

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
WEB: WWW.COASTAL.CA.GOV



W15a & W16a

A-3-MRA-24-0026 & 3-23-0288 (MST BUS ROAD)

AUGUST 7, 2024 HEARING

EXHIBITS

Exhibit 1: Locations Maps

Exhibit 2: Site Area Photos

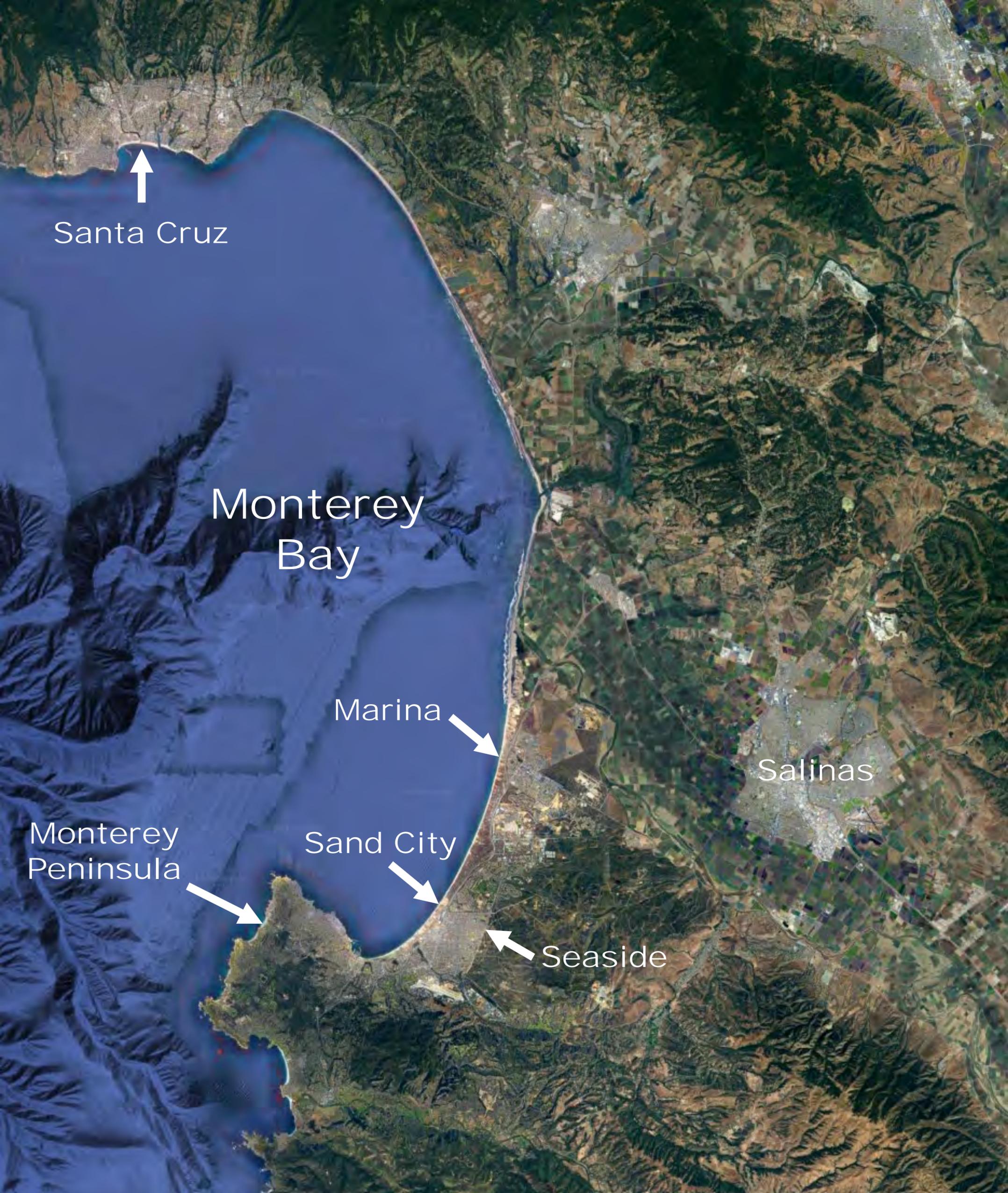
Exhibit 3: Proposed Project Plans (representative sheets)

Exhibit 4: City of Marina Final Local Action Notice

Exhibit 5: Appeal Number A-3-MRA-24-0026

Exhibit 6: Coastal Commission Staff Ecologist Memorandum

Exhibit 7: Coastal Commission Staff-Applicant Major Communications Timeline



Santa Cruz

Monterey Bay

Marina

Monterey Peninsula

Sand City

Seaside

Salinas

Regional Location Map



Monterey
Dunes Complex

Fort Ord Dunes
State Park
(FODSP)

Marina

Sand City

Monterey

Seaside

Fort Ord
National Monument

Regional Location Map



Project Alignment Outside of Coastal Zone

Marina

Project Alignment Within Marina LCP Area (Appeal A-3-MRA-24-00026)

5th Street Station (Outside Coastal Zone)

Project Alignment Within Commission's Retained Jurisdiction (CDP Application 3-23-0288)

Fort Ord Dunes State Park

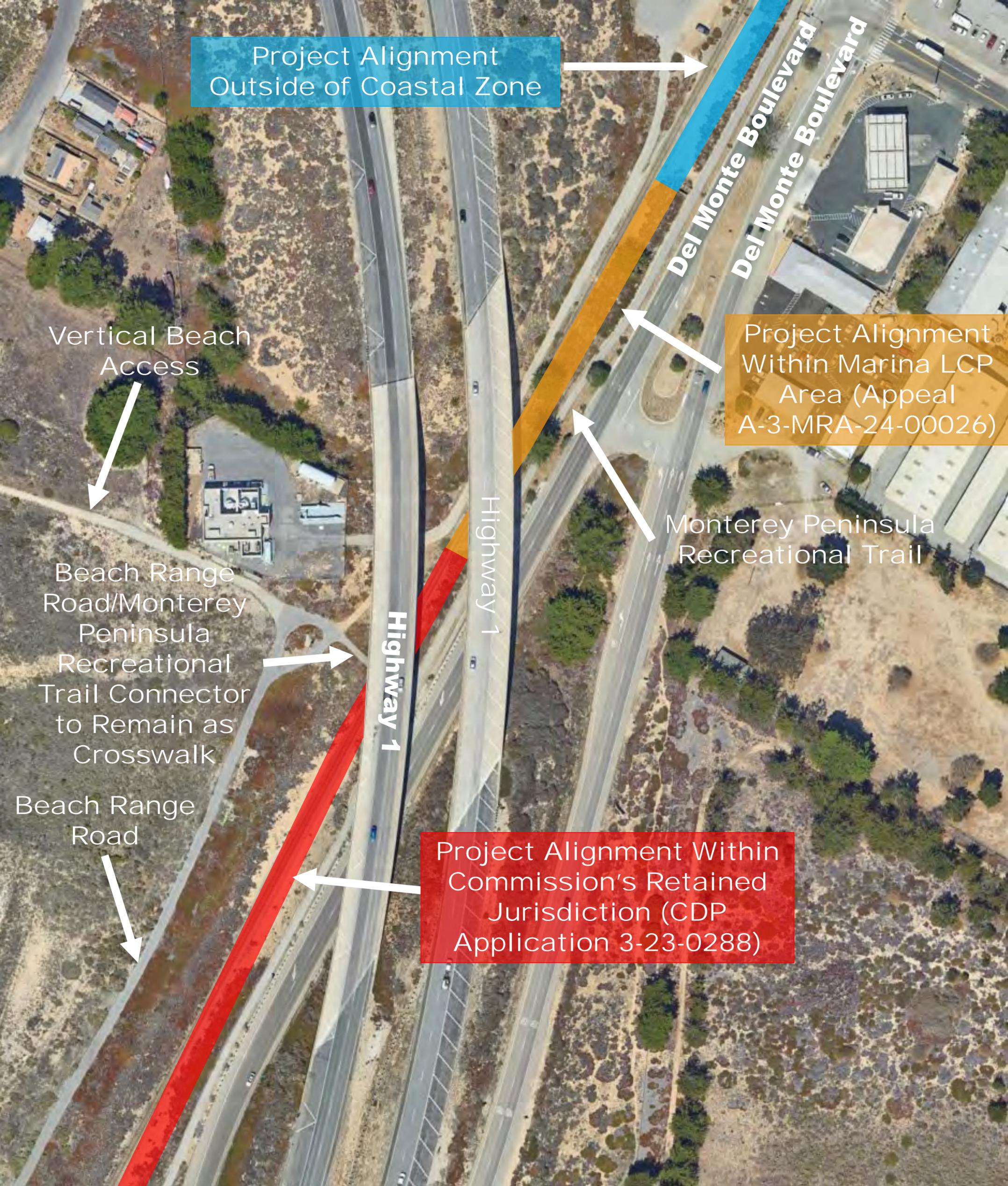
Sand City

Seaside

Project Alignment Within Sand City LCP Area

Project Alignment Outside of Coastal Zone

Project Area Map



Project Alignment Outside of Coastal Zone

Project Alignment Within Marina LCP Area (Appeal A-3-MRA-24-00026)

Project Alignment Within Commission's Retained Jurisdiction (CDP Application 3-23-0288)

Vertical Beach Access

Beach Range Road/Monterey Peninsula Recreational Trail Connector to Remain as Crosswalk

Beach Range Road

Monterey Peninsula Recreational Trail

Highway 1

Highway 1

Del Monte Boulevard
Del Monte Boulevard

Project Alignment: North End



Project Alignment Within Commission's Retained Jurisdiction (CDP Application 3-23-0288)

8th Street Bridge

8th Street Continues to FODSP Parking Lot

Beach Range Road

Highway 1

Highway 1

Monterey Peninsula Recreational Trail

Project Alignment: 8th Street



5th Street Station (Outside Coastal Zone)

Monterey Peninsula Recreational Trail

5th Street Underpass

Project Alignment Within Commission's Retained Jurisdiction (CDP Application 3-23-0288)

Beach Range Road

Highway 1

Project Alignment: 5th Street



Project Alignment: South End



Highway 1

Highway 1

Monterey Peninsula Recreational Trail

Monterey Branch Line Railroad Tracks

Beach Range Road

Typical Corridor Section
(Approximate bus road alignment shown in red)



Applicant's Visual Rendering of Project



Photograph Location Key

Rail Corridor From Marina
Looking South

A

Highway 1

← **Recreational Trail** →

Approximate Bus Road Alignment

Beach Range Road

Marina Area Beach Range Road/Recreational Trail Connector

B

← Beach Range Road →

Approximate Bus Road Alignment

← Recreational Trail →





Marina

Highway 1 Overpass

Approximate Bus Road Alignment

Fort Ord Dunes State Park

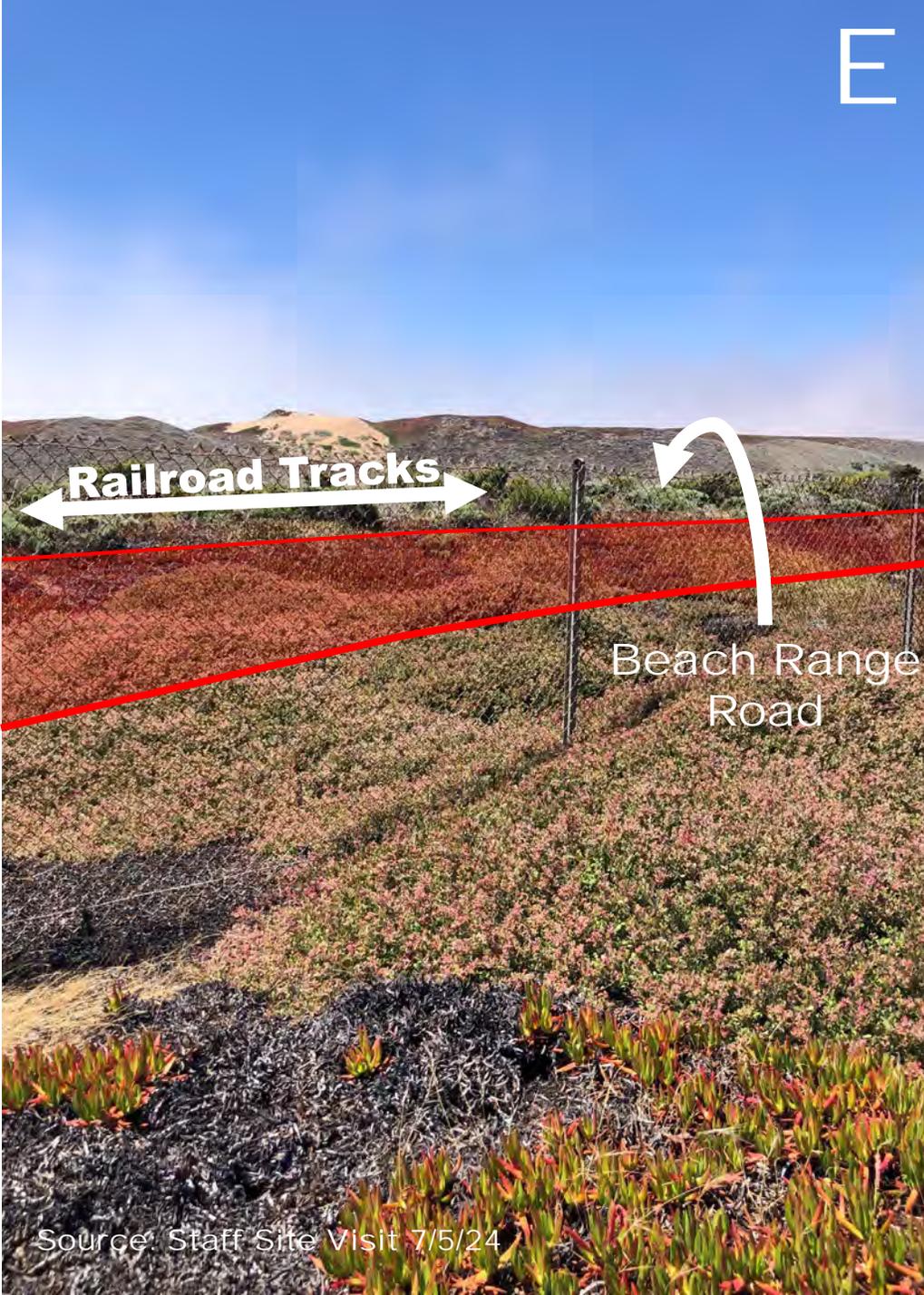
Vertical Beach Access

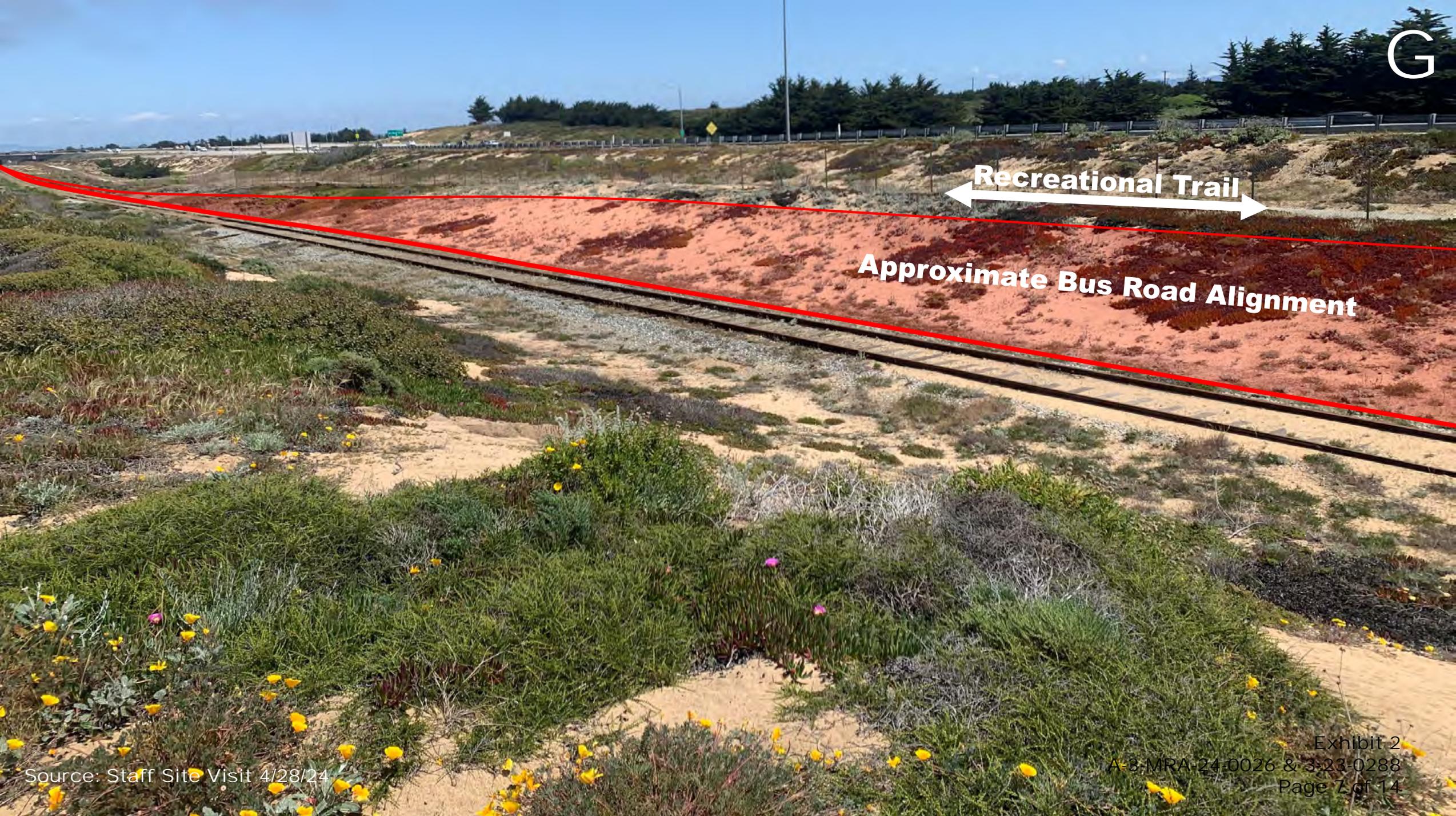
C

Fort Ord Dunes State Park

Approximate Bus
Road Alignment







Recreational Trail

Approximate Bus Road Alignment



Recreational Trail

Approximate Bus Road Alignment



8th Street Bridge

Highway 1

Beach Range Road

Approximate Bus Road Alignment

Recreational Trail



Source: Staff Site Visit 4/28/24

Source: Staff Site Visit 4/28/24

5th Street Bicycle/Pedestrian Underpass

Highway 1



Approximate Bus Road Alignment

← Recreational Trail →

Railroad Tracks

Approximate Bus Road Alignment

Recreational Trail

N

← Beach Range Road →

Approximate Bus Road Alignment

Recreational Trail

Highway 1

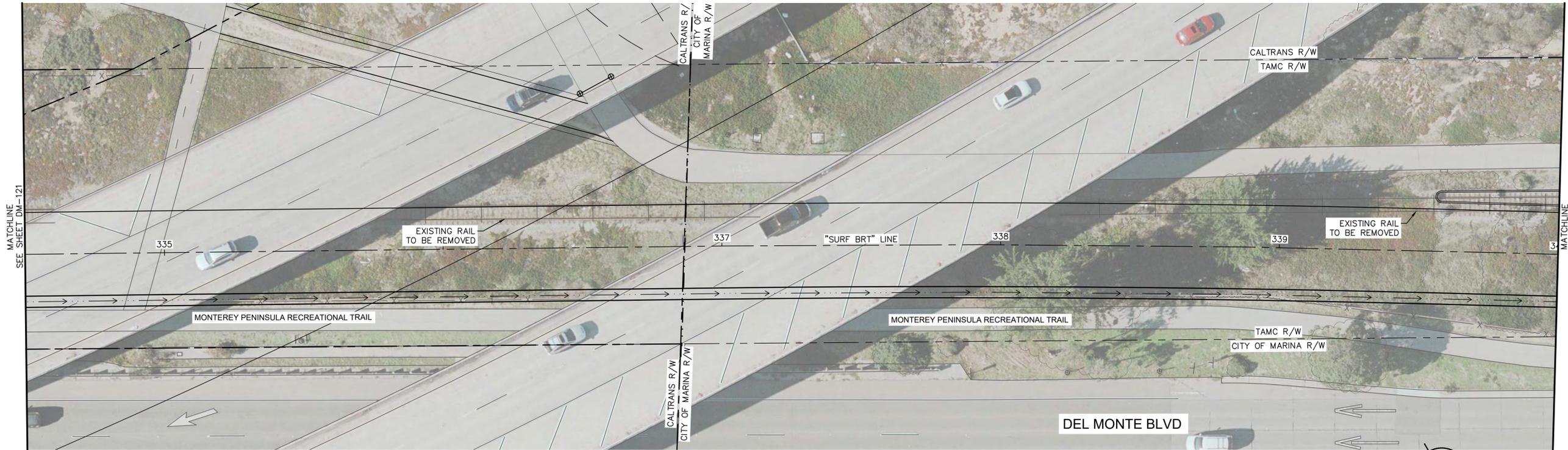
Recreational Trail Fence Holes and Informal Trails into Rail Corridor



Source: Staff Site Visit 4/28/24



Source: Staff Site Visit 4/28/24



PLAN

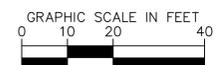
North End



Representative segments from project plan set PLAN

(full set is available for review in the Central Coast District office)

90% DESIGN - NOT FOR CONSTRUCTION



SURF! BUSWAY AND BRT PROJECT
DEMOLITION SHEET 25 OF 25
MONTEREY COUNTY CALIFORNIA

NOT FOR CONSTRUCTION

DATE	NOVEMBER 2023
DRAWN	ML
DESIGNED	LJ
CHECKED	PM
CONTRACT NO.	22-03
SHEET NO.	DM-122
25 OF 25 SHEETS	





PLAN



Near North End

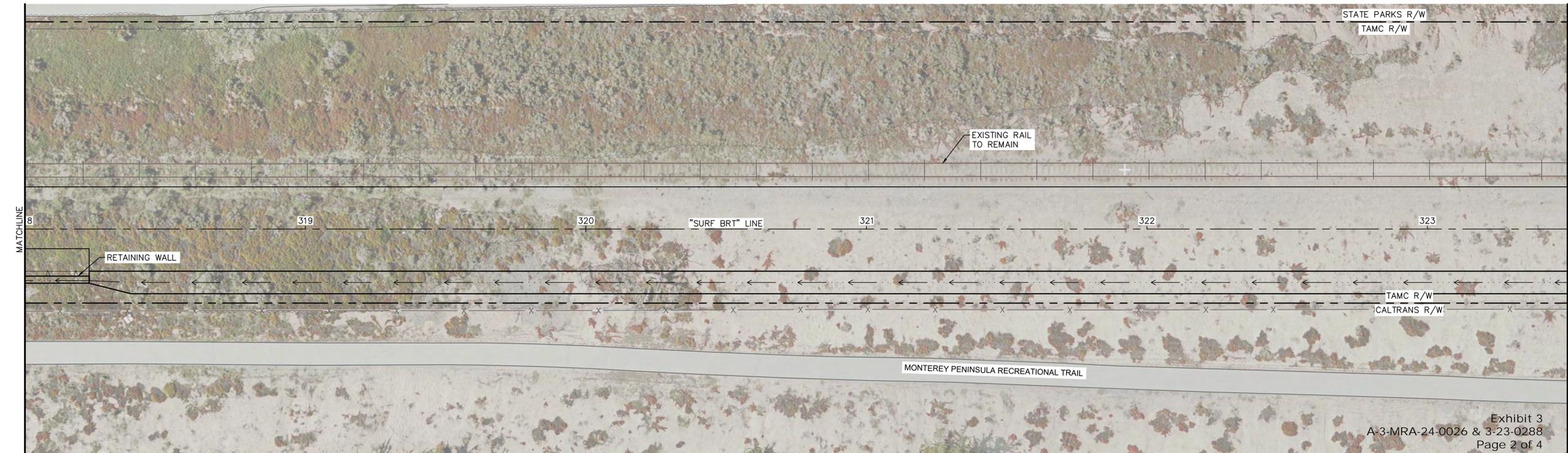
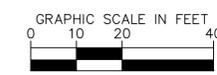


Exhibit 3
A-3-MRA-24-0026 & 3-23-0288
Page 2 of 4



**Representative segments from project plan set
(full set is available for review in the Central Coast District office)**

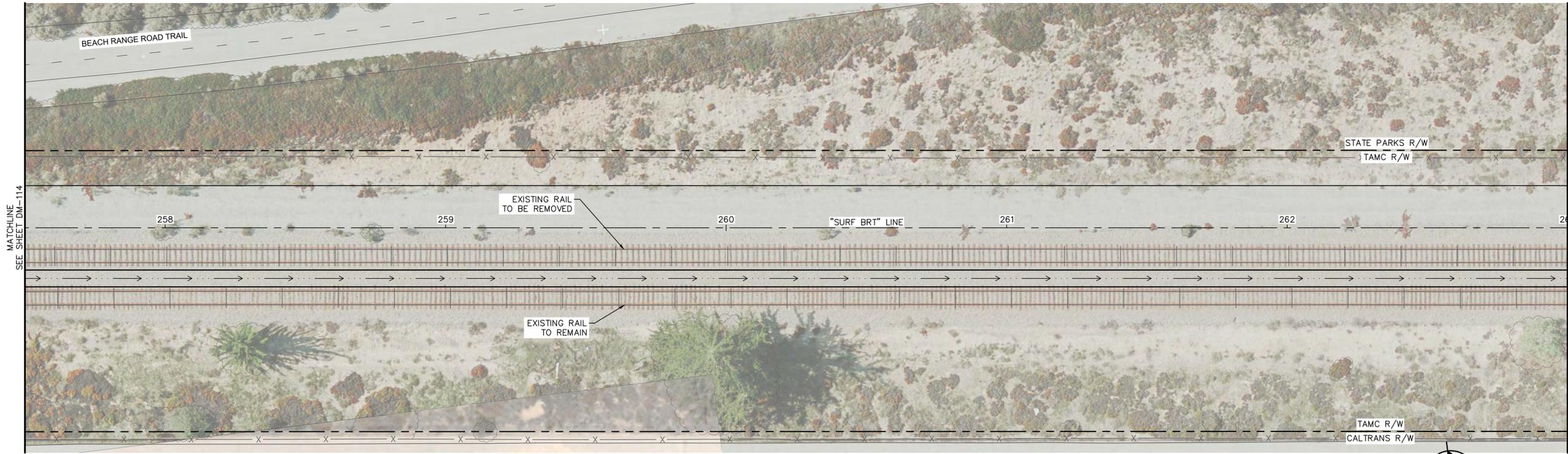
90% DESIGN - NOT FOR CONSTRUCTION



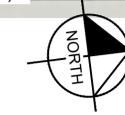
SURF! BUSWAY AND BRT PROJECT
DEMOLITION SHEET 23 OF 25
MONTEREY COUNTY CALIFORNIA

NOT FOR CONSTRUCTION

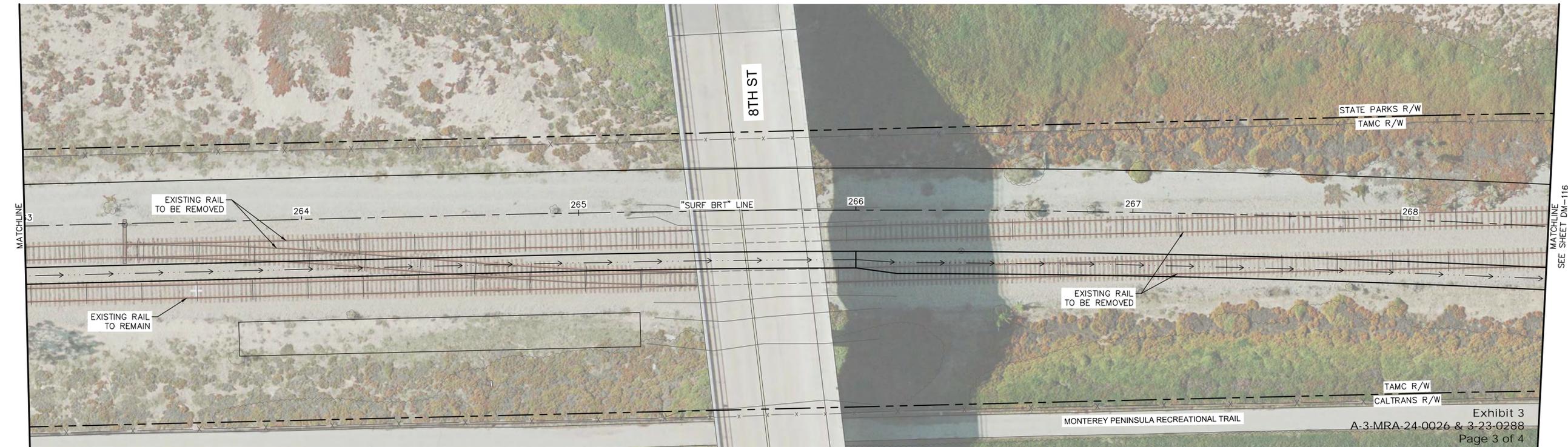
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CONTRACT NO.	22-03
SHEET NO.	DM-120
23 OF 25 SHEETS	



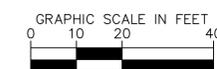
PLAN



8th Street



PLAN



Representative segments from project plan set
(full set is available for review in the Central Coast District office)

90% DESIGN - NOT FOR CONSTRUCTION



SURF! BUSWAY AND BRT PROJECT
 DEMOLITION SHEET 18 OF 25
 MONTEREY COUNTY CALIFORNIA

NOT FOR CONSTRUCTION

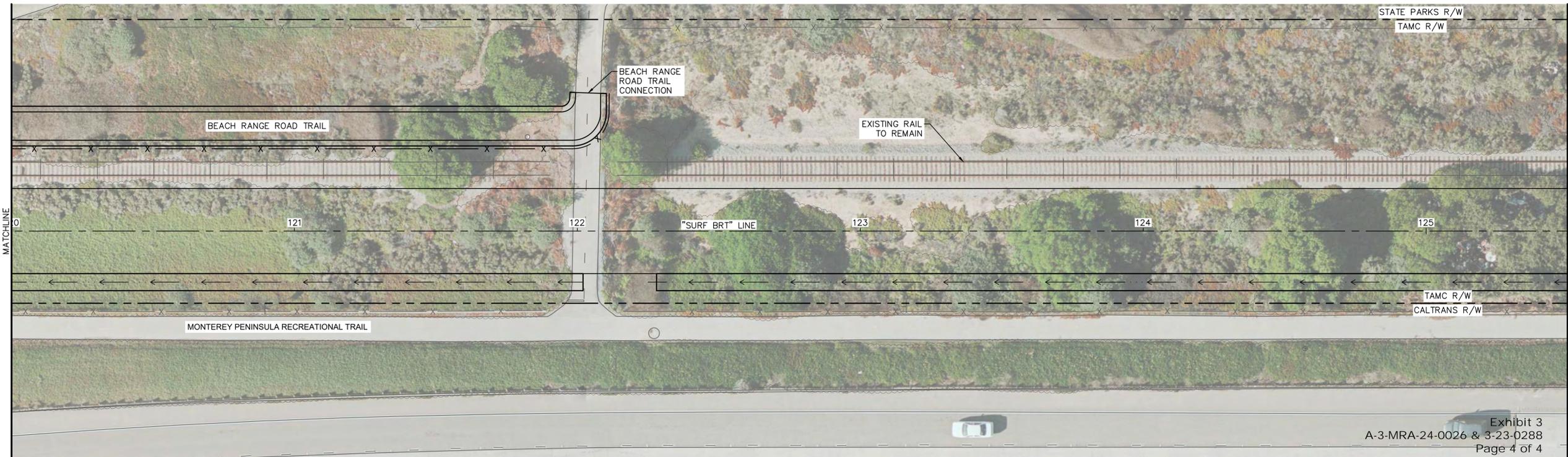
DATE	NOVEMBER 2023
DRAWN	ML
DESIGNED	LJ
CHECKED	PM
CONTRACT NO.	22-03
SHEET NO.	DM-115
	18 OF 25 SHEETS

K:\SAC_TRANSPORT\97541003 - MST SURF Final Design\Permits\Coastal Commission\2023 0313_CDP Information\Final Oct 2023 Submittal\SURF Busway Project Area\DM-115.dwg 02/22/2024 11:27:53AM theml.hoo



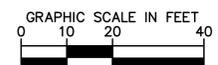
PLAN

South End



Representative segments from project plan set (full set is available for review in the Central Coast District office)

90% DESIGN - NOT FOR CONSTRUCTION



SURF! BUSWAY AND BRT PROJECT
DEMOLITION SHEET 5 OF 25
MONTEREY COUNTY CALIFORNIA

NOT FOR CONSTRUCTION

DATE	NOVEMBER 2023
DRAWN	ML
DESIGNED	LJ
CHECKED	PM
CONTRACT NO.	22-03
SHEET NO.	DM-102
	5 OF 25 SHEETS



RECEIVED

JUN 07 2024
NOTICE OF FINAL ACTION ON COASTAL PROJECT
CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA
CITY OF MARINA

FINAL LOCAL ACTION NOTICE
REFERENCE # 3-MRA-24-0810
APPEAL PERIOD 6/10-6/21/24

Date of Notice: June 5, 2024

Notice Sent to (via Certified Mail): Katie Butler, District Supervisor

From: City of Marina, Alyson Hunter, CDD
Marina, CA 93933

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Please note the following Final City of Marina Action on a coastal permit, coastal permit amendment, or coastal permit extension application (all local appeals have been exhausted for this matter).

Project Information:

Application #: TR/CDP 23-0004
Project Applicant: Monterey-Salinas Transit (MST)
Applicant's Rep: n/a
Project Location: TAMC ROW within Marina City limits
Project Description: The development of 6 linear miles of bus rapid transit (BRT) line on City streets and within TAMC rail ROW...

Final Action Information:

Final Local Action: June 4, 2024 - approved as conditioned

Final Action Body: [] Planning Commission [x] City Council

Table with 3 columns: Required Materials Supporting the Final Action, Enclosed, Previously Sent (Date). Rows include Adopted Staff Report, Findings, Conditions, Site Plans, and Elevations.

Table with 3 columns: Additional Materials Supporting the Final Action, Enclosed, Previously Sent (Date). Rows include CEQA Documents, Arborist Report, Biotic Report, and Correspondence.

Coastal Commission Appeal Information

The Final Action is:

[] NOT appealable to the California Coastal Commission. The Final City of Marina Action is now effective.

[x] Appealable to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this final action.

Copies of this notice have been sent via first-class mail to:

- Applicant Interested parties who arranged for mailing of this notice.

RESOLUTION NO. 2024-60

A RESOLUTION OF THE CITY COUNCIL DENYING THE APPEALS OF CDP 23-0004 (MST'S SURF! BUS RAPID TRANSIT PROJECT) AND UPHOLDING THE PLANNING COMMISSION'S APRIL 11, 2024, APPROVAL BASED ON FINDINGS, CONDITIONS OF APPROVAL, AND THE FINDING THAT THE PROJECT IS EXEMPT FROM CEQA PER PUBLIC RESOURCES CODE SECTION 21080.25(b).

WHEREAS, SURF! Bus Rapid Transit project, in its entirety, consists of approximately 6 linear miles of roadway surface dedicated for express busway service (bus rapid transit) between Marina and Sand City. The Marina portion of the route for the SURF! busway project would begin at Monterey-Salinas Transit's (MST)'s Marina Transit Exchange at Reservation Road and De Forest Road (northern terminus), and end at the proposed 5th St. Transit Center Contra Costa Street in Sand City (southern terminus in Marina);

WHEREAS, the project would be located in the cities of Marina and Sand City, running parallel to Highway 1 next to Fort Ord Dunes State Park. The busway includes dedicated express busway lanes, platforms, a new station at 5th Street on the former Fort Ord (outside the Coastal zone), and related infrastructure including the extension of the Beach Range Rd. path to the new Palm Ave. station;

WHEREAS, the project will use 100 percent zero-emission, near-zero emission, low oxide or nitrogen engines, compressed natural gas fuel, fuel cell, or hybrid powertrain buses. The completed project is expected to open in 2027 and will relieve congestion and support more frequent public transit services for people traveling within the corridor and beyond;

WHEREAS, the Transportation Agency of Monterey (TAMC) right-of-way (ROW), within which a portion of the proposed bus rapid transit (BRT) project is proposed to occur, has been utilized for transportation uses since the 1880s. The Monterey Branch Line, where the SURF! BRT project is to be developed, was purchased by TAMC in 2003 expressly for public transportation and transit uses;

WHEREAS, TAMC recognizes the SURF! project as the intended user of this portion of the Monterey Branch Line until such time as it develops a rail project within the corridor. TAMC supports the SURF! project and, as property owner, is signatory on the City of Marina permit application;

WHEREAS, Monterey-Salinas Transit (MST), the applicant and developer of the SURF! project, owns the property known as the 5th St. Transit Station (APN 031-221-005), located at 1st Ave. and 5th St. within the former Fort Ord area, east of Highway 1. This property was conveyed to MST as part of the original Fort Ord closure with the express intent of developing a new multimodal mobility hub. The Station will include a safe drop-off and pick-up area, public parking with EV charging, and bicycle and mobility amenities including a bicycle repair station;

WHEREAS, on April 11, 2024, the Planning Commission unanimously approved the Coastal Development Permit (CDP) and a Tree Removal Permit (TRP) as necessary for the multi-jurisdiction Project;

WHEREAS, on April 18, 2024, within the City's 10-day appeal period, the City of Marina received two (2) appeals of the Planning Commission's action to approve the CDP: one from Robert Solerno, on behalf of Keep Fort Ord Wild (KFOV), and one from Mason Clark, the owner/operator of the handcar commercial use that currently occupies a portion of the subject TAMC ROW. Issues raised in the appeal(s) include, generally:

- a) The project is not in compliance with the Coastal Act
- b) The project is not in compliance with the City's Local Coastal Program (LCP)
- c) The project will not improve coastal access
- d) The project is not in compliance with Proposition 116
- e) The Planning Commission erred in finding the Project exempt from the California Environmental Quality Act (CEQA).

Each appeal is described more specifically in the accompanying staff report, which also attaches the appeals in their entirety as exhibits;

WHEREAS, the 5th St. Transit Station is outside of the Coastal Zone and not subject to the requirements of the City's Local Coastal Program (LCP). Seventy-six (76) of the total 92 trees authorized for removal under Tree Removal permit (TP 23-004) are located on this property. The Tree Removal Permit has not been appealed and remains in effect;

WHEREAS, sixteen (16) trees are authorized for removal within the TAMC ROW between Palm Ave. and the Highway 1 overcrossing to the south. Two (2) of those trees are located within the 0.37 acre portion of the TAMC ROW within the Coastal Zone and are subject to this appeal. The other 14 are not;

WHEREAS, both of the appeals expressly do not appeal the TRP approved by the Planning Commission on April 11, 2024, and thus the TRP is final and remains in effect notwithstanding the Council's action on the appeals;

WHEREAS, the biological report¹ prepared for the project analyzed the entirety of the project, both within and outside the City of Marina and the multi-jurisdictional Coastal Zone boundary and, based on findings for Segment 2 which includes the 0.37 acre portion of the TAMC ROW within the City's Coastal Development Permit (CDP) jurisdiction, found that the subject appeal area (0.37 acres) does not contain the three (3) vegetation types that can be considered sensitive or Environmentally Sensitive Habitat Area (ESHA) in the City's LCP. These three (3) habitat areas are: dune scrub, habitat for the Smith's blue butterfly (i.e., buckwheat) and areas supporting rare plants;

WHEREAS, the City's CDP jurisdiction over the Project is limited due to the Coastal Commission's retention of CDP jurisdiction within City limits, specifically, within the area to the south of the Highway 1 overpass at Del Monte and west of the Highway 1 ROW;

WHEREAS, contrary to the Appellants' claims that the SURF! BRT Project would negatively impact coastal access, the portion of the SURF! project within the City's CDP jurisdiction will improve existing coastal access by formalizing the existing "social trails" along Beach Range Rd. and Marina Dr. to the new Palm Ave. transit stop (all within the TAMC ROW), and by improving pedestrian crossings at Reindollar Ave.;

WHEREAS, the City's LCP policies are "statements of intent" and are not binding upon the City. LCP at 2-1. Rather, "[i]mplementation of these policies will sometimes mean achieving a balance among the policies which best effectuates the City's Local Coastal Land Use Plan." Id. Although certain policies prioritize maintaining coastal access for recreational uses, other policies in the LCP support implementation of the SURF! busway, for example: Policy 35 ("To encourage continued and improved service by mass transit within the Coastal Zone."); Policy 36 ("To provide and promote the role of Marina as the physical and visual gateway to the Monterey Peninsula."); and Policy 39 ("To encourage development which keeps energy consumption to the lowest level possible.");

¹ Final Biological Resources Report, May 2021. Prepared by Denise Duffy & Assoc. (DD&A) for the MST SURF! BRT Project on file with the City of Marina Community Development Dept.

WHEREAS, by improving coastal access for pedestrians/bicyclists while also implementing the SURF! busway – which provides a more climate-friendly, mass transit alternative to commuters in the region – the Planning Commission properly exercised its policy judgment to strike a balance among the LCP’s various policies;

WHEREAS, Appellant KFOW claims that the Project is not eligible for MST’s proposed funding pursuant to Proposition 116 – because this 1990 voter initiative allegedly limits this funding to “rail” projects, which do not include the SURF! BRT Project – yet the Project’s funding source is irrelevant to the CDP permit at issue; City has no role in the funding of the project because the SURF! project is solely grant funded; and thus the funding’s consistency with Proposition 116 is outside of the City’s purview;

WHEREAS, for informational purposes, a full outline of the funding sources and construction timelines is available on the MST website at: <https://mst.org/about-mst/planning-development/surf/>;

WHEREAS, Appellant KFOW alleges that portions of MST’s larger project, which are outside of the City’s LCP jurisdiction (and in some cases, outside of the City’s municipal boundary), contain Environmentally Sensitive Habitat Areas (ESHA). Under the Coastal Act, only uses dependent on their proposed location in ESHA may be allowed within ESHA. Pub. Res. Code sec. 30240(a). However, the claim that portions of the Project site outside of the City’s CDP jurisdiction (and/or City’s municipal boundaries) may unlawfully interfere with ESHA is unrelated to the CDP being appealed, and is beyond the City’s purview here;

WHEREAS, Appellant KFOW alleges that the Planning Commission erred in finding the Project exempt from CEQA pursuant to Public Resources Code section 21080.25(b), specifically because in Appellant’s view, the Coastal Commission must find that the exemption applies before the City can make such finding. However, Appellant’s claim that the Coastal Commission must find that the Project qualifies for the statutory exemption for certain mass transit projects (PRC 21080.25(b)) *before* the City can make such determination has no basis in the law, nor does Appellant cite to any. The Planning Commission reviewed MST’s grounds for finding the overall Project eligible for the statutory exemption when MST approved the Project. The Commission then exercised its independent judgment to find that the CDP (which is necessary for the overall project) qualifies for the exemption for the same reasons the overall Project does;

WHEREAS, TAMC, through a sublease with the City, currently leases an approximately 3.5 mile segment of the railroad tracks to the Museum of Handcar Technology (“Museum”), which is also one of the parties to this appeal (Mason Clark). The existing lease expires on October 31, 2024. Both the primary lease between the City and TAMC and the sublease between the City and Museum expressly acknowledge that “*Museum understands and agrees that LESSOR has future plans for the Property, such as the SURF! Busway and Bus Rapid Transit Project, or other transportation uses. Thus, Museum agrees to vacate the Property during the TERM of the SUBLEASE or any renewal or extension of the SUBLEASE, without liability to the CITY, upon termination of the SUBLEASE by the CITY.*”²

WHEREAS, the Planning Commission’s approval of the Coastal Development Permit is subject to findings (**Exhibit A**) and conditions of approval (**Exhibit B1**) as provided herein;

² TAMC/City Lease agreement executed 11/04/22 and City/Museum Sublease agreement executed 11/09/22

WHEREAS, although not applicable or relevant to the subject appeal of the Coastal Development Permit, for ease in City staff's review for compliance with conditions of approval upon Project implementation, the TRP conditions are also provided herein as **Exhibit B2**; and

WHEREAS, Staff recommends that the City Council (1) find that the Council has reviewed the Notices of Exemption filed by MST on July 12, 2021, and March 13, 2023, including the reasons MST provided for adopting the exemptions; and (2) find that in the Council's independent judgment, the project qualifies as exempt from CEQA per Section 21080.25(b) of the Public Resources Code. The City will file a Notice of Exemption with the Monterey County Clerk's Office.

NOW THEREFORE, BE IT RESOLVED that the City Council does hereby:

1. Find that the foregoing recitals, and the accompanying staff report, are adopted as findings of the City Council as though set forth fully herein.
2. Deny the appeal by Mason Clark (**Exhibit C1**), and deny the appeal by Robert Solerno on behalf of KFOW (**Exhibit C2**), based on such findings, and uphold the decision of the Planning Commission, including:
 - a. Making the findings set forth in Exhibit A, attached hereto;
 - b. Adopting the Resolution to approve CDP 23-0004 subject to the conditions of approval attached hereto; and
 - c. Finding that in the Council's independent judgment, the project qualifies as exempt from CEQA per Section 21080.25(b) of the Public Resources Code.
3. Direct staff to submit the City's Notice of Final Action to the California Coastal Commission.

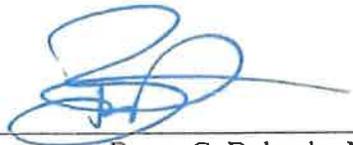
PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 4th day of June 2024, by the following vote:

AYES, COUNCIL MEMBERS: McAdams, Biala, Visscher, Delgado

NOES, COUNCIL MEMBERS: None

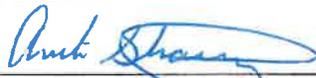
ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: McCarthy



Bruce C. Delgado, Mayor

ATTEST:



Anita Sharp, Deputy City Clerk

Exhibit A

Findings

Coastal Development Permit § 17.40.200.E.3

The finding is in standard font with Staff's response following in *italics*.

In considering an application for a coastal development permit the planning commission shall consider and give due regard to the Marina general plan and local coastal land use and implementation plans. The planning commission shall determine whether or not the establishment, maintenance and operation of the use applied for will, under the circumstances of the particular case, be consistent with the general plan and local coastal land use and implementation plans, based upon the following findings that the project will:

a. Not impair major view corridors towards the sea from Highway 1 parallel to the sea, including the planning guidelines listed in the LCLUP;

The 0.37-acre portion of the project that lies within the City's jurisdiction of the Coastal zone will be developed with a paved bus rapid transit busway consisting of two (2) twelve-foot paved traffic lanes within the TAMC right-of-way (ROW). The busway itself will be at existing grade with minimal vertical disruption to views to the west at this point. A portion of the subject location is under an existing freeway overpass and a portion is just north between the Del Monte Blvd. ROW to the east and the Beach Range Rd. extension (trail) to the west. The TAMC ROW travels through and adjacent to the Caltrans Highway 1 ROW.

b. Be subject to approval of the site and architectural design review board, including the planning guidelines listed in the LCLUP;

No development that is subject to design review is proposed at this time; Design Review Board review is not required.

c. Guarantee that appropriate legal action is taken to insure vertical and lateral coastal access or fees paid in lieu thereof as required in the LCLUP and coastal zoning ordinance access components. Required improvements shall be completed, or a bond adequate to guarantee their completion shall be posted with the city, prior to issuance of a certificate of occupancy;

The project will not negatively affect public access to the coast. The 0.37-acre portion of the project that is located in the City's CDP jurisdiction that will be developed with the busway will continue to provide access to existing beach trails.

d. Be adequately set back from the shoreline to withstand erosion to the extent that the reasonable economic life of the use would be guaranteed without need for shoreline protection structures;

The proposed busway is more than 2,500 feet from the shoreline and not subject to coastal erosion.

e. Protect least disturbed dune habitat areas, primary habitat areas and provide protection measures for secondary habitat areas consistent with the LCLUP and coastal zoning ordinance;

According to the LCLUP, the property is outside areas mapped as having sensitive natural habitats. Furthermore, the biological report prepared for the project did not identify any special status species within this area, although two (2) trees are to be removed. The site is an existing transportation ROW (TAMC, state highway, local road, Monterey Bay Rec. Trail) and is developed with out-of-service railroad tracks and paved trails. Given the existing transportation network in this area, this

portion of the project site is highly disturbed. The LUP includes a policy (#35) stating mass transit within the Coastal zone shall be continued and improved.

- f. Be consistent with beach parking standards, as established in the LCLUP access component;

There is no vehicular access (other than the BRT bus) provided at the subject location.

- g. Included feasible mitigating measures which substantially reduce significant impacts of the project as prescribed in any applicable EIR;

The mitigation measures identified by and certified in MST's adopted Mitigation Monitoring and Reporting Program (MMRP), part of the MST Mitigated Negative Declaration (MND), are in full force and effect over activities within the City's permit jurisdiction where they apply. As noted in "e" above, there were no sensitive species observed in the preparation of the project biological report for the 0.37-acre portion of the project in the City's Coastal zone jurisdiction and this location is not included in the LCP's sensitive habitats maps. The other development and tree removal is outside the Coastal zone and not subject to these findings.

- h. Not interfere with public access along the beach;

There is no beach access at this location.

- i. Comply with the access, shoreline structure and habitat protection standards included in the local coastal land use and implementation plans;

Direct shoreline access, shoreline structure, and habitat protection standards are not applicable to this project or site.

- j. Comply with the housing element and housing recommendations of the local coastal land use and implementation plans;

The project is a transportation project to be developed in a transportation corridor and on a ± 4.5 acre property owned by MST and required to be used as a multi-modal transportation hub. No housing is proposed.

- k. In the case of demolition of a residential structure, except to abate a nuisance, not detrimentally alter the character or housing mix of the neighborhood. The structure shall be moved, if capable of providing comparable housing opportunities at another location. The demolition and replacement structure shall comply with applicable local coastal land use plan policies;

No demolition is proposed other than preparing the site for a busway.

- l. In the case of new surf zone or beach sand mining operations, comply with all standards regarding such operations specified in the LCLUP including standards for significant adverse impacts on shoreline erosion, either individually or cumulatively.

No mining operations are proposed.

LCP Land Use Plan consistency

The City's LUP includes 42 "policies of intent" which are very broad in nature and seek to communicate all the City's aspirations for development in the Coastal zone . These include policies that prioritize coastal access and recreation opportunities (#2) and policies that encourage continued and improved service by mass transit within the Coastal Zone (#35) and encourage development which keeps energy consumption to the lowest level possible (#39). It is the City's job to balance these sometimes opposing goals.

The LUP has policies for the protection of rare and endangered species and their habitat (p. 3-1), wetlands (p. 3-2), and ponds (p. 3-3). None of the characteristics of these features are present on or immediately adjacent to the 0.37 acre portion of the project within the Coastal zone. Furthermore, this segment of the TAMC ROW is surrounded on all sides by either paved or vertical State Highway 1 ROW and overpass structures, the Del Monte Blvd. ROW, the Monterey Peninsula Recreation Trail (Rec Trail) ROW and Beach Range Rd., a narrow paved road within the TAMC ROW which Monterey One Water (M1W) utilizes to access its lift station from time to time.

In terms of public access to the coast, the LUP discusses the three (3) existing coastal access points (Reservation Rd., Dunes Dr., and Lake Ct.) and does not discuss trail access from Del Monte since the establishment of the trails from Beach Range Rd. and the Rec Trail were established with the State Parks property (former Fort Ord) and post-LCP certification. The establishment of a transit use within an existing transportation corridor that does not contain either ESHA or other habitat or species of critical concern is consistent with the overarching policies in the LUP.

Exhibit B1

Conditions of Approval for the Coastal Development Permit (CDP)

1. **Effective Date, Expiration, and Extensions.** This approval shall become effective immediately, except when an appeal period applies pursuant to MMC Section 17.70 in which case actions shall become effective ten (10) days after the approval date provided that no appeal is filed. Approval shall expire **two (2) years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit application has been filed with the Community Development Department, or the authorized activities have commenced in the case of a permit not involving construction. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the City Council may grant a one-year extension of this date, with additional extensions subject to approval by the approving body (Planning Commission). Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval or its implementation, then the time period stated above for obtaining necessary permits for construction and/or commencement of authorized activities is automatically extended for the duration of the litigation.
2. **Compliance with Other Requirements.** The owner, applicant, and operator shall comply with all other applicable federal, state, regional, and local laws, codes, requirements, regulations, and guidelines. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.
3. **Modifications.** Any modification to the approved project, site plan, conditions of approval, or use requires consistency review and approval by Planning Staff. Major revisions may require review and approval by the original approving body or a new independent permit.
4. **Compliance with Conditions of Approval.** The owner, applicant, and operator shall be responsible for compliance with all Conditions of Approval. The City reserves the right at any time during construction to require certification by a licensed professional at the applicant's expense that the as-built project conforms to all applicable requirements. Violation of any term, project description, or Condition of Approval is unlawful and prohibited. In the case of noncompliance with the requirements of a Use Permit, MMC Section 17.58.060 allows for the revocation of said permit. The City reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings where violations are present, consistent with Chapter 1.08 of the Marina Municipal Code.
5. **Mitigation Measures BIO 1 – BIO 6.** The owner, applicant, and operator shall be responsible for compliance with the Construction Best Management Practices, Construction-Phase Monitoring, Non-Native/Invasive Species Controls, Pre-Construction Surveys for Protected Avian Species, Pre-Construction Surveys for Monterey Dusky-Footed Woodrat, and Pre-Construction Surveys for Townsend's Big-eared Bat as described in the Biological Report³ and MMRP.
6. **Timing of Tree Removal.**
Per Mitigation Measure (MM) BIO-1.4 from MST's adopted MND:

Construction activities that may directly (e.g., vegetation removal) or indirectly (e.g., noise/ground disturbance) affect protected nesting avian species will be timed to avoid the breeding and nesting season. Specifically, vegetation and/or tree removal can be scheduled after September 16 and before

³ <https://mst.org/wp-content/media/Appendix-07-Final-Biological-Resources-Report.pdf>

January 31. Alternatively, a qualified biologist will be retained by the project applicant to conduct pre-construction surveys for nesting raptors and other protected avian species within 500 feet of proposed construction activities if construction occurs between February 1 and September 15. Pre-construction surveys will be conducted no more than 14 days prior to the start of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). Because some bird species nest early in spring and others nest later in summer, surveys for nesting birds may be required to continue during construction to address new arrivals, and because some species breed multiple times in a season. The necessity and timing of these continued surveys will be determined by the qualified biologist based on review of the final construction plans and in coordination with the CDFW [California Department of Fish and Wildlife], as needed.

If raptors or other protected avian species nests are identified during the pre-construction surveys, the qualified biologist will notify the project applicant and an appropriate no disturbance buffer will be imposed within which no construction activities or disturbance should take place (generally 500 feet in all directions for raptors; other avian species may have species-specific requirements) until the young of the year have fledged and are no longer reliant upon the nest or parental care for survival, as determined by a qualified biologist.

Per MM BIO-1.5:

Not more than thirty (30) days prior to the start of construction of Segments 1-4 and the 5th Street Station (including vegetation removal), a qualified biologist shall conduct a survey of suitable habitat within the work site to locate existing Monterey dusky-footed woodrat nests. All Monterey dusky-footed woodrat nests shall be mapped and flagged for avoidance. Graphics depicting all Monterey dusky-footed woodrat nests shall be provided to the construction contractor. Any Monterey dusky-footed woodrat nests that cannot be avoided shall be relocated according to the following procedures:

- Each active nest shall be disturbed by the qualified biologist to the degree that the woodrats leave the nest and seek refuge elsewhere.
- Nests shall be dismantled during the non-breeding season (between October 1 and December 31), if possible.
- If a litter of young is found or suspected, nest material shall be replaced and the nest left alone for 2-3 weeks, after this time the nest will be rechecked to verify that young are capable of independent survival before proceeding with nest dismantling.

Per MM BIO-1.6:

To avoid and reduce impacts to Townsend's big-eared bat, if the project construction is planned during the reproductive season (May 1 through September 15), MST will retain a qualified bat specialist or wildlife biologist to conduct site surveys to characterize bat utilization within and adjacent to the project site and potential species present (techniques utilized to be determined by the biologist) prior to construction. Based on the results of these initial surveys, one or more of the following will occur:

- If it is determined that bats are not present within or adjacent to the site, no additional mitigation is required.
- If it is determined that bats are utilizing the trees or abandoned buildings within or adjacent to the site and may be impacted by the proposed project, pre-construction surveys will be conducted within 50 feet of construction limits no more than 30 days prior to the start of construction. If, according to the bat specialist, no bats or bat signs are observed in the course of the pre-construction surveys, construction may proceed. If bats and/or bat signs are observed during the pre-construction

7. **Display of Tree Removal Permit.** Prior to and during the removal of any tree approved for removal, a copy of the tree removal permit shall be displayed on site. If no tree removal permit is displayed, the City will issue a stop work order and commence the City's administrative fine process.
8. **Tree Protection.** Per MM BIO-1.1 from MST's adopted MND:
 - a. Tree and vegetation not planned for removal or trimming shall be protected prior to and during construction to the maximum extent possible through the use of exclusionary fencing, such as hay bales for herbaceous and shrubby vegetation and protective wood barriers for trees. Only certified weed-free straw shall be used to avoid the introduction of non-native, invasive species. A biological monitor shall supervise the installation of protective fencing and monitor at least once per week until construction is complete to ensure that the protective fencing remains intact.
 - b. Per MM BIO-4.12:
 - i. Temporary construction fencing shall be placed at approximately 10 feet from the trunk of native trees intended to be retained. Grading, vegetation removal, and other ground disturbing activities shall not commence until the project arborist has inspected and approved the protective fencing installed by the contractor. No equipment or materials, including soil, shall be stored within the established environmental exclusion zone. Prior to grading within 25 feet of retained trees, the project arborist shall be consulted to determine whether pruning is necessary to protect limbs from grading equipment.
 - ii. To avoid soil compaction from damaging the roots, heavy equipment shall not be allowed to drive over the root area. If deemed necessary and approved by the forester, equipment may drive across one side of the tree. To reduce soil compaction, wood chips shall be spread 6-12 inches deep to disperse the weight of equipment and plywood sheets shall be placed over the wood chips for added protection.
 - iii. Roots exposed by excavation must be pruned and recovered as quickly as possible to promote callusing, closure, and healthy regrowth.
 - iv. Retained trees shall be watered periodically in accordance with species need to promote tree health. Transplanted trees and their intended planting areas shall be pre-watered. Post planting watering shall be done as needed to assure establishment.

As determined necessary by the project arborist, retained trees shall be watered periodically to promote tree health.

9. **Additional Mitigation Measures.** In addition to the measures stated herein, the City of Marina relies upon all other mitigation measures included in the MMRP and certified by MST as they apply to the portions of the project subject to the City's discretionary permit review; i.e., tree removal within the TAMC ROW, new transit development within the 0.37 ac portion of the TAMC ROW in the City's CDP jurisdiction, and site development at the 5th St. Transit Center.
10. **Replacement Trees.** Upon completion of the grading and infrastructure development for the Phase in which trees were removed, new trees shall be planted at a 2:1 ratio. The replacement tree species and sizes shall be a mix of native coast live oak (*Quercus agrifolia*), Monterey cypress (*Cupressus macrocarpa*), Ray Hartman Wild Lilac (*Ceanothus X 'Ray Hartman'*), Majestic beauty fruitless olive (*Olea Europaea 'Majestic Beauty'*), with Coffeeberry (*Frangula californica*), Coast silktassel (*Garrya elliptica*), and Toyon (*Heteromeles arbutifolia*) interspersed to supplement the Ceanothus at the discretion of the landscape architect. The tree sizes shall follow the Appendix C of Resolution

24-01. Alternatively, MST may provide the City with “in lieu” fees per MMC Section 17.62.060.D.2. Any combination of these two (2) replacement methods is acceptable.

11. **Tree and Landscaping Maintenance.** The trees and landscaping installed under this permit shall be maintained for the life of the project using the International Society of Arboriculture (ISA) best management practices (BMPs).
12. **Site Restoration Plan.** The ground surface shall be restored in the vicinity of the tree removals. Restoration shall include but not be limited to the removal of tree stumps and filling of any holes left by the removal.
13. **Coastal Development Permit.** The two trees proposed for removal within the coastal zone (nos. 1073 and 1074) are subject to additional review and a coastal development permit (CDP) from the City of Marina. These trees shall not be removed until the CDP has been issued and all appeal periods have passed. Removal of any trees within the coastal zone shall be consistent with the required Conditions of Approval attached to the CDP.
14. **Encroachment Permit(s).** Prior to the commencement of any work within the City’s public ROW, an encroachment permit from the Public Works Dept. shall be obtained.
15. **Inadvertent Discovery of Archaeological, Tribal Cultural Resources, Paleontological Resources or Human Remains.** Any inadvertent discovery while removing trees and/or restoring the site post-removal shall be mitigated in accordance to MM CR-2 in the adopted MMRP.
16. **Indemnification.** To the extent allowable by law, the owner, applicant, and operator agree to hold the City harmless from costs and expenses, including attorney’s fees, incurred by the City or held to be the liability of the City in connection with the City’s defense of its actions in any proceeding brought in any state or federal court challenging the City’s actions with respect to the project. The owner, applicant, and operator understand and acknowledge that the City is under no obligation to defend any legal actions challenging the City’s actions with respect to the project.
17. **Violation of Code.** Any person who does any work or uses, occupies or maintains any building or structure, or causes the same to be done, or does any grading, contrary to or in violation of this title or of any of the uniform codes adopted by this title is guilty of an infraction pursuant to MMC 15.04.060.
18. **Construction Noise.** Unless otherwise authorized, construction activities shall be conducted in compliance with MMC Section 15.04.055 and all non-emergency construction or repair work shall be limited to the following schedule:
 - a. Monday through Saturday: 7 a.m. to 7 p.m.
 - b. Sunday and holidays: 10 a.m. to 7 p.m. (For the purposes of this section, “holidays” shall include New Year’s Day, July 4th, Thanksgiving and Christmas)
 - c. During daylight savings time, the hours of construction may be extended to 8 p.m.

No construction, tools, or equipment shall produce a decibel level of more than sixty (60) decibels for twenty-five (25) percent of an hour at any receiving property line.

19. **Operational Noise.** Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of Chapter 9.24 of the Marina Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

- 20. Site Maintenance.** The site shall be kept in a blight- and nuisance-free condition, and healthy and well-kept landscaping shall be continuously maintained. Any existing blight or nuisance shall be abated within 60 days of permit approval.
- 21. Lighting.** Exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties. After installation, the Community Development Director or designee shall retain the right to require reduction in the intensity of illumination or change of light color if said illumination creates any undue public nuisance.
- 22. Waste Receptacles.** No storage of trash, recycling, or food waste receptacles shall be permitted within the public right-of-way. Receptacles shall be stored on site and screened from public view. The owner, applicant, and operator shall ensure that the requirements of Chapter 8.04 of the Marina Municipal Code pertaining to recycling and solid waste disposal are met.
- 23. Graffiti.** All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT ST., SUITE 300
 SANTA CRUZ, CA 95060-4508
 (831) 427-4863
 CENTRALCOAST@COASTAL.CA.GOV

**APPEAL FORM**

Appeal of Local Government Coastal Development Permit

Filing Information (STAFF ONLY)

District Office: Central Coast

Appeal Number: A-3-MRA-24-0026Date Filed: 6/21/24Appellant Name(s): Keep for the Ord wild (Michael Salerno)

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RECEIVED

JUN 21 2024

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

APPELLANTS

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted **ONLY** at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the Central Coast district office, the email address is CentralCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

Appeal of local CDP decision

Page 2

1. Appellant information¹

Name: _____

Mailing address: _____

Phone number: _____

Email address: _____

How did you participate in the local CDP application and decision-making process?

Did not participate Submitted comment Testified at hearing Other

Describe: _____

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: _____

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: _____

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Appeal of local CDP decision

Page 3

2. Local CDP decision being appealed²

Local government name: _____

Local government approval body: _____

Local government CDP application number: _____

Local government CDP decision: CDP approval CDP denial³

Date of local government CDP decision: _____

Please identify the location and description of the development that was approved or denied by the local government.

Describe: _____

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

Appeal of local CDP decision

Page 4

3. Applicant information

Applicant name(s): _____

Applicant Address: _____

4. Grounds for this appeal⁴

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: _____

⁴ Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision

Page 5

5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

Interested persons identified and provided on a separate attached sheet

6. Appellant certification⁵

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name _____

Signature

Date of Signature _____

7. Representative authorization⁶

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400



DISCLOSURE OF REPRESENTATIVES

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name _____

CDP Application or Appeal Number _____

Lead Representative

Name _____

Title _____

Street Address. _____

City _____

State, Zip _____

Email Address _____

Daytime Phone _____

Your Signature _____

Date of Signature _____

Additional Representatives (as necessary)

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Your Signature _____

Date of Signature _____

Appeal of local CDP decision

Page 5

5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Michael Salerno

Signature 

Date of Signature 6/20/24

7. Representative authorizations

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

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DISCLOSURE OF REPRESENTATIVES

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name Michael Salerno - Keep Fort Ord Wild

CDP Application or Appeal Number 23-0004

Lead Representative

Name Molly Erickson
Title Attorney
Street Address PO Box 2448
City Monterey
State, Zip CA 93942-2448
Email Address erickson@stampaw.us
Daytime Phone 831-373-1214

Your Signature 

Date of Signature 6/20/24



April 18, 2024

To: City of Marina

From: Keep Fort Ord Wild

RE: Appeal of City of Marina PLANNING COMMISSION RESOLUTION NO. 2024-09 dated April 11, 2024

With this correspondence Keep Fort Ord Wild (KFOW) appeals the action of the City of Marina PLANNING COMMISSION RESOLUTION NO. 2024-09 dated April 11, 2024

Note: KFOW appeals the entire resolution by the Planning Commission as the language of the resolution combines a Coastal Development Permit and Tree Removal Permit into one action. Since they cannot be separated, KFOW appeals the resolution and therefore the Coastal Development Permit.

The City of Marina Planning Commission relied on numerous inaccurate statements by MST representatives and documents put forward by the project applicant. These inaccurate statements have been perpetrated by the project applicant over multiple years giving the Planning Commission and the public the impression the SURF project can move forward when, in fact, there are multiple reasons why it is impossible for the SURF project to be constructed. The overarching barrier to construction of the SURF project is that vast portions of the project are proposed in an ESHA which makes proceeding with construction in the Coastal Zone impossible.

KFOW joins in the reasons and issues raised in all other appeals and reincorporates them as if fully set forth herein, and raises the following issues and concerns in this appeal of the commission actions to approve the permits and the claims and documents in the environmental review under CEQA, the LCP and the Coastal Act. (KFOW reserves the right to submit additional material not included here to the City before the expiration of the appeal period.)

Proposed Action by the Marina Planning Commission was Premature, SURF Project is Impossible Under the Coastal Act

The proposed action by the planning commission was premature. Only a very small portion of the SURF project is proposed within Marina's Local Coastal Plan. However, much more of the project (4.4 miles) is in the jurisdiction of the California Coastal Commission. The Coastal Act makes construction of SURF project impossible because vast portions of the project are proposed in an ESHA where land and habitat cannot be disturbed, filled, or graded.

The California Coastal Commission has not approved the SURF project. The SURF project is not scheduled for a hearing in front of the California Coastal Commission. The California Coastal Commission has asked MST for major revisions to the project and to present less impactful alternatives. MST has not provided such alternatives and instead continues to seek approval for the version of the project that would disturb unprecedented areas of ESHA and Coastal Dune Habitat. For further reference, we attach multiple letters from the California Coastal Commission to MST highlighting the fundamental problems with the SURF project and its construction in an ESHA:

The California Coastal Commission informed MST of these problems in 2021 (before MST approved the project). Important excerpts as follows:

“Coastal Act Section 30240 provides for the protection of ESHA, including sensitive dune habitats such as those found at the former Ford Ord and within the TAMC right-of-way: Section 30240 (a) environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.”

“The currently proposed project is located in dune ESHA and is not resource dependent and is not approvable under Coastal Act Section 30240 or under the ESHA policies of the various LCPs that would apply to the project in the areas located outside of the Commission retained permitting jurisdiction...”

Project is Impossible Under Proposition 116

The Monterey Branch Line was purchased by TAMC with Proposition 116 funds that set guidelines as to how the line is to be used. Proposition 116 was a State Proposition approved by voters specifically for expansion of rail service. Ultimately, the line can only be used for rail because rail bonds were used to purchase the line. The line cannot be converted to a busway and the tracks cannot be destroyed or covered.

Inspection of the SURF design plans confirm two miles of tracks will be covered or destroyed. This is critical information and means SURF and a future TAMC rail project cannot co-exist as MST claims. MST representatives continued to intentionally downplay the length of track that would need to be removed for SURF up to and at the 4-11-24 Planning Commission meeting. SURF makes a future rail project impossible as it destroys the rail line which is not allowed under Proposition 116. MST still claims a rail project is a long-term vision for the corridor. However, it is now clear the two projects are incompatible, and MST intends to destroy the rail infrastructure along a significant portion of the Monterey Branch Line.

Planning Commission Relied on a CEQA Exemption That Does Not Apply

The Planning Commission relied on a CEQA exemption that does not apply. The Planning Commission relied on a prior CEQA exemption for MST's project that has not been fully approved by the California Coastal Commission. Unless and until the entire project is fully approved, the Planning Commission and the City cannot rely on the exemption claimed by MST.

Inaccurate Claims re: Improved Coastal Access and Recreation

MST and TAMC public officials suggest the MST SURF busway will improve local bike paths and coastal access. This is not an accurate on-the-ground reality. The MST SURF busway as proposed will result in negative and dangerous impacts to local bicycle traffic and coastal access during and after construction. The current bike paths have been thoughtfully designed to safely move bike traffic. The after-the-fact insertion of the MST SURF Busway sacrifices safe and easy bike travel.

By design, the busway fractures and re-routes existing bike trails (Beach Range Road, Monterey Bay Recreation Trail, 5th Street Bike Path). At the same time, it introduces awkward and dangerous crossings where cyclists will have to negotiate with two-way bus traffic. In Winter months cyclists will be subject to blinding headlights along with noise and vibration from buses only a few feet away. This is not an improvement from current conditions.

Currently, cyclists can travel unimpeded using Beach Range Road and/or Monterey Bay Recreation Trail interchangeably from Palm Avenue in Marina to Playa Avenue in Sand City. Cyclists do not need to stop or negotiate traffic for this entire distance. These routes are safe and extremely popular with bike commuters and recreational users.

The MST SURF Busway also introduces an awkward crossing at the 5th street bridge and will dig-up and re-route a bike path TAMC recently built that connects safely and easily to the new VA clinic. The MST SURF busway proposal calls for squeezing in a bus lane *and* a bike path where there currently barely room for a bike path.

Request:

The SURF project would be a detriment to the citizens of Marina damaging coastal ESHA, recreation and coastal access. For all the reasons above, attached and more the Marina City Council should vote to vacate the approval of PLANNING COMMISSION RESOLUTION NO. 2024-09 dated April 11, 2024, and not grant a Coastal Development Permit for the SURF project.

Sincerely yours,

Michael Salerno

Spokesman, Keep Fort Ord Wild.



May 21, 2024

To: Marina City Council

From: Keep Fort Ord Wild

RE: Item 11d Regular Meeting of the City Council on May 21, 2024

With this correspondence Keep Fort Ord Wild (KFOW) requests the City Council NOT uphold the PLANNING COMMISSION'S APPROVAL OF CDP 23-0004. The resolution should not be adopted.

KFOW reiterates its objections to the SURF project contained in its 4-11-24 letter to the Planning Commission included in the 5-21-24 City Council agenda packet and attached.

KFOW also provides the following additional comments for the City Council. The resolution and supporting exhibits have several inaccuracies and therefore should not be relied on or approved by the Council.

- Finding "h" from Exhibit A to the resolution states SURF does "Not interfere with public access along the beach" and that "There is no beach access at this location". This assertion is false on multiple levels as the SURF project would remove a widely used connector trail that provides direct access from the Monterey Bay Recreation Trail to the beach and Fort Ord Dunes State Park. In other words, SURF directly limits and impedes safe coastal access and recreational access. Currently, bike and foot traffic coming from the Monterey Bay Recreation Trail can safely cross the TAMC ROW near the HWY1 overpass. The existing crossing complies with requirements of the Coastal Act and Marina's LCP. The SURF project proposes to remove this crossing and build a new crossing 900ft North to Reindollar Ave forcing pedestrians to negotiate the active SURF bus lanes where buses will be traveling every 10 minutes from 6am to 10pm. It is disingenuous for TAMC, MST or the City to claim that the SURF project would somehow improve coastal and recreational access. To the contrary, SURF would replace a popular

and safe coastal access location with an awkward and dangerous one. For this reason alone, the Council should not uphold the PLANNING COMMISSION'S APPROVAL OF CDP 23-0004.

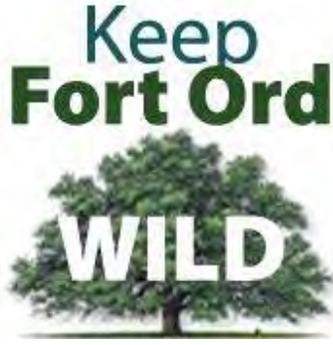
- The proposed resolution states *"WHEREAS, the Transportation Agency of Monterey (TAMC) right-of-way (ROW), within which a portion of the proposed bus rapid transit (BRT) project is proposed to occur, has been utilized for transportation uses since the 1880s. The Monterey Branch Line, where the SURF! BRT project is to be developed, was purchased by TAMC in 2003 expressly for public transportation and transit uses..."*. This statement is misleading. TAMC purchased the Monterey Branch Line specifically for rail use not general public transit use. The Monterey Branch Line was purchased by TAMC with Proposition 116 funds that set guidelines as to how the line is to be used. Proposition 116 was a State Proposition approved by voters specifically for expansion of rail service. Ultimately, the line can only be used for rail because rail bonds were used to purchase the line. The line cannot be converted to a busway and the tracks cannot be destroyed or covered.
- The proposed resolution states *"WHEREAS, TAMC recognizes the SURF! project as the intended user of this portion of the Monterey Branch Line until such time as it develops a rail project within the corridor..."*. This statement is also false and misleading. SURF and a future rail project cannot co-exist. SURF makes a future rail project impossible as it destroys the rail line. According to SURF project plans as much as 2 miles of existing track will be dug up, covered, or made unusable. KFOW emphasizes that if a rail project were designed and built later, SURF would then need to be abandoned wasting tens of millions of public dollars. It is also exceedingly unlikely another set of state and local funding would ever become available for a second (rail) transportation project along the same right-of-way

Unfortunately, I am unable to attend the 5-21-24 meeting in person due to long scheduled family obligation. Thank you for the opportunity to comment and the consideration.

Sincerely yours,

Michael Salerno

Spokesman, Keep Fort Ord Wild.



June 4, 2024

To: Marina City Council

From: Keep Fort Ord Wild

RE: Item 11a Regular Meeting of the City Council on June 4, 2024

With this correspondence Keep Fort Ord Wild (KFOW) requests the City Council NOT follow staff recommendation and NOT uphold the PLANNING COMMISSION'S APPROVAL OF CDP 23-0004.

KFOW reiterates its objections to the SURF project contained in its 4-11-24 letter to the Planning Commission and 5-21-24 letter to the City Council.

KFOW also provides the following additional comments for the City Council:

- Comments by MST staff at and after the 5-21-24 City Council meeting regarding SURF project compliance with Proposition 116 have proven to be demonstrably false. The claims by MST staff that SURF complies with Proposition 116 have, in fact, been nullified by the subsequent actions of TAMC. At the 6-3-24 TAMC Rail Committee meeting TAMC Director Todd Muck admitted the SURF project's non-compliance with Proposition 116 as an incurable problem. At the same meeting, Muck also admitted on the record the current design of SURF will rip-up 1.75 miles of existing track. Thus, repeated claims by MST and TAMC over the last few years that rail was a "long-term vision" are false.

- As a matter of record, KFOW informed TAMC and MST that SURF couldn't happen due to Proposition 116 requirements in February 2023. Since then, TAMC has distributed at least \$11.6 million to MST in public Measure X funds for the design and construction management of SURF. MST and TAMC staff knew the design would rip up long sections of track on the Monterey Branch Line. At the same time, they secured State and Federal grants based on the “rail as a long-term vision” narrative pretending SURF didn't meaningfully impact future rail plans when communicating with the various agencies. However, it is now clear rail is not and never has been a long-term vision of the SURF project.
- As a further demonstration of the SURF project’s incurable non-compliance with Proposition 116, TAMC is now considering a buyout of the Monterey Branch Line to rid the SURF project of any obligations to use the corridor for rail. KFOW notes this proposed strategy by TAMC is tantamount to total abandonment of any future rail along the Monterey Branch line. (See attached 6-5-24 agenda item for the TAMC Executive Committee.) As a practical matter TAMC would be buying out the whole Monterey Branch Line even though SURF only uses the southern portion of the Monterey Branch Line. The immense additional cost would be a raw deal for the public, in that TAMC would be buying out the whole Monterey Branch Line to only use a portion of it as a busway. The result would be the entire Monterey Branch Line rendered useless for rail. The City Council should carefully consider TAMC’s proposed action to buy out the Monterey Branch Line to enable SURF. Significant sections of the Monterey Branch Line not related to SURF run through Marina. What will happen to those other sections if not used for rail? Will they be developed for other uses, etc.?
- At the 5-21-24 City Council meeting Councilmember McCarthy raised the issue of the SB 922 exemption for SURF. At the time, MST staff insisted SURF was still under the \$100 million threshold. However, if TAMC proceeds with a plan to buy-out the Monterey Branch line the project cost will be well over \$100 million, and the project will be required to present a business case for the project as well as a racial equity analysis and additional public meetings.

- For emphasis, KFOW reiterates the dramatic non-compliance of the SURF project with the Coastal Act. The California Coastal Commission has consistently informed MST for the past several years through a series of detailed letters SURF was not approvable under the Coastal Act. MST chose to ignore these letters and proceed with the same design of SURF it knew was impossible for multiple reasons.

Request:

The SURF project would be a detriment to the citizens of Marina damaging coastal ESHA, recreation, coastal access and the promised future of rail service. The true design and impacts of the SURF project have been misrepresented for years. The SURF project has deep, and incurable flaws as proposed and the solutions to salvage it are becoming more extreme and more expensive for citizens. For all the reasons above, attached and more the Marina City Council should NOT uphold the approval of PLANNING COMMISSION RESOLUTION NO. 2024-09 dated April 11, 2024.

Sincerely yours,

Michael Salerno

Spokesman, Keep Fort Ord Wild.

Attachment 4 – KFOW Appeal of CDP 23-0004

On 6-4-24 the City of Marina Approved CDP 23-0004. The approval relates to the portion of the SURF project under the jurisdiction of City of Marina’s Local Coastal Plan.

The area at issue in CDP 23-0004 lies at the Northern boundary of Fort Ord Dunes State Park where the HWY 1 overpass crosses over Del Monte Boulevard.

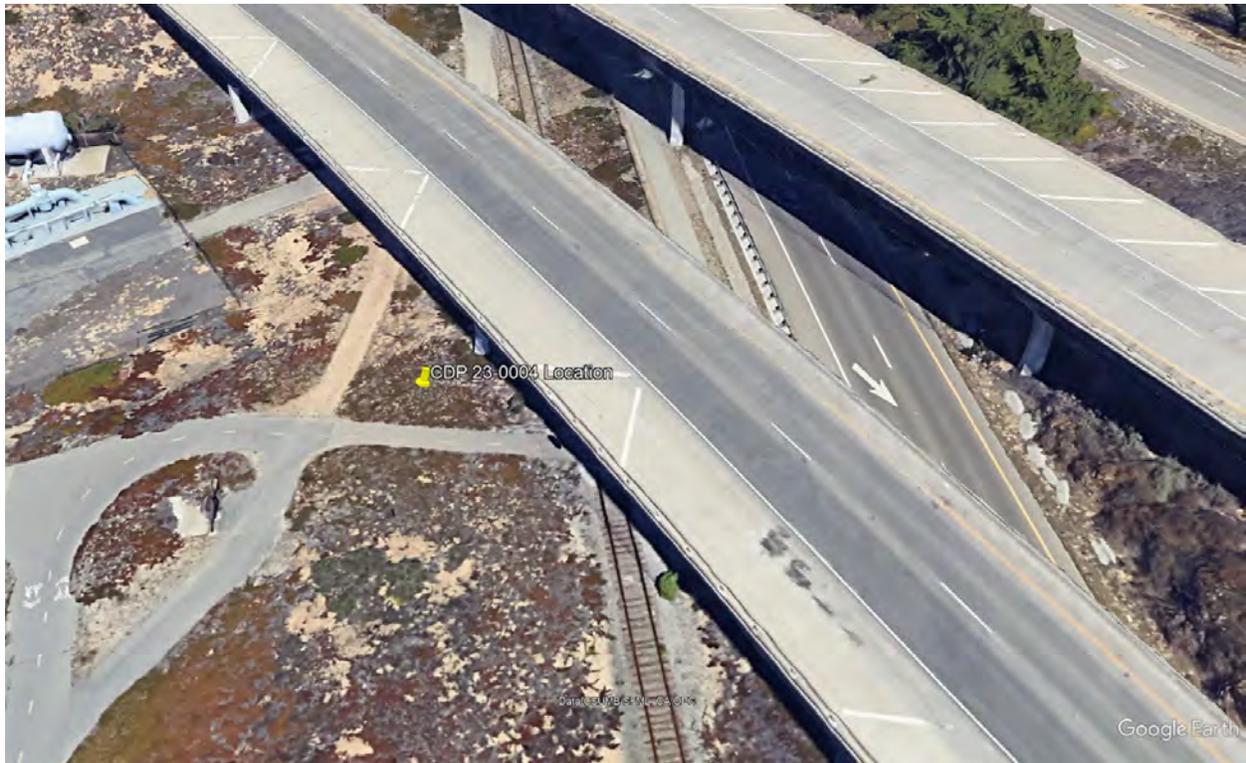


Figure 1: CDP 23-0004 Location

The SURF project is a proposed 6-mile-long busway that would extend from Marina to Sand City. The project is proposed by Monterey Salinas Transit on a rail right-of-way owned by the Transportation Agency of Monterey County. The effective result of the project would be a new two-lane road between Marina and Sand City. However, the new road will be exclusively for buses and not available to regular vehicle traffic, pedestrians or cyclists.

The Northern segment of the proposed busway would be constructed in Marina with a portion of that construction falling within the boundaries of Marina’s Local Coastal Plan.

Attachment 5 – KFOW Appeal of CDP 23-0004

KFOW appeals the approval of CDP 23-0004 by the City of Marina. KFOW members live in the City of Marina and nearby communities and regularly access the coastal zone and beach in and around the area specified in CDP 23-0004. KFOW members frequently use this same area for recreational activities such as cycling, running, walking and wildlife viewing.

KFOW disagrees with the City of Marina’s 6-4-24 approval of CDP 23-0004 as it violates the City’s own Local Coastal Use Plan. The approval violates the specific policies of the Marina Local Coastal Use Plan as follows:

Policy 1. To insure access to and along the beach, consistent with the recreational needs and environmental sensitivity of Marina’s Coastal area.

City of Marina’s approval of CDP 23-0004 is not consistent with this LCP policy. By design, the busway eliminates a widely used vertical connector trail that allows access to Fort Ord Dunes State Park and to Marina Beach from the Monterey Bay Recreation Trail. The connector trail is safe for recreational users and free of any traffic hazards. KFOW is informed as many as 2,000 park and coastal zone visitors use this specific connector trail each week.



Figure 1: Safe Vertical Connector Trail to Fort Ord Dunes State Park and Marina Beach to be removed.

Policy 2. To provide beach access and recreational opportunities consistent with public safety and with the protection of the rights of the general public and of private property owners.

City of Marina's approval of CDP 23-0004 is not consistent with this LCP policy. The SURF project, in fact, reduces safe beach access and recreational opportunities. Public safety will be diminished as SURF introduces awkward and dangerous crossings where recreational users will be forced to negotiate with two-way bus traffic from 6am to 10pm. In Winter months recreational users will be subject to blinding headlights along with noise and vibration from buses only feet away.

Policy 5. To encourage and place priority on passive recreational opportunities on the beach and dune areas.

City of Marina's approval of CDP 23-0004 is not consistent with this LCP policy. The SURF project de-prioritizes safe access and passive recreation for construction of a busway.

Policy 8. To prohibit further degradation of the beach environment and conserve its unique qualities.

City of Marina's approval of CDP 23-0004 is not consistent with this LCP policy. Construction and later operation of SURF would directly lead to further degradation of the beach environment.

Policy 12. To provide suitable and sufficient area for recreation use and supportive public and private development.

City of Marina's approval of CDP 23-0004 is not consistent with this LCP policy. The SURF project would reduce suitable and sufficient area for recreation while making adjacent areas of Fort Ord Dunes State Park undesirable to visit due to noise, vibration, intense light, and danger from constant bus traffic.

Policy 13. To give priority to visitor-serving commercial and recreational uses in order to fully develop the unique Coastal-oriented recreational activities of Marina and still protect the natural resource.

Policy 14. To reinforce and support Coastal recreational and visitor-serving activities in the inland area, where appropriate, to the extent the support activities would complement, not destroy, the Coastal resource.

City of Marina's approval of CDP 23-0004 is not consistent with the two LCP policies above (13 and 14). SURF will remove portions of the Monterey Branch Line that will result in the direct loss of a growing visitor serving activity. Handcar Tours is now an exceedingly popular visitor serving business that uses the tracks of the Monterey Branch line to take visitors directly into the Coastal Zone for low-impact, environmentally friendly recreation. According to Handcar Tours management, more than 10,000 riders participated in 2023. KFOW is informed more than 5,300 riders have already participated in a tour so far in 2024 and as many as 1,000 riders/week are pre-booked for tours during summer months in 2024. Construction of SURF involves removing significant portions of the Monterey Branch rail line, making Handcar Tours or a similar future business impossible. Marina's LCP specifically favors uses like Handcar Tours over other non-coastal dependent uses within the coastal zone.

Policy 38. To regulate development in order to minimize the risks to life and property in the Coastal Zone.

City of Marina’s approval of CDP 23-0004 is not consistent with this LCP policy. The SURF busway as proposed creates dangerous and risky situations for local bicycle and foot traffic. The after-the-fact insertion of the SURF Busway sacrifices safe and easy bike and pedestrian travel. SURF would introduce awkward and life-threatening crossings where cyclists and pedestrians will be forced to negotiate with speeding two-way bus traffic from 6am to 10pm.



Figure 2: Example of safe crossing on vertical connector from Monterey Bay Recreation Trail to Fort Ord Dunes State Park

Marina’s 1982 Local Coastal Plan also specifically called for a “connection from the Lake Court accessway to the bicycle path parallel to Highway 1”. This connection was indeed established in the late 2000’s around the time Fort Ord Dunes State Park officially opened. Again, the construction of SURF would eliminate this important connection and unwind the intent of Marina’s LCP. (citation from Marina LCP below) ↓

Lake Court

Location: Just north of Ford Ord at the City's southern boundary. Lake Court is a cul- de-sac off Lake Drive which is approximately one mile south of Reservation Road.

7. Provide a connection from the Lake Court accessway to the bicycle path parallel to Highway 1.

The City of Marina Local Coastal Program Volume II Implementation Plan also specifically addressed vertical accessways which are called for by the Coastal Act. The vertical accessway was to be a perpendicular connection from the nearest public road to the sandy beach frontage with improvements implemented by the State Department of Parks and Recreation. The vertical accessway extending from Lake Court was built and extended to Del Monte Blvd/Monterey Bay Recreation Trail and has been highly successful in enhancing coastal access. The SURF busway will eliminate this direct access that now exists. (citation from Marina Local Coastal Program Volume II Implementation Plan below) ↓

Vertical Accessways

There are three (3) vertical access points recommended in the Marina Local Coastal Land Use Plan; two (2) are located on property owned by the California Department of Parks and Recreation. These two (2) beach accesses now exist at Lake Court and Reservation Road. The plan proposes that they be improved by the State Department of Parks and Recreation. Timing of this improvement is dependent upon available funding. Expectations of the type and level of development at these accessways is outlined in Marina's Local Coastal Land Use Plan. Since any development on this site by the State Department of Parks and Recreation will require a Coastal Development Permit, issued by the City of Marina, standards and expectations expressed in the Plan will be complied with.

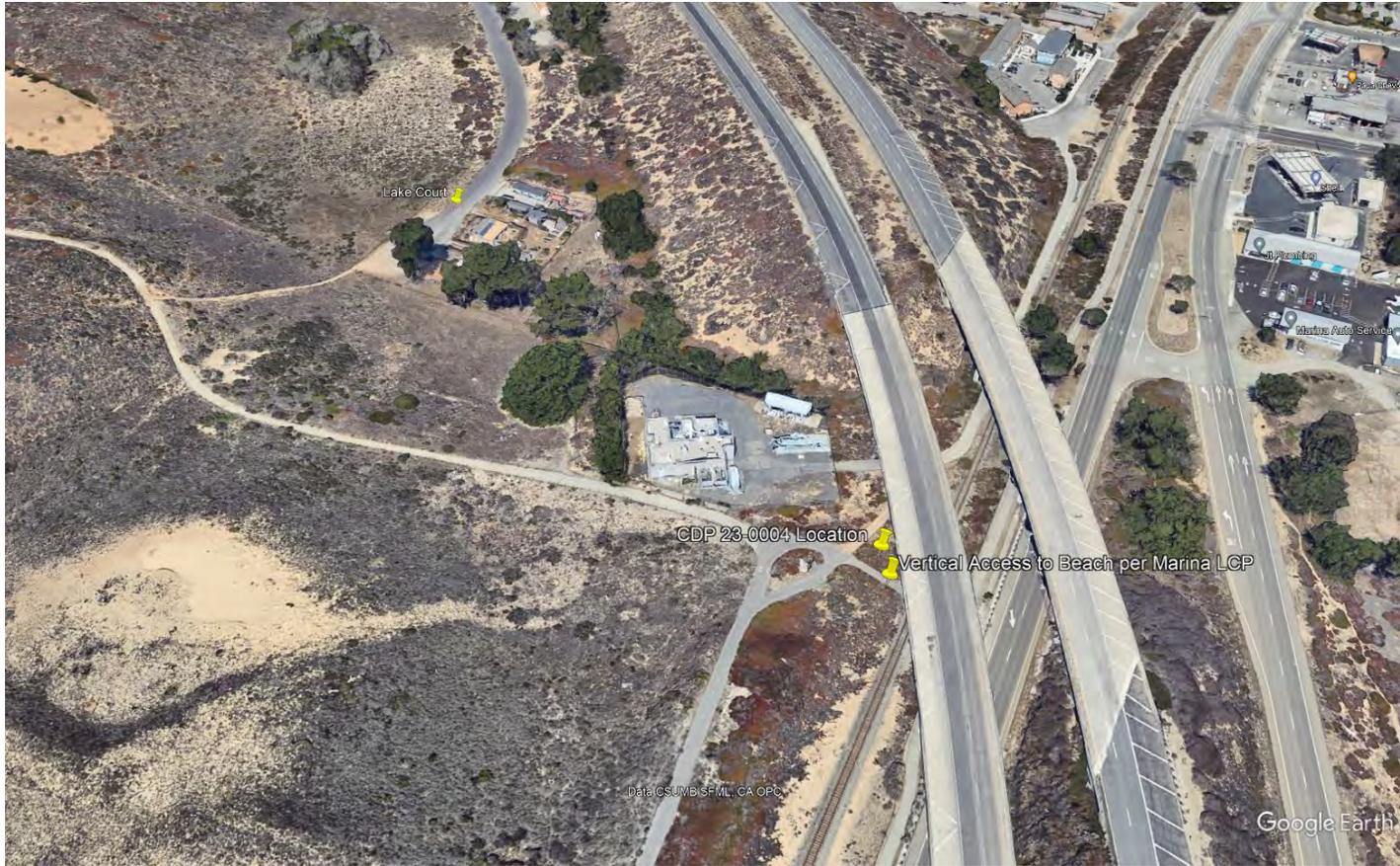


Figure 3: Vertical Access to Beach Identified and Built per Marina LCP and Coastal Act. Vertical Access would be eliminated by SURF construction.

The City of Marina’s approval of CDP 23-0004 violates Coastal Act public access provisions as follows:

Coastal Act Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Construction of the SURF project would diminish, not maximize access to the Coastal Zone. Furthermore, SURF proposes to replace existing safe access points with pedestrian crossings that are dangerous and life-threatening and therefore not consistent with public safety.

Coastal Act Section 30211: Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Construction of SURF project would remove a widely used vertical access point leading directly to the beach and impede the public's ability to safely access the sea. (see also Figure 1 and Figure 3)

Coastal Act Section 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

As mentioned above, construction of SURF project would specifically eliminate a vital and safe vertical access point for entry to the Coastal Zone and Marina Beach (see Figure 1). This access point is free for all visitors. SURF is not a recreational use.

Coastal Act Section 30212: (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects.

A vertical access point already exists from the nearest public roadway. SURF project construction would eliminate this vertical access point. MST only has a vague plan to replace this vertical access point with an awkward lateral access point. The plan includes moving access ¼ mile north, and then squeezing bicycle and pedestrian traffic along a narrow 10-foot access road intended for use by maintenance vehicles for Monterey One Water. Pedestrians and cyclists will have no place to move to allow the trucks to pass. MST would not be providing new and proper public access but rather cobbling together alternative access to fit their project.

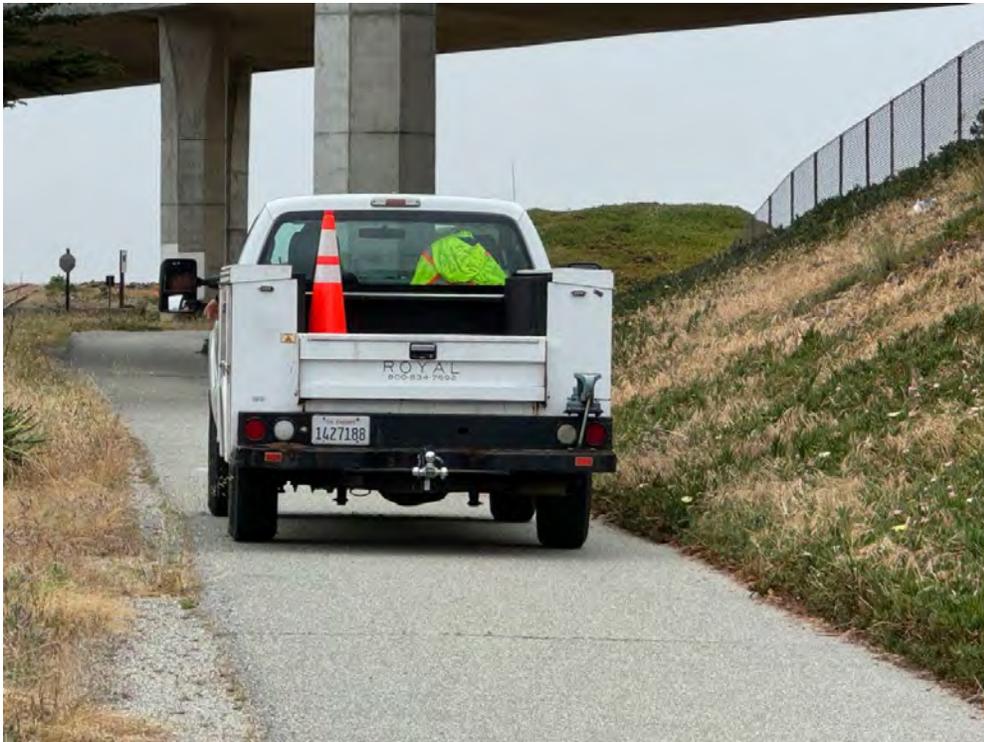


Figure 4: Narrow replacement lateral access to be shared with maintenance trucks.

-
- KFOW emphasizes that current conditions promote frequent and safe access to the Coastal Zone for both locals and visitors. These conditions are close to ideal and should not be degraded.
 - KFOW members, over a period of many years, have observed MST buses traveling through Marina and the HWY1 corridor with only one or two passengers and often travelling with zero passengers. This is widely known by locals and easily observable. At the same time, hundreds of people per day from all socioeconomic and ethnic backgrounds use the vertical access point leading to Fort Ord Dunes State Park and Marina beach. The number of people who access the Coastal Zone in the area impacted by CDP 23-0004 far exceeds any current or reasonably expected future bus ridership on SURF.
 - MST has never explained how it plans to dramatically increase bus ridership along the HWY1 corridor and its claims that bus ridership will increase exponentially once SURF is constructed are unsupported. There is simply no on-the-ground evidence of ridership to support a project of this size and scale, now or for the foreseeable future
 - The City of Marina relied on numerous inaccurate statements by MST representatives in approving CDP 23-0004. These inaccurate statements have been perpetrated by the project applicant over multiple years, giving the City and the public the impression the SURF project could move forward when, in fact, it couldn't. For example, MST (and TAMC) insisted for years the SURF project would not impact future rail service and the project conformed to the requirements of Proposition 116. These claims have proven to be false in the past few weeks where MST (and TAMC) have finally admitted the project does not comply with Proposition 116 and would remove or cover 1.75 miles of the Monterey Branch Line rails. As of the filing of this appeal, TAMC is now considering a costly buyout of the Monterey Branch Line to rid the SURF project of any Proposition 116 obligations to use the corridor for rail. The story keeps changing. The SURF project has deep, and incurable flaws as proposed and the solutions to salvage it are becoming more extreme. It is exceedingly unlikely that any of the stated goals of the SURF project will ever come to fruition.

Attachment 6 – KFOW Appeal of CDP 23-0004
Identification of interested persons

KFOW is aware the following persons and entities are interested in the local decision process of CDP 23-0004:

Monterey-Salinas Transit
19 Upper Ragsdale Drive, Suite 200
Monterey CA 93940
clerk@mst.org

Transportation Agency of Monterey County
55-B Plaza Circle,
Salinas CA 93901
info@tamcmonterey.org

City of Marina City Council and Planning Commission
211 Hillcrest Avenue
Marina, CA 93933
marina@cityofmarina.org

Mason Clark
17926 Maplehurst Pl,
Canyon Country, CA 91387
mason@handcar.com

Jeffrey Markham
jeff@jeffmarkham.com

William H. Godwin, PG, CEG
Environmental and Engineering Geologist
Salinian Geoconsulting
605 9th Street
Pacific Grove, California 93950
(831) 884-3308
godwinbillh@gmail.com

Yuri C. Anderson | Trustee, Area 2
Monterey Peninsula Community College District

Yuri Anderson <yanderson@mpc.edu>

Alex Stewart
145 Hilo Ave.
Marina, CA 93933

Tanja Roos, MNA ([she/her](#)) | Director of Community Programs & Policy
Blue Zones Project Monterey County – Peninsula Cities
451 Washington Street, Monterey, California 93940
W : 831.512.1197 | tanja.roos@sharecare.com

DAVID SCHONBRUNN

TRAC
Train Riders
Association
of California

david@schonbrunn.org

Kevin Kahn
District Manager
Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Tanisha Taylor
Executive Director
California Transportation Commission
1120 N Street, MS 52
Sacramento, CA 95814
Tanisha.Taylor@catc.ca.gov

Amy R. Higuera
ahiguera@downeybrand.com
415.848.4836 Direct
415.848.4801 Fax

Downey Brand LLP
455 Market Street, Suite 1500
San Francisco, CA 94105
415.848.4800 Main
downeybrand.com

Todd Clark
17926 Maplehurst Pl
Canyon Country, CA 91387
(661) 600-7590

Margaret Davis
atnmargaret@gmail.com

Elisabeth Gerrity
elisabeth.gerrity@gmail.com

District 4 - Supervisor Wendy Root Askew
2616 1st Ave.
Marina, CA 93933
district4@countyofmonterey.gov

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT ST., SUITE 300
 SANTA CRUZ, CA 95060-4508
 (831) 427-4863
 CENTRALCOAST@COASTAL.CA.GOV

**APPEAL FORM**

Appeal of Local Government Coastal Development Permit

Filing Information (STAFF ONLY)

District Office: Central Coast

Appeal Number: A-3-MRA-24-0026Date Filed: 6/21/24Appellant Name(s): Margaret Davis**RECEIVED**

JUN 21 2024

 CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA
APPELLANTS

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the Central Coast district office, the email address is CentralCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

Appeal of local CDP decision

Page 2

1. Appellant information¹

Name: Margaret Davis
Mailing address: Box 1168
Phone number: 831-224-4534
Email address: attnmargaret@gmail.com

How did you participate in the local CDP application and decision-making process?

Did not participate Submitted comment Testified at hearing Other

Describe: Spoke at Marina city council meeting, May 21, 2024,
in favor of reversing the planning-commission
approval of CDP 23-0004 for the Surf busway project.

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: _____

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: I spoke during the public hearing at the Marina city council meeting. I am
interested in preserving California coastal access
(including the regional coastal-access 30-mile FORTAG
trail) for all.

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Appeal of local CDP decision
Page 3

2. Local CDP decision being appealed²

Local government name: City of Marina

Local government approval body: Marina City Council

Local government CDP application number: #23-004

Local government CDP decision: CDP approval CDP denial³

Date of local government CDP decision: 06/04/2024

Please identify the location and description of the development that was approved or denied by the local government.

Describe: The Surf development interferes with EXISTING free, simple, safe, and scenic coastal access from Marina. This access is robustly used by residents.
The development runs alongside six miles of the coastal FORTAG (Fort Ord Recreational Trail and Greenway) trail, from Del Monte overpass in Marina to the Fremont Avenue exit in Sand City, compromising habitat the and safe continuity of this trail linking peninsula cities to coastal access.
FORTAG is a priority project of Measure X, a transportation measure approved by voters. Please see attached map.

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

Appeal of local CDP decision
Page 4

3. Applicant information

Applicant name(s): Monterey Salinas Transit (MST)
19 Upper Ragsdale Drive, Suite 200
Applicant Address: Monterey CA 93940

4. Grounds for this appeal⁴

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: The approved development violates the Marina LCP overall, and
particularly by inconsistency with a) Policy 1,
"to insure access to and along the beach consistent with re-
creational needs and environmental sensitivity of the coastal area";
b) policy 5, "to encourage and place priority on passive recreational
opportunities on the beach and dune areas"; c) policy 13, "priority to visitor-
serving commercial and recreational uses to fully develop the unique
coastal-oriented recreational activities of Marina and still protect the
natural resource"; and c) policy 38, "to regulate development to
minimize risks to life and property in the coastal zone."

⁴ Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision
Page 5

5. Identification of interested persons

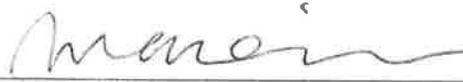
On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Margaret Davis


Signature _____

Date of Signature 6/20/24

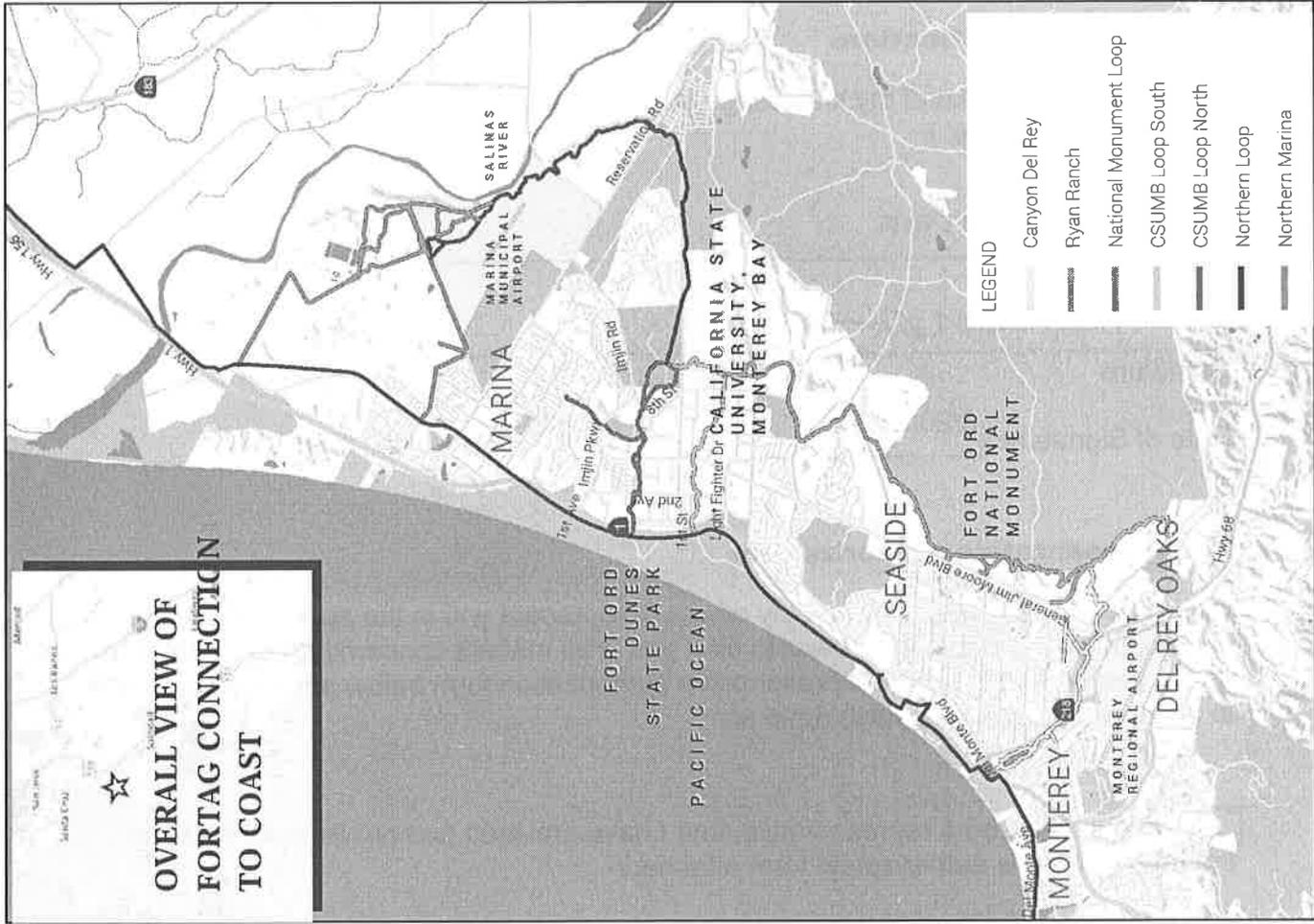
7. Representative authorization

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.



MEMORANDUM

FROM: Rachel Pausch, Ph.D., Ecologist

TO: Breylen Ammen, Central Coast District Analyst

SUBJECT: MST Bus Road Ecological Resources

DATE: July 26, 2024

Materials Reviewed:

- MST SURF! Busway and Bus Rapid Transit Project Environmental Initial Study/Mitigated Negative Declaration, prepared by Kimley Horn (June 2021)
 - Monterey-Salinas Transit SURF! Busway and Rapid Transit Project Final Biological Resources Report, prepared by Denise Duffy & Associates, Inc. (May 2021)
 - MST Response to Request for Additional Information, dated July 28, 2023
 - Memoranda: MST SURF! Project-ESHA Impacts, prepared by Denise Duffy & Associates, Inc., dated November 30, 2023 & March 1, 2024
 - MST Response(s) to Coastal Commission Staff Correspondence, dated December 1, 2021 & March 1, 2024
 - CalFlora, California Invasive Plant Council (Cal-IPC), and California Natural Diversity Database (CNDDDB) records, searches on July 15, 2024
 - CalAm Monterey Peninsula Water Supply Project maps, prepared by AECOM (2019)
 - Site photos from 2022-2024 CCC Staff visits along Monterey Bay Recreational Trail
-

The Coastal Commission's Central Coast District staff requested that I prepare a memorandum on the ecological resources occurring, or likely to occur, within the proposed MST bus road project footprint, and to make a determination regarding the presence of environmentally sensitive habitat areas (ESHA). I visited the site on July 5, 2024, and reviewed both publicly available resources and materials submitted by the applicant.

Project Setting & Summary

The project area is sited on the landward, backdune edge of the Monterey dune complex (Figure 1). This complex consists of higher relief dunes along the southern

Monterey Bay coastline, and geologically older, flatter dune sheets extending inland, constituting a total area of approximately 40 square miles.¹ The dune complex serves as a natural buffer from sea level rise and intensifying storms due to climate change for Highway 1 and the coastal cities of southern Monterey Bay. This area also supports several endemic species unique to Monterey Bay and the Central coast. Though development, including former military operations, sand mining, the construction of Highway 1, residential and commercial endeavors, and coastal agriculture have limited the extent and impacted the natural condition of the dune complex, the remaining area, particularly that west of Highway 1, represents a largely continuous stretch of rare coastal dune habitat. In recent decades, efforts throughout the southern Monterey Bay region have aimed to restore dune communities and preserve or re-establish native habitat corridors.

The proposed bus road is proposed to be constructed within a portion of the Monterey Branch Line Rail corridor owned by the Transportation Agency for Monterey County (TAMC). The project footprint is located generally seaward of Highway 1. Portions of the project fall under the LCP jurisdiction of the City of Marina (0.08 miles), and Sand City (0.57 miles; Figure 2), with a majority of the project located within the Coastal Commission's retained jurisdiction (4.3 miles; Figure 1). The Marina segment is the subject of appeal A-3-MRA-24-0026, which is being analyzed concurrently with CDP application 3-23-0288 that covers the portion of the corridor within the Commission's retained jurisdiction.

The bus road is proposed to be paved between an existing inactive rail and the Monterey Bay Recreational Trail (Recreational Trail). In some areas, the rail would be removed to accommodate the paved, 2-lane road and its associated retaining walls and drainage features. The project would also include the relocation of small segments of the Recreational Trail and the Beach Range Road Trail where there is currently not enough room to accommodate the bus road and existing paved trails.

The proposed project within both the Commission's and City of Marina LCP jurisdictions is estimated to cover at least 23.2 acres of dune habitat with new pavement, retaining walls, and graded drainage features. Coastal Commission staff have estimated an additional 1.6 acres of temporary disturbance due to staging areas and 5.6 acres of potential temporary impacts due to construction along the edge of the project footprint (i.e., 5 feet on either side of the busway length). This would result in a potential 30 acres of direct habitat disturbance. Paving would remove vegetation and seedbank, habitat supporting wildlife species, and ongoing natural processes within the footprint.

Beyond these quantifiable impacts, the introduction of a bus road within the rail corridor would have cumulative impacts on habitat fragmentation. What is currently a relatively broad swath of viable habitat between Beach Range Road and the Recreation Trail would be bisected by the new bus road, leaving narrow strips of habitat where there is currently one more contiguous area (Figure 3), spanning over 250 feet in some

¹ Cooper, W. S. (with Internet Archive). (1967). Coastal dunes of California. [Boulder, Colo., Geological Society of America]. <http://archive.org/details/coastaldunesofca0000coop>

sections. Current habitat fragmentation is compounded by Highway 1; that barrier would be further reinforced by a bus road with large vehicles traveling at 55 mph every 15-30 minutes.

In addition, because the project is proposed within dune ESHA, the proposed setback from adjacent dune ESHA is zero feet. The Commission typically starts its project analyses with a setback buffer distance of at least 100 feet for ESHA. Here, there would be no buffer at all. Should this project include such buffers, realizing that Highway 1 precludes the establishment of a full buffer on the landward side, the Commission could consider approximately 78 acres of dune habitat within the buffer area and susceptible to impacts from the proposed development. Studies have shown that vehicular use directly within dune habitat can have significant adverse effects on species living in adjacent areas. New roads can also provide the disturbance needed for additional non-native species to invade an area.² Wildlife may be disturbed through noise and vibration, both of which can lead to avoidance behavior directly injuring and/or killing dune animals, including sensitive species.³ When combined with the potential impacts from additional night lighting, sustained disturbance, and maintenance associated with the bus road, the project's impacts would be larger than the quantifiable acreage that would be paved over or disturbed during construction.

Coastal Dunes as Environmentally Sensitive Habitat Areas (ESHA)

The Coastal Act defines environmentally sensitive [habitat] areas, or ESHA, in §30107.5, where it reads:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act requires protection of ESHA as follows:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat

² Jørgensen, R. H., & Kollmann, J. (2009). Invasion of coastal dunes by the alien shrub *Rosa rugosa* is associated with roads, tracks and houses. *Flora-Morphology, Distribution, Functional Ecology of Plants*, 204(4), 289-297.

³ Defeo, O., McLachlan, A., Schoeman, D. S., Schlacher, T. A., Dugan, J., Jones, A., ... & Scapini, F. (2009). Threats to sandy beach ecosystems: a review. *Estuarine, coastal and shelf science*, 81(1), 1-12.

and recreation areas.

The rarity of specific habitats and species is determined by the California Department of Fish and Wildlife (CDFW), the US Department of Fish and Wildlife, and other expert groups (e.g., California Native Plant Society). The California Natural Diversity Database (CNDDDB) is a state repository of data concerning rare plant and animal species, and rare natural communities (e.g., habitats, vegetation communities) that are vetted, maintained and continually updated by the Biogeographic Data Branch of CDFW. Commission staff routinely use this resource to confirm records and rarity status of habitats and species that have potential or confirmed occurrences around project sites. Generally, species or communities rated “Critically imperiled,” “Imperiled,” or “Vulnerable” [i.e., Global (G) or State (S) ranking of 1, 2, or 3]⁴ are considered rare. Plant species with these ratings, or a California Rare Plant Rank of 1B or 2⁵ (defined by California Native Plant Society as presumed extirpated, rare, threatened, or endangered in California), are also considered to be rare and sensitive. Habitat supporting any of these rare species or communities, or those listed by the federal Endangered Species Act or the California Endangered Species Act, and/or identified under other special state species categories (e.g., Species of Special Concern) is typically considered ESHA.⁶

Stabilized and vegetated backdunes in central California, like the ones within the project area, are typically characterized by diverse coastal scrub communities. Central dune scrub areas, present within the project area, intergrade with foredune dune mat vegetation and inland chaparral. They are often recognized as dense scatterings of shrubs, subshrubs, and forbs, generally reaching less than 1m in height.⁷ CDFW has historically recognized central dune scrub as a globally and statewide imperiled vegetation community with a ranking of G2S2.⁸

The rarity of dunes and associated natural resources is readily established through technical literature and occurrence records following the above framework and mapping. They are geographically constrained and rare in that beach-dune complexes are cited to make up just 2-3% of California’s habitats.⁹ However, a 2022 Ocean

⁴ NatureServe’s ranking system is used by a network of agencies around the world, including CDFW. It assigns each listed species a level of risk based on both its Global (G) abundance, where applicable, and its risk at the State (S) level. Rankings include such categories as “Critically imperiled” (1), “Imperiled” (2), “Vulnerable” (3), “Apparently secure” (4), and “Secure” (5).

⁵ California Native Plant Society’s California Rare Plant Ranks include 1A: Presumed extinct in CA, 1B: Rare in CA and elsewhere, 2A: Presumed extirpated in CA, 2B: Rare in CA, common elsewhere, 3: More info needed, and 4: Watchlist. Rarity ranks can include a threat rank: 0.1: Seriously threatened, 0.2: Moderately threatened, and 0.3: Not very threatened in CA.

⁶ Coastal Commission Staff. 2016. *Environmentally Sensitive Habitat Area (ESHA)*. [Presentation]. <https://www.coastal.ca.gov/meetings/workshops/>

⁷ Holland, R. F. (1986). Preliminary descriptions of the terrestrial natural communities of California. State of California Resources Agency, Department of Fish and Game.

⁸ CDFW. (2010). Sensitive Natural Communities. State of California Natural Resources Agency.

⁹ Pickart, A. J., & Barbour, M. G. (2007). Beach and dune (pp. 155-179). Berkeley, CA: University of California Press.

Protection Council report determined that in California, there is six times as much coastal wetland habitat as there is coastal dune area. That estimate suggests dunes may make up just 0.06% of California.¹⁰

Aside from rarity, another aspect to the definition of ESHA is the clause referring to a habitat's special nature or special role. Coastal dunes are an irreplaceable resource that are created by a unique combination of physical and biological factors that only exist in a narrow band of the coastal zone. Dunes form only under certain physical conditions including where there is available space, sand, and wind. They are subject to extreme physical disturbance from wave action, sun exposure, and salt spray. The changing and often harsh conditions found in coastal dune habitats result in specially adapted plant and animal species. For example, many dune plants have seeds that can remain dormant for extended periods of time until conditions allow for them to germinate, and several animals burrow beneath the sand for significant portions of their lives. The winds and shifting sands in dune habitats can cause the physical characteristics and the species at any given location to change on a relatively short or shifting timescale. Thus, a particular area of dune habitat may demonstrate relatively higher or lower physical and/or biological complexity over time but nonetheless represents a dynamic and adaptable rare ecosystem.

Coastal dunes' position between the beach and inland development makes them a valuable natural buffer to rising seas and flooding events during storms. Not only do they buffer wave action, but they also are a sand supply for receding beaches.¹¹ Numerous cities in California have undergone coastal dune restoration efforts to reap the benefits of their erosion protection and sand accretion.¹² As sea level rises, the persistence of dunes relies, among other things, on their ability to migrate,¹³ which makes preserving undeveloped back dune areas critical to coastal resilience.

The Coastal Act places a high priority on the protection and enhancement of sensitive habitats. Due to coastal dunes' rare and especially valuable nature, confined spatial ranges, occupation by special status species and communities, and coastal resilience services, dune systems, including degraded¹⁴ dunes, have historically been considered

¹⁰ OPC. (2022). State of California Coast and Ocean Annual Report. https://www.opc.ca.gov/webmaster/_media_library/2023/01/Annual-State-of-the-Coast-and-Ocean-Report-2022-508.pdf

¹¹ Aerts, J. C., Barnard, P. L., Botzen, W., Grifman, P., Hart, J. F., De Moel, H., ... & Sadrpour, N. (2018). Pathways to resilience: adapting to sea level rise in Los Angeles. *Annals of the New York Academy of Sciences*, 1427(1), 1-90.

¹² Johnston, K. K., Dugan, J. E., Hubbard, D. M., Emery, K. A., & Grubbs, M. W. (2023). Using dune restoration on an urban beach as a coastal resilience approach. *Frontiers in Marine Science*, 10, 1187488.

¹³ Griggs, G., & Reguero, B. G. (2021). Coastal adaptation to climate change and sea-level rise. *Water*, 13(16), 2151.

¹⁴ *Bolsa Chica Land Trust v. Superior Court* (1999) 71Cal.App.4th 493 determined ESHA(s), "whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection."

ESHA by the Coastal Commission.¹⁵ Dunes have been historically identified by the Commission based on their physical processes, sandy substrate, and morphology (hummocks and hollows) with or without vegetation, and in some cases, a limited combination thereof. The Commission has identified dune habitat with the above characteristics that only support non-native plants to be ESHA. Over the last seven years alone, the Coastal Commission has consistently found the coastal dunes of Monterey Bay to rise to the level of ESHA, including with the development at the CEMEX sand mining facility (Consent Cease and Desist Order CCC-17-CD-02) and the Monterey Bay Aquarium Research Institute (CDP A-3-MCO-17-0068). In 2017, the Commission found the dunes of Fort Ord Dunes State Park to rise to the level of ESHA (Fort Ord Dunes State Park Campground, CDP 3-14-1613). The proposed bus road would be adjacent to this same park. Just over two miles of the SURF! project extent was analyzed when it was considered under California American (Cal-Am) Water's CDP (CDP A-3-MRA-19-0034 and CDP 9-20-0603); the Commission's adopted findings in 2022 identified an overlapping portion of the current project's footprint as ESHA.

Documented Biological Resources at the Project Site

Biological resources within the project area were documented by Applicant surveys in 2020 and earlier. Previous surveys in overlapping areas under Cal-Am's CDP 9-20-0603 were also completed as recently as 2019. Coastal Commission staff visited the site between 2022 and 2024, and searched records within the online CNDDDB and other desktop resources (e.g., CalFlora, etc.). Each of these sources detected special status species or the potential for special status species to occur within the Coastal Commission retained jurisdiction area. It is possible that the abundance of some of these species was underestimated by certain project surveys given the drought conditions from late 2019 to 2022.

Plant Species

Characteristic species in central dune scrub vegetation communities include California goldenbush (*Ericameria ericoides*), dune bush lupine (*Lupinus chamissonis*), and beach sagewort (*Artemisia pycnocephala*).⁷ These species occur throughout the project footprint. Roughly one third of an acre of silver dune lupine - mock heather scrub (*Lupinus chamissonis* - *Ericameria ericoides*) shrubland alliance¹⁶ was identified by the Applicant, which has a CDFW ranking of G3S3 and is considered vulnerable. This alliance is affiliated with Holland's central dune scrub community.⁷ As stated above, CDFW has historically recognized central dune scrub as a globally and statewide imperiled vegetation community with a ranking of G2S2.² Several sensitive individual plant species, described below, also occur or have the potential to occur within the

¹⁵ For examples outside of Monterey County, see City of Malibu (LCP Amendment 1-07, Malibu Bay Company), City of Oxnard (LCP Amendment 1-05, Oxnard Shores), Oceano Dunes State Vehicular Riding Area (Permit Review [2021] for CDP 4-82-300), and Huntington Beach Bike Lane (CDP 5-23-0291).

¹⁶ CNPS. A Manual of California Vegetation, Online Edition. <http://www.cnps.org/cnps/vegetation>]. California Native Plant Society, Sacramento, CA. The MCV classification system has superseded the 1986 Holland classification system. However, since state mapping and classification efforts have not been completed within the project area, the Holland classifications are still relevant, per CDFW guidance.

project area, some of which have ranges largely limited to the southern Monterey Bay dunes.

Sandmat manzanita (*Arctostaphylos pumila* – CDFW ranking G1S1 and CRPR⁵ 1B.2) has been documented within the project site by the Applicant, Cal-Am project consultants, and Coastal Commission staff. This species' native range is limited to the Monterey Bay area. Like many other coastal species, sandmat manzanita has a unique low-lying form and is dependent on coastal fog. It is typically associated with sandy soils at low elevations, including within stabilized backdune communities. Large shrubs were observed by Coastal Commission staff within and immediately adjacent to the project area (Figure 4a), including within the rail tracks (Figure 4b).

The Applicant also identified three rare native perennial forbs within the project footprint, including Kellogg's horkelia (*Horkelia cuneata* var. *sericea*; CRPR 1B.1) and numerous occurrences of the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*; CDFW ranking G2S2 and CRPR 1B.2). Previous Cal-Am surveys also documented extensive Monterey spineflower within the site. This species is often found within disturbed areas or those without dense vegetative cover, and where substrates have a significant sandy component, which is present throughout the project area. Records of occurrence in the local area on CNDDDB and CalFlora are numerous, reaching from just south of the Salinas River mouth down to the Monterey Peninsula. The Applicant also noted Coast wallflower (*Erysimum ammophilum*; CDFW ranking G2S2 and CRPR 1B.2) onsite near the border of Sand City. CNDDDB notes additional occurrences of this species within the project area.

The Applicant also noted the potential for Yadon's rein orchid (*Piperia yadonii*; CDFW ranking G1S1 and CRPR 1B.1) to be present on site. Yadon's rein orchid is listed as federally endangered and any individuals located within the project area would represent occurrences potentially connecting the larger, more established populations to the north and south.¹⁷ A *Piperia* spp. individual was mapped within the project boundary but was outside of the coastal zone.

The Applicant and the biological consultants for Cal-Am's CDP 9-20-0603 (Appendix A) found occurrences of both seacliff and coastal buckwheat (*Eriogonum parvifolium* and *E. latifolium*). Coastal Commission staff also observed seacliff buckwheat regularly occurring along the Recreational Trail, directly adjacent to the project area. Although the two buckwheat species are perennial forbs native to California, they are not in themselves recognized as a sensitive species. However, they are the only known host plants for the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*; CDFW ranking S2), and thus constitute ESHA. CNDDDB also identified local historic occurrence of seaside bird's beak (*Cordylanthus rigidus* ssp. *littorali*; CDFW ranking S2 and CRPR 1B.1), a state-listed endangered species.

Some of the project area was characterized by the Applicant's biological report as a coastal scrub vegetation type, containing a *Baccharis pilularis* shrubland alliance under

¹⁷ CalFlora Observation Search, Yadon's piperia, July 15 2024.

the Manual of California Vegetation (MCV).¹⁸ Alliances can be further refined into specific vegetation associations, some of which can be rare (*i.e.*, CDFW ranking 1-3), even if the broader alliance is not. The coastal scrub alliance described by the Applicant is not refined to the association level. However, given the vegetation's presence on a pre-existing dune sheet, presence of other rare species, interspersed with the rare '*Lupinus chamissonis* - *Ericameria ericoides* shrubland alliance' under the MCV, and the *Baccharis pilularis* alliance's relationship with dune scrub, the site already contains several attributes that support an ESHA determination.

The segment of the project within Marina's LCP jurisdiction is approximately 0.34 acres and extends roughly 500 feet northeast from the Highway 1 overpass. This segment was not found to rise to the level of ESHA (or 'primary habitat' as it is referred to by the Marina LCP¹⁹) by the City of Marina due to the lack of observed rare species within the small Marina segment in the Applicant's 2020 survey. While the segment was dominated by iceplant during a July 2024 Commission staff site visit, dune-associated California natives were present, including beach wormwood (*Artemisia pycnocephala*; Figure 5). Giant buckwheat (*Eriogonum giganteum*) was also present, which is endemic to California and CDFW ranked G3 ("vulnerable"), but likely originated from freeway plantings at the site decades ago.²⁰ Additionally, the Applicant's biologist did document that the Marina segment was bordered by Monterey spineflower directly to the north and south, and CNDDDB notes multiple populations nearby (Figure 6). Given the similarity and continuity of the backdune habitat corridor that connects those observed plants through the small Marina segment, and considering the competition present from iceplant that is likely precluding the proliferation of other native plants, it is likely that Monterey spineflower seed bank is present within the Marina segment and that spineflower is supported by the Marina segment.

Animal Species

Within Coastal Commission retained jurisdiction, several California Species of Special Concern (as designated by CDFW) were detected or deemed to have potential to occur within the project area by the Applicant, including Townsend's big-eared bat [*Corynorhinus townsendii*; CDFW ranking S2] and Northern California legless lizard (*Anniella pulchra*; CDFW ranking S3). The legless lizard relies on dune vegetation leaf litter (for cover and foraging on associated insects), which was abundant throughout the project footprint. The Applicant also noted the potential for Coast horned lizard (*Phrynosoma blainvillii*) and Monterey dusky-footed woodrat (*Neotoma macrotis luciana*; CDFW ranking S3), whose constructed and complex 'stick houses' are reused by

¹⁸ The '*Baccharis pilularis* shrubland alliance' under the 2009 MCV, while not rare itself, may be further refined to a rare association, or classified as a dune scrub type under the 1986 Holland classification, which is also rare.

¹⁹ Primary habitat is defined by the Marina LCP in part by "*Habitat for all identified plant and animal species which are rare, endangered, threatened, or are necessary for the survival of an endangered species. These species will be collectively referred to as "rare and endangered."*" Monterey spineflower is considered a rare and endangered species by the Marina LCP.

²⁰ CalFlora [May 7 2024] <https://www.cch2.org/portal/collections/individual/index.php?occid=2922969>

generations²¹ for as much as decades and constitute especially valuable habitat. These findings are consistent with previous Cal-Am surveys.

The federally endangered Smith's blue butterfly was observed onsite during the Cal-Am mapping efforts in 2019 and assumed present by the Applicant. The butterflies have evolved to complete their full life cycle in conjunction with their host plants, including emergence from their pupal cases in the plant's duff in synchrony with the peak buckwheat (discussed above) flowering period to take advantage of the available nectar resource. While not all areas with host plant species are occupied by the butterflies, population trends are believed to parallel that of the available habitat.²² Thus, where the buckwheat species are in decline, it is generally interpreted that the Smith's blue butterfly populations are as well. It has been estimated that more than 50% of the dune habitat in the butterfly's northern region, where the project is proposed, has been either lost to or significantly altered by human activities such as development, sand mining, recreational use including for off-road vehicles, fire suppression, and non-native, habitat-altering plant species such as iceplant.²³ Ongoing habitat fragmentation diminishes the quality of remaining suitable habitat both directly and indirectly.

In addition to the fauna discussed above and as reported by the project Applicant, surveys completed in 2019 in support of Cal-Am's CDP (9-20-0603) reinforced these findings and additionally, noted several other special status species (via observed individuals, nests, shells, or burrows) in areas that directly overlap with the project area. These included the state threatened bank swallow (*Riparia riparia*; CDFW ranking S3), which is thought to nest at bluffs near the beach and forage in the backdunes where insect abundance and diversity is greater than foredune areas, the American badger (*Taxidea taxus*; CDFW ranking S3), which can utilize backdune habitat for burrowing, and species of shoulderband snail (*Helminthoglypta spp.*), which are known to qualify as S3 and rarer. Coastal Commission staff also noted shoulderband snail shells onsite during a 2024 site visit. CNDDDB also noted the potential for burrowing owl (*Athene cunicularia*), a CDFW S2 ranked species and a California Species of Special Concern, in the area.

ESHA Determination and Conclusion

The proposed bus road footprint falls within the dune habitat of the Monterey dune complex. Due to the rarity and especially valuable nature of coastal dunes, confined spatial ranges, coastal resilience services, and the presence of special status species and unique vegetation communities (all as described above), dune systems, including degraded systems, have historically been considered ESHA by

²¹ Tweet, J. S., Santucci, V. L., & Hunt, A. P. (2012). An inventory of packrat (*Neotoma spp.*) middens in National Park Service areas. *Vertebrate coprolites: New Mexico Museum of Natural History and Science Bulletin*, 57, 355-368.

²² Arnold, R. A. (2022). Population Dynamics and Determinants of Annual Fluctuations of the Endangered Smith's Blue Butterfly, *Euphilotes enoptes smithi* (Lycaenidae). *The Journal of the Lepidopterists' Society*, 76(2), 121-134.

²³ US Fish and Wildlife Service. (2020). Species Status Assessment for Smith's Blue Butterfly (*Euphilotes enoptes smithi*). <<https://ecos.fws.gov/ServCat/DownloadFile/183160>>.

the Coastal Commission.¹⁵ In this case, there is strong evidence supporting a determination that is consistent with this precedent and our contemporaneous and increasingly robust understanding of coastal dune ecosystems.

At least 6 plant species that are known to occur or likely to occur within the bus road project area possess a California Rare Plant Rank of 1B or rarer, with some federally listed as threatened or endangered. At least 8 animal species that are known to occur or likely to occur within the project area are considered rare or of special concern by the California Department of Fish and Wildlife or are federally threatened or endangered. In addition to the project area qualifying as dune, these species' presence further supports determination of the project area as qualifying as ESHA. This determination includes undeveloped areas alongside the trail and rail, as well as within the tracks and ballast, as demonstrated by species' encroachment into the development (Figure 4b).

Related directly to the Marina segment, given that Monterey spineflower has been observed locally in proximity to the Marina segment, is likely within the Marina segment as discussed above, and is considered "rare and endangered" by the Marina LCP, this would qualify the Marina segment as "primary habitat," or ESHA.

In conclusion, given the project's location within a dune system that has been determined to rise to the level of ESHA by the Coastal Commission in multiple past decisions, and the presence of numerous rare, imperiled, and vulnerable dune-associated species and communities, this project area clearly and repeatedly rises to the level of ESHA.



Figure 1. The bus road project area, as seen in the Staff Report exhibits. The subject of this CDP and appeal are the red and orange segments, located on the landward edge of the Monterey dune complex.



Figure 2. The rail would be removed at this Sand City location and replaced by a relocated, paved section of the Monterey Bay Coastal Recreational Trail and the paved bus road. Photo taken from current Monterey Bay Recreational Trail looking seaward (2024).



Figure 3. An area of the bus road near Marina. The proposed road and associated drainage features would be located approximately within the yellow lines next to the rail. In a few areas, the road will replace the rail. Note the Project's effect of increasing habitat fragmentation between Highway 1 and the area west of Beach Range Road.



Figure 4a (left). Rare, critically imperiled sandmat manzanita (*Arctostaphylos pumila*) in the foreground within a native vegetation community in July 2024, viewed from the Recreational Trail looking seaward. Small portions of the rail are visible among native dune scrub plants.

Figure 4b (right). Rare, critically imperiled sandmat manzanita (*Arctostaphylos pumila*), growing within the rail in 2022. The area directly inland of the rail (left) would be paved by the bus road project.

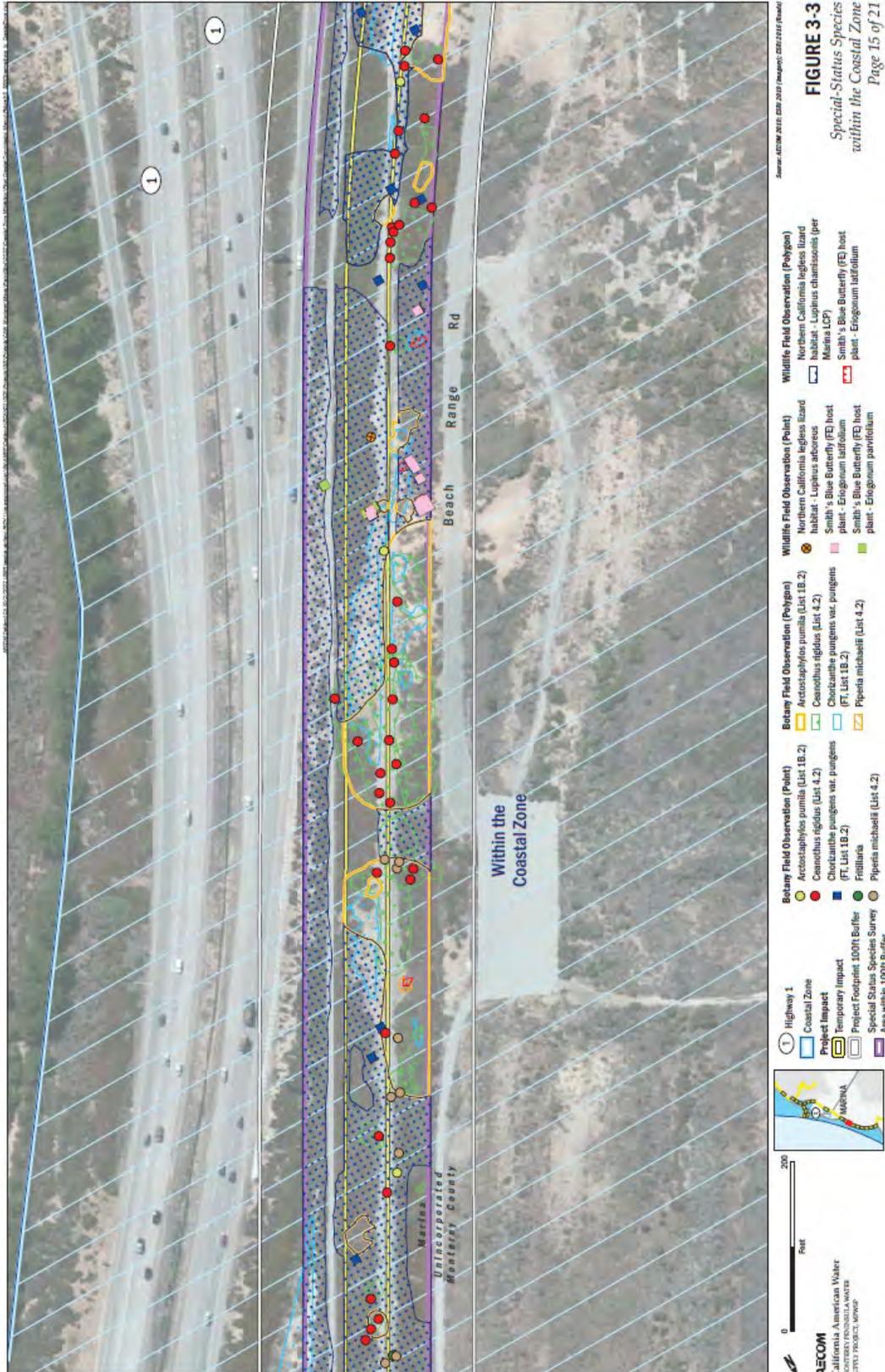


Figure 5. Portion of the Marina segment of the proposed bus road, taken from the Recreational Trail looking seaward near the Highway 1 overpass. Note the dune-associated plants directly in front of the rail.



Figure 6. Marina segment of the SURF! Bus road highlighted in magenta. The blue-outlined polygons indicate documented Monterey spineflower (*Chorizanthe pungens* var. *pungens*) habitat within the California Natural Diversity Database. Monterey spineflower was also mapped to the northeast of the Marina segment, outside of the coastal zone, by the Applicant.

Appendix A Cal-Am CDP 9-20-0603 2019 AECOM biological mapping excerpt. The proposed bus road project impact area includes the area outlined in yellow as well as the western portion of the special status species buffer, outlined in purple and nearest to Beach Range Road. Note the extent of cover and multitude of sensitive biological resources present within the corridor, as well as the open sand and vegetated dune areas continuous to the west of the project area.



In the time since Commission staff were first made aware of the project in 2019, staff has done its best to advise MST staff, and has been consistent in terms of the advice in those interactions for over five years. In fact, and starting from the first time staff first heard about the project in 2019, staff has been consistently supportive of project goals and objectives, but has been clear with MST that: the project was proposed in dune ESHA; that whether that dune ESHA is degraded or not it is still dune ESHA; that the project is not a resource dependent use and thus is prohibited in dune ESHA by the Coastal Act and applicable LCPs; that even if it were to be an allowable use the project has significant impacts to dune ESHA that are also prohibited by the Coastal Act and applicable LCPs; and that the project is simply not approvable consistent with the provisions of the Coastal Act and applicable LCPs. Thus, and in order to help MST achieve project goals and objectives, staff has long advised that MST should pursue a alternative project that can avoid dune ESHA, and staff has offered to help and partner in that effort as best as it can.

Unfortunately, MST decided to continue to pursue a CDP for the project in its current form, including submitting CDP applications for it to the Commission and applicable local governments, where staff has maintained its initial position throughout while also continuing to do its best to help explain processes and issues to MST as their project efforts have progressed. And where more recent interactions have also pushed deeper into the details associated with potential alternatives to the proposed project, as well as including discussions regarding how the Coastal Act's conflict resolution provisions work and are applied, and how they are not applicable to a project like this, and how even if a project were to be allowed in that way, the mitigation requirements would be significant, and probably in the neighborhood of \$30 million or more worth of dune mitigation, where none of that is part of MST's plan/budget.

Commission staff major communications/contacts with MST staff included at least ten meetings, two additional meetings in the field at the project site, and four formal letters. See summary below.

1. May 2019 - Commission staff (Kevin Kahn and Mike Watson) meeting in Santa Cruz office with MST staff

MST staff gave an overview of the proposed project and the goals it seeks to meet. Commission staff voiced strong support behind the overall goals of the project, including facilitating public transportation and supporting lower-income and inland communities' transportation needs. At the same time, Commission staff identified a fatal flaw for the proposed project in that it was proposed in what was almost assuredly dune ESHA where such a project is not allowable under the Coastal Act and applicable LCPs. Commission staff committed to helping to facilitate alternative projects that do not raise similar Coastal Act problems, and being a partner in doing so. The meeting was cordial and professional, and both staffs thanked each other for the frank discussion. However, MST still decided to continue to pursue the project notwithstanding the Commission staff advice to pursue alternatives instead.

2. April 2021 (4/12/2021) - Commission staff (Mike Watson) meeting with MST staff

This meeting was a refresher to the proposed project and issues thereto, and included a similar discussion as from the May 2019 meeting, with additional discussion regarding

the sensitivity of the public recreational access features and public views associated with the proposed project alignment as well, and how these raised different sorts of Coastal Act and LCP concerns about the project.

3. April 2021 (4/13/2021) - Commission staff email (Mike Watson) to MST staff

The email again reiterated the issues that with the proposed project Commission staff has already noted to MST staff since 2019. The email:

- Identified CDP permitting jurisdictions.
- Identified again that the project was proposed in dune ESHA, which is protected under the Coastal Act whether it is degraded or not, and that the proposed project is not a resource dependent use and thus not allowed in such dune ESHA. The email concludes that: “the current iteration of the project proposal clearly will result in significant adverse impacts to ESHA. As a result, it seems clear that the current project proposal cannot be found Coastal Act consistent.”
- Informed MST again that they needed to pursue other alternatives that avoided ESHA: “alternatives including, at a minimum, establishing a bus lane within the State Route 1 rights-of-way, adaptive reuse of existing paths or roads, reestablishing use of rail transit, HOV lane designation for bus use, and the no project alternative.”
- Informed MST that, notwithstanding that this was not an approvable project in ESHA, approvable projects in ESHA must first avoid ESHA impacts as much as possible and must fully mitigate unavoidable impacts.
- Informed MST again regarding the public access and public view concerns with the project.

4. April 2021 (4/19/2021) - Commission staff (Kevin Kahn and Mike Watson) meeting with MST staff

The meeting was in response to the 4/12/2021 meeting and 4/13/2021 email, and thus a rehashing of issues discussed then, and a reiteration of the significant obstacles in the way of approval of a project like this.

5. May 2021 (5/10/2021) - Commission staff (Mike Watson) letter to MST staff

The letter:

- Again expressed support for project objectives, but reiterated the need for any proposed project to be consistent with the Coastal Act.
- Encouraged MST to do more community outreach to ensure that members of the community have an accurate understanding of the project, including its potential impacts and the need to pursue alternatives as a result.
- Again reiterated that the project was in dune ESHA, including both intact and degraded dune habitats, and that as a non-resource dependent use with extensive ESHA impacts it is “not approvable under Coastal Act Section 30240 or under the ESHA policies of the various LCPs that would apply to the project in the areas located outside of the Commission retained permitting jurisdiction.”
- Again suggested that MST should look to alternatives that can avoid ESHA impacts, and suggested that at least the following be evaluated: “1) establishing bus service

within the existing highway right-of-way via widening or use of an existing lane; 2) establishing an HOV lane in the right-hand lane of Highway 1; 3) commuter rail on the existing rail alignment; 4) utilizing surface city streets to accommodate bus rapid transit.”

- Again expressed concerns about public access impacts (including to Fort Ord Dunes State Park (FODSP) and the CCT/Recreational Trail) and public view impacts (including from Highway 1, CCT/Recreational Trail, and planned FODSP campground).
- Concluded: “although we are supportive of strategies to maximize public transit opportunities and to reduce carbon emissions and reliance on fossil fuels, the current proposal cannot be found consistent with the Coastal Act or with the applicable LCPs. We strongly suggest that MST take a pause on this project to develop a public process to evaluate alternatives that will not result in the range of significant coastal resource impacts described herein.”

6. July 2021 (7/14/2021) - Commission staff (Dan Carl) email to MST staff

In response to outreach from the MST General Manager regarding Commission staff recommendations to date, the email:

- Encouraged MST to work on responding to the concerns identified and issues raised by Commission staff, particularly in terms of looking to alternatives that can avoid ESHA impacts.
- Clearly stated that the project is sited in ESHA where the only uses allowed are resource dependent, and the proposed project is not resource dependent, making it unapprovable, further stating: “That may be an inconvenient truth, but it is a truth nonetheless, which is one of the reasons why our staff has continued to ask for a more robust alternatives analysis.”

7. October 2021 - Commission staff (Kevin Kahn, Mike Watson, and Esme Wahl) site visit meeting with MST staff

Staff again reiterated the project’s dune ESHA inconsistencies, and again strongly suggested that MST pursue other alternatives that did not impact ESHA, including working with Caltrans to provide for a project on/within the Highway 1 corridor, or a new bus road utilizing existing surface streets on the inland side of Highway 1, or a combination of such permutations.

8. February 2022 (2/9/2022) - Commission staff (Kevin Kahn) email to MST staff

Commission staff requested more information regarding alternatives, and potential restoration: “As we discussed when we were out in the field in October, this is all critical information for us since the project raises some fundamental approvability issues in terms of dune impacts.”

9. October 2022 (10/10/2022) - Commission staff (Katie Butler) email to MST staff

Reiterated that the project is not allowable in ESHA and the need for MST to thoroughly analyze project alternatives. Also outlines at a high level the Commission’s process and approach when it comes to mitigation for ESHA impacts when such impacts are allowable.

10. March 2022 (3/21/2022) - Commission staff (Rainey Graeven and Dr. Lauren Garske-Garcia) site visit meeting with MST staff

Commission staff ecologist Dr. Lauren Garske-Garcia again informed MST of the ESHA status of the corridor, and that the proposed project is not an allowable use within ESHA. Staff also responded to questions about how ESHA mitigation works when ESHA impacts are allowable.

11. April 2022 (4/28/2022) - Commission staff (Rainey Graeven) meeting with MST staff

Commission staff again discussed the dune ESHA issues that the project faces and highlighted that MST should include an evaluation of dune ESHA impacts for the various alternatives that they look at, because large ESHA impacts are both inconsistent with the Coastal Act and even if approved, would come with costly large scale mitigation, which could itself render certain options financially infeasible.

12. May 2023 (5/3/2023) – Commission staff (Breylen Ammen) letter to MST staff (first non-filing letter sent in response to CDP application submitted on 4/3/2023)

Asked for more information supporting project need, alternatives, approvals from other agencies, ESHA impacts, public access impacts, and more.

13. August 2023 (8/24/2023) - Commission staff (Kevin Kahn, Katie Butler, and Breylen Ammen) meeting with MST staff

Staff again voiced support for project objectives and public transit in the coastal zone but reiterated that this project is not approvable because it is inconsistent with the Coastal Act and applicable LCPs. As a result, MST needs to pursue other alternatives. MST staff seemed less focused on that issue than discussing ways of mitigating ESHA impacts as a way to get to approval. Staff again discussed how conflict resolution works under the Coastal Act but identified that this project does not raise a conflict. And even if it did, it is not clear that a bus road in ESHA (1) could be found the most protective of significant coastal resources, as would be required; nor (2) that it would be possible for MST to feasibly mitigate for such impacts. On the latter point, staff noted that the 25 acres or more of dune ESHA impacts would be unprecedented, one of the largest in this area ever, and, if approvable, would require a package of mitigation that would be difficult to put together, including in terms of cost. MST staff continued to press for an approval of this sort, but Commission staff again reiterated the project was not approvable, and that MST needed to pursue other alternatives.

14. August 2023 (8/25/2023) - Commission staff (Breylen Ammen) letter to MST staff (second non-filing letter sent in response to additional CDP application information submitted by MST on 7/28/2023)

Asked for more information supporting project need, alternatives, ESHA impacts, and more, all in response to materials that had been submitted by MST but that hadn't answered the initial questions for the first non-filing letter. Also discussed how conflict resolution works under the Coastal Act, including the high bar that a project must meet to qualify for it.

15. December 2023 (12/29/2023) - Commission staff (Breylen Ammen) letter to MST staff (third non-filing letter sent in response to additional CDP application information submitted by MST on 12/1/2023).

Asked for more information on ESHA impacts in response to materials that had been submitted by MST but that hadn't answered the questions from the second non-filing letter.

16. January 2024 (1/22/2024) - Commission staff (Breylen Ammen) meeting with MST staff

Commission staff asked for clarification on how project benefits were calculated and again highlighted that the bar for a project to qualify for conflict resolution is high, and that Commission staff needed detailed information on project benefits to inform that analysis.

17. January 2024 (1/22/2024) - Commission staff (Breylen Ammen) email to MST staff

Reiterated in writing the requests for information emanating from the meeting on the same day (see above) and requested an evaluation of benefits for a variant of the no project alternative that would include increased bus frequency, and use of all electric buses, but no bus road in dune ESHA.

18. April 2024 (4/30/2024) - Commission staff (Breylen Ammen) meeting with MST staff

Based on meetings and discussions with California Public Utility Commission Railroad Division (CPUC) and California Transportation Commission (CTC) staff, it had become apparent to Commission staff at this time that the proposed project may have fatal problems associated with the CTC and CPUC processes. Specifically, in terms of the CTC, Commission staff became aware that the project appeared to be incompatible with the funding used to purchase the Monterey Branch Line corridor, which would disallow a project of this sort as proposed. And in terms of CPUC, CPUC staff had told Commission staff that the applicant was going to need to go through a lengthy and complicated CPUC approval process to be able to put a bus line in the rail corridor, and CPUC identified very specific set of steps that the applicant was going to need to pursue with CPUC in that regard.

Commission staff informed MST staff about the above issues and recommended that MST withdraw their CDP application and resubmit once these questions were settled given that the application was filed and the Permit Streamlining Act (PSA) 180-day clock was running, and it appeared clear that these issues could not be resolved within that time frame. MST declined. As a result, Commission staff sent a letter (dated May 17, 2024) to CPUC and CTC staff asking for their official input on the pending project so that the Commission could have the benefit of their input for the staff report and subsequent deliberations.

19. June 2024 (6/3/2024) - Commission staff (Kate Huckelbridge, Dan Carl, Kevin Kahn, Logan Tillema, and Breylen Ammen) meeting with MST staff

MST staff gave a broad project overview, and Commission staff reiterated both strong support for project objectives and strong admonition that it was difficult to see an

approval path here. Commission staff also noted that MST's evaluation of potential alternatives seemed to be flawed as they had funding only for their specifically proposed project, and not funding for any other project that might be able to meet project objectives. As a result, any other alternative would be infeasible for this reason, which essentially undercuts any alternatives analyses. The staffs agreed to further discussion regarding potential alternatives and, while not acquiescing that an approval would be possible, Commission staff agreed to further discussion regarding potential restoration requirements were the proposed project to be approved. Commission staff also noted that, based on current estimates of dune mitigation requirements (from Cal-Am), a mitigation package in such an approval could easily add \$30 million or more to project costs.

20. July 2024 (7/2/2024) - Commission staff (Peter Allen and Eric Stevens) meeting with MST staff

Commission transportation staff heard from MST on the proposed project plans and MST's views of project benefits.

21. July 2024 (7/8/2024) - Commission staff (Kevin Kahn, Dr. Rachel Pausch, Katie Butler, and Breylen Ammen) meeting with MST staff

While continuing to note that approvable was not possible consistent with the Coastal Act, at MST's request, Commission staff walked through potential restoration requirements if the proposed project were it to be approvable, emanating from an agreement at the June 3, 2024 meeting to do so. In this meeting, while still not acquiescing to approval being possible, Commission staff outlined the type of mitigation and restoration requirements that would likely be applied were the project to hypothetically be approved. These requirements would include, but not necessarily be limited to:

- 1:1 habitat replacement mitigation, meaning that a developed dune site equivalent in size to the size of the project's permanent dune impacts would need to be acquired, development removed, and the site restored to dune. The site would need to be in a location that facilitated such dune restoration and dune values (e.g., adjacent to/in existing undeveloped dune areas).
- 3:1 habitat restoration (or 6:1 habitat enhancement) mitigation for all of the project's dune impacts, inclusive of the above 1:1 creation requirement for permanent impacts.

Commission staff also again asked about the methodology by which MST had calculated permanent dune ESHA impacts (because the information provided to date was unclear), where such impacts appeared to be significantly underestimated by MST if the Commission's typical approach to such calculations were applied. Staff again requested revised estimates using the appropriate methodology. Commission staff also again described the challenges that Cal-Am was having in terms of fulfilling similar mitigation requirements, albeit on a smaller scale, and identified that as applied to MST's project, mitigation requirements could easily add \$30 million or more to project costs. Finally, Commission staff again reiterated that the project was not an allowable use in dune ESHA, that the proposed project would have significant dune ESHA impacts, and that none of this was approvable under the Coastal Act and applicable LCP's. While continuing to voice support for project goals and objectives, and a

willingness to partner with MST to work towards the other alternatives that had been identified that could avoid such impacts, Commission staff also indicated that work on the staff report for their CDP application was underway, and that the preliminary staff recommendation at this point was denial.

22. July 2024 (7/9/2024) - Commission staff (Breylen Ammen) email to MST staff

In a follow up from the 7/8/2024 meeting, staff requested additional information on the projected quantitative project benefits that had been requested previously but not provided, including methodology, model inputs, and raw data.

23. July 2024 (7/9/2024) - Commission staff (Dr. Rachel Pausch) email to MST staff

In a follow up from the 7/8/2024 meeting, staff reiterated how the Commission would look at mitigation for dune ESHA impacts were the project to be approvable, but made clear that the project was not approvable, and thus the information provided was purely hypothetical.