

Protecting Public Trust Resources as Sea Level Rises

The State of California has been protecting its public trust resources ever since it became a state in 1850. Now, as accelerating sea level rise threatens the coastline, the state must begin to anticipate changes to the public trust. In most locations, sea level rise is expected to cause the public trust boundary to move inland over time. This poses new challenges to the protection of public trust resources.

Understanding the Public Trust Doctrine

What is it?

The modern Public Trust Doctrine refers to the principle that the government holds sovereign title to certain lands and must protect them for public use. It is rooted in English common law, under which the sovereign held in trust all navigable waterways and submerged lands for public commerce, navigation, and fishing. The State of California acquired sovereign ownership of all tidelands, submerged lands and beds of natural, navigable waterways upon its admission to the United States in 1850. While private parties can own coastal upland property, the state continues to own most tidelands, submerged lands, and waters in trust for the public. The Public Trust Doctrine is not static but is continuously evolving to reflect the needs and values of Californians. Presently, uses that may be considered consistent with the Public Trust on these Public Trust lands include maritime commerce, navigation, fishing, boating, water-oriented recreation, public access, and environmental preservation and restoration. On all sovereign land, the Public Trust Doctrine prioritizes public uses and interests over private ones.¹



Photo Credit: Ellen Finch

Where is it?

In coastal areas, the landward location and extent of the state's Public Trust lands are generally defined by reference to the ordinary high water mark,² as measured by the mean high tide line.³ This boundary is ambulatory, except where there has been fill or artificial accretion, court judgment, a boundary agreement with the state, or in certain cases where the land title derived from a Mexican land grant. In areas where there has been fill or artificial accretion, the ordinary high water mark (and the state's public trust ownership) is generally defined as the location of the mean high tide line just prior to the fill or artificial influence. It is important to note that such boundaries may not be readily apparent from present day site inspections. It is expected that in the majority of locations sea level rise will cause the Public Trust boundary to move inland over time.

Who protects it?

The responsibility for protecting the Public Trust on California's outer coast falls upon the California Legislature, California State Lands Commission (CSLC), California Coastal Commission (CCC), other state agencies with relevant jurisdiction or property interests, and local governments. In some cases, the California Legislature has transferred certain sovereign lands in trust to local jurisdictions, including cities, counties, and harbor districts. These lands, known as "granted lands," are held by 85 entities ("local trustees") and include the major ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka.

Agency Backgrounds

California State Lands Commission (CSLC)



The CSLC is a land and resource management agency, whose properties include tide and submerged lands, state school lands, beds of natural, navigable waterways, and resources contained within them. The mission of the CSLC is to provide the people of California with effective stewardship of the lands, waterways, and resources entrusted to its care through preservation, restoration, enhancement, responsible economic development, and the promotion of public access.

Through its actions, CSLC balances use of the state’s resources, maximizing public access to Public Trust lands while also advancing responsible business and commerce. The CSLC has oversight of all Public Trust lands, and many local governments are trustees of granted tidelands. CSLC staff monitors the granted lands to ensure compliance with the terms of the statutory grants, the California Constitution, and the Public Trust Doctrine.

California Coastal Commission (CCC)



The California Coastal Act of 1976 established the CCC to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. The CCC reviews applications for development on tidelands and must consider public interests in trust resources such as coastal access, habitats, and scenic values.⁴ The CCC, in partnership with coastal counties and cities, also plans and regulates land use and development in the California coastal zone (which excludes San Francisco Bay), including in areas adjacent to Public Trust lands where development could affect those lands. In addition, the CCC must certify Port Master Plans (PMPs) and updates as consistent with the policies of the Coastal Act to allow ports the authority to issue permits for projects within those granted lands.

Local governments

The Coastal Act requires that all coastal counties and cities prepare Local Coastal Programs (LCPs) consisting of a land use plan, zoning ordinances, and other measures to implement the statewide policies and development permit requirements of the Act in the coastal zone at the local level. Once an LCP is submitted and approved by the CCC, most Coastal Act permit authority is delegated to the local government. However, the CCC retains permitting authority for development on tidelands.

Roles and Responsibilities

The Public Trust Doctrine gives the state the authority to manage sovereign tidelands and imposes a duty to protect the public’s interests in those tidelands.⁵ The Legislature has broad authority to implement the Public Trust and to delegate authority over sovereign land to state agencies or local governments. The CSLC has jurisdiction over ungranted tidelands owned by the state, as well as residual jurisdiction over sovereign land granted to local trustees.⁶ The Legislature has also granted to the CCC the authority to regulate development within California’s coastal zone, including development on sovereign tidelands or that may affect tidelands.⁷ In cases where development is proposed on sovereign land, the applicant will need to obtain a lease or other appropriate authorization from the CSLC or the appropriate legislative grantee in addition to an appropriate development approval from the CCC.

Local governments and local trustees have a responsibility to protect Public Trust resources associated with tidelands, and they must carry out this responsibility when drafting LCPs and PMPs and considering coastal development permit applications. Although the CCC retains the authority to issue coastal development permits for development located on tidelands,⁸ local governments are obligated to have policies that regulate development on adjacent uplands in a manner that protects tidelands.⁹ Local governments also play a critical role in protecting uplands that will likely become tidelands in the future due to sea level rise.



Photo Credit: John Charles Bruckman

Looking to the Future

Sea level rise increases the risk of flooding, coastal erosion, and saltwater intrusion into freshwater supplies, which have the potential to threaten many of the resources that are integral to the California coast, including coastal development, coastal access and recreation, habitats, coastal agricultural lands, water quality and supply,

cultural resources, community character, and scenic quality. Because the potential impacts of sea level rise fall directly within the CCC's (and coastal zone local governments') planning and regulatory responsibilities under the Coastal Act, the agency developed and recently updated the science in its [Sea Level Rise Policy Guidance document](#). The interpretive guidelines are intended to assist local governments and Coastal Development Permit applicants in preparing for sea level rise within the context of the Coastal Act. The CSLC developed a [sea level rise program](#) to incorporate sea level rise and climate change considerations into all of the agency's activities and decision making to stay at the forefront of efforts to mitigate those impacts on Public Trust lands. Through the program, CSLC participates in interagency efforts to develop sea level rise policy and guidance, integrates sea level rise information into lease application review, communicates with lessees about sea level rise risks and adaptation approaches, and has developed [mapping resources](#)¹⁰ to assist sea level rise planning. CSLC is also reviewing sea level rise vulnerability assessments from granted lands jurisdictions that generate annual revenues over \$250,000, pursuant to [AB 691](#).¹¹ They will use these assessments for a cumulative study evaluating risks to granted Public Trust lands and resources and preferred adaptation strategies and develop recommendations to the state to support local adaptation implementation efforts.

Accelerating sea level rise will likely lead to more disputes regarding the location of property boundaries along the shoreline, as lands that were previously landward of the mean high tide line become subject to the state's ownership and protections of the public trust. These disputes, in turn, will affect determinations regarding what kinds of structures and uses may be allowed or maintained in areas that, because of sea level rise, are already seaward of the mean high tide line, are likely to become seaward of the mean high tide line in the future, or would be seaward of the mean high tide line if it were not for artificial alterations to the shoreline. Adaptation and mitigation measures integrated into lease and permit conditions can help protect public trust resources as conditions change in the future. CSLC and CCC will continue to collaborate and coordinate in addressing sea level rise, shoreline change, and new challenges to the management of public trust resources.



Photo credit: Kristen Fletcher

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¹ Center for Ocean Solutions. 2017. The Public Trust Doctrine: A Guiding Principle for Governing California's Coast Under Climate Change. Stanford Woods Institute for the Environment, Stanford University, California.

² Civil Code § 670.

³ *Borax Consolidated v. City of Los Angeles* (1935) 210 U.S. 10.

⁴ Cal. Pub. Res. Code § 30251-53.

⁵ *Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419.

⁶ Pub. Res. Code §§ 6301, 6305, 6009; *State of Cal. ex rel. State Lands Com. v. County of Orange* (1982) 134 Cal.App.3d 20.

⁷ Pub. Res. Code §§ 30000 et seq., 30519(b).

⁸ Pub. Res. Code § 30519(b).

⁹ E.g., Pub. Res. Code §§ 30230, 30231, 30232, 30235, 30240, 30253.

¹⁰ California State Lands Commission Sea-Level Rise Viewer [Outlook Web App](#)

¹¹ Assembly Bill 691 (Muratsuchi), Chapter 592, Statutes of 2013. http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0651-0700/ab_691_bill_20131005_chaptered.pdf