

# **Introduction to Legal and Policy Issues Associated with Promoting Coastal Resilience**

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**March 3, 2010**

# What is Resilience?

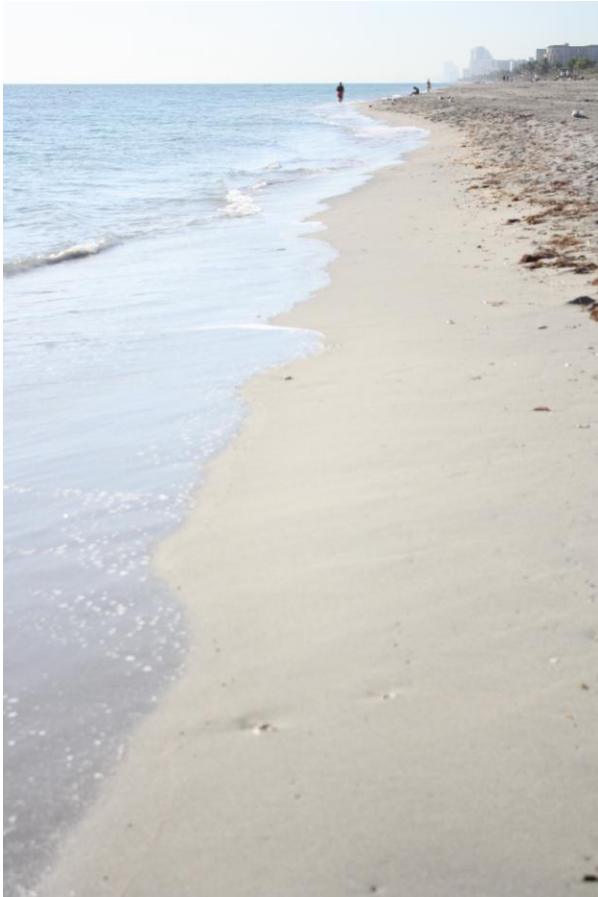
Resilience is the ability of a system to self-organize and recover from disturbance.

# Responses to Sea Level Rise

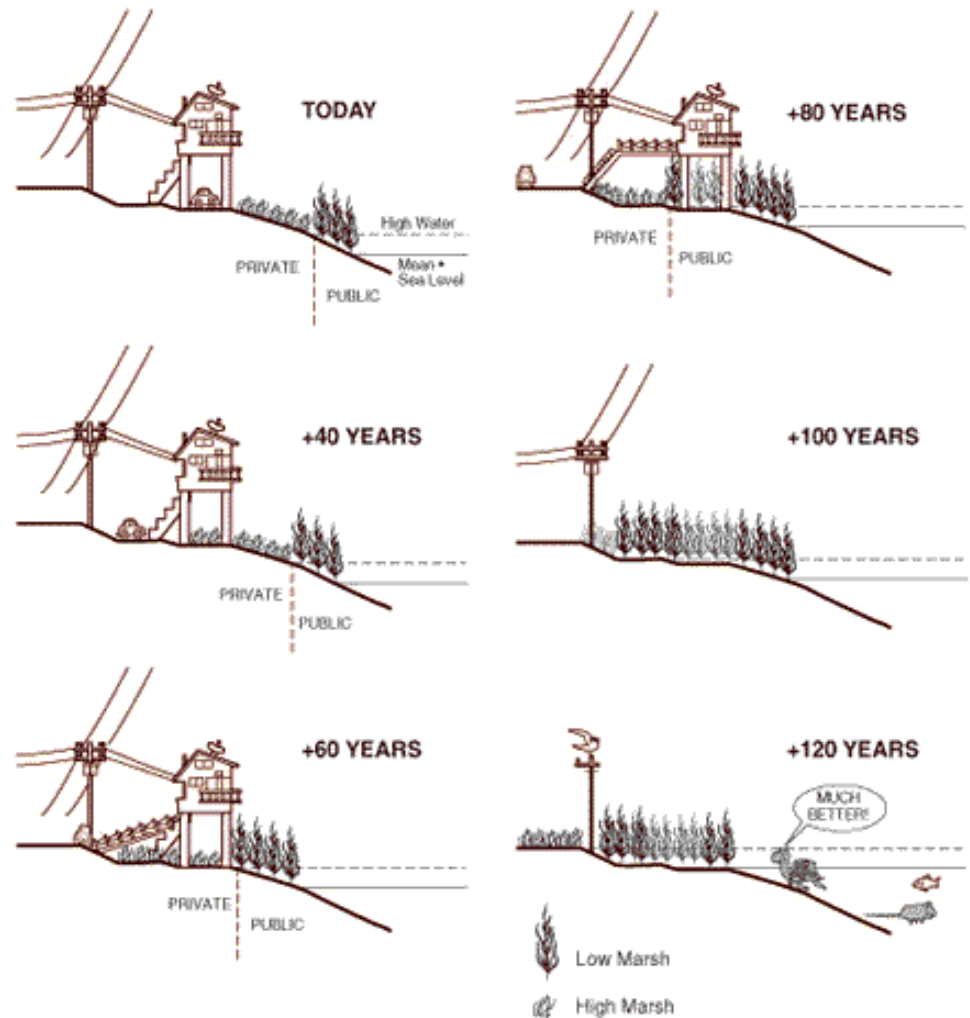
- Coastal Engineering
  - Armoring
  - Beach Nourishment
- Managed Realignment



# The Public Trust and Rolling Easements



## Rolling Easement



Titus (1998)

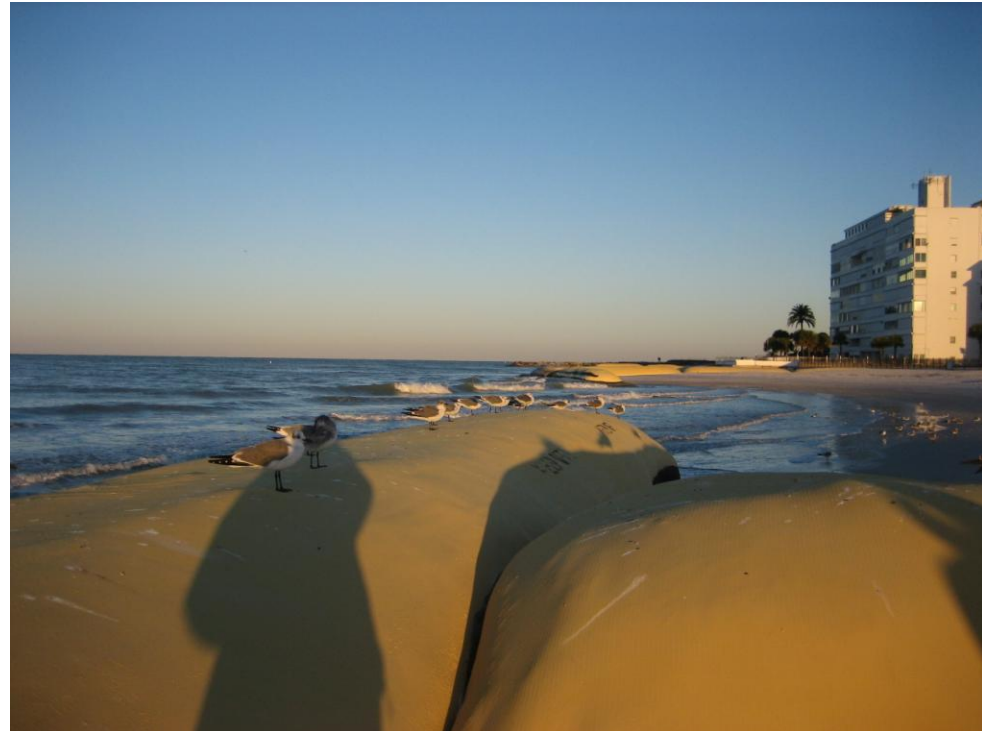
# Common Law Principles of Dynamic Property

- 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* <sup>V&E</sup>

- 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

