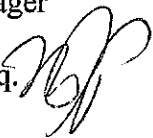


MONTECITO COMMUNITY DEVELOPMENT DISTRICT

MEMORANDUM

TO: Jodi Thomke, Facility Attendant
Montecito Beach Club

CC: Eric Dailey, District Manager

FROM: Michael J. Pawelczyk, Esq. 
District Counsel

RE: Montecito Community Development District (the "District")
Public Access to District Roadways

DATE: January 21, 2011

The District Manager has requested that I provide you with a brief overview of the public access requirements associated with the District roadways. As a community development district, the District is a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes. A community development district is, by definition, a form of special purpose local government. As a public entity, the roadway facilities owned by the District and financed with tax-exempt bonds therefore public, must remain open to the public, and must continue to serve an essential governmental function.

As a local governmental entity, the District is treated, for purposes of Florida and federal law, in much the same manner as a municipality, county, or state agency. For example, a municipality cannot prevent any individuals from utilizing the public rights-of-way just because such individuals do not reside within that municipality. Similarly, a community development district cannot exclude non-residents from accessing the District-owned roadways. It is for this reason that the District operates a soft-gate system at the entrance to the community, which soft gate system allows access to any individual who desires to travel upon the public rights-of-way within the boundaries of the District.

In addition to the principles outlined above, federal tax law the District from utilizing tax-exempt bond proceeds to finance capital projects like roadways for a private purpose. The District has utilized tax-exempt bond proceeds to finance the construction of the roadways within the District, and therefore, such roadways must continue to serve "an essential governmental function." Included within the meaning of this term is that the roadway facilities must be available for use by the general public and be of the type of facility generally financed by government. See Section 141 of the Internal Revenue Code, and specifically Section 1.141-5(d).

The District currently operates a gate system that requires anyone desiring entry to the community to enter the access code posted on the screen above the touchpad. This is considered a soft-gate system and complies with the applicable law and public access requirements described above. Soft-gate systems utilizing on-site guards or off-site guards and cameras are also prevalent in community development districts or other special districts where the roadway facilities are considered public.

Accordingly, under the factual circumstances of the District, since the District is a local government entity, the District roadway facilities were financed and constructed with tax-exempt bond proceeds, and the District funds the operation and maintenance of such facilities through a non-ad valorem special assessment on the properties within the District, the District roadway facilities must be and remain open and accessible to the general public and must continue to serve an essential governmental function.