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May 1, 2023

Homeowner
Delta Coves Maintenance Corporation

Ref. #: 12854

**RE: Delta Coves Maintenance Corporation
Lagoon Construction Activities | Pile Driving
Important Information and Request for Cooperation**

Dear Homeowner:

As you may be aware, our firm serves as general counsel to the Delta Coves Maintenance Corporation (“Association”). In that capacity, we have been directed to provide homeowners with additional context concerning recent discussions regarding work within the Delta Coves lagoon (“Lagoon”), and, more particularly, providing homeowners conditional opportunities for engaging contractors to conduct pile driving activities related to dock or deck installations and alterations.

The Lagoon is a body of water occupying an area of land designated as Parcel A on the subdivision map for the Association. Recently, ownership of the Lagoon was transferred to the Association. It is therefore important for homeowners, as members of the Association, to understand that the waters within the Lagoon are regulated by the United States Fish and Wildlife Service, the National Marine Fisheries Service, California Water Quality Control Board and California Department of Fish and Wildlife to protect its suitability for recreational use concurrent with the marine environment.

In the early stages of development, an exceedingly detailed proposal was submitted by the Declarant for the Association, SDC Delta Coves LLC (“SDC Delta Coves”), to the aforementioned governmental agencies describing Lagoon construction procedures and the times of year when construction would occur. This process includes a description of how the piles are anchored to the Lagoon floor. The materials are indicated to reduce decibel levels from the process, and specifically noting how many blows are needed to drive a single pile. It is critical that the stated thresholds are not exceeded to avoid any injury to fish and other species within the Lagoon waters. Further time constraints are enforced since it is recognized that marine mammals tend to migrate during the winter months. Prior to pile driving divers enter the water to remove the riprap around the driving area to reduce turbidity in the water that could cause sedimentation into the Delta and then replace the riprap to complete the process. A commitment has been made by SDC Delta Coves that if marine mammals enter the Lagoon all pile driving will stop until they exit the area.

Understanding the level of detail that must be followed to permit any further dock construction or deck construction from Lagoon-based platforms at Delta Coves, it is critical that SDC Delta Coves control the process for all work occurring while its permits are in effect,¹ and that proper biological monitoring occurs by highly qualified individuals. The applicable permits are as follows: US Army Corps of Engineers section 10 permit SPK-1994-00393; United States Fish and Wildlife Service (USFWS) permit 08FBDT00-2022-F-0002, National Marine Fisheries Service (NMFS) permit #WCRO-2002-00414, Central Valley Water Quality Control Board permit WDID#5B07CR00227, and California Department of Fish and Wildlife (CDFW) permit 1600-2020-0263-R3 (collectively, the “Permits”). Importantly, the Permits limit work within the lagoon to between August 1st and October 15th of each year.

Given this information, while SDC Delta Coves has agreed to allow members to review these permits for information only, neither the Association nor SDC Delta Coves is willing to allow members to use other vendors to perform work in the Lagoon under the Permits. Of course, any members who want to expend the time and effort to obtain their own permits from the above-listed governmental authorities for dock and deck improvements within the easement areas associated with their Lots may do so after receiving approval of the plans from the Association and Contra Costa County. However, it is likely that no additional permits will be issued until the full impact of SDC Delta Coves buildout is understood by the permitting agencies. Once SDC Delta Coves completes its dock development within the Lagoon any excess allowable coverage could be available for individual permits if the agencies find that the water quality for marine life within the Lagoon could be maintained.

Again, only work in the Lagoon that is authorized by the Association and SDC Delta Coves is permitted at this time. For work to be authorized under the Permits, individual property owners must deliver plans, specifications, Association design approvals, start and stop dates, and payment of fees to cover costs to monitor the work.

While the aforementioned process does not directly involve the Association beyond the architectural control provisions contained in the Governing Documents (as that term is defined in the Civil Code), we (as the Association’s legal counsel) write to you for two reasons: (1) the Association is the record owner of the waters which are protected and regulated by the Permits, and (2) the Association is tasked with the duty to enforce the restrictions imposed to protect the Lagoon. The Association will continue to ensure that all homeowners engaged in dock/deck work are performing such work (particularly, the pile driving component of the work) in strict compliance with the requirements provided by SDC Delta Coves and its biologist. To encourage compliance, the Board of Directors for the Association has recently revised the Association’s Fine Schedule to impose a substantial fine for members who fail to comply with this requirement and other criteria provided in the informational brochure now posted on the Association’s website.

We recognize that the foregoing may be disappointing to you and that you may nevertheless object to the Board’s position in this matter. However, we ask that you consider the consequences associated with failing to comply with the requirements imposed by the relevant governmental agencies that issued the Permits. Those consequences are real, and could have a devastating impact, not only on the individuals violating the restrictions imposed under the Permits, but on the community as a whole.

¹ Although title to the Lagoon is in the name of the Association, the permits which enable construction activities within the Lagoon are in the name of SDC Delta Coves and/or DMB Associates.

We therefore urge you to avoid incurring said consequences by complying with the requirements set forth above and in the Permits.

Should you have any questions concerning the foregoing, or would like to discuss the matter further, please do not hesitate to contact the Association's managing agent, Monica Wolf, at mwolf@coherelife.com. We thank you in advance for your anticipated cooperation.

Very truly yours,

TINNELLY LAW GROUP



MATTHEW T PLAXTON, ESQ.

MTP:ba

