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**Exempt from Filing Fee Pursuant to
Government Code § 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

13 **MIDCOAST ECO,**
14
Petitioner and Plaintiff,
15
v.
16
CALIFORNIA COASTAL COMMISSION,
17
Respondent and Defendant,
18
SAN MATEO COUNTY; SAN MATEO
19 **COUNTY BOARD OF SUPERVISORS,**
20
Real Parties in Interest and
21 Defendants.
22

Case No. CPF-21-517430

**RESPONDENT AND DEFENDANT
CALIFORNIA COASTAL
COMMISSION'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PETITIONER
MIDCOAST ECO'S OPENING BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE**

Date: December 5, 2022
Dept: 503
Judge: The Honorable Cynthia M. Lee
Hearing Date: February 23, 2023
Action Filed: April 21, 2021

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1 Respondent and Defendant California Coastal Commission (“Commission”) submits this
2 opposition¹ to the opening brief filed in support of Petitioner Midcoast ECO’s Verified Petition
3 for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

4 INTRODUCTION AND SUMMARY OF RESPONSE

5 More than ever, California needs to reshape development patterns and provide housing for
6 low- to moderate- income individuals and families in coastal areas previously inaccessible to
7 marginalized communities. For much of the Coastal Act’s history, the Commission was not
8 authorized to require the provision of affordable housing in the coastal zone. When it adopted an
9 environmental justice policy in 2019, the Commission acknowledged that the elimination of
10 affordable coastal neighborhoods pushed low-income communities of color further from the
11 coast, limiting access for disadvantaged communities and increasing disparities and barriers to
12 coastal access. (See e.g., Administrative Record (“AR” or “Record”) 7256.) The Commission
13 recognized that, while not mandated, the Coastal Act directs it to encourage the protection of
14 existing, and the provision of new, affordable housing opportunities in the coastal zone. (See Pub.
15 Resources Code, § 30604, subs. (f) and (g).)² The Commission committed to work with local
16 governments to adopt local coastal program (“LCP”) policies that allow for a broad range of
17 housing types, including affordable housing, in a manner that protects coastal resources.

18 The present dispute involves Petitioner’s desire to prevent an affordable housing
19 development in the coastal zone, on an approximately 11-acre parcel (“site”), near its homes in
20 San Mateo County (“County”). (Petitioner’s Opening Brief (“POB”) 7; AR 7234.) The parcel at
21 issue is not pristine; it is a former military installation housing remnants of barracks, offices, and
22 drill fields surrounded by other, existing development. (AR 9, 556.) In 1986, the County zoned
23 the parcel for 148 market rate and affordable residential housing units, pursuant to a Commission-
24 certified LCP. (AR 15, 26, 4397.) Now, the County seeks to down zone the parcel to
25 accommodate only 71 fully affordable housing units to attract future development. (AR 1.) To
26 rezone the parcel, the Commission must first certify an amendment to the County’s LCP.
27 Petitioner challenges the amendment, asserting Commission certification violated the California
28 Environmental Quality Act (“CEQA”) and Coastal Act. (POB 7.)

Petitioner’s challenge fails. Petitioner’s claims confuse the environmental review the

1 Pursuant to section 4.d. of the Court’s briefing Order, the lines on each page of this brief
are one and one-half spaced.

² All further unspecified statutory references are to the Public Resources Code.

1 Commission undertakes to certify an LCP (or LCP Amendment) with the review the County must
2 undertake to grant a coastal development permit (“CDP”) for any future, site-specific project. An
3 LCP³ is a plan-level document that local governments prepare to implement Coastal Act
4 requirements at the local level; and, once certified by the Commission, LCPs allow local
5 governments to issue individual CDPs for projects in the coastal zone. Here, the Commission’s
6 review of an amendment to the County’s certified LCP is programmatic; that is, the review
7 focuses generally, at a high-level, on whether proposed changes in the LCP Amendment that
8 affect the Land Use Plan (“LUP”) portion of the LCP are consistent with the policies in Chapter 3
9 of the Coastal Act and proposed changes that affect the Implementation Plan (“IP”) portion of the
LCP are consistent with LUP policies.

10 Here, the Commission analyzed the LCP Amendment’s potentially significant
11 environmental effects on traffic and circulation, public services, fire hazard response, hazardous
12 materials, visual resources, community character, and biological resources. (AR 33.) The
13 Commission analyzed the LCP Amendment’s effects on coastal resources under Chapter 3 of the
14 Coastal Act and existing LCP policies, depending on whether modifications affect the LUP or IP
15 portions of the LCP. (AR 1–2.) The Commission’s review was based on substantial evidence in
16 the entire Record. (AR 26.) Based on that review, the Commission found the LCP Amendment
17 would not result in any significant environmental effects and concluded no alternatives or feasible
18 mitigation measures are warranted. (AR 5, 24–25, 26.) As a result, the Commission met its
review obligation under CEQA and the Coastal Act.

19 Further, the Commission analyzed reasonably foreseeable impacts, did not defer any
20 impacts analysis, and properly compared the LCP Amendment to the existing LCP zoning. (POB
21 7.) The Commission cannot evaluate future impacts because the LCP Amendment allows smaller
22 or different projects and the precise density, design, and configuration of future development are
23 not within the Commission’s control. (AR 33.) Nonetheless, the Commission staff reviewed
24 material related to a proposed development project on the parcel, and relied on it in its analysis.
25 (AR 25, 1566–67, 1574–76, 1578–80, 1582–1615.) The Commission did not defer an impacts
26 analysis, where a specific, future project will be subject environmental review during the
County’s CDP process. (See e.g., AR 23, 26.) The Commission properly used the LCP to serve as

27 ³ Pursuant to section 30108.6, “local coastal program” means a local government’s (a)
28 land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal
resources areas, other implementing actions, which, when taken together, meet the requirements
of, and implement the provisions and policies of, this division at the local level. (See AR 4397.)

1 the baseline and properly evaluated the LCP Amendment for consistency with the relevant
2 provisions of the Coastal Act and LCP. (AR 2.) Even so, the Commission staff reviewed and
3 relied on the no project alternatives analysis, which is identical to the existing conditions baseline
4 Petitioner advocates. (POB 7.)

5 As demonstrated below, substantial evidence in the Record supports the Commission’s
6 decision to certify the LCP Amendment.

7 **STATEMENT OF RELEVANT FACTS**

8 The Commission incorporates by reference the County’s Statement of Relevant Facts.

9 **SUMMARY OF THE COASTAL ACT**

10 To provide perspective to Petitioner’s claims, the Commission provides a brief overview of
11 the Coastal Act framework in which this case arose.

12 **I. THE COASTAL ACT’S BASIC GOALS AND POLICIES.**

13 The Coastal Act is a “comprehensive scheme to govern land use planning for [California’s]
14 entire coastal zone[.]” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012)
15 55 Cal.4th 783, 793 [citing *Yost v. Thomas* (1984) 36 Cal.3d 561, 565].) The primary reason
16 behind its adoption was to avoid the “deleterious consequences” of development on coastal
17 resources. (*CEED v. Cal. Coastal Zone Conserv. Com.* (1974) 43 Cal.App.3d 306, 321.) The
18 Coastal Act is to be “liberally construed to accomplish its purposes and objectives.” (§ 30009.)

19 The Legislature declared that a basic goal of the Coastal Act is to “[m]aximize public
20 access to and along the coast and maximize public recreational opportunities in the coastal zone
21 consistent with sound resources conservation principles and constitutionally protected rights of
22 private property owners.” (§ 30001.5, subd. (c).) Another goal is to “[p]rotect, maintain, and,
23 where feasible, enhance and restore the overall quality of the coastal zone environment and its
24 natural and artificial resources.” (§ 30001.5, subd. (a).) “To achieve this goal, the Act sets forth
25 specific policies governing public access, recreation, the marine environment, land resources, and
26 development along the coast.” (*McAllister v. Cal. Coastal Com.* (2008) 169 Cal.App.4th 912,
27 922; §§ 30210–30265.5, 30001.5, 30512, 30513.) These policies govern the permissibility of
28 proposed development in the coastal zone. (§ 30200, subd. (a).)

29 **II. LOCAL COASTAL PROGRAMS UNDER THE COASTAL ACT.**

30 The Coastal Act vests the Commission with primary authority to implement the Coastal
31 Act, including issuing permits for any development in the coastal zone. (§§ 30330, 30600, subd.
32 (a).) To encourage local cooperation in planning and development in the coastal zone, the Coastal

1 Act requires local governments in the coastal zone to prepare and submit for Commission
2 certification a local coastal program consisting of land use plans, zoning ordinances, zoning
3 district maps, and other implementing actions that satisfy the Coastal Act. (§§ 30001.5, 30108.6,
4 30500–30535; *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 272.) Once
5 certified by the Commission, the local government assumes permitting authority in the coastal
6 zone, with certain exceptions, and with certain rights to appeal permit decisions to the
7 Commission. (§ 30519, subd. (a), 30600, 30603.)

8 To certify a local government’s LCP, the Commission must find that it conforms to the
9 Coastal Act’s policies. (§§ 30200–30265.5.) Generally, the Commission may not certify an LCP
10 unless it meets the policies and requirements of Chapter 3 of the Coastal Act. (§§ 30200, subd.
11 (a), 30512, 30513, 30514, subd. (a).) Chapter 3 contains the basic policies governing public
12 access, recreation, visual and scenic resources, protection of the coastal and marine environment,
13 including environmentally sensitive habitat areas, wetlands, water quality, agricultural and timber
14 land, and minimization of geologic hazard, as well as standards for coastal development. (§§
15 30200–30255.) More specifically, the Commission must certify the LUP portion of an LCP (or
16 any amendments thereto) if the LUP “meets the requirements of, and is in conformity with, the
17 policies of Chapter 3.” (§ 30512, subd. (c).) It must certify the IP portion of an LCP (or any
18 amendments thereto) unless it finds that it “do[es] not conform with, or [is] inadequate to carry
19 out, the provisions of the certified land use plan.” (§ 30513; *Ross v. Cal. Coastal Com.* (2011)
20 199 Cal.App.4th 900, 928 (“*Ross*”).)

21 After the Commission initially certifies the LCP and the local government assumes
22 permitting authority, the local government may amend any portion of the LCP (i.e., any portion of
23 the LUP and any of its implementing ordinances, regulations and other actions). (See *City of*
24 *Malibu v. Cal. Coastal Com.* (2012) 206 Cal.App.4th 549, 554 [explaining the LCP amendment
25 process].) An amendment is not effective until certified. (§ 30514, subd. (a).) The local
26 government may not change land use designations in the LCP without submitting an amendment
27 to the Commission for certification. (§ 30514, subd. (e).) The Commission reviews and certifies
28 any amendment to a certified LCP according to the standards applicable to its initial certification.
(§§ 30512, subd. (c), 30513, 30514, subd. (b).)

Petitioner’s claims arise under this statutory framework. The County has a certified LCP⁴

⁴ The Commission certified the County’s LCP in 1980. (AR 6970, 6235–7228.)

1 and, in March 2021, it submitted for Commission certification an amendment to the LCP. (AR
2 4719.) As required, the Commission reviewed the proposed amendment for consistency with
3 Chapter 3 of the Coastal Act (for proposed changes to the LUP) and the County’s certified LUP
4 (for proposed changes to the IP) and found the amendment consistent with both. (§§ 30512,
5 30514, subd. (b); Cal. Code Regs., tit. 14, §13542, subd. (c).)

6 STANDARD OF REVIEW

7 The Commission’s decisions are reviewed for substantial evidence.⁵ (See *Ebbetts Pass*
8 *Forest Watch v. Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 944 (“*Ebbetts Pass*”)
9 [reviewing for abuse of discretion, which is established in the absence of substantial evidence].)
10 Under this test, the court determines whether substantial evidence supports the Commission’s
11 findings and whether the findings support its decision. (*LT-WR LLC v. Cal. Coastal Com.* (2007)
12 152 Cal.App.4th 770, 780 [stating trial court’s review standard].) Substantial evidence supporting
13 a Commission decision may include expert opinion, oral presentations at the public hearing, staff-
14 prepared written materials and testimony, and even reasonable inferences. (See *Feduniak v. Cal.*
15 *Coastal Com.* (2007) 148 Cal.App.4th 1346, 1360 [expert technical opinions and inferences];
16 *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 660–661 [staff opinions].)

17 “The trial court presumes that the agency’s decision is supported by substantial evidence,
18 and the petitioner bears the burden of demonstrating the contrary.” (*McAllister v. Cal. Coastal*
19 *Com.*, 169 Cal.App.4th at p. 921.) On review, the court “examines the whole record and considers
20 all relevant evidence, including evidence that detracts from the decision.” (*Id.*) The court may not
21 overturn a Commission finding because “a contrary finding would have been equally or more
22 reasonable.” (*West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198
23 Cal.App.4th 1506, 1518.) The court “may reverse [the Commission’s] decision only if, based on
24 the evidence before it, a reasonable person could not have reached the conclusion reached by it.”
25 (*Kirkorowicz v. Cal. Coastal Com.* (2000) 83 Cal.App.4th 980, 986.)

26 ARGUMENT⁶

27 Petitioner asserts that the Commission violated CEQA and the Coastal Act in certifying the
28

25 ⁵ Under CEQA’s implementing regulations, “[s]ubstantial evidence” is “enough relevant
26 information and reasonable inferences from this information that a fair argument can be made to
27 support a conclusion, even though other conclusions might also be reached.” (Cal. Code. Regs.,
28 tit. 14, § 15384.)

⁶ To avoid burdening the Court with duplicative arguments, the Commission joins in the
arguments made in the County’s brief. (See *Save S.F. Bay Assn. v. S.F. Bay Conservation etc.*

1 LCP Amendment.⁷ (POB 7.) Petitioner’s opening brief addresses CEQA first and the Coastal Act
2 second, placing substantial weight on the CEQA arguments. (POB 2.) To avoid confusion, the
3 Commission likewise will address CEQA first and the Coastal Act second; even though the
4 Coastal Act establishes the parameters that guide the Commission’s review of the LCP
5 Amendment and, as an agency with a certified regulatory program,⁸ the Commission is obligated
6 to adhere to the Coastal Act. To avoid duplication, the Commission notes that its arguments
7 relating to the impacts analysis under CEQA apply equally to the analysis of harm to coastal
8 resources under the Coastal Act.

8 **I. THE COMMISSION COMPLIED WITH CEQA.**

9 The Commission’s review and approval of coastal development permits is a certified state
10 regulatory program exempt from CEQA’s requirement to prepare a written environmental impact
11 report (“EIR”).⁹ (§ 21080.5; see *Pesticide Action Network North America v. Cal. Dept. of*
12 *Pesticide Reg.* (2017) 16 Cal.App.5th 224, 239 (“*PANNA*”) [“[N]o mandate for such programs to
13 prepare initial studies, negative declarations, and EIRs.”].) As such, the environmental review
14 document prepared using the agency’s own regulations are considered the “functional equivalent”
15 of an EIR. (*Ebbetts Pass, supra*, 43 Cal.4th at p. 943.) The “functional equivalent” document
16 must include a description of the proposed project, its significant adverse impacts, and a
17 discussion of alternatives and feasible mitigation measures; the document also must be made
18 available for review and comment by the public and other agencies. (See *Sierra Club v. State Bd.*
19 *of Forestry* (1994) 7 Cal.4th 1215 [requirements]; § 21080.5, subd. (d)(3).) The form of analysis
20 in a functional equivalent document need not replicate that required by the CEQA Guidelines.

20 *Com.* (1992) 10 Cal.App.4th 908, 919 [noting parties can join in the arguments of others].)

21 ⁷ The Commission incorporates by reference the County’s arguments related to
22 completeness of the LCP Amendment and joins in those arguments.

22 ⁸ The Commission is certified by the Secretary to conduct environmental reviews under
23 section 21080.5. (See §§ 30000–30900; Cal. Code. Regs., tit. 14, § 15251, subd. (f).) An agency
24 with a certified regulatory program is exempt from Chapters 3 and 4 of CEQA (sections 21100
25 through 21154), section 21167, and from the requirement to prepare an EIR, regardless of the
26 contents of its certified program. (*PANNA, supra*, 16 Cal.App.5th at 240.) As a result, the
27 Commission produces staff reports when it considers an amendment to a LCP, and its staff report
28 serves as the environmental review document. (*Kaczorowski v. Mendocino County Bd. of*
Supervisors (2001) 88 Cal.App.4th 564, 569; § 21080.5; Cal. Code Regs., tit. 14, § 13057.)

25 ⁹ Section 21080.5 declares that, when “the regulatory program of a state agency requires a
26 plan or other written documentation containing environmental information . . . the plan or other
27 written documentation may be submitted in lieu of the environmental impact report required by
28 this division if the Secretary of the Resources Agency has certified the regulatory program
[citing omitted]; see also *Seghesio v. County of Napa* (1982) 135 Cal.App.3d 371, 374
[explaining the history and construction of section 21080.5].)

1 (See *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1422.)
2 The “document is generally narrower in scope than an EIR” to afford expeditious environmental
3 review. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 113;
4 *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 610
5 [abbreviated rather than complete EIR].)

6 Here, the Commission’s final adopted findings fulfill the role of a “functional equivalent”
7 document. (AR 1, 25.) They adequately described the LCP Amendment (AR 1–2, 6–7); identified
8 and evaluated the LCP Amendment’s potential adverse environmental effects (AR 21–22, 26–
9 32); and, considered whether those effects necessitated the adoption of alternatives or feasible
10 mitigation measures (AR 25). (AR 4492, 6177; see *Santa Barbara County Flower & Nursery*
11 *Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 872 [“EIR is not
12 required for the approval of an LCP or LCP amendment by the Commission”].) Petitioner
13 previously acknowledged that the Commission’s staff report would be narrower than an EIR and
14 that the Commission’s review would be limited to review of the LCP Amendment—and not a
15 future, site-specific project. (POB 9; AR 24–25, 4753; § 21080.5, subd. (d)(3)(A); Cal. Code
16 Regs., tit. 14, § 15252, subd. (a)(2)(A).)

17 **A. The Staff Report Appropriately Examined Submitted Documents.**

18 The Commission appropriately examined Record documents to decide whether to certify
19 the County’s LCP Amendment. (POB 9; see *Ross, supra*, 199 Cal.App.4th at p. 943 [noting the
20 Commission reviews the entire record, which could include project-level analysis].) The
21 Commission staff report adequately identified the documents it examined in reaching its
22 conclusions and recommending approval of the LCP Amendment. (See Cal. Code Regs., tit. 14, §
23 15252; AR 2, 4556.) In particular, the staff report explicitly states staff examined the entire
24 Record, which includes extensive expert technical materials, reports, and findings submitted by
25 the County, as well as public comments and responses thereto, and a substantive file of listed
26 documents. (AR 26, 34, 80–90, 1566–67, 1574–76, 1578–80, 1582–1615, 2133–34, 3414–31,
27 3543–46, 5153–6064, 6213–30, 7230–31.) The report also appropriately concluded the
28 amendment would have no significant or potentially significant environmental effects making
alternatives and mitigation unnecessary. (AR 25; see Cal. Code Regs., tit. 14, § 15252.)

B. The Commission Adequately Considered the LCP Amendment’s Impacts.

The Commission’s consideration of the LCP Amendment’s impacts on the environment (as
required under CEQA) and harm to coastal resources (as required under the Coastal Act) are

1 similar. To avoid duplication, the Commission addresses the impacts analysis here and does not
2 replicate the discussion in Section II, unless necessary to address Petitioner’s specific contentions.

3 **1. The Commission evaluated reasonably foreseeable impacts.**

4 The LCP Amendment is the only action before the Commission. Cypress Point is not before
5 the Commission.¹⁰ The Commission independently reviews the LCP Amendment, which is
6 distinct from the County’s review of any future CDP application for the Cypress Point
7 development. (AR 4493–95.) The Commission may have appellate review authority over a CDP
8 decision, but only after the County first reviews the CDP application and decides whether to
9 approve or deny it. (AR 1537.) While MidPen (Cypress Point’s developer) intends to prepare a
10 future CDP application (AR 3478), Cypress Point’s plans were—and are—still preliminary (AR
11 1537). Any future development would be heavily market driven. (AR 1549.) Nonetheless, the
12 Commission reviewed voluminous technical materials in the Record to evaluate the LCP
13 Amendment’s impacts, including reasonably foreseeable ones. (POB 10; AR 26, 4627–29.)

14 The Commission is not required to consider impacts from possible future development that
15 could be subject to its own review process. (See *Topanga Beach Renters Assn. v. Dept. of Gen.*
16 *Services* (1976) 58 Cal.App.3d 188, 196 [noting if plans are speculative and not compelled,
17 evaluation of future environmental effects must await future decisions on such plans]; Cf. *Save*
18 *Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 [Commission cannot pre-commit where it
19 takes no definite course of action].) The Commission does not err by limiting review to those
20 impacts attributable solely to a proposed zone change. (See *Union of Medical Marijuana Patients,*
21 *Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1192–1193 [noting zoning change not inflexibly
22 a CEQA “project” requiring environmental review]; AR 33.) CEQA is violated only when
23 authority to approve or disapprove a project is separated from the responsibility to complete the
24 related environmental review. (See *POET, LLC v. State Air Resources Bd.* (2013) 218
25 Cal.App.4th 681, 731 (“*POET*”) [noting agency may not delegate environmental review];
26 *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360
27 [finding agency may have dual independent/appellate authority over project].) Here, the
28 Commission could not review Cypress Point before the County because it would be premature,
given the County’s responsibility to first issue a CDP (§ 30519, subd. (a)); and, therefore, the

¹⁰ The “project” at issue and before the Commission is not Cypress Point. Reports related to environmental impacts contained in the Record were informative, but not determinative of the LCP Amendment’s impacts.

1 Commission would violate CEQA as a “prohibit[ed] delegation of authority to a person or entity
2 that is not a decisionmaking body[.]” (*POET*, 218 Cal.App.4th at p. 731.)

3 The LCP Amendment defines some of the maximum development parameters for the site; it
4 does not foreclose development of a smaller or different project at the site; and, it will not require
5 any development at the site, all of which are outside the Commission’s current purview and
6 control. (AR 33.) Rather than affect the environment or harm coastal resources, the LCP
7 Amendment limits the scope and scale of residential development allowed on the site, thereby
8 constraining potential future impacts of any development that the County could authorize. Even
9 so, the Commission considered Cypress Point’s potential impacts. (AR 32–33, 201–26.) The
10 Commission’s staff report evaluated the LCP Amendment’s associated site plan, which tracks
11 Cypress Point in that it accommodates a maximum of 71 affordable housing units, in 18 two-story
12 residential apartment buildings with a maximum height of 28 feet, and 142 uncovered parking
13 spaces. (AR 6–7, 44–50, 7234, 7241, 7836, 7388.) Technical analyses in the Record demonstrate
14 that the site could accommodate a project of Cypress Point’s scale. (AR 27, 1683–1744.)

15 *Ross, supra*, is instructive. In *Ross*, the city approved a project subject to the Commission’s
16 certification of an LCP amendment to reduce the minimum lot width for area beachfront parcels.
17 (199 Cal.App.4th at pp. 910–911.) There, as here, the Commission considered the environmental
18 impacts of the zoning change to assess whether it conformed to the city’s LUP. (*Id.* at pp. 926–
19 930.) As discussed, the staff report, the addendum, and the presentation address the impacts,
20 including impacts that are reasonably foreseeable, from the LCP Amendment. (AR 23–24; 29–33;
21 4625–30; 7385–89.) As staff acknowledged, the LCP Amendment’s approval could allow for any
22 number of future projects conforming to the Amendment’s minimum standards, and the precise
23 design, density, and configuration of such future projects would be speculative. (AR 33.)

24 Petitioner previously acknowledged that the Commission’s review would not reach Cypress
25 Point’s reasonably foreseeable impacts, which makes sense. (AR 4755.) Nevertheless, Petitioner
26 repeatedly refers to the “project” when discussing technical reports that assess Cypress Point’s
27 impacts, not the LCP Amendment, and misleadingly suggests that these reports found significant
28 impacts associated with the proposed LCP Amendment. The Commission distinguishes the LCP
29 Amendment from Cypress Point and encourages the Court to avoid making the same mistake as
30 Petitioner. The Commission is neither the project proponent, nor the lead agency¹¹ charged with

¹¹ The County is the lead agency charged with approving Cypress Point. (Cal. Code Regs.,
tit. 14, §§ 15050, 15051.)

1 Cypress Point’s review. (AR 4631.) MidPen, as the project applicant, will need a CDP from the
2 County (the appropriate permitting decisionmaking body) and that process will require project-
3 level environmental review. (AR 1565.) And, while the Commission’s findings acknowledged
4 that the LCP Amendment is project-driven (POB 10), the Commission is required only to analyze
5 the “LCP Amendment that reduces the allowed density and modifies development standards for
6 [the site].” (AR 33, 4631.) Because the LCP Amendment will not require site development,
7 “future development depends on many factors not within the Commission’s control. The primary
8 impact of the LCP Amendment is to prevent development of a more dense project, and it requires
9 future residential development on the site to consist of 100% affordable housing.” (AR 4631.)

9 **2. The Commission did not improperly defer any analysis of impacts.**

10 The Commission did not improperly defer analysis of the LCP Amendment’s impacts as
11 Petitioner suggests. (POB 11.) Deferring analysis of site-specific impacts is appropriate where, as
12 here, the specific project will be subject to its own environmental review. (See *Towards*
13 *Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 681 [effects of rezoning
14 sufficiently disclosed in EIR].) Deferral may be appropriate where the action involves approving
15 or amending a planning document or zoning change. (See *Schaeffer Land Trust v. San Jose City*
16 *Council* (1989) 215 Cal.App.3d 612, 625–626 [planning documents by nature are tentative and
17 subject to change; distinguishing *City of Carmel-By-The-Sea v. Bd. of Supervisors* (1986) 183
18 Cal.App.3d 229, 250 (“*Carmel-By-The-Sea*”) because impacts of rezoning may be speculative].)

18 The Commission considered potential environmental impacts, including those to water and
19 sewer, traffic and circulation, fire hazards, hazardous materials, habitat resources, and public
20 views and community character. (AR 26–32.) Where appropriate, the Commission reviewed and
21 relied on technical analyses that evaluated impacts from both the LCP amendment and Cypress
22 Point. (AR 27, 28, 30, 34, 94–1504, 1564–68, 1683–1713, 1714–44.) Petitioner improperly
23 focuses on the fact that the staff report and addendum do not include an EIR-type of analysis.
24 (POB 12.) But, the Record contains an adequate, and appropriately abbreviated, impacts analysis
25 of the LCP Amendment and Cypress Point. (AR 64, 7001, 7019, 7033, 7047–48, 7107, 7135.)

25 **3. The Commission appropriately compared the Amendment to the
26 existing LCP and properly made consistency findings.**

26 Petitioner asserts the Commission should have evaluated the LCP Amendment to the site’s
27 existing environment and not to the existing LCP zoning. (POB 12, 21.) Petitioner’s assertion
28 fails. Courts generally defer to an agency’s selection for comparison of impacts (i.e., the

1 baseline). (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013)
2 57 Cal.4th 439, 450, 454 [deferring to agency’s baseline selection].) And, while comparison to
3 existing conditions is the norm, if the “no project alternative analysis” is identical to the “existing
4 environmental setting analysis,” then the comparison is satisfied.

5 When a proposed project includes a revision of a plan or policy, the project’s impacts are
6 ordinarily assessed against existing conditions, and hypothetical future conditions under the
7 existing plan are treated as a no-project alternative. (1 Kostka & Zischke, Practice Under the Cal.
8 Environmental Quality Act (Cont.Ed.Bar 2d ed. 2020) § 12.21; see also Cal. Code. Regs., tit. 14,
9 § 15126.6, subd. (e)(3)(A).) “The purpose of describing and analyzing a no project alternative is
10 to allow decisionmakers to compare the impacts of approving the proposed project with the
11 impacts of not approving the proposed project.” (Cal. Code. Regs., tit. 14, § 15126.6, subd.
12 (e)(1).) “The ‘no project’ analysis shall discuss the existing conditions . . . as well as what would
13 be reasonably expected to occur in the foreseeable future if the project were not approved.” (Cal.
14 Code. Regs., tit. 14, § 15126.6, subd.(e)(2).) When a project requires an amendment to an existing
15 land use plan, the “no-project” analysis also may compare the proposed project’s impacts against
16 a project initiated under the existing plan. (Cal. Code. Regs., tit. 14, § 15126.6, subd. (e)(3)(A).)

17 The Commission reviewed an alternatives analysis that compared the impacts of a “no
18 project” alternative to the impacts from the proposed LCP Amendment, the existing LCP, and
19 Cypress Point. (AR 240, 247–66, 1755, 1768–82.) The “no project” alternative analysis assumed
20 that the site would remain undeveloped in its present physical condition. (AR 240.) Separately,
21 the alternatives analysis evaluated a buildout pursuant to existing PUD Zoning in the LCP. (AR
22 244, 248–49, 1759.) Both alternatives—the “no project” and the existing PUD Zoning—were
23 evaluated for all environmental impacts and compared to the potential impacts from
24 implementation of the LCP Amendment and Cypress Point. (AR 256–266, 1578–80, 1768–70.)
25 Petitioner failed to recognize this analysis. (POB 12–14.)

26 Petitioner cites *Communities for a Better Environment v. South Coast Air Quality*
27 *Management District* (2010) 48 Cal.4th 310 and *Carmel-By-The-Sea, supra*, to contend that
28 CEQA requires the Commission to analyze the impacts to the environment against the existing
physical condition, not the maximum permitted capacity. Petitioner’s reliance on these cases is
misguided. The Commission could only review and approve the LCP Amendment, not Cypress
Point. As discussed above, Petitioner blurs that distinction. Also, the “no project” alternative
analysis subsumes the existing conditions analysis, which is allowed under CEQA, and is the

1 exact analysis Petitioner requested. Petitioner may desire a more exhaustive analysis, but the
2 information in the Record complies with CEQA’s requirements. (See *Sierra Club v. City of*
3 *Orange* (2008) 163 Cal.App.4th 523, 548 [“[w]hile an EIR must ‘include sufficient information
4 about each alternative to allow meaningful evaluation, analysis, and comparison with the
5 proposed project’ ... ‘[t]he discussion of alternatives need not be exhaustive”].)

6 **4. Substantial evidence supports the Commission’s finding that the LCP
7 Amendment will not result in significant environmental impacts.**

8 As noted above, the Commission’s review is limited to impacts to the environment and
9 coastal resources from the LCP Amendment—and not Cypress Point. Impacts related to Cypress
10 Point, while informative, were not the Commission’s focus. The Commission explained its
11 conclusion that the LCP Amendment would have no significant impacts on the environment,
12 despite Petitioner’s contention to the contrary. (POB 14; AR 2, 32–34, 237–39, 4631, 4496.)

13 In compliance with CEQA, the Commission appropriately followed its certified regulatory
14 process and prepared written findings (the required functionally equivalent document) that
15 considered the LCP Amendment’s potential impacts on the environment and coastal resources
16 pursuant to the relevant standards and policies in CEQA, in Chapter 3 of the Coastal Act, and
17 when applicable, the LUP. The Commission considered the wealth of information in the Record
18 relating to traffic and circulation, public services, fire hazard response, hazardous materials,
19 visual resources, community character, and biological resources. Petitioner asks this Court to
20 substitute its judgment for that of the Commission and set aside approval because an opposite
21 conclusion could be equally or more reasonable, which is inappropriate on writ review. (See
22 *Laurel Heights Improvement Association v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376,
23 393 [“purpose of [CEQA] is not to generate paper, but to compel government at all levels to make
24 decisions with environmental consequences in mind. [CEQA] does not, indeed cannot guarantee
25 that these decisions will always be those which favor environmental considerations”].)

26 The present case is distinguishable from *Mountain Lion Coalition v. Fish and Game*
27 *Commission* (1989) 214 Cal.App.3d 1043, which Petitioner cites, where the court rejected a
28 cursory four-page cumulative impacts analysis that contained almost no information on project
impacts and “overlooked the significant environmental issues that had been brought to appellants’
attention” in a prior decision. (*Id.* at pp. 1051–1052.) Here, the Commission’s findings explain, in
detail and based on scientific technical studies in the Record, that the LCP Amendment would not
result in significant impacts. Although not required for review of an LCP Amendment, the

1 Commission considered information relating to project-level impacts even though it was not
2 reviewing a specific development project. As demonstrated below, the Commission did not
3 “sweep issues under the rug;” rather, it considered potential impacts to the environment and
4 coastal resources and reasonably concluded the proposed changes reducing the scope of allowable
5 development on the site would not result in significant impacts. (*Id.* at p. 1051.)

6 **a. The Commission reviewed soil and water-quality impacts.**

7 Commission staff evaluated potential impacts of hazardous materials present on the site and
8 proposed measures to address such impacts that could arise from site development. (AR 30.) The
9 Commission findings also addressed Petitioner’s concern regarding the potential for toxic
10 substances to be present on site, which could potentially impact groundwater and surface water
11 quality. (POB 14.) The Commission noted that potential impacts from contaminated soil could be
12 addressed through the preparation of a site management plan, which would be required during the
13 CDP application process for Cypress Point. (AR 30, 1692.) Therefore, the Commission
14 reasonably concluded the LCP Amendment does not result in significant and unavoidable impacts
15 to coastal resources due to hazardous materials (an analysis consistent with section 30253 and
16 LUP policy 1.18(c), POB 22–24) as any potential impacts could be addressed during the County’s
17 review and approval of a CDP for Cypress Point. (AR 30.)

18 **b. The Commission reviewed impacts to biological resources.**

19 The biological resources assessment disclosed that the site is not designated as a sensitive
20 habitat, does not contain any areas of special biological significance (“ASBS”) or
21 environmentally sensitive habitat areas (“ESHA”) (which are protected under sections 30230,
22 30231, 30240 and LUP policy 7.3, POB 24–26) and would not drain to Montara Creek. (AR 20,
23 1658.) A site investigation found no evidence of any rare or special status species. (AR 1932–39;
24 4404.) No documented special status species are present on the site and no wetlands, riparian or
25 other sensitive habitats were identified on the site. (AR 20, 4405.) No significant trees were
26 identified on the site that would necessitate removal. (AR 1662, 4406). The biological resources
27 assessment also noted that the California Red-legged frog has not been recorded on the site (AR
28 1937), contradicting Petitioner’s contention (POB 15). The Commission explained that LCP
habitat protections would continue to apply to future site development, including avoidance,
buffers and construction best management practices (“BMPs”) (AR 20.)

c. The Commission reviewed traffic impacts.

The Commission’s findings contain a thorough discussion of the potential traffic impacts

1 associated with the LCP Amendment (an analysis also consistent with section 30253, POB 26–
2 27). (AR 8–10, 28–29.) Contrary to Petitioner’s assertion, the traffic analysis in the Record and
3 the staff report do not conflict, because they evaluated impacts from separate activities that
4 undergo separate review. (POB 15.) The traffic impacts analysis analyzed impacts from Cypress
5 Point’s development (AR 1040), while the staff report evaluated impacts from the LCP
6 Amendment’s implementation (AR 28). The Commission found that the LCP Amendment results
7 in reduced traffic impacts as compared to development under the existing LCP; and, the County
8 would mitigate any impacts related to site development during the CDP process and with
9 implementation of the Connect the Coastside plan. (AR 2, 9–10, 16, 28.)

10 Further, the Commission recognized that site development would exacerbate existing traffic
11 deficiencies on Highway 1 and Carlos Street in particular. (AR 28, 1041.) But, the Commission
12 determined that the County must weigh options for mitigation of traffic impacts during the CDP
13 process. (AR 17; 2655 [Caltrans acknowledging the County “is responsible for all project
14 mitigation”].) The Commission noted that traffic controls could address increased traffic,
15 movement, and pedestrian safety. (AR 17, 23.) The only reason the traffic impacts analysis
16 determined seven significant and unavoidable impacts exist is that implementation of mitigation
17 are at intersections under Caltrans’ jurisdiction. (See e.g., AR 1083.)

18 **d. The Commission reviewed impacts to public views.**

19 The Commission’s findings addressed evidence concerning the potential impacts to public
20 views associated with the LCP Amendment (an analysis also consistent with section 30250). (AR
21 18, 20–21, 30–31.) The aesthetics and visual resources report, which includes a scenic resources
22 analysis, disclosed that Highway 1 is a scenic road in the site’s vicinity, and no other roads are
23 designated scenic, and development parameters contained in the existing LCP and the proposed
24 amendment would ensure that no site development affects public views. (AR 13, 1661, 1663,
25 4405.) Such development parameters contained in the LCP Amendment include a reduced
26 number of units from 148 to 71, a 28-foot limit on structure height, and a greater than 20-foot
27 setback. (AR 21, 4405–06.) The LCP Amendment’s parameters ensure development is
28 compatible with surrounding medium density land uses and located where it is least visible from
State and County Scenic Roads, particularly Highway 1. (AR 21, 4405–06.)

e. The Commission reviewed impacts to cultural resources.

The Commission’s findings addressed evidence concerning the potential impacts to cultural
resources associated with the LCP Amendment (an analysis also consistent with section 30250).

1 (AR 13–14, 18, 20). The cultural resources evaluation disclosed that the site is highly disturbed.
2 (AR 13.) The site is a former World War II military training facility, and concrete infrastructure
3 dating from that time period were noted on site. (AR 2001, 2003.) Surveys identified the potential
4 for subsurface cultural materials to be present in undisturbed portions of the site. (AR 13.)
5 Surveys also identified a potential mussel shell fragment midden, but determined the shell
6 fragment may have been imported to the site from more recent fill activities given the site’s
7 development history, the mixture of glass and plastic present with the deposit, and the heavy
8 disturbed nature of the site. (AR 13, 473, 2003.) The Commission reasonably concluded that the
9 proposed reduction in density would allow for greater opportunity to concentrate development
10 away from any significant cultural resource areas found on site as compared to the existing LCP.
(AR 13, 2004.)

11 **f. The Commission reviewed impacts to wildfire evacuation.**

12 The Commission’s findings addressed evidence relating to potential wildfire impacts of the
13 LCP Amendment (an analysis consistent with section 30253, POB 24). (AR 21–22, 29–30.) The
14 Commission noted that reduced development density under the LCP Amendment would improve
15 the ability to evacuate the site and surrounding area. (AR 22.) Contrary to Petitioner’s assertion,
16 the site is not within a designated Hazardous Fire Area. (AR 1674–75.) The site’s proximity to
17 the Moss Beach fire station and modern code requirements means future development would
18 reduce ignition risk and fire spread, thereby reducing widespread evacuation. (AR 29–30, 1694,
19 1709.) Nonetheless, site development would undergo environmental review at the CDP stage
20 during which the County could address emergency evacuation. (AR 29.)

21 **g. The Commission reviewed impacts to water and sewer capacity.**

22 The Commission’s findings address evidence concerning impacts relating to water and
23 sewer capacity (an analysis also consistent with section 30250, POB 27–29). (AR 8–9, 26–28.)
24 The public services and utilities report in the Record indicates that municipal facilities have
25 prioritized adequate water and sewer capacity to serve an affordable housing development at the
26 LCP Amendment’s proposed density of 71 units. (AR 27–28, 1023 fn. 3, 1024–25.) The County
27 already requires adequate water and sewer capacity be reserved for this site, which is surrounded
28 by existing development, in an amount sufficient to meet the current LCP density of 148 units.
(AR 27, 1020, 1025.) Thus, the proposed reduction in units would liberate water and sewer
capacity and be within the anticipated, projected growth capacity of those facilities. (AR 27.)

1 **C. The Commission Adequately Responded to Comments.**

2 The Commission responded to significant environmental issues raised in public comments
3 and reviewed responses to comments the County submitted with the LCP Amendment; as such,
4 the Record contradicts Petitioner’s claims to the contrary. (POB 16–19; AR 25–32, 80–90
5 [summary of responses], 1550–60 [summary of responses], 2133–34 [response to SWAPE],
6 4481–96 [summary of responses during public participation], 4623–32, 4984–5000; Cal. Code
7 Regs., tit. 14, § 13552 [as part of the LCP amendment submittal, local government must include a
8 summary of significant comments received and responses thereto].) The Commission is not
9 obligated to respond to comments submitted to the County on Cypress Point.

10 However, the Commission’s responses do not require the same level of detail as applicable
11 to an EIR. (See § 21080.5, subd. (d)(2)(D); *Ebbetts Pass*, *supra*, 123 Cal.App.4th at p. 1357
12 [responses containing brief, accurate description of the issue raised satisfied requirement].) The
13 Commission has “considerable leeway” when responding to comments; “a failure to respond to a
14 particular comment is not prejudicial error when the issue raised by the comment is adequately
15 addressed elsewhere.” (*Environmental Protection Information Center v. Dept. of Forestry & Fire*
16 *Protection* (2008) 44 Cal.4th 459, 487, fn. 9.) The Commission also may consider responses to
17 comments from the County. (See *Ross*, *supra*, 199 Cal.App.4th at p. 941.)

18 **1. Responses to comments regarding soils.**

19 The Commission responded to comments related to soil contamination. (AR 30.) In
20 addition, the Commission considered the County’s responses to comments and noted that during
21 site redevelopment, the developer would remove impacted soil and eliminate unhealthy lead
22 levels. (AR 4487.) The County also noted that during the CDP process, the County and developer
23 would identify and implement additional remediation activities necessary to eliminate
24 contaminated soils. (AR 85, 4487.)

25 **2. Responses to comments regarding sewer.**

26 The Commission responded to comments related to sewer impacts. (AR 27.) The staff
27 report addendum recognized, as noted above, that the LCP ensures the site is served with
28 adequate water supplies and wastewater treatment facilities. (AR 4570.) Regarding past sewage
spills, MidPen reported that the number and volume of sewage spills in the surrounding area are
lower than for equivalent systems in Pacifica, Half Moon Bay, and the region. (AR 86, 1556.)
Regarding future spills, staff determined that predicting such overflows would be speculative and,
in any event, the County could address mitigation through the CDP process. (AR 27.)

1 **3. Responses to comments regarding traffic.**

2 The Commission responded to comments related to traffic impacts. (AR 28–29.) Staff
3 reviewed technical traffic studies and modeling specific to Cypress Point and Connect the
4 Coastsides; but, as the County noted, the traffic analyses presently conducted were preliminary and
5 required further evaluation during the CDP process and after the County revises its guidelines to
6 address a vehicle miles traveled (“VMT”) analysis. (AR 16, 28, 82–83, 2544.) As discussed
7 above, the studies identified existing deficiencies that any site development would exacerbate,
8 requiring certain, necessary improvements. (AR 28, 4478.)

9 In response to comments regarding Highway 1, Carlos Street, and multi-modal access, the
10 County noted that before issuing a CDP, the County must complete the “Connect the Coastsides”
11 plan and any developer must prepare a traffic impact analysis, both of which would identify
12 transit and roadway improvements for future site development. (AR 28–29, 81–84, 4478.)

13 Regarding roadway segment analysis and trip generation comments, the County did not
14 narrowly tailor the intersection analysis, but focused on areas closer to the site that would have
15 direct traffic impacts. (AR 81.) Even so, MidPen noted that the County’s traffic impacts
16 guidelines do not mandate a traffic analysis here because site development would generate less
17 than 100 peak hour trips, which triggers such an analysis, and downstream intersection analyses
18 sufficiently capture upstream roadway segment capacities. (AR 1040, 1047.)

19 **4. Responses to comments regarding biological resource impacts.**

20 The Commission responded to comments related to biological resource impacts. (AR 12–
21 13.) Technical studies determined only ruderal vegetation, no wetlands or sensitive habitats, and
22 no potential or actual sensitive species occur on or adjacent to the site; and, as a result, no further
23 analysis was necessary. (AR 12, 20, 30.) Nonetheless, the Commission’s findings note that the
24 existing, certified LCP includes habitat protections and the CDP process would address ESHA or
25 habitat issues. (AR 13.)

26 **D. Petitioner Received Adequate Notice of the Addendum to the Staff Report.**

27 The law does not support Petitioner’s assertion that the Addendum fails to satisfy the
28 Commission’s obligation to respond to comments because it was not available for a reasonable
time for review and comment. (POB 22.) The addendum is not subject to the same notice
requirements as the initial staff report. (See *Ross, supra*, 199 Cal.App.4th at 939 [“the addendum
was issued only two days before the commission’s public hearing [but] the addendum is not
subject to the notice requirement under Code of Regulations, title 14, section 13532”].)

1 Commission regulations require that staff respond to comments after issuing the initial report, but
2 no deadline exists to submit the responses so long as they are available at the hearing. (Cal. Code
3 Regs., tit. 14, § 13533, subd. (b).) The timing outlined in the regulations would indicate that the
4 addendum is not subject to notice requirements and was provided timely. (*Ibid.*)

5 The Commission distributed notice of the LCP Amendment to all known interested parties
6 and published notice in local newspapers. (AR 7313–19.) Commission staff prepared the Staff
7 Report on February 26, 2021 and posted it to the Commission’s website, at least seven days
8 before the March 12, 2021 hearing. (AR 1; Cal. Code Regs., tit. 14, § 13532.) In response to the
9 February 26 Staff Report, Petitioner submitted pages of material objecting to portions of the
10 Report. (See e.g., AR 4663–4666, 4752–69, 4778–90.) Staff prepared the March 11, 2021
11 Addendum to the Staff Report, with reference to documents in the Record, as required by law.
12 The Addendum did not change the staff recommendation to approve the proposed LCP
13 Amendment. The March 11, 2021 Addendum was posted prior to the Commission’s hearing and
14 Petitioner spoke through counsel at the March 12, 2021 hearing raising many of the objections it
15 raises in its Petition and Opening Brief. (AR 7399–7400.)

16 **E. The Commission Adequately Evaluated Alternatives and Mitigation.**

17 The Commission evaluated the necessity of alternatives and mitigation, contrary to
18 Petitioner’s assertions. (POB 19–21; see, e.g., Cal. Code Regs., tit. 14, § 15252, subd. (a)(2)
19 [requiring “[e]ither” a list of alternatives and mitigation measures or a “statement that ... the
20 project would not have any significant or potentially significant effects on the environment”
21 together with “a checklist or other documentation to show the possible effects that the agency
22 examined in reaching this conclusion”].) The Commission reviewed the proposed LCP
23 Amendment and evaluated whether any significant environmental impacts would result requiring
24 mitigation or alternatives. (AR 25.) Based on the entire Record (AR 26), the Commission found
25 alternatives and mitigation unnecessary because no significant adverse environmental impacts
26 would result from the LCP Amendment’s approval. (AR 25.)

27 The Commission considered MidPen’s alternatives analysis, which evaluated four on-site
28 and two off-site alternatives to Cypress Point. (AR 1577, 1745.) The off-site alternatives—at two
separate locations in the County—are infeasible because the locations are unavailable for sale and
significant slopes make development difficult. (AR 1577, 1766.) Of the four on-site
alternatives—No Project, Medium Density Development, Reduced Number of Units, and
Existing PUD Zoning—only the Reduced Number of Units Alternative would decrease

1 significant impacts, but only 31 affordable housing units would be constructed under this
2 alternative. (AR 1781, 1577, 1782.) The analysis demonstrated that 71 units of affordable housing
3 at the site would be the preferred alternative to achieve reduced density and maximized affordable
4 housing on the site. (AR 1766–82.)

5 Further, the Record demonstrates that feasible mitigation would be appropriately imposed
6 during the CDP process, since the LCP Amendment and not Cypress Point is before the
7 Commission. (AR 1564–65, 1582–1615.) According to the County’s technical reports, MidPen
8 identified feasible mitigation to reduce potential significant impacts resulting from Cypress Point.
9 (AR 1582–1615, 1714–44.) Even Caltrans acknowledged that the County—and not the
10 Commission—is responsible for mitigating impacts from site development. (AR 5416.)

11 Further, the Commission did not improperly defer mitigation. (POB 20.) The Commission
12 considered significant environmental impacts resulting from the LCP Amendment and finding
13 none, determined no mitigation is necessary. The Record supports the Commission’s reasoned
14 analysis and so, the Commission neither deferred nor delayed mitigation. Deferring analysis of
15 site-specific cumulative impacts is appropriate when a general plan is being approved or
16 amended. (See *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 625–
17 626 [allowing negative declaration for a site-specific land use change in the general plan with
18 deferral of traffic impacts analysis until an EIR for specific development was considered].)
19 Deferral may be appropriate where, as here, approval of a planning amendment does not commit
20 the agency to approving a development project. (*Id.*)

21 **II. THE COMMISSION COMPLIED WITH THE COASTAL ACT.**

22 **A. Substantial Evidence Supports the Commission’s Decision to Certify the 23 County’s LCP Amendment.**

24 The Commission’s staff report evaluated the LCP Amendment’s consistency with the
25 Coastal Act and LUP, where applicable, using scientific and empirical evidence, despite
26 Petitioner’s assertion. (POB 21.) As discussed above, substantial evidence in the Record
27 demonstrates the LCP Amendment’s reduced density would result in potentially less significant
28 impacts to the environment and coastal resources than any development that could occur under
the existing, certified LCP. (AR 7386–88.) Specifically, harm to coastal resources overlaps with
the discussion in Section I *ante* about impacts to soil, water quality, biological resources, traffic,

1 public views, cultural resources, wildfire, evacuation, water and sewer capacity.¹² The discussion
2 below supplements the arguments above, which together demonstrate that the LCP Amendment
3 protects coastal resources. (AR 7387–88.)¹³

4 **1. The LUP change is consistent with Chapter 3 of the Coastal Act.**

5 As noted above, the County’s certified LCP is comprised of an LUP and an IP. The LCP
6 Amendment modifies the certified LCP in two primary respects. First, the LCP Amendment
7 modifies the certified LCP’s LUP to require that 100% of the units constructed on the site are
8 reserved for low-income households. (AR 43.) Second, the LCP Amendment modifies the
9 certified LCP’s IP to reduce the site’s allowable density to accommodate a smaller 71-unit, fully
10 affordable housing project with a maximum 28-foot building height. (AR 1, 6–7, 15, 44–50,
11 7234, 7241, 7836, 7388.) The changes to the IP replace the site’s existing Planned United
12 Development (“PUD”) Zoning District (PUD-124), adopted in 1986, with a new PUD Zoning
13 District (PUD-140), and reduces the maximum development allowed on the site. (AR 15.) The
14 Commission reviews the LUP modification for consistency with the Coastal Act; and, it reviews
15 the IP modifications for consistency with the existing LUP, and only to the extent necessary to
16 carry out LUP policies. (See *Mountainlands Conservancy, LLC v. Cal. Coastal Com.* (2020) 47
17 Cal.App.5th 214, 221, 231–232.) The Commission found the LUP modification consistent with
18 Chapter 3 of the Coastal Act and the IP modifications consistent with the existing LUP. (AR 5, 7–
19 14, 14–22.) The Commission’s findings are more than sufficient for purposes of the
20 Commission’s review of this LCP Amendment.

21 Petitioner’s assertions confuse the separate portions of the LCP Amendment. Petitioner’s
22 assertions involving consistency with the Chapter 3 policies of the Coastal Act only relate to the
23 LUP modification; they do not relate to the IP modifications. (POB 24–26, 27–29.) On reply,
24 Petitioner may not raise new arguments or go beyond what it raised in the opening brief. (See
25 *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 560–561 [new

23 ¹² Petitioner asserts the Commission’s finding that the LCP Amendment will not result in
24 impacts is not supported by substantial evidence. (POB 15.) The Commission addressed
25 Petitioner’s assertion on the Commission’s findings as to each of these impact factors in Section
26 I.B.4 *ante*.

26 ¹³ It bears noting that Petitioner’s challenge effectively seeks to prohibit site development
27 and would undermine the existing, certified LCP. But, once certified, later alterations to the LCP
28 through statutory or regulatory amendments do not affect the certification unless the certification
is withdrawn. (See *Mountain Lion Foundation v. Fish & Game Com.*, *supra*, 16 Cal.4th at p.
128.) If the certification or decertification decision is not challenged within 30 days, the LCP
cannot later be collaterally attacked. (See *Ross*, *supra*, 199 Cal.App.4th at p. 930.)

1 issues may not be considered on reply].)

2 **2. The Commission properly made consistency determinations and**
3 **findings.**

4 **a. The LCP Amendment is consistent with Section 30232.**

5 As discussed above, the Record demonstrates the Commission evaluated impacts from
6 potentially contaminated soil. The Record also demonstrates the Commission reviewed
7 consistency with section 30232, contrary to Petitioner’s assertions. (POB 22.)¹⁴ The staff report
8 recognized possible lead contaminated soil at the site and noted the County could require a site
9 management plan, construction BMPs, and other measures to mitigate or avoid potential impacts
10 from the presence of on-site hazardous soil during the CDP process, none of which would be
11 prevented by certification of the LCP Amendment. (AR 30, 1722–23.)

12 **b. The LCP Amendment is consistent with Section 30253.**

13 The Record demonstrates the Commission considered consistency with section 30253 and
14 evaluated risks associated with wildfire evacuation and VMT. (AR 29, 1673–77; POB 23, 26.)

15 In particular, the Commission found that the LCP Amendment’s reduced density would
16 improve the ability to evacuate the site and surrounding area.¹⁵ (AR 22.) The site’s proximity to
17 the Moss Beach fire station and adherence to modern code requirements would mean that future
18 development would result in reduced ignition risk and fire spread, thereby reducing the chances
19 of widespread evacuation. (AR 29–30.) At a high level, the proposed amendment still must meet
20 existing LCP policies and allows for measures that could address circulation in an evacuation and
21 development of defensible space. (AR 29.) Also, site development would undergo environmental
22 review during the CDP process and could further address emergency evacuation. (AR 29.)

23 The staff report also noted the reduced density at the site associated with the LCP
24 Amendment would better address traffic issues as compared to the existing LCP (including issues
25 associated with reduced energy consumption and VMT). (AR 10, 2544.)

26 **c. The LCP Amendment is consistent with Section 30250 and LUP**
27 **Policy 1.18(c).**

28 Any site development would be located close to areas able to accommodate it and would be
served by adequate public services, despite Petitioner’s contentions. (POB 27.) As discussed

¹⁴ The Commission incorporates by reference the County’s discussion addressing
Petitioner’s contention to exclude the Supplemental Environmental Evaluation Report, and also
joins in the arguments regarding exclusion of Record materials made in the County’s brief.

¹⁵ Contrary to Petitioner’s assertion, the site is not within a designated Hazardous Fire
Area. (AR 1674–75.)

1 above, the LCP prioritizes affordable housing, requires the reservation of public service capacity
2 for such use. (AR 9.) Additionally, sewer and water capacity would be adequate to serve the site.
3 (AR 14, 1644–45.) The proposed LCP Amendment covers a site that is in an existing residential,
4 industrial and commercial area, surrounded by existing development and infrastructure, including
5 gas, electricity, fire, sheriff, hospitals, and schools. (AR 16, 1643, 4397–98.)

6 Further, as discussed above, any potential traffic generated from future development would
7 be reduced by the LCP Amendment’s reduced density. (AR 9.) Implementation of the County’s
8 Connect the Coastside plan would improve roadway access and safety. (AR 28.)

9 **d. The LCP Amendment furthers environmental justice goals.**

10 The Coastal Act authorizes the Commission and local governments to consider
11 environmental justice when acting on CDPs. (§§ 30604, subd. (h), 30107.3.) In approving the
12 LCP Amendment, the Commission considered its environmental justice policy (adopted in 2019),
13 the historical inequities resulting from inadequate supply of affordable housing in the coastal
14 zone, and the ways in which the LCP Amendment would further environmental justice goals by
15 encouraging affordable housing and more diversity of housing opportunities in the coastal zone.
16 (AR 10–11.) The Record supports that the Amendment would encourage more affordable housing
17 options in the coastal zone, an area in which lower income communities and communities of
18 color historically have been marginalized or denied access. (AR 4566.) The County, and the Moss
19 Beach area in particular, is predominantly white compared to the rest of California. (AR 487.)

20 Petitioner contends the staff report avoids any analysis of environmental justice concerns
21 relating to contaminated soils and hazardous materials. (POB 23 fn. 13.) But, the Commission’s
22 findings and response to comments explain that evidence in the Record analyzed the potential
23 impacts of hazardous materials and transport associated with a site-specific project, as well as
24 measures to address such impacts, including methods of ensuring residents are protected. (AR
25 30.)¹⁶ The Commission’s findings are more than sufficient for purposes of the Commission’s
26 review of this LCP Amendment.

27 **e. The LCP Amendment is consistent with Sections 30230, 30231
28 and 30240 as well as LUP Policy 7.3.**

29 The LCP Amendment is consistent with policies protecting coastal resources, including
30 marine resources and environments, ESHAs, sensitive and critical habitats, special status species,

¹⁶ Importantly, the existing cumulative pollution burden in the County is very low. (AR 489.) For example, the Moss Beach area of the County is below the fiftieth percentile for pesticides, drinking water contaminants, and hazardous waste generator facilities. (AR 489.)

1 natural landforms and scenic corridors (§§ 30230, 30231, 30240; LUP policy 7.3.; AR 11–14, 17–
2 19, 1658–66, 1670–80.) The LCP Amendment does not alter policies in the existing, certified
3 LCP requiring future development to protect coastal resources. (AR 12.) The Commission
4 reasonably concluded that the LCP Amendment is consistent with section 30240 and LUP Policy
5 7.3(a), which prohibits land uses development that would have “significant adverse impact on
6 sensitive habitat areas.” And, while the Commission did not identify sections 30230 and 30321 in
7 particular, the Commission addressed the relevant resource protection issues in its findings, and
8 the findings are supported by substantial evidence in the Record.

9 As discussed above, the site is a highly disturbed, former military installation. (AR 1671.)
10 No wetlands, riparian, or other sensitive habitats are identified on site. (AR 20, 4405.) Likewise,
11 no evidence of landslides, slope instability, or erosional issues were observed on site. (AR 13,
12 508.) It contains no identified ESHAs and any future proposed development at the site would not
13 affect Montara Creek (an identified ESHA), which lies to the north of the site. (AR 12, 1670–71.)
14 Existing residential development and a paved street lie between the site and Montara Creek. (AR
15 4405.) Hydromodification modeling demonstrated that runoff from Cypress Point would be
16 consistent with pre-project runoff drainage patterns; that is, any site development under the LCP
17 Amendment would not increase impacts to Montara Creek. (AR 939.) In addition, possible
18 contaminated soil at the site could require during the CDP process preparation of a site
19 management plan, implementation of construction BMPs and other measures to mitigate or avoid
20 potential impacts from the presence of on-site hazardous soil. (AR 30, 1722–23.) Also, the
21 number and volume of sewage spills in the surrounding area are lower than for equivalent nearby
22 systems and any predicting any future spills is highly speculative. (AR 27, 86, 1556.)

23 Also, as discussed above, the site is not visible from Highway 1 and would not block or
24 interfere with access to, or views of, the coast. (AR 13, 1672, 1674.) The site is not within or
25 adjacent to any known fault zone, flood hazard zone, or area of coastal cliff instability; and it does
26 not have steep or unstable slopes or soils subject to liquefaction. (AR 13.) A portion of the site
27 would remain undeveloped for recreation and open space. (AR 1673.)

28 The nearest marine or wildlife reserve to the site is the Fitzgerald Marine Reserve, located
more than 0.5-miles south of the site. (AR 1696, 1973.) The California Ocean Plan, adopted by
the State Water Resources Control Board, protects marine resources and environments in the
County from drainage impacts. (AR 1696.) Additionally, the future CDP process would protect
the Fitzgerald Marine Preserve from any discharges or contamination. (AR 30, 1700.)

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CONCLUSION

Based on the foregoing, the Commission respectfully requests the Court deny the petition.

Dated: December 5, 2022

Respectfully submitted,

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DECLARATION OF SERVICE BY FILESERVEEXPRESS

Case Name: *Midcoast Eco v. Coastal Commission et al.*
No.: San Francisco Superior Court Case No.: CPF-21-517430

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On December 5, 2022, I served the attached **RESPONDENT AND DEFENDANT CALIFORNIA COASTAL COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER MIDCOAST ECO'S OPENING BRIEF IN SUPPORT OF PETITION FOR WIT OF MANDATE** by transmitting a true copy via File&ServeXpress to the following:

Brian Gaffney
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 5, 2022, at Oakland, California.

A. Shorter

Declarant



Signature