



Carpinteria Sanitary District

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ENVIRONMENTAL HEALTH
SERVICES

February 9, 2007

Supervisor Salud Carbajal
First District Supervisor
105 E. Anapamu Street
Santa Barbara, CA 93101

**Re: South Coast Beach Communities Septic to Sewer Project
Reimbursement Funding Request**

Dear Salud,

First and foremost, it is my pleasure to report that the South Coast Beach Communities Septic to Sewer Project was recently approved by the Carpinteria Sanitary District (District) Board of Directors. We are now moving forward with implementation of this important project, which involves abandonment of on-site septic systems and construction of public sanitary sewer systems in four discrete beach communities within the First District. Your assistance and support in getting to this point is greatly appreciated.

As you may know, the District has been pursuing this project on behalf of homeowners within the represented communities since 1999. In 2000 an assessment district was formed for the Rincon Point community with overwhelming support, but was subsequently dissolved due to legal challenges from a minority opposition group. As part of that original assessment district formation process, the District incurred legal, engineering and related costs that totaled approximately \$67,000. Graciously, the Santa Barbara County Board of Supervisors committed to reimburse the District if these expenses could not otherwise be recovered.

At the Board of Supervisors hearing on May 1, 2001, the Board restated its commitment and guaranteed reimbursement of the \$67,000 through a State Water Resources Control Board (SWRCB) grant program, intended for septic to sewer projects, that is administered by the County Environmental Health Services Department. A copy of the minutes from that hearing item is attached for your reference.

The District is now pursuing formation of an assessment district to provide a funding mechanism for the infrastructure required to serve Rincon Point. It had been the District's intent to recover the previously incurred costs through this process. However, we have been advised that the nature of these expenses precludes the District from

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February 9, 2007

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including them in the new assessment district. Attached herewith is an opinion letter from Mr. Scott Ferguson of Jones Hall, the District's bond counsel, which provides a basis for this position.

I have discussed this matter at length with Mr. Rick Merrifield, the Environmental Health Director. Rick and I believe it was the intent of the Board of Supervisors to reimburse the District if the \$67,000 could not be recovered. In the action item, however, it states that the money shall be paid to the District if the pending assessment district election were to fail and that the County would retain the money if the election passed. We are now in a situation where the new assessment district is expected to pass, but it will not include recovery of the money in question. Accordingly, the District is requesting your help to remedy this situation. I understand that a new Board action may be necessary for clarification and to authorize reimbursement through the SWRCB grant program.

Thank you very much for your continued support of this critical project. I would be happy to meet with you or your staff to discuss the details of this situation further. If there is anything I can do to facilitate the process, please let me know. You can always reach me at 684-7214 x12 or by email at craigm@carpsan.com.

Best regards,
CARPINTERIA SANITARY DISTRICT



Craig M. Murray, P.E.
General Manager

Enclosures

cc: ✓ Rick Merrifield, SB County EHS
Anthony Trembley, District General Counsel
CSD Board of Directors

May 1, 2001

COUNTY ADMINISTRATION BUILDING

BOARD HEARING ROOM

105 EAST ANAPAMU STREET, FOURTH FLOOR

SANTA BARBARA

The Board of Supervisors meets concurrently as the Board of Directors of the Flood Control & Water Conservation District, the Water Agency and other Special Districts.

Persons may address the Board in person or by using the remote video testimony system located at the Betteravia Government Center, Board Hearing Room, 511 East Lakeside Parkway, in Santa Maria. Persons may address the Board on any matter listed on the agenda by completing and delivering to the Clerk a speaker slip before the item is considered. Matters not listed on the agenda may be addressed at the public comment period following the administrative agenda. Further information on agenda items may be obtained at the Clerk of the Board Office, Room 407, in the County Administration Building in Santa Barbara.

COUNTY ADMINISTRATOR'S RECOMMENDATION: POLICY

Schwartz/Marshall a) and b) Directed.

c) Approved.

d) Conducted public hearing and accepted report.

e) Upon acceptance of the requested modifications by the State Water Resources Control Board for use of the state funding for the septic-to-sewer program, directed Public Health Department Staff to allocate \$67,000 of said funds for Carpinteria Sanitary District Rincon Point sewerage project costs. The intent of the Board is to guarantee \$67,000 in costs identified by the Carpinteria Sanitary District pending an election to create an assessment district and tax of property owners at Rincon Point. Should said election fail, the \$67,000 shall be paid to the Carpinteria Sanitary District. Should said election pass, the County shall retain the \$67,000.

JONES HALL

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January 8, 2007

BY EMAIL

Craig Murray, P.E.
General Manager
Carpinteria Sanitary District
5300 Sixth Street
Carpinteria, CA 93013

Re: Carpinteria Sanitary District
Cost Recovery Regarding Abandoned Assessment District

Dear Craig:

I understand that the Carpinteria Sanitary District is pursuing the formation of one or more assessment districts to finance sewer line projects in three neighborhoods, known as Sandyland Cove, Sand Point Road and Rincon Point, for which prior assessment districts were initiated then abandoned after a legal challenge.

You have asked about the extent to which costs previously incurred for this project by the District and others (including the nonprofit group Heal the Ocean) could be recovered and financed through the new assessment district or districts. Specifically, you have asked whether the proceeds of the new assessment district could pay for legal costs incurred in defending the legal challenge to the former assessment district prior to its abandonment.

Generally, the Streets and Highways Code permits the financing of the costs of constructing the project and the expenses incidental thereto. As such, the costs of defending any challenges to the new assessment district (or districts) would be includible in the assessment (so long as the assessment engineer's report contains a separate estimate of and line item for expected litigation costs). However, the legal costs associated with the challenges to and eventual abandonment of the former district are *not* technically costs incidental to the

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project, and would be difficult to justify as part of the assessments levied by the new proposed district. The governing law is Article XIII D of the California Constitution (Proposition 218), which requires a "special benefit" finding for all project costs and limits the costs that may be assessed to those that provide a special benefit to the properties included within the assessment district. Because the prior districts were abandoned, it would be difficult for the District's Board to make a finding (evidenced by the assessment engineer's report) that costs associated with the abandoned districts are incidental to the sewer project or provide a special benefit to the properties in the proposed new district. Therefore, in our opinion, including those prior costs as a component of the project to be financed by the new district would not be permitted under the 1913 Act or Article XIII D of the California Constitution.

Please let me know if we can provide further guidance on this issue.

Very truly yours,

/s/ Scott R. Ferguson

cc: Anthony Trembley, Esq. (via email)