

CAPISTRANO BAY DISTRICT
AGENDA REPORT
July 29, 2021

PUBLIC HEARING

ITEM 7

PUBLIC HEARING

Proposed District Purchase of Real Property

The purpose of this hearing is to disclose to property owners the intent of the District to purchase an undeveloped vacant lot and to hear homeowner comments in support and in opposition prior to the Board reaching a decision.

Since the establishment of the Beach Road community in 1928, there has always been a number of vacant lots for the District to make use of for accessing the beach. Fast forward 93 years and today the available vacant lot inventory has decreased substantially. The District maintains twelve storm drains that convey rain runoff from our own road and the upper palisades out to the beach. These drain pipes must be kept open during the rainy season which requires mechanized equipment such as skiploaders, backhoes, bobcat tractors, and excavators, for maintenance and repairs, and to dig the beach cobble away from the outfalls.

Additionally, during el nino years, the heavy rains tend to wash debris out of the nearby San Juan Creek, all of which washes up onto our beach. This debris has to be cleaned up as it creates a serious public safety hazard for our homeowners.



Debris from El Nino Storms – winter 2017

As beach erosion continues and the seas rise, the District is becoming more and more concerned with protecting the road and pavement condition from high wave runup. The actual road eleva-

(continued on next page . . .)

tion is lower than the homes, especially of those raised on caisson foundations. Any breeches through sideyards from high wave runup can easily reach the road, eventually washing out the subgrade, causing sinkholes and damaging the paved surface.

While there is uncertainty regarding shoreline protection, it is clear and very certain that if the limited number of vacant lots remaining were to sell and be developed, the District would have no assured and lasting access to the beach for the maintenance purposes pointed out above.

The District currently has an opportunity to purchase the undeveloped vacant lot adjacent to the home at 35067. The seller has agreed with the District on a fair price and the Board is in negotiation with the California Special Districts Association (CSDA) for a financing offer. No money has changed hands, there is currently no written agreement, only an effort by the Board to see if an affordable financing deal can be reached.

DISTRICT'S PURCHASE LIMIT

The District's current reserves are \$2,427,227.00. Pursuant to the District *RESERVE STUDY (Foresight Financial 2019, next renewed in 2023)*, the District should retain \$535,654 of reserves as of 2021. This is the minimum reserve level the District must have accumulated by this year to meet its fiduciary responsibility (*the Reserve Study requires a 3% increase each year*).

If the District can put up \$1.5M in cash toward the purchase, this would leave reserves at \$927K, almost double our reserves requirement. With a sale price of \$2.8M, this would also create a 47% loan-to value ratio that is more attractive to lenders when it comes to interest rates and risk.

A previous quote was offered by CSDA at 2.95% on a 15-yr term but the annual payments were \$110K and according to the draft budget, the District's loan payment limit is \$90K. CSDA was asked to quote the same but on a 20-yr term to see if the payments can get closer to our limit.

The District did attempt to obtain a loan deal from our depository at Farmers & Merchants Bank but they required a 30% loan-to-value ratio with an interest rate of 4.5%. Additionally, mortgage companies were not interested in lending on an undeveloped vacant lot, thus making CSDA our best financing option.

The District expects to receive the revised financing quote from CSDA by mid-week, prior to the Board meeting, in which case all final figures will be ready for presentation and discussion.

Description of the following pages

- Draft Resolution No. 7-29-21 (2 pgs)
- Memo from District Counsel re District power to purchase real property (2 pgs)
- Letter in opposition from homeowner Jack Tarr (3 pgs)

RESOLUTION NO. 7-29-21

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CAPISTRANO BAY
COMMUNITY SERVICES DISTRICT AUTHORIZING THE ACQUISITION OF
VACANT PARCEL #691-141-07 TO ENHANCE BEACH ACCESS AND TO
DELEGATE TO BOARD PRESIDENT SAEED IRANI ALL AUTHORITY
NECESSARY AND APPROPRIATE TO EFFECTUATE ACQUISITION**

WHEREAS, the Capistrano Bay Community Services District (“District”) is a local government agency formed and operating in accordance with Section 61000 *et seq.* of the California Government Code;

WHEREAS, the District provides, inter alia, Beach Road operation and maintenance, trash collection, police and security services, infrastructure maintenance, flood control and other related services to persons and properties within the District boundaries;

WHEREAS, coastal erosion and sea level rise require permitted and active shoreline protection and flood control measures, and the District is responsible for, inter alia, protecting District infrastructure, which requires active flood protection measures;

WHEREAS, coastal erosion and sea level rise are jeopardizing the continued and future operations of, inter alia, storm drains within the District boundaries, for which the District has an obligation to maintain;

WHEREAS, an undeveloped parcel (“the Parcel”) in the District has become available on the open market for purchase;

WHEREAS, the District Board of Directors (“Board”) has determined that District ownership of an undeveloped parcel will enhance the District’s flood protection and infrastructure maintenance operations by providing unfettered beach access for, inter alia, storm drain maintenance work;

WHEREAS, the Board has determined that the purchase price of \$2.8 Million (the “Purchase”) for the Parcel, with a cash deposit of \$500,000 and seller financing for two years at 3% interest is a necessary and appropriate expenditure of District funds in furtherance of the District’s flood protection and infrastructure maintenance obligations;

WHEREAS, the Board desires to delegate to its President, Saeed Irani, all necessary and appropriate authority to effectuate the Purchase, including the authority to sign on behalf of the District and negotiate terms of financing on the District’s behalf; and

WHEREAS, the District held a noticed public hearing on July 29, 2021, to receive public input on the Purchase.

NOW THEREFORE, be it resolved by the Board of Directors of the Capistrano Bay Community Services District as follows:

1. The foregoing recitals are approved and incorporated herein by reference.
2. That the District shall purchase for \$2.8 Million the property, including a down payment of \$500,000 and seller financing for two years at 3% interest, with no penalty for early payoff.
3. The District is authorized to refinance the Property on such terms as the Board deems to be in the best interest of the District;
4. That Board President Saeed Irani is authorized to take all steps necessary to effectuate the Purchase, including signing all documents and negotiating all terms and securing financing that best serves the interests of the District, and that such authority is delegable.

ADOPTED, SIGNED AND APPROVED this 29th day of July, 2021.

Saeed Irani, President
Capistrano Bay Community Services District

CERTIFICATION

I, DONAL S. RUSSELL, Secretary of the Board of Directors of the Capistrano Bay Community Services District, do hereby certify that the foregoing Resolution No. 7-29-21 was duly adopted at the Regular Meeting of the Board held on July 29th, 2021, by the following vote:

AYES:
NOES;
ABSENT:
ABSTAIN:

Secretary
CAPISTRANO BAY
COMMUNITY SERVICES DISTRICT

(DISTRICT SEAL)

MEMORANDUM

To: Capistrano Bay CSD Board of Directors
From: Sean Schwerdtfeger
Re: District Acquisition of Real Property
Date: July 22, 2021

The Capistrano Bay Community Services District (“District”) is a local government agency formed and operating in accordance with the Community Service District law to provide a variety of municipal services to persons and properties within the District.

Capistrano Bay became a community services district in 1959 via Resolution of the Board of Supervisors of Orange County, California. The Capistrano Bay Founding Resolution No. 59-1354 provides that the express purposes for which Capistrano Bay is formed are as follows:

1. The collection or disposal of garbage or refuse water;
2. Public recreation by means of parks, playgrounds, swimming pools or recreation buildings;
3. Street lighting;
4. The equipment and maintenance of a Police Department or other Police protection to protect and safeguard life and property;
5. The opening, widening, extending, straightening and surfacing, in whole or in part, of any street in such District, subject to the consent of the governing body of the county or city in which improvement is said to be made;
6. The construction or improvement of bridges, dams, culverts, curbs, gutters, drains and works incidental to the purposes specified in subdivision 5, subject to the consent of the governing body of the county or city in which said improvement is to be made.

(Resolution of the Board of Supervisors of Orange County, California, December 14, 1959.) As a community services district, Capistrano Bay has the powers to carry out these purposes for the benefit of the community.

This year, the District Board of Directors (“Board”) approved a resolution to activate the District’s latent power pursuant to California Government Code, Title 6, Division 3, Part 3, Chapter 1, Section 61100, subd. (r) to “plan, design, improve, maintain, and operate flood protection facilities” for the purpose of engaging with engineers, consultants, contractors, the City of Dana Point, the County of Orange, the California Coastal Commission, and others to explore shoreline protection options to protect District property. The activation of this power by the District compliments the District’s corresponding obligation to protect and maintain District infrastructure, most notably Beach Road, from coastal erosion and sea level rise under the rubric of flood protection and prevention. In particular, the District is obligated to maintain storm drains, three of which were constructed by the Orange County Flood Control District, that run through the District to the beach. The Board is currently engaged with the County of Orange and LAFCO in connection with the exercise of the District’s powers over flood protection infrastructure, including in connection with the District’s authority to plan, design, construct,

improve, maintain and operate flood protection facilities. (See Government Code, Section 61100, subd. (r).)

As part of the District's obligation to, *inter alia*, maintain the storm drains running to the beach, it is necessary that the District ensure for itself permanent beach access to the storm drains for the purpose of maintenance and repair. One of the consequences of sea level rise and coastal erosion is the slow but steady elimination of undeveloped beach property within the District. To address this problem, the Board wishes to exercise its acquisition power to purchase undeveloped beachfront property in the District that would allow for the District to, *inter alia*, access the storm drains for maintenance and repairs. (Government Code §61130 ["A district may acquire and improve land, facilities, or equipment..."].)

Of the limited amount of undeveloped beachfront property in the District, there is currently a parcel of undeveloped property for sale ("the Parcel"). Acquisition of the Parcel would assure the District long term beach access along with a staging area for the District to carry out its authorized purposes.

Consistent with the requirements of California's Ralph M. Brown Act as codified by California Government Code section 54950, et seq., the Board must hold an open and public meeting to consider the District's purchase of the Parcel for the purpose of providing the District permanent beach access to the storm drains for maintenance and repair, following which members of the Board will vote in favor of or against the purchase of the Parcel, including whether or not to approve potential terms of the purchase.



**JACK TARR DEVELOPMENT
COMPANY**

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July 20, 2021

Capistrano Bay District
Board of Directors
35000 Beach Road
Capistrano Beach, California 92624

RE: Capistrano Bay District; Vacant Lot Purchase

Gentlemen:

On behalf of the Tarr Family Trust, I note at the last Board meeting you authorized initiation of negotiations for the potential purchase of a vacant lot with one or more existing landowners or potential landowners on Beach Road. The primary purpose was initially stated to allow for maintenance of the existing easements with the Orange County Flood Control District. Then there was some expanded narrative later in the dialogue by the President that would lead one to conclude that the real purpose was also for the benefit of the Beach Road Homeowners or District to provide vertical access to the Beach to allow equipment if the individual properties needed any repairs in the future. It also doesn't take much curiosity to wonder if this is a non-transparent method of one part of a puzzle to advance the discussion of the so called Del Mar Sea Wall solution??

1. It is my understanding that the easements for the OC Flood Control (OCFCD) are between private property owners and the OCFCD? It is also my understanding that the obligations for maintenance between the parties are set forth in the easement/map documents that it would be the OCFCD's responsibility to maintain and replace the flood control facilities including gaining and maintain access for maintenance and replacement of their facilities that receive upstream waters exiting to the Pacific Ocean. I would respectfully submit that the District has no contractual role regarding these easements and therefore purchasing property with taxpayers' funds is not the District's charge in regards to any concern voiced over access to the OCFCD's easements.
2. In regard to what appeared to be the Board's concern about gaining access to the Beach on behalf of Homeowners to gain access the Beach side of their properties for repairs or

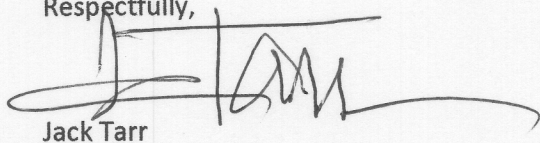
replacements, has there been any research completed by the District that would conclude that upon full build-out of the Community that the Community would be legally land-locked and would not be allowed to access through any other pathway to the beach side of the Community? If so, please provide copies of the research for my review. If not, I would suggest you retain proper counsel for such a review. I would submit that the Beach Road property owners would not be allowed to be landlocked by private or government property owners and other landowners would need to grant the owners of Beach Road properties access. It would appear the District has acted reflexively and prematurely to the potential lack of supply of vacant lots without doing the necessary legal research of alternative access solutions.

3. When I was President of the Capistrano Bay District, we were advised by legal counsel to not do anything that would highlight or bring attention to the existing OCFCD easements because the California Coastal Commission would like to gain access even through private gated Communities for the public to access these "VERTICAL EASEMENTS" for pathways to the Beach. To avoid any perceived prescriptive rights being given to the public whether Beach Road property owners or outside public, the property owners who have the OCFCD easements burdening their property have fenced the properties to discourage the perception of public access. If the Board can give the owners of Beach Road properties any assurances the California Coastal Commission will not try to gain access to these or any other properties with vertical access to the Beach, please share any research or documentation that you are relying on for the assurances.
4. Purchasing a vacant lot on Beach Road offers a 'target rich' environment for the California Coastal Commission to maneuver themselves into a spot to "condition" any permit (emergency or permanent) requested by the District to require vertical access through our private gate similar to the OCFCD easement concerns. This also fits nicely into the Commission's unanimous comments that they prefer that the County Park NOT be repaired but left to naturally retreat which is consistent with their Sea Level Rise objectives. The District parking at the entry and elsewhere (most of which is on short-term leases with the railway and could be transferred to any other stakeholder) would allow access to the vertical easements including the newly minted lot that the District would own. Allowing the County Park to retreat will not lessen the demand to use the Beach and need for parking and other public facilities. Let's even ponder that the State would consider condemning the newly purchased lot as a demonstration of "fairness". The State would argue that the value is diminished from the original purchase price estimated to be in the range of \$3.2 million to \$3.7 million because that was intended to be a residential price and the District purchased under a perceived and unproven rationale of duress thusly the value the State would pay would be significantly less. At the very least the State would argue the lot still serves the Community for their repair and replacement needs and therefore the costs should be at least shared. And besides using our parking stalls, with vertical access comes the needs for public facilities such as restrooms and showers, etc.

5. Purchasing a lot contradicts the District's response to the California Coastal Commission that they have no property with Beach access and weakens further negotiating and/or litigation positions with the California Coastal Commission as well as other perceived stakeholders.

In summary, it would appear that the District has not completed proper the legal/title due diligence to conclude there is a need for access for the purposes stated by the Board by virtue of not having researched any other alternative existing access rights. To purchase a lot would give the California Coastal Mission more reasons to attempt to breach our gate for the benefit of gaining access for the public therefore diminishing our existing way of life and the corresponding impact on property values. You would be allowing the Camel to get its nose under the tent.

Respectfully,



Jack Tarr

RECEIVED 7-27-21

From,
George P Thomas MD
35059/35061 Beach Road
Capistrano Beach

July 26, 2021

Re: Purchase of vacant lot

To,

Don Russell and President and Board members of the Capistrano Bay District

We have been homeowners at Beach Road since 1987.

I understand there is a plan to purchase Mr. Harvey's property closest to the guard gate.

The purchase as I understand is to give the Capistrano Bay district a permanent access to the beach for needed maintenance work, to prevent flooding of Beach Road and maintenance of the drains. A loan must be obtained for this purchase, and my understanding is that our annual Special Benefit fees will not be raised for this transaction at this purchase or in the future for this purchase.

My Concerns:

1. Beach Road is a unique beautiful beach. This unusual step of buying a lot for its stated/needed use should not compromise the visual beauty of this Beach Road property and the property value of neighboring properties.

As intended this lot after purchase should be maintained as 30 feet of open access to the beach and should not be used as a parking lot for bulldozers, to pile up rocks, other unsightly beach refuse or building materials. There should be no construction on this site. This site should remain a permanent unbuilt access to the beach which is necessary for the vital support of the beach.

2. If purchased, the purpose of this property should be protected from future changes.

There should be ample clear legal wording that ensures that the stated purpose of this lot is protected and not reversible by any future Boards.

I am supportive of the Capistrano Bay District's expressed needs. I would like your assurance that the decisions you make will not compromise the value of neighboring properties and reduce this pristine location into a storage facility.

We hope the Board will give our thoughts due consideration.

We appreciate all you are doing to preserve Beach Road.

Sincerely,

Drs. George and Premi Thomas