

Public Trust Doctrine

Introduction

The public trust doctrine is a background principle of state property law reflecting the supreme importance of public values, resources, and uses along California's coastline.¹ Under the public trust doctrine, California has a duty to protect and sustain its coastal tidelands and submerged lands for public purposes ranging from navigation and commerce to recreation, access, and conservation, as well as the authority to defend the public's interests when they are at risk.² This duty can extend to uplands, where construction and regulation of private or state-owned properties has the potential to adversely affect public interests near the shoreline.³ The public trust doctrine likewise obligates California to proactively manage and protect public trust resources, and the uplands areas that affect them, in response to sea level rise.⁴

Geographic Scope

The public trust doctrine protects tidelands, submerged lands and the beds of navigable waterways. On the coast, all lands seaward of the ordinary high water mark are encumbered by the public trust doctrine.⁵ In California, the ordinary high water mark—generally located with reference to the mean high tide line⁶—is a boundary between state-owned tidelands and alienable uplands. This boundary is highly ambulatory, meaning that the public-private boundary line moves as the shoreline

naturally accretes or erodes (Figure 1).⁷ The boundary also moves to reflect long-term fluctuations in the plane of mean high water, which is expected to rise due to rising seas.⁸ Consequently, the boundary between uplands and publicly-owned tidelands will continue to fluctuate due to seasonal erosion and accretion, and will likely move landward over the long term in light of increased rates of sea level rise and coastal erosion.

Public Trust Doctrine Consensus Statement

The Center for Ocean Solutions convened a working group of public trust and coastal land use experts to understand how sea level rise will implicate the public trust doctrine and, by extension, future coastal decisionmaking. In summer 2017, the group produced a Consensus Statement and a longer legal background document (Footnote 1).

Changing Coastline

Sea level rise and climate change effects are expected to combine to create higher baseline sea levels and more extreme weather events, resulting in increased flooding and erosion.⁹ Coastal towns throughout California are ill-prepared for these changes, as historic public and private development has occurred in close proximity to its public trust lands. This development is poised to impede the natural landward migration of the land-sea boundary, where the collision of natural environments with coastal infrastructure may result in the loss of public coastal

1 CENTER FOR OCEAN SOLUTIONS, STANFORD WOODS INSTITUTE FOR THE ENVIRONMENT, THE PUBLIC TRUST DOCTRINE: A GUIDING PRINCIPLE FOR GOVERNING CALIFORNIA'S COAST UNDER CLIMATE CHANGE 4 (2017), available at http://www.centerforoceansolutions.org/sites/default/files/publications/The%20Public%20Trust%20Doctrine_A%20Guiding%20Principle%20for%20Governing%20California_Report.pdf.

2 *Id.*

3 *Id.* at 28 ("The limits on how far into the future, or how far down the causal chain the requirement to consider effects to trust resources from activities on adjacent lands extends, are not clearly defined.")

4 *Id.* at 9.

5 Early common law established the boundary between uplands and state-owned tide and submerged lands as the ordinary high water mark. In 1935, the Supreme Court declared that the ordinary high water mark is equated to the mean high tide line, a plane of reference for elevations developed by the U.S. federal government. CENTER FOR OCEAN SOLUTIONS, *supra* note 1, at 17, citing *Borax Consol., Ltd. v. Los Angeles*, 296 U.S. 10, 22-23 (1935).

6 *Lechuza Villas West v. Cal Coastal Comm'n*, 60 Cal. App. 4th 218, 236-37 (1997).

7 CENTER FOR OCEAN SOLUTIONS, *supra* note 1, at 18.

8 The mean high tide line is legally defined as the 18.6-year average. *Borax*, 296 U.S. at 27. Under current practice, changes to the mean high tide elevation—one component of boundary determinations—will not be gradual, but instead will reflect sudden changes within the context of the national tidal epoch.

9 GARY GRIGGS ET AL., RISING SEAS IN CALIFORNIA: AN UPDATE ON SEA-LEVEL RISE SCIENCE 17 (2017), available at <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>.

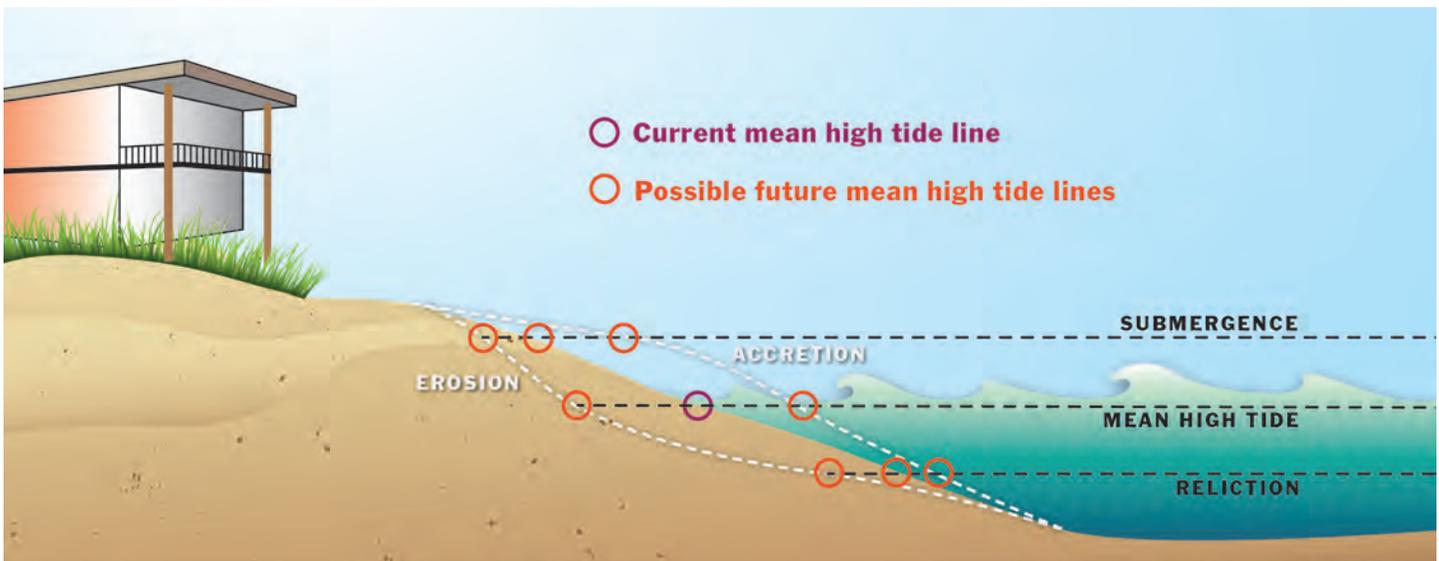


Figure 1. Diagram of four dynamic processes and how they may change the location of the mean high tide line.

lands.¹⁰ This inevitable collision of sea level rise and coastal infrastructure—or “coastal squeeze”—threatens to degrade, destroy, and even privatize the state’s shorelines.¹¹

Implications

State and local governments in California are tasked with allocating funds and making decisions about where and how coastal uses should be permitted. This challenging task is complicated by the effects of rising sea levels, as the potential for long-term unidirectional change to the coastline and site-specific uncertainty make the future state of the coast a required consideration in present-day planning and decision making. As decisions about California’s coastline are made, the public trust doctrine’s values must inform the decisionmaking of legislative, administrative, and judicial government bodies at the state and local level. The dynamic division between California’s public trust lands and private properties is important for local planning specifically, as some lands currently regulated by local government planning bodies may become state-owned public trust lands due to the landward progression of the mean high tide line. Although a fact- and location-specific analysis is necessary to determine the particular public trust obligations that apply in a given

circumstance, the doctrine’s guiding principles apply to all lawmaking and management activities that may affect public resources and uses.

These difficult questions necessitate careful planning and enhanced coordination between decisionmakers at all levels of government. Specifically, due to the complexity in identifying coastal property boundaries and defining public trust obligations, coordination and collaboration between local governments, the California Coastal Commission, and the State Lands Commission is essential. The effect of rising sea levels on the ambulatory shoreline boundary may result in the State Lands Commission recognizing future control over some lands currently under the regulatory purview of local governments. Local governments should act now to protect the public’s future interests in these public lands. The public trust doctrine arguably requires current coastal planners with jurisdiction over lands above the mean high tide line to ensure that future public interests are not negatively affected, or given away, through land use and development permitting decisions.¹² This reality highlights the need for collaboration and dialogue between

¹⁰ CENTER FOR OCEAN SOLUTIONS, *supra* note 1, at 17.

¹¹ *Id.*

¹² *National Audubon Soc’y v. Superior Court*, 33 Cal. 3d 419, 429–30, 446 (Cal. 1983).

the State Lands Commission, Coastal Commission, local governments, and affected coastal property owners.¹³

A heightened focus on community level engagement and planning should assist this endeavor. Affected communities are uniquely situated to understand the local sense of place, economic importance, and cultural benefits that are in play as difficult tradeoffs are made. Protecting the public's interest in shared resources of the coastal zone from current and foreseeable future harm is a central tenet

of the public trust doctrine, and the sooner sea level rise adaptation planning proceeds with all involved, the better.

Researchers

Jesse Reiblich, Early Career Law & Policy Fellow: jesselr@stanford.edu

Eric Hartge, Research Development Manager: ehartge@stanford.edu

Don Gourlie, Early Career Law & Policy Fellow

Cole Sito, Legal Intern

¹³ This logic extends to upland uses and cumulative effects as well; aggregate coastal development is likely to have greater effects on public trust resources than individual projects, and should be scrutinized in conjunction with foreseeable uses, harms, and changes to public trust resources. CENTER FOR OCEAN SOLUTIONS, *supra* note 1, at 29.