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*Via Email*

*15 Copies at Commission Hearing*

San Mateo County Planning Commission

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[mschaller@smcgov.org](mailto:mschaller@smcgov.org)

RE: MidPen Housing proposed Cypress Point project  
PLN2018-00264

Dear Commissioners Hansson, Gupta, Santacruz, Ramirez and Ketcham,

This office represents Resist Density regarding the proposed Cypress Point project in Moss Beach. Based on review of the Staff Report and Attachments prepared for the January 22, 2020 Planning Commission Hearing, and as explained in greater detail below, Resist Density offers the following comments regarding the County's review of this proposed project.

- 1) San Mateo County must conduct environmental review of the discretionary approvals the County will consider for the project;
- 2) Review by the Coastal Commission is limited to conformance with the Coastal Act and project impacts to coastal resources;
- 3) The County has failed to follow its own Zoning Regulations in review of the proposed project;
- 4) The Staff Report and its Attachments do not adequately analyze environmental impacts and mitigations;
- 5) The proposed project is inconsistent with the Coastal Act and the San Mateo County LCP.

Thank you for your careful consideration of these comments and others by the public.

Sincerely,



Brian Gaffney

**I. San Mateo County Must Conduct Environmental Review of the Discretionary Approvals the County Will Consider for the Project.**

The proposed Cypress Point project includes proposed amendment to the San Mateo County General Plan to change the land use designation of APN 037-022-070, amendment to the County's Zoning Map, amendment of the County's zoning text, and creation of an entirely new Planned Unit Development (PUD) designation for the project site. Each of these proposed changes are discretionary acts which the County may or may not approve.

In addition, the proposed project includes an amendment to San Mateo Local Coastal Program (LCP) Polices 3.15(b) and 3.15(d.1), and amendment of the LCP Land Use Plan Map. If the San Mateo County Board of Supervisors approves the proposed changes to the LCP, these LCP amendments will need to be subsequently certified by the California Coastal Commission. The approval of the LCP amendments by the California Coastal Commission is exempt from the requirement to prepare an EIR, but not exempt from CEQA's substantive requirements. (Pub. Res. Code §§ 21080.5, 21080.9)

The County is required to conduct its own environmental review of the discretionary approvals the County will consider for the project, and can not rely upon the Coastal Commission's compliance with CEQA. Further, the County must not defer its environmental review until subsequent review of a Coastal Development Permit (CDP).

First, MidPen's proposed project requires more than changes to the LCP. The proposed project will also require amendment to the San Mateo County General Plan, amendment to the County's Zoning Map and the County's zoning text, and proposed changes to the Planned Unit Development (PUD) designation for the project site.

MidPen's proposed general plan amendment is undoubtedly a discretionary action subject to environmental review under CEQA. In *DeVita v. Cty. of Napa*, 9 Cal. 4th 763, 793-94 (1995), the California Supreme Court explained that

General plans "embody fundamental land use decisions that guide the future growth and development of cities and counties," and amendments of these plans 'have a potential for resulting in ultimate physical changes in the environment.' General plan adoption **and amendment** are therefore properly defined in the CEQA guidelines (Cal. Code Regs., tit. 14, § 15378, subd. (a)(1)) as projects subject to environmental review."

"Because general plans embody fundamental land use decisions that guide future growth and development of cities and counties, they have the potential for resulting in ultimate physical changes in the environment. ...[W]hen general plan

amendment is among numerous approvals required for a particular development project, the question is the effect of that development on the environment].” *Black Prop. Owners Assn. v. City of Berkeley*, 22 Cal. App. 4th 974, 985 (1994).

So too, because the changes to the County’s Zoning Map and text are discretionary actions which will cause direct physical environmental changes or reasonably foreseeable indirect physical environmental changes, such zoning amendments are projects subject to CEQA’s mandate of environmental review. (Pub. Res. Code §§ 21080, 21065; *Union of Med. Marijuana Patients, Inc. v. City of San Diego*, 7 Cal. 5th 1171, 1199 (2019). Approval of these zoning changes will facilitate building the proposed project - resulting in direct and indirect physical changes in the environment, many of which MidPen itself admits will be significant adverse impacts.

While a “Local Coastal Program” includes a local government’s land use plans, zoning ordinances, and zoning district maps, not all such plans and zoning constitute the LCP. By statute it is only those plans and zoning which “implement the provisions and policies” of the Coastal Act at the local level.” (Pub. Res Code 30108.6.) Here, there is no showing the general plan amendment and zoning changes implement the Coastal Act.

Likewise, the creation of an entirely new Planned Unit Development designation for the project site, PUD-140, is a discretionary action by the County which will result in foreseeable physical environment changes, i.e. development of the site. Amendment of the PUD is not necessary for amendment of the LCP. In fact, the PUD designation is clearly not part of San Mateo County’s LCP.

For these reasons, adequate environmental review by the County now in the form of a CEQA document is needed for the public, responsible agencies and the County to evaluate the proposed project.

Despite this, the County’s position is that it need not undertake environmental review of its proposed land use changes, or that it can defer analysis until a CDP after the PUD, zoning and general plan have been amended. Consider, however, what happens in the absence of such environmental review. The County has its own independent discretion over whether to grant the general plan amendment, zoning changes and PUD designation. The County appears to be prepared to amend the general plan, amend the zoning, and create the new PUD designation - *without the benefit of environmental review*.

Such a result would clearly violate CEQA - whose guiding mandate is long term protection of the environment and consideration of environmental consequences at the earliest possible stage, even though more detailed environmental review may be necessary later. By chopping the project into two stages – changes to the general plan, zoning and PUD first, followed by the Coastal Development Permit later - the County is engaging in impermissible piecemeal

review. CEQA requires that the whole of the action which has the potential for environmental consequences be reviewed now by the County.<sup>1</sup>

## **II. Review by the Coastal Commission Is Limited To Conformance with Coastal Act and Coastal Resources.**

The Coastal Commission’s review of an LCP amendment is limited to a determination that the amendment is or is not consistent with the coastal zone values cited in Section 30001 of the Act, as well as its conformance with the requirements of Chapter 3 (commencing with Section 30200) of the Coastal Act. (Pub. Res. Code § 30512 – 30514, 30200) Those “Chapter 3 policies” thus represent the standards for judging the adequacy of an LCP. *McAllister v. Cty. of Monterey*, 147 Cal. App. 4th 253, 272 (2007).

Moreover, the Coastal Commission “shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in [Coastal Act] Section 30001.5.”<sup>2</sup> (Pub. Res. Code § 30512.2; *Yost v. Thomas*, 36 Cal. 3d 561, 566–67 (1984). Similarly, the Commission may only reject zoning ordinances on the grounds that they do not conform, or are inadequate to carry out the provisions of the certified land use plan (Pub. Res. Code § 30513; *Yost, ibid.*)

As such, the Coastal Commission’s environmental review necessarily will not reach to reasonably foreseeable environmental impacts of the proposed project beyond impacts to coastal resources. For example, consideration of traffic impacts may not extend to analysis of traffic impacts to neighborhood streets. Likewise, the adverse impacts of the project on emergency evacuation of Moss Beach may not be reached by the Commission’s review – as such impacts while potentially adverse and significant – do not pertain to coastal resources.

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<sup>1</sup> In fact, in applying for loans for the project from San Mateo County, MidPen asserted that project approval would “involve two environmental reviews under CEQA and the Coastal Commission’s CEQA-equivalent process. See 1st Quarter 2018 Report to San Mateo County regarding Cypress Point.

<sup>2</sup> Those Coastal Act section 30001.5 goals are  
(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the **coastal zone environment** and its natural and artificial resources.  
(b) Assure orderly, balanced utilization and conservation of **coastal zone resources** taking into account the social and economic needs of the people of the state.  
(c) Maximize public access to and along the coast and maximize public recreational opportunities **in the coastal zone** consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Therefore, review by San Mateo County of environmental impacts can not be avoided on the assertion that Coastal Commission review will substitute.

**III. The County Has Failed to Follow Its Own Zoning Regulations in Review of the Proposed Project.**

A. The CDP Is Not Being Considered Concurrently with Other Project Approvals.

San Mateo's Zoning Regulation require that an application for a Coastal Development permit "**shall**" be made **prior to or concurrently with** application for any other permit or approvals required for the project by the San Mateo County Ordinance Code. Zoning Regulation 6238.7. Likewise, "to the extent possible, action on a Coastal Development Permit **shall** be taken concurrently with action on other permits or approvals required for the project. Zoning Regulation 6328.9.

Here, however, the County will not follow its own zoning regulations. The County will not consider the CDP until after amending the LCP, General Plan, zoning and PUD. Moreover, the purpose of this impermissible 2-stage review is to avoid analysis of impacts, mitigation measures and alternatives until the subsequent CDP review.

B. The County Is Not Following the Proper Procedure for Adoption of a New PUD District.

Zoning Regulation 6191 mandates that no PUD District shall be enacted for any area unless and until the Planning Commission shall first have reviewed a precise plan of the subject area and its environs, and found that the proposed zoning of the area would be in harmony with said plan, and would not be in conflict with the County Master Plan, or with any other current land use plan for a sub area of the County previously adopted by the Planning Commission.

1. Review of Conceptual Not Precise Plans.

The Planning Commission will not review a precise plan of the subject area and its environs. In fact, proposed PUD-140 only refers to "conceptual development plans presented to the San Mateo County Planning Commission on January 22, 2020," a "Conceptual Grading Plan," and a "conceptual landscape plan." Such "conceptual" plans can not constitute the precise plans to be reviewed by the Planning Commission. Thus, the County has not complied with Zoning Regulation 6191.

2. No Evaluation of Conflict With the San Mateo General Plan.

In evaluating compliance with Zoning Regulation 6191, the Staff Report vaguely asserts that "Based on the previous discussion in the LCP Compliance

Section of this report (Section A.2), the proposed PUD Zoning District regulations, for this parcel, are in harmony with applicable LCP policies. Section A.2 is a purported evaluation of the Consistency of Zoning Amendments with the San Mateo County Local Coastal Program Land Use Plan.

Neither in Section A.2 nor under compliance with Zoning Regulation 6191 does the County evaluate consistency of the proposed project with the San Mateo General Plan and its various policies.

3. **No Evaluation of Conflict With the Montara-Moss Beach-El Granada Community Plan.**

According to the San Mateo County General Plan, the project site is located in the Montara-Moss Beach El Granada community plan area. See Attachment H to the January 22 Staff Report. The County adopted the Montara-Moss Beach-El Granada Community Plan which in 1978. According to the General Plan such Plans are “part of the General Plan and contain more specific policies for certain geographic areas.” The San Mateo County General Plan explains that “Area Plans allow for more local application of General Plan element policies.” Despite this, the Planning Commission has not evaluated the proposed project’s compliance with the Montara-Moss Beach-El Granada Community Plan.

**IV. The Staff Report and its Attachments Do Not Contain Adequate Environmental Review.**

Aside from the need for the County to conduct its own environmental review, the County’s submission of a proposed LCP Amendment to the Coastal Commission must include complete environmental review. Coastal Commission review of LCP amendments must comply with the substantive requirements of CEQA - even where an EIR is not prepared.

As detailed below, neither MidPen nor County staff have provided analysis of the proposed project that complies with CEQA. Thus, the San Mateo Planning Commission is in the untenable position of making recommendations without knowledge of the proposed project’s adverse impacts and potential mitigations. In addition, the County is not meeting CEQA’s purpose to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of the proposed project.

A. **The Environmental Setting is Improper.**

First, the California Supreme Court has repeatedly made it clear that in evaluating impacts of a proposed project, the baseline for a significance determination should normally be the existing physical conditions in the project's vicinity, not what was allowed under existing permits. (*Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320-

322; *Ctr. for Biological Diversity v. Dep't of Fish & Wildlife*, 62 Cal. 4th 204, 224 (2016).

So here, it is important that the County's evaluation of the proposed project look at the traffic, sewage, discharge, public safety, biological and other impacts based on a baseline of undeveloped, de-facto open space, rather than comparing it to the existing but never implemented PUD-124 zoning for the site.

Instead, the County evaluates evacuation and circulation, protection of coastal resources, compliance with the Coastal Act, impacts to archeological resources, vehicle miles traveled, erosion, traffic and cumulative traffic - by impermissibly pointing to the PUD-124 density rather than the existing setting as the baseline. On that skewed basis the County asserts that the proposed project will reduce impacts.

Second, the Staff Report and its Attachments are flawed where they fail to describe the physical environmental conditions in the "vicinity of the project," as required by CEQA Guideline 15125. For example, the "Biological Resource Assessment" at Appendix G states only that the project site does not contain habitat for the California red legged frog, and fails to describe if this federally threatened species exists in the adjacent Montara Creek, or if the area is within the critical habitat designation for the species.

Third, the County's evaluation of existing conditions is also flawed as it fails to mention or otherwise account for the environmental review conducted in 1985 on the same site for a different project. That County environmental document recognized the site as "prairie grassland," which includes a native beach strawberry on the project site - which is classified as "locally unique" species in the San Mateo County LCP. The 1985 review also identified Montara Creek as within 50 feet of the project site. These facts are omitted from the Staff Report and its Attachments.

B. There is No Analysis of Emergency Evacuation and Public Safety Impacts.

The project site is located within a Community at Risk zone according to the San Mateo County's Wildland Urban Interface Fire Threatened Communities Map.<sup>3</sup> In addition, there has been no evidence by MidPen that there is enough water to fight a fire in the surrounding hillsides. 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

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<sup>3</sup> See also California Public Utilities Commission's Fire Threat Interactive Maps at [http://cpuc\\_firemap2.sig-gis.com/#](http://cpuc_firemap2.sig-gis.com/#) **and** [https://ccag.ca.gov/wp-content/uploads/2019/03/6.5-Community-Wildfire-Safety-Program-Overview\\_San-Mateo-County\\_20190314.pdf](https://ccag.ca.gov/wp-content/uploads/2019/03/6.5-Community-Wildfire-Safety-Program-Overview_San-Mateo-County_20190314.pdf).

(i.e. the number of un-covered parking spaces) to this tightly constrained area of Moss Beach – decreases traffic circulation in the event of an emergency.

Public health and safety are of great importance in CEQA. (Public Resource Code §§ 21000, 21001, 21083.) An agency must evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions including wildfire risk areas “as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.” CEQA Guideline 12126.6(a). “[W]hen a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.” *California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal. 4th 369, 377 (2015). “CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present.” *Id.* at 388.

Despite this there is no analysis of the Project's impacts regarding emergency evacuations in the event of a wildfire or other emergency.

C. There is No Analysis of Storm Water Runoff Impacts to Montara Creek and the Fitzgerald Area of Specific Biological Significance.

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 Staff Report, the project site slopes from 189 MSL along the easterly boundary to 77 feet MSL at the northwest corner.

The hydromodification report prepared by BKF on May 2, 2018 – and excluded from the Staff Report to the Planning Commission – reveals that surface runoff will discharge to Montara Creek within the Fitzgerald Area of Specific Biological Significance:

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, Resist Density believes it reasonably likely that there will be

increased storm water discharges to Montara Creek. Even assuming the retention basins are adequately sized (the Staff Report does not mention retention basins), during the construction phase and immediately thereafter, 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, if asbestos or other hazardous substances are present on this site, the discharges to the Creek, the ASBS and the wetlands may also contain these hazardous substances.

Despite this, the Staff Report and its attachments avoid any analysis of storm water runoff and project hydromodification, nor the biological impacts or water impacts of such reasonably foreseeable discharges.

D. The Analysis of Traffic Impacts is Flawed.

1. Failure to Consider Construction Phase Impacts.

There has been no analysis of the traffic (and air quality) impacts of over 690 construction-phase truck trips to import 7,000 cubic yards of fill (MCC May 22, 2019 comment). CEQA requires all phases of a project be reviewed for environmental impacts, including the construction phase. There has been no analysis of the impacts of these trips either on Highway 1 traffic or on local roads.

2. Failure to Address Traffic Concerns Raised by Caltrans.

MidPen's Cypress Point Traffic Impact Analysis (April 2019) fails to address issues raised by California Department of Transportation's (Caltrans) August 29, 2018 letter regarding this proposed project, including:

- 1) Neither the Cypress Point Traffic Impact Analysis (April 2019) nor MidPen's Cover Letter Response to Comments references Caltrans' Strategic Management Plan 2015-2020 nor discusses reductions in Vehicle Miles Traveled (VMT), myopically focusing on the "number of vehicle trips," which excludes any calculation of vehicles miles travelled as a result of the proposed project;
- 2) Caltrans commented that the applicant should further analyze alternatives for improving pedestrian and bicycle access in the area, specifically opportunities for improving pedestrian and bicycle crossing of State Route 1.

MidPen's Cover Letter Response to Comments does not provide this analysis, instead it only vaguely promises that project impacts will be addressed without providing any specifics.

Likewise, the Cypress Point Alternatives Analysis (April 2019) claims there will be the same pedestrian impacts for the three alternatives considered, but does

not discuss alternatives for improving pedestrian and bicycle access in the area as Caltrans requested.

MidPen does not commit to providing any pedestrian and bicycle crossing of State Route 1 – not even where the Connect the Coastside study proposed a striped pedestrian crossing with a beacon along State Route 1 at 16th Street. This despite that, according to the Cypress Point Traffic Impact Analysis (April 2019), the project would result in potentially significant impacts from an increase in pedestrians accessing bus stops located across State Route 1, and inadequate corner sight distance at Carlos Street and State Route 1 for pedestrians to see vehicles and drivers to see pedestrians.

Rather than undertake traffic calming measures or pedestrian crossings with beacons, MidPen now only suggests the cheaper (and likely less-effective) distribution of literature to discourage residents from crossing the highway to access the Pacific Ocean, the lighthouse, and southbound bus lines.

Public safety impacts are of particular concern given that the northbound SamTrans route 17 bus requires walking along the shoulder of State Route 1 for approximately 0.15 miles. Similarly, the commercial area of Montara is just beyond (0.5 miles north), Montara Beach (1 mile north across State Route 1) and the Farallone View Elementary School (1.2 miles north). Given this, it is reasonably foreseeable that project residents including school children will attempt to walk along the highway to reach these destinations.

Further, the Cypress Point Traffic Impact Analysis provides no discussion of public safety impacts to pedestrians – outside of the Carlos/Sierra and Carlos/Stetson intersections - from traffic gridlock in the neighborhood nor the acknowledged significant adverse traffic impacts. The traffic delay at California/Wienke/Highway 1 is expected to reach over 124 seconds, 112 seconds at Vallemar /Etheldore Street/Highway 1, and 114 seconds at 16th Street/Highway 1. (Kittelton April 2019, Table ES 2.)

In addition, Carlos Street is proposed to be the only access point for non-emergency vehicles, i.e. everyday traffic.

The Cypress Point Traffic Impact Analysis (April 2019) avoids any discussion of impacts to bicycle riders, instead narrowly focusing on impacts to “bicycle facilities.” There is no discussion of the impacts of traffic gridlock and acknowledged significant adverse traffic impacts at multiple intersections on bicycle riders. This omission despite that the 2011 San Mateo County Comprehensive Bicycle and Pedestrian Plan identified planned bikeways through Moss Beach including (1) a Class I multi-use path near State Route 1 between Carlos Street and Main Street, (2) a Class II bicycle lane along Carlos Street, and (3) a Class III bicycle route along State Route 1.

3) Caltrans commented that MidPen should consider relocating the southbound bus stop so that it is across from the existing northbound stop at SR1 and 14th Street and providing a pedestrian hybrid beacon, as well as adequate pedestrian and bicycle access to/from project site.

MidPen avoids any response to the idea of relocating the southbound bus stop. Confusingly, MidPen responds that “MidPen's traffic consultant does not believe [sic] 16th or 14th Street would not be an optimal location for a pedestrian crossing.”

4) Caltrans commented that MidPen must evaluate primary and secondary effects on pedestrians and bicyclists, travelers with disabilities, and transit users including the effect of proposed VMT mitigations.

In response, the Cypress Point Traffic Impact Analysis provides no discussion of impacts to travelers with disabilities, and does not mention secondary effects on pedestrian and bicyclists.

There is no discussion of the effect of traffic delays on bus transit users. Further, whereas a few months ago MidPen proposed rerouting bus lines to address pedestrian safety, that modification has been dropped and no bus alternative is proposed by MidPen.

5) Caltrans commented that MidPen should either provide mitigation or pay its fair share fee for impacts towards multi-modal and regional transit improvement.

The Cypress Point Traffic Impact Analysis (April 2019) includes no reference to fair share payments for MidPen's traffic impacts, nor discusses the benefits of an on-site shuttle. Also, MidPen has not proposed to pay for the traffic signals and roundabouts being considered.

6) Caltrans requested use of a SimTraffic model and Intersection Control Evaluation. Impacts must be analyzed before project approval so that the public and agencies such as Caltrans can understand the effects, and so decision makers can evaluate the adequacy of proposed mitigations and alternatives. MidPen has not undertaken the modeling and evaluation Caltrans requested; MidPen proposes to push the intersection control evaluation onto Caltrans. Also, MidPen appears to be impermissibly deferring this evaluation and modeling until after project approvals have been granted.

7) Caltrans encouraged measures to increase sustainable mode shares, but the only mention of shares in the Cypress Point Traffic Impact Analysis (April 2019) is sharing of parking spaces – which will do nothing to reduce Vehicle Miles Travelled (VMT).

8) Caltrans commented that given the location and size of the proposed project, MidPen needed a robust Transportation Demand Management (TDM) Program to reduce VMT and greenhouse gas emissions, including but not limited to (1) “aggressive trip reduction targets with Lead agency monitoring and enforcement,” (2) TDM “annual monitoring reports by an onsite TDM coordinator,” (3) if VMT goals are not met, next steps to achieve those targets, (4) 10% reduced parking supply, (5) charging stations of electric vehicles, (6) carpooling parking spaces, and (7) real time transit information.

MidPen has included none of these measures in its proposed TDM Program, nor acknowledged Caltrans’ recommendations in either MidPen’s Cover Letter Response to Comments or its Traffic Impact Analysis (April 2019).

Further, an actual “Transportation Demand Management plan” (Mitigation TRAF-1B) will not even be formulated for public review or Caltrans consideration until after project approval. TRAF-1B is proposed as the mitigation measure for seven of the identified significant traffic impacts, and the sole mitigation for “unavoidable” impacts TRAF-4, TRAF-3C, TRAF-3B, TRAF-3A and TRAF-2B. As MidPen is forced to acknowledge, the effectiveness of this mitigation plan – which ignores Caltrans’ suggestions - can “not” be guaranteed.

E. There Has Been an Inadequate Analysis of Project Impacts from Hazardous Materials.

MidPen’s April 2019 submission included a Phase I Environmental Site Assessment and a Limited Phase II Subsurface Investigation. Those reports have not been presented to the Planning Commission.

Lead was detected at concentrations between 4.5 and 230 mg/kg in surface soils. Diesel petroleum was detected at a concentration of 1.3 mg/kg. Metals, including arsenic, barium, chromium, cobalt, copper, molybdenum, nickel, vanadium, and zinc, were detected at concentrations between 1.0 and 44 mg/kg. Total hexafurans were detected at a concentration of 2.78 picograms/gram. Further soil sampling has been recommended to further assess the horizontal extent of lead-impacted surface soils around 2 identified locations.

MidPen’s environmental evaluation doesn’t opine on whether the soil contamination constitutes a significant impact or not, but does reveal that the transport and use of hazardous materials during construction of the proposed project would be a significant impact requiring mitigation.

Assessment for the presence of asbestos containing materials inexplicably was determined to be “out of [the] scope” of MidPen’s Phase I report. However, asbestos materials were commonly used for buildings constructed in the 1940s. Most of the building foundations are still present on the project site and the site appears to be littered with building materials. In fact, 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 other areas of the property. Despite this, the project site apparently has not been tested for asbestos in soil and groundwater by MidPen or the County. Such testing should be conducted as part of a proper evaluation of potential impacts prior to approval of requested zoning, GP and PUD amendments.

Despite the presence of these hazardous materials, there has not been an analysis of whether the impacts are likely significant.

MidPen's preliminary evaluation promises a "Site Management Plan" will later be developed, but no details are provided regarding what standards this plan will meet or whether the Plan will bring impacts to a level of insignificance.

MidPen proposes to impermissibly defer analysis of existing building pad asbestos until after project approval. That analysis by law should occur before consideration of project approvals.

F. The Biological Assessment at Attachment G Is Inadequate.

The 1985 EIR for another project at the same site recognized project biological impacts including (1) removal of locally unique beach strawberry, (2) removal of coastal prairie grassland, (3) removal of approximately 33 existing trees, and (4) detrimental impacts on the remaining Monterey pines by directly destroying roots and compacting soils. None of these impacts are disclosed by the Staff Report or the Biological Assessment at Attachment G thereto.

Further, as discussed above, the Staff Report and Attachment G do not discuss impacts to Montara Creek, the Fitzgerald ASBS or wetlands at the Ocean, or impacts to California red-legged frogs in the Montara Creek riparian area.

G. The Analysis of Aesthetic Impacts Does Not Consider the Height of the Proposed Project in Evaluating Consistency with Community Scale and Character.

It is undisputed that Midcoast standards limit building maximum height to 28 feet. MidPen has proposed 36 feet, but the County's proposed PUD-140 designation does not even limit the project to this height, instead using only maximum height of all proposed buildings shall not exceed two stories and shall conform to that shown on the conceptual plans.

There has been no analysis of whether this height will be a significant adverse aesthetic impact. This despite that height limitations are a criteria under the San Mateo County Community Design Manual (San Mateo County 1976).

Further, the County is impermissibly deferring analysis of whether the

project design will conflict with applicable General Plan or Zoning Ordinance provisions. The “mitigation” for this is to conduct the required analysis after the PUD is amended. This procedure turns CEQA on its head by approving the project first, and conducting the analysis of impacts later.

H. The Analysis of Mitigation Measures is Flawed.

CEQA requires analysis of mitigation measures prior to project approval. Yet here the County is prepared to impermissibly defer discussion of mitigation measures until after approval of the LCP, zoning and PUD amendments.

The Staff Report states that it is only “At the time a CDP application for development of the site is being considered, the specific actions that will be taken to address the project’s impact on traffic, safety, and circulation will be identified.”

Similarly, MidPen proposes to push an intersection control evaluation onto Caltrans, to be completed after project approval during the design phase. Likewise, MidPen has impermissibly deferred discussion of mitigations in its proposed Mitigation Measures TRAF-1A and TRAF-1B. TRAF-1B consists of a vague “Transportation Demand Management plan” which will not even be formulated for public review until after project approval. TRAF-1B is proposed as the mitigation measure for seven of the identified significant traffic impacts, and the *sole* mitigation for “unavoidable” impacts TRAF-4, TRAF-3C, TRAF-3B, TRAF-3A and TRAF-2B. This poorly thought through measure includes one grocery cart that residents would walk one-mile round-trip coming back up a steep street, as little as one car share parking space, bus schedules, and the illusory “additional measures that may become available.” As MidPen is forced to acknowledge, the effectiveness of this plan can “not” be guaranteed.

The traffic report avoids any consideration of the traffic impacts of proposed restrictions on traffic movements (roundabouts, new signal lights, closing Carlos St., left turn restrictions) proposed as mitigations. Under CEQA, impacts of proposed mitigations themselves must be analyzed for potential impacts.

Traffic impacts are called “unavoidable” simply because MidPen and the County have not undertaken an adequate analysis of potential mitigation measures.

I. The County Has Not Evaluated Cumulative Impacts.

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. CEQA Guideline 15355. The Coastal Act and Coastal Commission regulations likewise require an analysis of the potential significant adverse cumulative impacts on coastal resources and on public access to or along the coast,

due to existing and potentially allowable development proposed in the LCP. 14 CCR § 13511, subd. (b); Coastal Act 30250.

The Staff Report and Attachments have not even included a cumulative impact analysis in its submission to the Planning Commission.

**V. The Proposed Project is Inconsistent with the Coastal Act and the San Mateo County LCP.**

Even with the inadequate environmental review MidPen has submitted to date, it is clear that that the proposed project is inconsistent with the Coastal Act and the San Mateo County LCP.

A. Traffic Impacts.

The proposed project will result in increased congestion and negative traffic impacts in violation of the Coastal Act and the San Mateo County Local Coastal Plan.

The proposed project 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.

There has been no analysis yet of vehicle miles traveled.

There has not been adequate consideration of cumulative traffic impacts which takes into account traffic from tourism, the Big Wave project, Best Western Hotel Half Moon Bay, Pacific Ridge, Mavericks Multiplex and other approved and reasonably foreseeable projects.

B. Public Access.

The proposed project will adversely impact public access to the coast and coastal resources in violation of the Coastal Act and the San Mateo County Local Coastal Plan.

Pedestrians crossing Highway 1 to access the coast or public transit are at great risk of being hit by oncoming traffic.

Since the Project will likely increase the pedestrian demand for crossing

State Route 1 at an unmarked crossing location with inadequate sight distance, the Project will increase the hazard for this crossing, resulting in a significant impact.

C. Community Character.

Pursuant to LCP 3.13, new development providing significant housing opportunities for low and moderate income persons must contribute to maintaining a sense of community character by being of compatible scale, size and design. So too, under Coastal Act section 30251, permitted development must be visually compatible with the character of surrounding areas.

Here, in contrast, the County is prepared to approve building height out-of-character with the surrounding community, and defer analysis of design compatibility until after amendment of the LCP.

D. Discharge to Montara Creek and the Fitzgerald Area of Specific Biological /Significance.

Discharge of storm water runoff to Montara Creek and the Fitzgerald ASBS may violate Coastal Act provisions providing “special protection” to areas and species of special biological significance. Coastal Act section 30230 & 30240. Marine resources and the biological productivity of coastal waters must be sustained. Id. Runoff is required to be controlled and alteration of natural streams must be minimized. Coastal Act section 30231.

In addition, Coastal Act section 30253(b) requires that new development neither create nor contribute significantly to erosion of the surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms. Discharge of storm water into Montara Creek and the Fitzgerald ASBS raises serious concerns about whether this discharge over time will lead to erosion or alteration of natural landforms.

Neither MidPen nor the County has conducted the analysis to ensure that these Coastal Act provisions are adhered to. Instead, the project hydromodification report has been withheld from the Staff Report to the Planning Commission.

E. Minimizing Risks in Areas of High Fire Hazard.

The Coastal Act requires that new development minimize risks to life and property in areas of high fire hazard. As discussed above, 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 – decreases traffic circulation in the event of an emergency.

F. Development Limited to 40 Units / Year in the Midcoast.

The Local Coastal Plan limits the number of new dwelling units built in the urban Midcoast to a maximum of 40 units per year. The reason for this limit is to ensure that roads, utilities, public works facilities and community infrastructure are not overburdened by rapid residential growth.

To date, there is no comprehensive transportation management plan for this area, and there is no evidence that sewage pipe reliability is adequate to avoid sewage overflows and water quality violations. In fact, over 100 sewage spills have occurred since 2011 according to review of public records. Even without MidPen's proposed development, the sewage pipe system serving this area has been grossly inadequate during storm events. Over 557,103 gallons of raw sewage have spilled into the Pacific Ocean and Half Moon Bay – almost entirely because of structural pipe failures. Further, tens of thousands of gallons of inadequately treated sewage has been released onto streets in residential neighborhoods within the City of Half Moon Bay, El Granada, Montara, Miramar, Moss Beach, and Princeton by the Sea.

The Project – as currently proposed – will add new sewage lines which only exacerbate the serious existing sewage problems. There is no evidence that sewage pipe reliability is adequate to avoid sewage overflows and water quality violations.

There has been no showing that the proposed project will be served with adequate water supplies and wastewater treatment facilities. LCP 1.19.

G. The Proposed Project Violates the Coastal Act Provisions Against Leap Frog Development.

The Coastal Act requires that new residential development must “be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it”, and “where it will not have significant adverse effects, either individually or cumulatively on coastal resources.” Coastal Act section 30250. It is clear that the traffic, public access, emergency evacuation, hazardous material, and discharge impacts of the proposed project are likely to have significant adverse impacts, and that after years of preparation neither MidPen nor the County are willing to engage in necessary analysis of impacts and mitigations for the project. Numerous traffic impacts are undoubtedly unavoidable. Thus, the project violates the Coastal Act.

Also, where as here, existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. 30254. Yet, this proposed project precludes basic traffic, sewage, and water services to other developments.

#### H. Impediments to Public Participation.

San Mateo County has informed the public for close to a year that “the next opportunity for public input will be when the project is formally brought before the Midcoast Community Council for their consideration and recommendation at a later date.” See <https://planning.smcgov.org/cypress-point-affordable-housing-community-project>.

Yet, the project is now before the San Mateo Planning Commission without consideration by the Midcoast Community Council. In so doing, MidPen and San Mateo County have not provided the public maximum opportunity to participate in the LCP amendment process, as required by Coastal Act section 30503.

#### Conclusion

For the reasons above, the proposed Cypress Point project 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 taking into account the social and economic needs of the people, or (3) maximize public access to and along the coast. Coastal Act § 30001.5