



NOVEMBER 2012

## Coastal Permitting in Rhode Island Following Hurricane Sandy

Given the severity of the damage caused by Hurricane Sandy to homes, commercial buildings, docks, seawalls, and other coastal structures in Rhode Island, many property owners along the shore will have questions about what they need to do to obtain the proper permits to repair or rebuild, from whom they need permits (federal, state, or local officials), and whether permits are even necessary. The answers to these questions depend on many factors, including the type of structure, the age of the structure, where the structure is located on the property, whether a permit was previously issued, the amount of damage suffered, and how any damage is to be valued.

### FEDERAL PERMITS

The United States Army Corps of Engineers (Corps) has issued a notice regarding post-hurricane permitting, which you can find at [Corps Provides Details on Exemptions, Permit Procedures for Storm Damage Repairs in New England](#). Pursuant to federal regulations that exempt maintenance of authorized structures in its jurisdiction from further regulation, the Corps anticipates that most post-hurricane repair activities will not require a new permit or authorization. "Maintenance" is defined in the regulation to include emergency reconstruction if undertaken within a reasonable period of time after the damage has occurred but may not include any modifications that change the character, scope, or size of the original design. To determine if a repair is covered by the exemption, property owners may wish to contact the Corps. If the activity is not exempt, it may be eligible for approval under the Corps' General Permit for Rhode Island, but to ensure compliance, property owners may wish to be certain that any structures are already properly permitted and carefully check the terms and conditions of the General Permit before conducting any work.

### STATE PERMITS

On October 31, 2012, the Rhode Island Coastal Resources Management Council (CRMC) invoked its authority to issue emergency assents under Section 180 of its regulations. Initially, CRMC said it would issue emergency permits for only 60 days and that all work allowed under the permits must be completed within 90 days. On November 7, 2012, in response to requests

from property owners and municipalities for more time to complete the repairs, CRMC extended the deadline to issue emergency permits to May 31, 2013, and extended the deadline to complete the work allowed under those permits to August 31, 2013. The CRMC also imposed a two-week temporary moratorium on its regular permitting activities.

Under CRMC's regulations, emergency assents are available after a storm such as Sandy where, if immediate action is not taken, the existing conditions may cause one or more of the following: (1) an immediate threat to public health and safety and (2) immediate and significant adverse environmental impacts. An emergency assent may only permit such action that corrects the condition in a manner consistent with CRMC's policies and regulations. Emergency assents are also available where the CRMC determines that there is imminent peril and that the existing conditions may cause (1) bodily harm or a threat to public health, (2) significant adverse environmental impacts, or (3) significant economic loss to the state. Emergency assents are for maintenance to allow property owners to restore what existed prior to the storm, and they are limited to structural and exterior damage caused by the storm.

The type of approval needed from the CRMC depends on the amount of damage and whether the structure already has an assent, but each emergency assent request is being handled on a case-by-case basis. Under normal circumstances, the repair or reconstruction of a structure that has an assent requires a Certification of Maintenance; however, assented structures that have been substantially damaged (that is, physically damaged or destroyed by 50 percent or more) may be required to obtain a new assent that conforms to the current program requirements. In an emergency situation, the requirement for a new assent in such situations may be waived by the executive director if he determines that no overriding programmatic policy or goal is served by requiring a new assent for a particular structure.

Many structures under CRMC jurisdiction predate its creation and were not subject to the permitting process when originally constructed. Pursuant to CRMC's regulations, property owners proposing simple repairs on such structures must obtain a Certification of Maintenance, meet relevant standards in the regulations, or obtain a new assent; however, owners of unassented structures that have been substantially damaged as a result of a storm typically are required to submit an application for a new assent and meet the current program requirements. Given the storm damage, decisions on unassented structures are being made on a case-by-case basis.

Similarly, provisions in the regulations that limit or prohibit the ability to repair or rebuild—for example, the prohibition against rebuilding all substantially damaged residential and non water-dependent recreational, commercial, and industrial structures on barrier beaches classified as "undeveloped" and the requirement that all substantially damaged shoreline protection structures and residential docks must obtain a new assent—are being considered on a case-by-case basis as assessments are made, as are exposed septic systems and any storm-damaged structures in Type 1 (Conservation Area) waters.

CRMC also recommends that property owners contact their local building authority before proceeding with any work.

## **LOCAL PERMITS**

Local zoning or building officials have authority over the implementation of FEMA flood hazard regulations for homes and commercial structures in flood hazard areas. All towns in Rhode Island participate in the National Flood Insurance Program and have flood hazard regulations

as part of their local ordinances or zoning regulations. In post-hurricane situations, the issue most homeowners face when they need to perform repairs is whether, due to the extent of the damage, any rebuilding will trigger the requirement that the house be "flood proofed" so as to comply with FEMA construction requirements. In general (but it may vary from town to town), if the repair or replacement cost exceeds 50 percent of the value of the building, the owner must comply with the flood proofing requirements, such as raising the house so the lowest habitable floor is above the "base flood elevation" and installing utility equipment and connections resistant to flood damage. Determining the cost of repairs and establishing the value of the building often raise issues of fact and law. The rules for rebuilding structures that are also otherwise nonconforming should be of concern as well.

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## CONTACT US

Coastal permitting is a complex field, with multiple overlapping regulatory requirements. After a storm, the complexity of the permitting requirements is magnified, especially for property owners whose land has been slowly eroding over the years, for those who have suddenly lost a significant amount of land due to the storm, or for those who learn for the first time that their dock or seawall does not have an assent and does not comply with the current CRMC requirements. The requirements and processes outlined above are only a general summary of the permitting requirements, and it is important to keep in mind that each coastal property has its own unique characteristics and history that influence the types of permits it requires. If you have any questions or wish to discuss coastal permitting issues further, please contact:

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