

Legal Implications & Regulatory Takings

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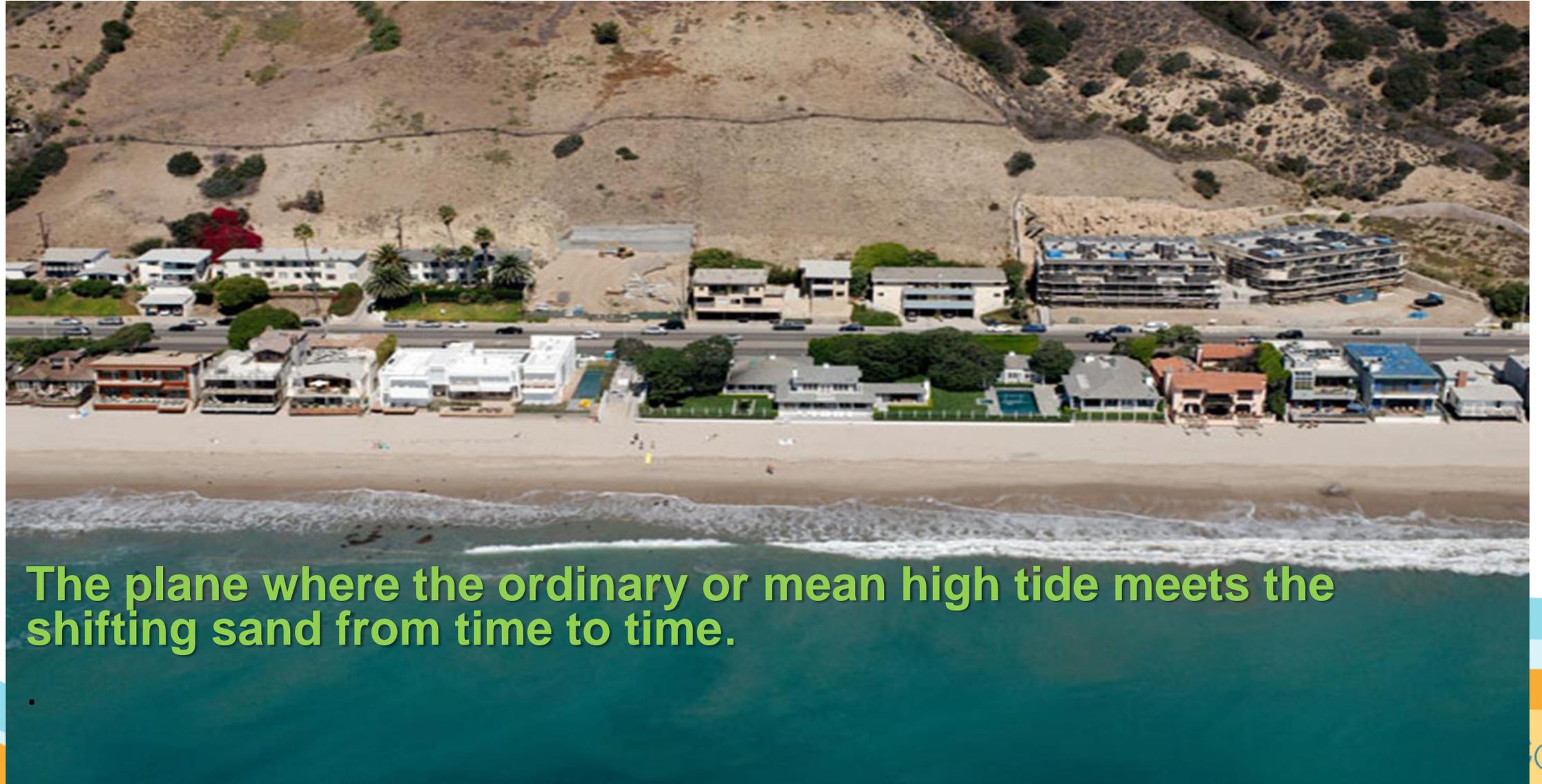
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State Land/Private Land

Ordinary High Water Mark or Mean High Tide Line

Mean High Tide Line

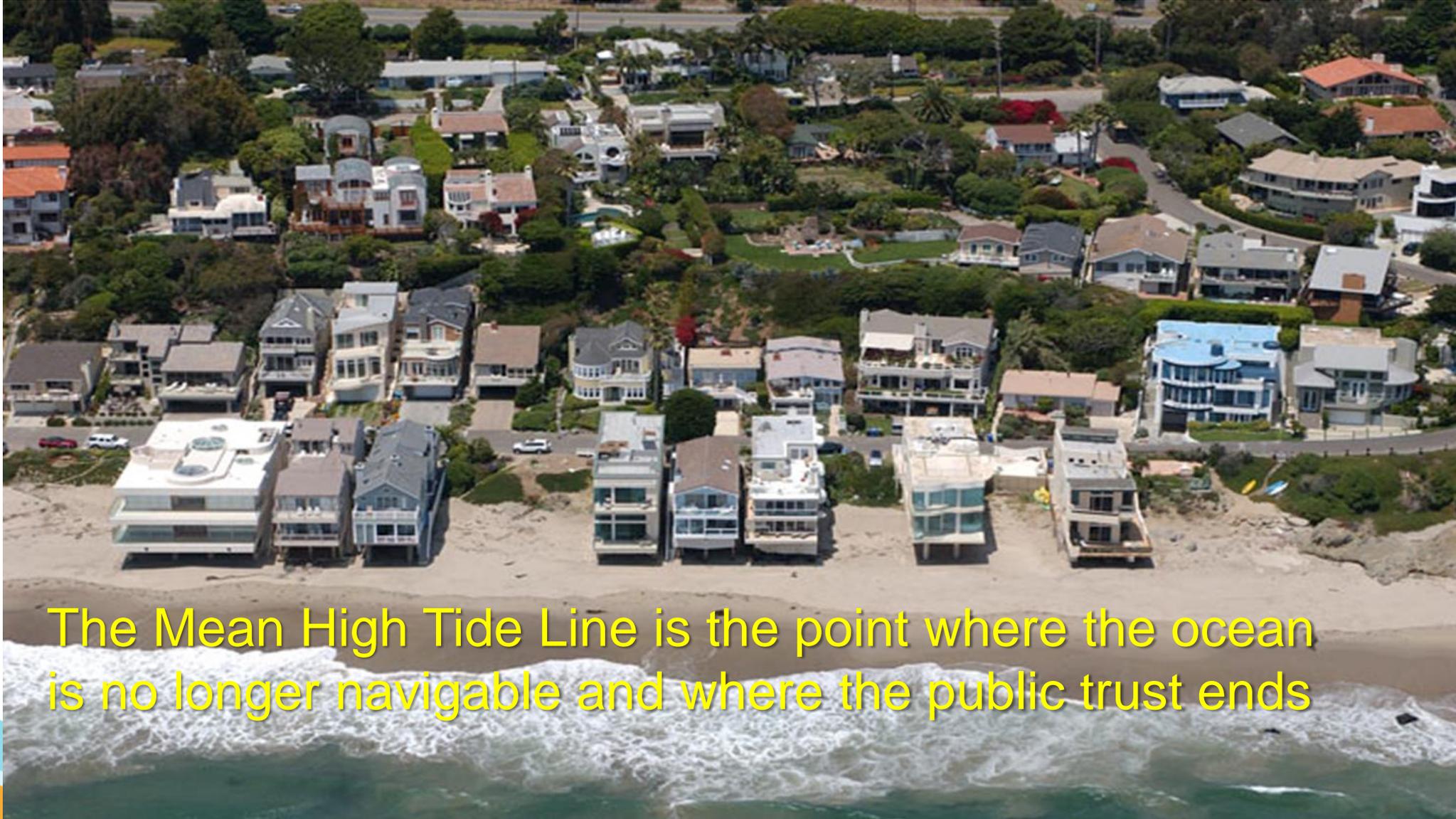


The plane where the ordinary or mean high tide meets the shifting sand from time to time.



Public Trust

Lechuza Villas West v. California Coastal Com'n (1997) 60 Cal.App.4th 218



The Mean High Tide Line is the point where the ocean is no longer navigable and where the public trust ends

Beach vs. Bluff



Adaptive Responses



Sea level rise



Retreat



Sea level rise



Accommodation

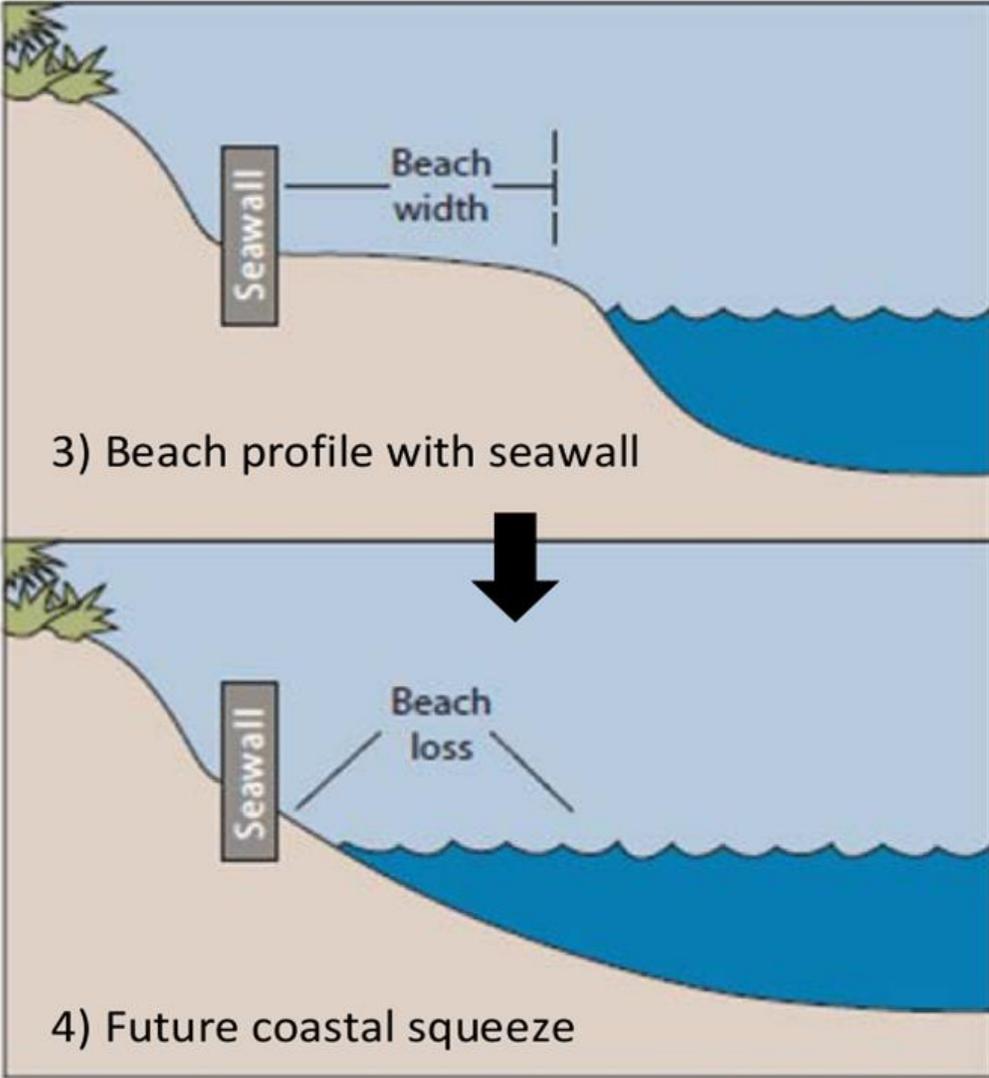
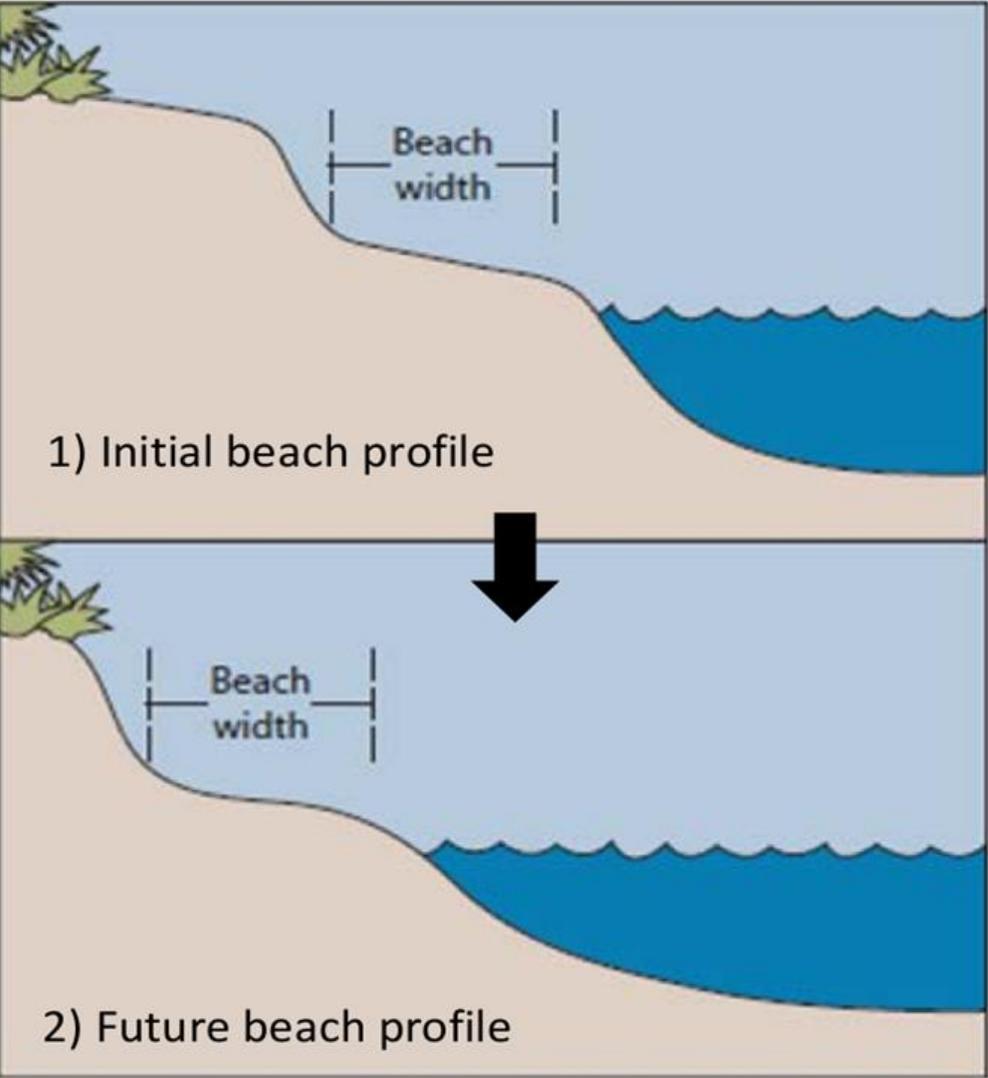


Sea level rise



Protection

Coastal Squeeze



Destined to Fail?

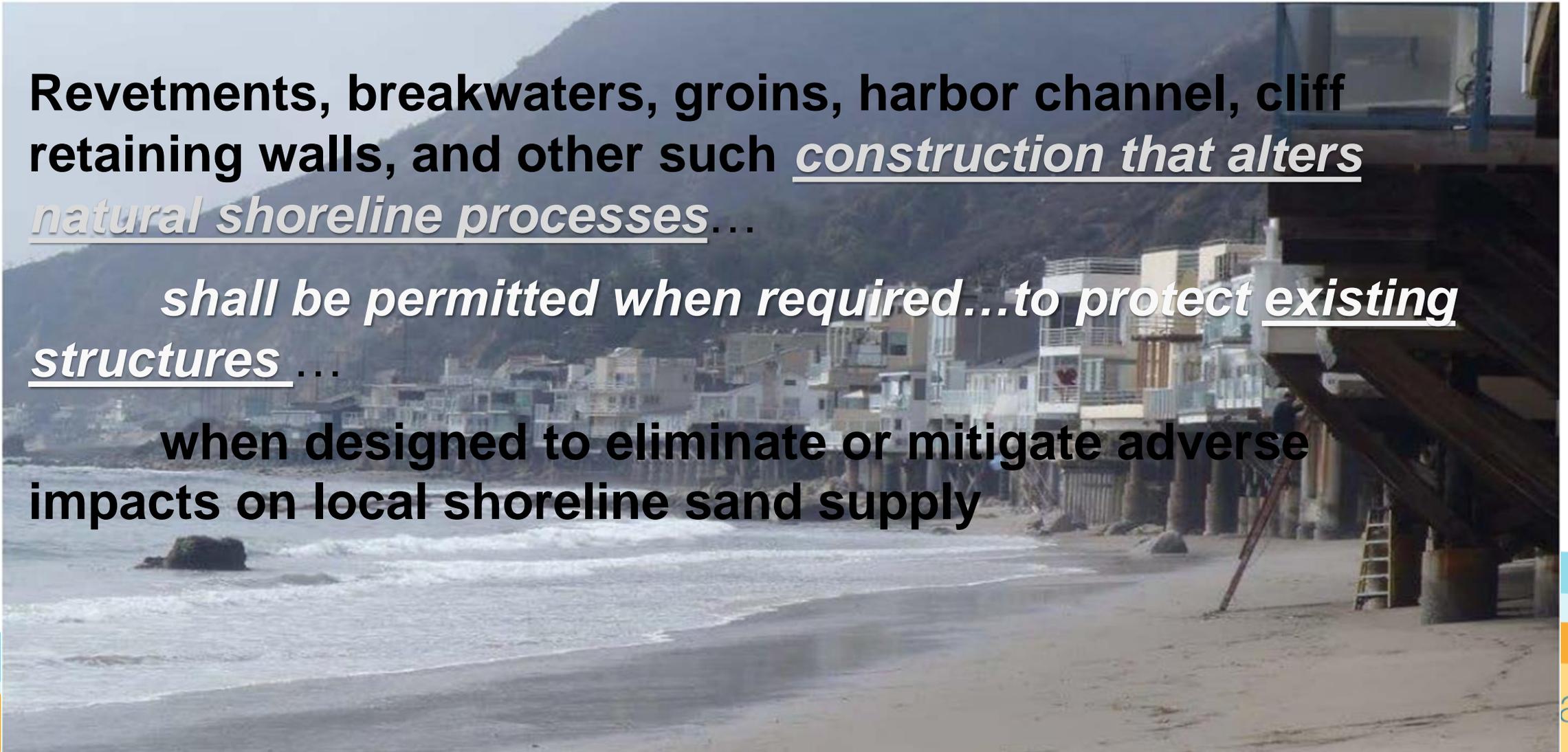


Coastal Act Section 30235

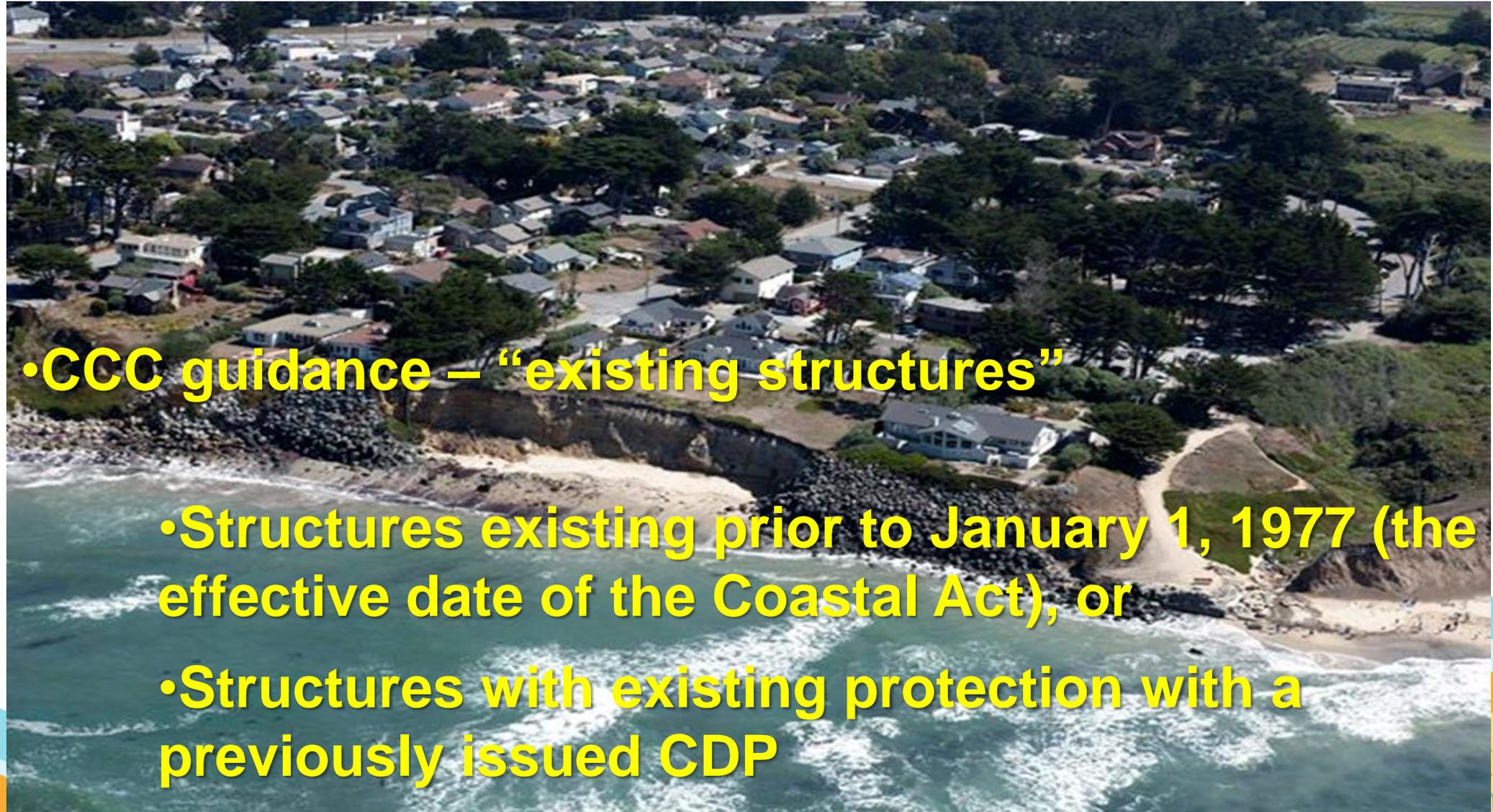
Revetments, breakwaters, groins, harbor channel, cliff retaining walls, and other such construction that alters natural shoreline processes...

shall be permitted when required...to protect existing structures ...

when designed to eliminate or mitigate adverse impacts on local shoreline sand supply



Existing Structures?



•CCC guidance – “existing structures”

•Structures existing prior to January 1, 1977 (the effective date of the Coastal Act), or

•Structures with existing protection with a previously issued CDP

California Constitution

Article I, Section 1

All people are by nature free and independent and *have inalienable rights*. *Among these are* enjoying and defending life and liberty, acquiring, possessing, and *protecting property*, and pursuing and obtaining safety, happiness, and privacy

Takings Provisions

- 5th Amendment - US Constitution:
 - “nor shall private property be taken for public use, without just compensation.”
- Art.1, Sec. 19 – California Constitution
 - “**Private property may be** taken or **damaged for a public use** and **only when just compensation**, ascertained by a jury unless waived, **has first been paid** to, or into court for, the owner.”

Per Se Takings

• Where regulation denies all economically beneficial or productive use of land.

• *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003

• Direct government appropriation or physical invasion of private property.

• *United States v. Pewee Coal Co.* (1951) 341 U.S. 114

• These are recognized as inherent attributes of the ownership of private property.

Regulatory Takings

Relevant considerations

- Character of the regulation
- The economic impact of the regulation...and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations

Penn Central Transportation Co. v. New York City (1978) 438 U.S. 104

These inquiries aim to identify regulatory actions that are functionally equivalent to an appropriation of property

Lingel v. Chevron USA, Inc. (2005) 544 U.S. 528

Damaging Private Property for Public Use – Per Se Taking

A government act intentionally reducing historic flood control measures, and thereby causing private land to be permanently inundated, is a taking under the California Constitution.

*Pacific Shores Property Owners Association v.
Department of Fish & Wildlife (2016) 244 Cal.App.4th 12*

Types of Takings

Per Se Taking

- The right to protect property is an inherent right of property ownership.
- Taking results when government action denies the exercise of that right.



Types of Takings



Regulatory Taking

- Character of the regulation – to allow private land to become available for public use.
- Reasonable investment back expectation – right to protect property

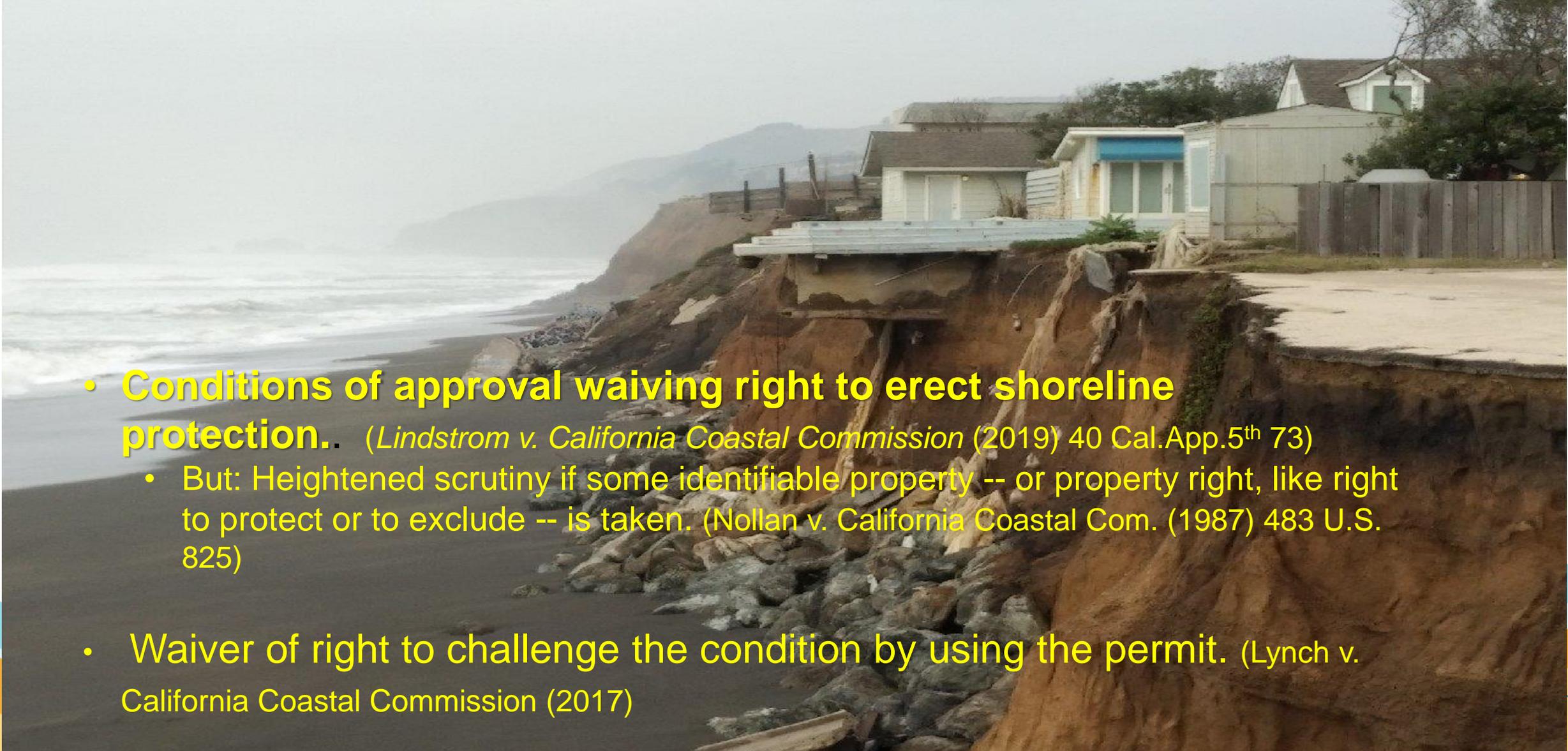
Types of Takings



Strict Liability – California Constitution

- Damage to private property for public use.

Issues & Concerns

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- **Conditions of approval waiving right to erect shoreline protection.** (*Lindstrom v. California Coastal Commission* (2019) 40 Cal.App.5th 73)
 - But: Heightened scrutiny if some identifiable property -- or property right, like right to protect or to exclude -- is taken. (*Nollan v. California Coastal Com.* (1987) 483 U.S. 825)
 - **Waiver of right to challenge the condition by using the permit.** (*Lynch v. California Coastal Commission* (2017))

The End