

**HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT  
PROCEDURE FOR PROCESSING PROPERTY  
DAMAGE REPAIR REQUESTS**

This document represents the process property owners shall follow when submitting requests for repairs to the Harbor Bay Community Development District (“**CDD**”) regarding property they believe has been adversely affected by the seawall located along the Mira Bay canal system. Owners believing their property damage is a result of the compromised seawall adjacent to their property, and wishing to make a request to the CDD for its financial participation in some portion of the repair of their property, shall follow the process this Property Damage Repair Request Protocol (“**Protocol**”) establishes. The CDD will make a copy of this Protocol, along with the other documents referenced in this Protocol (Repair Request Form, Easement Repair Work Guidelines, etc.) available on its website, <http://harborbaycdd.org/projects/upland-claims/>.

1) ***Deadline to Request Upland Repair Contribution.*** Property owners are responsible for promptly notifying the CDD of the damage to property they believe has been caused by the canal seawall. Property owners must complete and submit the Repair Request Form and supporting documentation within 30 days of first becoming aware of the damage they believe has been caused by the seawall. The CDD reserves the right to deny any claim not submitted within 30 days of discovery of the damage believed to be caused by the seawall.

The CDD shall not render any opinions as to when said repairs are to be made. Property owners should make their own determinations regarding the timing and the need for repair of upland damages. In those circumstances where property owners wish to proceed with upland repairs before the adjacent seawall stabilization project has been completed, and are willing to waive any future damages associated with the completion of the stabilization project, then the CDD Board of Supervisors (“**Board**”) will consider approving a financial settlement in advance of the completion of the seawall stabilization project, once the Repair Request Form and other required documentation have been received and processed in accordance with this Protocol.

2) ***Repair Request Form.*** The CDD will make available to the property owners on its website an intake form entitled, “Harbor Bay Community Development District Property Damage Repair Request Form” (“**Repair Request Form**” found at <http://harborbaycdd.org/projects/upland-claims/>). Property owners shall complete and submit the Repair Request Form to the CDD along with the required additional documentation (specified below) and any additional information the property owner believes might be helpful to the CDD’s investigation. Property owners shall submit the Repair Request Form and additional documentation to the District Manager. <sup>1</sup> Per Paragraph 1, above, property owners are responsible for the prompt submission of the Repair Request Form.

---

<sup>1</sup> Currently the District Manager is Joseph Roethke, Rizzetta & Company, 9428 Camden Field Parkway, Riverview, FL 33578 ([jroethke@rizzetta.com](mailto:jroethke@rizzetta.com)).

- a) In addition to the Repair Request Form, property owners shall submit the following documentation:
  - i. a copy of the property owner’s homeowners insurance policies in effect at the time the property owner first identified the property needing repair.
    - 1. If Repair Counsel determines, upon a review of the property owner’s insurance policy(ies), that insurance coverage may be available, then the property owner must file a claim with his/her insurer. The District will not consider the property owner’s claim until the property owner has submitted to the District documentation regarding the disposition of that claim from his/her insurer.
    - 2. This requirement mentioned in Paragraph 2(a)(i)(1), above, is not applicable to property owners that made an upland repair claim with the District on or before June 1, 2017.
  - ii. photos of the property needing repair.
- b) The CDD has developed a list of contractors that are registered with the CDD to perform work within the CDD’s easement area. Property owners are not limited to the contractors on the CDD’s list; however, any contractor selected to work within the CDD’s easement must be approved by and registered with the CDD before performing any work within the CDD’s easement. For a list of the registered contractors, please consult the CDD’s website, <http://harborbaycdd.org/projects/upland-claims/>, or contact the Club Director.

3) **Completion of Repair Request Form.** Once the property owner submits the Repair Request Form and supporting documentation, the District Manager will acknowledge receipt and completeness of the documentation. The District Manager shall provide an acknowledgement of the completed Repair Request Form to the property owner within 7 days of the District Manager’s receipt of a completed Repair Request Form. If necessary, the District Manager will inform the property owner of additional information and/or documentation needed within 7 days of the District Manager’s receipt of an incomplete Repair Request Form. If the property owner fails to provide the additional information and/or documented within 28 days of the District Manager’s request, the property owner’s Repair Request shall be deemed denied.

4) **Inspection.** Upon receipt of a complete Repair Request Form and accompanying documentation, the District Manager will schedule a physical inspection of the property to take place within 30 days of the District Manager’s acknowledgment of the completed Repair Request Form. In most instances, the CDD will only conduct one

inspection at each property location, although the CDD reserves the right to conduct more than one inspection if necessary.

With the CDD's approval, special counsel, retained to assist with the implementation of this Protocol ("**Repair Counsel**"), will retain engineering and/or other technical support ("**Repair Engineer**") to conduct inspections with respect to the property owner's requested upland repair. Within the timeframe established above, the Repair Engineer, and, if necessary, Repair Counsel, shall meet at the property for the purpose of investigating the property owner's request. The property owner has the option to be present for this site visit.

5) **Report.** Within 45 days of the inspection, at the Repair Counsel's express direction, the Repair Engineer shall prepare and submit a report ("**Repair Report**") to Repair Counsel. The Repair Report shall describe and analyze the relevant information, and determine whether any damage resulted from the seawall located along the Mira Bay canal system.

If the Repair Report determines that the property owner's property has been adversely affected by the seawall located along the Mira Bay canal system, the CDD, through Repair Counsel, shall retain an independent third party, (i.e. contractor, design professional, and/or adjustor) to advise the Board regarding an appropriate settlement amount for the damage repair. The independent third party shall visit the property and provide its estimate to Repair Counsel within 30 days of Repair Counsel's receipt of the Repair Report.

6) **Board Determination.** At least 7 days prior to the next scheduled meeting, Repair Counsel will advise the Board of the Repair Report's conclusions and the independent third party's repair estimate. The Board will consider those conclusions and estimates at the next available meeting, as agendas allow, and, provided the next meeting is at least 7 days after the Board members have been advised of the conclusions and estimates, the Board will determine whether to:

- a) enter into a settlement agreement with the property owner relating to the requested repairs and determine the amount of the CDD's financial contribution to the repair work ("**Settlement Agreement**");
- b) decline to enter a settlement agreement with the property owner and take no further action regarding the property owner's claim;
- c) direct additional investigation into the repair request; or
- d) take any such other action as may be appropriate under the circumstances and in the best interests of the CDD.

7) **Implementation.** The District Manager shall notify the property owner who made the repair request within 7 days of the Board's decision. In the event that the Board determines a repair is warranted, and before the CDD provides any funding, the property owner and the CDD shall enter into a Settlement Agreement establishing the rights and

responsibilities of the property owner and the CDD in connection with that work. The CDD's obligation to financially participate in any repairs is strictly conditioned upon the CDD and the property owner entering into a written Settlement Agreement. At a minimum, the Settlement Agreement shall:

- a) specify the amount and timing of the CDD's financial contribution;
- b) require the property owner to execute a release of liability associated with the seawall, any upland damages, and any future damages related to any repairs the property owner undertakes as to the upland damages;
- c) require the property owner to assign and/or subrogate to the CDD any applicable warranties and/or homeowner's insurance policy rights to the extent of the CDD's financial contribution of the repairs; and
- d) the property owner(s) shall represent and warrant that they did not cause, contribute, and/or exacerbate any of the upland damage for which they are seeking the CDD's financial contribution to repair; that they have not been a party to, nor are they currently a party to, litigation against the CDD regarding the seawall adjacent to their property; and that they have not contributed financially to any person and/or entity currently in litigation against the CDD regarding the seawall.

The CDD will make payment to the property owner within 30 days of the execution of the Settlement Agreement and in accordance with the terms of the Settlement Agreement. All work performed shall be engaged and performed under the direction of the property owner.

The District Engineer, in conjunction with outside engineers, has provided guidelines on how work within the CDD's easement must be conducted. Property owners can find these guidelines on the CDD's website (<http://www.harborbaycdd.org/projects/upland-claims>), and property owners should provide these guidelines to the contractors before obtaining estimates as the guidelines regarding work within the easement may impact a contractor's pricing.

8) ***Work in the Easement.*** To the extent that the repair work will be performed within the CDD's easement, the CDD shall have the right to inspect the work. Prior to the inspection, the following information should be forwarded to the District Manager:

- a) plans and related specifications outlining the completed repairs signed and sealed by an Engineer licensed in the State of Florida;
- b) a letter from the property owner's Engineer of Record certifying the repairs were completed per the plans and specifications; and

c) invoices outlining work completed.

Except to the extent that the work interferes with the easement rights of the CDD, the CDD shall not make any determinations as to the scope or the performance of the work. The CDD makes no representations or warranties, including but not limited to warranties of fitness or merchantability, regarding any repair work performed pursuant to this Protocol whether located in the easement or otherwise.

**Summary of action items and associated timeframes:**

<b>Action</b>	<b>Responsibility</b>	<b>Timing</b>
Download and complete Repair Request Form. Submit insurance policy.	Property Owner	Within 30 days of first becoming aware of damage
Acknowledge completed Repair Request Form	District Manager	7 Days from receipt of Form
Notify owner of incomplete Repair Request Form	District Manager	7 Days from receipt of Form
Review repair request and schedule inspection	District Manager & District Engineer	30 Days from acknowledgement of complete Form
Issue a Repair report	Repair Engineer & Repair Counsel	45 Days after the Inspection
Independent Third Party visits property and provides repair estimate	Repair Counsel & Independent Third Party	30 Days after receipt of the Repair Report
CDD Board review and final determination	CDD Board	Next available CDD meeting (provided it is at least 7 days after the Board receives the conclusions and repair estimates reached from Repair Counsel)
Notify property owner of decision	District Manager	7 Days after Board's decision
Settlement Agreement provided, reviewed, and accepted by CDD and property owner.	District Manager	Owner's discretion
Applicable reimbursement payment issued by check to property owner	District Manager	Within 30 days of execution of Settlement Agreement
Work commences and completes	Property Owner	Owner's discretion
Submit documents (plans & specifications, engineer's certification and invoices) to the District Manager	Property Owner	Owner's discretion
Final CDD Inspection of work done in CDD easement and sign-off	District Engineer & Repair Engineer	10 Business Days