

CAPISTRANO BAY DISTRICT
AGENDA REPORT
December 7, 2021

Old Business

ITEM 9b

LAFCO/Activation of Latent Powers

In moving this process along, the next step is to engage with Walter Crampton's firm *ENGEO* to complete the list of requirements from LAFCO staff for the *Plan of Service*. As was indicated at the October meeting, we are about halfway to the finish line with our preliminary submittal but the engineer will have to complete the remainder of the requirements.

The Board authorized staff at the October meeting to direct *ENGEO* on this matter and to get the ball rolling. The attached proposal was authorized and the District is now working with one of Walt's associates, Joe Tottle of *ENGEO*, as outlined in their proposal.

Since this expense item was not planned nor anticipated when the 2021 Budget was set, the engineer's cost is going to have to be expensed out of budget code #8805 *General Reserves*. The budget amount under General Reserves this year is \$143,462. The District must maintain a minimum of \$61,632 to meet its ongoing annual Reserve Requirements, thereby leaving an excess in the amount of approximately \$81,000 to cover the \$12,000 *ENGEO* fee.

In working through this process with LAFCO, it is important to bear in mind that there are no guarantees that the District will prevail and gain the expanded powers being pursued. Because of this uncertainty, it becomes even more vital to the community that the homeowner *Advisory Committee* continue its work out ahead of any success the District may achieve with LAFCO. And it is also for this reason that the community and the District consider the recommendation I have made in the agenda report under Agenda Item 10, to wit: *New Coastal Law Counsel and release of Nossaman LLP*.

The District is not going to get to the finish line with LAFCO possibly until Spring and it is important that the homeowners group not lose any further time waiting for the outcome.

**Following is the ENGEO proposal for the remaining LAFCO requirements.*

Project No.
T3135.000.001

November 22, 2021

Mr. Donal S. Russell
District Manager
Capistrano Bay District
35000 Beach Road
Dana Point, CA 92624

Subject: Capistrano Bay District
Dana Point, California

PROPOSAL FOR LAFCO RESPONSE

Dear Mr. Russell,

As requested, we prepared this proposal to provide supporting documentation and studies requested by the Local Agency Formation Commission (LAFCO). In a meeting between representatives of the Capistrano Bay District (District) and LAFCO on October 21, it was explained that while the District has sufficiently made its case for the need to expand powers based on sea level rise and shoreline erosion, LAFCO still requires supporting reports and studies prior to approving the request to expand the District's powers.

SCOPE OF SERVICES

Task 1: Preparation of Supporting Documentation

In response to LAFCO's request, we propose the following scope of services:

- An enumeration and description of the services to be approved by LAFCO
- The estimated cost to provide this protection
- An identification of any existing alternate service providers, if any, and their estimated cost
- A plan for financing the costs associated with the planning and construction of whatever it is the District is able to implement

Task 2: Continued Consultation and Meeting Attendance

Following completion of the Task 1 scope-of-work, we will provide any additional clarifications and/or responses to comments that LAFCO may prepare. In addition, we will provide ongoing consultation and attend meetings as requested in support of the effort to activate the District's latent powers.

FEE ESTIMATE

We propose to provide our services on a time-and-expense basis in accordance with our current fee schedule. We estimate that a fee of **\$12,000** would be required to complete Task 1. Task 2

items, if required, would be provided on an as-requested basis in accordance with our current fee schedule.

AUTHORIZATION

If the above scope of services and fees are acceptable, please sign and return the attached Professional Services Agreement to our office, which will serve as our authorization to proceed.

ENGEO's liability for damage due to professional negligence, acts, errors, omissions, breach of contract and consequential damages will be limited by Client to an amount not to exceed an aggregate limit of twenty-five thousand dollars or ENGEO's fee, whichever is greater, regardless of the legal theory under which such liability is imposed.

We look forward to continuing to serve you on this project. If you have any questions regarding the scope of services or fee presented herein, please contact us.

Sincerely,

ENGEO Incorporated



Josef J. Tootle
jjt/wfc/jg



Walter Crampton

Attachments: Professional Services Agreement
Preferred Client Fee Schedule