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Moment of truth for coastal commission

- After two-year delay, supreme court to hear case on agency's constitutionality

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THE APPEALS court had its say way back in 2002, when a three-judge panel ruled unanimously that the California Coastal Commission had too much power and was unconstitutional.

Next week, after a wait of more than two years, the state supreme court will finally hear the coastal commission's appeal of that ruling — a session that has enormous implications for the Pebble Beach Company and its new golf course in Del Monte Forest, for proponents of a desal plant to solve the peninsula's longstanding water crisis, and for hundreds of other property owners and local governments along the state's precious coast.

"If my client prevails before the supreme court, the coastal commission will be limited to setting policy pursuant to the California Coastal Act and will no longer have the power to issue, condition or deny coastal permits," said Ron Zumbrun, attorney for the Marine Forests Society, an Orange County environmental group that sued in 1999 after the coastal commission ordered the group's experimental underwater reef off the Newport Beach pier be dismantled.

According to Zumbrun, if the supreme court sees things his way, the routine permit functions which the commission has carried out for nearly 30 years would revert to local governments. This was the "original intent of the Coastal Act of 1976," Zumbrun said.

Even if the coastal act intended that permit hearings be carried out locally, the law also gave enormous power to the legislature, too much power to be legal according to the appeals court. Since 8 of 12 coastal commissioners are appointed by the President of the State Senate and the Speaker of the Assembly, the legislature effectively controls the agency's business, including its enforcement powers, which the constitution reserves for the executive branch of government, according to the appeals court.

"The scheme for appointment of its members gives the legislative branch control over the commission, thus impermissibly interfering with the commission's executive branch responsibility to execute the laws," a three-judge appeals court panel unanimously ruled in Jan. 2003.

This legal theory was mocked by coastal commission executive director Peter Douglas when it was first

embraced by Superior Court Judge Charles Kobayashi in a May 2001 ruling.

"He [Zumbrun] has been pushing this idea for a long time, and he finally found a judge who agreed with it," Douglas said at the time.

But after the court of appeals quickly upheld Kobayashi's ruling two years ago, then-governor Gray Davis called an emergency session of the legislature to try to fix the problems with the coastal commission's makeup.

The solution they came up with — giving the assembly speaker's and state senate president's appointees fixed terms in office instead of having them continue to serve at the whim of the legislators who appointed them — may have removed those commissioners' fears of being fired for acting on their own, but it didn't stop the legislature from continuing to control the coastal commission, according to Zumbrun.

"The legislature's solution fails to address the separation of powers deficiencies discussed in the appellate court's decision," Zumbrun said.

And numerous "friends of the court" briefs filed with the supreme court by the City of Malibu, the Pacific Legal Foundation and other groups, argue that the legislature unquestionably still controls the coastal commission.

Attorneys representing the commission disagree. The original appointment structure was fine, deputy attorney general Joseph Barbieri argued, and the appeals court erred in overturning it. But the legislature's fix was fine, too. Furthermore, even if the commission was and remains unconstitutional, none of its earlier decisions should be overturned. In fact, the only reason for the Supreme Court to get involved, according to Barbieri, is to validate the legislature's power to continue to appoint a majority of coastal commissioners.

"Principles of judicial restraint suggest that it would be appropriate for the court to confine its analysis to the commission's existing appointment system," he wrote in a letter to the high court in January.

Meanwhile, the supreme court's long delay in scheduling oral arguments in the Marine Forests case is undoubtedly an indication of the importance and complexity of the case.

"We can hope that their long silence indicates they've been going into it in great depth, so they can resolve these issues once and for all," said Monterey businessman David Armanasco, a former member of the coastal commission.

The California Supreme Court will hear oral arguments in the case, *Marine Forests Society vs. California Coastal Commission*, April 6 at 2 p.m. at 300 Spring St. in Los Angeles.