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Staff Report:	7/26/2024
Hearing Date:	8/7/2024

COMBINED STAFF REPORT:
SUBSTANTIAL ISSUE DETERMINATION
CDP DE NOVO HEARING
CDP APPLICATION

Applicant:	Monterey-Salinas Transit
Appeal Number:	A-3-MRA-24-0026
Local Government:	City of Marina
Appellants:	Keep Fort Ord Wild and Margaret Davis
Application Number:	3-23-0288
Project Location:	A roughly 4.3-mile-long portion of the unused (since the 1970s) Monterey Branch Line rail corridor located mostly seaward of Highway 1 in the sand dunes running through unincorporated Monterey County between the Cities of Marina and Sand City and adjacent to Fort Ord Dunes State Park, where the appealed segment (i.e., the subject of Appeal Number A-3-MRA-24-0026) is limited to about 500 feet within the City of Marina.
Project Description:	Construct a roughly 4.3 mile long and 30-foot-wide (with one travel lane in each direction) dedicated bus road for Monterey-Salinas Transit buses, and associated development including retaining walls, grading, lighting, drainage features, some rail removal, and construction of an approximately 700-foot extension of Beach Range Road.
Staff Recommendation:	Substantial issue and denial of both CDPs

IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a combined staff report and hearing on two separate CDP actions that apply to different segments of the same project. The first action is for the Commission to determine whether or not the City of Marina's CDP approval raises a substantial issue of LCP conformance. If the Commission so determines it raises a substantial issue and takes jurisdiction over the CDP application, then the de novo review of the CDP for that portion of the project will be heard concurrently with the CDP evaluation of the rest of the project located in the Commission's CDP jurisdiction.

For the appeal, at the hearing for this item the Commission will not take testimony on staff's substantial issue recommendation unless at least three Commissioners request it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take such testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify those time limits). Only the Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application, and it will then review that application, along with the CDP for the rest of the proposed project (CDP 3-23-0288) immediately following that determination (unless postponed), at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective, but the Commission would still need to evaluate the portion of the project subject to the Commission's retained CDP jurisdiction (unless postponed).

SUMMARY OF STAFF RECOMMENDATION

The Applicant (Monterey-Salinas Transit, or MST) is the operator of a network of public transit buses in Monterey County and proposes to construct and operate a new over 4-mile-long bus road that would allow its buses to avoid Highway 1 between the Cities of Marina and Sand City. The road would be built within sand dunes seaward of Highway 1 and adjacent to Fort Ord Dunes State Park in a former railroad corridor. The Applicant's existing Line 20, which runs from Salinas to Monterey, would then use this new road instead of Highway 1 for the identified stretch. According to the Applicant, doing so would reduce travel times during the morning weekday commute hours by some 10 minutes or so (while slightly increasing travel times during other times due to a new proposed bus stop), and generally provide better (e.g., more frequent, less variable) transit service for its predominantly lower-income riders using the bus to get to and from work on the Monterey Peninsula from homes in Salinas.

The Applicant has pitched this idea to Commission staff for over half a decade. And since that time, in countless site visits, meetings, phone calls, emails, and other correspondence, staff have consistently reiterated a common theme: the Coastal Commission fully supports many of the goals and objectives underlying the proposed

project, including facilitating less car-centric transportation options, particularly in terms of enhancing transit options for lower-income riders, environmental justice communities, and the general public, but that this particular proposal is not approvable in dune ESHA under the law, and alternative projects that avoid dune ESHA need to be pursued instead. Staff offered to be a ready partner in helping the Applicant to pursue such alternatives, including to avoid a scenario where a project with identified Coastal Act approvability flaws was continued to be pursued, but the Applicant nonetheless decided to push forward with the project and to apply for the CDP that is before the Commission today. This is at least partially because the Applicant indicates they have obtained some $78 million in funding for this project, where most, if not all, can only be used for this particular proposed project, and not for an alternative project. So, and in staff's opinion truly unfortunately, we collectively find ourselves in a position where a project with laudable objectives is required to be denied due to its prohibited impacts to dune ESHA.

And these are not simply minor such impacts, rather the proposed bus road and related development would be located entirely within dune ESHA,[1] where it would directly lead to the direct loss of almost 25 acres of these dunes, and where subsequent bus operations would be expected to reduce habitat value and function over another some 80 acres of dunes that border the project. In other words, the project would be expected to lead to over 100 acres of dune impacts, where roughly a quarter of that is simply dunes that would be lost forever.[2] And this is all within a truly significant coastal dune system, the Monterey dune complex, that is the second largest extant such system in California,[3] and one that supports a wide variety of state and federally listed species as well as a major state park, namely Fort Ord Dunes State Park that lies adjacent to the project area. These dunes are some of the rarest and most ecologically important coastal habitats in California, performing numerous ecological functions, but also performing increasingly important global climate change natural resiliency functions for Highway 1 and inland communities here (including for Marina, Seaside, Sand City, and CSU Monterey Bay), where all such functions would be reduced by the project.

In addition, the project would be located adjacent to significant and very popular California Coastal Trail (CCT) segments, where in some cases the bus road would

[1] Again, except for a few discrete locations, the bus road would be entirely located in undeveloped sandy dune areas adjacent to the rails, and would not be located on top of the rail track alignment itself, as has been a common misconception associated with the project for some time.

[2] And where mitigation of such impacts, were they to be approvable, could cost between $30 and $40 million based on recent estimates applicable to the dunes in question (i.e., emanating from Cal-Am's efforts to develop a suitable mitigation package to offset dune ESHA impacts associated with their nearby desalination project in the same dune complex (CDPs A-3-MRA-19-0034 and 9-20-0603, approved in 2022). And that $30 and $40 million estimate is without even assigning a mitigation cost value to the roughly 80 acres of adjacency impacts, where doing so would only increase such estimated costs. These mitigation costs are indicative of both the degree of importance of these dune habitats, and the difficulties associated with offsetting impacts when they are adversely affected, especially at the scale of impact of a project like this (where, to provide a sense of relative scale, permanent impacts from the footprint of Cal-Am's desalination infrastructure were 1.9 acres (with greater temporary acreage associated with construction impacts), and where similar permanent impacts here are more than ten times higher than with Cal-Am's project.

[3] Where the largest such system, the Guadalupe-Nipomo Dunes Complex in San Luis Obispo and Santa Barabara Counties, is actually the largest such coastal dune system in the world.

cross over these CCT facilities (requiring crosswalks over the new bus road), and in all cases the road would be quite close to them, running about ten feet from the Monterey Peninsula Recreational Trail for most of the alignment, and as close as 5 feet away in one location. The CCT here is a non-vehicular meandering trail that provides for a relatively quiet, and even contemplative, access experience that takes in all of the splendor of the essentially undeveloped dunes and the Monterey Bay lying seaward, and provides a welcome respite from the hustle and bustle of developed areas lying inland. The proposed bus road would change all of that, and would change these important public recreational access facilities for the worse, with buses driving by for up to 16 hours of the day significantly reducing CCT public access and public view value and utility, including significantly altering the sense and perception of serenity that make these CCT segments so valuable in the first place. The same would be the case for other users of the immediately adjacent State Park for similar reasons.

Put another way, the proposed bus road is simply located in the wrong place considering the sensitivity of the affected coastal resources, and it can't be found consistent with the Coastal Act and the affected LCP for these reasons. On this point, staff notes that the Applicant in some capacity acknowledges these resource problems, but is asking the Commission to approve the project nonetheless via conflict resolution. Conflict resolution under the Coastal Act, however, cannot be invoked here because denial for ESHA reasons would not lead to the type of conflict with another Chapter 3 policy that affirmatively mandates approval to stop some sort of ongoing or expected resource degradation when denied. As to the Applicant suggestion that the Commission should be balancing dune ESHA protection against public access improvements, not only is that not how conflict resolution works, but it presumes that the project has no other demonstrable adverse impacts or problems to existing public access. As indicated above, it has numerous such problems and impacts. And, as such, the public access 'improvements' that are proposed as part of the project are actually primarily public access mitigations to offset the identified impacts of the bus road in certain areas,[4] where, even if they weren't, conflict resolution does not allow an Applicant to 'create a conflict' by adding on an essentially independent component, rather the benefits of a project must be inherent in its essential nature. This is a commuter transit improvement project at its core, and although it has some public access benefits to bus users (by providing more options for bus riders to disembark for recreation between Marina and Sand City), they are simply more muted (including because bus users already have similar such access), and do not appear sufficient enough to even mitigate for the above-described public access impacts much less to create a true conflict. And even if they were considered otherwise, and used for conflict resolution when not actually appropriate, conflict resolution requires the Commission to resolve true conflicts "in a manner which on balance is the most protective of significant coastal resources." It is hard to see how allowing the above-described over 100 acres of dune ESHA impacts would meet that test.

[4] For example, the proposed public access pathway near 5th street is needed because the bus road would be constructed on top of the existing path, a new crosswalk is needed to address the new road's severing of an existing connection between inland and coastal trails in Marina, the Beach Range Road extension is needed because the bus road severs the connection to Beach Range Road, etc.

Again, in staff's view, and based on a consistent record of discussing such issues with the Applicant for over five years, none of this is new information to the Applicant, and staff has repeatedly identified potential alternatives for the Applicant that could be pursued to avoid these dune ESHA impacts in the first place. And staff believes that there are a handful of promising alternatives that warrant additional consideration (each discussed in more detail in this report), including using one of the current three highway travel lanes as a transit/carpool lane during peak commute hours as has been done in parts of the state,[5] using the highway shoulder for bus-on-shoulder operations[6] or using portions of the median in similar ways, and an inland alignment that uses existing surface streets.[7] While the Applicant has dismissed all of these options for a variety of reasons, and has noted that the current project funding can't be applied to such projects and would be lost if forced to pursue them, it is clear to staff that all of these options are promising and should be evaluated further, including as they can all achieve project objectives without the type of coastal resource impacts that require denial of this project. Staff has already laid the groundwork with Caltrans and other entities to help facilitate conversations on next steps for these options, and remains a willing partner moving forward as well.

Thus, staff finds itself in the unenviable position of needing to recommend denial of a project for which its core principles are ones that are quite laudable. But, nevertheless, those laudable goals cannot overcome the fundamental legal inconsistencies with the Coastal Act that require it to be denied. In doing so, two things are noted. First, while staff believes that the Applicant should have opted to not pursue this project as soon as they were informed by staff over 5 years ago that it was unapprovable, staff also notes that this is a classic symptom of the way transportation project funding in California often works, where funding tends to be allocated for projects well in advance of serious environmental analysis and entitlement processes, including for CDPs. And then it is the funding that drives a particular course of pre-determined action, rather than an unencumbered evaluation of potential alternatives based on a coequal analysis of project benefits and burdens. It is quite clear that this is not a good way to provide for large public infrastructure projects in the coastal zone, and something that all parties involved can acknowledge is something that needs to be addressed, including so that public resources are wisely used.[8]

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[5] Where Highway 1 outside the project area is generally two lanes in both directions, but in the project area has actually three lanes in both directions. It is this third lane, in between the two lane segments on either side, that staff believes might be able to be put to higher/better use as a bus/carpool lane during the weekday commute. A similar use of a third lane of Highway 1 in San Francisco as a bus/carpool lane was initiated in 2022.

[6] Such as is currently underway in Santa Cruz County on Highway 1.

[7] For example, with traffic signal priority, dedicated lanes, platform stations, and similar such measures, all adjacent to existing developed areas and amenities such as the VA Hospital, CSU Monterey Bay, and existing and planned residential development areas.

[8] And staff notes that it is precisely these sorts of issues that led to the creation of the formal Caltrans-Coastal Commission partnership that is has now been in place for over a decade. A primary objective of that partnership was and is to create paths for early coordination, including to avoid the sort of situation in which the Commission finds itself here. And while there can always be one-offs and outliers (and

And second, staff believes that it is time to rethink how we collectively accomplish important transportation objectives, where the old paradigm of needing to constantly build new and more to address a particular transportation problem doesn't necessarily hold true in each case. And in fact, oftentimes what's needed isn't anything new, but rather the best course of action is to retrofit what's existing and to make it better, particularly when it comes to VMT and GHG reduction goals and objectives, where it is clear that the proper incentives for transit and muti-modal options need also to be part of such decisions (e.g., here, using the third highway lane for bus/carpool purposes to incentivize those modes of transportation over single-occupancy vehicles). The communities in this area, like others, have extensive transportation infrastructure already in place, including a six-lane freeway in this project area and various surface streets that can be repurposed to something better and more efficient. Our collective lens should be looking at how to make what's existing better for the types of transportation we want to incentivize, rather than needing to build something new, particularly when doing so would cause substantial impacts to coastal resources. Through this lens, staff remains ready and able to help facilitate project alternatives that improve public transportation options in this area.

Staff recommends that the Commission deny the CDP for the proposed project, and motions and resolutions to do so are found on page 8.[9]

although there was that sort of early coordination between Commission and MST staff in this case), that Caltrans-Coastal Commission partnership has paid significant dividends in terms of avoiding these kinds of conflicts for Caltrans projects.

[9] As explained further below, because this is both a CDP application to the Commission, and an appeal of a City of Marina CDP action, the Commission must take action first on the appeal, and then on the two CDPs for the (combined) project after that.

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1. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **no** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of no substantial issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-3-MRA-24-0026 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act and the public access provisions of the Coastal Act, and I recommend a* ***no*** *vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-3-MRA-24-0026 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified City of Marina Local Coastal Program and the public access provisions of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **deny** both CDPs for the proposed development. To implement this recommendation, staff recommends a **no** vote on the following two motions. Failure of each motion will result in denial of that CDP and adoption of the following resolution and findings. The motions pass only by affirmative vote of a majority of the Commissioners present.

Motion 1: *I move that the Commission approve Coastal Development Permit Number 3-23-0288 pursuant to the staff recommendation, and I recommend a* ***no*** *vote.*

Motion 2: *I move that the Commission approve Coastal Development Permit Number A-3-MRA-24-0026 pursuant to the staff recommendation, and I recommend a* ***no*** *vote.*

Resolution to Deny CDPs: *The Commission hereby denies Coastal Development Permit Numbers 3-23-0288 and A-3-MRA-24-0026 and adopts the findings set forth below on grounds that the development as proposed will not be in conformity with the policies of Chapter 3 of the Coastal Act and the City of Marina Local Coastal Program, respectively. Approval of the permits would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

2. FINDINGS AND DECLARATIONS

A. Project Location

Monterey-Salinas Transit operates a fleet of public transit buses in Monterey County and proposes to construct a new bus road for their exclusive bus line use almost entirely within the dunes seaward of Highway 1 between the cities of Marina and Sand City and adjacent to Fort Ord Dunes State Park (FODSP). The project would be located primarily within a section of the Monterey Branch Line rail corridor owned by the Transportation Agency for Monterey County (TAMC),[10] where that corridor runs parallel to and some 80-200 feet seaward of Highway 1.[11] The corridor contains the derelict railroad tracks of the former Southern Pacific-owned railway, some of which have been subsumed under the sand dunes. In fact, the tracks have not been used for rail purposes for over half a century (since 1971)[12] and much of corridor is now essentially a 100-foot-wide swath of sandy dune habitat with exposed rail segments. The overall project encompasses three separate CDP jurisdictions: a segment within the City of Marina's coastal zone at the project's northern end (about 500 feet) (the subject of Appeal Number A-3-MRA-24-0026), a segment within the City of Sand City's coastal zone at the project's southern end (most of which lies between a shopping center and Del Monte Boulevard extending about a half-mile inland of Highway 1, already approved by the City), and the main segment within the Commission's retained CDP jurisdiction in unincorporated Monterey County adjacent to FODSP (about 4.3 miles) (the subject of CDP Application Number 3-23-0288).

The proposed project is also adjacent to the Monterey Peninsula Recreational Trail (Recreational Trail) system, the primary California Coastal Trail (CCT) segment in this area, that provides a relatively flat, and mostly paved, walking and biking experience for over 18 miles from Marina through Sand City, Seaside, Monterey, Pacific Grove, and into the Del Monte Forest. This trail is a significant public access destination onto itself, and is very popular and heavily used by pedestrians, recreational and commuter bicyclists, and others (e.g., wheelchair users, families with strollers, etc.) and in the project area generally lies between Highway 1 and the project corridor,[13] thus allowing for a relatively quiet and even contemplative access experience that takes in all of the splendor of the essentially undeveloped dunes and FODSP lying seaward of it and the Monterey Bay past the dunes. The Recreational Trail in the project area is regarded as one of the longest scenic trails in California.

[10] TAMC is the County's regional transportation planning agency and administrator of local transportation sales tax dollars that plans, owns, and funds transportation infrastructure and projects; they are not themselves a provider or operator of transit.

[11] Highway 1 is three lanes in either direction between Marina and Sand City (i.e., the project area), but is two lanes in either direction both north and south of that segment.

[12] See Schwieterman, Joseph P. (2004) *When the Railroad Leaves Town: American Communities in the Age of Rail Line Abandonment, Western United States*. Kirksville, Missouri: Truman State University Press, page 59.

[13] The recreational trail is located between 20 and 200 feet from highway travel lanes, and between 0 and 50 feet from the proposed project corridor.

The proposed project is also adjacent to and parallels State Parks' Beach Range Road that lies seaward of the project corridor within Fort Ord Dunes State Park (FODSP).[14] Beach Range Road, also a component of the CCT, is a remnant road that remains from when Fort Ord was a U.S. Army base before it was closed and repurposed in the 1990s. All of Fort Ord seaward of Highway 1 became FODSP in the 2000s. Beach Range Road is currently[15] used almost exclusively by pedestrians and bicyclists, including via three connections between it and the Recreational Trail,[16] all of which cross the proposed project corridor. Beach Range Road is important for public access in similar ways to the recreational trail but is further seaward and further away from Highway 1, thus only increasing its appeal as a more serene CCT option. Public access to the beaches in this area is provided via both formal and informal trails through FODSP from Beach Range Road.

The Recreation Trail and the Beach Range Road trail together are the most significant public coastal access features in the area. This is the case perhaps most obviously for lateral access purposes, but these facilities are also incredibly important for beach access for the communities of Marina, Seaside, and California State University Monterey Bay. Critically, the proposed project area is located between the Recreational Trail and the Beach Range Road trail, which provides important locational context for evaluating the Applicant's proposed project.

As alluded to earlier, the proposed project site is located entirely within the Monterey dune complex, which extends roughly 15 miles from near Moss Landing to the northern end of the City of Monterey. This complex consists of higher relief dunes along the southern Monterey Bay coastline, and geologically older, flatter dune sheets extending inland, and is the second largest coastal dune complex in Central California (after the Guadalupe-Nipomo Dunes in San Luis Obispo and Santa Barbara Counties, which itself is the largest coastal dune complex in the world). The dunes serve 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, with at least eight rare species documented within the project footprint. Though development, including former military operations, sand mining, Highway 1, residential and commercial endeavors, and coastal agriculture have largely 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 these dune communities and to preserve or re-establish native habitat corridors.

[14] Beach Range Road is located between 30 and 1,300 feet from the proposed project corridor.

[15] Although Beach Range Road is currently closed to non-State Park vehicles, a small portion of it will be repurposed as the driveway to State Parks' yet-to-be-constructed new campground (permitted pursuant to CDP 3-14-1613), where that project also includes a new connector trails to help bicyclists and pedestrians easily and safely bypass the driveway while maintaining continuous access along the road otherwise.

[16] With cross connections in Sand City, Marina, and roughly half-way between the two.

In short, the proposed project site is located in an important sandy dune complex and between two important and heavily used public coastal access features, all of which lies seaward of Highway 1 and adjacent to Fort Ord Dunes State Park. See location maps and site area photos in Exhibits 1 and 2.

B. Project Background

The Applicant's bus Line 20 runs between Salinas and Monterey, and uses Highway 1 for the portion of the trip between Marina and Sand City. While the on-highway travel time for Line 20 between Marina and Sand City in normal traffic is about 10 minutes,[17] during peak commuting hours[18] (particularly the morning) and on some summer weekends, this section of Highway 1 suffers from congestion, which, according to the Applicant, delays all users of Highway 1, including their buses, by an average of about 15 minutes (i.e., while a trip between Marina and Sand City on the highway takes about 10 minutes in normal traffic, the Applicant indicates that that travel time increases to about 25 minutes during heavy traffic times). The Applicant indicates that such congestion is also variable, which results in unpredictable bus schedules and travel times, frustrating bus users.

To address these issues, the Applicant, along with their transit counterpart in Santa Cruz County (the Santa Cruz Metropolitan Transit District) contracted for a 2018 report that evaluated potential ways to improve bus service in relation to Highway 1 in the Monterey Bay area, primarily focusing on whether operating buses on the highway shoulder should be pursued, but also looking at other options, including using the derelict rail corridor between Marina and Sand City.[19] Although the report did not evaluate options for making changes inland of Highway 1 to improve transit, and did not evaluate use of existing Highway 1 travel lanes for bus/high occupancy vehicle (HOV) use during peak commute hours (where the project area stretch of Highway 1 is six lanes, 3 in each direction), and actually concluded that use of the rail corridor for a dedicated bus road "is not fully cost-effective", the Applicant decided to pursue the now proposed project in that old rail corridor.[20] In contrast, the Santa Cruz Metropolitan

[17] Per MST, 10 minutes is the travel time traveling towards Monterey from the Del Monte/Palm stop to the Fremont/Ord Grove stop.

[18] Where peak commuting hours here are considered to be between 6am and 10am in the morning, and 3pm and 7pm in the afternoon/evening.

[19] See "Final Project Report | Monterey Bay Area Feasibility Study of Bus on Shoulder Operations on State Route 1 and the Monterey Branch Line", prepared by CDM Smith and dated June 26, 2018 (see Appendix A).

[20] The report appears to have not considered ramifications associated with the fact that the corridor was occupied by coastal zone dunes, where dunes are protected in the coastal zone, where allowed development in such dunes is severely limited (and does not extend to dedicated roads for buses), and where impacts for even allowable development in such dunes is required (and where the cost of a dune mitigation program for a project such as proposed could easily be $30-40 million – see alternatives discussion later in this report). Put another way, had these issues been evaluated, it seems clear that the project would have been deemed 'not cost effective' and infeasible for these reasons. In any case, neither the report preparers nor the Applicant contacted the Coastal Commission in relation to these issues at that time, and in any case they were not properly countenanced.

Transit District decided to pursue a bus on shoulder project in the Highway 1 corridor in Santa Cruz County, and that project is currently under construction.

The rail corridor in question is owned by TAMC, who is a project partner with the Applicant in this case. TAMC purchased the rail corridor in 2003 using Proposition 116 funds,[21] intending to provide for light rail service in the corridor by June of 2009, part of what was billed at the time as a restoration of train service from San Francisco to Marina and Seaside. However, due to financial and other constraints, that rail project in the corridor never came to fruition, and although TAMC indicates that it still plans to pursue rail service in the corridor at some point in the future, it has also agreed to partner with the Applicant on this proposed project, even though it is not clear that a dedicated bus road is allowed in the corridor due to Proposition 116 funding constraints,[22] and indeed that a bus road in the corridor may actually eliminate the potential for rail to be pursued in the future.[23]

The Applicant first reached out to Coastal Commission staff to discuss the proposed project in early 2019 and the two staffs met in Santa Cruz in May of that year. At that time, MST staff gave an overview of the proposed project and asked for Commission staff input on it. 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. However, Commission staff also identified for MST staff a fatal flaw in the proposed project's particular siting: the Coastal Act and applicable LCP do not allow development of the type proposed in dune habitat,

[21] Proposition 116 was a 1990 initiative (titled the "Clean Air and Transportation Improvements Act") that allocated $1.99 billion for specific projects, purposes, and geographic jurisdictions, primarily for passenger rail projects. TAMC received about $9.4 million in Proposition 116 funding for the purchase of the Monterey Branch Line, then owned by Southern Pacific Railroad, which had discontinued regular rail service in 1971.

[22] Proposition 116-funded acquisitions can only be used for rail, and explicitly cannot be used for bus transit. As a result, the proposed project cannot actually be constructed in the rail corridor, as has been confirmed to Coastal Commission staff by the California Transportation Commission (CTC). Per CTC, TAMC would need to pay back the $9.4 million plus interest in order for the project to be able to come to fruition in the corridor. Upon learning of these Proposition 116/CTC issues in Spring 2024, Coastal Commission staff suggested to the Applicant that they withdraw their CDP application until such time as these Proposition 116/CTC issues were resolved, including because the Permit Streamlining Act (PSA) deadline was/is coming up in September 2024, but the Applicant declined to do so. See further discussion on this issue in the findings that follow.

[23] The proposed project would crisscross the remaining rail line in the rail corridor in multiple locations, which prompted the California Public Utilities Commission (CPUC) rail division to suggest in April 2024 that the Applicant was required to undertake a 'comprehensive corridor-wide diagnostic review', 'GO 88-B' process with CPUC to ensure that the project would not affect future potential rail options. Upon learning of these CPUC rail issues, Coastal Commission staff also suggested to the Applicant that this was also a good reason to withdraw their CDP application until these CPUC issues were resolved, including as it appeared that the CPUC process was fairly complex, and likely to take significant time to complete, and certainly longer than the PSA deadline would allow, but again the Applicant declined to do so. Subsequently, the CPUC decided to 'close out' the rail corridor, which eliminated the need for the Applicant to complete the GO 88-B process with CPUC, but also stripped away the corridors rail status with CPUC. As a result, if TAMC (or anyone else) intends to pursue rail in this corridor in the future, they would need to 'start over' with CPUC and redesignate and reevaluate the potential for the corridor to be used for rail at all. See further discussion on this issue in the findings that follow.

including because the Commission has a long history of finding that this type of habitat rises to the level of environmentally sensitive habitat area, or ESHA, and where the Commission has a long history in protecting these very dunes in this manner at Fort Ord. Commission staff clearly informed MST staff that transportation projects, like this one, while clearly well intentioned, are not allowable uses in such dune habitat, and thus that the project would be inconsistent with the Coastal Act's ESHA protection provisions. Because of these issues, Commission staff also committed to helping MST to identify and evaluate alternative projects that do not raise similar Coastal Act problems, and to being a partner in doing so. However, despite being clearly informed of these issues at the very first staff to staff meeting in May 2019, MST continued to pursue the project, and chose not to pursue a different one that did not have the same approvability problems.

Commission staff have continued to discuss these project issues with MST staff ever since that first meeting in 2019, ultimately meeting together a dozen times, including twice meeting in the field in the proposed project corridor (in 2021 and 2022), and submitting four letters to MST on the project between 2021 and 2024 (see timeline and description of major communications/contacts between Commission staff and MST staff in Exhibit 7). At each juncture, Commission staff have consistently communicated to MST staff that the project is proposed in dune ESHA, that regardless of whether that dune ESHA is degraded or not it is still considered ESHA,[24] that the project is not a resource dependent use and thus 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 Coastal Act and applicable LCPs. At the same time, Commission staff have also consistently informed MST staff that Commission staff is highly supportive of the project objectives, and open to a partnership with MST to help facilitate alternatives that do not have these Coastal Act/LCP inconsistencies.

Unfortunately, MST staff was not dissuaded and continued to pursue the project, despite the identified problems, and ultimately applied for CDPs for the project in 2023, two of which are the subjects of this report (i.e., the appeal of the City of Marina CDP action for 500 feet of the project, and the CDP application to the Commission for 4.3 miles of the project). And while Commission staff have continued to provide the same advice as it has for the last five years, more recent interactions with MST staff have included discussions focused in a little greater detail on the feasibility of certain potential alternatives that can avoid Coastal Act inconsistencies (such as the potential use of one of the three Highway 1 lanes in each direction as a dedicated bus/HOV lane during commute hours, bus route improvements inland of Highway 1, bus on shoulder/median, or a combination of various permutations), and have included discussions regarding the Coastal Act's conflict resolution provisions (which Commission staff have informed MST staff are not actually triggered by the proposed project) and the types of mitigation that would be required if a project were to be approvable. Commission staff have continued

[24] See, for example, the *Bolsa Chica* decision (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507–508), stating "Rather, under the statutory scheme, ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection."

to be clear with MST about the approvability issues that apply to the proposed project, and formally informed MST staff in early July that the staff recommendation was going to be for denial.

C. Project Description

The Applicant proposes to construct a new dedicated off-highway, 30-foot-wide, two-lane, paved bus road, which would extend some 4.3 miles within the approximately 100-foot-wide former rail corridor between Marina and Sand City, with the bus road generally proposed next to the derelict tracks.[25] The proposed project also includes associated improvements such as over a mile (roughly 6,000 linear feet) of retaining walls (ranging in height from approximately 5 to 15 feet), roughly 27,500 cubic yards of grading (or nearly 3,000 large dump trucks worth of grading), drainage infrastructure, and an offshoot of the bus road under Highway 1 to access a to-be-constructed bus station at 5th Street (located outside of the coastal zone, and not part of the project before the Commission).[26] The proposed project also includes a roughly 700-foot-long and 14-foot-wide extension of Beach Range Road at its southern terminus,[27] relocation of one of the three bicycle/pedestrian connections between Beach Range Road and the Recreational Trail, and relocation of a section of the trail where it passes under Highway 1 in order to accommodate the entrance to the new (outside of the coastal zone) bus station. The bus road would be located roughly 10 feet from the Monterey Bay Recreational Trail for most of its length, and would be located as close as 5 feet in at least one location. The Applicant indicates that the bus road would be used exclusively by one bus route (namely Line 20 between Salinas and Monterey). The Applicant indicates that it intends to pursue electric buses for Line 20, and the frequency of buses on Line 20 would be doubled.[28] See proposed project plans in Exhibit 3.

In sum, the proposed project would construct a roughly 4.3 mile, 30-foot-wide, 2-lane bus road in the dunes seaward of Highway 1 between two coastal public access recreational trails, where the bus road would be mostly about 10 feet from the main public recreational trail. The bus road would be reserved solely for MST buses and would eliminate the railroad tracks in some locations. Altogether, and as explained in more detail subsequently, the proposed bus road project would ultimately lead to a loss of nearly 25 acres of dune ESHA, and degradation of another over 75 acres of adjacent dune ESHA. Put another way, the proposed project would result in one of the largest

[25] About a half-mile of the bus road would be placed atop or crossing the tracks, necessitating track removal, but the vast majority of the bus road (3.8 miles, or nearly 90%) is proposed to be located in the dunes that lie adjacent to the tracks.

[26] In addition to the new proposed bus station that is outside the coastal zone, the project includes a number of other non-coastal zone components that are not before the Commission, including modifications/improvements to existing surface streets to better accommodate buses.

[27] The extension would connect the existing southern terminus of Beach Range Road to the recreational trail further south, and is needed because the bus road would sever the existing connector trail in this area.

[28] Doubling the frequency of buses traveling along Line 20 from the current frequency of one bus every 30 minutes on weekdays to one bus every 15 minutes, and from one bus every 60 minutes on weekends to one bus every 30 minutes.

dunes impacts ever considered by the Commission on the Central Coast.

D. Jurisdiction and Standard of Review

The proposed project crosses three coastal jurisdictions, with the portions of the project discussed in this report crossing two jurisdictions: the City of Marina's CDP jurisdiction under their LCP and the Coastal Commission's original CDP jurisdiction under the Coastal Act.[29] The portion of the project in the City of Marina's jurisdiction is an approximately 500-foot-long section of bus road that begins at the middle of Highway 1 and ends at the inland edge of the coastal zone within the City (see Exhibit 1). The standard of review for the substantial issue phase of the appeal of the City's CDP approval for this segment is the City of Marina's LCP and the Coastal Act's access policies (see the City's notice of its CDP action in Exhibit 4). In de novo review, the standard of review is the City of Marina's LCP and the Coastal Act's access and recreation policies.

The portion of the project subject to CDP application 3-23-0288 and the Coastal Commission's CDP jurisdiction is located both within the City of Marina and unincorporated Monterey County; however, the entirety of this area is outside of these jurisdictions' respective certified LCP areas (because the area was historically part of former Fort Ord military base for which LCP provisions have never been proposed nor certified), meaning that the standard of review for this application is the Coastal Act, with the City of Marina and Monterey County LCPs providing non-binding guidance.

E. Appeal A-3-MRA-24-0026 – Substantial Issue Determination

1. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This City CDP decision is appealable to the Commission because the project qualifies as a major public works project and portions of it are located seaward of the first public road (the Highway 1 right-of-way in this case).

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public

[29] As indicated above, the third jurisdiction involved (but not part of this report) is in the City of Sand City, where the bus road would extend to the intersection of Playa Avenue and California Avenue about a half-mile inland of Highway 1.

access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline. The Applicant has not waived the 49 day deadline in this case.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.[30] At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

[30] The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue…" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

2. Summary of Appeal Contentions

The appeals contend that the City-approved project is inconsistent with numerous Coastal Act and City of Marina LCP provisions, including those that require maximum public coastal access and recreational opportunities, protect existing public access and recreation trails, and protect sensitive habitats. Generally, the appeals state that the project would adversely impact existing pedestrian and bike access on the Recreational Trail and Beach Range Road, impede access to the beach along an existing vertical beach access path, and impact sensitive habitats. See Exhibit 5 for the Appellants' appeal documents and contentions.

3. Analysis of Appeal Contentions

As noted earlier, the component of the project subject to the City of Marina's CDP jurisdiction, and thus this appeal, is the northernmost portion of the project under Highway 1 and extends inland to the edge of the coastal zone (see Exhibit 1). At this location, the existing railroad tracks are closely flanked by Beach Range Road and the Recreational Trail. A paved connector that crosses the tracks to link the two trails is located in this area, allowing Marina residents to access Beach Range Road and a vertical beach access trail through to Fort Ord Dunes State Park and then onto the beach (see Exhibit 1). The City's approval would site the new bus road atop the railroad tracks and dune habitat between Beach Range Road and the Recreational Trail. It would replace the connector trail, with some form of crosswalk across the bus road.[31]

The Appellants assert that the City-approved project would degrade public coastal access in this location, and cite several Marina LCP and Coastal Act provisions, including LUP Policies 1, 2, 14, and 38, as well as Coastal Act Sections 30210, 30212(a), and 30213, as standards that protect such public access resources.[32] These provisions together can generally be understood to require maximum public coastal access, and to protect existing public access facilities. Both Appellants place particular emphasis on Marina LUP Policy 1, which requires the City to "insure access to and along the beach, consistent with the recreational needs and environmental sensitivity of Marina's Coastal area." The Appellants contend that the City-approved section of bus road would impact the safety and recreational experience of pedestrians and bicyclists on the Recreational Trail and Beach Range Road, including as it relates to beach

[31] The specific attributes of the crosswalk are not clear from the project materials.

[32] See citations for all LCP and Coastal Act provisions discussed here in the CDP Determination section that follows.

access.[33] As discussed previously, the Appellants raise valid concerns regarding the City-approved project's public coastal access consistency. Buses travelling on the bus road would be located only about 5 feet away from trail users, where such proximity raises questions about trail user safety and would degrade the trail user's public access experience. Put another way, there are fundamental questions about the compatibility of operating a bus road in close proximity to significant public access infrastructure that is part of the CCT, including the ways in which it cuts off certain types of vertical access, and it is not clear that such potential public access impacts are allowable under the Coastal Act's access policies and the LCP, raising substantial issues as a result.

In addition, the Appellants also raise concerns about the City-approved project's impacts on sensitive habitats. As also discussed prior, the project does indeed raise significant concerns in this regard as well. The City's approval would require grading and paving much of the area between the two recreational trails, resulting in the direct loss of some roughly 15,000 square feet (or about a third of an acre) of dune habitat, and it would also lead to degradation of the adjacent dune habitat not covered by infrastructure as it would introduce significant vehicular traffic (and its noise, lights, movement, reverberation, etc.) into the habitat area. As discussed in detail in the CDP Determination section of this report, as well as in the memorandum on the project prepared by the Commission's Staff Ecologist, Dr. Rachel Pausch (see Exhibit 6), the affected dunes are all part of the larger Monterey dunes complex that stretches from Monterey and through to Moss Landing. The entire dune complex supports rare and sensitive species specifically adapted to the unique dune environment that only occurs in extremely rare situations along coastal land/shoreline interfaces. For these types of reasons, the Commission has typically considered dunes, even when degraded, to be ESHA, and Dr. Pausch has specifically found the dunes in question here to meet the LCP ESHA test. As identified by the Appellants, the LCP is clear that only resource-dependent uses are allowed within such ESHA, and even then, only when it would not significantly disrupt habitat values. Here, the City-approved bus road is not a resource-dependent use, and thus is prohibited in dune ESHA by the LCP. In addition, even if it were an allowed use, the City-approved project leads to significant disruption of dune habitat values. Thus, the City's approval also raises substantial dune habitat protection issues as well.

In short, the City-approved project raises substantial conformance issues with the LCP and Coastal Act public access provisions, and with the LCP dune/ESHA provisions.

4. Substantial Issue Determination Conclusion

When considering a local government action that has been appealed to it, the Commission must first determine whether the local government action on the project raises a substantial issue of Coastal Act public access and/or LCP conformity, such that

[33] Of particular concern to the Appellants are potential impacts to the trail connection between Beach Range Road and the Recreational Trail. As discussed later in this report, such impacts do indeed raise significant public access concerns; however, the connector is located outside of the City's LCP jurisdiction and within the Commission's retained permitting jurisdiction (i.e., the actual impact of the bus road removing the connector is not within the City's CDP jurisdiction and thus not actually authorized by the City, rather it is part of the CDP application before the Commission separately and will be evaluated subsequently).

the Commission should assert jurisdiction over the CDP application for such development 'de novo'.[34] At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of Coastal Act public access and/or LCP conformance. As indicated above, Section 13115(c) of the Commission's regulations identify five factors that can aid the Commission in determining if a local government action raises a substantial issue: the degree of factual and legal support; the extent and scope of development involved; the significance of the coastal resources involved; the precedential value for future LCP interpretation; and, whether the issues raised are local or regional/statewide on nature. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors, both considered together as well as separately, support a conclusion that the City's approval of this project raises a substantial issue of Coastal Act public access and LCP conformance. Regarding the first factor, the City did not adequately evaluate the impacts that the bus road would have on public access trail safety and user experience, and did not adequately evaluate how or why the City found the project consistent with the LCP's dune ESHA policies. Indeed, the City found that "Direct shoreline access…and habitat protection standards are not applicable to this project site" which is in direction contradiction to the facts of this case. Thus, the City has clearly not provided adequate factual or legal support for its decision, and the first factor strongly suggests substantial issue.

Regarding the extent and scope of the development approved by the City, the project leads to roughly a third of an acre of direct dune ESHA loss, and assuredly more so in terms of overall dune ESHA degradation (e.g., from construction impacts, from adjacency/buffer impacts, etc.). These are significant dune ESHA impacts. In addition, while affecting fairly small sections of two recreational trails and the CCT, the City's decision has oversized negative impacts in this regard on these public access features. And public access and ESHA are two of the most significant coastal resources under both the Coastal Act and the LCP. The second and third factors also weigh heavily toward substantial issue.

Regarding the fourth factor (i.e., the potential to set an adverse precedent for future interpretations of the LCP), it should first be noted that any one case, like this one, is decided on its specific facts and its specific merits and is not entirely dispositive on how the City (or the Commission on appeal) decides on a subsequent item. At the same time, there is always the potential that the City (and/or potential future applicants) might see the City's action with regard to this project as precedential. In that sense, this City decision would be highly problematic in terms of potential adverse LCP precedent, including in terms of its approval of prohibited development and habitat degradation in dune ESHA, and the way in which it allows for diminution of existing public access opportunities – the opposite of maximizing access as is actually required here. The

[34] The term 'de novo' meaning from the beginning, or anew, which applied in this context means that the local government's decision is mooted and void, and the Commission evaluates the proposed CDP application anew.

fourth factor strongly suggests substantial issue as well.

And finally, the project clearly raises issues of regional and statewide significance as public access and dune ESHA are not only important locally, but are also clearly issues of statewide concern, including here where the project affects one of the largest dune systems in California's central coast, the California Coastal Trail, and access to a significant State Park and its beaches. The fifth factor also weighs toward substantial issue determination.

As such, and for the reasons stated above, the Commission finds that the City's approval of a CDP for the project raises a substantial Coastal Act public access and LCP conformance issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and therefore the Commission takes jurisdiction over the CDP application for the proposed project.

F. CDP Determination

This CDP determination applies to both the CDP application for the main project segment located within the Commission's retained CDP jurisdiction (CDP Application 3-23-0288) and the CDP application for the 500-foot portion of the project located within the City of Marina's CDP jurisdiction for which the Commission has taken jurisdiction (CDP Application A-3-MRA-24-0026). Although considered together herein, the standard of review for consideration of the two applications is not the same, as detailed earlier (i.e., Coastal Act for CDP Application 3-23-0288, and Coastal Act public recreational access and LCP provisions for CDP Application A-3-MRA-24-0026).

1. Background Context

As described above, and according to the Applicant, the intended purpose of the new bus road is to allow their bus Line 20 to bypass congestion on 4 or so miles of Highway 1 between Marina and Sand City, and therefore improve bus service between the Salinas area and the Monterey Peninsula. The Applicant indicates that the project is also intended to improve public transit access to FODSP, and to improve public transit options for residents that are located near to the proposed new 5th Street station. More broadly, the Applicant has framed the project in the context of anthropogenic climate change and the need to decarbonize the California transportation system, with part of the solution being high-quality public transit that attracts increased ridership. Toward this end, the Applicant has estimated how future ridership would be expected to change with the proposed project, and has correspondingly estimated reductions in vehicle miles traveled (VMT) and greenhouse gas (GHG) emissions associated with getting new riders to transit and out of their cars.[35]

MST estimates that Line 20 currently provides (2022 data) about 142,000 annual passenger trips on the portion of the route that would be relocated off the highway by the proposed project, and that such ridership is expected to increase to 1.1 million

[35] It's important to note that MST in its analysis does not anticipate that the project would result in enough ridership to demonstrably impact existing congestion levels of Highway 1, and thus improving highway congestion is not a stated project purpose. Rather, MST suggests that the proposed project would provide an option for travelers to avoid current and future congestion on the highway.

annual passenger trips in 20 years (to 2045) in a no project scenario, and to 1.3 million annual passenger trips in 20 years if the project is constructed, leading to a project-related increase of about 172,000 annual passenger trips as estimated by MST (or about 235 additional round trips added per day, or an increase of about 8 bus round trips per day attributable to the proposed project).[36] While MST's presumptions and assumptions have not been identified (and Commission staff requested same), assuming that riders would no longer commute between Salinas and Monterey via a single-occupancy vehicle, and based on the Applicant's higher ridership projections overall in their system that are driven by a variety of changes besides the proposed bus road,[37] the Applicant then estimates that the project would lead to a reduction of 6 million VMTs and 1,600 metric tons of CO_2 annually,[38] or a reduction of about 2.6 million VMTs and 700 metric tons of CO_2 annually if scaled to just the changes attributable to the Line 20 bus road in the coastal zone.[39] Put another way, the Applicant expects transit ridership in this corridor to go up dramatically in the next 20 years with or without the project, but estimates that it would increase by about 15% more with the proposed project, which translate into about 235 additional passenger round trips added per day, or an increase of about 8 bus round trips per day, that are attributable to the proposed project in the coastal zone.

That said, while it seems reasonable to presume that the new proposed bus road would lead to some new passengers taking trips, such forecasting also raises some questions. For example, it is unclear from the project materials how or why ridership on Line 20 would increase by nearly 8 times without the project, and by nearly 10 times with the

[36] 172,000 additional passenger trip per year equates to 86,000 additional round trips per year, or 236 such round trips per day when averaged over a year. If a standard bus seats about 30 passengers, about 8 bus round trips per day would be added that are attributable to the proposed project.

[37] MST suggests that total passenger trips in the entire Salinas to Monterey Line 20 corridor by 2045 would increase from an overall 2022 baseline of 190,000 annual passenger trips to 1.3 million such trips in a no project scenario and to 1.7 million such trips with the project, or a difference of 400,000 new trips attributable to the project in that time frame. However, the project includes a variety of inland and out of the coastal zone elements, such as inland road modifications and traffic light prioritization, that are not part of the project before the Commission but that could increase ridership alone, and there doesn't appear to be any information that more specifically attributes ridership increases to the proposed bus road versus such other non-coastal zone measures. Put another way, MST suggests that the proposed bus road along with other non-coastal zone measures will increase ridership even for riders that disembark before the bus travels over the new bus road or board after the bus has already travelled over the new bus road, and will also increase the ridership on other connecting bus lines, essentially doubling new transit trips as compared to Line 20 increases alone.

[38] This reduction in CO_2 emissions is roughly equivalent to the yearly emissions of 352 average cars in the U.S., or the annual average per capita emissions of 108 Americans (see Tso, Kathryn, *How Much is a ton of Carbon Dioxide?,* MIT Climate Portal, 2023).

[39] MST estimates these VMT/GHG reductions based on an increase in ridership attributable to the overall project – in and out of the coastal zone – of 400,000 annual passenger trips. When scaled to just the estimated 172,000 additional annual passenger trips associated with the actual project in the coastal zone and before the Commission, that comes to a reduction of about 2.58 million VMTs and 688 metric tons of CO_2 annually.

project, over the next twenty years.[40] It is also unclear how other aspects of the project outside of the coastal zone affect such estimates, particularly because the overall project MST is pursuing includes a number of more inland transit improvements that could be constructed irrespective of the proposed bus road. Also, while there is no doubt that getting drivers out of their cars and onto transit can further VMT and GHG reduction goals, the project itself has its own impacts in that regard, which would need to be countenanced as well for a true representation.[41] None of which is to suggest that the project does not have VMT and GHG benefits, but rather to appropriately temper their degree, including where focused on the coastal zone portion of the project, and including in light of the inherent uncertainties in such forecasting.

Regardless of the degree of the project's positive impacts on VMT/GHG reduction, there are inherent benefits to improved transit. In this case, the Applicant has identified a primary project benefit to be enhancing transportation options for environmental justice communities. Line 20 currently serves low-income communities from the Salinas Valley to the Monterey Peninsula and is critically important to those communities for their transit needs, including commuting to work in the visitor-serving economies on the Monterey Peninsula, accessing the coast, and more. Overall, according to the Applicant, the project would result in improved transit time variability (e.g., buses would more consistently show up at stops at the same time every day) and a roughly 10 to 12-minute decrease in transit time during peak hours (although during non-peak hours the slower-than-highway speeds on the bus road and the addition of the bus stop would actually increase transit times). It would also add a bus stop just inland of Highway 1 that would allow riders on Line 20 to more easily access FODSP. There is little doubt that these type of project benefits are important, especially for the environmental justice communities[42] that use this transit service. And better transit, whether or not it solicits new riders and decreases VMTs/GHGs, is a positive societal benefit and good public policy goal in and of itself.[43]

In sum, although it appears clear that the proposed project would not demonstrably

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[40] In fact, national transit trends over the past decade actually generally show reduced ridership, including due to the growing popularity of ridesharing (see, for example, research by UCLA's Institute of Transportation Studies in the San Francisco Bay Area showing transit declines even prior to the pandemic: *Why is Public Transit Falling in the San Francisco Bay Area, and What Might be Done About It?* https://escholarship.org/uc/item/7zt9k47v).

[41] For example, per the project's CEQA document (see Appendix A), direct emissions associated with project construction would lead to about 1,100 metric tons of CO_2, and project operation would result in approximately 219 metric tons of CO_2 per year. None of which accounts for emissions associated with offsite energy generation, for emissions associated with material inputs needed to construct the project (e.g., associated with mining, refining, and transporting raw materials, manufacturing the products, shipping, etc.), and the loss of carbon sequestration capacity of what is currently vegetated dune habitat.

[42] In this staff report, the terms "underserved communities" and "environmental justice communities" are used interchangeably with the term "communities of concern." All these terms refer to lower-income communities, communities of color, and other populations with higher exposure and/or sensitivity to adverse project impacts due to historical marginalization, discriminatory land use practices, and/or less capacity to mitigate adverse impacts.

[43] See more discussion of the project's environmental justice implications in the Environmental Justice section of this report.

affect Highway 1 traffic congestion, it is fair to assume that it would have some type of positive increase in ridership (and corresponding reduction in VMTs/GHGs, although the extent is somewhat uncertain) and some benefit overall to both existing and new users of Line 20, many of whom come from environmental justice communities. Such background and context can help inform the consistency analysis that follows.

2. Proposition 116 Issues

The Commission's regulations require that applications for CDPs demonstrate that an applicant as a legal interest in all of the property where work is proposed, where, at a minimum, a CDP application requires:[44]

> *A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain, and, if a business entity, proof of the applicant's authority to conduct business in California. The application shall also include proof that all holders or owners of any interests of record in the affected property have been notified in writing of the permit application and each invited to join as a co-applicant.*

As indicated earlier, the proposed project is sited within the Monterey Branch Line rail corridor that is currently owned by TAMC. Although TAMC is not a co-applicant for the CDP for the proposed project, it is an active Applicant partner, and the Applicant has an agreement with TAMC that would allow them to legally construct and operate the proposed bus road on TAMC property. When MST submitted the CDP application, that agreement seemed to be sufficient to demonstrate the Applicant's necessary legal property interest under the Commission's regulations, and thus sufficient for the application to be filed as complete on this point. However, in Spring 2024, after the Commissioned filed the application as complete (on March 31, 2024 which started the Permit Streamlining Act's 180-day clock for the Commission to take action on the application, where that deadline is September 17, 2024), Commission staff was notified by one of the Appellants (Keep Fort Ord Wild) that there could be a potential issue with the Applicant's legal property interest and its compatibility with the funding used to purchase the corridor in the first place.

Specifically, the rail corridor in question was purchased by TAMC using Proposition 116 funding provided by the State of California. Proposition 116 was a 1990 voter-approved ballot measure that provided funding for passenger rail projects across the state, and TAMC received about $9.4 million in Proposition 116 funding for the purchase of the Monterey Branch Line in 2003. At that time, TAMC intended to provide for light rail service in the corridor by June of 2009, part of what was billed at the time as restoring train service from San Francisco to Marina and Seaside. However, due to financial and other constraints, that rail project in the corridor never came to fruition, and although TAMC indicates that it still plans to pursue passenger rail service in the corridor at some

[44] See 14 CCR Section 13053.5(b).

point in the future, the rail line has been essentially unused since 1971.[45]

While Proposition 116 funding can be used to acquire property for rail service, it cannot be used to acquire property for bus service. Specifically, Proposition 116 defines a "rail project" to consist of "exclusive public mass transit guideway projects",[46] where, by definition, such projects do not include bus lanes.[47] Indeed, California Transportation Commission (CTC) staff have informed TAMC and the Applicant that the proposed bus road is not compatible with the Proposition 116 funding used to purchase the corridor, and that for the project to move forward, TAMC must either repay the state with interest for the funds used to purchase the corridor, or work out some other form of renumeration with the state.[48] As such, and although TAMC indicates that it is pursuing options to resolve these Proposition 116 issues, and although the Applicant has secured permission from TAMC to construct the proposed project in the corridor, as of the time of this report being published (i.e., July 26, 2024), TAMC appears not to currently have the legal ability to grant that permission given these funding issues legally preclude use of the corridor in this way. Thus, construction of the bus road within the corridor is not currently legally possible because the Applicant does not have a sufficient legal interest in the property, which also precludes the Commission from approving a CDP for the project.

Furthermore, the proposed bus road would be constructed in such a way as to require removal of substantial sections of rail track. The bus road would be sited atop of the tracks in a few locations, and at other times would crisscross the rail corridor, both eliminating the potential future use of these tracks and configuring development within the corridor in such a way that would necessitate partial or full removal or relocation of the bus road if rail were to be implemented in the future. On this point, it seems quite likely that if a bus road were to be constructed as proposed, then that would preclude any potential rail service in this corridor. In addition to the physical barriers (such as whether there would be the desire/funding to remove/relocate the bus line to allow rail and bus to coexist in the corridor, to replace affected track segments, etc.), there is the simple reality that passenger rail is incredibly expensive to construct and to operate in California, and it is not clear that a future rail project would receive funding in the future if it was perceived to be redundant due to the presence of the bus road, or if such a project were unpopular because it would remove the bus road, or if bus road physical complications would themselves require significant funding to resolve. On this point, staff of the railroad division of the California Public Utilities Commission (CPUC), which has jurisdiction over railroad operations and issues in California, including the ways in which development near/across railroad tracks might affect rail viability, were quite

[45] The Commission authorized a project that allowed the Museum of Handcar Technology to temporarily run 4 to 5 human-powered and guided railroad handcar tours (using up to 12 small handcars) per day on the rails in 2023 and through November 1, 2024 (see CDP authorization number 3-22-0296-W).

[46] See Public Utilities Code (PUC) Section 99602(j).

[47] See Public Utilities Code (PUC) Section 99602(e), which explicitly references a 1987 California Attorney General Opinion (70 Op. Atty. Gen. 119) that concludes that neither bus lanes nor carpool lanes constitute "exclusive public mass transit guideway projects".

[48] CTC indicates that it expects to make some form of formal determination regarding the project at its August 15-16, 2024 meeting.

concerned upon learning about the proposed bus road. In fact, CPUC suggested in April 2024 that the Applicant was required to undertake a GO 88-B process with CPUC to ensure that the project would not affect future potential rail options. Subsequently, CPUC decided to 'close out' the rail corridor (i.e., essentially reclassifying it as not a rail line), which eliminated the need for the Applicant to complete the process with CPUC, but also stripped away the corridor's rail status with CPUC. As a result, if TAMC (or anyone else) intends to pursue rail in this corridor in the future, they would need to 'start over' with CPUC and redesignate and reevaluate the potential for the corridor to be used for rail at all, which itself would be a complicated process.

In addition, even if the bus road project were to be approvable under the Coastal Act's ESHA criteria (it is not, see also discussion below), it is entirely possible that approval would be accompanied by conditions that would extinguish the development potential on remaining ESHA in the corridor and restrict it to habitat purposes, as has been the Commission's typical practice with projects in ESHA. In such a circumstance, there would likely be very little – if any – developable space left after a bus road were constructed, and it is not clear that a bus road and a rail line could be squeezed into that space, further complicating the potential for rail in the future. In short, and while TAMC and MST have both asserted that the proposed project is compatible with future rail within the corridor, this does not appear to be the case.

3. Environmentally Sensitive Habitat Areas

Applicable Coastal Act and LCP Provisions

While the Coastal Act includes a mix of broad and specific provisions to address a variety of coastal resources, one of the more unique and seminal provisions is how it protects particularly sensitive habitats. The Coastal Act states:

> ***Section 30107.5.*** *"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.*** *(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.*

Thus, Section 30107.5 defines what constitutes an 'environmentally sensitive habitat area', or ESHA, including if such habitat is either rare or especially valuable, or if it plays a special role in an ecosystem. For such qualifying habitats, Section 30240 then provides a strict multi-part test so as to ensure its protection. Namely, for development proposed in ESHA (see Section 30240(a)), as is the case here, the first test is whether such use is dependent on the habitat resource, commonly referred to as determining whether it is a 'resource-dependent use' (e.g., habitat restoration, scientific research/education, low-impact interpretive trails, etc.) because these are the only types

of uses that are allowed in ESHA. If it is not resource-dependent, then it is prohibited in ESHA under the Coastal Act. If it is a resource-dependent use, then the next test is whether it would significantly disrupt any ESHA habitat values, where, if so, then it too is prohibited under the Coastal Act. In short, only a resource-dependent use that doesn't in any way lead to significant disruption of ESHA habitat values is allowed within ESHA under the Coastal Act.

When the proposed development is proposed outside of ESHA but adjacent to it (see Section 30240(b)), such development is required to be sited and designed so as not to lead to impacts that would significantly degrade such ESHA areas, and is required to be compatible with ESHA in such a way as to ensure the continuing function of those ESHA areas. This Section 30240(b) test is designed to ensure that indirect degradation of ESHA is also appropriately avoided, and, depending on the type of proposed development and the type of ESHA involved, typically involves the use of making sure ESHA is appropriately buffered from such development (e.g., via setbacks, where the Commission has typically employed a minimum 100-foot buffer from most ESHA). It also ensures that appropriate parameters are prescribed for both the buffer and the development being approved (e.g., limitations on noise, lights, and activities, types of plants, domestic animals/pets, etc.). In short, only development that doesn't significantly degrade or cause such ESHA areas to lose habitat value is allowed adjacent to ESHA under the Coastal Act.

In addition, Section 30240 is quite prescriptive in this sense, including using terms like 'shall' (i.e., ESHA shall be limited to resource-dependent use, shall be protected against significant habitat disruption/degradation, and shall be compatible with continuing habitat values) and 'only'/'any' which leave no gray area (i.e., 'only' resource-dependent uses are allowed in ESHA, no amount of significant ESHA disruption is allowed, etc.), which evinces a strong letter and intent of the law to protect the most sensitive of habitats found in the coastal zone through a very strict analytic framework. Not only does this provide a clear standard for evaluating ESHA, but courts have also opined that that standard is essentially black and white and can't be manipulated.[49] If it is ESHA, there are simply very few Coastal Act consistent uses that can be provided in or near such areas.

The City of Marina LCP provides a similar ESHA framework, including limiting the uses within ESHA to those that are resource-dependent and not allowing significant disruption of ESHA habitat values. The LCP also includes additional provisions specifically addressing the City's significant dune systems that form a greenbelt of sorts along the City's coast from Highway 1 to the immediate shoreline, while providing more detail regarding the types of habitats that qualify as rare, endangered, and ESHA. The

[49] For example, the appellate court's published decision in the *Bolsa Chica* case (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507) confirmed that, under the Coastal Act, the Commission cannot simply disregard ESHA resource-dependency requirements, and cannot simply allow for significant disruptions to habitat values by mitigating for those impacts, among other things. Rather, providing mitigation for impacts is not a sufficient justification for allowing development that is not resource-dependent in the first place. Rather, Section 30240 protects the specific area of ESHA, not just its habitat value. And non-resource-dependent projects are not allowed within ESHA, even if off-site mitigation would theoretically replace lost habitat value.

LCP is made up of both a Land Use Plan (LUP) and an Implementation Plan (IP), and Chapter 2.0 of the LUP states:

> *The policy of the City of Marina shall be*:
>
> ***1.*** *To insure access to and along the beach, consistent with the recreational needs and environmental sensitivity of Marina's Coastal area. …*
>
> ***19.*** *To promote reclamation and protection of native dune habitat and vegetation except in areas presently being mined. …*
>
> ***25.*** *To protect the habitat of recognized rare and endangered species found in the Coastal dune area.*
>
> ***26.*** *To regulate development in areas adjacent to recognized rare and endangered species or their habitats so that they will not threaten continuation of the species or its habitat.*

Additionally, LUP Chapter 3.0 gives the following planning guideline which provides context and specificity regarding how to understand, interpret, and thus carry out LCP provisions:

> *Primary habitat areas shall be protected and preserved against any significant disruption of habitat values and only uses dependent on those resources shall be allowed within those areas. All development must be sited and designed so as not to interfere with the natural functions of such habitat areas...*

The LUP Exhibit A defines "primary habitat," "secondary habitat," and "rare and endangered":

> ***Primary habitat.*** *This term includes all of the environmentally sensitive habitat areas in Marina. These are as follows:*
>
> *1. 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." …3. All native dune vegetation, where such vegetation is extensive enough to perform the special role of stabilizing Marina's natural sand dune formations.4. Areas otherwise defined as secondary habitat that have an especially valuable role in an ecosystem for sensitive plant or animal life, as determined by a qualified biologist approved by the City.*
>
> ***Secondary habitat.*** *This term refers to areas adjacent to primary habitat areas within which development must be sited and designed to prevent impacts which would significantly degrade the primary habitat. The secondary habitat area will be presumed to include the following, subject to more precise determination upon individual site investigation:*
>
> *1. The potential/known localities of rare and endangered plant species as shown*

on LUP p. 71 ("Disturbed Vegetation" map). 2. The potential wildlife habitats as shown on LUP p. 75 ("Potential Wildlife" map). 3. Any area within 100 feet of the landward boundary of a wetland primary habitat area.

Rare and endangered species. *This term will apply to those plant and animal species which are rare, endangered, threatened or are necessary for the survival of such species. The Environmental Analysis Report prepared for the Marina Local Coastal Program identified such species in the dune habitat areas. While future scientific studies may result in addition or deletion of species, the list presently includes:1. Smith's Blue Butterfly (Shijimiaeoides enoptes smithi)[50], 2. Globose Dune Beetle (Coelus globosus), 3. Black Legless Lizard (Anniella pulchra nigra), 4. Salinas Kangaroo Rat (Dipodomys heermanni goldmani), 5. Seaside Painted Cup (Castilleja latifolia ssp. latifolia), 6. Monterey Spine Flower (Chorizanthe pungens var. pungens), 7. Eastwood's Ericameria (Ericameria fasciculate) [sic][51], 8. Coast Wallflower (Erysimum ammophilum), 9. Menzies' Wallflower (Erysimum menziesii), 10. Coastal Dunes Milk Vetch (Astragalus tener var. titi), 11. Dune Gilia (Gilia tenuiflora var. arenaria), 12. Wild Buckwheat (Eriogonum latifolium) (only within the range of Smith's Blue Butterfly), 13. Wild Buckwheat (Eriogonum parvifolium) (only within the range of Smith's Blue Butterfly), 14. Bush Lupine (Lupinus ssp.) (only within the range of the Black Legless Lizard)*

Thus the LCP reiterates Coastal Act Section 30240's primary tenets: including the Section 30240(a) requirement that only resource-dependent uses are allowed in ESHA (which this LCP refers to as 'Primary habitat'), and only if those uses do not significantly disrupt habitat values; and the Section 30240(b) requirement that only development that doesn't significant degrade or cause such ESHA areas to lose their value is allowed adjacent to ESHA (where the LCP refers to these adjacent areas as "Secondary habitat").[52]

Consistency Analysis

Dune habitat background

The Commission's Staff Ecologist, Dr. Rachel Pausch, has prepared a memo that documents the habitat composition of the proposed project area, explains its rarity and sensitivity to development and other human disturbance, and assesses the overall ecologic impact of the proposed project (see Exhibit 6). As Dr. Pausch explains, the proposed project area consists entirely of stabilized and vegetated backdunes in part characterized by a central dune scrub community. Coastal dunes are one of the most important, vulnerable, and geographically constrained habitat types in California, where

[50] Note: this name has been updated since publication of the LCP – it is now *Euphilotes enoptes smithi.*

[51] Note the correct spelling is *Ericameria fasciculata*

[52] And, should there be any confusion or questions on how to appropriately interpret the LCP's ESHA provisions, as affirmed in *McAllister v. Cal. Coastal Commission* (2008, 169 Cal.App.4th 912), LCP provisions, including LCP ESHA provisions, must be interpreted consistent with the Coastal Act from which they statutorily derive their authority.

beach-dune complexes constitute just 2-3% of the State's landmass.[53] In fact, at about 58,000 acres statewide, the Ocean Protection Council estimates that dune habitat is actually only one-sixth that of coastal wetlands, underscoring the rarity of this habitat type.[54] Dunes form only under certain conditions where adequate sand supply and appropriate wind energy and direction allow. They are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray. The winds and shifting sands in dune habitat can cause the habitat characteristics and species at any given location to change on a relatively short or shifting timescale, so a particular area may have relatively higher or lower physical and/or biological complexity over time. This dynamic environment supports plant and animal species that have evolved strategies adapted to these dynamic conditions. For example, many dune plants have seeds that can remain dormant for extended periods of time until conditions allow for them to germinate. Many of the specially adapted plant and animal species have become uncommon and are considered rare, endangered, or have a similar special status. The ability of these various resources to withstand such challenging conditions for long periods allows dune habitat, even severely disturbed dune habitat, to be restored relatively easily, whether through passive or active restoration efforts.

In addition to their ecologic value, and particularly given their dynamism and position between the beach and inland development, coastal dunes are also an important nature-based resiliency solution to rising seas and flooding events.[55] Not only do they help to buffer wave action, but they also are a sand supply for eroding beaches. Numerous communities in California have undergone coastal dune restoration efforts to reap the benefits of their erosion protection and sand accretion functions.[56] As sea level rises, dunes' persistence relies, among other things, on their ability to migrate, which makes preserving undeveloped backdune areas critical to coastal resilience.[57]

Given this understanding of dunes' rarity and especially valuable nature, confined spatial ranges, habitat for special status species, coastal resilience services, and overall

[53] See, for example, Pickart, A. J., & Barbour, M. G., *Beach and dune* (Vol. 2007, pp. 155-179), Berkeley, CA, University of California Press (2007).

[54] See https://www.opc.ca.gov/webmaster/_media_library/2023/01/Annual-State-of-the-Coast-and-Ocean-Report-2022-508.pdf, page 20.

[55] And the Commission has found as much in previous CDP actions as reason to protect and restore dune habitat function (see, for example, the Oceano Dunes Coastal Development Permit 4-82-300 Review in 2021 where dune impacts were determined to be contributing to lost resiliency for the community of Oceano). In addition, the Commission has found as much in the very dune complex within which the proposed project is located, citing to *Monterey Bay Area: Natural History and Cultural Imprints* (Gordon) in 1996 (CDP A-3-MAR-96-094): "Dune life is a complex and interesting assemblage of species, with the natural vegetation supporting a characteristic fauna...In addition to the ecological considerations, the protection of dune vegetation is important simply from an engineering standpoint…In places the dunes are essential protection against marine flooding…Dunes in the South Monterey Bay area appear to be richer in species than those in the north."

[56] See, for example, Johnston, K. K., Dugan, J. E., Hubbard, D. M., Emery, K. A., & Grubbs, M. W., U*sing dune restoration on an urban beach as a coastal resilience approach*, Frontiers in Marine Science, 10, 1187488, (2023).

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

aesthetic and character-defining features in the coastal landscape, dune systems, including degraded systems, have historically been considered ESHA by the Commission throughout the state.[58] And, in fact, the Commission has determined that the specific dune system within which the proposed project is located (i.e., the Monterey dune complex) is ESHA as well, including in recent years in the CEMEX sand mining facility closure (Consent Cease and Desist Order CCC-17-CD-02), the Monterey Bay Aquarium Research Institute equipment storage facility (CDP A-3-MCO-17-0068), and the Fort Ord Dunes State Park campground and access facility improvements project (CDP 3-14-1613). And in fact, the Monterey dune complex (of which the project area is a part), extending nearly 15 miles along the southern shore of the Monterey Bay between Moss Landing and Monterey, has long been found by the Commission to be "a natural asset of tremendous ecological and aesthetic value" that "comprises the largest and best preserved of any of the historic dune systems in Central California, except for the [the Guadalupe-Nipomo Dunes Complex]."[59,60] And most recently, the Monterey dune complex was the site of another project analyzed by the Commission, namely California-American Water Company's proposed desalination intake wells (CDP Applications A-3-MRA-19-0034 and 9-20-0603), where that project was located within the Applicant's project area and to the north. In that 2022 case, the Commission determined that the dunes present were ESHA. In sum, the Commission has a long history of finding dunes in general across the state qualify as ESHA, and has an equally long history finding the Monterey dune complex in the Monterey Peninsula in the project area to be ESHA as well.

ESHA determination

In addition to their status as being part of the overall Monterey dunes complex, the coastal backdunes that contain the proposed bus road's footprint provide habitat for over a dozen sensitive species, some listed as endangered or threatened under the California and Federal Endangered Species Act (CESA and ESA).[61] Between 2007 and 2020, the Applicant's consultants conducted several biological surveys of the site for various proposed projects.[62] These surveys, along with the investigations done between

[58] For just a few examples of CDP and LCP decisions finding dunes to be ESHA across the State, see City of Malibu LCP Amendment 1-07 (Malibu Bay Company), City of Oxnard LCP Amendment 1-05 (Oxnard Shores), Oceano Dunes CDP 4-82-300 Review, and Huntington Beach Bike Lane (CDP 5-23-0291).

[59] See CDP A-3-MAR-96-094 from 1996.

[60] The Guadalupe-Nipomo Dunes Complex extends some 18 miles from southern San Luis Obispo County into northern Santa Barbara County, and it has been identified as the largest such intact coastal dune ecosystem in the world (including by the Nature Conservancy, see: https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/guadalupe-nipomo-dunes/), and a federally designated National Landmark.

[61] Although the Federal and State Endangered Species Acts (ESAs) are directly administered by other resource agencies, the Coastal Commission has an independent authority under the Coastal Act to protect coastal resources generally, and ESHA specifically. In discharging this responsibility, the Commission has in the past found that ESA/CESA-listed species and their habitats are protected as ESHA, and are at least an indicator when making ESHA determinations more broadly.

[62] See survey dates and findings in Appendix 07 – Final Biological Resources Report of the project's IS/MND (2021).

2016 and 2019 in support of the Cal-Am CDP application and Coastal Commission staff observations during site visits between 2022 and 2024 (see Exhibits 2, 6, and 7), identified several special-status plant and animal species or communities present within and adjacent to the proposed bus road alignment, including but not limited to:

- Monterey spineflower (*Chorizanthe pungens var. pungens*) is an annual herb listed as federally threatened under the ESA. It also has a California Rare Plant Rank (CRPR)[63] of 1B.2. Monterey spineflower was observed extensively along the proposed bus road alignment.

- Sandmat manzanita (*Arctostaphylos pumila*), a native shrub listed by the California Native Plant Society as "rare, threatened, or endangered in California and elsewhere" (CRPR 1B.2). Sandmat manzanita was observed extensively throughout the bus road alignment, as well as adjacent to and within the rails.

- Smith's blue butterfly (*Euphilotes enoptes smithi*), a federally endangered species ranked by the CDFW as 'critically imperiled,' or S1,[64] is obligate to two host plant species throughout its life cycle – coast buckwheat (*Eriogonum latifolium*) and seacliff buckwheat (*E. parvifolium*) – that grow in these coastal dunes. While the butterfly's flight season is only from mid-June to early September each year, larvae consume the plants' flowers and seeds and pupate directly on or beneath the plants, where they overwinter until the following flight season. The endangered butterfly and both species of buckwheat were also observed within the bus road alignment.

- Silver dune lupine-mock heather scrub (*Lupinus chamissonis-Ericameria ericoides* shrubland alliance), which is ranked by CDFW as G3S3 and thus considered by CDFW to be "vulnerable", was also observed within the corridor.

Dr. Pausch and the biological consultants further describe other special status species that have been observed in the project area, including Kellogg's horkelia (*Horkelia cuneata var. sericea;* CRPR 1B.1) and Coast wallflower (*Erysimum ammophilum*; CRPR 1B.2), which were both observed near Fort Ord Dunes State Park. Yadon's rein orchid (*Piperia yadonii*; CRPR 1B.1) and seaside bird's beak (*Cordylanthus rigidus ssp. littorali*; CRPR 1B.1) also have the potential to be present on site or have been historically documented. In addition to all of the sensitive status species noted in the proposed project area, the proposed bus road alignment lies within central dune scrub, a terrestrial community which CDFW has ranked as "imperiled".[65]

Several other CDFW-designated animal species of special concern were detected or

[63] Plant species with a California Rare Plant Rank of at least 1B or 2 (defined by California Native Plant Society as presumed extirpated, rare, threatened, or endangered in California), have been considered to be rare and sensitive by the Coastal Commission.

[64] 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). A ranking of S1 thus means that it is critically imperiled in California.

[65] CDFW ranks this habitat type as G2S2, which makes it "imperiled" both globally and within the state.

deemed to have potential to occur within the project area, including Townsend's big-eared bat (*Corynorhinus townsendii;* CDFW ranking S2, Northern California legless lizard (*Anniella pulchra*; CDFW ranking S3), Coast horned lizard (*Phrynosoma blainvillii*), and Monterey dusky-footed woodrat (*Neotoma macrotis luciana*; CDFW ranking S3), whose constructed 'stickhouses' are reused by generations and constitute especially valuable habitat. Additionally, surveys completed in 2019 in support of the Cal-Am project noted additional special status species (via observed individuals, nests, shells, or burrows) in areas that directly overlap with the proposed bus road project area. These included the state threatened bank swallow (*Riparia riparia*; CDFW ranking S3), which is thought to nest of bluffs near the beach and forage on the backdunes; the American badger (*Taxidea taxus*; CDFW ranking S3), which can utilize backdune burrows; 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. CNDDB[66] also notes the potential for burrowing owl (*Athene cunicularia*), a California species of special concern, in the area.

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 LCP) by the City of Marina due to the lack of documented rare species within the small Marina segment during a 2020 survey. While the segment was dominated by iceplant during a July 2024 site visit by Commission staff, dune-associated California natives were present, including beach wormwood (*Artemisia pycnocephela)*. Giant buckwheat (*Eriogonum giganteum*) was also present, which is endemic to California and CDFW ranked G3 ("vulnerable"). Although the Marina segment was dominated by iceplant and other non-native plants, the presence of dune-associated plants, the location of the site in the Monterey dune complex, and sandy substrate all suggest the area rises to the level of dune ESHA.

Additionally, the Applicant's biologist documented that the Marina segment is bordered by Monterey spineflower to the north and south. Given the similarity and continuity of backdune habitat that connects those observed plants through the Marina segment, and competition present from iceplant onsite, it is likely that Monterey spineflower seed bank is present within the Marina segment and that spineflower could be supported by the Marina segment. In fact, Court decisions have determined that the absence of a species is not determinative and does not preclude an area as habitat for that species, including as demonstrated by the *McAllister* case.[67] Given that Monterey spineflower has been observed locally, is likely within the Marina segment, and is considered "rare and endangered" by the Marina LCP, this too would qualify the Marina segment as "primary habitat," or ESHA.

In short, the project is located within one of the largest coastal dune systems in California, the Monterey dune complex. This dune system has been repeatedly recognized, including by the Commission, State Parks, and CDFW, as an important

[66] The California Natural Diversity Database (CNDDB) is an inventory of the status and locations of rare plants and animals in California that is maintained by CDFW.

[67] See *McAllister vs. California Coastal Commission* (2008) 169 Cal.App.4th 912, 927.

resource not only for the Monterey Bay area and its communities, but also for the state, and beyond, including for their ability to help with coastal resiliency. Coastal dunes are amongst the most constrained of coastal habitats, and subject to significant development threats across the state. As such, they are not only important for their resource values, as described above, but also for the way they help to promote and conserve biodiversity and resiliency in the face of global climate change. Put another way, the Monterey dune complex has inherent resource value, but it also has important strategic value for reaching local, statewide, and global conservation goals,[68] elevating the sensitivity and importance of this system in a Coastal Act and LCP sense.

The proposed project area is part of this important dune system, and the specific proposed road alignment has been documented to include a variety of state and federally protected sensitive plant and animal species. And while it is acknowledged that some of the project area dunes are in a degraded state, including where covered with iceplant and derelict railroad tracks, as noted before, even such degraded areas support these sensitive species and habitat values (and even listed plant species were observed by Coastal Commission staff to be growing within the railroad tracks themselves). Furthermore, the construction of a busway would preclude future habitat restoration of the dune portions that are degraded but continuous with the larger dune complex. Thus, for all of the above reasons, and consistent with the Commission's past practice across the state and in the Monterey dune complex specifically, the entire proposed project area is made up of coastal dunes that rise to the level of ESHA due their important habitat, resiliency, and character-defining functions, in addition to their ability to host particularly rare plants and other species.

Impacts of the proposed project on ESHA

The project would construct a roughly 4.3-mile-long, 30-foot-wide, 2-lane bus road (as well as a 700-foot-long extension of Beach Range Road) in the above-described dune ESHA. Within Commission's retained CDP jurisdiction area, the proposed project would directly cover about 15.5 acres of such habitat with new pavement for the road and retaining walls, and proposed project plans indicate an additional approximate 7.4 acres would be occupied by related development such as drainage and retaining wall features. In other words, about 23 acres of dune will be converted to physical bus road development. The proposed project plans also suggest that approximately 1.6 acres dune would be needed for construction staging, which could be expected to recover within 12 months following the conclusion of construction. Consistent with past Commission practice (including the Cal-Am project), these impacts should be understood as "long-term temporary" rather than permanent. In addition, while not identified on project plans nor quantified by the Applicant in their application materials, the Commission's understanding of construction projects, particularly large and complex

[68] For example, in October 2020, Governor Newsom issued Executive Order N-82-20 which established a state goal of conserving 30% of California's lands and coastal waters by 2030 – known as the 30x30 initiative. The 30x30 goal is intended to help accelerate conservation of our natural resource areas to help meet three core objectives: to conserve and restore biodiversity, to expand access to nature, and to mitigate and build resilience to climate change. California's 30x30 commitment is also part of a complementary global effort to increase biodiversity conservation, including in the United States. In January of 2021, the Biden administration issued an Executive Order that also committed the United States to 30x30 through its America the Beautiful initiative.

ones like this, is that construction activity oftentimes necessarily ventures into a rather wide footprint and area. In other words, construction, including that which is needed to flatten grades, usually extends beyond the actual footprint of the final product. In the absence of such information, it is reasonable to estimate an additional 5-foot buffer on each side of the bus road to account for the construction footprint. Applying this buffer to the length of the road yields about 5.5 acres. These impacts would be considered short-term temporary, per past Commission practice, and the 5.5-acre total can serve as a proxy to provide relevant accounting for such potential impacts.

Thus, altogether, the project under Coastal Commission jurisdiction can be understood to have a permanent loss of 22.9 acres of dune to bus road development, 1.6 acres of long-term temporary disturbance within the dunes due to construction staging, and about 5.5 acres of short-term construction impacts along the borders of the project. This totals to 30 acres of potential impact to the dune system. In addition, the small segment of the project located in Marina's CDP jurisdiction would directly cover about 0.34 acres of such habitat with new pavement for the road and associated development. It would also include an estimated (using the 5-foot buffer as a proxy) 0.11 acres of short-term construction impacts (it does not appear to have any long-term temporary impacts since construction staging equipment can be located on existing developed areas within town). Thus, combings Commission and Marina segments, the proposed project would lead to an estimated permanent loss of 23.2 acres and temporary loss of 7.2 acres of dune ESHA.

Beyond these quantifiable direct impacts, the introduction of a busy bus road would also have substantial indirect impacts in terms of habitat fragmentation and broader habitat degradation of the surrounding areas. In terms of the former, what is currently a relatively broad swath of viable dune habitat between Beach Range Road and the Recreational Trail would be bisected by the new bus road. The Monterey dune complex is currently fragmented by Highway 1 itself, and the proposed project would only compound the nature of the fragmentation along that edge of the system, essentially reinforcing fragmentation by placing a bus road with large vehicles moving at up to 55 mph every 15-30 minutes in that space. This kind of habitat fragmentation can interfere with plant dispersal[69] and open up the overall habitat to additional edge effects, further degrading it in the process, both in terms of the project area but also overall in terms of the dune system.

In addition, because the project is proposed in dune ESHA, the proposed setback from adjacent dune ESHA is zero feet. Again, as indicated above, the Commission typically starts its analysis with a setback buffer distance of at least 100 feet for ESHA, which it then adjusts based on the nature of the project and the ESHA resource. Here, there would be no buffer at all. Were this project include such buffers, realizing that Highway 1 precludes the establishment of a full buffer on the landward side, the Commission would consider approximately 78 acres of dune habitat within the buffer area and susceptible to impacts from the proposed development. Studies have shown that

[69] For example, such development would not only physically remove dunes and dune vegetation, but it would also preclude germination of any native seedbank (i.e., dormant seeds within the ground), isolate populations, and stunt adjacent dune species growth, richness, and abundance.

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.[70] 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.[71] Such impacts must be understood within the context of the ecosystem as a whole and would correspondingly reduce the overall habitat value of the Monterey dune complex.

Relatedly, the proposed project includes lighted segments (at pedestrian crossings), and also includes both pre-dawn and post-dusk bus service (with buses running as early as 6am and as late as 10pm), requiring the buses to run with headlights. However, night driving within dune systems can cause serious adverse impacts to the native species from artificial light and noise. Artificial light can attract animals, increasing the chance of collision, or dissuade natural nighttime foraging patterns.[72]

The pivotal role of light in organismal biology raises the potential that there will be significant impacts on animals from artificial night lights. The sources of natural light are the sun, the moon, and stars. Light is used by plants and animals to infer a wide range of information from their environment. One of the most important roles of light for animals is regulation of their biological clocks or circadian rhythms on a daily, weekly, seasonal, and annual basis. Light information that contributes to the establishment of circadian rhythms includes daylength, light intensity, and light wavelength. In animals, eyes ranging from very simple to complex are the organ that collects light from the environment. Animals typically fall into one of several patterns of activity. Diurnal animals are active during the day; nocturnal animals are active at night; crepuscular animals are active at dawn and dusk; and 24-hour pattern animals have activity bursts during the night, dawn, and dusk. While humans are diurnal in nature, most other mammals are nocturnal (e.g., 80% of primates and all bats are nocturnal), crepuscular (e.g., rabbits, rodents, etc.), or have a 24-hour pattern where they are most active at night, dawn, and dusk (e.g., ungulates, large carnivores, some smaller carnivores).[73] Thus daily behavioral activities such as sleeping, foraging, eating, moving, and resting occur at different times for different animals such that a single habitat is partitioned into temporal niches regulated by light. Most predators are specifically adapted to hunt under particular light conditions (including in terms of intensity and wavelength), and in most natural habitats there is a distinct “changing of the guard”, from a suite of animals

[70] See, for example, 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.

[71] See, for example, 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.

[72] See, for example, Bird, B. L., Branch, L. C., & Miller, D. L. (2004). Effects of coastal lighting on foraging behavior of beach mice. *Conservation Biology*, *18*(5), 1435-1439.

[73] See, for example, Rich, C. & T. Longcore (Eds.) 2006. Ecological Consequences of Artificial Night Lighting. Island Press, Washington. 458 pgs.

that are active during the day to a suite of animals that are active at dusk or dawn and/or at night.

Introducing artificial night lights, such as those from the lighted crossings and the buses themselves, to an unlighted area will change the ambient setting and may adversely impact animals. Likely effects of artificial night lighting on mammals include avoidance, disorientation, disruption of foraging patterns, increased predation risk, disruption of biological clocks, increased mortality on roads, and disruption of dispersal movements through artificially lighted landscapes.[74] Adding light to the night environment can range from a moderate disruption to a significant risk to survival. An important fact is that the time when night lighting is most important to humans (i.e., the hours at and just after dusk and just prior to dawn) are the same hours when changing natural light levels are critical to many animals. The majority of activity of many nocturnal and all crepuscular animals tends to occur during these hours.[75] Nocturnal animals, as the name implies, are active during the night. This means they conduct their business under varying darkness levels including under clear starry skies with an illuminance value of 0.001 foot-candle (fc)[76] as well as under overcast night skies with an illuminance value of 0.0001 fc.[77] And under a full moon (0.01 fc), nocturnal animals change their activity patterns, prey species stay under cover, and predator species do not actively hunt as frequently.[78] In short, the proposed artificial lighting associated with the proposed project can adversely affect species.

In addition, even when not lit (at crossings or via bus headlights), noise and sound, just like the availability of food, also plays an important role in an ecosystem. Activities such as finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories, are all dependent on the acoustic environment. A growing number of studies indicate that animals, like humans, are stressed by noisy environments and will avoid habitat and feeding or reproductive activities to escape it.[79] For example, the endangered Sonoran pronghorn avoids noisy areas frequented by military jets; female frogs exposed to traffic noise have more difficulty locating the

[74] See, for example, Rich, C., & Longcore, T. (Eds.). (2013). *Ecological consequences of artificial night lighting*. Island Press.

[75] See, for example, Gaston, K.J., T.W. Davies, J. Bennie & J. Hopkins. 2012. Reducing the ecological consequences of night-time light pollution: options and developments. Journal of Applied Ecology. v. 49:1256-1266.

[76] A foot-candle is a is a measurement of light intensity and is defined as the illuminance on a one-square foot surface from a uniform source of light.

[77] See, for example, Rich, C., & Longcore, T. (Eds.). (2013). *Ecological consequences of artificial night lighting*. Island Press.

[78] See, for example, Rich, C., & Longcore, T. (Eds.). (2013). *Ecological consequences of artificial night lighting*. Island Press.

[79] See, for example, Shannon, G., M.F. McKenna, L.M. Angeloni, K.F. Crooks, K.M. Fristrup, E. Brown, K.A. Warner, M.D. Nelson, C. White, J. Briggs, S. McFarland & G. Witemyer. 2016. A synthesis of two decades of research documenting the effects of noise on wildlife. Biological Reviews. v. 91: 982-1005.

male's signal; gleaning bats avoid hunting in areas with road noise.[80] When these effects are combined with other stressors such as drought, disease, and food shortages, noise impacts can have adverse impacts on the health and vitality of wildlife populations.[81]

Here, it would be expected that noise, sound, lights, and activities associated with the proposed project would adversely impact wildlife in adjacent dune ESHA areas, and potentially cause them to leave the immediate project area entirely, further confining such species within the broader dune system and putting a stress on these species themselves, but also reducing biodiversity and habitat values in the areas near the proposed bus road. This is the case both during the expected two or more years of construction, but also permanently after that time as it relates to operation of the buses on the bus road, as well as necessary repair, maintenance and replacement of bus road segments and related development over time. Again, the purpose of buffers is to avoid these 'adjacency' impacts, and thus the 78 acres that would ordinarily be non-ESHA buffer are instead dune areas that will bear the brunt of these impacts.

Altogether, the proposed project would directly remove dune ESHA and replace it with a bus road and related development (as well as a Beach Range Road extension), resulting in 23.2 acres of permanent and 7.2 acres of temporary dune ESHA loss/impact. Additionally, both construction and operation disturbance would also adversely affect adjacent ESHA because there would be no buffer provided between the proposed roadway and surrounding environment, leading to additional impacts of this nature on over 78 acres of ESHA. This is roughly 100 acres of total ESHA impact, one of the most significant proposed for a project of this nature in dune ESHA on California's Central Coast.[82]

Coastal Act and LCP consistency analysis

As noted previously, both the Coastal Act and the LCP specifically prohibit non-resource-dependent development within ESHA (or 'primary habitat'), prohibit any significant disruption of ESHA habitat values when development is within ESHA, and prohibit any significant degradation/lost habitat values when development is adjacent to ESHA.

Regarding the first test, the Commission has generally interpreted 'resource-dependent development' to be development that is required to be located within such habitat in order to function. Usually, there are only three types of development that so qualify: 1) habitat restoration (as this inherently must be in the habitat to meet its stated objectives); 2) scientific research and nature study (again, to study a particular habitat necessarily means one must be within in it in certain cases); and 3) low-intensity public

[80] See, for example, Ware, H.E., C.J.W. McClure, J.D. Carlisle, & J.R. Barber. 2015. PNAS Online. A phantom road experiment reveals traffic noise is an invisible source of habitat degradation. https://pdfs.semanticscholar.org/4553/ 85667d9a2568fcb39e0ca29c1991b289ca78.pdf.

[81] See, for example, Barber, J.R., K.R. Crooks, & K.M. Fristrup. 2010. The costs of chronic noise exposure for terrestrial organisms. Trends in Ecology & Evolution. v. 25: 180-189.

[82] For a sense of scale, permanent impacts from the footprint of Cal-Am's desalination infrastructure were 1.9 acres (with greater temporary acreage associated with construction impacts).

access and recreation opportunities such as interpretive trails. On the latter, the Commission has a long history of allowing certain bicycle and pedestrian trails to be sited within ESHA[83] because of the intrinsic manner in which access in and around a particular habitat is needed to enjoy it, to experience it, and to protect it. This is differentiated by, for example, general transportation infrastructure, like highways, roads, or other high-intensity infrastructure where the purpose is to get from Point A to Point B, rather than to access/experience a coastal locale. The proposed project falls within this latter specific transportation category. It is not a low-intensity trail providing access to and along the shore, but is rather what can be understood as an off-highway road extension meant to take commuters from Marina to Sand City as fast as possible to avoid highway traffic. And not only is it not a public access project at its core, as explained subsequently, it actually has adverse public access impacts on the existing trail network in the area. In sum, the project is not a resource-dependent use that requires placement within dune ESHA, and in fact is a transportation project that can be placed in any non-habitat area. Therefore, the proposed bus road is prohibited by the Coastal Act and LCP within dune ESHA.

As to the second test, as the previous discussion makes clear, the proposed project would significantly disrupt dune ESHA habitat values. The project represents a substantial and direct loss of a significant amount of dune habitat that supports a variety of rare and threatened species. And these impacts are not just indirect or tangential to the primary project purpose, but rather the entire bus road traverses this habitat type directly and unavoidably. The proposed project would lead to an estimated total permanent loss of 23.2 acres of dune ESHA to bus road and related development, eliminating that area as dune ESHA as well as adversely affecting the overall Monterey dune complex. It also would lead to the temporary physical disturbance of some roughly 7 acres of additional dune habitat. These are all undeniably a significant disruption of dune ESHA habitat values, and therefore the proposed bus road is prohibited by the Coastal Act and LCP within dune ESHA for this reason as well.

In terms of the third test, again as the previous discussion makes clear, the proposed

[83] The following is a non-comprehensive list of some of the projects the Commission has approved that include low-key trail development through ESHA. The trails in these projects include paved and unpaved trails and boardwalks, and some provide pedestrian-only access while others allow multi-use access, including bicycles and wheelchair access: CDP 3-24-0020 (Cayucos Connector Trail - multi-use public trail through bluff ESHA), CDP 2-07-018 (Sonoma County Regional Parks – multi-use path consisting of crushed rock, located in coastal scrub habitat containing sensitive plant species); CDP 3-01-101 (Del Monte Beach re-subdivision – boardwalk through dune habitat); 3-01-003 (Grover Beach Boardwalk – boardwalk through dune habitat); CDP 3-87-258 (Asilomar State Beach Boardwalk – boardwalk through dune habitat); CDP A-3-SLO-04-035 (PG&E Spent Fuel Storage – unpaved paths through coastal terrace prairie habitat); CDP 3-05-071 (Morro Bay Harborwalk – paved road and paved trail through dune habitat); CDP A-1-MEN-06-052 (Redwood Coast Public Access Improvements – unpaved paths through rare plant habitat and riparian habitat); 80-P-046-A1 (Humboldt County Public Works Subdivision – compacted gravel trail through riparian habitat); CDP 3-00-092 (Monterey Dune Recreation Trail and Parking Lot – paved multiuse path through dune habitat); CDP 1-07-005 (Crescent City Harbor Trail North Segment – Class I and Class III multiuse trails involving some wetland fill); CDP 3-97-062 (Sand City bike path – paved path through dune habitat); CDP 3-06-069 (Fort Ord Dunes State Park Improvements – unpaved path through dune habitat); CDPs 3-98-095 and 3-98-095-A1 (Elfin Forest Boardwalk – boardwalk through terrestrial habitat ESHA); CDP 6-06-043 (Otay River Valley Regional Park trails – decomposed granite trails through coastal sage scrub and wetland habitat).

project would significantly degrade dune ESHA habitat values in the area adjacent to the bus road itself as well, including as it includes no buffer from these areas. Such impacts to habitat values would be felt across over 78 acres of dune ESHA, and more broadly in the way in which that area contributes to the overall Monterey dune complex. This would clearly be a significant degradation of dune ESHA and its habitat value, and therefore the proposed bus road is prohibited by the Coastal Act and LCP adjacent to dune ESHA also for this reason.

Finally, even if the proposed project were otherwise allowable by Coastal Act and LCP ESHA provisions, which it clearly is not, the above-described dune ESHA impacts would also require proportionate and offsetting mitigation. Toward this end, while the Applicant has provided some high level information about working with State Parks and the Monterey Peninsula Regional Parks District on restoration efforts within Fort Ord Dunes State Park and the Marina Dunes Preserve, respectively (including some 60 acres of dune enhancement at Fort Ord and 2.5 acres at Marina Dunes), such proposed mitigation is significantly deficient for a number of important reasons.

First, there are no definitive agreements in place or defined, detailed restoration areas or plans to do so. Thus, it is difficult to opine on the quality and logistics of the habitat mitigation identified. And it should be noted that essentially all of the dunes in the former Fort Ord lands, including at FODSP, are already required to be restored by virtue of the Commission's Federal Consistency action for the Fort Ord Army base closure, and the FODSP HCP. In other words, it isn't clear if there is any land available that isn't already required to be restored from other previous regulatory actions.

Second, the scope of mitigation that the Applicant would be required to provide for impacts like this, were they allowed, is considerable. It is informative in this context to look at the manner in which the Commission approached dune ESHA mitigation in this same dunes complex most recently related to the Cal-Am desalination CDP (CDPs A-3-MRA-19-0034 and 9-20-0603, approved in 2022), as that effort reflects the Commission's now current understanding of dune resource issues and mitigation requirements, including as applied to a similar industrial-type project.[84] In that case, the Commission required mitigation of permanent dune ESHA impacts at a 3:1 ratio in two parts. The first part required dune habitat creation at a 1:1 level, where creation was understood to require the applicant there to purchase a dune habitat area contiguous with the Monterey dune complex that was already committed to non-dune uses, or that was considered developable and at-risk to be developed, and then to permanently restore that area to dune ESHA. The intent of this aspect of the mitigation was to effectively result in 'no net loss' of dunes in the area, and in Cal-Am's case, the 1:1

[84] On this point it is noted that the Applicant suggests that the mitigation requirements that would accrue to their proposed project should be the same as were applied to State Parks when State Parks was granted a CDP for their Fort Ord Dunes State Parks campground project in 2017. However, not only has the Commission's understanding related to dune ESHA, dune ESHA impacts, and the degree of necessary mitigation needed to offset such impacts been refined since that action, including significantly due to the need to delve into such issues in this very dune complex for the Cal-Am project most recently, but that State Parks project was for a public visitor serving low-cost campground facility, where the context surrounding the costs and benefits of the project were significantly different in a Coastal Act sense than the context associated with this bus road transportation project.

requirement equated to about 2 acres of new dune creation (to mitigate a permanent impact of about 2 acres).

The second part required substantial dune habitat restoration at a 2:1 level. Substantial restoration is understood to alleviate the system from stressors and actively facilitate the return of a full suite of self-sustaining ecological functions. This may involve techniques such as manipulating landforms to return natural processes or eradicating non-native species and then revegetating with a robust palette of natives.

That methodology as applied to this case would mean that the Applicant would have a 23.2-acre dune habitat creation obligation (i.e., the 1:1) and a 46.4-acre dune habitat substantial restoration requirement (i.e., the remaining 2:1) for permanent impacts, totaling approximately 70 acres. In addition, the Commission typically allows 1.5:1 mitigation for long-term construction impacts under certain conditions, where the disturbed area is restored onsite and an additional 0.5:1 mitigation acreage is required offsite due the temporal loss of such habitat. Mitigation for short-term temporary impacts occurs at a 1:1 mitigation ratio onsite. Applying these mitigation requirements would yield a long-term temporary requirement of 2.4 acres, and a short-term temporary requirement of 5.6, totaling 8 acres for all temporary impact mitigation for both segments. Put another way, the actual mitigation obligation that would accrue to this Applicant if the proposed project were to be allowed in dune ESHA would be roughly 78 acres (i.e., 70 acres to mitigate permanent loss, and 8 to mitigate temporary loss (with 23.2 acres in form of dune creation and 54.8 as substantial restoration)).[85]

Were the impacts allowable (again, which they are not), this mitigation would be significantly costly. For example, recent Commission-approved projects with similar mitigation approaches have estimated costs of $100,000-$250,000 per acre for relatively simple restoration projects, and have estimated restoration costs for more complicated cases (akin to what would be expected for required habitat ‘creation’) of $1,000,000 per acre.[86] As applied to the Applicant’s proposed project, such mitigation costs would be quite large, with the 23.2 acre creation requirement itself totaling more than $23 million (at $1 million per acre estimate) and the remaining 54.8 acres of substantial restoration ranging from roughly $6 million to roughly $14 million on top of

[85] The Commission typically does not require mitigation for adjacency impacts. Instead, it typically requires buffers to avoid those impacts in the first place. Thus, these calculations above for this project do not include an estimate of required mitigation for the 78 acres of such adjacency impacts. This is not to say that the Commission couldn’t impose mitigations in this case, but rather a reflection that the Commission does not have an established mitigation ratio for doing so. The calculations above are also meant to be illustrative in any event, since the Commission is denying this project for its impermissible impacts.

[86] In the 2022 Cal-Am case, this range came from a San Mateo County example that included a proposal with a budget that, if simply scaled-up, would create and restore dunes at a cost of approximately $740,000 per acre (2-22-0192-W (Caltrans)), and from published literature for larger and more complex projects involving dunes in California that suggested a starting point of $1,000,000 per acre (King et al 2018 in Shore & Beach). Coastal Commission staff conversations with experienced dune restoration practitioners in California indicated that a relatively simple project can readily cost somewhere between $100,000-$250,000 per acre and that up to $1,000,000 per acre is reasonable for complex or significantly degraded sites requiring significant engineering effort for components such as grading topography or removing contaminated materials.

that, altogether ranging from nearly $30 million to $40 million. Thus, even if the proposed project would otherwise be allowable by Coastal Act and LCP ESHA provisions, which it is not, the mitigation requirements alone would likely make the project infeasible.[87]

In conclusion**,** the proposed project seeks to place a significant piece of transportation infrastructure into dune ESHA, where the impacts to dune ESHA would both be substantial and prohibited by the Coastal Act and the City of Marina LCP. The proposed project is fundamentally inconsistent with the Coastal Act and LCP ESHA protections, and represents not just a small or tangential impact, but a large and consequential one, and one where Coastal Act/LCP inconsistencies are incurable by conditions of approval, requiring denial of the CDP application. All of which is unfortunate because the Commission strongly supports the transit-related objectives of the proposed project, and also strongly suggests that the Applicant look to alternatives that can achieve these same goals but without these same ESHA impacts (e.g., using one of the three lanes of Highway 1 along the project area as a HOV/bus only lane during peak commute times, pursuing a bus lane that makes use of the paved shoulders of Highway 1 along the project area, making improvements along inland and more developed routes closer to actual population centers, etc. – see also Conclusion section of this report).

4. Public Access and Recreation

Applicable Coastal Act and LCP Provisions

The Coastal Act protects and requires the provision of public recreational access, and maximizing public recreational access opportunities is a fundamental Coastal Act objective. Relevant provisions include:

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

[87] On this point it is noted that the Applicant appears to have significantly underestimated potential dune ESHA mitigation requirements that would accrue to a project like this were it to be approved. This is likely at least partially due to the fact that although the Applicant prepared an initial study/mitigated negative declaration under CEQA, it did not prepare an EIR (based on state legislation that by then exempted the project from CEQA). Such EIR would have been required to evaluate the proposed project and alternatives to it, including in relation to the various mitigations that would be associated with each alternative, and would have been an opportunity to have a coequal evaluation of alternatives across the full set of constraints and mitigation requirements, including related to dune ESHA mitigation for alternatives that led to a loss of dune ESHA.

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected…

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

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Section 30240(b). *Development in areas adjacent to…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…recreation areas.*

The Marina LCP similarly protects public access and recreation. The Marina LUP states that *"the policy of the City of Marina shall be:"*

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

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. …*

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

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. …*

34. *To provide for local and community recreational needs within the Coastal Area.*

35. *To encourage continued and improved service by mass transit within the Coastal Zone. …*

37. *promote bicycle, horse and other alternative modes of access, except off road vehicles, within the Coastal Zone*

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

These overlapping Coastal Act and LCP provisions protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. Specifically, Section 30210 requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Section 30213 protects lower cost forms of access, such as the free access available along the CCT and at FODSP as relates to this project site. Section 30220 protects coastal areas suited for ocean-oriented activities, such as Monterey Bay offshore here, for such purposes. Sections 30221 and 30223 protect oceanfront and upland areas for public recreational uses. And Section 30240(b) protects parks and recreation areas, like the CCT and FODSP, from degradation, and requires any allowed development to be compatible with the continuation of those areas.

Coastal Act Section 30210's requirement to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and it is fundamentally different from other like provisions in this respect. Namely, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be <u>maximized</u>. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

Finally, all of the Coastal Act and LCP public view provisions, and the analysis of this proposed project's compliance with them, are also public access provisions/analysis inasmuch as public views are a critical component of public access, which is particularly the case the Monterey Dunes complex associated with the project area. As a result, all of the public view findings that follow are also applicable in a public access sense, and those thus findings are incorporated herein by reference.

Consistency Analysis

<u>Public access and recreation background</u>

As described earlier, the project area is rich with public access amenities, including numerous trails that provide access to area beaches and Fort Ord Dunes State Park (FODSP) itself, as well as general non-vehicular access and recreation options in a safe environment completely separated from cars along the Monterey Peninsula Recreational Trail system and Beach Range Road, both components of the California Coastal Trail (CCT). In addition, the Commission expects future expansions of public access opportunity in the area when State Parks completes its new campground and associated visitor-serving facilities at FODSP. Such amenities are described in more detail below, and see Exhibit 1 for maps and Exhibit 2 for site area photos.

FODSP lies seaward of the project site and is a portion of the former Fort Ord Army base that was decommissioned in 1994. In 2009, the Army transferred 979 acres of the base – the area seaward of Highway 1 – to California State Parks, which became FODSP. Much of the portion of the base inland of Highway 1 became Fort Ord National Monument in 2012. FODSP provides public access and recreational opportunities for bicyclists (along Beach Range Road), hikers (along Beach Range Road, various trails through the dunes, and along the beach), and beachgoers. State Parks intends to begin construction of a new campground at the park in December 2024.[88] The FODSP parking area is accessible via 8th Street and includes 51 parking spaces as well as other visitor-serving amenities such as bathrooms, trash cans, picnic tables, and informational signage. The parking lot is located approximately 300 feet inland of the beach, which is accessible via a formalized vertical access trail.

The Monterey Peninsula Recreational Trail is the primary CCT segment in this area, and one that provides a relatively flat (and mostly paved) walking and biking experience for over 18 miles from Marina through Sand City, Seaside, Monterey, Pacific Grove, and into the Del Monte Forest. This trail is a significant public access destination onto itself that is highly popular and heavily used by pedestrians, bicyclists, and others (e.g., wheelchair users, families with strollers, etc.) and in the project area generally lies between Highway 1 and the project corridor,[89] thus allowing for a relatively quiet and even contemplative access experience that takes in all of the splendor of the essentially undeveloped dunes lying seaward of it and the Monterey Bay past the dunes. It also helps to connect the communities of Marina and California State University Monterey Bay to FODSP and the beach, including where it connects to inland bike paths at the 5th Street underpass, The recreational trail in the project area is universally regarded as one of the longest scenic trails in all of California.

State Parks' Beach Range Road is a former Army road within FODSP that has been converted to a paved bicycle and pedestrian trail located seaward of and generally parallel to the Monterey Peninsula Recreational Trail. Beach Range Road's only direct connection to inland roads and bike paths is roughly at its midpoint, where the Divarty Street underpass runs under Highway 1. At its northern and southern ends, it relies on two connections to the Monterey Peninsula Recreational Trail to access Marina and Sand City. It connects to several vertical beach accessways, including at 8th Street, which crosses on a bridge over Highway 1 and continues to the FODSP parking lot. Beach Range Road relies on the Recreational Trail for its connectivity with Marina and Sand City and does not have a connection to 5th Street (but the Recreational Trail does). Beach Range Road is thus also important for public access in similar ways to the Recreational Trail, as it provides many of the same attributes, and is actually further seaward and more 'remote' as measured from Highway 1. Public access to the beaches in this area is provided via both informal and developed State Parks' trails from Beach Range Road.

Handcar tours currently operate along the northern half of the existing railroad tracks

[88] See CDP 3-14-1613 (Fort Ord Campground).

[89] The recreational trail is located between 20 and 200 feet from highway travel lanes, and between 0 and 50 feet from the proposed project corridor.

within the railroad corridor.[90] The handcars are a mix of actual hand-powered cars and foot-powered pedal-assist electric cars that use similar technology to electric bicycles. Tours begin outside of the coastal zone in Marina and travel along the tracks to where the tracks form a loop seaward of the Lightfighter Drive/Highway 1 interchange, then travel back to Marina. When tours are operating, a crossing guard stands at the connection between the Recreational Trail and Beach Range Road, stopping the handcars when bicyclists and pedestrians use the connector.

The area's primary vehicular transportation infrastructure in the project area is Highway 1, and the Applicant's buses currently run on and inland of the Highway 1 corridor. Bus service is provided by three lines: Line 18 runs inland of Highway 1 between Marina and Sand City, Line 17 runs farther inland than Line 18, and Line 20 runs along Highway 1 between Marina and Sand City.[91] Traffic is highly variable along the six-lane section[92] of Highway 1 currently used by Line 20. Significant congestion occurs during peak morning commute hours traveling from Marina to Sand City, with less congestion occurring in the opposite direction in the evening. Congestion also occurs intermittently on summer weekends. At all other times, congestion is typically mild or nonexistent. The Applicant indicates that Highway 1 traffic conditions pose an issue for the quality of Line 20 service, where peak congestion delays buses by an average of approximately 15 minutes, but is variable. The Applicant indicates that this variability is itself an issue, as regularly scheduled buses arrive at bus stops at irregular and somewhat unpredictable times, meaning that riders must spend additional time at bus stops and may not arrive at their destinations on time, a particular concern for riders who must begin work or class at a set time each day.

According to the Applicant,[93] riders on Line 20 use it mostly for work/job commuting (roughly 50% of riders) and/or shopping (just less than 50% of riders), but also for school (about 25%), visit friends/relatives (about 25%), healthcare (nearly 35%), and recreational/other (roughly 15%).[94] The proposed project is primarily intended to serve commuters; however, the Applicant has also suggested that it also has potential public access benefits, including via a new bus station near FODSP (but out of the coastal zone, and not part of the project before the Commission) and faster more reliable public transit to the Monterey Peninsula from inland areas. The Applicant also indicates that some riders may increase the use of Line 20 for recreational purposes if the bus road

[90] See CDP waiver 3-22-0800 (Handcar Tours). Tours are authorized for a two-year period ending in November of 2024. Operations beyond this date depend on an agreement with TAMC to extend their lease.

[91] The Marina-Sand City leg of Line 20 only makes up a small fraction of its overall route, as the full route runs between Salinas and the Monterey Peninsula.

[92] Highway 1 is three lanes in either direction between Marina and Sand City (i.e., the project area), but is two lanes in either direction both north and south of that segment.

[93] And based on an MST survey of riders in 2023 that asked them to identify the ways they use the bus service, where the choices were work/job, school, visit friends/relatives, shopping, healthcare, and recreational/other.

[94] These percentages total more than 100% because respondents were able to select multiple options, reflecting the fact that individual trips may be for more than one reason.

project were developed.[95] The Applicant also highlights the extension of Beach Range Road as a benefit to pedestrians and bicyclists, although, the extension is necessary because otherwise the proposed bus road would sever the beach access connection across the project area from Sand City and to the beach without any replacement.

In sum, the proposed project is located in an important public recreational access area where such public access is largely dependent primarily on the Recreational Trail, Beach Range Road, and FODSP, both for access along the coast and access to the beach. The Recreational Trail and Beach Range Road together are the most significant public coastal access features in the area. This is the case perhaps most obviously for lateral access purposes, but these facilities are also incredibly important for vertical beach access for the communities of Marina, Seaside, and California State University Monterey Bay. Critically, the proposed project area is located between the Recreational Trail and the Beach Range Road trail, which provides important locational context for evaluating the Applicant's proposed project. While the project may come with some public access benefits, such benefits are nuanced, and the project would also have some negative impacts on existing public access facilities, as discussed below.

Bus service changes

The proposed project is intended to not only bypass Highway 1 traffic congestion between Marina and Sand City, but also to increase bus frequency on Line 20. On the first point, according to the Applicant, the ability to bypass traffic congestion via a separated bus road would reduce travel times by an average of 10-12 minutes during peak commute hours, where riders would benefit from an overall decrease in transit time during and a decrease in transit time variability as well. According to the Applicant, these improvements would tangibly improve the experience for commuters and public access users, particularly for riders who live in Salinas and want to recreate on the Monterey Peninsula. However, as discussed below, when Highway 1 is not congested, which is essentially all the time other than the three commute hours in the mornings and evenings on weekdays, and on certain summer weekends, the new bus route would actually be slower than the existing service. So, while it would appear to help weekday commuters, it is not as clear that it would help to maximize public access for users who are not typically transiting during commute hours.

On the second point, the proposed project includes increased bus frequency from every 30 minutes on weekdays and every hour on weekends to every 15 minutes on weekdays and 30 minutes on weekends. Increased bus frequency improves the convenience of bus service for riders by reducing the wait times at bus stops and allowing riders to select a bus that will arrive closer to the time when they need to be at their destination. The Applicant has framed this as a transit improvement that is closely tied to the proposed bus road; however, the Applicant could just as well make these headway improvements now without the proposed project. And while it is clear that weekday commutes would potentially be better overall, and while there are certainly some gains to be made in terms of the potential for decreased transit time variability,

[95] In an MST survey in February 2021, in response to the question "How will you use the SURF! Line?" 72% of respondents said they would use it for access to recreation (where again, respondents were allowed to select multiple answers).

travel times would be a bit slower outside of commuting hours with the project than the current status quo.

In short, while both the bus road and the increased bus frequency would have tangential public access benefits, it is clear that the project was designed to serve commuters rather than public recreational users, and thus should not be understood as something meant to significantly improve public access and recreation as those terms are understood by the Commission under the Coastal Act.

5th Street bus station

The Applicant asserts that the proposed new 5th Street park and ride bus station, which would be constructed outside the coastal zone but connected to the bus road via a connector road, is a significant public access benefit of the proposed project. As posited by the Applicant, by creating this stop for Line 20 between Marina and Sand City, recreational bus users can disembark at this location and access the recreational trail, Beach Range Road, FODSP, and the beach between Marina and Sand City. While this is true, and it could help public transit riders using Line 20 to more readily access the areas directly seaward of the proposed bus station at 5th Street, such access would be generally inconvenient due to the location of the station, especially in terms of access to the beach. The bus stop would be on the inland side of Highway 1, where the shortest path to the beach from there is nearly three-quarters of a mile long. Bus riders would also have to cross the new bus road to access the trail network, raising usability and safety concerns. Bus users can currently use a different bus line to disembark near 8th Street (less than a quarter mile north of the proposed station site) for a shorter walk to the beach along an accessway which includes State Parks' main FODSP beach parking lot, restrooms, and other amenities for the beachgoing public. In this respect, the evidence in front of the Commission does not suggest that the project's connection to the 5th Street station significantly increases public access.

In addition, the Applicant suggests that the proposed new 5th Street bus station would provide a public access benefit to the neighborhood that is located just inland of the proposed station site. While it is true that this new stop would make it more convenient for that residential neighborhood to access Line 20, it is unclear how this would maximize coastal access benefit to this neighborhood (and more importantly the public generally), including as there already is an existing pathway leading under the highway (more on this below) both at this location, 8th Street, and Divarty Street to the south, and these would remain here whether or not the station were to be installed or not. It does not appear that this is a true public access benefit in this sense (again, including because there would now also be bus road that must be crossed).

Finally, because of the need to remove the existing pedestrian trail that extends under Highway 1 to the recreational trail for the proposed bus road extension to the new proposed station, the Applicant also intends to install replacement coastal trail in this area, and also touts that as a public access benefit. However, this is not so much a benefit as the Applicant providing a replacement trail for the existing trail that would be removed. These "new trails" are not a public access benefit in that sense.

Beach Range Road extension

The Applicant also proposes an approximately 700-foot-long extension of Beach Range Road from where it currently terminates near the Sand City city limits (see Exhibit 1), and also the Applicant has stated this as a public access benefit of the project. Again, however, the extension is only necessary because the new bus road would eliminate the pedestrian path that currently connects from the end of Beach Range Road to the Recreational Trail, which then connects to Sand City sidewalks and bike paths. In other words, while the extension and the connectivity the extension would provide is indeed essential, it is only required to correct project-related adverse public access impacts at this location. As such, this too is not a public access enhancement so much as a necessary mitigation to protect the status quo. In addition, although it would help to maintain the existing level of public access (see also below), it also introduces additional dune habitat impacts of the type described in the ESHA section previously in order to do so.

Impacts to Existing Access

Coastal Act Section 30240(b) specifically requires that development adjacent to parks and recreational areas be sited to prevent degradation of those resources. The proposed project is located directly adjacent to the Recreational Trail, Beach Range Road, FODSP, and bisects various trail connections between them. These existing public recreational access facilities are incredibly popular and important facilities that are protected by the Coastal Act and the LCP in the ways described above. They are also currently non-vehicular, and provide for a relatively quiet and even contemplative access experience that takes in all of the splendor of the essentially undeveloped dunes lying seaward of it and the Monterey Bay past the dunes, and a respite from the hustle and bustle of developed areas inland of them. The proposed bus road would alter these current uses and would negatively impact these public access recreational facilities.

Specifically, the proposed bus road would pave a significant area of dune directly adjacent to these areas, and would introduce large buses moving at up to 55 mph in some places less than 10 feet and 20 feet away from the Recreational Trail and Beach Range Road, respectively – and in some places the proposed bus road would actually cross the recreational trail. Along most of the alignment, the Applicant did not propose protective barriers other than the existing deteriorating chain link fence that runs along the Recreational Trail, which currently has numerous gaps where informal paths onto and across the corridor have formed (see Exhibit 2). In short, the proposed project leads to a series of impacts to existing public recreational access opportunities.

First, where the proposed bus road crosses the recreational trail, it would sever multiple existing connections between it and Beach Range Road. While the project would reestablish those connections via crosswalks over the road, a crosswalk where trail users have to navigate fast moving buses degrades those access users' experience and results in safety concerns.[96] Second, proposed buses using the bus road for up to

[96] Two primary and formal vertical access trail connections would be modified in this way between the recreational trail and Beach Range Road, one on the southern end of the corridor near Sand City and the other on the northern end in Marina. Both connections would be changed to surface-level crosswalks across the bus road, where trail users would have to look out for buses.

16 hours of the day (as early as 6am until as late as 10pm) would lead to significant changes in these access facilities' ambiance, as vehicular noise, lights, and activities would significantly alter the sense and perception of serenity on the affected trials and in FODSP. Put another way, close physical proximity to large, fast-moving vehicles is unsettling for pedestrians and bicyclists, and would introduce significant development in the immediate vicinity of trails for which the primary recreational benefit lies in their separation from the highway and in their relatively undeveloped surroundings. Third, the proximity and lack of safety barriers between trail users and fast-moving buses would reduce both actual trail user safety as well as perceived trail safety, reducing recreational value. In addition, when buses are not physically present on the bus road, trail users may even believe that that road is available for pedestrian and bicyclist access, leading to additional potential public safety issues.

In short, while the proposed project would have some benefits to public access, such benefits appear to be incidental to its primary purpose (where a project designed for public access would likely look substantially different than what is proposed) and it also comes with serious negative public access impacts to the current public access system at this location. In particular, the project would introduce fast-moving buses into an area that is currently well set back from the highway and for exclusive bicycle and pedestrian use. Not only would the close proximity of the buses degrade the user experience on the trails and in FODSP, but it would also introduce serious potential safety hazards that do not exist today, including the need for trail users to cross the bus road in order to get to or from FODSP, Beach Range Road, and the beach access paths connected to it. While some of these impacts could potentially be addressed via alternative siting and design, such as additional pedestrian over or under passes, these elements could have their own adverse coastal resource impacts. And since the project is otherwise inconsistent with the Coastal Act's and LCP's ESHA protection provisions, such alternatives are moot in this case. As such, the project as proposed is inconsistent with the public access and recreation provisions of the Coastal Act and the Marina LCP.

5. Public Views

Applicable Coastal Act and LCP Provisions

The Coastal Act provides that the scenic and visual qualities of coastal areas are resources of public importance that must be protected, and that new development is required to protect public views and designed to be visually compatible with the surrounding area. In highly scenic areas, such as the viewshed in which the proposed project is located, proposed development is also required to be subordinate to the character of its setting. Section 30251 states:

> ***Section 30251.*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the*

character of its setting.

Similarly, the Marina LCP states that "the policy of the City of Marina shall be:"

> ***LUP Policy 33.*** *To protect scenic and visual qualities of the Coastal area including protection of natural landforms, views to and along the ocean, and restoration and enhancement of visually-degraded areas except in areas presently being mined.*

Consistency Analysis

The proposed project is sited directly adjacent to FODSP, a highly scenic and mostly undeveloped stretch of the Monterey Dunes Complex, which is largely characterized by natural sand dunes that are a character-defining element of the public viewshed at this location. The primary public views affected by the proposed project are views of the site from Highway 1, from the recreational trail, from Beach Range Road, and from FODSP, where the impacts are different in each case. In all public view cases, the proposed project would introduce a new 30-foot-wide two-lane paved road with extensive retaining walls into the view (see Exhibits 1 and 2).

In terms of the Highway 1 public view over FODSP and toward the ocean, this view already takes in the recreational trail, Beach Range Road, and in some places remnant roads associated with the former Army base. So, while the bus road would incrementally add to development in this view, it is unlikely to have a significant impact in that regard. It is likely that buses moving through that view, especially at dusk and dawn when they are lit, would introduce incongruous development into the view that would detract from it, but this is tempered by the fact that they would be moving through at 7.5-15 minute time intervals. In short, while it would lead to some visual deterioration, it doesn't appear that the project would significantly change the view from Highway 1, including because its existing perspective takes in the recreational trail and Beach Range Road, and the bus road would become another component of that visual backdrop.

However, in terms of public views from the recreational trail and Beach Range Road, the bus road is likely to lead to a rather significant change in scenery, especially when buses are moving along the road at high speed, and as close as 5 feet away. Some of this view impact is tempered by the fact that the derelict rail tracks still exist in this area, and would still exist with the bus road next to them, but it would still be an adverse impact to these significant public trail views.

As for views of the bus road from FODSP, it is likely that the impact would be similar to the views from the trails, but reduced in as much as the views would be from a further distance. The direction of the view (looking back towards Highway 1) would also temper impacts, as the trails, the tracks, and Highway 1 somewhat lump together visually, especially at further distances. As a State Park, these views are afforded somewhat higher levels of priority for protection, and so while the impact would likely be less than those from the trails, it's still a significant impact.

Section 30251 requires public views to "be considered and protected as resources of public importance" where proposed development is required "to be subordinate to the

character of its setting", and thus it is appropriate in that analysis to take the most conservative approach in terms of protecting such views. In doing so, it is clear that the project does not minimize the alteration of natural landforms, as required by Section 30251, rather it significantly changes that natural landform. Both in terms of replacing that dune topography with a flat paved road, but also in terms of the related retaining walls and drainage elements, where the retaining walls would be visible at heights of up to ten feet above grade from these public views. Similarly, while some might argue that the bus road would be visually compatible with and subordinate to the character of the surrounding area because there is a paved recreational trail and a paved Beach Range Road in close proximity, as a resource of public importance, a conservative analytical approach would suggest that is not the case. Rather, the project introduces a 30-foot wide 4.3 mile long paved road, replacing natural dune, where the surrounding area is predominantly natural dune. As such, the project is not truly visually compatible with nor subordinate to the visual character of the area.

Thus, overall, the proposed project would degrade, to a degree, this highly scenic area inconsistent with Section 30251. While some of these impacts could potentially be addressed via alternative siting and design, since the project is otherwise inconsistent with the Coastal Act's and LCP's ESHA protection provisions, such alternatives are moot in this case.

6. Environmental Justice

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need for equity and environmental justice (EJ) and allows the Commission to consider coastal resource issues and impacts through that lens, both in CDP cases where the standard of review is the Coastal Act itself, as well as in appeal cases, like this, when the standard of review is the LCP, and even if the LCP itself may be silent on such issues. The Coastal Act states:

> ***Section 30013.*** *The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.*
>
> ***Section 30107.3.*** *(a) "Environmental justice" means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) "Environmental justice" includes, but is not limited to, all of the following: (1) The availability of a healthy environment for all people. (2) The deterrence, reduction, and elimination*

> *of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.*
>
> ***Section 30604(h).*** *When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.*

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy ("EJ Policy") to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. Among other things, the EJ Policy specifies the reviewing lens through which the Commission will implement environmental justice principles into its planning and permitting decisions. For public habitat protection, EJ Policy says the following:

> *Understanding that public health and the health of natural ecosystems are inextricably intertwined, ecological impacts are felt first by disadvantaged and at-risk communities, and that there is no environmental justice without a healthy environment, the Commission will continue to prioritize the protection of coastal resources. This includes sensitive habitats, watersheds, water quality, marine biodiversity, and biological productivity…. The Commission's environmental justice policy shall be implemented in a manner that is fully consistent with the standards in, and furthers the goals of, Chapter 3 of the Coastal Act (the agency's legal standard of review), and certified local coastal programs.*

In short, the Coastal Act's environmental justice authorities and the Commission's EJ Policy offer an important lens and framework upon which to make Coastal Act and LCP decisions, to ensure that CDP decisions do not unduly burden a particular underserved community with adverse coastal resource outcomes. Further, the Commission recognizes the importance of providing for equitable coastal access and recreation consistent with coastal resource protection requirements regardless of an individual's race, ethnicity, sexual orientation, gender identity, income, or place of residence. The Commission also recognizes the disproportionate impact of climate change and sea level rise on certain communities with the least capacity to adapt.

Identification of Communities of Concern

The Applicant has indicated that the proposed project will benefit lower-income communities of color since Line 20 (again, the existing bus line that would use the new proposed bus road) currently serves historically under-resourced communities in Salinas, Marina, and Sand City, with riders from those communities making up a significant portion of Line 20 ridership. Demographics for Line 20 specifically are not

available, however the Applicant indicates that 77% of their overall ridership in Monterey County has an annual household income under $40,000 and 76% are from historically underrepresented non-white populations.[97] The cities which are connected by Line 20 all have several communities with large number of limited English proficiency households,[98] housing-burdened households,[99] individuals of color,[100] and communities with high exposure to pollutants, adverse environmental impacts, or sensitivities to pollution according to CalEnviroScreen 4.0. Line 20 helps to connect communities in areas with housing costs that are, at least relatively speaking, lower than those on the Monterey Peninsula to work and recreational opportunities on the peninsula.

Analysis

Ultimately, it is safe to say that the proposed project would improve service for existing riders, including by making the ride less variable timing-wise and quicker during commute times (but longer during others). It is also a safe assessment to conclude that some amount of new ridership would be induced by these improvements, as described earlier, and the improvements would be particularly beneficial for the under-resourced communities that Line 20 serves. The Commission fully supports transportation improvements that can reduce transit variability and travel times, and that can incentivize non-single occupancy vehicle modes of travel, including for the environmental and social benefits that it provides. At the same time, the Coastal Act specifies the ways in which such transportation improvements need to be accomplished in the coastal zone, including avoiding significant coastal resource impacts such as those associated with this project.

When evaluated through an EJ lens, the project does include benefits for lower-income inland residents, which is a large reason why Commission staff has long encouraged MST staff to identify alternative projects and alignments that enhance public transit opportunities without impacting dune ESHA or other significant coastal resources. The Commission's EJ Policy ensures that EJ concerns are integrated with coastal resource protections required by Chapter 3 and applicable LCPs, rather than overriding them. The EJ Policy aims to ensure that benefits and burdens are equitably distributed, preventing undue burdens on EJ communities. While the proposed project offers benefits to environmental justice communities, these benefits cannot justify the disregard of significant coastal resource protections. This is particularly true when there appear to be alternative projects that can provide similar public transit benefits to these communities without causing significant coastal resource impacts and conflicting with Coastal Act/LCP requirements, as discussed in more detail below.

[97] MST 2023 Year in Review.

[98] Households where no one over age 14 speaks English very well. Based on "linguistic isolation" indicator from CalEnviroScreen 4.0

[99] The housing burden indicator from CalEnviroScreen 4.0 is the percent of households in a census tract that are both low income (making less than 80% of their county's median family income) and severely burdened by housing costs (paying greater than 50% of their income for housing costs).

[100] Population of color refers to anyone that identifies as Hispanic (of any race) and anyone who identifies as non-Hispanic but as a race other than white on the Census, such as Black or African American, Asian, or American Indian.

7. Conclusion

Significant improvements and expansions of public transit are needed in the coastal zone, and the Commission is strongly supportive of such projects, and will continue to work to improve public transit in this corridor. Unfortunately, in this case, the Applicant opted to pursue a project that is fundamentally inconsistent with Coastal Act ESHA protections despite early and continuous recommendations from Commission staff that – while staff are supportive of the overall goals and tenets of the project – MST needs to instead pursue project alternatives that do not present these kinds of fatal approvability problems (again, see Exhibit 7).

In their CDP application materials and in subsequent discussions, the Applicant has openly acknowledged that the project is inconsistent with Coastal Act ESHA protections but has nevertheless requested the Commission approve the project via conflict resolution, including suggesting that the project's benefits to public access, greenhouse gas emission reductions, transportation, and environmental justice require such approval.[101] The Commission disagrees that the project can be approved in this way, and herein provides a brief overview of the reasons why.

Coastal Act Conflict Resolution Principles

In actions where one Coastal Act provision requires denial but denial would frustrate an affirmative mandate of another Coastal Act provision, the Commission is tasked with resolving such differences "in a manner which on balance is the most protective of significant coastal resources" (often referred to as conflict resolution), as detailed in the Coastal Act as follows:

> ***Section 30007.5.*** *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.*
>
> ***Section 30200(b).*** *Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict*

[101] In making these types of arguments, the Applicant has also has opined that the project should be understood similar to State Parks' Fort Ord Dunes State Park Campground project, whereby the Commission approved, via conflict resolution, a campground and access improvement project in the dunes in FODSP near the project site. To be clear, that project and the reasons for its approval are not the same as this bus road. The campground project is a bona fide public access project to create lower-cost overnight access and new public beach trails in an area that did not have either. That was the inherent conflict: that denial of it for ESHA reasons wouldn't provide for any public access at this State Park, which was envisioned and planned for such access uses as part of its overall master plan when the property was transferred from the Army to State Parks. This project, as described herein and previously, is not a public access project and has public access impacts that raise similar approvability problems as its ESHA impacts. The Commission is not swayed that the two projects are analytically equal.

and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

To be clear, however, the fact that a proposal is consistent with one Chapter 3 policy and inconsistent with another policy does not necessarily result in such a conflict. In fact, virtually every proposal will be consistent with some Chapter 3 policy, and almost no project would violate every such provision. Put another way, a proposal does not present a conflict between two statutory directives simply because it violates some policies and not others.

In order to invoke conflict resolution, the Commission must find that, although approval of a proposal would be inconsistent with a Chapter 3 policy, denial of such proposal based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal resource effects at all because it will simply maintain the status quo. However, in some cases such denial can result in coastal resource effects that are inconsistent with a Chapter 3 policy. This is because some Chapter 3 policies, rather than prohibiting a certain type of development, affirmatively mandate the protection and enhancement of coastal resources.[102] If there is ongoing degradation of one of these resources, and a proposal would cause the cessation of that degradation, then denial would result in coastal resource effects (in the form of the continuation of the degradation) inconsistent with the applicable policy. Thus, the only way that a true conflict can exist is if: (1) the proposal will stop some ongoing coastal resource degradation, and (2) there is a Chapter 3 provision requiring that the resource being degraded is protected and/or enhanced. Only then is the denial option rendered problematic because of its failure to fulfill the Commission's protective mandate, and only then can the Commission invoke the Coastal Act's conflict resolution provisions.

With respect to the second of those two requirements, though, there are relatively few Chapter 3 provisions that include such an affirmative mandate to enhance a coastal resource. Moreover, because the Commission's role is generally a reactive one, responding to proposed development rather than affirmatively seeking out ways to protect resources, even provisions that are phrased as affirmative mandates to protect resources more often function as prohibitions.[103] Denial of a project cannot result in a

[102] See, for example, Sections 30210 ("maximum access…and recreational opportunities shall be provided"), 30220 ("Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses"), 30230 ("Marine resources shall be maintained [and] enhanced"), and 30253 (Development shall "Minimize risks to life and property in areas of high geologic, flood, and fire hazard" and "(a)ssure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site").

[103] For example, Section 30240's requirement that environmentally sensitive habitat areas "shall be protected against any significant disruption of habitat values" generally functions as a prohibition against allowing such disruptive development, and its statement that "only uses dependent on those resources shall be allowed within those areas" is a prohibition against allowing non-resource-dependent uses within these areas. Similarly, Section 30251's requirement to protect "scenic and visual qualities of coastal areas" generally functions as a prohibition against allowing development that would degrade those qualities. Section 30253 begins by stating that new development shall minimize risks to life and property in certain areas, but that usually requires the Commission to condition projects to ensure that they are not

coastal resource effect that is inconsistent with a prohibition on a certain type of development. As a result, there are relatively few Coastal Act policies that can serve as a basis for a conflict.

Similarly, denial of a proposal is not inconsistent with Chapter 3 and thus does not present a conflict simply because the proposal would be less inconsistent with a Chapter 3 policy than some alternative project would be, even if approval of the proposal would be the only way in which the Commission could prevent the more inconsistent alternative from occurring. For denial of a proposal to be inconsistent with a Chapter 3 policy, the proposal must produce tangible, necessary, enhancements in resource values over existing conditions, not over the conditions that would be created by a hypothetical alternative. In addition, the proposal must be fully consistent with the Chapter 3 policy requiring resource enhancement, not simply less inconsistent with that than the hypothetical alternative proposal would be. If the Commission were to interpret the conflict resolution provisions otherwise, then any proposal, no matter how inconsistent with Chapter 3, that offered even the smallest, incremental improvement over a hypothetical alternative proposal would necessarily result in a conflict that would justify a balancing approach. The Commission concludes that the Coastal Act's conflict resolution provisions were not intended to apply based on an analysis of different potential levels of compliance with individual provisions or to balance a proposal against a hypothetical alternative.

In addition, if a proposal is inconsistent with at least one Chapter 3 policy, and the essence of that proposal does not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the proposal's proponent cannot "create a conflict" by adding on an essentially independent component that does remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, such proponents could regularly "create conflicts" and then demand balancing of harms and benefits simply by offering unrelated "carrots" in association with otherwise unapprovable proposals. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and manipulatable process. The balancing provisions were not designed as an invitation to enter into a bartering game in which proponents offer amenities in exchange for approval of their proposals.

Finally, a project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the proposal without violating any Chapter 3 policies. Thus, an alternatives analysis is a condition precedent to invocation of conflict resolution. If there are alternatives available that are consistent with all the relevant Chapter 3 policies, then the proposal does not create a true conflict among Chapter 3 policies.

In sum, in order to invoke conflict resolution, the Commission must conclude all of the following with respect to the proposal before it: (1) approval of the proposal would be

unsafe. Even Section 30220, an affirmative mandate, can be seen more as a prohibition against allowing non-water-oriented recreational uses (or water-oriented recreational uses that could be provided at inland water areas) in coastal areas suited for such activities.

inconsistent with at least one of the policies listed in Chapter 3; (2) denial of the proposal would result in coastal resource effects that are inconsistent with at least one other Chapter 3 provision by allowing continuing degradation of a resource the Commission is charged with protecting and/or enhancing; (3) the proposal results in tangible, necessary resource enhancement over the current state, rather than an improvement over some hypothetical alternative proposal; (4) the proposal is fully consistent with the resource enhancement mandate that requires the sort of benefits that the proposal provides; (5) the benefits of the proposal are a function of the very essence of the proposal, rather than an ancillary component appended to the proposal's description in order to "create a conflict"; (6) the benefits of the project are not independently required by some other body of law; and (7) there are no feasible alternatives that would achieve the objectives of the proposal without violating any Chapter 3 provisions.[104]

Denial Does Not Present a Coastal Act Conflict

The project does not qualify for conflict resolution because it fails to meet these seven criteria. Conflict resolution is, at its core, a remedy that enables the Commission to navigate the highly complex and substantive resource management issues that can arise from the Commission's broad mandate to protect and enhance coastal resources and the broad definition of what constitutes a coastal resource. While coastal resource management challenges are often high stakes and complex, the Commission can navigate most (primarily through conditioning a project) to achieve full Coastal Act consistency, although achieving such an outcome is sometimes at odds with the project an applicant proposes and desires. In this case, denial of the project is fully consistent with the Coastal Act and does not present a conflict.

First, the project as proposed fails to present a true conflict between Coastal Act Chapter 3 policies. While the project is not without some benefits, particularly in terms of improving transit for EJ communities and the general public, the extent of some of these benefits, including with respect to an increase in ridership and decrease in travel time (along with VMT and GHG reductions) appears relatively small (see prior findings). The project also comes with significant adverse impacts to current public recreational access that make the project overall inconsistent with the public recreational access provisions

[104] As an example, the Commission applied conflict resolution to a 1999 proposal involving the placement of fill in a farmed wetland area in order to construct a barn atop the fill and to install water pollution control facilities on a dairy farm in Humboldt County (CDP 1-98-103, O'Neil). In that case, one of the main objectives of the project was to create a more protective refuge for cows during the rainy season. However, another primary objective was to improve water quality by enabling the better management of cow waste. In short, the use of the site was degrading water quality, and the barn enabled consolidation and containment of manure, thus providing the first of the four necessary components of an effective waste management system. Although the project was inconsistent with Section 30233, which limits allowable fill of wetlands to seven enumerated purposes, the project also enabled the cessation of ongoing resource degradation. The project was fully consistent with Section 30231's mandate to maintain coastal water quality and offered to tangibly enhance water quality over existing conditions, not just some hypothetical alternative. Thus, denial would have resulted in impacts that would have been inconsistent with Section 30231's mandate for improved water quality. Moreover, it was the very essence of the project, not an ancillary amenity offered as a trade-off, that was both inconsistent with certain Chapter 3 provisions and yet also provided benefits. Finally, there were no alternatives identified that were both feasible and less environmentally damaging.

of the Coastal Act. Furthermore, as discussed in the Public Access and Recreation section, the project's primary purpose is not to improve public coastal access; rather, it is to improve transit for a ridership that is predominantly commuters – even if these commuters come from EJ communities. Conflict resolution does not allow for approval of projects where a project is not fully consistent with the Chapter 3 policies that point towards approval and where the benefits of such an approval would be marginal and unrelated to the primary purpose of the project (see steps 3, 4, and 6).

In short, and for these reasons alone, the proposed project does not qualify for conflict resolution. As such, the Commission is not required to go to the next step of evaluating alternatives to the proposed project in order to further conclude on this point. Put another way, the Commission is not tasked with identifying an alternative for this proposed project, because there is no conflict that requires that an alternative be explored nor identified. That said, and even if the proposed project met the tests above, which it does not, it fails to qualify for conflict resolution because it appears that alternatives exist that would reduce or entirely eliminate the project's impacts to coastal resources, including ESHA and public recreational access. At a high level, the project seeks to improve the function of MST Line 20 between Marina and Sand City. More specifically, the Applicant hopes to decrease transit time and transit time variability for Line 20 (particularly during rush hour) and increase the community's access to bus services by adding a new bus stop. Multiple options exist for the Applicant that appear could achieve these goals without the significant coastal resource harm associated with the proposed project, and that could warrant further investigation; these are discussed below.[105] Again, such further review is not required for the Commission to dismiss the application of conflict resolution in this case, rather it is provided in the spirit of trying to help this Applicant find an appropriate resolution to the transit issues that it sees in Monterey County, and to be a partner in that effort.

[105] Again, the Commission notes that the Applicant prepared an initial study/mitigated negative declaration under CEQA, and it did not prepare an EIR (based on state legislation that by then exempted the project from CEQA). Such EIR would have been required to evaluate the proposed project and alternatives to it, including in relation to the various mitigations that would be associated with each alternative, and would have been an opportunity to have a coequal evaluation of alternatives across the full set of constraints and mitigation requirements, including related to dune ESHA mitigation for alternatives that led to a loss of dune ESHA. So, unfortunately, this application does not have the benefit of that type of thorough EIR alternatives analysis. As a result, Commission staff asked a number of questions about potential alternatives to the proposed project, and the Applicant submitted a variety of analyses of individual alternatives, each to a different level of detail (where most were actually quite sparse, and less than a page), and not the type of coequal evaluation across the same impact and constraint categories of the range of alternatives suggested. The Applicant concluded that the only feasible project in their estimation is the proposed project. While not acknowledged by the Applicant, a feasibility issue in this particular case is that the project funding, estimated by the Applicant at some $78 million, is only for their proposed project, and the Applicant observes that such project funding cannot be applied to a different alternative project, and would be asked to be refunded by grantors in some cases if the proposed project were to not move forward. Put another way, the Applicant states that none of the other alternatives are feasible (primarily financially) because the Applicant claims they don't have funding to pursue any of them at current time. While this is a fairly damning indictment of the way in which transportation project funding tends to work in the coastal zone, where funding is allocated before projects are vetted for CDPs, it also means that the Applicant may need to come up with other funding sources to pursue other alternatives more fully.

Alternatives

Use of Highway 1 lane during commute hours

Highway 1 is a two-lane highway (one lane in each direction) throughout most of Monterey County, with some sections near more heavily populated areas being four lanes (two lanes in each direction). The stretch of Highway 1 between Marina and Sand City is an exception; the approximately 4.3-mile segment of highway that the proposed bus road seeks to bypass is the only segment of Highway 1 in Monterey County that is six lanes, three lanes in each direction. In other words, traffic approaching this 4.3 mile segment from either direction is two lanes, and then there is a third lane just within the 4.3 miles between Marina and Sand City. This additional lane in each direction presents an opportunity to explore whether the Applicant could use that third lane as a dedicated bus lane or a dedicated bus/carpool lane during commute hours to achieve the types of transit objectives associated with the project, and return the lane to regular use outside of peak demand hours. Such a commute lane would allow buses to bypass traffic during peak congestion, and, in its most modest form would appear to only require modified highway striping and new signage to achieve, and all without the loss of dune ESHA associated with the proposed project. This type of temporary bus lane is an emerging practice in more congested urban regions throughout California (more on this below).

The Applicant only provided the Commission minimal analysis of this alternative, and dismissed it as infeasible because of Applicant concerns that it may increase congestion, is not currently supported by Caltrans, would require the construction of new flyovers, and in order to provide service to the 5th Street station would require new on-ramps and exit-ramps at both ends of the highway. However, not only is the analysis fairly conclusory, but it mistakenly assumes that for a project alternative to be considered feasible, the project outcome must be functionally essentially a replica of the Applicant's proposed project. For example, while the construction of new flyovers and ramps may (or may not) help make such a highway lane project more functionally similar to the proposed bus road, such infrastructure improvements are unnecessary to achieve broader project objectives while reducing the environmental impacts (which here are quite significant). In fact, buses could use existing ramps and then, once on the highway, use the dedicated lane to bypass traffic. This would mean the 5th Street station could not be added to Line 20; however, it could be added to Line 18, which runs on surface streets just inland of the highway. Alternatively, Line 18 could continue to use the existing stop at the VA Monterey Outpatient Facility that is a closer walk to the beach than the proposed 5th Street station. In fact, improvements to Line 18 combined with commute time use by Line 20 of the third Highway 1 lane would be expected to improve the speed and reliability of both lines, thereby improving the ridership experience for a larger ridership base, and improving bus service more broadly. In addition, by removing the 5th Street station stop, Line 20 would then reduce transit time between Marina and Sand City even more than the proposed project, and would not increase transit time compared to current off-peak conditions.

While it is true that use of an existing highway lane for transit only during commute times may increase highway congestion during those hours, it is also possible that it would reduce bottlenecks that form on each end when the lanes drop from six to four. And no matter what, if some modicum of congestion increased for this 4.3 miles during

these times, then this may be a worthwhile tradeoff and incentive to get people out of single occupancy vehicles and into bus ridership and other alternative modes of transportation. Or put another way, in place of adding highway lanes, albeit in this case for buses to use, our existing transportation infrastructure can be repurposed to prioritize the type of transportation that meets broader goals, including with respect to VMT and GHG reductions. As noted more subsequently, it may also serve to help change the paradigm of adding 'new' and 'more' to our transportation infrastructure and instead retrofit what is existing into something better and more efficient.

In any event, although there has not been the type of analysis necessary to ascertain more detailed impacts and benefits, the use of a highway lane during commute hours for HOVs and buses, or just buses, is worth considering. The area in question is within the only stretch of the highway in this area that happens to have a third lane, and that extends for the exact length that the proposed bus road in ESHA would extend. Repurposing this third lane would avoid significant dune EHSA and other coastal resource problems and appears to be an alternative worthy additional consideration (and that, as explained below, suggest denials per CEQA and the Coastal Act as it is not the least environmentally damaging alternative). And in recent Commission staff conversations with Caltrans staff about these types of project alternatives for transit, and although Caltrans staff noted that congestion could be an issue with any of them, Caltrans staff also indicated that they are open to a partnership that could explore potential use of portions of Highway 1 if the bus road project were not to be pursued.

Further, there is precedent for this type of use of a third lane as a commuter lane on Highway 1, where the San Francisco Municipal Transportation Agency is currently partnered with Caltrans for a pilot project that has converted one lane of a three lane (in each direction) portion of Highway 1 (where it is Park Presidio Boulevard between Golden Gate Park and the Presidio) in each direction to a bus and carpool lane in the City of San Francisco.[106] In the San Francisco case, there is no transition between two lane and three lane sections of the road, as is the case in this proposed project area, rather that segment of Highway 1 is all three lane, and the commuter lane project removed one of those lanes for about 1.5 miles. In other words, it seems likely that the San Francisco project poses a greater risk to disrupting traffic flow and leading to congestion than might be the case here, and it was a longer-duration lane conversion (from 5am to 8pm Monday-Friday), and not just use of the lane for HOV and buses during commute hours, which would also be expected to do the same thing. This pilot program covers the only other location in central or northern California where Highway 1 is six lanes.[107] Information gleaned from this pilot project could be helpful to understand its appropriateness in the Monterey Peninsula.

[106] See San Francisco Municipal Transportation Agency (SFMTA) staff reports for the SFMTA April 20, 2021 (agenda item 14) and 9/6/2022 (agenda item 12) Board of Directors meetings.

[107] The pilot program does not cover the entirety of the six-lane portion of the highway through San Francisco, just the Park Presidio Boulevard portion. The entirety of the six-lane portion of the highway begins in Daly City, continues through San Francisco, and merges with Highway 101 to cross the Golden Gate Bridge; Highway 1 splits from Highway 101 as a two lane road in the Tamalpais-Homestead Valley in unincorporated Marin County.

And while the funding structure of a commuter/bus lane project alternative would be different than that of the proposed bus road, the fact that a partnership with Caltrans would be required to construct a project alternative is not a viable reason to dismiss that alternative. In sum, the use of a Highway 1 lane during commute hours as described represents what appears to be a potentially feasible (and more affordable) alternative to the proposed project that would avoid substantial ESHA and other coastal resource impacts. It also probably represents a more significant step towards reducing California's dependency on single occupancy vehicles than does the proposed project.

Inland alignment and improvements

The inland alignment and improvements alternative involves the use of existing surface streets, the addition of bus lanes to some surface streets, and if possible, new segments of dedicated bus road on the inland side of Highway 1, which is outside the coastal zone. This alternative would allow buses to bypass Highway 1 and would allow for a connection to a new 5th Street station if desired, as well as connection to significant existing development (e.g., the VA Hospital, California State University Monterey Bay, etc.) and housing currently under construction. The Applicant's alternatives analysis found that there is inadequate space to construct a bus road on the inland side of Highway 1, so the bus would end up using surface streets, which would be both duplicative of Lines 17 and 18, and slower than existing Line 20 service. However, some amount of dedicated bus road may be possible, and there is room along many surface streets for the addition of a bus lane and/or conversion of an existing surface street lane to bus-only. This alternative would avoid ESHA entirely, would use existing developed/paved areas, and other improvements to existing infrastructure could also be made, such as traffic light prioritization, to allow buses to travel faster. While the Commission acknowledges that this is a different project than that which is proposed, it would address overall goals of improving north-south transit connectivity and could be paired with increased bus service on Line 20 that work in tandem with each other. And principles of true bus rapid transit, with dedicated lanes, signal priority, level boarding stations, and all within walking distance of the area's urban core, could significantly address local and regional transportation needs. Again, this alternative is potentially feasible as well, and warrants additional consideration.

Bus on highway shoulder

The bus on shoulder alternative involves use of the Highway 1 shoulder in the same 4.3 mile stretch of highway for bus use. This is the alternative explored the most thoroughly by the Applicant, including in its exploratory report from 2018.[108] The Applicant asserts that there is inadequate space on the highway shoulder and that widened shoulders and relocated bridge supports would be required, that this alternative would in fact lead to greater ESHA impacts than the proposed project due to the need for increased grading, and emphasizes the general concerns that California Highway Patrol (CHP) has expressed regarding the safety of bus on shoulder operations. However, there appear to be options that would address these constraints.

[108] See "Final Project Report | Monterey Bay Area Feasibility Study of Bus on Shoulder Operations on State Route 1 and the Monterey Branch Line", prepared by CDM Smith and dated June 26, 2018.

First, it is uncertain that the Applicant would need to relocate any bridge supports for this alternative; there are 15 feet or more beyond the existing outer paved edge of the shoulder, and as discussed below, potential room in the highway median. That said, it is true that the slopes leading up to some supports may need to be steepened or, more likely, require new retaining walls, and it appears possible that the 5th Street highway overcrossing would need to be widened. Even if bridge support relocation was necessary, that does not mean that the Applicant should not further explore this alternative. When compared to the infrastructure changes associated with the proposed project, these types of changes actually appear relatively small, especially when considered in light of the significant dune ESHA and other coastal resource impacts associated with the proposed project.

As for the idea that a bus on shoulder alternative would have even greater impacts to dune ESHA than the proposed project, such a conclusion appears misplaced and miscalculated. The Applicant has not provided the Commission any significant information on how this conclusion was drawn, including on what assumptions it was based, but it appears very unlikely such a conclusion, regarding ESHA impacts, is accurate given that the current proposal is to build a new bus road entirely within dune ESHA, and the problem articulated by the Applicant is that the existing shoulders would need to be widened. The reality is that the existing highway shoulders in this area appear to average between 8 and 10 feet in width, and even if the shoulder would need to be extended a few feet,[109] it simply isn't physically possible that this alternative project would exceed – let alone equal – the direct loss of dune ESHA associated with the proposed project. In addition, if the project considered a 100-foot buffer required for dune ESHA, the proposed project has indirect impacts that degrade roughly 78 acres of dune ESHA habitat values. A bus on shoulder operation, even if it were to extend a few feet, would not have any such adjacency impacts in light of the fact that it would not significantly change the effect of Highway 1 operations on adjacent dunes. In addition, this section of Highway 1 actually has shoulders on either side of the three lanes moving in each direction, and they both appear to be 8 to 10 feet in width. Thus, one permutation of this option is simply to shift the travel lanes towards the median to create whatever space is necessary on the opposite shoulder to accommodate bus operations without any need for more pavement (or any other infrastructure changes, like to the 5th Street overpass) at all.

In addition, the Applicant's analysis assumes that bus-on-shoulder operations would necessitate the construction of new on/off ramps and flyovers, which as discussed above, is not necessarily the case, and more rudimentary options that avoid such significant infrastructure could still meet project objectives. With respect to the Applicant's law enforcement and safety observations, bus on shoulder operations are not foreign concepts and could potentially be designed in ways that address CHP safety. While CHP may prefer any alternatives that do not involve Highway 1 shoulders, as that is obviously simpler for CHP to work with, and makes sense coming from that perspective, it is clear that CHP has been able to work with bus on shoulder operations in other locations. In fact, and based on the same exploratory study from 2018, bus on shoulder improvements are currently under construction on Highway 1 in Santa Cruz

[109] According to the Applicant, bus on shoulder operations need at least 12 foot lanes to operate.

County nearby, and the Richmond-San Rafael 580 bridge also provides an example where shoulders have been converted for an extra commute lane during peak commute hours.

Again, as above, an alternative like this would necessary involve working with Caltrans, but recent Commission staff conversations with Caltrans staff about this alternative show that Caltrans is open to a partnership that explores this alternative, and Caltrans and the Commission have a strong relationship that could support exploration of shoulder alternatives.

Bus on highway median

The bus on highway median alternative takes advantage of the fact that there is quite a wide median between northbound and southbound Highway 1 travel lanes in this 4.3 mile stretch, and to put the bus lanes in this median. The Applicant's analysis of this option concluded it was infeasible because it would need to be 34 feet wide (as opposed to the proposed project, which would be 30 feet wide) to accommodate additional guardrails; because the median is only 30 feet wide, a width that includes bridge supports in some locations; that it would require new flyovers at each end of the project and to access the 5th street station; that it would require widening of the 5th street overpass; and that it is not supported by Caltrans.

While this alternative may face some additional complexities as opposed to the alternatives already discussed above, it still appears to be a feasible and viable alternative worth more consideration. While it is true that the unpaved median is as narrow as 30 feet in some places, including locations with existing bridge supports, this does not account for the existing paved median shoulders, which as described above are themselves 8 to 10 foot wide, leaving an additional 15 feet or so to work with. And the total median width does not fall below approximately 44 feet, which is more than enough room to accommodate a 34-foot-wide bus road that avoids the bridge supports. In addition, if each bus lane in each direction were separated, it is not clear why they would need to be wider than 12 to 15 feet or so, which would appear to be readily able to be accommodated. And similar to the above discussions, new ramps and flyovers are not necessarily a prerequisite for a project like this, and buses could enter the highway with normal traffic and merge left onto the bus road in the median. That said, the 5th Street overpass may need to be widened, which would add to construction costs, and the 5th Street station would likely have to be omitted from Line 20. Again, as above, the idea that these kind of potentially needed infrastructure improvements should eliminate further consideration of an option like this is a false premise, especially when the vastly more significant infrastructure improvements that accrue to the proposed bus road in ESHA were not eliminated for similar reasons.

In addition, one permutation of this alternative is to make use of the fact that this section of Highway 1 actually has shoulders on either side of the three lanes moving in each direction, and they both appear to be 8 to 10 feet in width, where an option could be to simply to shift the travel lanes towards the shoulder to create whatever space is necessary on the median to accommodate bus operations without any need for more pavement (or any other infrastructure changes, like to the 5th Street overpass) at all. And the same Caltrans observations as above apply here as well.

Finally, it is possible that a bus on median project would come with its own ESHA impacts; while the Commission has not evaluated the ESHA status of the median area, it does appear from observation to be a dune landform, and it is possible that it constitutes ESHA. In any event, there is a little doubt that the habitat value of the median is likely significantly less than the habitat values that are affected by the proposed project seaward of the highway, and the adjacency impact issues are clearly not the same. Although a concern to be more fully fleshed out in any further evaluation of this option, the Applicant's observations are not enough to suggest that it not be evaluated at all, or that it is somehow infeasible. On the contrary, the whole point of this exercise is to identify some potential alternatives that could be further explored to meet the project objectives in a way that doesn't lead to the significant dune ESHA and other coastal resource impacts that are fundamentally inconsistent with the Coastal Act and the LCP.

Hybrid alternatives

In addition to all of the potential alternatives above that are worthy of further consideration, it is also appropriate to look at using bits and pieces of each of the alternatives to come up with a different sort of alternative. For instance, existing wide shoulders and the existing wide median may provide options for a bus lane without extensive widening or bridge work. In other words, to look at the alternatives and to see which portions of them are not worth pursuing, versus which portions of them are promising and may become elements of a cohesive whole. All of these potential iterations are on the table for further review and analysis.

In summary, multiple project alternatives exist that warrant additional discussion and consideration on how best to improve public transit service in the project area while also either eliminating or significantly reducing the scope of resource impacts associated with the project's Coastal Act and LCP inconsistencies.

Conclusion

The Applicant has pitched the proposed bus road project to Commission staff for over half a decade. And since that time, in countless site visits, meetings, phone calls, emails, and other correspondence, staff have consistently reiterated a common theme: namely that the Coastal Commission fully supports many of the goals and objectives underlying the proposed project, including facilitating less car-centric transportation options, enhancing transit options for lower-income riders, EJ communities, and the general public. However, the Commission simply cannot approve this particular proposal in dune ESHA under the plain terms of the Coastal Act, and the Applicant must pursue alternative projects that avoid dune ESHA. And the Commission notes that Commission staff has consistently provided this information to MST staff for over 5 years, so it should not come as a surprise (see Exhibit 7). Thus, unfortunately, all parties collectively find themselves in a position where a project with laudable objectives is required to be denied due to its prohibited impacts to dune ESHA.

And the project does not propose minor or incidental such impacts, rather the proposed bus road and related development would be located entirely within dune ESHA, where the project would directly lead to the loss of almost 25 acres of these dunes, and where subsequent bus operations would reduce habitat value and function of another over

almost 80 acres of dunes. In other words, the project would lead to over 100 acres of dune impacts, where roughly a quarter of that is dunes that would be lost forever. And this is all within a truly significant coastal dune system, the Monterey dunes complex, that is the second largest extant such system in California,[110] and one that supports a wide variety of State and Federally-listed species as well as a major state park, namely Fort Ord Dunes State Park that lies adjacent to the project area. These dunes are some of the rarest and most ecologically important coastal habitats in California, performing numerous ecological functions, but also performing increasingly important global climate change natural resiliency functions for Highway 1 and inland communities here (including for Marina, Seaside, Sand City, and CSU Monterey Bay). All of these functions would be reduced by the project.

In addition, the project would be located adjacent to significant and highly popular California Coastal Trail (CCT) segments, where in some cases the bus road would cross over these CCT facilities (requiring crosswalks over the new bus road), and in all cases the road would be quite close to them, running about ten feet from the Monterey Peninsula Recreational Trail for most of the alignment, and as close as 5 feet away in one location. The CCT here is a non-vehicular meandering trail that provides for a relatively quiet, and even contemplative, access experience that takes in all of the splendor of the essentially undeveloped dunes and the Monterey Bay lying seaward, and provides a welcome respite from the visual and auditory distractions of the developed areas lying inland. The proposed bus road would change all of that, and would change these important public recreational access facilities for the worse, with buses driving by for up to 16 hours of the day significantly reducing the public access and public view value and utility of the CCT segments, including significantly altering the sense and perception of serenity that make these segments so valuable in the first place. The same would be the case for other users of the immediately adjacent State Park for similar reasons.

Put another way, the proposed bus road is simply located in the wrong place considering the sensitivity of the affected coastal resources, and the Commission cannot find the project consistent with the Coastal Act and the affected LCP for these reasons. On this point, the Commission notes that the Applicant is asking the Commission to approve the project nonetheless via conflict resolution. However, as described just above, the Commission cannot appropriately invoke the conflict resolution under the Coastal Act because denial for ESHA reasons would not lead to the type of conflict with another Chapter 3 policy that affirmatively mandates approval to stop some sort of ongoing or expected resource degradation when denied. As to the Applicant suggestion that the Commission should be balancing dune ESHA protection against public access improvements, not only is that not how the Coastal Act's conflict resolution provision operates, but the Applicant presumes that the project is a positive public access project. As indicated above, it has its own adverse access impacts that itself require mitigation. And even if they were considered otherwise, and used for conflict resolution when not actually appropriate, conflict resolution requires the Commission to resolve true conflicts "in a manner which on balance is the most

[110] Where the largest such system, the Guadalupe-Nipomo Dunes Complex in San Luis Obispo and Santa Barabara Counties, is actually the largest such coastal dune system in the world.

protective of significant coastal resources." The Commission does not find that permitting over 100 acres of dune ESHA impacts, some one-quarter of them permanent dune ESHA loss, would meet that test.

As noted, the preceding analysis is not new, but rather something that has been relayed to the Applicant for some years now. And the Commission believes that there are a handful of promising alternatives that warrant additional consideration (each discussed in more detail above), including using one of the current three highway travel lanes as a transit/carpool lane during peak commute hours,[111] using the highway shoulder for bus-on-shoulder operations[112] or using portions of the median in similar ways, and an inland alignment that uses existing surface streets.[113] While the Applicant has dismissed all of these for a variety of reasons, and has noted that the current project funding can't be applied to such projects and would be lost if forced to pursue them, it is clear to the Commission that all of these options are promising, and that the Applicant should evaluate them further, including as they can all achieve project objectives without the type of coastal resource impacts that require denial of this project.

Thus, the Commission finds itself in the unenviable position of needing to deny a project for which its core principles are ones that are quite laudable. But, nevertheless, those laudable goals cannot overcome the fundamental legal inconsistencies with the Coastal Act that require it to be denied. In doing so, two things are noted. First, while the Commission believes that the Applicant should have opted to not pursue this project as soon as they were informed by Commission staff over 5 years ago that it was unapprovable under the Coastal Act/LCP, the Commission also notes that this is a classic symptom of the way transportation project funding in California often works, where funding tends to be allocated for projects well in advance of serious environmental analysis and entitlement processes, including for CDPs, and the subsequent analysis appears to bolster an already identified outcome. It is quite clear that this is not a good way to provide for large public infrastructure projects in the coastal zone, and something that all parties involved can acknowledge is something that needs to be addressed, including so that public resources are wisely used.[114]

[111] Where Highway 1 in the project area is generally two lanes in both directions, but in the project area is actually three lanes in both directions. It is this third lane, in between the two lane segments on either side that the Commission believes might be able to be put to higher/better use as a bus/carpool lane during the weekday commute.

[112] Such as is currently underway in Santa Cruz County on Highway 1.

[113] For example, with traffic signal priority, dedicated lanes, platform stations, and similar such measures, all adjacent to existing developed areas and amenities such as the VA Hospital, CSU Monterey Bay, and existing and planned residential development areas.

[114] And the Commission notes that it is precisely these sorts of issues that led to the creation of the formal Caltrans-Coastal Commission partnership that is has now been in place for over a decade. A primary objective of that partnership was and is to create paths for early coordination, including to avoid the sort of situation that the Commission finds itself here. And while there can always be one-offs at outliers (and although there was that sort of early coordination between Commission and MST staff in this case), that Caltrans-Coastal Commission partnership has paid significant dividends in terms of avoiding these kinds of conflicts for Caltrans projects.

And second, the Commission believes that it's time to rethink how we collectively accomplish important transportation objectives, where the old paradigm of needing to constantly build 'new and more' to address a particular transportation problem doesn't necessarily hold true in each case. And in fact, oftentimes what's needed isn't anything new, but rather the best course of action is to retrofit what's existing and to make it better, particularly when it comes to VMT and GHG reductions, where it is clear that the proper incentives for transit and muti-modal options need also to be part of such decisions (e.g., here, using the third highway lane for bus/carpool purposes to incentivize those modes of transportation over single-occupancy vehicles). This community, like others, has extensive transportation infrastructure already in place, including a six-lane freeway in this project area and various surface streets that can be repurposed to something better and more efficient. Our collective lens should be looking at how to make what's existing <u>better</u> for the types of transportation we want to incentivize, rather than needing to build something new, particularly when doing so would cause substantial impacts to coastal resources. Through this lens, the Commission remains ready and able to help facilitate project alternatives that improve public transportation options in this area, but must deny the CDP for this purposed project.

G. California Environmental Quality Act (CEQA)

The Applicant, acting as the lead CEQA agency, prepared an initial study/mitigated negative declaration (IS/MND) in June 2021, where that IS/MND concluded that the project, would not have significant adverse environmental effects provided the incorporation of a variety of mitigation measures. The Applicant was subsequently sued by two parties, including one of the current Appellants in this matter (Keep Fort Ord Wild), challenging the conclusions of that IS/MND. However, before that litigation could be completed, state legislation was signed into law that exempted the project from CEQA (SB 922).

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

> ***CEQA Guidelines (14 CCR) Section 15042.*** *Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*
>
> ***Public Resources Code (CEQA) Section 21080(b)(5).*** *Division Application and Nonapplication. …(b) This division does not apply to any of the following activities: …(5) Projects which a public agency rejects or disapproves.*
>
> ***CEQA Guidelines (14 CCR) Section 15270(a).*** *Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096(a) of the CEQA guidelines requires that a specific finding be made in conjunction with CDP applications about the consistency of the application with any

applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to Section 15042 of the CEQA Guidelines "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in this report, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission's denial of the project is justified under CEQA and also represents an action to which CEQA, and all requirements contained therein that might otherwise apply to actions by the Commission, do not apply.

3. APPENDICES

A. Appendix A – Substantive File Documents[115]

- Commission Files for CDP Application 3-23-0288 and CDP Appeal/CDP Application A-3-MRA-24-0026
- *Final Project Report* | *Monterey Bay Area Feasibility Study of Bus on Shoulder Operations on State Route 1 and the Monterey Branch Line*, prepared by CDM Smith (June 26, 2018)

B. Appendix B – Staff Contact with Agencies and Groups

- Monterey-Salinas Transit
- City of Marina
- City of Sand City
- California State Parks
- Caltrans
- California Department of Fish and Wildlife
- California Public Utilities Commission
- Californian Transportation Commission
- California Native Plant Society
- Keep Fort Ord Wild
- The Museum of Handcar Technology

[115] These documents are available for review from the Commission's Central Coast District office.