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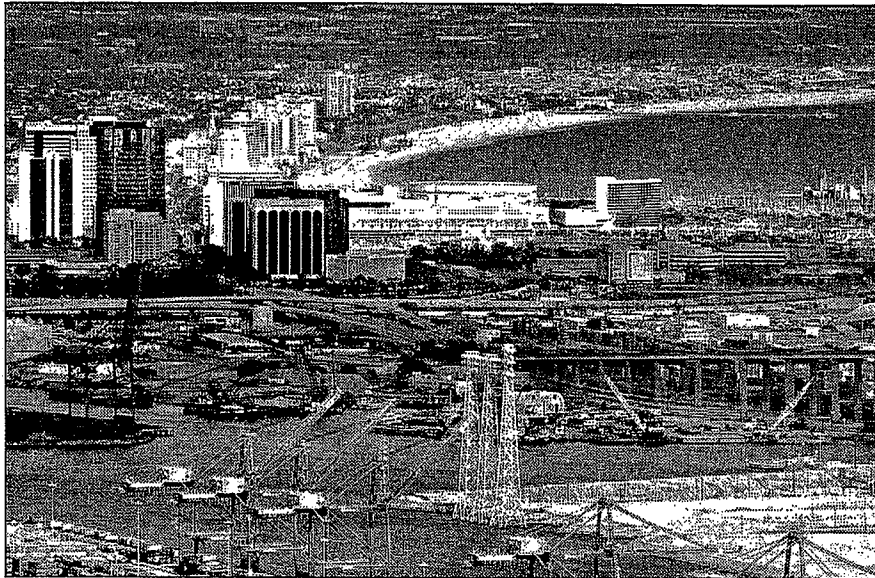
# Daily Journal

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## Court OK's Coastal Commission

By Dennis Pfaff and Hudson Sangree

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*Among the California Coastal Commission's duties is reviewing the coastal protection plans of local jurisdictions, such as Long Beach, shown in this photo. The state high court thwarted a challenge to the commission's membership.*

The California Supreme Court on Thursday removed the most serious legal challenge faced by the California Coastal Commission in its three decades as one of the state's most powerful environmental bodies.

Unanimously, the court rejected a constitutional challenge to the commission's membership, which is dominated by

legislative appointees.

The decision delighted backers of the Commission and left property rights advocates surprised at the magnitude of their loss.

"Relieved, greatly relieved," was how Coastal Commission Executive Director Peter Douglas described himself Thursday. He said that with "all the threats facing the

coast, one simply cannot underestimate the enormity of this decision."

"I thought we would have some members of the court going our way," said James Burling, an attorney for Sacramento's Pacific Legal Foundation. The conservative group, which champions property rights, had sided with the plaintiffs challenging to the commission.

The court held that the current scheme for legislative appointments to the panel, in place since 2003, does not violate the separation-of-powers doctrine. The law, which replaced a scheme laid out in the 1976 Coastal Act, placed certain restrictions on the tenure of legislative appointees.

In deciding to resolve the case under the current statute, the Supreme Court largely sidestepped the issue of whether the previous system was valid. The effect was to let stand tens of thousands of decisions issued by the commission before the Legislature changed the appointment process.

### **‘[Marine Forests] should have been dealt with under the old law, not the new law.’**

Ronald Zumbrun  
attorney

The ruling came as the commission faces hugely significant decisions involving offshore oil drilling and the siting of liquefied natural gas terminals and desalination plants that could affect the coastline for decades.

The commission in some ways acts as a super zoning board along a relatively narrow strip of California's more than 1,000 miles of shoreline. It dates to a 1972 ballot measure approved by state voters. It was further codified by the 1976 legislation.

Douglas said he was especially pleased that the court "did not cast in doubt or strike

down the literally thousands of permit decisions" that were made prior to 2003.

Officials had estimated that 100,000 decisions could have been vulnerable. In a statement released through Douglas, Meg Caldwell, the commission's chairwoman, praised the court for removing "the cloud of uncertainty over the commission's decisions and its statutes."

Today's decision affirms that the coastal Commission's appointment structure reflects the will of the voters who long ago declared that our coastal resources will best be preserved for future generations if planning decisions affecting the coast are made by an independent body comprised of members representing a variety of philosophical backgrounds," Attorney General Bill Lockyer said in a written statement. His office defended the commission law in court.

Chief Justice -Ronald M. George's 67-page opinion cited the "nature of the Coastal Commission's functions, the origin, purpose and operative effect of the commission's current appointment and tenure structure," and the safeguards built into the law governing the agency.

Those protections, he wrote, "ensure that the actions of commission members adhere to statutory guidelines and are not improperly interfered with or controlled by the legislative appointing authority" *Marine Forests Society v California Coastal Commission*, 2005 DJDAR 7550.

George noted that the California Constitution does not preclude the Legislature from appointing members to an executive commission or board.

All six justices separately concurred in George's opinion.

The decision overturned a December 2002 ruling by the 3rd District Court of Appeal, which found the commission's composition violated the separation-of-powers doctrine. That court rejected the body's makeup because eight of its 12 members were appointed by the

Legislature and could be fired by legislative leaders at will. That was an impermissible intrusion into executive branch authority, the court ruled.

But in February 2003, the Legislature, reacting to the court backed threat to the commission, imposed a four-year fixed "term on commission members appointed by lawmakers. The four members appointed by the governor continue to serve at his pleasure.

The new provisions "do not violate the separation of powers clause of the California Constitution," George wrote.

Those amendments had not mollified critics including Ronald Zumbrun, the Sacramento attorney and property rights advocate who represented the plaintiff in the case.

Zumbrun had argued to the Supreme Court that the commission remained overly influenced by political pressure from the Legislature even after the law was changed. Thursday, he said he was "just shocked by some of the analyses" in the opinion.

The Pacific Legal Foundation's Burling said he, too, believed that the 2003 changes were not enough to salvage the commission.

Zumbrun's client, the Marine Forests Society, is the brainchild of a French researcher, Rodolphe Streichenberger. The nonprofit society had been experimenting with the construction of an artificial reef system and kelp bed, using old tires, plastic pipes and nylon mesh.

Streichenberger — whom Zumbrun noted has been honored by Gov. Schwarzenegger for his environmental and economic leadership — had permits from local and state officials. Even so, the commission issued a stop order against him. He sued in 1998 and sought an injunction against the panel.

Streichenberger has called the commission a "totalitarian tribunal."

Zumbrun said the ruling might open a federal due-process claim for his client Marine Forests, he said, had prevailed in the lower

courts before the Legislature changed the commission appointment process.

"They should have been dealt with under the old law, not the new law," he said.

Zumbrun said the decision also delved into areas not challenged by the plaintiff. His client didn't object to the Legislature's authority to make appointments to executive boards, he said, but to the fact that its appointees constituted the majority on the coastal commission.

On the critical issue of whether the commission's pre-2003 decisions would be threatened, George wrote Thursday that the previous law posed "a much more serious" separation-of-powers question. But prior commission rulings "could not properly be set aside on that ground at this time," he wrote.

George wrote that the earlier decisions were covered by the "de facto officer doctrine," which holds that lawful acts of public officers are valid even if their qualifications are in question. The doctrine is intended to "prevent the crippling of an officer's or commission's operations," he wrote.

In addition, he wrote, the statute of limitations and res judicata would block challenges to many prior decisions.

Justice Marvin R. Baxter, in a concurrence joined by Justice Janice Rogers Brown, said he believed the previous Coastal Act was constitutionally flawed until the 2003 amendments were enacted. He was silent on whether pre-2003 permits were suspect.

The commission has won generally high praise from environmentalists, as well as condemnation from some property owners, for its control of coastal construction. It blocked plans to build a seaside resort proposed by the Hearst Corp. in San Luis Obispo County and a major residential development in Orange County's Bolsa Chica wetlands.

The commission was tarred by a major scandal when one of its members pleaded guilty in the early 1990s to using his office to

solicit bribes from people with business before the body.

The courts previously have clipped the commission's powers when property owners objected to what they viewed as extreme limitations on coastal development. But as recently as May, the Supreme Court ruled unanimously that the commission could review developments outside the coastal zone if those projects might affect ones within the zone. *Sierra Club v. Coastal Commission*, 35 Cal.4th 839.

The panel has been at the forefront of the state's efforts to block offshore oil drilling. State attorneys have successfully argued that the commission has the power to review extensions of underwater leases.

The commission in August will review about three dozen dormant oil exploration leases along the central and southern California coast. The federal government has given a green light to extending the leases.