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Supreme Court
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SCAP-22-0000429

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU and HONOLULU BOARD OF WATER SUPPLY,
Petitioners/Plaintiffs-Appellees,

v.

SUNOCO LP; ALOHA PETROLEUM, LTD.; ALOHA PETROLEUM, LLC; EXXON
MOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY;
SHELL OIL PRODUCTS COMPANY, LLC; CHEVRON CORP.; CHEVRON USA,
INC.; BHP HAWAII, INC.; BP PLC; BP AMERICA, INC.; MARATHON
PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY;
PHILLIPS 66; and PHILLIPS 66 COMPANY,
Respondents/Defendants-Appellants,

and

BHP GROUP LIMITED and BHP GROUP PLC,
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CAAP-22-0000429; Case No. 1CCV-20-0000380)

NOTICE

(By: Recktenwald, C.J.)

This is to advise the parties that I engage in
educational presentations relating to environmental, energy, and
natural resources issues.

On April 4, 2023, I presented as part of a remote course offered by the National Judicial College, in collaboration with the Environmental Law Institute, entitled "Rising Seas and Litigation: What Judges Need to Know About Warming-Driven Sea Level Rise." Attached are slides that I used in my presentation.

I am also co-chair of the Energy, Environment and Natural Resources Committee of the Conferences of Chief Justices and Chief Court Administrators. In that capacity, I will be presenting in a virtual special event entitled "Environment, Energy and Natural Resource Disputes: The Use of Special Masters in Resolving Complex Litigation" on June 20, 2023.

I enter this notice on the record so that any party who has any concerns about my participation in this matter may object to such participation by Friday, May 19, 2023. The failure to object as set forth herein will be deemed a waiver of any objection.

DATED: Honolulu, Hawai'i, May 9, 2023.

/s/ Mark E. Recktenwald
Chief Justice





ENVIRONMENTAL
LAW • INSTITUTE

RISING SEAS AND LITIGATION: **WHAT JUDGES NEED TO KNOW**

April 4, 2023
Chief Justice Mark Recktenwald
Hawai'i Supreme Court

ROADMAP

- 1 INTRODUCTION
- 2 PROPERTY & LAND USE
- 3 PLANNING & EVALUATION
- 4 MARKETING AND CONSUMER PROTECTION
- 5 OTHER LEGAL ISSUES
- 6 CONCLUSION

1

INTRODUCTION

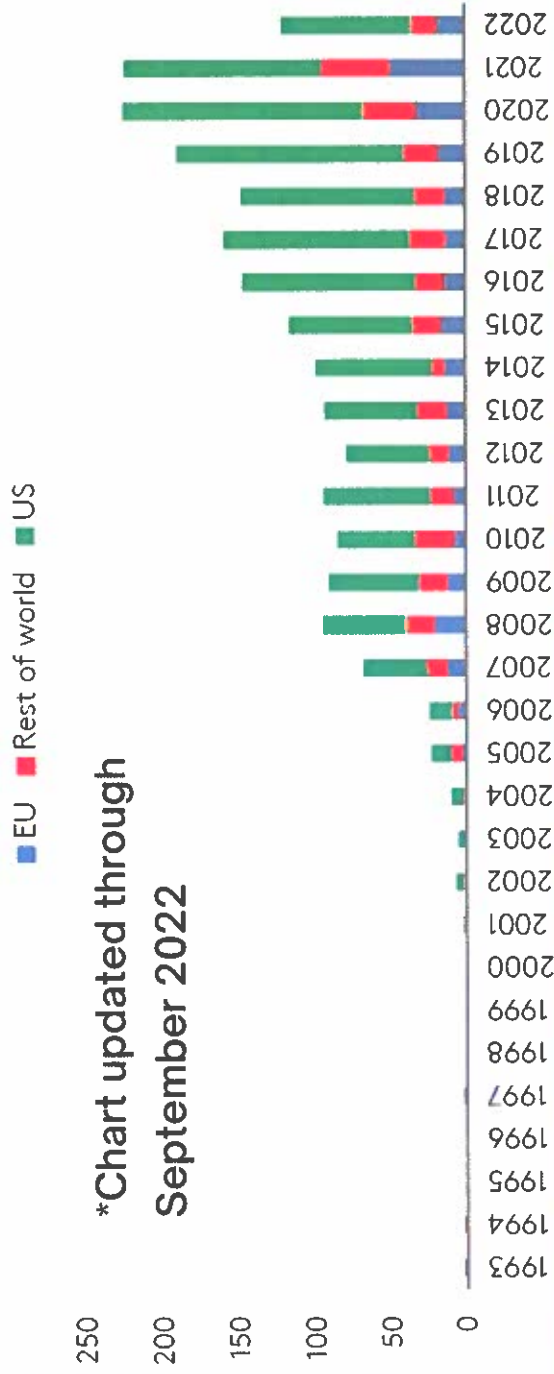
1 CLIMATE SCIENCE AND LAW

CLIMATE LITIGATION TRENDS

2,200+ U.S. and international climate cases (as of 3/2023)

1,565 in the U.S. as of 4/3/2023

Figure 3. No. of cases filed around the world, 1993 to 2022*



Source: Joana Setzer, Harj Narulla, Catherine Higham and Emily Bradeen, *Climate Litigation in Europe 6* (December 2022) (based on data from the Sabin Center and Climate Change Laws of the World databases)

U.S. CLIMATE LITIGATION TRENDS

**The majority of climate cases are filed in federal court*

FEDERAL CASES*

most involve federal statutes like the National Environmental Policy Act and the Endangered Species Act

STATE CASES

many involve state impact assessment laws and utility regulation

1 CLIMATE SCIENCE AND LAW

CLIMATE LITIGATION DATABASE

<http://climatecasechart.com/>

HOME

U.S. LITIGATION

GLOBAL LITIGATION

SEARCH

ABOUT

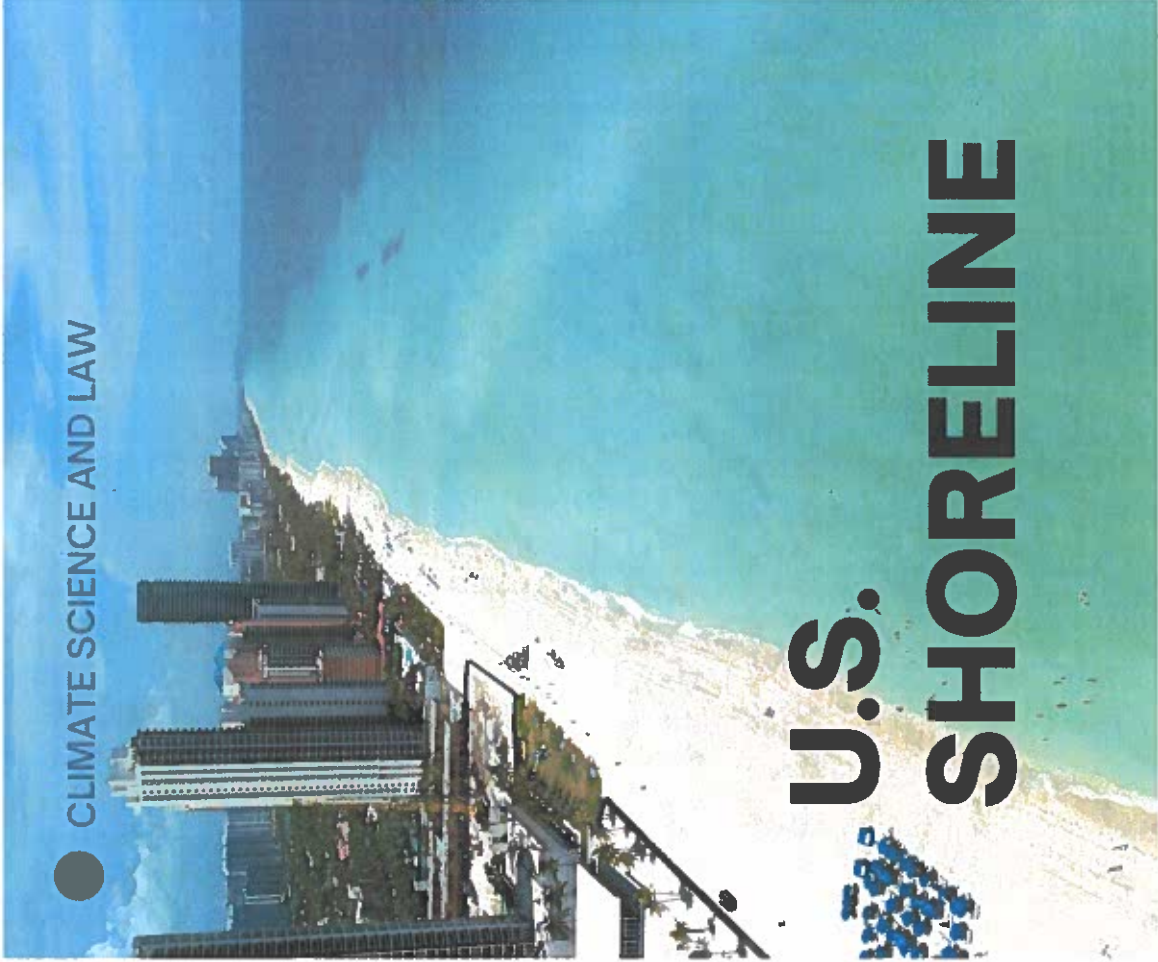
CONTACT

Climate Change Litigation Databases

U.S. CLIMATE CHANGE LITIGATION

GLOBAL CLIMATE CHANGE LITIGATION

This site provides two databases of climate change caselaw. The Global database includes all cases except those in the U.S. Cases in the databases are organized by type of claim and are searchable. For many cases, links are available to decisions, complaints, and other case documents.



U.S. SHORELINE

NOAA's official value for the total length of the U.S. shoreline is

95,471 miles

As there is no reference that designates one specific shoreline as the "legal" shoreline, numbers for the length of the U.S. shoreline can vary depending on how the shoreline is defined.

1 CLIMATE SCIENCE AND LAW

CLIMATE LITIGATION AND SEA LEVEL RISE

Litigation happens before
(**planning and preparing**) and
after (**impacts**)

Can include:

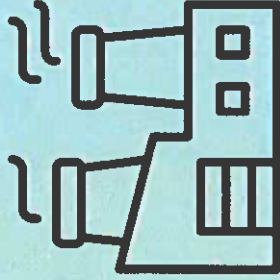
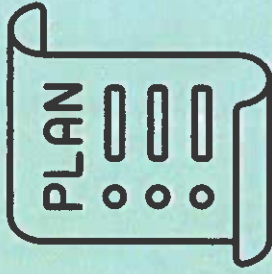
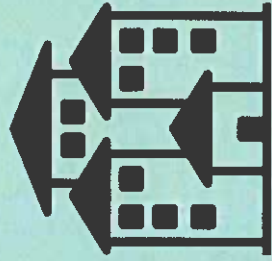
CONSTITUTIONAL

STATUTORY

ADMINISTRATIVE

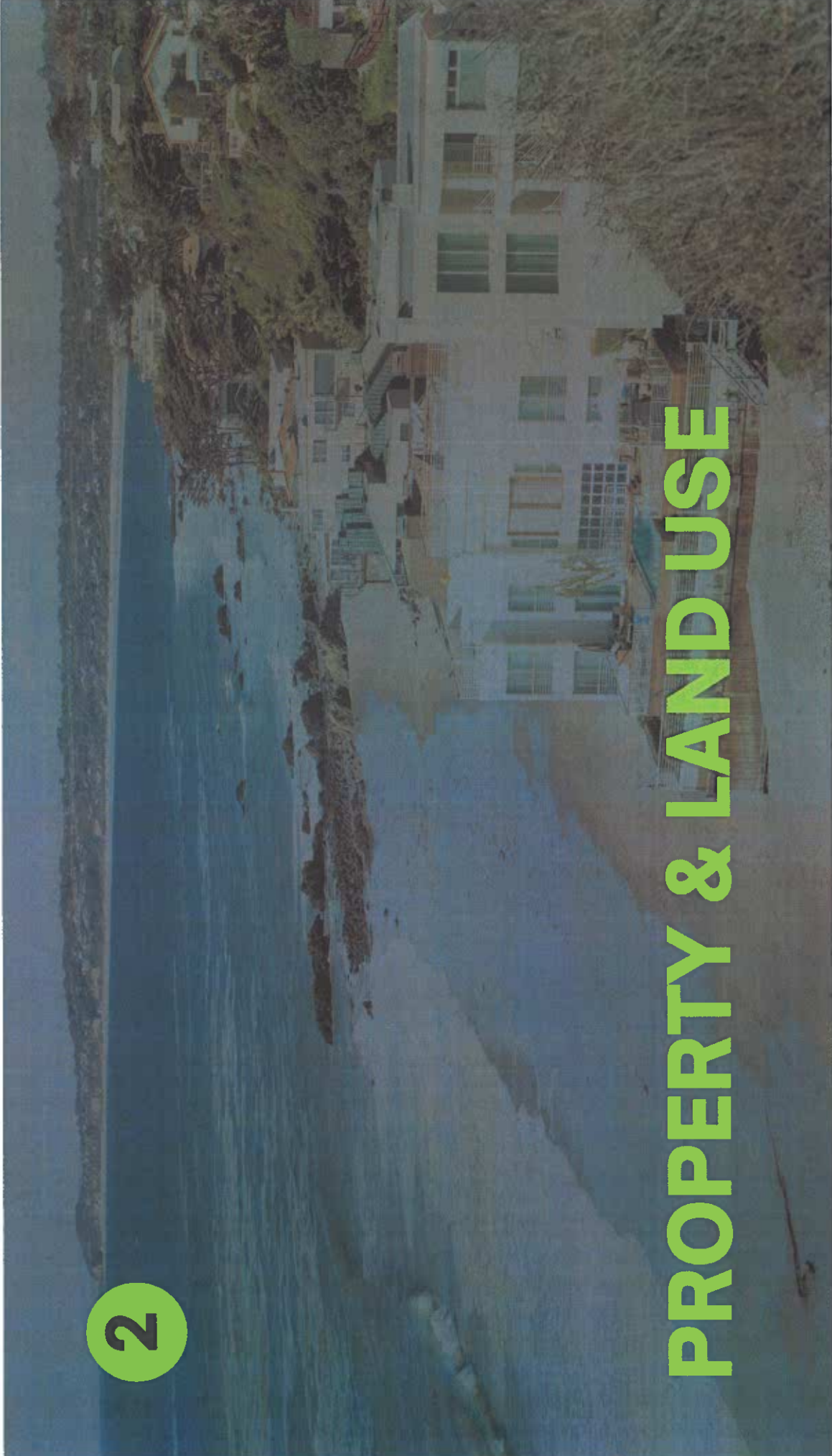
COMMON LAW
(torts, contracts)

LEGAL ISSUES RELATED TO SEA LEVEL RISE



2

PROPERTY & LAND USE



PROPERTY ISSUES

1

BOUNDARIES

How does remapping coastlines change property rights?

2

USE

Can a private property owner build coastal protection (e.g., sea wall or revetment)?

3

TAKING

When is coastal property abandoned and subject to removal?

PROPERTY & LAND USE CASES

LINDSTROM V. CALIFORNIA COASTAL COMISSION

No. D074132 (Cal. Ct. App. 2019)

Upholding 60-62 ft. set back for oceanside bluff residence rather than 40 ft.)

Agreeing with Commission that constructing a bluff or shoreline protective device to protect the new home was not an unconstitutional taking.

WG WOODMERE LLC V. TOWN OF HAMPSTEAD

No. 20-3903 (E.D.N.Y. 2022)

Coastal Conservation District zoning overlay did not result in takings and equal protection claims—including an exactions takings claim in which the plaintiffs asserted that the zoning required them to install flood mitigation improvements solely for the benefit of nearby residents—were not ripe.

PROPERTY VALUES

Increased tidal flooding driven by sea level rise has eroded \$15.9 billion in relative property values between 2005 and 2017.*

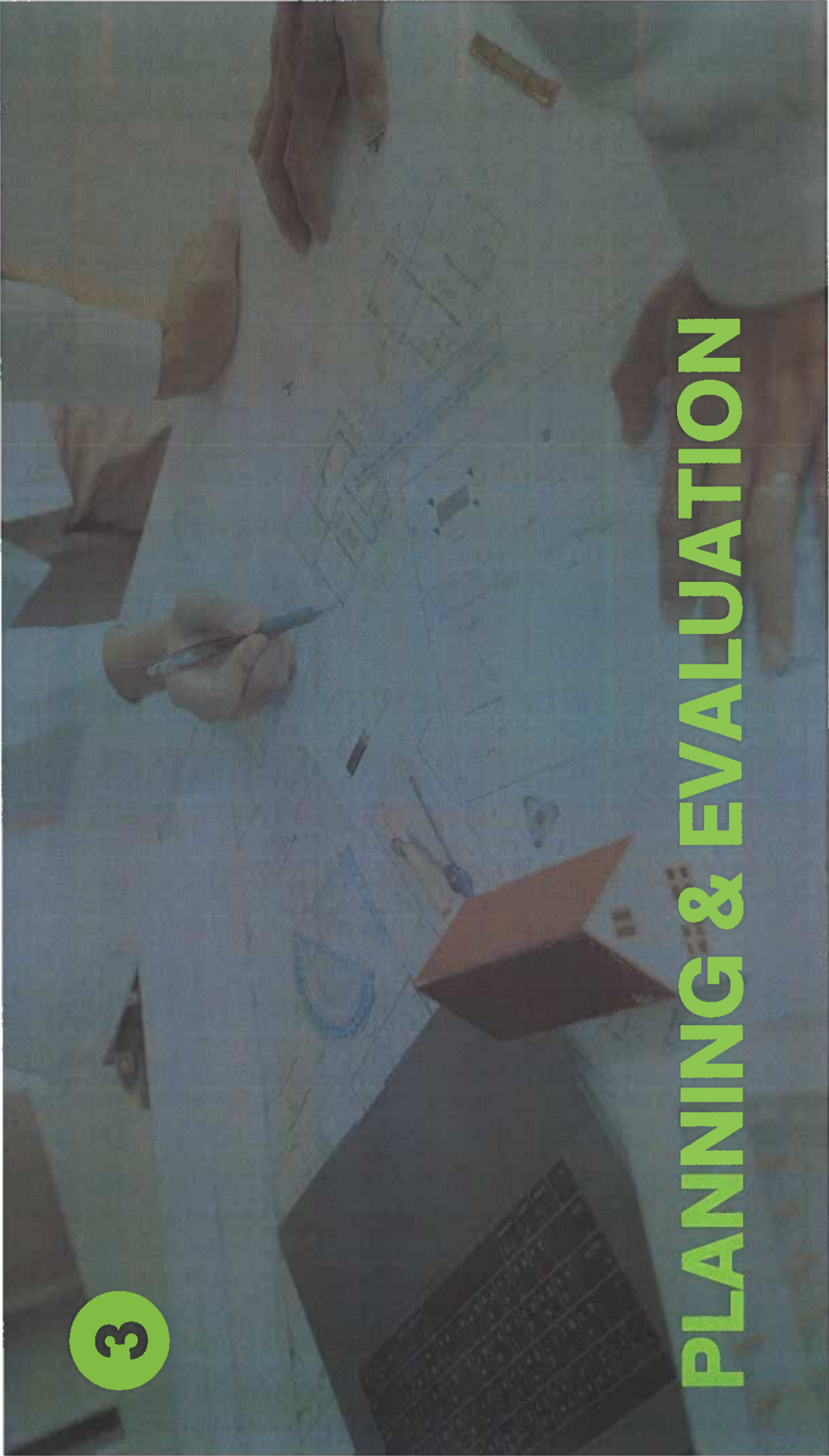
***18 states along the East and Gulf Coasts**



Source: First Street Foundation, [State by State Analysis: Property Value Loss from Sea Level Rise](#) (2019)

3

PLANNING & EVALUATION



PLANNING ISSUES

FAILURE TO ADAPT OR
PREPARE FOR SEA LEVEL RISE

CONSIDERATION OF SEA
LEVEL RISE IN GOVERNMENT
DECISIONMAKING

FAILURE TO ADAPT

Conservation Law Foundation Cases

- Coastal facilities are vulnerable to sea level rise (and other climate impacts), and the companies have not done enough to prepare.
- Rhode Island - discovery
- Connecticut - dismissed (standing)

New Haven Harbor. Photo: Christian Hinkle via Shutterstock



GOVERNMENT DECISIONMAKING CASES

SIERRA CLUB V. CITY OF OXNARD

No. 56-2011-004-0040116 (Cal. Super. Ct. 2012)

Court required the City's final environmental impact report to be augmented "to analyze scientifically expected sea level rise during the life of the ... project" and to consider the effects of the sea level rise on wetlands migration.

FRIENDS OF GRAYS HARBOR V. STATE

No. 84019-3-1 (Wash. Ct. App. 2022).

Court ruled the County's Cumulative Impacts Analysis was not required by law to evaluate and consider sea level rise.

4

MARKETING AND CONSUMER PROTECTION

MARKETING AND CONSUMER PROTECTION

- Cases involve claims by **states/counties/cities against fossil fuel companies**
- **The argument:** corporations engaged in deceptive sales and marketing campaigns that have resulted in damaging climate impacts
- Cases should be remanded to **state courts** (U.S. Solicitor General 3/16/23)

MARYLAND

BALTIMORE V. BP

ANNAPOLIS V. BP

ANNE ARUNDEL
COUNTY V. BP

Annapolis is alleging impacts to:

- inundation of property -- City, historic, private, businesses
 - loss of tax revenue
- infrastructure and utility damage
- increased maintenance costs
- increased planning costs
- damage to cultural assets
- population displacement and/or disruption
- tourism-based impacts and revenue loss

5

OTHER LEGAL ISSUES

5 OTHER LEGAL ISSUES

PUBLIC HEALTH

- **drinking water and saltwater intrusion**
- **vector-borne diseases**
- **emergency preparedness**
- **toxic floodwaters**
- **abandoned structures**



WILDLIFE

- listing species as endangered or threatened
- designation of critical habitat
- other species/habitat impacts



5 OTHER LEGAL ISSUES

OTHER LEGAL ISSUES

INSURANCE

- flood insurance
- flood risk disclosure
- climate litigation coverage

NEGLIGENCE

- professional ethics - developers, real estate agents, lawyers, bankers, architects, engineers, planners
- duty of care

CONCLUSION

KEY TAKEAWAYS

1

**More Impacts
= More Cases**

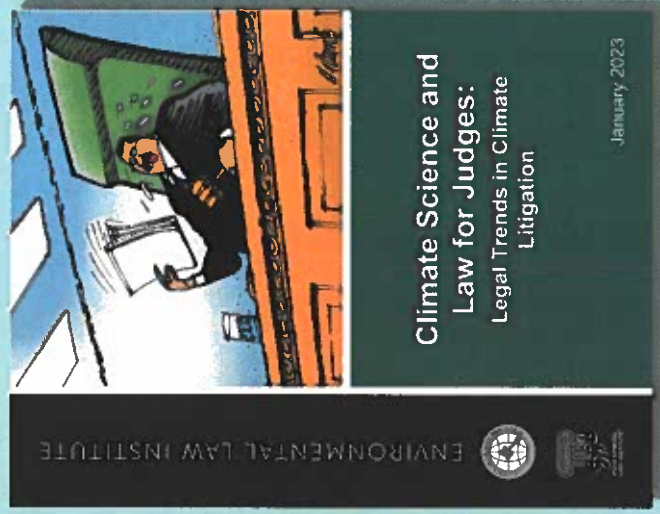
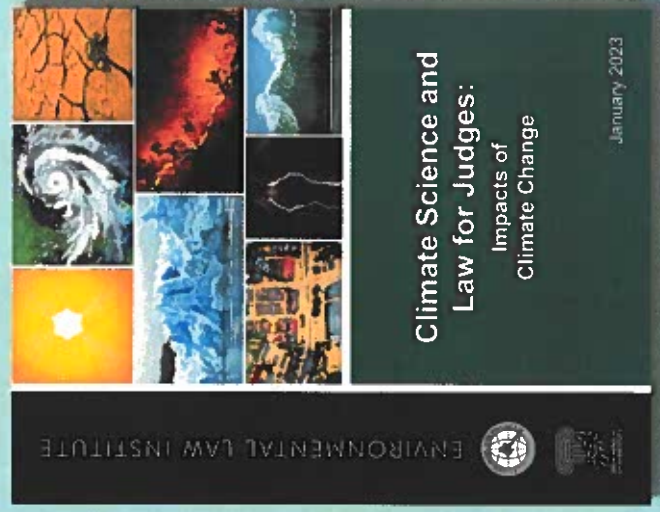
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**Property and
Planning**

3

Long Horizon

CLIMATE JUDICIARY PROJECT RESOURCES

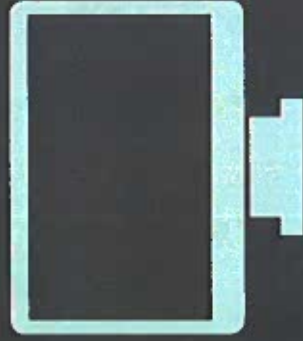


Climate Science and Law for Judges Curriculum

Providing judges and the judiciary with reliable and up-to-date information about the legal and scientific issues in the climate litigation of today and tomorrow.

CONTACT US

Climate Judiciary Project



<https://www.eli.org/climate-judiciary-project>



climatejudiciary@eli.org