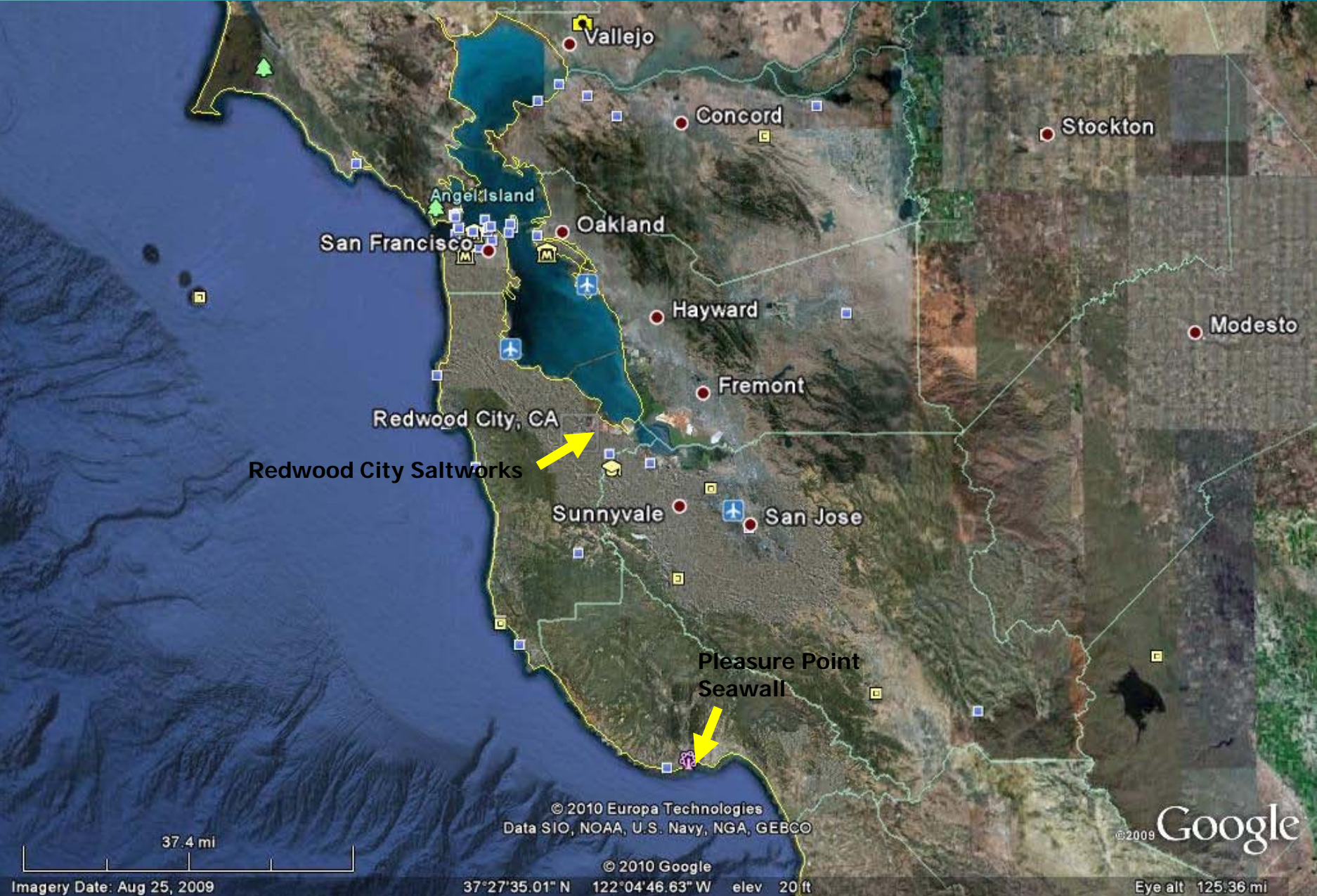


# **Creating Space for Coastal Habitats: Set Backs, Rolling Easements, and Other Legal Tools to Avoid Coastal Squeeze**

**Margaret E. Peloso, JD/Ph.D.**

**November 15, 2010**



Redwood City Saltworks

Pleasure Point Seawall

© 2010 Europa Technologies  
Data SIO, NOAA, U.S. Navy, NGA, GEBCO

©2009 Google

Imagery Date: Aug 25, 2009

37°27'35.01" N 122°04'46.63" W elev 20 ft

Eye alt 125.36 mi

# SHORELINE AREAS VULNERABLE TO SEA LEVEL RISE SAN FRANCISCO BAY AREA

- Area vulnerable to an approximate 16-inch sea level rise
- Area vulnerable to an approximate 55-inch sea level rise
- No Data



SOURCE: Inundation data from Knowles, 2008. Additional salt pond elevation data by Siegel and Rachand, 2002. Aerial imagery is NAIP 2005 data.  
 DISCLAIMER: Inundation data does not account for existing shoreline protection or wave activity. These maps are for informational purposes only. Users, by their use, agree to hold harmless and blameless the State of California and its representatives and its agents for any liability associated with its use in any form. The maps and data shall not be used to assess actual coastal hazards, insurance requirements, or property values or be used in lieu of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA).

# The Redwood City Saltworks



San Francisco Chronicle



[www.rcsaltworks.com](http://www.rcsaltworks.com)

# Policy Responses to Sea Level Rise

- Coastal Engineering
  - Armoring
  - Beach nourishment
- Managed Realignment
  - Rolling easements
  - Economic incentives



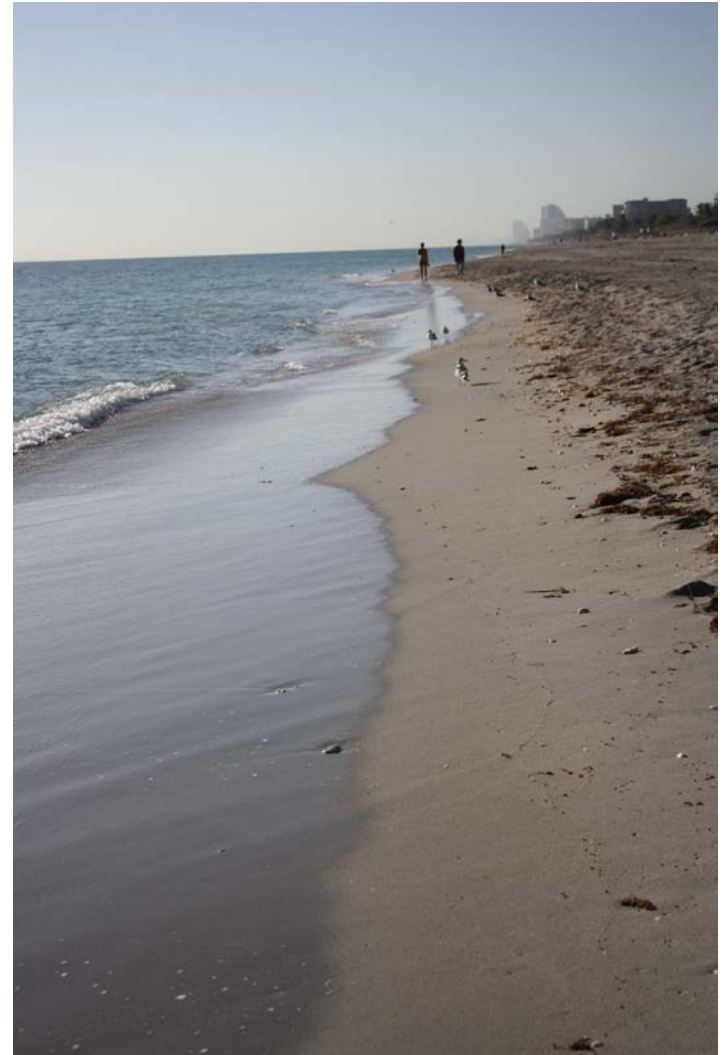
# Land Use Tools to Accommodate Wetland Migration

- Zoning
- Set Backs
- Elevate & Accommodate
- Rolling Easements

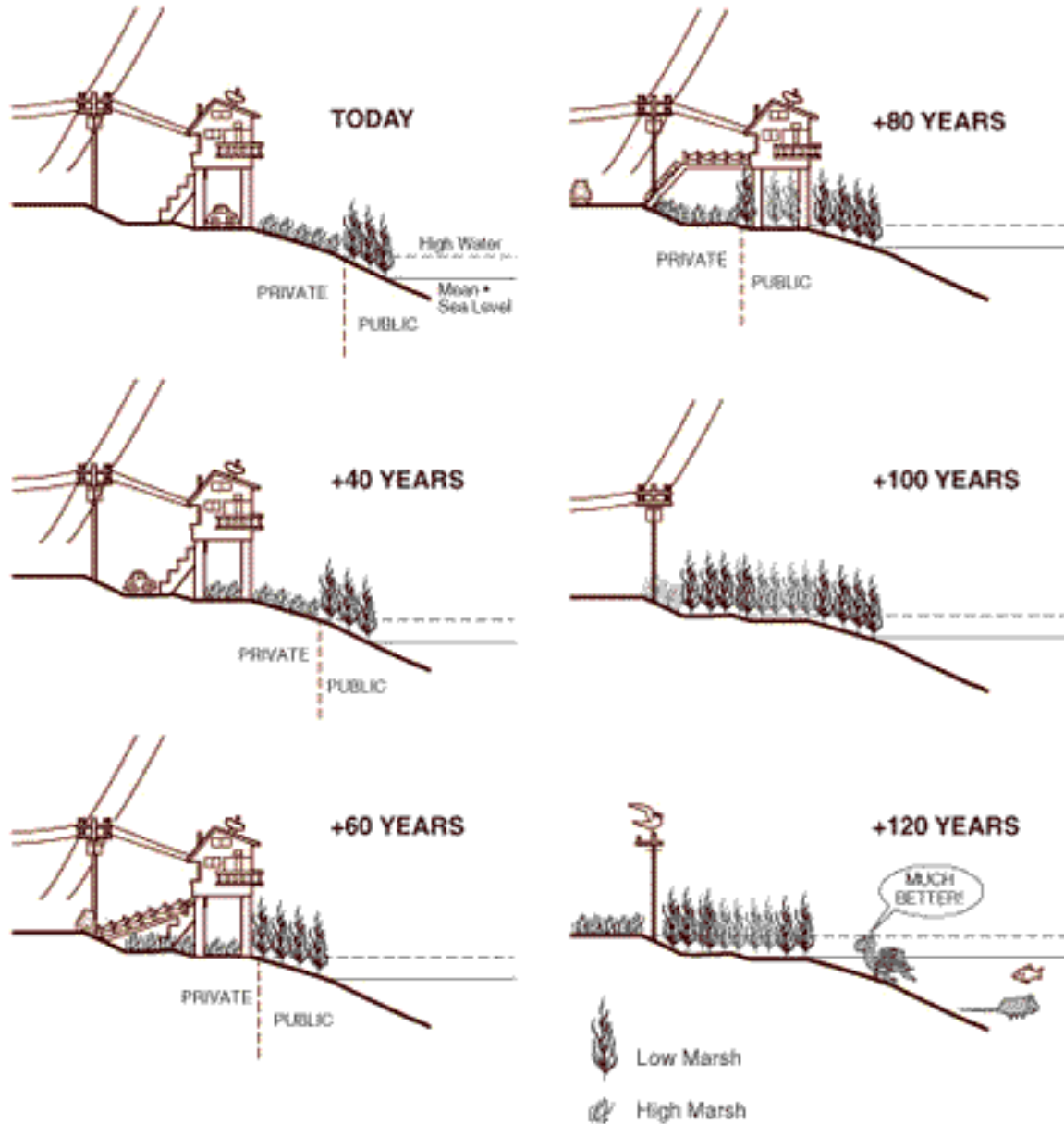


# Sea Level Rise and the Advancement of the Public Trust Doctrine

- State holds title to submerged lands in trust for the public
- *How* the property boundary moves matters
  - Erosion = “gradual and imperceptible change”
  - Avulsion = sudden and observable change



# Rolling Easement



# Legal Regimes for Littoral Property Use Differ on Ocean and Estuarine Coasts

V&E



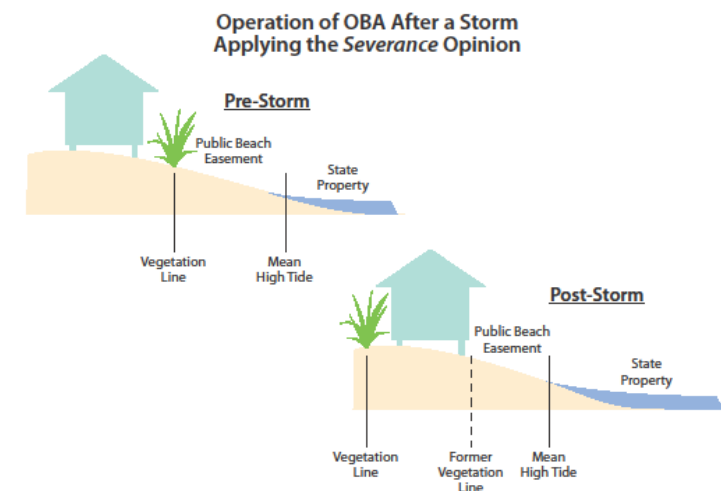
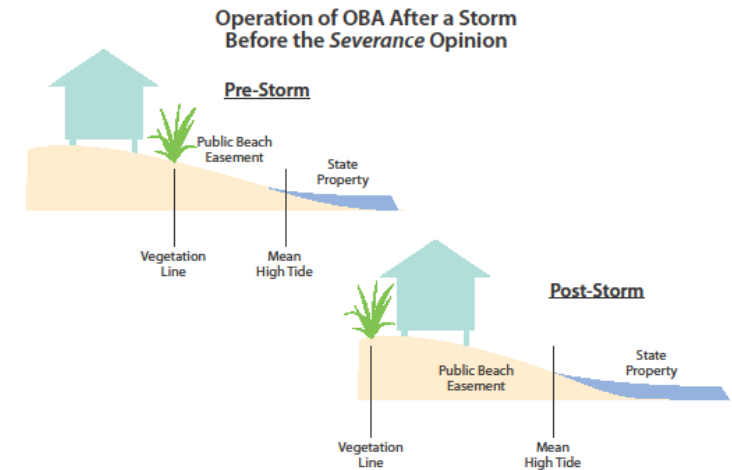
# *Severance v. Patterson* - Background

- Property purchased in 2005, came to lie on public beach after Hurricane Rita
- GLO sent notice letter, Severance sued in Federal court
- 5<sup>th</sup> Circuit certified Questions to the Texas Supreme Court



# Severance v. Patterson – The Holding

- There is no rolling easement
  - OBA applies only to public beach
  - Public Beach must be proven over *specific* parcel
- Eliminates the doctrine of custom as a means to establish public beach access
- Adopts a form of the doctrine of avulsion in Texas



# The end of Open Beaches in Texas?



# Questions?

