Community Rating System and Historic Preservation: Implications for Beaufort, South Carolina

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Role of Law in Coastal Resilience

• Critical to understand the legal framework associated with coastal hazard mitigation

• Lessen the future risk of legal liability for pre-flood prevention measures and post-flood cleanup and rebuilding efforts

• Create realistic expectations for local community planners and managers
Regional Community Resilience Project

• Partnerships between Sea Grant southeast regional offices and coastal communities with flooding and sea level rise vulnerabilities

• Goal is to facilitate conversations between various stakeholders in the community: local officials, community organizers, local industry professionals and members of the community—and develop comprehensive plans addressing the unique vulnerabilities the community will face in the future
Resilience Project Methodology

• Collect stakeholder input through a collaborative and participatory process to determine the resilience priorities of the community

• Create digital date models to improve local planning capacity and educate stakeholders of hazards

• Use compilation of local data to improve planning on a regional level
Discussion and Data Gathering Process

- VCAPS—Vulnerability, Consequences, and Adaptation Planning Scenario Process
  
  - Developed by:
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    - Thomas Webler, Research Fellow, Social and Environmental Research Institute
    - Kirstin Dow, Associate Professor, Carolinas Integrated Sciences and Assessments, Department of Geography, University of South Carolina
    - Jessica Whitehead, Regional Climate Extension Specialist, South Carolina Sea Grant Consortium and Carolinas Integrated Sciences and Assessments
    - Nathan Kettle, Graduate School of Geography, University of South Carolina
VCAPS Process

• Identifies management concerns, environmental hazards and stressors, outcomes, and consequences

• Facilitated discussions then determine what public and private actions are being taken, and what could private individuals, businesses, or the government do in the future
Building Blocks of a VCAPS Diagram

Management Concern → Hazard/Stressor → Outcomes → Consequences

- Public Actions
- Private Actions
- Contextual Factors

Management Concern

Hazard/Stressor

Outcomes

Consequences
Sample VCAPS Diagram:

Beaufort County, South Carolina
Benefits of the VCAPS Process

• Flexibility to meet community specific hazards, needs, and goals

• Integrates climate science with local knowledge of hazards and vulnerabilities

• Can be utilized to address all of the impacts of climate change without specifically bringing it up
Partnership with City of Beaufort, South Carolina

• Unique features to address in Beaufort’s VCAPS Process
  • Status as a National Historic Landmark
  • Goal of improving their Community Rating System (CRS) score

• Challenges with the VCAPS Process
  • Hurricane Mathew shifted town priorities
  • VCAPS is a long process with numerous stakeholders to coordinate with
Hurricane Irma & Beaufort, South Carolina

Photo Credit: The Island Packet
Historic Beaufort

• Founded in 1711 in the heart of the South Carolina Lowcountry

• 304 acres of the city’s downtown were designated a National Historic Landmark in 1973

• The Landmark is comprised of 5 distinct neighborhoods: the District, the Point, the Old Commons, the Bluff, and the Northwest Quadrant
Historic Beaufort Secession House - Built in 1813 in Greek Revival Architectural style
St. Helena’s Episcopal Church: founded in 1712 as a colonial parish of the Church of England, this Beaufort historic site is one of the oldest churches in the United States.
Historic Property Management

• The City of Beaufort has a 5 member Historic Review Board tasked with aiding in the preservation, protection and enhancement of the Beaufort National Historic Landmark District.

• The Historic Review Board reviews all new construction and additions, demolition, renovation, rehabilitation, and restoration that occurs within the District.

• Guided by principles in the Beaufort Preservation Manual and the Secretary of the Interior’s Standards for Rehabilitation
Beaufort, South Carolina
Flood Vulnerability

• The majority of the City of Beaufort lies within flood zone A as determined by FEMA.

• Properties within Zone A are within the 100-year floodplain.

• Zone A is a special flood hazard area—new properties developed in this zone must obtain flood insurance and meet National Flood Insurance Program minimum standards.
Community Rating System

- Program administered by FEMA beginning in 1990; as of June 2017 impacted nearly 3.6 million policyholders in 1,444 communities
- Encourages communities to take additional steps to reduce flood hazards
- Any community in full compliance with the requirements of the National Flood Insurance Program may participate
Benefits of CRS Participation

• Each CRS class improvement leads to a 5 percent greater discount on flood insurance premiums for properties located in Special Flood Hazard Areas (SFHAs)

• Provides an opportunity to educate property holders of the unique risks and vulnerabilities faced by their communities

• Improvements to public safety and mitigation of damage upon a flood event
Methods to Improve CRS Score

- There are 19 activities that count toward CRS credit; formulas and adjustment factors are used to calculate the specific credit points for each activity.

- Four general categories under which the activities fall:
  - Public Information
  - Mapping and regulations
  - Flood damage reduction
  - Warning and response
Public Information Activities

- Elevation Certificates
- Map Information Service
- Outreach Projects
- Hazard Disclosure
- Flood Protection Information
- Flood Protection Assistance
- Flood Insurance Promotion

Photo Credit: National Weather Service
Mapping and Regulation Activities

- Floodplain Mapping
- Open Space Preservation
- Higher Regulatory Standards
  - Developmental limitations
  - Freeboard
  - Foundation protection
  - Protection of critical facilities
- Flood Data Maintenance
- Stormwater Management

Photo Credit: U.S. Geological Survey
Flood Damage Reduction Activities

- Floodplain Management Planning
  - Repetitive loss area analysis
  - Natural floodplain functions plan
- Acquisition and Relocation of Buildings
- Flood Protection
  - Retrofitted buildings
  - Structural flood control & drainage projects
- Drainage System Maintenance

Photo Credit: FEMA
Warning and Response Activities

• Flood Warning and Responses
  • Flood threat recognition system
  • Emergency warming dissemination
  • Critical facilities planning

• Levees
  • Maintenance
  • Failure threat recognition

• Dams
  • Failure threat recognition
  • Failure response operations

Levees in New Orleans
Photo Credit: CNBC
Beaufort and the CRS Program

• Beaufort currently has a score of 7 and is hoping to further reduce the score and obtain flood insurance premium discounts for the community members

• Beaufort is particularly interested in preservation of open space, and the elevation, relocation, and retrofitting of properties within the flood zone, as well as improve storm water management
Integrating Historic Preservation and the CRS

• Prospect of reductions in flood insurance rates can encourage the involvement of more stakeholders

• More community member involvement provides an opportunity to define specific preservation goals, and to identify previously undocumented areas and structures of historic and cultural significance

• Improved awareness of the flood risks for historic properties and help protect vulnerable populations
CRS Measures and Historic Preservation Laws

• Federal regulations promulgated under the National Historic Preservation Act for rehabilitation of historic properties are inconsistent with many types of flood mitigation tactics that count toward improving CRS scores.

• Under the Certified Legal Government program, local municipalities implement the designation of historic properties and suitability of alterations and demolitions in the historic districts.

• Increasing open space: vulnerable populations and ownership of heir’s property.
Legal Implications of CRS Implementation

• In order to receive credit through the CRS program, all regulations, zoning, subdivision ordinances, and deed restrictions must be legally enforceable

• Local governments in South Carolina, such as the City of Beaufort have the statutory authority to enact ordinances as part of their general police power to ensure public health and the safety of citizens

• Home Rule Act of 1975; S.C. Code 5-7-10; S.C.Code 6-29-1130
WE'RE GIVING WHAT'S LEFT OF YOUR BEACH, AND YOUR HOUSE SOME PROTECTION, COURTESY OF THE TAXPAYER.
Risks for Historic Districts

• Federal funding involved in a project in the historic district? National Historic Preservation Act Section 106 Review may be triggered.

• Impacts of Section 106 Review—may lead to costly delays of project

• Downzoning in tourist-centric historic districts may invite regulatory takings challenges
Liability Prevention

• Physical Taking- constitutional requirement of just compensation

• Regulatory Taking- challenges to new zoning laws and ordinances
  • Under the “Penn Central” framework courts hearing takings challenges consider:
    • (1) Economic impact on the claimant
    • (2) Extent of regulatory interference with investment-backed expectations
    • (3) The extent/character of government action

• General principle: maintain some beneficial economic use of the property, unless the same result of a regulation could have been achieved via a state’s laws for private nuisance (Lucas v. South Carolina Coastal Council)
Zoning & Open Space Preservation Legal Implications

• Permit approvals conditioned on the maintenance or dedication of open space
  • *Dolan v. City of Tigard* set forth a two part test to determine constitutionality
  • (1) Is there an “essential nexus” between the permit conditions and a legitimate state interest?
  • (2) Are the exactions caused by the permit conditions proportional to the proposed development

• The Supreme Court noted that floodplain development restrictions do further the legitimate government interest of mitigating risks posed by flooding
VCAPS Process and Legal Protection

• VCAPS process is used to gather data and put communities on notice about the types of hazards they face

• Especially important to put small communities with tight budgets on notice—takings litigation can be extremely costly

• Detailed record of flood and sea level rise vulnerability assessments done in the area as well as other technical data used in the implementation process
Next Steps for Beaufort VCAPS

• Set up meetings with the relevant stakeholders in the city:
  • Elected officials
  • City management and administrations
  • Planning Commission
  • Water and sewer staff
  • Stormwater managers
  • Historic preservation officials
  • Interested community members and business owners

• Identify most feasible and beneficial CRS activities
• Determine methods to create legally binding implementation of the CRS activities
• For more information on the progress of the VCAPS process in Beaufort, South Carolina contact:

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