

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
FAX (415) 904-5400  
TDD (415) 597-5885



**W6d**

**INFORMATIONAL BRIEFING ON PUBLIC TRUST TIDELANDS  
AND SEA LEVEL RISE**

**NOVEMBER 17, 2021**

**CORRESPONDENCE**

**From:** Dwight Worden <[dwrightworden@gmail.com](mailto:dwrightworden@gmail.com)>

**Sent:** Sunday, November 7, 2021 4:16 PM

**To:** ExecutiveStaff@Coastal <[ExecutiveStaff@coastal.ca.gov](mailto:ExecutiveStaff@coastal.ca.gov)>

**Subject:** Public Comment on November 2021 Agenda Item Wednesday 6d - Informational Briefing on Public Trust Tidelands and Sea Level Rise

Thanks to Charles Lester for this thorough and thought provoking paper. Two questions that I would like to see addressed.

1. Given that the boundary line between tidelands and private uplands (ordinary highwater mark) moves through natural migration of the tidelines and not through artificial changes, how do we classify the coming changes caused by sea level rise---is the predicted rise "natural" such that the boundary line will move over time, or human caused by human generated GHG and artificial, such that it won't move? It seems the paper assumes the coming SLR will result in boundary movement, but without addressing the issue. Why wouldn't it be equally justifiable to treat sea level rise coming from human induced GHG emissions as an artificial change not moving the boundary?

2. Regarding sand replenishment: Will sand replenishment be treated as "natural" such that the boundary will move seaward, or as "artificial" such that the sand replenishment will not impact boundary location? This is an important factor in considering sand replenishment programs.

In both of these questions the changes--sea level rise and beach building--arguably, mimic natural processes but are human induced. I know in some cases, for example human made reservoirs, that look and act like natural lakes are treated the same as natural lakes, for liability and other purposes. It seems to me we need to know how to treat GHG induced sea level rise and human caused sand replenishment beach building as well.

Thanks!

Dwight Worden

Ralph Faust  
641 Paddlewheel Court  
Roseville, CA 95747  
[ralph.faust@gmail.com](mailto:ralph.faust@gmail.com)  
November 12, 2021

Steve Padilla, Chair  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

Re: Coastal Commission Agenda # W 6d, November 17, 2021

Dear Chair Padilla and Coastal Commissioners:

I write to support the recommendations contained in the report “Protecting Public Trust Shoreline Resources in the Face of Sea Level Rise” prepared by Dr. Charles Lester. Dr. Lester’s report is timely, because the ground truth of rising seas on the California shoreline becomes clearer by the season. We can see that public trust lands are being prevented from their natural migration by fixed development, and much has been said about that. Dr. Lester writes with recommendations for action, not simply words, in the face of these challenges to the shoreline environment. The need for action is not simply one to be met by grand plans in distant places such as Glasgow, but by all of us in the particular realms where each of us can take such action. For the Coastal Commission this is in its review of proposed development along the shoreline, including by acting upon its affirmative duty to protect the public trust.

Historically, the Commission has reviewed development proposed along the shoreline as if the Mean High Tide line (MHT) is static, under the assumption that proposed development can comfortably be placed landward of such a knowable line. Nature now informs us that such an assumption is wrong, and that acting upon this incorrect assumption has resulted in the approval of fixed development such as shoreline protective devices that now are, or soon will be, in the tidelands, interfering with protected public trust uses. Continuing to approve development in this manner will result in the continuing conversion of public trust

lands, and their uses, including public access along the shoreline, to private use, contrary to the Public Trust doctrine.

Dr. Lester proposes the use of a “zone of concern”, rather than a fixed boundary line, to accommodate Commission practice to the rising level of the sea and the reality of an ambulatory MHT. This practice would use best available science to determine the range of the projected MHT line over the foreseeable life of the proposed development, and then apply the “Milner” rule to prevent the approval, the placement, and ultimately the continuing existence of fixed structures such as SPDs that are now or would foreseeably halt the natural inland progression of the tidelands as sea levels continue to rise. This practice, if consistently and rigorously applied, could provide a tool to save the public’s tidelands from privatization.

Commissioners might properly be concerned about adopting this new practice in the face of the apparently “mandatory” nature of Coastal Act section 30235. Dr. Lester anticipates this concern and provides a legal basis to support the adoption of this practice within the overall context of the application of the Coastal Act’s Chapter 3 policies in the Commission’s review of proposed development. Contrary to the interpretation presently used by the Commission, Dr. Lester suggests that section 30235 must be interpreted in the context of the Commission’s full application of the Chapter 3 policies, and within that context it is no more nor less mandatory than any of the other apparently mandatory provisions of Chapter 3. When those policies conflict, the Legislature has directed that the conflict must be resolved utilizing Coastal Act section 30007.5. The Commission is not required, in other words, to approve a seawall if that approval would be in conflict with one or more other Chapter 3 policies, and if, on balance, not approving it would be most protective of significant coastal resources. Whether that conclusion is appropriate in any particular case is of course a matter for the Commission to decide based upon the particular facts of each individual permit application. But Dr. Lester’s interpretation allows for judgment that considers, for example, the access policies of Coastal Act sections 30210 and 30214 and the Public Trust, along with the need to protect existing structures in danger from erosion.

The precise manner of implementing these recommendations is a matter for the Commission. But the critical thing for the Commission is to act to implement them. Public trust lands are being lost, and the Commission has a duty to protect them in its implementation of the Coastal Act. As the Supreme Court said in the

Illinois Central case quoted by Dr. Lester: “The state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them...than it can abdicate its police powers in the administration of government and the preservation of the peace”. For the whole of the people of California, I urge you to act upon the recommendations of Dr. Lester’s report.

Sincerely,

Ralph Faust