


10-2-2013

Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government

Molly Mitchell

Virginia Institute for Marine Science

Follow this and additional works at: https://digitalcommons.odu.edu/hraforum_04

 Part of the [Climate Commons](#), [Legal Studies Commons](#), [Public Affairs, Public Policy and Public Administration Commons](#), and the [Public Law and Legal Theory Commons](#)

Repository Citation

Mitchell, Molly, "Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government" (2013). *October 2, 2013: Quantifying Risks and Moving Forward*. 4.
https://digitalcommons.odu.edu/hraforum_04/4

This Presentation is brought to you for free and open access by the Hampton Roads Sea Level Rise/Flooding Adaptation Forum at ODU Digital Commons. It has been accepted for inclusion in October 2, 2013: Quantifying Risks and Moving Forward by an authorized administrator of ODU Digital Commons. For more information, please contact digitalcommons@odu.edu.

Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government

Molly Mitchell

Oct. 3, 2013

Norfolk, VA

All photos by David Malmquist



Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government

Hosted by:

- Virginia Coastal Policy Clinic (VCPC) at William & Mary Law School Center
- Coastal Resources Management at VIMS

In collaboration with:

- the Commonwealth of Virginia

Major Funders:

- Virginia Environmental Endowment.

Additional supporter:

- Virginia Sea Grant
- Greehan, Taves, Pandak & Stoner
- Virginia Chapter, American Planning Association.



Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government

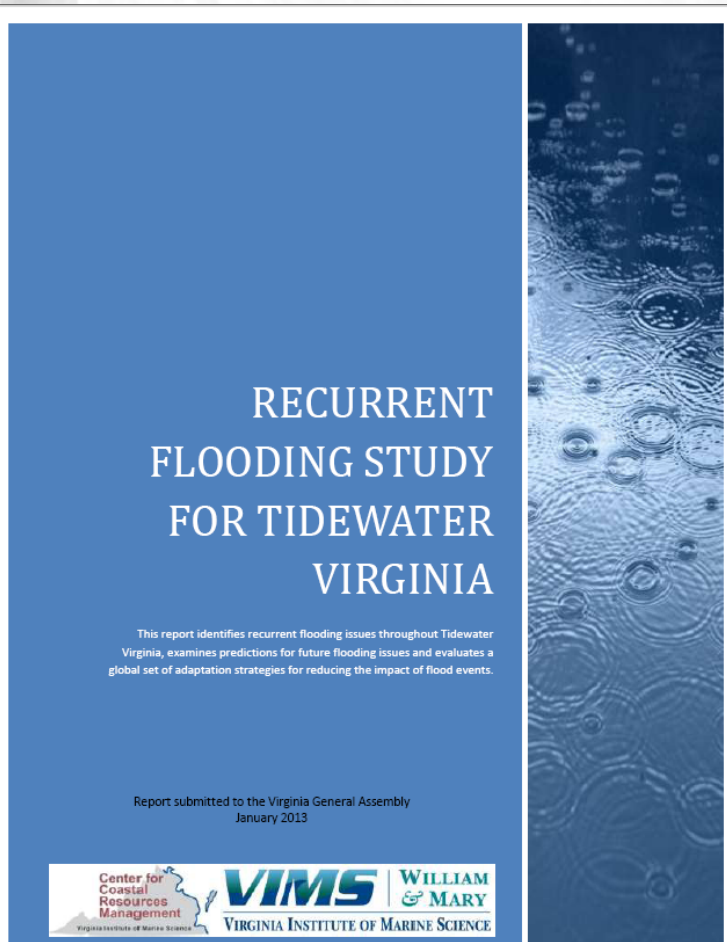
To help address concerns of local governments regarding their legal authority to address flooding and sea level rise issues through regulatory channels

- Over 230 people registered, representing various localities, agencies, and the public
- Speakers represented a wide variety of backgrounds, including political leaders, academics and industry consultants

Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government

• Addressing concerns from the Recurrent Flooding Study for Virginia

- What statutory authority do local governments have?
- What legal responsibilities do they have?
- What are the risks involved with taking action?
- How can they craft a coordinated approach to adaptation that incorporates all the major stakeholders?



Adaptive Planning for Flooding and Coastal Change in Virginia: Legal and Policy Issues for Local Government

Speakers discussed:

- The extent of the threat facing localities as well present and future adaptation methods.
- The need for state involvement, leadership, and funding with regard to recurrent flooding.
- Incorporating all stakeholders--including public and private actors--into one cohesive adaptation strategy.
- Legal issues facing localities seeking to implement adaptation strategies—including possible tort and takings liability.
- Local perspectives on recurrent flooding: specifically the need for legal authority to act and the need for educating the population.



Quotes from the Conference

“Sea level is rising at 8 inches per century globally, and in Virginia we have to add subsidence. Our coastal communities are felling the problem, and the administration is ready to partner with the General Assembly in what comes out of this workshop.”

-- Doug Domenech, Secretary of Natural Resources

“It’s a major issue for all of us We have a relatively short window of opportunity, 20 to 30 years” in which to act.

**-- Mayor Will Sessoms,
Virginia Beach**

“It is time for state government to say there is a problem, and that we need to address it.”

-- Senator John Watkins, District 10.

“Local government cannot solve this problem on its own. We need to support local politicians so they can go to Richmond, and help them implement change.”

-- Mayor Molly Ward, Hampton

“Of the seven major flooding events that have affected Norfolk in the last 80 years,” says Fraim, “four have occurred in the last 10 years. We now regularly experience flooding during lunar high-tide cycles, which was unheard of just a few years ago... The problem is real, well-documented, and we have to deal with it.”

-- Mayor Paul Fraim, Norfolk

Advice from the consultants

David Bookbinder

- it is important for localities to avoid both alarmism and complacency during their adaptation planning
- Environmental groups should be brought into the planning process early
- The presence of the military is a big asset to the Hampton Roads area. Engage them.
- Consider issues of environmental justice while planning

David Bailey

- There are two types of adaptation policy: (1) reactive, which is usually a large and extremely costly project following a disaster and (2) proactive and anticipatory
- Localities help businesses by providing them with short term projections of sea level rise impact, addressing the worst problems first, and looking for cheap, effective solutions.
- When making adaptation decisions, localities shouldn't fight the market. If a property needs to be abandoned, then it may be best to abandon it.

Legal Issues: Between a Rock and a Hard Place? Local Government Authority, Duties, and Regulatory Responsibilities

Speaker Pollard, Christian & Barton, LLP

- Recommends holistic management of sea level rise with TMDL and stormwater requirements
- Provided some great resources: <http://law.wm.edu/academics/programs/jd/electives/clinics/vacoastal/docs/adaptive%20planning%20conference%20documents/pollardlegalstrategiesoutline.pdf>

Professor Ron Rosenberg, William & Mary Law School

- Elucidated the impact of the Dillon Rule on localities ability to manage floodwaters
- Emphasized that localities have extensive authority under in the Virginia Code to address flooding and floodplain management

Legal Issues: Between a Rock and a Hard Place? Local Government Authority, Duties, and Regulatory Responsibilities

Shana Jones, VCPC Director and Chris Olcott, Virginia Sea Grant Summer Legal Fellow

- Virginia Code § 15.2-970 provides localities with sovereign immunity for failing to maintain drainage, erosion, and flood control works.

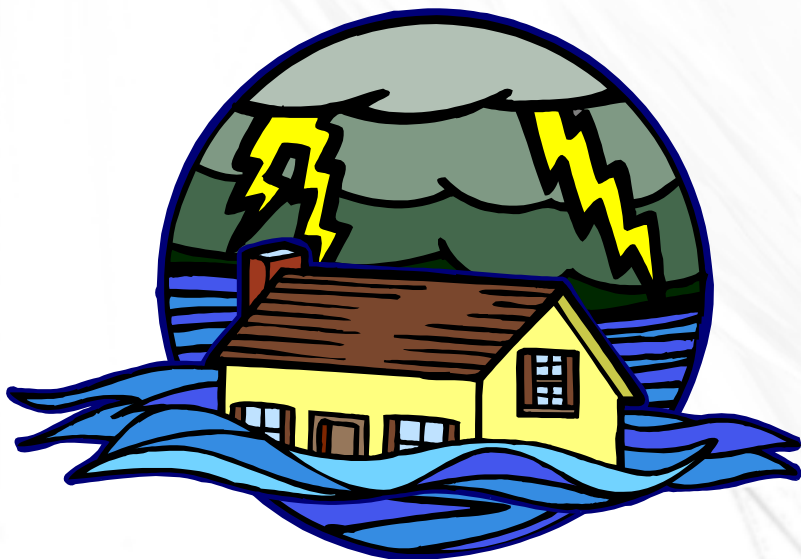


- However, a recent case suggests that localities may incur takings liability where they fail to maintain drainage, erosion, and flood control works and private property is damaged

Legal Issues: Between a Rock and a Hard Place? Local Government Authority, Duties, and Regulatory Responsibilities

Professor Lynda Butler,
Chancellor Professor of Law,
William & Mary Law School

- Two recent *takings* cases heard by the Supreme Court may hamper the ability of local governments to respond to recurrent flooding



Sharon Pandak, Greehan, Taves,
Pandak & Stoner, PLLC

- In order to regulate coastal land use with less risk of takings liability, localities should:
 - Frame land use regulations as needed for public safety, health, and welfare (as opposed to regulating to limit damage to property)
 - Avoid regulations that prevent all uses of the property.

A locality perspective

Jim Redick, CEM Director, Norfolk Emergency Preparedness and Response

Sea level rise and recurrent flooding should be treated as any other sort of disaster -- including hurricanes and terrorist attacks. Localities should share resources and coordinate with one another in order to most efficiently deal with flooding threats.

Joseph DuRant, Deputy City Attorney, City of Newport News

Localities are facing a barrage of costs due to risks from recurrent flooding, new stormwater regulations, Chesapeake Bay TMDL, and consent decrees for sewage treatment. As such, they are put in a difficult situation of having to allocate scarce resources

Dave Hansen, Deputy City Manager, City of Virginia Beach

In responding to the threat of recurrent flooding, localities will need to balance political, environmental, and economic considerations.

Localities need to know the extent of potential liability for damage caused by failed flood-control infrastructure -- no feat of engineering is fail-safe.

Lewie Lawrence, Executive Director, Middle Peninsula Planning District Commission

Education is needed, for constituents as well as local government leaders, in order to provide the scientific background that will enable those groups to acknowledge the problem and begin to produce solutions.

Next steps: Where do we go from here?

Senator John Watkins, 10th Senatorial District

The state government needs to engage the issue in a deliberate and proactive manner. Regional coordination is a must, and the state is in the best position to provide such structure as well as seek federal funding for flood control measures.

Joe Lerch, Virginia Municipal League

Localities need some certainty with regard to funding. Local governments may be hampered in their ability to limit flooding damage if the Federal Government eliminates tax-exemptions for municipal bonds. Further, localities would greatly benefit from funding for state primary roads within urban borders. They could have greater leeway to implement adaptation measures if the state shares the cost.

