

RETREAT THROUGH REGULATION:

Expropriation by regulation, compensation, and the impact on managed retreat from rising seas in the United States, Australia and New Zealand

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Despite the widespread acknowledgement of the mistakes that have been made in allowing development in dangerous coastal zones, communities impacted by destructive tropical cyclones repeatedly choose to rebuild. Sea level rise and climate change has increased the need for a new paradigm, but this outcome continues to persist, partly because property owners and communities have few other options. Although retreating from the shore is considered one of the most effective means to manage this risk (Alexander et al 2012), retreat is politically challenging and often cost-prohibitive, since governments are prohibited from regulatory and actual expropriation without compensation.

In this paper we conduct a comparative study of the practice of coastal retreat for sea level rise and climate change adaptation in the United States, Australia, and New Zealand using case studies from Ocean City, Maryland, Ogunquit, Maine and East Hampton, New York in the U.S., Cottesloe, Freemantle and Byron Bay in Australia, and Muriwai Beach, Urenui Beach and the Kapatī Coast in New Zealand.

Retreat policies have been challenging to implement in all three countries, despite the very different compensation requirements for regulatory takings and direct expropriation. Overall, findings support the conclusion that climate change adaptation in the coastal zone is a political challenge and that differences in compensation requirements may have little impact on outcomes.

Findings also suggest that regulatory retreat approaches have the potential to be more impactful than acquisition, despite the challenges, because they allow communities to adapt incrementally and in a manner consistent with constitutional rights. Local innovations, from expanding public participation to using transfer of development rights, cluster and subdivision ordinances to set-back development from the shoreline, are within the capacity and grasp of almost all local governments globally.

Retreat is often framed as an all or nothing strategy, traditionally defined as relocating development from the coast and often implemented through land purchase and buyouts. Yet, regulatory and land use tools can often provide the same benefits, with reduced interference with property rights and a much lower cost to local governments. Adaptation will not be simple and it involves many tradeoffs – but the capacity and will to do so is clear, and many are already imagining a bold future of sustainable, resilient coastal communities.