

Muir Beach Community Services District

MBCSD Land Uses, Easements, and Encroachment Policy

Background Muir Beach Community Services District (MBCSD) owns both real property (land) as simple fee and manages some defined access and utility easements for specific purposes over privately owned real property. *(See Attached – Map of Muir Beach Community Services District)* The purpose of this document is to provide the MBCSD Board of Directors with policy for managing these lands and easements, along with providing guidance for dealing with encroachments either by private property owners onto a) land owned outright by the MBCSD; and b) easements maintained by the MBCSD in public trust for specific purposes.

I. MBCSD Land Uses and Encroachments Policy

Policy Statement This District Land policy specifically addresses requirements and procedures relating to the use of MBCSD Public Parklands and Water District properties.

Application This policy applies to the District lands/properties that are held as ‘fee simple’ and dedicated to Public uses, including parklands and water system properties.

Practical Definition of Encroachment Encroachments can take many forms, but generally is defined as any situation where an individual homeowner has created, or allowed to be created, a private use of District lands that is not consistent with the dedicated Public uses.

Types of Encroachments The term ‘encroachment’ specifically includes, but is not limited to, barricading of access whether physical or placing of private property/no trespassing signage, allowing damage to occur as a result of uses on private property, dumping in the public areas, private development on Public lands, obstructions caused by trees and tree branches, and propagation of non-native and/or invasive species of plantings from individual lots into Public areas. Encroachments may be identified in various ways, including but not limited to land surveys, visual inspection by MBCSD Staff and reports or complaints from the Public.

Policy Guidance Principles

- a. Exercise of this policy regarding encroachments must be equitable to all Muir Beach residents. People in similar situations must be afforded the same treatment with respect to process and enforcement of MBCSD policies.
- b. Exercise of this policy, and any allowance of encroachments must be transparent.
- c. Exercise of this policy must be equitable, giving priority to health and safety of people and the environment, and cannot harm or jeopardize clean water, fire protection, emergency access, property, or the environment.
- d. Exercise of this policy may not cause new or increased liability to the MBCSD.

- e. All costs of removing any structure or restoring land that was altered from its original state as a result of an encroachment must be borne by the person or landowner who currently has the encroachment.
- f. Nothing in this policy applies to disputes between neighbors in which the MBCSD has no interest.
- g. Nothing in this policy applies to the existing lease with the Marin Emergency Radio Authority (MERA) on District property.

District Lands Policy

1. District Responsibility MBCSD is responsible for maintenance and improvements on land in which it owns the fee simple interest.

2. Enforcement of Covenants As a property owner, the MBCSD has the right to pursue enforcement action in court for violations of restrictive covenants in the Seacape subdivision recorded in the [Deed and Declaration of Protective Covenants Book 2016 page 461](#) of the Marin County Land Records either on its own or in conjunction with another owner. Par. 11 of the Covenants defines every violation of covenants as a nuisance, public or private, depending upon how many residents are adversely affected.

3. Parklands [\(See District lands\)](#) District Parklands (including the Bowyer Donation) have been dedicated to being used as public parks and are protected from any subjective or categorical changes in use. Public dedicated right of use shall be preserved and not infringed upon. Any encroachment into MBCSD parklands from individual lots is not allowed. There is zero-tolerance for encroachments on parklands and any instances of existing or new encroachments, of any type, must be reversed. Existing encroachments shall be remediated at a pace consistent with the “District Lands - Encroachment Prevention and Enforcement Guidelines” and shall be done in cooperation with the current homeowners involved. Parklands cannot be sold or leased and can only be exchanged for other equivalent land of equal value and esthetic appeal and used for recreational purposes only.

4. Water District Properties [\(See District Lands\)](#) Water is considered a vital and essential service so: A) No property that is being actively used by the water system to produce or distribute water (such as wells, tanks, pumps, pipes, etc.), or structurally essential to providing water service, or is a backup property that could be potentially put into service as a mitigation against system failure should ever be sold. Unauthorized encroachments are not allowed, existing or new of any type, and must be reversed if not previously approved by the District. Existing encroachments shall be remediated at a pace consistent with the “District Lands - Encroachment Prevention and Enforcement Guidelines” *(see Exhibit 1)* and shall be done in cooperation with the current homeowners involved. B) Leasing of water system property not currently being used by the water system, or essential to supporting property that currently is in service, can only be considered on an individual basis. All leases will retain a restoration clause to be negotiated and/or approved by the Board. Leasing of any water system property can only be done under 1-year short-term lease contracts that shall be reviewed annually by the Board for additional 1-year extensions. All leases are revocable at any time if the majority

of the Board all conclude that the leased property is now needed for the water system. No permanent structures can be built on leased water system lands and the land must be returned to its original state at the lessee's expense to the satisfaction of the District Manager within 60-days, or less, unless pre-determined in the lease agreement or extended at the sole discretion of the Board, when either the lease expires or is not renewed for an additional lease term or revoked by the District.

II. MBCSD Easement Management and Encroachment Policy

Background This Easement policy governs maintenance and improvements to streets, pedestrian and other easements, removal of obstructions, nuisances, and enforcement of covenants in the [Bello Beach](#) and [Seacape](#) subdivisions.

Definition of Easements An easement is a nonpossessory right to use and/or enter onto the real property of another without possessing it. In the Bello Beach and Seacape subdivisions, easements typically take the form of rights-of-way (often described as roads, lanes, and pedestrian) and utilities.

Longfellow Legal Memos The Longfellow legal opinions dated January 22, 2021 [consisting of "[Analysis of Muir Beach Rights-of-Way Issues](#)", "[Supplemental Analysis Regarding Seacape Rights-of-Way](#)", and "[Summary of Rights-of-Way Memos](#)"], which have been published on the MBCSD website, are specifically incorporated by reference herein.

Purpose of Easement Policy This policy seeks to achieve a balance between the MBCSD's ability to carry out its governmental functions and private property rights. The policy is designed to achieve the goal of keeping the roads and pedestrian easements open and in good repair for the mutual use and benefit of the community and public at large and requires the cooperation by all concerned for the greater good. Indeed, that is the essence of "community." Costly litigation and/or coercive action to secure compliance should be the last resort.

Policy Exceptions Roads and easements accepted by the County of Marin (i.e., Seacape Drive, Ahab Drive, Starbuck Drive, Muir Beach Overlook, a 50 ft Non-development easement, and a Non- access easement) are undisputedly not affected by this policy.

District Easement Policy

1. Easements over Non-MBCSD Owned Property With respect to non-MBCSD owned property, as putative owners in fee simple, the responsibility for maintaining and improving roads and pedestrian easements (hereinafter "rights-of-way") in the former Bello and Seacape subdivisions rests with the lot owners whose lots abut such rights-of-way to the middle of the road.

2. MBCSD's Involvement with respect to Easements Notwithstanding paragraph 1, where the MBCSD has heretofore exercised control over said areas by substantially maintaining and/or improving them for a five-year period without the permission of the owners or objection from any person, or where lot owners of the affected area unanimously consent, and where the MBCSD deems it necessary, appropriate and fiscally prudent, it will continue to maintain and/or

improve said rights-of-way as in the past. The scope of the MBCSD's responsibility shall be the area historically used by the public in the case of the Bello subdivision and the parameters of the rights-of-way as delineated on the subdivision map of [Seacape in Book 13 of Maps page 54](#) in the case of the Seacape subdivision. When considering maintenance projects requiring MBCSD funding, the MBCSD will take into consideration its statutory powers and any constraints on its legal authority as reflected in the Longfellow memos along with any calculated risks engendered thereby.

3. Unobstructed Public Use of Easements As a condition of the MBCSD's involvement, these rights-of-way must be kept open and unobstructed for use by the public, which has likely acquired an easement over them based on historical usage – as in the case of the Bello subdivision, or as a dedicated use as delineated on the map of [Seacape \(Book 13 of Maps page 54\)](#) – as is the case of the Seacape subdivision. In the Seacape subdivision, the offer of easements for public use by the developers specifically states: “Said easements are to be kept open and free from buildings or structures of any kind.”

4. Removal of Encroachments and Abatement of Nuisances within Easements Cases in which an encroachment (in whole or in part) by an individual property owner in the Bello Beach or Seacape subdivisions arguably impairs the ability of the MBCSD to carry out its statutory or charter powers of domestic water supply and distribution, protection against fire, providing recreational facilities and parks, and road maintenance (along with related improvements) will be considered on a case-by-case basis by the governing body. This may require the MBCSD to establish or acquire a judicially recognized property interest in the land. The MBCSD has statutory authority to abate public nuisances which may require appropriate legal action. This may apply to utility easements when and if applicable.

5. Enforcement of Covenants As a property owner, the MBCSD has the right to pursue enforcement action in court for violations of restrictive covenants in the Seacape subdivision recorded in the [Deed and Declaration of Protective Covenants Book 2016 page 461](#) of the Marin County Land Records either on its own or in conjunction with another owner. Par. 11 of the Covenants defines every violation of covenants as a nuisance, public or private, depending upon how many residents are adversely affected.

6. Rights of the Public Nothing contained herein shall affect the rights of the public (which has likely acquired easements over rights-of-way by implied dedication or prescriptive use) and/or lot owners (who have the right of ingress and egress along rights-of-way), from enforcing their rights to keep said rights-of-way free from obstructions or from enforcing covenants where applicable.

7. Administrative Procedure Any person contemplating the filing of a claim based upon a regulation or action by the MBCSD affecting their property, shall first inform the board of their intent. Upon receiving such a notice, the board shall schedule a hearing and render a final decision on the matter as soon as practicable within 45 days.

EXHIBIT 1

District Lands - Encroachment Prevention and Enforcement Guidelines

The MBCSD has a zero-tolerance for encroachments on District Parklands and does not allow unauthorized uses or encroachments on Water District properties as mandated in the MBCSD Land Use and Encroachments Policy. These guidelines are the approved steps which the MBCSD should follow in order to implement the District Land Policy and for guidance in overseeing management of the District properties.

1. Prevention Preventing encroachments and unauthorized uses on District land is essential to good land management practices. The MBCSD is a small enough District to maintain active oversight and monitoring of District's borders and those property borders should be actively and regularly reviewed. Taking preventive actions should always be considered as a first steps in deterring encroachments or aiding in the quick determination of an evolving encroachment. Steps that shall be considered and supported by the District are:

- a) Locating and securing all existing property survey markers where possible.
- b) Using short runs of light open split-rail fences or other means necessary in areas where it is cost effective to protect a given District property boundary that may be more vulnerable to encroachments or has a history of incidences of encroachment and may be more likely subject to a reoccurrence of future encroachments.
- c) Practice good open communications with the community as to what are the District land policies and promote neighborly support and goodwill for universal compliance.
- d) Whenever possible, organize volunteer workdays to promote community support and public ownership for District lands and policies.

2. General Enforcement Overall District guidance on encroachments will overlay the more specific steps to managing individual incidences.

- a) An individual homeowner cannot establish rights over public lands, thus there is no prescriptive rights for adverse possession on public lands.
- b) All encroachments are to be considered independently of other potential encroachments, so as a rule of thumb – just because one encroachment exists and may not yet have been dealt with, this does not then justify the existence of another encroachment.

c) The District has zero-tolerance for any encroachments on Parklands or unauthorized (without prior approval) encroachments on Water District properties and shall actively pursue all encroachments based on a determined priority to respond.

d) If the District has more than one outstanding encroachment at the same time, the District shall prioritize its actions based on high, moderate, or low urgency. This will be determined, first by the effect on public safety or interference with the primary use of property, then second, the nature of the encroachment whether it is built structures, physical infrastructure, or plantings, and also the size and area of encroachment, or its overall egregiousness.

e) A high priority would likely be addressed first before a low or moderate priority, and would likely include either safety issues, hard built surfaces and infrastructure, or be a relatively large area in size (which would be anything over 10 feet into the District property).

f) Moderate and low priorities can be addressed at the same time, if District resources can accommodate, but otherwise, would be addressed as soon as high priority encroachments have been resolved or are not actively taking large amounts of staff time and resources.

g) For either moderate or low priority encroachments that have not had good response from the homeowner of the encroaching property, the District can wait until the property goes on the market to contact the real estate agent to inform them of the encroachment. The agent then must correct or disclose the encroachment, otherwise the District can file against title.

h) The District has a number of legal procedures to deal with encroachments on its property (the same as any property owner), including placing a lien or seeking judgments from a court for monetary damages against the encroaching party.

3. Specific Enforcement If an existing encroachment or possible new active encroachment is discovered, District staff (likely the District Manager) shall intervene and engage immediately by following District protocols as follows:

a) Look for existing known property markers or assessor's maps to ensure it is a likely encroachment.

b) Contact homeowner where encroachment is occurring by any necessary means of communication and follow up with written documentation. Outreach and negotiations with the encroaching homeowners for voluntary removal of the encroachment is always an essential first step.

c) Heading off any building or ongoing active construction immediately until encroachment or potential encroachment issue is resolved to the satisfaction of the District Manager or any applicable Board action is necessary to mitigate further encroachment intensity and impact.

d) Research to determine whether an active encroachment does exist starting with the most easily determinable methods such as any existing assessor's maps, survey maps, Marin Maps, Google Earth, the County Historical Offices and discuss findings with encroaching property owner to further negotiate a resolution.

e) If negotiations become stalled either by lack of response from encroaching party or the encroaching party has taken a confrontational position, then District shall have an official survey done before taking next steps. Encroacher shall be advised that they will be liable for the cost of the survey along with any legal fees incurred by the District if the District has to file suit for removal of the encroachment.

f) If encroaching party is engaging in discussion for possible alternative solutions to removal, the District Manager will present those options and circumstances to the Board for consideration or approval, but only if the solutions have merit and meet all District land policy requirements. All negotiated solutions of merit; including leases, licenses, or swaps, require Board approval at a public meeting.

g) If encroaching party is still not responding after having been given a copy of the survey - which has been provided to the encroaching party, either in person or by certified mail, and the survey has officially established and substantiated the encroachment, but the encroaching party has still not taken steps to actively remove the encroachment or committed in writing to a timeline for removal, then the District Manager shall inform the Board of all the previous steps taken and request permission from the Board to file suit. The District shall be required to use an outside contracted lawyer who specializes in land issues.