

CAPISTRANO BAY DISTRICT  
AGENDA REPORT  
February 23, 2021

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*Old Business/Shoreline Protection*

## ITEM 9a

### Exercising Latent Powers

California Special Districts, including Community Services Districts like Capistrano Bay, are formed by the State Legislature and the local County Board of Supervisors to enable outlying communities, far from the center of county services, to independently provide a variety of municipal powers/services to the constituents of those areas.

Our District was formed in 1959 to provide the following five standard municipal powers:

- street lighting
- street sweeping
- trash collection
- roadway and other infrastructure maintenance
- police and security services

There are a total of 31 municipal powers that are reserved for Special Districts, of which most Districts are formed to provide just a few of the 31 services. The remaining unassigned powers are referred to in the Government Code as *Latent Powers*.

Our District has an obligation to protect its infrastructure, in particular, the paved roadway. Without the road, owners would not be able to get to their homes and with eroding beaches and sea level rise, the District's obligation to protect the road has become unavoidable. Engaging in shoreline protection has become the singular most important project for the District at this time.

An attorney representing a homeowner has recently questioned the District's authority to directly engage in shoreline protection efforts, citing the lack of specific authority as spelled out in the five powers/services listed above – *see attached letter from Jackson Tidus Law Firm.*

In a review of the remaining 26 Latent Powers reserved to Special Districts, the Capistrano Bay District does have access to the power to '*Operate flood protection facilities.*' As such, the District has engaged with the County of Orange to initiate the process for the authority to exercise the following Latent Power, listed here in abbreviated form:

CALIFORNIA GOVERNMENT CODE, TITLE 6, Div. 3, Part 3, Chap. 1, to wit; Authorized Services, Section 61100:

Subsection (r) *Plan, design, construct, improve, maintain, and operate flood protection facilities.*

In addition to soliciting the County for exercising this particular Latent Power, the Board has been following the Bills coming out of the State Legislature for any proposed laws or amendments relating to Sea Level Rise and Beach Erosion, that might be beneficial to coastal property owners.

For example, last year, State Senator Patricia Bates introduced SB1090, a bill that would have given more shoreline protection rights to owners of homes built after the 1976/77 Coastal Act was passed into law. This Bill was opposed by numerous activist groups, including the CCC and Surfrider Foundation and never made it out of the Natural Resources Committee. There is speculation that Sen. Bates may re-introduce this bill in a slightly revised form this year.

The following is a list of SLR and erosion-related Bills that have been introduced and considered so far this year:

- SB1 Requires local governments to amend LCP's to address sea level rise
- SB45 Wild fire, drinking water, drought, and flood protection Bond Act of 2022
- SB83 SLR revolving loan program for cities to buy back threatened homes and rent out
- AB11 Create 12 regional climate change authorities to manage access to state funds/grants
- AB50 Create climate change adaptation center/regional support network/science expertise
- AB67 Policies, resolutions, recommendations to address sea level rise
- AB72 Coastal Adaptation Permitting Act of 2021
- SB418 Requires regular SLR planning info reporting by local cities
- AB826 Create beach erosion authority for zone from Pt Conception to Pt Mugu
- AB897 Climate change adaptation-related legislation

For reading the full text of these bills use the following website and type in the Bill # into the search window: [www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov)

The unfortunate reality with the legislation listed above is that it all boils down to more regulation and control from the State over development in the Coastal Zone.

But because there is so much legislation being introduced this year, the Board is considering engaging with a professional lobbying agent to consult with the District on these bills. On the following pages, right after the *Jackson Tidus* letter, are proposals from two lobbying/consulting firms, *Platinum Advisors* and *McCabe & Company*.

Regarding progress with the District's efforts to obtain a temporary permit for shoreline protection, as was pointed out at last month's meeting, the Board has engaged with a coastal engineer firm, *Terra Costa Engineers*, and a legal consultant, Steve Kaufmann of *Nossaman LLP*.

The Board is waiting for a response from the CCC regarding the Notice that was issued back in December. The nature of the letter from the CCC should give the Board some indication of what direction the community could or should take regarding the alleged shoreline protection violations that the CCC claims have been committed.

As a last note, the current sandbag work being done at 35099 is completely legal as the owner applied for and has received a 60-day emergency permit from the CCC after having pulled out all of his heretofore illegal shoreline protection materials.



February 12, 2021

Direct Dial: 949.851.7491  
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Reply to: Irvine Office  
File No: 9740-127423

**VIA EMAIL ONLY ([drussell@capobay.org](mailto:drussell@capobay.org))**

Donal Russell, Manager  
Capistrano Bay District  
35000 Beach Road  
Capistrano Beach, CA 92624

**Re: Capistrano Bay District ("District") Negotiations with California Coastal Commission**

Dear Mr. Russell:

As you know, our firm represents the Tarr Family Trust ("Tarr Family") that owns the single-family home located at 35841 Beach Road. We understand that the District has been in discussions with the California Coastal Commission ("CCC") on behalf of some homeowners about a number of asserted Coastal Act matters, such as violations, notices of violations, permits, or entity formation (such as a GHAD). We also understand that the District has assessed, and possibly spent, \$75,000 on engineers and consultants to assist the District with these negotiations with the CCC.

The Tarr Family must insist that the District cease negotiations with the CCC, not assess any additional money for doing so, and refund to the homeowners the \$75,000. The District does not have authority to act on behalf of homeowners with respect to Coastal Act issues, and not only is such action beyond the scope of the District's authority, the District does not have the expertise nor the funding to carry out such negotiations.

There are other government agencies that can assist the homeowners, such as the City, or the homeowners affected by the CCC can certainly organize themselves. The District is not equipped to engage the CCC on these sensitive issues. Please advise if you have any questions.

Very truly yours,

Boyd L. Hill

cc: Michael L. Tidus, Esq.

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# McCabe & Company

## Consulting Services Agreement

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This is a Consulting Services Agreement (Agreement) between McCabe & Company (Consultant) and Capistrano Bay District (Client), collectively referred to as “Parties” to provide consulting services relating to Coastal Commission correspondence regarding 1) a Notice of Violation (V-5-16-0064) related to unpermitted sand berm installation and 2) a potential Consent Order or permit to authorize alternative measures to protect residences along Beach Road in the Capistrano Beach community of the City of Dana Point (Project). Anne Blemker, Senior Planning Advisor with McCabe & Company, will assist me in representing the Client on the Project.

### **Scope of Services**

The Consultant will assist the Client in achieving their goals related to the Client’s interests in the Project, including but not limited to the following:

1. Providing strategic counsel and advice to the Client to assist them in making an informed decision as to an appropriate course of action regarding the violation matters before the Coastal Commission;
2. Reviewing background material, including local staff reports, correspondence, technical reports and CCC emergency permit for prior work at the subject site;
3. Coordinating with the Client’s legal and technical experts as requested.

### **Compensation**

The Client agrees to provide to the Consultant the following compensation in return for the services as detailed in the Scope of Services above:

1. Hourly Rates:  
Susan McCabe \$850.00/hr  
Anne Blemker \$550.00/hr
2. Fees shall be due at the end of each month upon receipt of an invoice.
3. The Consultant shall be reimbursed by the Client for necessary and reasonable expenses incurred on behalf of the Client upon submittal of appropriate documentation.

### **Term**

The term of this Agreement shall commence upon signature of both Parties to this Agreement and Services desired beyond the scope of work in this Agreement shall be subject to a separate agreement.

### **Notices**

All notices to the Consultant relating to this Agreement including payments of invoices shall be in writing and sent to the following address:

McCabe & Company  
4712 Admiralty Blvd., #1148  
Marina del Rey, CA 90292  
[smccabe@mccabeandcompany.net](mailto:smccabe@mccabeandcompany.net)

All notices to the Client relating to this Agreement shall be in writing and sent to the following address:

Donal S. Russell, Manager  
Capistrano Bay District  
35000 Beach Road  
Capistrano Beach, CA 92624  
[drussell@capobay.org](mailto:drussell@capobay.org)

If this Agreement is acceptable to you, please sign and date as indicated below.

Signature: *Susan McCabe* Date: 1/18/21  
Susan McCabe

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Donal Russell



**Capistrano Bay District**  
*Strategy. Tactics. Plan for Success.*

February 4, 2021

Contact:

Brian Lungren  
Advisor  
bfl@platinumadvisors.com  
1215 K Street, Suite 1150  
Sacramento, CA 95814  
(916) 225-8084



February 4, 2021

Mr. Donal Russell, General Manager  
Capistrano Bay District  
35000 Beach Road  
Capistrano Beach, CA 92624  
Sent Via Email

Dear Mr. Russell:

Thank you for the opportunity to share with you our strategy to support and shepherd legislation addressing California coast's rising sea levels to ensure resiliency for impacted communities and properties. We are excited about the possibility of working with your team – both internal and external partners – to reach your goal of securing a statewide approach to sea level changes in the California Legislature and regulatory agencies.

Our team reviewed the provided background information on the issue and Senate Bill 1090 from 2020 to develop a comprehensive legislative and political approach for your consideration.

We believe our aggressive, proactive, and hands-on approach will help you achieve your stated goals of educating legislators, key policymakers, and other governmental interests about the need for a statewide solution to rising sea levels and erosion. Your vision is protection and stability of coastal communities and that message needs to be amplified in Sacramento, so residents are guaranteed the long-term stability for their investments.

Platinum Advisors is Sacramento's premier lobbying and advocacy firm, with extensive legislative and regulatory experience that spans more than 20 years, always putting our clients in the driver's seat on their issues. This means that we can engage on your issues quickly to implement a strategy that is unique to the District.

We have 10 registered lobbyists in our office who are committed to protecting your interests and advocating your needs. California's government is dynamic and frequently volatile, but our combined experience will help you navigate this complex environment with ease. We pride ourselves on our team commitment to client issues and understand that a "one size fits all" approach to issues does not always equal success.

Although you have access to our full team, Brian Lungren and Nick Garcia will act as project managers and lead lobbyists for this effort. With Brian and Nick's extensive experience in local government and regulatory advocacy, we believe they are a natural fit for your issues. I will be involved developing and implementing legislative strategy for your efforts as well as direct outreach to the Governor's Office.

Below we have provided a snapshot of our winning strategy for the District and included our recommended approach to advocacy, harnessing existing community outreach efforts and integrating with your current local and regional connections. Additionally, you will find information about our firm, services and key team members who will lead our efforts on your account.

We would be pleased to discuss your objectives and our plan of action to achieve them with the Board and you via a Zoom conference. Please just advise when it may be convenient.

Should you have any questions or need additional detail, please do not hesitate to contact Brian Lungren at (916) 225-8084.

Sincerely,

A handwritten signature in black ink, appearing to read "Darius Anderson". The signature is fluid and cursive, with the first name "Darius" and last name "Anderson" clearly distinguishable.

Darius Anderson  
Founder



# Approach

Legislative, regulatory, and political advocacy are complex issues that require well-thought plans to achieve your desired objectives. At Platinum Advisors we understand that one size *does not* fit all and will work with you to develop a comprehensive strategy that helps you win. Our bipartisan approach means that our team of professionals puts years of experience to work on both sides of the aisle for you.

Below we have detailed the foundation of our governmental relations approach and political strategy for your consideration:

Our goal is straightforward: assist the District in pursuing legislation that would ensure resiliency for all coastal properties in California. Our team will work as a trusted partner to expand and enhance your current efforts to position by-right construction of sea walls and other hard shoreline structures. We will use our years of experience to increase the likelihood that your goals drive the needed approvals within the California Legislature and targeted regulatory agencies. We will also outreach the Governor's Office when necessary. Specifically, we envision:

- **Providing Access to the Governor's Administration**

Members of our team have worked with Governor Newsom's office providing legislative, regulatory, and political guidance on some of the state's most pressing issues – even going back to his time as Mayor of San Francisco. This experience provides our clients critical insight to the governor and key members of his administration. Our approach will be to meet with key staff to assess the Administration's position about a global approach to coastal resiliency. We will share your views to help shape theirs and – more importantly – understand the Governor's position on any potential concerns with the immediate needs across California that need action to support sea level issues now.

- **Engaging the State Legislature**

Platinum Advisors will engage members of the State Legislature – specifically the coastal delegation – to educate them on the need by communities statewide to find a solution to needed coastal resiliency efforts. This effort will include you and other like-community services districts leaders coming to Sacramento (or via Zoom) to meet one-on-one with legislators to educate leaders on your efforts. As we discussed, this Legislature is a lot different than those in the recent past in terms of longevity and members who understand the impact of supporting local initiatives with a special focus on environmental issues. This will allow us to cultivate quick relationships that will serve as a backstop to any potential efforts by the administration or Coastal Commission that may be harmful to your eventual construction plans.

- **Regulators Are Key**

Our team will use our relationships to connect you with regulators at the California Natural Resources Agency, CalEPA, and the California Coastal Commission. We envision these to be relationship-building meetings that will provide a foundation to make our eventual request of support for support of an eventual legislative solution.

- **Interacting with Stakeholders**

As we discussed, there may be multiple interest groups and related supporters that we can engage help support your efforts and goals. We envision meeting with key stakeholders who may engage in your issues and bridge any divides that may exist so that we can amplify their support.

Here is a work plan that we believe will quickly position the District's and your project:

Registering Platinum Advisors as your official lobbyist with California's Secretary of State triggers reporting obligations on work done on your behalf. We will:

- Develop a strategic executive and legislative outreach plan to accomplish your goals of supporting legislation like SB 1090 from 2020.
- Arrange meetings with potential coalition partners and interface with their Sacramento-based representatives.
- Coordinate key legislative and Governor's Administration meetings with policy makers who have influence on coastal and environmental issues.
- Provide introductions to key regulatory contacts at our targeted administrative agencies and departments (Natural Resources, CalEPA, Coastal Commission, Governor's Office).

### **Political Strategy**

Many times, multiple issues converge to move a matter forward or stop its progression. As part of our services, we will provide you with a unique view of political influences on legislative and regulatory issues.

We know many legislators are influenced by their desire to run for more prominent political office. This opportunity allows us to work with your team to apply needed pressure in targeted areas to help drive our desired outcomes. To add to this pressure – and increase the District's exposure – we will work with your public policy team to organize a yearly "Zoom-in" where your board members and residents can engage in a legislative/regulatory action day. Basically, putting a face on the issue for legislators and administration members to see and engage.

# Fee

Platinum Advisors bills clients on a monthly retainer for the services provided. We believe in spending the time needed on an issue so that you are successful. We also believe in using all our resources, including multiple lobbyists, to achieve your objectives.

We propose a lobbying agreement for a fee of **\$15,000 per month**. This fee is exclusive of travel and major expenses as pre-approved by the District.

Should we partner on this exciting project, we will execute a standard agreement, which includes a 30-day no-cause termination clause.

Additionally, we believe in strong client communication and performance measures to track our success and progress. As part of our work, we will:

- Join weekly leadership calls to provide up-to-the-minute updates on policy and political happenings in Sacramento. This weekly recap will also be emailed so the District can share it with staff and residents.
- Attend all meetings and hearings of state agencies working on the District's project so that we have in-person recognition of your commitment to this project.
- In-person briefings with local elected officials or other thought leaders who we can call upon to help support your efforts at the regulatory agencies and legislature. Additionally, we believe local support can insulate our Sacramento advocacy efforts so we would call on these same supporters as needed as the approval process moves through California's massive government system.