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***VIA ELECTRONIC MAIL***

Board of Directors  
Capistrano Bay Community Services District  
35000 Beach Road  
Capistrano Beach, CA 92624  
Attn: Donal S. Russell, General Manager  
Email: [drussell@capobay.org](mailto:drussell@capobay.org)

Re: Capistrano Bay Community Services District (the “**District**”)

Dear Members of the Board:

As you know, this firm represents the Coalition to Protect Capistrano Beach (the “**Coalition**”). The Coalition believes that the District’s Board members (the “**Board**”) can take action to protect the Beach Road Community from continuing shoreline erosion.

The Coalition has reviewed the Advisory Report that was distributed by the District via email on October 12, 2022. While the Coalition is supportive of the Shoreline Committee’s efforts to address the issue of shoreline erosion and is eager to review the guidance that the Shoreline Committee is preparing for homeowners, the Coalition was disappointed that the Advisory Report did not include any indication that the District plans to engage in any outreach with local and regional partners.

As the Coalition has noted in its previous correspondence to the Board, the District needs to engage with its regional partners to address the issue of shoreline erosion. As we have previously noted, the Southern California Regional Rail Authority, Amtrak and Orange County Transportation Authority (“**OCTA**”) are all natural partners because the District is located immediately adjacent to a rail line. This railroad corridor is one of the nation’s busiest rail routes. Recently a declaration of emergency was issued and over \$6MM was approved for construction to stabilize sliding railroad tracks in San Clemente (“Work halts coastal rail service.” Los Angeles Times. October 6, 2022. Page B3). Eric Carpenter, a spokesman for the OCTA, noted that the OCTA is performing repair work but that re-routing the rail line away from the coast is an option – however, it would be incredibly time consuming and expensive to move the rail line inland.

The Coalition continues to stress that the proximity of the District to the railroad line is a strategic asset in terms of shoreline protection. As mentioned previously, because the State and Federal governments will never allow the railroad line or the Pacific Coast Highway to be submerged by elevated seal level rise, managed retreat cannot and should not apply to Beach Road. Accordingly, (i) the Board needs to take the position with the

California Coastal Commission (“CCC”) in any discussions regarding the Local Coastal Plan Amendment that managed retreat is inapplicable to Beach Road; and (ii) the Board needs to engage in outreach to the OCTA, Amtrak and Metrolink to obtain their support in the District’s efforts to protect the homes in the District.

As an alternative to the various governmental agencies and California taxpayers incurring the cost to protect the railroad line and the PCH, the Coalition believes that the Board needs to propose to the CCC that the District and the Beach Road private property owners should construct barriers and devices that protect not only the Beach Road homes but also the vital public infrastructure projects located immediately adjacent to the District (*i.e.*, the rail line and the PCH). In effect, the private property owners along Beach Road in the District would be subsidizing the protection of PCH and the railroad and the vital governmental, economic and public interests that they serve – all that the Coalition asks is that in exchange for the private property owners in the District protecting these infrastructure projects, that they also be permitted to protect their own homes.

This is common sense solution that would help protect the homes in the District and allow the rail line to continue operating in its current location, thereby avoiding the need for a costly relocation of the line inland. Accordingly, the District and its homeowners, the OCTA, Metrolink and Amtrak and the taxpayers of California would all benefit from such a proposed arrangement. However, the Board needs to reach out to the OCTA, Amtrak and Metrolink to engage those parties and obtain their support and buy-in for any such proposed plan. If the Board does so, it will obtain strategic allies in its discussions and negotiations with the CCC to protect the homes in the District. The Coalition urges the Board to reach out to these regional partners as soon as possible.

In addition, the Advisory Report makes reference to evaluating properties for possible test cases to obtain after the fact permits (ATF Permits). The Coalition believes that this is an important process to fully explore potential permits for the community. However, the Coalition also believes that approaching the City or the CCC on an individual property basis is problematic because it does not take advantage of the common cause among the property owners on Beach Road. Rather, the Coalition believes that the District should be approaching the CCC on behalf of all of the owners in the Beach Road community. By doing so, homeowners would be in a stronger position than if homeowners individually approached the City and CCC for permits. Moreover, if the District is able to obtain the support and cooperation of the OCTA, Metrolink and Amtrak, the District would be in an even stronger position to bargain with the CCC to obtain concessions from the CCC such as removing the applicability of the doctrine of managed retreat to the Beach Road community and permitting additional protective devices along the shoreline. We urge the Board and the Shoreline Committee to consider these recommendations in their deliberations.

Sincerely,

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

Alexander W. Schwada  
of Schwada Law, P.C.