What is *Kelo* and What Does it Have to Do With Environmental Law?

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Property may be restricted, but only “taken” for public use & w/compensation

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

- US Const. amend. V, XIV
State law may be more restrictive

- “Private property shall not be taken or damaged for public use without just compensation.”

- Haw. Const. art I, § 20

Property is a Constitutional Right

“We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.”

_Dolan v. City of Tigard_, 512 US 374 (1992)
Not just classic “title”


- (Damon Key victory!)

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*Power not a Right*

“It’s Good To Be The King!”
Eminent Domain in a Nutshell

Whether you know it or not, your house is for sale

“Regulatory Taking”

- Police power not a work around to eminent domain
- Regulatory state can’t pay for every change (can it?)
- *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922)
Key issue in regulatory takings

- When has regulation “gone so far” so that it is a de facto exercise of eminent domain?

Regulatory takings formula

- “per se”
- “ad hoc”
“Per se”

- “Fails to substantially advance a legitimate state interest”
- or
- deprives the owner of beneficial use of the property

*Kelo*: The Offer You Cannot Refuse?
Singing the *Poletown* Blues

Lingle v. Chevron USA

Do regulatory takings mean more than

“Show me the money!!”
Federal Courts to property owners: “Go Away”

- Kelo – move to Michigan
- Lingle – my bad
- San Remo – been there, done that
- Palos Verdes – civil rights? you don’t need no civil rights
- Exxon Mobil – we don’t need the Rooker doctrine to keep you out

For more information or copies of this presentation or handouts, contact -

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