

CAPISTRANO BAY DISTRICT  
AGENDA REPORT  
September 5, 2023

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Advisory Committee Report

## ITEM 4

Resolution Calling a Mail-Ballot Election for December 5, 2023 on Whether to Impose a Special Tax for a Period of Seven Years In The Total Amount Of \$18,857.14 Per Taxable Parcel

As the board is aware, the Shoreline Protection Advisory Committee has been pursuing a parcel tax initiative to fund Beach Road Shoreline Protection activities. The District has retained Willdan Financial Services and Meyers Nave PLC to assist with this effort. The attached resolution, if adopted, would call a mail ballot special election for December 5, 2023, on a special tax to fund such activities.

The proposed tax measure (“the proposed ordinance”), which the voters would be asked to approve, is included as Exhibit A (item 4b) to the resolution. It would levy a tax on each property owner to be collected on the property tax roll as follows:

<i>Fiscal Year</i>	<i>Tax per Taxable Parcel</i>
2024-2025	\$3079.37
2025-2026	\$3079.37
2026-2027	\$2641.89
2027-2028	\$2360.91
2028-2029	\$6,156.86
2029-2030	\$1,025.83
2030-2031	\$512.91

As noted, the tax would be imposed for a seven year period beginning July 1, 2023 and ending June 30, 2031. Section 8 of the proposed ordinance outlines how the revenue from the tax may be used, which is limited to Beach Road shoreline protection activities. The proposed ordinance has various financial accountability provisions, including annual audits, to ensure that the revenues are used appropriately.

The election will be conducted entirely by mail in accordance with authorizations set out in the Elections Code. The election will be conducted by the General Manager, who will be assisted by a firm that specializes in conducting elections. Should the board adopt the resolution, the immediate next steps would include submitting the measure to the

## ITEM 4 cont.

County Counsel for the preparation of the impartial analysis and coordinating the arguments for and against the proposed ordinance. Once that is completed, the ballots can be printed and mailed.

Once the resolution is adopted, the District cannot participate in the election. State law prohibits public agencies from being involved in campaigns other than through informational activities. (See *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.) The line between unlawful campaign activities and permissible informational activities can be murky because it can turn on the "style, tenor and timing" of a particular communication. Thus, it is generally a good practice for public agencies to be very cautious about communications related to ballot measures. But, these rules do not restrict individual board members from campaigning related to the election in their personal capacities.

In addition, state law authorizes the Board of Directors or members of the Board of Directors to submit arguments for and against the measure. So, if it is the board's desire, it could submit an argument in favor or authorize individual board members to do so. Given the press for time in election matters, and the need for board approval of a Board of Directors' argument, staff would recommend for logistical reasons that the Board authorize two of its members to prepare the argument.

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*\*\*The following is a support letter from a group here on Beach Road expressing support for the parcel tax initiative.*



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August 30, 2023

***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](mailto:drussell@capobay.org)

Re: Capistrano Bay Community Services District (the “**District**”) Special Tax for Shoreline Protection

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.

The Coalition has reviewed the Notice of Public Hearing regarding a proposal for a special tax for shoreline protection activities. **The Coalition strongly supports the proposed tax because it will raise revenues for the purpose of shoreline protection, which is the most pressing issue facing the District and the Beach Road Community.** The Coalition was pleased to see that approximately 93% of those homeowners who responded to a survey from the District agreed that the tax should be implemented. By marshalling the collective resources of the Beach Road Community with a dedicated stream of funding, the District will be better equipped to implement community-wide solutions to address shoreline protection.

As of the date of this letter, additional information regarding the proposed tax measure has not yet been made available. The Coalition looks forward to those additional details about how the tax revenues will be used to further the cause of shoreline protection. The District indicated in prior meetings that one potential use of such tax revenues would be to fund legal challenges against the California Coastal Commission (“**CCC**”) by several Beach Road homeowners (*i.e.*, test cases would be used for 1) a home that is alleged to have a post-1977 violation, 2) a home that is alleged to have a pre-1977 violation, and 3) a ground up construction candidate). The Coalition believes it is important to challenge the CCC, and that the use of tax revenues for such a purpose is wise. We look forward to learning what other avenues the District will pursue to further shoreline protection in the Beach Road Community.

The Coalition has outlined numerous other potential avenues for shoreline protection in prior correspondence to the District. Examples include the following:

1. Current Analysis. The Coalition believes that the Board should be examining the effect that 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.
2. Sand Replenishment/Beach Nourishment. The Coalition believes that the District should seek to become part of a regional solution to provide for sand nourishment and retention along the coastline.
3. Cooperation with Local Partners. The District needs to engage with its regional partners to address the issue of shoreline erosion. As we have previously noted, the Southern California Regional Rail Authority, Amtrak and Orange County Transportation Authority are all natural partners because the District is located immediately adjacent to a rail line.
4. 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 Local Coastal Plan and any amendments thereto (collectively, the "LCPA"). 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. 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. The Coalition believes that the State and Federal governments will never allow these key transportation assets to be submerged by elevated seal level rise, and therefore the District needs to take the position with the CCC that managed retreat is inapplicable to the Beach Road Community.

**To reiterate, the Coalition strongly supports the proposed special tax and looks forward to the District's continue attention and dedication of resources to the issue of shoreline protection in the Beach Road Community.**

Sincerely,



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