

MROSD suit petitioned to state Supreme Court

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Not to be deterred by two legal defeats, two Coastside property rights groups have petitioned the California Supreme Court to take their case.

Citizens for Responsible Open Space and Californians for Property Rights submitted their request to the high court on March 11. The move followed a Jan. 31 defeat from the First Court of Appeals in San Francisco, and a trial court loss in October of 2006.

The appellate court ruled that the Midpeninsula Regional Open Space District did not mislead Coastsiders during its process for annexing 144,000 acres of Coastside land, as the two groups have alleged since at least 2004. MROSD officials say — to the best of their recollection — the district has never before been taken to the Supreme Court.

Now Ronald A. Zumbrun and Angela Thompson, attorneys for the two groups, are trying to break that streak. They are asking the Supreme Court to review four elements of the case.

“Even though they’re four discreet legal questions, they’re all related to public notice,” said Thompson, who also pointed to conflicting precedents in similar cases. “The appellate courts in California don’t all agree on this question.”

One of her clients, CPR founder Terry Gossett, said his motivation for continuing the fight against the district and San Mateo County’s office of the Local Agency Formation Commission is simple.

“There’s a reason why there are government laws and codes for what have to be in a government notice. How fundamental can that be?” Gossett said his fear was that the appellate decision — in his opinion — actually lowered the standards for public notice, possibly giving government agencies more strength to fend off not just annexation proposals, but referenda and initiatives, too.

“Everything that we’ve ever done always comes down to one issue — that the government follow the law,” he said. “This is far beyond Midpen or LAFCo or anything now.”

The dust-up began when voters supported an advisory ballot measure in 1998 calling for MROSD to extend its jurisdiction to the San Mateo County coast. The district formally set the process in motion in 2003, including public meetings and requests for comment.

The two groups, however, soon began lobbying against the program. They gathered and submitted more than 5,000 written protests of the annexation to LAFCo, which had to sign off on the deal.

That’s when things took a turn. LAFCo invalidated many of the protests based on a technicality that involved whether voters used post office or street addresses on their protest forms. The groups also claimed that the maps displayed by the district at public meetings were misleading.

“Their concept is that the only way to protect land is through government ownership,” said Gossett, who added that he favors protecting land via “private and public stewardship.”

When the two organizations lost at the trial level, they went to the appellate court.

Meanwhile, the district has purchased thousands of acres of Coastside land under the program, including Driscoll Ranch and an upcoming purchase of Mindego Hill, both located between La Honda and Half Moon Bay.

“The appellate court essentially adopted a ‘no harm, no foul’ attitude in reaching its decision, but this is not the law,” reads the latest petition.

Susan Schectman, MROSD’s attorney, said she will submit a reply to the groups’ petition, arguing why the Supreme Court does not need to act. That step will happen within the next week or so. Then the court has 90 days to decide whether to hear the case.

“I think the Court of Appeals got it exactly right,” she said. “The plaintiffs were not adversely affected by any of the alleged errors that they claimed occurred. And the court ... recognized that this was a multi-year process with dozens and dozens of public hearings, and there was simply no basis to overturn what LAFCo did.”

Schectman said she wasn’t surprised by the appeal to the high court, describing the groups’ litigation thus far as “tenacious.” In what she called the “unlikely scenario” of the court taking the case and ruling against the district, she averred that the agency’s assets are probably safe. “I’m confident that the court wouldn’t set aside any purchases (made by) the district.”

As for Gossett, who said he would “hate to say” how much the legal tussles have cost, he fears his efforts have done more harm than good.

“If they don’t hear it, then it’s published and it’s done,” he said, referring to the appellate decision and the laws for public notice. “And in sum, we kind of hurt it.”