

Introduction to Legal and Policy Issues Associated with Promoting Coastal Resilience

Margaret Peloso

Vinson & Elkins, LLP

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What is Resilience?

Resilience is the ability of a system to self-organize and recover from disturbance.

Responses to Sea Level Rise

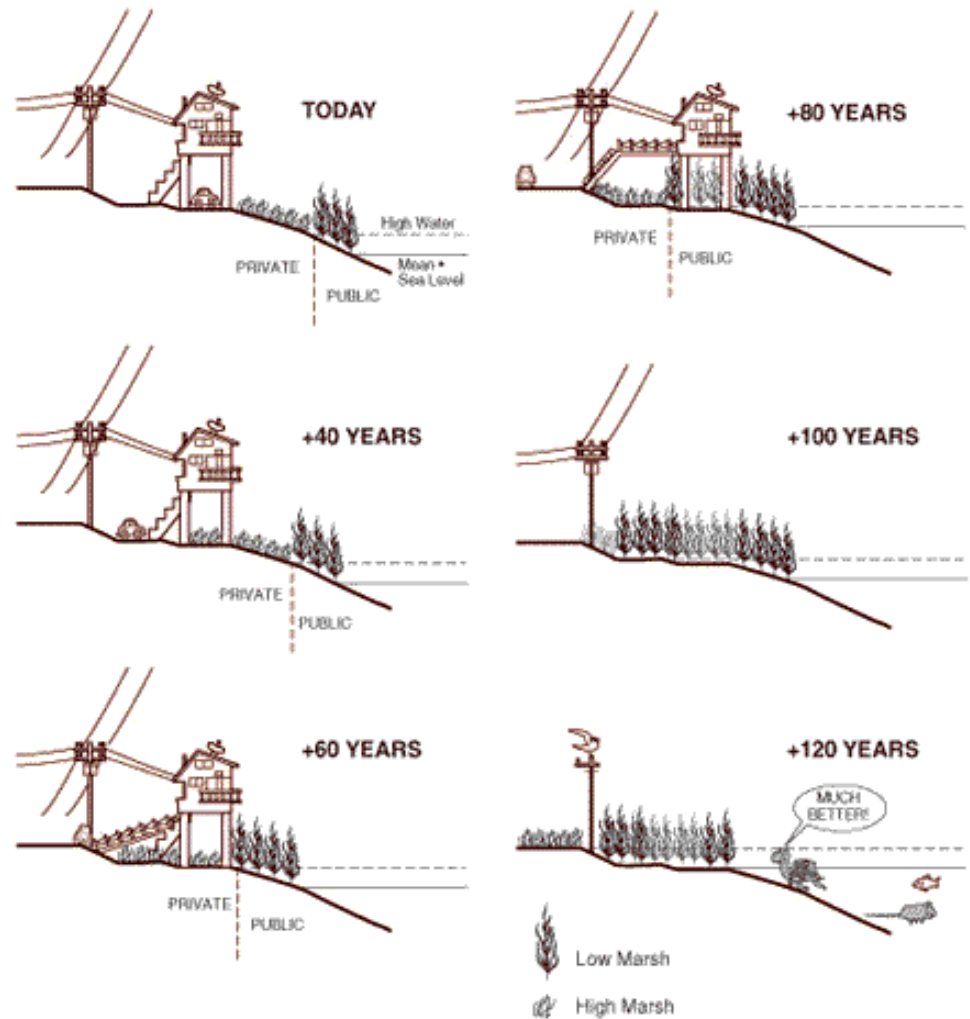
- Coastal Engineering
 - Armoring
 - Beach Nourishment
- Managed Realignment



The Public Trust and Rolling Easements



Rolling Easement



Titus (1998)

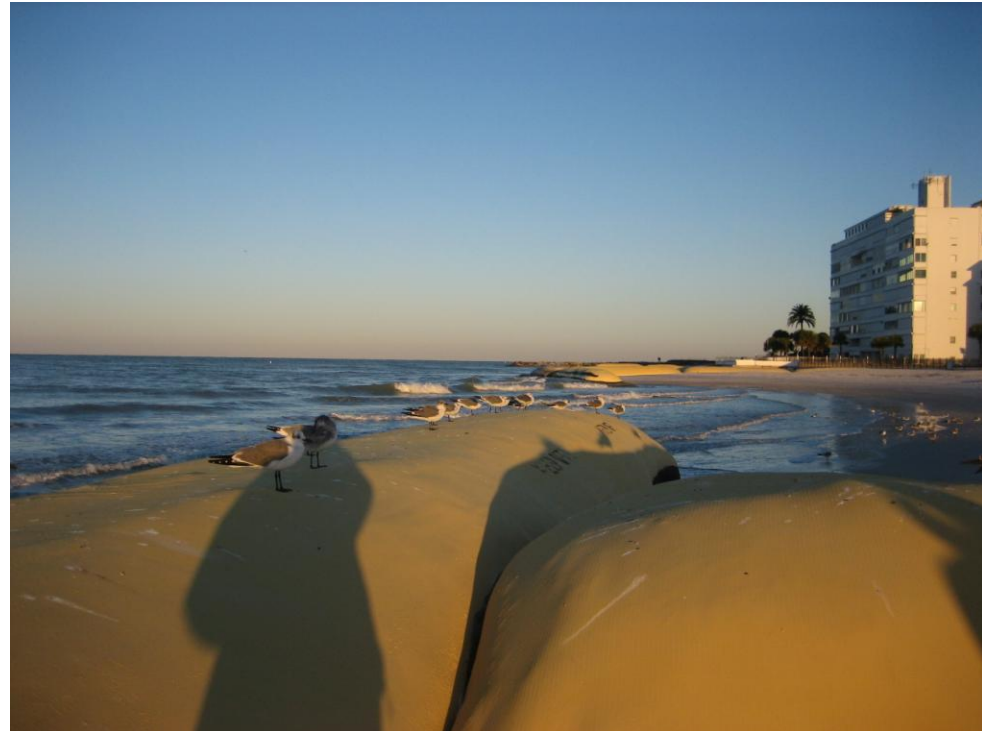
Common Law Principles of Dynamic Property

- Littoral boundary moves
- How the boundary moves determines title
 - Accretion
 - Erosion
 - Avulsion



Challenges to a State's Ability to Implement Resilient Management Practices

- Public Risk Perception
 - Natural Disaster Syndrome
 - Safe Development Paradox
- Political Pressure
 - Response to Storm Events
 - Response to Erosion
- Federal Disaster Relief and Insurance
- State Wind Pools and Hurricane Insurance
- Takings Claims



Takings Concerns

- Limitation of state power to prevent coastal development
- Background principles are key
 - Public Trust
 - Doctrines of Accretion & Erosion
 - Doctrine of Avulsion
 - Custom

Current Litigation: *Stop the Beach Renourishment v. Walton County*

- Argued Before the Supreme Court December 2009
- Issue of Judicial Taking
- Case assesses whether setting an erosion control line and cutting off right to accretion is a taking

Current Litigation: *Severance v. Patterson* ^{V&E}

- Argued before Texas Supreme Court
November 19, 2009
- Issue is whether the Texas Open Beaches Act's rolling easement takes property



Key Factors in Determining a State's Ability to Promote Coastal Retreat

- Legal:
 - Observance of the Doctrine of Avulsion
 - Rights of Littoral Owners
 - Comprehensive Land Use Planning
 - Geographic Extent of the Coastal Zone for Permitting
- Political:
 - Response to Political Pressures to Defend the Coast



Initial Actions Coastal States Should Take to Promote Resilience

- Education of:
 - Public
 - Property Owners
 - Policy Makers
- Begin a public discussion about retreat
- Clarify the legal landscape
 - Doctrine of Avulsion
 - Rights of Littoral Owners
- Adopt policies that promote long-range planning

