

Legal Implications and Regulatory Takings

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Constitutional Provisions

- US Constitution – Fifth Amendment
 - No person shall be deprived of property without due process of law
 - Private Property shall not be taken without just compensation

Constitutional Provisions continued

- California Constitution

- Article 1 section 1

- All people have the right to enjoy and protect property

- Article 1 section 19

- Private property shall not be taken without just compensation

Constitutional Provisions continued

- Article 10 section 3
 - Prohibition on alienation of tidelands
- Article 10 section 4
 - No one shall be permitted to exclude the right of way to navigable waters, including tidelands
 - Legislature shall enact laws to give liberal construction of section
 - Access to navigable water shall always be attainable for the people

Constitutional Provisions continued

- Article 16 section 6
 - Prohibition on gift of public money or thing of value
 - To anyone, including individuals
 - Includes gift of public property

Coastal Act Overview

- Public Resources Code section 30000 and following
- Enacted in 1976
- Established California Coastal Commission
- Two key requirements
 - Coastal development permits
 - Local Coastal Programs
 - Comprised of land use plans and implementing ordinances
 - “Constitution” for planning and permitting development in coastal zone

Key Coastal Act Findings

- 30001
 - Protect natural and scenic resources
 - Promote public safety
 - Protect public and private property
 - Carefully plan future developments
- 30001.5
 - Maximize public access

Key Coastal Act Findings continued

- 30010
 - Permit requirement not to be used to take or damage private property
 - Without compensation
 - Applies to Commission, ports and local governments
- 30210
 - Provide maximum access/recreational opportunities
 - Consistent with public safety
 - Consistent with protection of public and private property rights

Key Coastal Act Policies continued

- 30235
 - Shoreline protection shall be permitted
 - To protect existing development or public beaches
 - In danger from erosion
 - When designed to eliminate or mitigate adverse impacts
 - Including impacts on local sand supply

Key Coastal Act Policies continued

- 30253
- New development shall
 - Minimize risks to life and property
 - Assure stability
 - Neither create nor contribute to
 - Erosion
 - Geologic instability
 - Destruction of site/surrounding area
 - Require construction of protective devices

Key Coastal Act Policies continued

- 30270
 - Commission shall take into account the effects of sea level rise
 - In coastal resources planning and activities
 - In order to identify, assess, and, to the extent feasible, avoid and mitigate
 - The adverse effects of sea level rise

Public Trust Lands

- On the coast, public trust lands include
 - Tidelands
 - Submerged lands
 - Beds of navigable rivers, streams, estuaries, inlets and straits
 - Can include filled lands no longer underwater
- Public trust lands are sovereign
- Held in trust for the People
- Granted or ungranted

Public Trust Lands continued

- Historically used for commerce, navigation, and fisheries
- Uses have broadened
- Now include
 - Right to swim, boat and engage in other forms of water recreation
 - Preservation of trust lands in their natural state
 - To protect scenic and wildlife habitat values
 - Education and scientific research
- Trust is continuously evolving to protect the public's use and needs in California's waterways