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## Sandy Could Change The Face Of Coastal Development In NJ

By **Martin Bricketto**

Law360, New York (November 05, 2012, 9:52 PM ET) -- While New Jersey is busy dealing with the immediate environmental impacts of Hurricane Sandy, the superstorm could eventually mean major changes to coastal and waterfront development in the state to protect against the devastation caused by extreme weather events, experts say.

Those changes could come in the form of overhauled government regulations to address flood threats, and in a reluctance from the private sector to invest in projects too close to the coast, environmental and land use attorneys told Law360 on Monday.

Property owners may also have to worry about liability from hazardous spills as well as flood-related contamination tied to the superstorm, attorneys said.

Hurricane Sandy may shift the thinking of those who financially back new coastal projects, including buyers, lenders and insurers, according to Seth Cooley, chairman of the environmental law practice group at Duane Morris LLP.

"My guess is that 100 years from now, historians will look back and see a picture of major coastal development in the 20th century, and a relative retreat from, and naturalization of, the coastline during the 21st century..." Cooley said in an email.

"I suspect that the 'environment' of the coastlines will largely be what Mother Nature decides it will be, as the cost of trying to fight the impacts of the sea will be too high for governments to handle (exceptions being the major cities, starting with [New York City])," Cooley added.

New Jersey may want to take a hard look at further limiting impervious surface coverage like asphalt and concrete, and doing more to preserve and restore natural barriers to protect flood-prone areas, according to David A. Brooks, a director in the real property and environmental practice at Gibbons PC.

"When you manage it better, when you limit the amount of impervious area, then you can help manage the water course better and provide those natural sponges, those natural barriers to the type of flooding caused by the storm surge," Brooks said.

The state may also re-examine its standards for single-family residences and duplexes along the coast — which can typically be constructed and expanded under general permits without the controls attached to larger developments — to increase flood protections, according to Lloyd H. Tubman, a partner with Archer & Greiner PC.

That could mean, for example, new storm flow-through and elevation requirements for

such buildings, said Tubman, who concentrates her practice on zoning approvals and federal and state environmental compliance.

"This probably provides a reconstruction opportunity to build in the controls that were not there when many of these shore areas were constructed," Tubman said.

But Sandy's flood waters may have left behind more than just tough planning and zoning decisions.

Fuel oil and other contaminants that may have been caught up in the flooding and that brew could have an impact on affected properties and public health going forward, according to Mitchell H. Kizner, a member of Flaster Greenberg's litigation and environmental law practice groups.

"What's happening now is they're digging out, they're restoring people to their homes, they're taking down damaged structures," Kizner said. "When it comes time to rebuilding those structures and constructing new homes and offices, there's a type of environmental assessment that will accompany that, and that sampling may show contamination of soil, of groundwater."

The state could face environmental problems from flooding on already contaminated sites as well as spills caused by the storm, said Dennis Toft, co-chairman of the environmental group at Wolff & Samson PA. Another concern could be leakages or other physical damage to sewer systems in coastal towns, he said.

"It's not just the environmental component of the clean-up that has to be looked at, it's also the infrastructure component," Toft said.

Attorneys also said that the harsh conditions during Sandy don't necessarily mean that property owners and operators can escape liability over hazardous discharges.

"The mere fact that there was a storm is not going to act to exonerate you, especially on the shore," Kizner said. "You're supposed to know about storms and take precautions so these things don't happen."

While a property owner facing environmental litigation because of a storm-related spill could mount an "act of god" defense, that's a tough burden to meet, according to Brooks.

"Whether it's a spill, discharge or release of a hazardous substance, if you're the owner/operator, you still have responsibility for cleaning it up," Brooks said. "I don't think you receive any kind of automatic exemption just because it happens in connection with a storm like Sandy."

--Editing by John Quinn.

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