



The Public Trust Doctrine & Sea Level Rise: Coordinated Planning Between the California State Lands Commission and the Coastal Commission

June 14, 2023



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Road Map to Public Trust

- The Basics of the Public Trust Doctrine
 - What is it?
 - Interpretations of the Public Trust in California
 - Boundaries & Related Terminology
- Public Trust and Sea Level Rise
 - California State Lands Commission
 - Coastal Commission
 - Coordination Work Between Both Agencies
- Resources and Products
 - Public Trust Guiding Principles & Action Plan



The principle that certain lands are held in trust for public use or benefit, and the government must protect and manage these lands for the public's use and enjoyment.



PC: Karen Vu, Alex Braud

Interpreting the Public Trust Doctrine in California

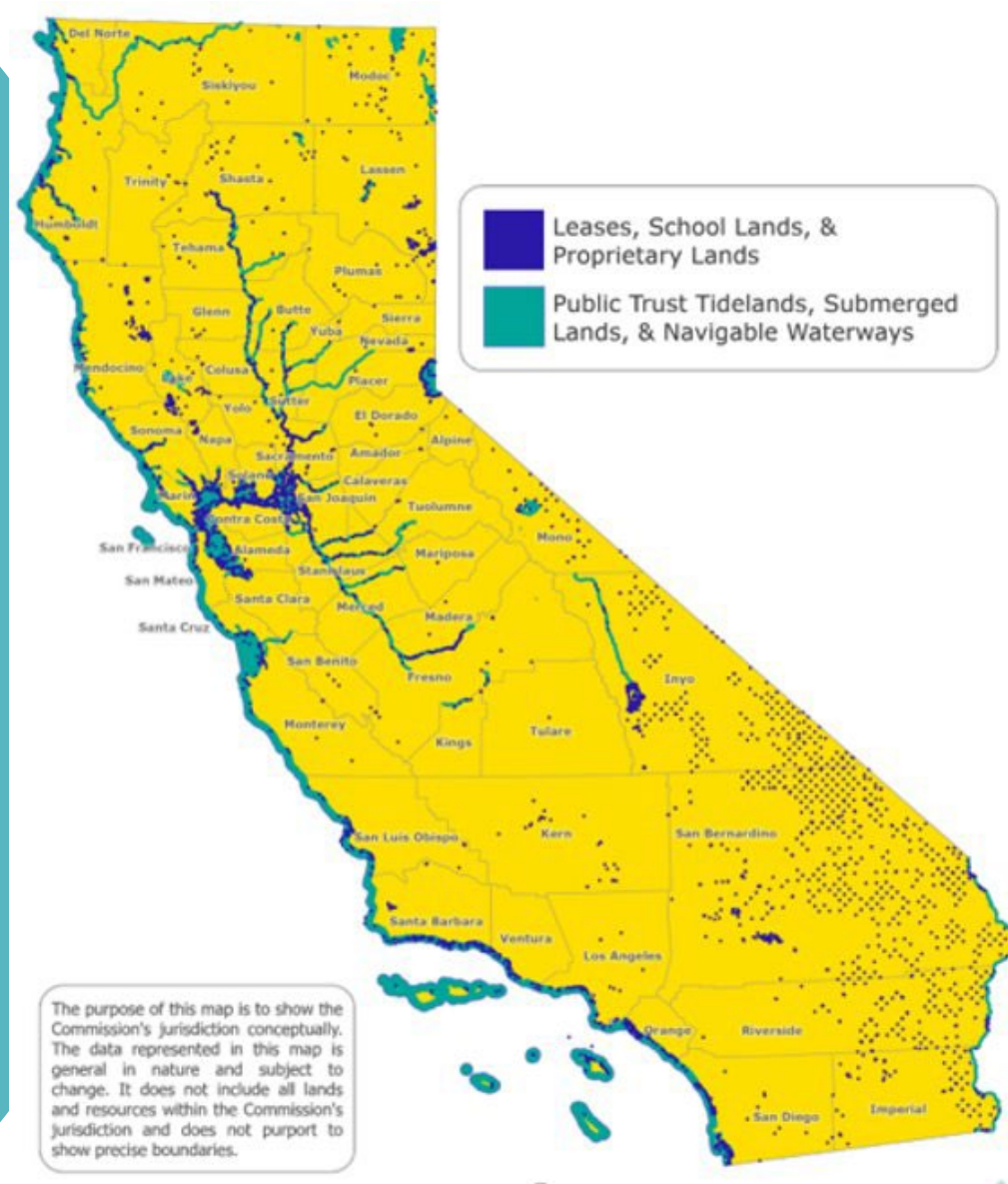
- California case law firmly establishes that the public trust doctrine grants the state the authority to manage tidelands, submerged lands, and beds of navigable waterways at the time of statehood (a.k.a. public trust lands), and an obligation to protect the public's interest in those lands
 - Requires the state to hold and protect the lands for the public
 - Requires the state to consider the public's interest when making decisions that affect these lands
 - Generally, prohibits the state from disposing of the public's interest in these lands

Interpreting the Public Trust Doctrine in California

- Uses consistent with the public trust include navigation, commerce, fishing, recreation and tourism, conservation, and public access
 - Must be considered water-related or water-dependent
 - Must be a benefit to all the public
 - Facilities that support these uses—such as boat docks, ports and harbors, hotels, restaurants, roads, parks, wildlife refuges, and utilities—may also be located on public trust lands in appropriate locations



Where the Public Trust Applies

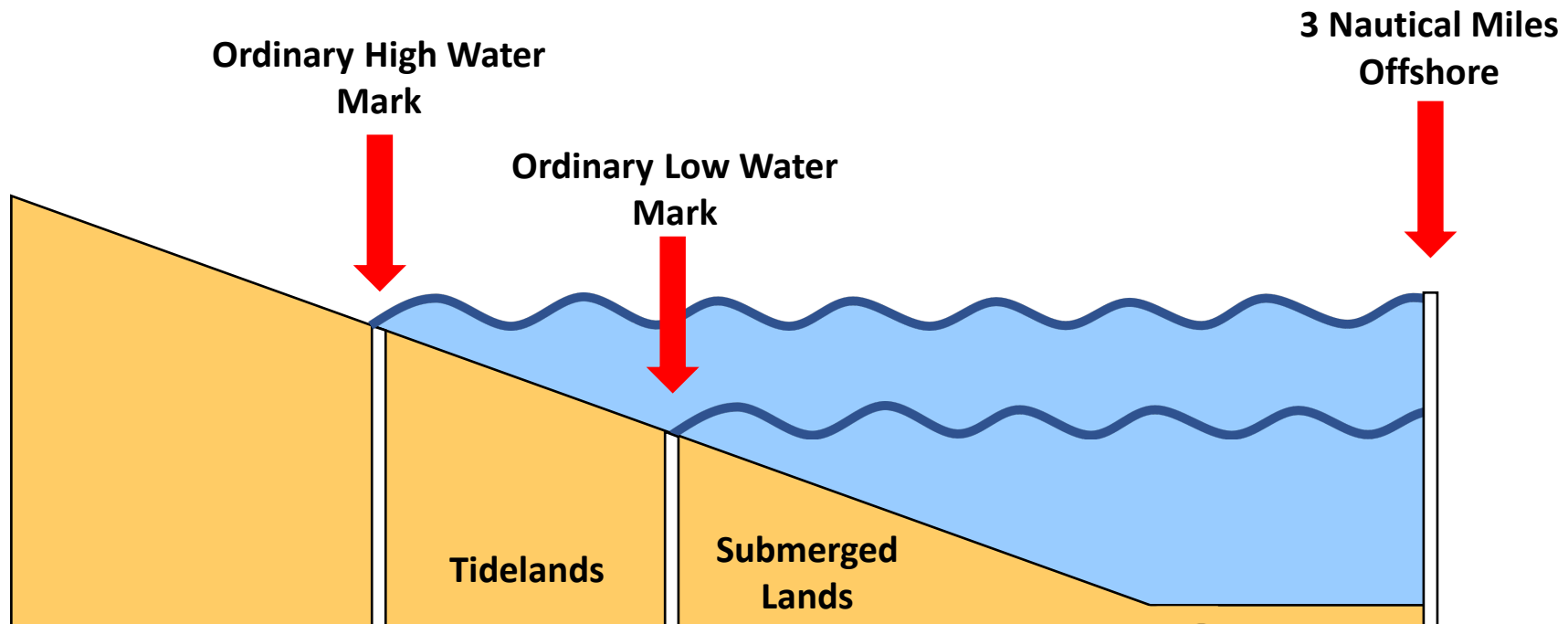


California's State Lands

- Tidelands
- Submerged lands below Pacific Ocean out to 3 miles offshore
- Rivers, streams, lakes, bays, estuaries that were navigable at the time of statehood
- Held “in trust” for the benefit of the public

Boundaries & Definitions

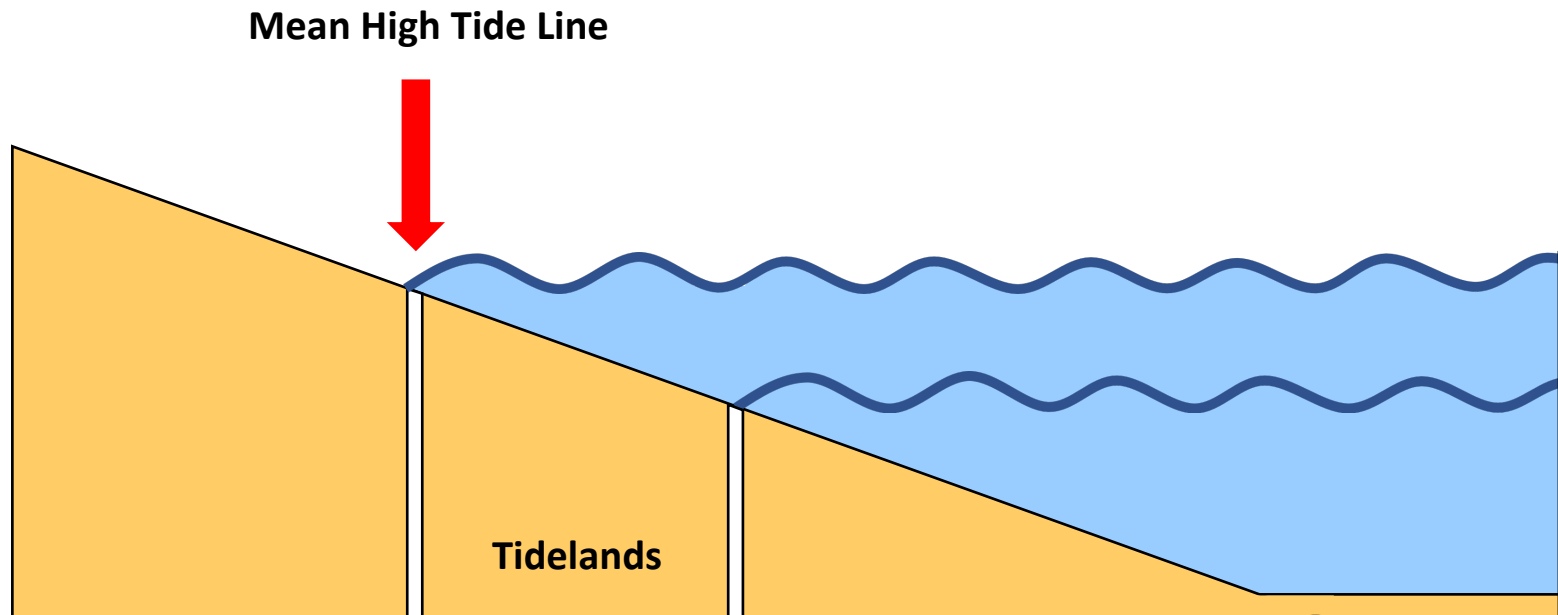
- **Tidelands:** situated between the ordinary high water and ordinary low water mark of tidal waters
- **Submerged Lands:** situated between the ordinary low water mark out to the state-federal fixed boundary three miles offshore



Boundaries & Definitions

Ordinary High Water Mark/Line = Mean High Tide Line (MHTL)

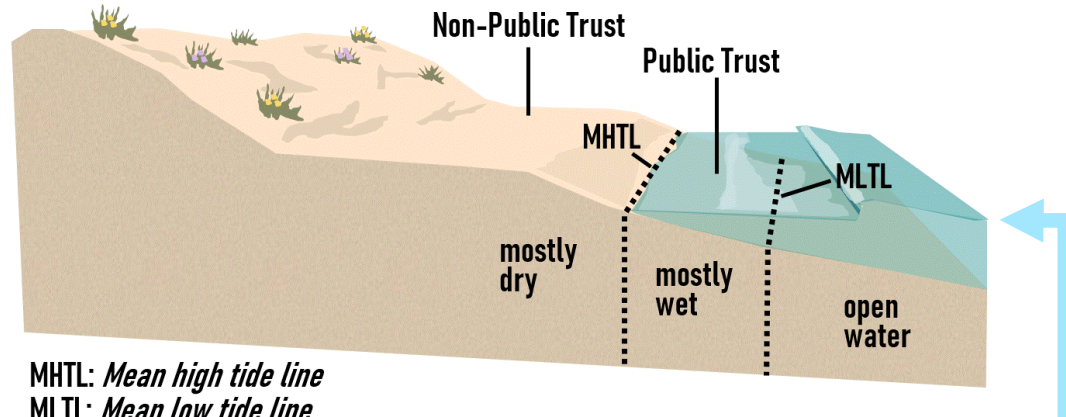
- The line on a map which represents the intersection of the land with the water surface at the elevation of mean high tide



Ordinary High Water Mark/Line = Mean High Tide Line (MHTL) = Ambulatory Boundary



SUMMER BEACH

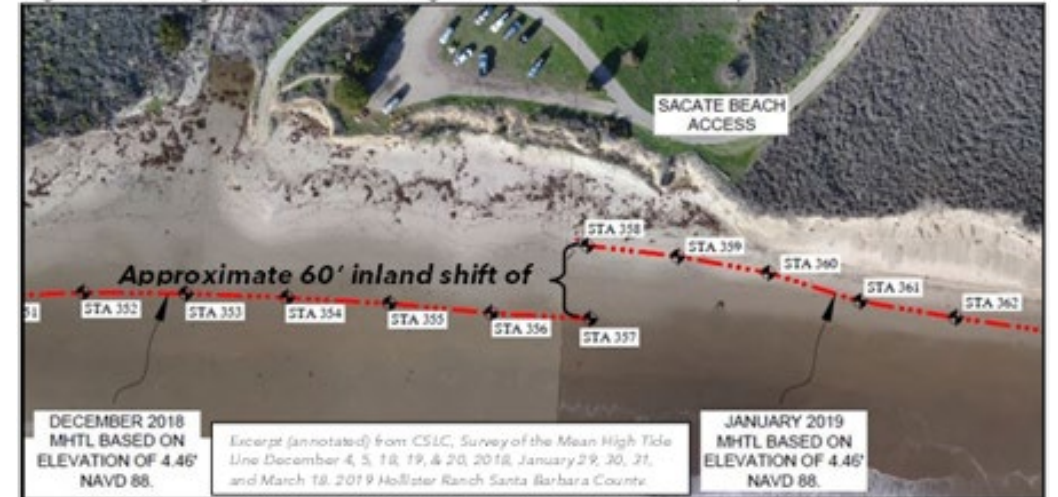


MHTL: *Mean high tide line*
MLTL: *Mean low tide line*

Created by Jeremy Smith

Notice: the mean high tide elevation does not change in this graphic; the shape of the shoreline does!

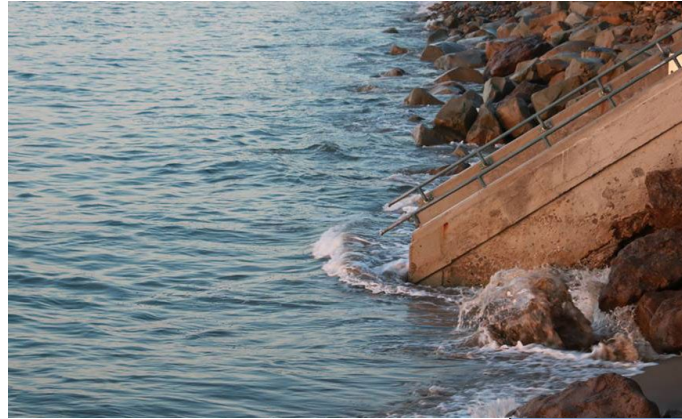
Figure 1. Shifting Sand and Mean High Tide Line Location Example: Hollister Ranch.



Easy enough, right? Not exactly...

There are many other challenges including:

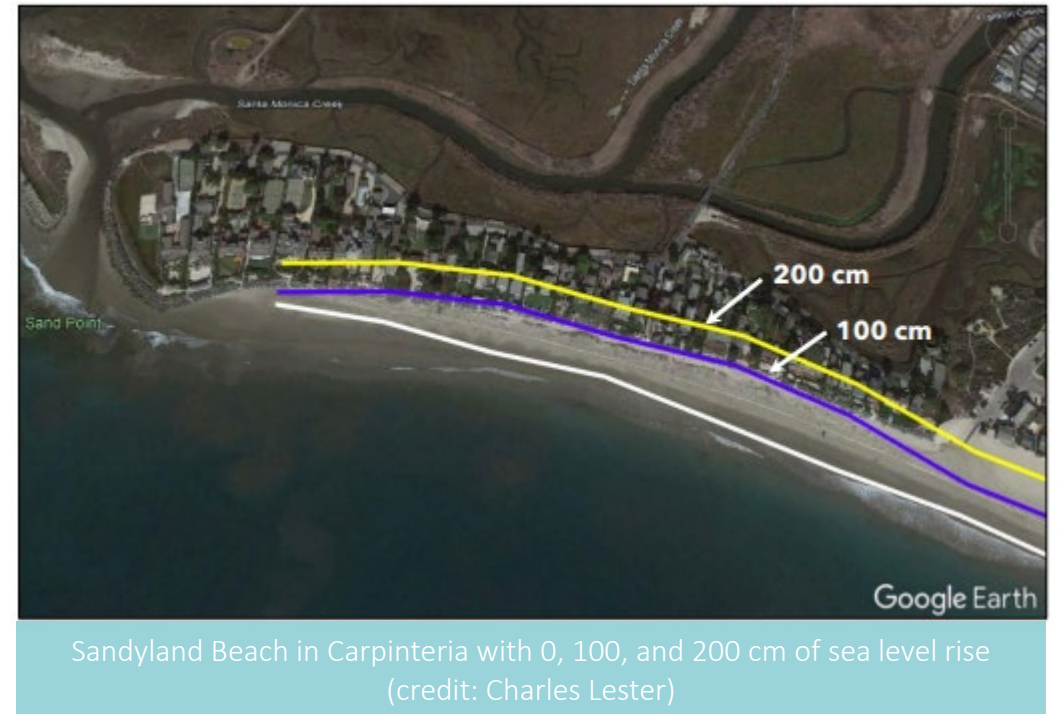
- Upland development impeding the natural tidal fluctuations and the location of the MHTL
- Surveys of the MHTL require expertise and considerable costs
- Not enough tidal gauges to measure the entire coast (there are 12 total)
- NOAA tidal datums are historic averages, not current tidal elevations



And now, sea level rise complicates things even more!

Sea level rise is:

- Increasing tidal elevations
- Causing the MHTL to migrate inland
- Eroding and flooding tidelands, leading to a loss of public land and public uses
- Increasing demand for shoreline protection and adaptation projects



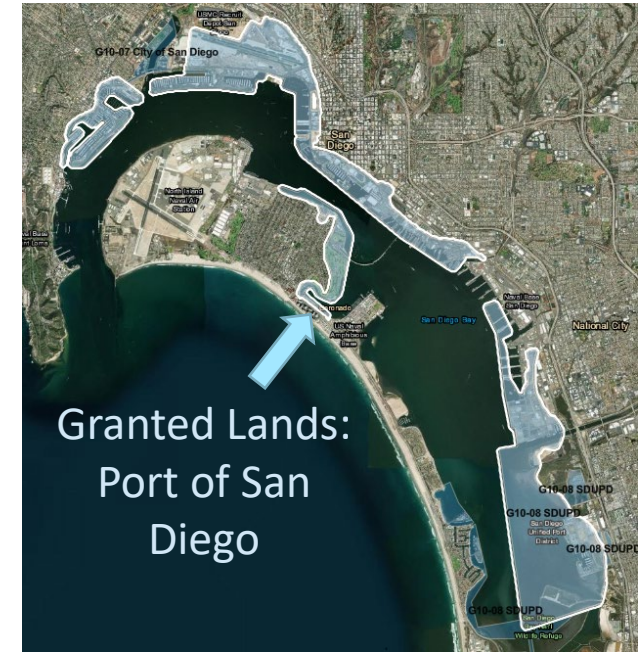
Role of the California State Lands Commission (CSLC)

- Land manager for all state tidelands, submerged lands, beds of navigable waterways, and school lands
- Recognized authority for determining the location of public trust boundary
- Issues leases for use of state lands determined to be consistent with the public trust and the state's best interests
- Ensures public access and balances public uses
- Conducts environmental reviews and sea level rise analyses



Granted Lands

- Public trust lands that were granted by the Legislature to over 70 cities, counties, and port districts to manage on the State's behalf
- The specific uses permitted in each grant varies, but may include the construction of ports, harbors, airports, visitor serving recreational uses, and the creation or protection of open space.
- These lands are still held in trust for the public and must be managed in accordance with the Public Trust Doctrine
- The trustees (i.e., cities, counties, port districts) issue leases for use of granted lands
- State Lands Commission retains broad oversight authority over these granted lands.



Role of the California Coastal Commission (CCC)

- Regulates development in the coastal zone including over public tidelands
- Must consider the effects that proposed projects would have on public trust resources
- Certifies Port Master Plans (PMPs) to allow ports the authority to issue permits within granted lands



Public Trust and Local Coastal Programs (LCPs)

- Recently certified LCPs include policies that acknowledge the migratory nature of the public trust boundary as a result of sea level rise, including:
 - Monitoring and mitigating for shoreline protective devices that impact migration of public trust lands
 - Removal of structures that may become located on public trust lands
 - Use rolling easements to limit or restrict development within a certain distance from the current MHTL so there is room for it to migrate landward
 - Require acknowledgement that leases will be needed for structures that may become located on public trust lands

Public Trust and Coastal Development Permits (CDPs)

- CDP findings typically address encroachment of development onto public trust lands
- CDP special conditions typically include:
 - Risk disclosures for property owners
 - Removal conditions and leasing-related disclosures or requirements
 - Monitoring conditions and MHTL survey requirements

CCC & CSLC Together



- CCC and CSLC's planning, permitting, and leasing decisions converge at the MHTL
- Sea level rise is causing the public trust boundary to migrate landward, which raises a variety of questions and challenges
- CCC and CSLC have entered into an MOU to facilitate interagency communication, education, and coordination on permitting review and decisions

Public Trust Guiding Principles and Action Plan

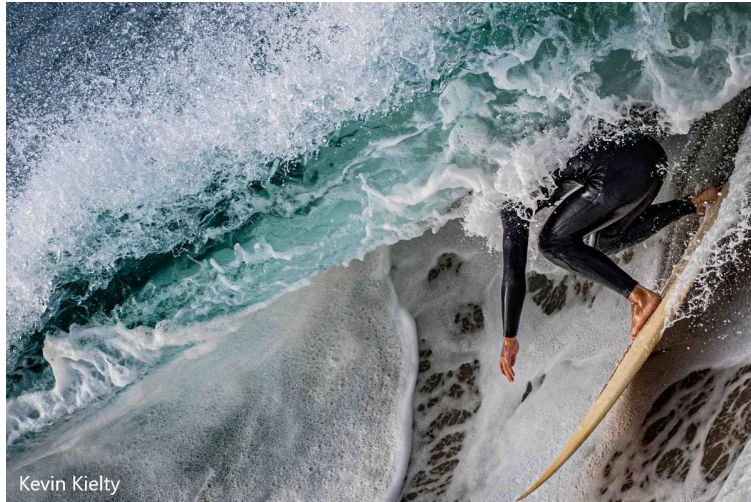
Carrying out the California Coastal Act
and Public Trust Doctrine in an era of
climate change and sea level rise



Adopted May 10, 2023
California Coastal Commission

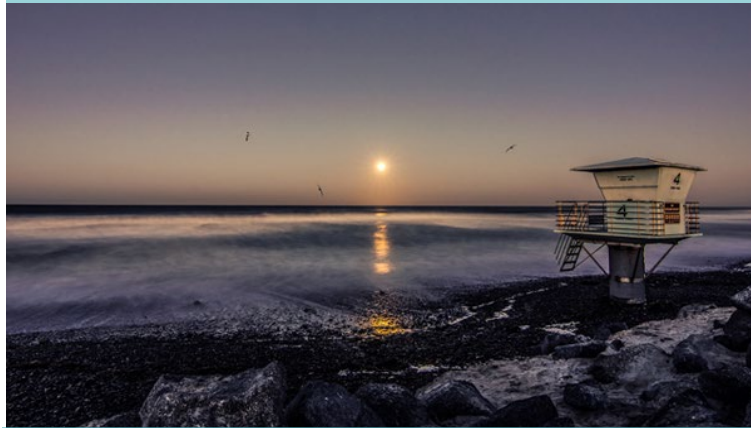
Public Trust Guiding Principles & Action Plan

- Draft developed in coordination with staff from the California State Lands Commission
- Public comment and tribal coordination incorporated into guidance
- Adopted at the May 2023 hearing



Kevin Kielty

45 Barrel, Newport Beach | Kevin Kielty
CA Ocean & Coastal Amateur Photography Contest, 20122



Winter Beach, Torrey Pines | Jeff Ries
CA Ocean & Coastal Amateur Photography Contest, 2013

Guiding Principles

- Climate change and sea level rise are moving the public trust landward.
- Development decisions and sea level rise will impact public trust lands, uses, and resources.
- Coastal Act decisions must be guided by the anticipated impacts of development on current and future public tidelands.
- Public trust principles support the requirement that Coastal Act decisions advance environmental justice and access for all.

Action Plan



For Forever, Davenport | Ethan Kone
CA Ocean & Coastal Amateur Photography Contest, 2019

- Conduct coordinated outreach, engagement, and public education on the purpose and role of the public trust doctrine, including through meaningful engagement with environmental justice communities.
- Consult and coordinate with California Native American Tribes on public trust issues.
- Consider updates to Coastal Commission regulations relating to mitigation of the adverse effects of sea level rise on public trust lands, resources and uses.
- Identify development and decisions, such as boundary line agreements, that result in “coastal squeeze” leading to the loss of public trust lands.

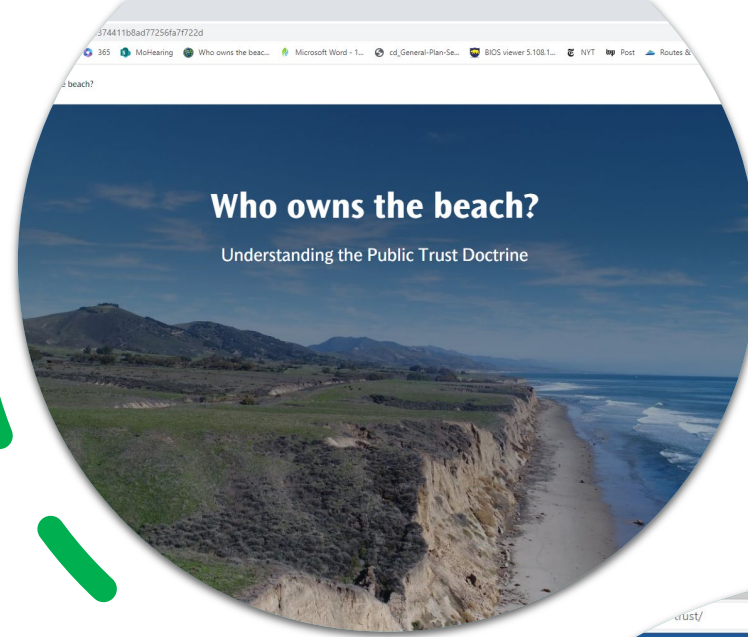
How to Use the Guiding Principles & Action Plan

- The Guiding Principles are guidance for Coastal Commission and local government decisions that may impact public trust resources, uses, or lands in the foreseeable future due to sea level rise.
- The Action Plan sets forth next steps and research priorities the Coastal Commission will use to develop programs and further guidance that protect the public trust.
- Local governments can use the Guiding Principles to create LCP policies relating to public trust resources



CCC & CSLC Public Resources

- [Story Map](#)
- [Protecting Public Trust Resources as Sea Level Rises Fact Sheet](#)
- [Public Trust Guiding Principles and Action Plan](#)
- [Protecting Public Trust Shoreline Resources in the Face of Sea Level Rise by Dr. Charles Lester](#)
- [California State Lands Commission – Land Types](#)
- [California State Lands Commission – OSCAR](#)



Who owns the beach?

Understanding the Public Trust Doctrine





PC: Karen Vu

Take Home Points

- What is the public trust doctrine?
 - What are public trust uses and resources?
- Where are public trust lands in California's coastal zone?
- The roles of CSLC and CCC in protecting the public trust doctrine
 - What are we doing about public trust and sea level rise?
 - Resources!