

# State's high court ready to weigh Encinitas seawall case

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An Encinitas case that will be heard Thursday by the California Supreme Court could tip the fate of thousands of coastal homes at risk of crumbling into the sea.

The case centers on an ongoing dispute between the California Coastal Commission and two bluff-top property owners over a seawall that for decades blocked the onslaught of waves threatening to erode the bluff. After a storm demolished the original seawall, the commission granted a permit to repair it, but placed a 20-year time limit on the barrier that the plaintiffs allege is unconstitutional.

The homeowners say the seawall is necessary to protect their homes, but the Coastal Commission says such structures block natural processes that preserve wide, sandy beaches.

The issue has gained urgency as scientists warn that rising ocean levels could reshape the shoreline within the next century, leaving beachfront homeowners scrambling to safeguard their property, and government officials struggling to manage the change.

About 10 percent of the state's 1,100-mile coastline is armored, including a third of Southern California beaches, according to the Coastal Commission. The outcome of the state Supreme Court decision could set legal precedent for those structures, and also define the commission's role in regulating beachfront property on a swiftly shifting coast.

“The specific climate change impact that the Coastal Commission is focused on is sea level rise, and increased frequency and intensity of coastal storms,”

said Rick Frank, director of the California Environmental Law and Policy Center at the UC Davis School of Law. “This is the first time this issue of the propriety of long-range planning efforts in relation to projected climate change impacts has gotten to the Supreme Court.”

In Encinitas, Tom Frick’s home on Neptune Avenue commands a sweeping outlook on the Pacific, along with a vertical view of the beach below. A dizzying flight of stairs descends to the shore, and at the bottom, a sculpted, sand-colored wall supports the bluffs.

That concrete seawall replaced the original wooden fortification, which was damaged in a 2010 storm that left a yawning gap in the bluff. Frick and his neighbor, Barbara Lynch, sought emergency permits from the Coastal Commission to make the changes.

“If they didn’t build their seawall, their homes could have collapsed,” said land use attorney Jon Corn, who is representing the families.

But that protection comes with a cost to the public, the Coastal Commission cautioned. Fighting bluff erosion with seawalls can hasten the loss of beach sand, reducing coastal access for all Californians, the commission maintains. With that admonition in mind, the commission granted permits to repair the damaged barricade, but imposed the 20-year limit. When it expires, the homeowners would need to reapply to keep the wall, Corn said.

The Lynches and Fricks proceeded to rebuild their wall and stairway, but challenged the 20-year restriction, saying it amounts to a regulatory taking of their property. Without the wall, their homes would be in jeopardy, and the time limit clouds their ability to maintain or sell them, said Jennifer Lynch, whose mother Barbara was an original plaintiff.

“I see the issue as the government overstepping its rights,” she said, in order “to take property without paying people.”

In 2013, San Diego Superior Court Judge Earl Maas agreed. He ordered the commission to remove the conditions from the seawall permit. The state agency challenged that decision, and in 2014, the 4th District Court of Appeals by a 2-1 vote reversed the lower court's decision, concluding that the homeowners had tacitly consented to the restriction by accepting the permit.

Judge Gilbert Nares disagreed, arguing that the conditions on the permit are at odds with the state's Public Resources Code and the California Coastal Act. Moreover, he wrote, they run counter to the state constitution.

“The right to use, enjoy, and protect property is not a government privilege, but a fundamental, constitutional right,” he wrote in a dissenting opinion.

Corn thinks there's something else at play in the state's position. He sees it as a quiet shift toward a policy of managed retreat — an effort to adapt to rising seas by shifting infrastructure inland.

“The Coastal Commission has a bunch of underground regulations that are designed to phase out oceanfront property over time,” Corn said. “The commission would much rather have people remove their homes than build a wall.”

Coastal Commission officials declined to comment for this story, but in a brief to the state Supreme Court, the agency's attorneys argued that the 20-year time limit allows the state to reassess the risks and benefits of the seawall at a future date, when climate conditions may be very different.

“Although there is scientific consensus that sea level rise will accelerate in coming years, there is substantial uncertainty about how quickly it will rise,” the brief stated. “This uncertainty makes long-term projections about the impacts and stability of shoreline structures extraordinarily difficult to make.”

In its landmark climate report in 2013, the Intergovernmental Panel on

Climate Change reported that sea level rose by more than seven inches over the last century, and is projected to rise between 10 and 38 inches by the end of this century.

Recent studies warn that it could be much higher. In a report released this month, the California Ocean Protection Council cited research showing that ice sheets in Greenland and Antarctica are melting faster than anyone anticipated; in the worst case scenario California's ocean could rise 10 feet by the end of the century.

While property rights advocates are critical of strategies for managed retreat, the sea itself may determine the pace of withdrawal, said Jordan Diamond, executive director of the Center for Law, Energy and Environment at the UC Berkeley School of Law.

“Nature is encroaching on the coastline, whether through erosion, sea level rise or intensifying storms,” she said. “Ten, 20 or 100 years from now, there may be forced retreat. We may not be able to protect the coastline enough from all of the natural forces.”

The Coastal Commission's 20-year permit, Frank said, allows the body to revisit its decision in light of the unstable environment.

“We don't have static environmental conditions,” he said. “Can you build in a point to check, and see what the impacts (of the seawall) are in practice, and check that your decision-making would be appropriate?”

Jennifer Lynch said that while environmental changes may be accelerating, the legal and regulatory processes in her family's case seemed to proceed at a glacial pace.

Her mother Barbara died in 2016, after the seawall was rebuilt, but was anxious about the court proceedings and distressed by her restricted access to the beach front during that battle, Lynch said. Suffering from medical

problems including cancer and high blood pressure, the elder Lynch got limited solace from the seaside home her husband built decades before.

“After the stairs were built, she only made it down to the beach one time,” Lynch said.

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