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# Sea-wall fee is being labeled an unfair tax

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## Solana Beach group sues coastal panel

**By Terry Rodgers**  
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The state Coastal Commission's newfound requirement that owners of oceanfront property pay an additional fee for the construction of private sea walls has triggered a growing legal battle and public-policy debate.

In what some people have described as "an evolution" in state coastal policy, the commission recently assessed such a fee on two seaside condo complexes – one in Solana Beach, the other in Monterey – because their sea walls supposedly limit recreational opportunities for the public at adjacent beaches.

The commission reasoned that a sea wall reduces the width of a public beach, thereby reducing its recreational value.

But opponents criticize the latest fee as an unfair tax that has no legal merit. They include the Las Brisas Homeowners Association, owners of a 36-unit condo complex perched on an 84-foot-high bluff overlooking Fletcher Cove in Solana Beach.

The association sued the commission Monday, seeking to rescind a \$248,680 recreational-loss fee imposed in October. It contends that commissioners have no authority under the state Coastal Act to impose a recreational-loss fee.

Statewide, about 10 percent of coastline has been armored with sea



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walls, and the figure is growing rapidly. About 790 miles of the coast have actively eroding sea bluffs, according to a recently published book, "Living With the Changing California Coast."

At the Las Brisas complex, residents wanted to protect their condos from the eroding bluff. Each of the units costs \$900,000 to more than \$1 million at current market values.

Two months ago, the commission approved a permit allowing the homeowners to build a 120-foot-long, 35-foot-high sea wall that would protect the bluff from further erosion. However, the agency said Las Brisas must pay the recreational-loss fee before construction could begin.

The money would go into a special account administered by the San Diego Association of Governments. The money could be spent on recreational amenities along the coastline, including beach-access stairways, restrooms and preservation of open space.

The fee is based on a complex formula designed by Philip King, an economics professor at San Francisco State University. King estimated the value of one person using the beach near Fletcher Cove at \$6.81 per day.

The fee was calculated by multiplying the estimated number of beach users over 22 years – the projected life span of a typical sea wall – times the \$6.81 value of one person's day at the beach.

At a press conference held Tuesday at the cove, representatives of the Las Brisas condo owners said if the fee is allowed to stand, it will adversely impact homeowners along much of the state's coastline.

"This is a major public-policy decision," said Norbert Dall, a Sacramento-based coastal consultant. "The Coastal Commission is proposing to exact big money without authorization" by the state Legislature or voters, he added.

Coastal property owners in California could pay up to \$1.5 billion during the next 70 years if the fee is applied to construction and rehabilitation of every sea wall, Dall said.

Homeowners at Las Brisas shouldn't have to pay a recreational-loss fee because the sea wall they desire would be built on their own property, he added.

A sea wall in front of Las Brisas would not adversely affect the beach's recreational value because previous erosion has already made it so narrow it is largely unusable by the public, the lawsuit states.

The city of Solana Beach has posted signs along the bluff near Las Brisas warning the public to stay back at least 20 feet.

"All we're doing (by building sea walls) is making the beach safer," said

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Mark Haines, who owns an oceanfront condo just south of Las Brisas.

But Marco Gonzalez, a coastal policy expert with the Coast Law Group in Encinitas, said the lawsuit's logic is flawed.

"To call this a tax is an indication (the condo owners) are grasping at straws," Gonzalez said. "The loss of the beach in front of sea walls is a significant impact that must be mitigated."

Building a sea wall at Las Brisas will ensure that the remaining sandy beach will be gone within the next decade, he said.

The fee is the second surcharge the commission has imposed on property owners building sea walls.

Since a decade ago, the agency has assessed a fee to compensate the public for the loss of sand that sea walls prevent from falling to the beach. No one has successfully challenged the sand-mitigation fee in court.

The recreational-loss fee was initiated in December 2004, when the commission imposed a \$5.3 million surcharge on Ocean Harbor House in Monterey.

The 172-unit condo complex had sought a permit to build a 400-foot-long sea wall. The homeowners subsequently filed a lawsuit, which is pending court review.

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