

# CALIFORNIA COASTAL COMMISSION

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TO: California Coastal Commissioners and Interested Public

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SUBJECT: Briefing on Draft Public Trust Guiding Principles & Action Plan available for public comment. **Informational item only. Commission will consider adoption at a future meeting.**

Exhibit 1: [Draft Public Trust Guiding Principles & Action Plan](#)

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## Table of Contents

I. BACKGROUND .....	2
A. The California Coastal Act & the Public Trust Doctrine .....	2
B. Project Background .....	3
II. SUMMARY OF GUIDING PRINCIPLES & ACTION PLAN.....	4
A. Guiding Principles .....	4
B. Action Steps .....	5
III. NEXT STEPS .....	6

## **I. BACKGROUND**

As the climate crisis and sea level rise threaten the future of public trust lands, uses, and resources, it is becoming ever more important to understand how the public trust doctrine interfaces with the work of the Coastal Commission as it endeavors to advance sea level rise adaptation planning statewide. The Draft Public Trust Guiding Principles & Action Plan attached as [Exhibit 1](#) describes how the public trust doctrine relates to the Coastal Commission's work on sea level rise planning and provides a series of guiding principles and next steps for the Coastal Commission. The Draft Public Trust Guiding Principles & Action Plan is available for public comment for a period of 45 days beginning June 9, 2022.

The Guiding Principles provide a set of principles to guide the Commission in its sea level rise planning work and will be brought before the Commission for adoption after the public comment period closes. As interpretive guidelines, and pursuant to Coastal Act section 30620, these principles are intended to assist the Commission, local governments, and members of the public in determining how to carry out the Coastal Act and address sea level rise in a manner that is consistent with public trust principles. However, this document is not a regulatory document. The Action Plan sets forth a suite of potential next steps and research priorities for the Coastal Commission for its work at the interface of the public trust doctrine and sea level rise planning.

### **A. The California Coastal Act & the Public Trust Doctrine**

Under the public trust doctrine, the State's tidelands, submerged lands, and navigable lakes, rivers, and streams are held in trust by the State for the benefit of the public. On the coast, the public trust is generally located on current tidelands – lands covered and uncovered by the ebb and flow of the tides. It also includes submerged lands and lands that were historically tidelands at the time California became a state in 1850 but have since been artificially drained and/or filled.

The Coastal Act is an exercise of the Legislature's public trust authority and responsibility and, as such, aligns with and implements aspects of the public trust doctrine, including through its emphasis on public access, ocean-related recreation, and coastal dependent uses like ports and fishing. Among other public access provisions, the Coastal Act recognizes the public's constitutional right of access to tidelands and other navigable waters pursuant to Section 4 of Article X of the California Constitution. The Coastal Act applies in the coastal zone, which includes both public trust tidelands and additional public and private upland areas.

Coastal public trust lands and adjacent uplands support a variety of ecological, socioeconomic, and cultural values. The various beaches and wetlands that constitute public tidelands support public access and coastal recreational activities like surfing, sunbathing, birdwatching, and fishing. Coastal wetlands support biodiversity and perform a variety of important ecosystem services, like buffering wave energy, filtering water, recycling nutrients, and serving as nursery habitat for fish species that not only fit

into larger coastal ecosystems and food chains, but also support commercial and recreational fisheries offshore. Unlike much upland coastal property, tidelands are often open to all visitors at no or low cost and are thus critical from an environmental justice standpoint as an important resource to provide equitable coastal access. Public trust lands and related uplands also support maritime commerce essential for coastal economies, which in turn supports jobs and economies at all scales. They are also significant areas for coastal-affiliated tribes, tribal resources and practices.

Due to the critical importance of these public coastal resources, it is important to carefully address looming threats to these resources from sea level rise. Although the Commission has long dealt with issues related to sea level rise, the Coastal Act was recently amended to explicitly require the Commission to “take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise” (Coastal Act § 30270). This policy reaffirms that sea level rise adaptation planning is a central goal and mandate for the Coastal Commission. Sea level rise is presenting unprecedented challenges for the California coast, which will only increase as sea level rise accelerates in the future. Sea level rise will cause new areas of the shoreline to be regularly inundated by tides, increased erosion of the shoreline, increased storm flooding, rising groundwater tables, and saltwater intrusion into coastal aquifers. These hazards will place both coastal development and coastal resources, including public trust resources, at risk.

## **B. Project Background**

The Draft Public Trust Guiding Principles & Action Plan was developed using federal financial assistance provided by the Coastal Zone Management Act, as amended, under award NA19NOS4190073, administered by the Office for Coastal Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. This project focuses on developing draft guidance for the Commission, local governments, and the public on how to protect public trust resources that are threatened by sea level rise.

The Draft Public Trust Guiding Principles & Action Plan was also developed in coordination with staff from the California State Lands Commission as part of a joint, long-term public trust and sea level rise coordination project. State Lands Commission staff have expressed support for the draft goals and guiding principles. The State Lands Commission has exclusive jurisdiction to lease and manage most public trust lands, and it must ensure that any such leases are consistent with, or at least do not significantly impair, public trust resources, uses, and needs. On September 19, 2019, Coastal Commission staff and State Lands Commission staff signed a Memorandum of Understanding (MOU) to encourage the exchange of information among staffs for project proposals requiring an approval by the Coastal Commission which may also implicate the State Lands Commission’s trustee interests under the public trust doctrine, among other issues. The Commissions’ staffs have coordinated on public trust and sea level rise issues over the course of many years and jointly developed several public trust fact sheets and documents. The State Lands Commission staff supports the draft

action steps contained in the Draft Public Trust Guiding Principles & Action Plan, and recognizes the ongoing role it will have in implementing several steps as part of ongoing coordination under the MOU, subject to funding and staffing resources.

This document follows presentation of the [Protecting Public Trust Shoreline Resources in the Face of Sea Level Rise](#) report to the Coastal Commission by Dr. Charles Lester, Director of the Ocean & Coastal Policy Center at the Marine Science Institute of University of California, Santa Barbara. That report discusses public trust issues relating to Coastal Commission planning and regulation of development on the immediate shoreline and adjacent uplands. It also includes a variety of legal, policy, management, and technical recommendations to address public trust tidelands and sea level rise based on tideland science and the public trust doctrine. The Draft Public Trust Guiding Principles & Action Plan builds on many of these recommendations.

## **II. SUMMARY OF GUIDING PRINCIPLES & ACTION PLAN**

The Draft Public Trust Guiding Principles & Action Plan ([Exhibit 1](#)) describes how the public trust doctrine relates to the Coastal Commission's work on sea level rise planning and provides guiding principles and action steps for the Coastal Commission. The guiding principles and action steps are listed below, but more details and discussion can be found in the full document.

### **A. Guiding Principles**

The Draft Public Trust Guiding Principles & Action Plan provides the following principles to guide the Coastal Commission in its sea level rise adaptation work:

1. The climate crisis and sea level rise are moving the public trust landward.
2. Development decisions and sea level rise will impact public trust lands, uses, and resources.
3. The Coastal Commission has an affirmative duty to carry out the public trust doctrine.
4. Protections for the public trust will be incorporated into Coastal Commission decision-making.
5. Anticipated impacts to current and future public tidelands will be identified.
6. Coastal Commission findings will be informed by interagency coordination.
7. Implementing the public trust doctrine through Coastal Commission actions can advance environmental justice.
8. Shoreline protective devices adversely impact public trust resources.

## Th6e (Draft Public Trust Guiding Principles & Action Plan)

9. Owners of shorefront property may not unilaterally prevent the landward migration of public trust lands.
10. Encouraging the use of nature-based adaptation strategies will help support public trust uses and values.

### **B. Action Steps**

The Draft Public Trust Guiding Principles & Action Plan presents the following next steps and research and policy questions that the Coastal Commission will prioritize over the next five years, as staff resources and funding allow:

- Participate in the development of interagency principles on sea level rise and the public trust doctrine
- Consult and coordinate with California Native American Tribes on relevant public trust issues
- Continue working with local governments to update local coastal programs to address sea level rise and include considerations for public trust resources
- Conduct coordinated outreach, engagement, and public education on the purpose and role of the public trust doctrine in the management of California's lands and natural resources
- Continue to analyze the impacts of residential-related development on public trust resources, uses, and needs
- Identify development and decisions, such as boundary line agreements, that result in "coastal squeeze" leading to the loss of public trust lands
- Consider updates to Coastal Commission regulations relating to mitigation of the adverse effects of sea level rise on public trust lands, including regulations that clarify the definition of the mean high tide line
- Complete a GIS inventory of public tidelands
- Explore alternatives for determining the mean high water elevation used in determinations of the mean high tide line
- Evaluate new technologies for locating the boundary between public tidelands and private uplands

### III. NEXT STEPS

The Draft Public Trust Guiding Principles & Action Plan is available for public comment for a period of 45 days beginning June 9, 2022, and closing July 24, 2022. Members of the public are encouraged to provide comments via email to [statewideplanning@coastal.ca.gov](mailto:statewideplanning@coastal.ca.gov). The Draft Public Trust Guiding Principles & Action Plan is available for review on the Commission's [website](#).

In addition to general public comment, Commission staff will communicate and coordinate with coastal-affiliated California Native American Tribes to seek input regarding the identification of potential issues relating to sea level rise and the public trust doctrine, and appropriate action steps, if any, to be taken by the Commission. Commission staff will provide Tribes with meaningful opportunities for input and engagement with issues relating to the Draft Public Trust Guiding Principles & Action Plan, and hope to incorporate additional discussion of the tribal interests and resources associated with public trust lands in the final Public Trust Guiding Principles & Action Plan.

The Public Trust Guiding Principles & Action Plan will be brought before the Coastal Commission for adoption after the public comment period has closed and coordination with California Native American Tribes is complete.