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ITEM NO. 7a

RESOLUTION NO. 08-27-24

**RESOLUTION OF THE CAPISTRANO BAY COMMUNITY SERVICES
DISTRICT AUTHORIZING EXPENDITURES FROM THE VOTER-
APPROVED SPECIAL TAX FOR INFRASTRUCTURE PROTECTION**

Recitals

1. The District's Beach Road Infrastructure Protection Advisory Committee, formed in the second quarter of 2022, identified the following three critical areas requiring the District's attention:

- a. Addressing California Coastal Commission letters threatening action and fines.
- b. Ensuring homeowners' rights to protect their properties from rising sea levels, waves, and erosion.
- c. Working towards remedying beach erosion issues.
- d. Protecting Beach Road residences imperiled by tidal forces provides first line protection of Beach Road and District facilities.

2. In response, the Board of Directors called a special election for December ~~19~~, 2023 on an ordinance (the "Ordinance") enacting a special tax for infrastructure protection, and the District's electorate approved the Ordinance by a vote of ~~74.19%~~ to ~~25.81%~~.

3. The Ordinance provides that the revenues derived from the special tax be used exclusively "for Beach Road infrastructure protection activities." The Ordinance indicates that those activities, include, but are not limited to, the following:

- a. 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.
- b. Responding to regulatory actions from the California Coastal Commission and other governmental entities related to Beach Road.
- c. Participating in regulatory rulemaking and other processes that relate to shoreline erosion and structure protection; and ensuring homeowners' rights to protect their properties from rising sea levels, waves, and erosion.
- d. Capital and maintenance projects that address erosion issues.

4. Recently, questions arose about whether expenditures on "seeking or assisting with [governmental] approvals related to specific properties on Beach Road that would protect Beach Road itself from erosion" were impermissible gifts under Section 6 of Article XVI of the California Constitution.

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5. In response to those questions, the Board, on July 22, 2024, paused then-ongoing efforts on the pending Miller Coastal Development Permit ("CDP") application and the proposed Ong CDP application to further evaluate the situation.

6. Since then, the Board has received information and legal advice sufficient for it to consider resuming those efforts.

7. Specifically, after reviewing California law, the Board understands that:

a. Expenditures (for which equal or greater value is *not* received) must serve a "direct and substantial public purpose" and benefit non-District entities "only as an incident to the public purpose." (See *County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281.)

b. The legislative decision of the Board as to what constitutes a public purpose will be upheld as long as it has a reasonable basis. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 746.)

NOW, THEREFORE, the Board determines that Beach Road infrastructure protection activities—including "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"—serve direct and substantial public purposes because those activities will protect District infrastructure facilities, namely Beach Road and the other District infrastructure in Beach Road. In particular, approvals involving improvements to specific properties on Beach Road will benefit the District by providing first line protection of Beach Road and District facilities.

BE IT FURTHER RESOLVED that the Board hereby authorizes staff, the Advisory Committee and its consultants to resume their work on the pending Miller Coastal Development Permit ("CDP") application and the proposed Ong CDP application.