

To: Leighton Hills, Muir Beach Community Services District
From: Emily Longfellow
Date: January 22, 2021
Re: Summary of Rights-of-Way Memos

This memo is a summary of memos regarding rights-of-way issues in Muir Beach, with reference to questions presented. The first memo analyzes issues mainly related to the Bello Beach Subdivision (“Memo 1”) and the supplemental memo addresses Seacape (“Memo 2”). The CSD currently has no established property interests in these rights-of-way. A legally binding decision by a court, or a recorded settlement, is necessary to establish uncertain property interests. (Memo 1, p. 9.) Prior to exercising any control over property, the CSD should establish a property interest pursuant to, for example, a quiet title action or settlement. (Memo 1, p. 9-10.) There are potentially successful arguments available to the CSD. These issues are necessarily highly fact-specific.

- Adjacent property owners likely have fee title ownership to land underlying rights-of-way. (Memo 1, p. 2-3; Memo 2, p. 1.) This ownership would not trump any easement interests that were established by the CSD.
- There is a likely argument that the public has acquired easement interests by implied dedication in the rights-of-way in the Bello Beach Subdivision. (Memo 1, p. 3-7.) An implied dedication may be established by a history of public use and expenditure of public funds.
- There is an argument that the CSD has acquired prescriptive easement rights to the rights-of-way in the Bello Beach Subdivision. (Memo 1, p. 7-9.) This may be more difficult to establish than an implied dedication, as a prescriptive easement would require evidence that the CSD exercised control over the property itself (by maintenance, etc.), rather than by the public using property.
- The scope of any rights-of-way established in the Bello Beach Subdivision, either by implied dedication or prescriptive use, is determined by historical use. (Memo 1, p. 6-7.) Historical use is determined by a court with reference to facts presented. Generally, only pre-1972 use for private, non-coastal property is considered. (Memo 1, p. 4.) Public expenditure of funds for visible improvements, and private use of coastal lands (where the property owner does not attempt to prevent) may be considered for post-1972 use. (Memo 1, p. 4.) Evidence will vary depending on the

facts.

- If it was determined that implied easements in the name of the public existed, and were accepted by the CSD, there is an argument that the CSD could authorize use within the rights-of-way pursuant to an encroachment permit to the extent it did not conflict with the purpose of the easement. (Memo 2, p. 4.) Independent analysis of each proposed use, and the constraints and purpose of the right-of-way at issue, would be necessary.
- If an implied dedication for a public easement is found, or a prescriptive easement, the CSD would not have authority to expand the scope of the right-of-way at issue, since scope is determined by historical use. It is noted that the CSD has eminent domain authority and may seek to condemn property for the public benefit, which could exceed the width of an implied or prescriptive easement. The issue of eminent domain is not addressed.
- The Seacape covenants likely remain enforceable as they run with the land. (Memo 1, p. 12-13.) However, property owners have a likely successful defense to enforcement of covenants due to laches, in that improvements have been in place for many years and there has been no notice given to property owners of any violation. (Memo 1, p. 13-14.) The CSD does not have authority to unilaterally enter property to remove any improvements that may be in violation of the restrictive covenants without establishing a property interest.
- There has been no complete dedication of pedestrian, utility, or drainage easements in Seacape. (Memo 2, p. 1-2.) There is a reasonable argument that there has been a common law dedication based on acceptance by public use. (Memo 2, p. 1-3.)
- As an owner of park property in Seacape, the CSD would likely have standing to seek enforcement of restrictive covenants including easement issues in court. (Memo 2, p. 14.) Because there has been no completed dedication of Seacape pedestrian, drainage, or utility easements, the CSD currently has no authority to directly enforce. (Memo 2, p. 14.) Additionally, noted above, any private enforcement of the restrictive covenants would be met with a likely successful laches defense by the property owners.
- There is a reasonable argument that easements offered in the Seacape Subdivision, including drainage and pedestrian easements, were impliedly accepted by public use. (Memo 2, p. 2-3.) Because the Seacape easements were explicitly offered for dedication (as opposed to an implied dedication) the scope of easements would be determined by the boundaries on the map. (Memo 2, p. 3-4.)