

Meeting #692

CAPISTRANO BAY DISTRICT
AGENDA REPORT
February 28, 2023

New Business

ITEM 10a

Advisory Committee Report

Committee Mission Statement

TO PURSUE A COURSE OF ACTION THAT RESULTS IN PROTECTION OF THE DISTRICT ROADWAY and INFRASTRUCTURE, THE HOMES ON BEACH ROAD, AND THE PUBLIC, FROM COASTAL FLOODING AND SHORELINE EROSION.

The Committee has progressed to the point where it is time to present its recommendation to the Board for approving a plan and expense budget to continue the Committee's work in carrying out its Mission Statement.

Much thought and research has gone into the effort of developing a strategy and course of action for protection of the roadway and the homes in the community. The Committee feels the recommendation and budget estimate on the following pages provides the most optimal strategy for achieving the goals for which the Committee was formed.

Keep in mind when looking through the budget estimate that not all the proposed funds need to be collected in the first year. This plan is spread over several years as the process develops, matures and evolves.

ITEM 10a

RECOMMENDATION Capistrano Bay District Board of Directors

Beach Road Resilience Advisory Committee

Mission Statement

1. Devise a strategy to preserve **ALL** property owners' rights to protect their homes and asset value with a minimum negative impact. The Capistrano Bay District owners/stakeholders are characterized as:
 - a. alleged violators (**after the fact** permittees) needing immediate prioritization of effort and,
 - b. non-alleged violators needing long-term support for remodeling, redevelopment or ground up construction (long term).
2. Engage proactively with all necessary stakeholders to plan and prioritize a long-term sustainable solution for sand nourishment and retention.

Strategy

To initiate, fund and indemnify select District property owner permit applicants (test cases) that have the highest probability of concluding the governmental approval process in a manner that would result in an administrative and as needed, a legal precedent setting outcome, the result of which would aid all future applicants.

Three Applicant Types

- a. Alleged (post 1977) Violator
- b. Alleged (pre 1977) Violator (near MHTL for setting engineering precedent; less legal challenge here)
- c. Ground Up Candidate to be determined (perhaps with aid of PLF)

Cost Categories

- a. Actual Third-Party Costs (excluding staff and volunteer time) including but not limited to attorneys, engineering, architectural, planning and government agency fees through initial application, administrative and legal appeal process.
- b. Contingent Liability Fees associated with indemnifying Candidates from potential Intervenor claims.

Funding

Funding for this multi-year effort (Mission Statement item 1) and potentially the monitoring/proactive engagement phase for long term sand nourishment/retention would be through the CBD initiating a ballot process among registered voters to pass a parcel tax. The overall tax amount can be levied/billed in phases and be refunded if not used. Please **NOTE** a significant amount of the individual candidate budget is for "Contingent Liabilities." These potential claim amounts are challengeable by the CBD and would only be due if we do not prevail at the Court level. The estimated budget is attached as EXHIBIT "A".

EXHIBIT "A"

BUDGET/COST BREAKDOWN

Proposed Parcel Tax Formation			
Formation Services/Engineering		\$17,500.00	
Legal Consult (Meyers-Nave LLP)		\$5,000.00	
Community Survey/Polling		\$10,000.00	
	Subtotal		\$32,500.00
Cost Per Test-Case Candidate			
Attorney Fees (State)		\$675,000.00	
Coastal Engineering		\$27,800.00	
Contingent Liabilities (Candidate Indemnity)		\$300,000.00	
	Subtotal	\$1,002,800.00	
Three (3) Test-Cases	Subtotal		\$3,008,400.00
Attorney (U.S. Supreme Court)	Subtotal		\$300,000.00
	Subtotal		\$3,340,900.00
Contingency	Subtotal	10%	\$334,090.00
		TOTAL	\$3,674,990.00
		<u>Per Lot</u>	
Lot Number	196	\$18,749.95	
Number of Years	7		
		<u>Per Lot Per Year</u>	
Year 1	\$600,000.00	\$3,061.22	
Year 2	\$600,000.00	\$3,061.22	
Year 3	\$515,000.00	\$2,627.55	
Year 4	\$460,000.00	\$2,346.94	
Year 5	\$1,199,990.00	\$6,122.40	
Year 6	\$200,000.00	\$1,020.41	
Year 7	\$100,000.00	\$510.20	
TOTAL	\$3,674,990.00	\$18,749.95	\$3,674,990.00

EXHIBIT "A"