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MEMORANDUM

TO: **Kristin Drumm, Senior Planner**
Marin County Community Development Agency

FROM: **Peter B. Sandmann**

DATE: **November 29, 2016**

SUBJECT: **LCP Amendments**
Dec. 13, 2016 Board of Supervisors Hearing

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You requested that I comment on behalf of the Seadrift Association with respect to the proposed modification of LUP section C-SB-2 by the staff of the Coastal Commission, namely the deletion of the words "only limited" from that section as it had been submitted by Marin County. Here is the section with the proposed modification for your convenience:

> **C-SB-2 Limited Access in Seadrift.** Allow ~~only limited~~ public access across the open space area generally located north of Dipsea Road and adjacent to Bolinas Lagoon in the Seadrift subdivision to protect wildlife habitat subject to the Deed of an Open Space and Limited Pedestrian Easement and Declaration of Restrictions as recorded March 26, 1986 as Instrument No. 86-15531. This area includes parcels 195-070-35 and 36; 195-080-29; 195-090-44; 195-320-62 and 78; and 195-340-71, 72, and 73.

This attempt by the Coastal Commission staff is typical of their efforts to change the historical record and impose standards and policies that further their own political agendas regardless of any legal justification. It is inconceivable that Coastal Commission staff could not be aware that the very Deed of Open Space and Limited Pedestrian Easement to which section C-SB-2 refers, specifically provides by its own terms that public access is limited. The grant of access in the deed, as recorded, provides in pertinent part as follows:

> 1. USE OF PROPERTY. The use of the Property shall be limited to Limited Pedestrian access and open space, recreation, and resource conservation uses. Pedestrian access shall be limited to periodic use by educational and environmental organizations by appointment with the landowner.

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Furthermore, modification of C-SB-2 at proposed by Coastal Commission staff would be a direct violation of the terms of the March 16, 1994 settlement agreement between the Seadrift Association and the Coastal Commission as well as the County of Marin. In pertinent part, that settlement agreement provides as follows:

> 10. Agreement to Refrain From Making Other Claims
>
> The parties agree that none of the parties shall in any manner . . . file or make, any claim or demand . . . that would allow pedestrian, equestrian or vehicular use by members of the public over the internal roads of the Seadrift Sandspit, except in cases of emergencies; provide access by members of the public . . . to those portions of the Seadrift Sandspit comprised, as of the effective date hereof, of filled lands, or . . . to any other part of the Seadrift Sandspit located above the mean high tide line . . . . So long as the Seadrift subdivisions continue to be substantially used for residential purposes in the form of single family residences, so that the kind and intensity of uses are not substantially changed, the CCC, SLC and the County of Marin agree that none of them will impose in any permit for improvements to the Seadrift Sandspit any condition which requires greater public access to the Seadrift Sandspit than required by this Agreement.

Clearly, to the extent that C-SB-2 is intended to provide guidance in the future, it should be consistent with the restrictions on which the grant of access is based. The proposed deletion should not be adopted. (Note that section 22.66.040B of the IP contains the same language, but that section is apparently not proposed to be modified by Coastal Commission staff, nor should it be.)

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In addition to the issue of C-SB-2, I would like to call your attention to the proposed definitions section of the LCP amendments as set forth in section 22.130. Specifically, the definition of Existing Structure contains a limitation regarding shoreline protective devices that is not appropriate and should be deleted. The section as proposed states in part as follows:

> For the purpose of implementing LCP policies regarding shoreline protective devices, a structure in existence since January 1, 1977.

There is nothing in the Coastal Act that supports defining the word "existing" as if it only applies to structures that were extant when the Act was adopted. In fact, where the Act uses a date other than the present date in applying the word "existing," it references a specific date. For example, in Section 30614(a) of the Act, the provision refers to "conditions existing as of January 1, 2002." In contrast is Section 30610(g) of the Act, for example, which provides that although no Coastal Permit is required for "the replacement of any structure . . . destroyed by a disaster," nevertheless, "the replacement structure shall conform to applicable existing zoning

requirements." Clearly those zoning requirements are the current ones, not those that existed when the Act was adopted. To like effect are numerous other provisions of the Act.

Previously, the Environmental Hazards sections had contained a specific reference to the Seadrift shoreline revetment seawall as authorized by the Coastal Permit issued in conjunction with the 1994 Settlement Agreement between Seadrift and the Coastal Commission (among other agencies). However, that reference has now been deleted, and for that reason, the definition of "existing structure" as it may be applied in the case of Seadrift is a serious concern. The permit for the Seadrift seawall states specifically that it is issued "in perpetuity," and there is nothing in the permit itself nor in the Settlement Agreement that restricts the benefits of the seawall to structures that existed seventeen years before the Settlement Agreement was approved, nor, for that matter, almost forty years before the current date. The definition of Existing Structure should be revised to remove the restrictive language regarding shoreline protective devices.

One other definition that seems to have been overlooked is the definition of "Redevelopment." That definition should be removed in its entirety. It is based on the same provision in the Environmental Hazards section that has now been tabled, and until the EH sections are revised and adopted, whenever that may occur, the definition of "redevelopment" should be tabled as well.

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The provisions of 22.65.070 as applied to height limitations in Seadrift are somewhat compromised by the decision to remove references to the Environmental Hazards sections. For example, 22.65.070D1 still refers to LUP policy C-EH-5, but that policy no longer exists, and the section needs to be modified accordingly. Moreover, in both subsections D1 and D2, the edited language states that maximum allowable heights "may be modified," but there is no explanation for the manner in which such a modification can occur. The substance of the provisions seems correct, but the syntax needs some minor work.

Subsection E of 22.65.070 also needs some minor edits. I have provided a redlined version here for your convenience.

> **Public access requirements.** Public access within the Seadrift Subdivision and on the ocean beach adjacent to Seadrift shall comply with the provisions of this LCP and the March 16, 1994 Settlement Agreement between the Seadrift Association and the County of Marin, et al., in ~~Kelley~~ Kelly et al. v. California Coastal Commission, et al., Marin County Superior Court Case No. 152998~~9~~8, and as set forth in that certain Deed of Open Space and Limited Pedestrian Easement and Declaration of Restrictions dated November 1, 1985, and recorded March 26, 1986, Marin County Recorder's Office.

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The Appendix that allegedly contains the Seadrift Settlement Agreement is a mess. It includes excerpts from settlements in two different lawsuits that occurred a decade apart from each other. Moreover, the terms of the Seadrift Settlement are completely out of order so that it is virtually impossible to decipher the provisions of the agreement by reference to the Appendix. I am attaching to my email to you a copy of the original agreement (albeit without the signatures of all the individual property owners who issued the easements called for in the agreement), and I suggest that you substitute my attachment for the mish mash of documents presently contained in that portion of the Appendix.

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There are numerous provisions in the current amendments that still refer to the Environmental Hazards sections, even though those sections are not being considered at the present time. These include, in the IP, in section 22.64, Note (4)d. of Table 5-4-a; and Note (4)d. of Table 5-4-b; section 22.64.045 3D3; section 22.64.045 4D6; section 22.64.100A4; section 22.64.110A4; section 22.65.030C1(b) and H4; section 22.65.060C; section 22.65.070D1 and D2; section 22.66.080C; section 22.66.090B, and in the LUP, section C-DES-4 4; C-DES-11; C-CD-6; and C-TR-3.

cc: Brian Crawford, Director
Jack Liebster, Principal Planner