

# Shifting Seas Case Study: Connecticut

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# Three Part Discussion

- 1. The Problem – A Mismatch.
- 2. The New Bill in Response to Irene.
- 3. The Task Force.



# The Problem:

## Mismatched Authorities and Incentives.



# Connecticut

- 169 separate towns.
- Split authority over the sea wall and retreat.
- Split incentives.



# Two Deciders

- Coastal Decisions are made on a bifurcated basis.
- CGS 22a-361 No [one] shall.. erect any structure....obstruction or encroachment ..., in the tidal, coastal or navigable waters of the state **waterward** of the high tide line until such person, firm or corporation has submitted an application and has secured from the Commissioner of Environmental Protection a certificate ...



# CGS 22a-109 (c )

- But CGS 22a-109( c ) puts "shoreline flood and erosion control structure" ....  
Seawalls... in the hands of the PZC.
- PZC's conduct many reviews consistent with the Coastal Management Act.



# Mismatched Incentives

- PZC Commissioners – approximately  $\frac{1}{2}$  appointed and  $\frac{1}{2}$  elected.
- Towns – Most Valuable Property is on the shore.
- Tax Revenue – Property Tax
- Receive a recommendation from the Office of Long Island Sound Program (OLISP)



# Home Rule!

- Article 10 of the Conn. Constitution provides in part:
  - Sec. 1. The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions.



# Connecticut's Statutory Scheme

- C.G.S. Sec. 7-148(c) broadly defines a municipalities powers. Including:
  - Animals
  - Nuisance
  - Public Health & Safety
  - Vice (too bad really)
  - Corporate Powers.



# CT Municipal Authority & the Environment

- C.G.S. 7-148(c)(8)(A) Provides:

“(A) Provide for the protection and improvement of the environment including, but not limited to, coastal areas, wetlands and areas adjacent to waterways in a manner not inconsistent with the general statutes;”



# Until Hurricane Irene....

- This Structure was about Static Seawalls in CT. Sealevel rise was not a valid consideration.
- Nothing in Section 7-148, Section 8, or the Coastal Management Act, 22a et seq., provided authority for Sea Level Rise planning or considerations.



# A New Bill In Response



# CMA Changed – Sea Level Rise Impacts Authorized

- 1. Adds to CMA's general goals and policies consideration of (a) private property owners' rights when developing, preserving, or using coastal resources and (b) the potential impact of a rise in sea level when planning coastal development;

# State Policy

- 2. establishes a state policy to encourage long-term strategic realignment of certain coastal land development;

# Topography

- 3. requires a coastal site plan to include a topography-based assessment of the impact a rise in sea level will have on a proposed use or structure over its lifespan;
  - Far more important than one would suspect, given the PZC CMA review!

# Vulnerabilities

- 4. requires a municipality, when reviewing a coastal site plan and the proposed activity's potential adverse impacts, to consider the site's vulnerability to a rise in sea level.

# Compensated Retreat

- 5. allows a municipality reviewing a coastal site plan to prevent certain building reconstruction after a casualty loss if it compensates the owner for doing so (§ 4).

# The Task Force



# Task Force

- Announced During and Inspired by our Sea Grant Conference.
- Assembled legislators in a working group from all of the coastal communities.
- Testimony on Sea Level Rise, Climate, and Vulnerabilities



# Direction

- Taking some of the suggestions from our conference.
- Recognizes the problem / municipal structure mismatch.
- Considering recommendations like :
  - Study, Different Zones, Expanded authority for the local commissions.





University of  
Connecticut

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Center for Energy and  
Environmental Law

You are cordially invited to attend a conference

# LEGAL SOLUTIONS TO COASTAL CLIMATE CHANGE ADAPTATION IN CONNECTICUT

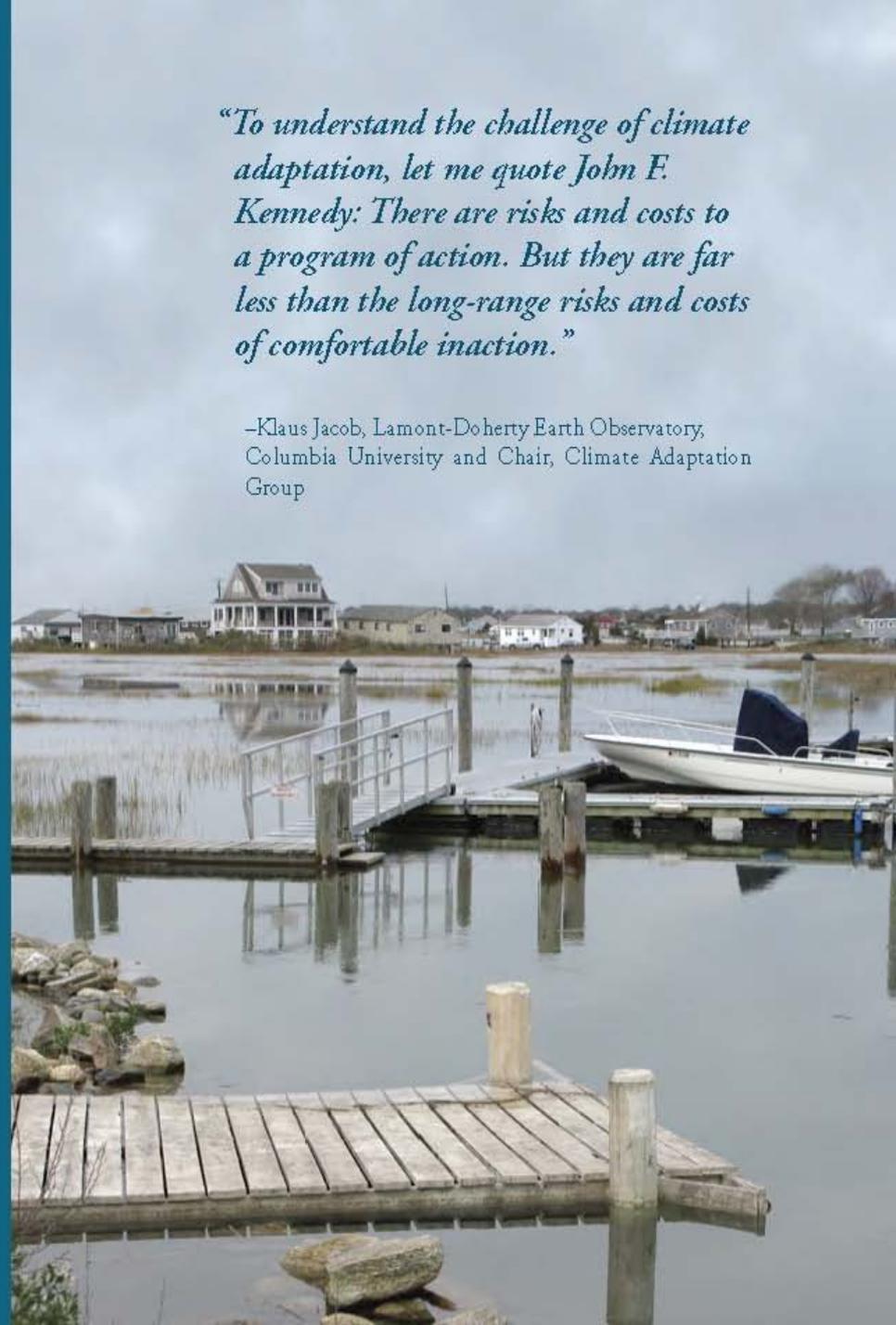
February 10, 2012

University of Connecticut School of Law  
Hartford, Connecticut



*"To understand the challenge of climate adaptation, let me quote John F. Kennedy: There are risks and costs to a program of action. But they are far less than the long-range risks and costs of comfortable inaction."*

—Klaus Jacob, Lamont-Doherty Earth Observatory,  
Columbia University and Chair, Climate Adaptation  
Group



# Legal Solutions to Coastal Climate Change in Connecticut

## Panel 1: State and Municipal Strategies for Climate Adaptation

- *Legal Options for Municipal Climate Adaptation in South Boston – An Example for Connecticut Coastal Jurisdictions*, Wendy B. Jacobs, Leah R. Cohen, and Jennifer McGrory, Harvard Emmett Environmental Law and Policy Clinic (presented by Sarah Fort, Wendy Jacobs, Nicole Rinke)
- *Adapting to Climate Change: Mapping Connecticut's Coastal Responses to a Global Problem*, Mark Boyer, University of Connecticut
- *Local Solution for Climate Change: The Climate Adaptation Board*, Carl Zimmerman, University of Connecticut, and Katherine Owens, University of Hartford
- *Coastal Management in the Face of Rising Seas: Legal Strategies for Connecticut Localities*, Jessica Grannis, Georgetown Law, and Julia Wyman, Rhode Island Sea Grant Law Program

## Panel 2: Takings Law and Climate Adaptation Strategies

- *Climate Adaptation and the Fifth Amendment of the United States Constitution: A Regulatory Takings Analysis of Adaptation Strategies in Coastal Development with Application to Connecticut's Coastal Management Regime*, Chad McGuire and Jason Hill, University of Massachusetts, Dartmouth
- *When Retreat Represents the Better Part of Valor: A Legal Analysis of Strategies that Incentivize Retreat from the Shore*, Hyo (Charlene) Kim and Caroline Karp, Brown University
- *Flood Mitigation through Property Acquisition: Lessons Learned from Louisiana and Recommendations for Connecticut*, David Lewis, Georgetown Law (presented by Jessica Grannis)



# Adapting to Sea-Level Rise: Legal Strategies for Connecticut

*Jena Shoaf, Meagan Singer, and Colin Lynch*

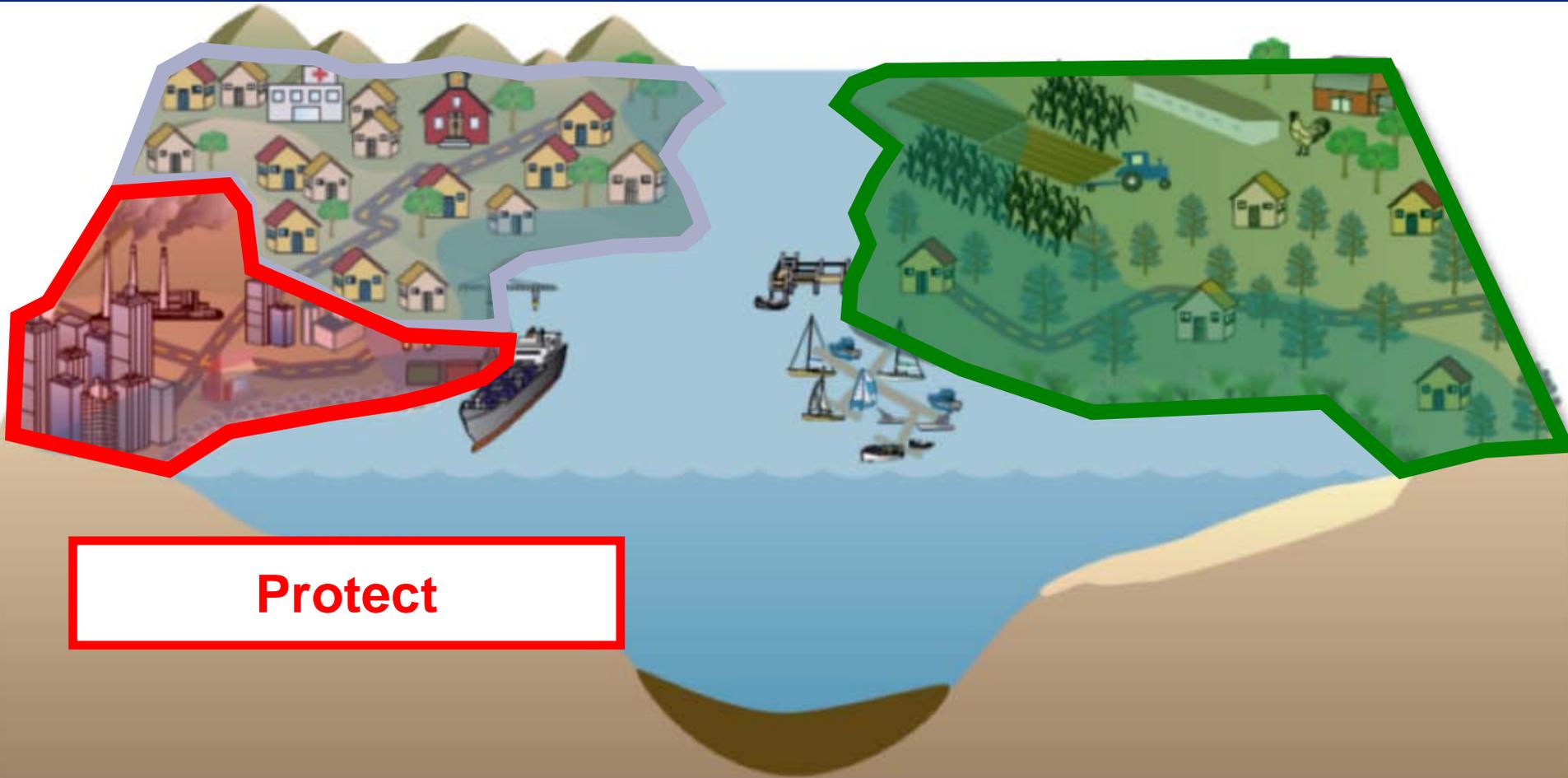
Connecticut Sea Grant Conference – February 10, 2012

# SLR Zoning Ordinance

Accommodate

Conserve

Protect



# Accommodation Zone



- Elevate structures higher
- Limit development of critical facilities
- Encourage soft shoreline armoring

# Protection Zone



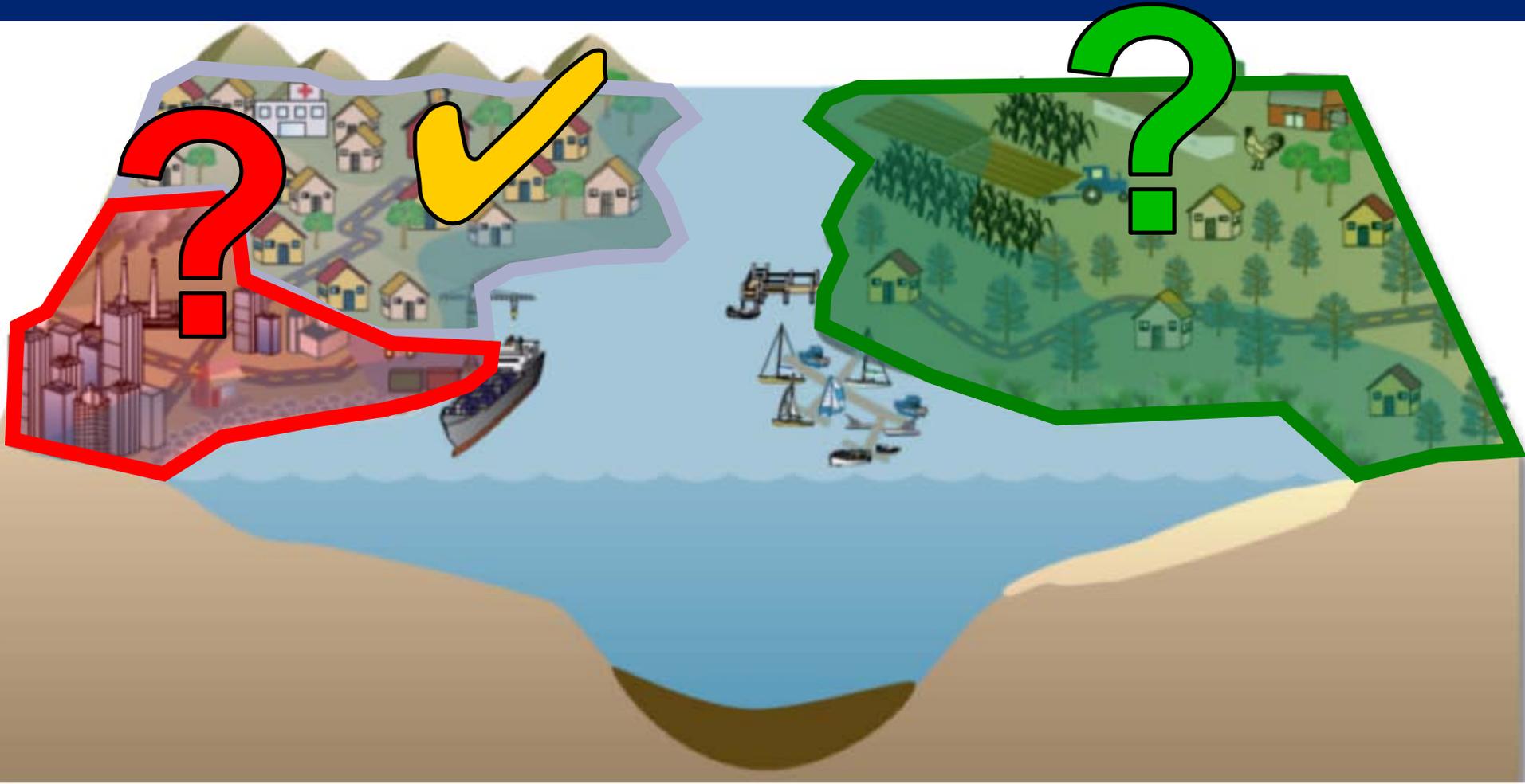
- Streamline permitting for hard shoreline armoring

# Conservation Zone

- Relocate Development Inland
- Require setbacks or buffers & prohibit armoring
- Restrict Rebuilding



# IS THIS LEGAL?



# Legal Options for Municipal Climate Adaptation in South Boston: An Example for Connecticut Coastal Jurisdictions



Photo credit: Aerial view of South Boston.  
Source: Boston Redevelopment Authority

Nicole Rinke

Sarah Fort

Harvard Law School Emmett Environmental Law & Policy  
Clinic

# Adaptation Strategies at the Municipal Level

## 1) Zoning:

- Land use restrictions apply to broad area
- Overlay zones to promote particular resources/purposes (groundwater, stormwater runoff, erosion control)

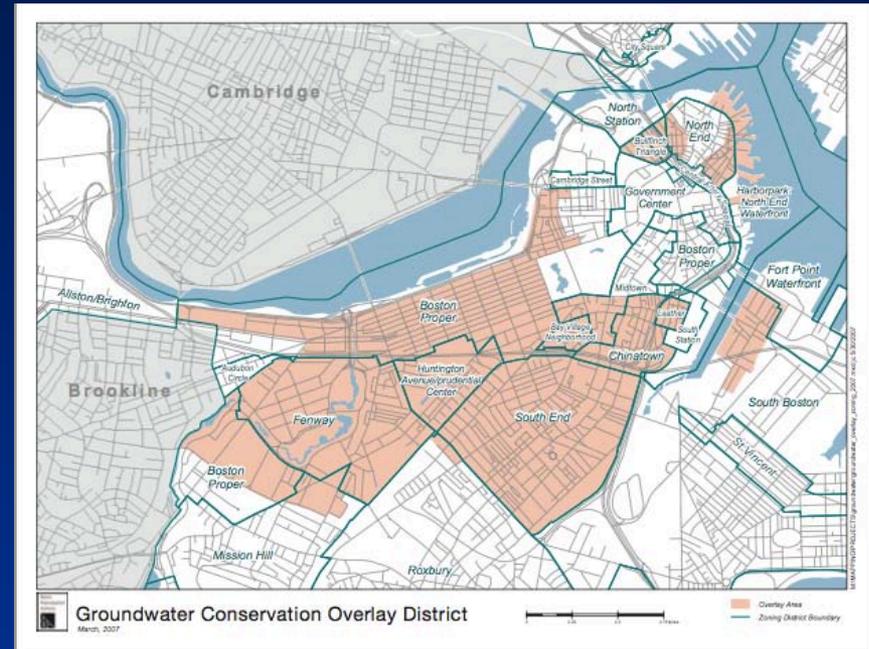


Image credit: Boston Redevelopment Authority. March 2007.

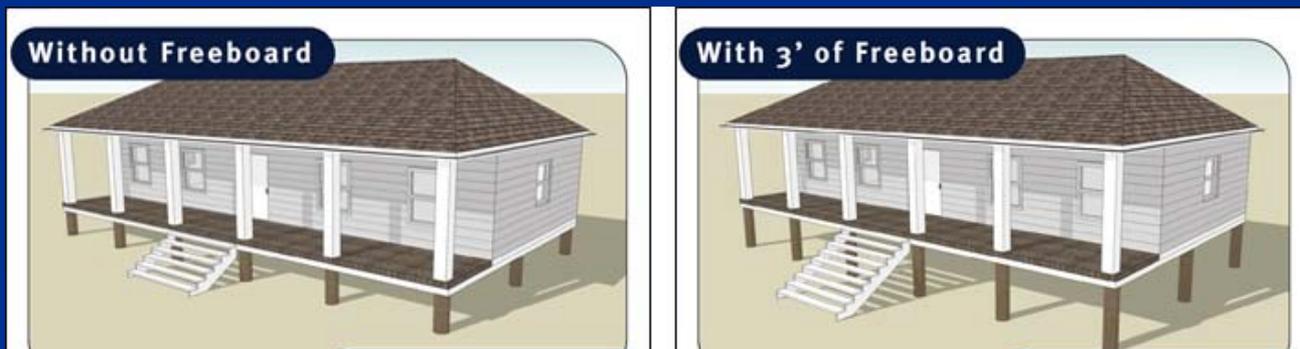


Photo credit: Massachusetts Office of Coastal Zone Management (see <http://www.mass.gov/czm/stormsmart/regulations/freeboard.htm>)

# Adaptation Strategies at the Municipal Level

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## 2) Procurement

- Uses the power of the purse to:
  - Specify climate resilient building criteria
  - Consider life cycle costs
- Leadership by example



Photo Credit: KAD Group Inc. (see <http://www.kadgroupinc.com/>)



Legal Solutions to  
Coastal Climate  
Change Adaptation in  
Connecticut – Panel 2

# Adapting to Climate Change through the Acquisition of Flood-Prone Coastal Properties

Author: Dave Lewis  
Georgetown Law Center  
Feb. 10, 2012

# A Local Solution for Climate Change: The Climate Adaptation Board

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Prof. Katharine Owens, PhD, University of Hartford



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# A Model: Municipal Inland Wetlands Agencies

- CT has unique water resource governance structure (CGS 22a-39)
- Each and every town wetlands agency (170)
  - Regulates own wetlands and watercourses through a commission that votes on permits
  - Has own regulations
  - Has own **TOWN POLITICS**
- Municipal Inland Wetlands Agencies are peopled by persons with day jobs. Commissioners are not professionals though some towns have wetland agents/others that provide support roles
- Key exemption in law is agricultural exemption



# Climate Adaptation Board

- A hybrid Municipal board that permits activities associated with climate adaptation and provides guidance and recommendations for CA planning
- Consists of both volunteers and members from other town boards
- Like Wetlands Commissions, right to jurisdictional review of activities. If not directly involved in statute driven Climate Adaption kicked out of process
- Fills in gaps in governance system for a period when flux, change, and uncertainty are common.
- Intended to encourage local participation and control
- Conduit for funding
- Jurisdiction could be physically limited

## Members of CAB

- Inland Wetlands
- Emergency Management
- P&Z
- Conservation Commission
- Floodplain Administrator
- Local citizens
- DEEP ?
- RPO ?



UMass

Dartmouth

UNIVERSITY OF MASSACHUSETTS DARTMOUTH



# Understanding How the *'Role'* of Government Impacts Regulatory Takings Analysis in Climate Adaptation Strategies

Chad J. McGuire

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University of Massachusetts, Dartmouth

# Takings Varieties

**U.S.  
Constitution**



**5<sup>th</sup>  
Amendment**



**Eminent  
Domain**

**Protection of  
private  
property**

**10<sup>th</sup>  
Amendment**



**Regulatory  
Takings  
Claims**

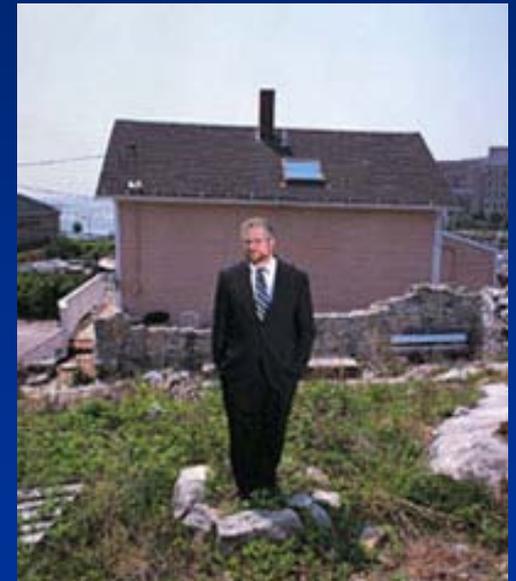
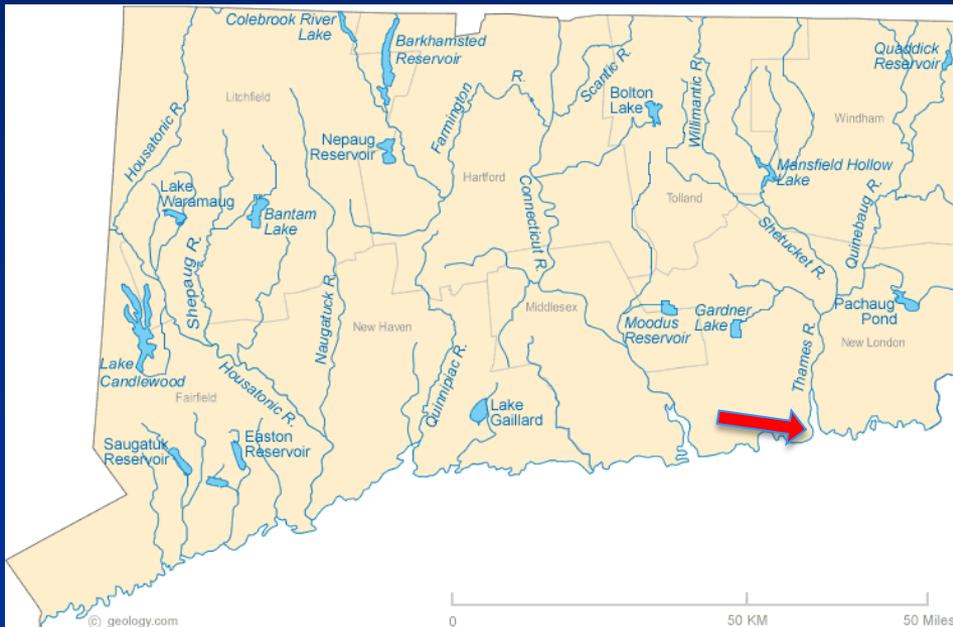
# Conclusions

- Regulatory takings issues are complex.
- State has interests in coastal zone besides that of regulator.
  - Can help to mitigate complex interactions.
- Some of these interests might offer a better foundation upon which policy options for adaptation strategies can be implemented.



# When retreat is the better part of valor: Analysis of Strategies to Incentivize Retreat from the Shore

Hyo (Charlene) Kim and Caroline Karp  
Center for Environmental Studies  
Brown University



# When retreat is the better part of valor...

*I. What can CT do to address existing coastal development that is at increased risk from effects of global warming?*



*II. Can State, local govts regulate or prohibit devpt of property in high risk areas (FIRM A, V, high erosion zones) even if it results in "loss of all economically beneficial use"?*

Aerial photo of Misquamicut Beach 1938



# Concluding Thoughts

The way forward in CT will likely need:

- Multi-level Collaboration & Partnerships
- Address EJ issues
- Education, Outreach and Innovative Communication approaches
- local implementation; state support, expertise and leadership
- Integration



# For more information

- **Conference proceedings published in a special issue of the Sea Grant Law and Policy Journal:**

**<http://nsglc.olemiss.edu/SGLPJ/SGLPJ.htm>**

- **Presentations and conference video:**

**<http://seagrants.uconn.edu/climatelaw/>**