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ITEM 12a

Received 10-26-20

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October 26, 2020

VIA ELECTRONIC MAIL

Board of Directors
Capistrano Bay Community Services District
35000 Beach Road
Capistrano Beach, CA 92624
Attn: Donal S. Russell, General Manager
Email: drussell@capobay.org

Re: Capistrano Bay Community Services District (the “**District**”)

Dear Members of the Board:

As you know, this firm represents the Coalition to Protect Capistrano Beach (the “**Coalition**”), and the Coalition believes that the District’s Board members (the “**Board**”) can take action to protect the Beach Road Community from shoreline erosion.

The Coalition is in receipt of the Agenda for tomorrow’s meeting (Meeting # 667). The Coalition is incredibly encouraged that the Board has decided to focus its energy and efforts on shoreline protection, and to place its discussion of the utility undergrounding project on hold. The Coalition is thankful and appreciative that the Board has made these decisions, and the Coalition looks forward to working with the Board and the District on the issue of shoreline protection.

Agenda Item No. 5 – Past Meeting Minutes

With respect to Agenda Item No. 5 and the draft minutes for the prior meeting (Meeting # 666), the Coalition is appreciative of the Board’s decision to engage TerraCosta Consulting Group, Inc. (“**TerraCosta**”), a professional coastal engineering firm, and the decision by the Board to create a dedicated funding source for shoreline protection issues. The Coalition also reviewed the Board’s notes regarding the September 25, 2020 meeting with the California Coastal Commission (“**CCC**”). Of particular interest was the CCC’s suggestion that the Board work with other stakeholders, including, the County of Orange (the “**County**”) to create a comprehensive solution along the coastline. The Coalition has been urging the Board to work with other stakeholders for the past several years, and is encouraged that the CCC recognizes this as an important part of a coordinated strategy to protect the Beach Road Community. To that end, the Coalition believes that the Board may find

it helpful to review the ideas and strategies that the Coalition has previously proposed. As discussed in further detail below, the Coalition believes that the Board needs to continue to build on proactive protection of the shoreline by reaching out to partners in the community, namely government agencies and insurers, to create strategic solutions to address the issue. The Coalition's members are willing partners in helping the Board and District, and they look forward to discussing these ideas with the Board.

1. Board participation in the City of Dana Point's local coastal program amendment process. The Board needs to provide input into the Local Coastal Program ("LCP") process. The Board needs to immediately interface with the City of Dana Point regarding this critical issue.
2. Board support and funding for a comprehensive beach/sand nourishment program to provide a buffer against rising sea levels.
3. Board leadership and support for individual owners who seek to challenge onerous deed restrictions sought by the California Coastal Commission and/or City of Dana Point as a condition of granting the property owners certain building permits.
4. Board support and sponsorship of an application for an emergency, District-wide coastal development permit to enable all property owners to employ temporary measures to protect their homes against an imminent threat of storm damage.
5. Board partnership with the Orange County Flood Control District to seek a Coastal Commission permit to maintain, expand or rebuild seawalls to protect the approximately eighteen (18) OC Flood Control District storm drainage facilities and pipes along the District's coastline.
6. The Board's exploration of the detrimental effect that the Orange County and Parks Department armoring has had on sand erosion for private property owners by diverting water flows.

In addition, it is our understanding that State of California and County have constructed additional barriers and systems to protect the parking lot located immediately north of the Beach Road community. The District should be working with those agencies and departments to protect the health and safety of the Beach Road residents and their homes. And it needs to do so by properly asserting its rights as a special district, not simply an HOA or similar entity which is how the District's Board seems content to conduct itself. The District needs to understand its status as a special district under California law, which provides further rights and options for the Board to take advantage of in protecting the coastline of Beach Road.

There are a variety of potential governmental partners and allies that the District can work with to protect the Beach Road Community. Here is a list of just some of the governmental and related entities that the District's Board should be contacting to create strategic partnerships to protect the homes, health and safety of the residents of Beach Road:

1. Orange County Flood Control District
2. County of Orange
3. City of Dana Point
4. Metro Link Railroad
5. Amtrak
6. Orange County Transportation Authority

7. California Department of Transportation
8. U.S. Military
9. Property and Casualty Insurers

As the District and the Board can see from the above list, the Beach Road Community and the District are literally surrounded by potential partners. The Coalition believes that the District and its Board members need to reach out to these agencies and insurers regularly and work with them to develop solutions to protect the District from shoreline erosion, and report back at each Board meeting as to the status of those efforts and the next steps to be taken.

Agenda Item No. 8 – Funding for Shoreline Protection

This initial funding for shoreline protection is described in Agenda Item No. 8 – again, the Coalition is supportive of all efforts to focus the Board’s energy, time and resources on the most important issue facing the Beach Road community, shoreline protection.

Agenda Item No. 9 – Engagement of TerraCosta

With respect to Agenda Item No. 9(a), the Coalition reiterates its support of engaging TerraCosta, and is encouraged by TerraCosta’s belief that a negotiated resolution with the California Coastal Commission that would protect the homes on Beach Road is possible. The Coalition is also encouraged by the fact that TerraCosta has implemented protective devices and plans that have been both effective in terms of homeowner protections and approved by the CCC in Del Mar and Broad Beach in Malibu. The Coalition encourages the Board to work with TerraCosta to explore all solutions to provide the maximum protection available to the Beach Road community homeowners. Outside of the solutions and ideas proposed by TerraCosta in its proposal, the Coalition also urges the Board to reiterate that the County is using many of the exact same protective structures and strategies that owners in the Beach Road Community are using, and that TerraCosta should be arguing to the CCC that this double standard is not acceptable and that the Beach Road community members should be able to employ the same tactics without sanctions or threats from the CCC. If rock revetments are permitted in the County and State’s protection of their income producing parking lots and facilities immediately to the north of the Beach Road community, there is no reason that the Beach Road homeowners should not be able to use the same devices to protect their homes.

Open Meetings and Transparency

The Ralph M. Brown Act (Government Code sections 54950-54963) requires that the Board must provide public notice of its meetings, post agendas of the items to be discussed at a meeting, and provide the public with access to every meeting. Public notice is required, and public access is mandatory.

The Coalition was disappointed to learn that the September 25, 2020 meeting with the CCC and the October 8, 2020 meeting with TerraCosta took place with the Board present but not in a public forum in which the community could participate. To be clear, under the Brown Act, a meeting is defined to include a “congregation by a majority” of a legislative body at the same time and place to “hear, discuss, or deliberate” on any matter within the jurisdiction of the body. For the avoidance of doubt, (i) the Board is subject to the Brown Act; and (ii) the meetings by the Board with the CCC and TerraCosta required public notice and public access, the latter of which was not provided in either case. Again, the Coalition is supportive of the Board’s efforts to focus on and address the issue of shoreline protection. That said, any meetings must be conducted with public access and prior notice to the public in compliance with the Brown Act. On an in issue as important as shoreline protection,

this is critical so that the community can be engaged and have access to such discussions. Moving forward, all meetings between the Board and any CCC staff, TerraCosta or any other consultants/advisers or other stakeholders must take place during a properly noticed meeting in which the public is able to view the meeting in question. The Board must comply with the Brown Act. For example, moving forward if TerraCosta wants to discuss certain strategies with the Board, the Board must provide prior written notice to the community and allow the meeting between the Board and TerraCosta to take place via Zoom and provide the public with instructions on how to access the meeting in question in order to comply with the Brown Act.

Thank you for paying attention to the Coalition's requests, and for the renewed focus on shoreline protection. Again, the Coalition is appreciative of the Board's consideration of these issues, and looks forward to working with the Board and the District on a path forward on the issue of shoreline protection.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS', with a long horizontal stroke extending to the right.

Alexander W. Schwada
Attorney at Law