



Board Meeting

Thursday, July 18, 2019

10:00 a.m.



**AGENDA
REGULAR SESSION**

Thursday, July 18, 2019 - 10:00 a.m.
Two DeKorte Park Plaza, Lyndhurst, NJ

I. **PLEDGE OF ALLEGIANCE**

II. **OPENING STATEMENT**

III. **ROLL CALL**

IV. **PRESENTATION**

SCS Engineers will give a technical presentation regarding the Keegan Landfill.

V. **APPROVAL OF MINUTES AND CASH DISBURSEMENTS** (Action)

- Approval of Regular Session Meeting Minutes of June 20, 2019.
- Amendment of the April 11, 2019 meeting minutes.
- Approval and/or Ratification of Cash Disbursements over \$100,000 for June 2019.

VI. **PUBLIC PARTICIPATION ON RESOLUTIONS**

VII. **APPROVALS** (Action)

Resolution 2019-25 Consideration of a Resolution Authorizing the Publication of a Notice of Adoption for New Rules and Amendments to the NJSEA Floodplain Management Regulations and the Adoption of FEMA's Revised FIS and Firm Panels for the Hackensack Meadowlands District, with an Effective Date of August 28, 2019 – File No. SP-721.

Resolution 2019-26 Consideration of a Resolution Issuing a Decision on the Variance Application Submitted as part of File No. 14-641 Union Meadows/ENER-G Rudox – Renovation & Addition, Block 106.02, Lot 3 in Rutherford.

VIII. **PUBLIC PARTICIPATION**

IX. **EXECUTIVE SESSION**

Resolution 2019-27 Consideration of a Resolution Authorizing the New Jersey Sports and Exposition Authority to conduct a meeting, to which the general public shall not be admitted for the purposes of discussing legal matters, personnel matters and contract negotiations.

X. **MOTION TO ADJOURN**

***TO VIEW THE FULL BOARD BOOK, PLEASE VISIT OUR WEBSITE AT:
<http://www.njsea.com/njmc/about/commission-meetings.html>***

PLEASE CONTACT THE NJSEA OFFICE (201-460-1700) PRIOR TO MEETING IF
SPECIAL REQUIREMENTS ARE NEEDED UNDER ADA

MINUTES



REGULAR SESSION BOARD MEETING

DATE: June 20, 2019
TIME: 10:00 a.m.
PLACE: 2 DeKorte Park Plaza - Lyndhurst, NJ
RE: REGULAR SESSION MEETING MINUTES

Members in Attendance:

John Ballantyne, Chairman
Joseph Buckelew, Vice Chairman
Vincent Prieto, President and CEO
Robert J. Dowd, Member
Armando Fontoura, Member
Michael Griffin, NJ State Treasurer's Representative (via phone)
Andrew Scala, Member
Anthony Scardino, Member
Robert Yudin, Member

Absent:

Michael Gonnelli, Member
Michael H. Gluck, Esq., Member
Steven Plofker, Member

Also Attending:

Christine Sanz, Senior Vice President/COO
Adam Levy, Vice President of Legal & Regulatory Affairs
Anna Ancanfora, Assistant Director of Finance/Accounting
Sara Sundell, Director of Land Use Management and Chief Engineer
Steven Cattuna, Chief of Staff
Thomas Marturano, Director of Solid Waste
Lisa LeBoeuf, Senior Legal Specialist
Lauren LaRusso, Assistant Counsel, Governor's Authorities Unit
Christine Ferrante, Executive Assistant/Paralegal

Chairman Ballantyne called the meeting to order.

- I. Pledge of Allegiance
- II. Opening Statement – Chairman Ballantyne read the Notice of Meeting required under the Sunshine Law.
- III. Roll Call

IV. SPECIAL PRESENTATION

Chairman Ballantyne welcomed everyone to the meeting. The Chairman stated that many people present are here to speak on the Keegan Landfill. The Chairman then explained that as stated at last month's meeting, that due to ongoing litigation the board is limited in the way that they are able to communicate. He stated that Commissioners will not be responding to comments or engaging in a question and answer scenario. He also explained that updates and answers to questions will be posted on the NJSEA website.

Chairman Ballantyne announced that to keep the public informed about the ongoing progress at the Keegan Landfill, there will be a special technical presentation by SCS Engineers on the progress of the Gas Collection System. The Chairman introduced Lisa Wilkinson. He stated that Ms. Wilkinson is a Project Manager at SCS with over 20 years of experience in landfill engineering design, landfill gas, permitting, civil and environmental engineering, financial feasibility evaluations, storm water design, and construction quality assurance at landfills and solid waste facilities. Ms. Wilkinson also has experience working on foundation and structural design teams for various facilities, and she is proficient in the computerized analysis of engineering designs.

Ms. Wilkinson presented and explained the following regarding the gas collection system:

- Summary of Work Update
 - May 8 – Monitoring Station Operation; May 23 – submitted & SW Permit Applications; May 29 – submitted emissions estimates per ACO; May 31 – submitted ACO progress report and June 18 – resolution for construction contractor.
- Construction Schedule (approximate)
 - Mobilization – week of June 24; trench excavation – 8-10 weeks; vertical well drilling – 2 weeks; flare skid installation – 5 days and system startup – 2 days. Full-time operation of gas collection system is expected end of September 2019.
- Landfill Gas Collection and Control System
 - Vertical gas extraction wells; horizontal collectors; blower to extract gas from the wells; flare to combust collected gas and goal: maximize LFG collection to reduce odors.
 - Keegan Landfill Gas Collection System:
 - 28 vertical gas extraction wells; 6 horizontal collectors; about one mile of main header pipe; about $\frac{3}{4}$ mile of lateral pipe; valves for isolation; 5 condensate drains and 1 skid-mounted utility flare.
 - Vertical Extraction Wells Design Parameters
 - Well depth 40 to 50 feet; boreholes 36 inch diameter; casing is pvc; bottom slotted – start 20-30 feet below ground surface and typical “radius of influent” – 100 feet.
 - Horizontal Collectors – Design Parameters
 - Installed on flat plateau of landfill; perforated pipe in a gravel trench; 6-inch HDPE pipe; drain pits at low points and solid pipe to outside slopes to prevent air intrusion.

- LFG Collection Piping
 - Pathway for LFG from wellheads to blowers; pipe material: HDPE; sized for velocity and pressure drop; design intent is to have more vacuum than necessary at all wells. Wellhead valve is adjusted to reduce vacuum to needed level and pipe sloped to promote condensate drainage.
- Condensate Management
 - LFG is saturated with water; as LFG cools, water condenses; temperature drop is affected by pipe length, wind, flow rate and whether piping is above or below grade.
 - Quantity of condensate produced is a function of flow rate and temperature differential.
- Skid-Mounted Blower/Flare
 - 15-hp blower with 500 scfm capacity; 6-inch utility flare with 750 scfm capacity; 24-inch diameter moisture separator; automatic shut-off valve; flow meter with chart recorder and remote monitoring; pilot flame assembly and ignitor and control panel for automatic operation.
- Odor Control Plan
 - During Construction
 - Minimize open trench; no open boreholes, trenches overnight; odorous waste from drilling/trenching directly onto trucks; stockpiled cover materials to cover odorous waste; monitoring stations active during construction; odor neutralizing agent direct applied and inspection of all disruption activities.
 - Odor Neutralizing Agent
 - Neutralene by Air Care; absorbent filter; suppression of dust particles; salt that acts as solvent and surfactant; NOT a masking agent and used at Monmouth County and other NJ Landfills.

V. APPROVAL OF MINUTES AND CASH DISBURSEMENTS

- Chairman Ballantyne presented the minutes of the Regular Session Board Meeting held on May 16, 2019.

Upon motion made by Commissioner Fontoura and seconded by Commissioner Dowd, the minutes of the Regular Session Board Meeting held on May 16, 2019 were unanimously approved.

- Chairman Ballantyne presented the report of cash disbursements over \$100,000 and Professional Invoices for the month of May 2019.

Upon motion by Commissioner Dowd and seconded by Commissioner Scala, the cash disbursements over \$100,000 for the month of May 2019 were unanimously approved.

VI. PUBLIC PARTICIPATING ON RESOLUTIONS

- Jim Kirkos, Chief Executive Officer, Meadowlands Regional Chamber of Commerce spoke in favor of Resolution 2019-22. Mr. Kirkos expressed to the Board how terrific staff has been in working with the Chamber with regards to their comments and thoughts on the Master Plan. Mr. Kirkos spoke about the importance of long term vision in the region and outside the 14 municipalities. Mr. Kirkos also spoke about the Chamber's 16-month process in developing their 2040 Vision Plan. Mr. Kirkos stated that he would share the document with Board.
- Alberto Santos, Mayor of Kearny spoke on Resolution 2019-22 - The Mayor commented that an active landfill should not be a permitted land use under this state agency. He stated that environmental restoration and economic development should be the mission of the agency and not active disposal of solid waste.

Public Participation on Resolution 2019-23

- Cristina Felix Montague and her daughter, Kearny residents. Ms. Montague's daughter presented a picture she drew in protest of the landfill. Ms. Montague spoke on how the gas capturing system is not enough and that the landfill must be permanently closed and capped like the Fennimore Landfill in Morris County. She also stated that the Governor would not speak to the Mayor of Kearny on this issue. She commented that the community is pleading for the health of their children and how the State of New Jersey and the NJSEA are fighting back so that they do not lose revenue.

Chairman Ballantyne thanked Ms. Montague's daughter for her participation and for sharing her poster.

- Gerald Ficeto, Kearny resident and Councilman. Councilman Ficeto thanked the board for the presentation on the gas collection system and asked the following questions:
 - Asked if the gas collection system is installed will the agency continue to receive tipping fees and if so will the fees be put into an escrow account and will the account be monitored by a third party?
 - Mr. Ficeto stated that the DEP Consent Order requires the agency take reasonable measures to eliminate the hydrogen sulfide odor. He then asked if the agency is providing additional coverage and excavation and removal of the illegal waste being deposited at the landfill. He noted at the protest the NJSEA engineer was more concerned that the trucks would be damaged from the rocks on the road from the children then he was of the sheet rock falling off the truck.

Chairman Ballantyne stated that he hopes that Mr. Ficeto recognizes that the engineer was concerned for the safety of the children if a truck had shot out a stone and injured someone.

- Mr. Ficeto stated that NJSEA received a temporary certificate. He then asked if it is the NJSEA's intension to use the gas collection system to extend the operation of the Keegan Landfill.
- Asked how the NJSEA proposes to comply with the Notice of Violation where corrective action has to be taken immediately to cease emitting hydrogen sulfide in concentrations exceeding 30ppb over a 30 minute period beyond the property line. He stated the standard for health violation is 30ppb averaged and not sustained over 30 minutes.

- Alberto Santos, Mayor of Kearny commented that the gas collection system is an important step but not the only step. He stated that curbing and reduction of hydrogen sulfide is not enough. The Mayor spoke of two ways to eliminate the hydrogen sulfide one being with a synthetic cap and the other excavation and removal, which they will be investigating. The Mayor also spoke about accountability and that it is never too late to do the right thing. The Mayor stated that due to the recent high levels of hydrogen sulfide they closed Harvey Field. The Mayor asked about the June 18-19 data not being posted on the NJSEA website. The Mayor stated that he has been researching landfill gas basics and spoke about the four phases of bacterial decomposition of landfill waste. Mayor Santos also spoke on how landfill gas can migrate to 1,500 feet and about landfill gas entering buildings and homes. The Mayor asked that the NJSEA represent the people of Kearny and that no more construction debris be accepted at the landfill. He would like the collection system to be built right away and to begin the design for a synthetic cover.
- Albino Cardoso, Kearny resident and Councilman stated that the gas collection system will not solve the problem and that the only solution is to cap and close the landfill. The Councilman also stated that the landfill is a money maker for the agency. He indicated that they will continue fighting until the landfill is closed. He spoke about how something has changed and how there were no odors ten years ago. He asked for resolution to no longer accept sheet rock and sewerage sludge.
- Desiree Mills, Kearny resident and Kearny Art Teacher spoke as a voice of the children. She presented a sign made by her students of the landfill. She spoke about how parents and children are concerned for their health by going outside. Ms. Mill also presented a poem and sign written by one of her student entitled "Please Care About Our Air."
- Linda Meado, Kearny resident asked if other dangerous gases that cannot be smelled are being collected.
- Linda Guziejewski Kearny resident spoke about odors from the Landfill that can be smelled across town and how the odor permeates into stores and buildings. She spoke how the odors are life shattering for the people and children living in the area. She spoke of the Kearny High School outdoor graduation tomorrow and hopes that people and students do not get ill. She asked how many ppb today and how many ppb every day.
- Santos Murillo Kearny resident and Vice Chairman of the Board of Health asked the following questions:
 - Asked if 20% gypsum is allowed at the landfill.
 - Asked how you determine the amount of gypsum in a truck.
 - Asked what is done if more than 20% gypsum is found?
 - Asked if there was a collection system in place when the agency took over the facility. Chairman Ballantyne replied that there was not a collection system in place.
 - Asked if DEP put the monitoring systems on the landfill? Chairman Ballantyne replied that they were put in place by the NJSEA.
 - Asked if workers wear special gear like masks.
 - Asked if there is a budget analysis for sulfur extraction v. capping the landfill.
 - Asked if funds accumulated from ticket fees have accrued money to take care of problems that are happening now?

- Michael Fernandez Kearny resident asked the following questions:
 - Asked if the Board read the Oxford University Study from 2016 on Hydrogen Sulfide?
 - Asked if the Board could direct the Town and its residents on what they need to do to close the landfill.
 - Asked what is the difference between the Fennimore and Keegan landfills?
 - Asked if there is a record of the truck from Jersey City that dropped the gypsum board the day of the protest.
 - Asked if a fishing pier will be built.
 - Asked about the health effects of hydrogen sulfide?
 - Asked if the town could do a presentation at next meeting?

Mr. Fernandez wanted to clarify that he was approached at the protest by NJSEA engineer that he would be responsible for trucks being damaged from the rocks the children put down in the roadway and not approached regarding concern for the children being injured. Mr. Fernandez stated that it is time to close and cap the landfill and that there is no need for the landfill.

- Lyla DeCastro, Kearny resident spoke about the Supreme Court order for the temporary closing of the landfill. She also spoke of her concern for the health of the community and that health should be the first priority. She stated that they will not stop until landfill is closed.
- John Pinho, Kearny resident asked the following questions:
 - Asked if the minutes of the April meeting can reflect that he spoke. President Prieto stated that his comments are listed in the transcript.
 - Asked if he could obtain a copy of the transcript. President Prieto replied that it can be obtained through an OPRA request.
 - Asked about the composition of the Board of Commissioners. He indicated that he would like to write to them individually asking that they close the landfill. It was answered that there are 12 members.
 - Asked about the policy for board members to appear via phone and having a quorum.
 - Asked who is the counsel on the Keegan matter that advised the board not to answer questions. Mr. Levy replied that it is Lowenstein Sandler.
 - Asked about the SCS report not being available on the website as required by the Consent Order.

Ms. Sanz advised Mr. Pinho and the public that the board is not going to discuss Keegan matters that are within attorney/client privilege and that he is welcome to speak with her after the meeting.

Mr. Pinho stated that the Keegan Landfill is poisoning the people and that the Supreme Court decision sent a message that it is causing irreparable harm. He asked that the commissioners propose a resolution to close and cap the landfill.

Commissioner Yudin stated to the Chairman his concern with the board being verbally abused by a gentleman in the audience.

- Gerald Ficeto – spoke again asking the following:
 - Should the monthly progress reports be posted on the website per the Administrative Consent Order? He noted that the month of May is not posted.
- Barbara Goldberg, Kearny resident indicated that she is personally offended by the Commissioner who felt threatened and upset by Mr. Downey’s outburst to a comment or lack of comment by the Commissioners. Ms. Goldberg stated that the community has been coming to the meetings, which are scheduled at

inconvenient times, for months trying to take corrective action against the Keegan landfill. She stated that the people are hurting and demand that the landfill be closed.

APPROVALS

Resolution 2019-20 Resolution Issuing a Decision on the Suitability Recommendation as Required by the NJSEA Interim Policies Governing Affordable Housing Development in the Meadowlands District - File No. 19-162, Alex Property Management LLC - New Residential Bldg. & Variances - Block 149, Lot 8 in Secaucus.

Ms. Sundell stated that Alex Property Management LLC submitted a zoning certificate application proposing the construction of a 32-unit residential building at 1150 Paterson Plank Road in Secaucus. She also stated that Block 149, Lot 8, a portion of the subject property, is located in the District's Neighborhood Commercial zone and currently contains a vacant restaurant that is proposed to be demolished. She explained that residential dwellings are only permitted in the Neighborhood Commercial zone when they are accessory to a permitted use, and as such, the proposed solely residential use on Lot 8, is not permitted in the zone. She also explained that the remainder of the subject property, Lot 7, is within the Low-Density Residential zone, where residential uses are permitted as a principal use. Ms. Sundell indicated that existing uses within the Neighborhood Commercial zone in the vicinity are predominantly residential, with a few ground floor commercial and retail businesses located in the immediate vicinity along Paterson Plank Road. She also indicated that the subject property is located along the border of an existing residential neighborhood, including single-family and multi-family residences situated to the north and west of the site. She also stated that the subject property is located within a walkable distance from downtown Secaucus, including local retail stores and restaurants, recreational facilities, and other public amenities. Ms. Sundell requested that the Board concur with the Review Team's recommendation that Lot 8 be deemed suitable for residential use.

Chairman Ballantyne presented Resolution 2019-20. Upon motion made by Commissioner Fontoura and seconded by Commissioner Dowd. Resolution 2019-20 was unanimously approved by a vote of 9-0.

Resolution 2019-21 Resolution Authorizing the Public Notice and Holding of a Public Hearing for the Draft Update to the Hackensack Meadowlands District Master Plan.

Ms. Sundell stated that the Hackensack Meadowlands Agency Consolidation Act mandates that the next examination and revision of the master plan be completed within five years of the Act's effective date, which was February 5, 2015. An update to the 2004 District Master Plan is being prepared by NJSEA staff. Ms. Sundell indicated that staff has sought and received stakeholder input from the Meadowlands Chamber of Commerce, environmental groups and municipal stakeholders. She explained that a public notice will be published in the NJ Register providing the date for the public hearing on the draft plan and the public comment period. Upon publication, the draft Master Plan will be made publically available. Ms. Sundell stated that staff is requesting

that the Board authorize the publishing of a public notice in the NJ Register and hold a public hearing to accept comments on the Draft Update to the District Master Plan. Chairman Ballantyne explained that this is an administrative step to notify the public and municipal stakeholders on the public hearings regarding the draft District Master Plan. The Chairman asked about the public comment period. Ms. Sundell explained that once it is published the document will be made available to the municipalities and on be our website. Ms. Sundell indicated that the public comment period will begin approximately August 5, 2019.

Chairman Ballantyne presented Resolution 2019-21. Upon motion made by Commissioner Dowd and seconded by Commissioner Scardino. Resolution 2019-21 was unanimously approved by a vote of 9-0.

VII. AWARDS/CONTRACTS

Resolution 2019-22 Resolution Authorizing a Lease Contract on New Copiers.

Ms. Acanfora stated that this resolution is for the renewal of the lease agreement with DEC Office Solutions for five copiers that are located in the mailroom, science center, solid waste, LUM, and the admin. kitchen. She also stated that the new monthly payment will be \$2,875.00 for a total of \$103,500.00. Ms. Acanfora explained that it includes the equipment and the service plan for a 36-month period. She also explained that DEC Office Solutions, a state contract vendor, has reduced the cost of the current lease by \$830.00 per month, a savings of \$29,880.00 over the 36-month lease.

Vice Chairman Buckelew stated that staff prepared a comparison between leasing and purchasing. He noted that they found it to be more advantageous to lease the equipment.

Chairman Ballantyne presented Resolution 2019-22. Upon motion made by Vice Chairman Buckelew and seconded by Commissioner Dowd. Resolution 2019-22 was unanimously approved by a vote of 9-0.

Resolution 2019-23 Resolution Authorizing a Contract for the Construction of a Gas Collection System at the Keegan Landfill.

Mr. Levy explained that resolution is for a contract for the installation and construction of a gas collection system at the Keegan Landfill. Mr. Levy stated that the contract is in the amount of \$1.9 million. He stated that the work will be performed by SCS Field Services as outlined during the presentation by Lisa Wilkinson.

Chairman Ballantyne presented Resolution 2019-23. Upon motion made by Commissioner Yudin and seconded by Commissioner Dowd. Resolution 2019-23 was unanimously approved by a vote of 9-0.

VIII. PUBLIC PARTICIPATION

- James Harris, NJ Association of Black Educators and President of NAACP. Stated that the Keegan Landfill issue needs to be addressed quickly for the health and

safety of the children and community. He also stated that this is a civil rights issue. Mr. Harris suggested having the next meeting at the site.

Mr. Harris asked about providing transportation to the American Dream site for workers coming from Union, Bergen and Essex counties and especially for those who are underemployed. Mr. Harris also asked who is responsible in monitoring the companies that are awarded the contracts at American Dream ensuring that they are following the affirmative action and equal opportunity contract provisions. Mr. Harris stated that the Association for Black Educators and the NAACP are available to help address these concerns especially relating to affirmative action and equal opportunity.

Chairman Ballantyne stated that the last report received from Triple Five showed that they had exceeded their goal with regards to diversity. The Chairman indicated that the Carpenter's Union and other trades have people in the diversity plan who sit in leadership roles as shop stewards and in major leadership roles. He did indicate that they fell short with regards to women participation, although there is ongoing outreach. The Chairman invited Mr. Harris to speak after the meeting with a representative of the Carpenter's Union who is present today and also Commissioner Scala for an update.

- Alberto Santos, Mayor of Kearny – spoke about diversity in the work force. He spoke of the Koppers Peninsula Redevelopment Area and that it would be a good vehicle to promote local businesses in Hudson County and for them to be involved in the project. The Mayor reaffirmed Mr. Harris' suggestion and welcomed the Board to have their meeting at or near the landfill. The Mayor also spoke about the perception of a police vehicle being parked at the front door of the building during a public meeting.
- Vincent Roderick – Spoke of his concern with American Dream diversity numbers exceeding expectation in labor only. Mr. Roderick stated that diverse community is not just laborers and should include senior level skills. He spoke of the diversity numbers between Triple Five and American Dream. Mr. Roderick indicated that diverse hiring starts at the top floor and ends in the basement and that a greater perspective is needed.

VIII. EXECUTIVE SESSION

Chairman Ballantyne stated a need for the Board to enter into Executive Session to discuss contractual matters, personnel matters and litigation matters.

Resolution 2019-24 Resolution Authorizing the NJSEA to Conduct a Meeting to which the General Public Shall Not Be Admitted.

Chairman Ballantyne presented Resolution 2019-24. Upon motion made by Vice Chairman Buckelew and seconded by Commissioner Scardino Resolution 2019-24 was carried by a vote of 9-0.

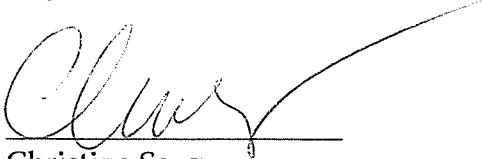
Entered Executive Session 12:00 p.m.

Returned to open session 12:43 p.m.

XI. ADJOURNMENT

With no further business, Chairman Ballantyne adjourned the meeting.
Meeting adjourned at 12:45p.m.

I certify that on information and belief this is a true and accurate transcript of the Minutes of the Regular Session of the New Jersey Sports and Exposition Authority Board Meeting held on June 20, 2019.



Christine Sanz
Assistant Secretary

June 20, 2019

Commissioner	Roll Call	2019-20	2019-21	2019-22	2019-23	2019-24
Ballantyne, Chairman	P	Y	Y	Y	Y	Y
Buckelew, Vice Chairman	P	Y	Y	Y	Y	Y
Prieto	P	Y	Y	Y	Y	Y
Dowd	P	Y	Y	Y	Y	Y
Fontoura	P	Y	Y	Y	Y	Y
Gluck	--	--	--	--	--	--
Gonnelli	--	--	--	--	--	--
Plofker	--	--	--	--	--	--
Scala	P	Y	Y	Y	Y	Y
Scardino	P	Y	Y	Y	Y	Y
Yudin	P	Y	Y	Y	Y	Y
Treasury Rep Griffin	P (via phone)	Y	Y	Y	Y	Y

P - Present A - Abstain
 -- Absent R = Recuse
 Y = Affirmative N = Negative

APPROVALS



CASH DISBURSEMENTS
\$100,000 OR MORE
JUNE 2019

EAST RUTHERFORD - SPORTS COMPLEX

<u>PAYEE</u>	<u>\$ AMOUNT</u>	<u>REFERENCE LETTER</u>	<u>ACCOUNT DESCRIPTION</u>
DEFENDER EMERGENCY PRODUCTS	113,593.00	A	PURCHASE OF AMBULANCE TRUCK
NEW JERSEY STATE POLICE	160,535.26	A/L	OVERTIME CHARGES: APR 2019 - MAY 2019
NEW MEADOWLANDS STADIUM CO. LLC	276,223.54	A	SETTLEMENT - WRESTLEMANIA: APR 2019
 	<hr/>		
EAST RUTHERFORD SC TOTAL	<u>550,351.80</u>		

MONMOUTH PARK RACETRACK MAINTENANCE RESERVE/CAPITAL

<u>PAYEE</u>	<u>\$ AMOUNT</u>	<u>REFERENCE LETTER</u>	<u>ACCOUNT DESCRIPTION</u>
BOROUGH OF OCEANPORT	550,432.22	A	CAFO SPECIAL ASSESSMENT AGREEMENT: 3RD QTR 2019
 	<hr/>		
MPR MAINTENANCE TOTAL	<u>550,432.22</u>		

LYNDHURST

<u>PAYEE</u>	<u>\$ AMOUNT</u>	<u>REFERENCE LETTER</u>	<u>ACCOUNT DESCRIPTION</u>
KEARNY MUNICIPAL UTILITIES AUTHORITY	460,338.13	A	KEEGAN LANDFILL - SEWER USER FEES : 2019 1st QTR
LOWENSTEIN SANDLER PC	163,136.77	A	LEGAL SERVICES - AUTHORITY TRANSACTIONS COUNSEL: MAR 2019 - APR 2019
NORTH BERGEN, TOWNSHIP OF	106,698.43	A	REAL ESTATE AGREEMENT: 2019
WASTE MANAGEMENT OF NEW JERSEY	406,772.04	A	OPERATIONS CONTRACT - KEEGAN LANDFILL: MAY 2019
 	<hr/>		
LYNDHURST TOTAL	<u>1,136,945.37</u>		



CASH DISBURSEMENTS
\$100,000 OR MORE

<u>REFERENCE LETTER</u>	<u>TYPE</u>
A	CONTRACT ON FILE
B	PURCHASE AWARDS - APPROVED AT MONTHLY BOARD MEETING
C	STATE REQUIREMENT FOR RACING
D	STATE VENDOR
E	SOLE SOURCE*
F	APPOINTED BY RACING COMMISSION
G	ADVERTISED BID
H	PRESIDENT/CEO APPROVAL
I	STATUTORY PAYMENT
J	UTILITIES
K	LOWEST PROPOSAL
L	REIMBURSABLE
M	OUTSTANDING PROFESSIONAL INVOICES APPROVED AT MONTHLY BOARD MEETING
N	PURCHASES ON BASIS OF EXIGENCY
*	PURCHASES DIRECT FROM SOURCE
	EXPENDITURE TO BE CHARGED TO MAINTENANCE RESERVE FUND

RESOLUTION 2019 - 25

**RESOLUTION AUTHORIZING THE
PUBLICATION OF A NOTICE OF ADOPTION FOR
NEW RULES AND AMENDMENTS TO THE
NJSEA FLOODPLAIN MANAGEMENT REGULATIONS
AND THE ADOPTION OF FEMA'S REVISED FIS AND FIRM PANELS FOR
THE HACKENSACK MEADOWLANDS DISTRICT, WITH AN EFFECTIVE
DATE OF AUGUST 28, 2019 (File No. SP-721)**

WHEREAS, the New Jersey Sports and Exposition Authority (NJSEA) is authorized by N.J.S.A. 5:10A-1 et seq., specifically N.J.S.A. 5:10A-7(b) to adopt codes and standards regarding the zoning and rezoning of lands within the Hackensack Meadowlands District (HMD); and

WHEREAS, in a letter dated February 28, 2019, the Federal Emergency Management Agency (FEMA) notified the NJSEA that, as part of its federal regulatory process, it has finalized modified Flood Hazard Determinations (FIDs) affecting the Flood Insurance Rate Maps (FIRM) and a Flood Insurance Study (FIS) report for the area that encompasses the Hackensack Meadowlands District (HMD);

WHEREAS, the NJSEA is a participating community in FEMA's National Flood Insurance Program (NFIP) and, as such, is required to ensure that its Flood Plain Management regulations meet or exceed the minimum requirements of the NFIP; and

WHEREAS, upon completion of FEMA's regulatory process for the final FIDs and the revised FIRM and FIS report, which will become effective as of August 28, 2019, all NFIP participating communities will be required to adopt or amend their flood plain management regulations to reference the new effective FIRM and FIS report; and

WHEREAS, as a condition of continued eligibility in the NFIP, all participating communities are also required to adopt or show evidence of adoption of flood plain management regulations that meet the standards of Paragraph 60.3(d) of the NFIP regulations; and

WHEREAS, NJSEA zoning regulations at N.J.A.C. 19:4-5.2(a)3, require that the minimum lowest floor elevations for structures within designated 100-year flood zones shall be established one foot above the applicable 100-year base flood elevations determined by the FIRM; and

WHEREAS, NJSEA Flood Plain Management regulations at N.J.A.C. 19:4-9.5 identify specific effective FIRM panels to be used as a basis for establishing the areas of special flood hazard within the District; and

WHEREAS, the NJSEA staff proposes to amend its Floodplain Management regulations at N.J.A.C. 19:4-9.5 to adopt FEMA's revised FIS and FIRM panels for the Hackensack Meadowlands District, which will have an effective date of August 28, 2019; and

WHEREAS, the NJSEA staff proposes new rules and amendments to its Floodplain Management regulations at N.J.A.C. 19:4-5.2 and N.J.A.C. 19:4-9 *et seq.* to be consistent with the New Jersey Department of Environmental Protection's model Flood Damage Prevention Ordinance, which thereby provides conformance with NFIP regulations; and

WHEREAS, the NJSEA staff has reviewed the proposed new rules and amendments to the NJSEA Floodplain Management Regulations and has determined that these rules meet the requirements of the New Jersey Department of Environmental Protection's model Flood Damage Prevention Ordinance and the NFIP; and

WHEREAS, the NJSEA Board of Commissioners authorized the NJSEA staff on March 21, 2019, by Resolution 2019-09, to prepare and submit a Notice of Proposal to the Office of Administrative Law for publication in the New Jersey Register and to hold a public hearing to receive input from interested parties regarding the proposed amendments to the District Floodplain Management regulations; and

WHEREAS, a Notice of Proposal was filed with the Office of Administrative Law (OAL) and was published in the May 6, 2019, issue of the New Jersey Register (NJR) at 51 NJR 5(1); and

WHEREAS, a public hearing was held at the NJSEA Offices on June 11, 2019, to receive comments on the proposed rezoning; and

WHEREAS, three (3) comments from were received by the NJSEA during the public comment period, which ended on July 5, 2019; and

WHEREAS, the Hackensack Meadowlands Municipal Committee (HMMC) approved the proposed Notice of Adoption on July 15, 2019; and

WHEREAS, based on the record in this matter, the staff recommends that the NJSEA Board of Commissioners adopt the proposed new rules and amendments to the NJSEA Floodplain Management Regulations and authorize NJSEA staff to file a Notice of Adoption with OAL; and

WHEREAS, the proposed new rules and amendments to the NJSEA Floodplain Management Regulations, including FEMA's revised FIS and FIRM panels for the Hackensack Meadowlands District, which will have an effective date of August 28, 2019, will become effective upon publication of the Notice of Adoption in the NJR.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the New Jersey Sports and Exposition Authority hereby adopts the new rules and amendments to the NJSEA Floodplain Management Regulations, including the adoption of FEMA's revised FIS and FIRM panels for the Hackensack Meadowlands District, which will have an effective date of August 28, 2019.

BE IT FURTHER RESOLVED, that the Board of Commissioners of the New Jersey Sports and Exposition Authority hereby authorizes the NJSEA staff to prepare and submit a Notice of Adoption to the Office of Administrative Law for publication in the New Jersey Register.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of July 18, 2019.



Vincent Prieto
Secretary



MEMORANDUM

To: NJSEA Board Members and Vincent Prieto, President/CEO

From: Sara J. Sundell *Date:* July 18, 2019

Subject: Rulemaking: Flood Plain Management Regulations - New FEMA FIRM (File #SP-721)

The NJSEA is a participating community in Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) and, as such, is required to ensure that its Flood Plain Management regulations meet or exceed the minimum requirements of the NFIP. In a letter dated February 28, 2019, FEMA notified the NJSEA that it has finalized modified Flood Hazard Determinations (FHDs) affecting the Flood Insurance Rate Maps (FIRM) and a Flood Insurance Study (FIS) report for the area that encompasses the Hackensack Meadowlands District (HMD). The current effective date of these documents listed in the District zoning regulations at N.J.A.C. 19:4-9.5 is September 30, 2005, which is required to be updated in order to meet NFIP requirements.

FEMA's federal regulatory process allows for only a limited amount of time for participating communities to adopt or amend their floodplain management ordinances/regulations after the final flood hazard data and the effective date of the new FIRM and FIS report have been established. In order to meet the federal timeline, along with the Office of Administrative Law's (OAL) requirements for New Jersey Administrative Code rulemaking, the NJSEA began the rulemaking process in advance of FEMA's publication of the final FIDs, which will become effective as of August 28, 2019. As a participating community in the NFIP, the NJSEA is required to amend its Flood Plain Management regulations at N.J.A.C. 19:4-9 et seq. to reference the revised FIRM and FIS report.

At the Board of Commissioner's meeting on March 21, 2019, the NJSEA staff was authorized, by Resolution No. 2019-09, to proceed with the Notice of Proposal and hold a public hearing regarding proposed amendments to the District Floodplain Management regulations.

A Notice of Proposal was filed with the Office of Administrative Law (OAL) and published in the May 6, 2019, issue of the New Jersey Register (NJR) at 51 NJR 5(1). A public hearing to receive comments was held at the NJSEA Offices on June 11, 2019. Three (3) comments were received by the NJSEA during the public comment period, which ended on July 5, 2019.

NJSEA staff prepared a Notice of Adoption to amend its Floodplain Management regulations at N.J.A.C. 19:4-9.5 to adopt FEMA's revised FIS and FIRM panels for the Hackensack Meadowlands District, which will have an effective date of August 28, 2019. The new rules and amendments to the Flood Plain Management regulations at N.J.A.C. 19:4-5.2 and N.J.A.C. 19:4-9 et seq. are required for consistency with the New Jersey Department of Environmental Protection's model Flood Damage Prevention Ordinance, and thereby provide for conformance with NFIP regulations.

On July 8, 2019, the matter was forwarded to the Hackensack Meadowlands Municipal Committee (HMMC) for its consideration. The HMMC approved the proposed new rules and amendments at their meeting on July 15, 2019.

Based upon the record in this matter, the staff is requesting that the NJSEA Board of Commissioners adopt the new rules and amendments to the NJSEA Floodplain Management Regulations, including the adoption of FEMA's revised FIS and FIRM panels for the Hackensack Meadowlands District, which will have an effective date of August 28, 2019. It is further requested the NJSEA Board of Commissioners authorize staff to file a Notice of Adoption with the OAL for publication in the NJR. A resolution requesting the same is attached for your consideration.

OTHER AGENCIES

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY

District Zoning Regulations

Floodplain Management

Adopted New Rules: N.J.A.C. 19:4-9.9A, 9.27, and 9.28

Adopted Amendments: N.J.A.C. 19:4-5.2, 9.1 through 9.6, 9.8, 9.9, 9.10, 9.11, 9.13, 9.14,

9.18, 9.19, 9.20, 9.22, 9.23, 9.25, and 9.26

Proposed: May 6, 2019 at 51 NJR 5(1)

Adopted: July 18, 2019 by the New Jersey Sports and Exposition Authority

Vincent Prieto, President and CEO

Filed: July 26, 2019, with non-substantial changes not requiring additional

public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 5:10A-1 et seq., specifically 5:10A-7(b). See also N.J.A.C. 19:3-1.5

Effective Date: August 19, 2019

Expiration Date: August 19, 2024

The rule adoption can also be viewed or downloaded from the NJSEA's website at

<https://www.njsea.com/public-notices/>.

Summary

The flood hazard areas of the NJSEA are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and

relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard, which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Structures that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

The NJSEA is a participating community in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) and, as such, is required to ensure that its floodplain management rules meet or exceed the minimum requirements of the NFIP. See 44 CFR Section 60. As a result of the adoption and enforcement of NJSEA's floodplain management rules, Hackensack Meadowlands District (District) property owners have the ability to apply for, and obtain, Federally-backed flood insurance through the NFIP. After significant study, FEMA has prepared revised Flood Insurance Rate Maps (FIRM) and a revised Flood Insurance Study (FIS) report for Bergen County, New Jersey, which includes the area that encompasses the District. As a participating community in the NFIP, the NJSEA is required to amend and add to its floodplain management rules at N.J.A.C. 19:4-9 to reference the new effective FIRM and FIS report, which according to FEMA's Letter of Final Determination (LFD), dated

February 28, 2019, will become effective on August 28, 2019. The NJSEA rules currently refer to the September 30, 2005, FIRM and FIS, and therefore, must be updated to meet NFIP requirements. The FIRM panel numbers have also been revised by FEMA and are required to be updated in the NJSEA rules. According to the FEMA LFD, communities

that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP.

The New Jersey Department of Environmental Protection (NJDEP) is designated as the State agency responsible for coordinating Federal, State, and local aspects of floodplain management activities as required under the provisions of the NFIP. The goals of the NFIP and the NJDEP include the reduction of threats to life and property through improved flood hazard information, enforcement of flood damage reduction regulations, and promotion of flood damage reduction activities including, and also exceeding, minimum NFIP standards. In order to facilitate conformance with NFIP standards, the NJDEP provides participating communities with a model flood damage prevention ordinance and map adoption language, and reviews local ordinance and regulation amendments. As a participating community in the NFIP, the NJSEA is proposing updates to its rules to conform to NFIP requirements and NJDEP guidance documents.

In this rulemaking, the NJSEA is also clarifying specific language in both the general provisions at N.J.A.C. 19:4-5.2 and the floodplain management rules at N.J.A.C. 19:4-19:4-9 in order to eliminate a potential or perceived conflict. The rules at N.J.A.C. 19:4-5.2(a)3 state that the minimum floor elevation for structures within the designated 100-year flood zones shall be established one foot above the applicable 100-year base flood elevations determined by the FEMA FIRMS. This paragraph is proposed for amendment to align with the revisions to Subchapter 9, which will provide clarity and consistency to the reader. In this regard, while the NJSEA has always required new

construction and substantial improvements to meet the minimum floor elevation noted in Subchapter 5, the existing language at N.J.A.C. 19:4-9.20(b) provides for an option to either meet the required elevation listed at N.J.A.C. 19:4-5.2(a)3 or floodproof new construction or substantial improvement of non-residential construction. As N.J.A.C. 19:4-5.2(a)3, requiring the base flood elevation plus one foot is the more restrictive of the two options, this has been the elevation required for such construction. The NJSEA policy decision to adhere to its longstanding enforcement of N.J.A.C. 19:4-5.2(a) eliminates the less-restrictive floodproofing option in Subchapter 9. In addition, the inclusion of a reference to the floodplain management rules in Subchapter 5 provides for consistency and not a loosening of the requirements. And while the FEMA standards allow for floodproofing in place of the base flood elevation plus one, the NJSEA has always exceeded this standard as a matter of policy, by enforcing the stricter of the two rules, and out of an abundance of caution for its constituents.

On March 21, 2019, the New Jersey Sports and Exposition Authority (NJSEA) Board of Commissioners authorized staff to prepare and file a notice of proposal with the Office of Administrative Law for publication in the New Jersey Register and to hold a public hearing to obtain public input on the proposed amendments regarding the floodplain management rules.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on this matter was held on June 11, 2019, at the NJSEA Offices.

Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer, was the public hearing officer, with Sharon A. Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer, and Fawzia Shapiro, P.E., P.P., CFM, Assistant Chief Engineer, also present.

No recommendations were made by Ms. Sundell or NJSEA staff during the hearing. The hearing record is available for inspection in accordance with applicable law by contacting:

Sara J. Sundell, P.E., P.P.

Director of Land Use Management and Chief Engineer

New Jersey Sports and Exposition Authority

P.O. Box 640

One DeKorte Park Plaza

Lyndhurst, NJ, 07071

ssundell@njsea.com

Summary of Public Comments and Agency Responses:

The official comment period ended on July 5, 2019. The NJSEA received comments from:

1. William Sullivan, Esq., Scarinci Hollenbeck, on behalf of the Meadowlands Regional Chamber of Commerce, and

2. Kristine Kalfas, P.E., P.P., Vice President – Site Development and Engineering, Hartz Mountain Industries, Inc.

3. Michael G. McGuinness, CEO, NAIOP, the Commercial Real Estate Development Association

1. COMMENT: The rules at N.J.A.C. 19:4-9.20(b) currently allow the dry

floodproofing of non-residential structures. The proposed amendments eliminate the floodproofing option for new construction or substantial improvements for non-residential structures and require that all new structures provide a minimum first floor elevation of one foot above the 100-year base flood or the design flood elevation set forth on the FEMA flood maps. The commenter provided a comparison of this proposed amendment with the NJDEP Flood Hazard Area Protection Act Program rules, which allow, under certain circumstances, that a structure can be dry-floodproofed, or if that is not feasible then wet floodproofed. In either of these instances, the dry-floodproofing or the wet-floodproofing is implemented to an elevation of one foot above the design flood elevation.

The commenter stated that permitting dry-floodproofing and wet-floodproofing would allow the developer to avoid placing additional fill on the site, which results in a loss of area flood storage and potentially impacts neighboring properties and would preserve flexibility for those circumstances in which it makes sense for a developer to look at the floodproofing options instead of bringing in additional fill. The commenter recognized that the waters in the Meadowlands are tidal and thus are not subject to the

net fill requirement of the DEP Flood Hazard Regulations; however, reducing the amount of fill placed on the sites would be beneficial for both the applicant and the neighboring properties, as the placement of fill could result in floodwaters being redirected to other sites and the cost of clean fill these days is very high.

The commenter also stated that as the Meadowlands Region comes to grips with the reality of climate change and sea level rise, property owners and developers should be given more options to use as applicable to the particular circumstances and not reducing the number of options available.

RESPONSE: Amending the specific language in both the general provisions at N.J.A.C. 19:4-5.2 and the floodplain management rules at N.J.A.C. 19:4-9 eliminates a potential or perceived conflict within the rules. The general provisions do not permit floodproofing as an option for non-residential new buildings and substantial improvements, and the floodplain management rules do. The NJSEA policy decision to adhere to its longstanding enforcement of N.J.A.C. 19:4-5.2(a) eliminates the less-restrictive floodproofing option in Subchapter 9. In addition, the inclusion of a reference to the floodplain management rules in Subchapter 5 provides for consistency and not a loosening of the requirements. The main purpose of these rules is to provide for the protection of the public's health, safety and general welfare.

The commenter requested that the proposed rules of the NJSEA be revised to match those of the NJDEP Flood Hazard Area Control Act at N.J.A.C. 7:13. While the NJDEP's rules allow certain buildings to utilize dry- and wet-floodproofing in place of providing the same required elevations as in the NJSEA's rules, the NJDEP rules have a

number of significant conditions that must be met in order to deviate from the BFE plus one foot requirement. Although not expressly permitted in the District, an applicant has the option of requesting a variance from the NJSEA to deviate from its rules. It should be noted that the NJSEA's proposed rules were developed with the assistance and support of the NJDEP's Bureau of Flood Control.

Regarding fill placement in the District for the construction of new buildings and substantial improvements at the required elevation, the statement that elevating a building's first floor to the BFE plus one foot will result in directing flood waters onto other properties is an overgeneralization. The design and circumstances of every proposed development are different, and as such, all proposed development plans submitted to the NJSEA are reviewed in accordance with the District zoning regulations and with consideration taken for the management of stormwater after rainfall events. Tidal flooding is also taken into consideration; however, the type of tidal flooding that the District experiences tends to be a gradual rise in tidal waters, with the exception of extreme events such as Superstorm Sandy.

More than three-quarters of the District is located within a FEMA designated Special Flood Hazard Area (SFHA), defined as an area that will be inundated by a flood event having a one percent chance of being equaled or exceeded in any given year. With respect to net fill, the District does not maintain net fill requirements due to the tidal nature of the region. Any new structure constructed within the SFHA results in a loss of flood storage no matter the elevation of its first floor. Of particular significance, however, is not the loss of uplands flood storage, but rather the loss of flood storage in

the existing wetlands and marshes. Permits for filling in District wetlands are under the jurisdiction of the U.S. Army Corps of Engineers and are discouraged by the policies of the NJSEA. Notwithstanding the commenter's net fill concern, raising the elevation of the first floor of a new building to at least one foot above the base flood elevation provides protections to the public.

Since 1992, the NJSEA has participated in the FEMA NFIP Community Rating System (CRS), which is a voluntary program that affords a discount on flood insurance premium rates for property owners, including businesses, tenants, and residents located in a SFHA in the District. It is a point-based system that accumulates credits for certain activities related to flooding mitigation while providing progressively larger discounts on the premium rates. The NJSEA's current participation in the CRS program maintains the classification of the Meadowlands District as a CRS Class 7 Community, resulting in a 15 percent discount on NFIP policies issued through FEMA. In order to maintain the District's Class 7 rating and the associated discount, the NJSEA must continue to implement certain activities that meet or exceed the CRS-established point system, including the enforcement of higher regulatory standards such as the requirement that new construction and substantial improvements are elevated at least one foot above the Base Flood Elevation (BFE) established by the FEMA FIRMs. Relaxing these elevation requirements by allowing floodproofing in lieu of building elevation could put the District's standing with the CRS program at risk, and along with it, the 15 percent discount on NFIP policies afforded to constituent property owners.

Finally, the NJSEA is fully aware of the potential dangers associated with climate change and sea level rise. Allowing new buildings and substantial construction to be built at an elevation that is not only currently at risk for flooding during extreme flooding events, but will be even more so as future sea level rise occurs, would not be taking the most recent science into account and, therefore, would not be prudent. The Science and Technology Advisory Panel (STAP), convened by Rutgers University, released a report in 2016 entitled, "Assessing New Jersey's Exposure to Sea-Level Rise and Coastal Storms: Report of the New Jersey Climate Adaptation Alliance Science and Technical Advisory Panel," (STAP Report), which presented a range of estimates of sea level rise (SLR) magnitude for New Jersey, as well as the probability of those estimates occurring. Sea level rise projections for New Jersey are on the order of 1.0 to 1.8 feet by 2050 and 1.7 to 3.1 feet by 2100. With the projected increase in sea level, the impacts of future coastal storms in New Jersey will be magnified. Storm surges combined with higher water levels due to sea level rise will make severe coastal flooding more frequent in the future. Tidally-influenced areas like the Meadowlands are also likely to experience increased nuisance, or high tide flooding, in low-lying areas. This type of flooding, which is common in certain Meadowlands communities, occurs even in the absence of severe storms. All of this information underlines the need to require the building elevation standards as proposed and to not permit floodproofing as the only solution for protecting development in the District. Raising all new construction and substantial improvements to at least one foot above the base flood elevation provides the best protection to new development.

2. COMMENT: The commenter referenced N.J.A.C. 19:4-9.13(a)4 and N.J.A.C. 19:4-9.27(a) as they relate to the introduction of new regulations regarding properties that may lie within a floodway. The commenter stated that the NJSEA should make available to the public maps showing the designated Floodways in the District and that property owners should have this resource available to determine if there is any impact on their property. The commenter also stated that because these are new regulations, the potential economic impact on effected property owners should be addressed.

RESPONSE: Areas that lie within a floodway are noted as such on the FEMA FIRM maps, including the effective maps currently dated September 2005, which are being superseded by these adopted rules, and the new effective maps dated August 28, 2019, which are noted in the adopted rules in N.J.A.C. 19:4-9.5. The FIRM maps are available on the FEMA website at <https://msc.fema.gov/portal/home> and in the offices of the NJSEA at One DeKorte Park Plaza, Lyndhurst, NJ, as noted in N.J.A.C. 19:4-9.5. It should be noted that there is only one location in the District that is designated as a floodway, which is located on Overpeck Creek in Ridgefield, NJ. The area of the floodway on Overpeck Creek remains unchanged on the adopted FIRM maps.

3. COMMENT: The commenter stated that with respect to the proposed adoption of ASCE/SEI 24-14, Tables 2-1 and 6-1, as referenced in N.J.A.C. 19:4-9.20, the tables listed have the potential to raise the minimum elevation of a project or the flood proofing of a project one to two feet or more above the current minimum elevation of one foot above the BFE. The commenter stated that the operational and economic

impacts of this new regulation would be substantial in many cases. The commenter also expressed concerns regarding the use of the ASCE Standards as a universal standard and the terminology used in the standard.

RESPONSE: The language proposed regarding the American Society of Civil Engineers (ASCE) publication entitled Flood Resistant Design and Construction, is required to be included in the NJSEA's flood plain management rules by the minimum requirements of the FEMA NFIP. The NJSEA is required to include specific language provided by FEMA in order to participate in the NFIP. According to the FEMA LFD, communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP. As a participating community in the NFIP, the NJSEA is adopting updates to its rules to conform to NFIP requirements and NJDEP guidance documents.

4. COMMENT: The commenter states that the rules at N.J.A.C. 19:4-9.20 specify that utilities are also regulated by the proposed rule and requests clarification as to what elements of each utility are included. The commenter states that utility companies are responsible for the maintenance and repair of their own equipment and generally determine where their equipment goes and at what elevation. The commenter states that it should also be made clear that underground conveyance systems are not regulated by the proposed minimum elevation requirements.

RESPONSE: The NJSEA declines, as the commenter suggested, to provide additional information regarding elements of each utility that are included in the rules. To be inclusive, such a list would need to catalog every possible piece of equipment

associated with each type of utility, which is not practical. With respect to the utility companies' determination of the elevations of their equipment, both the NJSEA and applicants submitting development applications in the District have been successful in communicating the need to elevate certain utility equipment, such as transformers, to the different utility companies in the region. In addition, underground conveyance systems such as sanitary and stormwater pipes are not expected to be installed above the minimum elevation standards listed in the rules, and as written, the rules do not suggest such a requirement. Further, the language utilized in the adopted rules is as provided by NJDEP guidance documents that are utilized across New Jersey and NFIP requirements that are utilized throughout the entire country.

No change to the new rules and amendments is proposed upon adoption as a result of these comments.

Summary of Agency Initiated Changes

After the Notice of Proposal for this rule change was published, FEMA updated the letter designation of the proposed FIRM panel numbers that will become effective on August 28, 2019, from "J" to "H." As such, in order to align the proposed rules with the FEMA requirements, this non-substantial change has been made in the proposed rules. For example, in N.J.A.C. 19:4-9.5, one of the FIRM panel designations is changed from 0245J to 0245H.

Federal Standards Statement

N.J.S.A. 52:14B-4 requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The District is located within the Federally designated Coastal Zone Management Area for New Jersey (designated in accordance with 15 CFR 923.53(a)(1)). The NJSEA acts as the lead coastal planning and management agency for the District under the guidance of the New Jersey Department of Environmental Protection (NJDEP). The NJSEA District Zoning Regulations serve as a regulatory tool for meeting the goals and rules established by the New Jersey Coastal Management Program.

The proposed amendments and new rules have been formulated in order to implement, comply with, and participate in the National Flood Insurance Program, which is a program established under Federal law. In addition, the rules are proposed to correspond to the language of the NJDEP's model ordinance, which corresponds to the requirements of the NFIP regulations at 44 CFR Section 60.3(c). With one exception, the proposed amendments and new rules do not contain any requirements or standards in excess of those imposed under Federal law.

The proposed amendments and new rules regarding the construction of new or substantially improved non-residential structures located within an A or AE zone on the District's DFIRM, require the lowest floor of such structures to be elevated 1) at or above the base flood elevation plus one foot; 2) at or above the best available flood

hazard data elevation plus one foot; or 3) as required by ASCE/SEI 24-14, Flood Resistant Design and Construction, Table 2-1, whichever is more restrictive.

FEMA/NFIP regulations allow for a secondary option for the construction of new or substantially improved non-residential buildings, which is to floodproof the structures to the required lowest floor plus one foot; thus not requiring construction of a lowest floor at the elevation of the standards listed. The existing NJSEA regulation at N.J.A.C. 19:4-5.2(a)3, requires the minimum floor elevation for structures within the designated 100-year flood zones to be one foot above the applicable 100-year base flood elevations determined by the FEMA Flood Insurance Rate Maps (FIRMS). FEMA's option of floodproofing is not contemplated at existing N.J.A.C. 19:4-5.2(a)3. However, there is a conflict, wherein existing N.J.A.C. 19:4-9.20(b) permits floodproofing for new and substantially improved non-residential structures. Due to the significant expense of floodplain within the District, the NJSEA has always enforced the more restrictive standard at N.J.A.C. 19:4-5.2(a)3, which is more protective of life and property in the District, versus permitting floodproofing of new or substantially improved non-residential construction. N.J.A.C. 19:4-9.20(b) is proposed for amendment to only permit floodproofing for non-substantial non-residential construction, and N.J.A.C. 19:4-5.2(a)3 is proposed for amendment to provide consistency with the updates to the floodplain management regulations; however, the basic premise continues to be the same, in that the lowest floor must be elevated to protect the structure from flooding.

The continued enforcement of the rules to this higher standard promotes increased protections from health and safety hazards, disruption of commerce and governmental

services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*, deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 5. DISTRICTS, USES AND STANDARDS

19:4-5.2 General provisions

(a) The following provisions shall apply to all zones:

1.-2. (No change.)

3. Minimum lowest floor elevations for structures within the designated 100-year flood zones shall be established one foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRMS), or as required in accordance with N.J.A.C. 19:4-9.20.

4.-7. (No change.)

(b) (No change.)

SUBCHAPTER 9. FLOODPLAIN MANAGEMENT

19:4-9.1 Title

(a) This subchapter shall be known, and may be referred to as, the Floodplain Management Regulations of the Hackensack Meadowlands District.

(b) The flood hazard areas of the New Jersey Sports and Exposition Authority are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard, which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

19-4-9.2 Purposes

This subchapter sets forth procedures and engineering and planning standards in accordance with which the NJSEA shall review and approve or disapprove applications for the development or use of land within the District. This subchapter is designed to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed: to protect human life and health; to minimize expenditure of public money for costly flood control projects; to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; to minimize prolonged business interruptions; to minimize damage to new and existing construction; to minimize damage to public and private facilities and utilities, such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in

areas of special flood hazard; to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard, so as to minimize future flood blight areas; to ensure that potential buyers are notified that property is in an area of special flood hazard; to ensure that those who own or occupy the areas of special flood hazard assume responsibility for their actions; and generally to provide for the exercise of the powers regarding the review and regulation of land use and development conferred upon the NJSEA by P.L. 2015, c. 19. In order to accomplish its purpose, this subchapter includes methods and provisions for: restricting or prohibiting uses that are dangerous to health, safety, and property due to water or erosion hazards, or that result in damaging increases in erosion, flood heights, or velocities; requiring that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction; controlling the alteration of natural floodplains, stream channels, and natural protective barriers that help accommodate or channel flood waters; controlling filling, grading, dredging, and other development that may increase flood damage; and preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards in other areas.

19-4-9.3 Words and phrases defined

Unless specifically defined in N.J.A.C. 19:4-2 or below, words or phrases used in this subchapter shall be interpreted, so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"AO Zone" means an area subject to inundation by one percent annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.

"AH Zone" means an area subject to inundation by one percent annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base flood elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

"Area of shallow flooding" means a designated AO or AH zone on the Digital Flood Insurance Rate Map (DFIRM) with a one percent annual or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist; where the path of flooding is unpredictable; and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, which is shown on the FIRM as zone V, VE, V1-30, A, AO, A1-A30, AE, A99, or AH.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Base flood elevation (BFE)" means the flood elevation shown on a published Flood Insurance Study (FIS), including the Flood Insurance Rate Map (FIRM). For zones AE, AH, AO, and A1-A30, the elevation represents the water surface elevation resulting from a flood that has a one percent or greater chance of being equaled or exceeded in any given year.

...

"Best available flood hazard data" means the most recent available flood risk guidance FEMA has provided. The best available flood hazard data may be depicted on, but is not limited to, Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

"Best available flood hazard data elevation" means the most recent available flood elevation FEMA has provided. The best available flood hazard data elevation may be depicted on an Advisory Flood Hazard Area Map, Work Maps, or Preliminary FIS and FIRM.

...

"Community" means any state or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

...

"Digital Flood Insurance Rate Map (DFIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Elevated building" means a non-basement building that is:

1. In the case of a building in an area of special flood hazard, built to have the top of the lowest floor, or in the case of a building in a coastal high hazard area, built to have the bottom of the lowest horizontal structural member of the elevated floor,

to real estate or improved real property, water, and sanitary facilities, structures, and their contents.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

"Freeboard" means the factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a select size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

"Historic structure" means any structure that is:

1. (No change.)
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. - 4. (No change.)

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access, or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the

elevated at or above the base flood elevation plus freeboard by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water; and
2. (No change.)

3. In an area of special flood hazard, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

...
"Flood insurance study" or "FIS" means the official report provided in which the FIA has provided flood profiles, as well as the FIRMs and the water surface elevation of the base flood.

"Floodplain Management Regulations" means the zoning and subdivision regulations, building codes, and other applicable rules and regulations. The term describes State rules that provide standards for the purpose of flood damage prevention and reduction.

"Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage

structure in violation of other applicable non-elevation design requirements of 44 CFR 60.3.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term manufactured home does not include recreational vehicles.

...
"New construction" means structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home, park, or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

...
"Start of construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)) includes

substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual

start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of pilings, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearings, grading, and filling, nor does it include the installation of streets and/or sidewalks; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building whether or not that alteration affects the external dimensions of the building.

...
"Substantial damage" means damage of any origin sustained by a structure, such that the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications that have been identified by the local code enforcement officer and that are the minimum necessary to assure safe living conditions; or

2. (No change.)

“Variance” means a grant of relief from the requirements of this subchapter, that permits construction in a manner that would otherwise be prohibited by this subchapter.

“Violation” means the failure of a structure or other development to be fully compliant with this subchapter. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation, until such time as that documentation is provided.

19:4-9.4 Lands to which this subchapter applies

This subchapter shall apply to all areas of special flood hazards within the boundaries of the District (NFIP community number 340570).

19:4-9.5 Basis for establishing the areas of special flood hazard

The areas of special flood hazard identified by the FIA in a scientific and engineering report entitled, "Flood Insurance Study, Bergen County, New Jersey, All jurisdictions," dated August 28, 2019, with accompanying FIRM, Panel numbers *[0245], 0252], 0253],

0254], 0256], 0257], 0258], 0259], 0261], 0262], 0263], 0264], 0266], 0267], 0268], 0307], 0331], and 0332]]* *0245H, 0252H, 0253H, 0254H, 0256H, 0257H, 0258H, 0259H, 0261H, 0262H, 0263H, 0264H, 0266H, 0267H, 0268H, 0307H, 0331H, and 0332H,* is incorporated herein by reference, as amended and supplemented, and declared to be a part of this chapter. The effective date of the floodplain management regulations is August 28, 2019. The Flood Insurance Study and FIRM mapping are on file at the Offices of the New Jersey Sports and Exposition Authority, One DeKorte Park Plaza, Lyndhurst, New Jersey 07071.

19:4-9.6 Fees

(a) Any requests for flood hazard certification or variances and appeals shall be submitted to the NJSEA and accompanied by such fee as set forth in N.J.A.C. 19:4-11.2.

(b) Any requests for copies of the regulations, study, or maps submitted to the NJSEA shall be accompanied by a copying fee as specified in N.J.S.A. 46:1A-1 et seq.

19:4-9.8 Other permits

No building permit, zoning certificate, occupancy certification, subdivision plat approval, or implementation plan approval shall be issued by any official or agency of the NJSEA on any land, or portion thereof, that is within an area of special flood hazard until there has been compliance with this subchapter. Any approvals issued in conflict with this subchapter shall be null and void.

19:4-9.9 Abrogation and greater restrictions

This subchapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this subchapter and other regulations, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

19:4-9.9A Interpretation

Interpretation of this subchapter shall be in accordance with N.J.A.C. 19:4-2.1 and 4.12A.

19:4-9.10 Warning and disclaimer of liability

The degree of flood protection required by this subchapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the NJSEA, any officer or employee thereof, or the FIA for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

19:4-9.11 Development permit

No structure or land shall be constructed, relocated, extended, converted, or altered, including placement of manufactured homes, after February 17, 2004, within any area of a special flood hazard established at N.J.A.C. 19:4-9.5, unless a zoning certificate, construction permit, occupancy certification, subdivision approval, sanitary landfill approval, or any other development permit approvals as required by P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.) shall first have been obtained from the NJSEA certifying that the proposed construction, use, or development complies with this chapter, including, but not limited to, N.J.A.C. 19:4-4.4 and 9.20(b). In addition, the extent to which any watercourse is proposed to be altered or relocated as a result of proposed development shall be depicted on the site plan.

19:4-9.13 Duties and responsibilities of the Chief Engineer

(a) The Chief Engineer shall administer the provisions of this subchapter in the manner set forth in this section. In furtherance of such authority, the Chief Engineer shall undertake such actions as he or she deems appropriate, including, but not be limited to, the following:

1. - 2. (No change.)
3. Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard.
 - i. If it is determined that there is no adverse effect, then the permit shall be granted, consistent with the provisions of this section.
 - ii. (No change.)

4. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of N.J.A.C. 19:4-9.27(a) are met.

5. Maintain for public inspection, all records pertaining to development permits, including: obtaining and recording the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement; verifying and recording the actual elevation (in relation to mean sea level) and maintaining flood proofing certifications for all new or substantially improved flood proofed structures;

6. Notify adjacent municipalities and the New Jersey Department of Environmental Protection, Bureau of Flood Control and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the FIA; require that maintenance is provided within the altered or relocated portion of said watercourse, so that the flood carrying capacity is not diminished;

7. When base flood elevation data has not been provided in accordance with N.J.A.C. 19:4-9.5, Basis for establishing the areas of special flood hazard, the Chief Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to administer N.J.A.C. 19:4-9; and

8. (No change in text)

9. The Chief Engineer, in coordination with the municipal code enforcement official, shall perform substantial damage review as follows:

- i. After an event resulting in building damage, assess the damage to structures due to flood and non-flood causes;
- ii. Record and maintain the flood and non-flood damage of substantial damage structures and provide a letter of Substantial Damage Determination to the property owner and the New Jersey Department of Environmental Protection, Bureau of Flood Control; and
- iii. Ensure that the substantial improvements meet the requirements of N.J.A.C. 19:4-9.20.

19:4-9.14 Variances from floodplain management regulations

(a) In cases in which there is exceptional hardship in carrying out the literal provision of this chapter, whether because of conflicting requirements or otherwise, the Board of Commissioners may authorize a variance from such provision. In passing upon requests for variances, the Board of Commissioners shall consider all technical evaluations; all relevant factors and standards specified in other sections of this chapter; and the following:

1. - 7. (No change.)
8. The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
9. -11. (No change.)

(b) (No change.)

(c) Any appeal of a variance recommendation shall be in accordance with N.J.A.C. 19:4-4.19.

19:4-9.18 Appeals

An appeal from an adverse decision of the Board of Commissioners made pursuant to this subchapter may be made in accordance with the provisions of N.J.A.C.

19:4-4.19.

19:4-9.19 Scope

In all areas of special flood hazards, the standards in this subchapter and compliance with the applicable requirements of the New Jersey Uniform Construction Code (NJ UCC), N.J.A.C. 5:23, are required.

19:4-9.20 Buildings

(a) Residential construction:

1. New construction and substantial improvement of any residential structure located in an A or AE zone on the District's DFIRM shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air conditioning, and other service equipment) and sanitary facilities, elevated at or above the base flood elevation (published FIS/FIRM) plus one foot, the best available flood hazard data elevation plus one foot, or as required by the

American Society of Civil Engineers (ASCE)/SEI 24-14, Flood Resistant Design and Construction, Table 2-1, incorporated herein by reference, as amended and supplemented, whichever is more restrictive. A copy of ASCE/SEI 24-14 may be obtained from ASCE, 1801 Alexander Bell Drive, Reston, VA 20191 or online at www.asce.org.

2. New construction and substantial improvement of any residential structure located in an AO or AH zone on the District's DFIRM shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air conditioning, and other service equipment) and sanitary facilities, elevated one foot above the depth number specified in feet, above the highest adjacent grade (at least three feet if no depth number is specified).

3. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.

(b) Non-residential construction:

1. New construction and substantial improvement of any commercial, industrial, or other non-residential structure located in an area of special flood hazard shall have the lowest floor, including basement, together with the attendant utilities and sanitary facilities, as well as all electrical, heating, ventilating, air conditioning, and other equipment, as follows:

i. When located within an A or AE zone on the District's DFIRM, elevated at or above the base flood elevation (published FIS/FIRM) plus one foot, the best

available flood hazard data elevation plus one foot, or as required by ASCE/SEI 24-14,

Flood Resistant Design and Construction, Table 2-1, whichever is more restrictive;

ii. When located within an AO or AH zone on the District's DFIRM,

elevated above the depth number specified in feet plus one foot, above the highest adjacent grade (at least three feet if no depth number is specified); or

iii. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures;

2. Non-residential construction deemed to be a non-substantial improvement of any commercial, industrial, or other non-residential structure located in an area of special flood hazard, together with the attendant utilities and sanitary facilities, as well as all electrical, heating, ventilating, air conditioning, and other equipment, may:

i. Be floodproofed, so that below the elevation equal to the base flood elevation (published FIS/FIRM) plus one foot, the best available flood hazard data elevation plus one foot, or as required by ASCE/SEI 24-14, Table 6-1, whichever is more restrictive, the structure is water tight with walls substantially impermeable to the passage of water;

ii. (No change in text.)

iii. Be certified by a licensed professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the Chief Engineer.

(c) (No change.)

(d) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall:

1. Be consistent with the need to minimize flood damage;
2. Be constructed to minimize flood damage;
3. Have adequate drainage provided to reduce exposure to flood damage; and
4. Be elevated on a permanent foundation, such that the top of the lowest floor is elevated to a minimum of one foot above the base flood elevation (published FIS/FIRM), the best available flood hazard data elevation plus one foot, or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive; and

5. The manufactured home chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

19:4-9.22 Subdivision proposals

(a) All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals and other proposed new development shall have public utilities and facilities, such as sewer, gas, electric, and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage.

(d) Base flood elevation data shall be provided for subdivision proposals and other proposed new development that contain at least three lots or three acres (whichever is less).

19:4-9.23 Anchoring

(a) (No change.)
(b) All manufactured homes to be placed or substantially improved shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

19:4-9.25 Utilities

(a) – (c) (No change.)
(d) For all new construction and substantial improvements, the electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located, so as to prevent water from entering or accumulating within the components during conditions of flooding.

19:4-9.26 Enclosure openings

(a) All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or

storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or registered architect or must meet or exceed the following minimum criteria:

1. A minimum of two openings in at least two exterior walls of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
2. - 3. (No change.)

19:4-9.27 Floodways

(a) Areas designated as floodways are located within certain areas of special flood hazard. Since the floodway is an extremely hazardous area due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Encroachments in floodways, including new fill, new construction, substantial improvements, and other development, are prohibited, unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If (a)1 above is satisfied, all new construction and substantial improvements shall comply with this subchapter.

3. In all areas of special flood hazard in which base flood elevation data has been provided and a floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths of a foot at any point.

19-4-9.28 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this subchapter is invalidated by judicial decision, or any reason whatsoever, such decision shall not affect the remaining subchapter, section, subsection, paragraph, sentence, clause, or phrase of this subchapter, which shall remain in full force and effect, and for this purpose, the provisions of this subchapter are hereby declared to be severable.

RESOLUTION 2019-26

**RESOLUTION ISSUING A
DECISION ON THE VARIANCE APPLICATION
SUBMITTED AS PART OF FILE NO. 14-641
UNION MEADOWS/ENER-G RUDOX - RENOVATION & ADDITION
BLOCK 106.02, LOT 3, IN THE BOROUGH OF EAST RUTHERFORD**

WHEREAS, an application for one bulk variance has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Michael J. Gross, Esq., of the firm Giordano, Halleran & Ciesla, on behalf of ENER G Rudox, Inc., for the premises located at 180 East Union Avenue and identified as Block 106.02, Lot 3, in the Borough of East Rutherford, New Jersey; and

WHEREAS, the premises is located within the Hackensack Meadowlands District's (District) Light Industrial A zone; and

WHEREAS, the bulk variance is sought in connection with the applicant's new 4,500-square-foot light industrial building addition on the subject premises; and

WHEREAS, the applicant requested bulk variance relief from N.J.A.C. 19:4-5.2(a)3, which requires that the minimum lowest floor elevations for structures within the designated 100-year flood zones shall be established one-foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, or at an elevation of 9 feet in the North American Vertical Datum of 1988 (NAVD 88) in this instance, whereas a 4,500-square-foot light industrial building addition has been constructed with a minimum lowest floor elevation of 7.74 feet NAVD 88; and

WHEREAS, notice of the requested bulk variance relief was given to the public and all interested parties as required by law and was published in The Record newspaper; and

WHEREAS, a public hearing was held in the Office of the NJSEA on Tuesday, April 30, 2019, before Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, P.P., AICP, Principal Planner; and Ronald Seelogy, P.E., P.P., Principal Engineer; and

WHEREAS, a comprehensive report dated July 8, 2019, has been prepared indicating the recommendations of the Director of Land Use Management and the Vice President, Legal & Regulatory Affairs, in this matter; and

WHEREAS, a copy of the recommendation and comprehensive report was provided to the applicant on July 8, 2019; and

WHEREAS, the report recommends the conditional approval of the requested bulk variance from N.J.A.C. 19:4-5.2(a)3, to construct a 4,500-square-foot light industrial building addition with a minimum lowest floor elevation of 7.74 feet NAVD 88; and

WHEREAS, the Board of Commissioners of the NJSEA has reviewed the full record, including the transcripts of the public hearings, submissions of the applicant, and recommendations on the application by the Director of Land Use Management and the Vice President, Legal & Regulatory Affairs,; and

WHEREAS, the Board of Commissioners concurs with the recommendations of the Director of Land Use Management and the Vice President, Legal & Regulatory Affairs; and

WHEREAS, the Board of Commissioners hereby determines that the requested bulk variance application to construct a 4,500-square-foot light industrial building addition with a minimum lowest floor elevation of 7.74 feet NAVD 88 conditionally conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e).

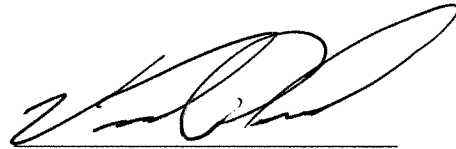
NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority, that the Union Meadows/ENER-G Rudox - Renovation & Addition application for one bulk variance to construct a 4,500-square-foot light industrial building addition with a minimum lowest floor elevation of 7.74 feet NAVD 88, is hereby **APPROVED WITH THE FOLLOWING CONDITIONS** for the reasons set forth in the recommendation dated July 8, 2019.

1. The property owner shall ensure that both the new addition and existing building are dry floodproofed to the NJSEA's minimum required lowest floor elevation (9.0 NAVD 88), and a Flood Emergency Plan is implemented to address operations, maintenance and inspection of floodproofing measures, in accordance with NFIP requirements. A Floodproofing Certificate, signed and sealed by a NJ-licensed professional, shall be provided to the NJSEA in accordance with NFIP requirements, prior to the issuance of any temporary or

final Certificate of Completion and/or Occupancy Certification by this Office.

2. The property owner shall be required to file a deed restriction with the Bergen County Registrar's Office, prior to the issuance of any temporary or final Certificate of Completion and/or Occupancy Certification by this Office, assuring that any future property owner shall be responsible for the installation, maintenance and inspection of the dry floodproofing in accordance with the Flood Emergency Plan.
3. The property owner shall be required to specify in any future lease agreement(s) for any space within the subject premises, that the future lessee(s) shall be the party(ies) responsible for the installation, maintenance and inspection of the dry floodproofing in accordance with the Flood Emergency Plan.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of July 18, 2019.



Vincent Prieto
Secretary



MEMORANDUM

To: NJSEA Board Members and Vincent Prieto, President/CEO

From: Sara J. Sundell

Date: July 18, 2019

Subject: Variance Recommendation - Union Meadows/ENER-G Rudox-Renovation & Addition (File No. 14-641)

An application for one bulk variance has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Michael J. Gross, Esq., of the firm, Giordano, Halleran & Ciesla, on behalf of ENER-G Rudox, Inc., for the premises located at 180 East Union Avenue and identified as Block 106.02, Lot 3, in the Borough of East Rutherford, New Jersey. The subject premises is located within the District's Light Industrial A zone. The bulk variance is sought in connection with the applicant's proposal to construct a 4,500-square-foot light industrial building addition on the subject premises.

Specifically, the applicant is requesting bulk variance relief from the following:

1. N.J.A.C. 19:4-5.2(a)3, which requires that the minimum lowest floor elevations for structures within the designated 100-year flood zones shall be established one foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, or at an elevation of 9 feet in the North American Vertical Datum of 1988 (NAVD 88) in this instance; whereas a 4,500-square-foot light industrial building addition has been constructed with a minimum lowest floor elevation of 7.74 feet NAVD 88.

A public hearing was held in the Office of the NJSEA on Tuesday, April 30, 2019.

In a comprehensive report dated July 8, 2019, the Director of Land Use Management and the Vice President, Legal & Regulatory Affairs, recommended the conditional approval of the bulk variance requested above. A copy of the comprehensive report and variance recommendation were provided to the applicant on July 8, 2019.

At this time, the Board of Commissioners is required to issue a decision on the variance application described above. A resolution requesting the same is attached for your consideration.

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
Union Meadows/ENER-G Rudox - Renovation & Addition**

FILE # 14-641

I. INTRODUCTION

An application for one bulk variance has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Michael J. Gross, Esq., of the firm Giordano, Halleran & Ciesla, on behalf of ENER-G Rudox, Inc., for the premises located at 180 East Union Avenue and identified as Block 106.02, Lot 3, in the Borough of East Rutherford, New Jersey. The subject premises is located within the District's Light Industrial A zone. The bulk variance is sought in connection with the applicant's proposal to construct a 4,500-square-foot light industrial building addition on the subject premises.

Specifically, the applicant is requesting bulk variance relief from the following:

1. N.J.A.C. 19:4-5.2(a)3, which requires that the minimum lowest floor elevations for structures within the designated 100-year flood zones shall be established one-foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, or at an elevation of 9 feet in the North American Vertical Datum of 1988 (NAVD 88) in this instance; whereas a 4,500-square-foot light industrial building addition has been constructed with a minimum lowest floor elevation of 7.74 feet NAVD 88.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record newspaper. No written objections were received. A public hearing was held in the Office of the Commission on Tuesday, April 30, 2019. All information submitted to the

Division of Land Use Management relative to this application is made part of the record of this recommendation.

II. GENERAL INFORMATION

A. Existing and Proposed Use

The property in question consists of approximately 3.11 acres. It contains frontage on East Union Avenue to the north and is bordered by Berry's Creek to the east. The site is encumbered by a four-foot-wide drainage easement along the southerly lot line. The eastern side of the subject property contains wetlands and a portion of Berry's Creek. Wetlands also extend along the southerly property line. An office building is located on adjacent property to the west of the site.

The site is currently improved with a one-story light industrial building, which is utilized for the manufacture and service of generators, along with associated parking and loading areas. The existing building has a pre-existing nonconforming lowest first floor elevation of 7.8 NAVD 88. Direct access to the site is provided from East Union Avenue by one driveway located to the northeast of the existing building.

On November 14, 2014, ENER-G Rudox, Inc., owner of the subject premises, submitted a zoning certificate application for the construction of a 4,500-square-foot light industrial building addition with a proposed first floor elevation of 7.8 feet NAVD 88. In accordance with the NJSEA's District Flood Plain Management regulations at N.J.A.C. 19:4-9.20, projects proposing new construction and "substantial improvement" of any non-residential structure shall either have the lowest floor elevated a minimum of one-foot above the base flood elevation, or shall be floodproofed to an elevation equal to one-foot above the base flood elevation, which equates to 9.0 feet NAVD 88 in this instance. In order for this Office to evaluate the addition with a proposed first floor elevation of 7.8 feet NAVD 88, a determination was needed as to whether the proposed

project constituted a "substantial improvement." Thus, in a letter dated December 23, 2014, this Office requested that ENER-G Rudox, Inc. provide an evaluation of the market value of the existing building versus the project costs in order to determine whether the improvement project and proposed renovations would be considered a "substantial improvement" in accordance with FEMA's National Flood Insurance Program Regulations, specifically 44 CFR 59.

In accordance with 44 CFR 59.1, a "substantial improvement" is defined as any reconstruction, rehabilitation, addition, or other improvement to a structure, the total cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. All building improvement projects requiring a building permit must be considered when determining the value of a "substantial improvement."

In response, ENER-G Rudox, Inc. provided a report entitled, "Appraisal Report," prepared by ARD Appraisal Company on February 19, 2015. Based upon the information provided in this report, this Office determined that the project could be classified as a "non-substantial improvement," as the estimated cost of the project (\$578,100) was calculated to be 34.83 percent of the market value of the existing building (\$1,660,000.00), which is under the 50 percent threshold. As a result, on April 15, 2015, the NJSEA approved Conditional Zoning Certificate, CZC-14-641, for the construction of the proposed addition with a finished floor elevation of 7.8 feet NAVD 88.

Upon completion of construction, the applicant was required to submit to the NJSEA a detailed report indicating the actual post-construction costs of the improvement project. Accordingly, a revised Appraisal Report prepared by ARD Appraisal Company on February 16, 2018, was submitted to the NJSEA indicating a total actual post-construction cost of \$775,740.00, which was calculated to be 46.73 percent of the market value of the existing building. Thereafter, this Office requested that copies of the actual invoices be provided in order to verify the total actual post-construction cost indicated.

The applicant provided actual invoices for the constructed work on February 27, 2018. The total cost of the completed work, as per the submitted invoices, was just over \$3.66 million. Therefore, based on our review of the submitted invoices, this Office determined that the renovations and building addition as constructed do not meet the criteria to be deemed a non-substantial improvement. As such, in accordance with FEMA's regulations at 44 CFR 59.1, the NJSEA considers the subject project to be a substantial improvement, necessitating the lowest floor of the addition to be elevated above elevation 9.0 NAVD 88. As a result, the applicant submitted a request for a variance to allow the proposed addition constructed with a finished floor elevation of 7.8 feet NAVD 88 to remain, while floodproofing the entire structure to the required elevation of 9.0 feet NAVD 88.

B. Response to the Public Notice

No written objections were received prior to the public hearing.

III. PUBLIC HEARING (April 30, 2019)

A public hearing was held on Tuesday, April 30, 2019. NJSEA staff in attendance were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, P.P., AICP, Principal Planner and Ronald Seelogy, P.E., P.P., Principal Engineer.

A. Exhibits

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Floor Plan - Floodproofing," Drawing No. A101a, prepared by KSS Architects on October 25, 2018.

- A-2 "Grading and Utility Plan," Sheet 5 of 11, prepared by Partner Engineering and Science, Inc., on October 6, 2014, last revised on October 19, 2016.
- A-3 "Floodproofing Plans - Reference Product Installations, 180 East Union Avenue, East Rutherford NJ," prepared by KSS Architects, undated.
- A-4 "Elevations - Floodproofing," Drawing No. A301a, prepared by KSS Architects on October 25, 2018.

B. Testimony

Michael J. Gross, Esq., of the firm, Giordano, Halleran & Ciesla, represented the applicant at the hearing. The following witnesses testified in support of the application:

1. David Suarez, ENER-G Radox, Inc.;
2. Daphne A. Galvin, P.E., Partner Engineering & Science, Inc.; and
3. David J. von Stappenbeck, AIA, NCARB, KSS Architects.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Beth Calderone, Certified Shorthand Reporter.

C. Public Comment

No members of the public were present at the public hearing.

IV. RECOMMENDATION(S)

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.2(a)3, which requires that the minimum lowest floor elevations for structures within the designated 100-year flood zones**

shall be established one-foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, or at an elevation of 9 feet NAVD 88 in this instance; whereas a 4,500-square-foot light industrial building addition has been constructed with a minimum lowest floor elevation of 7.74 feet NAVD 88.

The Hackensack Meadowlands District Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. Concerning bulk variances:

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The property is unusual because, as an upland property situated along the bank of Berry's Creek, it contains a pre-existing industrial building with a nonconforming lowest first floor elevation of 7.8 NAVD 88, but lies within the 100-year floodplain where the required first-floor elevation is 9 feet NAVD 88. According to aerial photography records, the building was constructed sometime between 1958 and 1969. It is one of only four properties in the Light Industrial A zone within the Borough of East Rutherford that are located directly along Berry's Creek, whereas most properties along Berry's Creek are predominately wetlands and zoned Environmental Conservation. This combination of factors is not

ordinarily found in other areas of the Hackensack Meadowlands District.

ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

Adjacent property owners will not be adversely impacted by the proposed variance request to permit a 4,500-square-foot light industrial building addition at elevation 7.74 feet NAVD 88, where the required minimum lowest floor elevation is 9 feet NAVD 88. The adjacent properties to the west and north are industrial in nature. The property to the south is an Environmental Conservation-zoned wetlands parcel owned by the State of New Jersey. Berry's Creek is located directly east of the site. No residences are located nearby. The new light industrial building addition will be compatible with neighboring land uses. Should any flooding of the site occur, the construction of the addition at a lower elevation than required will not cause storm and flood waters to be directed onto adjacent properties.

iii. *The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the provision of these regulations requiring all new construction to maintain a minimum lowest floor elevation of 9 feet NAVD 88 will create an undue hardship on the applicant. Based on the applicant's assertion that it was a non-substantial improvement, the building addition was initially approved and

constructed with a minimum lowest floor elevation of 7.74 feet NAVD 88, which matches the finished floor elevation of the pre-existing nonconforming building.

The area of the new addition is intended to be utilized by Ener-G Rudox as a test area for its larger generator units, which are manufactured in a portion of the existing building that is adjacent to the addition. When fully assembled, each of the larger generator units measures approximately 10 to 12 feet in height and weighs roughly 25,000 to 30,000 pounds. A uniform finished floor elevation between the existing building and the addition will enable the massive 12 to 15 ton generator units to be moved on skates from the assembly to testing area. Raising the floor of the building addition by 1.26 feet (15.12 inches) to meet FEMA and NJSEA regulations would not be practical as ramps would be required. It would be very difficult to maneuver the assembled product, the largest of which is 15 tons, by ramp between the new addition and the existing building. Such ramping would also lead to a reduction in manufacturing and warehouse space. In addition, raising the finished floor elevation within the existing structure to elevation 9.0 NAVD 88 is also not practical since an increase in floor elevation would result in a loss of clear height in the assembly area and would also impede the use of an existing gantry system running along the underside of the roof structure, thus creating an undue hardship.

iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

The granting of the variance to permit a 4,500-square-foot light industrial building addition at an elevation of 7.74 feet NAVD 88, whereas the required minimum lowest floor elevation is 9 feet NAVD 88, will not adversely affect the health, safety, morals, order, convenience, prosperity or general welfare. No health or safety issues shall result from an addition constructed at the lower floor elevation, as the applicant has testified that the entire building will be floodproofed to protect it from flooding. Specifically, in accordance with a proposed Flood Emergency Plan, which shall address operations, maintenance and inspection in accordance with NFIP requirements, ENER-G Rudox personnel will be assigned to monitor and be on call 24/7 to deploy flood protection measures in the event of a flood, including the installation of flood panels at all personnel and loading door openings. An epoxy coating will be applied to the base of the structure to prevent saturation by floodwaters, and existing masonry walls will be reinforced to withstand wind force in accordance with current code requirements. An emergency access door and steps will also be installed with a threshold at or above elevation 9 feet NAVD 88. To address existing utilities, the applicant's professional testified that a check valve will be installed within the existing sanitary sewer pit to prevent sanitary sewer effluent from surcharging into the building and that existing electrical utilities are located well above the design flood. The provision of these dry floodproofing

measures and an associated Flood Emergency Plan will be a condition of the granting of this variance.

ENER-G Rudox manufactures, services, and sells/rents generators to the public. The granting of the variance to permit an addition with a floor elevation below the minimum required elevation will ensure the continued operation of the ENER-G Rudox facility. As such, ENER-G Rudox will be able to manufacture its generators, which are utilized by the local business community to ensure business continuity in the event of a power outage. The provision of equipment for emergency power is a benefit to the public good, health, safety, order, convenience, and prosperity.

v. The variance will not have a substantial adverse environmental impact.

The granting of the variance to permit the construction of a 4,500 square-foot addition with a lowest floor elevation below the minimum required elevation of 9 feet NAVD 88 will not have an adverse environmental impact. The existing wetlands on site will not be negatively impacted by the elevation of the addition. The addition was constructed in an area of the site that had been previously paved. The applicant's professional also testified that the new building addition, which is constructed at elevation 7.74 feet NAVD 88, will not have an impact on glare, airborne emissions, vibrations or noise and will not require the use of hazardous materials.

vi. The variance represents the minimum deviation from the regulations that will afford relief.

more protection than the floodproofing measures, as long as the Flood Emergency Plan is followed and maintained.

vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

The granting of the variance to permit a 4,500-square-foot light industrial building addition with a minimum lowest elevation of 7.74 feet NAVD 88, whereas the required minimum lowest floor elevation is 9 feet NAVD 88, will not substantially impair the intent and purpose of these regulations and will not result in substantial detriment to the public good. The industrial building addition is permitted in the Light Industrial A zone, and, except for the minimum lowest floor elevation, all other zoning requirements are met.

The applicant has provided testimony stating that floodproofing measures will be implemented to ensure that there will be no detrimental impacts to the building or its contents. A Flood Emergency Plan will require ENER-G Rudox personnel to be assigned to monitor and be on call 24/7 to deploy flood protection measures in the event of a flood, including flood panels that will be installed at all personnel and loading door openings. The building will be floodproofed to elevation 9.0 NAVD 88, the NJSEA's required minimum lowest floor elevation.

The intent and purpose of the NJSEA's required minimum lowest floor elevation is to protect the public and provide for their safety and welfare in the event of a flooding event. The construction of

The variance requested represents the minimum deviation from the regulations that will afford relief. The required minimum lowest floor elevation is 9 feet NAVD 88. The applicant is providing an addition with a minimum lowest floor elevation of 7.74 feet NAVD 88, which is three inches below the FEMA base flood elevation and 15 inches below the NJSEA's required minimum lowest floor elevation. The existing structure adjacent to the new addition has a lowest floor elevation of 7.74 feet NAVD 88. As such, the existing structure and the new addition will have the same floor elevation.

A uniform finished floor elevation between the existing building and the addition will enable the 12 to 15 ton generator units to be moved on skates from the assembly area in the existing building to the testing area in the addition. Raising the floor of the building addition by 1.26 feet (15.12 inches) to meet FEMA and NJSEA regulations would not be practical as ramps would be required and it would be very difficult to maneuver the massive assembled product, the largest of which is 15 tons, over ramp spanning the height differential between the new addition and the existing building.

The applicant has proposed extensive floodproofing measures that are intended to protect the existing building and proposed addition from the effects of flooding. With the floodproofing measures in place, the entire building should be sufficiently protected from flooding up to one foot above the base flood elevation. Proposing a small increase of the elevation of the addition, such as a three inch increase to meet the base flood elevation, would not provide any

the new addition at the same elevation as the existing structure, which is 1.24 feet below the minimum lowest elevation, will not have an impact on public safety or welfare. Through proposed dry floodproofing along with a Flood Emergency Plan, the property owner will ensure that the building and its occupants will be protected in the event of a flood. In addition, the applicant testified that any subsequent lease agreement for space within the subject premises will require the lessee to be responsible for the installation and maintenance of the dry floodproofing measures. In addition, a deed restriction will be placed on the property to require future property owners to comply with the implementation, maintenance, and inspection of the dry floodproofing in accordance with the Flood Emergency Plan. The lease agreement provisions and the deed restriction will be conditions of the granting of this variance.

In addition, the Hackensack Meadowlands District's Floodplain Management Regulations at N.J.A.C. 19:4-9.14(a) state in part that, *in passing upon requests for variances, the N/SEA shall consider all technical evaluations; all relevant factors and standards specified in other sections of this chapter; and the following:*

1. *The danger that materials may be swept onto other lands, to the injury of others;*

High magnitude flooding along Berry's Creek in this area is generally due to a coincidence of high tides with heavy rains, resulting in more of a rising tide/pooling effect than a sweeping water effect. Thus, there is minimal potential for equipment or property being damaged by the velocity of rushing floodwaters on the site. As per CZC-14-641, exterior structures and tanks on site

will be elevated at or above the required minimum lowest elevation of 9 feet NAVD88.

2. *The danger to life and property due to flooding or erosion damage;*

There is no danger to life and property due to the flooding or erosion damage associated with the construction of the building addition with a minimum lowest floor elevation of 7.74 feet NAVD 88. The immense size of the floodplain area in which the building addition is located precludes the possibility of an increase in the intensity of flooding due to the 4,500 square-foot building addition. Erosion damage is unlikely due to the nature of the developed industrial area in which the subject property is located. Also, both the new addition and the existing building will be modified to include dry floodproofing measures to elevation 9.0 NAVD 88, which is the required minimum lowest elevation. In addition, there will be a Flood Emergency Plan in place to ensure the implementation of the floodproofing measures in the event of a storm.

3. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage to the individual owner;*

Through proposed dry floodproofing measures and a corresponding Flood Emergency Plan, the property owner will take special precautions to ensure that the building, including its occupants and equipment, will be protected in the event of a flood. Due to the nature of their business as a provider of generators during power outages, the applicant has staff on call 24/7 for

monitoring and receiving notifications of impending storm and flooding events from the National Oceanic and Atmospheric Administration (NOAA). As such, the property owner should be forewarned of impending weather conditions that may require the implementation of the requirements in the Flood Emergency Plan, which will safeguard the building contents from flood damage. The dry floodproofing measures will be implemented to elevation 9.0 NAVD 88, which is the NJSEA's required minimum lowest floor elevation. In addition, the property owner has indicated that special precautions will be taken to place vulnerable equipment above elevation 9.0 NAVD 88 within the building in the event that the dry floodproofing measures are breached.

4. The importance of services provided by the proposed facility to the community;

ENER-G Rudox manufactures, services, sells and rents generators to the public. The granting of the variance to permit an addition with a floor elevation below the minimum required elevation will ensure that ENER-G Rudox will continue to manufacture generators at this location, which are provided to the local business community during power outages. This service benefits and enhances the public good by ensuring business continuity through the supply of emergency power after single or wide-spread outages.

5. The necessity to the facility of a waterfront location, where applicable;

ENER G Rudox, Inc. manufactures, services, rents and sells generators to the business community. The need for the facility to be located near the waterfront is not applicable in this instance.

6. The suitability of alternative locations for the proposed use that are not subject to flooding or erosion damage;

There are no alternate locations for the placement of the building addition on the subject site that are outside of the 100-year flood zone. In moving from its prior outdated manufacturing facility in Carlstadt, the applicant conducted an exhaustive search of available buildings. They were seeking a new facility with proximity to its New York City clients and local highways. The company also wanted to remain in the general vicinity to retain their 30 existing employees. They looked at many buildings, however, the subject building met their required criteria.

7. The compatibility of the proposed use with existing and anticipated development;

The subject and surrounding properties are located within the Light Industrial A zone, where development is generally light industrial in nature. ENER-G Rudox's building addition is compatible with the existing land uses in the neighborhood and meets all bulk requirements of the District regulations, with the exception of the required minimum lowest floor elevation of the addition. Future development in the area will be required to comply with the Light Industrial A zone requirements.

8. *The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;*

ENER-G Rudox's generator manufacturing and service facility is a permitted use in the Light Industrial A zone. In accordance with N.J.A.C. 19:4-9.2, the purposes of floodplain management regulations include the following: to promote the public health, safety and welfare, and to minimize losses due to flood conditions in specific areas by provisions designed: to protect human life and health; to minimize the need for public rescue and relief efforts associated with flooding; to minimize prolonged business interruptions; to minimize damage to new and existing construction; and to ensure that those who own or occupy the areas of special flood hazard assume responsibility for their actions.

With the exception of the subject variance request for an addition with a floor elevation lower than the minimum required lowest floor elevation, the project will comply with the District Zoning Regulations, inclusive of the Floodplain Management Regulations. Constructing the building addition with a lowest elevation of 7.74 feet NAVD 88 will not have any effect on the level of flooding experienced in the area. In addition, the applicant testified that they will dry floodproof both the addition and existing building to elevation 9.0 NAVD 88, the NJSEA's minimum required lowest floor elevation, and will implement a Flood Emergency Plan. The dry floodproofing is intended to provide protections to the new addition and the existing building that will meet the purposes of the floodplain management regulations, including safeguarding human life and health, and minimizing losses due to flood

conditions, the need for public rescue and relief efforts associated with flooding, prolonged business interruptions, and damage to new and existing construction.

9. *The safety of access to the property in times of flood for ordinary and emergency vehicles;*

The safety of access to the subject property during flooding conditions will not be jeopardized due to the new building addition. The existing driveway along East Union Avenue appears to provide adequate access for emergency vehicles to and from the site. Flooding in this area does not occur at a rapid rate, but is a result of a coincidence of high tides with heavy rains that tends to raise water levels gradually. The applicant has testified that the addition and existing building will be protected by dry floodproofed to elevation 9.0 NAVD 88, and a Flood Emergency Plan will be implemented to provide for flood monitoring and flood panel deployment, which should minimize the need for emergency personnel and their vehicles. As this area is not prone to flash flooding, there should be ample time for workers to evacuate if a flooding situation were to be anticipated.

10. *The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;*

The proposed building addition is located in a vast 100-year floodplain, and as such, the lower floor elevation of the building addition will not be the cause of flooding at the subject site or adjacent properties and will not increase the expected height,

velocity or duration of any flooding experienced at the site. Wave action is not applicable to the proposed situation, as the adjacent water body is a tidal creek and not subject to wave action. Flooding in this area does not typically occur at a rapid rate, but is a result of a coincidence of high tides with heavy rains that tends to raise water levels gradually with low velocity over an extended period of tide coinciding with the tides. With the gradual rise in the water elevation, sediment transport associated with moving floodwaters is not generally a matter of concern, unlike other locales in which wave action or rapid water rise transport significant quantities of sediment into an area. In addition, the deviation in floor elevation, between 7.74 feet NAVD 88 provided and 9 feet NAVD 88 required, will not cause any difference in the characteristics of flooding in this area.

11. *The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;*

There will be no impact or increase in the cost of governmental services required during and after flood conditions as a result of the minimum lowest floor elevation of the new building addition. The applicant has testified that the addition and existing building will be protected by dry floodproofing to the required minimum lowest floor elevation of 9.0 NAVD 88, and a Flood Emergency Plan will be implemented to provide for flood monitoring and flood panel deployment, which should minimize flood damage within the building and the need for emergency personnel and their vehicles.

The proposed addition is located to the rear of the property, with the existing building located between the addition and the public street. In such a vast floodplain, the placement of the addition will not cause damage to the public street system or the utilities located within the right-of-way. In addition, the applicant provided testimony that the facility's utilities have been floodproofed and/or elevated at or above elevation 9.0 NAVD 88.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19-4-5.2(a)3, which requires that the minimum lowest floor elevations for structures within the designated 100-year flood zones shall be established one-foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, or at an elevation of 9 feet NAVD 88 in this instance. A 4,500-square-foot light industrial building addition has been constructed with a minimum lowest floor elevation of 7.74 feet NAVD 88.

Based on the record in this matter, the bulk variance application to permit a 4,500-square-foot light industrial building addition on the subject premises with a minimum lowest floor elevation of 7.74 feet NAVD 88 is hereby recommended for APPROVAL CONDITIONED UPON THE FOLLOWING:

1. The property owner shall ensure that both the new addition and existing building are dry floodproofed to the NJSEA's minimum required lowest floor elevation (9.0 NAVD 88), and a Flood Emergency Plan is implemented to address operations, maintenance and inspection of floodproofing measures, in accordance with NFIP requirements. A Floodproofing Certificate, signed and sealed by a NJ-licensed professional, shall be provided in accordance with NFIP requirements, prior to the issuance of any temporary or final Certificate of Completion and/or Occupancy Certification by this Office.
2. The property owner shall be required to file a deed restriction with the Bergen County Registrar's Office, prior to the issuance of any temporary or final Certificate of Completion and/or Occupancy Certification by this Office, assuring that any future property owner

shall be responsible for the installation, maintenance and inspection of the dry floodproofing in accordance with the Flood Emergency Plan.

3. The property owner shall be required to specify in any future lease agreement(s) for any space within the subject premises, that the future lessee(s) shall be the party(ies) responsible for the installation, maintenance and inspection of the dry floodproofing in accordance with the Flood Emergency Plan.

CONDITIONAL APPROVAL 7/8/19

Recommendation on Date
Variance Request



Sara J. Sundell, P.E., P.P.
Director of Land Use Management

Conditional Approval 7/8/19

Recommendation on Date
Variance Request



Adam Levy, Esq.
Vice President
Legal & Regulatory Affairs

EXECUTIVE SESSION

RESOLUTION 2019-27

**RESOLUTION AUTHORIZING THE
NEW JERSEY SPORTS AND EXPOSITION AUTHORITY
TO CONDUCT A MEETING TO WHICH
THE GENERAL PUBLIC SHALL NOT BE ADMITTED**

BE IT RESOLVED by the New Jersey Sports and Exposition authority (“Authority’) that it shall conduct a meeting to which the general public shall not be admitted to discuss personnel matters, the status of pending and anticipated litigation and other matters within the attorney client privilege, contract negotiations, and, if necessary, to act upon pending contracts.

BE IT FURTHER RESOLVED that the time when such discussions may be disclosed to the public shall be when and as such disclosure may be made without adversely affecting the Authority’s pending and/or anticipated legal, personnel, contractual matters and other matters within the exceptions provided for by the statute.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of July 18, 2019.



Vincent Prieto
Secretary