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Rising Sea Levels Could Affect Zoning Laws

Statewide panel's suggestions would provide work for land use lawyers

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Even before Superstorm Sandy slammed into Connecticut and the rest of the Northeast, a state task force that studied the impact of the damage from previous storms concluded that towns along the shoreline need to adopt zoning laws accounting for rising sea levels.

The report, which was released last Monday (Jan. 14), doesn't say zoning changes should make it harder to build near the water. But members of the Shoreline Preservation Task Force say revised zoning laws ultimately will make builders, mortgage finance companies and homeowners reappraise home construction on beachfront property.

"I think most people do not want to build homes that are unsafe," said task force member Joseph MacDougald, director of the University of Connecticut School of Law Center for Energy and Environmental Law and a member of Madison's Board of Selectman.

Jennifer O'Donnell, also a member of the task force and principal engineer at Coastal Ocean Analytics, an environmental consulting firm, said prospective homeowners should know that damage



Law Tribune File Photo



Shipman & Goodwin's Joseph Williams said there will be 'an important role' for attorneys in helping shoreline municipalities and property owners comply with any new zoning laws the state passes in the wake of several destructive storms.

from repeated storms will alter beaches.

"Do they realize that the house they're building right on the water will be in the water?" she said. "We've already been damaged twice in the last year by non-hurricanes, and we still have people building right on the water."

The 19-member task force, headed by state Representative James Albis, D-East Haven, will have a meeting next month to discuss the recommendations with Dan Esty, commissioner of the Department of Energy and Environmental Protection. The task force's report is an early step in the process of addressing permitting and governance changes prompted by rising sea levels.

The recommendations could bring work for lawyers who represent businesses, developers and property owners in permitting proceedings or litigation.

"I do expect there will be an important role for lawyers in helping municipalities and property owners address the recommendations," said Joseph Williams, a task force member and partner in Shipman & Goodwin's real estate, environmental and land use practice in the firm's Hartford Office. "As a state, we all need to talk to each other and plan to adapt to climate change and sea levels rising, and in doing that, there are a number of ways attorneys will play an important role in the process.

For example, some lawyers might advise

towns and cities on how to consider climate change when revising their development plans and zoning regulations. Lawyers might also be called upon to help with transactional work, such as proposed disclosure requirements for those who sell property in flood-prone areas.

“There was no intent to generate litigation in making the recommendations,” Williams said, “but more litigation is possible as changes are worked into local regulations or state statutes.”

John Tesei, lead attorney in the land use department for Gilbride, Tusa, Last & Spellane in Greenwich, expects that zoning laws in municipalities throughout the state will eventually be changed to make them consistent with Federal Emergency Management Agency regulations. “There’s no question there will be more land use work involved in the future,” he said. “I don’t see appeals increasing [because of zoning changes], but I do see more advocacy.”

Mammoth Barriers

Stephen Gill, a senior scientist at the National Oceanic and Atmospheric Administration, said measurements at Bridgeport and New London show that the sea level has risen nearly one foot since the late 1930s. The trend is expected to accelerate because of melting glaciers, he said.

“No matter what the storm is — a nor’easter or a general hurricane coming up the coast — storms will have more of an impact because of rising sea levels,” Gill said.

The devastation of Superstorm Sandy in late October and Irene in August forced communities and states along the U.S. coastline to rethink rules for beachfront use as billions of dollars are required for rebuilding. Planners are considering mammoth barriers or codes requiring flood-zone builders to keep electrical and other critical systems above predicted high water.

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Connecticut’s report isn’t detailed but instead offers “concepts and ideas that need to be fleshed out,” said David Sutherland, director of government relations at the Nature Conservancy. Enacting new rules for where septic tanks can be located will go a long way in protecting public health if a massive storm again hits Connecticut’s beaches, he said.

Other recommendations include streamlined state permits for seawalls and other coastal structures and increased financial help to towns, cities and nonprofit land conservation groups to acquire open space and watershed land recreation, tidal wetland preservation and habitat conservation.

Sen. Edward Meyer, a task force member, said a provision requiring the state DEEP to map vulnerable shoreline areas will

be much easier than winning changes in local zoning. “I don’t think most of our constituents are believers in sea level rise,” he said. “People are saying, ‘Keep your cotton-picking hands off my property.’”

Albis, the task force chairman, said Connecticut’s strong home-rule tradition that gives towns autonomy in enacting zoning and other local laws block state efforts to force changes in land-use

regulations. “It’s something we’re going to be struggling with and discussing this session,” he said.

The panel was established in February 2012, six months after Hurricane Irene hit Connecticut as a tropical storm and four months after a nor’easter crippled large swaths of Connecticut. And eight months after the task force was formed, Superstorm Sandy hit the Northeast and inflicted tremendous damage in Connecticut, killing six residents, knocking out power to more than 625,000 homes and businesses and damaging or destroying hundreds of shoreline homes.

“It just reinforced what we were doing,” Albis said. ■

Law Tribune Managing Editor Jay Stapleton contributed to this article.