

2022 Smart Coast California Policy Summit



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U.S. Constitution

5th Amendment – Prohibition on takings

[14th Amendment – Application to the states]

California Constitution

Art. 1, § 19 – Prohibition on takings

Art. 1, § 1 – right to acquire and protect property

Address



Meters and Bounds

MINIMUM DAY

A PARCEL OF LAND IN LOS ANGELES COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERN LINE OF THE #0 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CALDWELL, TRUSTEE, ET AL. TO HENRY W. COOPER, DATED NOVEMBER 10, 1881, AND RECORDED IN THE RECORDS, OF SAID COUNTY, SAID POINT ON BEGINNING BEING IN SAID PARCELS OF LAND, THENCE GOING NORTHEASTLY 1.71 FEET AND 80.71 FEET MEASURED ALONG SAID SOUTHERN LINE FROM A POINT BEARING HEADING 80° 46' 30" TRUE NORTH 30 SECONDS WEST FOR 6 FEET FROM ENGINEER'S SURVEY STATION AND PLATE MARKED "E. 1.71 FT.", AND GOING NORTHEASTLY A CERTAIN COURSE DESCRIBED IN SAID DEED AS SOUTH 83 DEGREES 48 MINUTES 10 SECONDS EAST, THENCE GOING NORTHEASTLY 1.71 FEET AND 80.71 FEET FROM THE PARCEL OF LAND DESCRIBED IN A DEED FROM M. W. TUCKSTON TO J. C. COOPER, DATED NOVEMBER 10, 1881, AND RECORDED IN THE RECORDS, OF SAID COUNTY, THENCE SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST ALONG SAID NESTERLY LINE TO THE ORDINARY HIGH TIDE LINE, AND GOING NORTHEASTLY 1.71 FEET AND 80.71 FEET FROM THE POINT OF INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST FROM SAID POINT OF BEGINNING, THENCE NORTH 6 DEGREES 10 MINUTES 30 SECONDS EAST TO SAID POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES CONTAINED IN, ON, WITHIN AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED IN DEED FROM MARBLEHEAD LAND COMPANY, RECORDED IN BOOK 16983 PAGE 213, OFFICIAL RECORDS.

ALSO EXCEPT ALL LITTORAL RIGHTS WITH FULL AND EXCLUSIVE RIGHTS TO PRESERVE AND PROTECT SAID LITTORAL RIGHTS AS CONTAINED IN THE ABOVE DEED.

SAID LAND IS SHOWN AS PARCELS NOS. 193 AND 194 AND PART OF 195 UPON A
LICENSED SURVEYOR'S MAP FILED IN BOOK 27 PAGE 48 OF RECORD OF SURVEYS
OF SAID COUNTY.

Assessor's Parcel Map



Parcel/Tract Map

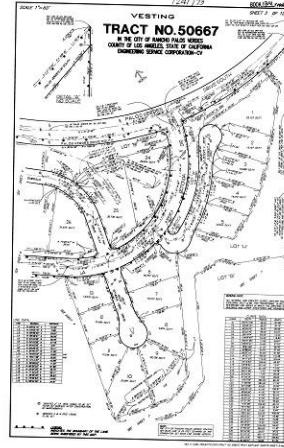


EXHIBIT "A"

A PARCEL OF LAND IN LOS ANGELES COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, TRUSTEE, ET AL, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, OF SAID COUNTY, SAID POINT OF BEGINNING BEING IN SAID SOUTHERLY LINE DISTANT SOUTH 83 DEGREES 48 MINUTES 30 SECONDS EAST 1025.71 FEET, MEASURED ALONG SAID SOUTHERLY LINE FROM A POINT BEARING SOUTH 6 DEGREES 11 MINUTES 30 SECONDS WEST 40 FEET FROM ENGINEER'S CENTER LINE STATION 989 PLUS 65.17 AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS SOUTH 83 DEGREES 48 MINUTES 30 SECONDS EAST 55 FEET, MORE OR LESS, TO A POINT IN THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN A DEED TO W. W. TOUCHSTONE AND CATHERINE C. TOUCHSTONE, HUSBAND AND WIFE, RECORDED IN BOOK 13445 PAGE 46, OFFICIAL RECORDS; THENCE SOUTH 6 DEGREES 11 MINUTES 30 SECONDS WEST ALONG SAID WESTERLY LINE **TO THE ORDINARY HIGH TIDE OF THE PACIFIC OCEAN**; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 6 DEGREES 11 MINUTES 30 SECONDS WEST FROM SAID POINT OF BEGINNING; THENCE NORTH 6 DEGREES 11 MINUTES 30 SECONDS EAST TO SAID POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES CONTAINED IN, ON, WITHIN AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED IN DEED FROM MARBLEHEAD LAND COMPANY, RECORDED IN BOOK 16983 PAGE 213, OFFICIAL RECORDS.

ALSO EXCEPT ALL LITTORAL RIGHTS WITH FULL AND EXCLUSIVE RIGHTS TO PRESERVE AND PROTECT SAID LITTORAL RIGHTS AS CONTAINED IN THE ABOVE DEED.

SAID LAND IS SHOWN AS PARCELS NOS. 193 AND 194 AND PART OF 195 UPON A LICENSED SURVEYOR'S MAP FILED IN BOOK 27 PAGE 48 OF RECORD OF SURVEYS OF SAID COUNTY.



SECONDS WEST ALONG SAID WESTERLY LINE TO THE ORDINARY HIGH TIDE OF
THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE

“The State owns all tidelands below the ordinary high water mark, and holds such lands in trust for the public [citation], while the owners of land bordering on tidelands take to the ordinary high water mark. [citation]”

Lechuza Villas West v. California Coastal Commission (1997), 60 Cal.App.4th 218, 235

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Lechuza Villas West v. California Coastal Commission (1997), 60 Cal.App.4th 218, 235



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Smart Coast
California

“By the law of nature these things are common to mankind – the air, running water, the sea and consequently the shores of the sea.”

J. INST. 2.1.1 (T. Cooper trans. & ed., 1841)

Public Trust Interests and Uses:

- commerce
- navigation
- fishing
- bathing/swimming
- boating
- general public access
- recreation
- preservation of lands in their natural state:
 - for scientific study
 - as open space
 - as an environment that provides food and habitat for wildlife
 - to improve the scenery and climate of the area

Marks v. Whitney (1971), 6 Cal.3d 251, 259-60; Colberg, Inc. v. State of Cal. ex rel. Dep't of Pub. Works (1967), 67 Cal.2d 408, 419-420.

“Any limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State’s law of property and nuisance already place upon land ownership.”

Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1029 (1992) (emphasis added)

Landowners’ rights are therefore:

“constrained by those ‘restrictions that background principles of the State’s law of property . . . already place upon land ownership.’”

Palazzolo v. Rhode Island, 533 U.S. 606, 629 (2001)

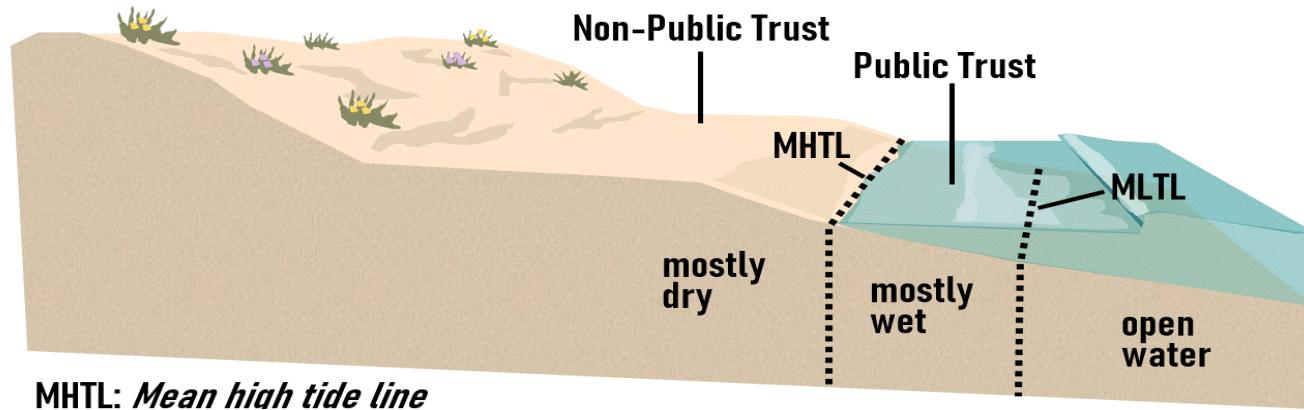
The Public Trust Doctrine is such a background principle.

See, e.g., Esplanade Properties, LLC, v. City of Seattle, 307 F.3d 978, 985-986 (9th Cir. 2002).

“The high water mark is the mark made by the fixed plane of high tide where it touches the land; as the land along a body of water gradually builds up or erodes, the ordinary high water mark necessarily moves, and thus the mark or line of mean high tide, i.e., the legal boundary, also moves.”

***Lechuza Villas West v. California Coastal Commission (1997),
60 Cal.App.4th 218, 235***

SUMMER BEACH





"the proposed residences appear to be located landward of those surveyed mean high tide lines known to us at this time . . . Our analysis . . . leads us to believe that the beach sand has, at times, been washed completely down to bedrock."

***Lechuza Villas West v. California Coastal Commission (1997),
60 Cal.App.4th 218, 223-24 (emphasis in original)***

Questions:

1. Could a property owner armor the coastal frontage of her property and thereby fix the MHTL and prevent the changing of the property boundary?
2. If so, would the government be obligated to allow that?

Revetments, . . . seawalls, . . . 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 . . .

Public Resource Code § 30235
(emphasis added)



“All people are by nature free and independent and have inalienable rights. Among these are . . . acquiring, possessing, and protecting property, and pursuing and obtaining the safety, happiness, and privacy.”

Cal. Const., Art. I, § 1 (emphasis added)



No person shall ever be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., 5th Am. (emphasis added)

Private property may be taken or damaged for a public use and only when just compensation . . . has first been paid

Cal. Const., Art. I, § 19(a) (emphasis added)



U.S. v. Milner (9th Cir. 2009) 583 F.3d 1174

“we decline to hold that the use of uplands is inherently more valuable than the use to which tidelands can be put”

United States v. Milner, 583 F.3d 1174, 1188 (9th Cir. 2009)

“because 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.”

Id. at 1187 (emphasis added).

Questions:

1. Could a property owner armor the coastal frontage of her property and thereby fix the MHTL and prevent the changing of the property boundary?
2. If so, would the government be obligated to authorize that?

Answers:

1. Could a property owner armor the coastal frontage of her property and thereby fix the MHTL and prevent the changing of the property boundary?

Answer: No

2. If so, would the government be obligated to authorize that?

Answer: Moot

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

specifically modified by this approval and any subsequent amendments to the project description. Any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit evidence of such condition compliance for the review and approval of the Executive Director.

17. Mean High Tide Line (MHTL) Surveys and Monitoring

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval:

- A. One printed copy and one digital copy of *a new MHTL survey* of the subject property subject to the criteria in Subpart C below.
- B. *An MHTL monitoring plan that includes surveying the MHTL on the subject property at least every 5 years following the initial MHTL survey required in Subpart A above. Each survey shall be prepared subject to the criteria in Subpart C below. The MHTL monitoring plan shall specify that the landowner shall submit each 5-year MHTL survey no later than December 31st of each fifth year after the date of receipt, by the Executive Director, of the initial survey required by Subpart A. This means that after the initial MHTL survey, a new survey will be conducted and submitted every 5 years thereafter. The landowner shall implement the approved MHTL monitoring plan in accordance with this condition. Any proposed changes to the final approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines no amendment is legally required.*
- C. The surveys required in Subparts A and B *at* following criteria. Such surveys of the field data collected within 12 months of the survey date shall include multiple surveys from the same location.

- B. By acceptance of this permit, the applicant further agrees that the development approval does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. In the event that the public trust boundary migrates landward such that (1) any portion of the approved development encroaches onto public trust lands, and/or (2) public trust land reaches the approved seawall¹, based on a Mean High Tide Line (MHTL) survey prepared in compliance with State Lands Commission survey standards (including, but not limited to, a MHTL survey prepared pursuant to **Special Condition 17**), the permittee or successor in interest shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development, unless the Executive Director grants additional time for good cause. The permit amendment application shall include a complete evaluation of all feasible alternatives to modify the residential development to ensure that it is located entirely on private property and provides the required 10 foot setback from the MHTL. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative for addressing shoreline protection, public access, and sensitive

¹ Since the approved seawall may stop the landward migration of the MHTL, this trigger is reached in the event that the MHTL reaches the approved seawall.

Thank you