

UPDATE (September 1, 2017): The statement's drafters have provided a link (shared at the end of the post) for California attorneys who wish to sign on to the statement discussed here.

Last month, a group of public trust and coastal land use experts, working under the auspices of the [Center for Ocean Solutions](#), [released two documents](#) that are likely to be influential in shaping the future of California's coastline. The documents, [Consensus Statement on the Public Trust Doctrine, Sea Level Rise, and Coastal Land Use in California](#) and [The Public Trust Doctrine: A Guiding Principle for Governing California's Coast Under Climate Change](#), explain how the [state holds its tidelands in trust](#) for the people of California, and analyze how the [state's trust responsibilities](#) interact with adaptation to coastal changes, including sea-level rise. The release of these documents coincides with the release of new [draft policy guidance](#) from the California Coastal Commission on how to facilitate adaptation to sea-level rise in residential contexts.

The longer Center for Ocean Solutions report provides an excellent overview of how our coastline is dynamic and undergoing constant physical change; how that change is likely to accelerate under conditions of climate change; how the public trust doctrine protects public interests in tidelands and associated ecosystems, recreational access, and other interests; and how the doctrine interacts with public decisionmaking and private property rights on and near the coastline.

This report provides context and detail to the shorter Consensus Statement, which is a blueprint for future action. The Consensus Statement articulates and expands on these six principles:

1. California's dynamic coastline is subject to natural changes as well as human influences, including sea level rise and coastal development. If not proactively and effectively managed, these changes and influences can impair public interests in the coast.
2. The public trust doctrine requires California to protect the public's interest in tidelands and submerged lands, including their use for navigation, commerce, fishing, public access, recreation, and conservation.
3. The public trust doctrine limits the ability of decisionmakers to dispose of public trust resources or impair their use for public trust purposes.
4. The public trust doctrine requires decisionmakers to consider the effects of their actions on public trust resources and uses.
5. The existing legal standards and technical methods for locating shoreline property boundaries are inadequate to deal with the dynamic environmental processes of the

open coast, or with ongoing sea level rise. California should explore alternatives to these standards and methods in order to ensure protection of public trust resources and uses.

6. The public trust doctrine obligates California to proactively manage and protect public trust resources and uses in light of sea level rise and upland land-use practices.

The Consensus Statement provides a clear overview of how the doctrine should apply to address coastal change. Many of its conclusions reflect principles clearly articulated in case law, while some of the ideas in the Statement are intended to resolve ambiguous or unsettled issues under current law. The authors include Don Gourlie and Ashley Erickson of the Center for Ocean Solutions, along with several other leading experts on coastal management, policy, and law and on the public trust doctrine: Deborah Sivas, Meg Caldwell, Tim Eichenberg, Ralph Faust, Curtis Fossum, Charles Lester, Steve Roady, Jan Stevens, and William White.

The basic insight of the Statement is that many of California's legal standards, technical practices, and attitudes related to coastal management have developed and evolved without sufficient attention to the real-world dynamic nature of the coastline or to the interaction between physical changes and the state's public trust responsibilities; as a result, proactive and new approaches are necessary in order for the state, and local governments, to adequately protect public coastal resources. To be sure, some legal doctrines have evolved to attempt to address the challenges of a dynamic coastline. But even in the absence of sea-level rise, property owners' expectations have unreasonably assumed that the coastline is, or can be made to be, physically static enough to accommodate a static conception of property rights, making it difficult to apply the law in a way that matches physical reality. We already see evidence of this dynamic in communities such as [Gleason Beach](#) in Sonoma County, where [blufftop erosion has caused houses to fall over a cliff](#) and Caltrans is embarking on a [project to reroute Highway 1 inland](#), as well as numerous communities where [seawalls are proving inadequate and harmful to neighboring properties and public resources](#). Sea-level rise exacerbates this problem significantly; over the coming decades, public beaches will be reduced and even eliminated, blufftops will erode more rapidly, and public agencies will find it difficult or impossible to maintain existing services. Sea-level rise makes past policy approaches and expectations unreasonable in light of the state's public trust obligations, and [existing legal doctrines should be applied](#) with an eye toward addressing this mismatch.

One significant concern of local governments is the possibility of having to compensate property owners for loss of property due to erosion, inundation, and migration of the tideline as sea-level rise encroaches, and for the consequences of actions to ensure that

public rights are maintained in light of those physical changes. While property owners' distress and desire to be compensated is understandable and their situation is difficult, protection of the public trust in coastal resources is a background principle of property law that - properly applied - [makes takings law inapplicable](#). That is, owners possess no right to encroach on trust resources, so a regulation to protect trust resources for the public should not give rise to a "taking" that requires compensation. Where coastal change, rather than government action, is the driver of loss of property, government cannot bear the burden of compensation. The Consensus Statement, and the longer report, endorse that view. They also endorse the view that protecting property through artificial means such as seawalls and other "hard armoring" cannot change the application of the public trust; that is, a property owner may not reduce the public's rights in favor of its own rights by armoring property.

The Consensus Statement concludes with the following recommendations:

- California can undertake a variety of sea level rise adaptation strategies that are consistent with the public trust doctrine. These include:
- Develop laws and policies that acknowledge the dynamic character of coastal property boundaries and avoid or minimize foreseeable threats to public trust resources and uses. Potentially valuable new state or local laws and policies could provide for rolling land use restrictions, revise zoning laws to phase out development in hazardous areas, or require boundary determinations and projections of future boundary movements when development is anticipated to encroach on public land or be located within flood zones.
- Encourage community-level land use and adaptation planning. Such efforts are most necessary in developed areas with difficult tradeoffs between the sense of place cherished by visitors and coastal residents, vested economic interests in coastal development and redevelopment, and the significant economic and cultural benefits of coastal access for all as protected by the public trust doctrine and California Constitution.
- Increase or improve coordination between relevant agencies to ensure effective protection and management of public trust resources and uses.
- Reject or place conditions on proposed developments or uses that will foreseeably cause harm to public trust resources and uses. Appropriate conditions may include measures such as setbacks, time restrictions, restrictions on future protective structures, payment of fees to mitigate effects on trust resources, or requirements for future removal if substantial impairment of public trust resources and uses arise.
- Establish procedures for periodic review and, if necessary, reconsider past decisions that affect public trust resources and uses in light of new knowledge.

- Ensure that coastal structures on tidelands are consistent with public trust needs. Where appropriate, require removal or charge rent for such structures. Clarify that such rules apply to structures that come to be located on public tidelands because of movement of the coastal property boundary, even if those structures were originally located on private land and lawfully permitted.

The California Coastal Commission, which is the primary regulator of the state's coastal development, has been working for several years to address sea-level rise. (The primary guardian of the public trust, however, is the [State Lands Commission](#), which works together with the Coastal Commission and other agencies.) The Commission oversees local governments' Local Coastal Programs, which govern development on the coast and which need to be updated to address coastal change. In 2015, the Commission adopted its [Sea Level Rise Policy Guidance](#). Commission staff just [released](#) a draft of an important follow-up document: its [Draft Residential Adaptation Policy Guidance](#). This new draft guidance incorporates some of the ideas articulated in the Consensus Statement, and cites the statement in its footnotes. The Commission staff [will be accepting comments](#) (via email to [ResidentialAdaptation@coastal.ca.gov](mailto:ResidentialAdaptation@coastal.ca.gov)) on the draft guidance through September 15<sup>th</sup>, and Commission staff plans to revise it to propose it for adoption this fall.

Overall, the Consensus Statement and accompanying report are an important and welcome contribution to the continuing dialogue over legal and policy barriers to effective adaptation to sea-level rise. I hope, and expect, that it will be influential.

The group is accepting additional endorsement from California attorneys. If you would like to express your support for the consensus statement, please [fill out this form](#).