

December 14, 2023

Midpeninsula Regional Open Space District
5050 El Camino Real
Los Altos, CA 94022
schan@openspace.org

Subject: **LETTER OF DECISION**
File Number: PLN 2023-00068
APN: Various

On December 13, 2023, the San Mateo County Planning Commission considered a Coastal Development Permit and Grading Permit for the Midpeninsula Regional Open Space District's Open Space Maintenance and Restoration Program, to authorize maintenance and restoration activities over a five-year period in unincorporated San Mateo County. This project is appealable to the California Coastal Commission.

Based on information provided by staff and evidence presented at the hearing, the Planning Commission approved the Coastal Development Permit and Grading Permit, County File Number PLN 2023-00068, by making the required findings and adopting the conditions of approval in Attachment A.

Any interested party aggrieved by the determination of the Planning Commission has the right to appeal to the Board of Supervisors within ten (10) business days from such date of determination. The appeal period for this matter will end at 5:00 p.m. on December 28, 2023.

Please direct any questions regarding this matter to the Project Planner, Luis Topete at ltopete@smcgov.org.

Sincerely,



Angela Montes
Planning Commission Secretary

cc: Susanna Chan
California Coastal Commission
Lennie Roberts, Green Foothills
Kerry Burke
Kendra Hartmann

County of San Mateo
Planning and Building Department

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number: PLN 2023-00068 Hearing Date: December 13, 2023

Prepared By: Luis Topete, Project Planner III For Adoption By: Planning Commission

RECOMMENDED FINDINGS

Regarding the Environmental Review, Find:

1. That the Commission, acting as a Responsible Agency, has reviewed and considered the Initial Study and Mitigated Negative Declaration prepared by the Lead Agency, Midpeninsula Regional Open Space District, and has considered the environmental effects of the project as shown in the Mitigated Negative Declaration.

Regarding the Coastal Development Permit, Find:

2. That the project, as described in the application and accompanying materials required by Zoning Regulations Section 6328.7, and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements, and standards of the San Mateo County Local Coastal Program with regards to the Sensitive Habitats and Visual Resources Component of the Local Coastal Program. See Section A(2) of the staff report for the supporting analysis demonstrating conformance with the Local Coastal Program.
3. That the project is not subject to the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code) since the project is not located between the nearest public road and the sea.
4. That the project conforms to specific findings required by policies of the San Mateo County LCP as detailed in Section A(2) of this staff report. See Section A(2) for the supporting analysis.

Regarding the Grading Permit, Find:

5. That the granting of the permit will not have a significant adverse impact on the environment. The District is the CEQA Lead Agency. They adopted a Mitigated

Negative Declaration and filed a Notice of Determination on September 23, 2021. Staff has reviewed the environmental document, proposed Open Space Maintenance and Restoration Program, and the biological and cultural resources assessments provided. Based on this review, staff has determined that there will not be a significant adverse effect on the environment with implementation of all mitigation measures and Best Management Practices.

6. That the project conforms to the criteria of Chapter 5, the San Mateo County Grading Ordinance, including the standards referenced in Section 9296, and is consistent with the General Plan. The County's Local Coastal Program (LCP), being a subset of the County General Plan, is internally consistent with the County General Plan. Many of the Coastal Act's requirements for the LCP Land Use Plan overlap with the Government Code's requirements for the General Plan. The County's General Plan and its LCP are generally aligned regarding policies and regulations specific to this project. No unique or specific General Plan policies have been identified that would apply outside the coastal zone which require separate analysis and discussion from the LCP policy discussion. Therefore, the analysis of the project's consistency with the LCP in Section A(2), which is more specific than the General Plan with regard to issues raised by this project, also addresses, by extension, the project's consistency with the County's General Plan in the coastal zone and non-coastal zone areas of the Program.

RECOMMENDED CONDITIONS OF APPROVAL

Current Planning Section

1. The approval applies only to the proposal as described in this report and materials submitted for review and approval by the Planning Commission on December 13, 2023. The Community Development Director may approve minor revisions or modifications to the project if they are found to be consistent with the intent of, and in substantial conformance with this approval.
2. The applicant shall implement all planning and impact avoidance approaches specified in the Program Manual.
3. Maintenance activities shall be conducted only when determined to be necessary or in conjunction with other nearby essential work to minimize equipment entries into an area.
4. The applicant shall implement all BMPs, as identified in Table 10-3 of the Program Manual, prior to and/or during Program activities, which include general avoidance and minimization practices as well as measures focused on biological resources and habitat protection, cultural resources protection, erosion control, sediment and water quality control, and dewatering. The District may periodically update the BMPs to reflect new BMP technologies and maintenance techniques which shall provide equal or greater protection.

5. The District shall adhere to all work limits set forth in the Program Manual to limit the extent of impacts associated with Program activities.
6. In addition to implementation of the impact avoidance and minimization measures, BMPs, and mitigation measures identified in the Program Manual, the applicant shall implement the following mitigation measures identified in the Mitigated Negative Declaration:

a. **Mitigation Measure BIO-1: Avoid Monarch Butterfly Wintering Habitat.**

Prior to any Program activities in tree groves comprised primarily or entirely of pine, cypress, fir, or eucalyptus that are within 2 miles of the Pacific Coast, a qualified biologist or biological monitor working under a qualified biologist will survey the grove for aggregations of Monarch butterflies during the overwintering season according to the Xerces Society's Western Monarch Count Protocol (Xerces Society 2019), available at <https://www.westernmonarchcount.org>:

- Two surveys will be conducted during the overwintering season, one during the Western Monarch Thanksgiving Count period (the three-week period centered on the Thanksgiving holiday), and a second during the New Year's County period (the two-week period beginning the weekend prior to the New Year's Day).
- Each survey will be conducted by two surveyors to provide multiple independent estimates of monarch numbers.
- Surveys will be conducted in the morning while temperatures are below 55° F (13° C) and monarchs are more likely to be clustered.
- Surveys will not be conducted during rain or strong winds due to poor visibility and the chance that individual monarchs shall be scattered on the ground.
- If no Monarch overwintering aggregations are observed, Program activities may proceed pursuant as long as they occur prior to November 1. If Program activities are delayed beyond November 1, then the grove will be re-surveyed.
- If a Monarch overwintering aggregation of any size is detected, then no Program activities may take place inside the tree canopy within 200 feet of the aggregation, when present. Activities outside of the canopy line but within 200 feet may proceed (i.e., treatment of low-growing vegetation outside of the tree grove) if a qualified biologist or monitor determines that the activity does not pose a threat to the monarch aggregation.

- Once the aggregation disperses (typically by March), treatment of vegetation within 200 feet of tree(s) where monarch aggregations were observed may proceed if, as determined by a qualified biologist or monitor, it will not result in significant alteration to wind and sunlight patterns within the grove.
- If monarch overwintering aggregations are detected in eucalyptus removal areas, then a long-term tree planting strategy is necessary (see Protecting California's Butterfly Groves [Xerces Society 2017]). A long-term tree planting strategy will also be used for those stands which have historically been used as monarch overwintering habitat (<https://www.westernmonarchcount.org/find-an-overwintering-site-near-you/>).
- Native tree species suitable for Monarchs must be planted many years prior to eucalyptus removal with the understanding that they may not reach functional heights to provide wind protection and suitable dappled lighting for 15-30 years. Transplanting saplings from a local source may speed this process. Planting of Eucalyptus will be prohibited. Removal of Eucalyptus may proceed once native replacement trees have reached sufficient size to provide wind protection within the grove.
- Standing dead trees generally do not contribute to monarch overwintering habitat (Xerces Society 2017) and may be removed within the grove between April 1 and August 31, outside of the overwintering period, as determined appropriate by a qualified biologist or monitor. Sites where invasive dead trees have been removed may create opportunities for native tree planting within the interior of the grove.
- If a Eucalyptus grove where a monarch overwintering aggregation was previously detected is re-surveyed using the Western Monarch Count Protocol (Xerces Society 2019) and found to be unoccupied for 5 consecutive years, then the grove may be removed before native replacement trees have reached full size.

b. Mitigation Measure BIO-2: Avoid Monarch Butterfly Host Plants.

- For all Program activities that only have incidental vegetation removal, Midpen will conduct a pre-construction worker training to identify milkweeds (*Asclepias* sp.), the host plant for Monarch butterflies, and survey for eggs/larvae. Following the training, workers will survey the site for milkweed.

- For Program activities that have more than incidental vegetation removal, a qualified biologist or biological monitor working under a qualified biologist will conduct pre-construction surveys for milkweed.
- Host plants containing eggs, larvae, or pupae of Monarch butterflies will be avoided, and will be protected with an appropriately-sized buffer as determined by a qualified biologist, taking into account the characteristics of the plant species and the nature of the proposed treatment.
- Vegetation treatment may proceed if a qualified biologist determines that the host plants (1) are not occupied by Monarchs, and (2) may benefit from treatment (such as if the host plants have already set seed and post-treatment conditions will favor them over non-native weed species).

c. Mitigation Measure GEO-1: Erosion Control and Slope Stability Measures.

This mitigation measure applies to any Program activity areas determined to be at risk for erosion and slope instability, including if the activity exposes soils and leaves groundcover or native mulch/organic matter to be less than 70 percent following work; if work is proposed to occur on steep slopes (defined as over 35 % slope); if evidence of unconsolidated soils or landslides is found on site; or if the scale of the proposed activity would disturb a large area.

Prior to conducting work that could result in erosion or slope instability, qualified personnel will conduct a review of site conditions which may include, but is not limited to, a desktop review of slope, LiDAR, historic evidence of landslides (e.g., Wentworth et al. 1997), local hazard mapping and safety plans, proximity of the site to infrastructure, and modeling of landslide susceptibility GIS data (e.g., Wills et al. 2011). Qualified personnel are personnel who have knowledge and experience in the application of erosion and slope stabilization control measures through training or field experience with control measure installation. The qualified personnel may also conduct a site visit to look for existing signs of erosion or slope instability (e.g., rills or slumped soil). Depending on the slope and the downslope resources (e.g., roads that could be impacted if a slope failed or waterbodies or habitat that could be impacted from erosion.), erosion and slope stabilization measures (listed below) will be implemented. These measures will depend on the site's specific characteristics and the type and extent of work to be performed and will be determined by qualified personnel. The qualified personnel will memorialize in writing their field observations and corresponding recommendations regarding installation of

control measures. Control measures may be adjusted as needed depending on the site's specific characteristics.

For activities that involve substantial grading on active slide areas, unstable areas, or unstable soils (as defined in the California Forest Practice Rules), a licensed geologist or Registered Professional Forester (RPF) will conduct the site inspection. This includes activities occurring in previously undisturbed soils (e.g., would not apply for grading within an existing, engineered road or trail); or activities occurring above (within 0.5 mile) or below (within 0.25 mile) infrastructure, including residences or other potentially occupied structures. Activities involving substantial vegetation removal will be conducted consistent with the IPM and Wildland Fire Resiliency Program measures.

A licensed geologist or RPF will also conduct site inspections where any road is proposed to be extended or re-routed by 600 feet or more, regardless of the proximity to active slide areas, unstable areas, or unstable soils. The licensed geologist or RPF will identify specific control measures to be implemented, which may include, but are not limited to, the control measures identified below.

If the desktop review and/or site visit determine that a public safety hazard could occur from Program activities being conducted in unstable areas adjacent to existing infrastructure, sensitive habitat, or habitable structures, a licensed geologist/engineer will perform a site assessment. Recommendations provided in the site assessment will be implemented as needed to ensure that slope instability and public safety hazards do not occur. Recommendations could include measures such as stabilizing slopes with mats or natural materials after tree removal and replanting denude areas to stabilize soils.

In areas that were previously analyzed by an RPF or licensed geologist, Midpen will review the prior recommendations for consistency with the proposed activity and determine if a new review is warranted.

General Control Measures

In addition to Program BMPs GEN-2 and GEN-19, the following general control measure will be implemented during work as determined appropriate by the qualified personnel:

- Shut down use of heavy equipment, skidding, and truck traffic when soils become saturated and unable to support the machines.

Reduced Groundcover Control Measures

In addition to Program BMPs EC-1 through EC-5, the following reduced groundcover control measures will be implemented during work as determined appropriate by the qualified personnel if the activity would leave less than 70 % of groundcover or native mulch/organic material on site:

- Sow native grasses and other herbs on denuded areas where natural colonization or other replanting will not occur rapidly; use slash or chips to prevent erosion on such areas.
- Use surface mounds, depressions, logs, rocks, trees and stumps, slash and brush, the litter layer, and native herbaceous vegetation downslope of denuded areas to reduce sedimentation and erosion as necessary to prevent erosion or slope destabilization.
- Install approved, biodegradable erosion-control measures and non-filament-based geotextiles (e.g., coir, jute) when:
 - Conducting substantial ground-disturbing work (e.g., use of heavy equipment, pulling large vegetation, etc.) within 100 feet and upslope of currently flowing or wet wetlands, streams, lakes, and riparian areas;
 - Causing soil disturbance on moderate to steep (i.e., 10 % slope and greater) slopes; and
 - Following the removal of invasive plants from stream banks to prevent sediment movement into watercourses and to protect bank stability.
- Install certified weed-free sediment control devices as appropriate. Sediment control devices will be inspected daily during active construction by workers to ensure that the devices are in good working condition to prevent sediment transport into the waterbodies and will be repaired as needed.

Steep Slopes Control Measures

The following measures will be implemented during work conducted on steep slopes (i.e., greater than 35 %) as determined appropriate by qualified personnel:

- Avoid use of heavy equipment on slopes greater than 35 % unless specialized equipment is used that does not impact slope stability as determined by the qualified personnel.
- Prescribed burns and pile burns will be performed outside of perennial and intermittent streams and of riparian forest/ woodland. A 50-foot buffer

around perennial and intermittent streams will be maintained when the burn is proposed upslope of the stream on slopes greater than 35 percent.

- Avoid installation of cleared areas, including spur roads or staging areas, on steep slopes, particularly over 50 percent slope, where feasible. Where not feasible, a licensed geologist/engineer or RPF will be consulted, as required above. The licensed geologist/engineer or RPF will identify and require implementation of appropriate design and control measures, including but not limited to, those identified in Low-Volume Roads Engineering (Keller & Sherar, 2003); Handbook for Forest, Ranch, and Rural Roads (Weaver, 2015); or the latest California Forest Practice Rules. Other suitable engineering guidance includes:
 - Locating roads on well-drained soils and slopes where drainage moves away from the road;
 - Providing adequate surface drainage;
 - Avoiding wet and unstable areas (seeps, springs, etc.);
 - Using the natural topography to control or dictate the ideal location of road or cleared area (e.g., staging area); use saddles, follow ridges, use bench areas, etc.

d. **Mitigation Measure HAZ-1: Proper Handling and Disposal of Contaminated Soil, Sediment, and Groundwater.**

Prior to initiating ground-disturbing activities, Midpen or its contractors will inspect the soil, sediment, or groundwater for the presence of possible contamination. If indicators of contamination (e.g., foul odor, staining or sheen, etc.) are found, soil and groundwater sampling will be conducted by an appropriate licensed professional and testing of samples will be completed by a California Certified laboratory. In the event that soils to be excavated are found to be contaminated, the excavated soil will be treated as hazardous materials and disposed of at an approved hazardous waste disposal facility in compliance with state and federal regulations and Midpen operational procedures. Effective dust suppression procedures will be used in construction areas to reduce airborne emissions of these contaminants and reduce the risk of exposure to workers and the public. Regulatory agencies for the State of California (Department of Toxic Substances Control [DTSC] or RWQCB) and the appropriate county will be contacted by Midpen or its contractor to plan handling, treatment, and/or disposal options. In removing potentially contaminated soil, sediment, or groundwater, workers will wear protective clothing and equipment to limit their exposure.

e. **Mitigation Measure HAZ-2: Review of Proximity to Existing Known Hazardous Materials Clean-up Sites and Implementation of Safety Precautions.**

Midpen and/or its contractors will evaluate the proximity of proposed Program sites that involve ground-disturbing activities to existing known hazardous material cleanup sites. This review will include examination of the planned Program activity footprint in relation to records of hazardous materials sites in the SWRCB's GeoTracker database and the DTSC's EnviroStor database.

If the Program activity is located on or within 100 feet of a documented hazardous material contamination site, for which clean-up activities have not been completed or been successful, Midpen and/or its contractors will commission a Phase I Environmental Site Assessment to more fully characterize the past land uses and potential for soil and/or groundwater contamination to occur at or in close proximity to the site.

If the Phase I Environmental Site Assessment demonstrates a reasonable likelihood that contamination remains within the Program activity's area of disturbance, Midpen and/or its contractors will commission a Phase II Environmental Site Assessment, including soils testing, to characterize the extent of the contamination and develop ways to avoid the contaminated areas during Program activities. Midpen will follow all recommendations of the Phase II Environmental Site Assessment and will avoid areas of contamination, to the extent feasible. In the event that it is not feasible to avoid all areas of contamination, Midpen and its contractors will follow all applicable laws regarding management of hazardous materials and wastes. This includes proper disposal of any contaminated soil in a hazardous waste landfill, and ensuring that workers are provided with adequate personal protective equipment to prevent unsafe exposure.

f. **Mitigation Measure NOI-1 Noise Control.**

For all Program activities, Midpen will implement the following noise control practices to minimize disturbances to residential areas surrounding work sites:

- The operation of heavy construction equipment will be limited to occur between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday and comply with applicable local noise requirements.
- Program activities in residential areas will not occur on Saturdays, Sundays, or any holidays except during emergencies, or with advance notification of surrounding residents. Powered equipment (vehicles, heavy equipment, and hand equipment such as chainsaws) will be

equipped with adequate mufflers maintained in good condition. Best available noise control techniques (e.g., mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) will be used for all equipment and trucks, as necessary.

- Staging areas will be located as far as possible from noise sensitive receptors during maintenance work.
- At work sites where heavy equipment will be used within 40 feet of sensitive receptors for longer than 5 days within the Program area, residents/sensitive receptors will be notified at least one week prior to performing maintenance work. At Program sites where heavy equipment will be used within 75 feet and 130 feet in Los Gatos and Cupertino, residents/sensitive receptors will be notified at least one week prior to performing maintenance work. The notification will include the anticipated schedule and contact number for a Midpen representative who can address noise complaints.

g. Mitigation Measure TRANS-1: Emergency Responders and Access.

The following measures shall be implemented to ensure emergency access is maintained:

- At least one week prior to temporary lane or full closure of a public road, Midpen shall contact the appropriate emergency response agency/agencies with jurisdiction (e.g., CalTrans, County, City) to ensure that each agency is notified of the closure and any temporary detours in advance. Midpen shall also notify adjacent neighbors along the road in advance of temporary closure.
- In the event of an emergency, roads (public roads, and Midpen-owned or managed roads) or access trails blocked or obstructed by activities shall be cleared to allow emergency vehicles to pass.
- During temporary lane or road closures on public roads, Midpen shall use flaggers equipped with two-way radios. During an emergency, flaggers shall radio to the crew to cease operations and reopen the public road to emergency vehicles.
- In work areas, all vehicles and equipment shall be parked so the road is not blocked or obstructed when there is no operator present to move the vehicle.

7. As identified in Section 10.6 of the Program Manual, once the Program is operating under regulatory approvals and permits, further mitigation opportunities shall be identified and implemented as necessary to address any potential impacts, including the need for any compensatory action.
8. For any mitigation efforts that the District will undertake in support of the Program, the District shall ensure adequate monitoring to document that the mitigation is operational and successfully providing the functions and value needed to offset potential Program impacts.
9. The applicant shall adhere to all Annual Work Plan Notification requirements as detailed in Section 11.4 of the Program Manual. At the beginning of each year, the District shall prepare an annual notification report summarizing proposed activities for that upcoming given year. The notification report shall describe the locations, natural resource conditions, and other key resource issues as well as summarize anticipated impacts on wetlands and waters of the U.S. and state, riparian resources, and federally and state listed species. The annual notification will also describe avoidance and minimization measures, BMPs, and proposed mitigation that will be implemented. If requested, the District shall be available to host a tour of the identified Program sites.
10. All Program activities will be conducted in accordance with the project description, program-wide and resource/activity-specific BMPs, and terms of the Program permits.
11. As required by Section 11.12 of the Program Manual, at the conclusion of the Program implementation season (generally after October 31 and before December 31), the District shall prepare and submit to the relevant regulatory agencies an annual summary report describing the work plan status and confirm which projects were completed. The report shall comply with permitting requirements issued by the relevant regulatory agencies.
12. The Coastal Development Permit and Grading Permit shall be valid for five (5) years from the date of final approval, in which time all work authorized under the permit must be completed. Any extension to this permit shall require submittal of a request for permit extension and payment of any applicable extension fees at least sixty (60) days before the expiration date.

13. Should any human remains be discovered during site preparation, excavation, or other ground disturbance associated with the proposed project, all ground disturbing work shall cease, and the County Coroner shall be immediately notified, pursuant to Section 7050.5 of the State of California Health and Safety Code. Work must stop until the County Coroner can make a determination of origin and disposition of the remains pursuant to California Public Resources Code Section 5097.98. If the County Coroner determines the remains to be Native American, the Native American Heritage Commission shall be contacted within 24 hours. A qualified archaeologist, in consultation with the Native American Heritage Commission, shall recommend subsequent measures for disposition of the remains.

2023_12_01_PLN_2023-00068_PCSR_WPC_FINAL