How the Law Can (But Usually Doesn’t) Help Us Prepare for Extreme Events

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Legal Tools to Prepare for Extreme Events

Assessment and disclosure
Formal planning
Permit conditions
Incentives
Liability
Assessment and Disclosure requirements

• Environmental impact review
  – National Environmental Policy Act
  – State Environmental Quality Review Act

• Securities disclosure
  – Securities and Exchange Commission
  – New York -- Martin Act

• Future property disclosure requirements?
Planning requirements

• State hazard mitigation plans for FEMA
• New York Community Risk and Resiliency Act of 2014
• Coastal Zone Management Program/ Local Waterfront Revitalization Programs
• Coastal Erosion Hazard Areas
• Transportation Improvement Programs of Metropolitan Planning Organizations
• Municipal master plans
Environmental Permits

• Superfund/Brownfields
  – Remedial investigations/feasibility studies, Records of Decision
• Municipal solid waste landfills
• Clean Water Act
  – National Pollutant Discharge Elimination System permits
  – Stormwater permits
  – Total Maximum Daily Loads
• Wetlands mapping
• Filtration Avoidance Determination
TOP STATES WITH SUBSIDIZED NATIONAL FLOOD INSURANCE POLICIES

KEY
# = Number of subsidized policies
#/10k = Policies per 10,000 housing units

CA
# 48,121
#/10k 35

TX
# 61,417
#/10k 62

LA
# 82,063
#/10k 418

NY
# 59,751
#/10k 74

PA
# 34,478
#/10k 62

NJ
# 88,601
#/10k 249

SC
# 29,523
#/10k 138

FL
# 268,648
#/10k 299
The National Flood Insurance Program has fallen deeper in debt since the payouts after Hurricane Katrina and most recently the costs of Hurricane Sandy. As of November 2012, the program was more than $20 billion in debt to the U.S. Treasury (GAO 2013), and that figure is likely to rise once all the Sandy claims are settled.

Sources: FEMA 2013a; estimate for 2012 NFIP payments for Hurricane Sandy from King 2013; estimate for 2012 NFIP debt based on its borrowing limit of $30.4 billion set by the Hurricane Sandy Relief Act.
Illinois Farmers Insurance Company v. Metropolitan Water Reclamation District of Greater Chicago
Liability Theories in Illinois Farmers Insurance

• Failure of local public entity to exercise ordinary care to maintain property in safe condition – 745 ILCS §3-102(A)

• Negligent failure of local public entity to remedy known dangerous conditions – 745 ILCS §3-103(A)

• Taking clauses of Illinois, U.S. constitutions
Claims against infrastructure providers
La Faute-sur-Mer, France, March 2010