**Midcoast Community Council**
**P.O. Box 64**
**Moss Beach, CA 94038**
**(650) 728-2129 (voice and fax)**
**www.montara.com (WEB Page)**

**Serving 12,000 residents**

March 15, 1998

To: Honorable Board of Supervisors
From: Mid-Coast Community Council
Date: 16 March 1998
Re: Development of non-conforming parcels in the Mid-Coast area under Coastal Act requirements

Dear President Huening and Honorable Supervisors,

The Mid-Coast Community Council appreciates the effort that your Planning and Building Division has put into the staff report and study, "Development of Substandard Residential Parcels in the Urban Mid-Coast." We have placed a great deal of emphasis on getting the facts of the situation. This is because it is only with complete information that your Board can expect to make far-reaching policy decisions that will affect the development of the Mid-Coast over the next several decades, and therefore determine the impact of that growth on sensitive coastal resources protected by the Coastal Act. Our Council members and volunteers have continued to research the situation "on the ground," and appreciate the cooperation they have received from your Planning Department staff.

However, we do not yet agree on the numbers that represent what we are talking about, so it may be premature to recommend policy changes. The large difference in substandard lot counts between the 1993 County study and the 1997 Perkovic study must be properly reconciled before your Board can take informed action to correct what we believe to be a situation that threatens the very fundamentals of the protections of our Local Coastal Program ("LCP").

At this point, we have reviewed the staff proposals for changes designed to restrict the potential increase in build-out beyond LCP estimates; we feel that they fall far short of what is required. We have not devoted Council attention to the other issues raised in the staff report, specifically, development standards and design issues. That does not mean that we won't have recommendations in those areas. However, we cannot make intelligent recommendations until we understand the scope of the problem. This brings us back to the key point in the Council's 11 February 1998 letter to Paul Koenig (Attachment 2 in the Board packet for the 24 March 1998 Supervisors meeting): **The County's study of substandard lot development is too narrow in its focus exclusively on the R-1/S-17 zoned lots. The study needs to be broadened, and accurate hard counts of the total number of substandard lots that could be permitted development is essential.** Until data is available to inform policy decisions, the County's proposed strategy for effectively regulating development of substandard lots is fatally flawed.

Our preliminary recommendations are attached. They were discussed in outline form and approved for forwarding to your Board at our meeting on 11 March 1998. These must be regarded as preliminary recommendations, because, as noted above, final recommendations require further staff work to determine the actual magnitude of the potential over-build-out situation.

We are also preparing a more detailed analysis and discussion paper, which is currently in draft form. We expect to revise the text and numbers (although not the general conclusions) of the report at our Planning and Zoning Committee meeting on 18 March 1998, and will forward this document to the Supervisors and Planning and Building Division staff as soon as it is ready. In addition, we are scheduling meetings with individual Supervisors to explain this complicated issue and reach greater mutual understanding both of the problem, and possible solutions.

After the County staff presentation at your 24 March public hearing, we would like approximately 15 to 20 minutes for two or three of our elected Council members to highlight our analysis and concerns. We feel this would be more effective (with overhead slides) than a series of speakers each presenting a three-minute portion of a complete presentation. We would like to thank County staff for their research assistance.

Sincerely,
David Spiselman
David Spiselman, Chair

cc:
Paul Koenig, Director of Environmental Services, San Mateo County
Jon Silver, Chairman, San Mateo County Planning Commission
Jack Leibster, Coastal Commission
Montara Sanatary District
Granada Sanatary District
Cabrillo Unified School District
Point Montara Fire Protection District
Half Moon Bay Fire Protection District
City of Half Moon Bay

**Midcoast Community Council**
**P.O. Box 64**
**Moss Beach, CA 94038**
**(650) 728-2129 (voice and fax)**
**www.montara.com (WEB Page)**

**Serving 12,000 residents**

March 15, 1998

To: Honorable Board of Supervisors
From: Mid-Coast Community Council
Date: 11 March 1998
Re: Development of non-conforming parcels in the Mid-Coast area under Coastal Act requirements

**1. Recommendation:**

That your Board:

1.1 Direct the Planning and Building Division to complete an accurate hard count of all parcels in the unincorporated area of the Mid-Coast in each zoning district, updating actual projected build-out numbers based on the County's current development standards. These projections must include both conforming parcels (single merged parcels that meet the minimum zoning dimension and area standards) and non-conforming parcels (single parcels less than the minimums; or groups of parcels under common ownership that are legally distinct and could be transferred into separate ownerships, and where each underlying legal lot fails to meet zoning standards). Your Board cannot make intelligent, informed public policy decisions, insure that the County's Local Coastal Program ("LCP") continues to meet Coastal Commission and Coastal Act requirements, or protect the interests of the citizens of the County, without accurate, complete, dependable background information.

1.2 Refer the attached set of questions that are derived from the Planning and Building Division's proposal to County Counsel for determination of whether the proposed new policies are consistent with the Subdivision Map Act. Until the actual hard count of parcels that have development potential and the legal status of the proposals have been verified, it is premature to adopt changes in the policies as proposed.

1.3 Impose an immediate moratorium on all new parcel divisions or subdivisions until the County is able to reconcile the true potential build-out numbers based on current entitlements with the Coastal Act requirement to protect sensitive coastal resources. The analysis performed by the Planning and Building Division for consideration of parcel mergers in 1993, when updated with current data and projected across the R-1/S-17

zoning district, together with a fairly complete analysis of the R-1/S-9, R-1/S-10, and RM/CZ area within the Rural Residential Area, yields a projected build-out under current development procedures that is far in excess of the numbers used by the Coastal Commission at the time the County's Local Coastal Program was certified. The LCP was certified based on the cumulative impacts projected for build-out contemplated under the County's zoning practices in 1980, and actual practice has changed significantly since then, resulting in the potential for vast over-building in violation of the Coastal Act.

1.4 Direct the Planning and Building Division to revisit the Mid-Coast Community Council's earlier recommendation, requesting that Planning staff examine the potential for use of Transferable Development Rights. This would allow proposed new subdivisions to acquire existing entitlements to develop from isolated substandard lots, thus providing a mechanism to allow market forces to guide new development where it is most cost-effective.

1.5 Immediately establish a mandatory procedure that requires average development densities in each zoning district to meet the stated minimum development density. Mere monitoring of this statistic, with no legislative action to enforce the zoning minimums, will fail to stem construction far in excess of the currently-projected build-out numbers, and adversely affects the property rights of current owners of conforming parcels in each zoning district. These current owners may find that all infrastructure has been consumed by development of non-conforming parcels by the time they desire to develop their conforming parcels under their existing entitlements. This measure will help protect the County against future litigation.

1.6 Establish a policy that a person who purchases one or more contiguous lots, which results in a new non-conforming holding, from a larger holding that is now in common ownership, without purchasing the entire holding, has explicitly failed to meet the County requirement that "all opportunities to acquire additional land have been proven infeasible," and deny such an owner any development that allows an exception from the zoning minimums. Apply this policy also to the previous owners, if they transfer a portion of a contiguous holding and leave themselves with a non-conforming portion of their parcel.

1.7 Refer the Planning and Building Division proposal to merge lots as a condition of new development, and to merge lots as a condition of demolition, to the Planning Commission for determination of whether this policy adversely harms the interests of current owners of conforming developments, in favor of the interests of the owners of undeveloped, non-conforming or substandard lots who are not required to merge, and to analyze whether these proposals may have unintended consequences or side effects (e.g., might the requirement to merge encourage pairs of lots to be sold into separate ownership?).

1.8 If your Board should choose to proceed with the recommendations of your Staff at this time, despite our recommendation that accurate information is necessary as a basis for informed decision:

1.8.1 The 3,500 square foot limit should be replaced with the actual minimum zoning requirement for each district; e.g., the policy should require merger when the underlying lots do not meet the current zoning standards.

1.8.2 The County should prohibit use of the Home Improvement Exemption on non-conforming parcels, since this provides a 250 square foot bonus above the development standards that appear in the Non-Conformities Chapter and allows an eventual house size of 1,750 square feet on a 2,500 square foot parcel.

1.8.3 The County should restrict the privilege of including Caretaker's Quarters within the Waterfront (W) District to conforming parcels, to prevent development of residential uses on non-conforming parcels.

1.8.4 County staff should re-examine the limitations of the Non-Conformities Chapter to ensure that, as claimed in the staff report, there are and will continue to be strong economic incentives to acquire an adjacent parcel and develop on a resulting (merged) parcel that conforms to zoning minimums, rather than develop each non-conforming lot separately.

## 2. Background

The County's staff report should be updated to include the adoption of the Home Improvement Exemption and to briefly state the consequences of this action when applied to structures on non-conforming parcels.

For our study, the following past events and actions are also relevant:

California Subdivision Map Act has been modified, invalidating all projections based on zoning minimums

January 26, 1984 – Coastal Commission approves Rural Residential Area with density of one dwelling unit per 5 acres.

Board of Supervisors has adopted an ordinance that merged parcels in the Miramar area to 10,000 square foot minimums and in the Seal Cove area to 20,000 square foot minimums.

Coastal Commission certified San Mateo Local Coastal Program based on findings that coastal resources are adequately protected by the land use policies and densities adopted.

## 3. Key Issues

Note: "Parcel" appears to be used interchangeably for any division of land, or for a particular ownership holding proposed for development. "Lot" also seems to be used ambiguously, but in our discussions we use the term "lot" to mean the smallest legally-recorded subdivision of land shown on the Assessor' Parcel Maps, and the term "parcel" to mean a group of one or more contiguous lots with the same ownership. Due to the difficulty of obtaining accurate counts by volunteers using publicly available records, and the failure of Assessor's Parcel Maps to show the consequences of legal lot merger, all counts and percentages given in the discussion should be considered approximations, unless preceded by the word "exactly."

The Mid-Coast Community Council's Planning and Zoning Committee has carefully analyzed the Staff study, Development of Substandard Residential Parcels in the Urban Mid-Coast, and finds that it fails to address many of the important issues, continuing the County's practice of unrealistically under-estimating potential build-out.

**This section parallels the Key Issues section of the staff recommendation from Terry Burnes.**

3.1 Planning and Building Division staff, in their cover memorandum, mis-state facts from their own staff study. We suggest that the County correct the text, as shown below. The attached report details our Committee's findings.

3.1.1 The claim on page 3 of the staff recommendations from Terry Burnes, which reads, "There are approximately 1,666 residentially zoned substandard lots in the Mid-Coast (1,444 lots are adjacent to another lot in common ownership; 222 lots are in separate ownership)," is completely false and appears to intentionally misrepresent the actual situation. A fair sentence would read, "There are approximately 1,666 vacant residentially zoned substandard lots zoned R-1/S-17 within the Urban/Rural boundary in the Mid-Coast." The staff wording incorrectly minimizes the scope of the problem, and if taken at face value may lead to inappropriate action.

3.1.2 The assumptions used in the 1993 staff study contradict claims made elsewhere. The 1993 staff study contemplated a comprehensive lot merger program, and considered that a single substandard lot in common ownership with an adjacent conforming parcel could be merged. Terry Burnes has explained that the Subdivision Map Act "expressly stated that merger beyond 5,000 square feet could not be based solely on density or minimum lot size provisions in a general plan or zoning regulation." Unless County Counsel can show compelling legal evidence that the proposed action to require a lot merger as a condition of demolition of an existing structure on a conforming parcel can also require merger of an adjacent vacant substandard lot into the resulting single holding (now typically 7,500 square feet, above the zoning district minimum of 5,000 square

feet), we must conclude that the existence of separate vacant substandard lots adjacent to a developed conforming parcel cannot be merged, and will always remain available for sale to someone who may choose to develop on the (now isolated) substandard lot. Therefore, rather than counting these vacant substandard lots as capable of being merged, they should be counted as isolated. The wording of the staff summary cleverly avoids describing this situation so that it can be understood without looking at parcel maps.

3.1.3 We disagree that the claimed average parcel size of 5,900 square feet over the past three years is representative of what can be expected in the future. By the County's own estimates, 80% of Montara and 76% of Moss Beach was divided into substandard lots, whereas only 27% of El Granada is so divided. Within the recent past, while the Montara Sanitary District has had no available sewer capacity and Citizens Utilities has been under a moratorium on new water connections, all new residential development has been concentrated in El Granada and Miramar. A quick scan of the Assessor's Parcel Numbers listed in Attachment F of the staff report reveals that not a single parcel was developed in Montara or Moss Beach. In addition, during this period, new residential development in El Granada required an expensive transfer of water and sewer capacity, exacting a significant premium over the costs associated with those services when not constrained. Therefore, it is reasonable that these higher costs are only justifiable for a much larger house than normal. Given the relative scarcity of substandard lots in El Granada, and the cost associated with transfers of water and sewer capacity from priority parcels to residential parcels, it is perfectly understandable that in the recent past the average parcel size for a new dwelling exceeds 5,000 square feet. However, this is a temporary artifact and there is no evidence that it will hold when additional infrastructure becomes available throughout the Mid-Coast.

3.1.4 A careful study of the R-1/S-9 zoning district (Miramar), where the County did a lot merger in the period from 1979 to 1983 (while the LCP was being certified), confirms the failure of lot merger to achieve the designated density of 10,000 square feet per buildable parcel. The average parcel size appears to be approximately 4,784 square feet, less than half of the stated minimum requirement (and, incidentally, even less than the 5,000 square foot minimum required in R-1/S-17 areas). Perhaps this explains the Planning and Building Division's resistance to including the R-1/S-9 area in the study, and also explains why the staff report fails to list recent building activity in the Miramar area among the 112 parcels developed in the past 3 years, since parcels less than 5,000 square feet in the Miramar area would reduce the Mid-Coast residential average the County is attempting to portray as currently above 5,000 square feet.

3.1.5 A careful study of the R-1/S-10 zoning district (Seal Cove), which was merged at the same time to a 20,000 square foot minimum, confirms even more clearly the failure of the merger policy to achieve the stated minimum parcel size objectives.

3.1.6 As a consequence of the evidence cited in the previous two paragraphs that lot merger in the Miramar and Seal Cove areas has not achieved the stated objective, these areas still contain a significant number of non-conforming parcels and need to be included in an accurate study. (The Miramar area was outside the scope of the Perkovic study; as noted in our attached report, the Perkovic study has been adjusted to reflect the actual number of substandard lots in the Seal Cove area that were successfully eliminated during the County's merger process, based on information furnished by staff.)

3.1.7 Lots in the Princeton and Miramar commercial areas must also be studied, because the zoning allows for so-called "Caretaker Quarters" or "Multiple Family Dwellings - Mixed Use" that can accommodate multiple residents. At this point we have been unable to determine whether households in Caretaker Quarters were even included in the original LCP population projections, as this is only a permitted use in the Waterfront (W) District. The same comment applies to residences (above the first floor, and limited to no more than the floor area of the commercial uses) in the Coastside Commercial Recreation (CCR) District.

3.1.8 The Rural Residential Area (RRA) is zoned for a density of one dwelling unit per 5 acres. According to the Staff report, the RRA comprises a total of 230 acres and already has 46 developed parcels. This area provides a perfect example of a zoning district that has already reached its build-out capacity, yet there are many owners who believe they still have parcels with development entitlements. How will the County demonstrate, in preventing any further development in the RRA, that it actually intends to enforce its own zoning regulations? If it is unable to demonstrate the political will to enforce the densities in the RRA, why should we believe that years in the future, when the R-1/S-17 area exceeds the designated density, the County will be able to find a solution at that time?

3.2 The Planning and Building Division recommendation asks us to believe that property owners will merge lots voluntarily for development, because it is currently economically more beneficial to their interests. The experience of the Granada Sanitary District during their recent assessment district proceedings contradicts this; it shows that property owners act as if they believe their individual substandard lots have economic value; owners of contiguous substandard lots were able to escape an assessment of [about $4,318.xx] on each underlying lot if they performed a legal parcel merger, yet there are very few such mergers, projecting from the sample area used in the 1993 staff substandard lot study. Accepting such an economic argument now, it then follows that property owners would not merge lots voluntarily when the economic calculus changes. No solution is acceptable that leaves every existing legal lot with an absolute entitlement

to develop, yet the Staff proposal does nothing to extinguish these entitlements except when it suits the property owner's economic interests.

3.3 The situation with the existing entitlements is far in excess of LCP build-out numbers. Until mandatory policies are adopted and enforced that correct the existing situation, it is imperative that no further land divisions be approved that result in exacerbating the prevailing situation. Cumulative growth impacts threaten to overwhelm the sensitive coastal resources in violation of the Coastal Act and County LCP.

3.4 Transfer of development rights provides the most effective mechanism to allow market forces to guide development, without taking anything away from current property owners. The staff dismissal of this mechanism would leave the County with a missed opportunity: Such policies have worked successfully in other communities throughout California, where existing development rights were inconsistent with public policy.

3.5 The proposed monitoring policy has no enforcement provision, even if the County does monitor the average parcel size approved for development. (One need only look through the LCP to find repeated sentences that begin, "The County shall monitor . . ." and observe how frequently the County has failed to monitor.) [This claim should be verified before being sent to the County. My copy of the LCP is lost in a stack of papers, and the introductory words might be slightly different.]

3.6 The most critical element of the solution – preventing holdings in common ownership from being split up into separate ownership – is completely ignored by the staff report. The staff presents reasons why a mandatory lot merger program will fail to work, yet shows no imagination in trying to come up with a solution that will work.

3.7 Fairness to all property owners is essential. The new policies, as proposed, would penalize those law-abiding owners who have developed their lots (or plan to develop their lots) in accordance with the zoning district requirements, while rewarding those scoff-laws who use legal tricks to evade the zoning requirements. The burden of accommodating actual development to the limits established in the Local Coastal Program must be shared among all property owners, not placed entirely on those who have already followed the rules. The County must deal with vacant lots first; that is where the biggest potential problem is.

3.8 The County has repeatedly claimed that it is only following the consequences of revisions to the Subdivision Map Act in the mid-1980's. Was the County unaware that this legislation was proposed, and that it would have damaging impacts on the County's zoning regulations? Did the
County take any action to preserve and protect the interests of the citizens of San Mateo County, who depend on the County to enforce the laws and regulations equally over all residents and property owners?

## 4. RELEVANT NOTES:

Coastal Commission decision states that if the infrastructure carrying capacity is exceeded there shall be no increase in build-out (section 30250 in Coastal Act)

San Mateo County Policy 1.8 – No development shall have adverse impacts

**Midcoast Community Council**
**P.O. Box 64**
**Moss Beach, CA 94038**
**(650) 728-2129 (voice and fax)**
**www.montara.com (WEB Page)**
***Serving 12,000 residents***

February 11, 1998

Mr. Paul M. Koenig, Director of Environmental Services
Planning and Building Division
Hall of Justice and Records
401 Marshall Street
Redwood City, CA 94063

Subject: Substandard Residential Parcels in the Unincorporated Mid-Coast

At its most recent Planning and Zoning Committee meeting, volunteer staff prepared a report that was discussed at the most recent publicly posted and held meeting of the Midcoast Community Council, on February 11, 1998. After the Planning and Zoning presentation and open public discussion, the Midcoast Community Council deliberated and decided unanimously to respond to County planning staff recommendations contained in the February 5, 1998 cover letter and attached staff report on substandard lot development in the urban Mid-Coast dated March 10, 1998. The Midcoast Community Council made the following findings:

1. The County's study of substandard lot development is too narrow in its focus on the S-17 zoned (5,000 square feet) lots and needs to be broadened to include all lots that are substandard within their zoning. In order to obtain an accurate, hard count of the total number of substandard lots that could be permitted development, the following changes need to be made to the scope of the study:

    a. Include others areas with zonings others than s-17 plus commercial;
    b. Include Caltrans Right Of Way (ROW) in Urban, Rural Residential, and Rural areas;
    c. Include unmerged developed lots; and
    d. Apply current Planning Department practices and precedents to these properties (a through c above) to obtain the actual, on-the-ground potential for development.

2. Until steps listed in 1(a to d) above are followed, the county's proposed strategy for effectively regulating development of substandard lots is flawed.

3. As recently elected representatives of the Mid-Coast community, the members of the Mid-Coast Council currently possess the "significant community support" needed for the establishment of a Floor Area Ratio (FAR) standard and/or related revisions to the zoning regulations to be more restrictive than existing policy. Hence, we formally request technical assistance from the county planning staff to complete establishment of a FAR standard as soon as possible.

4. As recently elected representatives of the Mid-Coast community, the members of the Mid-Coast Council currently possess the "significant community support" needed for the creation of new design review regulations. Hence, we formally request technical assistance from the county planning staff to design and operate such an effort.

5. Until the study is broadened to include the areas requested in paragraph 1, above, completed, analyzed and responded to by our Council, we request a moratorium, effective immediately, on the granting of approval by the county for development on substandard lots, on subdivisions, and on all proposed lot line adjustments that create one or more substandard lots. This moratorium is required because, according to the Coastside County Water District (CCWD), the amount of water currently projected as "available for future use" in the unincorporated midcoast is less than 500 additional new connections. If these are assigned to substandard housing, they effectively foreclose the ability of the unincorporated midcoast to develop land in a way that is more tax-revenue intensive. That result would not be favorable either to the county or to the residents living in the unincorporated midcoast that have expressed a desire for local land use control.

6. We support the basic process proposed by the county for the merging of lots. However, the process needs to include FAR, Lot Coverage, and Setbacks to encourage merger for larger houses and for use of existing single owner substandard lots for affordable housing with consideration for Setbacks matching modular housing sizes.

7. We request a presentation by county staff at a future meeting or workshop to assist the Council and the community in defining and understanding all of the related planning issues clearly in order to offer specific solutions. We need this presentation and additional data to begin working on possible solutions.

8. Given our request for the additional data required in a broader scope of study and a presentation by staff, please reschedule this item to a future date. It is currently pending for a March 10 hearing at the Board of Supervisors. This will give county planning staff the time they will need to complete an accurate count (not formula projection) the actual total number of substandard lots in the unincorporated midcoast. To date, Midcoast Community Council member Paul Perkovic has been instrumental in collaborating with County Planner George Bergman to develop this information and we believe that the most credible result would be obtained through having Mr. Bergman work with him to complete this project. To complete our analysis, this project must produce an accurate hard-count listing of the actual lots, including address, owner, size dimensions, total square footage and APN number. Please send both a computer media copy and a printed hard copy of this property listing to the Midcoast Community Council at least 20 days prior to placing this topic on a future San Mateo County Board of Supervisors meeting agenda.

We appreciate your time and consideration of our requests. As previously discussed and agreed to by planning staff at a recent meeting with staff, Paul Perkovic is ready and willing to sit down with staff to discuss an approach for developing a hard count of the number of substandard lots that will meet the needs of all interested parties.

Sincerely,

David Spiselman
Midcoast Community Council, Chairman

c.c.:

Mr. Terry Burnes, Planning Administrator
Planning and Building Division
Hall of Justice and Records
401 Marshall Street
Redwood City, CA 94063

Supervisor Richard Gordon
Hall of Justice and Records
401 Marshall Street
Redwood City, CA 94063

Mr. Jack Leibster, Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105

Mr. Jon Silver, Chairman, Planning Commission
Hall of Justice and Records
401 Marshall Street
Redwood City, CA 94063