New York Department of State
Division of Coastal Resources and Waterfront Revitalization

Hazardous Property Disclosure

§309 Project of Special Merit

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Draft Law Revisions
to the Office of Ocean and Coastal Resources Management
National Ocean Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

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AN ACT to amend the executive law, the environmental conservation law, the real property law, chapter 535 of the laws of 1945 relating to authorizing and providing for the construction of erosion arresting public works to restore and protect the lands along the Atlantic ocean, the banking law and the tax law, in relation to coastal flooding and erosion

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 912 of the executive law, as amended by chapter 366 of the laws of 1986, is amended to read as follows:

5. To minimize damage to natural resources and property from flooding and erosion, including proper location of new land development away from coastal hazard areas, , protection of beaches, dunes, barrier islands, bluffs and other critical coastal and inland waterway features, [and] use of non-structural measures, whenever possible and maintenance of existing shorelines in coastal hazard areas where there are significant levels of development, public infrastructure, and public investment.

§2. Subdivision 5 of section 34-0102 of the environmental conservation law, as added by chapter 841 of the laws of 1981, is amended to read as follows:

5. Publicly-financed structures to minimize erosion damage should be utilized only where necessary to protect human life, maintain existing shorelines where there are significant levels of existing development, public infrastructure, and public investment [in] , or new development which requires a location within the

erosion hazard area or adjacent coastal waters to be able to function. Both publicly and privately financed erosion protective structures should be designed to minimize damage to other man-made property or to natural protective features or to other natural resources; long term costs of such structures should be carefully weighed against public benefits before construction is undertaken.

§3. The real property law is amended by adding a new section 333-b to read as follows:

333-b. Lands in coastal erosion hazard areas; disclosure.

Any person, firm, company, partnership or corporation offering to sell real property located in an area identified by the commissioner of the department of environmental conservation as a coastal erosion hazard area pursuant to section 34-0104 of the environmental conservation law or as an area of special flood hazard pursuant to section 36-0103 of the environmental conservation law shall provide written notice in the contract of sale to the prospective purchaser or the prospective purchaser's agent, stating as follows: "This property is located in an area identified as a Coastal Erosion Hazard Area or an area of special flood hazard and activities or development may be regulated or prohibited pursuant to article thirty-four or thirty-six, respectively, of the Environmental Conservation Law. Further information regarding this property can be obtained from the nearest office of the New York State Department of Environmental Conservation." Such notice shall be printed or written in a size equal to at least ten point type in any contract of sale of real property located in a coastal erosion hazard area or area of

special flood hazard. Failure to provide such notice shall, at the option of the prospective purchaser or the prospective purchaser's agent, result in cancellation of the contract of sale without any penalty or obligation at any time prior to transfer of title by mailing a notice of cancellation to the address of the person offering to sell said real property. If the contract is canceled, any payments made thereunder shall be returned within ten business days following receipt of the cancellation notice.

2. Any prospective or actual purchaser who has suffered a loss due to a violation of this section is entitled to recover any actual damages incurred from the person offering to sell or selling said real property. In addition, the court may award to the prospective or actual purchaser reasonable attorney fees and court costs.

§4. Section 2 of chapter 535 of the laws of 1945, relating to authorizing and providing for the construction of erosion arresting public works to restore and protect the lands along the Atlantic ocean, as amended by chapter 941 of the laws of 1970, is amended to read as follows:

2. Construction costs; contracts; apportionment.

The cost of preparing plans, specifications, cost estimates, engineering and inspection services shall be deemed to be a part of the cost of construction. Such construction shall be subject to any consent or approval required under or pursuant to federal law or order, which consent shall be obtained by the commissioner of the department of environmental conservation. All such works or

1 improvements shall be constructed by contract let by the said
2 commissioner [of conservation] in the manner provided by the public
3 buildings law, or by forces of the department of environmental
4 conservation, or partly by such contract and partly by such forces.
5 However, if the commissioner [of conservation] deems it to be in
6 the interest of the public, the commissioner may contract with the
7 municipality or municipalities affected (a) to have the employees
8 thereof prepare plans, specifications, cost estimates, engineering
9 and inspection services, (b) to have the forces and equipment
10 thereof perform such work of construction, and (c) to purchase the
11 material; upon such terms as the commissioner may deem
12 advantageous to the state. Such municipality or municipalities are
13 hereby authorized to enter into such contract in order to restore,
14 control and prevent economic and recreational losses. The cost of
15 construction of any such works or improvements shall be paid in the
16 first instance by the state from moneys appropriated therefor and
17 upon completion of such construction and certification by the state
18 comptroller of the total cost thereof, the municipality or
19 municipalities affected shall reimburse the state to the extent of
20 [thirty] fifty per centum of such cost. Upon the adoption of a
21 resolution by the affirmative vote of a majority of the members of
22 the governing boards or bodies of such municipalities, any two or
23 more of such municipalities may, by agreement, approved by the
24 state comptroller and without further authorization, participate in
25 the cost of such construction. For the purpose of reimbursing the
26 state for [thirty] fifty per centum of the cost of such
27 construction which is hereby declared to be a specific object or

purpose, and not a class of or different objects or purposes, such municipality or municipalities may and are hereby authorized to raise the amount certified by the state comptroller by general tax upon all taxable real property located therein, or by special assessment upon the real property benefitted thereby, or partly by such general tax and partly by such special assessment or by the issuance of obligations pursuant to the local finance law provided, however, that (a) in towns of the second class any resolution authorizing the issuance of serial bonds for such object or purpose shall be subject to permissive referendum only, or such resolution may be subject to a referendum only, or such resolution may be subject to a referendum by the finance board of the town on its own motion, in the manner prescribed in article seven of the town law, as amended, from time to time; (b) notwithstanding the provisions of section one hundred seven of the local finance law no down payment shall be required; and (c) the period of probable usefulness of such object or purpose shall be governed by the type of work or improvements, as follows:

(1) Construction work of steel, stone, or concrete, thirty years;

(2) Construction work of wood, or partly wood, twenty years; and

(3) Dredging work, fill work, dune restoration or other work or improvements, to which items (1) and (2) above, do not apply, five years. The period of probable usefulness for such dredging, fill, dune restoration or other work or improvements shall apply even though easements on land on which such work is done have a

duration of less than five years. In the event of failure of such municipality or municipalities to raise or to pay to the state [thirty] fifty per centum of the cost of construction or any portion thereof within six months of the certification of costs by the state comptroller, the state comptroller shall cause to be withheld from state-collected, locally-shared taxes, to which the municipality or municipalities would otherwise be entitled, a sum sufficient to reimburse the state for any amount remaining unpaid, together with interest on any such unpaid amount at the rate of two per centum per annum from the date of such certification by the state comptroller. Such moneys so withheld, including interest, shall be credited against the amount payable to the state by such municipality or municipalities on account of such construction.

§5. Section 103 of the banking law is amended by adding a new subdivision 3 to read as follows:

3. Make any loan upon the security of real estate located within a special flood hazard area designated by the federal emergency management agency, unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term of the loan.

§6. Subdivision 1 of section 174 of the banking law, as amended by chapter 111 of the laws of 1960, is amended to read as follows:

1. No private banker shall:

(a) Purchase with funds held by him as a private banker any real estate except a plot upon which there is or may be erected a building suitable for the convenient transaction of his business; nor make a loan of such funds upon the security of real estate, if such real estate is unimproved, in excess of two-thirds, and if such real estate is improved by a building or buildings or is to be improved by a building or buildings in the process of construction, the major portion of which building or buildings is used or in the case of a building under construction is to be used, for residential, business, manufacturing or agricultural purposes, in excess of three-fourths, of the appraised value of such real estate, or in an amount which when added to the amount unpaid upon prior mortgages, liens and encumbrances upon such real estate exceeds such real estate is subject to prior mortgage, lien or encumbrance and the amount unpaid upon such prior mortgage, lien or encumbrance or the aggregate amount unpaid upon all prior mortgages, liens and encumbrances exceeds ten per centum of the permanent capital of such private banker.

(b) Make any loan upon the security of real estate located within a special flood hazard area designated by the federal emergency management agency, unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term

1 of the loan.

2 §7. Subdivision 6 of section 202 of banking law, as amended
3 by chapter 360 of the laws of 1984, is amended to read as follows:
4 6. No foreign banking corporation licensed pursuant to
5 article two of this chapter to maintain one or more branches in
6 this state shall in this state [make]:
7 (a) Make any loan for the purpose of financing the purchase of
8 or refinancing an existing ownership interest in certificates of
9 stock or other evidence of an ownership interest in, and a
10 proprietary lease from, a corporation or partnership formed for the
11 purpose of the cooperative ownership of real estate, unsecured
12 except to the extent of an assignment or transfer of the stock
13 certificates or other evidence of ownership interest of the
14 borrower and the proprietary lease within ninety days from the
15 making of the loan, which shall exceed the same maximum per cent of
16 the purchase price or, in the case of a refinancing, the appraised
17 value of such certificates of stock or other evidence of an
18 ownership interest as is permitted to be made on real estate
19 improved by a single family residence occupied by the owner and
20 which shall fail to provide for full repayment of principal and
21 interest within the same number of years as a loan secured by real
22 estate as hereinabove described; provided that such loan shall be
23 subject to such regulations as the banking board may from time to
24 time promulgate. Notwithstanding any other provision of law, the
25 maximum rate of interest which may be charged, taken or received
26 upon any loan or forbearance made pursuant to this subdivision may

exceed the rate of interest prescribed by the banking board in accordance with section fourteen-a of this chapter by no more than one and one-half per centum per annum.

(b) Make any loan upon the security of real estate located within a special flood hazard area designated by the federal emergency management agency, unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term of the loan.

§8. Section 235 of the banking law is amended by adding a new subdivision 6-b to read as follows:

6-b. No savings bank shall make any loan upon the security of real estate located within a special flood hazard area designated by the federal emergency management agency, unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term of the loan.

§9. Subdivision 4 of section 380 of the banking law is amended by adding a new paragraph (c) to read as follows:

(c) Relating to real estate located within a special flood hazard area designated by the federal emergency management agency,

unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term of the loan.

§10. Section 454 of the banking law is amended by adding a new subdivision 11-a to read as follows:

11-a. Make any loan upon the security of real estate located within a special flood hazard area as designated by the federal emergency management agency, unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term of the loan.

§11. Section 509 of the banking law is amended by adding a new subdivision 5 to read as follows:

5. Make any loan upon the security of real estate located within a special flood hazard area as designated by the federal emergency management agency, unless such real estate has been insured against the full cash amount of any loss resulting either from flood, the rising of the waters of an adjacent waterbody, or erosion, or has been insured against any such loss to the maximum extent possible under the national flood insurance program, and any such insurance shall remain in force and effect throughout the term

1 of the loan.

2 §12. Section 595-a of the banking law is amended by adding a
3 new subdivision 4 to read as follows:

4 4. Mortgages in coastal erosion hazard areas. No licensee
5 under this article shall make any loan upon the security of real
6 estate located within a special flood hazard area as designated by
7 the federal emergency management agency, unless such real estate
8 has been insured against the full cash amount of any loss resulting
9 either from flood, the rising of the waters of an adjacent
10 waterbody, or erosion, or has been insured against any such loss to
11 the maximum extent possible under the national flood insurance
12 program, and any such insurance shall remain in force and effect
13 throughout the term of the loan.

14 §13. Article 2 of the banking law is amended by adding a new
15 section 14-f to read as follows:

16 14-f. Escrow of flood insurance premiums and fees.

17 1. Any mortgage lending institution which requires the
18 escrowing of taxes, insurance premiums, fees or any other charges
19 for a loan secured by real estate, shall require the escrowing of
20 all premiums and fees for flood insurance for real estate located
21 within a special flood hazard area designated by the federal
22 emergency management agency. Premiums and fees paid to the
23 mortgage lending institution shall be paid in a manner sufficient
24 to make payments as due for the duration of the loan. Upon receipt
25 of the premiums and fees, the mortgage lending institution shall
26 deposit such premiums and fees in an escrow account on behalf of
27 the borrower. Upon receipt of notice from the director of the

federal emergency agency or the insurance provider that insurance premiums are due, the mortgage lending institution shall pay from the escrow account to the provider of the insurance, the amount of insurance premiums owed.

2. No mortgage lending institution shall impose a service charge in connection with the maintenance of an escrow account unless provision therefor was expressly made in a loan contract executed prior to the effective date of this section.

3. The banking board shall have the power, by a three-fifths vote of all its members, to adopt such regulations as it shall deem necessary or appropriate to implement the provisions of this section.

§14. Subsection (c) of section 615 of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) any loss experienced by a structure constructed or substantially reconstructed after the effective date of this chapter in a flood hazard area designated as a "V" zone on a flood insurance rate map prepared by the federal emergency management agency or within a coastal erosion hazard area as identified by the commissioner of environmental conservation pursuant to section 34-0104 of the environmental conservation law, which is attributable to a disaster occurring in an area subsequently determined by the president of the united states to warrant assistance by the federal government under the disaster relief act of 1974, to the extent that such expenses and premiums are deductible in determining federal taxable income.

§15. This act shall take effect immediately.

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