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Via Email

California Coastal Commission
NorthCentralCoast@coastal.ca.gov

**RE: San Mateo County LCP Amendment No. LCP-2-SMC-20-0054-1
Cypress Point Project
Agenda Item 14a – March 12, 2021**

Dear Honorable Commissioners,

This office submits the following comments on behalf of Midcoast ECO regarding the California Coastal Commission Staff's review pursuant to the California Environmental Quality Act (CEQA) and the California Coastal Act of 1976 (Coastal Act) of the above-referenced proposed amendment to San Mateo County's Local Coastal Program (LCP). The LCP Amendment consists of both a proposed Land Use Plan (LUP) Amendment and a Local Implementation Plan (LIP) Amendment for the proposed Cypress Point Planned Unit Development (PUD).

For the reasons discussed below and in those comment those previously submitted to the Coastal Commission, Midcoast ECO respectfully requests that the proposed LCP Amendment be denied, or, alternatively, that consideration of the proposed LCP Amendment be continued to a future date after the required CEQA evaluation and Coastal Act Chapter 3 consistency analyses have been provided for public review and comment.

I. Coastal Commission Staff's Environmental Review of the Proposed San Mateo County LCP Amendment No. LCP-2-SMC-20-0054-1 Fails to Comply With CEQA.

A. The Coastal Commission's CEQA Duties.

Approval of the proposed LCP Amendment by the Coastal Commission must comply with all of CEQA's substantive requirements. (Pub. Res. Code, §§ 21080.5, 21080.9.)

Specifically, the Coastal Commission's duties under CEQA are those of a state agency with a regulatory program subject to Public Resources Code section 21080.5 (§ 21080.5), which is part of CEQA. Section 21080.5 allows the Secretary of the Resources

Agency to certify a state agency as exempt from CEQA's formal EIR preparation requirement if the program requires that the project be preceded by the preparation of a plan or written documentation "containing sufficient environmental . . . information." (*Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 620, 610 (*EPIC*); see *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 113-114, 116.) Section 21080.5, subdivision (d), prescribes what sufficient environmental information must consist of, as well as additional public review procedures a state agency with a regulatory program certified under section 21080.5 must follow. (*Mountain Lion Foundation*, 16 Cal.4th at pp. 126-127; *EPIC*, 170 Cal.App.3d at pp. 610-611.) The Secretary of the Resources Agency has determined that the Coastal Commission's regulatory program of approving LCPs and LCP amendments qualifies for certification under section 21080.5. (CEQA Guideline 15251, subd. (f).) This then means the Coastal Commission's staff reports -- its "written documentation" in the jargon of CEQA (§21080.5, subdivision (a)) -- "serve as a functional equivalent of an EIR." (*Mountain Lion Foundation*, 16 Cal.4th at p. 113; see *EPIC*, 170 Cal.App.3d at p. 611.)

Courts have made clear that section 21080.5 establishes but "a limited [CEQA] exemption" (*Mountain Lion Foundation*, 16 Cal.4th at p. 126; see *EPIC*, 170 Cal.App.3d at p. 616.) This means that as a state agency certified under section 21080.5, the Coastal Commission is exempt *only* from CEQA's formal EIR requirement. (See § 21080.5, subd. (c).) As a state agency with a regulatory program certified under section 21080.5, the Coastal Commission still "must comply with *all* of CEQA's other requirements. [Citations.]" (*Mountain Lion Foundation*, 16 Cal.4th at p. 114, emphasis added; see *EPIC*, 170 Cal.App.3d at pp. 616-618, 620.) These requirements include, among other things, the fundamental public duties set forth in sections 21000 and 21002 to fully identify and evaluate in its staff reports a project's adverse environmental effects, and to mitigate those effects through adoption of feasible alternatives or mitigation measures. (§ 21080.5, subd. (d).) Furthermore, the environmental documentation prepared by a certified state agency must support its conclusions with "references to specific scientific and empirical evidence." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1047.) It "must *demonstrate* [in the written documentation available for public review] strict compliance with its certified regulatory program. [Citations.]" (*Mountain Lion Foundation*, 16 Cal.4th at p. 132, emphasis added.)

In summary, the Coastal Commission's staff report here must fulfill a critical information disclosure role. It is intended to serve as both the functional equivalent of an EIR and the purveyor of the Coastal Commission's findings explaining its decisions and tracing the findings to substantial supporting evidence (see Cal. Code Regs., tit. 14, §§ 13057, subd. (c)(1), (2), 13092, subd. (a), 13096, subd. (a)); and so the staff report is the vehicle for the Coastal Commission to demonstrate strict compliance with its regulatory program. In the Coastal Commission's decisionmaking process, the staff reports are to the public and the members of the Coastal Commission what EIRs are to the public and other decisionmaking bodies with permit programs that do not fall under section 21080.5. Therefore, if the Coastal Commission approves a local government's proposed LCP amendment, but the data and environmental evaluations within its staff report fall short of CEQA's information disclosure requirements and the Coastal Commission's own CEQA

regulations, then the Coastal Commission prejudicially abuses its discretion under CEQA and its decision is vulnerable to writ of mandate relief from the courts.

As described in greater detail below, the Coastal Commission will violate CEQA (1) if it fails to analyze the reasonably foreseeable impacts of the proposed LCP Amendment, (2) if it fails to analyze the impacts of the proposed LCP Amendment to the existing environment, (3) if it fails to evaluate and respond to public comments, (4) if it fails to evaluate the cumulative impacts of the LCP Amendment, and (5) if its conclusion of no significant environmental impact is not supported by substantial evidence. In addition, Midcoast ECO raises the CEQA deficiencies raised in its previous correspondence to the Coastal Commission detailed in Section I.E. below.

B. The Coastal Commission Staff Report Fails to Analyze the Reasonably Foreseeable Impacts of the Proposed LCP Amendment.

The proposed LCP Amendment is a fundamental land use decision that will guide the future growth and development of the site and will result in reasonably foreseeable physical changes in the environment. In fact, the stated purpose of the LCP Amendment is “in preparation for the future submittal of a coastal development permit application.” (June 3, 2020 San Mateo County Staff Report p. 2.) The Coastal Commission’s Staff Report acknowledges that the LCP Amendment includes specific development plan requirements, permitted uses, density, height, setbacks, lot coverage, floor area, landscaping, outdoor lighting, and parking provisions for the MidPen project, and even includes a site plan with which future development must conform, referencing Exhibit 5 and its proposed 18 two-story residential apartment buildings. Evidently, the LCP Amendment directly serves to facilitate MidPen’s project, a more than reasonably foreseeable project, thus resulting in direct and indirect physical changes in the environment, onsite and offsite, many of which MidPen itself admits will be significant adverse impacts.¹

Because the LCP Amendment thus will likely result in ultimate physical changes in the environment, the scope of the Coastal Commission’s CEQA review must be the reasonably foreseeable effect of these changes (the site-specific development) on the environment. (See *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 793–794; see also *Black Prop. Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985.) Environmental effects include “[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or

¹ For CEQA and Coastal Act purposes, a project’s impacts (or “effects”) on the environment include cumulative effects. The Coastal Act specifically defines such effects and requires their review by the Coastal Commission where it is reasonably foreseeable that an LCP amendment or other project before the Coastal Commission will result in new residential, commercial or industrial development. “‘Cumulatively’ or ‘cumulative effect’ means the incremental effects of an individual project *shall be reviewed* in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (Pub. Resources Code, § 30105.5, emphasis added; see *id.*, § 30250; CEQA Guideline 15355 & 15358.)

growth rate, and related effects on air and water and other natural systems, including ecosystems.” (CEQA Guideline 15358, subd. (a)(2).) Again, in evaluating the significance of the environmental effect of a project, a public agency must consider not only direct physical changes in the environment which may be caused by a project, but also reasonably foreseeable indirect physical changes. (CEQA Guideline 15064, subd. (d).)

Despite this unequivocal legal requirement, Coastal Commission Staff has failed to analyze the reasonably foreseeable impacts of the residential development allowed by the LCP Amendment. Rather than engage in the analysis needed for informed decision making and public participation, Staff has impermissibly forestalled that analysis to a “subsequent process” in regards to *inter alia* reasonably foreseeable traffic, biology, hazardous soils, wastewater and fire risk impacts.

Based on its impermissibly truncated review, Coastal Commission Staff have found that “the proposed LCP amendment is not expected to result in any significant environmental effects.” The conclusion of no significant adverse impacts from reasonable foreseeable development is in fact contradicted by substantial evidence of potentially significant impacts. That evidence was submitted to the Coastal Commission’s North Central Coast District.

In addition, based on the Coastal Commission’s finding that there are no potential significant adverse environmental effects from the proposed amendment, Staff commits another CEQA error of failing to even consider project alternatives or mitigation measures.² Put another way, if the Coastal Commission approves the LCP Amendment premised on the Staff Report’s short-sighted environmental review, the Commission will have taken action that significantly furthers the reasonably foreseeable site-specific residential development while foreclosing alternatives or mitigation measures that would otherwise be part of the CEQA review for the coastal development permit for that development. An alternative site-specific project inconsistent with the LCP Amendment will no longer be considered legally feasible. This manner of proceeding violates CEQA. (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138 and cases cited.) Simply put, disclosure and evaluation of the reasonably foreseeable impacts of MidPen’s housing development, as well as evaluation of alternatives (including alternative locations that would better serve the environmental and environmental justice, economic and social interests at stake) may not be deferred to the later coastal development permit stage.

² The public, as far back as June 2019, submitted comments to the Coastal Commission questioning whether traffic impacts would be adequately mitigated. Proposed mitigations impermissibly defer mitigations until after project approval. TRAF-1B consists of a vague “Transportation Demand Management Plan” which will not even be formulated for public review or the Coastal Commission’s consideration until after project approval. As MidPen acknowledged, the effectiveness of this plan can “not” be guaranteed.

C. The Coastal Commission Staff Report Fails to Analyze the Impacts of the Proposed LCP Amendment to the Existing Environment.

Coastal Commission Staff has also improperly skirted adequate evaluation of the potential environmental impacts of the LCP Amendment by comparing the amendment to the hypothetical development allowable under the existing LCP (the current but never implemented site designation of PUD-124), rather than to the existing physical conditions on the ground. For example, the Staff Report argues (at p. 9):

“With regard to road and traffic capacity, the project site would be accessible from existing roadways with primary access from Carlos Street and a second emergency vehicle access point from Lincoln Street. There are existing noted traffic deficiencies in the surrounding area, including an existing Level of Service E or F for Etheldore and California Street intersections with Highway 1 during commute periods, that could be exacerbated by any development at the proposed location. However, the proposed reduction in density at the site, *as compared to the existing land use designation*, would reduce the potential traffic generated from any subsequent development.” (Emphasis added.)

This manner of proceeding violates CEQA. The error pervades not only the traffic impacts review (VMT, circulation, energy consumption, capacity), but also Staff’s evaluation of water and sewer impacts, fire risk and evacuation impacts, visual/aesthetic impacts, cultural/archeological impacts, as well as biological and sensitive habitat impacts.

“Under CEQA, a public agency must determine what, if any, effect on the environment a proposed project may have. To do so, a public agency must first make a fair assessment of existing physical conditions (i.e., baseline physical conditions) and then compare it to the anticipated or expected physical conditions were the project to be completed, thereby allowing the agency to focus on the nature and degree of changes expected in those physical conditions after the project and whether those changes result in any significant effect on the existing environment.” (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1037, citing CEQA Guideline 15125, subd. (a) and *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319–321, 328.) The existing environment is not the existing LCP.

The comparison must be “between existing physical conditions without the project and the conditions expected to be produced by the project.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.) Without such a comparison, the agency’s environmental review will not inform decision makers and the public of the project’s significant environmental impacts. (*Communities*, 48 Cal.4th at p. 328.)

“A long line of Court of Appeal decisions holds, in similar terms, that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework. This line of authority includes cases where a plan or regulation allowed for greater development or more intense activity than had so far actually occurred.” (*Communities*, 48 Cal.4th at p. 321.) The California Supreme Court has explained that “[i]n each of these decisions, the appellate court concluded the baseline for CEQA analysis must be the “existing physical conditions in the affected area (*Environmental Planning Information Council v. County of El Dorado*, 131 Cal.App.3d at p. 354) that is, the ‘real conditions on the ground’ (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal.App.4th at p. 121; see *City of Carmel-by-the-Sea v. Board of Supervisors*, 183 Cal.App.3d at p. 246), rather than the level of development or activity that could or should have been present according to a plan or regulation.” *Communities*, 48 Cal. 4th at 321.)

The case of *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229 is particularly instructive. There, a hotel subject to a coastal LUP permitting the development of up to 75 residential units sought rezoning. The court of appeal expressly rejected the argument that no significant impacts could result because the maximum number of units allowed under the rezoning would be lower - 65. The court explained: “A comparison between what is possible under the LUP and what is possible under the rezoning bears no relation to real conditions on the ground.” (*Id.* at p. 246.)

The Coastal Commission Staff Report’s approach using hypothetical allowable conditions under PUD-124 as the baseline results in an “illusory” comparison that “can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,” a result directly at odds with CEQA. (*Communities* at p. 322, citing *Environmental Planning Information Council*, 131 Cal.App.3d at p. 358.)

D. The Coastal Commission Staff Report Improperly Defers Analysis of Project Impacts Until After Approval of the LCP Amendment

It is a fundamental principle of CEQA that potentially significant project environmental impacts must be analyzed before project approval.

Despite this, the Coastal Commission Staff Report improperly defers the required analysis of the impacts of the LCP Amendment to a subsequent process in regards to traffic, environmental justice, coastal resources (water, sewer, and circulation), sensitive habitats, fire risk, aesthetics, and water availability impacts.

Each of these errors violates CEQA, but the California Supreme Court has provided important relevant guidance particularly regarding water availability.

First, CEQA's informational purposes are not satisfied by environmental analysis “that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with

sufficient facts to “evaluate the pros and cons of supplying the amount of water that the [project] will need.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 430–31 citing *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.)

Second, an adequate environmental impact analysis “cannot be limited to the water supply for the first stage or the first few years. ...CEQA's demand for meaningful information “is not satisfied by simply stating information will be provided in the future.” *Id.* at 431.

“Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (“paper water”) are insufficient bases for decisionmaking under CEQA. An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. [citations omitted.] *Id.* at 432.

E. The Coastal Commission Staff Report Fails to Evaluate and Respond to Public Comments.

The Coastal Commission Staff Report must provide written responses to significant environmental points raised during the public evaluation process for the project. (§ 21080.5, subd. (d)(2)(D); see Cal. Code Regs., tit. 14, § 13057, subd. (c)(3).) Failure to do so is prejudicial error under CEQA. (*Mountain Lion Foundation*, 16 Cal.4th at pp. 122-123, 133; *EPIC*, 170 Cal.App.3d at pp. 627-629.) CEQA Guideline 15088 likewise requires that an agency evaluate comments on environmental issues and prepare a written response describing the disposition of significant environmental issues raised, particularly where the agency's position is at variance with recommendations and objections raised in the comments. (See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 882 [agency response “did not provide a detailed, reasoned analysis of why the suggested measure for clustering of wells and infrastructure when feasible was not accepted. As such, the response did not comply with the requirements of Guidelines section 15088, subdivision (c) or CEQA”].)

As reflected in the Coastal Commission's correspondence file for this proposed project, this office commented to the Coastal Commission on October 16, 2020 and February 8, 2021. The February 8, 2021 submittal attached copies of comments previously submitted to San Mateo County on January 22, 2020, June 8, 2020 and July 21, 2020, and the Coastal Commission's own two prior comment letters on this project. In addition, on January 21, 2021, this office submitted to the Coastal Commission significant expert comments from Pang Engineers, Matt Hagemann (SWAPE), Steve Powell (BioMaAS Inc.), Robert W. Emerick and Bryan Jessop related to project traffic and transportation, soil contamination, sewage wastewater, and biological impacts, and the lack of adequate analysis of and mitigation for these impacts.

Regrettably, the Coastal Commission Staff Report contains no written response to the significant environmental points we raised. As we noted before, the fact that the Coastal Commission need not circulate a final EIR does not exempt it from compliance with CEQA's substantive environmental review requirements, including providing written responses to public comments.

F. The Coastal Commission Staff Report Fails to Evaluate the Cumulative Impacts of the Proposed LCP Amendment.

CEQA requires analysis of cumulative impacts, i.e., the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. (See fn. 1, *ante*.)

Despite this, the Staff Report avoids the required analysis of cumulative impacts while cursorily concluding that the proposed LCP Amendment will not result in any significant adverse environmental effects, including with regard to potential cumulative impacts. But the Staff Report jumps to this conclusion without discussing the cumulative traffic impacts from tourism and related projects, such as the Big Wave project, Best Western Hotel Half Moon Bay, Pacific Ridge, Mavericks Multiplex and other approved and reasonably foreseeable projects in the San Mateo County coastal zone.

Further, there has been no analysis of whether the expanded sewage line and potential pump station for the reasonably foreseeable residential development will increase development intensity or facilitate other off-site development by facilitating second units or ADUs (Accessory Dwelling Units) in the project vicinity.

II. The Proposed Project is Inconsistent with the Coastal Act.

As Midcoast ECO commented in its February 8, 2021 correspondence, the proposed LCP Amendment project is inconsistent with the Coastal Act as it will not (1) protect, maintain and enhance the overall quality of the coastal zone environment and its resources, (2) assure orderly, balanced utilization and conservation of coastal zone resources, or (3) maximize public access to and along the coast. (Pub. Resources Code, § 30001.5.)

The LCP Amendment does not conform with the requirements of Coastal Act Chapter 3 commencing with section 30200. (See Pub. Resources Code, §§ 30512 – 30514, 30200.) The Chapter 3 policies are the standards for judging the adequacy of an LCP. (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 272.)

The comments above -- regarding Staff's failure under CEQA to adequately analyze the reasonably foreseeable impacts of the proposed LCP Amendment, improper comparison of the LCP Amendment to the current PUD-124 designation, and failure to

evaluate the cumulative impacts of the LCP Amendment -- are equally applicable to the analysis of whether the project is consistent with the Coastal Act.

A. LCP Amendment Inconsistency with Coastal Act section 30250.

The reasonably foreseeable development will not be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it, and will not be served by adequate public services or offsite road infrastructure.

Even the inadequate traffic analysis conducted by MidPen to date concludes that the reasonable foreseeable development will result in numerous significant “and unavoidable” traffic impacts:

- 1) Project traffic will critically delay traffic at Highway 1 and Carlos Street -- the main access point to the Project from Highway 1. The project will make turns into and out of Carlos Street, as well as through traffic on Highway 1, substantially more hazardous.
- 2) Project traffic will critically delay traffic at Highway 1 and California/Wienke.
- 3) Project traffic will critically delay traffic at Highway 1 and the intersection of Vallemar and Etheldore.
- 4) Project traffic will critically delay traffic at Highway 1 and 16th Street.

Significant questions have been raised by peer review (Pang Engineers) of MidPen’s traffic discussion, showing that it is deeply flawed. Caltrans and the San Mateo County Department of Public Works have raised serious points about how the reasonably foreseeable development will overburden the Highway 1 and not be adequately served by transit services. Also, MidPen’s use of a ratio approach to justify traffic impacts -- the project will only “incrementally” exacerbate these *LOS F* delays a by small percentage -- violates well established CEQA law.³

In addition, serious wastewater issues have been raised because of the location of the site and the condition of the sewer system. The reasonably foreseeable development is located within the Montara Water & Sanitary District (MWSD), which is located at the

³ Courts have recognized time and again that the more degraded a baseline condition is, the greater the potential for cumulative harm from an individual project that incrementally increases the harm, and the greater the need to prevent incremental degradation, even if, in and of itself, the incremental degradation is below a threshold of significance. (See *Coastal Southwest Development Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 538 [degraded visual setting; “a site which represents a diminishing coastal resource is to be preserved and gives a stronger reason for its preservation as such resource”]; accord, *Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, 994-995 [degraded wetlands]; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507-508 [degraded environmentally sensitive habitat area]; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1027-1028 [degraded urban acoustic environment]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721 [degraded air basin].)

furthest end of the Intertie Pipe System (IPS) from the Sewer Authority Mid-Coastside (SAM) wastewater treatment facility. All of the Montara sewage is pumped through the IPS by SAM's northern pump station, the Montara Pump Station, to the sewage treatment plant located in Half Moon Bay (MWSD 2018). Wastewater generated by the MidPen project must necessarily be conveyed by the IPS through segments also serving Montara, Princeton by the Sea, El Granada, and the City of Half Moon Bay. SAM's Intertie Pipeline System has had *at least 65 separate discharges of inadequately treated or raw sewage since 2013 alone*. Over 557,103 gallons of sewage have been illegally released, the vast majority released into the Pacific Ocean and Half Moon Bay.

The Stevens Consulting Cypress Point Project Public Services and Utilities Report at Section 7.4.1 reveals that the project site slopes range from 10 percent to 50 percent, there is no existing storm drain infrastructure on the property, and that "stormwater ultimately discharges to Montara Creek within the James V. Fitzgerald Area of Specific Biological Significance (ASBS) watershed area." In addition to stormwater from the 11-acre project site, there is an additional one acre offsite generating runoff that drains through the project site and contributes to the overall drainage area. Drainage out of the project retention ponds and stormwater runoff has the potential to adversely impact wetlands.

An adequate analysis of the wastewater impacts of the reasonably foreseeable development has not been completed or released to the public to date. To assure consistency with the public (ocean) recreation policies of Chapter 3 of the Coastal Act (§§ 30220–30224) as well as Coastal Act sections 30230–30232, Staff must evaluate potential project impacts in light of the history of sewage spills, the SAM Infrastructure Plan, the Force Main segment replacements and Pump Station as the status of each program element described within the Capitol Improvement Plan.

Coastal Act section 30232 specifically mandates "[p]rotection against the spillage of crude oil, gas, petroleum products, or *[other] hazardous substances* . . . in relation to any development or transportation of such materials." (Emphasis added.) The Coastal Commission staff report completely ignores Coastal Act sections 30230–30232. As such, it offers no analytic basis for finding the LCP Amendment consistent with Coastal Act sections 30230–30232. This is not a minor Chapter 3 inconsistency. The Project site drains into Montara Creek within the James V. Fitzgerald Area of Specific Biological Significance watershed area. Coastal Act section 30230, which requires that "[m]arine resources . . . be maintained, enhanced, and, where feasible, restored[,]" expressly calls for "[s]pecial protection [to] be given to areas and species of special biological or economic significance." "Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes."

No utility plans have been completed for the proposed project yet. Therefore, what actually is proposed is not adequately described, and thus cannot demonstrate, based on substantial evidence, that the LCP Amendment is consistent with Chapter 3 policies it

implicates. No sanitary sewer infrastructure currently exists on the project site, and new sewer pipelines will be needed to connect the project site with the existing MWSD sewer lines in adjacent roadways.

It is reasonably likely that a pump station will be needed for the project and if improperly designed could result in more raw sewage spills into the coastal waters and waters of the United States. The Coastal Commission may not ignore these risks under Chapter 3 of the Coastal Act. At its closest point, the project site is located only about 750 feet from the coastline of the Pacific Ocean. Elevations of the project site range from 77 feet at the northwest corner to 189 feet along the easterly boundary. A perennial stream (Montara Creek) is located approximately 50 to 250 feet to the northwest of the project site and runs parallel to the site's northern border before reaching the Pacific Ocean. There is a 100 foot elevation change moving away from the Pacific Ocean and a stream at the northern boundary. Given this geomorphology and in the absence of utility plans, it is reasonably likely that a new pump station will be required to adequately remove wastewater from the MidPen project site to a neighboring sewerage conveyance system. Pump stations have the potential to overflow into waters of the United States if not adequately designed and maintained. Thus, there is a potentially significant adverse wastewater impact, and to prevent future disputes about developer obligations at the CDP stage, that impact must be evaluated now and it must be fully mitigated as part of the LCP Amendment.

B. LCP Amendment Inconsistency with Coastal Act section 30253.

The reasonably foreseeable development will not minimize energy consumption because it will be located far from any commercial uses or development. Also, there has been no analysis yet of vehicle miles traveled. Coastal Act section 30253 requires energy consumption and vehicle miles traveled to be minimized. (*Id.*, subd. (d).) The Coastal Commission Staff Report does not offer any standard or threshold for the Coastal Commission to use to find consistency with this Chapter 3 policy, as applied in the impacted coastal zone area.

Midcoast ECO, through this office, has submitted substantial evidence of the known high fire risk and landslide risks at this site, yet the Coastal Commission Staff Report does not consider these risks in evaluating Chapter 3 consistency. The project site is located within a Community at Risk zone. There is only one road in and out of the proposed project site, and limited roads serving Moss Beach -- all of which lead to Highway 1 only. The proposed project, by adding a *minimum* of 142 new vehicles (i.e., the number of un-covered parking spaces), to this tightly constrained area of Moss Beach, adversely impacts traffic circulation in the event of an emergency.

In addition, there has not been an analysis of water availability to fight fires in this Community at Risk zone that includes consideration of the reasonably foreseeable development. These are significant issues that cannot be swept under the proverbial rug in a LCP amendment process (Coastal Act section 30253, subds. (a), (c)) -- certainly not in the wake of the mega-fires of 2020 which have only confirmed that catastrophic

wildland fires are the new normal in California, including along the central coast, as climate change increases fire intensity (predisposing dried out vegetation into ever drier conditions, augmenting fuel loads), the length of the fire season, and public water systems are at increasing risk of public safety power shutoffs (PSPSs or de-energizing events).⁴

C. LCP Amendment Inconsistency with Coastal Act Section 30254.

As discussed above, new or expanded sewage facilities will likely be required and there is evidence of potentially significant adverse impacts from such facilities.

State Highway Route 1 in this rural area of the coastal zone may not remain a scenic two-lane road with the addition of the reasonably foreseeable development. MidPen and the County have considered the need for roundabouts or additional lanes to handle the expected traffic from the reasonably foreseeable development.

There has been inadequate analysis of the effects on public recreation, commercial recreation, and visitor-serving land from the reasonably foreseeable development and whether such uses will be precluded or coastal visitor access interfered with.

The reasonably foreseeable development from the proposed LCP Amendment will likely preclude basic traffic, sewage, and water services to other developments.

D. LCP Amendment Inconsistency with Coastal Act Sections 30107.3 and 30604, subdivision (h).

The Coastal Commission Staff report does not consider pollution burdens. It fails to consider the evidence submitted regarding residual soil contamination at the Project site.

The Project site is a former World War II-era facility used for gunnery training. A November 10, 2015 Phase I Environmental Site Assessment (ESA), prepared for the Project, describes the Project site including an incinerator.

A November 1989 letter to the owner of the project site reveals that there was asbestos abatement, and states that additional asbestos containing materials were detected in areas of the property. Despite these baseline conditions, the project site apparently has

⁴ Analyses of decades of data tracking California wildfires and the destruction they've wrought show that wildfires and their compounding effects, including effects on air quality, have intensified in recent years. "The last 10 years have shattered records. 2020 tops them all. Record-breaking wildfires are occurring more often. Eight of the 10 largest fires in California history have burned in the past decade." (Krishnakumar & Kannan, *The Worst Fire Season Ever. Again*, L.A. Times (Aug. 15, 2020), available at <https://www.latimes.com/projects/california-fires-damage-climate-change-analysis/> [as of Mar. 5, 2021].)

Fire hazard and associated air quality impacts raise an LCP Amendment issue that should not have been ignored. (Coastal Act section 30253, subs. (a), (c).)

not been tested for asbestos in soil and groundwater by MidPen or San Mateo County.

This testing must be performed before findings of LCP Amendment consistency with Coastal Act sections 30230–30232 may be made, and such findings, supported by substantial evidence, must be made before the LCP Amendment may be approved. (See Coastal Act §§ 30200, subd. (a), 30512.)

A Phase II ESA sampling investigation found two locations (Borings B-7 and B-21) where lead concentrations in soil exceeded the San Francisco Bay Regional Water Quality Control Board (RWQCB) Environmental Screening Level (ESL). The concentrations of lead in those two samples, taken at the ground surface, was 230 mg/kg and 88 mg/kg, respectively. In contrast, the RWQCB ESL for lead in residential shallow soil is 32 mg/kg based on terrestrial habitat exposure. An additional investigation found the concentration of lead in soil at boring CS-3 was found to be 290 mg/kg – nine times the ESL.

To these points, note that MidPen’s Public Services and Utilities report (Stevens Consulting, July 2018) does not address pollutant loads. In regards to wastewater, pollutant loads ultimately become sludge that requires its own treatment and disposal. There has been no analysis of sludge treatment capacity and long-term sludge disposal capacity from the reasonably foreseeable development as well as associated with likely ADUs.

E. LCP Amendment Inconsistency with Coastal Act Section 30240.

The 1985 EIR for a different project on the same site found that Montara Creek is located approximately 50 feet north of the project site. The Montara Creek riparian corridor is an Environmentally Sensitive Habitat Area (ESHA) as defined by the San Mateo County LCP.

According to the San Mateo County Staff Report, the project site slopes from 189 MSL along the easterly boundary to 77 feet MSL at the northwest corner. The May 2, 2018 hydromodification report prepared for MidPen by BKF revealed that **project surface runoff will discharge to Montara Creek within the Fitzgerald Area of Specific Biological Significance watershed area:**

“The existing site slopes range from 10% to 50% with the high point on the east side of the property and the low point at the northwest corner. There is no existing storm drain, sanitary sewer or known gas infrastructure on the property. Storm water runoff is assumed to percolate on site and excess runoff surface flows towards Carlos Street and 16th Street, **ultimately discharging to Montara Creek within the James V. Fitzgerald Area of Specific Biological Significance (ASBS) watershed area.** Beside the 11 acre property, an additional 1 acre of offsite runoff drains through the project site and contributes to the overall tributary drainage area.”

Based on the increase in impervious surfaces with the proposed project, the increased flows off-site of storm water runoff, and project grading and demolition of existing buildings, it is reasonably likely that there will be increased storm water discharges to Montara Creek. Even assuming the retention basins are adequately sized during the construction phase and thereafter (e.g., accounting for atmospheric river events, also on the rise due to climate change), these increased flows will likely discharge significant additional sediment levels into Montara Creek, the James V. Fitzgerald Area of Specific Biological Significance (ASBS), and the wetlands at the Pacific Ocean. In addition, given the likelihood that asbestos or other hazardous substances are present on this site, the discharges to the Creek, the ASBS and the wetlands may also transport these hazardous substances into the ASBS.

There is no discussion or evidence in the Coastal Commission Staff Report addressing the level of significance of these impacts to the ASBS and Montara Creek ESHA. Hence, there is no evidence before the Coastal Commission to allow the Coastal Commission to find that the ESHA will be protected against any significant disruption of its habitat values, or that the stormwater discharges to Montara Creek and the James V. Fitzgerald ASBS may be considered “uses dependent on” these ESHA resources. (See Coastal Act § 30240.)

F. The LCP Amendment Conflicts With the LCP.

The proposed LCP Amendment conflicts with the Land Use Plan policies of the LCP and the Coastal Commission Staff Report has not adequately analyzed the inconsistencies for the reasons stated and in the comments previously submitted to the Coastal Commission.

Thank you for your careful consideration of these issues.

Sincerely,



Brian Gaffney