



TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

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It's Bad, You Know

You know things are getting serious when a Louisiana parish is taking seriously zoning in a floodplain. You may remember when the storm with no name rode into [Louisiana in August 2016](#), dropped three times more water than Katrina, and flooded 146,000 homes across fifty-six parishes. Well, it seems that Ascension Parish remembers. How local governments funded on suburban sprawl, subdivision developments, and [slab-on-grade housing](#) would respond to the [devastation caused in 2016](#) was one of the great questions of the disaster's aftermath. For a good while, it seemed that the response was going to be, well, not much. In [2017](#), a planning commission appeals board was accused of corruption. In [2018](#), it was reported that building codes hadn't changed and subdivisions were being approved like before. In [2020](#), it was reported that a new subdivision was approved in an area that had flooded – the first after new restrictions on earthen mound construction were put in place in Ascension Parish. And [a year ago](#) they instituted development rules restricting development in wetlands. All it took was watering them down to get the parish council on board. But now Ascension is proposing [a massive zoning change](#) that will significantly limit development in the floodiest 18% of the parish. Subdivision developers have said the rules are costly and driving up home prices (but not actually stopping development where there shouldn't be?). But the people of Ascension Parish have seen the costs of development aimed at keeping the initial costs the lowest. It keeps prices down for developers and homebuyers alike. After the houses are bought, however, only one of those groups pay for what comes next.

This may seem like a lot of information about one formerly rural-now-suburban Louisiana parish, but it's happening at a confluence of events that is being repeated around the country. Sprawl has led to building in more flood zones. Building houses with slab foundations at ground level puts the homes right in the way of floods. The next cheapest building option is to put the slab at the top of an earthen mound using trucked-in dirt. That just reduces the volume of space for flood waters to fill, raising the level of the flood. Oh, plus climate change means warmer air masses that can hold more moisture that can lead to heavier rains more frequently. That's not all that's driving Ascension Parish's decision, though. The Risk Rating 2.0 for FEMA's Flood Insurance Program that we reported on [last week](#) threatens much [higher insurance rates](#) for communities across the country. One thing a community can do to reduce those rates is to improve their rating in FEMA's Community Rating System, and that's exactly what Ascension's planners are hoping can happen with the improved zoning restrictions. The past seven years since the floods have been a battle to see if Ascension Parish can avoid a repeat of 2016, but if this parish can put in place real measures to meet the climate challenges of the 21st century, then just maybe your parish (fine, county) can, too.

How One of Louisiana's Oldest Property Laws Is and Should Be Used in the 21st Century

When Europeans settled along Louisiana's rivers and streams, they began the still-ongoing (and ultimately futile?) effort of turning a subtropical, dynamic—even transient—landscape into a stable, sedentary place where Western Europe's habits, laws, and traditions could be applied. The most important weapon in their arsenal for their

battle with Mother Nature and Old Man River was the man-made (well, slave-made) levee. The natural levees built up by streams and distributaries were a start, but they're built by the river flooding, so they're never actually built above the highest floods. They're just above water *most* of the time. If you want to be above water *all* the time, you have to build up above where the levees naturally grow. This was such an important part of the taming of Louisiana that landowners from France, Spain, Germany, or even the United States were expected, nay, obligated to construct and maintain levees along their bordering rivers (but, you know, not do that labor themselves). This public interest in these private properties still exists in the form of Louisiana's levee servitude. Our Senior Research Fellow, Isabel Englehart, has written [a just-published article in the Louisiana Law Review](#) about the levee servitude and how it can best be used in the name of coastal restoration and climate adaptation. It must be good, because Isabel will be starting a new job as a policy advisor with the Louisiana Governor's Office of Coastal Activities next week. Good luck, Isabel! The state will be lucky to have you!

If You Appreciate Water, Hug a Tree

Even though Arbor Day was last week, let's take a minute to talk about trees and forests ([which are more than just trees](#)). "In a water newsletter?" you say? Absolutely! Of course, forests across the American West were connected to the Pacific Ocean through salmon migration, a connection federal agencies, states, and tribes are [still trying to reestablish](#). Like [wetlands](#), forests of all kinds can greatly improve water quality, as a [new study from the US Forest Service](#) finds. That improvement in water quality also creates better habitats for important fisheries, [as has been shown in Japan](#), where fishers took it upon themselves to plant forests around their fishing grounds decades ago. [As has been shown in Michigan](#), those forests improve the quality of drinking water sources for people, too.

Reminders of forests' importance are handy at a time when trees themselves are having a rough go in many places. They're under so much stress in some cities that [new ones are being limited](#) to trees that are capable of growing in deserts (so, cacti?). The [state trees of many states are vulnerable to climate change](#) and may leave those states entirely. And using genetic engineering to meet these challenges? Well, [that might be illegal](#)?

Coming Up:

[Blue Carbon Law Symposium](#); May 17-18; Athens, GA

[2023 State of the Coast Conference](#); May 31-June 2; New Orleans, LA

Water jobs:

[Policy Coordinator](#); The Water Collaborative; New Orleans, LA

[Legislative Director, Healthy Communities](#); Earthjustice; Washington, D.C.

[Drinking Water Policy Coordinator](#); National Wildlife Federation; various Great Lakes offices

[Lead Policy Advocate](#); James River Association; Richmond, VA



The [Tulane Institute on Water Resources Law and Policy](#) is a program of the Tulane University Law School. The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

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