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ITEM NO. 12

(1st Letter)

Writer's Email Address:
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RECEIVED

MAR 07 2019

February 26, 2019

VIA ELECTRONIC MAIL

Capistrano Bay Community Services District
35000 Beach Road
Capistrano Beach, CA 92624
Attn: Donal S. Russell, General Manager
Email: drussell@capobay.org

Re: Capistrano Bay Community Services District (the "**District**")

As you know, my firm represents the Coalition to Protect Capistrano Beach. My office is in receipt of the District's Agenda for Board Meeting #650 (the "**Agenda**"), which is scheduled to be held tonight, February 26, 2019, as well as the draft meeting minutes for Regular Meeting #649 held on Tuesday January 29, 2019 (the "**Meeting Minutes**").

It is incredibly disconcerting that shoreline protection was not an agenda item at the January meeting, and that Carter Clark, a former board member, appears to be the only person who addressed the issue of shoreline protection. Adding to this concern is that the Agenda for tonight's meeting does not appear to substantively address any of the shoreline protection issues that have been raised at prior meetings or provide any updates to those serious concerns affecting the Beach Road community.

As brief reminder, the Board of Directors for the District (the "**Board**") has heard public comments from my office as well as other concerned individuals in the community on the topic of shoreline protection. While it was a nice gesture to appoint Mr. Lurner as the shoreline representative and Mr. Lurner has brought important issues to the Board's attention, the lack of follow through by the Board on the number one issue facing the community has been incredibly troubling.

To be clear, here is a list of just some of the shoreline protection issues and strategies that the Board does not seem to have pursued (as evidenced by the lack of any mention in the Agenda or Meeting Minutes), but that have been previously raised by members of the public at previous Board meetings:

1. Board participation in the City of Dana Point's local coastal program amendment process. The Board needs to provide input into the LCP process. The Board can look no further than what the City of Del Mar recently accomplished, when it was able to remove the concept of managed/planned retreat from its LCP amendment. The Board needs to immediately interface with the City of Dana Point regarding this critical issue.

2. Board support and funding for a comprehensive beach/sand nourishment program to provide a buffer against rising sea levels.
3. Board leadership and support for individual owners who seek to challenge onerous deed restrictions sought by the California Coastal Commission and/or City of Dana Point as a condition of granting the property owners certain building permits.
4. Board support and sponsorship of an application for an emergency, District-wide coastal development permit to enable all property owners to employ temporary measures to protect their homes against an imminent threat of storm damage.
5. Board partnership with the Orange County Flood Control District to seek a Coastal Commission permit to maintain, expand or rebuild seawalls to protect the approximately eighteen (18) OC Flood Control District storm drainage facilities and pipes along the District's coastline. This novel idea emerged from remarks made by former Board member Robert H. Bancroft, and Mr. Lurner provided an update to the Board at the December 5, 2018 meeting of the Board.
6. The Board's exploration of the detrimental effect that the Orange County and Parks Department armoring has had on sand erosion for private property owners by diverting water flows.

Again, the Board needs to take serious, concerted action to address these issues. Director Stephen Muller suggested at the December 5, 2018 Board meeting that shoreline protection should be a regular topic at each meeting. However, since the December 5, 2018 meeting shoreline protection has not been a dedicated agenda item on the January or February 2019 meetings.

We are glad that Mr. Lurner has taken on the responsibility of updated the Board regarding shoreline protection issues, but the Board needs to be willing to follow through on these matters and take action. The Coalition believes all these opportunities should be vigorously and promptly pursued by the Board, with follow through, real action and updates provided to the public in an open forum at each and every meeting.

Unfortunately it appears that the Board's position so far is to view itself as a homeowner's association in a condo development. The Board needs to understand that it is a special district, which provides further rights and options for the Board to take advantage of in protecting the coastline of Beach Road.

Please forward this letter to the members of the Board.

Sincerely,

A handwritten signature in black ink, appearing to be 'AS' with a long horizontal stroke extending to the right.

Alexander W. Schwada
Attorney at Law

RECEIVED

MAR 28 2019



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ITEM NO. 12
(2nd Letter)

Writer's Email Address:
alex@schwadalaw.com

March 27, 2019

VIA ELECTRONIC MAIL

Capistrano Bay Community Services District
35000 Beach Road
Capistrano Beach, CA 92624
Attn: Donal S. Russell, General Manager
Email: drussell@capobay.org

Re: Capistrano Bay Community Services District (the "**District**")

As you know, my firm represents the Coalition to Protect Capistrano Beach. My office is in receipt of the District's Meeting Minutes for Board Meeting #650 (the "**Meeting Minutes**"), which was held February 26, 2019.

It is incredibly disconcerting that the issue of shoreline protection was confined to how to manage the slow drains when there is a lot of rain, with the Board of Directors for the District (the "**Board**") coming to the conclusion that a pump should be rented ahead of time. To say that a decision to rent a pump is a disappointing response to shoreline protection and flood control, the most important issues facing the Beach Road community, is an understatement.

The Meeting Minutes also noted that a representative from Capo Cares discussed Orange County's concern that its bike and pedestrian path on the beach will get washed out by shoreline erosion, and the County is looking to either purchase, lease or get an easement for part of Beach Road's Northgate property to use a replacement for the bike path. As noted previously, the County has been armoring its assets (e.g., parking lots) and such armoring could be potentially exacerbating the shoreline erosion on the properties of private owners on Beach Road as a result of the diverted water flows. Now it appears the County is requesting the assistance of the Board.

The Board should take into consideration that the County appears to be in a relatively weak bargaining position, as it needs the District's assistance to relocate the bike path onto District property. As such, the District should consider using this to its advantage and explore how to potentially partner with the County and other governmental entities to potentially create a coordinated approach to combat shoreline erosion and flooding that benefits both the private owners on Beach Road and County and other governmental entities (such as the OC Flood Control District, as discussed below). As a part of any negotiations for a potential partnership, the Board should carefully analyze the detrimental effect of the County's current armoring system on the Beach Road private owners due to water flow diversion.

As I noted in my letter to the Board dated February 26, 2019, the lack of follow through by the Board on the number one issue facing the community has been incredibly troubling. Renting a pump is not a strategy in the face of rising sea levels and shoreline erosion. The time to act is **NOW**. The County is currently armoring its income producing assets along the Beach (parking lots, etc.) via barriers and sandbags. The Board needs to begin working with other entities, private and governmental, to protect the property of the Beach Road owners before it is too late.

Again, I strongly encourage the Board to work to address and implement the strategic measures that have been introduced at prior meetings to implement a real shoreline protection plan. An example of just a few of these measures are discussed below:

1. Board participation in the City of Dana Point's local coastal program amendment process. The Board needs to provide input into the LCP process. The Board can look no further than what the City of Del Mar recently accomplished, when it was able to remove the concept of managed/planned retreat from its LCP amendment. The Board needs to immediately interface with the City of Dana Point regarding this critical issue.
2. Board support and funding for a comprehensive beach/sand nourishment program to provide a buffer against rising sea levels.
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Alexander W. Schwada
Attorney at Law