Florida Sea Grant Coastal Planning Program

Sea-Level Rise and Flooding Legal Workshop on Florida's West Coast

Florida Sea Grant, in conjunction with Pinellas County, The Tampa Bay Regional Planning Council, The Florida Climate Institute, The Suncoast Chapter of the APA, the West Coast Branch of the APWA, and Erin L. Deady, LLC will hold the workshop "Sea-Level Rise and Flooding: Planning & Law for Local Governments" from 8:30 a.m. to 4:30 p.m. on May 11, 2017 in Largo, Florida. The full agenda is available at: Workshop agenda

The workshop focuses on legal and policy issues confronted by local governments as they face increased flooding and sea-level rise. The workshop is geared to local government managers, attorneys, engineers, floodplain managers, and planners; consultants; and interested NGOs and citizens.

Registration & information at https://www.eventbrite.com/e/slr-and-flooding-planning-and-law-for-local-governments-tickets-33274900122.

Sea-Level Rise in the News

An April 4 article by BBC gives a great overview of sea-level rise issues and responses in SE Florida based on interviews with many key figures. The article is available here.

Despite continued questioning of human-caused climate change and sea-level rise, local governments, both nationally and here in Florida, demonstrate increasing acceptance of and planning

April 2017

Comments from Attendees of Previous Florida Sea Grant Legal Workshops

"[T]he presentations and discussions were extremely important and beneficial to the wide variety of participants."

Jon Van Arnam, Palm Beach County Assistant Administrator & Southeast Florida Regional Climate Compact Steering Committee member

"[T]his was one of the most substantive legal forums I've ever attended and received similar comments from many audience members. Chock full of very useful information."

Richard Grosso, Director, Environmental & Land Use Law Clinic & Associate Professor of Law, Nova Southeastern Shepard Broad Law Center

"[S]incere KUDOS to you and your esteemed colleagues for such a great program – here's to making a proactive difference!"

Fawn Powers, Assistant City Attorney, City of Pompano Beach for climate change and sea-level rise. While personal conversations with managers and department heads in some Florida local governments demonstrate acceptance of the real scope and magnitude of the challenge of sea-level rise over the long-term and the likely eventual need to relocate, only recently have some local governments been willing to begin saying such things publicly. Coral Gables, Florida Mayor James Cason mentioned the need to consider leaving areas even as he tried to remain optimistic about potential "solutions."

"Takings" case before U.S. Supreme Court addresses the "denominator" issue.

On March 20th, four attorneys argued before the U.S. Supreme Court in the case of Joseph P. Murr, *et al.* v. Wisconsin, *et al.*, Docket No. 15-214, appeal from 359 Wis.2d 675. The case involves owners of two contiguous, substandard lots along the St. Croix River in Wisconsin. Under a local ordinance in place for decades, common ownership of contiguous properties results in a merger of the parcels. After repeated flooding, the Murrs sought to improve a cabin on one of the lots and sell the other, even though both lots were considered substandard, resulting in denial of a variance for separate use of the lots.

Despite appeals, that decision stood, so the Murrs then sued the state and county, alleging that the ordinance merging the properties effected a taking of their private property. Those decisions also went against the Murrs, so the case reached the United States Supreme Court. The question is whether the "parcel as a whole" concept in *Penn Central v. New York* establishes that two legally distinct but commonly owned contiguous parcels must be combined for a takings analysis.

And while the city of New York, even after Hurricane Sandy, has insisted that it is not going anywhere, a new report highlighted in an article in Scientific American, indicates that even as the New York City region has made progress in preparing for storms, the region needs to put more focus on preparing for sea-level rise. Even so, the report's authors note that people will have to begin to consider "where we can invest limited funds to retreat."

Boston also has begun to come to grips with the need to plan effectively to remain as vibrant and resilience as long as possible before eventually confronting an ocean that will reclaim parts of the city that were once themselves "reclaimed" from Boston Harbor.

Sea-Level Rise and Economic Impacts Continue

Sea-level rise is not slowing down. The rate of sea-level rise increasing, but as a spate of research has demonstrated, there could even be a risk of catastrophic glacier collapse leading to several feet of sudden sea-level rise within decades or centuries.

It should come as no surprise that more and more commercial, government and non-governmental organizations, such as the Navy, increasingly pay attention to sea-level rise and climate change; after all, the economic impacts are already starting and the future costs and impacts are significant. The US Army Corps of Engineers and taxpayers have spent hundreds of millions of dollars in beach nourishment from Rhode Island to Virginia after Hurricane Sandy, but even so, a Corps representative said the estimated nourishment costs for the next 20 years for the North Atlantic Division of $2.9-3.7 billion might mean that for "some coastal and flood-prone communities, buyouts and relocations will be the 'the only realistic way to reduce risks."

A recent New York Times article examined how the "Perils of Climate Change Could Swamp Coastal Real Estate." The article notes that since the real estate collapse of 2008, home sales have been slower to recover in flood-prone areas, and nationally prices for properties in flood-prone areas are still 4.4% below 2006 prices whereas properties in low-risk areas are up 29.7% during that time period. But, do those national trends also apply to coastal areas where there is demand for coastal living? Many vulnerable coastal areas, such as southeast Florida, continue to rapidly add new housing stock. This leads many economists to worry that banks and lenders and investors in the housing market are not responding adequately and might be contributing to a housing market bubble that could potentially be worse than the 2008 since this bubble, when it bursts, will never see the value of the affected properties come back. But no one knows exactly how and when coastal, hazard-prone properties will begin to depreciate. The article notes that in some areas, this may already be happening due to increasing flood-insurance costs. As these costs rise, more and more property will likely on be suitable for cash buyers since it will become increasingly cost-prohibitive to secure flood insurance that would allow getting a mortgage.

While I have previously shared a related, fictional story, it merits inclusion again: here you can find a fictional scenario of how things could potentially play out when a bank first decides to deny a 30-year mortgage in Florida because of sea-level rise.

Flood Insurance in the News: NFIP Reauthorization, New CRS Coordinator's Manual, and Florida Bills on Flood Insurance

Flood insurance continues to be a news topic. Three important developments this year: The National Flood Insurance Program (NFIP) is set to expire this fall, so Congress needs to take action to reauthorize the program. Also, the Community Rating System (CRS) Program of the NFIP is awaiting public release of its new CRS Coordinator's Manual. Finally, two bills in Florida address flood insurance issues.

FEMA Completed New 2017 Edition of the Community Rating System Coordinator's Manual

FEMA completed the 2017 Edition of the CRS Coordinator's Manual late last year. It is currently awaiting final review by the federal government's Office of Management and Budget for compliance with Paperwork Reduction Act. As soon as OMB clears the manual, it will be available for download at www.CRSresources.org.

The 2017 Edition of the Coordinator's Manual focused more on corrections, clarifications, and smaller improvements to the Manual large rather than large, substantive changes. While some credits were eliminated due to duplication, the Element names and maximum credits for each Activity remained the same.

The 2017 Manual increases the emphasis on future conditions, such as sea-level rise. This includes:

- A standard for calculating sea-level rise for use in mapping to receive credits for mapping future conditions. The Manual specifies use of the U.S. Army Corps of Engineers' Sea-Level Change Curve Calculator with the "Intermediate-High" curve out to the year 2100.
- The Higher Study Standards (HSS) maximum points increased 25%, from 160 to 200, including for future conditions mapping, such as sea-level rise.

NFIP Reauthorization

The NFIP is set to expire on September 30, 2017 unless Congress acts. Many agree that the NFIP should be reauthorized, including the National Association of Realtors, The Florida Association of Counties, The National Association of Insurance Commissioners, The Association of State Floodplain Managers, and others. But areas of disagreement exist. For example, Representative Carlos Curbelo of Florida introduced into the U.S. House of Representatives the "Flood Insurance Fairness Act of 2017." This bill would make non-primary residences and commercial properties eligible for the same subsidies that primary residences receive under the current NFIP. Others portray this as unfairly forcing taxpayers to subsidize vacation properties and other high-cost properties.

It will be an interesting debate to follow reauthorization.

- The "Watershed Master Plan" (WMP) credit now includes a coastal sea-level rise option for coastal communities that consider sea-level rise even though they may not have any natural or constructed channels.
- Addressing sea-level rise now is an additional option for communities to meet the Class 4 prerequisite of showing that they have "taken appropriate steps to eliminate or minimize future flood losses."

For more information on changes in the 2017 CRS Coordinator's Manual, see https://www.flseagrant.org/climatechange/coastalplanning/insurance-issues-coast/, http://crsresources.org/, or https://www.fema.gov/national-flood-insurance-program-community-rating-system.

Speaking of the NFIP . . . .

The making of flood maps forms a critical part of the NFIP as the Flood Insurance Rate Maps (FIRMs) determine which properties must have NFIP coverage to be eligible for federally backed mortgages. Yet these maps are often far out of date because of the high cost of the extensive data and modeling necessary to create new maps.

And the funding situation is not getting any better it appears. As many seek to promote more private insurance options for flood insurance, few mention that of the cost of flood maps that help determine risk are funded by the NFIP and by Congress. And the proposed budget submitted by President Trump proposed eliminating $190 million for flood mapping.

So, even though the 2012 Biggert-Waters Flood Insurance Reform Act added a requirement that flood mapping take into account the best available science on climate change and sea-level rise, it may be a while before that happens as mapping continues to lag behind the need due to funding issues.

Florida Bills on Flood Insurance

CS/SB 420, introduced by Senator Brandes, and its companion House Bill 813, continues to move through committees in Tallahassee, clearing the Community Affairs committee on 4/3/17. CS/SB 420 continues Senator Brandes' work on insurance affordability, begun in 2013 in response to the Biggert-Waters Act changes to the NFIP at the federal level; Brandes' work seeks to keep flood insurance more affordable by promoting the availability of private flood insurance as an alternative to the NFIP. Currently, based on a 2014 bill by Brandes, Florida already has an expedited process allowing private insurers to offer "personal lines" (i.e.—only to individuals for residential, non-commercial use) of flood insurance. Fla. Stat. §627.15. This 2014 law allowed flood coverage rates to be set by the standard procedure in statute or, for those submitted before October 1, 2019, to be set by insurers without prior review by the State Office of Insurance Regulation. The 2014 law also allowed "surplus lines agents" to sell insurance with insurance companies not fully regulated by the state.

CS/SB 420 would extend the deadline for rates to be set by surplus lines insurers outside of the regular process in statute; this deadline would be extended 2019 until October 1, 2025. CS/SB 420 also essentially makes permanent a feature of the 2014 law: a surplus lines agent may send a policy to a surplus lines insurer without getting three refusals from fully regulated and approved insurers.

Taken together, these and other changes in CS/SB 420 seek to promote competition among insurers. One senator expressed concern that "surplus lines" of insurance that are not as carefully regulated by the state were intended for unusual circumstances and not as general replacements for regulated insurance.

Senate Bill 112 seems so far to be getting less traction. This bill is similar to one that died during the 2016 legislative session: it would create a $50 million grant program for flood mitigation. SB 112 would require the Department of Economic Opportunity to develop criteria to rank proposals and would expand the powers of the Florida Communities Trust to coordinate and fund flood mitigation projects.