

What's Missing in the Draft Development Agreement?

What Does It Actually Say?

- *Provisions differ from hearing discussions*
- *Missing important protections*

No Long Term Affordable Housing

- ✗ Affordable housing commitments in Development Agreement expire when DA expires
- ✗ Development Agreement term is 12 years
 - Starts on effective date, after appeals are completed
 - 18-24 months of permitting and construction leaves only 10-10½ years of actual housing occupancy
 - For phases built later, time even shorter
- *Require deed restriction or long-term agreement with housing authority that makes affordable housing commitments permanent*

Short-Term Rentals

- ✗ C39 prohibits short-term rentals, but only LMC signs Development Agreement
 - Does not require leases to forbid tenants to sublet, short-term or long-term
 - Units can be leased to holiday rental companies
 - LMC may have current policy to forbid subletting, but unless DA prohibits it policy could change
- ✗ Expires when DA expires (around 10-10½ years from initial occupancy)
- *Require leases to prohibit subletting*
- *Bind property permanently*

Early Site Clearing

- ✗ No milestones before site clearing can begin
 - CI only prohibits the issuance of building permits before issuance of preliminary certificate of compliance
 - *You can't go back once you cut down trees and plough grassland!*
- ✗ Adding to preliminary certificate not enough
 - Doesn't require signed and filed conservation restriction
 - Doesn't require permits for transportation improvements
- *Prohibit site clearance until all CI conditions are met, conservation restriction is signed and filed, and transportation improvement permits are obtained*

Solar Panels

- ✗ C31 requires special power arrangements if installing solar panels is not feasible
- ✗ Does not require installing solar panels if feasible
 - LMC can just say it's feasible, then no obligation to install or enter into the special power arrangements
- ✗ What is "feasible"?
 - Isn't rooftop solar feasible today?
 - You don't want an argument with LMC in the future
- *Require solar installation when feasible*
- *Define feasibility*

Visibility

- ✗ Community Design compliance depends on project not being visible from nearby streets and neighborhoods
- ✗ July 27 Staff Memo said LMC should provide "photorealistic renderings that illustrate visibility"—Staff reconfirmed at July 28 hearing
- ✗ Renderings have not been provided
- *Require photorealistic renderings showing Project will not be visible from nearby streets and neighborhoods before DA is signed or site clearance begins*

No Tax Benefits from Conservation Restriction

- ✗ LMC promised it will not take tax credits or deductions or reduced assessed value for property taxes because of conservation restriction
- ✗ This commitment is not in the draft DA
- *Insert clause committing LMC not to seek or accept any tax benefits from conservation restriction*

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Soil

- ✗ Multiple references in Exhibit 10 Geotechnical Report to concerns over soil conditions
 - “The surficial topsoil and subsoil are *not suitable to support the proposed buildings* The existing fill *is not suitable to support the proposed buildings* and should be entirely removed from within the proposed building footprints.”—p. 8
 - “An LGCI geotechnical representative should observe the removal of the existing fill and the subgrades of footings and slabs prior to fill and concrete placement to *verify that the exposed bearing materials are suitable for the design soil bearing pressure*.”—p. 16
- *Require thorough soil study before site clearing or issuing preliminary certificate of compliance*

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Not a DRI?

- ✗ Project Development and Review Paragraph 1 says Project is not subject to DRI review under Sections 12 and 13 the CCC Act
- ✗ M10 says Staff will acknowledge Project no longer is a DRI
- ✗ Development agreements may go through a different *process*, but it’s still a DRI
- ✗ No basis in CCC Act or Regulations
- *Delete provisions saying Project is not a DRI*

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No Commitment to Build

- ✗ M14 says LMC *not* required to complete the Project
- ✗ Effectively turns Development Agreement into a 12-year option to build
- ✗ *Green space could be lost forever with no housing ever built!*
- *Require LMC to complete the Project*
- *Require LMC to restore site or pay liquidated damages if it fails to complete*

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LMC’s Liability Limited

- ✗ M9 limits LMC’s liability to its interest in Site
 - Does not include completed buildings, rents, etc.
 - All likely mortgaged to LMC’s banks financing Project
 - Cannot reach LMC’s other projects and profits
- ✗ If something goes wrong, rest of LMC is off the hook
- *Remove limits on LMC’s liability*
- *Require LMC to post a bond to support restoration and other obligations*

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Other Contract Provisions

- ✗ No standard representations and warranties
 - LMC is a duly formed and existing entity registered in Massachusetts
 - LMC and its owners have taken all steps required to authorize signing of DA
 - DA is binding on and enforceable against LMC
- *Include standard representations and warranties*

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From Here

- Instruct Staff to fix these deficiencies
- Distribute marked redraft well in advance of hearing when vote is taken to allow members of the subcommittee and the public adequate time to review
- Approve a draft agreement only when you think it says what you think it should say