Sea-Level Rise Adaptation: Drivers, Challenges, and Opportunities

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Overview

- Drivers
  - Flooding, erosion, law & policy changes
- Challenges
  - Lawsuits and potential liability
- Opportunities
  - Benefits of addressing the challenges and tools to help

Drivers: Flooding

- Damage to property
- Stormwater flooding and drainage costs
  - Miami Beach example
- Insurance costs
  - NFIP premiums rising
  - Need for CRS credits

Drivers: Erosion Impacts

- *Jordan et al.* case
  - Direct costs for road ($2.3 m over 5 yrs)
  - Cost to defend litigation ($1 m)
  - Problem remains
- Result of past decisions

Drivers: Law & Policy Changes

- Adaptation Action Area (AAA) (2011)
  - Incorporated in several comprehensive plans in Florida since creation
    - Miami Dade County
    - Palm Beach County
    - Fernandina Beach
    - Satellite Beach
    - Fort Lauderdale

Drivers: Law & Policy Changes

- SB 1094 (2015): Flood Peril
  - Strategies to reduce the flood risk in coastal hazards, including ***sea-level rise***
  - Strategies to remove coastal property from flood zones
  - Identify development techniques and best practices to reduce flood losses and claims made under flood insurance policies
  - Encourage CRS participation
  - Implementation: timing, data, methods

Challenges: Takings

- *". . . nor shall private property be taken for public use, without just compensation."*
  - *Jordan et al.* again—if not now, later. . . .
  - Most cases under an ad hoc test
  - Few cases result in a taking
- Minimize takings risk
  - Appropriate public process & hearings
  - Focus on flooding, health & safety
  - Coastal No Adverse Impact (http://www.floods.org/index.asp?menuid=340)

Challenges: Takings

- State Takings Law—Bert J. Harris Act
  - Prohibits "inordinate burden"
- Untried defenses lurking in definitions:
  - Reasonable, investment-backed expectations
  - "Suitable. . .and compatible with adjacent land uses."
    - degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development
    - land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

Challenges: Liability for *Not* Planning?

- Does "foreseeability" lead to liability
  - Not always
  - Better focus: difference between "legislative/planning" decisions and "operational/executive" actions

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by Thomas Ruppert and Carly Grimm

Opportunities & Resources

- Evaluate impacts of SLR and CC on surge, drainage, and flooding—project underway
- Get CRS credits for integrating SLR into planning/analysis: https://www.flseagrant.org/wp-content/uploads/SLR-and-CC-in-CRS-program_FINAL_3.3.15.pdf
- Meet new statutory requirement in SB 1094

Opportunities & Resources

- Example language address SLR in Florida local governments: https://www.flseagrant.org/climatechange/coastalplanning/case-studies/
- Coming soon: “Environmentally Compromised Road Segments—A Model Ordinance”

THE THREE LITTLE PIGS: CLIMATE CHANGE EDITION

"[A] foolish man . . . built his house on sand. The rain came down, the streams rose, and the winds blew and beat against that house, and it fell with a great crash."

Matthew 7: 26-27

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