

Legal Quick Takes: SLR and Roads

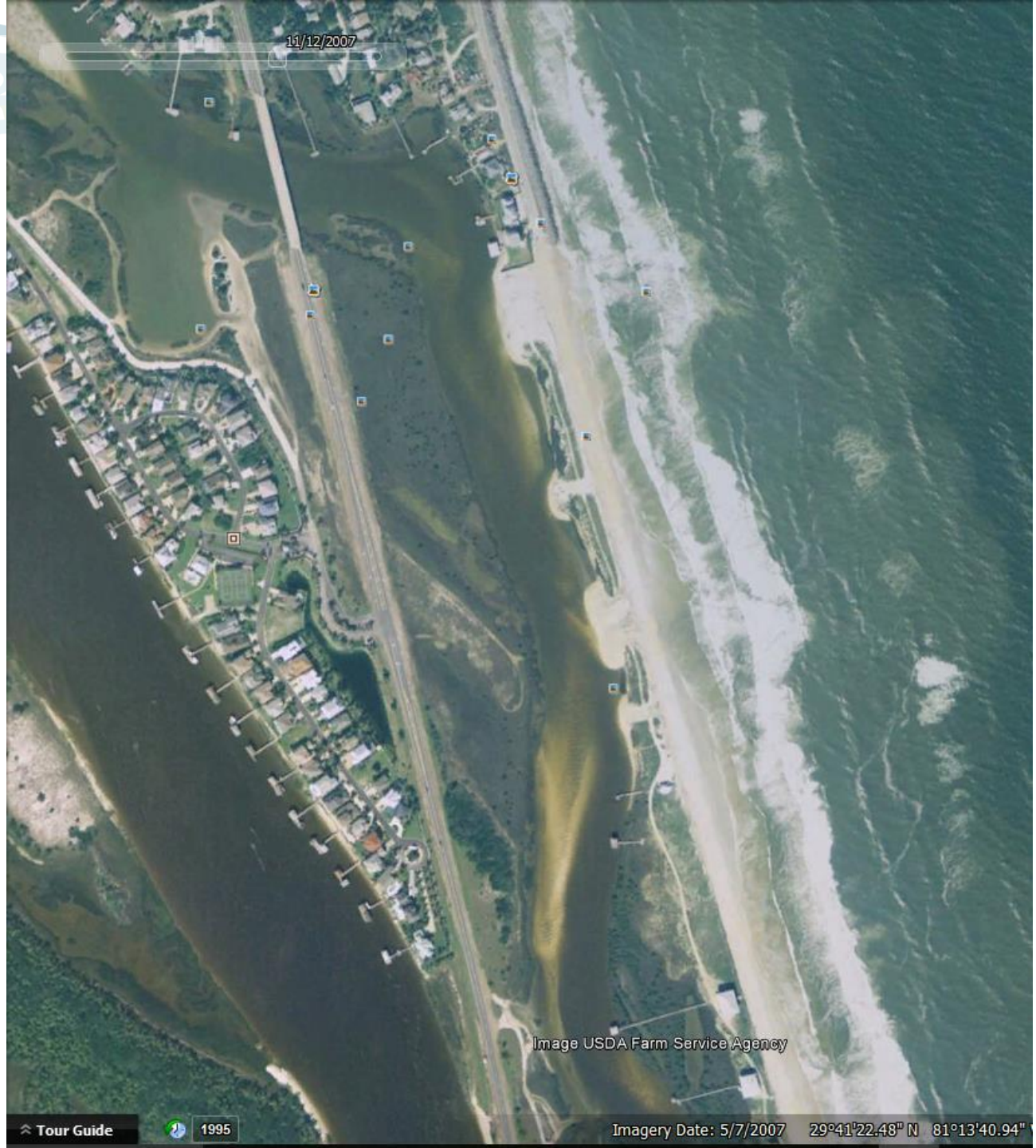
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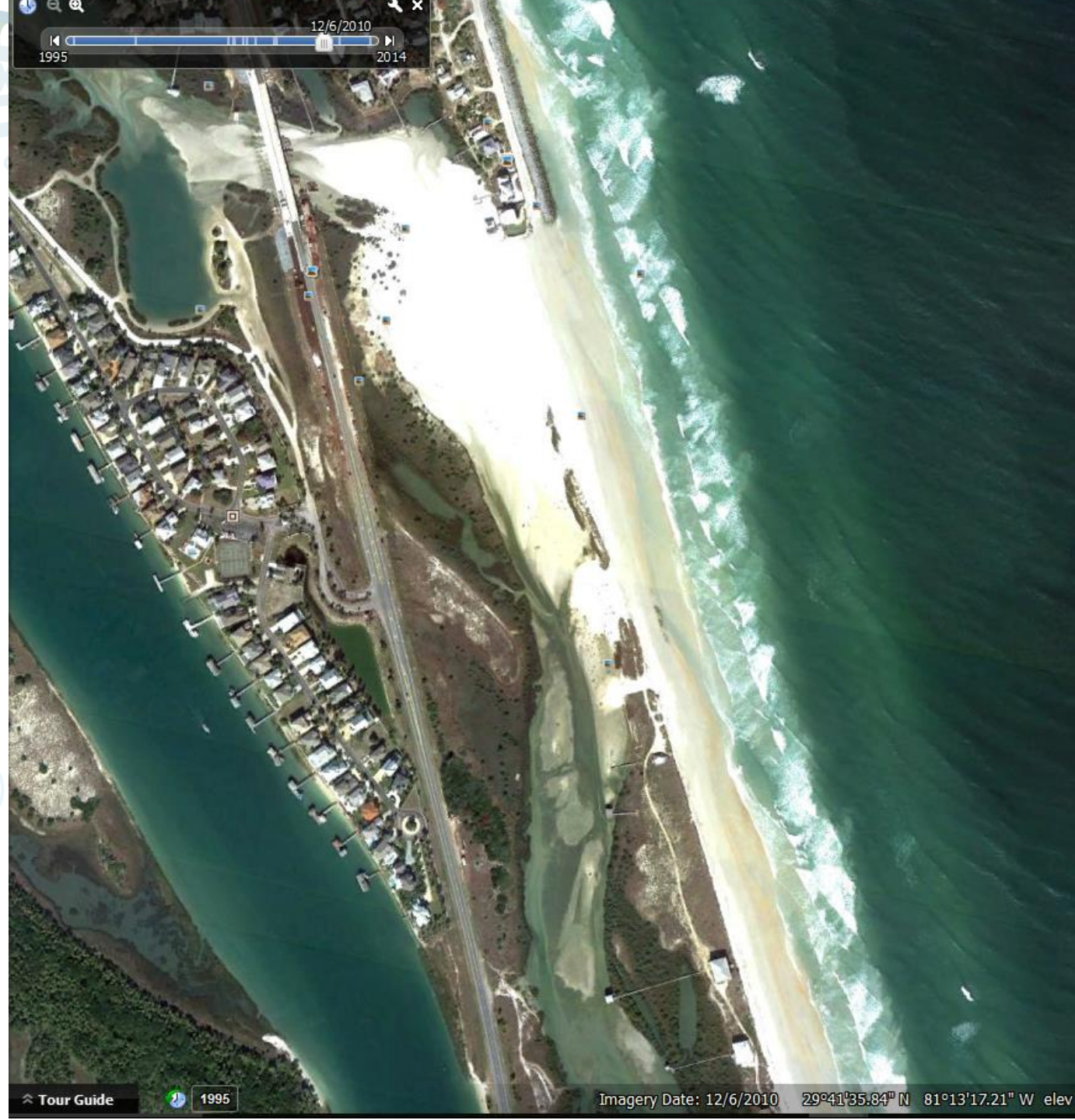
Overview

- *Jordan et al. v. St. Johns County*
 - Facts & context
 - Trial court opinion
 - Fifth DCA opinion
- Environmentally Compromised Road Segments—A Model Ordinance

11.12.2007



12.6.2010





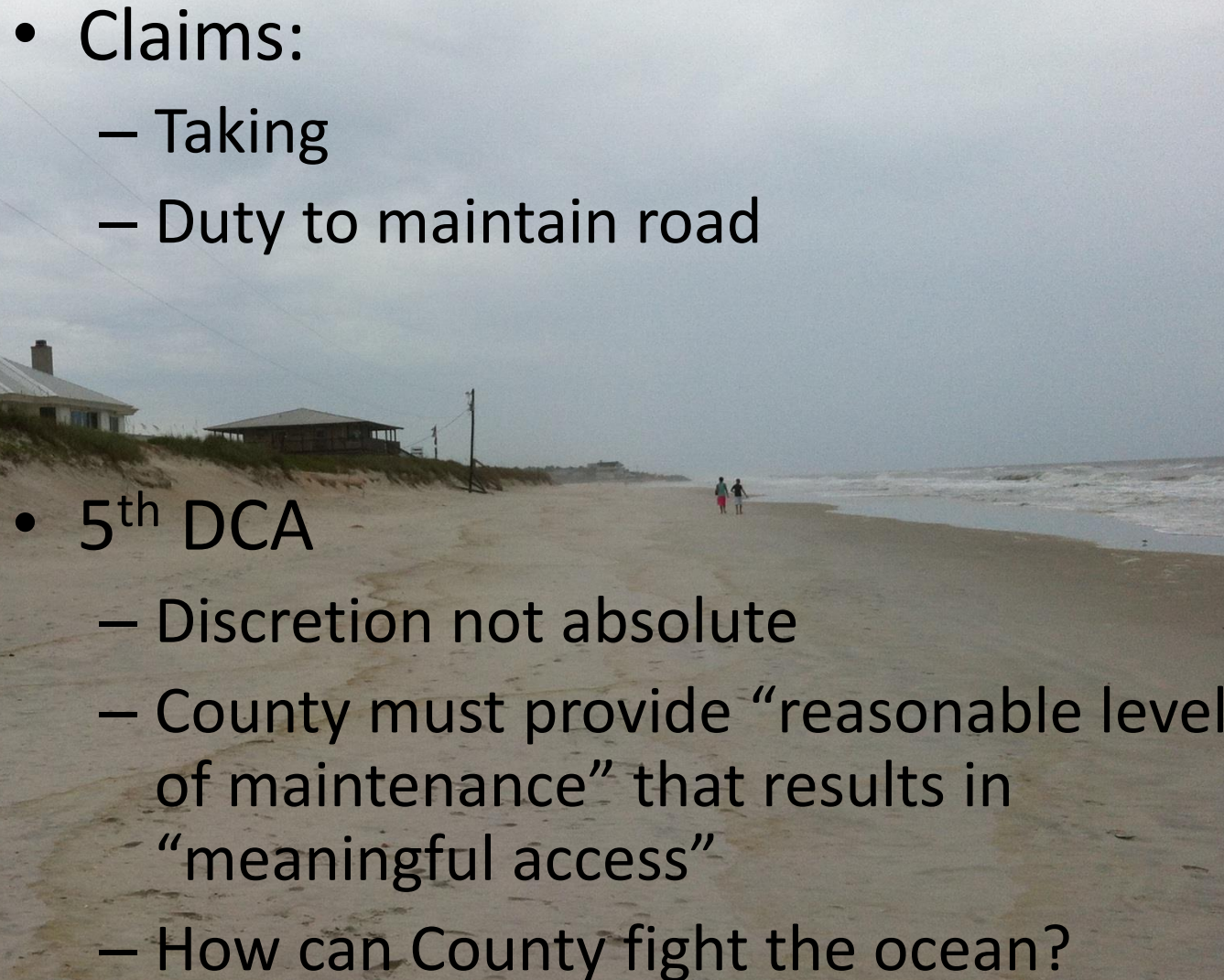


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Some Key Facts

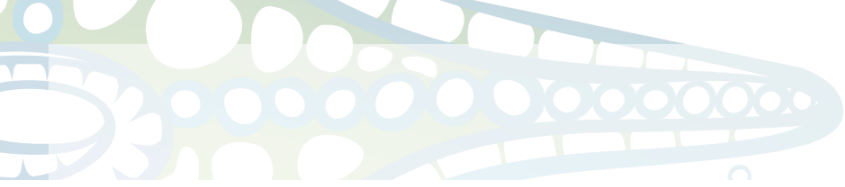
- 3 residences when County acquired in '79
- All owners that testified acquired after 1980
- Sporadic County maintenance
- County frustration expressed at meetings
 - Too expensive to maintain; study proving same
- More \$ from FEMA in 2000
- \$2.3 M from 2000-2005; avg. of \$244K/yr/mile
- 2008 study: ~\$13.1M plus \$5.7-8.5 M/3 yrs
- Responded to all emergency calls

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- A photograph of a coastal scene. In the foreground, a wide, sandy beach stretches from the bottom left towards the right. In the middle ground, a dune rises on the left, topped with a white house and a smaller structure. A utility pole stands on the dune. Further down the beach, two people are walking near the water's edge. The sky is overcast and grey.
- Claims:
 - Taking
 - Duty to maintain road
 - 5th DCA
 - Discretion not absolute
 - County must provide “reasonable level of maintenance” that results in “meaningful access”
 - How can County fight the ocean?

Settlement Agreement Excerpt from Summer Haven Case

If a catastrophic weather event occurs that destroys a substantial portion of any part of the paved or unpaved portion of the Old A1A right-of-way from Blocks 66 to 23, the County agrees to make timely and good faith efforts to obtain State, Federal, and/or other available funds to restore, to the greatest extent reasonably possible, the condition of Old A1A from Block 66 to Block 23 as it existed as of the date of this Settlement Agreement and Release, subject to any regulatory limitations imposed upon the County in making this effort. The County also agrees that it will, prior to obtaining any available State or Federal funds, and subject to other demands placed upon the County resources by said catastrophic weather event, make timely and good faith efforts to provide temporary vehicular access to all properties from Block 66 to Block 23,





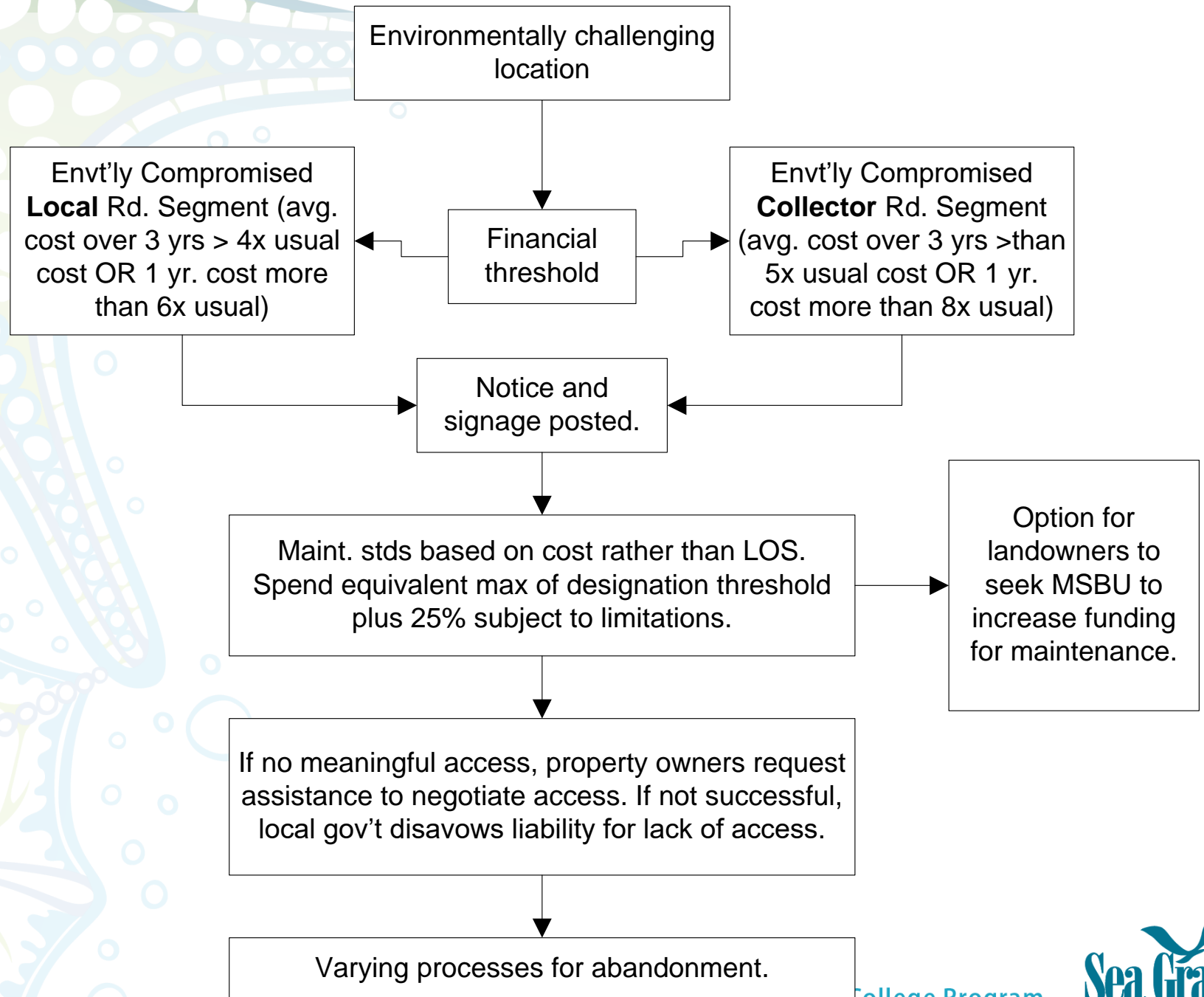






Overview of Ordinance

- Sets financial criteria thresholds
- Exceptions to LOS for “environmentally compromised road segment”
- Must add signage to designated roads
- Assistance in negotiation if a lack of “meaningful access”
- MSBU option for additional funding
- Abandonment procedures outlined



Definitions

- LOS: County-defined level of service for roads
- Env't'ly challenging location: typical road constr., maint., or stds. infeasible to meet due to naturally occurring conditions
 - Repeatedly damage or threaten road to extent that not safe;
 - Repair, maint. requires materials, processes, or techniques not standard for other roads in county;
 - Presence, maint. or repair has detrimental impact on natural resources; or
 - Location of road requires permitting or mitigation from federal or state authorities for activities that otherwise are considered routine maintenance.

Definitions (cont.)

- “Env’tly compromised local road segment”
 - Annual per-mile cost avg. over 3 yrs. for typical maint. is 4x or more usual cost per mile; or
 - Annual per-mile cost in 1 yr. for typical maint. Is 6x or more usual cost per mile
- “Env’tly compromised collector road segment”
 - Annual per-mile cost avg. over 3 yrs. for typical maint. is 5x or more usual cost per mile; or
 - Annual per-mile cost in 1 yr. for typical maint. Is 8x or more usual cost per mile

Purposeful Design

- Focus on *PROCESS*
- fiscal backstop
- minimize risk of successful legal claims
 - Possible sovereign immunity from tort claims
 - Takings claims difficult; only court decides



Limitations

- No guarantee against lawsuits or judgments
- Varies in how appropriate it is for roads
 - Best for smaller roads and those that have some other route available
 - More difficult when only access or main thoroughfare

“[A] foolish man . . . built his house on sand. The rain came down, the streams rose, and the winds blew and beat against that house, and it fell with a great crash.”

Matthew 7: 26-27

A coastal scene with a concrete barrier in the foreground, a rocky shoreline, and a lifeguard stand in the background.

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