitation and any other activity that significantly prolongs the physical or economic life of the structure (24 CFR 51.302(b)).**

**HUD should be consulted regarding individual activities proposed in accident potential zones. The number of such activities is likely to be small.**

#### 15. Fish and Wildlife Coordination Act

(16 U.S.C. 661-666c)

Not applicable. Compliance determined in Tier 1 environmental assessment.

#### 16. Magnuson-Stevens Fishery Conservation and Management Act

(16 U.S.C. 1801 et seq.)

Not applicable. Compliance determined in Tier 1 environmental assessment.

## Conditions for Approval

The following mitigation measures are required as conditions for approval of the project:

### General

1. Acquire all required federal, state and local permits prior to commencement of construction and comply with all permit conditions.
2. If the scope of work of a proposed activity changes significantly, the application for funding must be revised and resubmitted for reevaluation under the National Environmental Policy Act.

### Historic Preservation

3. All activities must comply with Section 106 of the National Historic Preservation Act per the implementing regulations 36 CFR Part 800. Compliance with Section 106 is achieved through the procedures set forth in the Programmatic Agreement among the Federal Emergency Management Agency, the New Jersey State Historic Preservation Officer, the New Jersey State Office of Emergency Management, the Advisory Council on Historic Preservation, the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge Munsee Band of Mohicans, as signed onto by the New Jersey Department of Community Affairs.
4. In the event that archeological deposits, including any Native American pottery, stone tools, bones, or human remains, are uncovered, the project shall be halted and the applicant shall stop all work immediately in the vicinity of the discovery and take reasonable measures to avoid or minimize harm to the finds. All archeological findings will be secured and access to the sensitive area restricted. The applicant will inform FEMA immediately and FEMA will consult with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and Tribes and work in sensitive areas cannot resume until consultation is completed and appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act (NHPA).

### Floodplain Management and Flood Insurance

5. All proposed reconstruction, repair, elevation and mitigation of substantially damaged structures in the 100-year floodplain must adhere to the most recent elevation requirements in accordance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).
6. All structures funded by the RREM Program and the Small Rental Properties Program, if in, or partially in, the 100-year floodplain shown on the effective FEMA Flood Insurance Rate Map, must be covered by flood insurance and the flood insurance must be maintained for the economic life of the structure [24 CFR 58.6(a)(1)]. This means no funding can be provided in municipalities not participating in or suspended from participation in the National Flood Insurance Program. In the nine counties included in the RREM and Small Rental Properties Programs, this includes the following municipalities in the following counties:
  - Bergen County: Alpine, Cliffside Park, and Englewood Cliffs
  - Hudson County: Union City
  - Monmouth County: Freehold and Shrewsbury
  - Union County: Winfield

7. No funding will be provided to any person who previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance, but failed to obtain and maintain the insurance [24 CFR 58.6(b)].
8. In the case of "Coastal High Hazard" areas ("V" or "VE" Zones on the latest (most recent) FEMA-issued Maps), adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR 60.3(e) as required by HUD Regulation 24 CFR 55.1(c)(3).

### **Wetlands Protection and Water Quality**

9. Implement and maintain erosion and sedimentation control measures sufficient to prevent deposition of sediment and eroded soil in onsite and offsite wetlands and waters and to prevent erosion in onsite and offsite wetlands and waters.
10. Minimize soil compaction by minimizing project activities in vegetated areas, including lawns.

### **Noise**

11. Outfit all equipment with operating mufflers
12. Comply with the applicable local noise ordinance

### **Air Quality**

13. Use water or chemical dust suppressant in exposed areas to control dust
14. Cover the load compartments of trucks hauling dust-generating materials
15. Wash heavy trucks and construction vehicles before they leave the site
16. Reduce vehicle speed on non-paved areas and keep paved areas clean
17. Retrofit older equipment with pollution controls
18. Establish and follow specified procedures for managing contaminated materials discovered or generated during construction
19. Employ spill mitigation measures immediately upon a spill of fuel or other hazardous material
20. Obtain an air pollution control permit to construct and a certificate to operate for all equipment subject to N.J.A.C. 7:27-8.2(c). Such equipment includes, but is not limited to, the following:
  - a. Any commercial fuel combustion equipment rated with a maximum heat input of 1,000,000 British Thermal Units per hour or greater to the burning chamber (N.J.A.C. 7:27-8.2(c)1);
  - b. Any stationary storage tank for volatile organic compounds with a capacity of 2,000 gallons and a vapor pressure of 0.02 pounds per square inch or greater (N.J.A.C. 7:27-8.2(c)9);
  - c. Any tank, reservoir, container, or bin with capacity in excess of 2,000 cubic feet used for storage of solid particles (N.J.A.C. 7:27-8.2(c)10); and
  - d. Any stationary reciprocating engine with a maximum rated power output of 37 kW or greater, used for generating electricity, not including emergency generators (N.J.A.C. 7:27-8.2(c)21).

(Note: One or two family dwellings and dwellings of six or less family units, one of which is owner occupied, are exempt pursuant to NJSA 26:2C-9.2.)

21. Minimize idling and ensure that all on-road vehicles and non-road construction equipment operated at or visiting the project site comply with the applicable smoke and “3-minute idling” limits (N.J.A.C. 7:27-14.3, 14.4, 15.3 and 15.8).
22. Ensure that all diesel on-road vehicles and non-road construction equipment used on or visiting the project site use ultra-low sulfur fuel (<15 ppm sulfur) in accordance with the federal Non-road Diesel Rule (40 CFR Parts 9, 69, 80, 86, 89, 94, 1039, 1051, 1065, 1068).
23. Operate, if possible, newer on-road diesel vehicles and non-road construction equipment equipped with tier 4 engines, or equipment equipped with an exhaust retrofit device.

### **Hazardous Materials**

24. All activities must comply with applicable federal, state, and local laws and regulations regarding asbestos, including but not limited to the following:
  - National Emission Standard for Asbestos, standard for demolition and renovation, 40 CFR 61.145
  - National Emission Standard for Asbestos, standard for waste disposal for manufacturing, fabricating, demolition, and spraying operations, 40 CFR 61.150
  - NJAC 7:26-2.12—Generator requirements for disposal of asbestos containing waste materials
  - New Jersey Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.
25. Applicant must comply with all laws and regulations concerning the proper handling, removal and disposal of hazardous materials (e.g. asbestos, lead-based paint) or household waste (e.g. construction and demolition debris, pesticides/herbicides, white goods).
26. All activities must comply with applicable federal, state, and local laws and regulations regarding lead-based paint, including but not limited to HUD’s lead-based paint regulations in 24 CFR Part 35 Subparts B, H, and J.
27. All residential structures must be free of mold attributable to Superstorm Sandy.
28. Radon testing and/or mitigation, as described below, is required for structures not in one of the following categories:
  - Structures in municipalities NJDEP classifies as having low radon potential
  - Structures with unenclosed air space between the entire lowest floor and the ground
  - Structures that have been evaluated by a radon professional and found to require neither testing nor mitigation to ensure that radon is below the standards of 4 picocuries per liter of air and 0.02 working levels, based on a physical inspection of the property, the characteristics of the buildings, and other valid criteria. The radon professional must meet the qualifications in the HUD Office of Multifamily Development Radon Policy, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=13-07ml.pdf>, and must be a certified radon mitigation specialist under NJAC 7:28-27.

Reconstructed homes that are not in one of these three exempt categories must incorporate the radon-resistant construction techniques listed in NJAC 5:23-10.4.

Homes to be rehabilitated that are not in one of the exempt categories must be tested for radon in accordance with accepted standards and the certification requirements in NJAC 7:28-27, and the testing must be documented. If the radon level is below the standards of 4 picocuries per liter of air and 0.02 working levels, no further action is required. If the radon level is at or above either of the standards, radon mitigation measures must be

implemented and the home must be retested to ensure that radon levels below the standards have been achieved.

29. Comply with all laws, regulations, and industry standards applicable to aboveground and underground storage tanks, including the New Jersey underground storage tank regulations at NJAC 7:14B.
30. Storage tanks below the base flood elevation must be watertight and must be anchored to resist floatation and lateral movement during a storm surge or other flood.

### **Sole Source Aquifers**

31. Comply with all laws, regulations, and industry standards.
32. Storage tanks below the base flood elevation must be watertight and must be anchored to resist floatation and lateral movement during a storm surge or other flood
33. The total impervious area of a parcel must not be increased significantly. In general, an increase in impervious area of more than 30% will be considered significant. The threshold of significance may be greater than 30% for parcels on which the current impervious area is unusually low, and may be less than 30% for parcels on which the current impervious area is unusually high.

### **Wild and Scenic Rivers**

34. Comply with any conditions specified by NJDEP and the National Park Service for protection of the Great Egg Harbor River and Menantico Creek, designated Wild and Scenic Rivers.

## Finding

Property Address:

Proposed activity complies with environmental requirements for funding.

Proposed activity does not comply with environmental requirements for funding.

Preparer signature: \_\_\_\_\_

Name, title:

Date:

Responsible agency official signature: \_\_\_\_\_

Name, title:

Date:

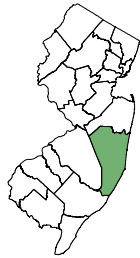
## **Appendix B**











### Sensitive Land Use Areas Map

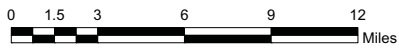


# Ocean County Sensitive Land Use Areas

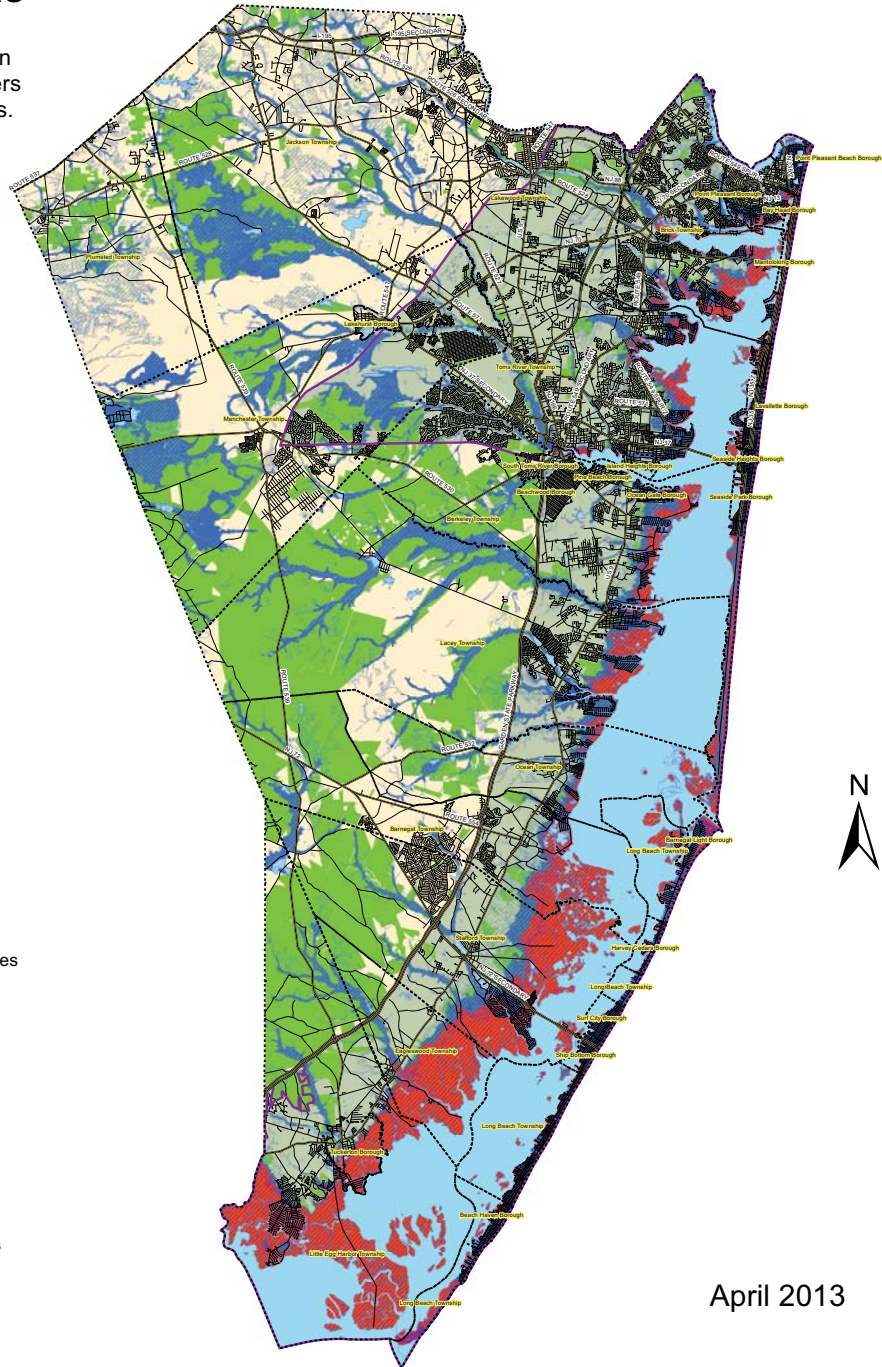
This map depicts environmental overlays within Ocean County. It is based on regional data layers which are not accurate for site specific reviews.



-  Municipal Boundaries
-  Major Roads
-  Other Roads
-  Coastal Zone Management Areas
-  Wetlands
-  Surface Water
- DFirm and ABFE Flood Zones**
-  A
-  V
-  Preserved Lands Outside the Flood Zones
-  Other Areas



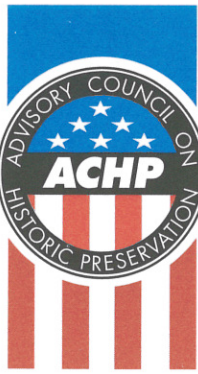
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April 2013

## **Appendix C**

### Historic Preservation



*Preserving America's Heritage*

May 20, 2013

Mr. Richard E. Constable, III  
Commissioner  
New Jersey Department of Community Affairs  
101 South Broad Street  
PO Box 800  
Trenton, NJ 08625-0800

Ref: *Appendix E to the Programmatic Agreement for Disaster Response Activities as a Result of Hurricane Sandy in the State of New Jersey*

Dear Mr. Constable:

Enclosed are three (3) copies of the Appendix E for the referenced programmatic agreement. By carrying out the terms of the agreement, you will fulfill your responsibilities under Section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, "Protection of Historic Properties" (36 CFR Part 800). The original agreement will remain on file at our office.

We commend the Department of Community Affairs for working closely with the New Jersey State Historic Preservation Officer, the U.S. Department of Housing and Urban Development and the Federal Emergency Management Agency to develop and execute this addendum which will administer Hurricane Sandy response activities.

We are available to provide any assistance you may need while implementing the agreement. If you have any questions, please contact Ms. Jaime Loichinger at (202) 606-8529, or via e-mail at [jloichinger@achp.gov](mailto:jloichinger@achp.gov).

Sincerely,

Charlene Dwin Vaughn, AICP  
Assistant Director  
Office of Federal Agency Programs  
Federal Permitting, Licensing, and Assistance Section

Enclosure (3)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • [achp@achp.gov](mailto:achp@achp.gov) • [www.achp.gov](http://www.achp.gov)

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,  
THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA  
THE DELAWARE NATION,  
THE DELAWARE TRIBE OF INDIANS,  
THE SHAWNEE TRIBE OF OKLAHOMA,  
AND THE STOCKBRIDGE MUNSEE BAND OF MOHICANS  
AS A RESULT OF HURRICANE SANDY**

**WHEREAS**, the mission of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards; and

**WHEREAS**, as a result of Hurricane Sandy (DR-4086-NJ) (Disaster Declaration), FEMA proposes to administer Federal disaster assistance programs set forth in Appendix A (Programs), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.).

**WHEREAS**, FEMA has determined that implementation of its Programs may result in Undertakings (as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)) that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the New Jersey State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 16 U.S.C. § 470f) and Section 110 of NHPA (codified as amended at 16 U.S.C. §470h-2), and the Section 106 implementing regulations at 36 CFR Part 800; and

**WHEREAS**, FEMA, ACHP, and SHPO have determined that FEMA's Section 106 requirements can be more effectively and efficiently implemented and delays to the delivery of FEMA assistance minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt certain Undertakings from Section 106 review, establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

**WHEREAS**, in order to implement its Programs, FEMA will provide assistance to the State of New Jersey that may provide monies and other assistance to eligible subgrantees, and as such, the New Jersey Office of Emergency Management (OEM) that is typically responsible for administering funds provided under these Programs, has participated in this consultation, and has invited OEM to execute this Agreement as an invited signatory party; and

**WHEREAS**, FEMA has determined that its Programs may result in Undertakings with the potential to affect historic properties having religious and cultural significance to Indian Tribes, including sites that may contain human remains and/or associated cultural items; and

**WHEREAS**, FEMA recognizes that the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge-Munsee Band of the Mohicans (Tribes) may have sites of religious and cultural significance and in meeting its Federal trust responsibility, FEMA has engaged in government-to-government consultation with the Tribes, and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Tribes to enter into an agreement that specifies how FEMA and the Tribes will carry out Section 106 responsibilities, including the confidentiality of information.

**WHEREAS**, notwithstanding the aforementioned invitation to enter into an agreement, FEMA has invited the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge-Munsee Band of the Mohicans to enter into this Agreement each as an invited signatory party to fulfill the requirements of Section 106; and

**WHEREAS**, FEMA may invite additional Tribes that may have sites of religious and cultural significance to enter into the terms of this Agreement; and

**WHEREAS**, FEMA also may perform its own Undertakings in order to implement its Programs; and

**WHEREAS**, in anticipation or in the immediate aftermath of the Disaster Declaration, impacted communities in the State of New Jersey and/or affected Tribes may conduct critical preparedness and response and recovery activities to safeguard public health and safety and to restore vital community services and functions. Some of these activities may become Undertakings requiring Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the appropriate review as warranted; and

**NOW, THEREFORE**, FEMA, ACHP, SHPO as signatories, and OEM and participating Tribes as the invited signatories agree that the Programs in the State of New Jersey shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all resulting Undertakings and effectively integrate historic preservation compliance considerations into the delivery of FEMA assistance. FEMA will not authorize implementation of an individual Undertaking until Section 106 review of the project is completed pursuant to this Agreement.

## STIPULATIONS

To the extent of its legal authority, and in coordination with the other signatories and invited signatories, FEMA will require that the following measures be implemented:

### I. GENERAL

#### A. Applicability

1. This Agreement terminates and fully supersedes the Agreement among FEMA and SHPO, executed on June 18, 2010 upon its execution by all signatory parties.
2. For FEMA undertakings that also are within the jurisdiction of the Federal Communications Commission's (FCC) and within the scope of its Section 106 Programmatic Agreements for communication facilities, FEMA defers Section 106 review in accordance with the ACHP Program Comment of October 23, 2009. The approval of funding for the FEMA Undertaking will be conditioned on the compliance of the subgrantee with FCC's applicable Section 106 review, including any required consultation with participating Tribes. FEMA will notify the SHPO when it applies the ACHP Program Comment to an Undertaking.
3. Other Federal agencies providing financial assistance for Program activities covered under the terms of this Agreement may, with the concurrence of ACHP, FEMA and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this Agreement." Other Federal Agencies" may include Departments of the State or municipalities providing funds and acting as the Responsible Entity pursuant to 24 CFR Part 58. In such situations, the Federal Agency shall notify FEMA, SHPO and ACHP in writing of their intent to use this Agreement to achieve compliance with Section 106 requirements, and consult with those agencies regarding its section 106 compliance. Resumes of staff who meet the Secretary's Professional Qualification Standard and will review Tier II projects will be included with the notification. The Federal agency may utilize this Agreement to satisfying its Section 106 responsibilities by executing the Addendum included in Appendix E. The Agreement will be effective for the Federal agency on the date the Addendum is executed by SHPO, FEMA and ACHP.
4. This Agreement may apply to Undertakings involving multiple Federal agencies and where some or all of the Federal agencies involved in the Undertaking may designate FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate notification to the ACHP. FEMA will act on the collective behalf of the agencies to fulfill all Section 106 responsibilities. When FEMA is not designated the lead Federal agency, all Federal agencies, including FEMA, remain individually responsible for their compliance with Section 106 and 36 CFR Part 800.

5. As a result of the Disaster Declaration, State, Tribal and local governments may lack the capability to perform or to contract for emergency work, and instead request that the work be accomplished by a Federal agency. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement will apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.
6. If another Federal program or Federal agency has reviewed and approved an Undertaking under Section 106 of the NHPA within the past ten (10) years, FEMA has no further requirement for Section 106 review provided that it confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the previous agency has not changed, and SHPO/Tribal consultation and concurrence are documented. FEMA shall document these findings to the project files in order to confirm that the requirements of Section 106 have been satisfied.
7. Should FEMA, in consultation with SHPO and participating Tribes, determine that the previous Section 106 review was insufficient or involved interagency disagreements on eligibility, effect, or mitigation, FEMA shall conduct additional Section 106 review in accordance with the terms of this Agreement.
8. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner occupied home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. For ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement housing), 206.117(b)(4) (permanent housing construction), and 206.117(c)(1)(vi) (privately owned access routes), FEMA will conduct Section 106 review under the terms of this agreement
9. FEMA has determined that the types of activities listed below have limited or no potential to affect historic properties and FEMA has no further Section 106 responsibilities, pursuant to 36 CFR § 800.3(a)(1). If the activities listed below appear to have the potential to directly affect either archeological resources or standing structures, FEMA will consult in accordance with stipulation II of this agreement.
  - a. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.
  - b. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents.

- c. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
- d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
- e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
- f. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
- g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.
- h. Community Disaster Loans for funding to perform governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.
- i. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
- j. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition. The Grantee will ensure that applicants agree to secure their property from physical alteration, illegal entry, and damage until any applicable requirements of this Agreement are fulfilled. The applicant community will agree to these terms as a condition of its acquisition grant before FEMA will release any related funding.
- k. Reimbursement of a subgrantee's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
- l. Labor, equipment and materials used to provide security in the Disaster Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.
- m. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
- n. Unemployment assistance.
- o. Distribution of food coupons.
- p. Legal services.



q. Crisis counseling.

10. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement in accordance with Stipulation IV.A, Amendments. Any change in the FEMA name, Programs, or organizational structure will not affect this Agreement.

## B. Roles and Responsibilities of FEMA, SHPO and OEM

### 1. FEMA:

- a. FEMA will use Federal, Tribal, State, subgrantee, or contractor staff whose qualifications meet the relevant Secretary's Professional Qualifications Standards (Professional Qualifications) set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified), in completing identification and evaluation of historic properties and in making determinations of effects. FEMA will review any National Register eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and participating Tribes.
  - i. FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and/or cultural significance to them. Tribal leaders and, as appropriate, their representatives shall decide who meets qualifications/standards as defined by their Tribes for review of undertakings affecting properties with religious and/or cultural significance to Tribes.
- b. In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize OEM, or a subgrantee through OEM, to initiate the Section 106 process with the SHPO and any other consulting parties, but remains responsible for determinations of National Register eligibility and findings of effect made by the authorized party. FEMA will follow the process set forth in Stipulation I.B.1.a, FEMA Roles and Responsibilities, above and will notify the SHPO in writing when OEM or a subgrantee has been authorized to initiate consultation on FEMA's behalf. FEMA shall conduct all project consultation with Tribes.
- c. Prior to authorizing the release of funds for individual undertakings requiring grant conditions pursuant to this Agreement, FEMA will inform OEM of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to subgrantees. FEMA will work in partnership with OEM to provide subgrantees with guidance on in-kind repair pursuant to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards)*, 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties

- d. FEMA shall provide the signatories and invited signatories with an annual report for the previous fiscal year by October 30 of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.
- e. FEMA will confer annually and as necessary with signatories and invited signatories to this Agreement within 30 days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail.
- f. FEMA shall notify the SHPO and affected Tribes as soon as practicable following the Disaster Declaration and provide specific points of contact and other pertinent information about the Disaster Declaration.
- g. FEMA shall convene an initial scoping meeting with the signatories and invited signatories as soon as practicable after the Disaster Declaration to address Declaration-specific issues and procedures.
- h. FEMA shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement shall be consistent with applicable SHPO guidelines and the confidentiality provisions of 36 CFR § 800.11(c).

2. SHPO:

- a. SHPO shall review FEMA's determination of the Areas of Potential Effect (APE), National Register eligibility determinations, and FEMA's effect findings and provide comments within timeframes required by this Agreement.
- b. Upon request, the SHPO will provide FEMA/and or its designee(s) with available information about historic properties (such as access to online systems or site files, GIS data, survey information, geographic areas of concern). Such data sharing may be memorialized in an agreement. Only Qualified FEMA staff and/or its designee(s) shall be afforded access to protected cultural resources information.
- c. As requested, SHPO staff will be available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with SHPO has occurred, a written notice (via e-mail or regular mail) will be sent to SHPO to confirm any decisions that were reached.
- d. The SHPO may delegate some or all of its responsibilities under this Agreement to Liaison(s). The Liaison(s) are not required to be members of SHPO staff. The SHPO will confer with FEMA about the selection of the SHPO Liaison(s), the scope of responsibilities delegated, and the implementing procedures related to the

actions and decisions delegated. FEMA and SHPO shall formally document their agreement regarding the SHPO Liaison(s).

- e. The SHPO shall participate in an initial scoping meeting for the Disaster Declaration.
- f. The SHPO shall coordinate with FEMA, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.
- g. SHPO shall participate in annual reviews convened by FEMA to review the effectiveness of this Agreement.

### 3. OEM:

- a. OEM shall ensure that its subgrantees understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.
- b. OEM shall ensure that subgrantees understand that failure to comply with the terms of this Agreement and any project-specific conditions could jeopardize FEMA funding.
- c. OEM will notify FEMA as soon as possible of any proposed change to the approved scope of work and direct the subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
- d. OEM shall ensure that its subgrantees are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property, human remains, or affected a known historic property in an unanticipated manner, the subgrantee will comply with Stipulation III.B, Unexpected Discoveries.
- e. OEM shall ensure that in its subgrant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries of cultural material and human remains.

### C. Tribal Consultation

- 1. Where no Tribal-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribes in accordance with 36 CFR Part 800 to determine if these Tribes will become a part of this agreement through the development and execution of a specific Appendix and thereby become participating Tribes. In

determining who the affected Tribes may be, FEMA may consult with the SHPO, Tribes, any State Tribal Agency, and access the National Park Service (NPS) Native American Consultation Database to identify Tribal geographic interests.

2. FEMA shall ensure that its consultations with other consulting parties shall not include the dissemination of information, when advised of data sensitivity by the affected Tribes, that might risk harm to an American Indian site or property of religious or cultural significance or that might impede the use of such a site by the affected Tribes in accordance with Section 304 of the NHPA and other applicable laws. Information provided is exempt from public knowledge and disclosure under the Freedom of Information Act (FOIA) by both Section 304 of the NHPA and Section 9 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa – 470mm).
3. As requested, staff of participating Tribes will be available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with Tribes has occurred, a written notice (via e-mail or regular mail) will be sent to the Tribes to confirm any decisions that were reached.

#### D. Public Participation

1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 review process. FEMA will notify the public of proposed Undertakings in a manner that reflects the nature, complexity, and effect(s) of the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of affected Tribes, and private individuals and businesses.
2. FEMA will consult with OEM, the subgrantee, SHPO, and participating Tribes, to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be made aware of an Undertaking. If such parties are identified or identify themselves to FEMA, FEMA will provide them with information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).
3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO and participating Tribes, for involving the public, FEMA will identify the appropriate stages for seeking public input during the Section 106 process.
4. FEMA will consider all views provided by the public regarding an Undertaking and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with the SHPO and participating Tribes, determine which should be consulting parties. FEMA will invite any individual or organization that will assume a specific role or responsibility outlined in a Section 106 agreement document to participate as a concurring party in that agreement document.

5. FEMA also may provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.

E. Timeframes: All time designations will be in calendar days unless otherwise stipulated. If any signatory or invited signatory does not object to FEMA's determination related to a proposed action within an agreed upon timeframe, FEMA may proceed to the next step in the review process as described in Stipulation II, Project Review. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence will vary. FEMA and consulting party agreed that communication via e-mail is official correspondence.

1. Under emergency conditions, the SHPO and participating Tribes will respond to any FEMA request for comments within three (3) business days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
2. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the review time shall be a maximum of fifteen calendar (15) days for delineation of the Area of Potential Effect (APE), determinations of National Register eligibility and findings of effect.
3. For the Hazard Mitigation Grant Program (HMGP), the response time for each request for concurrence shall be a maximum of thirty calendar (30) days.

## II. PROJECT REVIEW

### A. Programmatic Allowances

1. If FEMA determines an Undertaking conforms to one or more of the Tier I or Tier II allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process by documenting this determination in the project file without SHPO and Tribal review or notification. When both Tier I and Tier II allowances are used together to review a project, review staff must meet relevant Secretary's Professional Standards for review for the Tier II allowances.
2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO and participating Tribes (per guidance from Appendices D.1-D.5) and the NHL Program Manager in the NPS Northeast Regional Office that the activities meet allowance criteria. FEMA will provide information about the proposed scope of work for the Undertaking and the allowance(s) enabling FEMA's determination. Unless the

SHPO, participating Tribes, or NPS object or request more information within 15 days after their receipt of this documentation, FEMA will complete the Section 106 review.

3. If an Undertaking is not composed entirely of an allowance listed in Appendix B, FEMA will conduct Section 106 review for the entire Undertaking.
4. If the scope of work for a proposed undertaking includes activities that are not listed in the Allowances, FEMA shall complete the Section 106 review process in accordance with Stipulation II.C, Standard Project Review, as applicable.
5. Allowances may be revised and new allowances may be added to this Agreement in accordance with Stipulation IV.A.4, Amendments.

#### B. Expedited Review for Emergency Undertakings

1. As part of the Disaster Declaration process, FEMA will define the time interval during which the disaster causing incident occurs (the incident period, as defined in 44 CFR § 206.32(f)). FEMA may approve Federal assistance and/or funding for emergency work (as defined in 44 CFR § 206.201(b)) that occurs during the incident period, including work already completed, in response to an immediate threat to human health and safety or property. FEMA will conduct expedited review of emergency Undertakings from October 27, 2012, the beginning of the incident period, until January 27, 2013.
2. Should FEMA determine that it is necessary to extend the expedited review period beyond January 27, 2013, FEMA will request in writing, prior to the expiration of the expedited review period, an extension of the period of applicability in 30-day increments in accordance with 36 CFR § 800.12(d). No action regarding the extension is required on the part of the notified parties.
3. For all emergency Undertakings, FEMA will determine the following:
  - a. If the Undertaking is an immediate rescue and salvage operations conducted in response to an event to preserve life and property, FEMA has no Section 106 review responsibilities in accordance with 36 CFR § 800.12(d); or
  - b. If the Undertaking is composed entirely of work included in the Allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process pursuant to Stipulation II.A.1, Programmatic Allowances.
  - d. If FEMA determines that the emergency Undertaking will adversely affect a historic property during this expedited review period, to the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO and/or the participating Tribes within 3 business days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period. FEMA may

elect to consult with the SHPO and/or the participating Tribes regarding the emergency Undertaking at any point before or during the implementation of an emergency Undertaking if FEMA determines circumstances are appropriate for expedited consultation.

- e. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA will clarify that an “expedited Undertaking review” is being requested. FEMA will document all such reviews in writing.
- f. FEMA will take into account any timely comments provided by SHPO and/or participating Tribes and notify the parties of how their comments were taken into consideration by FEMA, OEM, and subgrantee.
- g. Should the SHPO and/or participating Tribes not comment within 3 business days, FEMA may fund the emergency Undertaking based on the available information. This will complete the Section 106 review for the Undertaking.

C. Standard Project Review: For Undertakings not exempt from further Section 106 review, FEMA will ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some of these steps during consultation.

1. Consulting Parties: FEMA will consult as appropriate with the SHPO and affected Tribes to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 review process. FEMA may invite others to participate as consulting parties as the Section 106 review proceeds.
2. Area of Potential Effects: For standing structures, qualified staff shall define the APE as the individual structure when the proposed Undertaking is limited to the repair or rehabilitation (as defined in 36 CFR § 68.3(b)(6) and 36 CFR § 68.2(b)) of a structure located outside of a National Register listed or eligible historic district. For all other undertakings, qualified staff will determine the APE in consultation with the SHPO and participating Tribes. FEMA may also consider information provided by other parties, such as local governments and the public, when establishing the APE.
3. Identification and Evaluation: Qualified staff shall determine, in consultation with the SHPO and participating Tribes if the APE contains historic properties, including archaeological sites or properties of religious or cultural significance, that are listed in or potentially eligible for the National Register. This may include the review of preliminary documentation collected by OEM or the subgrantee in coordination with the SHPO.
  - a. Archaeological Properties, FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and define the limits of archaeological properties. For historic properties of religious and cultural

significance to participating Tribes, FEMA shall consult with the Tribes to identify geographic areas where properties may be affected by an Undertaking in order so that FEMA may determine the necessary level of effort required to avoid or protect any such properties.

- b. National Historic Landmarks: When FEMA determines an Undertaking has the potential to affect an NHL, FEMA shall notify the Secretary through the NHL Program Manager in the NPS Northeast Regional Office in addition to the SHPO and participating Tribes.
- c. Determinations of Eligibility: FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with SHPO and participating Tribes regarding these determinations. Should the SHPO or participating Tribes disagree with the determination of eligibility, FEMA may elect to either continue consultation, treat the property as eligible for the National Register, or to obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
- d. Findings of No Historic Properties Affected: FEMA shall make a finding of “no historic properties affected” if no historic properties are present in the APE; the Undertaking is designed to avoid historic properties, including archaeological sites or properties of religious and cultural significance to participating Tribes; or the Undertaking does not affect the character defining features of a historic property.
  - i. FEMA shall notify the SHPO, participating Tribes(s) in accordance with Appendices D.1-D.5, and any other consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d) and applicable documentation standards. Unless the SHPO or participating Tribes object to the finding pursuant to the appropriate timeframe outlined in Stipulation I.E.2 or I.E.3, Timeframes, FEMA shall complete the Section 106 review.
  - ii. If the SHPO or participating Tribes object to a finding of “no historic properties affected”, FEMA shall either (a) consult with the objecting party to resolve the disagreement and if the objection is resolved, FEMA may proceed with the action in accordance with the resolution or (b) reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.D.4, Application of the Criteria of Adverse Effect. If FEMA is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). FEMA will consider the recommendations of the ACHP in making its final determination.



4. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may affect identified historic properties in the APE, including properties of religious and cultural significance to participating Tribes in accordance with Appendices D.1-D.5, , or if a consulting party objects to the finding of “no historic properties affected,” FEMA will apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and public concerning effects in accordance with 36 CFR § 800.5(a).
  - a. If FEMA determines that an Undertaking does not meet the adverse effect criteria or, for a standing structure, that the Undertaking meets the *Standards*, FEMA shall propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).
  - b. FEMA shall notify the SHPO, participating Tribes in accordance with Appendices D.1-D.5, and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e) and applicable documentation standards. Unless a consulting party objects within the appropriate timeframe, FEMA will proceed with its “no adverse effect” determination and complete the Section 106 review.
  - c. If FEMA finds the Undertaking may have an adverse effect, FEMA shall request through OEM that the subgrantee revise the scope of work to substantially conform to the *Standards* for standing structures, or avoid or minimize adverse effects for archaeological properties, in consultation with the SHPO, participating Tribes, and any other consulting parties. If the subgrantee modifies the scope of work to address the adverse effect, FEMA shall notify the consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection, FEMA shall proceed with its “no adverse effect” determination and complete the Section 106 review.
  - d. If a consulting party objects to a finding of “no adverse effect,” FEMA will elect to consult with the objecting party to resolve the disagreement. If the objection is resolved, FEMA will proceed with the undertaking in accordance with the resolution, or;
  - e. If the objection cannot be resolved, FEMA will forward its findings and supporting documentation to the ACHP and request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i-ii). FEMA will consider the ACHP’s comments in making its final determination, or;
  - f. If an Undertaking cannot be modified to avoid or minimize adverse effects FEMA will initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.D.5, Resolution of Adverse Effects.
5. Resolution of Adverse Effects: If FEMA determines that an Undertaking will adversely affect a historic property, it will notify the consulting parties of its decision and provide documentation as required by 36 CFR § 800.11(e) and subject to the

confidentiality provisions of 36 CFR § 800.11(c), as well as provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1). FEMA, in consultation with the SHPO, OEM, participating Tribes, subgrantee, ACHP, if participating, and any other consulting parties, shall resolve the effects of the Undertaking by one of the following methods depending upon the nature and scale of the adverse effect as well as the determination of the historic property's significance on a local, state or national level:

- a. **Abbreviated Consultation Process:** After taking into consideration the nature of the historic properties affected and the severity of the adverse effects, FEMA may propose in writing to the consulting parties to resolve the adverse effects of the Undertaking through the application of Treatment Measures outlined in Appendix C as negotiated with the SHPO, OEM, and participating Tribes. FEMA will not propose to resolve adverse effects through the Abbreviated Consultation Process if the Undertaking may affect an NHL. The use of these Treatment Measures will not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.
  1. In consultation with the SHPO, OEM, and participating Tribes, FEMA will put forth a written proposal for the implementation of a specific Treatment Measure, or combination of Treatment Measures with the intent of expediting the resolution of adverse effects. Unless a consulting party objects within fifteen (15) days of receipt of FEMA's proposal, FEMA will proceed with the use of Treatment Measure(s) and will complete Section 106 review.
  2. If any of the consulting parties objects within the 15 day review and comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.D.5.b, Memorandum of Agreement.
  3. Because funding and implementation details of Treatment Measure(s) for specific Undertakings may vary by program, FEMA will provide written notice to the consulting parties within sixty (60) days of the completion of the Treatment Measure(s). This written notice will serve as confirmation that the Treatment Measure(s) for a specific Undertaking have been implemented. FEMA will also include information pertaining to the completion of Treatment Measures in the annual report pursuant to Stipulation I.B.1, FEMA Roles and Responsibilities.
- b. **Memorandum of Agreement (MOA):** In consultation with the other consulting parties, including the ACHP, if participating, FEMA will develop an MOA in accordance with 36 CFR § 800.6(c) to stipulate treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties where an Abbreviated Consultation Process is infeasible or is objected to by SHPO, OEM

or the participating tribes. The MOA may also include feasible treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures. Should the execution of an MOA not be appropriate given the nature and significance of historic properties, scale of adverse effects, or include one or more complex Undertakings, FEMA shall resolve the adverse effects using the procedures outlined below in Stipulation II.D.5.c, Programmatic Agreement.

- c. Programmatic Agreement: FEMA, the SHPO, OEM, participating Tribes, the ACHP, as appropriate, and any other consulting party may consult to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b) to identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings by a single subgrantee.
  - d. Objections: Should any signatory, invited signatory, consulting party, or member of the public object within the timeframes established by this Agreement to any plans, specifications, or actions pursuant to resolving an adverse effect, FEMA shall consult further with the objecting party to seek resolution. If FEMA determines the objection cannot be resolved, FEMA shall address in accordance with Stipulation IV.B, Dispute Resolution.
  - e. National Historic Landmarks: When FEMA determines an Undertaking will adversely affect an NHL, FEMA also will notify and invite the Secretary and the ACHP to participate in consultation, pursuant to 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP will report the outcome of the consultation to the Secretary and the FEMA Administrator.
- D. Emergency Demolition and Debris Removal of Privately-Owned Properties: FEMA may need to fund debris removal activities involving the demolition and removal of buildings and structures that are damaged beyond repair or that are completely collapsed and/or disassembled by the actions of the storm and therefore must be removed for health and safety reasons). FEMA is required by the NHPA to determine if its specific actions in response to disasters will cause adverse effects to any historic properties. FEMA EHP will review these projects using the following emergency process outlined below.
- 1. Areas in the surge zone where there is substantial and widespread damage to improved property and where it is anticipated that FEMA funds will be used for the emergency removal of private property will be targeted for surveys by a joint FEMA-SHPO team. The purpose of the survey is to delineate areas of no above ground historic properties. FEMA and SHPO survey team will jointly identify these areas through background research and a windshield survey. The post-survey write-up will provide a description of the survey boundary where the no historic above ground properties. It also includes information about where there are properties that will require more information if an undertaking takes place. The boundaries of the area where there are no historic above

ground properties are digitally mapped. The survey write-up, the maps and photos taken during the survey comprise the consultation package which is formally submitted to SHPO for review and approval. Undertakings occurring within these areas have been formally determined to contain no above ground historic properties in accordance 36 CFR§ 800.4(d)(1) and will have no effect on historic properties. FEMA may approve undertakings to above ground resources in these areas without further consultation with SHPO.

2. Properties outside these areas that are identified for demolition under the emergency demolition program will be reviewed in accordance with Stipulation II. C. of this Agreement.

### **III. OTHER CONSIDERATIONS**

- A. Changes to an Approved Scope of Work: OEM is required to notify FEMA and will require its subgrantees to notify it immediately when there are proposed changes to an approved scope of work for an Undertaking. When notified by OEM of any proposed substantive change to the approved scope of work for an Undertaking, FEMA may authorize the OEM or subgrantee to proceed with the change once the required review is completed. FEMA will notify participating Tribes of changes to approved scopes of work in accordance with the consultation circumstances described in the Appendices D.1-D.5.
- B. Unexpected Discoveries: Upon notification by a subgrantee of an unexpected discovery in accordance with Stipulation I.B.3.d, OEM Roles and Responsibilities, OEM will immediately notify FEMA and require the subgrantee to:
  1. Stop construction activities in the vicinity of the discovery; and,
  2. Notify the local law enforcement office and coroner/medical examiner if human remains are discovered, in accordance with applicable New Jersey State statute(s);
  3. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, participating Tribes in accordance with Appendices D.1-D.5, and any other consulting parties. Upon notification by OEM of a discovery, FEMA will immediately notify the SHPO, participating Tribes, and any other consulting parties that may have an interest in the discovery, and consult to evaluate the discovery for National Register eligibility.
  4. FEMA will consult with the consulting parties in accordance with the review process outlined in Stipulation II, Project Review, to develop a mutually agreeable action plan with timeframes to identify the discovery, take into account the effects of the Undertaking, resolve adverse affects if necessary, and ensure compliance with applicable Federal and State statutes.

5. In cases where discovered human remains are determined to be American Indian, FEMA shall consult with the appropriate Tribal representatives and SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007).
6. FEMA will coordinate with OEM and the subgrantee regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.

#### C. Curation

1. FEMA and OEM shall ensure that all records and materials (collections) produced during the course of an archaeological survey, testing, and any data recovery operations for the implementation of its Undertakings are curated at a facility, preferably in-state, that meets the standards of, and in accordance with the applicable provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and applicable State law and guidelines.
2. In cases where the survey, testing, or data recovery are conducted on private land, any recovered collections remain the property of the land owner and FEMA will return the collections to them with the assistance of the SHPO. In such instances, FEMA and OEM, in coordination with the SHPO or participating Tribes, shall encourage land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner declines to accept responsibility for the collection(s) and wishes to transfer ownership of the collection(s) to a public or Tribal entity, FEMA and OEM will ensure curation of the collection(s) in accordance with Stipulation III.C.1 above.

#### D. Anticipatory Actions and After the Fact Review

1. FEMA shall specifically advise OEM and shall require that the OEM advise its subgrantees in writing that they may not initiate the Undertaking for which they are seeking Federal funding prior to compliance with this Agreement. OEM also shall advise its subgrantees in writing that they may jeopardize Federal funding if activities are initiated prior to compliance with this Agreement.
2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a subgrantee who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with the ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite

the adverse effect created or permitted by the subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.

3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA will determine if the Undertaking would have required Section 106 review in accordance with Stipulation II.D, Standard Project Review.
4. If FEMA determines no Section 106 review or consultation with SHPO and participating Tribes would have been required pursuant to Stipulation II.D, Standard Project Review, FEMA will document this determination to the project files and consider the undertaking Section 106 compliant.
5. If FEMA determines the Undertaking would have required Section 106 review, FEMA will coordinate with SHPO and participating Tribes to determine if consultation is feasible.
  - a. If after coordination with the SHPO and participating Tribes, FEMA determines that consultation is feasible, the FEMA will review the Undertaking in accordance with Stipulation II.D, Standard Project Review.
  - b. If after coordination with the SHPO and participating Tribes, FEMA determines that review is infeasible, FEMA will document that the undertaking is noncompliant with Section 106, and the FEMA program then will make a funding eligibility decision and notify SHPO.
6. FEMA will ensure that all Undertakings considered for after the fact review in accordance with this stipulation are included in the annual report.

#### **IV. IMPLEMENTATION OF AGREEMENT**

##### **A. Amendments**

1. If any signatory or invited signatory to the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to the terms of this agreement must be made, the signatories and invited signatories will consult to seek a resolution. If no resolution is reached, then FEMA will forward all relevant documentation to the ACHP including FEMA's recommendations for resolution. Within 15 days, the ACHP
  - a. Concur in FEMA's proposed resolution, or
  - b. Provide FEMA with recommendations, which EFMA will take into account in reaching a final decision.

2. An amendment to this agreement will be effective only when it has been signed by FEMA, SHPO, ACHP and participating Tribes. This Stipulation does not apply to amendments made to Appendices A, B, and C pursuant to Stipulation IV.A.3, Amendments, below.
3. FEMA will implement the participating Tribes preferences for consultation per the terms of this agreement according to Appendices D.1-D.5. Amendments will be made between the Agency and Tribes on an as needed basis.
4. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances) and Appendix C (Treatment Measures) and Appendices D.1-D.5 (Stipulations Relative to Consultation with Tribes) may be amended at the request of FEMA or another signatory or invited signatory party in the following manner:
  - a. FEMA, on its own behalf or on behalf of another signatory or invited signatory, shall notify all signatory and invited signatory parties to this Agreement of the intent to add to or modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all signatory and invited signatory parties.
  - b. If no signatory or invited signatory party objects in writing within 15 days of receipt of FEMA's proposed addition or modification, FEMA will date and sign the amended Appendix and provide copies of the Amended Appendix or Appendices to all signatory and invited signatory parties.
  - c. If a signatory or invited signatory to this agreement objects in writing to amending the Appendix, the disagreement may be resolved through the Amendment process established in IV.A.1. of this Agreement.

#### B. Dispute Resolution

1. Should any signatory or invited signatory to this Agreement object in writing within 30 days to the terms of this Agreement, FEMA will consult with the objecting party for not more than 30 days to resolve the objection.
2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA will forward to ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within 30 days of receipt, ACHP will:
  - a. Concur in FEMA's proposed resolution; or

- b. Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the objection; or
  - c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting comment into account.
4. FEMA will take into account any ACHP recommendations or comments, and any comments from the other signatories and invited signatories, in reaching a final decision regarding the objection in accordance with 36 CFR § 800.7(c)(4). The signatories and invited signatories will continue to implement all other terms of this Agreement that are not subject to objection.
  5. Should ACHP not respond within 30 days, FEMA may assume ACHP has no comment and proceed with its proposed resolution to the objection.
  6. FEMA will provide the signatories and invited signatories with its final written decision regarding any objection brought forth pursuant to this Stipulation.
  7. FEMA may authorize any disputed action to proceed, after making its final decision.
  8. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FEMA will notify the other signatories and invited signatories in writing and take the objection into consideration. FEMA will consult with the objecting party and, if that party so requests, the other signatories and invited signatories, for not more than 21 days. In reaching its decision regarding the objection, FEMA will take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA will provide the other parties with its final decision in writing.
  9. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with Stipulation II.C.3.c, Determinations of Eligibility.

#### C. Severability and Termination

1. In the event any provision of this Agreement shall be deemed contrary to, or in violation of, any applicable existing law or regulation of the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.
2. FEMA, the SHPO, OEM, or participating Tribes may terminate this Agreement by providing 30 days' written notice to the other signatory and invited signatory parties, provided that the parties consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA will



comply with 36 CFR Part 800. Upon such determination, FEMA will provide all other signatories and invited signatories with written notice of the termination of this Agreement.

3. A participating Tribe may notify the other signatories and invited signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA will review undertakings that may affect historic properties of religious and cultural significance to the Tribe in accordance with 36 CFR §§ 800.3 through 800.7 or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a participating Tribe does not terminate the Agreement. A Tribe that has withdrawn from the Agreement may at any time that this Agreement remains in effect notify FEMA, OEM, and SHPO in writing that it has rescinded its notice withdrawing from participation in the Agreement.
4. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

#### D. Duration and Extension

1. Unless terminated in accordance with Stipulation IV.C.2 or IV.C.4, Severability and Termination, this Agreement shall remain in effect until Section 106 review for all undertakings related to the Disaster Declaration have been completed.
2. If another federally declared disaster occurs within the State of New Jersey while this PA is effective, the signatories and invited signatories will consult to determine whether it would be appropriate to extend the Agreement. If the parties agree that the extension of this Agreement is an acceptable mechanism for reviewing undertakings as a result of the new disaster, its duration shall be extended pursuant to IV.A.


#### E. Execution and Implementation

1. This Agreement may be implemented in counterparts, with a separate page for each signatory and invited signatory, and will become effective on the date of signature by FEMA, SHPO, and ACHP. FEMA will ensure that each signatory and invited signatory party is provided with a complete copy.
2. Execution and implementation of this Agreement evidence that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs.

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,  
THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA  
THE DELAWARE NATION,  
THE DELAWARE TRIBE OF INDIANS,  
THE SHAWNEE TRIBE OF OKLAHOMA,  
AND THE STOCKBRIDGE MUNSEE BAND OF MOHICANS  
AS A RESULT OF HURRICANE SANDY**

**SIGNATORY**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

  
\_\_\_\_\_  
MaryAnn Tierney  
Acting Regional Administrator, FEMA Region II

Date: 4/23/13

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,  
THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,  
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AS A RESULT OF HURRICANE SANDY**

**SIGNATORY**

**NEW JERSEY STATE HISTORIC PRESERVATION OFFICER**



Date:

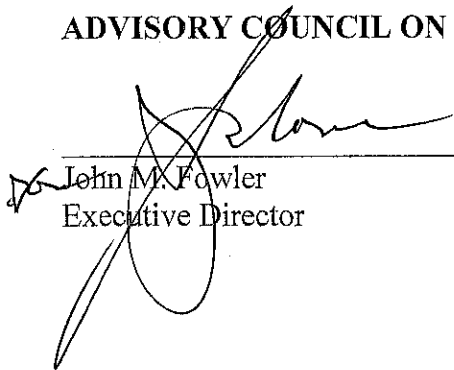
4/17/2013

Daniel Saunders  
Deputy State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT AMONG  
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AS A RESULT OF HURRICANE SANDY**

**SIGNATORY**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**



John M. Fowler  
Executive Director

Date: 4/30/2013

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AS A RESULT OF HURRICANE SANDY**

**INVITED SIGNATORY**

**NEW JERSEY OFFICE OF EMERGENCY MANAGEMENT**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Lou Goetting  
Deputy Chief of Staff

**PROGRAMMATIC AGREEMENT AMONG  
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**SIGNATORY**

**NEW JERSEY STATE HISTORIC PRESERVATION OFFICER**

\_\_\_\_\_  
Daniel Saunders  
Deputy State Historic Preservation Officer

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT AMONG  
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AS A RESULT OF HURRICANE SANDY**

**INVITED SIGNATORY**

**THE ABSENTEE-SHAWNEE TRIBE**

Date: \_\_\_\_\_

\_\_\_\_\_  
George Blanchard  
Governor

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AS A RESULT OF HURRICANE SANDY**

**INVITED SIGNATORY**

**THE DELAWARE NATION**

Date: \_\_\_\_\_

\_\_\_\_\_  
C.J. Watkins  
Vice President



**PROGRAMMATIC AGREEMENT AMONG  
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**INVITED SIGNATORY**

**THE DELAWARE TRIBE OF INDIANS**

Date: \_\_\_\_\_

\_\_\_\_\_  
Paula Pechonick  
Chief

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,  
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AS A RESULT OF HURRICANE SANDY**

**INVITED SIGNATORY**

**THE SHAWNEE TRIBE OF OKLAHOMA**

Date: \_\_\_\_\_

Ron Sparkman  
Chief

**PROGRAMMATIC AGREEMENT AMONG  
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THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,  
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AS A RESULT OF HURRICANE SANDY**

**INVITED SIGNATORY**

**THE STOCKBRIDGE MUNSEE BAND OF MOHICANS**

Date: \_\_\_\_\_

Robert Chicks  
Tribal Chairman

## Appendix A

### FEMA Program Summaries

This Appendix may be amended in accordance with Stipulation IV.A, Amendments.

#### **Disaster Response and Recovery Programs**

The following programs are authorized under Titles IV and V of the Stafford Act.

##### *Public Assistance Program (PA)*

This program assists States, Tribal and local governments, and certain types of private nonprofit organizations quickly respond to and recover from major disasters or emergencies declared by the President. Grants are provided for debris removal (Public Assistance Category A), emergency protective measures (Public Assistance Category B), and the repair, replacement, or restoration of disaster-damaged, publicly owned and certain private non-profit facilities (Public Assistance Categories C-G).

##### *Individual Assistance Programs (IA)*

These programs help ensure that individuals and families that have been affected by disasters have access to the full range of FEMA assistance including: crisis counseling (Section 416), disaster legal services (Section 415), medical assistance (Section 403), transportation (Section 419), funeral services, minor home repairs (Section 408), and temporary housing assistance (Section 408). It should be noted that other Federal agencies provide disaster assistance to individuals as well, such as the US Small Business Administration, Department of Agriculture, and Department of Labor and that this assistance is not subject to the terms of this agreement.

##### *Fire Management Assistance Grant Program (FMAG)*

The FMAG is available to State, Tribal, and local governments for the mitigation, management, and control of fires on publicly or privately owned lands. Eligible costs may include expenses for field camps, equipment use, repair and replacement, materials and supplies, and mobilization and demobilization activities.

##### *Hazard Mitigation Grant Program (HMGP)*

The HMGP provides grants to States, Territories, Tribes, and local governments to implement long-term hazard mitigation measures after a Disaster Declaration. Activities may include buyouts, retrofits, relocations, elevations, and minor flood control projects.

## Appendix B

### Programmatic Allowances

This list of Allowances enumerates FEMA funded activities that based on the consulting parties to this agreement experience have no effect or limited effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and participating Tribes pursuant to Stipulation II.A.1, Programmatic Allowances.

The allowances consist of two tiers – Tier I and Tier II. The Tier I allowances will have no effect on historic properties. FEMA staff may apply Tier I allowances without meeting any professional historic preservation qualification standards. Tier II allowance will have limited effect on historic properties. Only FEMA staff meeting the applicable Secretary Professional Qualifications in accordance with Stipulation I.B.1.a of this Agreement may apply Tier II allowances to ensure that the work is in conformance with the Secretary for the Treatment of Historic Properties.

When referenced in the allowances, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. Where severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. The in-kind repair provided for in both Tier I and Tier II allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures and in general should not be utilized when a building or structure has been substantially altered.

When referenced in the allowances, “previously disturbed soils” will refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts.

Previously disturbed soils are those soils altered by human activity after the twentieth century that has changed the soil’s original configuration. Soil disturbance can be demonstrated through previous cultural resource surveys, site inspection, or construction drawings that clearly depict the depth of prior ground disturbance.

Examples of activities that would have created disturbed soil horizons include: the installation of culverts, foundations, and below-ground utilities; the excavation of basements or footings; and the construction of dams, bridge abutments, and other structures. Disturbed soils are also assumed to occur within two feet of a foundation, abutment or other improvement and to the depth of the previous construction.

Soil disturbance under a parking lot or road is limited to the depth of prior construction. Soils beneath the depth of prior construction may be undisturbed. Undisturbed soils may exist under areas where additional material (eg. soil or gravel) has been placed in order to raise land surface (eg. road beds, railroad alignments, and building pads). The addition of soil may not constitute

significant disturbed ground beyond the added soil layer. Activities such as plowing or cultivation do not constitute ground disturbance.

## **Tier I Allowances**

**I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

### **A. Debris and Snow Removal**

1. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way, public area and the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads.
2. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools are left in place.
3. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
4. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
5. Dewatering flooded developed areas by pumping.

### **B. Temporary Structures and Housing**

1. Installation of temporary structures for uses such as school classrooms, offices, or shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and victims, at the following types of locations:
  - a. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.
  - b. Existing multi-family units.

- c. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
- d. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, business parks, military bases when all utilities are installed above ground or tie into pre-existing utility lines.
- e. Sites that have been previously cleared and prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, military bases, schools, etc. when all utilities are installed above-ground or tie into pre-existing utility lines.
- f. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

**C. Recreation and Landscaping**

- 1. Installation of temporary removable barriers.
- 2. In-kind repairs or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas.

**D. Minor Ground Disturbances**

- 1. Borrow material if from a commercial source, or a stock tank berm, dug-outs, or reclaimed ditch provided the original surface of the ground is not impacted by the removal method.

**II. BUILDINGS**

- A. Repair or retrofit of buildings less than 48 years old when the disaster was declared.
- B. Removal of water by physical or mechanical means.
- C. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA).
- D. Installation of security bars over windows on non primary facades and below-grade windows.
- E. Dry vacuuming of remediated areas, pertaining to mold remediation.

**III. TRANSPORTATION FACILITIES**, when proposed activities conform to the original footprint and/or performed in previously disturbed soils, including any staging areas.

## **A. Roads and Roadways**

1. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders medians, clearances, curbs, and side slopes. This allowance does not include improvement to existing roadways and appurtenances.
2. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
3. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
4. Re-establishment of existing roadway ditches.
5. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, traffic surveillance systems.
6. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
7. In-kind repair or replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. Additional guardrails and safety end treatments are allowed when the undertaking is not located within a historic district that is eligible or listed on the National Register.

## **B. Airports**

1. In-kind repair or replacement of existing runway surfaces and features (e.g. asphalt, concrete, gravel, and dirt) and associated air transportation safety components and systems (e.g. lighting bars, beacons, signage and weather sensors).

## **C. Rail Systems**

1. In-kind repair or replacement of safety components.
2. In-kind repair or replacement of existing track system and passenger loading areas.

## **Tier II Allowances**

**I. BARRIER ISLANDS ONLY - GROUND DISTURBING ACTIVITIES AND SITE WORK:** Any projects located on a barrier island will be exempt from archaeological review by the New Jersey State Historic Preservation Office except when any of the following conditions applies:

- A. There is a known shipwreck site on or adjacent to the project site; or



- B. There is a known archaeological site on or adjacent to the project site;
- C. Local officials or members of the public identify to the federal agency archaeological resources, or strong potential, within the project site; or
- D. Footprint of ground disturbance exceeds 5 acres; or
- E. FEMA personnel meeting or exceeding the Secretary's Professional Standards for archaeology assesses the project site as possessing a high potential for the presence of significant archaeological deposits, as guided by archaeological site sensitivity models developed for the region.

**II. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

**A. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems**

1. In-kind repair, replacement, and reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier pile and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.
2. Installation of perimeter drainage (e.g. French drains) when performed in previously disturbed soils.
3. Excavation work in areas of soils where the work is confined to natural slopes of 15% or greater and there are no known archeological sites and no probability for prehistoric sites such as rock shelters or historic buildings/structural remains.

**B. Recreation and Landscaping**

1. In-kind repair, in-kind replacement, and minor upgrades to recreational facilities and features (e.g. playgrounds, campgrounds, fire pits, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, simple wooden/wire stream crossings). The reviewer should note that there are many parks in New Jersey that are listed on the National Register and minor changes to character defining features within these parks required consultation with SHPO.
2. In-kind repair or in-kind replacement or repair or minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps). The reviewer should note that there are many parks with significant landscapes in New Jersey that are listed on the

National Register and minor changes to character defining features within these parks required consultation with SHPO.

### **C. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers**

1. In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.

### **C. Cemeteries**

1. Removal of woody debris, such as branches, limbs and uprooted trees, from a defined cemetery and a 100 foot area around the cemetery boundary, provided no heavy equipment and other machinery is operated or staged in these areas. Small light vehicles (such as gators and skid steers) may be used.
2. In-kind repair of historic gravestones, monuments, fences, and other historic components.

## **III. BUILDINGS**

### **A. Interior Work: Floors, Walls, Stairs, Ceilings and Trim**

1. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
2. Replacement of damaged vinyl floor tile (including floor tile containing asbestos) with contemporary floor tile of the same dimension and thickness, and similar texture or pattern.
3. Painting and surface preparation provided color/finish is matched to pre-existing finish and the coating and preparation is limited to material repaired or replaced or immediately adjacent thereto.
4. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
5. Use of portable de-humidification systems provided no changes are made to character-defining features (specifically for mold remediation).
6. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

### **B. Utilities and Mechanical, Electrical, and Security Systems**

1. In-kind repair or in-kind replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork.
2. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street and located within an interior space of secondary architectural/historic character.
3. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.
4. Installation of building communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character defining architectural features, can be easily removed in the future and is installed so that it has minimal impact on historic character.
5. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features and can be removed in the future without impacts to significant architectural features.

### **C. Windows and Doors**

1. In-kind repair of damaged or severely deteriorated windows and window frames,, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match those of the originals.
2. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of existing intact archaic or decorative glass.
3. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non character-defining spaces with metal blast resistant doors and frames.

### **D. Exterior Walls, Cornices, Porches, and Foundations**

1. In-kind repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
2. In-kind repair, and where necessary, in-kind replacement of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
3. In-kind repair and where necessary in-kind replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
6. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices or limited in-kind replacement of damaged components including comparable brick, and mortar that matches the color, strength, content, rake, and joint width.
7. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, strength, rake, and joint width where occurring.
9. Repairs to and in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered.

#### **E. Roofing**

1. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
2. In-kind repair, and where necessary, in-kind replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
3. Repairs to a flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.

4. In-kind repair and where necessary in-kind replacement of lightning rods.

#### **F. Weatherproofing and Insulation**

1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
2. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered.

#### **G. Structural Retrofits**

1. The installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior: attic bracing, cross bracing on pier and post foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.
2. Replacement, repair or installation of lightning rods.

**IV. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

#### **A. Roads and Roadways**

1. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches except where in close proximity to known archeological sites or within the view shed of historic districts that are listed or eligible for listing on the National Register.
2. In kind repair to historic paving materials for roads and walkways.
3. In-kind repair or when necessary in-kind replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.

4. In-kind repair or, where necessary, in-kind replacement of road lighting systems, including period lighting fixture styles.
5. In-kind repair or, where necessary, in-kind replacement of road appurtenances such as curbs, berms, fences, and sidewalks.
6. Installation of speed bumps and/or enhanced curbs. This allowance does not apply to any work in historic districts listed or eligible for listing in the National Register.
7. Stabilization of hazardous slopes within transportation rights-of-way. Stabilization methods include the installation of retaining walls and systems such as gabion baskets, crib walls, and soldier pile and lag walls. Work will not exceed the limits of the previously disturbed rights-of-way and will not take place within the APE of any historic property listed or eligible for listing in the National Register. This allowance does not apply to any work in historic districts listed or eligible for listing in the National Register.

#### **B. Bridges**

1. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
2. In-kind repair, and where necessary, in-kind replacement of bridge components (e.g. abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.

**V. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

#### **A. General**

1. In-kind repair or replacement, or minor upgrading, small scale realignment, and elevation of utilities and associated features and structures within previously disturbed soils of rights-of-way or utility corridors.
2. Installation of new utilities and associated features within existing rights-of-way except when in close proximity to known archeological sites or within view sheds of historic districts eligible or listed on the National Register.
3. Directional boring of new/replacement service line and related appurtenances involving boring or silt trenches within previously disturbed soils of rights-of-way or utility corridors.

4. In-kind repair or replacement, or minor upgrade of water towers provided activities take place within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This allowance does not apply to masonry water towers.
5. Temporary storage of supplies and equipment (poles, cable spools, pedestals, etc.) where no ground disturbance will occur; this does not include construction of temporary access routes.
6. Repair in kind of metal utilitarian structures to house or protect utilities, such as pump houses and electrical transformer houses, as well as related elements, such as oil tanks and exposed pipelines, except when located within a historic district.

#### **B. Generators and Utilities**

1. In-kind repair or replacement, or minor upgrades elevation, and/or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils and any roof mounted equipment is not visible from the ground level.
2. Underground cable replacements of any length when the replacement cable is placed within three feet of the same trench as an existing or failed cable except when in close proximity to known archeological site.
3. Substantially in kind repair or replacement of antenna towers.
4. Replacement of power poles in pre-existing locations is allowed including increase in the pole diameter. Relocation or construction of new poles are allowed in (1) urban or suburban settings between the edge of roadway and the sidewalk, (2) rural settings along roadway shoulders, and (3) in off-road alignment settings in the existing utility corridor except when in close proximity to a known archaeological site or within the view shed of historic districts listed or eligible for listing on the National Register.
5. New construction of a single pole overhead line is permissible when the auguring, pole placement, and line placement is conducted from within the previously disturbed public or private right-of-ways, or when the lines will not pass within or through any areas known or suspected to contain human remains, archeological resources, or any other historic properties except when in close proximity to a known archaeological site or within the view shed of historic districts listed or eligible for listing on the National Register.
6. Replacement, relocation or installation of solar panels on the roofs of building less than 5 years of age.

7. Directional boring for replacement/new service lines and related appurtenances, where ground disturbance would involve no greater than 10 square foot excavation units for directional boring equipment to be placed. These units would be placed in areas for directional drill to begin and end or where needed to complete boring.

### **C. Communication Equipment/Systems and Towers**

1. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
2. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 year in age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
3. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
4. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work occurs does not require modification of buildings/structures older than 45 years and occurs within previously disturbed soils.
5. Construction of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures older than 45 years, occurs within previously disturbed soils and is not within 500 ft of the boundaries of a historic property.

**VI. WATER RESOURCE MANAGEMENT AND CONTROLS**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

#### **A. Canal Systems**

1. In-kind repairs, when necessary, or in-kind replacement to canal systems and associated elements with the understanding that when the undertaking includes the D&R and Morris Canals, the applicant complies with the New Jersey Register of Historic Places Act N.J.A.C.7.4, effective September 2, 2008 which requires consultation with the appropriate agencies.

#### **B. Breakwaters, Seawalls, Revetments, and Berms**



1. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils and there are no known shipwrecks within the project's area of potential effect.

#### **C. Dams, Levees, and Floodwalls**

1. In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

#### **D. Fish Hatcheries**

1. In-kind repair or replacement of fish hatcheries and fish ladders.

#### **E. Waste-Water Treatment Lagoon Systems**

1. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

### **VII. OTHER PROGRAM ACTIVITIES**

#### **A. Elevation, Demolition, and Reconstruction**

Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age the so long as the proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a historic district. *Undertakings may take place using Federal funds to resources located within the areas surveyed by the joint FEMA-SHPO team that have formally been determined to contain no above-ground historic properties without further consultation with NJ SHPO.*

1. Activities related the elevation, demolition or reconstruction of buildings or structures less than 48 years of age provided the proposed activates substantially conform to the original footprint and/or are performed in previously disturbed soils including any staging areas, and the buildings or structures are not located within or adjacent to historic districts.
2. Undertaking occurring within areas previously surveyed by the joint FEMA-SHPO survey team that have been formally determined to contain no above ground historic properties in accordance with Section 106 will have no effect on historic properties. FEMA may approve undertakings to above ground resources in these areas without further consultation with SHPO.

#### **B. Safe Rooms**

1. Installation of individual safe rooms within the property limits of a residence where the installation will occur within an existing structure or building or previously disturbed soils.

### **C. Temporary Actions**

1. Installation of temporary stabilization, bracing or shoring, provided each work does not result in additional damage, significant loss of historic fabric, or irreversible alterations, and does not affect known archaeological sites or features or is located in an area with high potential for significant archeological sites.
2. Installation of scaffolding, polyethylene sheeting, tarps or temporary barriers (e.g. chain link fences), provided such work will not result in additional damage, irreversible alterations, or significant loss of historic fabric.

### **D. Lower Impact Debris Removal Stipulations For Private Property Debris Removal (PPDR) and demolition of condemned private property (as debris) under the Public Assistance Program.**

#### **1. General Approach to Minimize Impact to Soil:**

- a. When using heavy equipment, work from hard or firm surfaces to the fullest extent possible, to avoid sinking into soft soils.
- b. The Applicant will, to the fullest extent possible, ensure that its contractors minimize soil disturbance when operating heavy equipment on wet soils (6 inches or less).
- c. Excavation and burial of debris on site is not permitted.

#### **2. Activity Specific Guidelines:**

##### *a. Woody Debris Removal (including Rootballs):*

- The Applicant will ensure to the fullest extent possible that all prior PA guidance regarding woody debris is followed.

##### *b. Filling Voids*

- Any voids which require filling because they are a "health and safety issue" will be filled with suitable fill from an approved source.

##### *c. Surface Grading and Site Clean-Up:*

- The Applicant will ensure to the fullest extent possible that its contractors will limit site grading to within the first six (6) inches of

the existing surface elevation (e.g., side walk level, driveway level, slab level, etc.).

d. *If the building or structure has been destroyed by the event and there are remaining Structural Features or Utilities that Require Removal, then:*

- Utility lines will be disconnected and capped. In cases where there are no shut-off valves, limited excavation within the utility rights-of-way will be required to cap these service lines.
- Shearing off of at the ground-surface is strongly encouraged so that further soil disturbance is minimized.

### 3. **Treatment of Unanticipated Discoveries:**

#### a. *Archaeological Materials/Human Remains*

- If debris removal activities disturb archaeological artifacts (e.g. old bricks, ceramic pieces, historic bottle glass or cans, coins, beads, stones in the form of tools [arrow heads], pieces of crude clay pottery, etc.), archaeological features (e.g. grave markers, house foundations, cisterns, etc.) or human remains the Applicant will ensure to the fullest extent possible that the Contractor immediately stops work in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the finds. In such cases, the Applicant will immediately inform the New Jersey State Historic Preservation Office SHPO and FEMA (also the local law enforcement, county coroner/medical examiner and county OEM representative for human remains, in accordance with applicable New Jersey SHPO and state guidelines) of the discovery for further guidance. The Applicant will ensure that the Contractor does not proceed with work in the areas of concern until FEMA staff has completed consultation with the (SHPO) and other interested parties, as necessary.
  - To ensure that all applicable State and local laws are adhered to, and permission from all appropriate parties is obtained to remove remains, the Applicant must also determine appropriate legal measures under New Jersey Cemetery law (N.J.S.A. 45:27-23.c).
4. FEMA reserves the right to conduct unannounced field inspections and observe debris removal activities to verify compliance with LIDRS. Failure to comply with these stipulations may jeopardize the Applicant's receipt of federal funding.
5. FEMA and the State Historic Preservation Office (SHPO) have agreed that the Applicant is responsible for ensuring that their demolition contractor adheres to these work restrictions known as Lower Impact Debris Removal Stipulations (LIDRS) for FEMA Public Assistance Category A eligible activities.

## Appendix C

### Treatment Measures

The following Treatment Measures are suggested for the resolution of Adverse Effects:

If Undertakings result or will result in adverse effects, FEMA, the SHPO, OEM, and participating Tribes(s), may develop a treatment measure plan that includes one or more of the following Treatment Measures, depending on the nature of historic properties affected and the severity of adverse effects. This Appendix may be amended in accordance with Stipulation IV.A.3 of this Agreement, Amendments.

#### A. Recordation Package

1. Digital Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Digital Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The Digital Photography Package will meet the standards cited in the National Park Service's *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
  - a. The Digital Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
  - b. The Digital Photography Package shall include printed color copies of the digital photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.
  - c. The designated responsible party shall submit the Digital Photography Package to the SHPO and participating Tribes for review and approval. Once approved by the SHPO and participating Tribes, the designated responsible party shall submit full copies of the approved Digital Photography Package to \_\_\_\_\_ for permanent retention.

2. 35 mm Black and White Film Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm Black and White Film Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
  - a. The 35 mm Black and White Film Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
  - b. The 35 mm Black and White Film Photography Package shall include one (1) full set of 35mm film black and white photographs printed on acid free paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
  - c. The designated responsible party shall submit the 35 mm Black and White Film Photography Package to the SHPO and participating Tribes for review and approval. Once approved by the SHPO and participating Tribes, the designated responsible party shall submit full copies of the approved 35 mm Black and White Film Photography Package to \_\_\_\_\_ for permanent retention.
3. Large Format Film Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Large Format Film Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
  - a. The Large Format Film Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

- b. The Large Format Film Photography Package shall include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-inch negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
- c. The designated responsible party shall submit the Large Format Film Photography Package to the SHPO and participating Tribes for review and approval. Once approved by the SHPO and affected Tribes, the designated responsible party shall submit full copies of the approved Large Format Film Photography Package to \_\_\_\_\_ for permanent retention.

#### B. Design Review by SHPO and participating Tribes

Prior to project implementation, FEMA, the Grantee, and subgrantee shall work with the SHPO and participating Tribes to develop a historically compatible design. Plans and specifications will, to the greatest extent feasible, preserve the basic character of a building. Primary emphasis shall be given to the major street elevations that are visible. Significant contributing features (e.g. trim, windows, doors, porches) will be repaired or replaced with either in-kind materials or materials that come as close as possible to the original materials in basic appearance. Aesthetic camouflaging treatments such as use of veneers, paints, texture compounds and other surface treatments and/or use of sympathetic infill panels and landscaping features will be employed to the greatest extent feasible. Final construction drawings used in the bidding process will be submitted to the SHPO and participating Tribes for review and comment prior to the award of a construction contract and the initiation of construction activities. No photography of Native American human remains or funerary objects will be allowed.

#### C. Tribal Treatment Plan

FEMA shall work with the participating Tribes to develop a plan for the protection and treatment of, including but not limited to, Native American remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, for known sites and in the event that any are discovered in conjunction with the Undertaking, including archaeological studies, excavation, geotechnical investigations, grading, and all ground-disturbing activity. The plan will also formalize procedures for Tribal monitoring during archaeological studies, grading, and ground disturbing activities for the Undertaking.

#### D. Public Interpretation

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, SHPO, participating

Tribes, and the designated responsible party will continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

#### E. Historical Context Statements and Narratives

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the drafting of the document and delivery of a final product. The SHPO and participating Tribes shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

#### F. Oral History Documentation

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the data collection, drafting of the document, and delivery of a final product. The SHPO and participating Tribes shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

#### G. Historic Property Inventory

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to establish the appropriate level of effort to accomplish a historic property inventory or synthesis of archeological data. Efforts may be directed toward the resurvey of previously designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the data collection process. The designated responsible party will use SHPO and participating Tribes standards for the survey of historic properties and SHPO and participating Tribes forms as appropriate. The designated responsible party will prepare a draft inventory report, according to SHPO and participating Tribes templates and guidelines, and work with the SHPO and participating Tribes until a final property inventory is approved. The designated responsible party will

use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

#### H. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO, and participating Tribes to identify the individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the drafting of the nomination form. The SHPO and participating Tribes will provide adequate guidance to the designated responsible party during the preparation of the nomination form and shall formally submit the final nomination to the Keeper for inclusion in the National Register. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

#### I. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to identify the historic maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to them for review. The SHPO and participating Tribes shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.





## APPENDIX D.1

### STIPULATIONS RELATIVE TO CONSULTATION WITH THE ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA

**WHEREAS**, FEMA has determined that implementation of its Programs will result in Undertakings that may have an effect on properties of traditional religious and cultural significance to the Absentee Shawnee Tribe of Indians of Oklahoma (Tribe) that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36 C.F.R. § 800.14(b)(3) ("Developing programmatic agreements") and 36 C.F.R. § 800.3(f)(2) ("Involving Indian Tribes") of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic properties of religious and cultural significance as being within Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Salem, Sussex, and Warren Counties in New Jersey; and

**WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the NHPA; and

**WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to become a consulting party;

**NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

1. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration for the identified area of geographic concern as listed above. Protocols for further consultation, if needed, will be established between FEMA and the Tribe at that time.
2. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land disturbance in Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Salem, Sussex, and Warren Counties.
3. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the potential to affect any ~~a large~~, pre-Contact, Native American archaeological habitation site listed in or eligible for listing in the National Register of Historic Places in Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Salem, Sussex, and Warren Counties.
4. FEMA will request that the Tribe become a Consulting Party in determining the treatment and disposition of any Native American grave or human remains that are inadvertently discovered as a result of a FEMA-funded Undertaking in All Counties in New Jersey.

\*\*\*\*\*

## APPENDIX D.2

### STIPULATIONS RELATIVE TO CONSULTATION WITH THE DELAWARE NATION

**WHEREAS**, FEMA has determined that implementation of its Programs will result in Undertakings that may have an effect on properties of traditional religious and cultural significance to the Delaware Nation (Tribe) that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. § 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic properties of religious and cultural significance as being all counties within the entire State of New Jersey; and

**WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the NHPA; and

**WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to become a consulting party;

**NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

5. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration for the identified area of geographic concern as listed above. Protocols for further consultation, if needed, will be established between FEMA and the Tribe at that time.
6. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land disturbance in all counties within the State of New Jersey.
7. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the potential to affect a large, pre-Contact, Native American archaeological habitation site in all counties within the State of New Jersey.
8. FEMA will request that the Tribe become a Consulting Party in determining the treatment and disposition of any Native American grave or human remains that are inadvertently discovered as a result of a FEMA-funded Undertaking in all counties within the State of New Jersey.

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### APPENDIX D.3

#### STIPULATIONS RELATIVE TO CONSULTATION WITH THE DELAWARE TRIBE OF INDIANS

**WHEREAS**, FEMA has determined that implementation of its Programs will result in Undertakings that may have an effect on properties of traditional religious and cultural significance to the Delaware Tribe of Indians (Tribe) that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. § 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic properties of religious and cultural significance as being all counties within the entire State of New Jersey; and

**WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the NHPA; and

**WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to become a consulting party;

**NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

9. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration for the identified area of geographic concern as listed above. Protocols for further consultation, if needed, will be established between FEMA and the Tribe at that time.
10. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land disturbance in all counties within the State of New Jersey.
11. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the potential to affect a large, pre-Contact, Native American archaeological habitation site in all counties within the State of New Jersey.
12. FEMA will request that the Tribe become a Consulting Party in determining the treatment and disposition of any Native American grave or human remains that are inadvertently discovered as a result of a FEMA-funded Undertaking in all counties within the State of New Jersey.

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## APPENDIX D.4

### STIPULATIONS RELATIVE TO CONSULTATION WITH THE SHAWNEE TRIBE OF OKLAHOMA

**WHEREAS**, FEMA has determined that implementation of its Programs will result in Undertakings that may have an effect on properties of traditional religious and cultural significance to the Shawnee Tribe of Oklahoma (Tribe) that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. § 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic properties of religious and cultural significance as being all counties within the entire State of New Jersey; and

**WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the NHPA; and

**WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to become a consulting party;

**NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

13. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration for the identified area of geographic concern as listed above. Protocols for further consultation, if needed, will be established between FEMA and the Tribe at that time.
14. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land disturbance in all counties within the State of New Jersey.
15. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the potential to affect a large, pre-Contact, Native American archaeological habitation site in all counties within the State of New Jersey.
16. FEMA will request that the Tribe become a Consulting Party in determining the treatment and disposition of any Native American grave or human remains that are inadvertently discovered as a result of a FEMA-funded Undertaking in all counties within the State of New Jersey.

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## APPENDIX D.5

### STIPULATIONS RELATIVE TO CONSULTATION WITH THE STOCKBRIDGE-MUNSEE BAND OF MOHICANS

**WHEREAS**, FEMA has determined that implementation of its Programs will result in Undertakings that may have an effect on properties of traditional religious and cultural significance to the Stockbridge-Munsee Band of Mohicans (Tribe) that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. § 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic properties of religious and cultural significance as being within Burlington, Sussex, and Warren Counties in New Jersey; and

**WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the NHPA; and

**WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to become a consulting party;

**NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

17. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration for the identified area of geographic concern as listed above. Protocols for further consultation, if needed, will be established between FEMA and the Tribe at that time.
18. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land disturbance in Burlington, Sussex, and Warren Counties.
19. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the potential to affect a large, pre-Contact, Native American archaeological habitation site in Burlington, Sussex, and Warren Counties.
20. FEMA will request that the Tribe become a Consulting Party in determining the treatment and disposition of any Native American grave or human remains that are inadvertently discovered as a result of a FEMA-funded Undertaking in Burlington, Sussex, and Warren Counties.

\*\*\*\*\*

**APPENDIX E**  
**TO THE PROGRAMMATIC AGREEMENT AMONG**  
**THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**  
**THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,**  
**THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER, AND**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**WHEREAS**, as a result of Hurricane Sandy (DR-4086-NJ) (Disaster Declaration), the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.), proposes to provide assistance through the New Jersey State Office of Emergency Management (OEM); and

**WHEREAS**, FEMA consulted with OEM, the New Jersey State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) to develop and execute a Programmatic Agreement (Agreement) for its disaster recovery activities, executed on April 30, 2013; and

**WHEREAS**, the New Jersey Department of Community Affairs (NJDCA) has assumed the role of Responsible Entity on behalf of the U.S. Department of Housing and Urban Development (HUD) and is responsible for environmental review, decision-making and action that would apply to HUD pursuant to 24 CFR Part 58, and NJDCA proposes to administer Community Development Block Grant – Disaster Recovery (CDBG-DR) funds pursuant to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2, January 29, 2013); and

**WHEREAS**, the CDBG-DR funds will support activities that fall within the scope of programs authorized under the terms of this Agreement and Appendix A (Program activities); and

**WHEREAS**, to efficiently and expeditiously deliver disaster recovery assistance to those affected by Hurricane Sandy, there is an opportunity to coordinate and align Section 106 reviews of disaster recovery projects that may have multiple funding sources; and

**WHEREAS**, Stipulation I.A.3. of this Agreement allows other Federal agencies to fulfill their Section 106 responsibilities for those undertakings addressed in this Agreement by fully accepting all the terms of the Agreement and executing this Addendum; and


**WHEREAS**, NJDCA will ensure that staff who meet the Secretary's Professional Qualification Standard will review Tier II projects and will provide resumes of such staff to the signatories to this Addendum;

**NOW, THEREFORE**, NJDCA agrees to assume the Federal agency role of HUD and accept the terms and conditions of the Agreement, as appropriate under authorizing legislation and agency regulations, and thereby take into account the effect of its undertakings and satisfy its Section 106 responsibilities for the CDBG-DR program.

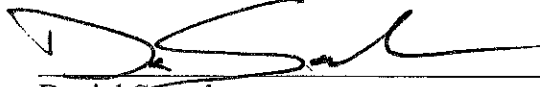
**EXECUTION AND IMPLEMENTATION** of this Addendum to the PA evidences that the New Jersey Department of Community Affairs (NJDCA) has taken into account the effects of its undertaking on historic properties, and that through the execution of this Addendum and implementation of the Agreement, the NJDCA will satisfy its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations for the referenced CDBG-DR program.

**SIGNATORY PARTIES:**


**FEDERAL EMERGENCY MANAGEMENT AGENCY**

 \_\_\_\_\_ Date: 5/16/13  
Mary Ann Fitzney  
Acting Regional Administrator, FEMA Region II

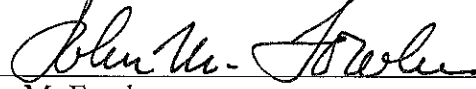
**NEW JERSEY STATE HISTORIC PRESERVATION OFFICER**

 \_\_\_\_\_ Date: 5/17/2013  
Daniel Saunders  
Deputy State Historic Preservation Officer

**NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**

 \_\_\_\_\_ Date: 5-17-13  
Richard E. Constable, III  
Commissioner, Department of Community Affairs

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

 \_\_\_\_\_ Date: 5/20/13  
John M. Fowler  
Executive Director



## **Appendix D**

### Floodplain Management

***Floodplain Management***  
**(24 CFR 55, Executive Order 11988)**

**Background**

HUD regulations in 24 CFR Part 55 implement Executive Order 11988, Floodplain Management. The purpose of EO 11988 is “to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.”

Project sites located within a 100-year floodplain are subject to EO 11988 and any actions outside the 100-year floodplain that directly or indirectly impact the floodplain are subject to EO 11988. The relevant data source for the 100-year floodplain is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps (FIRMs).

**24 CFR 55.1(c)**

No HUD financial assistance may be approved for the following:

- Any action, other than a functionally dependent use, located in a floodway;
- Any critical action (refers to hospitals, nursing homes, Emergency Operation Centers, power-generating facilities, etc.) located in a coastal high hazard area (V-zone); or
- Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area (V-zone compliant) or is a functionally dependent use.

Any proposed actions within the V zone must comply with the construction standards outlined in 24 CFR 55(c)(3).

**NJDEP Approach**

In applying EO 11988 and 24 CFR Part 55, NJDEP’s approach is to avoid adverse impacts to the floodplain as a result of the Proposed Actions to the extent possible.

**ABFEs**

FEMA released its new floodplain mapping in December 2012 on an advisory basis. The New Jersey Department of Environmental Protection (NJDEP) has determined that FEMA’s new Advisory Base Flood Elevation (ABFE) maps, provide the best elevations to be protective of lives and property, and therefore incorporated them as the new elevation standard for the state through a Flood Hazard Area Control Act Emergency Rule adopted on January 24, 2013. The emergency rule requires new, reconstructed and substantially damaged buildings in the floodplain to be elevated in accordance with the best available flood mapping. These elevation requirements reflect Best Available Data and the most accurate flood risk.

Property owners who have to rebuild because their property is substantially damaged will have to build to the highest available State or FEMA elevation level. In addition, The Flood Hazard

Area Control Act rules, in effect since 2007, require the lowest floor of each building in flood hazard areas to be constructed at least one foot above this elevation. A structure is considered substantially damaged if the cost of restoration equals or exceeds 50% of the market value of the structure prior to damage.

ABFEs are now available for Atlantic, Bergen, Burlington, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union Counties. In the majority of cases, these advisory flood maps indicate that the 100-year flood elevation is higher than previously mapped by the NJDEP and FEMA, and in some places significantly higher. These maps can be viewed at [www.region2coastal.com/sandy/abfe](http://www.region2coastal.com/sandy/abfe). The FEMA Base Flood Elevation Maps can be viewed at [www.msc.fema.gov](http://www.msc.fema.gov).

The NJDEP establishes standards for floor elevations for buildings constructed in the floodplain through its Flood Hazard Area Control Act rules. The Flood Hazard Area Control Act Emergency rule (emergency rule) adopted on January 24, 2013, includes a new permit-by-rule (effectively an automatic permit) that allows people reconstructing and elevating buildings utilizing the State's elevation standard to proceed with construction without the need for a formal permit application or review process, or pay the fee typically charged for a Flood Hazard Area permit provided they build in accordance with the standards of the permit-by-rule found at N.J.A.C. 7:13-7.2(a)3.

#### Zone A and Zone V

Both the A zone and the V zone lie within NJDEP and FEMA's 100-year floodplain. Zone V applies only in tidal floodplains and denotes hazards associated with storm-induced waves of at least three feet in height. Construction standards in the V-zone are more stringent in order to account for the increased risk of damage from storm surges.

In reference to the requirements listed in 24 CFR Part 55.1 (c), none of the residential structures and properties included in the Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program or the Small Rental Property Program would be considered a functionally dependent use. Compliance with the standard for addressing a V-zone compliant design will be documented through the building permit and/or elevation certificate, which are required eligibility documents under these programs.

#### **Site-Specific Review Determination Process**

The proposed approach to document compliance with EO 11988 is:

- Document the source of information on the Site-Specific Checklist.
- Project sites located within the Special Flood Hazard Area (Zones A or V) as identified by FEMA maps have been addressed in the attached Areawide Compliance Process document, a large-scale 8-Step Process prepared according to 24 CFR Part 55.20.
  - a. NJDEP will review the property locations to identify any within a FEMA-delineated floodway. Any located within a FEMA-delineated floodway are not eligible for assistance under the RREM Program or the Small Rental Properties Program.
  - b. NJDEP will identify applicable measures to mitigate impacts to the floodplain if the parcel is located within the 100-year floodplain.

**DOCUMENTATION**

**FOR**

**AREAWIDE COMPLIANCE PROCESS**

**Executive Order 11988 – Floodplain Management**

**Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union  
Counties, New Jersey**

**Effective Date: March 2013 (Revised May 10, 2013)**

**New Jersey Department of Community Affairs  
Rehabilitation, Reconstruction, Elevation and  
Mitigation Program (RREM) and Small Rental  
Properties Program (1 to 4 residential units within a  
building)**

**TABLE OF CONTENTS**

**(A) Areawide Compliance Process (8-Step Process)**

Step ONE: Determine if a Proposed Action Is in the 100-year Floodplain

Step TWO: Early Public Review

Step THREE: Identify and Evaluate Practicable Alternatives to Locating in the Base  
100-year Floodplain

Step FOUR: Identify the Impacts of the Proposed Actions

Step FIVE: Minimize Threats to Life and Property and to Natural and Beneficial  
Floodplain Values. Restore and Preserve Natural and Beneficial  
Floodplain Values.

Step SIX: Re-evaluate Alternatives

Step SEVEN: Issue Findings and a Public Explanation

Step EIGHT: Implement the Action

**AREAWIDE COMPLIANCE PROCESS Executive Order 11988 – Floodplain  
Management, New Jersey Department of Environmental Protection**

**U.S. Department of Housing and Urban Development Community Development Block  
Grant Disaster Recovery**

**New Jersey Department of Community Affairs New Jersey Rehabilitation, Reconstruction,  
Elevation and Mitigation (RREM) Program and Small Rental Properties Program (1 to 4  
residential units within a building)**

**Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union  
Counties**

May 2013

This Areawide Compliance Process document addresses the requirements of Executive Order 11988, “Floodplain Management” and has been completed in anticipation of numerous unspecified housing properties participating in the U.S. Department of Housing and Urban Development (HUD)’s New Jersey housing Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program and the Small Rental Properties program (1 to 4 residential units within a building). This document pertains to proposed activities in the 100-year floodplain (A and V zones) as delineated on the latest FEMA floodplain maps, whether advisory, preliminary, or final.

This HUD-funded RREM program, administered by the New Jersey Department of Community Affairs (DCA), was established as a grant award to provide financial assistance to homeowners whose primary residences were substantially damaged, as determined by Municipal Floodplain Administrators to rehabilitate, reconstruct, elevate or mitigate housing units within the nine counties most affected by Superstorm Sandy (Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union, New Jersey). The HUD-funded Small Rental Properties program, also administered by DCA, was established as a grant award to provide financial assistance to rental properties. The program will prioritize rental properties within the nine most impacted counties that were significantly damaged during the storm. Priority will be given to owners wishing to rehabilitate their properties, properties serving special needs populations, and properties in need of remediation for mold. Although the Small Rental Properties Program may provide funds to owners of rental units with more than four units, this area wide compliance document covers only rental properties with up to four units. The NJDEP has the following elevation requirements regarding rehabilitation, reconstruction and elevation of housing structures:

- All residential property owners located in tidal floodplains that have to rebuild because their property is substantially damaged will have to build the lowest floor at least one foot above the highest available state or FEMA 100 year flood level.

- All residential property owners located in non-tidal floodplains that have to rebuild because their property is substantially damaged will have to build the lowest floor to at least one foot above the State design flood elevation, which will result in a lowest floor that is at least two feet above FEMA's BFE.

### **Step ONE: Determine if a Proposed Action Is in the 100-year Floodplain**

#### **Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program and the Small Rental Properties Program**

The RREM Program and the Small Rental Properties Program are in response to severe coastal flooding and storm damage caused by Superstorm Sandy and is addressing the State's need for housing, especially safe, decent, and affordable housing. The RREM Program and the Small Rental Properties Program will provide funding for homeowners and owners of small rental properties (1 to 4 residential units within a building) within the nine most impacted counties (Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union). The RREM Program will provide funding to homeowners whose homes were substantially damaged, as determined by Municipal Floodplain Administrators. The program will fund activities necessary to restore their storm damaged homes, including rehabilitation, reconstruction, elevation and/or other mitigation activities within the disturbed area of the previously developed parcel. The Small Rental Properties Program will provide funding to owners of small rental properties (1 to 4 residential units within a building) that were significantly damaged during the storm. Priority will be given to owners wishing to rehabilitate their properties, properties serving special needs populations, and properties in need of remediation of mold.

To reflect a more accurate risk of flooding in the impacted counties (Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union), in December 2012, FEMA issued Advisory Base Flood Elevations (ABFEs) that in many areas increased the anticipated depth of tidal flooding during the 100-year flood, as well as a corresponding increase in the area expected to be inundated by this flood. These maps are intended to ensure that reconstruction in the tidal floodplain will be at less risk to flooding in the future. DCA estimates that more than 33,000 residential structures that were not located within the floodplain under FEMA's effective flood insurance rate maps are now located within the floodplain under the newly released ABFEs. FEMA anticipates that the updated ABFE maps will be formally adopted through the federal regulatory process as effective flood insurance rate maps (FIRMs) within 18 to 24 months.

NJDEP and DCA require that all property owners whose homes are determined to be "substantially damaged", by a Municipal Floodplain Administrator, must rebuild so that the first floor is at least one foot above the highest available state or FEMA flood elevation. A structure is considered substantially damaged if the cost of restoration equals or exceeds 50% of the market value of the structure prior to damage.

At this time, the exact locations of the properties that would participate in the programs are unspecified. However, eligible applicants under the RREM Program are homeowners whose primary residence was substantially damaged by the storm in the eligible counties listed above; whose household adjusted gross annual income is less than \$250,000.00; and who live in a V or

A Zone, as indicated on either the effective FIRM or ABFE maps. Therefore all counties will have some portion in the floodplain (FEMA Zones A, AE, AH, V & VE). Eligible applicants under the Small Rental Properties Program are owners of small rental properties whose property is used for year-long rental housing, and not as a second home; whose units are targeted to low and moderate income households; and whose rents do not exceed 30% of income for a household earning 80% of Area Median Income (AMI).

Below is a table showing an estimate of acres of floodplain in the nine most impacted counties.

\* Including Surface Water

\*\* Not including Surface Water

County	Acres *	Acres**
ATLANTIC	144,402.88	107,320.96
BERGEN	27,249.55	22,182.55
CAPE MAY	99,264.12	77,085.35
ESSEX	17,849.69	15,684.57
HUDSON	19,876.40	15,156.71
MIDDLESEX	34,751.74	29,829.54
MONMOUTH	37,516.64	28,037.04
OCEAN	176,541.32	96,738.56
UNION	14,299.60	12,515.28

Source: Base GIS review of a combination of the Digital Q3 flood layers; and FEMA determined Advisory Base-Flood Elevations by the NJDEP.

Once an Applicant applies for a grant award, the NJDEP will determine if the Applicant's project parcel is located in the floodplain. The New Jersey Department of Environmental Protection (NJDEP) has developed a HUD Disaster Relief Screening Profile that will be used to conduct an initial screening of each site and proposed activities through a desktop assessment. The application developed for the Tier 2 desktop review of sites is built on the NJDEP's web based environmental mapping tool, NJ-GeoWeb. NJ-GeoWeb enables non-GIS users to view and query geospatial data sets. Examples of existing GeoWeb profiles available to the public can be found at <http://www.state.nj.us/dep/gis/geoweb splash.htm>.

For the Tier 2 site specific reviews, a custom GeoWeb profile was developed that includes data layers associated with the Tier 2 site specific project review checklist. The review layers include such data sets as the 100-year floodplains, wetlands, piping plover habitats, areas where there are no above-ground historic properties as identified jointly by FEMA and the SHPO, and others. The sites will be pre-screened against these review layers and will produce an attribute table associated with each site. In addition, a search tool has been developed for locating the parcels on the map that allows a reviewer to zoom to a particular parcel being reviewed. The user can then turn on any of the GIS layers needed for the review of each parcel. Further, maps for each parcel can be saved electronically as pdf files, as can any of the tabular information created, so



that a complete record can be maintained supporting the Tier 2 desktop analysis for each site. This desktop analysis will help identify when consultation with other agencies is required, if a site inspection is required and any required actions needed to demonstrate compliance with each listed statute, executive order (E.O.), or regulation. The NJDEP will determine whether the project parcel is located within the 100-year floodplain by using this screening tool which includes the best available 100-year floodplain maps.

### **Step TWO: Early Public Review**

A 15-day “Notice for Early Public Review of a Proposed Activity in a 100-Year Floodplain” was published in The Press of Atlantic City, The Star Ledger, The Asbury Park Press, The Courier News, The Daily Record, and the Home News Tribune, on March 5, 2013. The 15-day period expired on March 20, 2013. The ad targeted local residents, including those in the floodplain. The notice was also sent to the following Federal and State agencies on March 5, 2013: U.S Fish and Wildlife Service; U.S. Environmental Protection Agency; U.S. Army Corps of Engineers; National Park Service; National Oceanic and Atmospheric Administration (NOAA); NOAA Fisheries Service; New Jersey Department of Agriculture; FEMA; New Jersey Historic Preservation Office; New Jersey Department of Community Affairs; and New Jersey Department of Environmental Protection, Division of Land Use Regulation. (See **Exhibit 1** for the advertisements and email to Federal and State agencies)

NJDEP received eight public comments on this notice. Most of the comments received by NJDEP were related to programmatic policies and were not related to impacts to the floodplain from the proposed activities. See **EXHIBIT 4** for the list of comments received by NJDEP and NJDEP’s response to those comments.

### **Step THREE: Identify and Evaluate Practicable Alternatives to Locating in the Base Floodplain**

The RREM Program and Small Rental Properties Program will provide grant awards to eligible homeowners and owners of small rental properties for activities necessary to restore their storm-damaged homes, including rehabilitation, reconstruction, elevation and/or other mitigation activities within the disturbed area of the previously developed parcels in the floodplain. The RREM program will benefit homeowners whose primary residences sustained “substantial damage” from Superstorm Sandy. The Small Rental Properties Program will benefit owners of small rental properties whose properties were significantly damaged during the storm. The residential properties must be located in one of the nine most impacted counties.

Based on the FEMA Individual Assistance data, the greatest concentrations of housing damage are located in Atlantic (12%), Bergen (5%), Cape May (4%), Essex (2%), Hudson (6%), Middlesex (5%), Monmouth (16%), Ocean (35%) and Union (6%) Counties. These nine counties account for 92% of reported housing damage in New Jersey. The State also has tracked the number of letters from Municipal Floodplain Administrators formally identifying properties as “substantially damaged,” meaning that repair costs exceed 50% of the structure’s pre-disaster market value. As of March 8, 2013, 2,995 such letters have been issued. Based on discussions with floodplain managers, more than 18,000 homes are estimated to be “substantially damaged,”

although this figure is preliminary and is expected to increase significantly as verification of housing damages continues. Many of these property owners likely will be required to elevate their homes. Without financial support, the added costs of elevating these houses or small rental properties will likely be overly burdensome for the majority of property owners.

Based on NJDEP's preliminary data, it is estimated that all these homes will be located in the 100-year floodplain. FEMA, in order to promote stronger, safer rebuilding, published ABFE maps for the State of New Jersey that advise a significant expansion of New Jersey's 100-year floodplain. Data suggests that more than 33,000 residential structures that were not within the floodplain under FEMA's effective Base Flood Elevation maps are now within the floodplain under the newly released ABFEs. FEMA had been in the process of remapping the floodplain along New Jersey's coastline for two years when Sandy hit. The ABFEs were recognized as the best available flood mapping data because FEMA's current, formally adopted maps are outdated and do not accurately reflect flood risk. Applicants who choose to develop in the floodplain must adhere to the applicable elevation requirements (as described above) to avoid flood damages.

New Jersey is the most densely populated state in the country and therefore a policy to prohibit any development in the floodplain is not considered practicable due to the great number of parcels located within the floodplain in the counties most affected by Sandy.

As a result of this program, there will be three outcomes that will describe impacts to the floodplain:

- Outcome A - Impact to the floodplain but no change from pre-Sandy condition except that the structure has to be elevated (Proposed Action 1).
- Outcome B – Impact to the floodplain with relocation or expansion and elevation of a housing structure within the disturbed area of the previously developed parcel (Proposed Action 2).
- Outcome C – Impact to the floodplain with no change from pre-Sandy condition (rehabilitation without elevation) (Proposed Action 3)

The only practicable alternative on a programmatic level would be the 'No-Action' alternative, which would mean that Applicants would not receive grant awards under the RREM Program or Small Rental Properties Program. As a result, these property owners may not be able to recover. Furthermore, the Applicants would not be provided financial assistance to elevate or rehabilitate their homes and thus their properties would be more vulnerable to future flooding conditions. Thus, the No-Action alternative would neither address the State's need for safe, decent, and affordable housing, nor would it require homes within the floodplain to be elevated to the highest standard for flood protection.

#### **Step FOUR: Identify the Impacts of the Proposed Actions**

The HUD-funded RREM Program is for rehabilitation, reconstruction, elevation and/or other mitigation activities on previously developed parcels in the floodplain. The program will benefit homeowners whose primary residences sustained "substantial damage" from Superstorm Sandy. The Small Rental Properties Program is for rehabilitation of small rental properties (1 to 4 units in a building). HUD's own regulations limit what actions can be considered under the RREM Program, including prohibition of any construction in the floodway. The homes would have to be

elevated to the elevation height standards described earlier which represent best available data and the most accurate flood risk. The only exceptions to this requirement are historic structures that are listed on the National Register of Historic Places, which will have elevation height requirements considered on a case-by-case basis.

In accordance with HUD regulations in 24 CFR Part 55 (Floodplain Management), eligibility for financial assistance will be determined.

The potential impacts of the Proposed Actions on the floodplain are detailed below. All Applicants with properties in the 100-year floodplain shown on the effective FIRM would also be required to maintain flood insurance up to the NFIP's maximum amount as part of this program.

**The Proposed Action 1** in a floodplain represents no change from pre-Sandy conditions except that the homes would now be elevated at least one foot above the best available (most recent) floodplain mapping, thereby reducing future damages from flooding. Overall this has a more beneficial impact on the floodplain than the No-Action alternative.

**Proposed Action 2** in a floodplain represents an elevation of the home and relocation or expansion of the footprint in the disturbed area of the previously developed parcel. All required permits must be identified and obtained prior to commencement of construction. All mitigation measures will be prescribed on a case-by-case basis to ensure minimal impacts to the floodplain.

Proposed Action 3 in a floodplain represents no change from pre-Sandy conditions except for rehabilitation of a significantly damaged residential structure (rehabilitation with no elevation)

Every Municipal Floodplain Administrator in the nine-county area was notified by NJDEP in a February 4, 2013, letter of the State's adoption of the emergency amendments to the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, which incorporate the use of ABFEs or the best available data in determining flood elevations. Under these amendments, flood elevations are now determined either using the higher of the ABFE, the effective BFE, or the design flood elevation shown on the DEP flood maps. In this letter, NJDEP encouraged municipalities to pass ordinances adopting the ABFE's. However, even if municipalities do not adopt such ordinances, property owners would still need to elevate in accordance with the Flood Hazard Area Control Act rules.

Furthermore, due to the added expense of complying with the program's elevation requirements if located within the floodplain, applicants with a practicable alternative to locating in the floodplain will likely choose it to reap a construction cost savings and reduced risk to their investment.

In summary, based on the requirement that property owners whose houses were substantially damaged who wish to rebuild, will have to elevate their homes to the strictest standard, it is extremely unlikely that there will be a net increase in floodplain development in comparison to pre-Sandy conditions as a result of this program.

In addition, the proposed RREM and Small Rental Properties programs would not increase floodplain occupancy, as they would enable people to return to their homes but would not expand the housing stock relative to conditions prior to Superstorm Sandy.

### **Step FIVE: Minimize Threats to Life and Property and to Natural and Beneficial Floodplain Values. Restore and Preserve Natural and Beneficial Floodplain Values.**

The NJDEP requires elevation of all substantially damaged structures in the floodplain. When followed, these regulations will reduce the threat of flooding damage to the homes located in the floodplain. The new elevation levels, which applicants are required to adhere to when considering reconstruction of their substantially damaged residential properties, represent the best available data and are assumed to advance floodplain management efforts in the nine counties.

Property owners participating in the RREM and Small Rental Properties programs would be required to adhere to the following conditions to minimize the threat to property, minimize losses from flooding and high-wind events, and benefit floodplain values:

1. All proposed reconstruction and repair of substantially damaged structures in the floodplain must adhere to the latest (most recent) elevation requirements in accordance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). Flood elevations are now determined either using the higher of the ABFE, the effective BFE, or the design flood elevation shown on the NJDEP flood maps;
2. All participants in these programs whose property is in the 100-year floodplain shown on the effective FIRM must carry flood insurance on the subject structure for its economic life; and
3. In the case of “Coastal High Hazard” areas (“V” or “VE” Zones on the latest (most recent) FEMA-issued Maps), that the applicant adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR Part 60.3 (e) as required by HUD Regulation 24 CFR Part 55.1 (c)(3).

Therefore, the requirements of the RREM and Small Rental Properties programs will help ensure a minimal adverse impact to the floodplain.

### **Step SIX: Reevaluate Alternatives**

The only practicable alternative on a programmatic level would be the ‘No-Action’ alternative, which would mean that Applicants would not receive grant awards under the RREM Program or the Small Rental Properties Program. As a result, these property owners may not be able to recover. Furthermore, the Applicants would not be provided financial assistance to elevate their homes and thus their properties would be more vulnerable to future flooding conditions. Thus, the No-Action alternative would neither address the State’s need for safe, decent, and affordable housing, nor would it require homes within the floodplain to be elevated to the highest standard for flood protection. In addition, all proposed reconstruction and repair of substantially damaged structures in the floodplain must adhere to the latest (most recent) elevation requirements in accordance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). Therefore the no action alternative was rejected.

### **Step SEVEN: Issue Findings and a Public Explanation**

It is our determination that there is no practicable alternative to locating the proposed project in the floodplain. This is due to: 1) the need to provide safe, decent and affordable housing; 2) the desire to not displace residents; and 3) the ability to mitigate and minimize impacts on human health, public property and floodplain values. A “Notice of Policy Determination” was published in accordance with 24 CFR 55, on March 22, 2013 for a 7-day comment period. The notice stated the reasons why the project must be located in the floodplain, a list of alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and preserve natural and beneficial floodplain values.

NJDEP received two comments from one commenter on this notice. The comments received by NJDEP were related to programmatic policies and were not related to compliance with EO 11988 or 24 CFR Part 55. See **EXHIBIT 4** for the list of comments received by NJDEP on the Early Notice and this Notice of Policy Determination and NJDEP’s response to comments on the Early Notice.

### **Step EIGHT: Implement the Action**

Step eight is implementation of the proposed action. The DCA will ensure that all mitigation measures prescribed in the steps above will be adhered to.

**EXHIBIT 1 Copy of Notice Transmitting Notice of Early Public Review and Proof of Publication**

**EXHIBIT 2 NJDEP Letter to Municipal Floodplain Administrators Dated February 4, 2013**

**EXHIBIT 3 Copy of Notice Transmitting Notice of Final Public Review**

**EXHIBIT 4 Public Comments Received and NJDEP Response**

## **Exhibit 1**

# **Copy of Notice Transmitting Notice of Early Public Review and Proof of Publication**

### **EARLY NOTICE AND PUBLIC REVIEW OF A PROPOSED ACTIVITY IN A 100-YEAR FLOODPLAIN**

March 5, 2013:

To: All Interested Agencies, Groups & Individuals

This is to give notice that the New Jersey Department of Environmental Protection (NJDEP) has conducted an evaluation as required by Executive Orders 11988 and 11990, in accordance with HUD regulations at 24 CFR 55.20 Subpart C Procedures for Making Determinations on Floodplain Management, to determine the potential effect that its activity in the floodplain will have on the human environment for Community Development Block Grant – Disaster Recovery (CDBG-DR) Homeowner Assistance and Rental Programs under Title I of the Housing and Community Development Act of 1974 (PL 93-383).

The State has prioritized that its first allocation of the CDBG-DR funds (\$1.83 billion in total) will be directed to housing in the most impacted municipalities and counties. These estimates reflect activity under the first allocation of funds. The best available data suggests 5,125 homes in Atlantic County, 2,675 homes in Bergen County, 2,265 homes in Cape May County, 1,455 homes in Essex County, 3,650 homes in Hudson County, 1,955 homes in Middlesex County, 7,015 homes in Monmouth County, 14,315 homes in Ocean County and 1,235 homes in Union County may seek funding through this program. It is the State's expectations that with additional unmet needs assessment the number of housing units to be assisted and the amount of additional funding to support this need will greatly increase.

Though the confirmation of site locations is currently in progress, the proposed projects will be located in the following nine counties: Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union. There are approximately 144,402 acres in Atlantic County, 27,249 acres in Bergen County, 99,264 acres in Cape May County, 17,849 acres in Essex County, 19,876 acres in Hudson County, 34,751 acres in Middlesex County, 37,516 acres in Monmouth County, 176,541 acres in Ocean County, and 14,299 acres in Union County in the floodplain. The tidal floodplains in the State are depicted on two maps: the advisory mapping developed by FEMA, which can be viewed by selecting "FEMA's Interactive ABFE Map" link at [www.region2coastal.com/sandy/abfe](http://www.region2coastal.com/sandy/abfe) and the FEMA Base Flood Elevation Map link at [www.msc.fema.gov](http://www.msc.fema.gov).

#### Homeowner Assistance

The Reconstruction, Elevation and Mitigation program will serve households predominately within the floodplain, in Special Flood Hazard Area A and V zones. It is currently estimated that this program will assist approximately 6,500 homeowners.

## Rental Programs

The State has also developed a slate of rental programs to restore quality, affordable rental for both its low income as well as Sandy-impacted residents. Initial projections are that the State will complete approximately 5,500 units under these programs.

There are three primary purposes for this notice. First, people who may be affected by activities in floodplains and those who have an interest in the protection of the natural environment should be given an opportunity to express their concerns and provide information about these areas. Second, an adequate public notice program can be an important public education tool. The dissemination of information about floodplains can facilitate and enhance Federal efforts to reduce the risks associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in floodplains, it must inform those who may be put at greater or continued risk.

Written comments must be received by NJDEP on or before March 20, 2013. NJDEP encourages electronic submittal of comments at [www.nj.gov/dep/special/hudnotices/comments.htm](http://www.nj.gov/dep/special/hudnotices/comments.htm). In the alternative, comments may be submitted on paper to: NJDEP, by March 20, 2013 Mail Code 401-07D, P.O. Box 402, Trenton, New Jersey 08625-0402 during the hours of 9:00 AM to 5:00 PM. Further information can be found on the Department's web site at [www.nj.gov/dep/](http://www.nj.gov/dep/).

Bob Martin, Commissioner, NJDEP

**Exhibit 2**  
**NJDEP Sample Letter to Municipal Floodplain Administrators Dated**  
**February 4, 2013**



**State of New Jersey**

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF ENGINEERING & CONSTRUCTION

BUREAU OF DAM SAFETY & FLOOD CONTROL

Mail Code 501-01A

PO Box 420, Trenton, NJ 08625-0420

Telephone: 609-984-0859 Fax: 609-984-1908

CHRIS CHRISTIE  
*Governor*

BOB MARTIN  
*Commissioner*

KIM GUADAGNO  
*Lt. Governor*

February 4, 2013

Re: Local Flood Damage Prevention Ordinance  
Adoption of Advisory Base Flood Elevation Maps

Dear Mayors and Local Floodplain Administrator:

This is in reference to the Federal Emergency Management Agency (FEMA) Advisory Base Flood Elevations (ABFE) for Atlantic, Bergen, Burlington, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties and the Department of Environmental Protection (DEP) Statement of Imminent Peril Mandating Flood Hazard Amendments (<http://www.nj.gov/dep/docs/20130124statement-of-imminent-peril-mandating-flood-hazard-amendments.pdf>). The State of NJ has adopted emergency amendments to the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, which incorporate the use of ABFE's in determining flood elevations. Under these amendments, flood elevations are now determined either using: (1) the higher of the ABFE, the effective BFE, or the design flood elevation shown on DEP flood maps; or (2) site-specific calculations that demonstrate a different flood elevation.

In order to ensure your residents are eligible for Increased Cost of Compliance (ICC) and other federal hazard mitigation grant funds, it is recommended that your community readopt its current Local Flood Damage Prevention Ordinance to meet or exceed the requirements of the amended Flood Hazard Area Control Act Rules (<http://www.nj.gov/dep/docs/20130124flood-hazard-emergency-rule.pdf>). In addition, your community could receive credits through the Community Rating System (CRS) program for adopting the ABFE maps.

To assist your municipality and FEMA, the DEP recommends amending your local ordinance in accordance with the Generic ABFE Model Ordinance language that can be found at the DEP flood control website: <http://www.nj.gov/dep/floodcontrol/modelords/modelde-abfe.doc>. Your amended ordinance should reference the appropriate ABFE map panels and dates (which can be accessed at the DEP flood control website for your specific community) in section 3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD to comply with federal flood insurance requirements. The model ordinance contains only the minimum requirements accepted by FEMA and the State of New Jersey.

Please forward to our office within ten (10) days a designated contact person and their contact information.



Also, please forward a draft copy of any proposed ordinance to my office prior to introduction, for our review. After adoption, please forward **two (2) certified, signed and sealed** copies of the ordinance to this office so I can report to FEMA that your municipality has adopted an ordinance that implements the ABFE regulations.

Should you have any questions or need the model ordinance document in Microsoft Word® format, please contact A. Chris Gould at (609) 292-2296 or alan.gould@dep.state.nj.us.

Sincerely,

John H. Moyle, P.E., Manager Bureau of Dam Safety & Flood Control

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## **Exhibit 3**

### **Notice of Policy Determination for Housing Assistance Programs**

March 22, 2013

To: All Interested Agencies, Groups & Individuals

This is to give notice that the New Jersey Department of Environmental Protection (NJDEP) on behalf of the Responsible Entity, the Department of Community Affairs has conducted an evaluation as required by Executive Order 11988, in accordance with HUD regulations at 24 CFR 55.20 Subpart C Procedures for Making Determinations on Floodplain Management, to determine the potential effect that its activity in the floodplain will have on the human environment for Community Development Block Grant – Disaster Recovery (CDBG-DR) Homeowner Assistance and Rental Programs under Title I of the Housing and Community Development Act of 1974 (PL 93-383).

In accordance with that process the NJDEP has made a final determination that there is no practicable alternative to locating the proposal in the floodplain as summarized in this notice. This notice satisfies 24 CFR Part 55.20 (g), Step 7 of the eight-step decision process.

#### **Reasons why the Proposal Must be Located in the Floodplain**

The Housing Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program will provide funding to repair or rebuild on previously developed parcels. The program is designed to recover the primary residences and rental units (up to 4 units) that were substantially damaged by Superstorm Sandy. The State has tracked the number of letters from Municipal Floodplain Administrators formally identifying properties as “substantially damaged”, in which repair costs exceed 50% of the structure’s pre-disaster market value. As of March 8, 2013, 2,995 such letters have been issued. Based on discussions with floodplain managers, more than 18,000 homes are estimated to be “substantially damaged” although this figure is preliminary and is expected to increase significantly as verification of housing damages continues. Many of these homeowners likely will be required to elevate their homes. Without financial support, the added costs of elevating these houses will likely be overly burdensome for the majority of homeowners. All of the housing units are located in the 100-Year Floodplain.

#### **List of the Alternatives Considered**

The only practicable alternative to locating the proposal in a floodplain on a programmatic level would be the ‘No-Action’ alternative, which would mean that applicants would not receive grants under the RREM Program. As a result, many homeowners recovery, and the recovery of the New Jersey Shore as a whole, would be substantially delayed. The applicants would not be provided financial assistance to elevate their homes or rental properties and thus their properties

would be more vulnerable to future flooding conditions. Thus, the No-Action alternative would neither address the State's need for safe, decent, and affordable housing, nor would it require homes and rental units within the floodplain to be elevated to the highest standard for flood protection.

### **Mitigation Measures to be Taken to Minimize Adverse Impacts and Preserve Natural and Beneficial Values**

The NJDEP requires elevation of all substantially damaged structures in the floodplain. When followed, these regulations will reduce the threat of flooding damage to the homes located in the floodplain. The new elevation levels, which applicants are required to adhere to when considering reconstruction of their substantially damaged home, represent the best available data and are assumed to advance floodplain management efforts in the nine counties.

In summary, homeowners participating in this program would be required to adhere to the following conditions to minimize the threat to property, minimize losses from flooding and high-wind events, and benefit floodplain values:

1. All proposed reconstruction and repair of substantially damaged structures in the floodplain must adhere to the latest (most recent) elevation requirements in accordance with the Emergency Flood Hazard Area Control Act rules (N.J.A.C. 7:13). Flood elevations are now determined either using the higher of the ABFE, the effective BFE, or the design flood elevation shown on the NJDEP flood maps;
2. All participants in the RREM Program must carry flood insurance on the subject structure, when mandated, in perpetuity; and
3. In the case of "Coastal High Hazard" areas ("V" or "VE" Zones on the latest (most recent) FEMA-issued Maps), that the applicant adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR Part 60.3 (e) as required by HUD Regulation 24 CFR Part 55.1 (c)(3).

Written comments must be received by NJDEP on or before March 29, 2013. NJDEP encourages electronic submittal of comments at [www.nj.gov/dep/special/hudnotices/comments.htm](http://www.nj.gov/dep/special/hudnotices/comments.htm). In the alternative, comments may be submitted on paper to: NJDEP, by March 29, 2013 Mail Code 401-07D, P.O. Box 402, Trenton, New Jersey 08625-0402 during the hours of 9:00 AM to 5:00 PM. Further information can be found on the Department's web site at [www.nj.gov/dep/](http://www.nj.gov/dep/).

Bob Martin, Commissioner, NJDEP

## EXHIBIT 4

### Public Comments Received and NJDEP Response

1. COMMENT: At present, between property taxes, homeowner's and flood insurance (which cost more than our homeowner's) we pay almost \$1,500/mo. This is BEFORE our actual mortgage payment. I believe \$1,500 is more than the median mortgage payment in the US at present. We are (and have been) in an A-rated flood plain area and sustained damage (though not "substantial") during Sandy. Our historic Jersey City neighborhood consists primarily of 100+ year old row houses (hundreds of which were affected by Sandy). These cannot be raised-it's simply not feasible. As I understand the upcoming FEMA rules-if approved as they are-any homeowner in our situation (unable to raise their homes) will be subject to huge flood insurance (which we are required to have) rate increases. It is unclear how much-but the figures I have seen cited range up to \$30K! If this happens, we will likely lose our home (and life savings)-as we cannot pay this-and it will be literally unsalable-or at the very least, depreciated so greatly as to be well underwater (from a mortgage standpoint). So the new guidelines will effectively evict and financially devastate us (and hundreds or thousands of other families). PLEASE RETHINK THIS BEFORE ENACTING NEW FEMA GUIDLEINES. Your role is to help people in need-not to devastate them.
  
2. COMMENT: As you see above the mailing address is in Philadelphia but the property we own and are concerned about is in West Wildwood, NJ. We have owned our second home for 10 years without any flooding problems inside. After Sandy, we sustained damage inside that was covered by our flood insurance. We are continuing a dispute with the flood insurance company about our foundation and the damage caused by the flood to it. We, as many of our neighbors, want to raise our homes because they sit close to the ground. We are hitting roadblocks because no one knows how high the foundation should be; the forms that have to be submitted for FEMA's ICC/Mitigation are so long and detail oriented that the questions are for plumbers, electricians, and or other tradesmen who can't give estimates until the magic number for the height of the foundations is given. Rumor has it that this won't be decided until sometime in August.

Our dilemma is that this is a second home. Because we have an investment that was to be our retirement home, we now face an uncertain future because of this issue. Having a second home that we don't rent out and is a modest 2 bedroom rancher doesn't mean we are well-off by any standards. We carry a mortgage on both properties and gutted the

second home 7 years ago. Now when I look inside the house and the ruin that has prevailed from the Sandy I get sick in the stomach thinking how much money we put into updating it. The point I would like to make is that we, as second home owners, pay a large chunk of money for our properties in real estate taxes. Why is there no recourse for us to be eligible for some kind of grant? I understand about primary residents, rental properties that were homes to many, but we play a vital part in keeping the resort towns in existence year after year and we have absolutely no rights to anything - everything is for primary property owners. It really stinks because if it weren't for second homes, there would be no vacation towns along the Jersey Shoreline. This will never change but it's a fact that can be added to the letter pile titled - Non-resident home owners. Thank you just the same.

3. COMMENT: Back in the late 1940's our family built a summer residence on Green Island, now Toms River Twp. We were one of the first post war houses to be built in the area which was still pretty much natural, one of the highlights being a huge osprey breeding area. Within twenty years the natural world was gone, marshes, pine forests, and ospreys, lost to development in which every inch of the island was developed, and the same held true for the surrounding areas of Silver Bay, Kettle Creek, etc. So it should come as no surprise that the devastation brought by Sandy was as serious as it was. No discernible restrictions on development were in evidence in those years and the result was that flood waters now have no place to go but into the houses which stand where salt marsh used to be.

Now we are faced with the Hobson's choice of raising the house to avoid the three foot wave feared by FEMA, (we are mainland) or confronting ruinous flood insurance premiums.

The house was out of the family for some thirty years and last spring we bought it back in time for Sandy, so our options seem pretty limited. On the one hand being classified as a "V" flood zone from what had been an "A" means an outpouring of resources beyond our capacity to raise the cottage to FEMA specs (the house being valued at only \$69,000 meant that the fifty percent damage criteria was all too easily met) placing us in the legion of folks who are really confused and frustrated about the entire process.

Had environmental concern existed during the time of the greatest development much of Sandy's carnage would have been lessened, but clearly after the fact, the attempt to put things right apparently means either selling the property at 'fire sale' rates with no prospect of paying the remaining mortgage, or joining thousands of others in what has become the house raising madness.

Right now we have dealt with the damage caused by the fourteen inches of water in the cottage, but the future seems clouded and we are wondering if we will be able to save what the family built so many years ago.

4. COMMENT: The revised flood maps, if carried out as currently planned, will gut the urban areas of Hoboken and Jersey City and leave millions of homeowners and business owners in bankruptcy. It's not enough that FEMA is providing next to no coverage for damage that we sustained during Super Storm Sandy (in spite of carrying the required amount of coverage), now they want to force us to choose between cost-prohibitive modifications to our homes and cost-prohibitive insurance premiums. We already know, as a result of Sandy, that flood insurance is just a formality. We have no actual coverage. Now they are going to financially rape us and still provide no coverage? It will quite literally decimate our waterfront cities and leave millions in bankruptcy. We will be unable to afford to stay because of the cost of insurance and unable to afford to leave because nobody will buy our homes. Please do the right thing for homeowners. Help homeowners make modifications that can prevent storm damage in the future. Help our cities make modifications to prevent damaging storm surges.
5. COMMENT: Many of the homes in Brick and surrounding communities cannot be raised. The V zone houses must be physically removed in order to put pilings in place. These homes are too close to be moved anywhere. Many residents are elderly and handicapped and cannot climb stairs to get into their homes. The FEMA maps are flawed and cover many areas that did not flood during the Sandy storm.
6. COMMENT: I have a home in Ortley Beach, NJ that was damaged due to Super Storm Sandy. The home was in an A Zone and is now changed to a V Zone. It will be more costly to rebuild with pilings and raising the house up. I would like to apply for money to help pay for some of this reconstruction of my home. I have received some money from FEMA and I can apply for the ICC Claim but it may not be enough to rebuild. I just want the same house reconstructed and raised. I am requesting assistance.
7. COMMENT: My comment is regarding the homeowners' assistance. Does it extend to secondary or vacation homes? Will the CDBG-DR funds be available for second homes? If taxpayers dollars are being used to fund this program, all taxpayers should receive the same advantage whether primary or secondary homeowners. To elevate my vacation home, I will need extra assistance because neither my homeowners insurance nor my flood insurance will cover my expenses to repair and raise my home. If the home isn't raised, the insurance premiums will become exorbitant. Community Development Block Grants should be available to ALL homeowners to help recover from this disaster.

8. COMMENT: Why is it that there are 151 unregistered "contractors" that are working on NJ homes, and now all of a sudden every contractor is a house mover/elevator? I don't know who to trust as a home owner. Isn't there a licensing process they should have to go through before they destroy someone's home or get someone killed?

**NJDEP RESPONSE:** Many commenters expressed a concern about the accuracy of the FEMA ABFEs as well as concerns regarding the increased cost of flood insurance. It should be noted that while the NJDEP does establish the flood elevation to which new, reconstructed and elevated buildings must be designed, the NJDEP does not set flood insurance rates, V Zone designations, or building codes. The NJDEP also does not require people to elevate or flood-proof any existing building unless it has been substantially damaged or is undergoing a substantial improvement.

If you have comments or concerns related to FEMA's development of flood mapping, your flood zone designation, your flood insurance rate, or the Biggert-Waters National Flood Insurance Reform Act of 2012, which reduced and eliminated many previous insurance subsidies, please contact FEMA or your flood insurance representative. If you have questions regarding proper construction techniques in flood prone areas or are concerned about how best to elevate your building, please speak with your municipal floodplain administrator and construction official.

One commenter stated that second homes should be eligible under the homeowner assistance program. NJ Department of Community Affairs Action Plan which determines who may be eligible for funding assistance, was posted on their website on March 12, 2013 and was open for public comment through March 19, 2013.

Another commenter stated that they want to elevate their home but are unsure of the required elevation. Property owners who have to rebuild because their property is substantially damaged will have to build to the highest available State or FEMA elevation level. In most cases this will be the ABFE. In addition, The Flood Hazard Area Control Act rules, in effect since 2007, require the lowest floor of each building in flood hazard areas to be constructed at least one foot above this elevation. A structure is considered substantially damaged if the cost of restoration equals or exceeds 50% of the market value of the structure prior to damage.

ABFEs are now available for Atlantic, Bergen, Burlington, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union Counties. In the majority of cases, these advisory flood maps indicate that the 100-year flood elevation is higher than previously mapped by the NJDEP and FEMA, and in some places significantly higher. These maps can be viewed at [www.region2coastal.com/sandy/abfe](http://www.region2coastal.com/sandy/abfe). The FEMA Base Flood Elevation Maps can be viewed at [www.msc.fema.gov](http://www.msc.fema.gov).

One commenter asked that the program help homeowners make modifications that can prevent future storm damage as well as damage caused by storm surges. As noted above property owners who have to rebuild because their property is substantially damaged will have to build to the highest available State or FEMA elevation level. In the case of “Coastal High Hazard” areas (“V” or “VE” Zones on the latest FEMA-issued Maps), that the applicant adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR Part 60.3 (e) as required by HUD Regulation 24 CFR Part 55.1 (c)(3). These requirements will ensure that new, reconstructed and elevated buildings are constructed to minimize future flood damage and to help protect the lives and property of New Jersey’s residents from the deleterious impacts of flooding.

One commenter stated that historic homes should not have to be raised. As noted above the NJDEP requires homes which were substantially damaged to be elevated to the highest standard. The only exception to the requirement to elevate a home is when the structure is a historic structure that is eligible for the National Register of Historic Places, which will have elevation heights requirements considered on a case-by-case basis.



## **Appendix E**

### Coastal Zone Management Act

Note: This map is for reference only and shall not be used to make Jurisdictional Determinations for any permit programs. State and/or Political Boundaries may not be accurate. Other State or Federal Jurisdiction may apply. For example, the upland extent of Waterfront Development jurisdiction is not represented on this map.

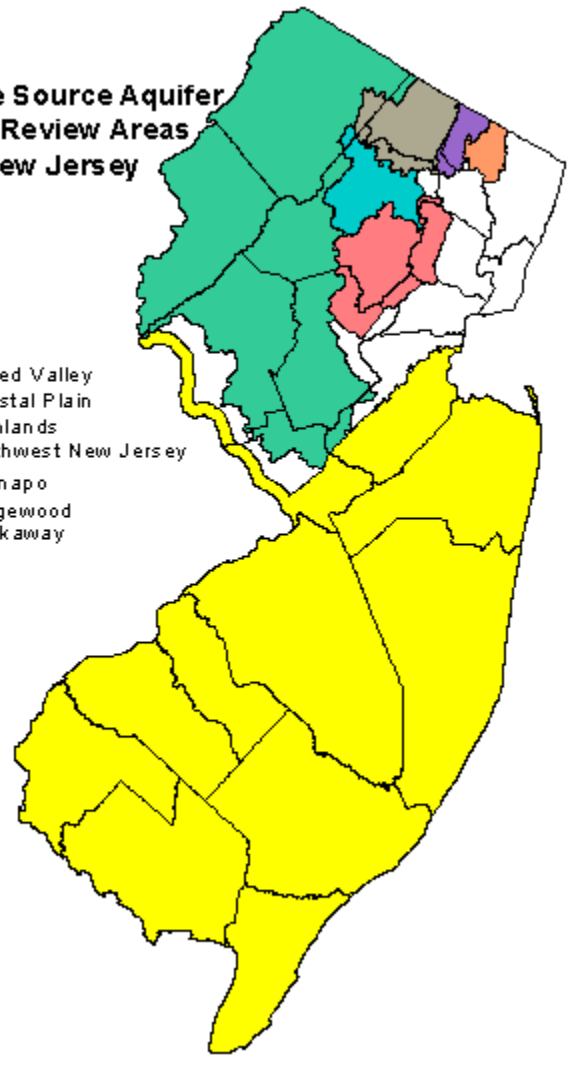


## **Appendix F**

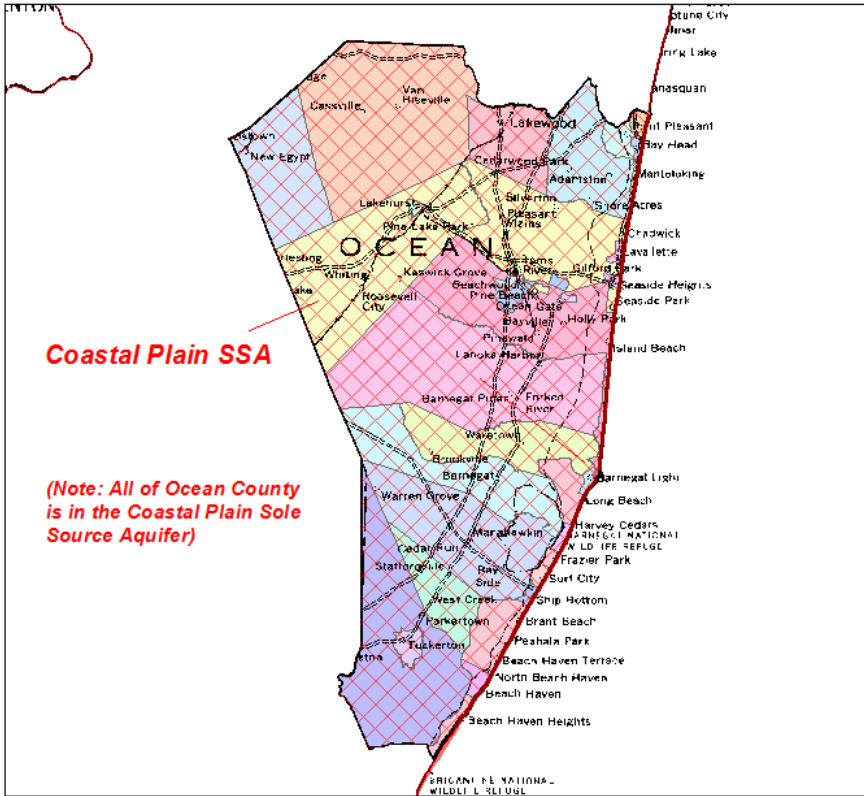
### Sole Source Aquifers

**EPA's Sole Source Aquifer  
Project Review Areas  
in New Jersey**

- Buried Valley
- Coastal Plain
- Highlands
- Northwest New Jersey
- Ramapo
- Ridgewood
- Rockaway





# Ocean County



**Coastal Plain SSA**

**(Note: All of Ocean County is in the Coastal Plain Sole Source Aquifer)**

 sole source aquifer

 major road

0 5 10 15 20 Miles



**From:** Pavlou, George [<mailto:Pavlou.George@epa.gov>]  
**Sent:** Friday, May 10, 2013 4:08 PM  
**To:** Lindner, William  
**Subject:** RE: NJDEP/ HUD tier documents

Bill, I would suggest rather than using a given percentage, have a condition that says a significant increase in impervious surface should be avoided. That would be fine for us.

**From:** Lindner, William [<mailto:William.Lindner@dep.state.nj.us>]  
**Sent:** Friday, May 10, 2013 11:08 AM  
**To:** Pavlou, George  
**Subject:** RE: NJDEP/ HUD tier documents

George, I got asked the question, what if someone has an application greater than 30% increase in impervious?

Do we just disqualify them or set up a process for EPA to review? I really don't want to add another layer. It seemed like yesterday you were a bit hesitant at 30%. I don't think it is an unreasonable number and am willing to say that. Also, I don't think most muni codes would allow much more anyway.....so I think the issue may not be that important for the very small percentage of cases it may impact. In addition, enlarging the footprint causes several other hurdles to be set in place so I think most people will try to maintain the same footprint.. Please give me a call on my cell when u have a chance to discuss.....609-456-3117. Thanks, Bill

**From:** Pavlou, George [<mailto:Pavlou.George@epa.gov>]  
**Sent:** Thursday, May 09, 2013 1:50 PM  
**To:** Lindner, William  
**Cc:** Dow, Diane; Rugg, F. Mack ([RuggFM@cdmsmith.com](mailto:RuggFM@cdmsmith.com)); Kropp, Irene  
**Subject:** RE: NJDEP/ HUD tier documents

Thanks Bill.

I will let the staff know.

**From:** Lindner, William [<mailto:William.Lindner@dep.state.nj.us>]  
**Sent:** Thursday, May 09, 2013 1:32 PM  
**To:** Pavlou, George  
**Cc:** Dow, Diane; Rugg, F. Mack ([RuggFM@cdmsmith.com](mailto:RuggFM@cdmsmith.com)); Kropp, Irene  
**Subject:** RE: NJDEP/ HUD tier documents

George, We can do that change no problem. We have some wording like that in our general statement earlier in the document but we will replace the first bullet with :

- “comply with all laws, regulations and industry standards”

Thanks

**From:** Pavlou, George [<mailto:Pavlou.George@epa.gov>]  
**Sent:** Thursday, May 09, 2013 1:25 PM  
**To:** Lindner, William  
**Cc:** Dow, Diane; Rugg, F. Mack ([RuggFM@cdmsmith.com](mailto:RuggFM@cdmsmith.com)); Kropp, Irene  
**Subject:** RE: NJDEP/ HUD tier documents

Thank you Bill.

I thought the first bullet would either include reference to storm water runoff and storage of hazardous materials or simply state: "comply with all laws, regulations and industry standards" without specific reference to any specific category.

**From:** Lindner, William [<mailto:William.Lindner@dep.state.nj.us>]  
**Sent:** Thursday, May 09, 2013 1:17 PM  
**To:** Pavlou, George  
**Cc:** Dow, Diane; Rugg, F. Mack ([RuggFM@cdmsmith.com](mailto:RuggFM@cdmsmith.com)); Kropp, Irene  
**Subject:** NJDEP/ HUD tier documents

George, as we discussed on the phone the following conditions regarding Sole Source Aquifers will be included in our Tier documents.

- Comply with all laws, regulations, and industry standards applicable to aboveground and underground storage tanks.
- Storage tanks below the base flood elevation must be watertight and must be anchored to resist flotation and lateral movement during a storm surge or other flood.
- Do not increase impervious surface on the parcel by more than 30%.

Thanks for your help with this. If you have any questions I can be reached by email or at 609-633-1223.

OPTIONAL FORM 99 (7-90)

<b>FAX TRANSMITTAL</b>		# of pages - <b>14</b>
To <b>Jeff Holloman</b>	From <b>Steve Gault</b>	
Dept./Agency	Phone #	
Fax #	Fax #	

## MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
REGION II, NEW YORK, NEW YORK

AND

THE ENVIRONMENTAL PROTECTION AGENCY  
REGION II, NEW YORK, NEW YORK

PURPOSE and GOAL

This Memorandum of Understanding (MOU) is established to assist the Environmental Protection Agency (EPA), Region II, and the Department of Housing and Urban Development (HUD), Region II, in meeting the Sole Source Aquifer (SSA) project review requirements of Section 1424(e) of the 1974 Safe Drinking Water Act (SDWA) PL 93-523.

The MOU establishes a formal agreement of each agency's responsibilities and the procedures to be followed in evaluating the potential groundwater impact of projects/activities submitted for HUD Federal financial assistance which are located within the project review area of a designated SSA in Region II.

Under Section 1424(e), an aquifer may be designated by EPA as a SSA if it is determined that the aquifer is the sole or principal source of drinking water for an area and, if contaminated, would create a significant hazard to public health. Following designation, no commitment of Federal financial assistance may be entered into for any project/activity within the SSA project review area which the EPA Administrator determines may contaminate the aquifer so as to create a significant hazard to public health.

The overall goal is to ensure that each project/activity receiving Federal financial assistance in a SSA project review area is designed and constructed in a manner that will prevent the introduction of contaminants into the SSA in quantities that may create a significant hazard to public health.

GEOGRAPHIC AREAS AFFECTED

This MOU applies to HUD Federal financially assisted projects/activities in the project review area of all current and future designated SSAs in Region II.



-2-

Attachment 1, Designated SSAs in Region II, lists the designated SSA areas within the states of New York and New Jersey in EPA, Region II; the date of designation; and the Federal Register Notice citation. Attachment 1 also provides a map of the SSA project review area boundary for each of the designated aquifers. When any other SSAs are designated in Region II, EPA will notify HUD in writing.

#### DEFINITIONS

##### Significant Hazard to Public Health:

A level of contaminant which causes or may cause the aquifer to:

- (a) Exceed any (1) maximum contaminant level set forth in any promulgated National Primary Drinking Water Standard; (2) state standard where more stringent than the Federal standard; (3) public health advisory level for currently unregulated contaminants; at any point where the water may be used for drinking purposes, or
- (b) May otherwise adversely affect the health of persons, or
- (c) May require a public water system to install additional treatment to prevent such adverse effect.

##### Federal Financial Assistance:

Financial benefits provided directly as aid to a project by a department, agency, or instrumentality of the federal government in any form including contracts, grants and loan guarantees. Actions or projects carried out by the federal government itself do not involve federal financial assistance.

Actions performed for the federal government by contractors should be distinguished from contracts entered into specifically for the purpose of providing financial assistance, and will not be considered programs or actions receiving Federal financial assistance.

Federal financial assistance is limited to benefits earmarked for a specific project or action and directly awarded to the project or action. Indirect assistance, e.g., in the form of a loan to a developer by a lending institution which in turn receives federal assistance not specifically related to the project in question is not federal financial assistance under Section 1424(e).

-3-

SSA Project Review Area:

The area within which federal financially assisted projects/activities will be reviewed, which includes the designated area and may include all or a portion of the streamflow source area(s). The designated area can include the area above the aquifer, the area which recharges the aquifer (possibly including all or a portion of the streamflow source area) and the area where the population served by the aquifer resides. Streamflow source zone is defined as the upstream headwaters area of losing streams (streams contributing to recharge to Ground Water) that drain into the recharge area. The extent of the SSA project review area is outlined in the Federal Register designation notice for that SSA. Attachment 1 lists the Federal Register Notice citation and provides a map of the SSA project review area.

MOU ATTACHMENTS

- Attachment 1: Designated SSAs in Region II
- Attachment 2: A. Non-Housing Initial Screen Criteria  
B. Housing Initial Screen Criteria
- Attachment 3: SSA Preliminary Review Information Requirements
- Attachment 4: Hazardous Constituents

ENVIRONMENTAL REVIEW RESPONSIBILITY

Pursuant to Section 1424(e) of the SDWA, EPA is responsible for designating SSAs and reviewing federal financially assisted projects/activities within SSA project review areas.

Pursuant to the National Environmental Policy Act (NEPA) and other provisions of law, HUD is responsible for environmental review and decision making except in those cases delegated by law such as with Community Development Block Grant Program (CPD). Environmental responsibility includes compliance with Section 1424(e) of the SDWA.

EIS EARLY NOTIFICATION/SCOPING

If an Environmental Impact Statement (EIS) is prepared for a project/activity in a SSA project review area, HUD or its grant recipients that assume by law environmental responsibilities and EPA shall coordinate at the earliest possible time so that the draft EIS contains EPA's SSA review determination. This is to ensure that any possible groundwater contamination has been considered.

-4-

This early notification will serve to initiate consultations with the developer to determine the scope of study that may be necessary if any formal groundwater quality assessment is required.

REVIEW PROCESS:

COMMUNITY PLANNING AND DEVELOPMENT (CPD) and HOUSING PROGRAM

The general procedures to be followed by HUD, its delegated agencies and EPA in reviewing HUD federal financially assisted activities and determining their potential impact on the SSA are outlined below. The overall goal is to ensure that each project/activity receiving federal financial assistance is designed and constructed in a manner that will prevent the introduction of contaminants into the SSA in quantities that may create a significant hazard to public health. Two levels of potential review are: (1) Initial Screen/Preliminary Review, and (2) Formal Section 1424(e) Review.

I. Excluded Projects/Activities

EPA and HUD mutually agree that the following list of project/activity categories would not create a significant hazard to public health:

- Construction of individual new residential structures containing from one to four units
- Funding of planning grants
- Rehabilitation of residential units
- Funding of all other grants for non-construction projects/activities
- Projects identified as exempt in 24 CFR 58.34

These categories of projects/activities are therefore excluded from the Initial Screen/Preliminary Review requirements as outlined in Sections II and III below. Potential CPD recipients; states; other delegated agencies and HUD are responsible for making this determination for their respective programs. EPA may request information on these projects/activities and conduct a review if EPA determines it to be necessary.

II. CPD Applications/Final Statements

A. Initial Screen/Preliminary Review

-5-

HUD shall notify all potential CPD recipients, including states that are administering HUD programs (Non-Entitlement Small Cities Program, etc.) and other delegated agencies with jurisdiction in SSA project review areas of the SSA review requirements under Section 1424(e) and of their responsibility as outlined in this MOU.

Potential CPD recipients shall conduct an initial screen of CPD projects/activities proposed for HUD federal financial assistance prior to submission of an application or final statement to HUD. Attachment 2.A, Non-Housing Initial Screen Criteria, shall be used for CPD projects/activities that do not involve housing; and Attachment 2.B, Housing Initial Screen Criteria, for CPD projects/activities involving housing only.

EPA shall be notified of any projects/activities which result in a positive response to one of the criteria questions in Attachment 2. Where a project/activity meets one of the criteria in Attachment 2, the information in Attachment 3, SSA Preliminary Review Information Requirements, shall also be completed and forwarded to EPA along with applicable project/final statement information.

Upon receipt of the above, EPA will conduct its Preliminary Review. If additional information is required, EPA will inform the potential CPD recipient and HUD. The potential CPD recipient shall be responsible for submitting to EPA any additional information requested in a timely manner.

Based on the information provided, EPA will make its determination on whether to complete its review at this stage and provide SSA review clearance, or proceed to a Formal Section 1424(e) Review. The project/activity may be cleared as is, or with modifications.

#### B. Timeframe for Preliminary Review and Notification

Within fifteen calendar days of EPA's receipt of the project's final statement, Attachment 2 and Attachment 3, EPA will notify the potential CPD recipient and HUD of one or more of the following:

- the project/activity has received SSA review clearance
- the project/activity requires modifications to receive SSA review clearance
- additional environmental information is required
- additional time to review the project, is required
- the project/activity raises major environmental concerns requiring interagency consultation
- a Formal Section 1424(e) Review is required

-6-

If EPA does not notify HUD within 15 days of receipt of the project, HUD should proceed with its project review.

HUD shall not authorize a release of funds until all outstanding issues with regard to the subject project/activity have been resolved.

#### C. Formal Section 1424(e) Review

Should a Formal Section 1424(e) Review be required, EPA shall formally notify the potential CPD recipient and HUD of this decision. If additional information is required, the potential CPD recipient shall be responsible for submitting the requested information to EPA in a timely manner. EPA may also schedule a public hearing to gather additional information.

Based on the information provided, EPA shall make a determination to either approve the project/activity, request more information, suggest modifications or disapprove the project/activity.

### III. Housing Program Applications

#### A. Initial Screen/Preliminary Review

HUD shall notify all of its field offices of the SSA review requirements under Section 1424(e) and of their responsibilities as outlined in this MOU.

HUD shall conduct an initial screen of housing projects proposed for HUD Federal financial assistance. Attachment 2.B, Housing Initial Screen Criteria, shall be used for this review. EPA shall be notified of any projects which result in a positive response to one of the criteria questions in Attachment 2.B. Where a project meets one of the criteria in Attachment 2.B, the information in Attachment 3, SSA Preliminary Review Information Requirements, shall also be completed and forwarded to EPA along with the applicable project information.

Upon receipt of the above, EPA will conduct its Preliminary Review. If additional information is required, EPA will inform the HUD field office who shall then be responsible for submitting to EPA the requested information in a timely manner.

Based on the information provided, EPA will make its determination on whether to complete its review at this stage and provide SSA review clearance or proceed to a Formal Section 1424(e) Review. The project may be cleared in its existing form, or with modifications.

-7-

#### B. Timeframe for Preliminary Review and Notification

Within fifteen calendar days of EPA's receipt of the pertinent environmental information from the housing application, Attachment 2 and Attachment 3, EPA will notify HUD of one or more of the following:

- the project has received SSA review clearance
- the project requires modifications to receive SSA review clearance
- additional environmental information is required
- additional time to review the project is required
- the project raises major environmental concerns requiring interagency consultation
- a Formal Section 1424(e) Detailed Review is required

The project environmental clearance needed for project approval shall not be considered complete (appropriate sign-offs) until outstanding SSA issues with regard to the subject project have been satisfactorily resolved.

If EPA does not notify HUD within 15 days of receipt of the project, HUD should proceed with its project review.

#### C. Formal Section 1424(e) Review

Should a Formal Section 1424(e) Review be required, EPA shall formally notify HUD of this decision. If additional information is required, HUD shall be responsible for submitting the requested information to EPA in a timely manner. A public hearing may be held to gather additional information.

Based on the information provided, EPA shall make a determination to either approve the project, request more information, suggest modifications or disapprove the project.

#### D. Local Area Certification For Housing Environmental Review

If the community is wholly or partially within a SSA project review area boundary, the local certified agency shall have the same responsibility as HUD in meeting the SSA review requirements as outlined in Section 1424(e) and this MOU.

GENERAL PROCEDURAL MATTERS

Materials submitted to IPA by HUD or the applicant will be addressed to the attention of:

Chief, Environmental Impacts Branch  
U.S. EPA Region II  
26 Federal Plaza, Room 500  
New York, New York 10278

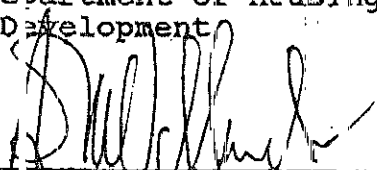
The following representatives will serve as liaisons for HUD and EPA respectively. The liaisons will maintain communication as needed regarding projects/activities affecting the SSAs and this MOU.

HUD: Regional Office Environmental Officer  
(212) 264-0793

EPA: Chief, Environmental Impacts Branch  
(212) 264-1840

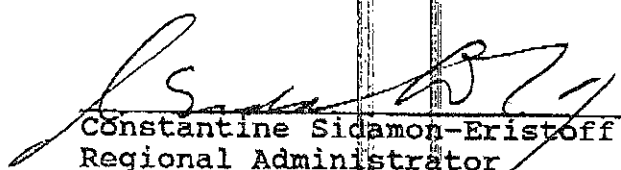
This MOU is subject to revision upon agreement by both parties.

U.S. Department of Housing and  
Urban Development



A. M. Villane, Jr., DDS  
Regional Administrator/  
Regional Housing Commissioner

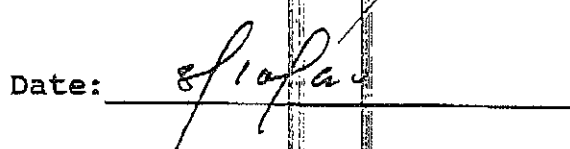
U.S. Environmental Protection  
Agency



Constantine Sidamon-Eristoff  
Regional Administrator

AUG 24 1990

Date: \_\_\_\_\_



Date: \_\_\_\_\_

ATTACHMENT 2.A

NON-HOUSING PROJECT/ACTIVITY INITIAL SCREEN CRITERIA  
(For projects in a designated Sole Source Aquifer area)

The following list of criteria questions are to be used as an initial screen to determine which non-housing projects/activities should be forwarded to the Environmental Protection Agency (EPA) for Preliminary Sole Source Aquifer (SSA) Review. (For housing projects/activities see Attachment 2.B) If any of the questions are answered affirmatively, Attachment 3, SSA Preliminary Review Requirements, should also be completed. The application/final statement, this Attachment, Attachment 3, and any other pertinent information should then be forwarded to EPA at the address below.

Any project/activity not meeting the criteria in this Attachment, but suspected of having a potential adverse effect on the Sole Source Aquifer should also be forwarded. Contact EPA if you have any questions.

Chief, Environmental Impacts Branch  
USEPA Region II  
26 Federal Plaza, Room 500  
New York, New York 10278  
(212) 260-1840

CRITERIA QUESTIONS

- 1. Is the project/activity located within a currently designated or proposed groundwater sensitive area such as a special Ground Water Protection Area, Critical Supply Area, Wellhead Protection Area etc.? [This information can be obtained from the County or Regional planning board, the local health department, the State health department or the State environmental agency.]
  
- 2. Is the project/activity located within a one half mile radius (2640 feet) of a current or proposed public water supply well or wellfield? [This information can be obtained from the local health department, the State health department or the State environmental agency.]

YES NO N/A

\_\_\_\_\_

\_\_\_\_\_



3. Will the project/activity include or directly cause: (check appropriate items)

- construction or expansion of solid waste disposal, recycling or conversion facilities
- construction or expansion or closure of landfills
- construction or expansion of water supply facilities (i.e., treatment plant, pump house, etc.)
- construction or expansion of on-site wastewater treatment plants or sewage trunk lines, greater than 1/4 mile
- construction or expansion of gas or petroleum trunk lines, greater than 1200 feet
- construction or expansion of railroad spurs or similar extensions
- construction or expansion of municipal sewage treatment plants

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Will the project/activity include storage or handling of any hazardous constituents as listed in Attachment 4, Hazardous Constituents?

If these constituents are used during the construction phase of the project, than an assurance statement must be provided indicating that chemicals will be used in a safe and proper manner, and that they will be promptly removed after construction is completed.

_____	_____	_____
-------	-------	-------

5. Will the project/activity include bulk storage of petroleum in underground or above ground tanks in excess of 1100 gallons?

_____	_____	_____
-------	-------	-------

6. Will the project/activity require a federal or state discharge elimination permit or modification of an existing permit?

_____	_____	_____
-------	-------	-------

This attachment was completed by:

Name:

_____	_____	_____
-------	-------	-------

Title:

_____	_____	_____
-------	-------	-------

Address:

_____	_____	_____
_____	_____	_____
_____	_____	_____

Telephone number:

_____	_____	_____
-------	-------	-------

Date:

_____	_____	_____
-------	-------	-------

ATTACHMENT 2.B

HOUSING/PROJECT INITIAL SCREEN CRITERIA  
(For projects in a designated Sole Source Aquifer area.)

The following list of criteria questions are to be used as an initial screen to determine which housing projects/activities should be forwarded to the Environmental Protection Agency (EPA) for Preliminary Sole Source Aquifer (SSA) Review. (For non-housing projects see Attachment 2.A). If any of the questions are answered affirmatively, Attachment 3, SSA Preliminary Review Requirements, should also be completed. The application/final statement, this Attachment, Attachment 3, and applicable project information than be forwarded to EPA at the address below.

Any project not meeting the criteria in this Attachment, but suspected of having a potential adverse effect on the Sole Source Aquifer should also be forwarded. Contact EPA if you have any questions.

Chief, Environmental Impacts Branch  
USEPA Region II  
26 Federal Plaza, Room 500  
New York, New York 10278  
(212) 264-1840

CRITERIA QUESTIONS:

1. Is the project located within a currently designated or proposed ground water sensitive area such as a Special Ground Water Protection Area, Critical Supply Area, Wellhead Protection Area etc.? [This information can be obtained from the County or Regional planning board, the local health department, the State health department or the State environmental agency.]
2. Is the project located within a one half mile radius (2640 feet) of a current or proposed public water supply well or wellfield? [This information can be obtained from the local health department, the State health department or the State environmental agency.]
3. Will the total impervious surfaces be greater than 75 percent?
4. Is the proposed project site greater than 30 acres?
5. Will the proposed density of the project be greater than 150 units per acre ?

YES NO N/A

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



## ATTACHMENT 3

## SSA PRELIMINARY REVIEW INFORMATION REQUIREMENTS

Where currently available, the information in this Attachment should be provided to the Environmental Protection Agency (see address below) along with the application/final statement; Attachment 2.A, Non-Housing Initial Screen Criteria or Attachment 2.B, Housing Initial Screen Criteria; and any other information which may be pertinent to a Sole Source Aquifer review. Where applicable, indicate the source of your information.

Chief, Environmental Impacts Branch  
 USEPA Region II  
 26 Federal Plaza, Room 500  
 New York, New York 10278  
 (212) 264-1840

ENCLOSED  
 YES NO

## I. Project/Activity Location

1. Provide the geographic location and total acreage of the project/activity site. Include a site location map which identifies the site in relation to the surrounding area. [Examples of maps which can be used include: 1:24,000 or 1:25,000 U.S. Geological Survey quadrangle sheet, Hagstroms Street Map.]
2. If applicable, identify which groundwater sensitive areas (Special Ground Water Protection Area, Critical Supply Area, Wellhead Protection Area etc.) the project/activity is located within or adjacent to. [This information may be obtained from the County or Regional planning board, the local health department, the State health department or the State environmental agency.]

## II. Nature of Project/Activity

3. Provide a general narrative describing the project/activity including but not limited to: type of facility; type of activities to be conducted; number and type of units; number of residents etc. Provide the general layout of the project/activity site and a site-plan if available.

III. Public Water Supply

- 4. Provide a description of plans to provide water supply.
- 5. Provide the location of nearby existing or proposed public water supply wells or wellfields within a one half mile radius (2640 feet) of the project/activity. Provide the name of the supplier(s) of those wells or wellfields. This information should be available from the local health department, State health department or the State environmental agency. If private wells are to be used, then information necessary to obtain a well drilling permit should be provided.


V. Wastewater and Sewage Disposal

- 6. Provide a description of plans to handle wastewater and sewage disposal. If the project/activity is to be served by existing public sanitary sewers provide the name of the sewer district.
- 7. Provide a description of plans to handle storm water runoff.
- 8. Identify the location, design, size of any on-site recharge basins, dry wells, leaching fields, retention ponds etc.


VI. Use, Storage, Transport of Hazardous or Toxic Materials (Applies only to non-housing projects/activities)

- 9. Identify any products listed in Attachment 3, Hazardous Constituents, of the Housing and Urban Development-Environmental Protection Agency Memorandum of Understanding which may be used, stored, transported, or released as a result of the construction activity.
- 10. Identify the number and capacity of underground storage tanks at the project/activity site. Identify the products and volume to be stored, and the location on the site.
- 11. Identify the number and capacity of above ground storage tanks at the project/activity site. Identify the products and volume to be stored, and the location on the site.


## **Appendix G**

### Endangered Species Act



In Reply Refer To:  
13-CPA-0123a

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

New Jersey Field Office  
Ecological Services  
927 North Main Street, Building D  
Pleasantville, New Jersey 08232  
Tel: 609/646 9310  
Fax: 609/646 0352  
<http://www.fws.gov/northeast/njfieldoffice>



Dave Jenkins, Chief  
New Jersey Division of Fish and Wildlife  
Endangered and Nongame Species Program  
501 E. State Street, Mail Code: 501-03  
Trenton, New Jersey 08625-0420

MAY 16 2013

Robert Cartica, Chief  
New Jersey Division of Parks and Forestry  
Natural Heritage Program  
501 E. State Street, Mail Code: 501-04  
Trenton, New Jersey 08625-0420

Dear Mr. Jenkins and Mr. Cartica:

The U.S. Fish and Wildlife Service (Service), New Jersey Field Office, has been working closely with the New Jersey Department of Environmental Protection's (NJDEP) Division of Fish and Wildlife, Endangered and Nongame Species Program (ENSP), and Division of Parks and Forestry, Natural Heritage Program (NHP), to clarify and streamline our environmental review processes. We have had numerous recent discussions, in-person, by phone, and by email. You indicated that the NJDEP is acting on behalf of the Department of Housing and Urban Development (HUD) with respect to compliance with the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act of 1940 (BGEPA) (54 Stat. 250 as amended, 16 U.S.C. 668-668d), and the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 et seq.). As the non-Federal representative, the NJDEP's ENSP can make the 'no effect' determination for the purposes of ESA informal consultation for wildlife, pursuant to 50 CFR 402.08. The NJDEP's NHP has the same responsibility for plants.

For Sandy-related projects, HUD activities generally rebuild or repair within the disturbed area of the previously developed site. ENSP and NHP have determined that proposed HUD activities outside piping plover (*Charadrius melodus*) habitat will have 'no effect' on federally listed species, including plants. Within plover habitat, ENSP and NHP will continue to review individual projects and will consult with the Service when either agency determines a project 'may affect' federally listed species.

Bald eagles (*Haliaeetus leucocephalus*) will be managed in accordance with the National Bald Eagle Management Guidelines (Guidelines) and all applicable State regulations. A link to the Guidelines is available on the NJFO's web site at <http://www.fws.gov/northeast/njfieldoffice/Endangered>. Consistent with these guidelines, ENSP has concluded and USFWS concurs, that activities within the previously developed are not likely to disturb bald eagles.

The Service acknowledges NJDEP serving as HUD's non-Federal representative for Sandy-related projects. Please contact Carlo Popolizio at (609) 383-3938, extension 32, if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "J. Eric Davis Jr." with a stylized, cursive script.

J. Eric Davis Jr.  
Field Supervisor



Federally Listed and Candidate Species Occurrences in New Jersey by County and Municipality

County	Municipality	Bog Turtle (T)	Piping Plover (T)	Indiana Bat (E)	Dwarf Wedgemussel (E)	NE Beach Tiger Beetle (T)	Small Whorled Pogonia (T)	Swamp Pink (T)	Knieskern's Beaked Rush (T)	American Chaffseed (E)	Sensitive Joint-vetch (T)	Seabeach Amaranth (T)	Red Knot (C)	Hirsts' Panic Grass (C)
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ATLANTIC	Absecon City								P					
ATLANTIC	Atlantic City		P									E	P	
ATLANTIC	Brigantine City		E									E	E	
ATLANTIC	Buena Borough							P	P					
ATLANTIC	Buena Vista Township							P	P	H				
ATLANTIC	Corbin City							P	P					
ATLANTIC	Egg Harbor City							P	H	H				
ATLANTIC	Egg Harbor Township	H	E					E	E		H	E	P	
ATLANTIC	Estell Manor City							P	P		H			
ATLANTIC	Folsom Borough							P	P	H				
ATLANTIC	Galloway Township		E					P	E	H		E	E	E
ATLANTIC	Hamilton Township							P	E	H	H			
ATLANTIC	Hammonton Town	H						H	E	H				
ATLANTIC	Longport Borough		P									P	P	
ATLANTIC	Margate City		P									P	P	
ATLANTIC	Mullica Township							E	E	H				
ATLANTIC	Northfield City								P					
ATLANTIC	Pleasantville City							E						
ATLANTIC	Port Republic City							P	H					
ATLANTIC	Somers Point City		H											
ATLANTIC	Ventnor City		P									P	P	
ATLANTIC	Weymouth Township							P	P		H			
ATLANTIC	Weymouth Township							E	P					
BERGEN	Allendale Borough			P										
BERGEN	Alpine Borough	X		P										
BERGEN	Closter Borough			P		X								
BERGEN	Demarest Borough			P										
BERGEN	Emerson Borough			P										
BERGEN	Englewood City			P										
BERGEN	Franklin Lakes Borough			P		X								
BERGEN	Hackensack City	X												
BERGEN	Harrington Park Borough			P										
BERGEN	Haworth Borough			P	X									
BERGEN	Ho-Ho-Kus Borough			P										
BERGEN	Little Ferry Borough			P										
BERGEN	Mahwah Township			P										
BERGEN	Montvale Borough	X		P										
BERGEN	Moonachie Borough			P										
BERGEN	Northvale Borough	X												
BERGEN	Norwood Borough			P										
BERGEN	Oakland Borough			P										
BERGEN	Old Tappan Borough	X		P										
BERGEN	Park Ridge Borough			P										

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BERGEN	Ramsey Borough			P										
BERGEN	Ridgefield Borough			P										
BERGEN	Ridgewood Village			P										
BERGEN	River Vale Township	X		P										
BERGEN	Saddle River Borough			P										
BERGEN	Tenafly Borough	X		P										
BERGEN	Washington Township			P										
BURLINGTON	Bass River Township	H						P	E		H			
BURLINGTON	Bordentown City	X												
BURLINGTON	Bordentown Township	H												
BURLINGTON	Burlington City									X				
BURLINGTON	Burlington Township	E												
BURLINGTON	Chesterfield Township	E												
BURLINGTON	Delanco Township	H												
BURLINGTON	Delran Township	E												
BURLINGTON	Eastampton Township	P						P						
BURLINGTON	Edgewater Park Township	X												
BURLINGTON	Evesham Township	H						E	P					
BURLINGTON	Florence Township	P												
BURLINGTON	Hainesport Township	P						P						
BURLINGTON	Lumberton Township	P						P						
BURLINGTON	Mansfield Township	E												
BURLINGTON	Maple Shade Township							X						
BURLINGTON	Medford Lakes Borough								P					
BURLINGTON	Medford Township	E						E	P					
BURLINGTON	Moorestown Township	E						P						
BURLINGTON	Mount Holly Township							P						
BURLINGTON	Mount Laurel Township	H						P						
BURLINGTON	New Hanover Township	E						P	P	P				
BURLINGTON	North Hanover Township	E						P						
BURLINGTON	Pemberton Borough							P	P					
BURLINGTON	Pemberton Township	P						E	P	E				
BURLINGTON	Shamong Township	P						P	H	H				E
BURLINGTON	Southampton Township	E						E	P	H				
BURLINGTON	Springfield Township	E						P						
BURLINGTON	Tabernacle Township	P						E	P	H				
BURLINGTON	Washington Township	H						P	E	H	H			
BURLINGTON	Westampton Township	E												
BURLINGTON	Woodland Township	P						E	E	E				
BURLINGTON	Wrightstown Borough							P	P					
CAMDEN	Audubon Borough	X												
CAMDEN	Berlin Borough							E						
CAMDEN	Berlin Township							E						

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CAMDEN	Camden City										X			
CAMDEN	Cherry Hill Township							P						
CAMDEN	Chesilhurst Borough								P					
CAMDEN	Clementon Borough							H						
CAMDEN	Gibbsboro Borough							E						
CAMDEN	Gloucester Township	H						E						
CAMDEN	Haddonfield Borough							H						
CAMDEN	Lindenwold Borough							E						
CAMDEN	Oaklyn Borough	X												
CAMDEN	Pine Hill Borough	H						E						
CAMDEN	Pine Valley Borough							E						
CAMDEN	Runnemede Borough							X						
CAMDEN	Voorhees Township							E						
CAMDEN	Waterford Township							E	H	H				
CAMDEN	Winslow Township							H	E	H				
CAPE MAY	Avalon Borough		E									E	E	
CAPE MAY	Cape May City		E							X		P	P	
CAPE MAY	Cape May Point Borough		H					X				P	P	
CAPE MAY	Dennis Township							E	P				E	
CAPE MAY	Lower Township		E					E		H		E	E	
CAPE MAY	Middle Township		E					E		H		P	E	
CAPE MAY	North Wildwood City		E									P	E	
CAPE MAY	Ocean City		E		X							E	P	
CAPE MAY	Sea Isle City		E									E	P	
CAPE MAY	Stone Harbor Borough		E									P	E	
CAPE MAY	Upper Township	H	E					E	P			E	P	
CAPE MAY	Wildwood City		P									P	P	
CAPE MAY	Wildwood Crest Borough		H									P	E	
CAPE MAY	Woodbine Borough							P	P					
CUMBERLAND	Bridgeton City							H						
CUMBERLAND	Commercial Township							P			H		E	
CUMBERLAND	Deerfield Township							P						
CUMBERLAND	Downe Township							E					E	
CUMBERLAND	Fairfield Township							E					E	
CUMBERLAND	Greenwich Township							P						
CUMBERLAND	Hopewell Township	P						H						
CUMBERLAND	Lawrence Township							E					E	
CUMBERLAND	Maurice River Township							E	P	H	E		E	
CUMBERLAND	Millville City							E			P			
CUMBERLAND	Stow Creek Township							H						
CUMBERLAND	Upper Deerfield Township	P						E						
CUMBERLAND	Vineland City							E						
ESSEX	Cedar Grove Township			P										

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ESSEX	Essex Fells Borough			P										
ESSEX	Fairfield Township			HI										
ESSEX	Livingston Township			MA	X									
ESSEX	Millburn Township			MA										
ESSEX	North Caldwell Borough			P										
ESSEX	Roseland Borough			P										
ESSEX	West Caldwell Township			P										
ESSEX	West Orange Township			P										
GLOUCESTER	Clayton Borough							E						
GLOUCESTER	Deptford Township							H						
GLOUCESTER	East Greenwich Township	E						H						
GLOUCESTER	Elk Township	P						E						
GLOUCESTER	Franklin Township							H	P					
GLOUCESTER	Glassboro Borough							E						
GLOUCESTER	Greenwich Township	P												
GLOUCESTER	Harrison Township	E						P						
GLOUCESTER	Logan Township	P									H			
GLOUCESTER	Mantua Township	H						H						
GLOUCESTER	Monroe Township							E	P	H				
GLOUCESTER	Newfield Borough							H	P					
GLOUCESTER	South Harrison Township	E						E						
GLOUCESTER	Washington Township	H						E						
GLOUCESTER	Wenonah Borough							H						
GLOUCESTER	West Deptford Township							H						
GLOUCESTER	Woodbury Heights Borough							H						
GLOUCESTER	Woolwich Township	E						H						
HUNTERDON	Alexandria Township	E		P										
HUNTERDON	Bethlehem Township	E		P										
HUNTERDON	Bloomsbury Borough			P										
HUNTERDON	Califon Borough			P			P							
HUNTERDON	Clinton Town	P		P										
HUNTERDON	Clinton Township	E		P										
HUNTERDON	Delaware Township			P										
HUNTERDON	East Amwell Township			P										
HUNTERDON	Franklin Township	E		P										
HUNTERDON	Frenchtown Borough			P										
HUNTERDON	Glen Gardner Borough	E		P										
HUNTERDON	Hampton Borough	P		P										
HUNTERDON	High Bridge Borough	P		P										
HUNTERDON	Holland Township	P		P										
HUNTERDON	Kingwood Township	P		P										
HUNTERDON	Lambertville City			P										
HUNTERDON	Lebanon Borough	P		P										

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HUNTERDON	Lebanon Township	E		P			P							
HUNTERDON	Milford Borough	P		P										
HUNTERDON	Raritan Township	P		P										
HUNTERDON	Readington Township	E		P										
HUNTERDON	Stockton Borough			P										
HUNTERDON	Tewksbury Township	E		MA			H							
HUNTERDON	Union Township	E		P										
HUNTERDON	West Amwell Township			P										
MERCER	East Windsor Township	E												
MERCER	Ewing Township			P										
MERCER	Hamilton Township	H												
MERCER	Hopewell Township			P										
MERCER	Lawrence Township			P										
MERCER	Princeton Township			P										
MERCER	Robbinsville Township	H												
MERCER	Trenton City				X									
MERCER	West Windsor Township	P		P				H						
MIDDLESEX	Cranbury Township	P		P										
MIDDLESEX	East Brunswick Township	H		P				E						
MIDDLESEX	Edison Township			P				X						
MIDDLESEX	Helmetta Borough	H		P				P						
MIDDLESEX	Middlesex Borough			P										
MIDDLESEX	Monroe Township			P				P						
MIDDLESEX	New Brunswick City			P				X						
MIDDLESEX	North Brunswick Township			P										
MIDDLESEX	Old Bridge Township			P				P						
MIDDLESEX	Perth Amboy City							X						
MIDDLESEX	Piscataway Township			P										
MIDDLESEX	Plainsboro Township	P		P										
MIDDLESEX	Sayreville Borough	X						X						
MIDDLESEX	South Brunswick Township			P										
MIDDLESEX	South Plainfield Borough			P										
MIDDLESEX	Spotswood Borough			P										
MIDDLESEX	Woodbridge Township			P										
MONMOUTH	Aberdeen Township		P										P	
MONMOUTH	Allenhurst Borough		P										P	
MONMOUTH	Asbury Park City		P										P	
MONMOUTH	Atlantic Highlands Borough		P										P	
MONMOUTH	Avon-by-the-Sea Borough		P										E	
MONMOUTH	Belmar Borough		P										E	
MONMOUTH	Bradley Beach Borough		P										E	
MONMOUTH	Brielle Borough							E						
MONMOUTH	Colts Neck Township							E	E					

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MONMOUTH	Deal Borough		P									P		
MONMOUTH	Farmingdale Borough								P					
MONMOUTH	Freehold Borough								P					
MONMOUTH	Freehold Township	E						E	P					
MONMOUTH	Gateway National Recreation Area		E		E							E	P	
MONMOUTH	Highlands Borough		P									P		
MONMOUTH	Howell Township	E						E	E					
MONMOUTH	Keansburg Borough		P									P		
MONMOUTH	Keyport Borough		P									P		
MONMOUTH	Loch Arbour Village		P									P		
MONMOUTH	Long Branch City	X	E									E		
MONMOUTH	Manalapan Township	E						E						
MONMOUTH	Manasquan Borough		P									E		
MONMOUTH	Middletown Township		P									P		
MONMOUTH	Millstone Township	E						E						
MONMOUTH	Monmouth Beach Borough		E									E		
MONMOUTH	Neptune Township		P						H			P		
MONMOUTH	Roosevelt Borough	E						P						
MONMOUTH	Sea Bright Borough		E									E		
MONMOUTH	Sea Girt Borough		E									E		
MONMOUTH	Spring Lake Borough		E									E		
MONMOUTH	Tinton Falls Borough								P					
MONMOUTH	Union Beach Borough		P									P		
MONMOUTH	Upper Freehold Township	E						P						
MONMOUTH	Wall Township	E						H	E					
MORRIS	Boonton Town	P		HI										
MORRIS	Boonton Township	E		HI										
MORRIS	Butler Borough			HI										
MORRIS	Chatham Borough	P		MA										
MORRIS	Chatham Township	E		MA										
MORRIS	Chester Borough	E		MA										
MORRIS	Chester Township	E		HI			P							
MORRIS	Denville Township	H		HI										
MORRIS	Dover Town	H		HI										
MORRIS	East Hanover Township			MA	X									
MORRIS	Florham Park Borough	H		MA										
MORRIS	Hanover Township	H		HI										
MORRIS	Harding Township	E		MA										
MORRIS	Jefferson Township	E		HI			P							
MORRIS	Kinnelon Borough	P		HI			P							
MORRIS	Lincoln Park Borough			HI										
MORRIS	Long Hill Township	E		MA										
MORRIS	Madison Borough			MA										

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MORRIS	Mendham Borough			MA										
MORRIS	Mendham Township	H		HI										
MORRIS	Mine Hill Township	H		HI										
MORRIS	Montville Township	P		HI										
MORRIS	Morris Plains Borough			HI										
MORRIS	Morris Township	E		HI										
MORRIS	Morristown Town			HI										
MORRIS	Mount Arlington Borough			HI										
MORRIS	Mount Olive Township	E		HI				E						
MORRIS	Mountain Lakes Borough	P		HI										
MORRIS	Netcong Borough			HI										
MORRIS	Parsippany-Troy Hills Township	H		HI										
MORRIS	Pequannock Township			HI										
MORRIS	Randolph Township	H		HI				H						
MORRIS	Riverdale Borough			HI										
MORRIS	Rockaway Borough			HI										
MORRIS	Rockaway Township	E		HI										
MORRIS	Roxbury Township	E		HI				H						
MORRIS	Victory Gardens Borough			HI										
MORRIS	Washington Township	E		MA			P							
MORRIS	Wharton Borough	H		HI										
OCEAN	Barneget Light Borough		E									P		
OCEAN	Barneget Township					X		E	E					
OCEAN	Bay Head Borough		P									E		
OCEAN	Beach Haven Borough		P									P		
OCEAN	Beachwood Borough							P	P					
OCEAN	Berkeley Township		E			X		P	E			E		
OCEAN	Brick Township	E	P					P	P			E		
OCEAN	Eagleswood Township							P	E					
OCEAN	Harvey Cedars Borough		H									P		
OCEAN	Island Heights Borough								P					
OCEAN	Jackson Township	P						E	H					
OCEAN	Lacey Township							E	E					
OCEAN	Lakehurst Borough	E						P	P					
OCEAN	Lakewood Township							E	P					
OCEAN	Lavallette Borough		P									P		
OCEAN	Little Egg Harbor Township		H			X		E	E				P	
OCEAN	Long Beach Township		P									P		
OCEAN	Long Beach Township		H									P		
OCEAN	Long Beach Township		P									E		
OCEAN	Long Beach Township		E			X						E	E	
OCEAN	Manchester Township	E						E	E	P				
OCEAN	Mantoloking Borough		H									E		

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OCEAN	Ocean Gate Borough								P					
OCEAN	Ocean Township		H					P	P					
OCEAN	Pine Beach Borough								P					
OCEAN	Plumsted Township	E						E	P	P				
OCEAN	Point Pleasant Beach Borough		P			X				X		P		
OCEAN	Seaside Heights Borough		P									E		
OCEAN	Seaside Park Borough		P									P		
OCEAN	Ship Bottom Borough		P									P		
OCEAN	South Toms River Borough							P	P					
OCEAN	Stafford Township		H					E	E					
OCEAN	Surf City Borough		P									P		
OCEAN	Toms River Township		H					E	P			P		
OCEAN	Tuckerton Borough							P	P					
PASSAIC	Bloomington Borough			HI			E							
PASSAIC	Clifton City			P										
PASSAIC	Haledon Borough			P										
PASSAIC	Little Falls Township			P										
PASSAIC	North Haledon Borough			P										
PASSAIC	Pompton Lakes Borough			P			P							
PASSAIC	Ringwood Borough			P			P							
PASSAIC	Totowa Borough			P										
PASSAIC	Wanaque Borough			P			P							
PASSAIC	Wayne Township	X		P										
PASSAIC	West Milford Township	H		HI			P							
PASSAIC	West Paterson Borough			P										
SALEM	Alloway Township	P						E						
SALEM	Elmer Borough							P						
SALEM	Elsinboro Township										H			
SALEM	Lower Alloways Creek Township	P						E			H			
SALEM	Mannington Township	E						P			H			
SALEM	Oldmans Township	P									H			
SALEM	Pennsville Township										H			
SALEM	Pilesgrove Township	E						P						
SALEM	Pittsgrove Township	P						E						
SALEM	Quinton Township	H						E			H			
SALEM	Salem City										H			
SALEM	Upper Pittsgrove Township	E						E						
SALEM	WoodsTown Borough							P						
SOMERSET	Bedminster Township	P		MA										
SOMERSET	Bernards Township	E		MA										
SOMERSET	Bernardsville Borough	P		MA										
SOMERSET	Branchburg Township	P		P										
SOMERSET	Bridgewater Township	P		P										



Federally Listed and Candidate Species Occurrences in New Jersey by County and Municipality

County	Municipality	Bog Turtle (T)	Piping Plover (T)	Indiana Bat (E)	Dwarf Wedgemussel (E)	NE Beach Tiger Beetle (T)	Small Whorled Pogonia (T)	Swamp Pink (T)	Knieskern's Beaked Rush (T)	American Chaffseed (E)	Sensitive Joint-vetch (T)	Seabeach Amaranth (T)	Red Knot (C)	Hirsts' Panic Grass (C)
Federal Listing Status: (E)=Endangered, (T)=Threatened, (C)=Candidate														
E = Extant (present), P = Potential (may be present), H = Historic (may still be present), X = Extirpated (no longer present)														
Extant occurrences of Indiana bat: MA = Maternity (April 1 to Sept. 30), HI = Hibernation														
SOMERSET	Far Hills Borough	E		MA										
SOMERSET	Franklin Township	H		P										
SOMERSET	Green Brook Township			P										
SOMERSET	Hillsborough Township			P										
SOMERSET	Millstone Borough			P										
SOMERSET	Montgomery Township			P										
SOMERSET	North Plainfield Borough			P										
SOMERSET	Peapack-Gladstone Borough	E		MA										
SOMERSET	Raritan Borough			P										
SOMERSET	Somerville Borough			P										
SOMERSET	Warren Township	E		MA										
SOMERSET	Watchung Borough	X		MA										
SUSSEX	Andover Borough	H		P	P									
SUSSEX	Andover Township	E		HI	P		H							
SUSSEX	Branchville Borough			P	P									
SUSSEX	Byram Township			HI	P									
SUSSEX	Byram Township	E		HI	P		P							
SUSSEX	Frankford Township	E		P	E		P							
SUSSEX	Franklin Borough	E		MA	P		H							
SUSSEX	Fredon Township	E		P	P									
SUSSEX	Green Township	E		P	P									
SUSSEX	Hamburg Borough	E		MA	P									
SUSSEX	Hampton Township	E		MA	E		P							
SUSSEX	Hardyston Township	E		HI	P		H							
SUSSEX	Hopatcong Borough	P		HI	P		P							
SUSSEX	Lafayette Township	E		MA	E		H							
SUSSEX	Montague Township	E		MA	E		E							
SUSSEX	Newton Town	P		MA	P									
SUSSEX	Ogdensburg Borough	E		HI	P		H							
SUSSEX	Sandyston Township	E		P	E		E							
SUSSEX	Sparta Township	E		HI	P		H							
SUSSEX	Stanhope Borough	P		HI	P									
SUSSEX	Stillwater Township	E		P	P		P							
SUSSEX	Sussex Borough	P		MA	P									
SUSSEX	Vernon Township	E		MA	P		P							
SUSSEX	Walpack Township	E		P	E		P							
SUSSEX	Wantage Township	E		MA	P		P							
UNION	Berkeley Heights Township	E		MA										
UNION	Cranford Township			P										
UNION	Mountainside Borough	X		MA										
UNION	New Providence Borough			MA										
UNION	Scotch Plains Township	E		MA										
UNION	Springfield Township			P										

Federally Listed and Candidate Species Occurrences in New Jersey by County and Municipality

County	Municipality	Bog Turtle (T)	Piping Plover (T)	Indiana Bat (E)	Dwarf Wedgemussel (E)	NE Beach Tiger Beetle (T)	Small Whorled Pogonia (T)	Swamp Pink (T)	Knieskern's Beaked Rush (T)	American Chaffseed (E)	Sensitive Joint-vetch (T)	Seabeach Amaranth (T)	Red Knot (C)	Hirsts' Panic Grass (C)
Federal Listing Status: (E)=Endangered, (T)=Threatened, (C)=Candidate														
E = Extant (present), P = Potential (may be present), H = Historic (may still be present), X = Extirpated (no longer present)														
Extant occurrences of Indiana bat: MA = Maternity (April 1 to Sept. 30), HI = Hibernation														
UNION	Summit City	X		MA										
UNION	Westfield Town			P										
WARREN	Allamuchy Township	E		P	E									
WARREN	Alpha Borough			P	P									
WARREN	Belvidere Town	P		P	P									
WARREN	Blairstown Township	H		P	P									
WARREN	Franklin Township	E		P	P									
WARREN	Frelinghuysen Township	E		P	P									
WARREN	Greenwich Township	P		P	P									
WARREN	Hackettstown Town	P		P	P									
WARREN	Hardwick Township	E		P	H		P							
WARREN	Harmony Township	E		P	P									
WARREN	Hope Township	E		P	P									
WARREN	Independence Township	E		P	E									
WARREN	Knowlton Township	P		P	E									
WARREN	Liberty Township	E		P	E									
WARREN	Lopatcong Township			P	P									
WARREN	Mansfield Township	P		P	P									
WARREN	Oxford Township	E		P	P									
WARREN	Phillipsburg Town			P	P									
WARREN	Pohatcong Township			P	P									
WARREN	Washington Borough	P		P	P									
WARREN	Washington Township	E		P	P									
WARREN	White Township	E		P	E									

## **Appendix H**

### Wild and Scenic Rivers Act

**From:** Kenney, Paul [[mailto:paul\\_kenney@nps.gov](mailto:paul_kenney@nps.gov)]  
**Sent:** Thursday, April 04, 2013 10:15 AM  
**To:** Stewart, Janet  
**Subject:** Re: Great Egg Harbor River

Janet:

This is fine as written. NPS appreciates being consulted and we thank the State of NJ for its continued support in protecting its four National Wild and Scenic Rivers.

- Paul

**Paul Kenney**  
**National Park Service**  
**Partnership Wild & Scenic Rivers**  
**Northeast Regional Office**  
**U.S. Custom House, 200 Chestnut Street**  
**3rd Floor**  
**Philadelphia, PA 19106**  
**(215) 597-5823**  
**F(215) 597-5747**

---

On Thu, Apr 4, 2013 at 10:11 AM, Stewart, Janet <[Janet.Stewart@dep.state.nj.us](mailto:Janet.Stewart@dep.state.nj.us)> wrote:

Hi Paul,

Thanks for taking the time to speak with Ryan and me this morning. I just want to confirm the details of our conversation.

For purposes of developing the HUD documentation to be used in this first round of funding related to Superstorm Sandy recovery, the overall "project location" is Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties. Within that area are two designated Wild & Scenic Rivers- the Great Egg Harbor River (Atlantic, Gloucester, Camden & Cape May counties) and the Maurice River (Atlantic & Cumberland counties).

There are currently no rivers within the State under study for possible inclusion into the Wild & Scenic River system.

The 2 actions items to be funded by HUD in this round are to:

1. Reconstruct structures (residential and commercial) damaged by Sandy within the same footprint, but elevated to conform with State/Federal standards. These structures will not be expanded.

2. Reconstruct and/or expand structures within the existing disturbed area of the site (impervious surface, lawn area, etc.).

Each town within the counties referenced above has a local river management plan that any work within that town would need to comply with (i.e. lot setbacks).

The National Park Service has no concern with these 2 action items since no disturbance within the bed or bank of a Wild & Scenic River will occur, which is what NPS would have jurisdiction over.

If anything needs to be clarified or added, please let me know. Thanks!

Janet

---

**From:** Stewart, Janet  
**Sent:** Wednesday, April 03, 2013 11:05 AM  
**To:** 'Paul Kenney@nps.gov'  
**Subject:** Great Egg Harbor River

Hi Paul,

Are you still the person to speak with regarding projects along the Great Egg Harbor River? I'm assisting with developing the State's plan for environmental/historic reviews under the HUD funding and would like to set up a conference call to discuss NPS comments. You may have spoken with someone from DEP a few weeks ago regarding this. Thanks.

Sincerely,  
*Janet L. Stewart*, Supervisor  
Bureau of Urban Growth & Redevelopment  
Division of Land Use Regulation  
New Jersey Department of Environmental Protection  
Mail Code 501-02A, PO Box 420  
Trenton, NJ 08625-0420  
Phone: (609) 984-6216 Fax: (609) 777-3656  
[janet.stewart@dep.state.nj.us](mailto:janet.stewart@dep.state.nj.us)

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*If you are not the intended recipient of this e-mail, please notify the sender, delete it and do not read, act upon, print, disclose, copy, retain or redistribute it.*

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## **Appendix I**

### Air Quality

## **Methodology to Estimate Emissions from the Housing Rehabilitation, Reconstruction, Elevation, and Mitigation Associated With Hurricane Sandy—Use of Fuel for Residential Construction and Average Pollutant Emission Factors**

**Step 1:** Obtain national data that relates residential housing spending to diesel fuel usage from Evaluation of Methodologies to Estimate Nonroad Mobile Source Usage, prepared by Sierra Research for the Office of Mobile Sources, U.S. Environmental Protection Agency (report number SR93-03-02, March 19, 1993, Table 7-4 on page 7-6). Based on the 1987 Census of Construction, \$1,200 of off-highway fuel is used for every million dollars of single family housing (SFH) construction. Also, \$880 of off-highway fuel is used for every million dollars of non-SFH residential construction. Assuming the Superstorm Sandy construction activities will be a mix of SFH and non-SFH residential construction, an average value of \$1,040 of off-highway fuel per million dollars of construction will be used.

**Step 2:** Convert the diesel fuel usage factor to gallons of fuel per million dollars (\$M) of current residential construction spending. An average 1987 diesel price of \$0.55 per gallon is from page 7-10 of the Sierra report. To convert the construction spending from 1987 dollars to current dollars, producer price indices (PPI) for finished goods less food and energy were obtained for 1987 (113.3) and 2012 (182.4) from <http://data.bls.gov/pdq/SurveyOutputServlet>. The diesel fuel usage factor is converted as follows:

$$\text{\$1,040 fuel/\$M1987constn} \times 1 \text{ gal diesel/\$0.55} \times 113.3/182.4 = 1,175 \text{ gal diesel/\$Mconstn}$$

**Step 3:** Obtain emission factors in terms of annual tons of pollutant per million gallons of nonroad diesel fuel to enable the estimation of pollutant emissions per million dollars of construction spending. The NJDEP ran the EPA NONROAD model to produce 2014 annual construction pollutant emissions and fuel usage for the nine New Jersey counties in which Superstorm Sandy recovery efforts will be concentrated. Details regarding the results of the NONROAD model runs are provided in the appendix. The NONROAD results were used to generate emission factors by considering the total annual construction pollutant emissions for the nine counties along with the total diesel fuel used by the construction equipment. This resulted in emission factors of: 6.90, 64.89, 5.51 and 0.13 pollutant tons per million gallons of diesel fuel for VOC, NO<sub>x</sub>, PM<sub>2.5</sub> and SO<sub>2</sub> respectively. Using the emission factors from the NONROAD model and 1,175 gal diesel/\$Mconstn from Step 2, the following emission factors are calculated: 0.00811, 0.0762, 0.00647 and 0.00015 annual tons of pollutant per million dollars of residential construction spending for VOC, NO<sub>x</sub>, PM<sub>2.5</sub> and SO<sub>2</sub> respectively.

**Step 4:** Apply the emission factors to the projected spending for the Superstorm Sandy rebuilding project. The spending for the project is estimated to be \$1.8 billion over a 24 month period beginning mid-2013 and ending mid-2015. The focus of this analysis will be the 2014 calendar year because project construction emissions are expected to be highest in that year (half of \$1.8 billion or \$900 million). General conformity emissions are estimated for each impacted nonattainment area. Of the nine counties in which HUD-funded Superstorm Sandy recovery projects will be concentrated, six are in the northern ozone nonattainment area and three are in the southern nonattainment area. However, the shoreline length is roughly equally split between the northern and southern ozone nonattainment areas. Six of the nine counties are in the northern

PM2.5 nonattainment area. Therefore, for the ozone precursor pollutants (VOC and NO<sub>x</sub>), 2014 project construction spending is assumed to be \$450 million (half of \$900 million) for each nonattainment area and for PM2.5, 2014 project construction spending is assumed to be \$600 million (2/3 of \$900 million). Using these spending assumptions and the emission factors from Step 3, the following are the estimated 2014 emissions:

**Table 1: Estimated VOC, NO<sub>x</sub> and PM2.5 Emissions Associated with HUD-Funded Housing Projects**

<b>Nonattainment Area</b>	<b>VOC (tons/year)</b>	<b>NO<sub>x</sub> (tons/year)</b>	<b>PM2.5 (tons/year)</b>	<b>SO<sub>2</sub> (tons/year)</b>
Ozone Northern	4	34	NA	NA
Ozone Southern	4	34	NA	NA
PM2.5 Northern	NA	NA	4	0.09
General Conformity Limits	25	100	100	100

The methodology used to determine the emissions estimates in Table 1: Estimated VOC, NO<sub>x</sub> and PM2.5 Emissions Associated with HUD-Funded Housing Projects is consistent with the damage reported by county and the method of distribution of funds included in the New Jersey Department of Community Affairs, Community Development Block Grant Disaster Recovery Action Plan (March 2013).<sup>1</sup>

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<sup>1</sup> <http://www.state.nj.us/dca/announcements/pdf/CDBG-DisasterRecoveryActionPlan.pdf> (pages 2-4 and 4-2)



## **Appendix J**

Noise Abatement and Control and Siting of HUD-Assisted Projects  
Near Hazardous Operations

**From:** Schopp, Danielle L [<mailto:Danielle.L.Schopp@hud.gov>]  
**Sent:** Monday, March 18, 2013 12:32 PM  
**To:** Sullivan, Neil  
**Cc:** Potter, James M; Rivera, Nelson A; Furda, Michael R; Fretwell, Therese J; Sanders, Jerimiah J  
**Subject:** RE: Noise and above ground storage tanks - New Jersey

Neil,

As discussed, noise is not applicable for a disaster recovery program including reconstruction and rehabilitation that meets the requirement at 24 CFR 51.101(a)(3).

In addition, ASD requirements do not apply because the definition for HUD assisted projects at 24 CFR Part 51.201 is predicated on whether the HUD project increases the number of people exposed to hazardous operations; therefore, the environmental review for grants to elevate, rehabilitate, or reconstruct housing that existed prior to the disaster where the number of dwelling units is not increased is not required to apply 24 CFR Part 51 Subpart C.

Mike Furda, as the FEO for New Jersey, is available for questions, follow up or additional guidance.

Thanks,  
Danielle

Danielle Schopp, JD, MPA  
Director, Office of Environment and Energy  
Department of Housing and Urban Development  
451 7th Street SW, Room 7250  
Washington, DC 20410

phone (202) 402-4442

fax (202) 708-3363

<http://portal.hud.gov/portal/page/portal/HUD/topics/environment>



Please consider the environment before printing this e-mail

**From:** Sullivan, Neil [<mailto:Neil.Sullivan@icfi.com>]  
**Sent:** Monday, March 18, 2013 10:26 AM  
**To:** Schopp, Danielle L  
**Subject:** Noise and above ground storage tanks - New Jersey

Danielle,

Just to follow up on our call on Thursday, NJ DEP requested that I e-mail you and confirm that there is no need to conduct a noise analysis for rehab and reconstruction projects (as defined by HUD) for 1-4 unit homes (the subject of NJ's first Tier 1 EA). Your comment that the analysis is unnecessary is based on the citation below at 24 CFR Part 51.101(a)(3). Can you please confirm that NJ can just cite the highlighted text below and avoid doing noise and AST analysis for both rehab and reconstruction projects?

Thanks  
Neil

24 CFR Part 51.101(a)(3)

*HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, manufactured home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. **The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.**

**NEIL SULLIVAN** | Senior Manager | 703.218.2533 (o) | [Neil.Sullivan@icfi.com](mailto:Neil.Sullivan@icfi.com) | [icfi.com](http://icfi.com)  
**ICF INTERNATIONAL** | 9300 Lee Highway, Fairfax, VA 22031 | 703.975.8853 (m)

## **Appendix K**

### Demolition Guidance Document

NEW JERSEY  
SUPERSTORM  
SANDY  
DEMOLITION  
GUIDANCE  
DOCUMENT

For Local Government Assuming Demolition of Private Residences

APRIL, 2013

# NEW JERSEY SUPERSTORM SANDY DEMOLITION GUIDE FOR LOCAL GOVERNMENT ASSUMING DEMOLITION OF PRIVATE RESIDENCES

## INTRODUCTION AND PURPOSE

On October 29, 2012, Superstorm Sandy devastated many New Jersey communities, particularly those near the coast and in low-lying areas. On October 27, 2012, Governor Christie signed Executive Order 104 (EO 104) declaring a State of Emergency in New Jersey, and President Obama declared the entire State of New Jersey a “major disaster area” on October 30, 2012.

To assist communities in the recovery from the storm, the State of New Jersey has developed this Guide to help local governmental bodies address statutory and regulatory requirements pertaining to the demolition of private residential structures. This Guide includes a summary of statutory and regulatory requirements, as well as requirements put in place under the authority of Executive Order 104.

This Guide shall not be construed to supersede any regulations or requirements by the State of New Jersey unless specified in this document. **Note: nothing in this Guide shall supersede Occupational Safety and Health Administration (OSHA) requirements and employers’ responsibilities to comply with all OSHA requirements.**

Please be aware, this Guide applies only to the demolition under local government contract of multiple private residences damaged by Superstorm Sandy and does not apply to the demolition of governmental or public buildings, commercial structures or residential demolition by individual homeowners.

**TABLE OF CONTENTS**

I. Responsibilities of New Jersey State Agencies ----- 4

II. USEPA Responsibilities

    NESHAP - Asbestos Regulation ----- 6

    Stratospheric Ozone ----- 7

    Air Monitoring ----- 8

    Total Dust Monitoring ----- 8

    Community Notification ----- 8

III. Applicable Requirements

    A. Houses Down by Storm ----- 9

    B. Houses Determined Unsafe to Enter ----- 11

    C. Houses Determined Safe to Enter ----- 17

IV. Appendices

    Appendix 1: Definitions/Acronyms ----- 24

    Appendix 2: Flow Charts ----- 30

    Appendix 3: Regulatory Requirements

        3.1 USEPA ----- 33

            NESHAP, Air Monitoring, Community Notification,

            Appliances Containing Refrigerant Handling and Decontamination

        3.2 New Jersey Department of Environmental Protection

            Solid & Hazardous Waste ----- 50

            Executive Order 104 ----- 55

        3.3 New Jersey Department of Community Affairs ----- 60

        3.4 New Jersey Department of Labor & Workforce Development ----- 64

        3.5 New Jersey Department of Health ----- 97

        3.6 New Jersey Department of Agriculture, Soil Conservation Program --- 100

    Appendix 4: Guidance

        4.1 USEPA ----- 105

            NESHAP, Air Monitoring, Community Notification,

            Appliances Containing Refrigerant Handling and Decontamination

            Quality Assurance Project Plan ----- 109

        4.2 New Jersey Department of Environmental Protection

            Solid & Hazardous Waste - Executive Order 104 ----- 118

        4.3 New Jersey Department of Community Affairs ----- 123

        4.4 New Jersey Department of Labor & Workforce Development ----- 125

        4.5 New Jersey Department of Health ----- 130

        4.6 New Jersey Department of Agriculture, Soil Conservation Program --- 133

Appendix 5: Contact Information -----	136
Appendix 6: Forms	
USEPA NESHAP notification form -----	140
NJDEP O & D form -----	142
NJDOH Exemption Notification Form -----	144
Soil Conservation Program (2 forms) -----	145



## **I. RESPONSIBILITIES OF NEW JERSEY STATE AGENCIES AND APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS**

Several New Jersey state agencies, as well as the United States Environmental Protection Agency (USEPA) have regulations applicable to the demolition and disposal of private residences. The specific regulatory requirements of each agency are excerpted in Appendix 3 and a link to the complete regulation, when available, has also been provided. Following is a summary of the responsibilities of each state agency as applicable to demolition.

### **Department of Environmental Protection**

The Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) authorizes the New Jersey Department of Environmental Protection (DEP) to ensure that all solid waste is collected, transported and disposed of in an environmentally acceptable manner and protective of public health. Responsibilities include the recycling program, approval of waste flow control, and Household Hazardous Waste (HHW). Under the authority of EO 104, additional safe guards have been required. (See Appendix 3.2)

### **Department of Community Affairs**

The State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) authorizes the New Jersey Department of Community Affairs (DCA) to adopt rules related to the construction, alteration, renovation, rehabilitation, maintenance, occupancy, and use of buildings or structures, to provide for the administration and enforcement of the Act, and to establish remedies and to fix penalties for violation of the Act.

### **Department of Labor & Workforce Development**

The Department of Labor and Workforce Development (LWD) administers the New Jersey Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.), which requires the licensing of asbestos abatement companies and performance identification permits for individuals performing asbestos work. In addition, the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.), requires the payment of Prevailing Wage for “public work” contracts, the definition of which includes demolition. Contractors performing “public work” must register with the LWD in accordance with N.J.A.C. 12:62-2.1.

### **Department of Health**

The New Jersey Department of Health (DOH) provides comprehensive general information for asbestos detection, removal, management and disposal activities. The DOH is the lead agency for the asbestos and environmental health information in New Jersey and has received partial

authorization from the USEPA to administer a state program for asbestos workers and supervisors. Under N.J.A.C. 8:60, the DOH administers the asbestos training and certification activities.

The DOH receives asbestos abatement notifications and conducts unannounced inspections at abatement worksites.

Under N.J.A.C. 8:60, the DOH may exempt from the licensing and permitting requirements certain activities involving non-friable asbestos containing materials.

The DOH performs inspections on behalf of USEPA to monitor compliance with the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation under the Clean Air Act (CAA), Section 105 grant.

### **Department of Agriculture, Soil Conservation Program**

The Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) requires land disturbances which meet the definition of a “project” to secure soil erosion and sediment control (SESC) plan certification prior to the initiation of the land disturbance. The definition of “project” means any disturbance of more than 5,000 square feet of the surface area of land for the demolition of one or more structures, among others.

## **II. USEPA RESPONSIBILITIES AND APPLICABLE REGULATORY REQUIREMENTS**

### **Asbestos National Emission Standards for Hazardous Air Pollutants – 40 C.F.R. Part 61, Subpart M**

#### **Regulatory Program**

The Asbestos NESHAP regulation establishes a national work practice standard that is designed to limit emissions of asbestos from a variety of activities, including demolition and renovation operations. It describes the actions that must be taken during demolition activities when asbestos may be present and identifies actions that are prohibited. It also establishes some training and health and safety requirements for persons working on and in the vicinity of demolition sites.

This Guide applies only to the demolition of multiple private residences damaged by Superstorm Sandy under local government contracts.

Here are some of the key provisions of the Asbestos NESHAP regulation.

- The building or structure must be a facility. This is usually a commercial, institutional, industrial, public or residential structure, installation or building. In general, single family residences are not subject. However, when a residence is part of a larger project with other residences or regulated structures, all of the affected residences can be subject to the Asbestos NESHAP regulation. The definition of facility and installation are found at 40 C.F.R. 61.141.
- The Asbestos NESHAP applies to both the owner and operator of the demolition or renovation operation. The owner/operator definition is found at 40 C.F.R. 61.141.
- The facility must be thoroughly inspected. Before any renovation or demolition work is conducted in the facility, it must be inspected by a USEPA or State accredited Asbestos Building Inspector. The inspection helps determine if asbestos is located in the building, how much asbestos is present, and which material is friable or non-friable.
- Do the homes have asbestos-containing materials? Are they currently friable or will they become friable during the demolition of the residence? If yes, these materials must be removed prior to the demolition. For more information, see the definitions of the following terms under 40 C.F.R. 61.141: Category I non-friable asbestos, Category II non-friable asbestos, friable asbestos, asbestos-containing material (ACM) regulated asbestos-containing material (RACM), and asbestos-containing waste material (ACWM).
- To be subject to the full Asbestos NESHAP regulation, the demolition operation must meet a regulatory threshold. If the installation has a combined amount of RACM totaling:

- 260 linear feet (on pipe), or
- 160 square feet (on facility components), or
- 35 cubic feet from facility components where the length or area could not be measured previously,

then the overall operation is subject to the Notification (40 C.F.R. 61.145(b), asbestos emissions controls (40 C.F.R. 61.145(c), and the waste management and transportation requirements (40 C.F.R. 61.150). The asbestos-containing waste material from a regulated demolition must be disposed of in an asbestos compliant landfill following the requirements of 40 C.F.R. 61.154.

**When this involves the demolition of multiple residences, as a public project, the cumulative amounts of RACM, from each residence, counts towards the 260lf/160sf threshold.**

- All demolition operations (even if the threshold amounts are not exceeded) are subject to the Asbestos NESHAP regulation. Accordingly, the owner and/or operator must file a Notification form with EPA Region 2. The Notification requirements are found at 40 C.F.R. 61.145(b).
- The demolition operation is subject to the asbestos emission controls. These are known as the work practice standards. By following these work practice standards, the release of asbestos fibers should be minimized to the surrounding environment. For more information on which work practices are acceptable, please review 40 C.F.R. 61.145(c).
- Once the RACM is removed from the facility under 40 C.F.R. 61.145(c), the RACM must be managed appropriately on-site, in transit to the waste disposal site and at the waste disposal site. 40 C.F.R. 61.150 identifies the various methods of managing, packaging and transporting the ACWM.
- There may be instances where the facility being considered for demolition is determined by order of the State or local government to be structurally unsound and in danger of imminent collapse. If the appropriate local or state official makes such a finding, certain requirements of the Asbestos NESHAP do not apply. For more information about the structurally unsound and in danger of imminent collapse regulation, please see 40 C.F.R. 61.145(a)(3).

### **Protection of Stratospheric Ozone – Recycling and Emissions Reduction**

40 CFR 82 Subpart F contains regulations designed to protect the ozone layer by reducing the emissions of refrigerants by maximizing the recapture and recycling of refrigerants during the service, maintenance, repair, and disposal of appliances. The regulations require using approved refrigerant recovery equipment. For refrigeration and air-conditioning equipment other than small appliances, refrigerant must be removed and handled by certified technicians. For small appliance, a non-certified technician can remove and recover the refrigerant. In addition, the regulations prohibit knowing releases of both ozone-depleting refrigerants and their substitutes during service, maintenance, repair and disposal of appliances.

## **Air Monitoring**

It is important to monitor demolitions and debris removal for potential asbestos releases that might affect demolition workers and nearby residences and businesses. Should deleterious asbestos concentrations be detected, the demolition processes will be modified to assure that future undesirable situations do not recur. The USEPA air monitoring protocol will be used to evaluate the effectiveness of the demolition practices. Air samples will be collected and analyzed for asbestos to evaluate the exposure to workers and the general public from the fugitive release of asbestos as part of these demolitions. (See Assessing Asbestos Emissions and Dust at Demolition Sites in Sandy Response Quality Assurance Project Plan for additional information.)

## **Total Dust Monitoring**

In addition to the asbestos air fiber monitoring, dust monitors must be installed around the demolition work area to measure total particulate. The number of total dust monitoring locations must be sufficient to monitor the entire area where demolition and debris removal work is taking place. The aerosol dust monitor(s) utilized shall be alarmed and capable of data logging. An action level for perimeter dust monitoring has been established including corrective measures if this level is exceeded. (See Assessing Asbestos Emissions and Dust at Demolition Sites in Sandy Response Quality Assurance Project Plan for additional information)

## **Community Notification**

It is important for people who could be potentially impacted by demolition activities to be informed beforehand so that they have a full understanding of what is happening in their community and what steps are being taken to protect them.

Municipalities shall develop and implement a plan to notify residents and businesses that are located within the local community. This broad general community notification will describe that demolition activities will be taking place in specific parts of the community, providing as much advanced notice as possible.

### **III. APPLICABLE REQUIREMENTS**

The applicable requirements of the above listed agencies are dependent upon the condition of the houses (facility) intended for demolition. It is anticipated that local government applying for reimbursement from FEMA will have houses in more than one category. Compliance is required with each applicable category. These categories are:

House Down by Storm  
House Unsafe to Enter  
House Safe to Enter

**A. House Down By Storm** – not subject to Asbestos NESHAP requirements

*The removal of a house that was brought down by Superstorm Sandy must be conducted in accordance with the following:*

A house is considered down when the local construction official determines that no structure remains to be demolished and no demolition permit is required.

An application must be filed with the local Soil Conservation District should there be an associated soil disturbance of 5,000 square feet or greater. (See Appendix 4.6 and 6)

Where the work being performed is “public work,” the contractor doing the work must pay the prevailing wage rate, in accordance with N.J.S.A. 34:11-56.25 et seq. and N.J.A.C. 12:60, and must be registered with LWD as a public works contractor, in accordance with N.J.S.A. 34:11-56.48 et seq., and N.J.A.C. 12:62 (See appendices 3.4 and 4.4)

An unsafe structure finding is not required to be issued by the local code official (N.J.A.C. 5:23-2.32(a) and (b)). (See Appendix 3.3)

An asbestos compliance assertion is not required to be submitted by either the homeowner or the registered contractor in accordance with DCA regulations N.J.A.C. 5:23-2.17(e). (See Appendix 3.3)

A demolition permit is not required to be issued by the local code official. (N.J.A.C. 5:23-2.17)

Removal activities shall include wetting to ensure no visible emissions as a measure to protect the community. (Appendix 3.2)

Appliances containing refrigerant must be segregated and decontaminated, and managed as per 40 C.F.R. 82.156 and procedures provided within. (See Appendix 3.1, 4.1 and 4.2)

The downed house and its contents are classified as ID 13C for disposal except for decontaminated appliances containing refrigerant. (See Appendix 3.1, 4.1 and 4.2)

Asbestos handling/packaging/and transportation requirements for RACM at N.J.A.C. 7:26-2.12(a) and 3.5(d)1, 3, and 5 shall apply to all debris (except decontaminated appliances containing refrigerant) generated from removal of down houses. (See Appendix 3.2 and 4.2)

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

Solid waste shipping documents must comply with DEP regulations found at N.J.A.C. 7:26-3.5(h). (See Appendix 3.2)

Recycling, with the exception of decontaminated appliances containing refrigerant is not permitted. (See Appendix 3.2 and 4.2)

All debris (except decontaminated appliances containing refrigerant) must be transported directly to a landfill permitted to accept ID 13C waste. The debris shall not be shipped to a transfer station, incinerator, materials recovery facility or be processed in any way after leaving the site. (See Appendix 3.2 and 4.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)

**B. House Determined Unsafe to Enter - Determined by county or municipal code inspector (Asbestos NESHAP regulation applies)**

*Demolition of a house that was not brought down by Superstorm Sandy but is deemed unsafe to enter to remove asbestos-containing materials prior to demolition will have multiple possible options/scenarios that may need to be followed, depending on the presence of asbestos, and decisions on segregation of asbestos from regulated asbestos. An option/scenario must be selected. The following requirements apply to all options/scenarios:*

Where the work being performed is “public work,” the contractor doing the work must pay the prevailing wage rate, in accordance with N.J.S.A. 34:11-56.25 et seq. and N.J.A.C. 12:60, and must be registered with LWD as a public works contractor, in accordance with N.J.S.A. 34:11-56.48 et seq., and N.J.A.C. 12:62 (See appendices 3.4 and 4.4)

A notice of unsafe structure is issued by the local construction official as per N.J.A.C. 5:23-2.32(a). Follow 40 C.F.R. 61.145(a)(3) for buildings structurally unsound and in danger of imminent collapse. (See Appendices 3.1 and 3.3)

The municipality must provide notification to nearby residences and businesses in accordance with USEPA requirements. (See Appendix 4.1)

A notice of imminent hazard is issued by the local construction official as per N.J.A.C. 5:23-2.32(b). Follow 40 C.F.R. 61.145(a)(3) for buildings structurally unsound and in danger of imminent collapse. (See Appendices 3.1 and 3.3)

An application must be filed with the local Soil Conservation District should there be an associated soil disturbance of 5,000 square feet or greater. (See Appendix 4.6 and 6)

A demolition permit is issued by the local construction official (N.J.A.C. 5:23-2.17) as well as a soil erosion and sediment control plan certification through the local soil conservation district should there be an associated land disturbance 5,000 square feet or greater. (See Appendix 3.3 and 3.6)

Refrigerant should be removed from any split system condensing units (where the unit is outdoors) before demolition in accordance with 40 CFR 82.156. (See Appendix 3.1, 4.1 and 4.2)

A notification of demolition is required to be submitted to USEPA prior to the demolition or no later than the following working day after the demolition in accordance with 40 C.F.R. 61.145(a)(3). This notification is required even if no asbestos is found. (See Appendix 3.1 and 6.1)

An asbestos notification must be provided to LWD and DOH in accordance with LWD/DOH regulations at N.J.A.C. 12:120-7.2 and N.J.A.C. 8:60 (See Appendix 3.4, 3.5 and 4.4).



A licensed asbestos contractor must be hired to participate in the demolition in accordance with LWD regulations at N.J.A.C. 12:120-1.4(a) and 3.2(a). (See Appendices 3.4 and 4.4)

Comply with USEPA air monitoring protocols. (See Assessing Asbestos Emissions and Dust at Demolition Sites in Sandy Response Quality Assurance Project Plan for additional information in Appendix 4.1)

All ACM (such as transite siding, asbestos-containing roofing materials, etc.) located on the exterior of the structure must be removed prior to demolition if it can be safely performed. Steps should be taken to minimize generation of friable emissions during the removal process. This material, if not extensively damaged during the removal, may be sent to an ID 13C landfill.

Asbestos and dust emission controls (work practice standards) including adequately wetting the asbestos-containing materials and dust to ensure no visible emissions, must be performed during demolitions. All demolitions involving asbestos must be performed in accordance with USEPA NESHAP regulations at 40 C.F.R. 61.145(c)(4) through (c)(9). (See Appendix 3.1 and 4.1)

After demolition, appliances containing refrigerant must be segregated and decontaminated, and managed as per 40 C.F.R. 82.156. (See Appendix 3.1, 4.1 and 4.2)

**B. House Determined Unsafe to Enter - Determined by county or municipal code inspector (asbestos NESHAP regulation applies)**

**Option 1: House Determined Unsafe to Enter - manage all waste as RACM**

The entire structure (facility) and contents (with the exception of appliances containing refrigerant) are classified as RACM (ID 27A) in accordance with USEPA NESHAP regulations at 40 C.F.R. 61.145(a)(3) and disposed of as ACWM in accordance with 40 C.F.R. 61.150. 40 C.F.R. 61.150 includes emissions controls, packaging, vehicle markings, and manifest and recordkeeping requirements. (See Appendix 3.1 and 4.1)

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

No recycling activity (with the exception of appliances containing refrigerant) is permitted due to the waste classification. (See Appendix 3.2 and 4.2)

Disposal must occur at a landfill authorized to accept ACWM (ID 27A) waste in accordance with regulations at 40 C.F.R. 61.150(b) and 61.154. (See Appendix 3.1 and 4.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)

**B. House Determined Unsafe to Enter - Determined by county or municipal code inspector (asbestos NESHAP regulation applies)**

**Option 2: House Determined Unsafe to Enter - After demolition allows isolation of RACM and potential RACM from the rest of the debris, where possible (segregation may be possible under a controlled demolition operation)**

A thorough inspection must be performed in accordance with Asbestos NESHAP regulations at 40 C.F.R. 61.145(a) by a certified asbestos inspector. Included within this provision is the determination by the inspector regarding sampling requirements. (See Appendix 3.1)

Engineering controls to ensure no visible emissions, must be performed during debris handling and removal in accordance with USEPA NESHAP regulations at 40 C.F.R. 61.145(c). (See Appendix 3.1)

After demolition, at a minimum, three representative samples must be taken from the building debris that contain plaster, drywall board, popcorn ceilings and other easily made friable ACM. If the bulk sampling test results return asbestos content in this debris, even less than one percent, then the debris from the entire structure must be disposed in an ID 27A landfill. If the test results return “non-detect” from these samples using PCM isolation of RACM is possible.

**Option 2: Scenario One –No Asbestos is found after demolition**

The demolition waste is classified as ID 13C.

Recycling is permitted in accordance with the applicable district solid waste management plan (N.J.A.C. 7:26A-10.1). (See Appendix 3.2 and 4.2)

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

Solid waste shipping documents must comply with DEP regulations at N.J.A.C. 7:26-3.5(h). (See Appendix 3.2)

Disposal must occur at a facility authorized to accept ID 13C. (See Appendix 3.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)

**B. House Determined Unsafe to Enter - Determined by county or municipal code inspector (asbestos NESHAP regulation applies)**

**Option 2: House Determined Unsafe to Enter - After demolition allows isolation of RACM and potential RACM from the rest of debris, where possible**

**Option 2: Scenario Two – Asbestos is found after demolition**

A licensed abatement contractor shall isolate all known RACM and potential RACM. Isolated RACM must be disposed of in an ID 27A landfill in accordance with USEPA NESHAP regulations at 40 CFR 61.150. Isolated Potential RACM may be disposed of in an ID 27A landfill or kept isolated for further testing. If the bulk sampling test results of potential RACM return “non-detect”, then this debris can be disposed of in an ID 13C landfill. If the test results return asbestos content, even less than one percent, then this debris must be disposed in an ID 27A landfill.

All remaining debris must be visually inspected during the containerization process. If any additional known RACM or potential RACM is identified, this debris and surrounding debris (i.e., in the container) must be disposed of in an ID 27A landfill in accordance with USEPA NESHAP regulations at 40 CFR 61.150. As an alternative, the potential RACM can be kept isolated while waiting further confirmatory testing of representative bulk samples. If the test results of potential RACM return “non-detect”, then this debris can be disposed of in an ID 13C landfill. If the test results return asbestos content, even less than one percent, then this debris and surrounding debris (i.e., in the container) must be disposed of in an ID 27A landfill. (See Appendix 3.1)

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

**Handling and Disposal of RACM**

Disposal of all RACM must occur at a landfill authorized to accept ID 27A waste in accordance with regulations at 40 C.F.R. 61.154. (See Appendix 3.1)

Management of RACM must follow the emission controls, package, label, manifest, recordkeeping, and vehicle markings requirements of the USEPA NESHAP regulation at 40 C.F.R. 61.150. (See Appendix 3.1)

**Handling and Disposal of Non-RACM**

Debris from a demolition that contains no RACM is classified as ID 13C waste for disposal. (See Appendix 3.1)

Recycling, with the exception of decontaminated appliances containing refrigerant, is not permitted. (See Appendix 3.2 and 4.2)

Asbestos handling/packaging/and transportation requirements for RACM at N.J.A.C. 7:26-2.12(a) and 3.5(d)1, 3, and 5 shall apply to all debris (except decontaminated appliances containing refrigerants) generated from removal of down houses. (See Appendix 3.2)

Solid waste shipping documents must comply with DEP regulations at N.J.A.C. 7:26-3.5(h). (See Appendix 3.2 and 6)

All demolition debris not classified as ID 27A (as stated above), and with the exception of decontaminated appliances containing refrigerant, must be transported directly to a landfill permitted to accept ID 13C waste. The debris shall not be shipped to a transfer station, incinerator, materials recovery facility or be processed in any way after leaving the site. (See Appendix 3.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)

**C. House Determined Safe to Enter – Determined by county or municipal code inspector (asbestos NESHAP regulation applies)**

*Houses that are deemed safe to enter but still need to be demolished have two possible scenarios that may need to be followed depending on the presence of asbestos and exemptions that may be granted by the Department of Health. A scenario must be selected. The following requirements apply to all scenarios:*

Where the work being performed is “public work,” the contractor doing the work must pay the prevailing wage rate, in accordance with N.J.S.A. 34:11-56.25 et seq. and N.J.A.C. 12:60, and must be registered with LWD as a public works contractor, in accordance with N.J.S.A. 34:11-56.48 et seq., and N.J.A.C. 12:62 (See appendices 3.4 and 4.4)

A notice of unsafe structure is issued by the local construction official (N.J.A.C. 5:23-2.32(a)). (See Appendix 3.3)

The municipality must provide notification to nearby residences and businesses in accordance with USEPA requirements. (See Appendix 4.1)

Soil erosion and sediment control plan certification through the local soil conservation district is required should there be an associated land disturbance of 5,000 square feet or greater. (N.J.A.C. 2:90-1.4). (See Appendix 4.6 and 6)

An asbestos compliance assertion is required to be submitted by either the homeowner or the registered contractor in accordance with DCA regulations N.J.A.C. 5:23-2.17(e). (See Appendix 3.3)

A demolition permit is issued by the local construction official (N.J.A.C. 5:23-2.17). (See Appendix 3.3)

The municipality will comply with USEPA’s air monitoring protocols. Perimeter air monitoring is not required at sites where inspections conducted in accordance with the Asbestos NESHAP did not identify any asbestos. (See Assessing Asbestos Emissions and Dust at Demolition Sites in Sandy Response Quality Assurance Project Plan for additional information) (See Appendix 4.1)

Recycling is permitted in accordance with the applicable district solid waste management plan (N.J.A.C. 7:26A-10.1). (See Appendix 3.2 and 4.2)

Appliances containing refrigerant must be segregated and decontaminated, and managed as per 40 C.F.R. 82.156. (See Appendix 3.1, 4.1 and 4.2)

E-waste must be removed and recycled properly. (See Appendix 4.2)

A thorough inspection must be performed in accordance with Asbestos NESHAP regulations at 40 C.F.R. 61.145(a) by a certified asbestos inspector. Included within this provision is the determination by the inspector regarding sampling requirements. (See Appendix 3.1)

An asbestos notification must be made to USEPA Region 2, in accordance with the NESHAP regulation at 40 C.F.R. 61.145(b). This notification is required even if no asbestos is found. (See Appendix 3.1 and 6.1)

An asbestos notification must be provided to LWD and DOH in accordance with LWD/DOH Regulations at N.J.A.C. 12:120-7.2 and N.J.A.C. 8:60 (See Appendix 3.4 and 4.4).

Exemptions to the asbestos licensing and permitting requirements for certain non-friable asbestos containing materials are allowed upon approval by the DOH in accordance with N.J.A.C. 8:60-4.2. (See Appendix 3.5 and 4.5)

If the inspection did not identify any asbestos containing materials refer to Scenario 1 below. If asbestos was identified, refer to Scenario 2 below.

**C. House Determined Safe to Enter – Determined by county or municipal code inspector (asbestos NESHAP regulation applies)**

***Scenario One – House Determined Safe to Enter by county or municipal code inspector - No Asbestos is found***

After a thorough inspection is completed in accordance with USEPA Asbestos NESHAP regulation at 40 C.F.R. 61.145(a), submit a Notification form to USEPA, Region 2 according to 40 C.F.R. 61.145(a)(2) that no asbestos is found. (See Appendix 3.1 and 6.1)

The demolition waste is classified as ID 13C.

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

Solid waste shipping documents must comply with DEP regulations at N.J.A.C. 7:26-3.5(h). (See Appendix 3.2)

Disposal must occur at a facility authorized to accept ID 13C. (See Appendix 3.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)



**C. House Determined Safe to Enter – Determined by county or municipal code inspector (asbestos NESHAP regulation applies)**

***Scenario Two – House Determined Safe to Enter by county or municipal code inspector – Asbestos is found***

All asbestos containing materials must be removed (abated) from the structure by a licensed asbestos abatement contractor in accordance with N.J.A.C. 12:120. (See Appendix 4.4)

Asbestos and dust emission controls (work practice standards) including adequately wetting the asbestos-containing materials and dust to ensure no visible emissions, must be performed during demolitions. All demolitions involving asbestos must be performed in accordance with USEPA NESHAP regulations at 40 C.F.R. 61.145(c)(4) through (c) (9). (See Appendix 3.1 and 4.1)

**Handling and Disposal of RACM from Abatement**

All RACM removed from the structure is disposed as ID 27A waste in accordance with USEPA NESHAP regulations at 40 C.F.R. 61.145(c).

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

Management of the RACM must follow the emission controls, package, label, manifest, recordkeeping, and vehicle markings requirements of USEPA NESHAP regulation at 40 C.F.R. 61.150. (See Appendix 3.1)

Disposal of all RACM **must** occur at a landfill authorized to accept ID 27A waste in accordance with regulations at 40 C.F.R. 61.154. (See Appendix 3.1)

**Handling and Disposal of Non-RACM Asbestos from Abatement**

Non-RACM asbestos is classified as ID 13C for disposal. (See Appendix 3.1)

Asbestos handling/packaging/and transportation requirements for RACM at N.J.A.C. 7:26-2.12(a) and 3.5(d)1, 3, and 5 shall apply to all debris (except decontaminated appliances containing refrigerant) generated from removal of down houses. (See Appendix 3.2 and 4.2)

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

Solid waste shipping documents must comply with DEP regulations at N.J.A.C. 7:26-3.5(h). (See Appendix 3.2 and 6)

All demolition debris not classified as ID 27A (as stated above), and with the exception of decontaminated appliances containing refrigerant, must be transported directly to a landfill permitted to accept ID 13C waste. The debris shall not be shipped to a transfer station, incinerator, materials recovery facility or be processed in any way after leaving the site. (See Appendix 3.2 and 4.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)

### **Handling and Disposal of Non-Asbestos Demolition Debris**

The demolition waste is classified as ID 13C.

A New Jersey licensed and registered solid waste transporter must be utilized in accordance with DEP regulations found at N.J.A.C. 7:26-3.2(a). (See Appendix 3.2)

Solid waste shipping documents must comply with DEP regulations at N.J.A.C. 7:26-3.5(h). (See Appendix 3.2)

Disposal must occur at a facility authorized to accept ID 13C. (See Appendix 3.2)

Waste flow control applies as required by the applicable district solid waste management plan. (See Appendix 4.2)

Final site conditions must meet requirements of certified soil erosion and sediment control plan and Standards for Soil Erosion and Sediment Control, when required at N.J.A.C. 2:90-1.3. A Report of Compliance shall be issued by the local soil conservation district pursuant to N.J.A.C. 2:90-1.14. (See Appendix 3.6)

# APPENDICES

Appendix 1: Definitions/Acronyms

Appendix 2: Flow Charts

Appendix 3: Regulatory Requirements

- 3.1 USEPA  
NESHAP, Air Monitoring, Community Notification,  
Appliances Containing Refrigerant Handling and Decontamination
- 3.2 New Jersey Department of Environmental Protection  
Solid & Hazardous Waste  
Executive Order 104
- 3.3 New Jersey Department of Community Affairs
- 3.4 New Jersey Department of Labor & Workforce Development
- 3.5 New Jersey Department of Health
- 3.6 New Jersey Department of Agriculture  
Soil Conservation Program

Appendix 4: Guidance

- 4.1 USEPA  
NESHAP, Air Monitoring, Community Notification,  
Appliances Containing Refrigerant Handling and Decontamination  
Quality Assurance Project Plan
- 4.2 New Jersey Department of Environmental Protection  
Solid & Hazardous Waste - Executive Order 104
- 4.3 New Jersey Department of Community Affairs
- 4.4 New Jersey Department of Labor & Workforce Development
- 4.5 New Jersey Department of Health
- 4.6 New Jersey Department of Agriculture, Soil Conservation Program

Appendix 5: Contact Information

Appendix 6: Forms

- USEPA NESHAP notification form
- NJDEP O & D form
- NJDOH Exemption Notification Form
- Soil Conservation Program (2 forms)

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**APPENDIX 1:**  
**DEFINITIONS/ACRONYMS**

**NOTE:** Any definitions in *italics* followed by (*EPA*) denote that it is a federal definition.

“*Appliance*” (*EPA*) means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

“Asbestos Containing Material” or “ACM” means any material containing greater than one percent (1%) of asbestos.

“*Asbestos-containing waste materials*” (*EPA*) means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this Subpart M. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

“*Category I nonfriable asbestos-containing material ACM*” (*EPA*) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. part 763, section 1, Polarized Light Microscopy.

“*Category II nonfriable ACM*” (*EPA*) means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix E, subpart E, 40 C.F.R. part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

“Construction and Demolition” or “C&D” means debris consists of debris resulting from structural damage to buildings as well as buildings demolished, and includes items such as aggregate (asphalt, brick, concrete), wood (both clean and treated), roofing and siding materials, wallboard, metals, carpeting and flooring, insulation, glass, tile, window coverings, plastic pipe, heating and ventilating, and air conditioning systems and their components, light fixtures, furnishings and fixtures.

“*Demolition*” (*EPA*) means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

“*Disposal of appliances*” (*EPA*) means the process leading to and including:

- (1) The discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;

- (2) The disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or
- (3) The disassembly of any appliance for reuse of its component parts.

“District Solid Waste Management Plan” means the Solid waste management plan developed by one of the State’s 22 Solid Waste Management Districts (the 21 counties plus the New Jersey Meadowlands Commission) pursuant to the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.)

“*Facility*” (EPA) means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

“Federal Emergency Management Agency” or “FEMA” means the agency which administers Public Assistance grant funding for eligible expenditures pursuant to 41 USC §5121, et seq., 44 C.F.R., Parts 13 and 206 and other published guidance.

“Friable” means any material that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure, or is capable of being released into the air by hand pressure. Material containing more than one percent asbestos as determined using the method specified in appendix A, subpart F, 40 C.F.R. part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

“*Friable asbestos material*” (EPA) means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. part 763, section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

“House Down” means a house is considered down by Superstorm Sandy when, in the opinion of the local construction official, no structure remains to be demolished and no demolition permit is required.

“Household Hazardous Waste” or “HHW” means waste that includes, but is not be limited to, items such as automobile fluids (used waste oil, antifreeze), batteries, oil-based paints and stains, cleansers, photo chemicals, lawn-care chemicals, unidentified

liquids, household cleaners, and pesticides. Latex paint is not household hazardous waste, but is solid waste that shall be disposed as solid waste.

*“In poor condition” (EPA)* means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

*“Installation” (EPA)* means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

*“Leak-tight” (EPA)* means that solids or liquids cannot escape or spill out. It also means dust-tight.

*“National Emission Standards for Hazardous Air Pollutants” or “NESHAP”* are federal standards for hazardous air pollutants, including asbestos (see 40 C.F.R. Part 61 Part M), that are known or suspected to cause cancer or other serious health effects and/or adverse environmental impacts.

*“Nonfriable asbestos-containing material” (EPA)* means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

*“Occupational Safety and Health Administration” or “OSHA”* is a federal agency responsible for worker protection and safety issues.

*“Owner or operator of a demolition or renovation activity” (EPA)* means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

- (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
- (b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

*“Private Property Debris Removal” or “PPDR”* means removal which is being handled by governmental agencies in New Jersey.

“*Recover*” (EPA) refrigerant means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

“*Refrigerant*” (EPA) means, for purposes of this subpart, any substance consisting, in part or whole, of a class I or class II ozone-depleting substance, that is used for heat transfer purposes and provides a cooling effect.

“Regulated asbestos-containing material” or “RACM” means friable asbestos material or non-friable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading or has crumbled, or been pulverized or reduced to powder in the course of demolition or renovation operations.

“*Regulated asbestos-containing material (RACM)*” (EPA) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

“*Small appliance*” (EPA) means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

“Soil Conservation District” or “District” means a governmental subdivision of this state organized pursuant to Chapter 24 of Title 4 of the Revised Statutes (§4:24-39 et seq.).

“Temporary Debris Management Area” or “TDMA” means the area approved by the New Jersey Department of Environmental Protection (NJDEP) for local governing bodies and contractors to temporarily store and segregate storm debris. More information may be found on the NJDEP website: <http://www.nj.gov/dep/special/hurricane-sandy/docs/emergency-debris--planning-fact-sheet.pdf>

“Uniform Construction Code” or “UCC” is enforced by State-licensed, municipally employed code enforcement officials. A list of municipal code enforcement officials may be found at: [http://www.nj.gov/dca/divisions/codes/publications/pdf\\_ora/muniroster.pdf](http://www.nj.gov/dca/divisions/codes/publications/pdf_ora/muniroster.pdf)



“United States Environmental Protection Agency” or “USEPA” is the federal agency responsible for overseeing environmental protection issues, and those environmental programs delegated to the State of New Jersey to administer.

“*Visible emissions*” (EPA) means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

“*Waste generator*” (EPA) means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

“*Waste shipment record*” (EPA) means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

“*Working day*” (EPA) means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

## **ACRONYMS USED THROUGHOUT THIS GUIDANCE**

**ACM** – Asbestos Containing Materials

**C&D** – Construction and Demolition

**DCA** - Department of Community Affairs

**DEP** –Department of Environmental Protection

**DOH** - Department of Health

**EO 104** - Executive Order 104

**EPA** – Environmental Protection Agency

**FEMA** – Federal Emergency Management Agency

**HHW** – Hazardous Household Waste

**LWD** - Labor and Workforce Development

**MSW** - Municipal solid waste

**NESHAP** - National Emission Standards for Hazardous Air Pollutants

**OSHA** – Occupational Safety and Health Administration

**PPDR** – Private Property Debris Removal

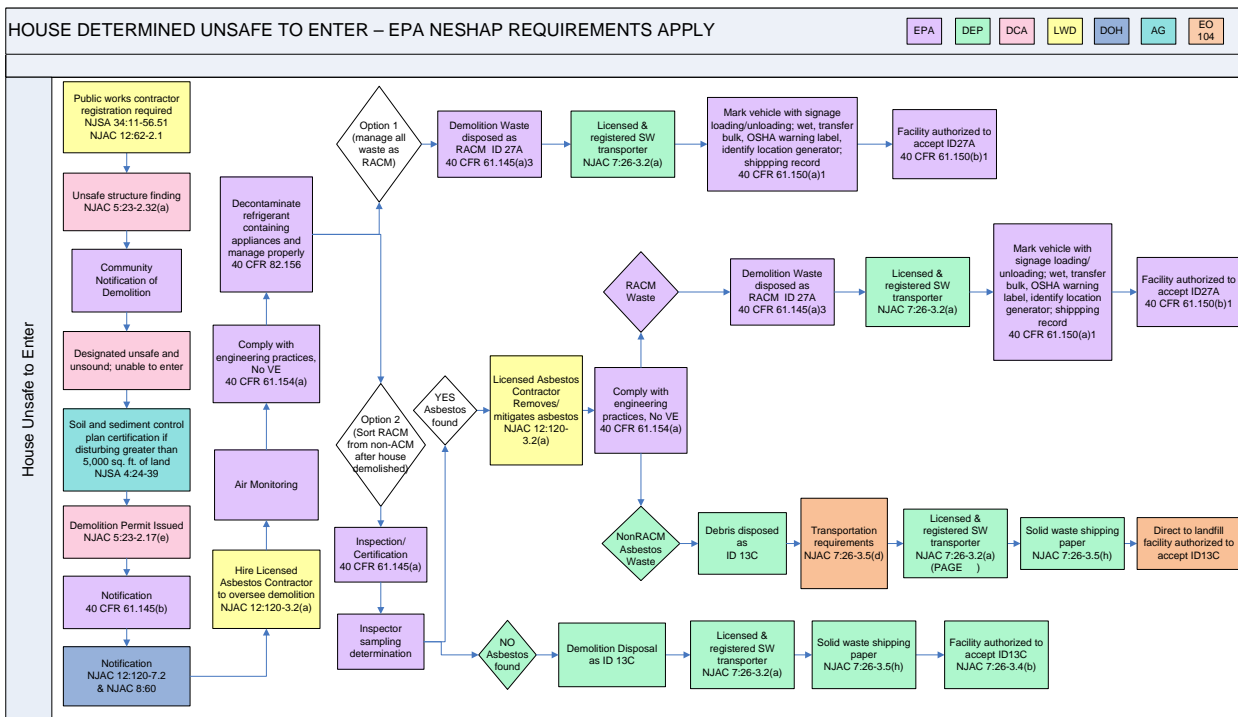
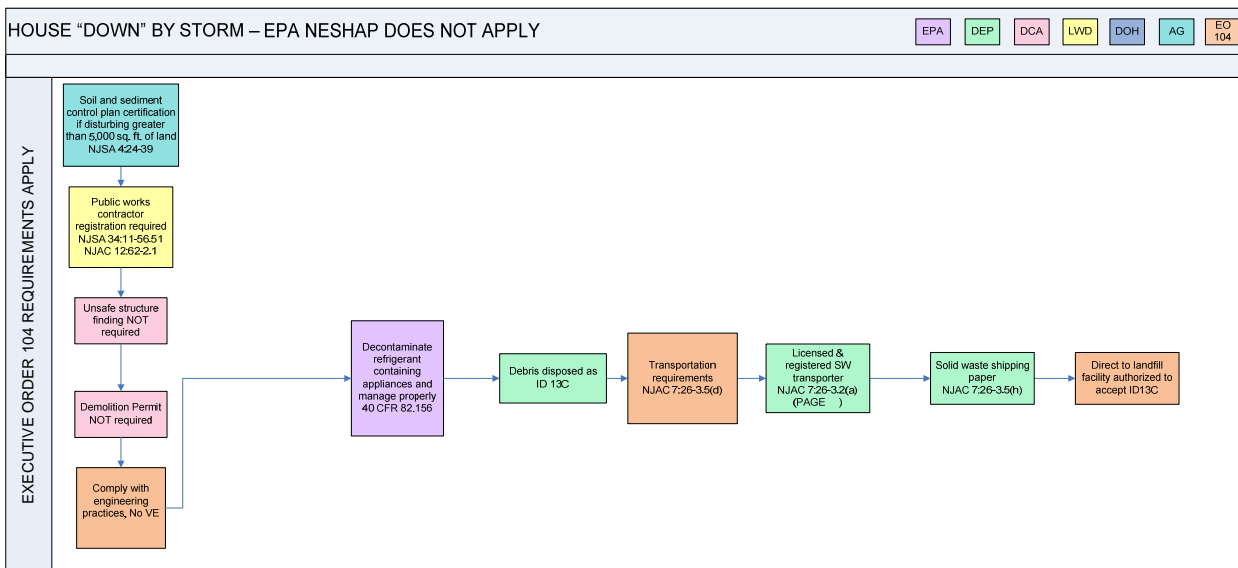
**RACM** - Regulated asbestos containing material

**TDMA** – Temporary Debris Management Area

**TSCA** – Toxic Substance Control Act

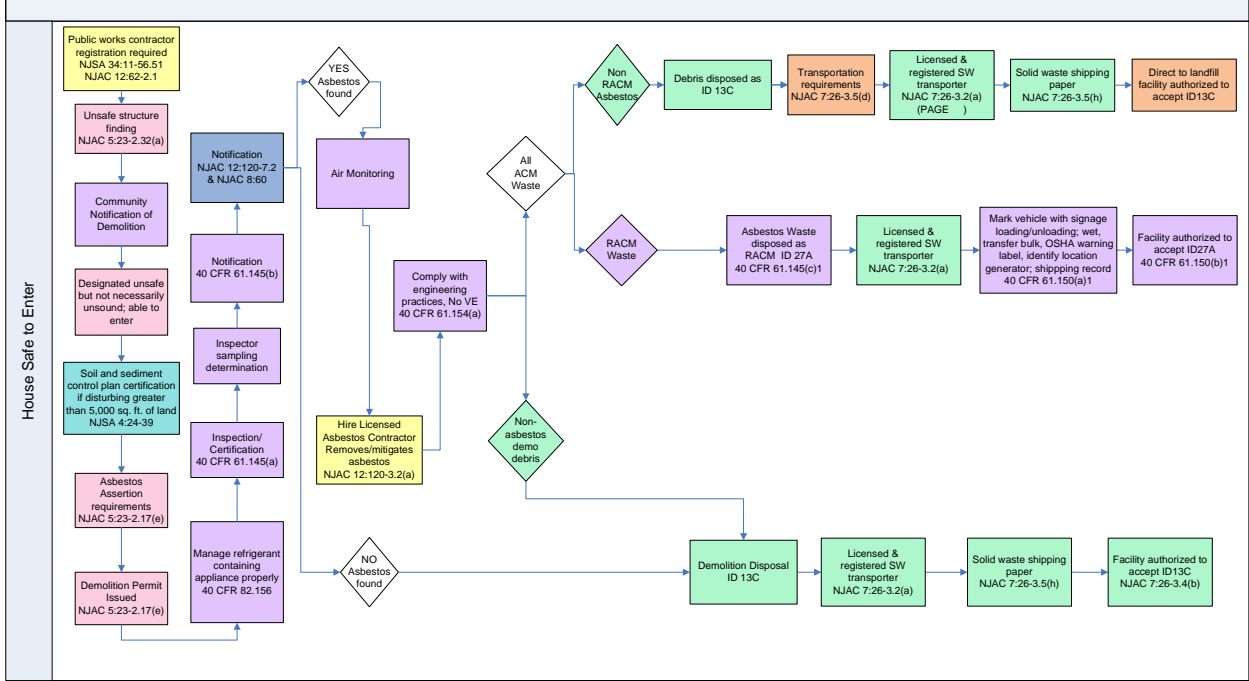
**UCC** – Uniform Construction Code

## APPENDIX 2: FLOW CHARTS



HOUSE DETERMINED SAFE TO ENTER – EPA NESHAP REQUIREMENTS APPLY

EPA DEP DCA LWD DOH AG EO 104



**APPENDIX 3:**  
**REGULATORY REQUIREMENTS**

- 3.1 USEPA  
Appliances Containing Refrigerant Handling and Decontamination  
NESHAP, Air Monitoring, Community Notification,
- 3.2 New Jersey Department of Environmental Protection  
Solid & Hazardous Waste Management (Regulations)  
Executive Order 104
- 3.3 New Jersey Department of Community Affairs
- 3.4 New Jersey Department of Labor & Workforce Development
- 3.5 New Jersey Department of Health
- 3.6 New Jersey Department of Agriculture, Soil Conservation Program

**APPENDIX 3.1:**  
**USEPA**

**Refrigerant Removal From Appliances Information**

<http://www.epa.gov/ozone/title6/608/index.html>

**40 CFR § 82.154      Prohibitions**

(a)(1) Effective June 13, 2005, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with the exception of the following substitutes in the following end-uses:

- (i) Ammonia in commercial or industrial process refrigeration or in absorption units;
- (ii) Hydrocarbons in industrial process refrigeration (processing of hydrocarbons);
- (iii) Chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds);
- (iv) Carbon dioxide in any application;
- (v) Nitrogen in any application; or
- (vi) Water in any application.

(2) The knowing release of a refrigerant or non-exempt substitute subsequent to its recovery from an appliance shall be considered a violation of this prohibition. De minimis releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes are not subject to this prohibition. Refrigerant releases shall be considered de minimis only if they occur when:

(i) The required practices set forth in § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in § 82.158 are used, and the technician certification provisions set forth in § 82.161 are observed; or

(ii) The requirements set forth in subpart B of this part are observed.

(b) No person may open appliances except MVACs and MVAC-like appliances for maintenance, service, or repair, and no person may dispose of appliances except for small appliances, MVACs, and MVAC-like appliances:

(1) Without observing the required practices set forth in § 82.156; and

(2) Without using equipment that is certified for that type of appliance pursuant to § 82.158.

**40 CFR § 82.156 Required practices.**

(f) Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning, MVACs, or MVAC-like appliances must either:

(1) Recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section, as applicable; or

(2) Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with paragraph (g) or (h) of this section, as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

(3) Persons complying with paragraph (f)(2) of this section must notify suppliers of appliances that refrigerant must be properly removed before delivery of the items to the facility. The form of this notification may be warning signs, letters to suppliers, or other equivalent means.

(h) All persons recovering the refrigerant from small appliances for purposes of disposal of these appliances must either:

(1) Recover 90% of the refrigerant in the appliance when the compressor in the appliance is operating, or 80% of the refrigerant in the appliance when the compressor in the appliance is not operating; or

(2) Evacuate the small appliance to four inches of mercury vacuum.

**NESHAP Information**

<http://www.epa.gov/asbestos/lawsregs.html>

**40 C.F.R. 61.145 Standard for demolition and renovation**

(a) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is

(i) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and

(ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of this section apply.

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.



(iii) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year of January 1 through December 31.

(iv) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(b) Notification requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. If the operation is as described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

(ii) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (a)(4)(iii) of this section.

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (a)(3) of this section or, if the operation is a renovation described in paragraph (a)(4)(iv) of this section.

(iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section, and for a demolition described in paragraph (a)(2) of this section, that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(A) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

(1) Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

(2) Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

(1) Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

(2) For demolitions covered by paragraph (a)(2) of this section, provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(C) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) An indication of whether the notice is the original or a revised notification.

(ii) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(iii) Type of operation: demolition or renovation.

(iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(vii) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, of the facility being demolished or renovated.

(viii) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in paragraph (a)(4)(iii) of this section.

(ix) Scheduled starting and completion dates of demolition or renovation.

(x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.

(xii) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(xiii) A certification that at least one person trained as required by paragraph (c)(8) of this section will supervise the stripping and removal described by this notification. This requirement shall become effective 1 year after promulgation of this regulation.

(xiv) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(xv) For emergency renovations described in paragraph (a)(4)(iv) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(xvii) Name, address, and telephone number of the waste transporter.

(5) The information required in paragraph (b)(4) of this section must be reported using a form similar to that shown in Figure 3.

(c) Procedures for asbestos emission control. Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(i) In renovation operations, wetting is not required if:

(A) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

(B) The owner or operator uses one of the following emission control methods:

(1) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(2) A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

(3) Leak-tight wrapping to contain all RACM prior to dismantlement.

(ii) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (c)(3)(i) of this section cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (c)(2), (3), and (4) of this section), the RACM is not required to be stripped if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(ii) The component is encased in a leak-tight wrapping.

(iii) The leak-tight wrapping is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0 °C (32 °F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) and the wetting provisions of paragraph (c)(3) of this section.

(ii) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

**40 C.F.R. 61.149 (c)2** Use an alternative emission control and waste treatment method that has received prior written approval by the Administrator. To obtain approval for an alternative method, a written application must be submitted to the Administrator demonstrating that the following criteria are met:

(i) The alternative method will control asbestos emissions equivalent to currently required methods.

(ii) The suitability of the alternative method for the intended application.

(iii) The alternative method will not violate other regulations.

(iv) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

**40 C.F.R. 61.149 (d)** When waste is transported by vehicle to a disposal site:

(1) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of the waste so that the signs are visible. The markings must:

(i) Be displayed in such a manner and location that a person can easily read the legend.

(ii) Conform to the requirements for 51 cm × 36 cm (20 in × 14 in) upright format signs specified in 29 C.F.R. 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend  
DANGER  
ASBESTOS DUST HAZARD  
CANCER AND LUNG DISEASE HAZARD  
Authorized Personnel Only  
Notation  
2.5 cm (1 inch) Sans Serif, Gothic or Block  
2.5 cm (1 inch) Sans Serif, Gothic or Block  
1.9 cm ( 3/4 inch) Sans Serif, Gothic or Block  
14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

**40 C.F.R. 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations**

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and



(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 C.F.R. 1910.1001(j)(4) or 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1) (i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and

Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

(c) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the requirements of §§ 61.149(d)(1) (i), (ii), and (iii).

(d) For all asbestos-containing waste material transported off the facility site:

(1) Maintain waste shipment records, using a form similar to that shown in [Figure 4] (Appendix 6 of this New Jersey Demolition Guidance Document), and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

(iii) The approximate quantity in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked,

and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(e) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

#### **40 C.F.R. 61.154 Standard for active waste disposal sites**

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under § 61.149, 61.150, or 61.155 shall meet the requirements of this section:

(a) Either there must be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of paragraph (c) or (d) of this section must be met.

(b) Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph (c)(1) of this section must be met.

(1) Warning signs must be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(i) Be posted in such a manner and location that a person can easily read the legend; and

(ii) Conform to the requirements of 51 cm × 36 cm (20"×14") upright format signs specified in 29 C.F.R. 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

<b>Legend</b>	<b>Notation</b>
Asbestos Waste Disposal Site	2.5 cm (1 inch) Sans Serif, Gothic or Block.
Do Not Create Dust	1.9 cm ( 3/4 inch) Sans Serif, Gothic or Block.
Breathing Asbestos is Hazardous to Your Health	14 Point Gothic.

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) The perimeter of the disposal site must be fenced in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, use an alternative emissions control method that has received prior written approval by the Administrator according to the procedures described in § 61.149(c)(2).

(e) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name, address, and telephone number of the transporter(s).

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers. Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site, by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(v) The date of the receipt.

(2) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local,

State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(4) Retain a copy of all records and reports required by this paragraph for at least 2 years.

(f) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(g) Upon closure, comply with all the provisions of § 61.151.

(h) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(i) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(j) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

**APPENDIX 3.2:**  
**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,**  
**SOLID & HAZARDOUS WASTE MANAGEMENT**

The following Solid and Hazardous Waste Management regulation excerpts are applicable. A link has been provided to the full regulation. "Recycling and Waste Management Requirements" pursuant to Executive Order 104 is included at the end of Appendix 3.2.

[Link to Solid & Hazardous Waste Management Regulations](#)

**N.J.A.C. 7:26-2.12** Generator requirements for disposal of asbestos containing waste materials

(a) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the standards for waste disposal at 40 C.F.R. 61.149 and 40 C.F.R. 61.150.

**N.J.A.C. 7:26-3.2(a)**

(a) No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. The registration period shall be biennial, unless otherwise established by the Department, and shall run from July 1 through June 30 of each odd numbered year. Annual registration shall continue through the registration period of calendar year 2002. Therefore, in accordance with this subsection, the odd numbered year for biennial registration shall begin the year 2003. For solid waste collection and disposal vehicles operated by a public entity, the registration period shall be five years commencing July 1, 2001. An approved registration statement shall expire at the end of the registration period unless renewed pursuant to (d) below.

1. No person shall act as a prime contractor or subcontractor for the transportation of solid waste in this State without first obtaining an approved registration statement from the Department.

i. For the purposes of this subchapter, a "prime contractor" means any person who enters into an oral or written agreement with a generator to store, collect, process, transfer, treat, or dispose of solid waste in this State through the use, control or possession of any solid waste transport unit.

ii. For the purposes of this subchapter, a "subcontractor" means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any solid waste vehicle,

pursuant to an oral or written agreement entered into with a prime contractor for the performance of all or part of the prime contract. A lease, pursuant to this subchapter, of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, shall not, for purposes of this subchapter, be considered a subcontract.

2. Any device used for transportation of solid waste shall be registered with the Department as either a solid waste cab, trailer, container, or single-unit vehicle.

3. The registration statement shall be signed by the person engaged in or desiring to engage in the transportation of solid waste, shall be executed on forms prescribed by and furnished by the Department and shall state such information necessary and proper to the enforcement of this subchapter, as the Department may require.

4. A registrant shall not allow, through a subcontract or any other means, any such registered equipment to be used by another person, unless such person is an employee of the applicant or registrant, or unless such use is in accordance with a lease of vehicle operators pursuant to this subchapter.

5. A person who has not obtained an approved registration statement shall not, through a subcontract or any other means, engage or contract to engage in the transportation, storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any solid waste vehicle, registered to any other person, or through any other means. The leasing of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, pursuant to this subchapter, shall not be deemed engaging or contracting to engage in said solid waste activities.

6. In addition to obtaining an approved registration statement from the Department, the person engaged in or desiring to engage in the transportation of solid waste shall comply with all of the rules and regulations of the New Jersey Division of Motor Vehicles. No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. The leasing of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, pursuant to this subchapter, shall not be deemed engaging or contracting to engage in said solid waste activities.

**N.J.A.C. 7:26-3.4(b)**

(b) All collected solid waste shall be properly deposited at an approved facility in accordance with N.J.A.C.7:26-1 and 2. Solid waste or recyclable materials shall be deposited at a solid waste or recycling facility only to the extent the materials contained in an individual load are waste types and recyclable materials permitted for acceptance at that facility and commingled only to the extent permitted in the operating approvals for that facility.



**N.J.A.C. 7:26-3.4(c)**

(c) Unless an emergency, such as inclement weather, equipment breakdown or accident warrants, no solid waste shall be allowed to remain or be stored in any solid waste transport units in excess of 24 hours.

**N.J.A.C. 7:26-3.4(h)**

(h) Each registered solid waste vehicle, except those exempted from fee payment under *N.J.A.C. 7:26-3.3*, and those meeting the requirements at *N.J.A.C. 7:26-3.5(f)* used in the collection or transportation of solid waste shall properly, permanently, and conspicuously display a current State of New Jersey solid waste decal and the New Jersey Department of Environmental Protection (N.J.D.E.P.) registration number and the name of the registered company in letters and numbers at least three inches in height, and, except for solid waste containers, shall carry the current N.J.D.E.P. registration certificate in the solid waste cab. Current solid waste decals must be permanently affixed to the driver's side of each solid waste vehicle, prior to transport of solid waste to, from or within New Jersey or prior to the unit being placed into service or before receiving waste.

1. A copy of any lease filed in connection with the solid waste registration of a solid waste vehicle shall be carried in the solid waste cab and made available to Department representatives upon inspection or request.

2. Only current period decals shall be displayed. Expired decals must be removed from the solid waste vehicle prior to affixing current registration period decals. The registrant of solid waste vehicles which are owned by the registrant shall, upon the interruption or termination of the exclusive use, possession or control of any such equipment by the registrant, notify the Department, return the N.J.D.E.P. registration certificate to the Department, and remove and destroy the N.J.D.E.P. registration number and decal on such solid waste vehicles. A registrant of solid waste vehicles, which are leased shall, upon the expiration of the lease, or upon the interruption or termination of the exclusive use, possession or control of any such equipment by the registrant, notify the Department, return the N.J.D.E.P. registration certificate to the Department, and remove and destroy the N.J.D.E.P. registration number and decal on such solid waste vehicles.

3. In addition, there shall be affixed to the driver's side of each registered solid waste vehicle, in letters and numbers at least three inches in height, the capacity of the solid waste transport unit in cubic yards, in tons or in gallons, so as to be visible to the operator of the solid waste facility.

**N.J.A.C. 7:26-3.4(m)**

(m) All solid waste transporters shall haul solid waste in accordance with the Solid Waste Management Plan developed by the county or district of waste origin pursuant to *N.J.A.C. 7:26-6*. In a district which has designated in its District Solid Waste Management Plan a weighing facility or facilities for waste leaving the district, transporters shall deliver solid waste to a designated in-district weighing facility before the solid waste is removed from the district for out-of-district transfer, materials recovery, or disposal.

**N.J.A.C. 7:26-3.5 (d)**

(d) Rules concerning transportation of asbestos and asbestos-containing waste materials follow:

1. All solid waste vehicles used for the transportation of asbestos and asbestos-containing waste materials shall be of such a design so as to prevent any spillage or leakage or emissions therefrom.

2. No transporter shall transport asbestos and/or asbestos-containing waste materials unless such waste is properly packaged in accordance with 40 C.F.R. 61.150 and *N.J.A.C. 7:26-2.12*.

3. The asbestos or asbestos-containing waste materials shall be transported in a manner that prevents the rupture of the asbestos containers in loading, transport, and unloading operations.

4. Once collected, asbestos and/or asbestos containing waste materials shall be transported directly from the point of generation to the solid waste landfill or transfer station permitted to receive such wastes.

5. There shall be no visible air emissions during loading, transporting, or unloading operations.

**N.J.A.C. 7:26-3.5(h)**

(h) O and D form requirements for transporters hauling solid waste to in-State solid waste facilities are as follows:

1. The Department shall provide the registered transporter with an approved O and D form. The transporter shall thereafter duplicate the form for use with each load of solid waste destined for an in-State solid waste facility.

2. Prior to transport of the solid waste to the disposal site, the transporter shall complete the O and D form and sign it, thereby certifying the accuracy of the information provided.

3. The completed and signed O and D form shall be given to the facility operator in accordance with N.J.A.C. 7:26-2.13(c).

**N.J.A.C. 7:26A-10.1 Scope**

(a) This subchapter applies to generators of materials designated for source separation and recycling in the applicable county recycling plan or municipal source separation ordinance. Generators include all persons occupying residential, commercial, or institutional premises.

(b) Generators of designated recyclable materials, who also generate used oil or universal waste are also subject to the rules at N.J.A.C. 7:26A-6 and 7.



**State of New Jersey**

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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

**Recycling and Waste Management Requirements for Residential Demolition as a Result of Super Storm Sandy Performed Under Local Government Contract**

The unprecedented damage caused by Super Storm Sandy along the New Jersey coastline resulted in the destruction of many houses and rendered many others structurally unsound, resulting in the need for demolition. These structurally unsound houses present a hazard to public safety and the removal of such structures is necessary to avoid continuing hazards and to allow rebuilding to proceed.

Under normal circumstances disposal of demolition waste from houses is regulated in New Jersey by the Solid Waste Management Act and its implementing regulations. Electronic waste (e-waste) is prohibited from disposal at solid waste facilities by the Electronics Waste Management Act, N.J.S.A. 13:1E-99.95 et. seq. White goods (i.e., refrigerators, washers, dryers, etc.) are designated as mandatory recyclables in certain county solid waste management plans and in addition, the removal of refrigerants from refrigerators and air conditioners prior to disposal or recycling is mandated by federal requirements. While recycling of other types of demolition debris, such as concrete, asphalt shingles, and wood waste, is not mandatory, the New Jersey Department of Environmental Protection has encouraged recycling whenever feasible.

However, the devastation left behind by Super Storm Sandy has created challenges that are not present under normal circumstances. Therefore, in an effort to expedite the demolition and removal of the many homes that have been rendered uninhabitable or structurally unsound, I, Commissioner Martin, pursuant to Executive Order #104 dated October 27, 2012, allowing agency heads to suspend or modify regulations hereby direct that household demolition waste be managed as follows:

**Waste Management for Houses Damaged by Super Storm Sandy**

Houses Damaged by Super Storm Sandy fall into one of the following 3 categories:

- I. Houses Safe to Enter
- II. Houses Unsafe to Enter

### III. Houses Down by Storm

There are certain general requirements that pertain to all of the categories including removal of refrigerants, solid waste transportation and waste flow provisions as discussed below. Specific requirements and options for each category follow the general requirements.

#### **General Requirements**

##### Refrigerant Removal from Appliances

EPA regulations at 40 CFR 82.156 require that appliances containing refrigerants must have the refrigerant removed prior to disposal or recycling. Management and decontamination of refrigerant containing appliances (RCA) shall conform to EPA Guidance. For houses that are safe to enter, removal of refrigerant from the appliances should be conducted as usual. However, due to asbestos contamination concerns, appliances must be decontaminated at the site prior to refrigerant removal for houses down by the storm or following demolition of houses that were unsafe to enter.

##### Solid Waste Transportation and Waste Flow

Each truck and container (roll off containers, dumpsters) utilized to collect or transport solid waste must have a valid solid waste transportation decal pursuant to N.J.A.C. 7:26-3.4(h) or other evidence of temporary authorization from the Department. Truck loading shall comply with New Jersey Department of Transportation rules and regulations including weight limitations and the covering of truckloads.

Tarpaulins or covers shall be provided and used on containers while transporting solid waste in accordance with N.J.A.C. 7:26-3.4(i). In addition, for regulated asbestos containing material ("RACM"), transporters must follow specific requirements for asbestos found at N.J.A.C. 7:26-3.5(d). Each shipment must be accompanied by proper shipping papers (Origin and Destination form) (see N.J.A.C. 7:26-3.5(h)) Solid waste must be transported to disposal facilities in accordance with applicable waste flow requirements per the Solid Waste Management Plan for the county of waste origin per N.J.A.C. 7:26-3.4(m). Summaries of District Solid Waste Plans are set forth at the Department website: [www.nj.gov/dep/dshw/recycling/03cplsum.htm](http://www.nj.gov/dep/dshw/recycling/03cplsum.htm). RACM waste is classified as waste type ID 27A and must be sent directly to a landfill authorized to accept RACM/ID 27A. Other waste from demolition is classified as construction and demolition waste, type ID 13C. Where loads of ID 13C may be shipped depends on the category of house from which the waste was generated.

Source separated recyclable materials (only allowed for houses that are safe to enter where asbestos contamination is not a concern) may be transported to facilities authorized to accept the specific types of recyclables collected. No special transporter licenses or county waste flow provisions apply to source separated recyclable materials being shipped to a recycling facility.

## Specific Requirements by Category

### I. House Safe to Enter

The waste management options differ as described below depending whether any asbestos containing material (ACM) is present in the house.

#### i. No Asbestos Found in House Prior to Demolition

After a house that is safe to enter has been inspected for ACM and no ACM is found, the Department is recommending the segregation of household hazardous wastes, and source separation of recyclable materials if feasible.

Reasonable effort should be made to separate HHW to the extent possible and transport HHW loads to an approved hazardous waste disposal facility.

Certain types of e-waste are prohibited from disposal. These include televisions, personal computers, laptops, notebooks and monitors. E-waste should be segregated and transported to an approved Class D recycling center or universal waste handler.

Reasonable efforts should be made to separate, collect and transport broken brick, block, concrete, and asphalt to a Department approved Class B recycling facility, or if outside of New Jersey, to a facility authorized by the jurisdiction. Concrete or other aggregate that has been visibly contaminated by an oil or chemical spill as a result of the disaster event should not be recycled and shall be managed as construction and demolition waste (ID 13C).

Following demolition the demolition waste is classified as construction and demolition waste, type ID 13C. ID 13C waste from houses that were safe to enter and did not contain asbestos may be shipped to any solid waste facility permitted to accept construction and demolition wastes.

#### ii. Asbestos Found in House Prior to Demolition

Following an asbestos inspection and removal of all asbestos the Department is recommending the segregation of household hazardous wastes, and source separation of recyclable materials if feasible prior to demolition.

However, reasonable effort should be made to separate HHW to the extent possible and transport HHW loads to an approved hazardous waste disposal facility.

Certain e-wastes are prohibited from disposal. These include televisions, personal computers, laptops, notebooks and monitors. E-waste should be segregated and transported to an approved Class D recycling center or universal waste handler.

Other materials in the house should be recycled if practical.

Reasonable efforts should be made to separate, collect and transport broken brick, block, concrete, and asphalt to a Department approved Class B recycling facility, or if outside of New Jersey, to a facility authorized by the jurisdiction. Concrete or other aggregate that has been visibly contaminated by an oil or chemical spill as a result of the disaster event should not be recycled and shall be managed as construction and demolition waste (ID 13C).

Following demolition, the demolition waste is classified as construction and demolition waste, type ID 13C. ID 13C waste from houses that were safe to enter and had all asbestos removed prior to demolition may be shipped to any solid waste facility permitted to accept construction and demolition wastes.

## II. House Unsafe to Enter

Waste from houses that were unsafe to enter prior to demolition may be managed in one of the following two scenarios:

- i. The first scenario assumes all of the waste is RACM (ID 27A). No recycling or segregation, except for refrigerant containing appliances decontaminated as discussed earlier, is permitted under this scenario. All waste is classified as ID 27A and must be managed and shipped to a landfill permitted to accept ID 27A.
- ii. The second scenario allows for inspection of the debris for the presence of asbestos. If no asbestos is found, the debris is classified as construction and demolition waste, ID 13C, and may be shipped to any solid waste facility permitted to accept construction and demolition waste and recycling is permitted. If any asbestos is found, the debris may be sorted to separate RACM from non-RACM to save expenses on disposal costs. Any RACM must be managed as ID 27A and be shipped directly to a landfill permitted to accept ID 27A. Non-RACM waste is classified as construction and demolition waste, type ID 13C. However, due to possible asbestos contamination concerns, the Department is requiring this

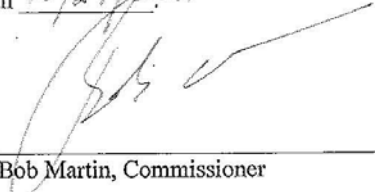
waste to be managed as if it were asbestos containing in regards to keeping the waste wetted at the site and wrapping the waste to prevent air emissions during transportation in accordance with the N.J.A.C. 7:26-3.5(d)1, 3 and 5. In addition, the waste shall only be shipped directly to a landfill authorized to accept ID 13C – the waste shall not be shipped to a transfer station, materials recovery facility, incinerator or be processed in any way after leaving the site. No recycling or segregation of material, except for refrigerant containing appliances decontaminated as discussed earlier is permitted.

### III. Houses Down by Storm

Waste from houses that are “down by the storm” is classified as construction and demolition waste, type ID 13C. However, due to possible asbestos contamination concerns, the Department is requiring debris to be wetted to prevent air emissions during waste handling and be managed as if it were asbestos containing in regards to keeping the waste wetted at the site and wrapping it to prevent air emissions during transportation in accordance with the N.J.A.C. 7:26-3.5(d)1, 3 and 5. In addition, the waste shall only be shipped directly to a landfill authorized to accept ID 13C – the waste shall not be shipped to a transfer station, materials recovery facility, incinerator or be processed in any way after leaving the site. No recycling or segregation of material, except for refrigerant containing appliances decontaminated as discussed earlier is permitted.

These requirements shall remain in effect until 10/29/2013

4/10/2013  
Date

  
\_\_\_\_\_  
Bob Martin, Commissioner



**APPENDIX 3.3:**  
**NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**

*N.J.A.C. 5:23-2.17*

5:23-2.17 Demolition or removal of structures; abandoned wells

(a) Service connections: Before a structure can be demolished or removed, the owner or agent shall notify all utilities having service connections within the structure, such as water, electric, gas, sewer and other connections. A permit to demolish or remove a structure shall not be issued until releases are obtained from all utilities that provided service to the property, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed or plugged in a safe manner.

(b) Abandoned wells:

1. In the event that there is a well on the property that has been abandoned, or that will be abandoned in conjunction with the proposed demolition, a permit to demolish or remove a structure on that property shall not be issued until a certification has been obtained from a well driller licensed by the Department of Environmental Protection indicating that the well has been sealed in accordance with N.J.A.C. 7:9-9. If such certification is not presented within 15 days of the application for the permit, the construction official shall give notice of the absence of such certification to the Bureau of Water Allocation, Department of Environmental Protection, PO Box 029, Trenton, NJ 08625-0029.

2. Notice shall also be given by the construction official to the Bureau of Water Allocation in the event of any demolition activity found to have been undertaken without a permit at a building or premises currently or previously served by a well and in any other case in which no permit application for demolition has been made but the construction official becomes aware that a well has been, or is about to be, abandoned without having been sealed by a licensed well driller.

(c) Notice to adjoining owners: Only when written notice has been given by the applicant to the owners of adjoining lots and to the owners of wired or other facilities, of which the temporary removal may be necessitated by the proposed work, shall a permit be granted for the demolition or removal of a building or structure.

(d) Lot regulation: Whenever a structure is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of the appropriate subcodes.

(e) Asbestos abatement: Before a structure can be demolished or removed, the owner or agent shall document that the requirements of USEPA 40 C.F.R. 61 subpart M have been or shall be met. A permit to demolish or remove the structure shall not be issued until the owner or agent notifies the enforcing agency that all friable asbestos or asbestos-containing material that will become friable during demolition or removal has been or will be properly abated prior to demolition.

**N.J.A.C. 5:23-2.32**

5:23-2.32 Unsafe structures

(a) All buildings or structures that shall become unsafe, or unsanitary, or that contain deficient or blocked exitway facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building that is unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this chapter.

1. Examination and record of damaged structure: The appropriate subcode official shall examine every building or structure reported as dangerous, unsafe structurally, unsanitary or constituting a fire hazard and shall prepare a report to be filed in a docket of unsafe structures and premises, stating the use of the structure, the nature of the hazard, the nature and estimated amount of damages, if any, caused by collapse or failure.

2. Notice of unsafe structure: If an unsafe or unsanitary condition is found in a building or structure, the construction official shall serve a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be vacated or demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the construction official his or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 15 days of receipt of the notice.

3. Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to a safe condition in accordance with N.J.A.C. 5:23-6, Rehabilitation Subcode. A certificate of approval or certificate of occupancy, as appropriate, shall be obtained prior to reoccupancy of the building or structure.

4. Posting notice of unsafe structure: If the person addressed with a notice of unsafe structure cannot be found within the municipality after diligent search, then such notice shall be sent by registered or certified mail to the last known address of such person, as on file with the office of the tax collector, and a copy of the notice of unsafe structure shall be posted in a conspicuous place on the premises; and such procedures shall be deemed the equivalent of personal notice.

5. Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

(b) Emergency measures:

1. When, in the opinion of the construction official and appropriate subcode officials, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the construction official is hereby authorized and empowered to order and require the occupants to vacate the same forthwith. The construction official shall cause to be posted at each entrance to such building a notice reading as follows: This structure is unsafe and its use or occupancy has been prohibited by the construction official, and it shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or demolishing the same. The order of the construction official shall be effective immediately.

2. Temporary safeguards: When, in the opinion of the construction official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, the construction official shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe, whether or not the legal procedure herein has been instituted. Such work may include such demolition as may be necessary in order to eliminate any actual and immediate danger to human life; provided, however, that any demolition work shall not commence until at least 24 hours following service of notice of the pending demolition upon the owner, unless such service is not possible because the identity or the address of the owner cannot be determined from public records. Upon expiration of the 24-hour period, demolition may proceed unless stayed by order of the Superior Court.

3. Closing streets: When necessary for the public safety, the construction official may temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe structure, and prohibit the same from being used.

4. Emergency repairs or demolition: For the purpose of this section, the construction official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

5. Costs of emergency repairs: Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on certificate of the construction official; and the legal authority of the jurisdiction shall institute appropriate action against the owner of the premises for the recovery of such costs.

6. Appeals: An emergency order issued by a municipal construction official pursuant to this subsection shall be appealable only to a court of competent jurisdiction.

**APPENDIX 3.4:**  
**NEW JERSEY DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT**

**WAGE AND HOUR**

Information on prevailing wages is available at  
[http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevaling\\_wage\\_determinations.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevaling_wage_determinations.html)

**N.J.S.A. 34:11-56.26. Definitions**

As used in this act:

(1) "Department" means the Department of Labor and Workforce Development of the State of New Jersey.

(2) "Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality," the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade.

(3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. "Maintenance work" also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids, and has an aggregate value exceeding \$ 50,000.

(4) "Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

(5) "Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

(a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

(b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

(6) "Commissioner" means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

(7) "Workman" or "worker" includes laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purpose of P.L.1963, c.150 (*C.34:11-56.25 et seq.*), contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

(8) "Work performed under a rehabilitation program" means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.

(9) "Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

(10) "Act" means the provisions of P.L.1963, c.150 (*C.34:11-56.25 et seq.*) and the rules and regulations issued hereunder.

(11) "Prevailing wage contract threshold amount" means:

(a) In the case of any public work paid for in whole or in part out of the funds of a municipality in the State of New Jersey or done on property or premises owned by a public body or leased or to be leased by the municipality, the dollar amount established for the then current calendar year by the commissioner through rules and regulations promulgated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1 et seq.*), which amount shall be equal to \$ 9,850 on July 1, 1994 and which amount shall be adjusted on July 1 every five calendar years thereafter in direct proportion to the rise or fall in the average of the Consumer Price Indices for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made; and

(b) In the case of any public work other than a public work described in paragraph (a) of this subsection, an amount equal to \$ 2,000.

(12) "Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation.

**N.J.A.C. 34:11-56.27 Prevailing wage rate required in contract**

Every contract in excess of the prevailing wage contract threshold amount for any public work to which any public body is a party or for public work to be done on property or premises owned by a public body or leased or to be leased by a public body shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workers employed in the performance of the contract and the contract shall contain a stipulation that such workers shall be paid not less than such prevailing wage rate. Such contract shall also contain a provision that in the event it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable for any excess costs occasioned thereby to the public body, any lessee to whom the public body is leasing a property or premises or any lessor from whom the public body is leasing or will be leasing a property or premises.

**N.J.S.A. 34:11-56.28 Specification of prevailing wage rate by craft in contract**

The public body, any lessee to whom the public body is leasing a property or premises and any lessor from whom the public body is leasing or will be leasing a property or premises awarding any contract for public work or otherwise undertaking any public work shall ascertain from the commissioner the prevailing wage rate in the locality in which the public work is to be performed for each craft or trade needed to perform the contract and shall specify in the contract itself what the prevailing wage rate in the locality is for each craft or trade or classification of all workers needed to perform the contract during the anticipated term thereof. Nothing in this act however shall prohibit the payment of more than the prevailing wage rate to any worker employed on a public work.

**N.J.S.A. 34:11-56.29 Record of wages paid by contractor and subcontractor**

Every contractor and subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work and such records shall be preserved for two years from date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, to any other party to the lease or agreement to lease pursuant to which the public work is done, and to the commissioner.

**N.J.S.A. 34:11-56.30 Establishment of prevailing wage rate by commissioner**

The commissioner shall determine the prevailing wage rate and forthwith shall establish the prevailing wage in the locality in which the public work is to be performed for each craft or trade or classification of all workmen needed to perform public work contracts. The prevailing wage shall be determined and computed in accordance with rules and regulations issued by the commissioner as may be required to carry out the provisions of this act; provided, however, that employer contributions for employee benefits pursuant to a then existing bona fide collective bargaining agreement shall be considered an integral part of the wage rate paid by employers of any craft or trade in the locality under consideration for the purpose of determining the prevailing wage under this act. Said wage determination shall be conclusive for a period of 2 years from date of issuance unless superseded within said 2-year period by a later determination. The commissioner shall forthwith announce all said determinations and give notice by mail of all determinations of prevailing wage rates made pursuant to this section to any representative of any craft or trade, any employer, or any representative of any group of employers who shall in writing request the commissioner so to do.

**N.J.S.A. 34:11-56.31. Powers of commissioner**

The commissioner shall have the authority to:

- (a) investigate and ascertain the wages of workmen employed in any public work in the State;
- (b) enter and inspect the place of business or employment of any employer or workmen in any public work in the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any such workmen; copy any or all of such books, registers, payrolls, and other records as he or his authorized representative may deem necessary or appropriate; and question such workmen for the purpose of ascertaining whether the provisions of this act have been and are being complied with;
- (c) require from such employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and such other information pertaining to his workmen and their employment as the commissioner, or his authorized representative may deem necessary or appropriate; and
- (d) require any employer to file, within 10 days of receipt of a request, any records enumerated in subsections (b) and (c) of this section, sworn to as to their validity and accuracy. If the employer fails to provide the requested records within 10 days, the commissioner may direct within 15 days the fiscal or financial officer charged with the custody and disbursements of the funds of the public body which contracted for the public work immediately to withhold from payment to the employer up to 25% of the amount, not to exceed \$ 100,000.00, to be paid to the employer under the terms of the



contract pursuant to which the public work is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records has been satisfied.

**N.J.S.A. 34:11-56.32 Posting of prevailing wage rates**

Contractors and subcontractors performing public work of a public body subject to the provisions of this act shall post the prevailing wage rates for each craft and classification involved as determined by the commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workmen their wages.

**N.J.S.A. 34:11-56.33 Statement by contractor of amounts due workers; deductions from payment to contractor; payments to workers**

(a) Before final payment is made by or on behalf of any public body or before any lessee to whom the public body is leasing a property or premises or any lessor from whom the public body is leasing or will be leasing a property or premises makes such payment, of any sum or sums due on a public work, it shall be the duty of the treasurer of the public body or other officer or person charged with the custody and disbursement of the funds of the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, as the case may be, to require the contractor and subcontractor to file written statements with the public body in a form satisfactory to the commissioner certifying to the amounts then due and owing from such contractor and subcontractor filing such statement to any and all workers for wages due on account of the public work, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively, which statement shall be verified by the oath of the contractor or subcontractor, as the case may be, that he has read such statement subscribed by him, knows the contents thereof, and that the same is true of his own knowledge; provided, however, that nothing herein shall impair the right of a contractor to receive final payment because of the failure of any subcontractor to comply with provisions of this act.

(b) In case any worker shall have filed a protest in writing within three months from the date of the occurrence of the incident complained of with the commissioner, objecting to the payment to any contractor to the extent of the amount or amounts due or to become due to the worker for wages for work performed on a public work, the commissioner may direct the fiscal or financial officer of the public body or other person charged with the custody and disbursements of the funds of the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, as the case may be, to deduct from the whole amount of any payment, the sum or sums admitted by any contractor in such statement or statements so filed to be due and owing by him on account of wages earned on such public work.

Such fiscal or financial officer, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, shall withhold the amount so deducted for the benefit of the worker whose wages are unpaid as shown by the verified statement filed by such contractor, and shall pay directly to any worker the amount shown by such statement to be due to him for such wages. Such payment shall thereby discharge the obligation of the contractor to the person receiving such payment to the extent of the amount thereof.

**N.J.A.C. 12:60-1.4 Scope**

(a) This chapter shall implement the Act by listing by name each craft, trade or class of workmen utilized in the various counties of the State; and

(b) This chapter shall apply to every contract in excess of \$ 14,187 awarded in whole or in part by a municipal public body and to every subcontract pursuant to said contract. It shall also apply to every contract in excess of \$ 2,000 awarded by a nonmunicipal public body and to every subcontract pursuant to said contract.

**N.J.A.C. 12:60-2.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25* et seq.

"Certified payroll record" means a payroll record which is attested to by the employer, or the owner of the company doing business as the employer, or a corporate officer of such company, or an authorized agent of the employer.

"Commissioner" means the Commissioner of Labor, or his duly authorized designee.

"Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation.

"Department" means the Department of Labor.

"Division of Wage and Hour Compliance" means the Division of Wage and Hour Compliance, New Jersey Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 08625-0389.

"Employer" means any natural person, company, firm, subcontractor or other entity engaged in public work.

"Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workmen in such craft or trade.

"Maintenance-related project" means a project related to the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

"Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. "Maintenance work" also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids and has an aggregate value exceeding \$ 50,000.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Payroll record" means a form satisfactory to the Commissioner, wherein is shown employee information such as name, address, social security number, craft or trade, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each craft or trade, gross pay, itemized deductions, and net pay paid to the employee; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the employee; and
2. Fringe benefits paid in cash to the employee.

"Persons" means any natural person, company, firm, association, corporation, contractor, subcontractor or other entity engaged in public work.

"Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workmen of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done

under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

1. Not less than 55 percent of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
2. The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

**N.J.A.C. 12:60-2A.1 Off-site manufacturing, assembly, or furnishing of materials, articles, supplies or equipment**

(a) The manufacture, assembly or furnishing of materials, articles, supplies or equipment will be subject to the Prevailing Wage Act if conducted in connection with, and at the work-site of, such public works project.

(b) Custom fabrication is subject to the Prevailing Wage Act, pursuant to P.L. 2004, c. 101, § 1 (*N.J.S.A. 34:11-56.26*), but custom fabrication shall not be subject to the requirements of this section.

(c) The work-site shall be deemed to include the following:

1. The physical place or places where the building or work called for in the public works contract, which is subject to the terms of the Prevailing Wage Act, will remain; and

2. Any other site where a significant portion of the building or work associated therewith, is constructed, provided that such site is established specifically for the performance of the contract or project.

(d) The following shall be considered to be part of the work-site of a public works project and subject to the terms of the Prevailing Wage Act:

1. Job headquarters, tool yards, batch plants, borrow pits, assembly centers and any other related manufacturing or construction site of the same contractor or a subcontractor provided that:

- i. They are dedicated exclusively or primarily, to the performance of the public works contract or building project; and

ii. They are adjacent or virtually adjacent to the site of the work as defined in (c)1 above.

(e) Not included in the site of the work are those locations which were established by a supplier of materials for a public works construction project before the opening of bids and not on the site of the work as set forth in (c)1 and 2 above.

### **N.J.A.C. 12:60-5.1 Inspections**

(a) The Commissioner, or an authorized designee, shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of employment for public works employees;

2. Question public works workmen to determine whether they are aware of violations of the prevailing wage act; and

3. Require public works employers to submit written statements, including sworn statements, concerning wages, hours, names, addresses and any other employee information as may be determined necessary by the Commissioner.

(b) If, within 10 days of a request by the Commissioner, a public works employer fails to file the material listed in (a)1 or 3 above, sworn as to its accuracy, the Commissioner may, within 15 days:

1. Direct the officer responsible for disbursement of funds for the public body which contracted for the public works project to withhold from the employer 25 percent of the amount, not to exceed \$ 100,000, due the employer under the contract for the project.

2. When the employer complies with the request for records, the Commissioner shall notify the public body, who shall immediately release the withheld funds.

(c) The public works contractors and subcontractors shall submit to the public body or lessor which contracted for the public works project the following in a form satisfactory to the Commissioner (see Appendix, incorporated herein by reference).

1. A certified payroll record on each public works project.

i. Such record shall be submitted each payroll period within 10 days of the payment of wages.

ii. The public body shall receive, file, store and make available for inspection at its normal place of business and during normal business hours the certified payroll records.

### **N.J.A.C. 12:60-6.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Apprentice" means an individual who, while performing work on a public work project, is registered, in good standing, in an apprenticeship program approved or certified by the Office of Apprenticeship in the United States Department of Labor.

"Records" means all books, registers, payrolls, and any other documentation maintained by the employer that have a bearing upon the question of wages, hours and other conditions of employment of any workmen.

### **N.J.A.C. 12:60-6.2 Responsibilities of contractors and subcontractors**

(a) A contractor or subcontractor employing one or more apprentices on a public work project shall maintain with its records written evidence that the apprentice or apprentices are registered in an approved apprenticeship program while performing work on the project.

1. The contractor or subcontractor shall make all records available for inspection by the public body awarding the contract and by the Commissioner during normal business hours.

2. The awarding body and the Commissioner shall have unencumbered access to the employees who are employed on a public work project for the purpose of interviewing and determining compliance.

(b) A contractor or subcontractor shall not create job titles and worker classifications which are not consistent with prevailing practices and existing task ratios for a specific building trades craft for the purpose of circumventing the intent of this subchapter.

### **N.J.A.C. 12:60-6.3 Ratio of apprentices to journeymen**

(a) Upon determining the prevailing wage rate and establishing the prevailing wage in the locality for each craft, trade or class of workmen needed to perform public work contracts, the Commissioner shall also determine the ratio of apprentices to journeymen for the purpose of establishing the number of workmen who may be paid the apprentice rate.

(b) If no ratio of apprentices to journeymen is set forth in the collective bargaining agreement used by the Commissioner to make his or her prevailing wage determination,

the maximum ratio of apprentices to journeymen shall be one apprentice to every four journeymen.

(c) If the prevailing collective bargaining agreement for a craft or trade does not provide for an apprentice rate, the employer shall pay the employees not less than the journeyman's rate even if an employee is registered in an apprentice program for that trade.

**N.J.A.C. 12:60-6.4 Correction of wage rate**

(a) If the Department determines that a worker who has been paid an apprentice wage rate on a project is entitled to a journeyman's rate, the Department shall conduct an audit and require the contractor or subcontractor to pay the worker an additional amount equal to the difference between the rate of an apprentice and the rate of a journeyman plus any applicable benefits the worker is entitled to as a journeyman.

**N.J.A.C. 12:60-7.1 Purpose and scope**

(a) The purpose of this subchapter is to set forth the conditions which constitute grounds for debarment from public works and Economic Development Authority (EDA) contracts, and to notify individuals of the departmental policies and procedures concerning debarment.

(b) The provisions of this subchapter shall be applicable to all contractors, subcontractors, and other persons who perform public works for any public body and EDA projects in New Jersey.

**N.J.A.C. 12:60-7.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development or his or her designee.

"Contractor" means a person who undertakes to perform a job or piece of a public works project or EDA project and who retains control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

"Debarment" means the inclusion on a Statewide list of persons who are prohibited from performing public works or EDA projects, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Entity" means a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust or organization.

"Interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant or representative. The term also includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed, or to be performed, for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment or supplies that have been or will be sold, rented or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Interest," however, does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

"Person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in public works or EDA projects.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means constructions, reconstruction, demolition, alteration, or repair work or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

"Suspension" means that an affected contractor shall not bid on or engage in any public works project effective upon the date on which he or she receives the Commissioner's Notification of Suspension Pending Debarment. Suspension shall not include public works projects bearing award dates which precede receipt of said notification.

### **N.J.A.C. 12:60-7.3 Conditions of debarment**

(a) Debarment from public works or EDA contracts shall be made only with the approval of the Commissioner, except as otherwise provided by law.

(b) The Commissioner may debar a person, after an investigation and determination that the person has failed or refused to pay the prevailing wage rate.



(c) A violation as listed in (b) above shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law. The Commissioner may consider the following factors as material in each decision to debar:

1. The record of previous violations by the person with the Division of Wage and Hour Compliance;
2. Previous cases of debarment by the Commissioner;
3. The frequency of violations by the person discovered in previous cases;
4. The significance or scale of the violations, consisting of shortfalls in wages or fringe benefits computed in audits;
5. The existence of outstanding audit(s) or failure(s) to pay;
6. Failure to respond to a request to produce records, forms, documents, or proof of payments; and
7. Submission of falsified or altered records, forms, documents, or proof of payment.

(d) The Commissioner may suspend a person pending debarment. The bases therefor shall include any or all of the following:

1. A history of any previous violation by the contractor of the New Jersey Prevailing Wage Act or Contractor Registration Act or any of their subsidiary regulations;
2. A history of a prior debarment or of a penalty imposed in a contested matter;
3. The existence of other contested prevailing wage or contractor registration matters pending against the contractor;
4. The size and scale of an outstanding audit by the Division of Wage and Hour Compliance is such as to indicate that the alleged violation by the contractor of the New Jersey Prevailing Wage Act, even absent a previous history of violations thereof, is significant; and/or
5. Aggravating factors which may include, but are not limited to:
  - i. Falsified testimony or statements;
  - ii. Attempts to evade investigations conducted by the Department;

iii. Attempts to intimidate or coerce workers from cooperating with the Department and its representatives in the investigation of the contractor;

iv. A history of not adhering to prior settlement agreements reached previously with the Department regarding the payment of wages, fees and penalties; and

v. A history of hiring subcontractors who have been found to be in violation of the Prevailing Wage Act or the Contractor Registration Act.

(e) When the Commissioner suspends a person from contracting, the person suspended shall be furnished with a written notice, which may be included in the notification of debarment, stating:

1. That suspension has been imposed, the date on which it becomes effective and the reasons therefor;

2. That if the contractor chooses to contest the suspension pending debarment, the contractor shall notify the Department in writing of that decision within 72 hours of receipt of the notification of suspension; and

3. That the suspension is for a temporary period, but that whenever debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

(f) A Departmental-level hearing on the suspension will be held before the Director of the Division of Wage and Hour Compliance, or his or her designee, within seven days of the receipt by the Department of the contractor's notification contesting the suspension.

1. The Director, or his or her designee, shall permit the contractor to explain his or her position as to why suspension should not be imposed and to present evidence expeditiously in support of that position;

2. At the conclusion of the Departmental-level hearing, the Director, or his or her designee, shall consider all of the evidence so presented and shall reevaluate the necessity of the suspension, if so warranted by the evidence; and

3. The Director, or his or her designee, shall issue a written determination upholding or reversing the suspension and the reasons for same within five business days of the hearing.

(g) If the contractor disagrees with the written determination, he or she shall appeal said determination to the Office of Administrative Law for a hearing pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.* and *52:14F-1 et seq.*, and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, in connection with the underlying debarment action.

**N.J.A.C. 12:60-7.4 Notification of debarment**

(a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:

1. That debarment is being considered;
2. The provisions of *N.J.S.A. 34:11-56.37* and *34:11-56.38*;
3. The specific details of the violations referring to employees involved by name, job classifications, dates of violations and any amount found due;
4. The public work or EDA project involved during which performance of the violations cited occurred; and
5. That the person shall have the right to appeal the debarment to the Commissioner within 15 days of the date of the notice of intent to debar. Any appeal received within the 15-day period will be filed as of the 15th day.

(b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.

(c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not filed an appeal, the person shall be listed as a debarred person.

(d) All hearings conducted pursuant to this section shall be conducted in accordance with the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1* and *N.J.A.C. 1:12B*. Where any other State department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or part.

(e) Debarment shall be for a period of three years.

**N.J.A.C. 12:60-7.5 Lists**

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

**N.J.A.C. 12:60-8.1 Purpose; scope**

(a) The purpose of this subchapter is to establish rules to effectuate *N.J.S.A. 34:11-56.25* et seq., the New Jersey Prevailing Wage Act (Act), provide sanctions for non-compliance, and to protect established wage rates.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act; and
2. Wages paid to an employee for services rendered.

**N.J.A.C. 12:60-8.2 Violations of the Act**

(a) Violations of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;

2. Fails to make, keep and preserve any records as required under the provisions of this chapter;

3. Falsifies any such record;

4. Refuses to make any such record accessible to the Commissioner upon demand;

5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;

6. Pays or agrees to pay wages at a rate less than the prevailing rate applicable under this chapter;

7. Requests, demands, or receives, either for himself or any other person, either before or after a worker is engaged in public work at a specified rate of wages, the following:

i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment; or

8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of this chapter shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than \$ 100.00 nor more than \$ 1,000;
2. Be imprisoned for not less than 10 nor more than 90 days; or
3. Be subject to both the fine and imprisonment.

(c) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

### **N.J.A.C. 12:60-8.3 Administrative penalties**

(a) As an alternative to or in addition to any other sanctions provided for in *N.J.A.C. 12:60-8.2*, pursuant to *N.J.S.A. 34:11-56.25* et seq. when the Commissioner finds that an employer has violated that Act, the Commissioner is authorized to assess and collect administrative penalties in the amounts that follow:

1. First violation--not more than \$ 2,500.
2. Second and subsequent violations--not more than \$ 5,000.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-working day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.

3. All wages due, fees and penalties shall be paid within 30 days of the date of the final order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the "Commissioner of Labor and Workforce Development, Prevailing Wage Trust Fund." All payments shall be made by

certified check or money order, or payable in a form suitable to the Commissioner of Labor and Workforce Development.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations.

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and
5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

**N.J.A.C. 12:60-8.4 Administrative fees**

(a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner directly to the employee or employees affected.

(b) The employer shall also pay the Commissioner an administrative fee on all payments due to employees pursuant to Articles 1 and 2 of Chapter 11 of Title 34 of the revised statutes.

(c) A schedule of the administrative fees is set forth in Table 8.4(c) below:  
Table 8.4(c)  
Schedule of Administrative Fees

1. First violation--10 percent of amount of any payment made to the Commissioner pursuant to this chapter;
2. Second violation--18 percent of amount of any payment made to the Commissioner pursuant to this chapter;
3. Third and subsequent violations--25 percent of amount of any payment made to the Commissioner pursuant to this chapter.

**N.J.A.C. 12:60-8.5 Interest**

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in *New Jersey Court Rules, 4:42-11*.

**N.J.A.C. 12:60-8.6 Hearings**

(a) No assessment of wages, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the wages, fees and/or penalties, and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*. The filing of a request for a hearing regarding wages, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Prevailing Wage Act, including debarment pursuant to *N.J.S.A. 34:11-56.37* and *56.38*.

(b) All requests for a hearing shall be reviewed by the Division of Wage and Hour Compliance to determine if the reason for dispute could be resolvable at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, reschedule a hearing.

(f) If the Commissioner or his or her designee does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.

(g) Payment of the wages, fees and/or penalties is due when a final agency determination is issued.

(h) Upon final determination, the wages, fees and penalties may be recovered with cost in a summary proceeding commenced by the Commissioner.

**N.J.A.C. 12:60-8.7 Discharge or discrimination against employee making complaint**

(a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the public body, or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$ 100.00 nor more than \$ 1,000.00.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a.24 to assess and collect administrative penalties as provided for in *N.J.A.C. 12:60-8.3*.

**N.J.S.A. 34:11-56.50. Definitions relative to public works contractors**

As used in this act:

"Commissioner" means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (*C.34:11-56.25 et seq.*), and includes any subcontractor or lower tier subcontractor of a contractor as defined herein.

"Department" means the Department of Labor and Workforce Development.

"Director" means the Director of the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development.

"Worker" includes laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of



services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site.

**N.J.S.A. 34:11-56.51. Registration required for contractors, subcontractors**

No contractor shall bid on any contract for public work as defined in section 2 of P.L. 1963, c. 150 (*C. 34:11-56.26*) unless the contractor is registered pursuant to this act. No contractor shall list a subcontractor in a bid proposal for the contract unless the subcontractor is registered pursuant to P.L. 1999, c. 238 (*C. 34:11-56.48 et seq.*) at the time the bid is made. No contractor or subcontractor, including a subcontractor not listed in the bid proposal, shall engage in the performance of any public work subject to the contract, unless the contractor or subcontractor is registered pursuant to that act.

**N.J.S.A. 34:11-56.52. Contractor to register in writing; form; requisites**

a. A contractor shall register in writing with the department on a form provided by the commissioner. The form shall require the following information:

- (1) The name, principal business address and telephone number of the contractor;
- (2) Whether the contractor is a corporation, partnership, sole proprietorship, or other form of business entity;
- (3) If the contractor's principal business address is not within the State, the name and address of the contractor's custodian of records and agent for service of process in this State;
- (4) The name and address of each person with a financial interest in the contractor and the percentage interest, except that if the contractor is a publicly-traded corporation, the contractor shall supply the names and addresses of the corporation's officers;
- (5) The contractor's tax identification number and unemployment insurance registration number; and
- (6) Any other relevant and appropriate information as determined by the commissioner.

b. At the time of registration, and subsequently upon request, the contractor shall submit to the commissioner documentation demonstrating that the contractor has worker's compensation insurance coverage for all workers as required by law.

**N.J.S.A. 34:11-56.53. Nonrefundable registration fees**

a. The contractor shall pay an initial annual non-refundable registration fee of \$ 300 to the commissioner. The non-refundable registration fee for the second annual registration shall be \$ 300. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$ 500.

b. A contractor who is performing public work on the effective date of this act shall submit the registration application form and fee to the commissioner within 30 days of the effective date of this act.

c. Registration fees collected pursuant to this act shall be applied toward the enforcement and administration costs of the Division of Workplace Standards, Office of Wage and Hour Compliance, Public Contracts section and Registration section within the department.

**N.J.S.A. 34:11-56.54. Issuance of certificate of registration**

Upon receipt of the fee, form and documentation required by section 5 of this act [C.34:11-56.52], the commissioner shall issue a certificate of registration to the contractor. A registration certificate shall be valid for one calendar year from the date of registration. Registrations shall be renewed not less than 30 days before the expiration date of the immediately preceding registration.

**N.J.S.A. 34:11-56.55. Submission of all subcontractor registration certificates by contractor**

Each contractor shall, after the bid is made and prior to the awarding of the contract, submit to the public entity the certificates of registration for all subcontractors listed in the bid proposal. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section.

**N.J.S.A. 34:11-56.56. Violation; disorderly persons offense; other penalties; suspension; hearing**

a. A contractor who:

(1) willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act;

(2) fails to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.);

(3) falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand;

(4) refuses to furnish a sworn statement of such records or any other information required for the enforcement of this act to the commissioner upon demand;

(5) pays or agrees to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (*C.34:11-56.25 et seq.*); or

(6) otherwise violates any provision of this act, shall be guilty of a disorderly persons offense.

b. As an alternative to or in addition to sanctions provided by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (*C.34:11-56.25 et seq.*), the commissioner may, after providing the contractor with notice of any alleged violation of this act, and with an opportunity to request a hearing before the commissioner or his designee:

(1) Deny renewal, revoke or suspend the registration of a contractor for a period of not more than five years; or

(2) Require a contractor, as a condition of initial or continued registration, to provide a surety bond payable to the State. The surety bond shall be for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to or otherwise comply with the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (*C.34:11-56.25 et seq.*) or this act. The surety bond shall be in the amount and form that the commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$ 10,000 per worker. The surety bond shall be issued by a surety that meets the requirements of *N.J.S.2A:44-143*.

c. The director may order the immediate suspension of a contractor's registration, prior to a formal hearing on the revocation of the contractor's registration pursuant to subsection b. of this section, if the director determines that ordering an immediate suspension is in the public interest and provided that the contractor is afforded an opportunity to contest the immediate suspension in the following manner:

(1) The director shall notify the contractor in writing of the immediate revocation and the contractor's rights under the subsection.

(2) The contractor may notify the director of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt of immediate suspension notification.

(3) Within seven business days of receipt of the notification from the contractor pursuant to paragraph (2) of this subsection, the director shall grant the contractor a hearing to contest the immediate suspension. The director shall permit the contractor to present evidence at the hearing.

(4) The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's immediate suspension. The decision shall include the grounds for upholding or reversing the contractor's immediate suspension.

(5) If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1* et seq.).

d. If the director intends to impose an immediate suspension as set forth in subsection c. of this section, based upon a rebuttable presumption as set forth in section 14 of P.L.1963, c.150 (*C.34:11-56.38*), the director shall provide the contractor with a notice of intent to suspend and the contractor may request a hearing before the Director of the Division of Wage and Hour Compliance within 72 hours of the receipt of the notice of intent to suspend in order to present evidence expeditiously in support of the position that the suspension should not be imposed. The suspension shall not take effect prior to the expiration of the 72-hour opportunity to request a hearing. If such a request is not made, the suspension shall take effect at the end of the 72-hour period. If such a request is made, the suspension shall take effect only after the director conducts the hearing.

e. If the director orders the immediate suspension of a contractor's registration pursuant to subsection b. of this section, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

#### **N.J.A.C. 12:62-2.1 Registration required**

(a) No contractor shall bid on any contract for public work unless the contractor is registered pursuant to the Act. In addition:

1. No contractor shall list a subcontractor, including a contractor/subcontractor who is involved in off-site custom fabrication, as defined in N.J.S.A. 34:11-56.26, in a bid proposal for a public works contract unless the subcontractor as required is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the Public Works Contractor Registration Act, at the time the bid is submitted to the public entity; and

2. No contractor or subcontractor not listed on the bid proposal shall engage in the performance of any public work project unless the contractor or subcontractor is registered pursuant to the Act.

(b) Any contractor which seeks to register under the Act shall apply to the Division of Wage and Hour Compliance, within the Department of Labor and Workforce

Development. For this purpose, the Department shall prepare a "New Jersey Department of Labor and Workforce Development Application for Public Works Contractor Registration." This form shall be available from the Department.

(c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

1. The name, principal business address, telephone and fax number as well as any e-mail address of the business;

2. Whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or other form of a business entity;

3. The name and address of the custodian of records and agent for service of process within the State of New Jersey;

4. The name, addresses of residence, and telephone number of each person with a financial interest in the business and the percentage of interest, except that if the business is a publicly traded corporation, the contractor shall supply the names and addresses of residence of the corporation's officers;

5. The business' Federal Employer Identification Number and State of New Jersey Taxpayer Identification Number;

6. A history of previous and/or current labor law violations and the final dispositions of such violations and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects;

7. Proof of workers' compensation insurance; and

8. Any other relevant and appropriate information from a particular applicant as determined by the Commissioner.

(d) The contractor shall pay an initial, non-refundable, annual registration fee of \$ 300.00 to the Commissioner. The non-refundable fee for the second annual registration shall be \$ 300.00. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$ 500.00. However, a two-year registration will only be granted if the applicant has not

violated the Act and/or the Prevailing Wage Act or these rules during the period of licensure preceding submission of the renewal application.

(e) An applicant shall fully and accurately complete all relevant parts of the Application for Public Works Contractor Registration. Failure to provide a complete application shall result in rejection.

(f) An applicant who fails to provide specifically requested additional information or documentation shall be considered not in compliance with the Act and shall be subject to rejection.

(g) If the applicant knowingly supplies incomplete or inaccurate information to the Department in connection with his or her application, he or she shall be disqualified under these rules, barred from reapplying for registration for a period of up to one year from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12:62-2.3, 2.4 and 2.5.

### **ASBESTOS CONTROL AND LICENSING**

The statutes and regulations pertaining to asbestos control and licensing are available at [http://lwd.dol.state.nj.us/labor/lssc/laws/Asbestos\\_law.html](http://lwd.dol.state.nj.us/labor/lssc/laws/Asbestos_law.html)

#### **N.J.S.A. 34:5A-34. Definitions**

As used in this act:

a. "Asbestos" means the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonitegrunerite); anthophyllite; termolite; and actinolite;

b. "Asbestos-containing material" means any material which contains more than 1% asbestos by weight;

c. "Employee" means any person suffered or permitted to work by an employer;

d. "Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work. In the case of a corporation, the officers of the corporation and any agents having the management of the corporation shall be deemed to be employers of the employees of the corporation for the purposes of this act. This term shall apply to private

employers and to the State, its political subdivisions, and any boards, commissions, schools, institutions, or authorities created or recognized thereby;

e. "Friable" means asbestos-containing material that when dry may be crumbled, pulverized or reduced to powder by hand pressure, and includes previously nonfriable asbestos-containing material after that material becomes damaged to the extent that when dry it may be crumbled, pulverized or reduced to powder by hand pressure.

**N.J.S.A. 34:5A-35. Specifications required**

Any private or public agency letting contracts for any activity involving the application, enclosure, repair, removal or encapsulation of asbestos in any structure for which a license is required shall include in these contracts specifications that these contracts are to be performed by contractors and subcontractors licensed by the Commissioner of Labor.

**N.J.S.A. 34:5A-36. License for asbestos work; exception**

No employer shall either directly or indirectly perform any of the functions of application, enclosure, removal, or encapsulation of asbestos in any structure, nor enter into any contract with the owner or the owner's representative for the employer to perform such work or services, without first obtaining a nontransferable license from the Commissioner of Labor, except private employers subject to the federal Occupational Safety and Health Act of 1970 (29 U.S.C. s. 651 et seq.) who use their own employees to apply, enclose, remove, repair, or encapsulate asbestos in their own facility, or as otherwise exempted pursuant to section 7 of P.L.1994, c.21 (C.34:5A-43).

This license shall be in writing, shall be dated when issued, shall contain an expiration date, and shall be signed by the commissioner. The commissioner may issue employer licenses with such conditions as the commissioner deems necessary, and as adopted by regulation, specifying the scope of work authorized by such license. No license shall be issued by the commissioner unless the employer has completed a course of training certified by, and satisfactorily has completed an examination approved by, the Department of Health. The license shall give the name and address of the employer to whom it is issued. Licensed employers shall post a sign indicating, in letters more than four inches in height, "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK," readily visible outdoors at the work site. The actual license shall be readily available at the work site for inspection by representatives of the Commissioners of Labor and Health and the contracting agency.

**N.J.S.A. 34:5A-37. Performance permit, exception**

Every employee performing functions of application, enclosure, repair, removal, or encapsulation of asbestos, with the exception of employees of an employer subject to the federal Occupational Safety and Health Act of 1970 (29 U.S.C. s. 651 et seq.) applying, enclosing, repairing, removing, or encapsulating asbestos at the employer's own facility, or as otherwise exempted pursuant to section 7 of P.L.1994, c.21 (C.34:5A-43), shall first procure from the Commissioner of Labor a performance permit. No permit shall be issued unless the employee has taken a course of training in asbestos control and removal, passed an examination thereon, and demonstrated the ability to perform asbestos control and removal safely, in accordance with the current state-of-the-art technology. The Commissioner of Health shall certify the course of training and approve the examination necessary for a permit. This permit shall be in writing, shall be dated when issued, shall contain an expiration date, and shall be signed by the Commissioner of Labor. It shall give the name and address of the employee to whom it is issued. The permit shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioners of Labor and Health and the contracting agency. The Commissioner of Labor may place reasonable conditions on employee permits which specify the scope of work authorized by such permit.

**N.J.A.C. 12:120-1.4 Scope**

(a) This chapter shall apply to:

1. Licensing of employers;
2. Training, examination and issuance of permits to workers;
3. Training, examination and issuance of permits to supervisors;
4. Certifying of training agencies and courses for the above job classifications;
5. Employers having a contractual relationship for asbestos work with the owner of a building or structure or equipment for the application, enclosure, encapsulation, repair, or removal of asbestos-containing material; and



6. Any public or private building, structure or equipment on which asbestos work is performed, except as provided in (b) below.

(b) This chapter shall not apply to:

1. The limited repair of asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released;

2. The stripping, limited repair, or removal of three feet or less of asbestos-containing material from piping;

3. The stripping, limited repair or removal of three square feet or less of asbestos-containing material from any duct, boiler, tank, structural member, or similar equipment;

4. The sale or storage of asbestos;

5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials in all but demolition projects;

6. The licensure of private employers subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair or remove asbestos-containing material in their own facility; or

7. The permitting of employees subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., who apply, enclose, encapsulate, repair or remove asbestos-containing materials in their employer's own facility.

### **N.J.A.C. 12:120-3.2. Compliance**

(a) Every employer falling within the scope of this chapter, who performs any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enters into any contract with the owner or owner's representative for the employer to perform such work or services, shall comply with the provisions of this chapter and shall be issued a nontransferable license by the Commissioner of Labor and Workforce Development.

(b) For the purpose of determining under (a) above whether an employer is performing any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or entering into any contract with the owner or owner's representative for the employer to perform such work and, therefore, whether the employer is required to comply with the provisions of this chapter and be issued a nontransferable license by the Commissioner of Labor and Workforce Development, the Department of Labor and Workforce Development and the Department of Health and Senior Services shall analyze all bulk samples obtained to determine the presence of asbestos utilizing the "Test Method -- Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, incorporated herein by reference, as amended and supplemented.

1. The Department of Labor and Workforce Development and the Department of Health and Senior Services shall analyze Category I non-friable asbestos containing material and other non-friable organically bound material utilizing the "Test Method -- Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, in the manner prescribed within the Appendix to this chapter.

(c) Every employee falling within the scope of this chapter who performs the functions of application, enclosure, repair, removal or encapsulation of asbestos shall procure a performance permit issued by the Commissioner of Labor and Workforce Development pursuant to this chapter.

(d) Every employer and employee shall take all prudent measures to comply with written recommendations made by the Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services, as the case may be.

#### **N.J.A.C. 12:120-4.2 Exempted activities**

(a) The Commissioner of Health and Senior Services may exempt from the license requirements those designated asbestos-related activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health and Senior Services for review at least 10 calendar days prior to the beginning of such work.

(b) These exempted activities involve non-friable asbestos containing material that is not rendered friable by the activity.

**N.J.A.C. 12:120-7.2 Notification requirements**

(a) Every employer under the scope of this subchapter who plans to perform asbestos work in New Jersey shall submit a written notification of intent to perform asbestos work at least 10 calendar days prior to beginning such work on forms specified by the Department of Health and Senior Services except where such work is exempted at N.J.A.C. 12:120-1.4(b) (8:60-1.4(b)).

1. The date of submission of the notice is determined to be the date as postmarked by the United States Postal Service on the transmittal envelope.

2. If the postmark is not legible, or if metered mail is used, the date of submission of the notice is determined to be the date of receipt by either the Commissioner of Labor and Workforce Development or Health and Senior Services.

3. If an earlier mailing date is established by proof of mailing with a recognized United States Postal Service receipt, the date of submission of the notice is determined to be the established date.

4. The pick-up date of a recognized overnight delivery or courier service shall be deemed equivalent to a United States Postal Service postmark.

5. Facsimile transmissions of written notifications of intent to perform asbestos work are only accepted as submissions where emergency circumstances are warranted pursuant to this subchapter.

(b) The written notification required by (a) above shall include:

1. The name, address, and telephone number of the licensee;
2. The license number and type of license held by the licensee;
3. The name and address of the owner of the facility;
4. The location and description of the facility;
5. A description of the asbestos work to be performed;
6. The starting and scheduled completion dates of the asbestos work;

7. The name and address of the waste disposal site where the asbestos-containing material will be disposed;

8. The name, address and New Jersey Waste Hauler identification number of the registered waste hauler;

9. A \$ 200.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor and Workforce Development); and

10. Any other relevant information which the Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services, as the case may be, determines to be necessary.

(c) Amended written notifications shall be submitted in accordance with and pursuant to N.J.A.C. 12:120-7.2(a) and (b) and 8:60-7.2(a) and (b). Amended notifications to the Commissioner of Labor and Workforce Development and the Commissioner of Health and Senior Services are required when:

1. The starting date is delayed beyond the scheduled completion date as submitted on the initial notification;

2. The scheduled completion date will extend beyond the scheduled completion date as submitted on the initial notification:

3. The scope or description of the asbestos work to be performed for the facility changes; or

4. Any other items as required pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b) that may change.

(d) The Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services, as the case may be, may allow less than 10 calendar days prior notification where emergency circumstances warrant less than a 10 calendar day prior notification.

1. Where emergency circumstances warrant less than a 10 calendar day prior notification, an employer shall still be required to adhere to the remaining requirements of N.J.A.C. 12:120-7.2(a) and (b) and 8:60-7.2(a) and (b) when it plans to perform asbestos work in New Jersey.

2. To enable the Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services to determine whether a waiver of the 10 calendar day prior notification may be granted, the notifying party shall:

i. Submit a written explanation from the facility owner or from the third party environmental engineer representing the facility owner to both the Commissioner of Labor and Workforce Development and the Commissioner of Health and Senior Services which details:

(1) The unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action; and

(2) The impact upon the facility owner should a waiver of the 10 calendar day prior notification not be granted.

ii. By facsimile transmission or express delivery, submit a written notice for the emergency circumstance pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b).

3. A request for a waiver of the 10 calendar days prior notification may be reviewed for approval by the Commissioner of Labor and Workforce Development or Health and Senior Services when received by facsimile transmission or express delivery. Only after the Commissioner of Labor and Workforce Development or Health and Senior Services has determined and has authorized that the emergency circumstance warrants a waiver, may the asbestos work proceed as notified.

(e) Written notifications required pursuant to this subchapter shall be submitted to:

New Jersey Department of Labor and Workforce Development  
Asbestos Control and Licensing Section

1 John Fitch Plaza, 3rd Floor

PO Box 392

Trenton, NJ 08625-0392

and

New Jersey Department of Health and Senior Services

Consumer and Environmental Health Services

PO Box 369

Trenton, NJ 08625-0369

**APPENDIX 3.5:**  
**NEW JERSEY DEPARTMENT OF HEALTH**

The New Jersey Department of Health (DOH) provides comprehensive general information for asbestos detection, removal, management and disposal activities. The DOH is the lead agency for the asbestos and environmental health information in New Jersey and has received partial authorization from the United States Environmental Protection Agency (EPA) to administer a state program for asbestos workers and supervisors. Under N.J.A.C. 8:60, the DOH administers the asbestos training and certification activities.

**N.J.A.C. 8:60 Scope**

(a) This chapter shall apply to:

1. Licensing of employers;
2. Training, examination and issuance of permits to workers;
3. Training, examination and issuance of permits to supervisors;
4. Certifying of training agencies and courses for the above job classifications;
5. Employers having a contractual relationship for asbestos work with the owner of a building or structure or equipment for the application, enclosure, encapsulation, repair, or removal of asbestos-containing material; and
6. Any public or private building, structure or equipment on which asbestos work is performed, except as provided in (b) below.

(b) This chapter shall not apply to:

1. The limited repair of asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released;
2. The stripping, limited repair, or removal of three feet or less of asbestos-containing material from piping;

3. The stripping, limited repair or removal of three square feet or less of asbestos-containing material from any duct, boiler, tank, structural member, or similar equipment;

4. The sale or storage of asbestos;

5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials in all but demolition projects;

6. The licensure of private employers subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair or remove asbestos-containing material in their own facility;  
or

7. The permitting of employees subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., who apply, enclose, encapsulate, repair or remove asbestos-containing materials in their employer's own facility.

### **N.J.A.C. 8:60-3.2. Compliance**

(a) Every employer falling within the scope of this chapter, who performs any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enters into any contract with the owner or owner's representative for the employer to perform such work or services, shall comply with the provisions of this chapter and shall be issued a nontransferable license by the Commissioner of Labor and Workforce Development.

(b) For the purpose of determining under (a) above whether an employer is performing any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or entering into any contract with the owner or owner's representative for the employer to perform such work and, therefore, whether the employer is required to comply with the provisions of this chapter and be issued a nontransferable license by the Commissioner of Labor and Workforce Development, the Department of Labor and Workforce Development and the Department of Health and Senior Services shall analyze all bulk samples obtained to determine the presence of asbestos utilizing the "Test Method -- Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, incorporated herein by reference, as amended and supplemented.

1. The Department of Labor and Workforce Development and the Department of Health and Senior Services shall analyze Category I non-friable asbestos containing material and other non-friable organically bound material utilizing the "Test Method -- Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, in the manner prescribed within the Appendix to this chapter.

(c) Every employee falling within the scope of this chapter who performs the functions of application, enclosure, repair, removal or encapsulation of asbestos shall procure a performance permit issued by the Commissioner of Labor and Workforce Development pursuant to this chapter.

(d) Every employer and employee shall take all prudent measures to comply with written recommendations made by the Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services, as the case may be.

**N.J.A.C. 8:60-4.2 and 4.5 Exempted activities**

(a) The Commissioner of Health may exempt from the license requirements those designated asbestos-related activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

(b) These exempted activities involve non-friable asbestos containing material that is not rendered friable by the activity.



**APPENDIX 3.6:**  
**NEW JERSEY DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION**  
**PROGRAM**

**Link to the Department of Agriculture Rules**

<http://nj.gov/agriculture/divisions/anr/pdf/Rules2006.pdf>

**Authority**

The Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) requires land disturbances which meet the definition of a “project” to secure soil erosion and sediment control plan certification prior to the initiation of the land disturbance.

N.J.S.A. 4:24-41

- a. “Project” means any disturbance of more than 5,000 square feet of the surface area of land (1) for the accommodation of construction for which the State Uniform Construction Code would require a construction permit, except that the construction of a single-family dwelling unit shall not be deemed a ‘project’ under this act unless such unit is part of a proposed subdivision, site plan, conditional use, zoning variance, planned development or construction permit application involving two or more such single-family dwelling units; (2) for the demolition of one or more structures; (3) for the construction of a parking lot; (4) for the construction of a public facility; (5) for the operation of any mining or quarrying activity; or (6) for the clearing or grading of any land for other than agricultural or horticultural purposes.

**Procedure**

No Soil Disturbance – For either a demolition of structure or structure down by storm involving no soil disturbance in excess of 5,000 square feet, the Soil Erosion and Sediment Control Act would not apply.

Demolition Permit required - Demolition activities with accompanied soil disturbance of 5,000 square feet or greater requires soil erosion and sediment control plan certification by the local soil conservation district prior to the issuance of a demolition permit by the local construction code official. Certification may either be through the proposed, expedited process (attached) when applicable or through the standard certification process. At the conclusion of debris removal, the property should be stabilized in accordance with the Standards for Soil Erosion and Sediment Control and a Report of Compliance inspection scheduled with the local District.

No Demolition Permit required - Demolition or structure down by storm activities with an accompanied soil disturbance of 5,000 square feet or greater requires soil erosion and

sediment control plan certification prior to any land disturbing activities. Certification may either be through the proposed, expedited process (attached) when applicable or through the standard certification process. At the conclusion of debris removal, the property should be stabilized in accordance with the Standards for Soil Erosion and Sediment Control and a Report of Compliance inspection scheduled with the local District. Close coordination between the local municipal officials and soil conservation district staff is essential to identify potential activities which may fall into this category.

**2:90-1.3 STANDARDS**

(a) The State Soil Conservation Committee adopts and hereby incorporates into these rules by reference as standards for soil erosion and sediment control those standards published in the "Standards for Soil Erosion and Sediment Control in New Jersey", and identified as adopted or revised on April 12, 1999 as the technical basis for local soil conservation district certification of soil erosion and sediment control plans. Specifically, these standards include the following:

1. Vegetative Standards	
Acid Soil Management .....	1-1
<b>Adopted April 12, 1999</b>	
Dune Stabilization.....	2-1
<b>Revised April 12, 1999</b>	
Maintaining Vegetation .....	3-1
<b>Revised April 12, 1999</b>	
Permanent Vegetative Cover for Soil Stabilization .....	4-1
<b>Revised April 12, 1999</b>	
Stabilization with Mulch Only.....	5-1
<b>Revised April 12, 1999</b>	
Stabilization with Sod.....	6-1
<b>Revised April 12, 1999</b>	
Temporary Vegetative Cover for Soil Stabilization .....	7-1
<b>Revised April 12, 1999</b>	
Topsoiling.....	8-1
<b>Revised April 12, 1999</b>	
Tree Protection During Construction.....	9-1
<b>Revised April 12, 1999</b>	
Trees, Shrubs and Vines .....	10-1
<b>Revised April 12, 1999</b>	
2. Engineering Standards	
Channel Stabilization.....	11-1
<b>Revised April 12, 1999</b>	
Conduit Outlet Protection .....	12-1
<b>Revised April 12, 1999</b>	
Detention Basin.....	13-1
<b>Revised April 12, 1999</b>	
Dewatering.....	14-1
<b>Adopted April 12, 1999</b>	
Diversions .....	15-1
<b>Revised April 12, 1999</b>	
Dust Control.....	16-1
<b>Revised April 12, 1999</b>	
Grade Stabilization Structure.....	17-1

<b>Revised April 12, 1999</b>	
Grassed Waterway .....	18-1
<b>Revised April 12, 1999</b>	
Land Grading .....	19-1
<b>Revised April 12, 1999</b>	
Lined Waterway .....	20-1
<b>Revised April 12, 1999</b>	
Offsite Stability Analysis .....	21-1
<b>Adopted April 12, 1999</b>	
Parking Lot Storage .....	22-1
<b>Revised April 12, 1999</b>	
Riprap .....	23-1
<b>Revised April 12, 1999</b>	
Rooftop Storage .....	24-1
<b>Revised April 12, 1999</b>	
Sediment Barrier .....	25-1
<b>Revised April 12, 1999</b>	
Sediment Basin .....	26-1
<b>Revised April 12, 1999</b>	
Slope Protection Structures .....	27-1
<b>Revised April 12, 1999</b>	
Soil Bioengineering .....	28-1
<b>Adopted April 12, 1999</b>	
Stabilized Construction Access .....	29-1
<b>Revised April 12, 1999</b>	
Storm Sewer Inlet Protection .....	30-1
<b>Revised April 12, 1999</b>	
Stream Crossing .....	31-1
<b>Adopted April 12, 1999</b>	
Subsurface Drainage .....	32-1
<b>Revised April 12, 1999</b>	
Traffic Control .....	33-1
<b>Revised April 12, 1999</b>	
Turbidity Barrier .....	34-1
<b>Adopted April 12, 1999</b>	
Underground Detention Storage .....	35-1
<b>Revised April 12, 1999</b>	
3. Stormwater Runoff Treatment Standards	
Dry Wells .....	36-1
<b>Adopted April 12, 1999</b>	
Extended Detention Basin .....	37-1
<b>Adopted April 12, 1999</b>	
Infiltration Structures .....	38-1
<b>Adopted April 12, 1999</b>	
On-Line Water Quality Storm Sewer Catch Basin .....	39-1

**Adopted April 12, 1999**

Sand Filters ..... 40-1

**Adopted April 12, 1999**

Vegetative Filter Strip ..... 41-1

**Adopted April 12, 1999**

Wet Ponds ..... 42-1

**Adopted April 12, 1999**

4. Copies of the Standards may be obtained by contacting the State Soil Conservation Committee or any of the soil conservation districts as follows:

- i. Bergen County Soil Conservation District;
- ii. Burlington County Soil Conservation District;
- iii. Camden County Soil Conservation District;
- iv. Cape-Atlantic Soil Conservation District (Cape May and Atlantic Counties);
- v. Cumberland County Soil Conservation District
- vi. Freehold Soil Conservation District (Middlesex and Monmouth Counties);
- vii. Gloucester County Soil Conservation District;
- viii. Hudson, Essex and Passaic Soil Conservation District (Hudson, Essex and Passaic Counties);
- ix. Hunterdon County Soil Conservation District;
- x. Mercer County Soil Conservation District;
- xi. Morris County Soil Conservation District;
- xii. Ocean County Soil Conservation District;
- xiii. Salem County Soil Conservation District;
- xiv. Somerset-Union Soil Conservation District (Somerset and Union Counties);
- xv. Sussex County Soil Conservation District;
- xvi. Warren County Soil Conservation District.

(b) Where it can be satisfactorily demonstrated by the applicant that unique or innovative control measures or procedures not specified in this chapter may be applicable to specific sites, such measures may be proposed for consideration and utilized subject to approval by the soil conservation district and the State Soil Conservation Committee. To secure such approval, a written request shall be sent to the soil conservation district and State Soil Conservation Committee describing the unique or innovative control measure or procedure and its proposed function or use on the project. Such approval may be granted only where it is determined that strict application of the standards as herein specified will not result in the most practical and effective control of soil erosion, sedimentation and stormwater damages.

(c) The location address, and telephone number of the local soil conservation districts may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, N.J. 08625, 609-292-5540.

**APPENDIX 4:**  
**GUIDANCE**

**APPENDIX 4.1:**  
**USEPA**

[http://www.iowadnr.gov/portals/idnr/uploads/air/insidednr/asbestos/asbestos\\_guidelines.pdf](http://www.iowadnr.gov/portals/idnr/uploads/air/insidednr/asbestos/asbestos_guidelines.pdf)

[www.epa.gov/sandy/pdf/R2asbestos.pdf](http://www.epa.gov/sandy/pdf/R2asbestos.pdf) “Guidelines for Catastrophic Emergency Situations Involving Asbestos” December 2009

(Excerpt from “Guidelines for Catastrophic Emergency Situations Involving Asbestos” December 2009; page 31)

In the aftermath of a catastrophic event, many buildings including single family homes within the affected area may be badly damaged and need to be demolished. Though the definition of “facility” excludes residences that have four or fewer dwelling units, when residences are on the same site or they meet the criteria to be considered an installation, they are subject to the demolition, renovation, and disposal requirements. After a catastrophic event, the demolition activities may be carried out by government agencies or contractors (often funded with public funds) and these demolitions are part of a larger project as opposed to a demolition by an individual. Under such circumstances, the demolition or renovation of single family homes is covered. Residences that are part of an installation or larger project are subject to the Asbestos NESHAP requirement.

In many cases, a contractor may be carrying out multiple demolitions involving buildings including single family homes through a contractual arrangement with a government organization. In such situations, single family homes or buildings with four or fewer dwelling units within the area of destruction are considered to be an installation and are subject to the asbestos NESHAP regulation.

**Refrigerant Removal from Appliances**

EPA regulations at 40 CFR 82.156 require that appliances containing refrigerants and substitute refrigerants must have all refrigerants/substitutes removed prior to disposal or recycling. Below is the protocol for handling these appliances from houses damaged by Superstorm Sandy.

### Protocol for Handling Appliances containing Refrigerants:

1. Local governments should require contractors demolishing structures, to the greatest extent practicable, to remove and properly handle appliances which include refrigeration equipment, freezers, window air conditioners, dehumidifiers, etc.
2. Refrigerants/substitutes shall be removed from split systems (central ACs) prior to demolition if it can be done safely. Outside condensing units shall then be removed and sent to an appropriate collection site.
3. Air Sampling shall continue to be conducted during the decontamination process of the appliances.
4. If these appliances could not safely be removed prior to demolition, the appliances shall be decontaminated after demolition by applying water to remove all visible debris from the surfaces. These appliances shall be taken to a facility for ultimate refrigerant removal and recycling.
5. All recovered refrigerant and substitute refrigerant shall be sent to an EPA-certified reclaimer or to a destruction facility using approved destruction technology.

### **Notifications to Communities**

It is important for people that could be potentially impacted by demolition activities to be informed beforehand so that they have a full understanding of what is happening in their community and what steps are being taken to protect them. Municipalities shall develop and implement a plan to notify residents and businesses that are located within a two block radius that demolition activities will be taking place, providing as much advanced notice as possible.

This notification should include:

- General information that explains that houses in the area are slated for demolition because they are structurally unsound and that there is the potential that they contain asbestos.
- General information about the risks posed by asbestos, with an explanation that this risk is related to asbestos that can be inhaled.

- An explanation of steps that are being taken to reduce the risk of the spread of asbestos. This should include a description of techniques such as constant wetting to prevent the asbestos from getting into the air where it can be inhaled, bulk sampling and/or air monitoring and steps to ensure that debris that could contain asbestos is being disposed of properly.
- The exact location(s), date and the expected duration of the demolition work.
- A local point of contact in case the residents or business employees have concerns.

The municipality shall retain documentation of notification procedures followed.

### **Required Air Monitoring Protocol**

- Perimeter air monitoring for respirable dust and asbestos fibers must be performed at locations up wind and downwind surrounding the work site, at a minimum, while the demolition work is ongoing. The number of asbestos air sampling locations must be sufficient to monitor the entire area where demolition work is ongoing.
- Asbestos air monitoring will follow NIOSH 7400 (Phase Contrast Microscopy—PCM) sampling method.
- Asbestos air samples will be analyzed daily with results being made available to the NJDOH by the following work day no later than 4:00 PM.
- If asbestos air sample results indicate any airborne asbestos at or above 0.010 fibers per cubic centimeter (f/cc) the work shall temporarily cease. The contractor must evaluate the work practices to determine the cause of the elevated readings and implement corrective measure to reduce the fiber levels. Corrective measures may include but not limited to, increased wetting or altering demolition procedures.
- Any asbestos air sampling results from PCM exceeding the action level of 0.010 f/cc for total fibers shall be analyzed by transmission electron microscopy (TEM) using NIOSH 7402 sampling method and made available to the NJDOH by the second day after collection of the sample(s) no later than 4:00 PM. If it is determined that the elevated readings are in fact due to the excessive levels of asbestos fibers leaving the perimeter of the work site, more aggressive suppression measures must be implemented. Corrective



measures may include but not limited to, increased wetting or altering demolition procedures.

- A copy of the asbestos air sampling results will be forwarded daily to the DOH.
- In addition to the air fiber monitoring, aerosol dust monitors must be installed around the demolition and debris handling work area to measure total particulates.
- The number of total dust monitoring locations must be sufficient to monitor the entire area where demolition and debris handling work is ongoing.
- The aerosol dust monitor(s) utilized shall be alarmed and capable of data logging
- The action level for the perimeter dust monitoring is background particulate concentration plus 150 ug/m<sup>3</sup>.
- If during demolition activities the action level is exceeded for two consecutive readings or 10 minutes, demolition activities shall be halted and work practices re-evaluated. Corrective measures, including increased wetting or altering demolition procedures, must be implemented to immediately reduce the total dust levels to below the action level.
- A copy of the total dust monitoring results will be forwarded daily to the DOH.

**Assessing Asbestos Emissions and Dust at  
Demolition Sites in Sandy Response  
Quality Assurance Project Plan**

**US Environmental Protection Agency  
Region 2, New York, NY 10007**

**USEPA  
Version, April 16, 2013**

## Purpose

EPA is requiring air monitoring of many of these demolitions for potential asbestos release and dust that might affect existing downwind residents, and should deleterious asbestos or dust concentrations be detected, the demolition and/or debris removal processes will be modified to assure that future undesirable situations do not recur. The goals of this effort is to evaluate the effectiveness of the demolition and debris removal practices being employed, to assure the safety of existing residents.

Municipalities covered by this guide are required to ensure that perimeter air monitoring is conducted and representative air samples collected and analyzed for asbestos and dust to evaluate the exposure to nearby residents from the fugitive release of asbestos and dust as part of these demolitions. Only houses that are either deemed unsafe to enter or safe to enter and have been abated of asbestos will be monitored as they potentially present the largest risk. The type and frequency of the sampling will depend on the individual scope and conditions of the work site.

## Meteorological Observations

At 30-minute intervals and when notable changes occur, the sampling teams will measure wind speed and direction and other observations. Wind direction and speed will be measured using a compass and handheld anemometer. Other observations will at a minimum describe wind stability, (i.e. steady, gusting, unstable etc.) and will also be used to record cloud cover, precipitation or other conditions that could affect transport of dust. Wind speed will be measured by a portable anemometer and rainfall will be measured with a portable rain gage.

The following observations must be documented:

- Military time
- Wind Direction
- Wind Speed
- Rainfall
- Observations

## **Air Sampling For Asbestos**

### ***Pump Calibrations***

Before the sampling pumps are used in the field, their performance will be evaluated by a qualified technician. The air sampling pumps for asbestos sampling, which are the primary air sampling item, will be evaluated to determine that they are capable of maintaining a stable flow rate for a given static pressure drop; i.e., the pressure drop created by a 25-mm, 0.45- $\mu\text{m}$  mixed cellulose ester (MCE) membrane filter with a five- $\mu\text{m}$  pore-sized MCE backup diffusing filter and cellulose support pad contained in a three piece cassette at the designated flow rate.

In the field, flow measurements will be taken using a primary standard calibrated flow meter placed downstream of the filter cassette at the beginning and ending of the sampling periods. If the flow rate at the end differs from that at the beginning by more than ten percent, the sample's validity must be evaluated.

A detailed written record will be maintained of all calibrations. The record will include all relevant calibration data, including the following elements:

- Flow meter model and serial number
- Sampling train (pump, flow control valve, and filter)
- Relevant calculations

Pump checks will be performed at least every hour during sample collection. These periodic checks will include the following activities:

- Observe the sampling apparatus (filter cassette, vacuum pump, etc.) to determine whether it's been disturbed.
- Check the pump to ensure that it is working properly and the flow rate is stable at the prescribed flow rate on the pump-mounted rotameter, where installed.
- Inspect the filter for overloading and particle deposition.

Overloading the filters is always a concern. Dust from traffic or other nearby activities (there should be little to none from the demolition effort) may overload the filters and invalidate the data set. The filters should be routinely visually inspected as the sampling period progresses and if they look excessively dirty, they should be replaced with new ones and the data recorded to ensure that sampling data is available for each filter. Both sets should then be analyzed and the results integrated to give a composite result for the whole sampling period. See Addendum A for more information.

## **Air Monitoring Protocol**

### Asbestos Air Monitoring

- Perimeter air monitoring for asbestos fibers must be performed at locations up wind and downwind surrounding the work site, at a minimum, while the demolition work is ongoing. The number of asbestos air sampling locations must be sufficient to monitor the entire area where demolition work is ongoing.
- Asbestos air monitoring will follow NIOSH 7400 (Phase Contrast Microscopy—PCM) sampling method.
- Asbestos air samples will be analyzed daily with results being made available to the NJDOH by the following work day no later than 4:00 PM.
- Any asbestos air sampling results from PCM exceeding the action level of 0.010 f/cc for total fibers shall be analyzed by transmission electron microscopy (TEM) using NIOSH 7402 sampling method and made available to the NJDOH by the second day after collection of the sample(s) no later than 4:00 PM.
- A copy of the asbestos air sampling results will be forwarded daily to the DOH by 4:00 PM.

### Total Dust Monitoring

- In addition to the asbestos air fiber monitoring, dust monitors must be installed around the demolition work area measure total particulate. The number of total dust monitoring locations must be sufficient to monitor the entire area where demolition work is ongoing.
- The aerosol dust monitor(s) utilized shall be alarmed and capable of data logging.
- A copy of the total dust monitoring results must be forwarded daily to the NJDOH by 4:00 PM. The total dust monitoring data must be directly exported from each of instruments from each of the monitoring location.

### ***Sample Collection***

All sample collection will be conducted in accordance with the procedures outlined in NIOSH 7400/7402 as appropriate.

## **Chain of Custody**

Chain-of-custody procedures emphasize careful documentation of constant secure custody of samples during the field, transport, and analytical stages of environmental measurement projects. After collection, sample information will be entered on a chain-of-custody form. This form will accompany the samples, and each person having custody of the samples will note receipt of the same and complete an appropriate section of the form.

## **Laboratory Analyses**

### ***PCM Method***

All fiber samples will be analyzed by phase contrast microscopy (PCM) following NIOSH 7400 per industry practices

### ***TEM Method***

Any PCM samples that exceed the action level of 0.010 structures/cm<sup>3</sup> will be verified by transmission electron microscopy (TEM) analysis.

### ***Reporting***

Structure counting data including the following shall be recorded for PCM and TEM (if required):

1. Laboratory Sample Number.
2. Project Sample Number.
3. Date of Analysis.
4. Air Volume.
5. Active Area of Sample Filter.
6. Analytical Magnification.
7. Mean Grid Opening Dimension in mm<sup>2</sup>.
8. Number of Grid Openings Examined.
9. Number of Primary Structures Detected.

***All QA/QC sample analyses will also be reported.***

## ***Laboratory QA/QC***

Laboratory has to follow all QA/QC procedures outlined in NIOSH 7400/7402 and all procedures outlined in accordance with the lab accredited programs.

## **Data Assessment**

### ***Screening Process***

The first level of protection to prevent or minimize asbestos release is to adequately wet the building material prior to, during, and after demolition, which should minimize releases of airborne fibers, including but not limited to asbestos fibers. The second level of protection is afforded by the ambient air monitoring (by PCM). The third level of protection incorporates the use of this TEM monitoring to evaluate the effectiveness of the overall demolition process, specifically targeting minimizing the release of asbestos per se. PCM can only see large fibers but typically can't distinguish whether they are asbestos whereas TEM can see both large and small fibers and can positively identify asbestos.

Any exceedances of either of these criteria prompt an immediate review of demolition procedures and prompt immediate corrective action in those processes (e.g., better wetting, less forceful demolition, use of surfactants, etc). Corrective action from these criteria will occur in a matter of a few days at most.

## **References**

1. U.S. EPA, Response to 2005 Hurricanes, Asbestos Screening Levels. <http://www.epa.gov/air/katrina/asbestos-screening.html>, May 2006.

# **Addendum A**

## **RACM Demolition Air Sampling Operating Procedures**

The following Operating Procedures relate to general concerns and field forms:

### **General Concerns – RACM Demolitions**

#### **Prior to event, set up pumps/filter at a flow rate of three liters per minute (lpm).**

This flow rate will provide the target volume range of 800 to 1,440 liters with durations of about 4.5 hours to eight hours. Demolitions are requiring from 2.5 to nine hours. The flow rate may be adjusted upward if demolition durations of less than five hours are expected or become common. Volumes greater than 1,440 liters will be acceptable.

#### **Response to rain, adverse weather, demolition delays, sample equipment failures.**

1. If rain or other conditions postpone the completion of the demolition and the demolition contractor demobilizes, the team will stop the pumps, record the time, cap the filters and the rain gage if water is in it, mark the sample locations and demobilize. The team will remobilize when the demolition team remobilizes and reverse the shutdown process when demolition continues.
2. If the demolition is delayed due to equipment failure or other reasons, generally sampling will continue during the downtime. If the delay will be significant, based on information from the contractor (i.e., overnight), then the team will stop the pumps, record the time, cap the filters and the rain gage if water is in it, mark the sample locations and demobilize. The team will remobilize when the demolition team remobilizes and reverse the shutdown process when demolition continues.
3. If sampling equipment fails including pumps and generators, sampling will continue at the failed station, if it can be repaired. Generally and at the discretion of the Air Group Leader, samples will be sent to the laboratory if at least one satisfactory downwind sample is collected.



### **Filter Check Worksheet – RACM Demolitions**

1. During the sampling run, check filters once per hour and more frequently if weather or other conditions indicate (at discretion of field team leader).
2. Note pump rotameter, clock time (hour, minute) and second hand of watch.
3. Inspect filter while pump is running.
4. Acceptable: minimal visible dust or filter discoloration.
5. Reject and replace the filter if sufficient visible dust or dirt is on filter. Recover the filter as a completed sample even if sample volume is less than 800 liters.
6. If the sample is rejected, another sample is started if there is enough time left in the demolition to get 800 liters before end of the event. Adjust flow rate as high as practical to achieve the necessary volume.
7. Record the new sample with a new ID, using the same location but using the new time. Add the new sample ID to the “Associated Samples” on the Meteorological Data Work Sheet.
8. Submit all samples at a given location for analysis.

The Filter Check Worksheet also will be used to record other instances of pump down time. For example, down time for refueling the generator or down time for overnight shutdowns will be recorded on this form.

### **Meteorological Data Work Sheet**

1. Meteorological observations should be made every half hour or more often at the discretion of the Air Group Leader and/or Team Leader.
2. The demolished structure address should be the complete legal address, including the street number, street name, city, town, village, or parish, state, five-digit zip code.
3. The structure description should be brief; for example, small, two-story wood.
4. The demolition contractor should be the company name.

5. The met station should be placed close to the upwind sample. The met station location description should be referenced to the upwind sample location, for example, 15-feet west of upwind sample location, OR-1011-070811.
6. The wind direction is the direction from which the wind is blowing.
7. Wind speed is measured in miles per hour (mph).
8. Other entries are self-explanatory.

**Air Sampling Work Sheet – RACM Demolitions**

1. The demolished structure address should be identical to the address in the Meteorological Data Work Sheet.
2. Contractor Information will include Contractor Name, Crew number, and Contractor Work Order or right of entry number.
3. Total down time will include the down time for filter changes and other possible down time for weather delays or demolition contractor delays.
4. Other entries are self-explanatory, explained elsewhere or automated.

**APPENDIX: 4.2**  
**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,**  
**SOLID & HAZARDOUS WASTE MANAGEMENT**

**Waste Management for Houses Damaged by Superstorm Sandy**

Houses Damaged by Superstorm Sandy fall into one of the following 3 categories:

- I. Houses Safe to Enter
- II. Houses Unsafe to Enter
- III. Houses Down by Storm

There are certain general requirements that pertain to all of the categories including removal of refrigerants, solid waste transportation and waste flow provisions as discussed below. Specific requirements and options for each category follow the general requirements.

**General Requirements**

Refrigerant Removal from Appliances

USEPA regulations at 40 C.F.R. 82.156 require that appliances containing refrigerants must have the all refrigerant removed prior to disposal or recycling. Management and decontamination, if necessary, of these appliances containing refrigerants shall conform to the EPA Guidance contained in Appendix 4.1. For houses that are safe to enter, removal of refrigerant from the appliances should be conducted as normally required. However, due to asbestos contamination concerns, appliances must be decontaminated at the site prior to refrigerant removal for houses down by the storm or following demolition of houses that were unsafe to enter.

Solid Waste Transportation and Waste Flow

Each truck and container (roll off containers, dumpsters, etc.) utilized to collect or transport solid waste must have a valid solid waste transportation decal pursuant to N.J.A.C. 7:26-3.4(h) or other evidence of temporary authorization from the Department. Truck loading shall comply with New Jersey Department of Transportation (NJDOT) rules and regulations including weight limitations and the covering of truckloads.

Tarpaulins or covers shall be provided and used on containers while transporting solid waste in accordance with N.J.A.C. 7:26-3.4(i). In addition, for regulated asbestos containing material (RACM), transporters must follow specific requirements for asbestos found at N.J.A.C. 7:26-3.5(d). Each shipment must be accompanied by proper shipping papers (Origin and Destination

form) (see N.J.A.C. 7:26-3.5(h)) Solid waste must be transported to disposal facilities in accordance with applicable waste flow requirements per the solid waste management plan for the county of waste origin per N.J.A.C. 7:26-3.4(m). Summaries of district solid waste management plans are set forth at the Department's website: [www.nj.gov/dep/dshw/recycling/03cplsum.htm](http://www.nj.gov/dep/dshw/recycling/03cplsum.htm). RACM waste is classified as waste type ID 27A and must be sent directly to a landfill authorized to accept RACM/ID 27A. Other waste from demolition is classified as construction and demolition waste, type ID 13C. Where loads of ID 13C may be shipped depends on the category of house from which the waste was generated.

Source separated recyclable materials (only allowed for houses that are safe to enter, where asbestos contamination is not a concern) may be transported to facilities authorized to accept the specific types of recyclables collected. No special transporter licenses or county waste flow provisions apply to source separated recyclable materials being shipped to a recycling facility.

## **Specific Requirements by Category**

### **I. House Safe to Enter**

A house that is safe to enter must be inspected for asbestos containing material (ACM). RACM must be removed in accordance with USEPA NESHAP regulations. New Jersey has more stringent regulations requiring all asbestos (both RACM and non-RACM asbestos containing material) to be removed.

#### **i. No Asbestos Found in House Prior to Demolition**

After a house that is safe to enter has been inspected for asbestos containing material (ACM) and no ACM is found, the Department is recommending the segregation of household hazardous wastes and source separation of recyclable materials, if feasible.

Household Hazardous Waste (HHW) includes, but is not limited to, items such as automobile fluids (used waste oil, antifreeze, etc.), batteries, oil-based paints and stains, cleansers, photo chemicals, lawn-care chemicals, unidentified liquids, household cleaners, and pesticides. Latex paint is not HHW, but is solid waste and shall be disposed as solid waste. HHW is excluded from the definition of hazardous waste and therefore does not require the same collection or handling procedures as hazardous waste. However, reasonable effort should be made to separate HHW to the extent possible and transport HHW loads to an approved hazardous waste disposal facility.

Certain electronic devices (“e-waste”) are prohibited from disposal. These devices include televisions, personal computers, laptops, notebooks and monitors. E-waste should be segregated and transported to an approved Class D recycling center or universal waste handler.

Reasonable efforts should be made to separate, collect and transport broken brick, block, concrete, and asphalt to a Department approved Class B recycling facility, or if outside of New Jersey, to a facility authorized by the jurisdiction. Concrete or other aggregate that has been visibly contaminated by an oil or chemical spill as a result of the disaster event should not be recycled and shall be managed as construction and demolition waste (ID 13C).

Following demolition, the demolition waste is classified as construction and demolition waste, type ID 13C. Type ID 13C waste from houses that were safe to enter and did not contain asbestos may be shipped to any solid waste facility permitted to accept construction and demolition wastes.

**ii. Asbestos Found in House Prior to Demolition**

Following an asbestos inspection and removal of all asbestos, the Department is recommending the segregation of HHWs and source separation of recyclable materials if feasible prior to demolition.

HHW includes, but is not be limited to, items such as automobile fluids (used waste oil, antifreeze, etc.), batteries, oil-based paints and stains, cleansers, photo chemicals, lawn-care chemicals, unidentified liquids, household cleaners, and pesticides. Latex paint is not HHW, but is solid waste and shall be disposed as solid waste. HHW is excluded from the definition of hazardous waste and therefore does not require the same collection or handling procedures as hazardous waste.

Reasonable effort should be made to separate HHW to the extent possible and transport HHW loads to an approved hazardous waste disposal facility.

Certain e-wastes are prohibited from disposal. These include televisions, personal computers, laptops, notebooks and monitors. E-waste should be segregated and transported to an approved Class D recycling center or universal waste handler.

Other materials in the house should be recycled if feasible.

Reasonable efforts should be made to separate, collect and transport broken brick, block, concrete, and asphalt to a Department approved Class B recycling facility, or if outside of New Jersey, to a facility authorized by the jurisdiction. Concrete or other aggregate that has been visibly contaminated by an oil or chemical spill as a result of the disaster event should not be recycled and shall be managed as construction and demolition waste (ID 13C).

Following demolition, the demolition waste is classified as construction and demolition waste, type ID 13C. Type ID 13C waste from houses that were safe to enter and had all asbestos removed prior to demolition may be shipped to any solid waste facility permitted to accept construction and demolition waste.

## **II. House Unsafe to Enter**

Waste from houses that were unsafe to enter prior to demolition may be managed in one of the following two scenarios:

- i. The first scenario assumes all of the waste is RACM (ID 27A). No recycling or segregation, except for appliances containing refrigerants decontaminated as discussed earlier, is permitted under this scenario. All waste is classified as ID 27A and must be managed and shipped to a landfill permitted to accept ID 27A.
- ii. The second scenario allows the licensed asbestos abatement contractor to inspect the debris for the presence of asbestos.

If no asbestos is found, the debris is classified as construction and demolition waste (ID 13C) and may be shipped to any solid waste facility permitted to accept construction and demolition waste.

If asbestos is found, the debris may be sorted to separate RACM from non-RACM to save expenses on disposal costs. Any RACM must be managed as ID 27A and be shipped directly to a landfill permitted to accept ID 27A. Non-RACM waste is classified as construction and demolition waste, type ID 13C. As non-RACM waste may contain asbestos, the Department is requiring this waste to be kept wet at the site and wrapped until disposal in accordance with N.J.A.C. 7:26-3.5(d) 1, 3,

and 5 to prevent air emissions. In addition, the waste shall only be shipped directly to a landfill authorized to accept ID 13C. The waste shall not be shipped to a transfer station, materials recovery facility, incinerator, or be processed in any way after leaving the site. No recycling or segregation of material, except for appliances containing refrigerants decontaminated as discussed earlier is permitted.

### **III. Houses Down by Storm**

Waste from houses that are “down by the storm” is classified as construction and demolition waste, type ID 13C. However, due to possible asbestos concerns, the Department is requiring debris to be wetted to prevent air emissions during waste handling and be managed as if it were asbestos containing in regards to keeping the waste wetted at the site and wrapping it to prevent air emissions during transportation in accordance with the N.J.A.C. 7:26-3.5(d)1, 3 and 5. In addition, the waste shall only be shipped directly to a landfill authorized to accept ID 13C. The waste shall not be shipped to a transfer station, materials recovery facility, incinerator or be processed in any way after leaving the site. No recycling or segregation of material, except for appliances containing refrigerants decontaminated as discussed earlier is permitted.

**APPENDIX 4.3:**  
**NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**

Demolition Requirements: New Jersey Uniform Construction Code (UCC)

The UCC is enforced by State-licensed, municipally employed code enforcement officials. A list of municipal code enforcement officials may be found at:

[http://www.nj.gov/dca/divisions/codes/publications/pdf\\_ora/muniroster.pdf](http://www.nj.gov/dca/divisions/codes/publications/pdf_ora/muniroster.pdf)

The Uniform Construction Code permit application may be found at:

[http://www.nj.gov/dca/divisions/codes/forms/pdf\\_ucc\\_stdforms/ucc\\_f100\\_cpa.pdf](http://www.nj.gov/dca/divisions/codes/forms/pdf_ucc_stdforms/ucc_f100_cpa.pdf)

Notice of Unsafe Structure: The Uniform Construction Code (UCC) requires that when an unsafe condition is found in a building, a written notice shall be served on the building owner. The unsafe structure notice must specify a time by which the deficiencies must be corrected or a time by which the building will be demolished, as applicable. The owner has 15 days to appeal the notice. (N.J.A.C. 5:23-2.32(a))

Notice of Imminent Hazard: The Uniform Construction Code (UCC) provides that when, in the opinion of the construction official and appropriate subcode officials, a building is in danger of failure or collapse, a notice shall be posted declaring the building unsafe and not available for occupancy. In this case, the construction official may order temporary safeguards, which may include the demolition of those parts of the building that constitute a danger to human life; the demolition may take place not sooner than 24 hours after the building has been posted. (N.J.A.C. 5:23-2.32(b))

Uniform Construction Code (UCC) Permit: A building that is already down does not require a Uniform Construction Code (UCC) demolition permit. A Uniform Construction Code permit is required for the actual demolition of a building or structure. At N.J.A.C. 5:23-2.17, the Uniform Construction Code requires that before a construction permit may be issued, the following conditions must have been met:

- Utility Connections: All utility connections within the structure must have been disconnected. These include gas, electric, and sewer. Each utility service provider must submit a notice to the local construction code enforcing agency stating that their service connections and equipment have been removed or disabled.
- Abandoned Well: If there is a well on the property, a certification from a well driller certified by the Department of Environmental Protection (DEP) must be submitted to the local construction code enforcing agency stating that the well has been properly abandoned. In the absence of such a certification, the local enforcing agency shall notify the Bureau of Water Allocation, DEP.



- Notice to Adjoining Owners: Prior to issuing the construction permit, notice must be issued to the owners of adjoining properties.
- Asbestos Abatement: A permit to demolish the structure shall not be issued until the owner or agent notifies the local code official that all friable asbestos or asbestos-containing material that will become friable during demolition or removal has been or will be properly removed prior to demolition. (See Bulletin 94-5, Renovations and Demolitions involving Asbestos:  
[http://www.nj.gov/dca/divisions/codes/publications/pdf\\_bulletins/b\\_93-5.pdf](http://www.nj.gov/dca/divisions/codes/publications/pdf_bulletins/b_93-5.pdf) )
- Lot Regulation: Following demolition, the property shall be maintained free from unsafe or hazardous conditions, including restoration of established grades and the erection of the necessary retaining walls and fences.

Soil Conservation: In addition, for a project covered by the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39), when there is to be a disturbance of at least 5,000 square feet of soil, a construction code permit may not be issued unless a soil disturbance plan has been certified by the local soil conservation district. See Bulletin 91-2, Compliance with requirements of the Soil Erosion and Sediment Control Act;

[www.nj.gov/dca/divisions/codes/publications/pdf\\_bulletins/b91\\_2.pdf](http://www.nj.gov/dca/divisions/codes/publications/pdf_bulletins/b91_2.pdf)

Questions about these conditions for issuing a UCC demolition permit may be directed to the Department of Community Affairs, Division of Codes and Standards, Code Assistance Unit, (609) 984-7609.

**APPENDIX 4.4:**  
**NEW JERSEY DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT**

**Division of Wage & Hour Compliance**  
**Public Contracts/Contractor Registration**

The contractor doing the work must comply, as applicable, with the New Jersey Prevailing Wage Act (NJPWA) and its implementing regulations (N.J.S.A. 34:11-56.25 et seq., and N.J.A.C. 12:60) and the New Jersey Public Works Contractor Registration Act (NJPWCRA) and its implementing regulations (N.J.S.A. 34:11-56.48 et seq., and N.J.A.C. 12:62). Relative to NJPWA and NJPWCRA coverage, the threshold question is whether the work being performed is “public work” as that term is defined within the NJPWA and the NJPWCRA. The answer to this threshold question turns on whether the work is construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, and whether the work is either being performed pursuant to a contract to which a public body is a party, or is being performed on property owned by a public body or leased or to be leased by a public body. Thus, if the work being performed is not construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, then neither the NJPWA, nor the NJPWCRA apply. Similarly, if the work is not being performed either pursuant to a contract to which a public body is a party or on property owned by a public body or leased or to be leased by a public body, then neither the NJPWA, nor the NJPWCRA apply.

Incidentally, in addition to the NJPWA, there are a series of laws in New Jersey which extend the obligation to pay the prevailing wage rate to contractors engaged in construction work undertaken in connection with financial assistance approved, provided, authorized, facilitated or administered by certain entities, including the Economic Development Authority, N.J.S.A. 34:1B-5.1 et seq., the Casino Reinvestment Development Authority, N.J.S.A. 5:12-161.3 et seq., the New Jersey Educational Facilities Authority, N.J.S.A. 18A:72A-5.1 et seq., the New Jersey Health Care Facilities Financing Authority, N.J.S.A. 26:2I-5.3 et seq., County Improvement Authorities, N.J.S.A. 40:37A-552 et seq., the New Jersey Commerce Commission, N.J.S.A. 52:27C-73.1, the New Jersey Housing and Mortgage Finance Agency, N.J.S.A. 55:14K-42, the New Jersey Redevelopment Authority, N.J.S.A. 55:19-38, and the Board of Public Utilities, N.J.S.A. 48:2-29.47. Finally, N.J.S.A. 34:13B-2.1 extends the obligation to pay the prevailing wage rate to contractors engaged in construction work on a public utility. It is not anticipated that these laws will come into play relative to the sort of work being addressed by this guidance document, but it is important to be mindful of their existence.

**Authority:**

The New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.) requires the payment of Prevailing Wage for “public work” contracts. The threshold amount for municipal public work projects is \$14,187.00. The threshold amount for all other governmental agencies is \$2,000.00. N.J.S.A. 34:11-56.26 (5)

In addition to the Prevailing Wage requirements, all construction firms performing public work must comply with” The Public Works Contractor Registration Act” (N.J.S.A. 34:11-56.48 et seq.).

**Procedure:**

Prevailing Wage Determination- The contractor awarded a public contract must comply with the wage determination package in effect at the time the contract is awarded by the Public Body. The Public Body is required to obtain and provide a copy of the applicable wage package. If a wage package is not provided the contractor can go to the following web site to obtain a wage package for the award date of the contract:

[http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing\\_wage\\_determinations.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html)

Public Work Contractor Registration Certificate – All contractors bidding on Public Work must obtain a valid Certificate prior to submitting a bid. The contractor can obtain an application by going to the following site. [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/lse/lse-2.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/lse/lse-2.pdf)

Payroll Requirements- The contractor and all subcontractors are required to complete certified payrolls reports for each week they work on site. They are required to submit those reports to the Public Body within 10 days of the payment of wages to the workers. A certified payroll form can be obtained from the following web site page:

[http://lwd.dol.state.nj.us/labor/forms\\_pdfs/lse/payrollcert.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/lse/payrollcert.pdf)

**Record Keeping:**

Every contractor and subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work and such records shall be preserved for two years from date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, to any other party to the lease or agreement to lease pursuant to which the public work is done, and to the commissioner. (N.J.S.A. 34:11-56.29)

**Inspections:**

The public works contractors and subcontractors shall submit to the public body or lessor which contracted for the public works project the following in a form satisfactory to the Commissioner.

1. A certified payroll record on each public works project.
  - i. Such record shall be submitted each payroll period within 10 days of the payment of wages.
  - ii. The public body shall receive, file, store and make available for inspection at its normal place of business and during normal business hours the certified payroll records. (N.J.A.C. 12:60-5.1)

**NEW JERSEY DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT**

**Division of Public Safety and Occupational Safety & Health  
Office of Asbestos Control & Licensing**

**Authority:**

The New Jersey Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.) requires the licensing of an employer who directly or indirectly performs the functions of application, enclosure, removal or encapsulation of asbestos in any structure or who enters into a contract with the owner or owner's representative for such work. See N.J.S.A. 34:5A-36. The Act also requires that every employee performing the functions of application, enclosure, repair, removal or encapsulation of asbestos obtains a performance permit from LWD. See N.J.S.A. 34:5A-37. Asbestos-containing material is any material containing more than 1% asbestos by weight. See N.J.S.A. 34:5A-34b.

**Procedure:**

**Determination of need for licensed asbestos contractor:**

There must be a determination as to whether a licensed contractor is required to conduct asbestos abatement work. LWD regulations apply to any person or business having a contractual relationship with an owner of a building, structure or equipment for asbestos work and to any building, structure or equipment on which asbestos work is performed (N.J.A.C. 12:120-1.4(a)5 and 6) provided that:

- such work involves any material containing more than 1% asbestos by weight (N.J.S.A. 34:5A-34b and N.J.A.C. 12:120-2.1); and
- such work involves more than 3 linear or 3 square feet of asbestos materials (N.J.A.C. 12:120-1.4(b)1, 2 and 3).

LWD regulations do **not** apply under the following circumstances:

- (1) the asbestos work involves asbestos-containing roofing and exterior siding in renovation or remodeling projects (N.J.A.C. 12:120-1.4(b)5);
- (2) the employer is a private employer subject to OSHA (29 U.S.C. 651 et seq.) who is using his own employees to perform asbestos work at his own facility (N.J.S.A. 34:5A-36 and N.J.A.C. 12:120-1.4(b)6 and 7); or

- (3) the asbestos abatement work **is exempted** from LWD licensing requirements by Department of Health (N.J.S.A. 34:5A-43b and N.J.A.C. 12:120-4.2). See DOH procedures for information pertaining to exemptions contained herein.

If required, a licensed contractor must be hired to perform the asbestos abatement work.

Proper Notification: Prior to commencing the asbestos abatement work, a licensed contractor must submit the proper notification to LWD and other involved agencies. See N.J.A.C. 12:120-7.2.

Abatement Work: The licensed contractor must ensure that asbestos abatement work complies with all applicable regulations and standards. See N.J.A.C. 12:120-4.7. The licensed contractor must remove asbestos-containing material prior to demolition. If the asbestos-containing material is not removed prior to demolition, then the licensed contractor must be on site to work in conjunction with the demolition company to remove the asbestos-containing material.

**APPENDIX 4.5:**  
**NEW JERSEY DEPARTMENT OF HEALTH**

**Exemption Review and Approvals**

The Commissioner of Health may exempt from the license requirements those designated asbestos-related activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data and notification must be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work. These exempted activities involve non-friable asbestos containing material that is not rendered friable by the activity.

When building demolition projects are submitted to the DOH for an exemption approval, the DOH will review the plan and control measures to ensure that no significant exposure will exist while performing the work. The DOH will work with municipalities and contractors to ensure that the plan contains controlled demolition procedures so that the remaining non-friable asbestos materials do not become friable. The DOH will also ensure that plan contains an air monitoring work plan to evaluate dust emissions being generated by the demolition activity. The monitoring plan must contain an asbestos fiber monitoring plan as well as a total dust monitoring work plan. In accordance with N.J.A.C. 8:60-4.2, the DOH may issue an approval of the exemption request for the work practices as outlined in the controlled demolition and monitoring work plans.

The DOH can provide an exemption approval to municipalities for PPDR projects. The DOH can provide assistance to municipalities when requesting a PPDR exemption approval to ensure that the project contains similar structures and will incorporate similar demolition work practices. Given the nature and scope of demolition projects, there is the potential for a significant amount of dust to be generated which may impact the surrounding areas as well as offsite locations. The work practices to control dust emissions outlined in the work plan must be maintained and evaluated on a daily basis to ensure their continued operation and effectiveness. The collection of asbestos fiber and dust air monitoring data must be conducted to ensure public safety. The conditions under which the demolition is being approved must remain in place to ensure the dust emissions are controlled over the entire scope of work for each PPDR project.

The DOH is aware that the conditions under which an exemption project has been approved could change. If any work site conditions change causing any deviation from the approved monitoring and work plans or if there is a concern that non-friable asbestos may have become friable, the demolition must stop and DOH notified immediately. The DOH can then assist the municipality to identify any alternative work practices that may need to be implemented.

## **Air Monitoring Protocol**

- Perimeter air monitoring for respirable dust and asbestos fibers must be performed at locations up wind and downwind surrounding the work site, at a minimum, while the demolition work is ongoing. The number of asbestos air sampling locations must be sufficient to monitor the entire area where demolition work is ongoing.
- Asbestos air monitoring will follow NIOSH 7400 (Phase Contrast Microscopy—PCM) sampling method.
- Asbestos air samples will be analyzed daily with results being made available to the NJDOH by the following work day no later than 4:00 PM.
- If asbestos air sample results indicate any airborne asbestos at or above 0.010 fibers per cubic centimeter (f/cc) the work shall temporarily cease. The contractor must evaluate the work practices to determine the cause of the elevated readings and implement corrective measures to reduce the fiber levels. Corrective measures may include but not limited to, increased wetting or altering demolition procedures.
- Any asbestos air sampling results from PCM exceeding the action level of 0.010 f/cc for total fibers shall be analyzed by transmission electron microscopy (TEM) using NIOSH 7402 sampling method and made available to the NJDOH by the second day after collection of the sample(s) no later than 4:00 PM. If it is determined that the elevated readings are in fact due to the excessive levels of asbestos fibers leaving the perimeter of the work site, more aggressive suppression measures must be implemented. Corrective measures may include but not limited to, increased wetting or altering demolition procedures.
- A copy of the asbestos air sampling results will be forwarded daily to the DOH.
- In addition to the air fiber monitoring, aerosol dust monitors must be installed around the demolition and debris handling work area to measure total particulates.
- The number of total dust monitoring locations must be sufficient to monitor the entire area where demolition and debris handling work is ongoing.
- The aerosol dust monitor(s) utilized shall be alarmed and capable of data logging
- The action level for the perimeter dust monitoring is background particulate concentration plus 150 ug/m<sup>3</sup>.
- If during demolition activities the action level is exceeded for two consecutive readings or 10 minutes, demolition activities shall be halted and work practices re-evaluated. Corrective



measures, including increased wetting or altering demolition procedures, must be implemented to immediately reduce the total dust levels to below the action level.

- A copy of the total dust monitoring results will be forwarded daily to the DOH.
- See Assessing Asbestos Emissions and Dust at Demolition Sites in Sandy Response Quality Assurance Project Plan for additional information in Appendix 4.1

**APPENDIX 4.6:**  
**NEW JERSEY DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION**  
**PROGRAM**

**Procedure:**

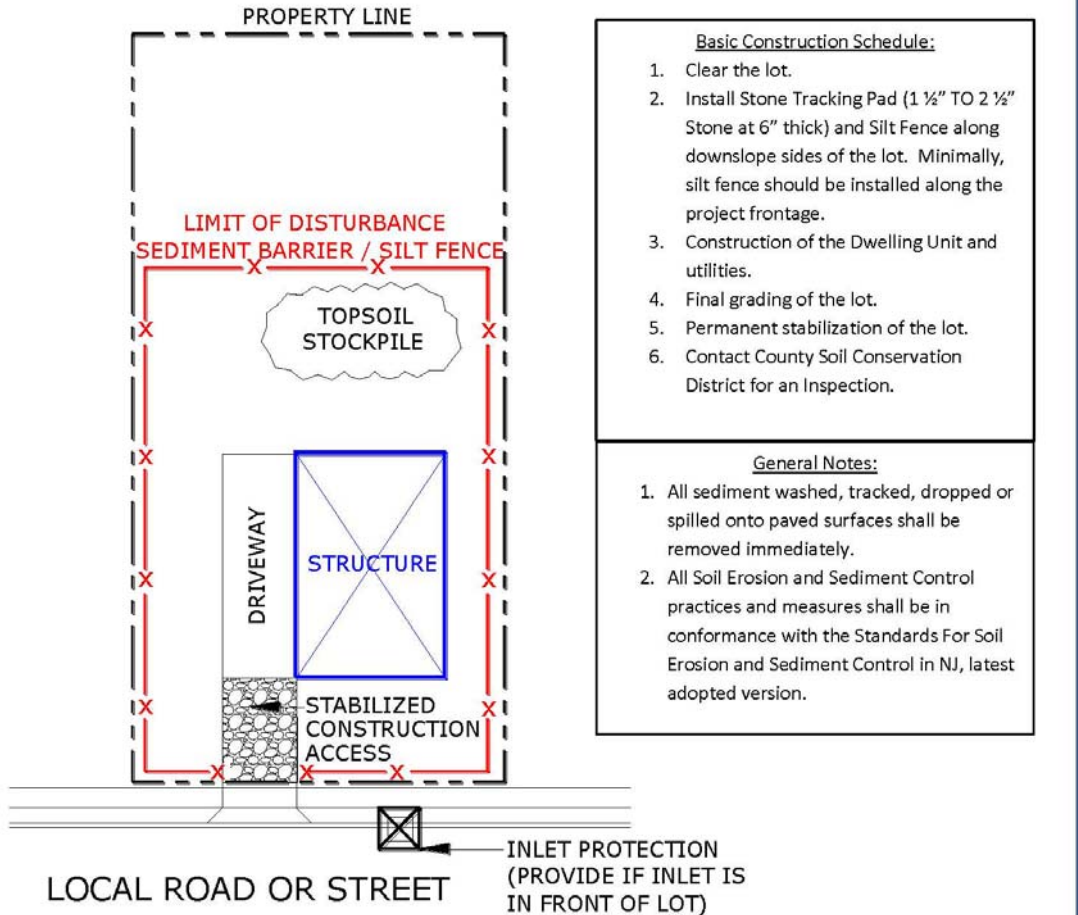
No Soil Disturbance – For either a demolition of structure or structure down by storm involving no soil disturbance in excess of 5,000 square feet, the Soil Erosion and Sediment Control Act would not apply.

Demolition Permit required - Demolition activities with accompanied soil disturbance of 5,000 square feet or greater requires soil erosion and sediment control plan certification by the local soil conservation district prior to the issuance of a demolition permit by the local construction code official. Certification may either be through the proposed, expedited process (attached) when applicable or through the standard certification process. At the conclusion of debris removal, the property should be stabilized in accordance with the Standards for Soil Erosion and Sediment Control and a Report of Compliance inspection scheduled with the local District.

No Demolition Permit required - Demolition or structure down by storm activities with an accompanied soil disturbance of 5,000 square feet or greater requires soil erosion and sediment control plan certification prior to any land disturbing activities. Certification may either be through the proposed, expedited process (attached) when applicable or through the standard certification process. At the conclusion of debris removal, the property should be stabilized in accordance with the Standards for Soil Erosion and Sediment Control and a Report of Compliance inspection scheduled with the local District. Close coordination between the local municipal officials and soil conservation district staff is essential to identify potential activities which may fall into this category.

**New Jersey Department of Agriculture – State Soil Conservation Committee**

**Single Lot Streamlined Application for Soil Erosion and Sediment Control  
Hurricane Sandy Damage Relief**

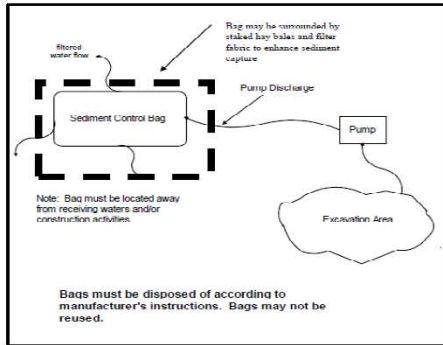


- Basic Construction Schedule:
1. Clear the lot.
  2. Install Stone Tracking Pad (1 ½" TO 2 ½" Stone at 6" thick) and Silt Fence along downslope sides of the lot. Minimally, silt fence should be installed along the project frontage.
  3. Construction of the Dwelling Unit and utilities.
  4. Final grading of the lot.
  5. Permanent stabilization of the lot.
  6. Contact County Soil Conservation District for an Inspection.

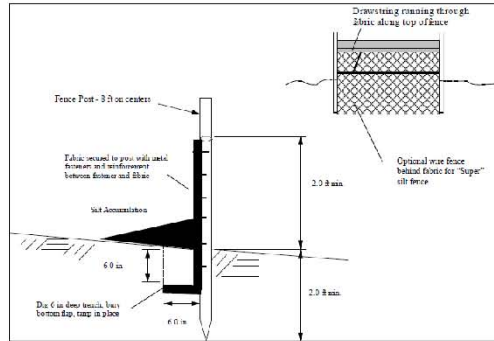
- General Notes:
1. All sediment washed, tracked, dropped or spilled onto paved surfaces shall be removed immediately.
  2. All Soil Erosion and Sediment Control practices and measures shall be in conformance with the Standards For Soil Erosion and Sediment Control in NJ, latest adopted version.

- \*Stabilization Specifications:
1. Apply 5" of Topsoil. Rake out topsoil.
  2. \*Apply 90 pounds of limestone.
  3. \*Apply 11 pounds of 10-20-10 fertilizer.
  4. Apply seed per the seeding
  5. Remove the temporary sediment control measures.
  6. \*Apply 90 pounds of straw mulch Properly tack down (anchor) the straw mulch.  
\*Application rates are per 1,000 square feet.

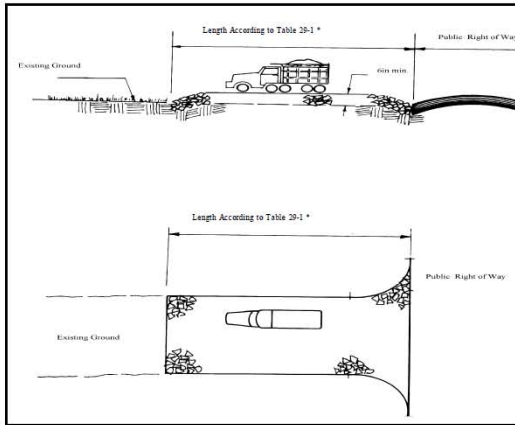
- Seeding Mixtures for Maintained Turf Lawns:
- Mix #1:  
Turf Type Tall Fescue @ 6.5 pounds per 1,000 square feet.  
Perennial Ryegrass @ 0.5 pounds per 1,000 square feet.  
Kentucky Bluegrass @ 0.5 pounds per 1,000 square feet.
- Mix # 2:  
Turf Type Tall Fescue @ 2.0 pounds per 1,000 square feet.  
Creeping Red Fescue @ 1.0 pounds per 1,000 square feet.  
Chewings Fescue @ 1.0 pounds per 1,000 square feet.  
Perennial Ryegrass @ 0.5 pounds per 1,000 square feet



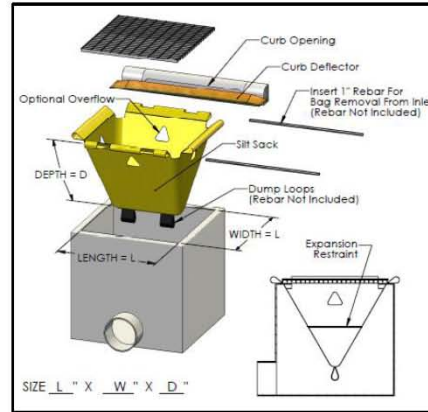
**Typical Dewatering Detail**



**Typical Silt Fence Detail**



**Typical Stabilized Construction Access Detail**



**Typical Inlet Filter Protection Detail**

(The stone access pad should be as long as the site logistics reasonably dictate, up to a maximum of 50 ft.)

*TYPICAL SINGLE LOT  
SOIL EROSION AND SEDIMENT CONTROL PLAN*

Block \_\_\_\_\_, Lot \_\_\_\_\_

Address \_\_\_\_\_

Municipality \_\_\_\_\_

County \_\_\_\_\_

Date \_\_\_\_\_ Scale Not to Scale

Owner Name \_\_\_\_\_

Fee: \$200.00

Paid \_\_\_\_\_ Date: \_\_\_\_\_ Check No. \_\_\_\_\_

For local SCD Use Only:

Date: \_\_\_\_\_

District: \_\_\_\_\_

Plan Certified:  Yes  No

District Official: \_\_\_\_\_

Certification Number: \_\_\_\_\_

**APPENDIX 5:**  
**CONTACT INFORMATION**

**USEPA**

James Daloia, Chief  
Response Section  
Response & Prevention Branch  
Emergency & Remedial Response Division  
732-906-6907  
[daloia.james@epa.gov](mailto:daloia.james@epa.gov)

**New Jersey Department of Environmental Protection  
Solid and Hazardous Waste Management**

P O Box 420  
Mail Code: 401-02C  
401 East State Street  
2nd Floor, West Wing  
Trenton, NJ 08625-0420  
Phone: (609) 292-9880  
Fax: (609) 633-9839

**New Jersey Department of Community Affairs  
Division of Codes and Standards**

Code Assistance Unit  
(609) 984-7609 for questions about UCC demolition permits.

**New Jersey Department of Labor & Workforce Development  
Division of Wage & Hour Compliance**

P.O. Box 389  
Trenton, New Jersey 08625-0389  
609-292-2259 (Phone) 609-695-1174 (Fax)  
Email: [david.biglin@dol.state.nj.us](mailto:david.biglin@dol.state.nj.us)

**New Jersey Department of Labor & Workforce Development  
Office of Asbestos Control & Licensing**

PO Box 949

Trenton, New Jersey 08625-0949

609-633-3760 or 609-633-2159

**New Jersey Department of Health  
Consumer, Environmental and Occupational Health Service**

P.O. Box 369

135 East State Street

Trenton, NJ 08625-0369

Phone: (609) 826-4950

Fax: (609) 826-4975

Website: [www.nj.gov/health/iep](http://www.nj.gov/health/iep)

**New Jersey Department of Agriculture  
Soil Conservation Program**

**State Soil Conservation Committee**

PO Box 330, Trenton, NJ 08625

609-292-5540 (phone) 609-633-7229 (fax)

Email: [frank.minch@ag.state.nj.us](mailto:frank.minch@ag.state.nj.us)

**Cape-Atlantic Conservation District**

Atlantic County Office Building

6260 Old Harding Highway

609-625-3144 (phone)

609-625-7360 (fax)

Email: [capeatlanticscd@comcast.net](mailto:capeatlanticscd@comcast.net)

**Freehold Soil Conservation District (Monmouth & Middlesex)**

4000 Kozloski Road, P O box 5033

Freehold, NJ 07728-5033

732-683-8500 (phone)

732-683-9140 (fax)

Email: [info@freeholdscd.org](mailto:info@freeholdscd.org)

**Ocean County Soil Conservation District**

714 Lacey Road

Forked River, NJ 08731

609-971-7002 (phone) 609-971-3391 (fax)

Email: [craabe@soildistrict.org](mailto:craabe@soildistrict.org)

**APPENDIX 6:**  
**FORMS**

USEPA NESHAP notification form

NJDEP O & D form

NJDOH

Soil Conservation Program (2 forms)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION 2  
 Division of Enforcement & Compliance Assistance - Air Compliance Branch (DECA-ACB)  
 290 Broadway - 21<sup>st</sup> Floor  
 New York, NY 10007-1866

NOTIFICATION OF DEMOLITION AND RENOVATION

Operator Project #	Postmark	Date Received	Notification	
I. TYPE OF NOTIFICATION (O = Original / R = Revised / E = Emergency/C = Cancelled) :				
II. FACILITY INFORMATION ( Identify owner, removal contractor, and other operator)				
OWNER NAME:				
Address:				
City:		State:	ZIP:	
Contact:			Tel:	
REMOVAL CONTRACTOR:				
Address:				
City:		State:	ZIP:	
Contact:			Tel:	
OTHER OPERATOR:				
Address:				
City:		State:	ZIP:	
Contact:			Tel:	
III. TYPE OF OPERATION ( D = Demolition / O = Ordered Demolition/R = Renovation/E = Emergency) :				
IV. IS ASBESTOS PRESENT? (Yes/No):				
V. FACILITY DESCRIPTION (include building name, number and floor or room number):				
Building Name:				
Address:				
City		State:	County:	
Site Location:				
Building Size:	SqMeter:	SqFt:	# of Floors:	Age in Years:
Present Use:			Prior Use:	
VI. PROCEDURE, INCLUDING ANALYTICAL METHOD, IF APPROPRIATE, USED TO DETECT THE PRESENCE OF ASBESTOS MATERIAL:				

VII. APPROXIMATE OF RACM TO BE REMOVED AND NON-FRIABLE ASBESTOS MATERIAL THAT WILL NOT BE REMOVED. SPECIFY THE AMOUNT OF ASBESTOS BELOW: 1. Regulated ACM to be removed 2. Category I ACM not removed 3. Category II ACM not removed	RACM to be removed	Non-friable Asbestos Material not to be removed		Indicate Unit of Measurement below	
		Cat I	Cat II	UNIT	
Pipes - Linear Feet				LnFt:	Ln M:
Surface Area - Square Feet				SqFt:	Sq M:
Volume RACM off Facility Component				CuFt:	Cu M:
VIII. SCHEDULED DATES OF ASBESTOS REMOVAL: (MM/DD/YY) Start: _____ Completion: _____					
IX. SCHEDULED DATES OF DEMOLITION/RENOVATION: (MM/DD/YY) Start: _____ Completion: _____					

NOTIFICATION OF DEMOLITION AND RENOVATION (continued)

X. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:		
XI. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:		
<u>XII. WASTE TRANSPORTER #1</u>		
Name:		
Address:		
City:	State:	ZIP:
Contact Person:	Telephone:	
<u>WASTE TRANSPORTER #2</u>		
Name:		
Address:		
City:	State:	ZIP:
Contact Person:	Telephone:	
<u>XIII. WASTE DISPOSAL SITE</u>		
Name:		
Address:		
City:	State:	ZIP:
Telephone:		
<u>XIV. IF DEMOLITION IS ORDERED BY A GOVERNMENT AGENCY, PLEASE IDENTIFY THE AGENCY BELOW</u>		
Name:	Title:	
Authority:		
Date if Order (MM/DD/YY):	Date Ordered to Begin (MM/DD/YY) :	
<u>XV. FOR EMERGENCY RENOVATIONS</u>		
Date and Hour of Emergency (MM/DD/YY):		
Description of the Sudden, Unexpected Event:		
Explanation of How the event caused unsafe conditions or would cause equipment damage or an unreasonable financial burden:		
XVI. DESCRIPTION OF PROCEDURE TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NON-FRIABLE ASBESTOS BECOMES CRUMBLLED, PULVERIZED, OR REDUCED TO POWDER:		
XVII. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THE REGULATION (40CFR PART 61 SUBPART M) WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENCE THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS. (Required 1 year after promulgation) .		
_____	_____	
Signature of Owner/Operator	Date	
XVIII. I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT.		
_____	_____	
Signature of Owner/Operator	Date	

**SOLID WASTE ORIGIN AND DISPOSAL FORM**

**A. Transporter Section** (To be completed by the Transporter prior to transport to the disposal site)

1. Name of Registered Transporter: \_\_\_\_\_ Phone No. \_\_\_\_\_ 2. NJDEP Registration No.: \_\_\_\_\_  
 3. Type of Transporter Registration: (Check One)  A-901 Licensed  Registered self-generator  Registration Exempt 4. Waste Self-Generated: (Check One)  YES  NO  
 5. Name of LESSOR if the solid waste vehicle is leased: \_\_\_\_\_  
 6. Decal No. \_\_\_\_\_ Type \_\_\_\_\_ License Plate No. \_\_\_\_\_ Capacity \_\_\_\_\_ Leased - Yes or No \_\_\_\_\_  
 Cab or Single Unit \_\_\_\_\_ Container \_\_\_\_\_ N/A \_\_\_\_\_  
 Trailer \_\_\_\_\_  
 8. Transporter to complete waste origin information. \_\_\_\_\_ State \_\_\_\_\_ % of Total Load \_\_\_\_\_  
 Municipality (ies) \_\_\_\_\_ County(ies) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 \* Sending Facility: (If solid waste is transported from a solid waste intermodal, transfer, or material recovery facility, list the facility name in the Municipality column, ID # in the County column and the State in which the sending facility is located in the State column.)

9. Date Waste Collected: \_\_\_\_\_

10. Transporter's Certification: I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE TO THE BEST OF MY KNOWLEDGE.

PRINT DRIVER'S NAME \_\_\_\_\_ SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**B. Disposal Destinations**

11. Final Disposal Facility Name & State (Transporter Completes 11 & 12): \_\_\_\_\_  
 12. Non Hazardous Manifest # or Bill of Lading # or Pull Ticket #: \_\_\_\_\_  
 13. In State weigh location (Weigh master completes 13 through 16): \_\_\_\_\_  
 14. GROSS WT.: \_\_\_\_\_ NET WT. (IN STATE DISPOSAL ONLY): \_\_\_\_\_ 15. SCALE TICKET No. (IN STATE DISPOSAL ONLY): \_\_\_\_\_  
 16. Weigh master's Certification: I CERTIFY THAT THIS FORM HAS BEEN COMPLETED BY THE REGISTERED TRANSPORTER IDENTIFIED ABOVE, AND THAT THE GROSS WEIGHT FIGURE IS TRUE AND ACCURATE FOR LOADS GOING OUT OF STATE.

**C. In State Disposal Facility Section** (To be completed by facility operator for loads disposed of in State only)

17. New Jersey Receiving Facility Operator Certification: I CERTIFY THAT THIS FORM HAS BEEN COMPLETED BY THE REGISTERED TRANSPORTER IDENTIFIED ABOVE, AND THAT THE WASTE AS IDENTIFIED BY THE TRANSPORTER IS PERMITTED TO BE DISPOSED OF AT THIS FACILITY

Receiving Facility Permit or ID#: \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ OPERATOR'S STAMP OR SIGNATURE \_\_\_\_\_

### **Instructions for completing NJDEP Solid Waste Origin And Disposal Form**

- Name of Registered Transporter and Phone Number:** The transporter must use the registered trade name of the transporter as identified on the NJDEP Solid Waste Transporter Registration along with the appropriate telephone number (including area code) of the company. Nicknames, aliases and abbreviations are not acceptable.
- NJDEP registration No.:** The correct NJDEP Solid Waste Transporter Registration Number must be filled out. This number appears on the registration certificate which must be carried with the vehicle.
- Type of Transporter Registration:** The appropriate box must be checked depending on whether the transporter is licensed, is a self generator exempted from licensing requirements, or the vehicle is not subject to NJDEP registration requirements.
- Waste Self Generated:** The appropriate box must be checked to disclose whether the waste was self generated by the entity performing the transportation.
- Name of LESSOR if the solid waste vehicle is leased:** The name of the lessor as indicated on the lease must be filled in if the vehicle is leased. The lease must be carried in the registered vehicle.
- Decal No., Type, License Plate No., Capacity, and Leased:** The decal number must be filled in for the appropriate type of registered equipment (i.e. container, trailer, cab, etc.). The License plate must also be filled in for the appropriate equipment along with the capacity (i.e. 30 cubic yard container). Yes or No must be filled in next to the appropriate type of equipment to indicate if it is leased.
- Waste Types and Source Separated Recyclables:** The transporter must indicate the type(s) of waste being transported by circling the appropriate waste types. An example of "other" would be non hazardous bulk liquid (type 72) for example. If a load consists of source separated recyclables the transporter must circle the appropriate material. If the load consists of more than one co-mingled type of recyclable, "co-mingled" must be indicated under the "Other" section along with the approximate percentages (i.e. co-mingled paper 25%, metal 50%, plastics 25%)
- Municipality, County State, % of Load:** The transporter must identify the waste origin by municipality, county, and state along with the respective percentage of each waste origin. In the event waste is transported from one solid waste facility to another (for example from a transfer station to a landfill for disposal) the transporter must indicate the sending facility's name in the municipality column, the facility permit # in the County column, and the State in which the sending facility is located in the State column, in addition to the waste origin(s). The percentage of waste sent from a single solid waste facility such as a transfer station should be recorded as 100%.
- Date Waste Collected:** The transporter must fill in the actual date the solid waste was collected.
- Transporter's Certification:** The driver representing the transporter must print and sign his/her name and date to certify the information in the Transporter Section was completed accurately.
- Final Disposal Facility Name & State:** The transporter must fill in the final disposal facility name and State in which the facility is located.
- Non Hazardous Manifest # or Bill of Lading # or Pull Ticket #:** The transporter must identify the appropriate manifest or bill of lading number for loads being transported for out of State disposal. The pull ticket number must be recorded for all loads where such a document is generated.
- In State weigh location:** The weigh master must complete the location of the weighing facility. For most instances of in State disposal this is the same location as the disposal facility, however in cases involving loads being transported out of State, the weigh location may be designated to be a location other than a disposal facility.
- Gross Wt. And Net Wt.:** The weigh master must complete the gross weight for all vehicles transporting waste and recyclables into solid waste facilities within this State. The gross weight must also be completed for all loads destined for out of State waste disposal facilities. The net weight must be recorded for all loads being disposed of in this State.
- Scale ticket #:** The weigh master must record the appropriate scale ticket # generated for loads received for disposal within this State.
- Weigh master's Certification:** The weigh master must certify the information he or she recorded is accurate.
- New Jersey Receiving Facility Operator Certification:** The person responsible for recording information for loads received at New Jersey solid waste facilities must fill in the facility number the date and time and stamp or sign the the form to certify the form was completed by the transporter and that the waste identified by the transporter is permitted to be accepted at the facility for disposal.

Failure to carefully follow these instructions in accurately completing the Solid Waste Origin and Disposal Form can lead to enforcement action including penalties.

Waste Type ID 10 = municipal solid waste  
Waste Type ID 13 = bulky solid waste  
Waste Type ID 13C = construction & demolition debris  
Waste Type ID 23 = vegetative waste  
Waste Type ID 25 = animal and food processing waste  
Waste Type ID 27 = dry industrial waste  
Waste Type ID 27A = asbestos containing waste  
Waste Type ID 27I = incinerator ash

New Jersey Department of Health  
Consumer, Environmental & Occupational Health Service  
PO Box 369, Trenton, NJ 08625-0369  
Telephone: 609-826-4950 Fax: 609-826-4975

**NOTIFICATION OF NON-FRIABLE ASBESTOS WORK ACTIVITIES RELATED TO SUPERSTORM SANDY**  
*Must be submitted 10 days prior to the beginning of work. Please type or print legibly.*

**I. Notification Information**

Date of Notification: \_\_\_\_/\_\_\_\_/\_\_\_\_

Initial  Amended  Cancellation  Emergency (must include justification)

Type of Work:  Renovation  Demolition

**II. Building Information**

Name of Building Owner/Operator: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Contact: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

**III. Facility Information**

Name of Facility Where Work Activity is to Take Place: \_\_\_\_\_

Describe Facility Use: **Residence**

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

County Name: \_\_\_\_\_ County Code (state use only): \_\_\_\_\_

Scheduled Start Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Scheduled Completion Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Occupancy Status During Activity (check only one):**

- Facility Closed/Vacated During Entire Activity  
 Activity Performed Outside Normal Facility Hours—Describe: \_\_\_\_\_  
 Other—Describe: \_\_\_\_\_

**Scope of Work (check all that apply):**

- |                                       |                       |                             |
|---------------------------------------|-----------------------|-----------------------------|
| <input type="checkbox"/> Floor Tile   | Square Footage: _____ | Percentage Asbestos: _____% |
| <input type="checkbox"/> Mastic       | Square Footage: _____ | Percentage Asbestos: _____% |
| <input type="checkbox"/> Transite     | Square Footage: _____ | Percentage Asbestos: _____% |
| <input type="checkbox"/> Roofing      | Square Footage: _____ | Percentage Asbestos: _____% |
| <input type="checkbox"/> Siding       | Square Footage: _____ | Percentage Asbestos: _____% |
| <input type="checkbox"/> Other: _____ | Square Footage: _____ | Percentage Asbestos: _____% |

**IV. Contractor Information**

Company Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

New Jersey Asbestos License Number (if applicable): \_\_\_\_\_

Monitoring Firm (if applicable): \_\_\_\_\_ Telephone No.: \_\_\_\_\_

**V. Signature**

Completed By (type or print legibly): \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



For District Use Only


## HURRICANE SANDY RECOVERY

### APPLICATION FOR SOIL EROSION AND SEDIMENT CONTROL PLAN CERTIFICATION

The enclosed soil erosion and sediment control plan and supporting information are submitted for certification pursuant to the Soil Erosion and Sediment Control Act, Chapter 251, P.L. 1975 as amended (N.J.S.A. 4:24-39 et. seq.) and NJDA Administrative Order No. XXXXXX. An application for certification of a soil erosion and sediment control plan shall include the items listed on the reverse side of this form. **This application is to be used ONLY for projects resulting from damage due to Hurricane Sandy.**

Name of Project		Project Location: Municipality	
Project Street Address		Block	Lot
Project Owner(s) Name		Phone # Fax #	
Project Owner(s) Street Address (No P.O. Box Numbers)		City	State      Zip
Total Area of Project (Acres)	Total Area or Land to be Disturbed (Acres)	No. Dwelling or other Units	Fee \$
Hurricane Sandy Damage Verification: FEMA Documentation or Substantial Damage Determination from municipal floodplain administrator			
Plans Prepared by*		Phone # Fax #	
Street Address		City	State      Zip

\* (Engineering related items of the Soil Erosion and Sediment Control Plan **MUST** be prepared by or under the direction of and be sealed by a Professional Engineer or Architect licensed in the State of New Jersey, in accordance with NJAC 13:27-6.1 et. seq.)

Agent Responsible During Construction			
Street Address			
City	State	Zip	Phone      Fax #

The applicant hereby certifies that all soil erosion and sediment control measures are designed in accordance with current **Standards for Soil Erosion and Sediment Control In New Jersey** and will be installed in accordance with those Standards and the plan as approved by the Soil Conservation District and agrees as follows:

- To notify the District in writing at least 48 hours in advance of any land disturbance activity. Failure to provide such notification may result in additional inspection fees.
- To notify the District upon completion of the Project (Note: No certificate of occupancy can be granted until a report of compliance is issued by the District).
- To maintain a copy of the certified plan on the project site during construction.
- To allow District agents to go upon project lands for inspection.
- That any conveyance of this project or portion thereof prior to its completion will transfer full responsibility for compliance with the certified plan to any subsequent owners
- To comply with all terms and conditions of this application and certified plan including payment of all fees prescribed by NJDA Administrative Order No. XXXXXX

The applicant hereby acknowledges that structural measures contained in the Soil Erosion and Sediment Control Plan are reviewed for adequacy to reduce offsite soil erosion and sedimentation and not for adequacy of structural design. The applicant shall retain full responsibility for any damages which may result from any construction activity notwithstanding district certification of the subject soil erosion and sediment control plan. It is understood that approval of the plan submitted with this application shall be valid only for the duration of the initial project approval granted by the municipality. All municipal renewals of this project will require submission and approval by the district. In no case shall the approval extend beyond three and one half years at which time resubmission and certification will be required. Soil Erosion and Sediment Control Plan certification is limited to the controls specified in the plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency. It is further understood that all documents, site plans, design reports etc. submitted to the district shall be made available to the public (upon request) pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

1. Applicant Certification*  Signature _____ Date _____  Applicant Name (Print) _____	3. Plan determined complete (receipt of forms, plot plan, hurricane damage certification, proper fee):  Signature of District Official _____ Date _____
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\*If other than project owner, written authorization of owner must be attached.

SSCC251 SANDY APPLICATION 3/2013

**Requirements for Hurricane Sandy**  
**Soil Erosion and Sediment Control Plan Certification**

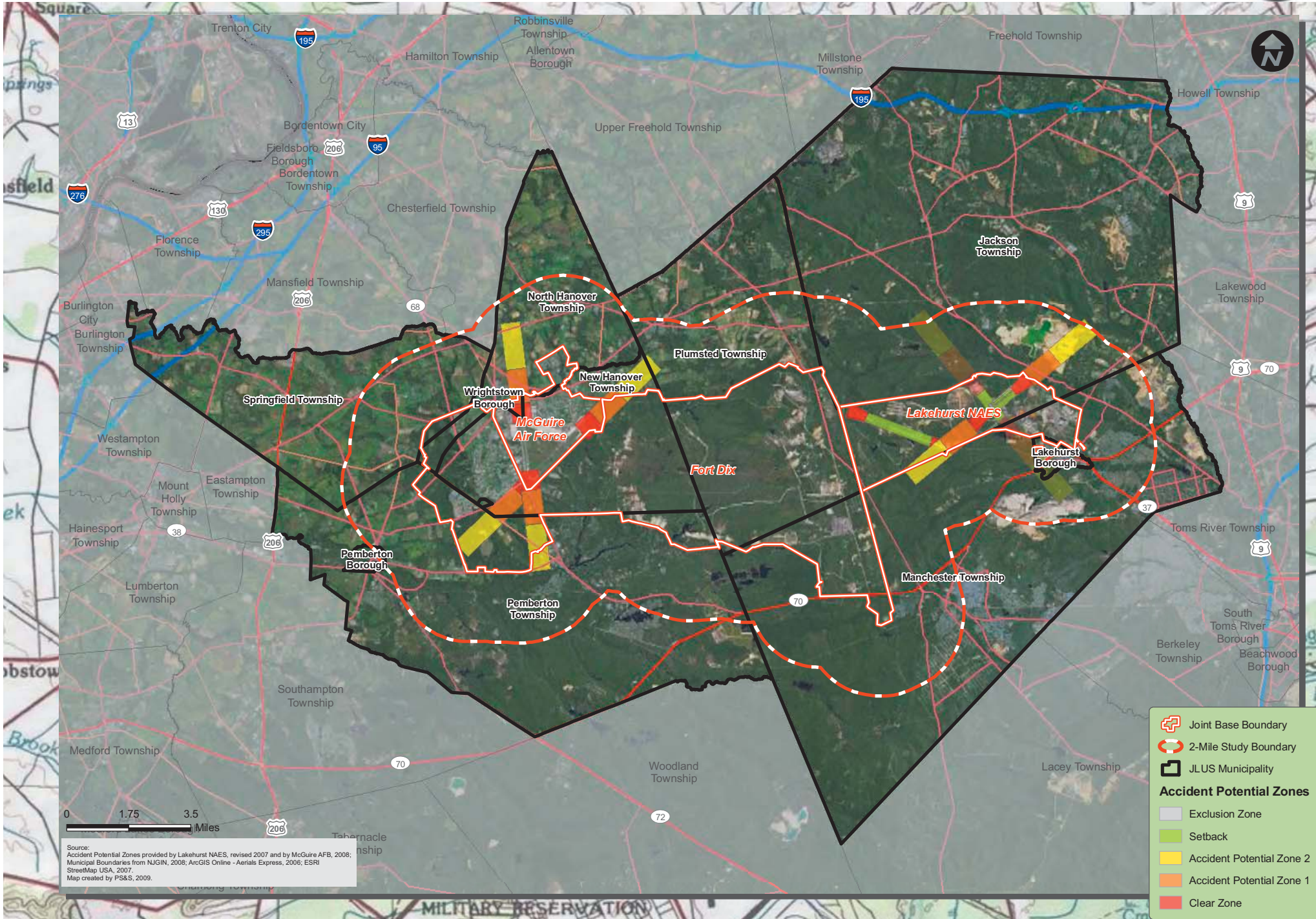
1. Completed Hurricane Sandy Recovery Application
  2. Documentation of Hurricane related damage (FEMA or municipal verification)
  3. Completed Typical Detail Plan with Notes
  4. 1 copy of proposed plot plan
  5. 1 copy of current tax map showing location of property with block and lot clearly marked
  6. Check for \$200.00 made out to the local soil conservation district.
-

## **Appendix L**

Airport Clear Zones and Accident Potential Zones



Figure 6.9 - Accident Potential Zones



## Section 6 - Technical Information – Noise and Safety Zones

Overall these safety zones make up an area that extends outward from each end of the runway, along the runway centerline, approximately 2.8 miles with a width of 3,000 feet. The aircraft accident potential in APZs 1 and 2 is much less than that of CZs and usually does not warrant land acquisition by the DoD. Instead, land use planning and controls are strongly encouraged in these areas to reduce exposure of the public to potential aircraft accidents. Clear Zones (CZs) and Accident Potential Zones (APZs) for Joint Base (McGuire and Lakehurst) runways are shown on Figure 6.9.

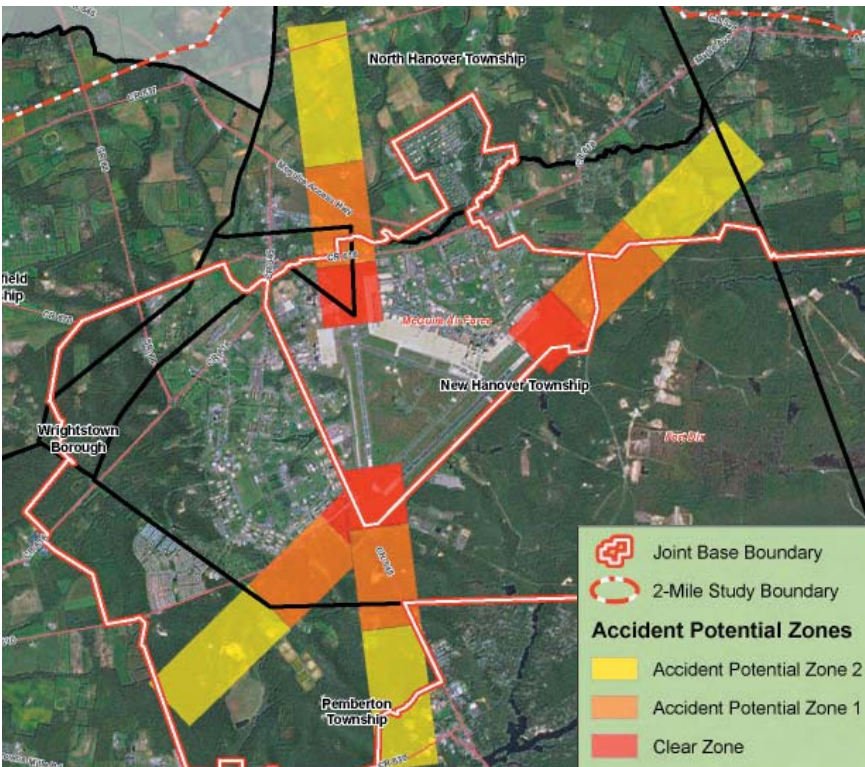
### McGuire Air Safety Zones

The CZs and APZs for McGuire runways are shown on Figures 6.10.

The following runways are located at McGuire:

- Runway 06/24 (southwest-northeast)
- Runway 18/36 (north-south)

Figure 6.10 Accident Potential Zones for McGuire Runways (Southern End)



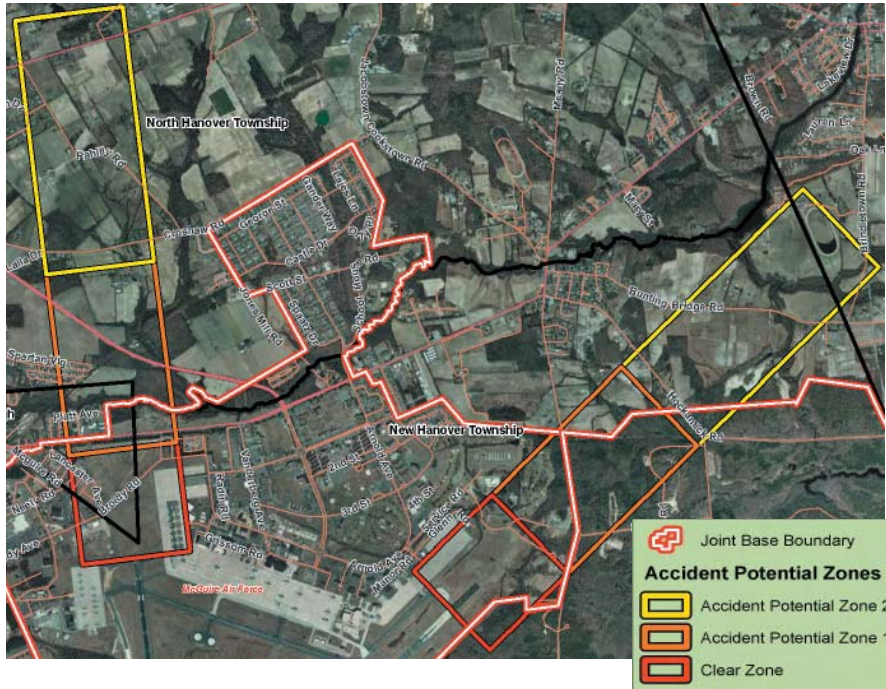
Areas extending beyond the base boundaries are related to aircraft departure (taking off) and approach (landing). The CZ and APZs for McGuire Runway 06/24 and 18/36 are shown on Figure 6.11 for southern runway ends and Figure 6.12 for northern runway ends. The CZs are contained within the boundaries of the base for both runway 06/24 and runway 18/36.

APZ 1 areas at the southern ends of the runways are primarily within the base boundaries with the exception of a very small area of APZ 1 for the southern end of runway 18/36 which is outside the base boundaries. The APZ 1 area at the northern end of runway 06/24 is primarily beyond the base boundary with a small area within the base boundaries. The APZ 1 area at the northern end of runway 18/36 is primarily within the base boundary with a small area beyond the base boundaries.

Figure 6.11 Accident Potential Zones for McGuire Runways 06/24 and 18/36 (Southern End)



Figure 6.12 Accident Potential Zones for McGuire Runways 06/24 and 18/36 (Northern End)



APZ 2 areas at the northern ends of the runways are primarily off-base with the exception of a very small area of APZ 2 for runway 18/36. The APZ 2 area at the southern end of the runway 06/24 is almost completely on the base. A major portion of the APZ 2 area at the southern end of the runway 18/36 is on the base with a large area extending off-base.

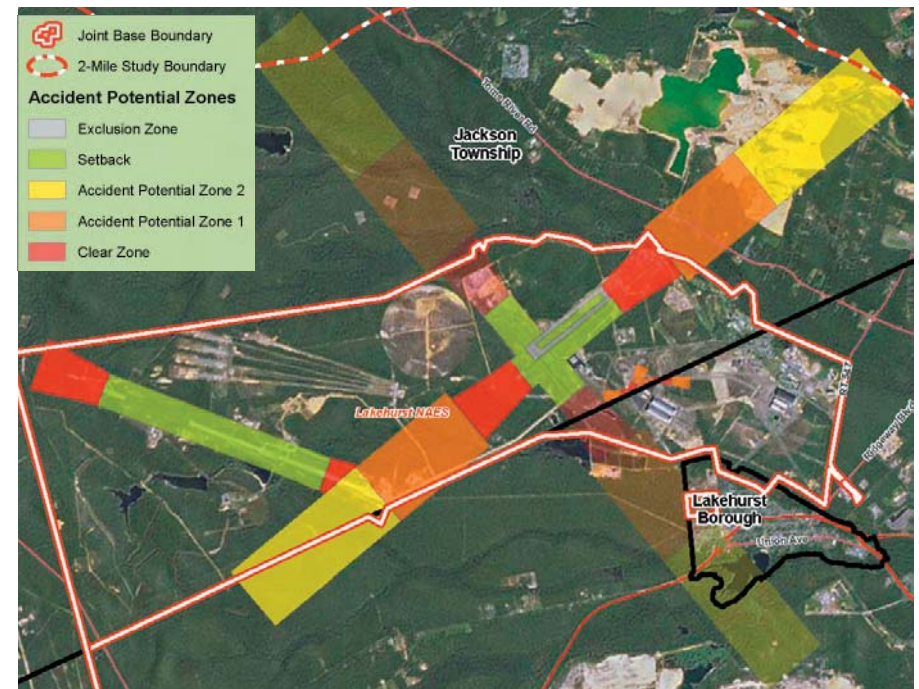
### NAES Lakehurst Safety Zones

The CZs and APZs for NAES Lakehurst runways are shown on Figures 6.13

The following runways are located at NAES Lakehurst:

- Runway 06/24 (northeast-southwest)
- Runway 15/33 (northwest-southeast)
- Runway 12/30 (west-east)

Figure 6.13 Accident Potential Zones for Lakehurst Runways



Section 6 - Technical Information – Noise and Safety Zones

Figure 6.14 Unrestricted Accident Potential Zones for Lakehurst Runway 15/33 (Southern End)

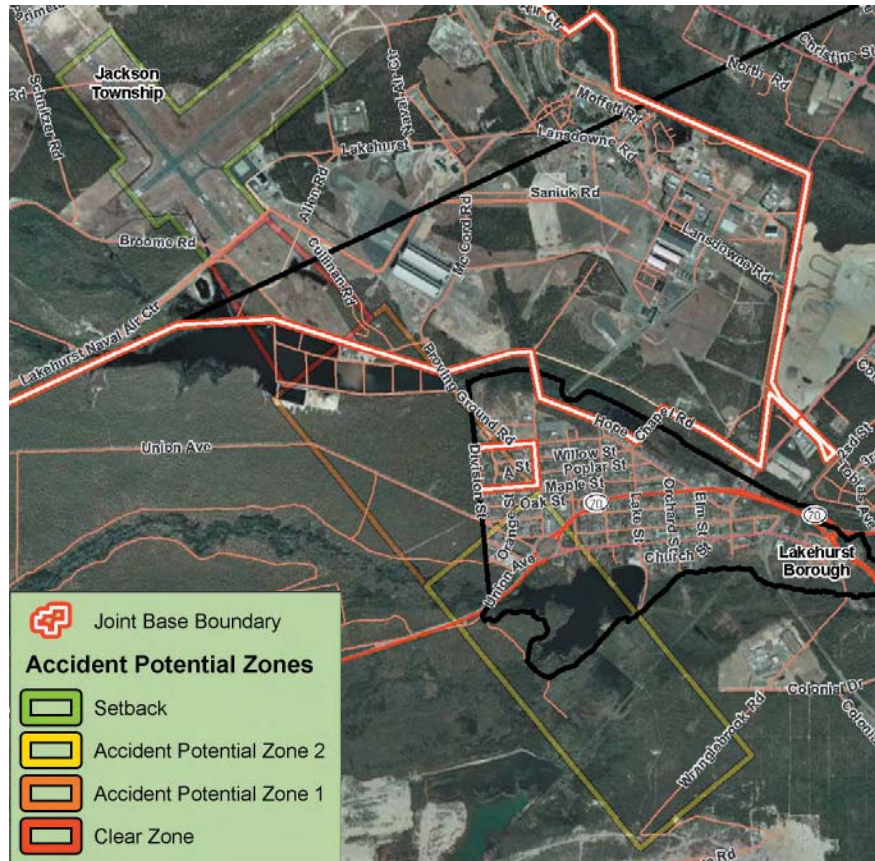
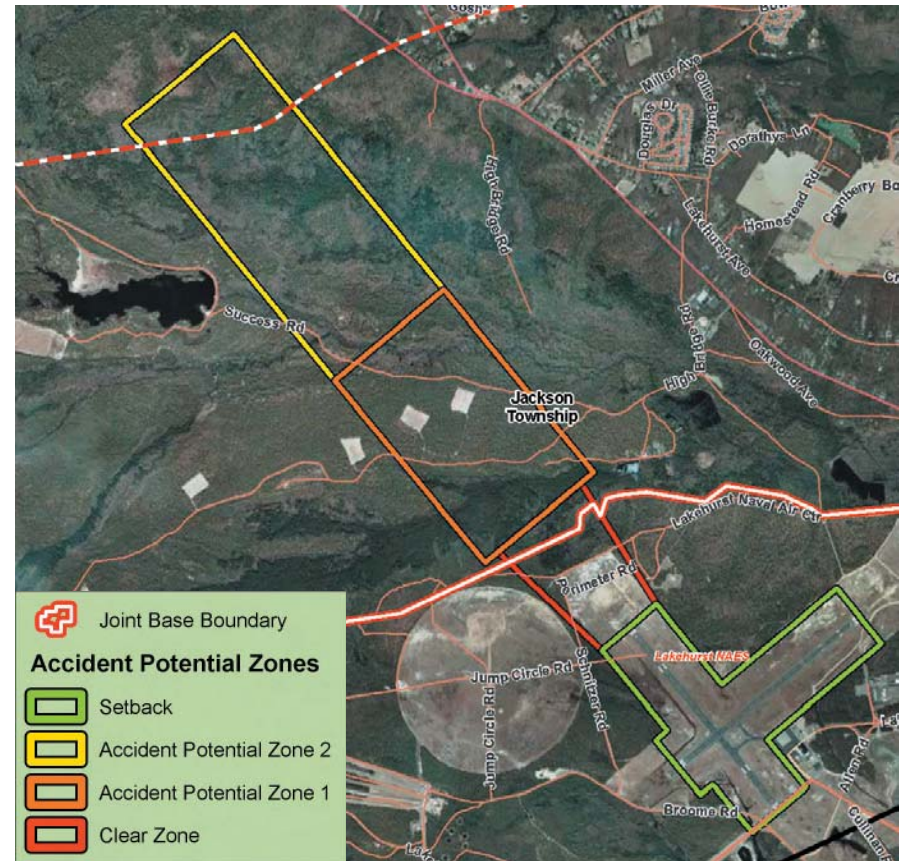


Figure 6.15 Unrestricted Accident Potential Zones for Lakehurst Runway 15/33 (Northern End)



Areas extending beyond the base boundaries are related to aircraft departure (taking off) and approach (landing). The unrestricted APZs for Lakehurst Runway 15/33 are shown on Figures 6.14 and 6.15. While shown in the above figures, data from 2008 confirms that there are no active APZs for this runway. Navy guidance on the designation of APZs says that they are only required on runways from which more than 5,000 flight operations occur a year. It should be noted that the 15/33 runway is not currently utilized and not anticipated to be utilized more than 5,000 flight operations per year. (A flight operation is defined as either a landing or a takeoff.) This APZ is shown for guidance purposes only.

Figure 6.16 Accident Potential Zones for Lakehurst Runway 06/24 (Southern End)

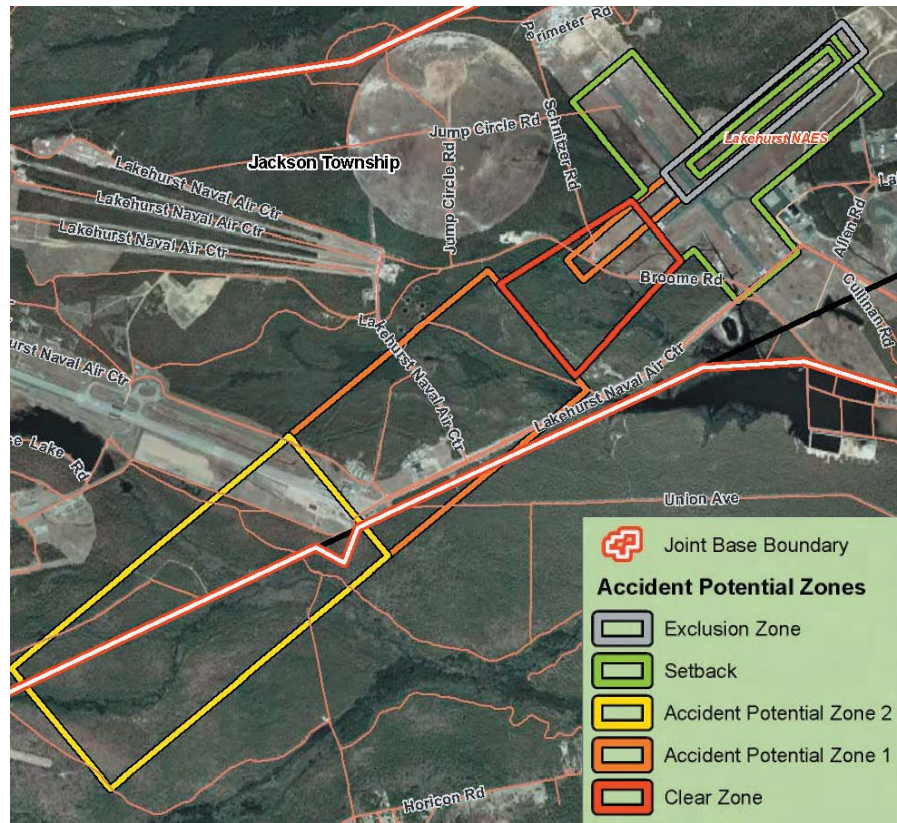
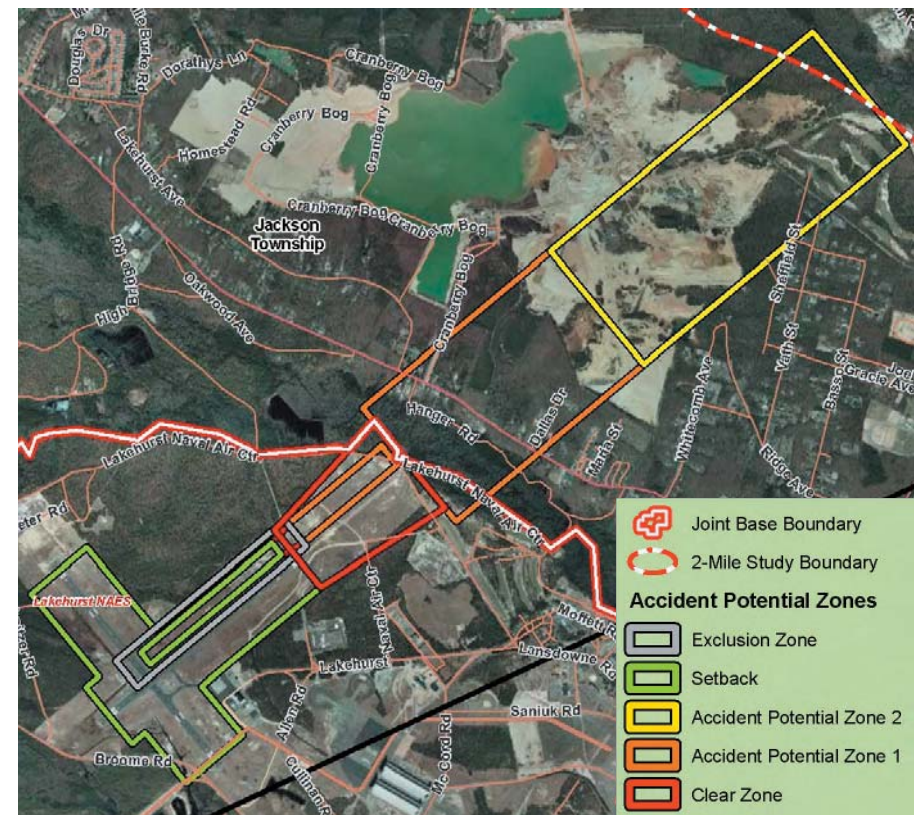


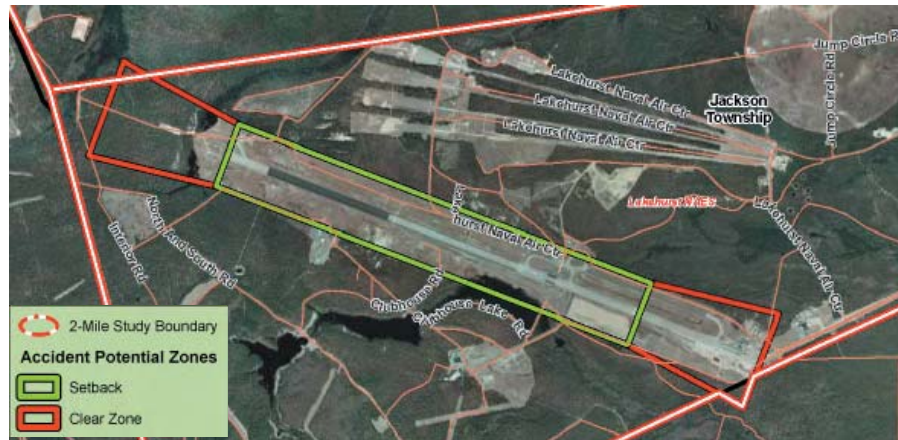
Figure 6.17 Accident Potential Zones for Lakehurst Runway 06/24 (Northern End)



The CZ and APZs for NAES Lakehurst Runway 06/24 are shown on Figures 6.16 and 6.17. Runway 06/24 is the primary runway for NAES Lakehurst. The CZs are contained within the boundaries of the Base. APZ 1 areas mostly extend beyond the base boundaries to the northeast of the runway and a small area at the southwest end. APZ 2 areas for runway 06/24 in the northeast quadrant are entirely off-base and partially extend beyond the 2 mile JLUS study area. APZ 2 areas for runway 06/24 in the southwest quadrant are partly off-base.

## Section 6 - Technical Information – Noise and Safety Zones

Figure 6.18 Accident Potential Zones for Lakehurst Runway 12/30



Lakehurst Runway 12/30 is shown on Figure 6.18. This runway is used primarily for testing. The CZs for runway 12/30 are primarily contained within the boundaries of the base with a very small area just beyond the base boundaries to the northwest end of the runway. APZ 1 and APZ 2 areas are not shown for Runway 12/30 as this runway is used for testing purposes and is not an operational runway.

### Air Safety Compatibility Concerns

**Land Use Planning and Compatibility Guidelines** The Joint Base air safety zones were evaluated to assess compatibility with zoning designations on land surrounding the installation. The following analysis assesses the compatibility of existing zoning around the installation. Incompatibilities discussed below may have existed under the baseline condition, however for planning purposes these incompatible areas are discussed for the current condition since these areas can be accounted for in future land use planning and zoning decisions.

Compatible land uses can exist next to each other without causing interference or exposing people to undue safety risks or nuisance. In this JLUS context, military training activities create compatibility issues when the activity occurs in the proximity of following land uses:

- Noise sensitive uses, such as housing, schools, medical facilities or places of worship

- Uses that tend to concentrate people (certain higher residential densities, schools, churches, hospitals)

For purposes of evaluating compatibility, the JLUS draws guidance from the DoD guidelines for compatible land use for clear zones and accident potential zones (U.S. Army 1981). These compatibility guidelines are standards only and do not determine acceptable uses of land within communities. Local governments have the authority to establish permissible land uses and to define the relationship between specific properties and air safety contours (see Appendix 13-6 for a full listing of land use compatibility guidelines).

All lands in the vicinity of Fort Dix, McGuire and Lakehurst are zoned by their respective townships and boroughs. Jurisdictions responsible for zoning designations, maps, and associated ordinances adjacent to the Joint Base include New Hanover Township, North Hanover Township, Pemberton Township, Springfield Township, and Wrightstown Borough in Burlington County; and Jackson Township, Manchester Township, Lakehurst Borough and Plumsted Township in Ocean County. Because of the extensive land coverage and vast differences among the zoning designations of different jurisdictions, composite or generalized zoning designations for all lands surrounding the military installations were created and are provided in Section 7.

**Accident Potential Zone Impact** Compatible land uses/zoning within the various air safety zones around the Joint Base, specifically, McGuire AFB and NAES Lakehurst are presented in Table 6.7. Guidelines strongly discourage any uses within the Clear Zone around airfields due to the risk of an aircraft mishap. However, certain non-residential activities can maintain compatibility with designated Accidental Potential Zones.

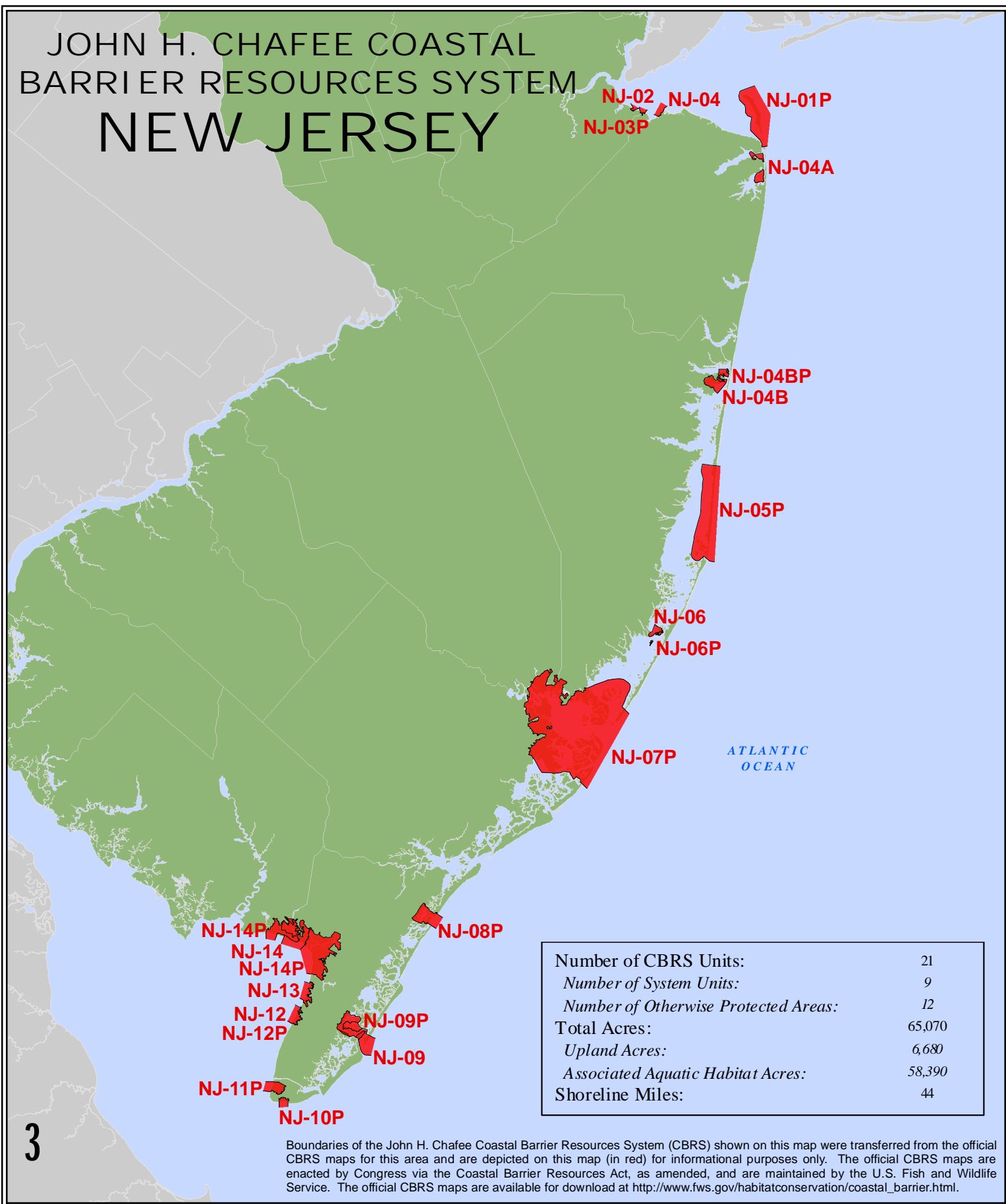
These compatibility guidelines are standards only and do not determine acceptable uses of land within communities. Only local governments have the authority to establish permissible land uses and to define the relationship between specific properties and noise or safety contours (see Appendix 13-6 for a full listing of land use compatibility guidelines).

The APZ for the Joint Base and the zoning classifications for the surrounding municipalities is shown in Figure 6.19. Joint Base APZs have not changed from the baseline condition; residential uses presently exist within and adjacent to the APZs. Residential uses and certain business types are typically not recommended as compatible in the APZ, with some exceptions

## **Appendix M**

Coastal Barrier Resources Act and Coastal Barrier Improvement Act

# JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM NEW JERSEY



Boundaries of the John H. Chafee Coastal Barrier Resources System (CBRS) shown on this map were transferred from the official CBRS maps for this area and are depicted on this map (in red) for informational purposes only. The official CBRS maps are enacted by Congress via the Coastal Barrier Resources Act, as amended, and are maintained by the U.S. Fish and Wildlife Service. The official CBRS maps are available for download at [http://www.fws.gov/habitatconservation/coastal\\_barrier.html](http://www.fws.gov/habitatconservation/coastal_barrier.html).