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7 COUNTY OF SAN MATEO

8 *Exempt from filing fees pursuant to*
9 *Government Code § 6103*

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO
12

13 MIDCOAST ECO,

14 Petitioner,

15 vs.

16 CALIFORNIA COASTAL COMMISSION,

17 Respondent and Defendant.

18
19 SAN MATEO COUNTY, SAN MATEO COUNTY
20 BOARD OF SUPERVISORS, and DOES 1 through
20, inclusive,

21 Real Parties in Interest and Defendants.
22

Case No. CPF-21-517430

**REAL PARTY IN INTEREST AND
DEFENDANT SAN MATEO COUNTY'S
MEMORANDUM OF POINTS &
AUTHORITIES IN OPPOSITION TO
PETITIONER MIDCOAST ECO'S
PETITION FOR WRIT OF MANDATE**

Hearing

Date: February 24, 2023
Time: 9:30 a.m.
Location: Department 503
400 McAllister St
San Francisco, CA 94102

HONORABLE CYNTHIA MING-MEI LEE

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REAL PARTY IN INTEREST AND DEFENDANT SAN MATEO COUNTY'S MEMORANDUM OF
POINTS & AUTHORITIES IN OPPOSITION TO PETITIONER MIDCOAST ECO'S PETITION FOR WRIT
OF MANDATE

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1 Real Party in Interest and Defendant SAN MATEO COUNTY (“the County”) submits this opposition
2 to the opening brief filed in support of Petitioner MIDCOAST ECO’s Verified Petition for Writ of Mandate
3 and Complaint for Declaratory and Injunctive Relief.
4

5 **I. INTRODUCTION**

6
7 Petitioners seek a writ of mandate to overturn a decision by the California Coastal Commission to
8 approve the County’s amendments to its Local Coastal Program (“LCP”) to allow a rezoning of a parcel
9 designated for the development of affordable homes in the unincorporated coastal community of Moss
10 Beach. The County sought these amendments to the LCP because the owner of the parcel proposed to
11 build a project consisting of affordable homes that would serve the coastside communities by providing
12 much-needed housing for families with lesser means.

13
14 In 1986, the County zoned the parcel for a mix of 148 market rate and affordable residential
15 housing units, pursuant to a prior version of the LCP. (AR 15, 26, 4397.) In response to a new proposal
16 for development of the still-vacant parcel by the owner in 2018, the County followed its local procedures
17 for amendment to its LCP and ultimately requested authorization from the Coastal Commission to down-
18 zone the parcel to accommodate 71 fully affordable homes. (AR 1.) Because the parcel is in the Coastal
19 Zone, the Coastal Commission must certify the County’s amendment to its LCP for the amendments to
20 become effective. Petitioner challenges the Coastal Commission’s approval of the amendment, asserting
21 that the Commission’s action violated the California Environmental Quality Act (“CEQA”) and Coastal
22 Act. (POB 7.) No challenge is made to the County’s own actions in furtherance of the amendments; thus
23 the County is a real party in interest in the present writ petition as the applicant for the amendments to the
24 LCP.
25

26 Here, the Commission’s purview was limited to the question of whether the proposal to amend
27 the LCP survives a consistency analysis with Chapter 3 of the Coastal Act and the LCP itself. The
28

1 Commission, as a certified regulatory program that follows its internal procedures for environmental
2 analysis instead of CEQA procedures, was entitled to prepare and rely upon the environmental analyses
3 of the questions presented by the application to amend.

4 The Commission met its obligations under CEQA and the Coastal Act because it analyzed the
5 LCP Amendment’s potentially significant environmental effects on traffic and circulation, public
6 services, fire hazard response, hazardous materials, visual resources, community character, and
7 biological resources. (AR 33.) The Commission sufficiently analyzed the LCP Amendment’s effects on
8 coastal resources under existing LCP policies, (AR 1–2.) and its review encompassed the substantial
9 evidence in the entire Record. (AR 26.) Based on that review, the Commission found the LCP
10 Amendment would not result in any significant environmental effects and concluded no alternatives or
11 feasible mitigation measures are warranted. (AR 5, 24–25, 26.) Further, the Commission analyzed
12 reasonably foreseeable impacts, did not defer any impacts analysis, and properly compared the LCP
13 Amendment to the existing LCP zoning. (POB 7.) The Commission could not undertake to evaluate
14 future impacts because the amendments allow the owner to propose smaller or different projects and the
15 precise density, design, and configuration of future development are matters of County approval
16 prerogatives and were not within the Commission’s control in connection with the LCP amendments.
17 (AR 33.) The Commission staff nevertheless reviewed information about the underlying property
18 owner’s proposed homes on the parcel, and relied on it in its analysis. (AR 25.) Because a specific, future
19 project will be subjected to traditional CEQA procedures during the County’s CDP process, the
20 Commission was under no obligation to mitigate the impacts of a future specific project proposal at this
21 stage. (See e.g., AR 23, 26.) Finally, the Commission properly used the LCP to serve as the baseline and
22 properly evaluated the LCP Amendment for consistency with the LCP. (AR 2.)

23 Substantial evidence in the Administrative Record supports the Commission’s decision to certify
24 the LCP Amendment. Petitioner has not carried its burden of proof for issuance of writ relief. The
25

1 Commission and the County should be permitted to proceed with evaluating the owner’s proposal for 71
2 fully affordable homes for qualifying families.

3
4 **II. STATEMENT OF RELEVANT FACTS**

5 **A. Factual Background**

6
7 The project is located on a 10.875-acre parcel adjacent to the northeast corner of Carlos Street and
8 Sierra Street in the unincorporated community of Moss Beach, San Mateo County, California. (AR
9 01567) The property is bounded by vacant land to the southwest, towards State Route (SR) 1, residential
10 properties along 16th Street to the northwest (in the community of Montara), and residential properties
11 along Carlos, Sierra, and Lincoln Streets on the other two sides. (AR 1567.)
12

13 The San Mateo County General Plan previously designated the project site for Medium-High
14 Density Residential uses. (AR 1570.) This designation allows for development of multi-family residential
15 uses at densities of between 8.8 and 17.4 housing units per acre. (AR 1570.) The existing zoning
16 designation of PUD-124/CD traces back to 1986. (AR 1570.) The 1986 PUD zoning allows for a total of
17 148 units on the site, with a density of 13.6 units per acre. (AT 1570.) The site was designated as
18 Medium-High Density Residential in the San Mateo County LCP, which allows for development at
19 densities from 8.1 to 16.0 units per acre. (AR 1570-71.) The site is defined as “infill” in the LCP, and
20 designated as a priority development site for affordable housing in the San Mateo County Local Coastal
21 Program Policies document. (AR 1571.) The site is also designated as an affordable housing opportunity
22 site by the San Mateo County General Plan Housing Element. (AR 1571.)
23

24 In March 2021, in response to an application by MidPen Housing, the County submitted for
25 Commission certification an amendment to its LCP. (AR 4719.) The LCP Amendment would allow for
26 re-designation of the parcel (“site”) to accommodate a reduced density development, while increasing the
27 amount of available affordable housing units. (AR 1, 6, 4447, 7234, 7835.) The LCP Amendment would
28

1 match the surrounding neighborhood of medium density residential development. (AR 7385–86.) The
2 project plan also includes several outdoor amenities, including landscaping; a community garden; a
3 children’s play area; an upper and a lower green; BBQ areas; and a public walking trail through a portion
4 of the site. (AR 1571.) All of the units, except for the manager’s apartment, will be affordable to
5 households earning up to 80 percent of the Area Median Income (AMI). (AR 1571.) It is expected that
6 the Cypress Point project will provide housing for approximately 213 people, including adults and
7 children. (AR 1571.) The new proposed density is 6.5 units per acre, significantly below the maximum
8 density allowed by the current General Plan designation, zoning, and LCP designation. (AR 1571.)
9 MidPen has also clustered the development so as to retain the forested open space on the northern portion
10 of the site. (AR 1571.) Altogether, MidPen proposes to leave approximately half of the site undeveloped.
11 (AR 1571.)
12

13
14 Specifically, the proposal would replace the County’s existing certified LCP, which designates
15 the site as medium-high density residential, and accommodates future development of a 148-unit, two-
16 story residential housing project that provides for 52 affordable and 96 market rate units. (AR 1, 6, 7234,
17 7237, 7240, 7385–86.) The LCP Amendment therefore modifies the site’s existing density to
18 accommodate a smaller 71-unit, fully affordable housing project with a maximum 28-foot building
19 height. (AR 1, 6–7, 15, 7234, 7241, 7836, 7388.) The LCP Amendment replaces the site’s existing
20 Planned United Development (“PUD”) Zoning District (PUD-124), adopted in 1985, with a new PUD
21 Zoning District (PUD-140), and reduces the maximum development allowed on the site. (AR 15.)
22

23 **B. Administrative Procedural History**
24

25 For the Commission’s consideration, the County submitted an LCP Amendment package
26 containing technical, scientific studies analyzing potential significant environmental effects, feasible
27 mitigation to reduce such effects, and alternatives, prepared by MidPen and relating to the future Cypress
28

1 Point development. (AR 1566–67, 1574–76, 1578–80, 1582–1615.) Cypress Point could follow the LCP
2 Amendment and is consistent with it (AR 30); Cypress Point would consist of 71 affordable housing
3 units in 18 two-story buildings, with a mixture of one, two, and three bedroom units (AR 1570–71).
4 Cypress Point also includes a community garden, children’s play area, upper and lower green space,
5 barbeque areas, and public walking trails. (AR 1571.)
6

7 The County went through a thorough land use and coastal resource analysis as part of its local
8 LCP amendment development and review process, including evaluating public service constraints,
9 habitat issues, community character concerns, public access, and site stability and safety. (AR 25.)
10 MidPen Housing, as the potential future CDP applicant, prepared a number of technical and related
11 reports and materials on these points for the County's use, all of which were also provided to and relied
12 upon by Commission staff in making its recommendation. (AR 25.)
13

14 During the public review period for the LCP Amendment, Petitioner submitted comments to the
15 Commission. (AR 3414–31, 3543–46, 5153–6064, 6213–30, 7230–31.) Commission staff, the County
16 and MidPen reviewed and responded to Petitioner’s comments. (AR 25–32, 80–90, 2133–34.)
17 Petitioner’s representative presented at the hearing before the Commission (AR 7399–7400).
18

19 Staff recommended the Commission approve the proposed LCP Amendment. (AR 2, 4556.) Staff
20 evaluated the proposed LCP Amendment, including documents the County submitted, as well as
21 responded to comments, and provided the Commission with a staff report, an addendum to that report,
22 and an oral presentation. (AR 1–34, 4623–32, 7384–89.) Staff’s report, addendum thereto, and
23 presentation together informed the Commission’s findings that the LCP Amendment is consistent with
24 Chapter 3 of the Coastal Act and the land use plan of the County’s existing certified LCP. (AR 1–34,
25 4563, 4623–32, 7384–89.)
26

27 The Coastal Commission’ staff report summarized that the existing unamended LCP included
28 maximum density/intensity standards for the site that are over twice as much as are being proposed (e.g.,

1 up to 148 units are allowed currently by the LCP, where the proposed amendment would allow up to 71
2 units). (AR 26.) Staff found that by reducing the density/intensity via the proposed amendment, the LCP
3 provides increased flexibility to address any such potential coastal resource concerns that might arise
4 through the required CDP process (e.g., including flexibility associated with a reduced density/intensity
5 of use, more space for any needed buffers, landscaping, etc.). (AR 26.) The proposed standards would
6 require that any future project be 100% affordable housing, an increase of 40 affordable units even as the
7 property is downzoned. (AR 26.) Thus, staff found that the proposed amendment better encourages
8 affordable housing in the coastal zone than the existing LCP, which is a requirement of both the Coastal
9 Act and the LCP. (AR 26.)

11 On the Record before it, the Commission certified the LCP Amendment. (AR 7419, 7426.)
12 Commission certification does not supplant the requirement that any future, proposed development on
13 the site submit to environmental review under the County’s CDP process. (AR 7, 4624, 7234, 7387.)

15 **III. LEGAL ARGUMENT**

17 **A. The County Joins All Arguments Made by the Commission**

18 The County hereby joins in all legal arguments asserted by the Commission in opposition to the
19 writ petition as though they were made by the County on its own behalf.

21 **B. The Commission Appropriately Considered Addenda and Supplemental Materials,**
22 **of Which Petitioner Received Legally Adequate Notice**

24 Petitioner urges the court to exclude the staff report addendum and supplemental environmental
25 evaluation report (POB 22), but no reason exists to exclude any Record documents (POB 17, 30). The
26 Commission distributed notice of the LCP Amendment to all known interested parties and published
27 notice in local newspapers. (AR 7313–19.) The Commission prepared the Staff Report on February 26,
28

1 2021 and posted it to its website, at least seven days before the March 12, 2021 hearing. (AR 1; Cal.
2 Code Regs., tit. 14, § 13532.) In response to the February 26 Staff Report, Petitioner submitted pages of
3 material objecting to portions of the Report. (See e.g., AR 4663–4666, 4752–69, 4778–90.) Staff
4 prepared the March 11, 2021 Addendum, with reference to documents in the Record, as required by law.
5 After the March 11, 2021 Addendum was posted, Petitioner spoke through counsel at the March 12, 2021
6 hearing raising many of the objections it raises in its Petition and Opening Brief. (AR 7399–7400.)
7

8 The addendum is not subject to the same notice requirements as the initial staff report. (See *Ross*
9 *v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 939 (staff report addendum issued only two days
10 before the commission’s public hearing not improper because such addenda are not subject to the notice
11 requirements of 14 Cal. Code Regs. § 13532). Commission regulations require that staff respond to
12 comments after issuing the initial report, but no deadline exists to submit the responses so long as they
13 are available at the hearing. (Cal. Code Regs., tit. 14, § 13533, subd. (b).) Because staff issued the initial
14 report at least seven days before the hearing, and the addendum includes responses to comments, the
15 timing outlined in the regulations would indicate that the addendum is not subject to notice requirements
16 and was provided timely. (*Ibid.*)
17

18 Accordingly, the addendum and supplemental materials were appropriately considered by the
19 Commission in taking its action and should not be excluded from the substantial evidence in support of
20 the Commission’s approval of the amendments.
21

22 IV. CONCLUSION

23
24 Substantial evidence in the Administrative Record supports the Commission’s decision to certify
25 the LCP Amendment. Petitioner has not carried its burden of proof for issuance of writ relief.
26 Accordingly, all writ relief sought by the petition should be denied.
27
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1 Dated: December 5, 2022

Respectfully submitted,

2 JOHN D. NIBBELIN, COUNTY COUNSEL

3 

4 By: _____
5 Timothy J. Fox, Lead Deputy
6 Lisa Y. Cho, Deputy

7 Attorneys for Real Party in Interest
8 COUNTY OF SAN MATEO

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1 **PROOF OF SERVICE**

2 I do hereby declare that I am a citizen of the United States employed in the County of San
3 Mateo, over 18 years old and that my business address is 400 County Center, Redwood City, California.
4 I am not a party to the within action.

5 On December 5, 2022, I served the following document(s):

- 6 • **REAL PARTY IN INTEREST AND DEFENDANT SAN MATEO COUNTY'S**
7 **MEMORANDUM OF POINTS & AUTHORITIES IN OPPOSITION TO PETITIONER**
8 **MIDCOAST ECO'S PETITION FOR WRIT OF MANDATE**

9 on all other parties to this action by placing a true copy of said document(s) in a sealed envelope in the
10 following manner:

11 (BY U.S. MAIL) by placing a true copy of said document(s) in a sealed envelope(s) addressed as
12 shown below for collection and mailing at Redwood City, California following our ordinary
13 business practices. I am readily familiar with this office's practice for collecting and processing
14 correspondence for mailing. On the same day that correspondence is placed for collection and
15 mailing, it is deposited in the ordinary course of business with the United States Postal Service in a
16 sealed envelope with postage fully prepaid.

17 (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of
18 the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent
19 to the persons at the e-mail address shown below. I did not receive, within a reasonable time after
20 the transmission, any electronic message or other indication that the transmission was unsuccessful.

21 (STATE) I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 *Pilar Coffey*
24 PILAR COFFEY

25 MIDCOAST ECO vs. CALIFORNIA COASTAL COMMISSION, - CPF-21-517430

26 **NAME AND ADDRESS OF EACH PERSON TO WHOM SERVICE WAS MADE**

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