MANAGED COASTAL RETREAT AND TAKINGS

Prof. J. Peter Byrne
Georgetown University Law Center

Thanks to Jessica Grannis for the photos and cartoons
Projected Sea-Level Rise

0.2 – 2 meters by 2100
Florida - Sea Level Rise

1 meter inundates the Everglades and Cape Canaveral

2 meters inundates Miami and most of Florida’s Gulf Coast
SLR Adaptation Strategies

DEFEND

ACCOMMODATE

RETREAT
Fifth Amendment

• “nor shall private property be taken for public use without just compensation.”
Regulatory Taking

• When do regulatory limitations on use amount to expropriation?
• What regulatory losses should in all fairness be borne by the public as a whole?
Public Trust Doctrine

- Public owns (or has paramount interest) in lands seaward of the mean high (rarely, low) tide line.
- Private ownership upland of mean high tide line
Accretion rule

• Movement of mean high tide line inland caused by sea-level rise transfers ownership of submerged land from private owner to public.
Three approaches

• 1) Permanent physical occupation
• 2) Deprivation of all economically valuable use
• 3) Multi-factor, ad hoc inquiry including
  • a) Economic Impact on property as a whole
  • b) Frustration of reasonable investment-backed expectations
  • c) Nature and purpose government action

- Shoreline regulation prohibiting construction seaward of erosion line a per se taking when owner retains no economic use

- Background principles of property law: nuisance and public trust
Five regulatory approaches to retreat

1. Downzone and Site Plan
2. Rolling Development Restriction
3. Prohibit Armoring
4. Conditional Permits
5. Disinvestment in Infrastructure
Property as a whole

1) Space – placing development at rear; natural coverings in front. *Palazzolo*

2) Time – a) Cannot use now, can in future. *Tahoe Sierra*
   B) Can use now, not in future. Rolling development restrictions; prospective limits on rebuilding
TODAY

Mean High Tide Line

Private

Public
+ 80 YEARS

Public
Public

+ 100 YEARS
Prohibiting Armoring

• Effects Retreat
• Not a taking because prevents harm to neighbors and public
• Common law right to armor?
• Elimination of property right a taking?

• County’s failure to maintain public road access to beachfront homes can support an action for inverse condemnation.