The Dillon Rule & Norfolk Sea Level Rise

An analysis of the limited impact of the Dillon Rule on planning for sea level rise in Norfolk

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SPRING 2013

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About the Virginia Coastal Policy Clinic

The Virginia Coastal Policy Clinic (VCPC) at William & Mary Law School pro¬vides science-based legal and policy analysis of environmental and land use issues affecting the state's coastal resources and educates the Virginia policy making, non-profit, legal and business communities about these subjects.

Working in partnership with Virginia scientists, law students in the clinic integrate the latest science with legal and policy analysis to solve coastal resource management is¬sues. Examining issues ranging from property rights to federalism, the clinic's activities are inherently interdisciplinary, drawing on scientific, economic, and policy expertise from across the university. VCPC has a strong partnership with the Virginia Institute of Marine Science (VIMS) and Virginia Sea Grant.

VCPC is especially grateful to the Virginia Environmental Endowment for providing generous funding to establish the clinic in fall 2012.

A Note from the VCPC Director

VCPC received funding from the Virginia Environmental Endowment to produce a series of white papers analyzing legal issues Virginia localities may face as they respond and adapt to increased flooding caused by sea level rise. To focus the students' analysis, we selected two Virginia jurisdictions—Norfolk and Poquoson—to analyze. The students utilized facts from published reports and press accounts to inform their work. Although we focused on these two jurisdictions, the issues raised are broadly applicable to similarly situated cities in Virginia. The reader should be aware, however, that the legal issues that county governments may face might be different from those in the city government context.

Future work is likely to involve interviews, additional analysis, and engagement with the broader policy community about some of the issues raised. Adapting to flooding and sea level rise is a complex area. We have not identified all of the possible legal issues that may arise. Nor have we necessarily answered every possible legal question as part of the analysis that was conducted. We hope, however, that our white papers begin to answer some of the threshold questions facing Virginia localities at this time. We also anticipate that they lay the groundwork for in-depth work and identify areas of needed discussion and additional research. We therefore welcome any feedback on our work.

Finally, a special thanks goes to Erica Penn, a rising third-year law student and Virginia Sea Grant Summer Fellow, for source-checking and editing this white paper. VCPC is also grateful to Virginia Sea Grant for funding the VCPC Summer Fellow program at William & Mary Law School.

Overview

Localities, such as the City of Norfolk, have certain authority under the Dillon Rule to manage flood concerns. While the Dillon Rule undoubtedly places restrictions on the ordinances enacted by Norfolk, as it begins to plan for sea level rise, the City should be confident that many, and arguably, most, of the potential adaptation and mitigation strategies are within the authority vested by the Commonwealth to address the threat of both current and future sea level rise.

Indeed, the Commonwealth of Virginia has a state interest in flood control[1] and, in particular, addressing the issue of "recurrent flooding" caused by sea level rise and subsidence in Hampton Roads. While the term "recurrent flooding" was in a recent bill passed by the Virginia General Assembly that funded a study to identify the economic impact of coastal flooding in Virginia, it is not a new term. Section 10.1-658(A) of the Code of Virginia, titled "[s]tate interest in flood control," speaks directly to the power of localities to create flood management programs, for the prevention against present and future flooding. The statute provides, in relevant part:

> The General Assembly declares that storm events cause *recurrent flooding* of Virginia's land resources and result in the loss of life, damage to property, unsafe and unsanitary conditions and the disruption of commerce and government services, placing at risk the health, safety and welfare of those citizens living in flood-prone areas of the Commonwealth…the public interest *requires the management of flood-prone areas* in a manner which prevents injuries to persons, damage to property and pollution of state waters.

The following chart indicates the many adaptation measures for which Norfolk clearly has statutory authority under the Dillon Rule, citing specifically to the section(s) of the Code of Virginia or Norfolk ordinance(s) that either expressly or impliedly grant(s) local governments the authority to implement the adaptation tool. The report later analyzes Norfolk's authority under the Dillon Rule to enact adaptation measures that mitigate flooding, or the threat of flooding. In sum, Norfolk is well equipped and enabled under the Dillon Rule to implement land use planning and other adaptation measures to meet the threat of both current and future sea level rise.

Potential Norfolk Sea Level Rise Adaption Measures & Dillon Rule Authority

Potential Adaptation Measure	Does Norfolk have authority under the Dillon Rule?	Source of Authority
Berms	• YES	• Code of Virginia §§ 10.1-658; 15.2-970
Seawalls, Dams, Levees	• YES	• Code of Virginia §§ 10.1-658; 15.2-970(A)
Flood Gates	• YES	• Code of Virginia §§ 10.1-658; 15.2-970. FPCHO Norfolk Code, Appendix A, Art. II, Ch. 11-3.1(e).
Water Pumps	• YES	• Code of Virginia §§ 10.1-658; 15.2-970. FPCHO Norfolk Code, Appendix A, Art. II, Ch. 11-3.1(e).
Drainage Pipes	• YES	• Code of Virginia § 10.1-658. FPCHO Norfolk Code, Appendix A, Art. II, Ch. 11-3.1(e).
Mandatory Setbacks	• YES	• Code of Virginia §§ 10.1-658; 15.2-2279. CBCHO Norfolk Code, Appendix A, Art. II, Ch. 11-2.9(c).
Down Zoning	• YES	• Code of Virginia §§ 10.1-658; 15.2-2286. FPCHO Norfolk Code, Appendix A, Art. II, Ch. 11-3.1(a)-(d).
Condemnation	• YES	• Code of Virginia §§ 10.1-658; 15.2-1901.1; 15.2-2284.

While the above actions are clearly allowed by statute, Norfolk can take additional actions not included in the statute if they are part of general flood management, zoning power, or under other authorities. This paper will discuss and allay concerns that the Dillon Rule precludes Norfolk, or other localities in Virginia, from adopting strategies to mitigation flooding from future sea level rise projections. Next, the paper will explain how the Dillon Rule Two-Step analysis is applied to localities' actions, then it will apply the analysis to the adaptation measures included in the chart on page one. At its conclusion, readers will know that:

- Norfolk can manage the threats of flooding predicted to result from sea level rise through existing ordinances and general zoning authority.
- Case law in Virginia related to Dillon Rule violations does not implicate the issues discussed in this paper.
- The Dillon Rule is not a barrier to the City of Norfolk in its preparation to meet the current and future threat of sea level rise and the resulting recurrent flooding.

The Dillon Rule is Not a Barrier to Many Adaptation Strategies in Norfolk

Because Virginia is a Dillon Rule state, localities may only exercise power expressly granted by the Commonwealth.[2] The Dillon Rule is a doctrine that allows a local government to "exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant, and the powers that are indispensable to the existence of the unit of local government."[3] In contrast, Home Rule is a doctrine that "allocate[s] a measure of autonomy to a local government, conditional on its acceptance of certain terms."[4] Most states adopt either the Home Rule or the Dillon Rule, although some states adopt a hybrid doctrine. This doctrine becomes particularly important in the context of planning for the occurrence of actions unknown, such as climate change or resultant sea level rise. Therefore, in the context of sea level rise, a local government may only apply those adaptation measures and employ those mitigation tools, such as those listed in the chart above, if the Commonwealth granted local governments the authority by statute.

The limitation of the Dillon Rule on the power of local government to enact ordinances and policies outside of the scope of power granted by the Commonwealth prompts localities to often refer to the Dillon Rule as a major barrier to taking action to solve local land use challenges. The Middle Peninsula Planning District Commission, for example, prepared a report titled "Initiating Adaptation Public Policy Development," in which the Dillon Rule is cited as a potential constraint on local government's authority to plan for climate change.[5] Discussion of the Dillon Rule's continuous presence in academic publications indicates its influence, whether actual or benign, over local governments as they begin to approach adaptation of various sources of future threats to the health and safety of local governments' citizens and resources.[6]

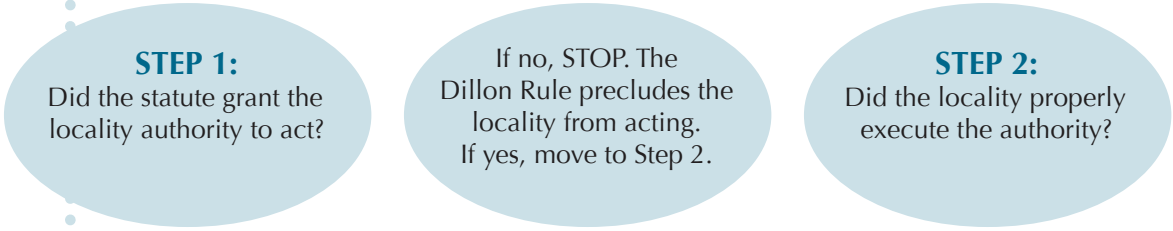
The Virginia Institute of Marine Science released a study in 2013, at the request of the Virginia General Assembly, on recurrent flooding. The report references the Dillon Rule as a constitutional "approach" and "challenge."[7] Although the restrictive nature of the Dillon Rule is rooted in a constitutional issue (the Constitution of Virginia requires the delegation of authority from the Commonwealth to localities), the challenge that localities

face in a Dillon Rule state is not one of constitutionality. This distinction, although slight on its face, could perpetuate both the fear that localities associate the Dillon Rule with constitutional questions, and the resulting resistance that they may apply to implementing adaptation measures to meet the threat of sea level rise.

Applying the Dillon Rule in Norfolk

Before adopting an adaptation measure to address flooding resultant of sea level rise, Norfolk must first determine whether or not the City is authorized, under the Dillon Rule, to implement the measure. Norfolk must complete what could be designated as the "Dillon Two-Step."[8]

The Dillon Rule Analysis: The Dillon Two-Step



STEP ONE

First, before taking action, Norfolk must ask, was the locality enabled by state law?[9] The locality may be enabled to act if the Commonwealth grants the power either "from express words or by implication."[10] If the power cannot be found at all, then the Dillon Rule analysis stops and the locality is precluded by the Dillon Rule; the locality does not have the authority to act.[11] Courts will first look to see if the power was expressly granted to the locality. If there was no express grant, then the courts will consider whether the authority is "necessarily or fairly implied from the powers expressly granted by the statute, or is essential and indispensable" to the functioning of a local government.[12] Implied power is shown by determining "that the legislature intended that the grant of the express also would confer the implied."[13] If Norfolk was enabled by state law, either expressly or impliedly, it would move to step two.

STEP TWO

Norfolk then must ask, did the locality properly execute the power?[14] Power is properly executed when either: (a) the enabling authority provides specific direction for how to execute the power and the locality follows that direction, or (b) if the enabling authority does not provide specific direction and the localities' actions are considered within reason.[15] If a locality is told expressly how to exercise the authority vested to it, the locality must exercise authority in that manner only.[16] If there is no specific direction for implementing the power, the locality may choose how to exercise its authority, "as long as the method selected is reasonable."[17] Reasonableness is determined when it is "consistent with legislative intent."[18]

Applying the Dillon Two-Step

Under the Dillon Two-Step, a locality must follow statutory instructions only if the Commonwealth speaks directly to the method of exercising given authority.[19] If a power is not expressly granted in a statute, the city of Norfolk is not necessarily precluded from enacting laws and policies impliedly related to its general statutory power.[20] In

that instance, a court may rule on whether Norfolk's authority is implied under its general power in the statute, or find that the authority is essential or indispensable.[21] In both cases, Norfolk's actions would be allowed under the Dillon Rule.

Applying this analysis, the abovementioned statutes included in the chart on page one would pass the Dillon Two-Step.

Norfolk Sea Level Rise Adaptation Measures

Potential Adaptation Measure	Does Norfolk have authority under the Dillon Rule?
Berms, Flood Gates, Seawalls, Levees, Water Pumps and Drainage Pipe	Localities are expressly granted authority to build structural tools used to protect land from flooding §15.2-970 of the Code of Virginia. The statute reads, "[a]ny locality may construct a dam, levee, sea all or other structure or device…to prevent the tidal erosion, flooding or inundation of such locality, part thereof."[22] The manner in which a locality builds and operates is not expressly stated in the Code of Virginia, ut the "design, construction, performance, maintenance and operation of any of such works" is eemed "to be a proper governmental function for a public purpose."[23] Norfolk is permitted to build nd manage these adaptation measures at their own reasonable discretion. In addition to the authority granted by the Commonwealth, the City of Norfolk's Floodplain/Coastal azard Overlay District (FPCHO) ordinance includes a provision that permits Norfolk to build flood tes or other structures that assist drainage located in the overlay district. These structures are eclared "necessary…[t]o ensure that adequate drainage is provided to reduce exposure to flood haz-ds."[24] Water pumps and drainage pipes, also included in the chart, would qualify as a structure implemen to provide "adequate drainage" within the FPCHO.[25]
Mandatory Setbacks	Localities are expressly granted authority to establish minimum setbacks in §15.2-2283 of the Code Virginia. The statute reads, "[a]ny locality may by ordinance regulate the building of homes in the cality including…minimum setbacks."[26] The Code does not provide specific directions for how the authority to create setbacks should be ercised, therefore Norfolk is permitted to create and enforce setbacks in a reasonable manner. In addition to the authority granted by the Commonwealth, the City of Norfolk's Chesapeake Bay eservation Area Overlay District (CBCHO) ordinance contains a provision that requires "a 100-foot uffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint urce pollution from runoff shall be retained if present and established where it does not exist."[27] Thi 00-foot buffer is required and enforced within the CBCHO.
Down Zoning	Localities are granted express authority in §15.2-2286 of the Code of Virginia to enter into voluntar greements with landowners "that would result in the downzoning of the landowner's underdevelope operty in exchange for a tax credit."[28] The statute provides some guidance to localities for how this authority should be exercised. Locali-es "may establish reasonable guidelines for determining the amount of excess real estate collected nd the method and duration for applying the tax credit."[29] Therefore, Norfolk is granted express au-ority to down zone and is given reasonable direction for how the down zoning should be executed. Supplemental to the Commonwealth's grant of authority to down zone, the City of Norfolk's FPCHO ntains a provision that could be interpreted to permit Norfolk to down zone within the overlay strict. The FPCHO reads that "it is necessary to [r]estrict or prohibit certain uses, activities and de-elopment from locating within certain areas or special flood hazards."[30] Although this provision does t expressly state that the City of Norfolk may enter into voluntary agreements with landowners, the dinance provision implies that the City may restrict development and activities within the FPCHO, hich could encompass a down zoning.
Condemnation	The Commonwealth expressly grants localities the right to condemnation in §15.2-1901.1 of the ode of Virginia.[31] The procedure that localities are required to follow when executing this authority

Norfolk's Authority to Implement Adaptation Strategies

Can Norfolk Manage the Threats of Flooding Predicted to Result from Sea Level Rise?

The Dillon Rule is not a barrier for Norfolk to implement adaptation measures to address current flooding and prepare for the challenges of recurrent flooding, resultant of sea level rise. The Commonwealth has identified recurrent flooding as an important state interest, and in doing so, the state spoke to the power of, and the importance for, localities to address the continuing occurrence of flooding. Specifically, the following statutory language buttresses the claim that localities are authorized to enact laws and policies for both current and future threats of flooding.

Section 10.1-658 of the Code of Virginia, titled "[s]tate interest in flood control,"a speaks directly to the power of localities to create flood management programs, for the prevention against present and future flooding. The statute reads as follows:

> A. The General Assembly declares that storm events cause *recurrent flooding* of Virginia's land resources and result in the loss of life, damage to property, unsafe and unsanitary conditions and the disruption of commerce and government services, placing at risk the health, safety and welfare of those citizens living in flood-prone areas of the Commonwealth…the public interest r*equires the management of flood-prone* areas in a manner which prevents injuries to persons, damage to property and pollution of state waters.
>
> B. The General Assembly, therefore, supports and encourages those measures which prevent, mitigate and alleviate the effects of stormwater surges and *flooding*, and declares that the expenditure of public funds and any obligations incurred in the development of flood control and other civil works projects, the benefits of which may accrue to any county, municipality or region in the Commonwealth, are necessary expenses of local and state government.[32]

In §10.1-659, the Virginia General Assembly directs agencies of the Commonwealth to "coordinate and cooperate with localities in rendering assistance" for "federal, state and local flood prevention." [33] The explicit use of the word prevention indicates a clear legislative intent to refer to future impacts of flooding in localities. Localities are authorized to implement "measures which prevent, mitigation, and alleviate the effects of stormwater surges and flooding."[34] Therefore, by relying on this authority, localities may develop and implement adaptation measures, so long as the localities pass the Dillon Two-Step analysis.

Given the express and simultaneously broad grant of power in §10.1-658 of the Code of Virginia, cited above, Step One and Step Two of the Dillon Two-Step will be met easily. The statute specifically references municipalities preparing for increased flooding and uses the word "prevent" to indicate the support of the General Assembly in adopting measures that address future threats posed by flooding.[35] Norfolk passes step one because the locality is expressly authorizes to adopt adaptation measures and will pass step two if the measures are executed in a reasonable manner.

Norfolk's Existing Ordinances Related to Flooding

The City of Norfolk currently has the authority to implement many adaptation and management strategies for protection against the threat of current and projected flooding.

Norfolk contains two existing overlay districts, created through the locality's zoning power, that are easily related to flood prevention. Norfolk can and does use its zoning power to address flooding in the following ways, and could rely on this power to take additional measures not referenced in the chart on page one.

Zoning Power

Norfolk has the authority to adopt ordinances and zoning laws under §15.2-2200 of the Code of Virginia. The scope of this power is outlined in §15.2-2280.[36] The following protections, tools, etc. are permitted in zoning ordinances and could be useful for Norfolk to explore as possible additional sources of authority from which to implement adaptation measures to plan for flooding resultant of sea level rise. [37]

Using the Commonwealth's Delegation of Zoning Power to Meet the Threat of SLR

Protections Permitted in Zoning Ordinances	Relevant Statutory Language	Virginia Statutory Authority
General Safety	• to "protect against" the "loss of life, health, or property from fire, flood"…"to provide for adequate light, air, convenience of access, and safety from fire, flood…and other dangers."	• Code of Virginia §15.2-2283
Water Quality	• "to protect surface water and ground water"	• Code of Virginia §15.2-2283
Protection of Historic Areas	• "to protect against destruction of or encroachment upon historic areas."	• Code of Virginia §15.2-2283
Preservation of Flood Plains	• "Zoning ordinances and districts shall be drawn and applied with reasonable consideration for…the current and future requirements of the community as to land…the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures…"	• Code of Virginia §15.2-2284
Downzoning	• "For provisions allowing the locality to enter in a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit…"	• Code of Virginia §15.2-2286(A)(11)
Amending/Repealing Zoning Text/Maps	• "Whenever the pubic necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property.	• Code of Virginia §15.2-2286(A)(7)

Overlay Districts

Localities are permitted to pass zoning ordinances that create overlay districts, which are zoning districts with two zoning districts overtop of one another, the requirements of which must both be met.[38] Overlay districts are a useful planning tool when localities would like to impose requirements more restrictive than those already accounted for in previous zoning. The coastline of a locality, for example, may require restrictions specific to the concerns of coastal landscapes. Norfolk already contains two overlay districts, the Floodplain/Coastal Hazard Overlay District (FPCHO)[39] and the Chesapeake Bay Preservation Area Overlay District (CBPAO).[40]

Floodplain/Coastal Hazard Overlay District (FPCHO)

Floodplain/Coastal Hazard Overlay District regulations "permit the creation of 100-Year Floodplain Districts and Coastal High Hazard districts in areas designated by the Federal Emergency Management Agency (FEMA) as areas of special flood hazards."[41] In 2009, FEMA released a Flood Insurance Study of the City of Norfolk, which designated areas of special flood hazards.[42] The Flood Insurance Study states that "the analyses reported herein reflect flooding potentials based on conditions existing in the community at the time of completion of this study. Maps and flood elevations will be amended periodically to reflect future changes."[43]

Therefore, the FPCHO contemplates planning for the future changes in flooding, by relying on projections from FEMA's 2009 Flood Insurance Study, which enables Norfolk to implement adaptation measures within the overlay district. The FPCHO purpose statement provides that "[i]t is the purpose of this division to promote the public health, safety and general welfare and to minimize those flood losses resulting from periodic inundation which result in loss of life, property, or health…the extraordinary and unnecessary expenditure of public funds for flood protection and relief."[44] Norfolk can restrict development within the FPCHO and install drainage and stormwater adaptation measures to protect against current and future flooding.

Chesapeake Bay Preservation Area Overlay District (CBPAO)

The Chesapeake Bay Preservation Area Overlay District is a zoning district that restricts activities that would cause harm to the water quality of the Chesapeake Bay and its tributaries. The CBPAO was adopted by the City of Norfolk for the specific purpose of "implement[ing] the requirements of The Chesapeake Bay Preservation Act."[45] Its purpose statement alludes to protecting Bay resources in the future. "The intent and purposes of the Overlay District are to: (1) [p]rotect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city."[46] Although the provisions in the CBPAO are broader, they do allow for the protection of water quality, which can deteriorate as a result of increased flooding from sea level rise.

How Courts Apply the Dillon Rule: Guidance for Norfolk from Case Law

The majority of Virginia cases addressing Dillon Rule violations do not directly implicate the issues discussed in this paper because the facts involved in those cases do not include flooding or adaptation measures adopted that take future flooding projections into account.[47] However, two recent cases that might be analogous in regards the general zoning powers of a locality are Town of Occoquan v. Elm Street Development, Inc. and Sinclair v. New Cingular Wireless PCS, LLC. In both of these cases, a locality is regulating construction on critical slopes.

In Elm Street, the Virginia Supreme Court held that Occoquan's zoning ordinance, which required a special use permit for construction on critical slopes in residential

areas, exceeded its authority under the Dillon Rule.[48] The Town of Occoquan is authorized to exercise its police and zoning powers under § 10. 1-2108 of the Code of Virginia, however, requiring a special use permit in residential areas conflicts with § 15.2-2288.1 of the Code of Virginia.[49] Therefore, when exercising broad powers, a locality should be aware that they might be limited by preexisting statutory authorization.

Similarly, in Sinclair, the Virginia Supreme Court held that the broad authority granted in § 15.2-2280 of the Code of Virginia, did not allow the board of supervisors to delegate a legislative function, such as the approval of critical slope waivers, to the planning commission.[50] In reaching this decision the court noted that the General Assembly does grant localities the power to delegate legislative functions, but those instances are expressed through statute.[51]

Common pitfalls for localities:

- Local government exercises broad authority and oversteps an existing, more specific law.
- Local government delegate powers expressly granted by statute to unauthorized entities.

Conclusion

The Dillon Rule should not prevent or limit the City of Norfolk, or other localities in Virginia, from implementing most adaptation measures to address the threat of current and future flooding, which results from sea level rise because of the broad state interest in enabling localities to address current and recurrent flooding. The restrictive reputation of the Dillon Rule logically creates cautious local governments, but oftentimes the caution is overstated and could prevent a locality from taking action to best service its citizens and resources. The Commonwealth has delegated sufficient expressed authority to localities to adopt adaptation measures to meet the threat of current and future flooding problems caused by sea level rise and subsidence. In addition to the Commonwealth's delegation of power, Norfolk's existing ordinances, within the overlay districts discussed in this paper, provide Norfolk with authority to implement tools to mitigate flooding.

Acknowledgement

Funding for this project came from the Virginia Environmental Endowment

Notes

1 Code of Virginia §§15.2-1401, 1-13.17; Va. Const. art. VII, § 3.
2 VA CODE §15.2-1401 (1997); VA CODE § 1-248 (2005); VA. CONST. art. VII, § 3.
3 BLACK'S LAW DICTIONARY, 523 (9th ed. 2009).
4 BLACK'S LAW DICTIONARY, 802 (9th ed. 2009).
5 MIDDLE PENINSULA PLANNING DISTRICT COMMISSION, INITIATING ADAPTATION PUBLIC POLICY DEVELOPMENT PHASE 3, at 24 (2012).
6 Jesse J. Richardson, Jr., Dillon's Rule is from Mars, Home Rule is From Venus: Local Government Autonomy and the Rules of Statutory Construction, 41 Publius: The Journal of Federalism 662 (2011); ANDREW C. SILTON & JESSICA GRANNIS, GEORGETOWN CLIMATE CENTER, VIRGINIA CASE STUDY: STEMMING THE TIDE: HOW LOCAL GOVERNMENTS CAN MANAGE RISING FLOOD RISKS ix (May 2010, revised Jan. 2013) [hereinafter GEORGETOWN CLIMATE STUDY]; VERMONT LAW SCHOOL LAND USE CLINIC, NEW FLOODPLAIN MAPS FOR A COASTAL NEW HAMPSHIRE WATERSHED AND QUESTIONS OF LEGAL AUTHORITY, MEASURES AND CONSEQUENCES 57 (June 2012).
7 VIRGINIA INSTITUTE OF MARINE SCIENCE, RECURRENT FLOODING STUDY FOR TIDEWATER VIRGINIA, S.J.R. 76, at 49 (2013).
8 GREG KAMPTNER & LARRY DAVIS, THE ALBEMARLE COUNTY LAND USE LAW HANDBOOK 5-2 to

5-3 (Mar. 2012) [hereinafter ALBEMARLE COUNTY HANDBOOK].

9 Id. at 5-2

10 Id.; Commonwealth v. County Board of Arlington County, 217 Va. 558, 575 (1997).

11 See County Board of Arlington, 217 Va. at 575.

12 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-2; Marble Technologies v. City of Hampton, 279 Va. 409, 417 (2010).

13 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-2; See County Board of Arlington, 217 Va. at 577.

14 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-3.

15 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-3 to 5-4.

16 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-3; Marble Technologies, 279 Va. at 221.

17 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-3; Advanced Towing Company, LLC. v. Fairfax County Board of Supervisors, 280 Va. 187 (2010).

18 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 5-4; Arlington County v. White, 259 Va. 708 (2000).

19 See Marble Technologies, 279 Va. at 417.

20 Resource Conservation Management, Inc. v. Board of Supervisors of Prince William County, 238 Va. 15, 20 (1989). "While the language does not specify a landfill as one of the uses that may be prohibited, such specificity is not necessary under even the Dillon Rule of strict construction." Id.

21 See Marble Technologies, 279 Va. at 417.

22 VA CODE §15.2-970(A) (1997).

23 Id.

24 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-3.1(E) (2009).

25 Id.

26 VA CODE §15.2-2279 (1997).

27 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-2.9(C) (2005).

28 VA CODE §15.2-2286 (2012).

29 Id.

30 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-3.1(B) (2009).

31 VA CODE §15.2-1901.1 (2003).

32 VA CODE §10.1-658 (1989) (emphasis added).

33 VA CODE §10.1-659 (2012) (emphasis added).

34 VA CODE §10.1-658 (1989).

35 Id.

36 See VA. CODE § 15.2-2280; ALBEMARLE COUNTY HANDBOOK, supra note vii, at 4-1.

37 The City of Norfolk may have already identified or implemented some of these zoning tools in their efforts to address sea level rise or general flooding.

38 ALBEMARLE COUNTY HANDBOOK, supra note vii, at 4-5.

39 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-3 (2009).

40 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-2 (2005).

41 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-3.1 (2009).

42 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-3.2 (2009).

43 FEDERAL EMERGENCY MANAGEMENT AGENCY, FLOOD INSURANCE STUDY: CITY OF NORFOLK VIRGINIA, 8 (Sept. 2009) (emphasis added).

44 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-3.1 (2009).

45 NORFOLK, VA., CODE OF ORDINANCES APP. A, ART. II, CH. 11-2.1 (2005).

46 Id. (emphasis added).

47 In two cases, the Supreme Court of Virginia held a locality to be in violation of the Dillon Rule when they delegated their powers expressly granted by the General Assembly to another entity. City of Richmond v. Confrere Club of Richmond, Virginia, Inc., 239 Va. 77 (1990); Sinclair v. New Cingular Wireless PCS, LLC, 283 Va. 567 (2012). The County of Arlington exceeded its authority under the Dillon Rule when it considered domestic partners as dependents in the administration of its health insurance program. Arlington County. v. White, 259 Va. 708 (2000).

48 Town of Occoquan v. Elm Street Development, Inc., 2012 Va. LEXIS 104.

49 Id.

50 Sinclair v. New Cingular Wireless PCS, LLC, 283 Va. 567 (2012).

51 Id

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VSG-13-16