

COASTAL RESILIENCE: LEGAL ISSUES FOR LOCAL ADAPTATION

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Since Hurricanes Katrina and Rita in 2005 and Superstorm Sandy in 2012, the concept of coastal “resilience” has transfixed the American public and gained increased importance across a variety of disciplines. While there has been increased interest in coastal resilience as a concept, however, many barriers to implementing resilience measures at the local level exist, including a need for greater understanding of the legal issues and potential solutions to these issues. Incorporating resilience measures into local decision-making raises questions about legal liability, legal duties, property rights, risk, economic and social equity, and fairness. In addition, every community is different and must balance competing interests such as encouraging economic development, promoting a secure tax base, and planning for long-term community prosperity, safety, and vitality. This session will provide an overview and introduction to two emerging legal and policy issues that are arising as coastal communities address increased flooding: “negligent takings” claims and “environmentally-compromised road segments.” With respect to “negligent takings,” recent court rulings indicate a growing trend of courts holding government liable for failing to protect their citizens from flooding disasters. Flood-control projects usually enjoy immunity from liability, but several recent cases have concluded that the government’s negligence resulted in an unconstitutional “taking” of citizens’ property. We will provide an overview of “takings” law and then will discuss how the law may be changing to allow for claims that have traditionally been barred by the doctrine of sovereign immunity. With respect to “environmentally-compromised road segments,” a recurring question is how should local governments balance their interests in protecting property rights and access to property with fiscal responsibility for maintaining frequently flooded roads? We will discuss Georgia law related to local government duties to maintain roads as well the process for abandoning roads.

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