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# ASLA warns landscape architects could be liable for climate impacts on projects

Beth Hyatt (/author/bhyatt) | January 4, 2019

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During the 2018 annual meeting of the American Society of Landscape Architects (ASLA), it was determined that landscape architects could potentially face liability due to climate impacts on their projects.

"Climate impacts are becoming more and more evident," Deanna Moran, Conservation and Law Foundation (CLF) director of environmental planning, told [ASLA's The Dirt blog](https://dirt.asla.org/2018/11/08/welcome-to-the-age-of-climate-liability/) (https://dirt.asla.org/2018/11/08/welcome-to-the-age-of-climate-liability/). "What does that mean for us when we know these impacts exist? When there is more public recognition of them, but we aren't addressing them or acknowledging them in a concrete way?"



According to The Dirt, a class action lawsuit in Houston, Texas, was filed by residents of a master-planned community that flooded during Hurricane Harvey. The residents are now suing the engineering firm responsible for designing the area's neighborhood stormwater management system.

While this suit specifically targets engineers, ASLA says landscape architects could also potentially end up on the chopping block for such occurrences.

The question ASLA now poses is, how can green industry professionals such as landscape architects and designers be subject to legal liability because they fail to account for and adapt to climate impacts?

In a [report](https://www.clf.org/wp-content/uploads/2018/01/GRC_CLF_Report_R8.pdf) (https://www.clf.org/wp-content/uploads/2018/01/GRC\_CLF\_Report\_R8.pdf) published by the CLF, Moran and CLF attorney Elena Mihaly studied this and other similar questions, and the pair determined there are three factors that contribute to climate liability risk for design professionals.

## Public awareness

With the amount of technology at our fingertips today, media coverage regarding climate and weather changes has become easier to monitor than ever.

This, according to Moran and Mihaly, means that landscape architects are much more obligated to monitor and understand the climate-related risks that could play a part in any project they work on.

"The more we talk about risks publicly," the greater "the foreseeability of climate impacts," increasing potential exposure to liability, Moran told The Dirt.

## Readily-available data

The report states that government agencies are investing in powerful modeling tools that will conduct vulnerability assessments, as well as climate adaptation planning.

The report notes that agencies tend to make information like this public and open-source. Since these tools are more sophisticated and accurate, The Dirt notes, landscape architects will now have access to high-quality modeling of potential impacts from climate change at a local level.

Since designers now have ample access to these climate changes, the expectations of customers will grow to have projects created that will be able to handle such natural disasters.

## Lack of litigation

According to The Dirt, Moran has argued that the failure of previous litigation against major greenhouse gas emitters could lead to “a shift in focus on the design community as defendants” when talking about the realm of climate change litigation.

The first two factors, Mihaly says, contribute to what’s known as a “standard of care,” which The Dirt says is a key concept in negligence litigation. According to The Dirt, the standard of care owed by a design professional is determined by the courts on a case-by-case basis.

Courts will look at many different factors when determining the standard of care owed by a landscape architect in any given case. This, The Dirt says, can include specific contract language, applicable codes and regulations, industry customs and the foreseeability of harm.

“It’s not just a question of ‘did you know this could happen?’ but ‘should you have known that this could happen?’” Mihaly told The Dirt.

The CLF’s findings concluded that with the growing awareness of climate impacts and easily-accessible data, the answer to these questions is a resounding “yes.”

Because the uncertain nature of climate change won’t be a sufficient defense in a negligence lawsuit, Mihaly advises caution and says that merely complying with a jurisdiction’s building or zoning codes won’t protect designers from liability if these codes don’t actually prevent the harm that the designer has a responsibility to avoid.

“Compliance alone isn’t necessarily a liability shield,” Mihaly told The Dirt. “The key question is: do those codes and standards actually contemplate the harm you are trying to prevent against?”

Regarding the lawsuit in Houston, Mihaly told The Dirt that “the standard of care expected of a design professional is rising due to climate change and improvements in climate science. The threat of liability is real, and there is already litigation in this space.”

She adds that more and more design professionals are beginning to be the targets of such lawsuits.

Even as the ever-changing nature of liability surrounding climate change continues to present threats to design professionals, both Moran and Mihaly insist there is a positive outlook on the situation.

“This could be an opportunity for the design community to really pioneer this space and use liability to proactive in the face of climate impacts,” Mihaly told The Dirt. “The threat of liability can turn what is dreamed about into the standard.”

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