

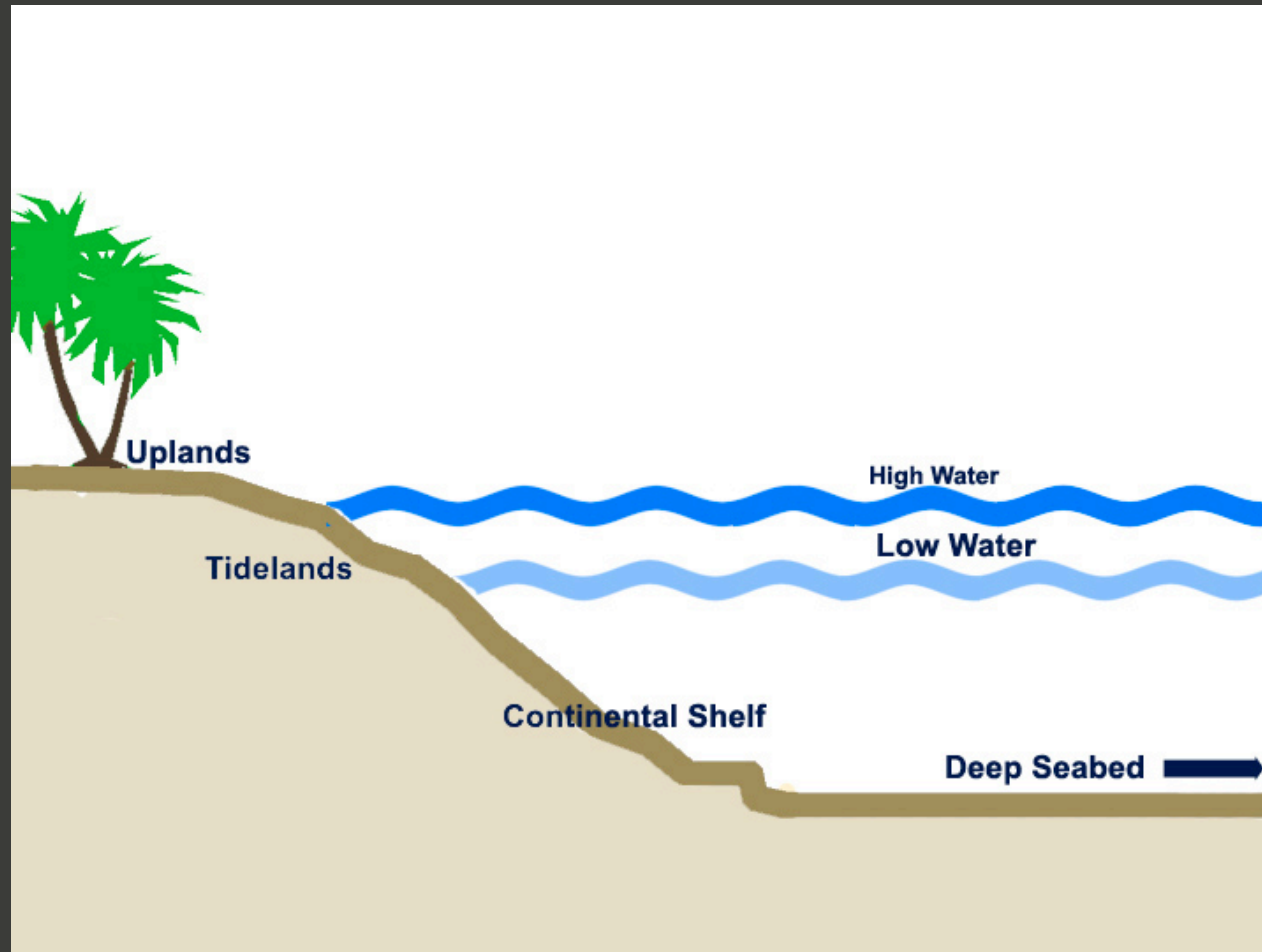
# Impacts of Living Shorelines on Property Rights in Alabama

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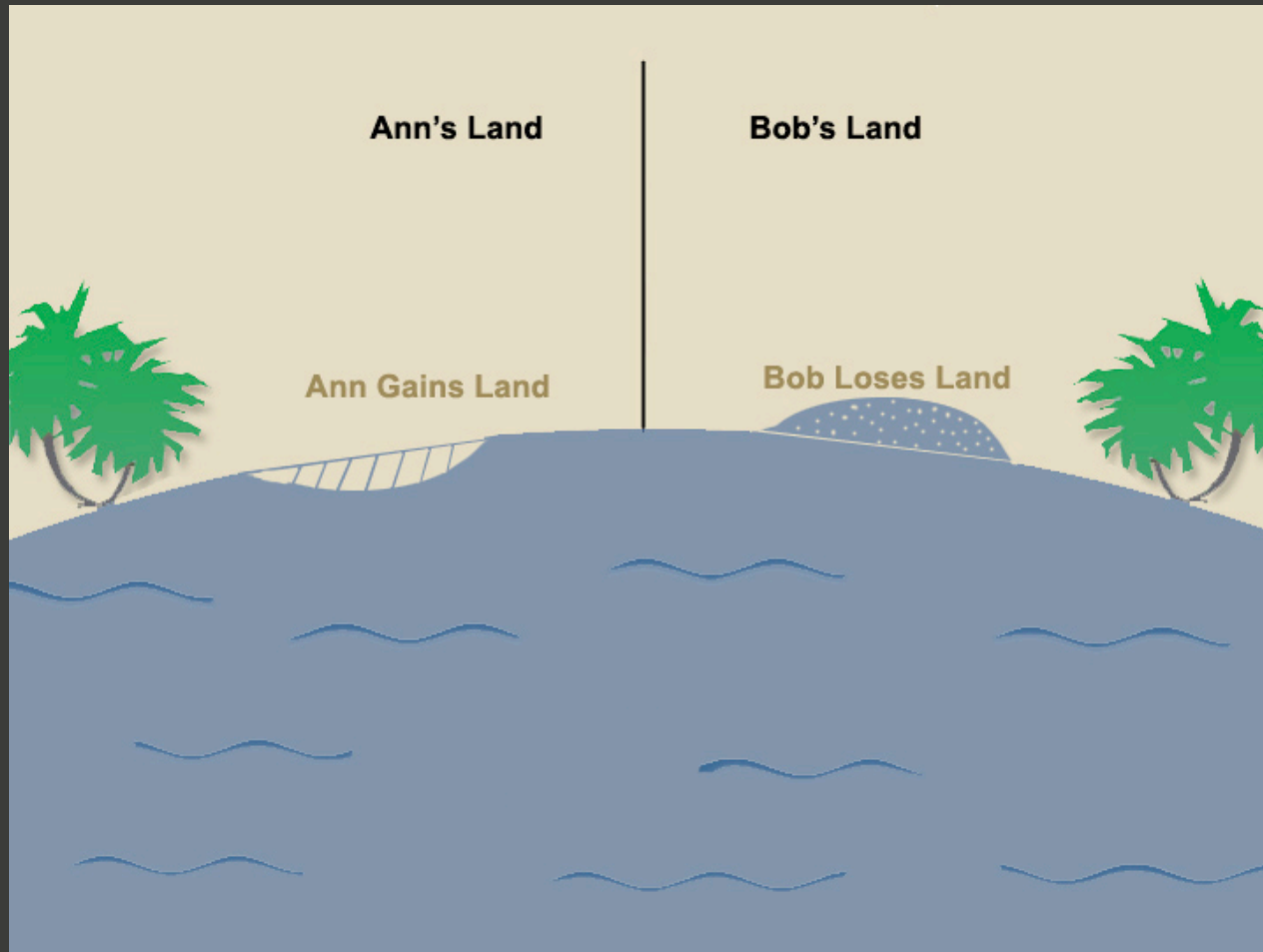
# Private Property vs. State Lands



# State Owned Submerged Lands

- Origins in Public Trust Doctrine
- Mean high tide line marks boundary between private property and state submerged lands in tidal areas.
- Riparian Rights include right to harvest oysters, build dock, and access water.
- Ambulatory Property Lines

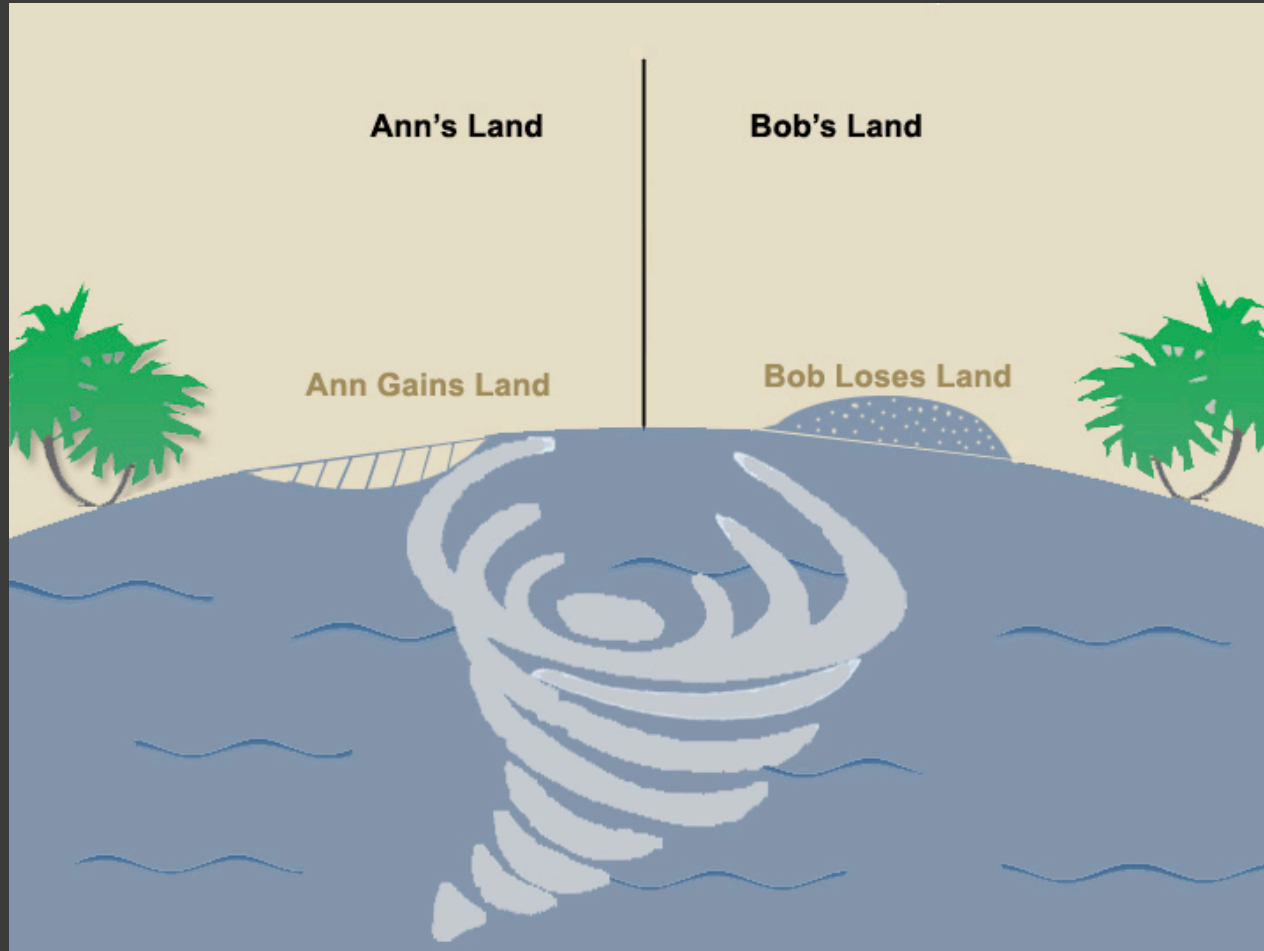
# Naturally Occurring Accretion and Erosion



# Naturally Occurring Accretion and Erosion

- When shoreline property naturally accretes (gaining land) or erodes (losing land), do the property lines change?
- General Rule: Shorelines naturally shift and property boundaries between private and state lands follow the natural shift.
- Ann gains land; Bob loses land (now state owned submerged lands).
- Caveat: Shoreline change must not be caused by man-made activities. It must occur naturally.

# Avulsion



# Avulsion

- The sudden or perceptible loss or addition to land.
  - Ala. Admin. Code r. 220-4-.09
- Key issue: Must happen suddenly.
  - Ex: a storm event or flood
- General Rule: Avulsive event does not change property boundaries.

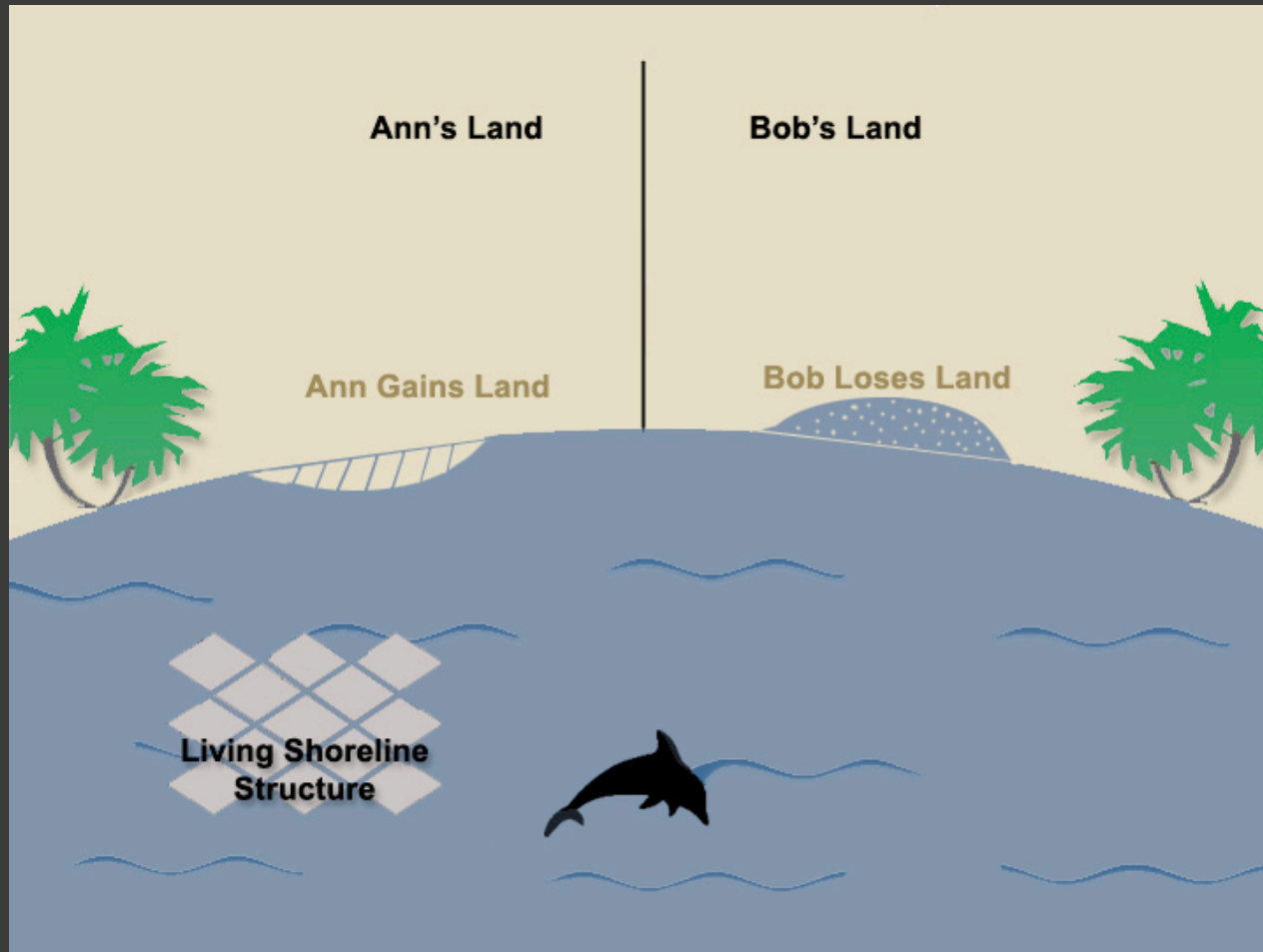
# Bob - Land Lost by Avulsion

- Can be reclaimed but:
  - Bob must prove that avulsion was the cause of his land loss.
  - Must make claim in a timely manner.
  - Needs permit from Ala. DCNR to refill lost land.
- Reclamation activities on state owned submerged lands shall be approved only if avulsion is affirmatively demonstrated.
  - Ala. Admin. Code r. 220-4-.09(4)(b)(5)

# Ann – Gained Land by Avulsion

- New land is still State land.
  - Property boundary remains fixed at the mean high tide line before the avulsion occurred.
- Ann does not own new land but maintains riparian rights.
  - Can cross new land to access the water

# Living Shorelines: Artificial Accretion/Erosion



# Living Shorelines: Artificial Accretion/Erosion

- Living Shorelines: any gains or losses of land caused by a living shoreline structure are considered artificial.
- Artificial erosion defined as: the slow and imperceptible loss or washing away of sand, sediment, or other material caused by man-made projects or operations. (Ala. Admin. Code r. 220-4-.09(3)(a))
- General Rule: A property owner may claim newly accreted land created caused by artificial accretion only if he (nor his predecessors in title) did not cause the artificial accretion.

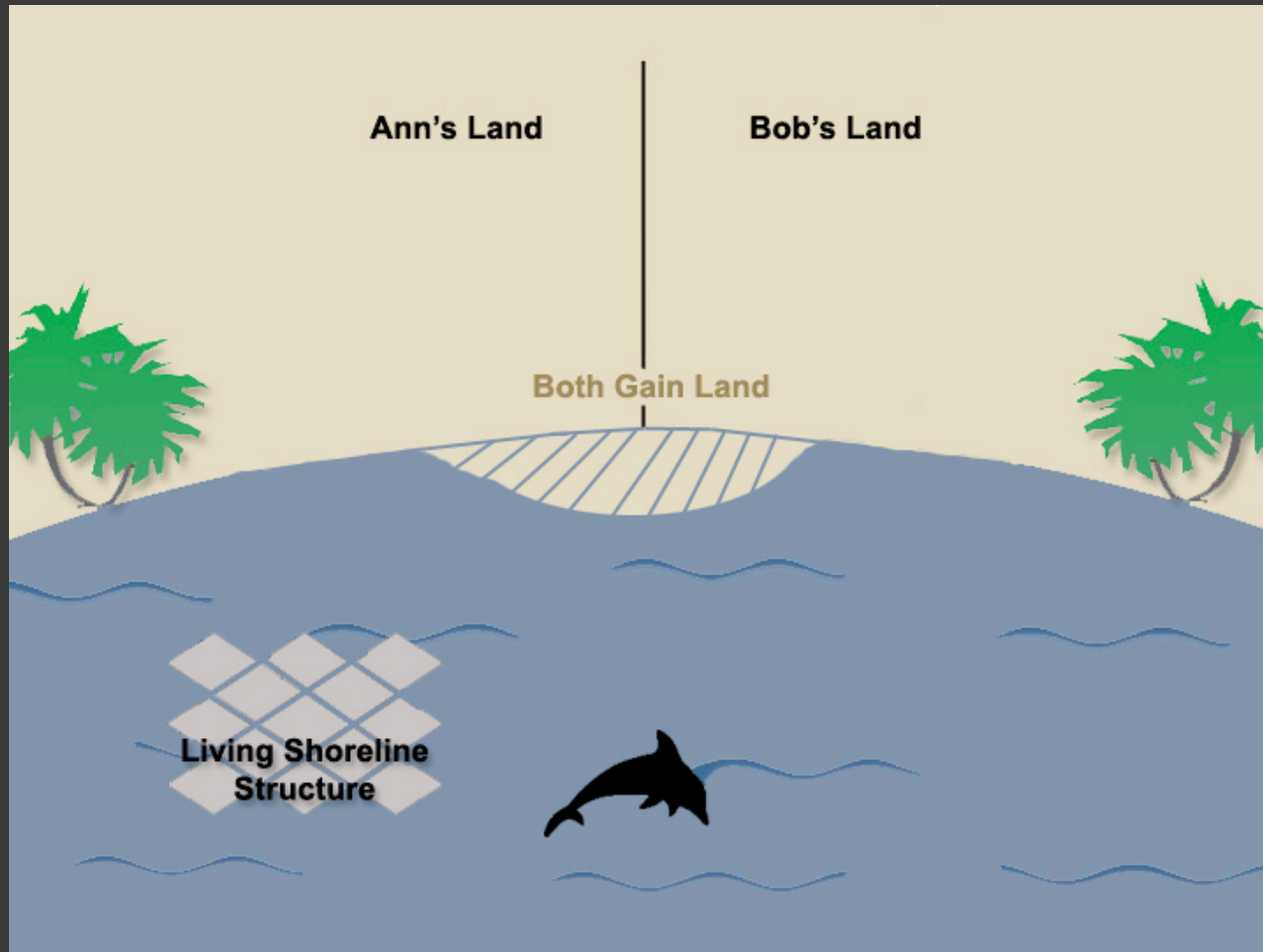
## Ann – Gained Land by Artificial Accretion

- New land belongs to Alabama.
- Ann may not claim the accreted land because Ann installed the living shoreline that caused the artificial accretion.
- Ann retains riparian rights, including right to access water over new land.
  - Ala. Code § 9-15-55

## Bob – Land Lost by Artificial Erosion

- Bob may reclaim lost land because Bob did not cause the artificial erosion. The erosion was caused by Bob's neighbor installing the living shoreline.
- To reclaim land:
  - Bob must prove that Ann's living shoreline caused the erosion of his property.
  - Bob must seek permit for reclamation activities from Ala. DCNR (Ala. Admin. Code r. 220-4-.09).

# Living Shorelines: Artificial Accretion/Erosion



# Living Shorelines: Artificial Accretion

- What if both Ann and her neighbor accrete land because of Ann's living shoreline?
- Bob owns the land in front of his property because Bob did not install the living shoreline.
- Alabama owns the land in front of Ann's property because Ann installed the living shoreline.

# Property Boundary Disputes?

- Cause of accretion or erosion?
  - Question of fact, not law.
- Action to Quiet Title
  - Asks court to decide who owns.
- Statute of Limitations
  - 10 years for actions to reclaim lands (Ala. Code § 6-2-33(2)).
  - 2 years for interference of riparian rights (Ala. Code § 6-2-38).

# Signage for Living Shorelines

- Structures that interfere with navigation require adequate lights and signs.
- Placement of signs is regulated by U.S. Coast Guard and Ala. Marine Police.
- Likely will be determined during the permitting process.

# Liability for Personal Injury

- Is a property owner liable for boat or watercraft accidents or personal injury related to the reef structure?
- General Rule: Property owner not liable for harms of recreational users.
  - Alabama Recreational Use Statute (Ala. Code 35-15-1)
- But: property owner may have liability if structure is not properly marked (see signage discussion).

# Storm Damage to Structures

- Who is responsible for strewn reef components and repair following a storm event?
  - Generally the permit holder for the reef installation is responsible.
  - If components interfere with navigational channel, USACE may remove.

# Questions/Comments?

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