

Legal Implications of Mandating Managed Retreat

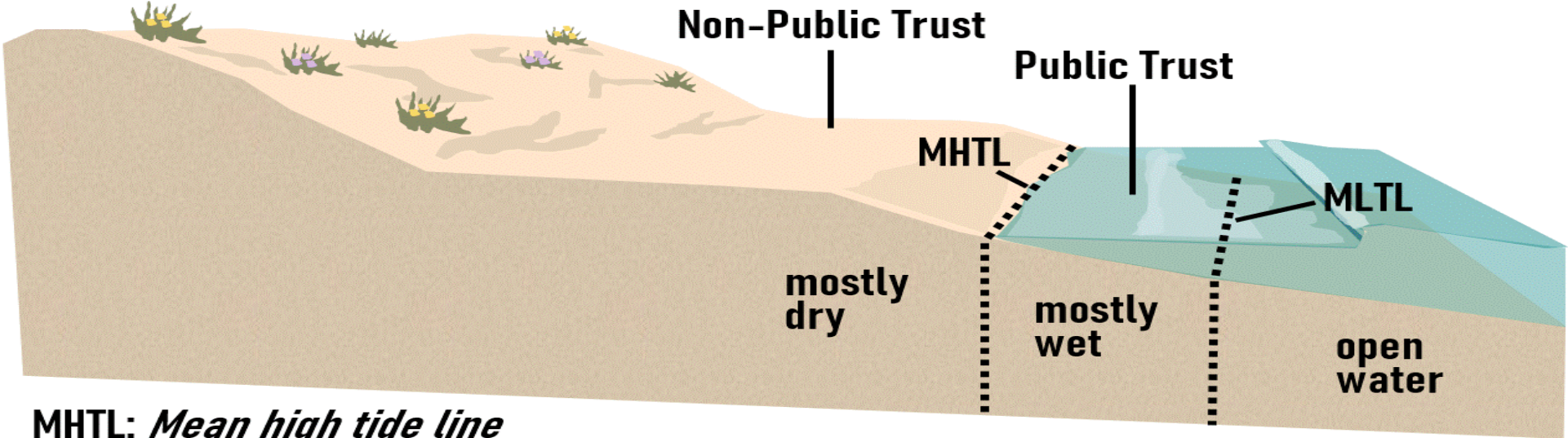
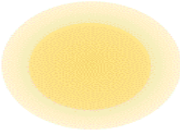
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State Land/Private Land

Ordinary High Water Mark or Mean High Tide Line

The mean average of all the high tides occurring over a lunar epoch, usually 18.6 years.

SUMMER BEACH



MHTL: Mean high tide line



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Coastal Act Sec. 30010

The Legislature hereby finds and declares that **this division** is not intended, and **shall not be construed as authorizing the commission...or local government...to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor.**

Orange County Register

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.”

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Per Se Regulatory Takings

At least two discrete categories of regulatory action are compensable without case-specific inquiry into the public interest advanced in support of the restraint

Regulations that compel the property owner to suffer a physical “invasion”

Regulations that deny all economically beneficial or productive use of land.

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Other Rights Per State Law

“**[We traditionally] resort to** ‘existing rules or understandings that stem from an independent source such as **state law**’ **to define the range of interests that qualify for protection as ‘property’**” under the Fifth and Fourteenth Amendments...”

Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 1030.

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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

Section 30010 & Existing Structures



If constitutional principles are applied to the construction of the statute...

existing structures

Applies to structures where denying a permit would deny the right to protect the property.

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Damaging Private Property for Public Use



Pacific Shores Property Owners Association

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

Cal Coastal Records Project

Pacific Shores Property Owners Association

The Department is *strictly liable for the damages* it caused in this instance. Strict liability applies because the Department intentionally designed the breaching to flood plaintiffs' properties by reducing the flood protection plaintiffs had historically enjoyed, and its *primary purpose* for doing so was not to provide flood protection, but *to protect environmental resources*.

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

Cal Coastal Records Project

Damaging Private Property for Public Use

Denying protection in circumstances where property would be damaged as a result in order to carry out a resource protection policy would be damaging private property for public use

Under §30010 neither the Commission nor a city can apply the statute to achieve that result, without compensating the landowner.

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Shifting Liability to Local Government

The Coastal Commission doesn't have the power of eminent domain

When 30010 applies, the Commission must approve the permit.

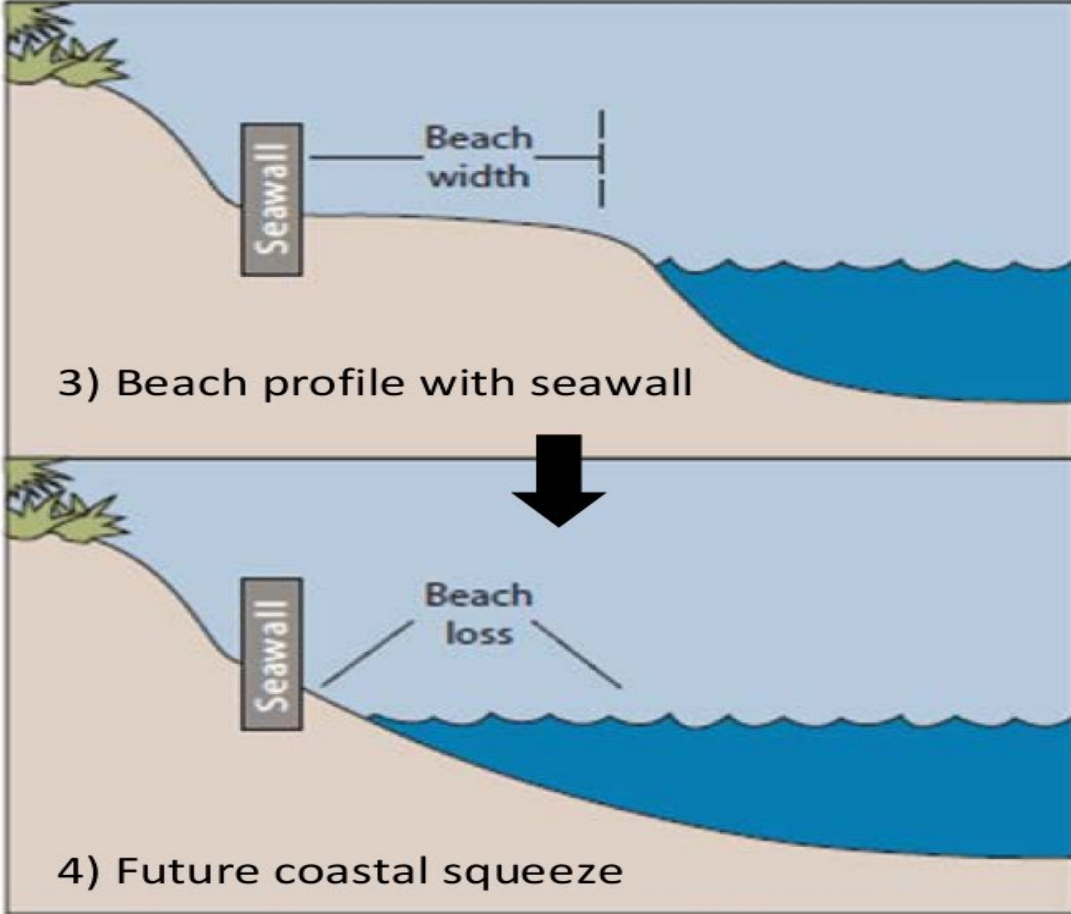
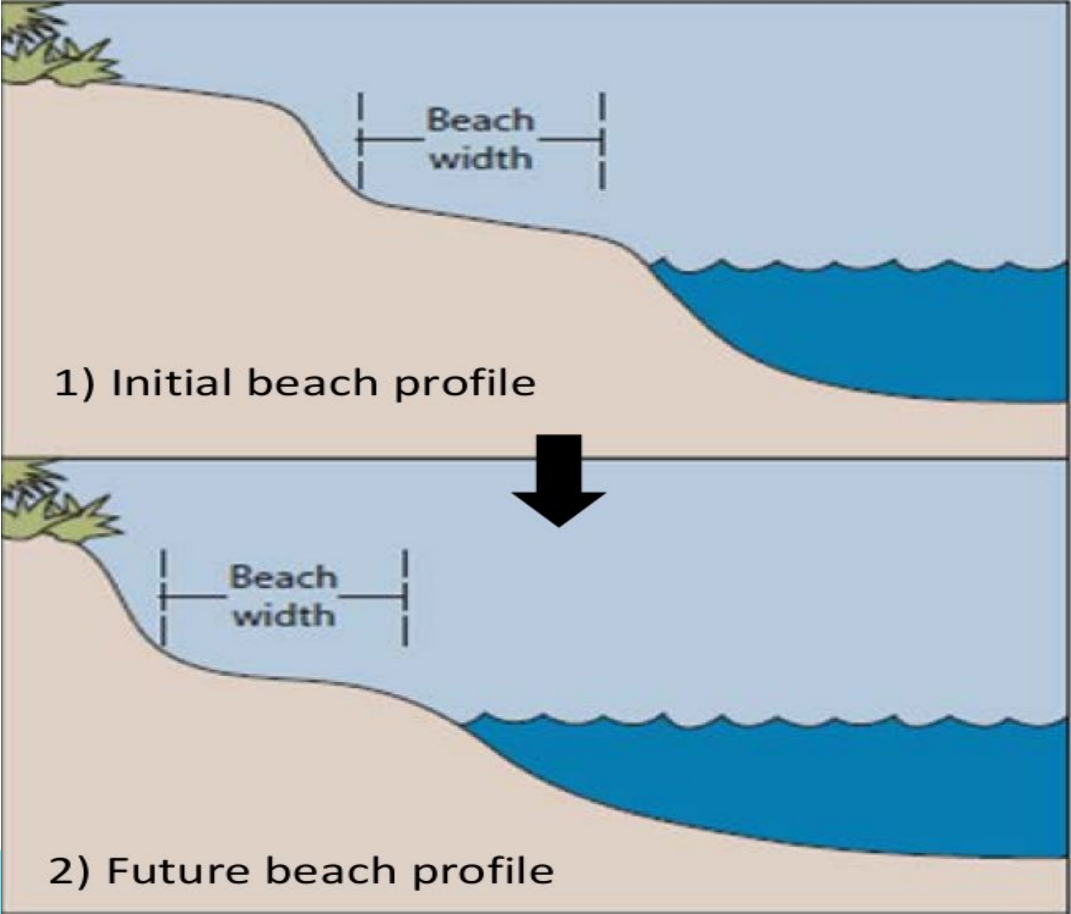
Shifting Liability to Local Government

Cities & Counties have the power of eminent domain.

When planned retreat is codified in an LCP & 30010 applies...

- cities & counties pay for the taking.

Coastal Squeeze





Coastal Squeeze = A narrowing of the beach on private property when the tide is above MHTL

“as sea levels rise and the beach erodes over time, lateral access may be “squeezed” between the rising tides and the proposed development, leading to the gradual loss of the public’s ability to use and recreate on the beach.”

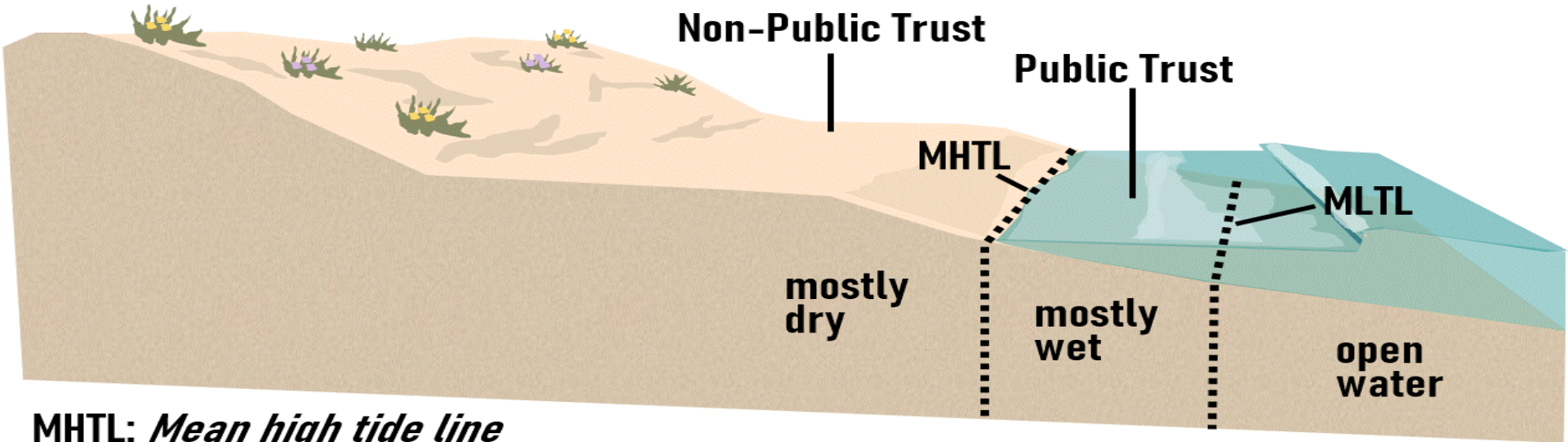
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“In the past few years...chronic erosion...has resulted in extremely narrow beach widths.”

Addressing coastal squeeze means imposing “methods for preserving future public access seaward of [a] project site.”

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SUMMER BEACH



MHTL: *Mean high tide line*

Coastal Squeeze not a narrowing of public access caused by a structure...

It is a narrowing of private property above the MHTL as a result of high water events.

The coastal squeeze argument is an attempt to require a property owner to allow public use over private land where there is no established public access for impacts of tidal events the property owner has not caused.

THE END