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Refer To File # -

March 12, 2021

Mr. Jordan Sanchez
Enforcement Officer
California Coastal Commission
South Coast Area Office
301 Ocean Boulevard, Suite 300
Long Beach, CA 90802-4302

Violation File No. V-5-16-0064

Property Location: 35000 Beach Road, Capistrano Beach, CA 92624
Lots Y and Z, Tract 797

Dear Jordan:

I write as special counsel to the Capistrano Bay District (“District”) and in reply to your enforcement letter of February 19, 2021.

The District and Commission staff have enjoyed a good dialogue to date regarding the armoring issue, but the District was somewhat surprised by your most recent letter. While the District wishes to be cooperative as you attempt to resolve the enforcement matters cited in your letter, it wishes to underscore that it has not undertaken any unpermitted development and, therefore, has no liability here for any unpermitted development or responsibility for resolving any unpermitted development that may have been undertaken by individual homeowners. The District has no legal authority to act on behalf of those who may have undertaken unpermitted development.

I thought it might first be helpful to provide you with the District’s notes from its January 23, 2020 meeting with Dana Point staff and the September 25, 2020 video conference call which included the District, Commission staff and the Dana Point staff. The notes are attached. The theme of both meetings was Board’s cooperation in identifying a short-term emergency solution for the homeowners. On both occasions, the Board was told that the homeowners’ existing armoring could stay in place until a mutually acceptable solution is presented to them. Commission staff asked the District to hire a coastal engineer and have that engineer contact the Commission’s engineer regarding that solution. The District hired Walt Crampton at TerraCosta to explore how to protect the District’s assets (i.e., the road and gate) and asked him to follow-up

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with your staff engineer, Lesley Ewing, which he did on December 3, 2020. In neither meeting was there any mention of penalties regarding the unpermitted armoring. Consequently, at this point, the homeowners on Beach Road are under the impression that, perhaps with the help of your coastal engineer, a short-term solution without a penalty for the unpermitted armoring might be presented to them.

While the District's December 22, 2020 letter suggested a further videoconference in January to explore whether some long-term solution might be possible, its efforts to cooperate may have been misunderstood. The District is not a homeowners association. It is a Community Services District (CSD) and its jurisdiction and authority is limited by its charter. The charter does not give the Board of the District any authority to compel homeowners to remove any existing unpermitted armoring, or to require anyone to obtain a coastal development permit, or to negotiate terms, conditions, or other enforcement matters on behalf of the individual homeowners.

The District's authority also does not extend to the beach or to seawall improvements thereon. Importantly, the District does not own any properties on the beach side of the houses or any access path to the beach. It does not own the sandy beach to the mean high tide line or own, possess or control any seawall constructed by an individual homeowner.

Thus, the District is willing to continue its cooperation but with Commission staff's acknowledgment of the limitations of the District's legal authority or responsibility to do so. The District is naturally sympathetic to the homeowners, but also to the difficulty the Commission may have in dealing with so many homeowners in the absence of a point of contact. However, its efforts to date to facilitate should not be confused with any assertion that the District has undertaken any development or seawall construction or is responsible for addressing it.

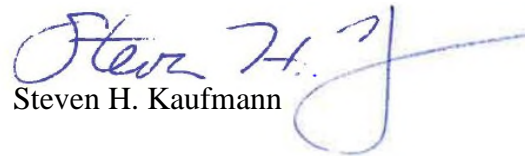
Your letter states that "the District has recently applied for an Emergency Coastal Development Permit to install an interim device to protect the homes, without removing the unpermitted devices." That is incorrect. In its December 22, 2020 letter, the District requested staff's consideration of such an interim solution, but the District has not applied for a CDP, emergency or otherwise. This may have been confused with a homeowner who recently made an independent application for CDP.

Finally, your letter suggests that the District work quickly with staff to authorize a comprehensive replacement of unpermitted seawalls with a temporary solution through a consent order process. As discussed above, this is not the District's function, nor is it within the District's legal authority. The District remains willing to cooperate and hopes for a win-win solution as between the Commission and the homeowners, but, as one public agency to another

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and to ensure the integrity of your enforcement process, we request acknowledgment that your enforcement efforts are not directed at the District itself.

Very truly yours,


Steven H. Kaufmann

CCs w/attachments:

Lisa Haage, Chief of Enforcement, CCC
Andrew Willis, Enforcement Supervisor, CCC
Karl Schwing, Deputy Director, CCC
Shannon Vaughn, Coastal Program Manager, CCC
Eric Stevens, Planning Supervisor, CCC
Alex Yee, Planner, Sea Level Rise Team, CCC
Christine Pereira, Coastal Program Analyst, CCC
Brenda Wisneski, Community Development Director, City of Dana Point
Jeff Rosaler, Planning Manager, City of Dana Point
Johnathan Ciampa, Senior Planner, City of Dana Point
Donal Russell, Manager, Capistrano Bay District
Saeed Irani, President, Capistrano Bay District