

October 26, 2016

MEMBER JURISDICTIONS

<p>CHESAPEAKE</p> <p>FRANKLIN</p> <p>GLOUCESTER</p> <p>HAMPTON</p> <p>ISLE OF WIGHT</p> <p>JAMES CITY</p> <p>NEWPORT NEWS</p> <p>NORFOLK</p> <p>POQUOSON</p> <p>PORTSMOUTH</p> <p>SMITHFIELD</p> <p>SOUTHAMPTON</p> <p>SUFFOLK</p> <p>SURRY</p> <p>VIRGINIA BEACH</p> <p>WILLIAMSBURG</p> <p>YORK</p>	<p>The Honorable Timothy Kaine Senator United States Senate 222 Central Park Avenue, Suite 102 Virginia Beach, VA 23462</p> <p>The Honorable J. Randy Forbes Congressman U.S. House of Representatives 505 Independence Pkwy Chesapeake, VA 23320</p> <p>The Honorable Bobby Scott Congressman U.S. House of Representatives 2600 Washington Avenue, Suite 1010 Newport News, VA 23607</p>	<p>The Honorable Mark R. Warner Senator United States Senate 101 W. Main Street, Suite 4900 Norfolk, VA 23510</p> <p>The Honorable Scott Rigell Congressman U.S. House of Representatives 4772 Euclid Road, Suite E Virginia Beach, VA 23462</p> <p>The Honorable Rob Wittman Congressman U.S. House of Representatives 4904-B George Washington Memorial Hwy Yorktown, VA 23692</p>
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RE: FEMA Requirement for Permitting Development in Flood Plain

Dear Senator Kaine, Senator Warner, Congressman Forbes, Congressman Rigell, Congressman Scott and Congressman Wittman:

On behalf of the Hampton Roads Planning District Commission (HRPDC) member jurisdictions, we are writing to request your assistance in a matter concerning permitting of development in flood hazard areas. During a recent compliance review (called a Community Assistance Visit (CAV)) for the city of Hampton, Region III of the Federal Emergency Management Agency (FEMA) took the unprecedented position that, in order to be minimally compliant with the National Flood Insurance Program (NFIP), the City must review and permit "development" that is exempt from review under the Uniform Statewide Building Code (Building Code). FEMA maintains that, despite exemption under the Building Code, ordinary repairs such as replacement of windows and doors, painting, new cabinets, replacement of roofing and siding, and replacement of light switches and lighting fixtures, must be reviewed by localities. This interpretation would require a family that lives in a Special Flood Hazard Area and desires to replace their kitchen cabinets to submit their plans to their local government for review.

Representatives of FEMA have insisted that they have imposed this requirement on other localities in the past, but based upon all available information, we are not aware of any jurisdiction in Virginia or the United States that has been required to permit development exempted from applicable Building Codes. Moreover, FEMA has refused to provide the City of Hampton with the name of any other locality that has been cited with this issue.

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Accordingly, the City has made a Freedom of Information Act request for all CAV reports that FEMA has completed in the last three years in Region III, which includes Virginia.

FEMA has explained that, since the definition of “development” in the Code of Federal Regulations is broad, they must require localities to review all development until the regulations change.¹ The definition is indeed broad, but it has never been interpreted before to include improvements exempt from the Building Code because minor repairs have no impact on the flood plain. Furthermore, FEMA’s own guidance manual acknowledges that minor development should be exempt from permitting. In the document entitled, “NFIP Floodplain Management Requirements: A Study Guide and Desk reference for Local Officials,” section 5-19 states that localities have discretion to exempt “small projects” and “routine maintenance, such as painting or re-roofing” from permitting.

While FEMA has indicated a willingness to work with the City of Hampton to identify a threshold under which development would remain exempt (potentially, improvements valued at \$2,500 or less), imposing this new requirement at all is a major and unnecessary departure from current practices. FEMA’s position does nothing to minimize risk to insured structures or protect flood plains. Rather, it only imposes time and cost on citizens and local governments. Further, requiring permits for minor improvements may disincentivize home maintenance, which would undermine the goals of improving property values and supporting healthy neighborhoods and could have a significant impact in low to moderate income areas.

Finally, in a letter to the City of Hampton’s Mayor, FEMA stated that failure to implement the Corrective Action Plan (in part, to permit improvements exempt from the Building Code) in a timely manner may jeopardize the City’s continued participation in the NFIP. FEMA further stated:

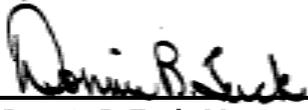
“Without corrective action, your community could be put on probation or suspended from the NFIP. Remedial actions, such as probation and/or suspension from the NFIP could result in a \$50.00 surcharge on each flood insurance policy in effect within the City and ultimately could prohibit community residents and business owners from flood insurance policy renewal or the purchase of new policies. If the City is suspended from the NFIP, most forms of federal disaster assistance would be unavailable during a presidentially declared disaster and most forms of federal grants and loans will not be available within the identified flood hazard areas.”

In addition to these consequences, FEMA has informed the City of Hampton that its scheduled Community Rating Service (CRS) review may be put on hold until corrective actions are taken. The CRS review is a process by which FEMA reviews a community’s flood program requirements that go above-and-beyond minimum NFIP requirements. A positive CRS review may result in lower flood insurance rates for citizens.

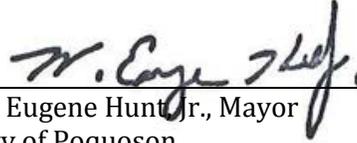
¹ The Code of Federal Regulations (44 CFR 59.1) defines “development” as “any man-made change to improved or unimproved real estate including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.”

In summary, we ask for your assistance in communicating with FEMA about this new requirement, ensuring prompt response to the above-mentioned Freedom of Information Act request, and, if necessary, modification to the Code of Federal Regulations to limit the definition of "development."

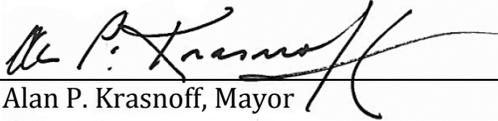
Sincerely,



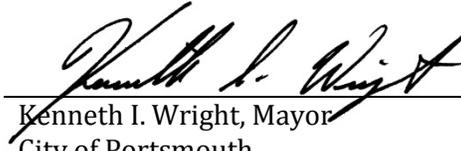
Donnie R. Tuck, Mayor
City of Hampton



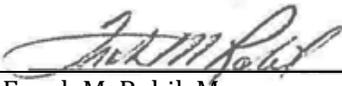
W. Eugene Hunt, Jr., Mayor
City of Poquoson



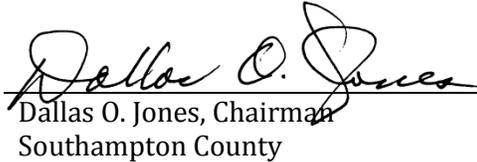
Alan P. Krasnoff, Mayor
City of Chesapeake



Kenneth I. Wright, Mayor
City of Portsmouth



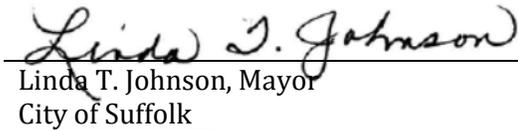
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City of Franklin



Dallas O. Jones, Chairman
Southampton County



John C. Meyer, Jr., Chairman
Gloucester County



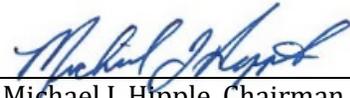
Linda T. Johnson, Mayor
City of Suffolk



Rex W. Alphin, Chairman
Isle of Wight County



William D. Sessoms, Mayor
City of Virginia Beach



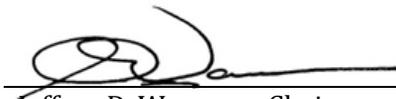
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James City County



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