

3. Here, Defendant's Evidence Establish There Was Insufficient Economic Impact to Establish a Taking.

In Walcek v. United States, 49 Fed. Cl. 248 (2001), the Federal Circuit considered the question of whether a 60% loss in value was sufficient economic impact to establish a taking:

several Supreme Court decisions suggest that diminutions in value approaching 85 to 90 percent do not necessarily dictate the existence of a taking. See Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) (no taking despite 75 percent diminution); Hadacheck v. Sebastian, 239 U.S. 394 (1915) (no taking despite 87.5 percent diminution). With one possible exception, this court has likewise relied on diminutions well in excess of 85 percent before finding a regulatory taking. See Loveladies Harbor, 21 Cl. Ct. 153, 160 (1990) (taking--99 percent), aff'd, 28 F.3d 1171 (Fed. Cir.1994); Bowles, 31 Fed. Cl. at 48-49 (taking--92-100 percent); Formanek, 26 Cl. Ct. 332, 340 (1992) (taking--88 percent). See also 1902 Atl. Ltd. v. United States, 26 Cl. Ct. 575, 579 (1992) (88 percent loss satisfies "economic impact" factor, although no taking found). [Footnote omitted.] Conversely, both the Supreme Court and the Federal Circuit have held that a percentage of value loss comparable to that found here is not indicative of a taking. See Concrete Pipe, 508 U.S. at 645 (no taking--46 percent diminution); Jentgen, 657 F.2d at 1213 (no taking--50 percent diminution). See also Ciampitti, 22 Cl. Ct. at 320 (no taking--25 percent diminution).