

Welcome, this introduction to the Public Trust Doctrine was developed by the staff of the California State Lands Commission in 2007 and was presented in workshop settings in San Francisco, Los Angeles and San Diego. We hope it is helpful in understanding the basic concepts of this important legal precept that has evolved over the millennia.



The Public Trust Doctrine

Protecting tide and submerged lands and navigable waterways for the benefit of the People of California



This presentation is only a glimpse at some of the landmark events that have molded the Public Trust Doctrine in California as we know it today. There are a myriad of other statutes, cases, and actions that have been part of the evolution of this rather unique area of the law. And of course we expect more legislation, cases and events in the future to leave their mark. But with that said – the basic principal remains the same -- these are publicly owned lands held in trust for water-related public needs.

Origins of the Public Trust Doctrine



- Roman Civil Law
 - The air, the rivers, the sea and the seashore were incapable of private ownership; they were dedicated to the use of the public.

Institutes of Justinian – 534 CE



- English Common Law
 - The sovereign held the tide and submerged lands, not in a proprietary capacity, but as trustee of a public trust for the benefit of the people of the realm.

Magna Charta – 1215



The origins of the Public Trust Doctrine are traceable to Roman law concepts of common property. Under Roman law, the air, the rivers, the sea and the seashore were incapable of private ownership – they were dedicated to the use of the public. This concept that waterways are unique and that the government holds them in trust for the people has endured.

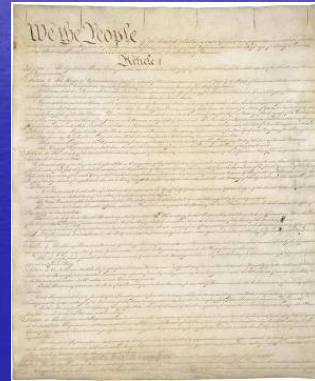
In 13th century Spain, public rights in navigable waterways were recognized in the *Siete Partides* and in England in the *Magna Charta* which placed restrictions on the sovereign in dealing with public use of waterways.

Under English Common Law, this principle evolved into the Public Trust Doctrine, pursuant to which the sovereign holds navigable waterways as a trustee of a public trust for the benefit of the people for various water-related uses.

Origins of the Public Trust Doctrine in the US



- The precept that tide and submerged lands are unique and that the ruler of the people holds them in trust for the people was transplanted to the new world and when the United States broke free of the English sovereign, those former colonies became sovereign states.
 - Post-American Revolution
Martin v. Waddell (1842)
 - Equal-Footing Doctrine
Pollard's Lessee v. Hagan (1845)



After the American Revolution, each of the original states succeeded to this sovereign right and duty. Each state became a trustee of the navigable waterways within its boundaries for the common use of the people.

When California was admitted to the Union in 1850, it too succeeded to the same sovereign rights and duties under the Equal-Footing Doctrine.

The Public Trust Doctrine Limitations on State powers



Illinois Central Railroad Co. v. Illinois (1892)



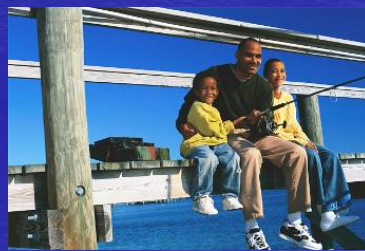
Over 115 years ago the United States Supreme Court issued its landmark ruling on the nature of a state's title to its tide and submerged lands. That decision serves as notice to lawmakers in all states that they are restricted in giving up trust lands to private interests. Although state and federal courts have reviewed tidelands trust issues many times since then, this basic premise of the trust remains fundamentally unchanged.

Purpose of the Public Trust Doctrine



- The state's title to its tide and submerged lands is a title held in trust for the people of the state so that those citizens may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing free from obstruction or interference from private parties.

Illinois Central R.R. Co. v. Illinois (1892) 146 U.S. 387, 452



In a decision involving a grant of the Chicago waterfront by the Illinois State Legislature to the Illinois Central Railroad, the US Supreme Court made it clear that a state's title to its tide and submerged lands is different from that of the proprietary lands it or the federal government holds for sale. The court found that it was beyond the authority of the legislature to transfer away the public's rights in the waterfront.

In other words, the Public Trust is an affirmation of the duty of the state to protect the people's common heritage in navigable waters for their common use. States have a duty to protect the public's right to navigate on, conduct commerce over, and fish in navigable waters.

The California Constitution



1879

Article X, Section 3 – State prohibited from selling certain tidelands

Article X, Section 4 – Public right of access to waterways guaranteed

1910

Article 1, Section 25 – Public Right to Fish

In a Constitutional convention in 1879, the delegates drafted several provisions for the new constitution aimed at prohibiting certain practices that had placed many of California's urban waterfronts in private hands and restricted public access and use. These provisions were adopted by the California electorate as was the right to fish in 1910. These provisions add additional protections to California's Public Trust lands.

To What Uses May Public Trust Lands Be Put ?



Traditionally Public Trust uses were limited to:

- Water-related Commerce
- Navigation
- Fishing



What common uses may public trust lands be put to? Traditionally, public trust uses were limited to commerce by navigation and fishing.

Commerce and navigation were essential elements in building the British empire in the 16th through the 19th centuries.

Being an island nation the right of English citizens to conduct commerce by sea along with the ability to access fishing grounds were rights set forth in the *Magna Charta* as restrictions on the sovereign's powers.

The Public Trust Doctrine



- Facilities for the Promotion of Trust Uses
- Examples of these Public Trust consistent uses include:
 - Harbors
 - Ports
 - Marinas
 - Piers
 - Wharves



Facilities for the promotion and accommodation of Public Trust uses are necessary and incidental or ancillary to Public Trust uses and are therefore consistent with the Public Trust Doctrine.

The Public Trust Doctrine



- As a common law doctrine, which is continuously evolving, the courts have found that other water-oriented uses that benefit the public are also consistent with the trust:

Open Space

Ecological Preservation

Scientific Study

Water-dependent or water-oriented recreation

Photo courtesy of Angelo Garcia, CA Dept. of Water Resources



Photo courtesy of the Port of San Diego



Marks v. Whitney (1971) 6 Cal.3d 251

In more recent years, the California Supreme Court has said that the Public Trust Doctrine embraces the right of the public to use the navigable waters of the state for bathing, swimming, boating, and general water-related recreational purposes. The Public Trust is sufficiently flexible to encompass changing public needs, such as to include the preservation of the lands in their natural state for scientific study, as open space and as wildlife habitat.

Uses that directly promote, support, or accommodate Public Trust uses and public access.

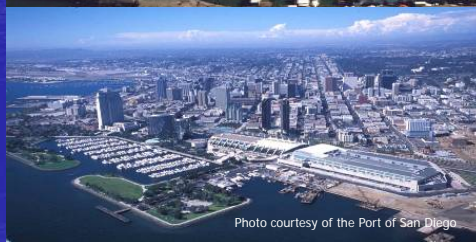


- Commercial facilities:

- Warehouses
Oakland v. Williams (1929) 206 Cal. 315
- Container cargo storage
- Convention and Trade Facilities
Haggerty v. Oakland (1958) 161 Cal.App.2d 407

- Facilities to serve waterfront visitors:

- Hotels
- Restaurants
- Parking lots
Martin v. Smith (1960) 184 Cal.App.2d 571



As we have observed, uses on Public Trust lands not only include those traditional and direct Public Trust uses of commerce by navigation and fishing, but also include uses which facilitate or support Public Trust uses, such as wharves and warehouses. These types of uses were approved by the courts early in the 20th century because they directly promote the public's trust needs. Later, uses which were incidental to the promotion of the Public Trust, such as the Port of Oakland's convention center, were held to be consistent with the trust, because, although they were not physically dependent on being near the water, they promoted port business by encouraging trade, shipping and commercial associations to become familiar with the port and its facilities. Many of these Public Trust lands have been filled and, while no longer underwater, they retain their legal character as tide or submerged lands and are protected by the Public Trust Doctrine.

Visitor-serving facilities, such as restaurants, hotels and parking areas, are also allowed uses because as places of public accommodation, they facilitate broad public access to public trust lands, and therefore, enhance the public's enjoyment of these lands set apart for their benefit. The Legislature in following the mandate of Article X, Section 4 of the Constitution **“to enact such laws as will give the most liberal construction of this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof”** passed the McAteer-Petris Act to protect the San Francisco Bay area, the Coastal Act and the Subdivision Map Act and set forth public access as one of the primary objectives of those laws.

General Guidelines for Achieving Compliance with the Public Trust:



1. The primary use must be water-dependant or water-related.
2. The use must directly promote or support uses authorized by the Public Trust Doctrine and if the trust is managed by a local or regional governmental entity, be authorized by the statutory trust grant.
3. The use must accommodate or enhance the statewide public's enjoyment or benefit from the trust lands not merely provide a local or municipal public benefit.

The trustee of the lands must determine appropriate uses between competing trust needs of the public. Uses that interfere with the public's trust needs must not be allowed. Only short-term (for the minimum period practicable, up to a maximum period of five years) non-trust uses may be allowed by the trustee if no trust needs for the site are foreseeable during that period and the trust receives just compensation for the use of the public's property.

Uses Inconsistent with the Public Trust



- Uses that are generally not permitted on Public Trust lands are those that:
 - Are not water-dependant or water-related
 - Do not serve a statewide public purpose
 - Can be located on non-waterfront property
 - Examples:
 - Residential
 - General Commercial
 - Non-visitor Serving Retail
 - Public Schools, Hospitals, etc. *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199



The essential Public Trust purposes have always been, and remain, water related, and the essential obligation of the state is to manage its Public Trust lands in order to implement and facilitate those trust purposes for all of the people of the state. Therefore, uses that do not accommodate, promote, foster or enhance the statewide public's need for essential maritime services or the public's enjoyment of the state's waterways are not appropriate uses for public trust lands. These would include commercial facilities that could easily be sited on uplands. It also includes strictly local or neighborhood-serving uses that confer no significant benefit to all Californians. Examples include public hospitals, public libraries, public schools, supermarkets, local government buildings and office buildings that serve general rather than specifically trust-related functions.

Another example of local, neighborhood-serving uses are public municipal parks. Some have suggested that public parks, recreation and open space are *ipso facto* consistent with the Public Trust Doctrine simply because they have been listed in the court cases or granting statutes. This suggestion must be rejected. The California Supreme Court made this eminently clear in the *Mallon* case. Open space, public parks and other uses unrelated to the waterfront and of a primarily community or municipal benefit, are not authorized on Public Trust lands or may not be supported by Public Trust revenues. Traditional Public Trust uses include water-dependent and water-related commerce, navigation, and fisheries. And, although courts have recognized that the Public Trust Doctrine is flexible and has been explicitly extended to include public access and public water-related recreational uses, as well as environmental protection, open space, and preservation of scenic areas, the overarching principle of the Public Trust Doctrine is that trust lands and trust assets belong to the statewide public and are to be used to promote water-dependent and water-related uses, beneficial to the statewide public rather than primarily benefiting a local community.

California's Sovereign Lands



Tide and submerged lands and the beds of lakes, streams, and other navigable waterways are held in trust by the State of California for the benefit of the people of California

- * 4 million acres
- * 120 rivers and sloughs
- * 40 lakes
- * 1100 miles of coastline
- * thousands of miles of non-coastal shorelines
- * 3 miles offshore



Public Trust lands in California, and under the State Lands Commission jurisdiction, include over 4 million acres underling the State's waterways. In addition to managing these lands directly the Commission and its staff seek to assist local government trustees in carrying out their mandates as public trustees.

Entities Involved in Public Trust Issues



- People of California
- California State Legislature
- Courts
- California State Lands Commission
- Legislative Trustees
- Attorney General's Office
- Regulatory Agencies
 - BCDC
 - Coastal Commission
 - State Water Resources Control Board
 - Regional Water Quality Control Boards
 - Department of Fish and Game
 - Tahoe Regional Planning Agency



1. The People of California – are the beneficiaries of the Public Trust and the people are afforded rights of access to navigable waterways through the California Constitution and Act of Admission to the Union. They also have standing to assert Public Trust rights in court and have directly enacted several Constitutional provisions in preserving public rights associated with Public Trust lands.
2. The State Legislature – is the representative of all the people and, subject to judicial review, is the initial authority dealing with management issues involving Public Trust lands and the uses to which Public Trust lands may be put. In order to promote Public Trust purposes, the Legislature has, since statehood, enacted nearly 300 statutes granting state-owned sovereign trust lands to various local governmental entities – legislative trustees. These grants were made for purposes consistent with the Public Trust Doctrine and typically for specific limited purposes including the development of harbors. The Legislature may create, alter, amend modify or revoke a trust grant so that the tidelands are administered in a manner most suitable to the needs of the people of the state.
3. The Courts – As a common law doctrine, it is the courts that have generally defined what the Public Trust Doctrine is. The courts interpret legislation and determine when the legislature or its trustees have overstepped their authority.
4. State Lands Commission – Following a scandal regarding malfeasance by the office entrusted to manage the State's Public Trust property, in 1938, the Legislature created an independent State Lands Commission, consisting of the LT Governor, State Controller and Director of Finance to administer the State's property interest in Public Trust lands. The Legislature vested exclusive jurisdiction over ungranted trust lands and any residual authority remaining in the State as to granted trust lands in the State Lands Commission. The Commission acts pursuant to legislative direction, the Constitution and the Public Trust Doctrine to protect the public's interest in all Public Trust lands, including granted trust lands.

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5. Legislative Trustees – As mentioned previously, the Legislature has enacted hundreds of statutes transferring daily control and management of Public Trust lands to many local governmental entities since 1850. These grants were made in trust, for general purposes consistent with the Public Trust Doctrine. In fact the major commercial ports in California all trace their development to Legislative grants-in-trust of tidelands. Each of the ports, from Oakland and San Francisco in the Bay Area, to Los Angeles, Long Beach and San Diego in the south -- has a statutory grant from the State. Each grant contained the mandate that the lands be used by the grantee for the establishment, improvement and conduct of a harbor. Thus although San Francisco had a state agency run its port for most of the 20th century, it was more often the cities, given the land and the power to govern, control, develop and improve the lands, which developed the state's major ports. These Public Trust lands are commonly called granted lands. The local grantee enjoys the benefits such utilization and development brings to a local economy, while the mechanism of a grant-in-trust promises that the state tidelands as well as all revenues generated directly or indirectly by the tidelands are used only for authorized Public Trust purposes of statewide benefit. It is important to note that except for certain statutory provisions specifically involving the CSLC, the Commission is not typically involved in day-to-day trust operations where the Legislature has transferred legal title to the trustee. It is the trustee that has the primary responsibility of administering the trust within the parameters of their granting statutes. It is therefore imperative that as trustees, these local governments treat public trust lands with the care that will allow this unique and limited resource to continue to provide utility and benefit to the statewide public for generations to come.
6. The Attorney General's Office – As a representative of the people of California it is the Attorney General's duty to enforce all laws. The Attorney General's office provides legal representation to the State Lands Commission through its Land Law division. State Lands and the Attorney General's office have worked closely in seeking to protect the public's interest in Public Trust lands.
7. Regulatory Agencies

All agencies with jurisdiction over development or other activities that can impact public trust lands and resources have a responsibility to consider their actions in the context of the effect on the resource. The Public Trust Doctrine exists to protect publicly owned property rights in the navigable waters of the state. Whether it is a land management decision by the State Lands Commission or local trustee or a regulatory decision of a governmental body exercising police power authority over the Public Trust property the obligation to the people of the state is the same.