

Robinson+Cole

TAKINGS LAW UNDER THE
U.S. AND CONNECTICUT
CONSTITUTIONS

2015 CLIMATE ADAPTATION ACADEMY

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Coastal Development & Regulation Implicates Many Legal Issues

- Private Rights
- Public Rights
- Multiple Layers of Regulation
 - Federal
 - State
 - Local



Constitutional Protection of Private Rights

- Federal Constitution

- Fifth Amendment

“nor shall private property be taken for public use, without just compensation”



Connecticut State Constitution

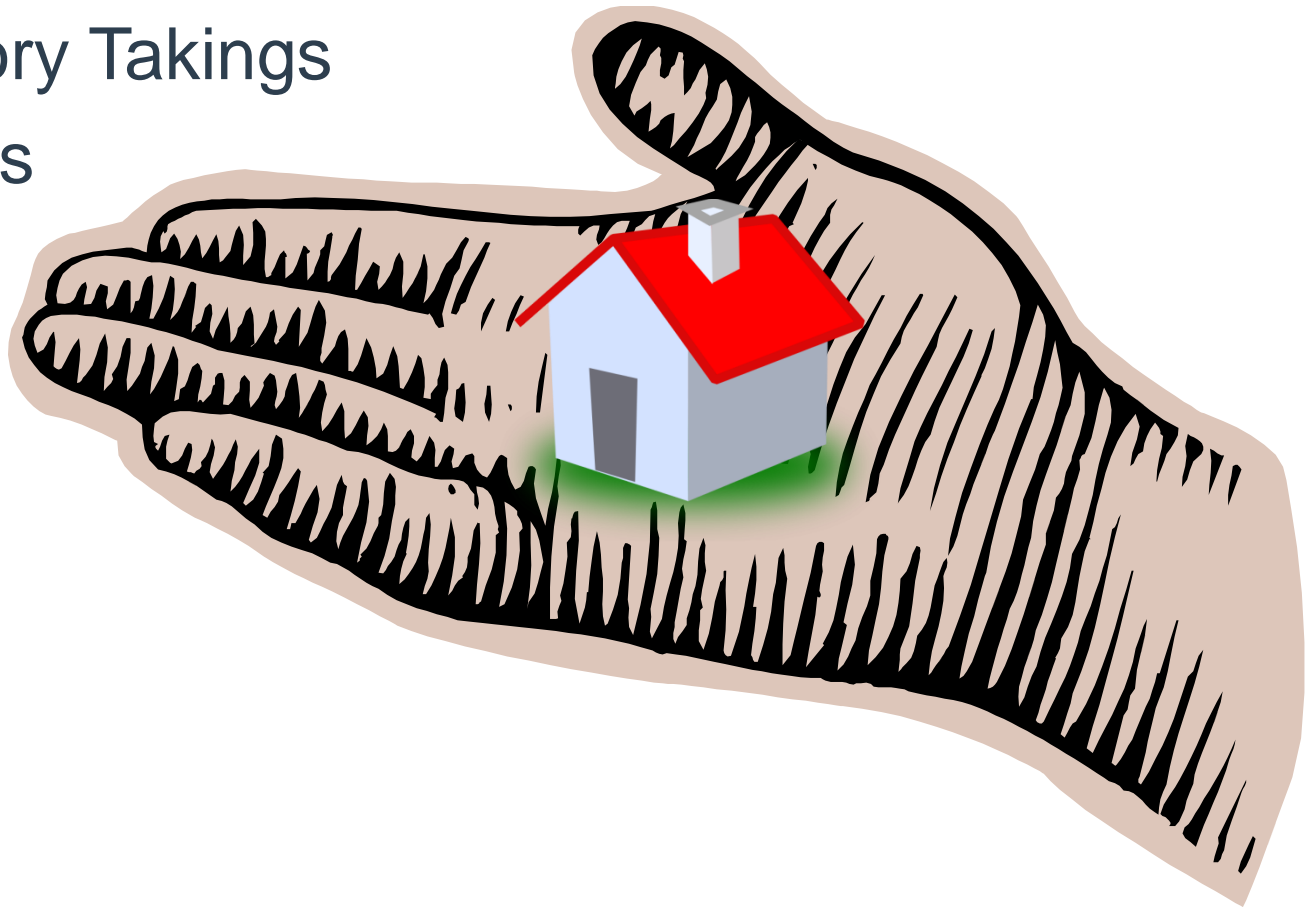
- Article I, Section 11

“The property of no person shall be taken for public use, without just compensation therefor.”



Types of Takings to Be Discussed

- Physical Takings
- Regulatory Takings
- Exactions



Physical Takings

- *Loretto v. Teleprompter Manhattan CATV Corp.* (1982)
 - Direct appropriations and permanent physical occupations = per se taking

Regulatory Takings / Inverse Condemnation

- *Lucas v. South Carolina Coastal Council* (1992)
 - Categorical taking that result in the total denial of all value = *Lucas* per se taking
- *Penn Central Transportation Co. v. New York City* (1978)
 - Lesser but still substantial restrictions on property use = potential *Penn Central* taking

Exactions / Unconstitutional Conditions Doctrine

- An exaction of a property interest in the context of a permitting process is not a taking, provided the exaction meets the “essential nexus” and “rough proportionality” standards
- Essential Nexus - *Nollan v. Calif. Coastal Comm’n* (1987)
 - Does the permit condition serve the same legitimate police power purpose as a refusal to issue the permit?
- Rough Proportionality - *Dolan v. City of Tigard* (1994)
 - Has there been an individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development?

Exactions / Unconstitutional Conditions Doctrine

- *Koontz v. St. Johns River Water Management District* (2012)

- The *Nollan* and *Dolan* tests extend to a permit denial and to unconstitutional requests for the payment of money, where no land dedication or real property taking is involved
- *IF* the demand occurs in the land use permitting context and is tied to a specific parcel of real estate

Connecticut Takings Jurisprudence

- **Practical Confiscation Test**
 - Where a regulation eliminates all reasonable uses of the land
 - Limited to undeveloped properties only
- **Balancing Test**
 - Attempts to balance public's interests in regulations against private property rights
 - Three-pronged test:
 - Degree of diminution of value
 - Nature and degree of public harm to be prevented
 - Alternatives available to landowner

Strategies to Avoid *Lucas* Claims

- Regulation of property alone is not a taking
- Don't enact ordinances that prohibit all development
- Understand the “background principles of state law”
 - Nuisance law
 - Property rights v. public trust
- Be reasonable in consideration of variances

Strategies to Avoid *Penn Central* Claims

- Consider:
 - The extent to which the regulation interferes with investment-backed expectations
 - The economic impact of the regulation on the property owner
 - The character of the government interest, or the social goals being promoted by the government

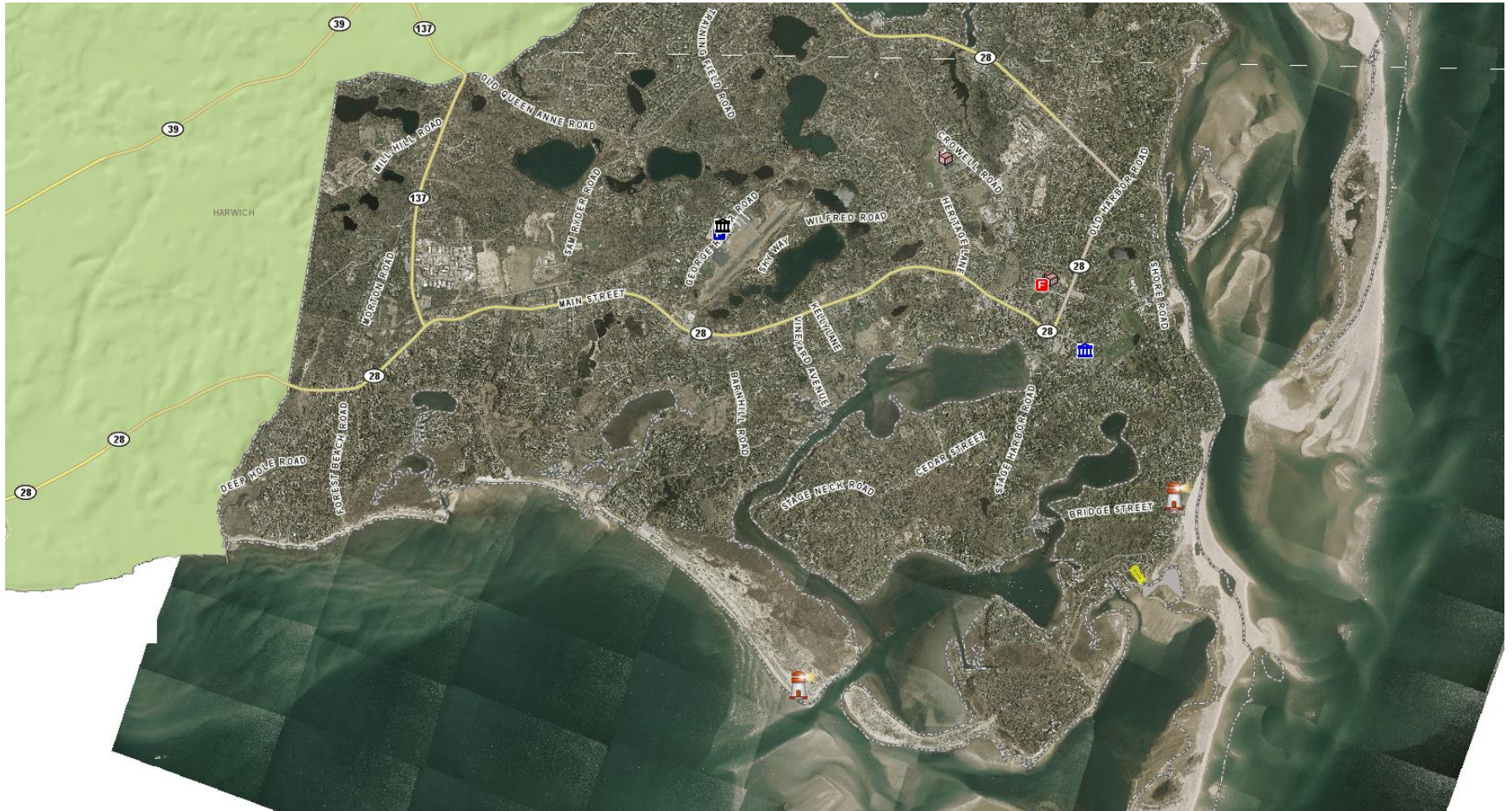
Strategies to Avoid Exaction Claims

- **Essential Nexus**
 - Does the permit condition serve the same legitimate police power purpose as a refusal to issue the permit?
- **Rough Proportionality**
 - Has there been an individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development?
- **Demanding an easement or future development rights is a taking**

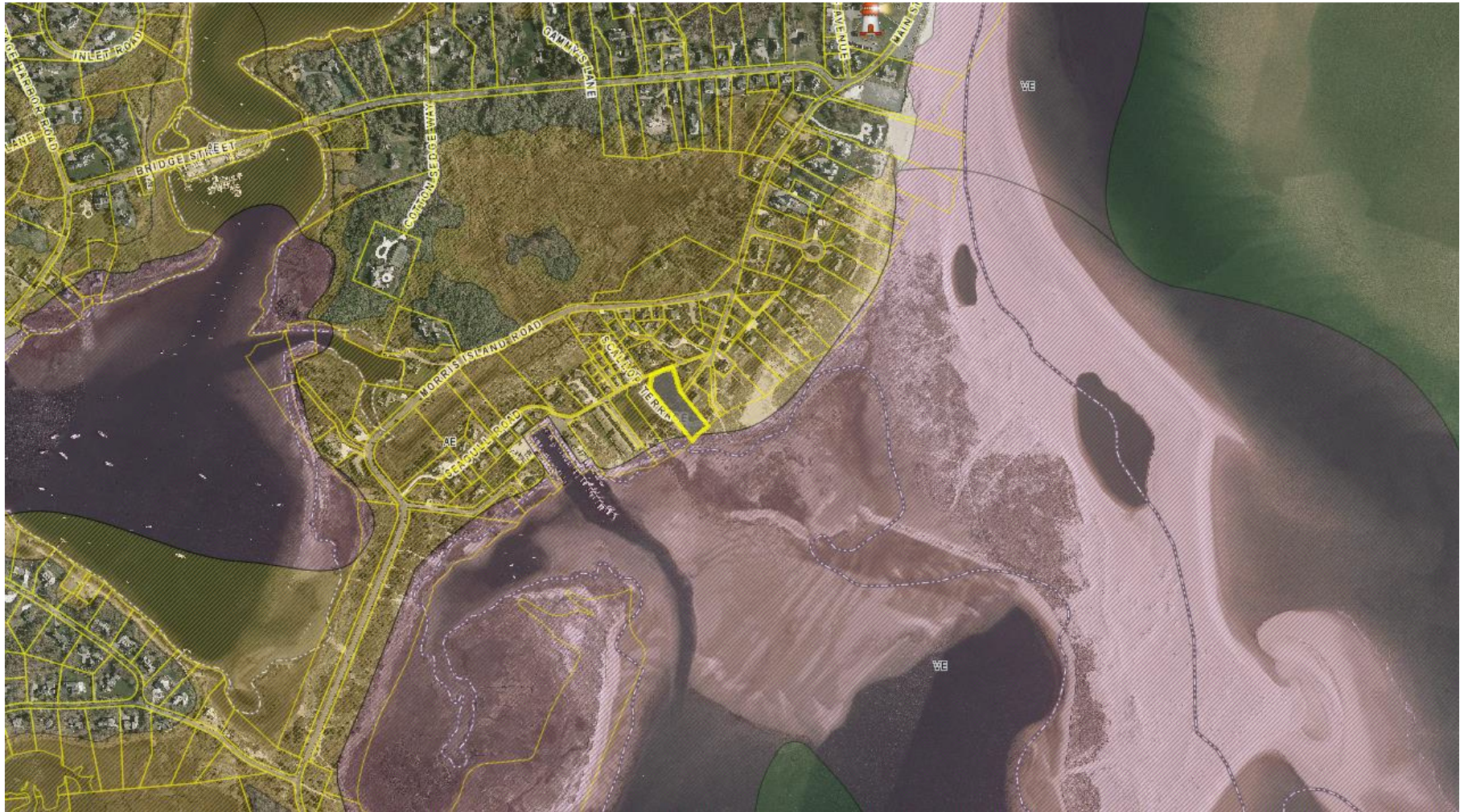
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- Local government can bar residential construction in flood-prone area
- “Reasonable relationship” between regulation prohibiting development in flood hazard zone and the town’s legitimate interests
- No taking because there were other viable development options

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Thank You!

QUESTIONS?

