

Coastal 'zone' awaits court decision

Commission under review by state supreme court

Coastal Commission

By Noel Smith

✓ The gorilla in the corner of coastal development, the California Coastal Commission - may soon be caged by the California Supreme Court, that's the hope of many coastal communities when the court rules in July.

On April 6, the State Supreme Court heard arguments in a case that threatens the Commission's authority to issue Coastal Permits which gives the commission the final say on development in the coastal zone. If the Supreme Court rules against the Coastal Commission, city councils and county supervisors along the coast would have more authority to regulate, or not regulate, development within their jurisdictions.

The case goes back to 2000 when the Marine Forests Society, a nonprofit dedicated to restoring marine habitats, filed a lawsuit against the Coastal Commission, arguing that the commission's structure violates the Separation of Powers Clause of the California Constitution. The society brought the lawsuit after the commission threatened to shut down its successful artificial reef project off Balboa Peninsula in Newport Beach, California - seven years into the project.

In 2002, the Third District Court of Appeal upheld a Sacramento County Superior Court ruling that the commission was unconstitutional. The commission holds executive powers (the permitting and local coastal plan approval power as well as enforcement power), even though 8 of the 12 commissioners are appointed by and served "at the will" of the Legislature - a violation of the Separation of Powers doctrine. In 2003, former Governor Gray Davis signed a quick-fix bill that eliminated the "at will" language and gave commissioners fixed 4-year terms, but with a majority of commissioners still appointed and removed by the Legislature.

The argument presented by the Pacific Legal Foundation in its 'friend of the court' brief was that the commission is an impermissible hybrid of executive and legislative appointments contrary to the basic principles of constitutional government, and leaves the commission unaccountable to voters.

Opponents of the commission argue that because of the illegal combination of plan approval, permitting and enforcement powers, the commission has become known for extorting exorbitant fees and land from property owners, granting permits quickly to those who make sizeable political donations to Sacramento lawmakers, and trampling over the rights of coastal property owners who seek to make even the most minor improvements to their homes or property.

Attorney Ron Zumbrun argued the case against the Commission on behalf of the Marine Forests Society. "The Coastal Commission is erratic. There's politics all over the place and they

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make rules as they go," Zumbrun said. The Coastal Commission, is fully justified in making rules for development within designated Coastal Zones. But Zumbrun's client argues that the Commission cannot carry out and enforce its own rules.

There are approximately 1.5 million acres of coastal land designated by California's legislature to be governed in a partnership between the Coastal Commission and the 15 coastal counties and 58 coastal cities. Coastal regions are defined by official maps. These areas vary from a few blocks inland in the more densely urban areas and up to five miles inland in the more rural areas. The Coastal Commission's sphere of influence also extends three miles out to sea.

The Commission is comprised of 12 voting members. Four of the 12 voting members are appointed by the governor, four are appointed by the Speaker of the Assembly and another four by the Chair of the Senate Rules Committee. Although the commission is "subservient to the Legislature," which appoints eight of the 12 commissioners, it performs an executive function, interpreting and implementing the California Coastal Act, said the Court of Appeal in 2002. Effectively, the legislature is running the Coastal Commission and therefore nearly every

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development, even down to home renovations, along the 1,000 miles of California coastline.

The result is that open-space set-asides and beach access paths are often required by the commission as its price for permitting development. This constitutes uncompensated land grabs, forbidden by the U.S. Constitution, Zumbrun says.

In 1987, the Federal Supreme Court ruled in *Nollan vs. California Coastal Commission* that the Commission cannot compel property owners to give up portions of their property in exchange for building permits. The Court also determined that the Commission's proposal for a tradeoff violated the Fifth Amendment, which states that "private property shall not be taken for public use without just compensation." But the Commission continues to ask for such easements.

Locally, property owner Mark De Mattei of Aptos agreed to exchange about 10 acres of his property for public use in to gain approval for his plans to build a house at the base of the coastal bluff on Hidden Beach.

One couple fought the commission's 10,000-square-foot limit on development of their Santa Monica Mountains property. A San Mateo County physician, says the commission demanded \$200,000 because he failed to obtain permits before rebuilding his oceanfront property after El Niño damage.

The city of Malibu also argued against the commission and in favor of local control of coastal development.

The Commission's original mandate was to protect the California coastal environment and promote public access. Working with local governments, the Commission develops Local Coastal Permits (LCPs) that determine the density, type and location of developments within a jurisdiction. Once adopted, the LCP is used to make decisions on proposals within the coastal area.

But, the Commission still retains jurisdiction over all development. That means developers must not only get the agreement of their local jurisdiction, but also approval from the Coastal Commission.

If the Coastal Commission is found to be illegally constituted, it may call into question the 100,000 permits, the dozens of offshore oil and gas leases, and the host of conditions placed on construction within the coastal zone for the past 27 years.

Such potential local developments as resort hotels or restaurants or public parking garages or bed and breakfast facilities need negotiate only with local cities and counties if the court ruling does away with the Commission.

However, most observers think it likely that the commission's powers in the future will be restricted to planning approval, leaving issuing permits and enforcement to local government. ■