

Hanging in the Coastal Balance: How do Coastal Communities Choose Between Economic Growth and Protecting their Citizens?

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I. Introduction

Municipalities are often faced with tough land use planning questions where they must make a decision between what is best for the health and safety of their community and what is in their community’s best economic interest. These decisions arise with a variety of property, from commercial to residential, and must take into account both the risks and benefits of developing that property. One such situation was recently brought to the attention of the Louisiana Sea Grant Law & Policy Program (SGLPP). The SGLPP has been a component of the Marine Advisory Services of the Louisiana Sea Grant College Program for nearly forty years. Its mission is to provide timely and relevant legal information and services for the many users of Louisiana’s coastal lands and waters, including state and local governments; coastal businesses, including commercial fishers, recreational fishers, and non-governmental organizations; and the general public.

Developers in a coastal parish (the Louisiana equivalent to a county) hoped to build a new subdivision and business park, complete with an inland boat slip and marina connecting the property to the Gulf Intracoastal Waterway.² In order to begin construction, the developers first had to obtain permission from the parish planning and zoning committee whose recommendation would then be passed to the parish council for final approval or remand.

From one perspective, the development would bring new uses to a previously barren piece

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² The Gulf Intracoastal Waterway is a navigable inland waterway running approximately from Carrabelle, Florida to Brownsville, Texas.

of land, encouraging growth in the area and increasing the parish's revenue from property taxes. From another perspective, the new development was a recipe for disaster. The undeveloped property in question sits just between a neighborhood of about six hundred residents and the banks of the Gulf Intracoastal Waterway. This neighborhood, unlike most of the parish, was fortunate enough to suffer very little flood damage during recent hurricanes. The proposed development's boat slip, however, would cut through a natural levee, which serves as an important flood control structure for the neighborhood, and move the water dangerously close to homes and an elementary school. Fearing the worst, the local residents started a petition in opposition, eventually gaining over six hundred signatures, and created a non-profit community organization to provide a voice for the local homeowners.

The Parish government was faced with an all too familiar situation in Louisiana: should they allow the development and bring money, jobs, and homes into their community, or should they deny the development in the name of safety? Following Hurricanes Katrina, Rita, Ike, and Gustav, such decisions have become much more complex for many coastal communities. These storms wreaked havoc on not only the floodwalls and homes of coastal Louisiana, but also on the area's economic viability. The mere possibility of another major hurricane each year has proven to be enough to discourage businesses and developers from investing money in coastal communities. Two competing public policies have emerged from this situation. On the one hand, citizens in these communities want new businesses, new development, and new jobs. On the other hand, the flood lines around their neighborhoods remind them that without adequate protection, one storm could make new development an afterthought. If the municipalities fail to consider all their decisions through the lens of safety, they run the risk of being unprepared for the torrents of the Gulf of Mexico. If, however, in the name of safety, the municipalities stall development and investment too much, the coastal communities may be safer from the immediate impact of hurricanes, but they will slowly wither away from lack of jobs and investment.

As if trying to strike a balance between public safety and the community's economic well-being was not hard enough, the Parish Government had one more factor to juggle: the threat of litigation. The legal counsel for the Parish Government was concerned that if they took steps that prevented some development of the property, even in the interest of safety, such actions could amount to a government taking of private property. The Parish had no intentions of physically appropriating the property, but regulation of private property, if extensive enough, can require the payment of just compensation. The Parish Council was therefore forced to choose between the immediate costs of litigation, the immediate need for economic development, the possible future costs of flooding, and, as is often the case with officials elected on the local level, the political costs of whatever decision is made.

One thing that coastal communities in Louisiana and those around most of the U.S. coast have in common is that hurricanes are always in the forefront of any public discussion. Unexpectedly, however, the Parish Council overturned the decision of the Parish Planning and Zoning Committee, marking the first time this particular Parish had ever overturned a Commission order. After the meeting, members of the Parish Council provided some insight into the decision-making process. The Council allowed the proposed development to advance, not because of any evidence absolving their fears of flooding, but because the Council feared that denying the developers a permit would be viewed as a regulatory taking

requiring the payment of just compensation, most likely following costly litigation.³ Following the Parish Council's decision, the community organization contacted SGLPP seeking to better understand the Council's lawsuit fears and whether those fears were warranted.

To hold the Parish Council liable for denying a development permit, a potential claimant must overcome two large legal obstacles. First, Louisiana courts have historically been reluctant to interfere with the decisions of Parish governing authorities. The powers of such authorities are not absolute,⁴ but they are typically free to operate without judicial review. Courts will usually not interfere with the Parish authorities' discretion except in cases of fraud, oppression, or gross abuse of power.⁵

Second, the claimant is likely to be unsuccessful in any litigation based on a theory of regulatory takings. The Louisiana and the Federal Constitutions both contain a "takings clause" prohibiting government seizure of private property for public use without just compensation. As will be discussed below, preventing development due to fear of potential flooding would likely fall within the Parish government's police powers and not require just compensation to the property owners under either the federal or state takings doctrine.

II. Regulatory Takings Under Federal Law

The "takings clause" of the Fifth Amendment of the U.S. Constitution states, "nor shall private property be taken for public use without just compensation." The text suggests that the government may not physically appropriate private property without paying the owner just compensation. The U.S. Supreme Court, however, has determined that government takings can occur through means other than physical occupation. In 1922 in *Pennsylvania Coal Co. v. Mahon*, the Court stated that a taking can result if government regulation goes "too far."⁶ These types of government takings are known as "regulatory takings." Unfortunately, although the Court in *Pennsylvania Coal* set the bar for a regulatory taking, there is no set formula in place to determine when a regulation goes too far.⁷

Despite the absence of a set formula, categories of compensable regulatory takings have emerged. Over the years, courts have established that landowners are entitled to compensation when (1) regulations result in some type of physical invasion and when (2) regulations deprive the owner of all economically beneficial use of the property.

³ Newspaper interview with a Parish Council member, May 12, 2009. The title of the newspaper and the identity of the council member have been intentionally omitted to protect the identity of the Parish. Please contact the author for the exact citation.

⁴ LA. REV. STAT. § 33:1236

⁵ See, *Torrance v. Caddo Parish Police Jury*, 119 So. 2d 617 (La. 1960); *Jefferies v. Police Jury of Rapides Parish*, 53 So. 2d 157 (La. 1951); *Altom v. Mayor of Village Lanesville*, 143 So. 77 (La. 1932); *Sheridan v. Washington Parish Police Jury*, 63 So. 2d 209 (La. 1953).

⁶ 260 U.S. 393 (1922).

⁷ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992).

A. *Physical Invasions*

If the regulation requires a physical invasion of the property, the landowner is entitled to compensation. For example, in *Loretto v. Teleprompter Manhattan CATV Corp.*, the Supreme Court determined that New York's law requiring landlords to allow television cable companies to place cable facilities on the outside of their apartment buildings constituted a taking.⁸ Because application of the Parish zoning regulations and the Planning Council's decision would not have resulted in a physical invasion of the developers' property, this rule is inapplicable to the current situation.

B. *"Total Takings"*

In the landmark case, *Lucas v. South Carolina Coastal Council*, the Supreme Court found "that when the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking."⁹ The key word in that statement is *all*. The Supreme Court has been hesitant to grant a regulatory taking when the property in question maintains a "significant development value" and has not been left "economically idle."¹⁰

Returning again to the Parish Council's situation, the denial of the developers' request to construct the proposed boat slip would not deprive the owners of all the property's economically beneficial uses. Under the parish's zoning ordinances, the owners could still develop the property into a subdivision, a business park, or any other development that would not endanger their neighbors' property.

Furthermore, even if the denial deprived the developer of all economically beneficial uses, the majority in *Lucas* indicated that compensation was not required if the government was applying "background principles of nuisance and common law."¹¹ Justice Kennedy, in his concurrence, recognized that coastal property may present unique concerns and, due to the fragile nature of the land, a state may be able to go further in regulating its development.¹²

Although the property does not technically fall within Louisiana's coastal zone,¹³ it is very close. However, *Lucas* does not explicitly equate "coastal property" with a state-delineated coastal zone, so a court could choose to apply Justice Kennedy's reasoning and designate this land as "fragile." Such a designation would give the government more freedom to regulate the property. Justice Kennedy does not explain in detail what this designation would allow the state to do, but allowing them the flexibility to regulate property in a way that best protects its citizens would seem to be a logical interpretation.

⁸ 458 U.S. 419 (1982).

⁹ *Lucas*, 505 U.S. at 1019.

¹⁰ *Palazzolo v. Rhode Island*, 606 U.S. 606 (2001)

¹¹ *Lucas*, 505 U.S. at 1030.

¹² *Id.* at 1035

¹³ The proposed development lies just outside of the Louisiana coastal zone as outlined by La. Rev. Stat. 49:214.24.

Developers often argue that the “total takings” theory of *Lucas* is too harsh. For instance, if a government regulation diminishes a property owner’s land value by 95%, she recovers nothing. But another 5% of lost value and the landowner recovers the land’s full value. It is an all or nothing situation. Justice Scalia, who wrote the majority opinion in *Lucas*, points out that this argument is not entirely true, however. While takings cases are “full of these ‘all or nothing’ situations,” the *Lucas* categorical formulation is not dispositive.¹⁴ As discussed in the next section, a regulation that results in less than 100% loss of value may still result in a compensable regulatory taking.

C. Non-Categorical Regulatory Takings

If the regulation does not result in a physical invasion or a total loss in value, then the property owners’ claim is to be evaluated utilizing the three-part test delineated by the Supreme Court in *Penn Central Transportation Company v. City of New York*.¹⁵ The *Penn Central* test is essentially a balancing test that instructs courts to weigh the economic impact on the property owner against the societal benefit of the regulation.

Under the *Penn Central* test, courts are instructed to consider: (1) the character of the government action, (2) the economic impact on the claimant, and (3) the extent to which the government action has interfered with distinct investment-backed expectations.¹⁶ With respect to the character of the government action, “a ‘taking’ may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.”¹⁷ Considering once again the Parish Council’s decision, the government action would be the denial of the right to build the boat slip. Not only would no physical invasion occur, but also, the primary reason for denial is to protect the surrounding neighborhoods from flood danger. As the Supreme Court stated, “government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.”¹⁸

Turning to the second factor, most government regulation has some impact on property values. There is little doubt that the developers would suffer an economic impact if they were unable to build the slip, but it is the level of that impact that matters. As mentioned above, the developers would still have numerous economically lucrative options for developing the land even without a permit to build a boat slip. When evaluating taking cases, courts do not “divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated.”¹⁹ Rather courts focus “on the character of the action and on the nature and extent of the interference with the rights in the parcel as a whole...”²⁰

¹⁴ *Lucas*, at 1019.

¹⁵ 438 U.S. 104 (1978).

¹⁶ *Id.* at 124.

¹⁷ *Id.*

¹⁸ *Pennsylvania Coal Co.*, 260 U.S. at 413

¹⁹ *Penn Central*, 438 U.S. at 130

²⁰ *Id.* at 130.

If the Parish Council denied the developer permission to build the boat slip, the property's value may be diminished. However, the Supreme Court has uniformly rejected "the proposition that diminution in property value, standing alone, can establish a "taking."²¹ In *Keystone Bituminous Coal Association v. DeBenedictis*, the Supreme Court rejected a takings claim by a coal company who asserted that a law requiring 50% of the coal under structures to remain intact was in effect a regulatory taking.²² Each property has a bundle of rights and the right of the company to mine all of the coal in the ground was merely one "strand" from that bundle.²³ To be a regulatory taking, the regulation must interfere with the entire bundle of property rights.²⁴ In the Louisiana Parish's situation, the right to build a boat slip on the undeveloped property would be one strand in the larger bundle of rights associated with the property; while the property value would be impacted, "mere diminution in the value of property, however serious, is insufficient to demonstrate a taking."²⁵

The third factor, interference with investment-back expectations, seeks to determine the level of harm that government regulation would cause to the expectations of the developer. The Supreme Court has been clear in showing that the investment-backed expectations test is important in determining the fairness of the taking, but they have failed to provide an exact definition.²⁶ The question in *Penn Central* was not whether the developer had investment-backed expectations, but "the extent to which the regulation has interfered with the expectations."²⁷ The Court in *Penn Central* found that the investment-backed expectations had not been sufficiently frustrated because the developers could simply shift their desire to build elsewhere in the city and they still had an opportunity to not only turn a profit but to also obtain a reasonable return on their investment.²⁸

The developers in Louisiana invested money in the project with the expectation of building a profitable subdivision on their property. Their expectations included a boat slip, but considering the situation in light of the *Penn Central* decision, even without a boat slip they still have a sufficient opportunity to profit from the venture. Furthermore, there may be

²¹ *Id.* at 131.

²² 480 U.S. 470 (1987).

²³ *Id.* at 480.

²⁴ *Id.*

²⁵ *Concrete Pipe and Products Inc. of California v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602 (1993). *See, e.g., Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 384 (1926) (approximately 75% diminution in value); *Hadacheck v. Sebastian*, 239 U.S. 394, 405 (1915) (92.5% diminution).

²⁶ *See, e.g., Ruckelshaus v. Monsanto*, 467 U.S. 986, 1005 (1984) (lack of reasonable investment-backed expectations defeated takings claim); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 532-35 (1998) (plurality upholds plaintiff's takings claim largely on investment-back expectations grounds); *Alabama Dept. of Transportation v. Land Energy, Ltd.*, 886 So. 2d 787, 799 (Ala. 2004) ("The specific terminology 'distinct investment-backed expectations' originates in *Penn Central*, but is not defined in that opinion or any subsequent decision of the United States Supreme Court relating to regulatory takings.").

²⁷ *Penn Central*, 438 U.S. at 124 (emphasis added).

²⁸ *Id.* at 124.

opportunities to build the development with a boat slip, if the slip is relocated to avoid breaching the levee.

Finally, a court would likely recognize that the regulation of the property was to protect the public. The harm to the developer would pale in comparison to the potential harm and loss to the community, depending, of course, on scientific data that shows the likelihood of an increased risk of flooding. Common sense, however, suggests that breaching the natural levee would increase the risk of flooding for hundreds of citizens, including those that move into the new subdivision. Furthermore, a public elementary school sits approximately 600 feet from the proposed slip. If it were flooded and damaged, a valuable resource for the community's children would be lost and the Parish taxpayers would eventually have to pay for its repair. In *Goldblatt v. Hempstead*, the U.S. Supreme Court addressed the issue of whether a town ordinance regulating dredging and pit excavating was a valid police regulation, and found that government action otherwise constituting a taking may not be considered a taking if it promoted a substantial public purpose.²⁹ The Parish Council's denial of the Parish Planning and Zoning Commission's permission to develop in order to protect the health and wellbeing of the citizens in the adjacent neighborhood should be viewed as effectuating a substantial public purpose.

III. Regulatory Takings Under Louisiana Law

The Louisiana Constitution includes a takings clause similar to that found in the U.S. Constitution, with the addition of some important language. Article 1, § 4(B)(1) of the Louisiana Constitution states that “[p]roperty shall not be taken or *damaged* by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit.”³⁰ The article goes on to enumerate a number of public purposes, including “the removal of a threat to public health or safety caused by existing use or disuse of the property.” Because the Louisiana Constitution prohibits the government from damaging private property without compensating the landowner, the Louisiana state law analysis of takings claims differs slightly from U.S. Constitutional analysis. In Louisiana, a taking occurs when the “public authority acquires the right of ownership or one of its recognized dismemberments,” and the property is “damaged when the action of the public authority results in the diminution of the value of the property.”³¹ The distinction between a taking and a damaging clearly exists in the law, however, Louisiana courts rarely apply this strict application and typically resolve such claims more in line with federal law.

A. Takings

If a court followed a strict application of the Louisiana takings provision (which is rarely done), the developer's claim against the Parish Council would be quickly defeated. The Parish Council's regulation of the proposed development is extremely unlikely to amount to their acquiring “the right of ownership or one of its recognized dismemberments.” By failing

²⁹ 369 U.S. 590 (1962).

³⁰ Emphasis added.

³¹ *Columbia Gulf Transmission Co. v. Hoyt*, 215 So. 2d 114 (La. 1968).

to approve the exact specifications of the developer's plans, the Parish Council would obtain no more rights to the property than previously retained. The only possible detriment to the developer's interest would be a diminution in the value of the property, which constitutes a "damaging" under Louisiana law.

B. Damaging

According to Professor John Costonis, there are roughly six judicially accepted elements to a damaging claim in Louisiana.³² These elements are: (1) the governmental activity causing the injury must be a deliberate or necessary consequence of an activity serving the public purpose;³³ (2) the act producing the injury must be legislatively authorized and advance a public purpose;³⁴ (3) the injury to the claimant's property rights must be the diminution in the value caused by the public project;³⁵ (4) damaging actions are subject to a two-year prescription period as opposed to three-year period with takings claims;³⁶ (5) the alleged damages must be *special* to the claimant rather than general to the community;³⁷ and (6) the government will not be held liable if the project or activity is a "reasonable exercise of the police power."³⁸

If the Parish Council denied the developer an opportunity to construct the proposed boat slip, a damaging claim may potentially fulfill at least five of the six elements. If the denial was given to protect the citizens from flooding that would likely fulfill the first two elements, and the diminution in the value of the property would be a special injury caused by the Parish Council's decision. The sixth element, however, would be a clear hindrance in the developer's lawsuit. As long as the Parish Council denied the rights to the boat slip in order to protect the citizens living to the north and to the west, the denial would likely qualify as a reasonable exercise of their police power, which is "the power of the state to place restraints on the personal freedom and property rights of persons for protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity."³⁹ Preventing the increased risk of flooding for hundreds of residents within the city limits would likely be well within the limits of the Parish Council's police power.

C. Most Likely Application of the Louisiana Takings and Damaging Law

In Louisiana, courts typically distinguish between a taking and a damaging only when the distinction forms the "dispositive issue" in the case. The seminal case on this issue in

³² See, John J. Costonis, *Avenal v. State: Takings and Damagings in Louisiana*, 65 LA. L. REV. 1015, 1024-28 (2005). Costonis claims there were eight prior to the *Avenal* decision.

³³ *Angelle v. State*, 34 So. 2d 321, 323 (La. 1948).

³⁴ See, *McMahon v. St. Louis & Ark. & Texas R.R. Co.*, So. 640, 641 (La. 1889); *Jarnagin v. State Highway Comm'n*, 5 So. 2d 660, 664 (La. App. 2d Cir. 1942); *Mathis v. City of DeRidder*, 599 So. 2d 378, 391 (La. App. 3d Cir. 1992).

³⁵ See *Reymond v. State*, 231 So. 2d 375, 384-85 (La. 1970); *Jarnagin*, 5 So. 2d at 663.

³⁶ LA. REV. STAT. § 9:5624.

³⁷ See, e.g., *Constance v. State*, 626 So. 2d 1151, 1156 (La. 1993); *Reymond*, 231 So. 2d at 383-84.

³⁸ La. Const. art. 1, § 4(A).

³⁹ BLACKS LAW DICTIONARY, 1156 (6th ed. 1990).

Louisiana is *Avenal v. State of Louisiana and the Department of Natural Resources*.⁴⁰ In *Avenal*, oyster farmers filed suit against the state alleging that the Caernarvon Freshwater Diversion project harmed their oyster lease to such an extent that it was a taking or a damaging. The court, however, never reached the constitutional issue about whether a taking or damaging had occurred because there was a question as to whether the statute of limitations had run. In Louisiana, a takings claim carries with it a three-year prescription period (meaning that there is no longer a right to sue on that claim after three years), but a damaging claim only has a two-year period.⁴¹ The class action claim in *Avenal* was filed after the damaging prescription time, but before the taking prescription time, so the classification of the claim as a taking or damaging was the dispositive issue (the issue on which the case was decided). Because the government had not acquired an ownership right to the property and merely diminished its value, the *Avenal* court classified the claim as a damaging and, since more than two years had gone by, it disposed of the case.⁴²

If a court found the distinction between a taking and a damaging suit formed the dispositive issue in the Parish Council's situation, as was the case in *Avenal*, then the court would likely apply the aforementioned strict analysis. However, since there appears to be no such reason to make the distinction, the court would likely treat the claim in much the same way as a federal takings claim.⁴³ In accordance with *Avenal*, the court would probably apply the three-prong takings evaluation from *State v. Chambers Investment Co.*, a case involving takings claims related to the construction of Interstate 49 through Louisiana.⁴⁴ Under *Chambers*, courts must first determine whether the claimant has a property right that has been affected.⁴⁵ As the developers seeking to build a boat slip own the property in question, they would undoubtedly be able to satisfy this element of their claim.

Once a legitimate property right has been determined, the courts must consider whether the property has been taken or damaged.⁴⁶ Most Louisiana courts treat this issue as they would a federal takings claim,⁴⁷ except that when applying the *Penn Central* three-prong

⁴⁰ 886 So. 2d 1085 (La. 2004).

⁴¹ LA. REV. STAT. § 9:5624.

⁴² *Avenal*, 886 So. 2d at 1109.

⁴³ See, e.g., *Angelle v. State*, 34 So. 2d 321, 324-25 (La. 1948); *Louisiana Seafood Mgmt. Council v. Louisiana Wildlife and Fisheries Comm'n*, 715 So. 2d 387, 392 (La. 1998); *Layne v. City of Mandeville*, 633 So. 2d 608, 611-12 (La. App. 1st Cir. 1993); *Annison v. Hoover*, 517 So. 2d 420, 423 (La. App. 1st Cir. 1987); *Standard Materials, Inc. v. City of Slidell*, 700 So. 2d 975, 983-84 (La. App. 1st Cir. 1997). It is not uncommon for Louisiana courts addressing Art. 1, § 4 takings or damagings issues to cite federal authority in support of their holdings. For example, a state highway plan that blocked access to the developer's subdivision was deemed a taking in *Rivet v. State*, 635 So. 2d 295, 297 (La. App. 5th Cir.). Offered in support of this holding was the statement in *Lucas v. South Carolina Coastal Council* that when state activity causes a landowner "to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking."

⁴⁴ 595 So. 2d 598, 603 (1992).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ In the case of *Annison v. Hoover*, 517 So. 2d 420, 423 (La. App. 1st Cir. 1987), instead of engaging in a more "Louisiana" oriented discussion, the court applied the standard from the federal case *First*

test, Louisiana courts have stated “the [property owner’s] ‘distinct investment-backed expectations’ prong is irrelevant to the question of whether a taking has occurred under Louisiana law.”⁴⁸

Finally, if the court determined that there has been a taking or a damaging, they must determine whether it was for a public purpose.⁴⁹ As previously mentioned, an act undertaken by the parish government for the health and safety of the citizens would be for a public purpose, thus insulating the Parish Council from the requirement to pay just compensation.

IV. Conclusion

While the exact analysis a court would apply to the Parish Council’s denial of the boat slip permit is unknown, one thing is certain. The court will be forced to engage in a balancing test, weighing the loss of the developers against the interests of the citizens who may be harmed by flood damage. Most likely, the possibility of increasing the flood risk for hundreds of citizens would outweigh the partial economic loss to the developers.

Fortunately, this particular situation did not result in litigation. Through their tireless efforts, the community organization raised enough concern in the Parish government and in the community at large to bring all parties to the bargaining table. Through a negotiation process, the community organization, the Parish government, and the developers came to an agreement. The developers agreed to build the entire subdivision to a suitable height, the Parish (with the developers help) agreed to build a levee system surrounding the subdivision, which would provide some protection to the adjacent neighborhoods, and the proposed boat slip would be built outside of the levee system. Finally, both the Parish and the developers have agreed to allow the community organization to closely monitor the entire project.⁵⁰

While in this instance the local government reached a suitable compromise between development and local citizen concerns, other coastal communities are likely to face similar tough decisions and may be unable to so easily resolve the concerns of all parties. At times, communities may be forced to choose development and economic growth over safety. Conversely, there will be times when what seems to be a great business decision is scrapped because it is too risky. The future of coastal communities lies in the balance between protection and development. This balancing act will only increase in complexity and importance as coastal communities face the increasing threats of sea level rise and storm surge as a result of climate change. One thing is for certain, however. In order to maintain

English Evangelical Lutheran Church of Glendale v. Los Angeles County, Cal., 482 U.S. 304 (1987), which states that partial regulatory takings can be found when “there has been a substantial diminution in value to such an extent that there has been a destruction of a major portion of the property’s value.”

⁴⁸ *Avenal v. State*, 757 So. 2d 1 (La. 1999).

⁴⁹ *Chambers Investment Co.*, 595 So. 2d at 603.

⁵⁰ Information pertaining to the resolution of this issue was gathered from personal communication with the President of the community organization on January 6, 2010.

their viability, all coastal communities will have to show prudence and make wise land use decisions if they are to survive.