

Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding

Executive Summary - 2014 Interim

Background

The Joint Subcommittee to Study Recurrent Flooding pursuant to HJ 16 (2014) and SJ 3 (2014) is tasked to formulate recommendations for the development of a comprehensive and coordinated planning effort to address recurrent flooding, including recommendations of short-term and long-term strategies for minimizing the impact of recurrent flooding. Final recommendations shall be presented to the 2016 Session of the General Assembly.

Meeting #1

The Joint Subcommittee to Study Recurrent Flooding held its initial meeting on July 22, 2014, in Richmond. Delegate Chris Stolle was elected to serve as Chairman of the joint subcommittee and Senator Mamie Locke was elected to serve as Vice-Chairman.

After opening remarks by Chairman Stolle and introduction of the joint subcommittee members, Brian Moran, Secretary of Public Safety and Homeland Security, was introduced. Secretary Moran described the ongoing work of the Secure Commonwealth Panel and the Governor's Climate Change and Resiliency Update Commission and pledged the cooperation of his office in working with the Joint Subcommittee.

The Joint Subcommittee then heard from Col. Paul Olsen, commander of the Norfolk District, U.S. Army Corps of Engineers. Col. Olsen oversees the district's civil works infrastructure and military construction. Col. Olsen described to the Joint Subcommittee the role of his office and the manner in which they seek to identify mutual interests with the state and localities so as to better coordinate and cooperate on various projects. Upon questioning, Col. Olsen stated that the Corp and localities are best able to work together on smaller, flexible projects such as shore restoration. Col. Olsen further explained the strategy of retreat/adapt/defend when determining how to best respond to challenges caused by recurrent flooding.

The Joint Subcommittee also heard from Jim Redick. Mr. Redick is the Director of Emergency Preparedness and Response for the City of Norfolk and a member of the Secure Commonwealth Panel. Mr. Redick encouraged Virginia to take the lead in determining how best to address the issues facing the Commonwealth related to recurrent flooding. Mr. Redick argued that with a unified effort, Virginia can set the standard that will be studied by others as these issues move to the forefront. Mr. Redick emphasized that given the long time frame necessary to effectively address recurrent flooding and sea level rise issues and given the speed at which risks are projected to increase, Virginia and its coastal localities should immediately begin comprehensive and coordinated planning efforts. He also stated that Virginia should establish a single point of reference for information on which to access consistent, timely and accurate information. After presenting an overview of various other issues facing the Joint

Subcommittee, Mr. Redick promised to return to the Joint Subcommittee with further recommendations of the Secure Commonwealth Panel once finalized.

After Joint Subcommittee discussion and receiving general comments from members of the audience, including representatives from the Cities of Norfolk and Virginia Beach, the Joint Subcommittee determined that it will hold its second meeting on September 10, 2014.

Meeting #2

The Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding held its second meeting on September 10, 2014, in Richmond.

After opening remarks by Chairman Stolle, Nicole Riley, Virginia State Director of the National Federation of Independent Businesses, described to the Joint Subcommittee the impact of recurrent flooding on businesses. In particular, the rising costs of flood insurance and the updating of flood maps have presented challenges to many businesses. Ms. Riley mentioned several techniques that businesses can use to try and reduce the impact of high flood insurance premiums. Although Ms. Riley was not able to give dollar estimates of actual losses from recurrent flooding, she stated that losses were often caused more by a loss of business rather than actual flood damage to the business.

The Joint Subcommittee also heard from Bill Tibbens, Manager of Government and Industry Affairs with Farmers Insurance. Mr. Tibbens discussed recurrent flooding and the mitigation of risk. According to Mr. Tibbens, the negative outcomes of recurrent flooding include possible mold, weakened construction, below standard repairs, auto claims and loss of life. There are a variety of ways to manage such risks, including avoidance (eliminate, withdraw), reduction (optimize fortification), sharing (insurance) and retention (bear the cost). Ways of mitigating the risks might include returning an area to its natural flood plain. According to Mr. Tibbens, for every dollar spent on mitigation, there is an average savings of \$4 in claims cost. Mr. Tibbens emphasized the importance of educating the consumer regarding flood coverage and the lack thereof in basic policies. He also pointed out various sources of further information such as government websites and community rating systems.

Bob Kerr, representing the Virginia Association for Commercial Real Estate and the Hampton Roads Association for Commercial Real Estate, also addressed the Joint Subcommittee. Mr. Kerr presented perspectives from the commercial real estate industry. He noted that local governments are on the front line regarding issues related to recurrent flooding and have been developing strategies to deal with these issues for a number of years. Mr. Kerr noted that some of the issues of immediate interest include stormwater regulations and increases in finished floor elevations. Other issues on the radar include further changes in state and local requirements and changes to commercial lending and insurance. He noted that although time is an ally in solving many of the issues related to recurrent flooding, the cost of many options will only increase with the passage of time. Mr. Kerr noted that some of the challenges for the Joint Subcommittee as it considers solutions include the impact of new policies on national and regional competitiveness, confusion regarding state versus local authority, and the cost and funding of new requirements and projects.

The Joint Subcommittee also received an update from Jim Redick, Director of Emergency Preparedness and Response for the City of Norfolk and a member of the Secure Commonwealth Panel. Mr. Redick informed the Joint Subcommittee of the Panel's continued work and highlighted possible recommendations of the Panel, including creation of a resilience coordinator and facilitation of a centralized source of information. Mr. Redick also emphasized the importance of speaking with a unified voice in order to maximize possible federal funding. Mr. Redick stated that he will keep the Joint Subcommittee updated on the Panel's work.

After a general discussion among Joint Subcommittee members, it was decided that the next meeting will be held November 5, 2014, in Norfolk at Old Dominion University.

Meeting #3

The Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding held its third meeting on November 5, 2014, at Old Dominion University in Norfolk.

After welcoming remarks from John R. Broderick, President of Old Dominion University, the Joint Subcommittee received a presentation from Ray Toll, Director of Coastal Resilience at Old Dominion University (ODU). Mr. Toll stated that issues related to sea level rise have been a priority focus for ODU for the past five years. He noted that the University created the Sea Level Rise Initiative in 2010 to facilitate research and education on sea level rise. Mr. Toll noted that earlier this year, ODU announced the creation of a federal pilot program to develop a regional approach to sea level rise preparedness and resilience planning. ODU will serve as the neutral facilitator and coordinator to incubate intergovernmental solutions. The goal is to, over the next two years, work to create the Hampton Roads Sea Level Rise Preparedness and Resilience Intergovernmental Planning Team, the first of its kind in the nation. Mr. Toll also informed the Joint Subcommittee of its efforts to create a National Center for Sea Level Rise in partnership with Virginia's congressional delegation and with the College of William & Mary/Virginia Institute of Marine Science.

The Joint Subcommittee also heard from Roy Hoagland, Director of the Virginia Coastal Policy Clinic at William & Mary School of Law. Mr. Hoagland presented an overview of legal issues related to local authority to take action regarding recurrent flooding and sea level rise. Mr. Hoagland began by giving an overview of the Dillon Rule as it impacts local authority in Virginia. The Dillon Rule limits the powers of local governments to those expressly granted by the General Assembly, those fairly implied from those express powers, and those that are essential to the exercise of those governmental powers. The Virginia Supreme Court has held that when there is reasonable doubt whether a legislative power exists, the doubt must be resolved against the local governing body. Mr. Hoagland concluded that although there is authority within existing statutes to support local government actions to respond to recurrent flooding, the state of law is confusing and that the Joint Subcommittee might want to consider legislative action to resolve the issue in a straightforward manner. Among the alternatives that Mr. Hoagland suggests is the crafting of legislation that exempts the application of the Dillon Rule to local government actions taken to respond to recurrent flooding and sea level rise. Other alternatives include

undertaking a detailed legal analysis to assess the specific extent of authority that exists under the current state of the law.

Robert Bennett, Division Director of Dam Safety and Floodplain Management with the Department of Conservation and Recreation, also addressed the Joint Subcommittee. Mr. Bennett noted that the General Assembly amended the Flood Damage Reduction Act in 1989 in response to several severe floods or storms that hit the state between 1969 and 1985. As part of these amendments, the Department of Conservation and Recreation (DCR) was named coordinator of flood protection programs in the Commonwealth. DCR was also designated coordinating agency for the National Flood Insurance Program. Furthermore, DCR was directed to develop a flood protection plan for the Commonwealth. Such a plan was implemented in 2005 but has not been updated since that time. The enabling statute is silent on the timing of any further updates. Mr. Bennett noted that a variety of new resources and information have become available since the creation of the initial plan and briefed the Joint Subcommittee on DCR's needs if it was to initiate a process to modernize the plan. Mr. Bennett also brought forth additional floodplain management ideas such as greater disclosure of floodplains locations as a part of the real estate disclosure act and offering grants to localities as an incentive to join the community rating system.

During a period for public comment, the Joint Subcommittee heard from representatives of the Virginia Association of Realtors and the City of Portsmouth regarding the issue of real estate disclosure of flood zones. The Real estate Association representative noted that Virginia has always been a "buyer beware" state while the City representative explained that some buyers are finding out after the fact that an expensive insurance policy is required due to the location of a dwelling.

Finally, Jim Redick, the Director of Emergency Preparedness and Response for the City of Norfolk and a member of the Secure Commonwealth Panel, gave a new update on the work of the Panel. He mentioned recommendations such as the creation of a resiliency coordinator, a continuation of the Panel, and an update of the flood plain plan.

The Joint Subcommittee concluded by discussing possible recommendations to be taken up at the final meeting of 2014. This meeting will be devoted to the development of interim recommendations to the 2015 Session of the General Assembly and discussion of possible plans for 2015.

Meeting #4

The Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding held its fourth meeting on November 24, 2014, in Richmond.

After Introductory remarks by Del. Stolle, the Joint Subcommittee heard from Steve Marzolf, ISP Director for the Virginia Information Technologies Agency. Mr. Marzolf presented information regarding the use of LIDAR in the Commonwealth. LIDAR is a mapping technology for examining the surface of the Earth using laser scanning to provide a three-dimensional picture. According to Mr. Marzolf, the eastern half of the state has been mapped using LIDAR; however, portions of the mapping have been created using a lower-quality and less accurate version of LIDAR. The Commonwealth is in the process of seeking

additional federal funding that will allow it to expand its LIDAR mapping as well as upgrade some of the areas that have been mapped previously. Accurate LIDAR maps would be particularly helpful to the Commonwealth and its localities in determining areas that are susceptible to recurrent flooding.

The Joint Subcommittee then discussed a variety of topics for the purpose of making interim recommendations for 2015 Session of the General Assembly.

Interim Recommendations

I. Topic: Ground water / Outfall ditches

A. Recommendation (groundwater): Initiate a study by JLARC to develop recommendations for a strategy to sustainably and equitably manage the coastal aquifer system in order to maintain its productivity and availability for the long term.

Background: Land subsidence has been identified as a component of recurrent coastal flooding. Over-pumping of groundwater from the coastal plan aquifer system has been identified as a contributor to land subsidence, declining groundwater levels, and increasing saltwater intrusion potential.

B. Recommendation (outfall ditches): VDOT shall inventory and record all drainage systems under the responsibility of VDOT. The inventory shall be completed by a specified date and be made available to the public.

Background: The issues of recurrent flooding and inadequate drainage across the lower portions of the Virginia Coastal Zone have become problematic. Both public roadside ditch infrastructure and the interconnected private ditch system have failed, causing losses to private property and public infrastructure.

II. Topic: Real estate disclosure

Recommendation: As part of required disclosures, advise purchasers to exercise due diligence, including obtaining a flood certification and a lender determination of whether the property is located in a flood zone and whether flood insurance is required.

Background: These changes would ensure that potential buyers are identifying issues and getting the most up-to-date information earlier in the real estate transaction.

III. Topic: Floodplain Management Plan

Recommendation: Update the Commonwealth's Floodplain Management Plan.

Background: The Commonwealth's initial Floodplain Management Plan has not been updated since 2005. With changing circumstances and access to new information, it would be beneficial to have the plan routinely updated and easily accessible by the public in an online format. It was also suggested that the Department of Conservation and Recreation should be encouraged to work with the Joint Subcommittee in seeking input for preparation of the plan update.

IV. Topic: State Resiliency Officer

[The recommendation below was not adopted; rather it is recommended that the Governor create such a position.]

Recommendation: Designate a State Resiliency Officer.

Background: As with any program or incident, there must be an individual identified as the lead in order to give direction and ensure accountability. Any resiliency coordinator should be closely aligned with the Secure Commonwealth Panel, and, in order to better assure consistency and continuity, the Commonwealth should consider creating a full-time career position.

V. Recurrent Flooding Resiliency Fund

Recommendation: Create or authorize the Recurrent Flooding Resiliency Fund, a low-interest loan program that will help residents who are subject to recurrent flooding.

Background: Connecticut has created a similar program that provides loan assistance to homeowners and business owners located in flood-prone areas. In the Connecticut plan, funds can be used to elevate or flood-proof primary and secondary single homes, one-unit to four-unit owner-occupied rentals, and businesses. The funds will be available to some property owners who are ineligible for federal assistance.

The Joint Subcommittee also discussed other potential proposals related to real estate disclosure and land use authority. It was determined that those issues should be carried over to the 2015 interim for further consideration.