



# COUNTY OF SAN MATEO

## PLANNING AND BUILDING

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### NOTICE OF EXEMPTION

<p>Recorded at the Request of,          and When Recorded Return to:          Mike J Schaller          Planning and Building Department          455 County Center, 2<sup>nd</sup> Floor          Mail Drop PLN122          Redwood City, CA 94063</p>	<p>For Clerk Use Only</p> <p>FILED ENDORSED  <small>IN THE OFFICE OF THE          COUNTY CLERK RECORDER          SAN MATEO COUNTY CALIF</small></p> <p>MAR 27 2024          Henry Salgado</p> <p>MARK CHURCH, County Clerk          By _____          Deputy Clerk</p>
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Filing of a Notice of Exemption in compliance with Public Resources Code (California Environmental Quality Act) Section 21152(b). The filing of this Notice begins a 35-day Statute of Limitations on court challenges to this approval.

Project Title: Cypress Point Affordable Housing Community

File Number: PLN2022-00220

Description of Project: Consideration of a General Plan Land Use Map Amendment, Coastal Development Permit, Design Review Permit, and Grading Permit for the Cypress Point Affordable Housing Community, which consists of 71 affordable housing units, community building, parking and landscaping, in the unincorporated Moss Beach area.

Specific Project Location: Corner of Carlos and Sierra Streets, Moss Beach

County of Project Location: San Mateo County

Name of Applicant: Midpen Housing Corporation

Name of Person Undertaking the project or receiving the project approval (if different from the applicant): None

Name of Public Agency Approving Project: San Mateo County

Exempt Status: Statutory Exemptions (Pub. Res. Code § 21080.40(b))

Reason why project is exempt: See attached analysis supporting the County's conclusion that this project qualifies for Exemption under the cited Public Resources Code section.

Lead Agency Contact Person: Mike J Schaller 650 363-1849 MSchaller@smcgov.org

Signature:  Title: Senior Planner Date: March 27, 2024

Print Name: Michael Schaller

- Signed by Lead Agency
- Signed by Applicant

March 1, 2024

MEMORANDUM

TO: County Decision Makers and Interested Parties

FROM: Steve Monowitz, Planning and Building Director

SUBJECT: Application of California Environmental Quality Act Exemption Established by AB 1449 to the Cypress Point Affordable Housing Project in Moss Beach. County File No. PLN 2022-00220 (MidPen Housing Corporation)

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**I. Background**

In 2022 the MidPeninsula Housing Corporation (“MidPen”) applied for a General Plan Amendment, Coastal Development Permit, Design Review Permit and Grading Permit, and General Plan Amendment to construct a 71-unit affordable housing project at the corner of Carlos and Sierra Streets, in the community of Moss Beach. This application was made after the California Coastal Commission (CCC) certified the County’s Local Coastal Program (LCP) Amendments which revised the previously adopted Planned Unit Development zoning designation to the site. The change in zoning reduced the number of permitted housing units on the site from 148 to 71 units, with all 71 units now reserved for low-income households.

As discussed in the documents prepared in conjunction with the LCP amendments, the CCC’s LCP review process provides the functional equivalent of CEQA<sup>1</sup>. In support of the amendments, MidPen submitted numerous technical documents that demonstrated that the LCP Amendments would not create an adverse environment impact, in conflict with the State Coastal Act. At that time, it was also identified that an Environmental Impact Report (EIR) would be prepared as part of the County’s review of the zoning permits and General Plan Amendment required to construct the project following LCP amendment certification.

Accordingly, following receipt of the 2022 applications, the County prepared a Notice of Preparation on December 1, 2022, and subsequently released a Draft EIR in August 2023. A 45-day public review period for the DEIR concluded on September 25, 2023. During the public comment period, the County received numerous comment letters.

During the preparation of a Final EIR and responses to these comments, Assembly Bill (AB) 1449 was signed into law on October 11, 2023, and took effect on January 1, 2024. The provisions of this law, and its application to the project, are detailed below.



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<sup>1</sup> CCR Section 15251(f) (*CEQA Guidelines*)

## II. Application of AB 1449 to the Project

The CEQA exemption established by AB 1449 (codified at Pub. Res. Code § 21080.40(b)) applies to the following actions:

- (1) The issuance of an entitlement by a public agency for an affordable housing project.
- (2) An action to lease, convey, or encumber land owned by a public agency for an affordable housing project.
- (3) An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project.
- (4) Rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project.
- (5) An action to provide financial assistance in furtherance of implementing an affordable housing project.

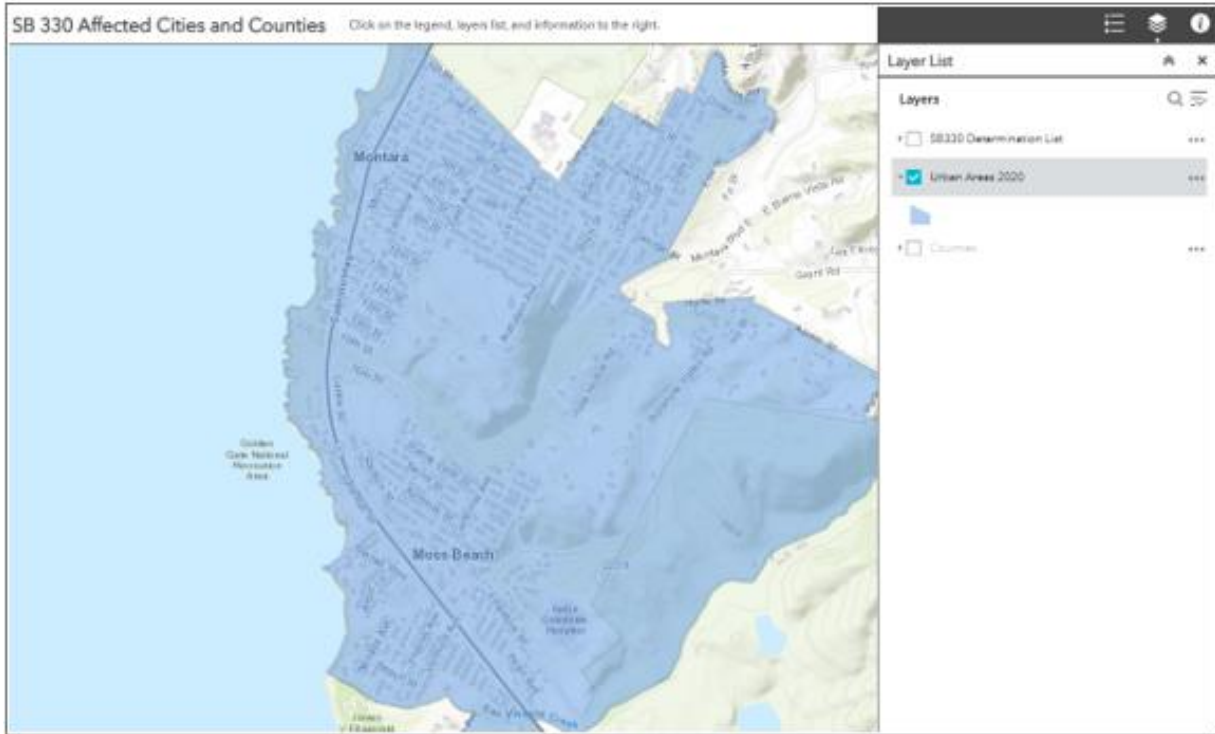
The exemption is a statutory exemption that is not subject to exceptions (Pub. Res. Code § 21080 et seq.). The sole question is whether the project fits within the language of the exemption. If a lead agency determines that an activity is eligible, the lead agency must file a notice of exemption with the Office of Planning and Research and the county clerk of the county (Pub. Res. Code §21080.40(d)). As the California Supreme Court has explained, exemptions from CEQA “promot[e] an interest important enough to justify foregoing the benefits of environmental review.” (*Napa Valley Wine Train, Inc. v. Pub. Util. Comm’n* (1990) 50 Cal.3d 370, 382.) “[T]he self-evident purpose” of a statutory exemption “is to provide an escape from the EIR requirement despite a project’s clear, significant impact.” (*CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 506.) As a result, once a project is exempt from CEQA, there is no longer a legal obligation to disclose or mitigate a project’s environmental impacts under CEQA.

The following table documents the basis for and substantial evidence supporting the County’s determination that this exemption applies to the Cypress Point project:

Public Resource Code Requirement	Consistency Analysis
“Affordable housing project” means a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the project designated for residential use. (Section 21080.40(a)(1))	Compliant. This is a 100% multi-family residential project. (Draft Environmental Impact Report, Section 2.5.2)
All of the residential units within the project, excluding managers’ units, are dedicated to lower income households, as defined by Section 50079.5 of the Health and Safety Code. (Section 21080.40(a)(1)(A))	Compliant. All units, except for the manager’s apartment, will be reserved for affordable households earning up to 80% of the Area Median Income. (Draft Environmental Impact Report, Section 2.5.1.)

<p>The project meets the labor standards set forth in Section 65912.130 of the Government Code. (Section 21080.40(a)(1)(B)(i))</p>	<p>Compliant. The Applicant has indicated, in writing, that they will comply with this prevailing wage requirement, and compliance with such provisions will be made a condition of project approval.</p>
<p>For a project with 50 or more residential units, the project meets the labor standards set forth in Section 65912.131 of the Government Code. (Section 21080.40(a)(1)(B)(ii))</p>	<p>Compliant. The Applicant has indicated, in writing, that they will comply with the obligation to offer employment opportunities to state-registered apprentices and provide health insurance to construction workers and their dependents. Compliance with these provisions will be required as a condition of approval.</p>
<p>The project is located on a legal parcel or parcels in any of the following locations:</p>	
<p>(i) In a city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau. (Section 21080.40(a)(1)(C)(i))</p>	<p>Compliant. The parcel is wholly within an urbanized area, as shown by the maps below.</p>

SB330 Affected Cities and Counties Map.

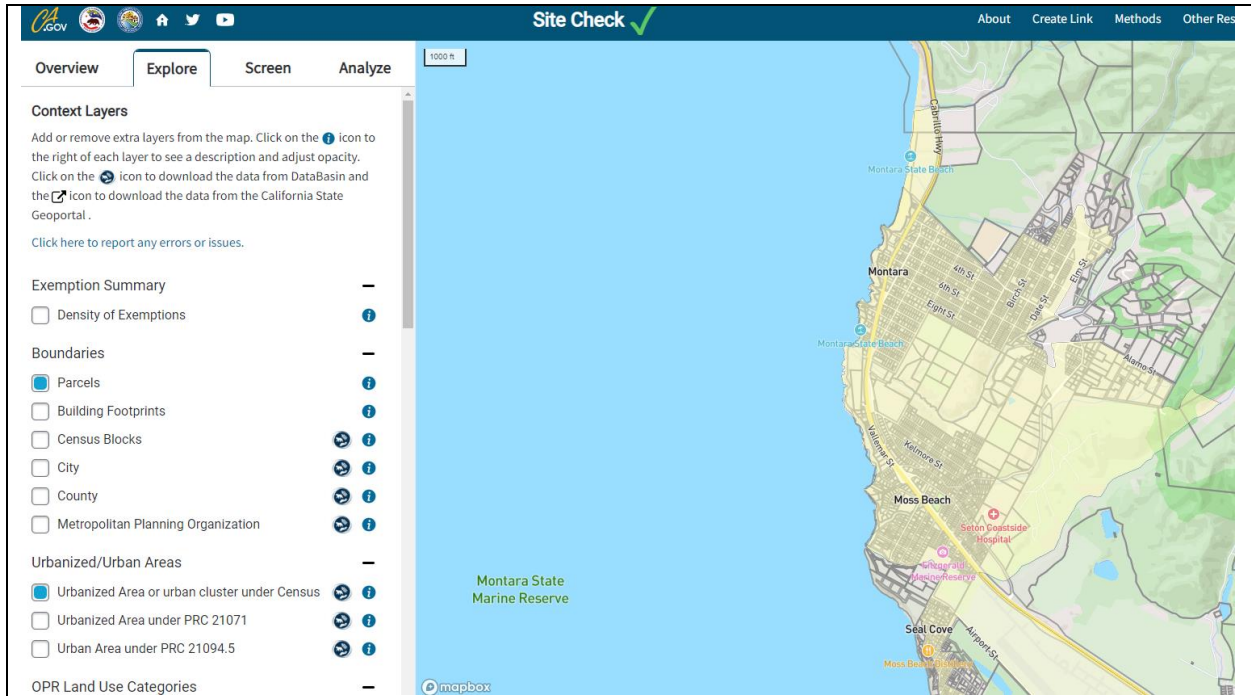


OPR, Site Check Map, Urbanized Area or Urban Cluster Under Census Layer.

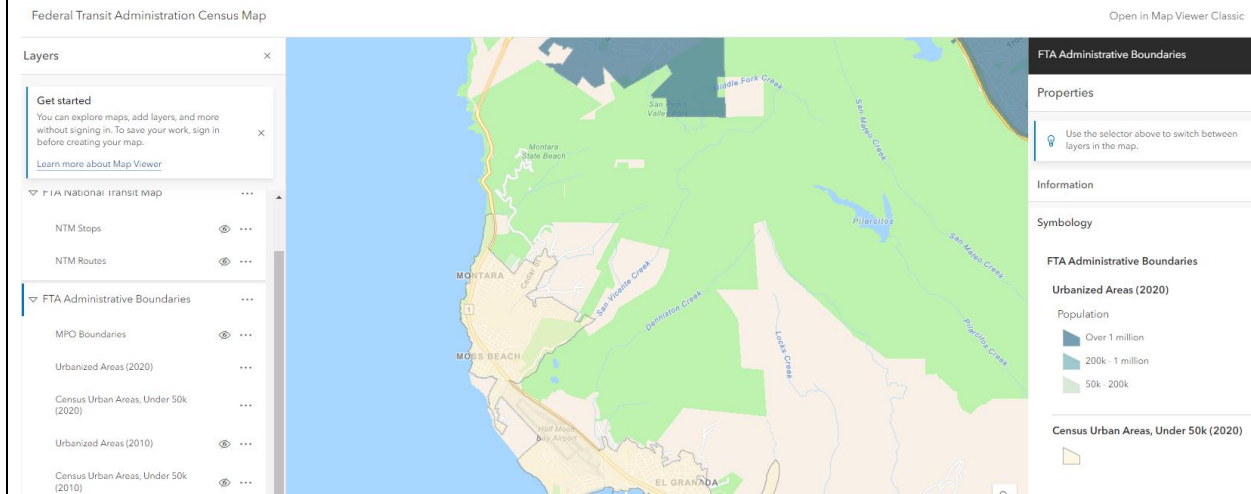
March 1, 2024

Cypress Point CEQA Exemption and Informational Response to Comments

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Federal Transit Administration Census Map, Census Urban Areas, Under 50K (2020).

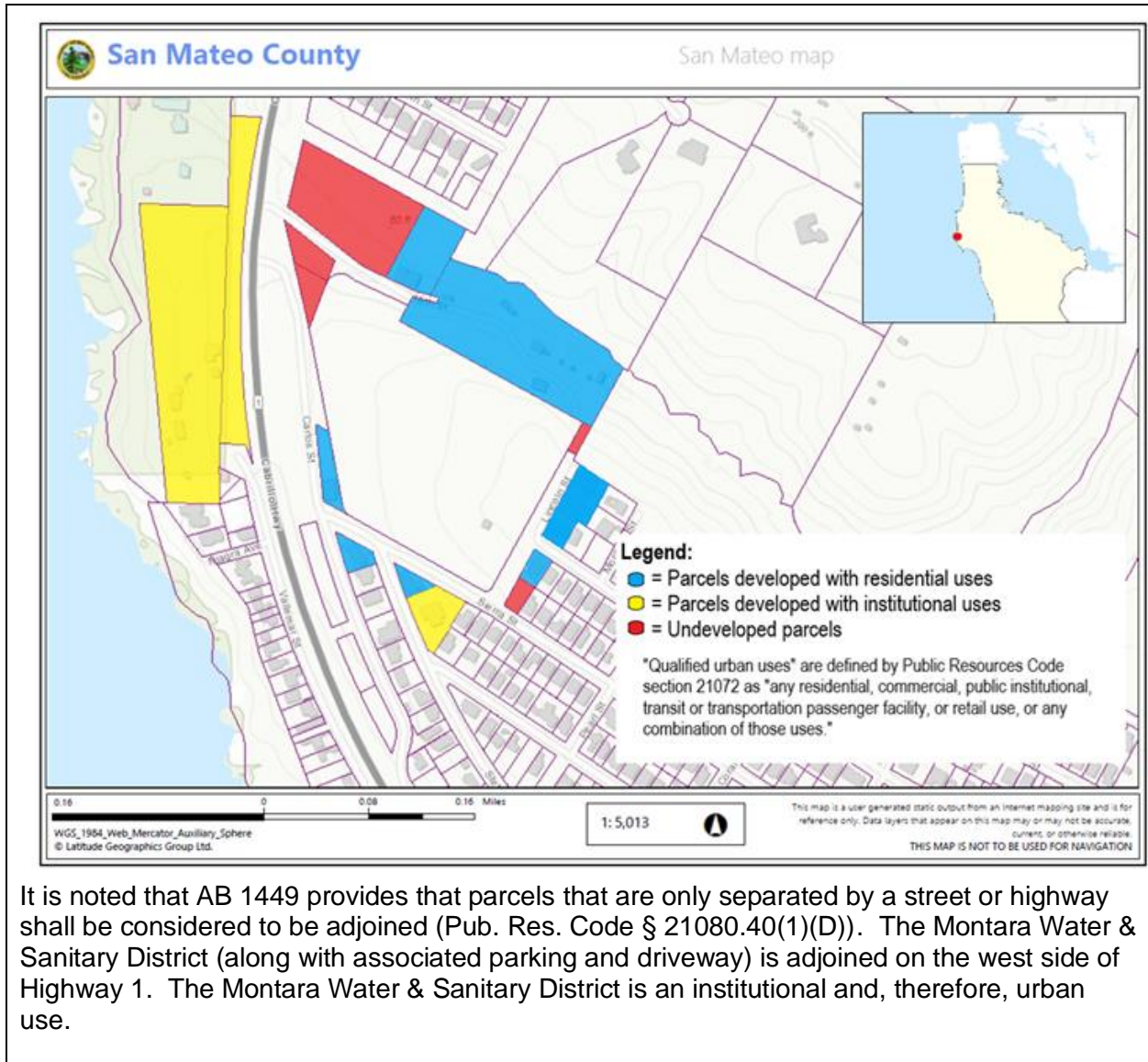


<p>(ii) Within one-half mile walking distance to either a high-quality transit corridor or a major transit stop. (Section 21080.40(a)(1)(C)(ii))</p>	<p>Not applicable. A location need only comply with one of the four requirements (i, ii, iii, or iv). In this instance, the project complies with requirement (i) and (iv), independently.</p>
<p>(iii) In a very low vehicle travel area. (Section 21080.40(a)(1)(C)(iii))</p>	

<p>(iv) Proximal to six or more amenities pursuant to paragraph (3) as of the date of submission of the application for the project. (Section 21080.40(a)(1)(C)(ii-iv))</p>	<p>Compliant. A location need only comply with one of the four requirements (i, ii, iii, iv). In this instance compliance with both (i) and (iv) each provide independent basis for compliance. The parcel is within 2 miles of at least seven of the specified amenities, including public parks, medical clinics or hospitals, and schools among others. Parcels located in “rural areas” need only be located within 2 miles. Section 50199.21 of the Health and Safety Code defines a “rural area” to be an area that “is eligible for financing under the Section 515 program, or successor program, of the Rural Development Administration of the United States Department of Agriculture.” The parcel location is eligible for such financing and is there within a rural area as defined by the US Department of Agriculture. The parcel is located within 2 miles of the following six amenities, as demonstrated in the map below:</p> <ol style="list-style-type: none"> <li>1. Moss Beach Park (County Park) – 0.37 miles</li> <li>2. James V. Fitzgerald Marine Reserve (County Park) – 0.61 miles</li> <li>3. Rancho Corral de Tierra (National Park) – 0.83 miles</li> <li>4. Pillar Point Bluff (County Park) – 1.21 miles</li> <li>5. Seton Coastside Hospital (Hospital) – 0.57 miles</li> <li>6. Farralone View Elementary School (School) – 0.70 miles</li> <li>7. Coastside Market (Grocery Store) – 0.36 miles</li> </ol>
<p>Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site. For purposes of this paragraph, parcels that are only separated by a street or highway shall be considered to be adjoined. (Section 21080.40(a)(1)(D))</p>	<p>Compliant. “Qualified urban uses” are defined in CEQA as “any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or</p>

	<p>any combination of those uses.” (Public Resources Code 21072)).</p> <p>APN 037-022-210, 037-022-250, 037-022-240, 037-022-020, and 037-062-110 are undeveloped. Combined, these parcels comprise approximately 545 linear feet of the property’s perimeter. The property’s entire perimeter is 2,840 linear feet. This means approximately 19.2 percent of the perimeter is not developed with urban uses, while 80.8 percent is developed with urban uses, largely with single family homes and public institutional uses including a fire station and the Montara Water &amp; Sanitary District and its supporting facilities.</p> <p>In addition, three of the parcel’s four sides have been developed with defined urban uses. MidPen’s analysis demonstrating that 3 of 4 sides are urban/residential uses was accepted by HCD in its award of <u>Multifamily Housing Program</u> and <u>Joe Serna, Jr. Farmworker Housing Grant Program</u> funds. The acceptance of the project’s eligibility by an expert agency is independent substantial evidence that the parcel complies with this criterion.</p>





It is noted that AB 1449 provides that parcels that are only separated by a street or highway shall be considered to be adjoined (Pub. Res. Code § 21080.40(1)(D)). The Montara Water & Sanitary District (along with associated parking and driveway) is adjoined on the west side of Highway 1. The Montara Water & Sanitary District is an institutional and, therefore, urban use.



<p>The affordable housing project will be subject to a recorded California Tax Credit Allocation Committee regulatory agreement.                  (Section 21080.40(c)(1))</p>	<p>Compliant. The project will be required to secure such an agreement prior to the issuance of building permits.</p>
<p>The affordable housing project site can be adequately served by existing utilities or extensions.                  (Section 21080.40(c)(2))</p>	<p>Compliant. Potable water and wastewater treatment will be provided by the Montara Water and Sanitary District (MWSD), and electricity will be provided by PG&amp;E.</p>

	(Draft Environmental Impact Report, Section 2.3.5.)
A public agency confirms all of the following:	
(A) The project site satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code. (Section 21080.40(c)(3)(A))	Compliant. Analysis is provided below.
Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction. (Section 65913.4(a)(6)(B))	Compliant. The appropriate inventory does not categorize this land as farmland. See <a href="#">California Department of Conservation Important Farmland Finder</a> . (Draft Environmental Impact Report, Section 4.4.1.1.)
Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993). (Section 65913.4(a)(6)(C))	Compliant. This site does not contain wetlands. See <a href="#">National Wetlands Inventory, Surface Waters and Wetlands, USFWS</a> . (Draft Environmental Impact Report, Section 3.3.1.9: “No potentially jurisdictional waters or wetlands were observed.”)
Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development. (Section 65913.4(a)(6)(D))	Compliant. The site is not in a mapped fire hazard zone. See <a href="#">Fire Hazard Severity Zone Map Viewer</a> .  (Draft Environmental Impact Report, Section 3.6.1.6: “The project site is not located within a California Department of Forestry and Fire Protection (CAL FIRE)–designated very high, high, or moderate fire hazard severity zone (FHSZ).”)

<p>A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code. (Section 65913.4(a)(6)(E))</p>	<p>Compliant. This site is not a hazardous waste site. See <a href="#">EnviroStor Database, Department of Toxic Substances Control</a>. (Draft Environmental Impact Report, Section 3.6.5.)</p>
<p>Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist. (Section 65913.4(a)(6)(F))</p>	<p>Compliant. This site is not in an earthquake fault zone. See <a href="#">Earthquake Zones of Required Investigation</a>. (Draft Environmental Impact Report, Section 3.4.5.)</p>
<p>Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. (Section 65913.4(a)(6)(G))</p>	<p>Compliant. This site is not within a special flood hazard area. See <a href="#">FEMA Flood Map Service Center</a>. (Draft Environmental Impact Report, Section 3.6.1.7)</p>
<p>Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. (Section 65913.4(a)(6)(H))</p>	<p>Compliant. This site is not within a regulatory floodway. See <a href="#">FEMA Flood Map Service Center</a>.</p>
<p>Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan. (Section 65913.4(a)(6)(I))</p>	<p>Compliant. This site is not within a natural community conservation plan or a habitat conservation plan. See <a href="#">California Natural Community Conservation Plans</a>. (Draft Environmental Impact Report, Section 3.3.5)</p>
<p>Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California</p>	<p>Compliant. This site does not contain critical habitat. See <a href="#">Critical Habitat Maps, United States Department of Fish and Wildlife</a>. Further, Draft Environmental Impact Report, Figure</p>

<p>Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code). (Section 65913.4(a)(6)(J))</p>	<p>3.3-2 shows there is no critical habitat on the site. Draft Environmental Impact Report Section 3.3 explained that the biological report included an extensive literature search of the 2-mile area surrounding the project site, followed by a field survey conducted on April 3, 2023. The field survey included the project site and a 200-foot buffer surrounding the site.</p>
<p>Lands under conservation easement. (Section 65913.4(a)(6)(K))</p>	<p>Compliant. There is no conservation easement encumbering the property. (Draft Environmental Impact Report, Section 2.3.3.)</p>
<p>For a vacant site, the project site does not contain tribal cultural resources that could be affected by the development that were found pursuant to a consultation described in Section 21080.3.1 and the effects of which cannot be mitigated pursuant to the process described in Section 21080.3.2. (Section 21080.40(c)(3)(B))</p>	<p>Compliant. This is not a vacant site. It was developed by the U.S. Navy in 1945 and has been in disuse since 1970. Recommended conditions of approval will effectively mitigate any potential impacts to cultural resources. (Draft Environmental Impact Report, Section 2.3.2.)</p>
<p>The development proponent has completed a phase I environmental assessment, as defined in Section 25319.1 of the Health and Safety Code. If a recognized environmental condition is found, the development proponent shall undertake a preliminary endangerment assessment, as defined in Section 25319.5 of the Health and Safety Code, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. (ii) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with current state and federal requirements. (iii) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of</p>	<p>Compliant. The <i>Phase I Environmental Site Assessment Report, Carlos Street at Sierra Street, Moss Beach, San Mateo County, California 92038</i>, was completed by AEI Consultants (AEI) on November 10, 2015. It found recognized environmental conditions (RECs) on-site which included the potential presence of lead-based paint in soils surrounding the building foundations, the “drill field,” which may have been used for weaponry or as a shooting range, concrete pad areas potentially used for firefighter training, and an incinerator. Additional Phase II testing was conducted. A Draft Site Management Plan (SMP) has been prepared for the project. The recommended conditions of approval will require a final SMP to be</p>

<p>insignificance in compliance with current state and federal requirements. (Section 21080.40(c)(3)(C))</p>	<p>submitted with the building permit applications. These conditions will effectively mitigate any potential impacts associated with the potential release of hazardous materials into the environment consistent with current federal and state requirements.</p>
<p>For a project site where multifamily housing is not a permitted use, all of the following are met: (i) None of the housing is located within 500 feet of a freeway, as defined in Section 332 of the Vehicle Code. (ii) None of the housing is located within 3,200 feet of a facility that actively extracts or refines oil or natural gas. (iii) The project site is not within a very high fire hazard severity zone, as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 or as designated pursuant to subdivisions (a) and (b) of Section 51179 of the Government Code. (Section 21080.40(c)(3)(D))</p>	<p>Not Applicable. Multifamily housing is a permitted use on this site. (Draft Environmental Impact Report, Section 2.3.1)</p>

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<sup>2</sup> Consistency analyses have been conducted throughout the planning and entitlement process. For example, see Cypress Point Affordable Housing Community Project - 2019 LCP Amendment Policy Consistency Analysis here: <https://www.smcgov.org/media/104101/download?inline=>