



To: Donne Brownsey, Chair, California Coastal Commission
Cc: Kate Huckelbridge, Executive Director, California Coastal Commission
Madeline Cavalieri, Chief Deputy Director

Re: W 6e Public Trust Guiding Principles & Action Plan

Dear Chair Brownsey and staff,

The Surfrider Foundation and partner organizations submit this letter to enthusiastically support the work of Coastal Commission and staff in the adoption of the Public Trust Guiding Principles & Action Plan. Such principles are critical for safeguarding the public trust at a time of immense pressure on our coastline, as discussed in detail in our attached July 2022 letter on the Draft Plan. We support the Plan and recent revisions to incorporate tribal input, add detail to environmental justice commitments, and clarify intentions to increase coordination with the California State Lands Commission. Below, we elaborate on our support for specific priorities and request amendments to language related to armoring in Principle 9.

Suggested Amendments to Principle 9 Regarding Shoreline Protective Devices

Overall, we strongly support the Plan’s characterization of shoreline protective devices and their impacts to coastal resources and recreation. However, we remain concerned about the Plan’s lack of clarity around armoring which may be in conflict with the Coastal Act.

Principle 9 correctly notes that armoring causes many adverse impacts to the public trust and is accordingly prohibited by Coastal Act Section 30253 — with the exception of armoring that complies with the narrow conditions outlined in Coastal Act Section 30235.

The Plan however, also now adds language to describe new “innovative approaches to adaptation” being necessary and cites the Coastal Act balancing provision to state that “there may also be situations when shoreline protection strategies conflict with a Coastal Act policy but are permissible because, on balance, they are most protective of significant coastal and public trust resources like public access and recreation.” (Principle 9)

As drafted, Principle 9 misses an important opportunity to clarify when new hard armoring is simply not permissible by the Coastal Act. Additionally as written, the way this balancing provision is referenced is vague and potentially misleading; for instance, it can be interpreted as

supporting armoring that would otherwise be inconsistent with the Coastal Act if it is accompanied by managed retreat commitments in the long-term. Section 30007.5 should only be used when there is a conflict among one or more policies of the Coastal Act. If there is a conflict, this Section reads that the “Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.” Cal. Pub. Res. Code sec 30007.5

The Public Trust Guiding Principles & Action Plan intends among other things to portray how the Commission expects local governments to make decisions regarding the public trust - there is perhaps no better place to make clear that the Coastal Act cannot and will not be compromised for private benefit. The Plan should clarify that:

- a) The use of armoring to protect structures built after the Coastal Act, or that do not serve a public purpose or coastal dependent use, cannot be permitted; as consistent with Section 30235 and 30253.
- b) The definition of ‘existing’ in the Coastal Act applies to structures built before 1977.
- c) Coastal Act Section 30235 is not an override of other Coastal Act policies, including 30253, 30210, 30214 and 30007.5.

In accordance with these suggestions, we propose the following amendment specifically to the text in Principle 9:

“As described above, hard shoreline armoring often adversely impacts public trust resources, uses, and needs and is often inconsistent with the Coastal Act. ~~However, In some cases,~~ Section 30235 of the Coastal Act authorizes the construction of shoreline armoring that is otherwise inconsistent with the Coastal Act if the armoring is required to serve coastal-dependent uses or to protect pre-existing structures built before January 1, 1977 or public beaches in danger from erosion, when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and when other impacts of the shoreline armoring are eliminated or mitigated. There may ~~also~~ be situations where ~~shoreline protection strategies conflict with a Coastal Act~~ **policies conflict, in which cases decisions must be made that are** ~~policy but are permissible because,~~ on balance, they are most protective of significant coastal and public trust resources like public access and recreation.²⁰ These situations are most likely to arise when temporary armoring is necessary to protect **public** coastal resources (e.g., public roads providing coastal access); the armoring would have limited impacts on coastal or public trust resources; there are no other feasible alternatives; and the project is paired with other coastal resource protection measures, such as managed retreat and nature-based adaptation strategies, and with identified longer-term adaptation solutions. **The use of armoring to protect structures built after the Coastal Act, or that do not serve a public purpose or coastal dependent use, cannot be permitted; as consistent with Section 30235 and 30253 of the Coastal Act.”**

These clarifications are necessary as private development will continue to encroach on public tidelands, and as adaptation strategies that go well beyond Coastal Act 30235 limits will continue to be proposed.

Finally, we appreciate the added reference in Principle 9 to beach recreation use and access fees, which can also help address existing and future encroachments on public trust land. The public recreation mitigation fee value should be regularly assessed to account for the loss of space on the beaches occupied by shoreline armoring and should be continually updated based on current beach attendance surveys.

Support for Coordination with the State Lands Commission

We strongly support commitments to work with the State Lands Commission to use best available science and technology in identifying the area between the current mean high tide line and the most landward projected location of public trust tidelands for the expected lifetime of a proposed development. Development within any part of this area constitutes an occupation of public trust lands and we appreciate the Commission's tools for avoiding and mitigating this scenario, including through the creation of a GIS inventory and the identification of boundary line agreements. We also support the new inclusion of a statement in Principle 6 about the need to work collaboratively on coastal development permits that involve a lease from the State Lands Commission for occupation of public tidelands. The State Lands Commission must protect public trust tidelands and, at a minimum, charge rent for any occupation of such lands by private entities.

We also appreciate the Staff Report's discussion on artificial accretion and whether artificial influences on coastal sediment supply — we have seen many applicants of coastal development permits maintain that new or existing seawalls are not in public tidelands because their seawall, or development around their seawall, has altered the mean high tide line (MHTL). This sets up a false choice where public tidelands are determined by development rather than by the nature of the tide. In short, we agree that artificial accretion does not change the public trust *interest* in tidelands or by extension the location of the MHTL.

Support for Affirmative Agency Action

We support Guiding Principle 3, outlining the Commission's affirmative duty to uphold the Public Trust doctrine, and note that this can also be read more succinctly as an affirmative duty to *protect public trust resources*, as stated in "Protecting Public Trust Resources in the Face of Sea Level Rise" (page 3.) Much of California's coastline is in jeopardy due to coastal squeeze, and it is this Commission's responsibility to avoid and mitigate the damage that development decisions cause on public trust resources. We strongly support the invocation of the *United States v. Milner* case in Guiding Principle 6 to state that owners of shorefront property may not unilaterally and permanently prevent the landward migration of public trust lands.

Support for Education and Outreach on Sea Level Rise

Finally, we support Guiding Principle 4 in the Plan and note that public outreach and education about the future of beaches and tidelands in California is crucial in order to protect public resources. Frontline and historically marginalized communities who visit the beach should have a voice and a role in its protection. Property owners should also be aware of their role in occupying public trust lands.

Thank you for consideration of these comments in the important effort of adopting the Public Trust Guiding Principle and Action Plan.

Sincerely,

Laura Walsh
California Policy Manager
Surfrider Foundation

Ashley Eagle-Gibbs
Legal and Policy Director
Environmental Action Committee of West Marin

Susan Jordan
Executive Director
California Coastal Protection Network