




# **SURFRIDER** **FOUNDATION**

**SMART COAST POLICY SUMMIT**

**LEGAL PANEL**

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**BY ANGELA HOWE, ESQ., SENIOR LEGAL DIRECTOR**

A large, powerful ocean wave is crashing, creating a massive wall of water. The water is a deep, vibrant blue-green color. A thick plume of white mist and spray is being thrown into the air by the breaking crest of the wave. In the upper right portion of the mist, a faint rainbow is visible. The sky is a pale, hazy blue. The overall scene is dynamic and captures the raw power of the ocean.

**SURFRIDER FOUNDATION IS DEDICATED TO THE PROTECTION AND ENJOYMENT  
OF THE WORLD'S OCEAN, WAVES AND BEACHES FOR ALL PEOPLE  
THROUGH A POWERFUL GRASSROOTS NETWORK.**

# PUBLIC TRUST PROTECTIONS OF COASTAL RESOURCES

- The State owns all tidelands below the mean high tide line, and holds such lands in trust for the public.
- State has fiduciary duty to preserve coastal resources for the benefit of the public (Civ. Code, § 670; *Lechuza Villas West v. California Coastal Com'n* (1997) 60 Cal.App.4th 218)
- “[P]ublic uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. . . . There is a growing public recognition that one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.” *Marks v. Whitney*, 6 Cal. 3d 251, 259-60 (1971)
- Public access to the tidelands is protected by both the Coastal Act and the California Constitution. And the Supreme Court ruled over a century ago that access to public trust resources should be “freed from the obstruction or interference of private parties.” *Illinois Central RR Co. v. Illinois*, 146 U.S. 387, 452 (1892)



# SEA LEVEL RISE AND THE COAST: COASTAL EROSION IN SAN CLEMENTE

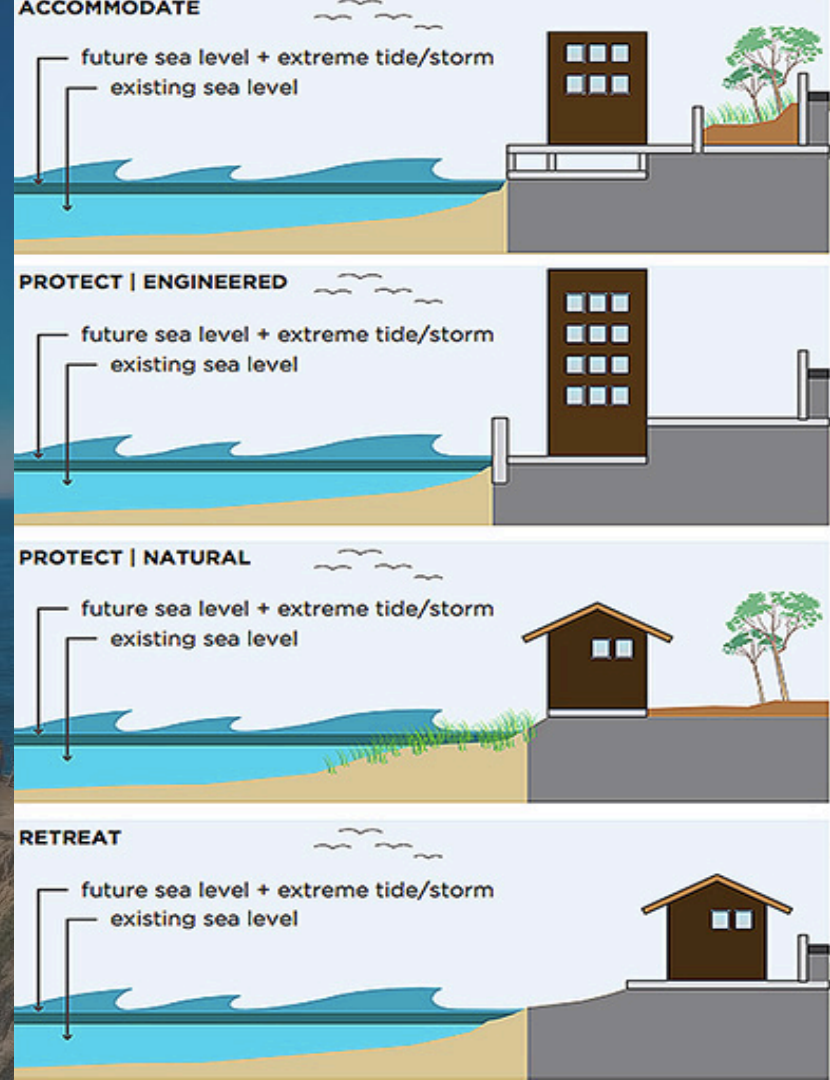


# SEA LEVEL RISE AND THE COAST: RISKS OF COASTAL CLIMATE HAZARDS



# ADAPTATION TO CLIMATE CHANGE IMPACTS

## ADAPTATION OPTIONS:



# SEA LEVEL RISE & THE COAST: HARMS OF SEAWALLS



## COASTAL SQUEEZE: CONFLICT BETWEEN PUBLIC AND PRIVATE RIGHTS

- Public Trust Doctrine ensures the state has a property interest in submerged lands below the mean high tide line and must hold lands in trust for public good
- Because the mean high tide line will shift predictably upslope, the Public Trust Doctrine may give the state a vested or contingent future interest in upland property
- Private property owners on the upslope side of the mean high tide line owe a duty not to waste the state's interest
- State efforts to protect its interest will lead to Takings claims under the Fifth Amendment of the U.S. Constitution and *Nollan/Dolan* case law



# COASTAL SQUEEZE: CENTER FOR OCEAN SOLUTIONS CONSENSUS STATEMENT ON PUBLIC TRUST DOCTRINE

- [With rising sea level,] if not proactively and effectively managed, these changes and influences can impair public interests in the coast.
- PTD requires California to protect the public's interest in tidelands and submerged lands.
- PTD limits the ability of decisionmakers to dispose of public trust resources or impair their use for public trust purpose.
- PTD requires decisionmakers to consider the effects of their actions on public trust resources and uses.
- Existing legal standards [] are inadequate to deal with [SLR]. California should explore alternatives to these standards and methods in order to ensure protection of public trust resources and uses.
- PTD obligates California to proactively manage and protect public trust resources in light of sea level rise and upland land-use practices.



## CZMA

- The Coastal Zone Management Act was enacted in 1972.
- Gives federal funding to states to develop and administer coastal programs
- Sets out guidelines for coastal management programs but allows for flexibility
- Allows states to raise concerns over OCS operations deemed to be not consistent with coastal management
- State Coastal Acts – required “in light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.” 16 USC 1451(h)

## State CMPs

- State Coastal Management Programs are empowered by the federal CZMA.
- State agencies sometimes set up for Coastal Protection
- In CA, California Coastal Commission is lead agency for coastal management with Ocean Protection Council, Coastal Conservancy, Water Board and State Lands Commission in regulatory authority roles

FEDERAL	Coastal Zone Management Act
STATE (CA)	Coastal Act
LOCAL (CA)	Local Coastal Plans (with Land Use Plans and Implementation Plans)



## Section 30253

Prohibits *new* development if it would require a coastal armoring structure.

“New development shall do all of the following: Minimize risks to life and property in areas of high geologic, flood, and fire hazard. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”

## Section 30235

Provides that armoring structures shall be allowed to protect *existing* structures if certain use and design conditions are met.

“Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.”



## Holding:

- Upland owners cannot use the tidelands in a manner that would harm the Lummi nation's interest in neighboring tidelands
- Here, homeowners cannot armor to fix a boundary to the detriment of the Lummi Nation's interest in coastal tidelands
- “[B]ecause both the upland and tideland owners have a vested right to gains from the ambulation of the boundary, the Homeowners cannot permanently fix the property boundary, thereby depriving the Lummi of tidelands that they would otherwise gain.” at 1187.



## Reasoning:

- Competing interests of two private parties in the shoreline; Lummi nation gives a name and face to the shoreline owners here.



## Holding:

- Dec. 15, 2016, Superior Court's Judge Casserly upheld 5 major provisions of the Solana Beach Land Use Plan Amendment dealing with impacts of seawalls and development on beach access and recreation.
- Nov 2018 appellate court upheld the entirety of the LUPA

## Reasoning:

- Challenge did not come in the form of administrative mandamus, which is required when the CCC acts in a quasi-judicial manner.
- Appellate Court stated these facial challenges, including takings, are misplaced versus as applied challenges against each and every permit.

