

RESOLUTION NO. 9-5-23

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT ESTABLISHING DECEMBER 5, 2023, AS THE ELECTION DATE TO CONSIDER AN ORDINANCE IMPOSING A SPECIAL TAX FOR A PERIOD OF SEVEN YEARS IN THE TOTAL AMOUNT OF \$18,857.14 PER TAXABLE PARCEL; ORDERING THE SUBMITTAL OF THE ORDINANCE TO THE VOTERS AT THE ELECTION; AND DIRECTING THE GENERAL MANAGER TO CONDUCT A MAIL BALLOT ELECTION PURSUANT TO CHAPTER 2 OF DIVISION 4 OF THE ELECTIONS CODE

The Board of Directors of the Capistrano Bay Community Services District does hereby resolve as follows:

Section 1. The foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Pursuant to section 2 of Article XIII C of the California Constitution, Government Code sections 50075 and 50077, and Elections Code section 9222, the Board of Directors of the Capistrano Bay Community Services District hereby calls a mail ballot election—“an election conducted wholly by mail”—at which it shall submit to the qualified voters of the District, an ordinance enacting a special tax for shoreline protection (“Ordinance”). If approved, such tax measure would adopt a special tax, as authorized by Government Code sections 50075 and 50077.

Section 3. The Ordinance to be considered by the voters pursuant to Section 2 is set forth in Exhibit A hereto. The Board of Directors hereby approves the Ordinance, the form thereof, and its submission to the voters of the District at the December 5, 2023 election, subject to the approval of a two-thirds vote of the voters voting on the measure at the election called by this Resolution. The Ordinance specifies that the annual amount of the tax payable by each property owner in the District during the seven-year period the tax remains in effect, for a total of \$18,857.14. The Ordinance also provides that the tax shall be collected by the County Tax Collector along with the property tax. The Board shall assign the Ordinance a sequential District ordinance number if it is approved.

Section 4. The proposed Ordinance shall be submitted to the voters on the ballot in the form of the following question:

For the purpose of protecting Beach Road and the shoreline from erosion, shall the Capistrano Bay Community Services District adopt an ordinance that would levy a special tax would collect a total of \$18,857.14 from each property owner in the District over the seven-year period that the special tax would be in effect?	YES
	NO

Section 5. The General Manager, who is hereby deemed the "elections official" for this election as that term is used in the applicable relevant Elections Code provisions (the "elections official"), is authorized, instructed, and directed to properly and lawfully conduct the election in accordance with Chapter 2 of Division 4 of the Elections Code ("Conduct of Mail Ballot Elections"). The ballots to be used in the election shall be in form and content as required by law. The General Manager is authorized to canvass the returns of the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding district elections.

Section 6. Ballots must be returned to the elections official by 8:00 p.m. on December 5, 2023, except that a ballot is deemed to have been timely cast if it received by the elections official via the United States Postal Service or a bona fide private mail delivery company no later than three days after election day and it satisfies the requirements set forth in Elections Code section 4103. The notice of the time and place of holding the election is hereby given, and the election official is authorized, instructed and directed to give further notice of the election, as may be required by law.

Section 7. (a) The arguments for or against the measure, and the rebuttal arguments thereto, shall be submitted at or before the time that may be specified by the elections official pursuant to Elections Code section 9316. In accordance with Elections Code section 9162, the Board of Directors or members of the board may submit arguments for or against the measure.

(b) Primary arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons. (Elec. Code, § 9315.)

(c) Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the primary arguments. (Elec. Code, § 9317.)

(d) Pursuant to California Elections Code section 9313, the Board of Directors hereby directs the elections official to immediately transmit a certified copy of the measure to the County Counsel for the preparation an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on the existing law and the operation of the measure. Although section 9313 does not impose a timeline on the County Counsel, the elections official shall request that the County Counsel file the impartial analysis with the elections official by September 21, 2023, which is consistent with the corresponding timeline for County measures under Elections Code section 9105.

(e) Pursuant to California Elections Code Section 9317, when the elections official has selected the arguments for and against the measure, which will be printed and distributed to the voters, the elections official shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words, or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

Section 9. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, "CEQA," and 14 Cal. Code Reg. §§ 15000 *et seq.*, "CEQA Guidelines"). Under CEQA Guidelines section 15378(b)(4), the tax

is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the District would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

Section 11. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED, SIGNED AND APPROVED this 5th day of September, 2023.

Patric D. McNulty, 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. 9-5-23 was duly adopted at the Public Hearing of the Board held on September 5, 2023, by the following vote:

AYES:

NOES;

ABSENT:

ABSTAIN:

Secretary
CAPISTRANO BAY
COMMUNITY SERVICES DISTRICT

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ORDINANCE NO. ___-23

AN ORDINANCE OF THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT ENACTING A SPECIAL TAX ON PROPERTIES LOCATED IN THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT FOR SHORELINE PROTECTION

RECITALS

1. The District's Beach Road Shoreline Protection Advisory Committee, formed in the second quarter of 2022, identified three critical areas requiring attention:
 - Addressing Coastal Commission (CCC) letters threatening action and fines;
 - Ensuring homeowners' rights to protect their properties from rising sea levels, waves, and erosion; and
 - Working towards remedying beach erosion issues.
2. The Committee has invested considerable time and resources in education, research, strategy development, and engaging necessary stakeholders to achieve these goals.
3. Additional funding is necessary to achieve the various goals identified by the Committee, and the Board has determined that a special tax adopted pursuant to Government Code section 50075 would best serve such purpose.
4. The District engaged with Willdan Financial Services to prepare a financial analysis to assist with determining the amount of funding required and the proposed tax that would be necessary to generate the necessary funding.
5. The Board has determined that the amount of \$3.7 million is necessary to achieve the objectives identified by the Committee, and the financial analysis recommends that the tax be a total amount of \$18,857.14 collected over a 7 year period in non-uniform annual amounts that reflect the cash flow needs of the District to meet the objectives of the Committee.

Be it ordained by the People of the Capistrano Bay Community Services District as follows:

SECTION 1. AUTHORITY

The People of the Capistrano Bay Community Services District enact this Ordinance in accordance with the authority granted to community services districts pursuant to Sections 50075 through 50077 and 61121 of the California Government Code.

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SECTION 2. RECITALS

All Recitals contained in this Ordinance are true and correct and are incorporated herein by reference.

SECTION 3. DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meanings provided below:

- A. "Administrator" means an official of the District, or designee thereof, responsible for carrying out the provisions of this Ordinance.
- B. "Assessor's Parcel Number" means the Parcel and Parcel Number as assigned by the Orange County Assessor on the equalized tax roll.
- C. "Board" means the Board of Directors of the District.
- D. "County" means the County of Orange.
- E. "County Assessor" or "Assessor" means the County Assessor of the County of Orange.
- F. "County Assessor's parcel" means a lot or Parcel with an assigned Assessor's Parcel Number used by the County Assessor in preparing the tax roll.
- G. "District" means the Capistrano Bay Community Services District.
- H. "Fiscal Year" means the period starting July 1 and ending the following June 30.
- I. "Parcel" means any County Assessor's parcel in the District based on the equalized tax roll of the County as of January 1 of each Fiscal Year with the exclusion of any County Assessor's parcel located within the census-designated place of Port Costa.
- J. "Special Tax" means the special parcel tax authorized and imposed by this Ordinance.
- K. "Taxable Parcel" means any Parcel that is not a Tax-Exempt Parcel.
- L. "Tax-Exempt Parcel" means any Parcel that is exempt from (1) the Special Tax, as provided for in this Ordinance; or (2) the levy of general ad valorem property taxes under California law, including but not limited to public streets; schools; parks; and public drainage ways, landscaping, wetlands, greenbelts, and open space.

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SECTION 4. TAX IMPOSED

A. An annual Special Tax is hereby imposed on July 1 of each Fiscal Year in the following amounts on every Taxable Parcel for the purposes described in Section 7 herein.

<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

B. The Special Tax shall take effect on July 1, 2024 for Fiscal Year 2024-2025 (Year 1) and shall continue through Fiscal Year 2030-2031.

C. The Special Tax constitutes a debt owed by the owner of each Parcel to the District.

D. The Special Tax shall be levied and collected on each Taxable Parcel within the District for which the owner receives a separate ad valorem property tax bill.

E. The Board may elect to collect less than the amount authorized in subsection A above by adopting a resolution that specifies the particular reduction by particular year, but any such reduction shall have no effect on the tax in any other year and the Board may elect to collect the reduced amount in a subsequent year in which the tax remains in effect.

SECTION 5. EXEMPTIONS

A. The following Parcels shall be exempt from the Special Tax:

- i. Any Parcel exempt from the levy of general ad valorem property taxes under California law, including but not limited to public streets; schools; parks; and public drainage ways, landscaping, wetlands, greenbelts, and open space; and

SECTION 6. COLLECTION OF TAX

The Special Tax may be collected in the same manner as ordinary ad valorem taxes are collected and, if collected in that manner, shall have the same lien priority and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes collected by the County of Orange. The District Board of Directors may provide for other alternative methods of collection of the Special Tax by resolution.

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SECTION 7. COLLECTION OF UNPAID TAX

The amount of the Special Tax, any penalty, and any interest imposed under the provisions of this Ordinance shall be deemed a debt owed to the District. Any person owing money to the District under the provisions of this Ordinance shall be personally liable to an action brought in the name of the District, at its option, for the recovery for such amount.

SECTION 8. USE OF TAX REVENUE

A. Revenue from the Special Tax, including penalties and interest thereon, shall be used only for Beach Road shoreline protection activities, which include, but are not limited to:

- i. Seeking and defending regulatory approvals from the California Coastal Commission and other governmental entities, which may include seeking or assisting with approvals related to specific properties on Beach Road that would protect Beach Road itself from erosion.
- ii. Responding to regulatory actions from the California Coastal Commission and other governmental entities related to Beach Road;
- iii. Participating in regulatory rulemaking and other processes that relate to shoreline erosion and shoreline protection; and Ensuring homeowners' rights to protect their properties from rising sea levels, waves, and erosion; and
- iv. Capital and maintenance projects that address erosion issues.

SECTION 9. ACCOUNTABILITY

In accordance with the requirements of California Government Code Sections 50075.1 and 50075.3, the following accountability measures, among others, shall apply to the Special Tax:

- A. A separate, special account, referred to as the Shoreline Protection Fund, shall be created, into which the proceeds of the Special Tax, including penalties and interest earned on such proceeds, must be deposited.
- B. On an annual basis, the District Board of Directors shall adopt a program and budget for use of the proceeds of the Special Tax.
- C. The specific purposes of the Special Tax set forth in Section 8 herein. The proceeds of the Special Tax shall be applied only to those specific purposes as set forth in the maintenance program and budget described in subdivision (B) of this Section 9.

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D. The Administrator shall annually prepare and submit to the District Board of Directors a report regarding the Special Tax funds collected and expended and the status of the maintenance program described in subdivision (B) of this Section 9, as well as any other information required by Government Code sections 50075.1 and 50075.3.

SECTION 10. ANNUAL AUDITS

A. Annually, the District retains an independent auditor to conduct an audit of and provide audited financial statements for all of the District's financial activities. The auditor shall include an accounting of the revenue received from the Special Tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the Board and made available to the public.

B. The District Board of Directors may, but is not required to, establish a committee of members of the public to review and report on the revenue and expenditure of funds from the Special Tax adopted by this Ordinance and to advise on the maintenance program and budget described in Section 9, subdivision (B).

SECTION 11. INTERPRETATION, APPLICATION, AND APPEAL OF SPECIAL TAX FORMULA AND PROCEDURES

A. Any taxpayer who feels the amount of the Special Tax assigned to a Parcel is in error may file a notice with the Administrator appealing the levy of the Special Tax. The Administrator then will promptly review the appeal and, if necessary, meet with the applicant. If the Administrator verifies that the Special Tax levied on the applicant's Parcel should be modified or changed, the Special Tax levy will be corrected and, if applicable in any case, a credit or refund will be granted. The appeal must be filed not later than one year after having paid the Special Tax that is disputed.

B. Interpretations may be made by the District, by Resolution or Ordinance of the Board, for purposes of clarifying any vagueness or ambiguity as it relates to the Special Tax rate, the classification of properties, or any definition applicable to the Special Tax.

C. Without Board approval, the Administrator may make minor, non-substantive administrative and technical interpretations of the provisions of this Ordinance for purposes of administrative efficiency or convenience or to comply with new applicable federal, state, or local law, so long as any interpretation does not materially affect the rate and manner of collection of the Special Tax.

SECTION 12. AMENDMENTS

This Ordinance may only be amended by a vote of the people if the amendment would result in the Special Tax being imposed, extended, or increased in a manner not authorized by this Ordinance as originally approved by the voters, or if the amendment

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would substantially alter the purpose of the Special Tax. The District Board of Directors may enact other amendments, including but not limited to amendments necessary to implement or administer the Special Tax.

SECTION 13. EXPIRATION OF TAX

The authority to levy the Special Tax shall remain in effect until June 30, 2031.

SECTION 14. ADJUSTMENT OF APPROPRIATIONS LIMIT

Pursuant to California Constitution Article XIII B and applicable laws, the appropriation limit for the Capistrano Bay Community Services District is hereby increased by the aggregate sum authorized to be levied by this Special Tax for Fiscal Year 2023-2024 and each year thereafter.

SECTION 15. SEVERABILITY

If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding. If any section, subsection, phrase, clause, sentence, or word in this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of this Ordinance but shall be confined to the article, section, subsection, subdivision, clause, sentence or word so held invalid or unconstitutional.

SECTION 16. SAVINGS CLAUSE

No section, clause, part, or provision of this Ordinance shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

SECTION 17. DATE OF ADOPTION AND EFFECTIVE DATE

This Ordinance will be approved if two-thirds of voters voting on the measure vote in favor of it. The date of adoption shall be the date of the declaration of the vote, and this Ordinance shall become effective ten (10) days after the date of the declaration of the vote.