



11100 Santa Monica Blvd., Suite 780
Los Angeles, California 90025

Telephone: 424.259.1878
Facsimile: 424.208.1153
www.schwadalaw.com

ITEM 12a

RECEIVED
8-30-22 4:31 pm

Writer's Email Address:
alex@schwadalaw.com

August 30, 2022

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**”). The Coalition believes that the District’s Board members (the “**Board**”) can take action to protect the Beach Road Community from continuing shoreline erosion.

Shoreline Protection/Advisory Committee (“**Shoreline Committee**”)

The Coalition is encouraged that the Board has created the Shoreline Committee to focus on the shoreline erosion and coastal related issues in the District. The Coalition is further encouraged that the Board has begun outreach to local and regional partners, including the Coastal Resiliency Strategic Plan and Smart Coast California. The Coalition looks forward to learning more specifics about engagement in these regional groups and direct engagement with local partners, which the Coalition has noted in detail in past correspondences to the Board. Among the parties the Board should be contacting directly are as follows:

1. Southern California Regional Rail Authority (“**Metrolink**”)
2. Amtrak
3. Orange County Transportation Authority (“**OCTA**”)
4. California Department of Transportation
5. U.S. Military
6. Orange County Flood Control District
7. County of Orange

Local Coastal Plan Amendment (“**LCPA**”)

In its June 28th and August 30th Agenda Reports, the Shoreline Committee noted that the California Coastal Commission (“**CCC**”) had proposed material changes to the LCPA that the City of Dana Point submitted to the CCC, many of which could have adverse effects on the rights of the property owners in the District. The

Coalition requests that the District post a copy of the CCC's proposed modifications to the LCPA on the District's website as soon as possible so that the members of the community and the Coalition can review the same.

No Managed Retreat

The District's geographic location renders managed retreat a severely misguided policy and it must be avoided at all costs in connection with the LCPA. As the Board knows, the District is located immediately adjacent to a railroad line and the Pacific Coast Highway. The railroad is located just east of the District and therefore Metro Link, Orange County Transportation Authority, and Amtrak each have a vested interest in protecting their rail line operations from coastal erosion. In fact, it is the Coalition's understanding that the federal government is providing funding for the widening of the existing rail tracks. The Pacific Coast Highway is also a vital part of the transportation network in Southern California and is located just east of the District as well – Cal Trans has a vested interest in protecting this asset.

Because the State and Federal governments will never allow these key transportation assets to be submerged by elevated sea level rise, managed retreat cannot apply to Beach Road. Accordingly, the District needs to take the position with the CCC in any discussions regarding the LCPA that managed retreat is inapplicable to Beach Road.

As an alternative to the various governmental agencies and California taxpayers incurring the cost to protect these transportation assets, the Coalition believes that the Board needs to propose to the CCC that the District and the Beach Road private property owners should construct barriers and devices that protect not only the Beach Road homes but also the vital public infrastructure projects located immediately adjacent to the District. In effect, the private property owners along Beach Road in the District would be subsidizing the protection of PCH and the railroad and the vital governmental, economic and public interests that they serve – all that the Coalition asks is that in exchange for the District's private property owners protecting these infrastructure projects, that they also be permitted to protect their own homes.

Alteration of the Natural Current

In addition to working with the regional partners, the Coalition also believes that the Board should be examining the effect that certain alterations along the coast may have on coastal erosion in the Beach Road Community. The Board should examine the Dana Point Harbor, the San Onofre reef project and other projects along the coast. These projects may have affected the natural current in the vicinity of the District, thereby increasing the erosion in the Beach Road Community. The Coalition urges the Board to investigate this issue.

Latent Powers

The Coalition was pleased to see that the Board was working several months ago to obtain the approval of its exercise of the latent power of flood protection from the Orange County Local Agency Formation Commission (LAFCO). Please provide an update on the LAFCO approval process.

Sincerely,



Alexander W. Schwada
of Schwada Law, P.C.