


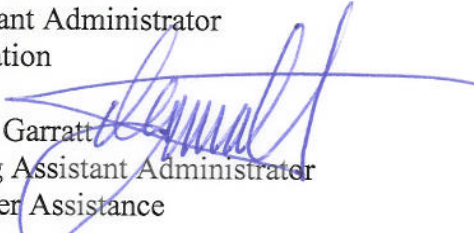


FEMA

June 5, 2007

MEMORANDUM FOR: Regional Administrators
FEMA I-X
Disaster Operations Assistant Administrator
National Preparedness Deputy Administrator
Transitional Recovery Office Directors
Federal Coordinating Officers

FROM: 
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Assistant Administrator
Mitigation


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SUBJECT: Guidelines for Complying with 44 CFR 9 and EO 11988 (Floodplain Management) in Coastal High Hazard Areas on the Gulf Coast

The purpose of this memorandum is to define the Coastal High Hazard Areas in those areas on the Gulf Coast with mapped Advisory Base Flood Elevations (ABFEs) and clarify requirements for FEMA-funded projects in Coastal High Hazard Areas. Previously, in a memorandum dated February 6, 2006, information was provided on the issuance and use of ABFEs in the implementation of FEMA assistance for Hurricanes Katrina and Rita. We would like to reiterate that the use of ABFEs applies to FEMA actions, including grant programs, for purposes of FEMA compliance with Executive Order 11988 (EO 11988), Floodplain Management, as implemented by FEMA through the Code of Federal Regulations (CFR) 44 - Emergency Management and Assistance, specifically 44 CFR 9.

The following guidelines are provided to assist you in meeting the EO 11988 requirements for FEMA-funded projects in Coastal High Hazard Areas on the Gulf Coast:

- **Best Available Data.** In accordance with Section 2(a)(1) of EO 11988, FEMA must use the best available data to meet EO 11988 requirements. While map revisions are underway, the ABFEs, including Coastal High Hazard Area information, constitute the best available data and their use is required. In the upcoming months, Mitigation will issue technical guidance on the applicability and use of preliminary FIRM data as the best available data throughout the FIRM adoption process, including the initial release phase, appeal phase, and issuance of Letter of Final Determination.

- **Defining the Coastal High Hazard Areas.** For purposes of compliance with 44 CFR 9, Coastal High Hazard Areas are those areas within the delineated 3-foot breaking wave zone on the ABFE maps where available, or Zone V on effective FIRMs;
- **Funding “New Construction” and “Substantial Improvement” in the Coast High Hazard Area.** FEMA’s funding of “New Construction” (44 CFR Part 9.4) of facilities or structures, other than those that are functionally dependent or facilitate open space use (44 CFR 9.4 and 44 CFR 59.1) is not permitted in a Coastal High Hazard Area; however, the funding of “Substantial Improvement” (44 CFR 9.4) is allowed in a Coastal High Hazard Area;
- **Guidelines for the funding of structures in Coastal High Hazard Areas that are functionally dependent or facilitate open space use.** Structures that are functionally dependent or facilitate open space can be constructed in Coastal High Hazard Areas and do not have to be elevated to the ABFE as specified in the February 6th memorandum, but must meet certain EO 11988 and NFIP requirements:
 - Structures must be elevated on adequately anchored pilings or columns so the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the BFE on the current effective Flood Insurance Rate Map (FIRM).¹ This type of construction must be built in accordance with 44 CFR 60.3(e);
 - Foundations must be designed to allow water to flow beneath the elevated building; the building must be constructed using flood resistant materials below the BFE and, to the extent practicable, the elevated portion of the building should be built with flood resistant materials; all building utility equipment including electrical and heating must be elevated; and proper consideration must be given to potential debris effects on the structure and adjacent structures;
 - If a community has adopted a base flood elevation requirement which is higher than the BFE on the effective FIRM, but it intends to elevate only to the BFE, it must issue a variance from the adopted ordinance for that particular structure or facility; and
 - These structures must minimize impacts by restricting the size and cost to the minimum necessary.

¹ The use of the effective FIRM’s base flood elevation instead of the ABFE for the elevation of structures that are functionally dependent or facilitate open space use is authorized by 44 CFR 9.11(d)(2).

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Frequently Asked Questions (FAQs) regarding this guidance for complying with 44 CFR 9 and EO 11988 in Coastal High Hazard Areas on the Gulf Coast are attached.

If you have any questions or need additional information regarding this guidance, please contact Mike Buckley, Deputy Assistant Administrator, Mitigation, by telephone at 202-646-3595.

Coastal High Hazard Areas DISASTER-SPECIFIC GUIDANCE *Questions and Answers*



Question: What is “new construction?”

Answer: “New construction” means the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

Question: What is “substantial improvement?”

Answer: “Substantial improvement” means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (a) before the repair or improvement is started, or (b) if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. The term “substantial improvement” does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

Question: What are examples of structures that are functionally dependent?

Answer: A functionally dependent use is a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. Examples of such uses include piers, harbormaster buildings, bait shops, unloading or loading of cargo or passengers, and ship building and ship repair facilities.

Question: What are examples of structures that facilitate open space?

Answer: Examples of structures that facilitate open space use include comfort stations/public restrooms and minimal park facilities such as benches and pavilions.

Question: How will FEMA decide if proposed new construction will result in structures that facilitate open space or are functionally dependent?

Answer: FEMA will evaluate each structure to determine whether the structure is primarily devoted to uses that facilitate open space or are functionally dependent. If the structure qualifies by that criterion, it may be constructed in the Coastal High Hazard Area using the guidelines for such construction.

Question: What is the minimum elevation these structures (that facilitate open space or are functionally dependent) must be elevated to in the Coastal High Hazard Area?

Answer: The Base Flood Elevation (BFE) is the minimum standard.

Question: Will a community need to grant a variance in order to meet the permit requirements of the local ordinance?

Answer: Yes. If a community has adopted Advisory Base Flood Elevations (ABFEs), which are higher than the BFE on the effective Flood Insurance Rate Map (FIRM), but it intends to elevate a functionally dependent use or structure that facilitates open space only to the BFE on the current effective FIRM, the community must issue a variance from their adopted ordinance. Such variance shall be issued in accordance with the variance criteria in the National Flood Insurance Program (NFIP) floodplain management regulations at 44 CFR 60.6(a)(1) through (a)(4). The structure must also be protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. Guidance in this memo provides methods for minimizing flood damages. The variance shall be documented and such documentation shall be placed in the community’s permit files.

Coastal High Hazard Areas DISASTER-SPECIFIC GUIDANCE *Questions and Answers*



Question: Is a community's participation in NFIP jeopardized by following the guidance in this memo?

Answer: No. A community's participation in the NFIP will not be jeopardized.

Question: Does a community need to amend its floodplain management ordinance to implement the guidance in this memo?

Answer: No. A community will not need to amend its floodplain management ordinance to implement the guidance in this memo.

Question: If a community participates in the Community Rating System (CRS) program, will implementing the guidance in this memo have any CRS implications?

Answer: As long as the community follows their variance criteria and the guidance in this memo for granting a variance for structures that are determined to be a functionally dependent use or a structure that facilitates open space, there will be no implications related to the CRS.