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COMBINED STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION 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: Roughly 21 acres of undeveloped sand dunes and 2 acres of unused (since the 1970s) railroad tracks located seaward of about 4 miles of Highway 1 in 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 a third of an acre 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 the Monterey Bay Sanctuary Scenic Trail (also known as Beach Range Road).

Staff Recommendation: No Substantial Issue (A-3-MRA-24-0026); Approval with Conditions (3-23-0288)

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 CDP evaluation of the project located in the Commission's CDP jurisdiction. The second action is for an appeal of the City of Marina's CDP approval, where the Commission must determine whether or not such approval raises a substantial issue of LCP conformance for the portion of the project located in the City's jurisdiction.

For the appeal, please note that this is a substantial issue only hearing, and testimony will be taken only on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, 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 will then review that application at a future Commission meeting, 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.

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 is proposed primarily within undeveloped sand dunes seaward of Highway 1 and adjacent to Fort Ord Dunes State Park, mostly adjacent to train tracks (which are also located in the dunes) that have been essentially unused for decades. The Applicant's existing bus 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 12 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 and reliable) transit service for its predominantly lower-income riders who use the bus to get to and from work and school on the Monterey Peninsula from homes in inland areas such as in Salinas, all of which is intended to facilitate increased transit ridership, which in turn is intended to help reduce vehicle miles travelled (VMTs) and greenhouse gas (GHGs) emissions and help to combat global climate change.

The Applicant has discussed this project with 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 a bus road is not approvable in dune ESHA consistent

with the Coastal Act's ESHA provisions, and that alternative projects that avoid dune ESHA should 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 \$92 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 directly runs afoul of the Act's ESHA protection requirements.

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 even the refined project currently proposed would lead to direct impacts to nearly 23 acres of these dunes,² and where subsequent bus operations would be expected to reduce habitat value and function over adjacent dunes that border the project as well. And this is all within a truly significant coastal dune system, the Monterey Bay Dune Complex, that is the second largest extant such coastal dune 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 (FODSP) 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 proposed 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 cross over these CCT facilities and connections between them that are important for beach access, replacing unrestricted access with crosswalks over the new bus road in most such cases, and in all cases the road would be quite close to them, running as close as 10 feet from the Monterey Peninsula Recreational Trail in many places along the alignment, and as close as 25 feet to the Monterey Bay Sanctuary Scenic Trail. And the road and buses driving by for up to 16 hours of the day would reduce CCT public access and public view value and utility for these reasons.

Ultimately, Coastal Act ESHA inconsistencies simply cannot be cured by conditions of approval, because no amount of conditions can make the bus road a resource-

¹ Again, except for a few discrete locations, the proposed 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 dune impacts could cost nearly \$30 million based on recent mitigation cost estimates applicable to the dunes in question (i.e., emanating from the recently approved Cal-Am desalination project).

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

dependent use that does not lead to dune habitat loss and degradation. As a result, staff published a staff recommendation for denial for the August 2024 Commission meeting, the Applicant subsequently exercised their right to postpone that hearing, and since then MST and Commission staffs have met regularly to discuss whether an approval was possible via conflict resolution,⁴ and if so, whether there were available project modifications that could reduce coastal resource inconsistencies. The good news is that Commission and MST staffs, as well as the underlying landowner (the Transportation Agency for Monterey County, or TAMC), have identified a path forward for just such an approval, balancing the mandates to provide and extend transit service, and to require that energy consumption and VMTs (and by extension GHGs) be minimized, against ESHA requirements, where staff's conclusions in this regard were driven by a choice to prioritize a project that broadly increases public transit and reduces VMTs and GHG emissions (and associated climate change driven problems, like sea level rise) against specific dune ESHA impacts here, but only if such dune ESHA impacts were significantly reduced. Where here that can be accomplished through a conditioned CDP approval that relocates the bus road onto the actual railroad tracks (i.e., the "ballast", or fill slope, and track location) in a way that also facilitates potential future rail service opportunities atop the road itself in the future. Put another way, such a project can help promote both rail and bus road development in a consolidated manner mostly atop an already developed/disturbed area as opposed to mostly atop natural dune features. TAMC has agreed to this approach, and the Applicant has indicated that they too are amenable to it.

In doing so, project dune impacts can be reduced because the existing rail track area is already disturbed by the tracks, which reduces the required dune creation mitigation (i.e., the most difficult mitigation requirement to satisfy) by more than half compared to the proposed project, and which allows the bulk of the dune restoration mitigation requirement to be satisfied by the Applicant's proposed partnership with State Parks in FODSP. Staff notes that such reduced dune mitigation package is only made possible by moving the project onto the railroad tracks, and by using the Commission's discretion in terms of application of mitigation ratios and requirements to a unique circumstance such as this. In addition, approval under conflict resolution also requires that other changes be made to reduce other sorts of coastal resource impacts as much as feasible for a project like this, and the project would also be required to be modified in several ways to accomplish this mandate (e.g., adding additional crossing points from inland areas through to the Recreational and Scenic Trails, adding access amenities (e.g., overlook and bench areas), limiting lighting, providing appropriate wayfinding and public access signs, adding a new bus stop to connect with the planned FODSP campground location, ensuring that all development is sited and designed to blend into the natural environment, applying construction BMPs, etc.). Such an outcome also specifically aims to help underserved communities access the coast for recreation, employment, and school opportunities through improved and affordable transportation options, which also

⁴ 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'), which can allow approvals of CDPs under specific circumstances for projects even when they include Coastal Act inconsistencies.

helps to further both Coastal Act and Coastal Commission environmental justice objectives.

Staff thus recommends that the Commission approve a conditioned CDP for the proposed project, and find that the City of Marina's approval of the portion of the project within its jurisdiction does not raise a substantial issue; the motions and resolutions to do so are found on page 7 below.⁵

⁵ 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 on both the CDP and the appeal, requiring two motions and votes.

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Exhibits

- Exhibit 1 – Location Maps
- Exhibit 2 – Site Area Photos
- Exhibit 3 – Proposed Project Plans (representative sheets)
- Exhibit 4 – City of Marina Final Local CDP Action Notice
- Exhibit 5 – Appeals of City of Marina CDP Action
- Exhibit 6 – Coastal Commission Staff Ecologist Memorandum
- Exhibit 7 – Coastal Commission Staff-Applicant Major Communications Timeline
- Exhibit 8 – Bus Road on Railroad Tracks (representative figures)

Correspondence

Ex Parte Communications

1. MOTIONS AND RESOLUTIONS

A. CDP Determination

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **yes** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **approve** Coastal Development Permit Number 3-23-0288 pursuant to the staff recommendation, and I recommend a **yes** vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 3-23-0288 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

B. Substantial Issue Determination

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have instead found a substantial issue and will instead take jurisdiction over the subject CDP application for future hearing and action. The motion passes only by an 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 **yes** vote.*

Resolution to Find No Substantial Issue: *The Commission finds that Appeal Number A-3-MRA-24-0026 does not present 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 Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid, and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO CONSTRUCTION, the Permittee shall submit two full-size sets of Revised Final Plans to the Executive Director for review and written approval. The Revised Final Plans shall: be prepared by a licensed professional or professionals (e.g., surveyors, geotechnical engineers, etc.); be based on current professionally surveyed and certified topographic elevations for the entire site; and include a graphic scale. The plans shall be substantially in conformance with the proposed plans (titled "Monterey-Salinas Transit Surf! Busway and Bus Rapid Transit (BRT) Project Monterey County, California" (see **Exhibit 3** for representative plan sheets; full plan sheets are located in the project file)) except that they shall be modified to meet the following requirements:
 - a. **Bus Road Changes.** The bus road (i.e., comprised of two contiguous 12-foot wide travel lanes with 3-foot wide shoulders on each outside edge, for a total paved width of no more than 30 feet) shall be relocated and constructed in the area currently occupied by the ballast and tracks of the Monterey Branch Rail Line (except for the 5th Street Station spur), where it shall be sited and designed such that (1) the road shall limit non-ballast area coverage; (2) the ballast shall be repurposed as part of the road support/base, and all other ballast, track, and related development shall be removed and disposed of pursuant to all applicable requirements; (3) the road shall be able to accommodate light-rail services in the

future in both directions (i.e., one for each travel lane); all to the maximum extent feasible. Retaining walls and all other above-ground development shall be limited to the maximum extent feasible, and only provided when required to ensure necessary safety and structural integrity for the bus road.

- b. Fencing/Barriers.** New fencing/barriers shall be prohibited, and existing fencing/barriers in the project area shall be removed, unless the Executive Director allows any such fencing/barriers in any particular locations for public safety or habitat protection purposes, where such fencing/barriers are only allowed provided the Executive Director also determines that any such fencing/barriers: (1) are the minimum necessary to provide for such public safety; and (2) are sited and designed in such a way as to seamlessly blend into the natural environment, to avoid public access degradation, and to minimize incursions into public views, all to the maximum extent feasible. All other fencing/barriers not meeting such parameters shall be prohibited.
- c. Lighting.** Lighting of any portion of the project area shall be prohibited, unless the Executive Director allows any such lighting in any particular locations for public safety purposes, where such lighting is only allowed provided the Executive Director also determines that any such lighting: (1) is the minimum necessary to provide for such public safety; (2) is directed downward and away from public and natural areas; (3) is shielded from public and natural area view; (4) is wildlife-friendly, and uses lamps that minimize the blue end of the visible spectrum; (5) limits the amount of light or glare visible from both public viewing and natural areas; (6) uses the lowest luminosity possible; (7) does not include blinking or flashing elements; (8) is automatically turned off when not required to be in use; and (9) is sited and designed in such a way as to seamlessly blend into the natural environment, and to minimize incursions into public views, all to the maximum extent feasible.
- d. Utilities.** All utilities (e.g., electrical conduits) shall be clearly identified (including the manner in which they will connect to offsite distribution networks) and shall be located underground within the bus road footprint, and all existing overhead utilities on the site shall be removed.
- e. Stormwater and Drainage.** All stormwater, drainage, and related water quality infrastructure (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.), shall be clearly identified. Such infrastructure shall provide that all project area stormwater and drainage is filtered and treated to remove expected pollutants prior to discharge and/or direction to offsite areas; shall retain runoff from the project onsite to the maximum extent feasible (e.g., through the use of pervious areas, percolation pits, engineered storm drain systems, etc.); shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event; shall, in extreme storm situations (i.e., greater than the 85th percentile 24-hour runoff event storm) where such runoff cannot be adequately accommodated on-site through the project's stormwater and drainage infrastructure, ensure that any excess runoff is

conveyed off-site in a non-erosive manner; and shall be permanently operated and maintained (where all maintenance parameters for such infrastructure, including based on manufacturers recommendations, shall be provided), where all such operation and maintenance activities shall be documented and shall be provided upon Executive Director request.

- f. **Signs.** All signs and related project components shall be identified (including details showing their location, materials, design, and text), and all such sign development shall be sited and designed: (1) to limit the number and visibility of all signs; (2) to minimize visibility in public views; (3) to seamlessly integrate into the surrounding environment (e.g., using natural materials, earth tone colors and graphics, etc.); (4) to limit lighting as much as possible (and be consistent with the lighting requirements specified above at a minimum); and (5) to be subordinate to the project setting, all to the maximum extent feasible.
- g. **Dune/View Sensitive Design.** All publicly visible development shall be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements) to maximize coastal view protection and minimize visual intrusion, including through use of materials appropriate to the dune context that blend with the natural environment, all to the maximum extent feasible. Hard structural concrete elements, such as retaining walls, shall be faced with a sculpted concrete surface that mimics the natural undulating dune landform in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible. The bus road itself (and other new paved areas) shall be colored to match nearby dune landforms, with any pavement markings both limited to that required for safety purposes, and colored to limit their visibility in public views. All drainage and related elements within shall be camouflaged so as to be hidden or inconspicuous as seen from public viewing areas, including camouflage of any expected drainage staining over time. The color, texture, and undulations of all such surfaces shall be maintained throughout the life of the approved development, and all such surface and related treatments shall make use of paints, stains, sealants, and any other such materials that are appropriate for and safe for use in the dune environment.
- h. **Sand Management Provisions.** All provisions that will be applied to manage sand accumulation on the bus road and Scenic Trail extension (including sand management methods, collection and deposition locations, frequency, and expected volumes of sand) shall be clearly identified. Any sandy materials collected shall be, where feasible, allocated to restoration projects in the area, provided that such material does not contain contamination that poses a threat to human or ecological health.
- i. **Construction Requirements.** All construction plan requirements (see Special Condition 2) shall be identified on the Revised Final Plans.
- j. **Archaeological and/or Tribal Cultural Resource Protection.** All archaeological and/or tribal cultural resource protection requirements (see

Special Condition 8) shall be identified on the Revised Final Plans.

- k. Public Access Areas and Amenities.** All public access areas and amenities as identified in the Public Access Management Plan (see Special Condition 3) shall be identified on the Revised Final Plans.

All requirements above and all requirements of the Executive Director-approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Revised Final Plans.

- 2. Construction Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:
 - a. Construction Areas.** The Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall minimize impacts on public access, including to and along the Monterey Bay Sanctuary Scenic Trail (i.e., Beach Range Road), the Monterey Peninsula Recreational Trail, and other coastal resources including by using inland areas for staging and storing construction equipment and materials, all to the maximum extent feasible. Construction areas shall be sited and designed to minimize impacts to public beach access and public views to the maximum extent feasible.
 - b. Construction Methods.** The Plan shall specify the construction methods to be used, including all methods to be used to keep construction areas separated from public use areas and to ensure uninterrupted public use along the Scenic Trail and the Recreational Trail (including through use of unobtrusive fencing and/or other similar measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction, all to the maximum extent feasible. The Plan shall also limit construction activities to avoid coastal resource impacts, including that lighting of the work area is prohibited unless the Executive Director determines that lighting the work area is required to safely carry out construction and measures are applied to ensure maximum coastal resource protection, all to the maximum extent feasible. The Plan shall also identify methods to temporarily re-open public access during any work stoppages (for phasing purposes or otherwise) to the maximum extent feasible.
 - c. Construction Timing.** The Plan shall include a complete construction schedule, where no work shall occur during weekends and holidays in the peak summer months (i.e., from the Saturday of Memorial Day weekend through Labor Day, inclusive) unless, due to extenuating circumstances, the Executive Director authorizes such work.
 - d. Construction BMPs.** The Plan shall identify the type and location of all construction best management practices that will be implemented during

construction to protect coastal resources, including at a minimum all of the following:

- 1. Runoff Protection.** Silt fences, straw wattles, and equivalent apparatus shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from discharging from the construction area, and/or entering into storm drains or otherwise offsite and/or towards into the adjacent dunes. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment and treatment equipment. Tarps or similar such devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills.
 - 2. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
 - 3. Equipment.** Equipment washing, refueling, and/or servicing shall take place at an appropriate off-site and inland location away from dune habitat on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similarly sited inland location to prevent leaks and spills of hazardous materials at the project site.
 - 4. Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).
 - 5. Rubber-tired Construction Vehicles.** Only rubber-tired construction vehicles are allowed, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction and maximum feasible measures are applied to ensure maximum coastal resource protection.
 - 6. Construction Material Storage.** All construction materials and equipment shall be stored off of dune habitat, except for necessary erosion and sediment controls and/or construction area boundary fencing area allowed where such controls and/or fencing are placed as close to the work area, and are minimized in their extent, both to the maximum extent feasible.
- e. Sand Retention.** Any sandy materials exported during the course of construction shall be, where feasible, allocated to restoration projects in the area, provided that such material does not contain contamination that poses a threat to human or ecological health.

- f. Biological Monitoring.** The Permittee shall enlist one or more qualified biologists, subject to the Executive Director's approval, to monitor construction activities. The biologist(s) shall possess the authority to halt work to prevent any breach in CDP compliance from occurring, or if any unforeseen sensitive habitat issues arise and until they are satisfied that the issue has been resolved; and shall immediately notify the Executive Director if development activities outside the scope of this CDP occur and document any incidents requiring the stoppage of work. The biologist(s) shall also conduct sensitive species pre-construction surveys and shall monitor the project site during all construction activities per the following:
- 1. Pre-Construction Surveys.** PRIOR TO CONSTRUCTION, the biologist(s) shall conduct protocol-level surveys for any sensitive species that have been previously documented within the work area and/or an area measured out one half-mile from it, and that could be reasonably expected to be present on the basis of other known factors (e.g., habitat suitability). Surveys shall be conducted to at least 100 feet beyond the specified work areas. In the event that such surveys identify any sensitive wildlife (within three days or less of intended construction for a specified work area) or plant species (within the preceding bloom season), the Permittee shall delay work, implement any pre-approved mitigation measures, and promptly notify the Executive Director, as well as CDFW and/or USFWS as applicable. Project activities may commence upon written approval from the Executive Director, following any necessary consultation with CDFW and/or USFWS. Protocol-level surveys shall be inclusive of, but not limited to, legless lizards, nesting birds, burrowing owls, American badgers, and Monterey dusky-footed woodrats.
 - 2. Construction Monitoring.** PRIOR TO COMMENCEMENT OF CONSTRUCTION EACH DAY, the biologist(s) shall inspect the active project areas to ensure that the day's activities will not result in impacts to sensitive species, where the results of each daily pre-construction survey shall be documented and made available upon request. Construction activities may not commence until any sensitive wildlife species have left the project area and its vicinity and/or any sensitive plant species have been sufficiently protected or salvaged in accordance with the approved final Habitat Mitigation and Monitoring Plan, pursuant to Special Condition 6. In the event that the biologist(s) determines that any sensitive species exhibit reproductive or nesting behavior, the Permittee shall cease work and promptly notify the Executive Director, as well as CDFW and/or USFWS as applicable, and construction activities may only resume upon written approval from the Executive Director. If impacts or injury occur to sensitive species, the Permittee shall notify the Executive Director, as well as CDFW and/or USFWS as applicable, and will be advised of the appropriate action or mitigation to be taken.
- g. Restoration.** All construction debris shall be removed, and all dune area and public recreational access and use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or

better within three days of completion of construction (unless addressed differently in the Habitat Monitoring and Mitigation Plan (Special Condition 6)). Any native materials impacted shall be appropriately filtered as necessary to remove all construction debris.

- h. Construction Site Documents.** The Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- i. Construction Coordinator.** The Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number (with message capabilities) and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis during construction.
- j. Construction Specifications.** All construction specifications and materials, including construction contracts, shall include appropriate penalty provisions that require appropriate and commensurate remediation for any work done inconsistent with the terms and conditions of this CDP.
- k. Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the Executive Director-approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake construction in conformance with this condition and the approved Final Construction Plan.

- 3. Public Access Management Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two full-size sets of a Public Access Management Plan to the Executive Director for review and written approval. The Plan shall clearly describe the manner

in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public use of all public access areas associated with the proposed development (including the connecting vertical accessways, Fifth Street Station trail connections, Monterey Bay Sanctuary Scenic Trail, Monterey Peninsula Recreational Trail,⁶ wayfinding and public access signs, etc.), and improvements/amenities associated with the approved project (i.e., parking areas, restrooms, pathways, overlooks, benches, picnic tables, bicycle racks and lockers, interpretive signage, waste and recycling receptacles, doggie mitt stations, etc.) as described in this special condition and Special Condition 1. All public access improvements/amenities shall be sited and designed to seamlessly integrate into the natural dune setting and to maximize public view protection, including through use of siting/design approaches and materials that are appropriate to the dune context, and including to ensure that the approved development effectively blends into and enhances the natural environment, all to the maximum extent feasible. All public access improvements/amenities are required to be maintained and managed by the Permittee pursuant to the Plan over time. The objective and goal is to also work in conjunction with California State Parks to optimize seamless connections between inland areas and Fort Ord Dunes State Park and Marina State Beach, including facilitating public access along the Scenic and Recreational Trails. The Plan shall at a minimum include and provide for the preceding and the following:

- a. Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above and below, shall be clearly identified as such on the Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use). The public access areas shall, at a minimum, and in addition to the Scenic Trail/Beach Range Road extension, include connections from inland locations to the Recreational and Scenic Trails at least at: (1) the upcoast end of the project nearest Marina; (2) the 5th Street Station; (3) the southern end of the Scenic Trail/Beach Range Road extension; and (4) the Recreational Trail along the southbound Highway 1 onramp at California Avenue, where all such connections shall ensure safe and convenient public access from east to west. In the event that any future improvements to Imjin Parkway include enhanced bicycle and pedestrian infrastructure, another connection shall be added to connect such infrastructure to the Recreational and Scenic Trails, including if such a connection requires new bike lanes and/or sidewalks over the Imjin Parkway bridge over Highway 1. The public access amenities shall, at a minimum, include (1) an additional bus stop seaward of Highway 1 sited to provide convenient pedestrian/bicycle access to the future Fort Ord Dunes State Park Campground, along with any additional trails necessary to connect the new stop to the campground trail system; (2) public access amenities deemed appropriate by the Executive Director, such as overlook areas, benches, picnic tables, bicycle racks/lockers, interpretive signage, waste and recycling receptacles, doggie mitt stations, low profile fencing in appropriate locations on the Recreational and Scenic Trails, and/or related public amenities near connection points, all

⁶ Unless the Recreational Trail is restored to dune habitat, as is allowed under this approval.

commensurate with expected public use; and (3) signage (see below). All public access amenities on State Park property or connecting to State Park property shall be sited and designed in collaboration with State Parks, and shall reflect State Parks approval of them.

- b. Public Access Signs/Materials.** The Plan shall identify all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access associated with the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). All materials shall include English and non-English languages (including but not limited to Spanish), tailored to be culturally relevant, and written in plain language to prevent educational and cultural barriers to public access. Sign details showing the location, materials, design, and text of all public access signs (including the public access use hours described in Special Condition 4(d)) shall be provided. At a minimum, public access and wayfinding signs shall be placed at all public access areas and amenities listed above. The signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. Public access interpretive signage (appropriate to Monterey Bay/Fort Ord Dunes issues, information, and/or history) shall be located at appropriate locations, as determined by the Executive Director, along each accessway to the Recreational and Scenic Trails.
- c. No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- d. Public Access Parameters.** The public access areas and amenities shall be open to the general public 24 hours per day and shall be available free of charge.
- e. Public Access Amenities Provided Prior to Use.** All public access components of the approved project shall be constructed and ready for use prior to use of the bus road.
- f. Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained by the Permittee in their approved state in perpetuity. Prior to any modification, movement, or replacement of such access improvements, the Permittee shall obtain CDP authorization for such development, unless the Executive Director determines that such authorization is not legally necessary.

All requirements above and all requirements of the Executive Director-approved Public Access Management Plan shall be enforceable components of this CDP. The Permittee shall undertake public access development and management in conformance with this condition and the approved Public Access Management Plan.

4. Habitat Impact Validation and Compensatory Mitigation. Habitat impacts shall be validated and mitigated as follows:

a. Post-Construction Impact Validation. WITHIN 90 DAYS OF COMPLETION OF CONSTRUCTION, the Permittee shall ensure that initial post-construction surveys are completed. For each habitat, post-construction surveys shall document, at a minimum: the physical extent and acreage of all impacted habitats, and the activities that occurred within the area, including any vegetation clearance, mortality, or other significant reduction in vegetation cover due to project activities (e.g., pruning), or ground disturbance. For impacts anticipated to be potentially characterized as temporary, surveys shall also document, at a minimum: the dates of initial and final project-related disturbance to the habitat; each vegetation community's native species diversity, native species cover, invasive species cover, and the relative cover of dominant native vegetation species; the vegetation community's age classes and/or size structure distributions; and, photos from the designated points used for pre-construction surveys, to support impact evaluations.

1. Final Short-term Temporary Impact Validation. WITHIN TWELVE MONTHS OF INITIATION OF CONSTRUCTION, the Permittee shall conduct a survey that validates areas (physical extents and acreages) initially characterized as short-term temporary impacts by comparison with the baseline condition for each vegetation community, including native species diversity, native species cover, the relative cover of dominant native vegetation species, and the vegetation community's age classes and/or size structure distributions. Invasive species cover shall also be described. The survey shall be detailed in a report, to be submitted by the Permittee within 30 days of final survey completion, for Executive Director review and approval. If the survey demonstrates impacts persist or any revegetation effort has been unsuccessful, in part or in whole, any remaining impacts are, by definition, permanent. Digital copies of the survey data and associated metadata shall be provided with the reports.

2. Final Long-term Temporary Impact Validation and Report. WITHIN TWELVE MONTHS OF THE COMPLETION OF CONSTRUCTION, the Permittee shall conduct a survey that validates areas (physical extents and acreages) initially characterized as long-term temporary impacts using the same comparisons outlined in (1) and shall be detailed in a report, to be submitted by the Permittee within 30 days of final survey completion, for Executive Director review and approval. If the survey demonstrates impacts persist or any revegetation effort has been unsuccessful, in part or in whole, any remaining impacts are, by definition, permanent, and shall be mitigated accordingly. Digital copies of the survey data and associated metadata shall be provided with the reports.

A final report comparing the extent and nature of impacts as estimated by the Permittee in the submitted material with those actually observed following construction shall be submitted for Executive Director review and written

approval. The observed impacts, once approved, shall form the basis of the compensatory habitat mitigation obligation. If the observed impacts are at least 15% greater than what was assessed as part of the approval final plans and the Commission's authorization, a CDP amendment shall be required to address the discrepancy, unless determined unnecessary by the Executive Director. Any such differences between estimated and observed impacts shall require revision or supplement to the Habitat Mitigation and Monitoring Plan pursuant to Special Condition 6.

- b. Temporary Impact Mitigation.** Short-term temporary habitat impacts are those that are fully restored within 12 months of initial construction activity disturbance, and long-term temporary habitat impacts are those that may occur for up to a 24-month period from the initial disturbance but require no more than 12 months following the conclusion of construction activity to fully recover. Any habitat impacts that do not meet these timing parameters; that significantly disturb the ground (e.g., trenching); and/or that fail to recover vegetation communities to equal or better condition in terms of native diversity, native species cover, the relative cover of dominant native vegetation species, and vegetation community age classes and/or size structure distributions, shall be considered permanent habitat impacts and shall require mitigation attributable to such permanent impacts. Any habitat impacts determined to qualify as temporary shall be mitigated for at a minimum ratio of 1:1 (short-term) or 1.5:1 (long-term).
- c. Permanent Impact Mitigation.** All impacts failing to qualify as temporary for any of the above cited reasons shall be recognized as permanent and mitigated for at a minimum ratio of 3:1, where this base ratio assumes compensation as habitat creation or substantial restoration. Alternatively, enhancement or preservation strategies may be proposed at no less than double or triple the base ratio, respectively. Except for the area presently occupied by ballast, no net loss of dune habitat(s) shall be assured by provision of a minimum ratio of 1:1 as habitat creation for the total acreage where permanent development will be located (see Special Condition 5). Any remaining balance following creation may be addressed through the various mitigation strategies, with adjustments to the discounted ratio, as described above (e.g., 2:1 may be satisfied via creation or substantial restoration, or as 4:1 via enhancement, or as 6:1 via preservation).
- d. Mitigation Areas Protection.** WITHIN 90 DAYS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and written approval documentation demonstrating that all habitat mitigation areas intended to compensate for permanent impacts as well as the 0.5:1 fraction for long-term temporary impacts that would not be addressed in place, are covered by deed restrictions, easements (or offers of easements), or equivalent, that require preservation of such habitat areas for habitat purposes only in perpetuity, and that prohibit development (as defined in Coastal Act Section 30106) except for development generally interpreted as compatible with habitat purposes (e.g., restoration activities, nature study, and low impact recreation). Any deed restrictions, easements/offers, and/or other provisions recorded to satisfy this requirement: (1) shall be recorded free of prior liens and

any other encumbrances that the Executive Director determines may affect the interest being conveyed; (2) shall include formal legal descriptions of the entirety of the parcels involved; (3) shall include a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor based on an on-site inspection, drawn to scale and approved by the Executive Director, of the mitigation areas; (4) shall run with the land, binding successors, and assigns of the property owner; (5) shall indicate that the restrictions on the use of the land shall be in effect upon recording and remain as covenants, conditions, and restrictions running with the land in perpetuity; and (6) for easements/offers, shall provide that acceptance is limited to public entities including State Parks or another land management entity, approved by the Executive Director.

- e. **Mitigation Deadlines.** If habitat mitigation has not been implemented pursuant to an approved Habitat Mitigation and Monitoring Plan (see Special Condition 5) within five years of construction commencement, the required mitigation ratios shall be increased by 0.5 acre for each portion of a year beyond five years (e.g., for mitigation starting at 3:1, the obligation becomes 3.5:1 if the 5-year time frame is exceeded, 4:1 after 6 years, etc.). The Executive Director may extend the habitat mitigation deadlines if they determine that the Permittee has been diligently pursuing habitat mitigation requirements, and that the Permittee has demonstrated good cause for any identified delays, or apply a lesser rate of increase if the Permittee can demonstrate diligent pursuit of mitigation implementation but has been delayed by matters outside of Permittee control (e.g., litigation complications, etc.).

5. Habitat Mitigation and Monitoring Plan. PRIOR TO CONSTRUCTION, the Permittee shall submit a Habitat Mitigation and Monitoring Plan (HMMP) to the Executive Director for review and written approval. The Plan shall be prepared by a qualified resource specialist approved by the Executive Director and shall provide for habitat mitigation and monitoring as described herein. All such habitat mitigation shall be located within the Monterey Bay Dunes Complex at locations where such mitigation areas can be protected in perpetuity, unless no feasible option is available and/or areas further away are determined by the Executive Director to provide more significant dune habitat benefits to the region. The restoration plan shall, at a minimum, include the following components:

- a. **Introduction.** Description of the HMMP purpose including an overview of the proposed project associated with the HMMP; a summary of impacts for which the HMMP is intended to mitigate; identification of the general mitigation strategies to be used; the proposed mitigation locations; and the mitigation areas intended to compensate for each affected resource.
- b. **Goals and Objectives.** Statement of mitigation goals, including the desired habitat types, major vegetation components, and sensitive species and wildlife support functions; description of the desired habitat with rationale, to be based on a high-functioning reference site where feasible and alternatively, derived from literature describing either the site's historic conditions or "typical" regional habitat conditions; specific, actionable objectives to support stated goals; and a

detailed timeline laying out all major activities including any outstanding preliminary work such as surveys, site preparation, mitigation implementation including revegetation activities, interim and final monitoring periods, etc.

- c. Compensatory Mitigation Strategies.** Compensatory mitigation requirements shall be satisfied by habitat creation, restoration, enhancement, and/or preservation as described below, and pursuant to the mitigation ratios and protections described in Special Condition 4:
- 1. Habitat Creation.** Habitat creation applies to lands that are developed or subject to identifiable development threats but that could appropriately support self-sustaining dune-associated habitat following habitat restoration activities. Such lands may include singular or multiple sites, and/or sites of variable habitat condition. In all cases, such sites shall be removed from future development threats and functions and values shall be fully restored to qualify as habitat creation.
 - 2. Habitat Restoration.** Habitat restoration applies to lands that presently support degraded dune-associated habitats where any physical, chemical, and biological stressors would be actively addressed in order to return a full suite of self-sustaining ecological functions and values to the area. This may involve intensive techniques such as manipulating landforms to restore natural processes, and/or eradicating large expanses of non-native species followed by revegetation with a robust palette of natives to restore a high-functioning natural condition.
 - 3. Habitat Enhancement.** Habitat enhancement applies to lands that presently support degraded dune-associated habitats where only limited interventions are necessary to reach a high-functioning natural condition that supports self-sustaining ecological functions and values. Such interventions may include weeding of patchy invasive vegetation, limited revegetation efforts, or installation of features to benefit target wildlife.
 - 4. Habitat Preservation.** Habitat preservation applies to lands that do or reasonably could support dune-associated ecological functions and values, and that are placed under some form of permanent protection but their condition is not actively improved.
 - 5. Habitat Land/Landowner Requirements/Limitations.** Land already obligated by other requirements, including but not limited to prior Coastal Commission decisions, legal obligations, and Habitat Conservation Plans, shall not be considered available for compensatory mitigation unless the work would demonstrably exceed those existing requirements as determined by the Executive Director, in which case only that exceedance shall so qualify. Applicable landowners shall be included in all discussions concerning potential mitigation (including related to site restoration priorities, goals and objectives, methods, cost, maintenance, etc.), and any agreements between the Permittee and landowners shall be subject to Executive Director review

and written approval to ensure that all terms are consistent with the terms and conditions of this CDP.

- d. Design Plans and Construction Methods.** Specification of final mitigation site design and construction methods consistent with identified goals and objectives, including but not limited to:
 - 1. Mitigation Design.** Detailed plans showing final topography, vegetation, and any other significant features characteristic of the intended habitat; and how these connect to the surrounding environment.
 - 2. Site Preparation.** Methods and plans for salvage of any plant and/or seed material (including collection from impact areas, storage, relocation, and/or reestablishment); salvage of any topsoils to be stock-piled and reused in the mitigation area; any demolition, debris removal, grading, decompaction, soil amendment, or other substrate-affecting activities; erosion control measures; and treatment of invasive species.
 - 3. BMPs.** Detailed list of all BMPs that will be implemented as part of project implementation, including triggers for further or remedial action.
 - 4. Revegetation Plans.** Details on plant palettes; stocks and seed mixes; material sourcing including verification of local and genetically appropriate nature; any proposed irrigation including rationale, method, and schedule; and provisions for removal of any temporary infrastructure following plant establishment.
- e. As-Built Report.** No more than 60 days following completion of mitigation site construction and revegetation activities, an as-built report summarizing mitigation activities to-date, a description of consistency with approved plans, documentation of acreage treated, maps and descriptions any temporary infrastructure installed, photos taken from fixed points, and a description of consistency with all terms and conditions, to be submitted to the Executive Director for review and written approval.
- f. Invasive Species Control.** Provision for continued control of all California Invasive Plant Council-listed species and description of monitoring and control methods. If any herbicide is proposed for potential use, rationale for why it would constitute the least environmentally damaging alternative and detail on the specific products that would be used, including its certification by the California Department of Pesticide Regulation and allowance for the intended application, and detail on how it would be used to minimize adverse effects (e.g., thresholds for and frequencies of treatment).
- g. Local Plant Species.** All revegetation shall include, at a minimum, replanting with locally and genetically appropriate native plant species for the Monterey Bay Dune Complex, where documentation of all plant material sources shall be provided.

h. Monitoring Plan. Detailed plan for quantitatively monitoring the condition and progress of the mitigation site(s) during both the initial mitigation phase as well as over the long-term at reduced frequency and intensity; performance relative to set criteria, as informed by robust sampling and statistics; triggers for adaptive management action; and reporting. Specifically:

- 1. Monitoring Frequency.** During the initial phase of no less than five years or three years following cessation of all remedial measures except weeding, whichever is longer, quantitative monitoring at least once per year during the period of rapid plant growth and flowering, generally in spring or early summer, unless a clear rationale for otherwise is fully presented. Following the determination that final success criteria have been met, long-term monitoring to inform maintenance and adaptive management shall occur at a frequency of no less than five years.
- 2. Success Criteria.** Final success criteria supported by interim criteria, the latter of which are intended to serve as benchmarks and guide adaptive management, whereas the former will enable measure of mitigation success. Criteria shall have a clear empirical basis (i.e. reference sites and/or published technical literature appropriate for the local area) and generally include representativeness of target vegetation communities (e.g., species composition, cover, structure, diversity, and presence of major structure-producing and habitat-defining species); physical parameters such as topography, bare substrate, and hydrology; and target wildlife support functions or usage. Criteria may be fixed values where there is a strong empirical basis, but, where feasible, should be relative to high-functioning reference sites in order to account for environmental variability. Reference sites shall be located within the Monterey Bay Dunes Complex; shall be similar to the mitigation site with regard to soil type, aspect, slope, and other relevant abiotic characteristics; and shall be identified, sampled, and quantitatively described as a component of the monitoring plan. Invasive species ranked by the California Invasive Plant Council as “high” shall not exceed a total of 1% cover, and all ranked invasives shall not exceed a total of 5% cover.
- 3. Performance Assessment.** Methods for judging mitigation success shall include supporting rationale for their selection and be specified in terms of the types of comparison, including whether relative to fixed criteria or reference sites; identification of any reference sites that will be used; tests of similarity; specification of the maximum allowable difference or effect size between the mitigation value and the reference value for each success criterion; and where statistical tests will be employed, statistical power analyses to document that the planned sample sizes will provide adequate power to detect maximum allowable differences (for such a test, alpha must equal beta; these values are typically 0.10 or 0.20, depending on the expected natural variability of the variables of interest).

- 4. Sampling Design.** The field sampling program shall be designed in conjunction with the success criteria and selected methods of assessment. The sampling design and methods shall provide sufficient detail to enable an independent scientist to duplicate them, including a description of the randomized placement of sampling units, sampling unit size, planned number of samples, etc.
- i. Reporting.** All monitoring efforts shall be detailed in annual monitoring reports (for no less than five years, and for at least three years following the conclusion of all remediation and maintenance activities other than weeding, whichever is later) prepared by a qualified restoration specialist and submitted to the Executive Director for review and written approval no later than December 31st of each year. All such reports shall include raw data and associated metadata in digital format, and shall comply with all of the following:
 - 1. Annual Reports.** Beginning the year after the mitigation project has been installed, annual monitoring reports shall be due each year, including photos taken from fixed points; assessment relative to interim success criteria; a work plan for the subsequent year; and specific recommendations to adaptively manage the effort and facilitate mitigation success. Once a monitoring report is approved by the Executive Director, recommendations identified in the report shall become prescriptive unless otherwise advised in writing. Reports shall also summarize results, document any management actions that have been taken on the mitigation site, and any recommendations for management action going forward.
 - 2. Final Annual Report.** A final monitoring report shall be submitted at the conclusion of all mitigation efforts, no sooner than five years following mitigation implementation, which shall summarize all prior reports; provide a detailed timeline of the overall progress and success; and include sufficient detail to evaluate comprehensive mitigation compliance with the specified goals, objectives, and success criteria set forth in the approved HMMP. If the final report indicates that the mitigation effort has been unsuccessful, in part or in whole, based on the approved final success criteria, the Permittee shall submit within 90 days a revised/supplemental HMMP to compensate for those portions of the original program which did not meet the approved success criteria. The revised/supplemental HMMP shall be prepared by a qualified restoration specialist approved by the Executive Director and shall specify measures to remediate those portions of the original approved HMMP that have failed or have not been implemented in conformance with the original approved HMMP. These measures, and any subsequent measures necessary to carry out the approved revised or supplemental HMMP, shall be carried out in coordination with the direction of the Executive Director until the approved revised or supplemental HMMP is established to the Executive Director's satisfaction. If the Executive Director determines that an amendment to the original CDP is necessary to implement the revised/supplemental HMMP, then the Permittee shall submit a complete CDP amendment application immediately to do so.

All requirements above and all requirements of the Executive Director-approved Habitat Mitigation and Monitoring Plan shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Habitat Mitigation and Monitoring Plan.

- 6. Bus Road Use Plan.** PRIOR TO COMMENCEMENT OF BUS TRANSIT OPERATIONS, the Permittee shall submit two copies of a Bus Road Use Plan to the Executive Director for review and written approval. The Plan shall provide that: (a) the bus road shall only be used by the Permittee for bus transit between at most the hours of 6 am and 10 pm on weekdays, and 7:30 am and 8:30 pm on weekends and holidays, and at intervals not to exceed every 15 minutes; (b) all buses used for such bus transit shall be zero emission buses, where documentation shall be provided demonstrating as much (e.g., manufacturer's spec sheets, etc.); and (c) if the bus road ceases to be used in the way authorized by this CDP for a period that exceeds 6 months, then the Permittee shall remove the bus road and all related development and appropriately restore the affected area to natural conditions subject to Executive Director approval of a plan to accomplish same with the least coastal resource impacts. The Bus Road Use Plan shall also specify all measures to maximize the bus's ridership to facilitate transportation and coastal access opportunities, including financial incentives for ridership (e.g., free passes, reduced fares, etc.), culturally-appropriate outreach methods that may include digital, paper, and other media (and translated into non-English languages, particularly Spanish, and written in plain language), identifying the bus's coastal access opportunities including as identified in the Public Access Management Plan, and any other means to facilitate coastal access for underserved/inland populations. The Plan may include partnerships with local organizations that help underserved communities access the coast, and shall be designed in order to facilitate such access. Every 2 years after commencement of bus road operations, the Permittee shall provide a report to the Executive Director documenting bus road usage trends and identify ways to increase ridership and coastal access. All requirements above and all requirements of the Executive Director-approved Bus Road Use Plan shall be enforceable components of this CDP. The Permittee shall undertake bus transit operations in conformance with this condition and the approved Bus Road Use Plan.
- 7. Dune Resiliency Plan.** WITHIN FIVE YEARS OF THE DATE OF THE APPROVAL OF THIS CDP (i.e., no later than September 12, 2029), the Permittee shall submit two copies of a Dune Resiliency Plan (Plan) to the Executive Director for review and approval. The Plan shall establish the framework and parameters for: (1) regularly monitoring dune erosion and other coastal hazards at the site and nearby off-site area and management responses to those hazards and resources both on- and off-site; (2) identifying how those hazards are affecting the operations of the bus road; (3) identifying changes necessary to allow continued appropriate and required functioning of the bus road in light of coastal hazard concerns/requirements; and (4) identifying 'triggers' to establish when actions (such as additional dune restoration and potential bus road relocation, but not including any form of shoreline armoring) need to be pursued. Upon Executive Director approval of the Resiliency Plan, the Permittee shall implement the monitoring and other measures identified in the Plan, and shall submit monitoring reports as established in the Plan at least annually for

Executive Director review and approval, with the first monitoring report due by no later than December 15, 2030. Each such report shall include and describe changes since the prior year's report, as well as cumulatively describing changes over time. Extension to the five year deadline for submittal of the Dune Resiliency Plan may be granted by the Executive Director for good cause.

- 8. Archaeological and/or Tribal Cultural Resource Protection.** The Permittee shall undertake the approved project in compliance with the following measures to protect archaeological and/or tribal cultural resources to the maximum extent feasible:
 - a. Notification.** At least one month prior to commencement of any ground-disturbing construction activities, the Permittee shall: (1) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list; (2) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (3) arrange for any invited Tribal representative that requests to monitor and/or a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources.
 - b. Monitoring.** A qualified, locally experienced archaeologist and a tribal monitor, approved by relevant tribes shall be on site to monitor all activities with the potential to impact archaeological and/or tribal cultural resources, including all ground disturbing activities. The monitors shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended tribal procedures for the inadvertent discovery of tribal cultural and/or archaeological resources and/or human remains.
 - c. Discovery Protocol.** If any tribal cultural deposits are discovered during the course of the project, all construction within 200 feet of such deposits shall cease and shall not re-commence until a qualified cultural resource specialist (which could be a persons identified in subpart (b), above), in consultation with the relevant tribes, analyzes the significance of the find and, if deemed significant, prepares a supplementary archaeological plan for the review and approval of the Executive Director that evaluates and provides suggested measures related to the discovery. The Executive Director shall review the plan and either: (1) approve it and determine that its recommended changes to the project or mitigation measures do not necessitate an amendment to this CDP, or (2) determine that the changes proposed therein necessitate a CDP amendment. The location of any and all identified archaeological and tribal cultural resources shall be kept confidential, and only those with a "need to know" shall be informed of their locations.
 - d. Human Remains.** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or tribal monitor shall notify the Monterey County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. If the County Coroner determines that the human

remains are those of a Native American, the Coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The Permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to discuss and confer with the descendants all reasonable options regarding the descendants' preference for treatment. Within five (5) calendar days of notification to NAHC, the Permittee shall notify the Coastal Commission's Executive Director of the discovery of human remains. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site.

- 9. Future Permitting.** Any and all future proposed development related to this project, this project area, and/or this CDP shall be subject to the Coastal Commission's continuing CDP jurisdiction. This CDP authorizes limited future repair, maintenance, and/or improvement development that is determined by the Executive Director to: 1) fall within the overall scope and intent of this CDP; and 2) not have any significant adverse impacts to coastal resources. Any development that the Executive Director determines does not meet such criteria shall require a separate CDP or a CDP amendment, as directed by the Executive Director.
- 10. Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the affected property, and that the Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist now or in the future.
- 11. Other Agency Approvals.** PRIOR TO CONSTRUCTION, the Permittee shall provide to the Executive Director copies of all other permits, permissions, or other authorizations from the Transportation Agency for Monterey County, California State Parks, California Transportation Commission, California Public Utilities Commission, California Department of Transportation, California Department of Fish and Wildlife, and United States Fish and Wildlife Service, or evidence that no permits, permissions, or other authorizations from these agencies are required. The Permittee shall inform the Executive Director of any changes to the Commission-approved project required by other agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director issues a written determination that no amendment is legally required.
- 12. Minor Changes.** The Permittee shall undertake development in conformance with the terms and conditions of this CDP, including with respect to all Executive Director-approved plans and other materials, which shall also be enforceable components of this CDP. Any proposed project changes, including in terms of changes to identified requirements in each condition, shall either (a) require a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director

determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

13. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (a) that the project area may be subject to coastal hazard risks at some point during the permitted development's lifetime, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tidal scour, storms, tsunamis, coastal flooding, sea level rise, landslides, earth movement, geologic instability, and the interaction of same, many of which will worsen with future sea level rise; (b) to assume all risks, including coastal hazard risks, to the Permittee and the property that is the subject of this CDP of injury and damage from such risks in connection with the permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such risks; (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of this project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims due to hazard or other risks), expenses, and amounts paid in settlement arising from any injury or damage; (e) that any adverse effects to properties caused by the permitted development shall be fully the responsibility of the Permittee; (f) to prohibit shoreline armoring (including but not limited to seawalls, revetments, retaining walls, gabion baskets, tie backs, piers, groins, caissons/grade beam systems, etc.) to protect any portion of the permitted development; (g) to waive any rights to construct shoreline armoring that may exist under Coastal Act Section 30235 and/or certified LCPs for the City of Marina, the City of Sand City, and Monterey County, or any other applicable laws; and (h) that no portion of the permitted development qualifies as an "existing structure" for purposes of Section 30235 and the above-listed LCPs.

14. Liability for Costs and Attorneys' Fees. The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

4. 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 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 in a stretch of sand dunes running parallel to the Highway 1 right-of-way,⁷ mostly adjacent to derelict railroad tracks that have not been used for passenger rail purposes for over half a century (since 1971),^{8,9} on property currently owned by the Transportation Agency for Monterey County (TAMC).¹⁰ 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, or about 0.1 miles) (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 4.2 miles) (the subject of CDP Application Number 3-23-0288).

The proposed project is located between the Monterey Peninsula Recreational Trail (Recreational Trail) and the Monterey Bay Sanctuary Scenic Trail (Scenic Trail),¹¹ the primary California Coastal Trail (CCT) segments in this area. Both trails parallel the highway, with the Recreational Trail located relatively close to Highway 1 within the Caltrans right of way, and the Scenic Trail located farther seaward within FODSP. The Scenic Trail 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. The Scenic Trail is currently used almost exclusively by pedestrians and bicyclists,¹² including via two connections at surface level between it and the Recreational Trail (one at each end of the Scenic Trail) and two direct connections to inland Marina and Seaside at roughly its middle. The first of these direct connections is at the Marina-Seaside border along Divarty Street via an undercrossing

⁷ 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.

⁸ 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.

⁹ Some freight continued to be delivered to the former Fort Ord Army base via the railroad track until the early 1990s.

¹⁰ Also known as the Monterey Branch Line rail corridor, and previously owned by the Southern Pacific Railroad. 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 Also known as Beach Range Road, the Scenic Trail is located between 30 feet and a quarter-mile seaward from the proposed project corridor.

¹² Although the Scenic Trail 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.

beneath Highway 1, the Recreational Trail, and the Rail corridor, which provides a key accessway from California State University Monterey Bay (CSUMB). The second direct connection is via the 8th Street Bridge, which crosses over the highway from inland Marina. The 8th street Bridge is the only connection to the Scenic Trail open to cars (although cars are not allowed on the trail itself), as 8th Street is used to access the FODSP parking lot. Public access to the beaches in this area is provided via both formal and informal trails through FODSP from the parking lot and the Scenic Trail.

The Scenic Trail is the most significant public coastal access feature in the project area; it is wider, in better condition, and farther from the highway than the Recreational Trail. It also has more inland connections than the Recreational Trail, although the two most important connections (the ones located on each end) currently rely on the portion of the Recreation Trail in Marina and Sand City. Because the two trails parallel each other, the Recreational Trail is somewhat redundant and is less used by the general public than is the Scenic Trail. While surprising to some because of its location near to Highway 1, the Scenic Trail actually provides a relatively quiet access experience through the sand dunes, and is quite heavily used by pedestrians, recreational and commuter bicyclists, and others (e.g., wheelchair users, families with strollers, etc.). The proposed project would be located between the Recreational Trail and the Scenic Trail, which provides important locational context for evaluating the Applicant's proposed project.

The proposed project site is also located within the Monterey Bay 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). 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, the railroad tracks, 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 the undeveloped areas west of Highway 1, represents a largely continuous stretch of rare coastal dune habitat. In this case, the majority of the proposed project is located in the dune next to the development footprint of the railroad tracks and their supporting 'ballast',¹³ with some short sections replacing the tracks and ballast.

In short, the proposed project is primarily located within undeveloped sand dune, where a smaller portion of its footprint would replace the derelict railroad tracks and ballast, and between the Recreational Trail and the Scenic Trail, all of which lies seaward of

¹³ Railroad ballast refers to the fill materials on which the railroad timbers and tracks are located, which in this case is roughly 15 feet wide, with sections stretching to 35 feet wide, with a traditional treated wood timber base with steel tracks atop the base.

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,¹⁴ during peak commuting hours¹⁵ (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 average 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) and other partners, 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.¹⁶ 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.¹⁷ The Santa Cruz

¹⁴ Per MST, 10 minutes is the travel time traveling towards Monterey from the Del Monte/Palm stop to the Fremont/Ord Grove stop.

¹⁵ Where peak commuting hours here are considered to be between 6am and 10am in the morning, and 3pm and 7pm in the afternoon/evening.

¹⁶ 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).

¹⁷ 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 by the Coastal Act 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 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.

Metropolitan 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.¹⁸

As indicated earlier, the 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,¹⁹ 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.

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 an issue for the proposed project's particular siting: the Coastal Act and applicable LCP do not allow development of the type proposed in dune habitat, 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 prior to release of the first staff report in July 2024 in Exhibit 7). At each juncture, Commission staff have consistently communicated to MST staff that the project is

¹⁸ Note that the Santa Cruz bus on shoulder project retains highway shoulders by adding an additional full auxiliary lane to the highway corridor.

¹⁹ 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 passenger rail service in 1971, although some freight continued to be delivered to the Fort Ord Army base via rail until the early 1990s.

proposed in dune ESHA, that regardless of whether that dune ESHA is degraded or not it is still considered ESHA,²⁰ that the project is not a resource dependent use and thus prohibited in dune ESHA by the Coastal Act and applicable LCPs, and 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. 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.

MST staff 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 (or about 0.1 miles) of the project, and the CDP application to the Commission for 4.2 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, bus on rail tracks, or a combination of various permutations), and have included discussions regarding the Coastal Act's conflict resolution provisions and the types of mitigation that would be required if a project were to be approvable.

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 4.2 miles between Marina and Sand City, with the bus road almost completely proposed in the sand dunes next to the derelict railroad tracks.²¹ 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), drainage infrastructure, and a spur road off of the bus road under Highway 1 to access a to-be-constructed bus station at 5th Street (located outside of the coastal zone).²² The proposed project also includes a roughly 700-foot-long and 14-foot-wide extension of the Scenic Trail at its southern terminus,²³ relocation of one of the three bicycle/pedestrian connections between the Scenic Trail 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

²⁰ 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.”

²¹ About a half-mile of the bus road would be placed atop or crossing the tracks, necessitating track/ballast 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.

²² 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.

²³ The extension would connect the existing southern terminus of the Scenic Trail to the Recreational Trail further south, and is needed because the bus road would sever the existing connector trail in this area.

station. The Applicant indicates that the bus road would be used by MST bus Line 20 which travels between Salinas and Monterey.²⁴ The Applicant indicates that it intends to pursue electric buses for Line 20, and they would double the frequency of buses on Line 20.²⁵ See representative sheets of proposed project plans in Exhibit 3.

In sum, the proposed project would construct a roughly 4.3 mile (4.2 miles of which are in the Commission's jurisdiction, and subject to the CDP application), 30-foot-wide, 2-lane bus road in the dunes and adjacent to the railroad tracks seaward of Highway 1 between two coastal public access trails. 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 directly impact almost 23 acres of dune ESHA. Put another way, the proposed project would result in one of the largest 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.²⁶ 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 roughly 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).

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. CDP Determination

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

²⁴ MST has indicated that it may also pursue using the new bus road for other bus lines in the future, but the current proposed project is just for the bus Line 20 use.

²⁵ 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.

²⁶ 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.

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. The Applicant opines the project is consistent with numerous Coastal Act provisions that address these issues, including Section 30252, which encourages public transit opportunities to facilitate coastal access, Section 30253, which requires vehicle miles traveled and energy consumption to be minimized, and all within a general lens of Section 30270's mandate to avoid and minimize the adverse effects of sea level rise due to climate change. 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.

MST estimates that Line 20 currently (using 2022 data) provides about 190,000 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 1.32 million annual passenger trips in 20 years (to 2045) in a no project scenario, and to 1.7 million annual passenger trips in 20 years if the project is constructed, leading to a project-related increase of about 380,000 annual passenger trips as estimated by MST. Assuming that riders would no longer commute between Salinas and Monterey via a single-occupancy vehicle, and based on the Applicant's ridership projections, the Applicant then estimates that the project would lead to a reduction of 6 million VMTs and 1,600 metric tons of CO₂ annually²⁷ or a reduction of about 2.6 million VMTs and 700 metric tons of CO₂ annually if scaled to just the changes attributable to the Line 20 bus road in the coastal zone.²⁸ 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 25% more with the proposed project. That said, significant uncertainty is inherent to these types of projections; it is possible that the project subject to the Commission's permitting jurisdiction²⁹ will not have this degree

²⁷ This reduction in CO₂ 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).

²⁸ Or roughly equivalent to the yearly emissions of 154 cars, or the yearly emissions of 48 Americans (Ibid).

²⁹ 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.

of impact.³⁰

Regardless of the degree of the project's positive impacts in terms of VMT/GHG reduction, there are also 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 lower-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, attending school, accessing the coast, and more. Overall, according to the Applicant, the project would result in improved transit time reliability (e.g., buses would more consistently show up at stops at the same time every day) and a roughly 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 communities³¹ 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.³²

In sum, it is fair to assume that the project would have 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. As such, the proposed project clearly provides and extends transit service, and clearly is designed to facilitate greater use of such transit, thereby minimizing energy consumption and VMTs, all of which are affirmative Coastal Act mandates.³³ And it clearly forwards Coastal Act and Coastal Commission environmental justice provisions. Such background and context, particularly as it relates to these affirmative Coastal Act obligations, can help inform the consistency analysis that follows.

2. Proposition 116

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

³⁰ The opposite is also potentially true, where the project may have greater benefits than those project by MST; MST has stated that they believe their estimates to be conservative.

³¹ 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.

³² See more discussion of the project's environmental justice implications in the Environmental Justice section of this report.

³³ Section 30252(1) states: "The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service." And Section 30253(d) states: "New development shall do all of the following: Minimize energy consumption and vehicle miles traveled."

minimum, a CDP application requires:³⁴

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 Commission 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 were made aware 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 point in the future, the rail line has been essentially unused since 1971.³⁵

Because Proposition 116 was intended to fund rail projects, including to acquire property for rail service, there are limits to the types of projects that are compatible with that funding. Specifically, Proposition 116 defines a "rail project" to consist of "exclusive public mass transit guideway projects",³⁶ where, by definition, such projects appear to

³⁴ See 14 CCR Section 13053.5(b).

³⁵ The Commission authorized a pilot project that allowed the Museum of Handcar Technology to temporarily run human-powered and guided railroad handcar tours (using up to 12 small handcars) on the rails in 2023 and through November 1, 2024 (see CDP authorization number 3-22-0296-W). A handcar is a small (roughly 4-foot by 6-foot) platform atop rail wheels that is powered by hand via a 'teeter-totter'-style apparatus.

³⁶ See Public Utilities Code (PUC) Section 99602(j).

exclude bus lanes.³⁷ In this particular case, the Proposition 116 funding used to purchase the Monterey Branch Line rail corridor also came with a 10-year deadline for TAMC to reinstate rail operations. That deadline passed over a decade ago, and it is now estimated that a future rail project could be decades away. As such, regardless of whether the construction of a bus road is consistent with Proposition 116 limitations, the fact remains that the 10-year deadline has been missed, which also poses a Proposition 116 issue. Indeed, California Transportation Commission (CTC) staff have stated³⁸ 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 will be required to refund the money or issue the state a credit for the present value”.³⁹ As such, and although TAMC and CTC staff indicate that they are 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., August 30, 2024), there is an open question of whether construction of the bus road within the corridor is consistent with Proposition 116 funding. In addition, the configuration of the bus road as proposed in relation to potential future rail opportunities may raise some questions as well.^{40,41}

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

³⁷ 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”.

³⁸ CTC staff have communicated these issues in an email and formal letter to Commission staff

³⁹ CTC indicates that it expects to make some form of formal determination in the coming months that will enable the project to move forward.

⁴⁰ 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, 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 adversely 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.

⁴¹ In addition, were a bus road to be approved, it is possible that 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, the only place for a future rail project would be atop the bus road, which is not atypical co-location but which would require the bus road to be configured in such a way as to accommodate future rail too (e.g., without sharp turns, etc.).

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 due to a special nature or 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 (see findings that follow on this point), 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 adjacent to ESHA (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.⁴² If it is ESHA, there are simply very few Coastal Act consistent uses that can be provided in or near such areas.

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 ecological impact of the proposed project (see Exhibit 6).⁴³ 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 beach-dune complexes constitute just 2-3% of the State's landmass.⁴⁴ In fact, at about 58,000 acres statewide, the Ocean Protection Council estimates that dune habitat actually constitutes only one-sixth of the area of coastal wetlands, underscoring the rarity of this habitat type.⁴⁵ 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 habitats 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 and communities 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

⁴² 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.

⁴³ It should be noted that Dr. Pausch's memo reflects the version of the proposed project that was then proposed and was evaluated in a July 26, 2024 staff report for an August 7, 2024 hearing. The proposed project has been refined since that time, including in relation to various dune impact estimations, and thus her memo includes slightly differing dune impact acreages than are discussed in this report. However, the same conclusions drawn by Dr. Pausch in her memo are still applicable in the same ways to the refined proposed project, even as the acreage numbers are different.

⁴⁴ See, for example, Pickart, A. J., & Barbour, M. G., *Beach and dune* (Vol. 2007, pp. 155-179), Berkeley, CA, University of California Press (2007).

⁴⁵ See https://www.opc.ca.gov/webmaster/media_library/2023/01/Annual-State-of-the-Coast-and-Ocean-Report-2022-508.pdf, page 20.

restoration efforts.

In addition to their ecological 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.⁴⁶ 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.⁴⁷ As sea levels rise, dunes' persistence relies, among other things, on their ability to migrate, which makes preserving undeveloped backdune areas such as this critical to coastal resilience.⁴⁸

Given this understanding of dunes' rarity and especially valuable role, confined spatial ranges, habitat for special status species and sensitive natural communities, coastal resilience services, and overall 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.⁴⁹ And, in fact, the Commission has determined that the specific dune system within which the proposed project is located (i.e., the Monterey Bay 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 Bay 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

⁴⁶ 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."

⁴⁷ See, for example, Johnston, K. K., Dugan, J. E., Hubbard, D. M., Emery, K. A., & Grubbs, M. W., *Using dune restoration on an urban beach as a coastal resilience approach*, *Frontiers in Marine Science*, 10, 1187488, (2023).

⁴⁸ See, for example, Griggs, G., & Reguero, B. G. (2021). Coastal adaptation to climate change and sea-level rise. *Water*, 13(16), 2151.

⁴⁹ 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).

Dunes Complex].”^{50,51} And most recently, the Monterey Bay 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 dunes within the Monterey Bay Dune Complex, including the project area, and on the Monterey Peninsula to be ESHA as well.

ESHA determination

In addition to their status as being part of the overall Monterey Bay 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).⁵² Between 2007 and 2020, the Applicant’s consultants conducted several biological surveys of the site for various proposed projects.⁵³ These surveys, along with the investigations done between 2016 and 2019 in support of the Cal-Am CDP application and Coastal Commission staff observations during site visits for Cal-Am and other projects in the area, as well as for the bus project specifically 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)⁵⁴ 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

⁵⁰ See CDP A-3-MAR-96-094 from 1996.

⁵¹ 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.

⁵² Although the Federal and State Endangered Species Acts 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.

⁵³ See survey dates and findings in Appendix 07 (Final Biological Resources Report) of the project’s Initial Study/Mitigated Negative Declaration (2021).

⁵⁴ 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 consistently considered to be rare and sensitive by the Coastal Commission.

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 S1,⁵⁵ 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 a "vulnerable" sensitive natural community, was also observed within the corridor.

Dr. Pausch and the Applicant's 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) which was observed near Fort Ord Dunes State Park. Yadon's rein orchid (*Piperia yadonii*; CRPR 1B.1) and seaside bird's beak (*Cordylanthus rigidus* ssp. *littoralis*; 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".⁵⁶

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

⁵⁵ 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.

⁵⁶ CDFW ranks this habitat type as G2S2, which makes it "imperiled" both globally and within the state.

onsite during a 2024 site visit. The California Natural Diversity Database (CNDDDB)⁵⁷ also notes the potential for burrowing owl (*Athene cunicularia*), a California species of special concern, in the area.

In short, the project is located within one of the largest coastal dune systems in California, the Monterey Bay Dune Complex. This dune system has been repeatedly recognized, including by the Commission, State Parks, and CDFW, as an important resource not only for the Monterey Bay area and its communities, but also for the state, and beyond, including for its role in supporting 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 Bay Dune Complex has inherent resource value, but it also has important strategic value for reaching local, statewide, and global conservation goals,⁵⁸ 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 sand atop 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 Bay 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 and values, in addition to their ability to host particularly rare plants, wildlife, and sensitive natural communities.

Impacts of the proposed project on ESHA

Under the updated (i.e., since the last staff report) and revised proposed project plans, the proposed project would construct a roughly 4.2-mile-long, 30-foot-wide, 2-lane bus road (as well as a 700-foot-long extension of the Scenic Trail) in the above-described dune ESHA. The proposed project would directly cover about 16.6 acres of such habitat

⁵⁷ The CNDDDB is an inventory of the status and locations of rare plants and animals in California that is maintained by CDFW.

⁵⁸ 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.

with new pavement for the road and related development (such as drainage and retaining wall features), leading to 16.6 acres of permanent ESHA impacts.⁵⁹ The plans also show that approximately 6.2 acres of dune habitats would be disturbed during construction but subsequently revegetated, which could be expected to recover within 12 months following the conclusion of construction. Consistent with past Commission practice (including the recent Cal-Am project identified above), these impacts should be understood as “long-term temporary” rather than permanent. Thus, altogether, the project under Coastal Commission jurisdiction can be understood to have a permanent loss of 16.6 acres of dune to bus road development and 6.2 acres of long-term temporary disturbance within the dunes, totaling 22.8 acres of direct impact to the dune ecosystem.

Beyond the quantifiable direct area impacts, the introduction of a bus road would also have 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 the Scenic Trail and the Recreational Trail would be bisected by the new bus road. The Monterey Bay 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,⁶⁰ lead to wildlife harm including mortality and even take (e.g., on federally listed Smith’s Blue Butterfly), 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 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 to include such buffers, realizing that Highway 1 precludes the establishment of a full buffer on the landward side, the Commission would consider the approximate dune habitat within the buffer area susceptible to impacts from the proposed development, where this (non-) buffer area covers about 80 acres of dune ESHA.

Studies have shown that vehicular use directly within dune habitat can have significant adverse effects on species living in adjacent areas. New roads can also provide the

⁵⁹ The Applicant suggests that only 4 acres of such area that would be so disturbed should constitute dune ESHA (i.e., 0.1 acres of dune scrub and 3.9 acres of coastal scrub). For the reasons listed above, the Commission disagrees with that assessment, and determines the entire project footprint rises to the level of ESHA, where such direct coverage is more than 4 times what is suggested by the Applicant.

⁶⁰ 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.

disturbance needed for additional non-native species to invade an area.⁶¹ 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.⁶² 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 Bay 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, disrupt diurnal and physiological patterns, or dissuade natural nighttime foraging patterns.⁶³ 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.⁶⁴ For example, the endangered Sonoran pronghorn avoids noisy areas frequented by military jets; female frogs exposed to traffic noise have more difficulty locating the male's signal; gleaning bats avoid hunting in areas with road noise.⁶⁵ 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.⁶⁶

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. This would further stress and confine such species within the broader dune system. And such impacts would last not only 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

⁶¹ 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.

⁶² 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.

⁶³ 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.

⁶⁴ 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.

⁶⁵ 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>.

⁶⁶ 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.

well as with the 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 areas that would ordinarily be buffer are instead dune areas that will bear the brunt of these impacts.

In short, the proposed project would directly remove dune ESHA and replace it with a bus road and related development, resulting in 16.6 acres of permanent and 6.2 acres of long-term temporary dune ESHA loss/impact. Additionally, both construction and operational disturbances would also adversely affect adjacent ESHA because there would be no buffer provided between the proposed roadway and the surrounding environment.

Coastal Act consistency analysis

As noted previously, the Coastal Act prohibits non-resource-dependent development within ESHA, prohibits 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 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 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.⁶⁷ This is differentiated by, for example, general transportation infrastructure, like highways, certain 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

⁶⁷ The following is a non-comprehensive list of some of the projects the Commission has approved that include such minimal impact 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 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. The project actually has adverse public access impacts on the existing trail network in the area, as described subsequently. 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 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. The proposed project would lead to an estimated total permanent loss of 16.6 acres of dune ESHA to bus road and related development, eliminating that area as dune ESHA as well as adversely affecting the overall Monterey Bay Dune Complex. It also would lead to the temporary physical disturbance of some roughly 6.2 acres of additional dune habitat. These are all undeniably a significant disruption of dune ESHA habitat functions and values, and therefore the proposed bus road is prohibited by the Coastal Act within dune ESHA for this reason as well.

In terms of the third test, again as the previous discussion makes clear, the proposed 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. This would clearly be a significant degradation of dune ESHA and its habitat functions and values, and therefore the proposed bus road is prohibited by the Coastal Act adjacent to dune ESHA also for this reason.

Finally, if the proposed project were otherwise consistent with Coastal Act ESHA provisions, the above-described dune ESHA impacts would require proportionate and offsetting mitigation. Toward this end, the Applicant has provided letters of intent to work with State Parks and the Monterey Peninsula Regional Parks District on restoration efforts within Fort Ord Dunes State Park and the Marina Dunes Preserve (including some 60 acres of dune restoration at Fort Ord and 2.5 acres at Marina Dunes). Their submitted maps also indicate the bulk of the work available in these areas constitutes substantial restoration, including the extensive removal of invasive species (i.e., iceplant) and the planting of native dune species. And while obviously such restoration would benefit the surrounding landscape, it raises several questions. First, 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. And second, such mitigation does not comport with the Commission's recent practices, and would thus appear to under mitigate for impacts, as described below.

In relation to the type of mitigation that would be required, 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/public works-type project.⁶⁸ 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 minimum 1:1 level, where the Commission required the applicant there to purchase a dune habitat area contiguous with the Monterey Bay Dune Complex, in the coastal zone, 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 minimum 1:1 requirement equated to about 2 acres of new dune creation (to mitigate permanent loss of an approximately 2-acre footprint of dune habitat).

The second part required substantial dune habitat restoration for any remaining fraction of the 3:1 following dune creation, presumably up to 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 for the project as proposed, the Applicant would have a 16.6-acre dune habitat creation obligation (i.e., the 1:1 for permanent impact areas)⁶⁹ and a 33.2-acre substantial restoration requirement (i.e., the remaining 2:1) for the permanent impacts. In addition, the Commission typically requires 1.5:1 mitigation for long-term construction impacts to ESHA 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. Applying this mitigation requirement would yield a long-term temporary requirement of 9.3 acres (6.2 times 1.5). In total the actual mitigation obligation that would accrue to this Applicant if the project as proposed were to be allowed in dune ESHA would be roughly 60 acres (i.e., 16.6 acres of creation due to permanent impacts, 33.2 acres of substantial restoration due to permanent impacts, and 9.3 acres of substantial restoration due to long-term temporary

⁶⁸ 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 type/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.

⁶⁹ Or 14.7 acres if the footprint of the tracks and ballast are omitted from the creation mitigation requirement.

impacts).⁷⁰

And, as has proven the case for Cal-Am, which has a mitigation requirement that is roughly ten times less than would be applicable to the proposed project, accounting for such mitigation requirements – especially the creation/no net loss requirement -- can be both very difficult (e.g., to locate and establish an interest in applicable sites) and costly. As an 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.⁷¹ As applied to the Applicant's proposed project, such mitigation costs would be quite large, with the 16.6 acre creation requirement itself estimated at \$16.6 million, and the remaining 42.5 acres of substantial restoration potentially costing some \$10.6 million on top of that, for a total of some \$27 million.

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. The proposed project is fundamentally inconsistent with the Coastal Act on this point, and represents not just a small or tangential impact, but rather a large and consequential one.

4. Public Access and Recreation

Applicable Coastal Act 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.*

⁷⁰ 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 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.

⁷¹ 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 debris and/or contaminated materials.

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: (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.*

These overlapping Coastal Act 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 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. Finally, 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 maximized. 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 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 Bay Dune 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

Public access and recreation background

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 and Monterey Bay Sanctuary Scenic Trail system. 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 the Scenic Trail), hikers (along the Scenic Trail, 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 2024.⁷² The FODSP parking area is accessible via 8th Street and includes 51 parking spaces as well as other visitor-serving amenities such as portable restrooms, trash cans, picnic tables, and informational signage. The parking lot is located approximately 300 feet inland of the beach, which is accessible via a developed beach access trail.

The Recreational Trail is a roughly 8-foot-wide paved bicycle and pedestrian path located within the Highway 1 right of way that operates as a segment of the CCT, and is located between the highway and the rail corridor, with a roughly 6-foot high deteriorating chain link fence generally separating it from the project area. It directly connects to other trails on both its north end, in Marina, and south end, in Sand City, where the trail then extends nearly 10 miles all the way into the Del Monte Forest. It also includes another inland connection via the public trail that runs beneath the 5th Street underpass. The Recreational Trail itself is located fairly close to the highway in

⁷² See CDP 3-14-1613 (Fort Ord Campground).

certain locations⁷³ and is less used than the Scenic Trail; however, the above-described connection points are critically important from a public access perspective, particularly the connections on the northern and southern end of the project area, which also allow trail users to access the Scenic Trail.

The Scenic Trail is the primary CCT segment in this area. It is a former Army road within FODSP that has been converted to a roughly 25-foot wide paved bicycle and pedestrian trail located seaward of and generally parallel to the Recreational Trail. It provides a relatively flat, paved, walking and biking experience, connected at its northern and southern ends to the Recreational Trail, and beyond that to important CCT segments 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 lies seaward of the project corridor away from the highway,⁷⁴ thus allowing for a relatively quiet 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. Public access to the beaches in this area is provided via both informal and developed State Parks' trails from the Scenic Trail. It also helps to connect the communities of Marina and California State University Monterey Bay (CSUMB) to FODSP and the beach.

In addition to the connections at either end via the Recreational Trail, the Scenic Trail's only direct connections to inland roads and bike paths are roughly in the middle of the project area via an underpass (at Divarty Street) and an overpass (at 8th Street), both in Marina, where the Divarty Street connection is particularly important for CSUMB students, staff, and visitors. It connects to several vertical beach accessways, including one at its northern end that is heavily used by Marina residents. The Scenic Trail relies on the Recreational Trail for its connectivity with Marina and Sand City and does not have a connection to 5th Street (where the Recreational Trail does).

In sum, the project area includes two parallel bicycle and pedestrian exclusive trails, where the Recreational Trail is narrower, closer to the highway, and in worse condition than the Scenic Trail, which is wider, substantially farther from the highway, and offers connectivity to State Parks facilities, including vertical beach accessways. As such, the Recreational Trail is somewhat redundant and is less used by the general public than is the Scenic Trail, but it does provide for important connectivity to the Scenic Trail and on to the beach from Marina, CSUMB, and Sand City.

In addition, and as described earlier, limited handcar tours also currently operate along the northern half of the existing railroad tracks within the railroad corridor.⁷⁵ 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

⁷³ Ranging from 20 to 200 feet from Highway 1.

⁷⁴ Ranging from 140 feet to over a quarter-mile seaward of Highway 1.

⁷⁵ 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.

zone in Marina and travel along the tracks about 2 miles to where the tracks form a loop seaward of the Lightfighter Drive/Highway 1 interchange, then travel back to Marina.

The 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 several bus lines including Line 18 which runs inland of Highway 1 between Marina and Sand City, Line 17 which runs farther inland than Line 18, and Line 20 which runs along Highway 1 between Marina and Sand City.⁷⁶ Traffic is highly variable along the six-lane section⁷⁷ 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. 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 such congestion is variable. The Applicant indicates that this variability is itself an issue because regularly scheduled buses arrive at bus stops at irregular and 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,⁷⁸ 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%).⁷⁹ The proposed project is primarily intended to serve commuters, but it would also help to increase the public's ability to access FODSP via a new bus station/stop out of the coastal zone near FODSP. The Applicant also indicates that some riders may increase their use of Line 20 for recreational purposes if the bus road project were developed,⁸⁰ and touts the extensions of the Scenic Trail as a benefit to pedestrians and bicyclists.

In sum, the proposed project is located in an important public recreational access area where such public access is largely dependent primarily on the Scenic Trail, the

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ in a February 2021 MST survey, in response to the question "How will you use the SURF! Line?", MST indicates that 72% of respondents said they would use it for recreation purposes (again, there were multiple choices, so that doesn't mean that 28% would use it for other purposes and the rest for recreation, rather that 72% would take trips that included recreational components). While the question was not asked in terms of coastal zone recreation (e.g., beach trips, etc.), it still offers some insight into the ways in which the bus road may impact ridership.

Recreational Trail, and FODSP for access along the coast and access to the beach. Importantly, the proposed project area is located between the Recreational and Scenic Trails, 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 about 12 minutes during peak commute hours, where riders would benefit from an overall decrease in transit time during peak hours, and an overall improvement in transit time reliability 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. 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 be slower than the existing service. However, the majority of bus riders use the bus during these peak hours, meaning that that overall, more riders would benefit from the decreased transit time during peak congestions hours than would be negatively impacted by the slight increase in travel time during non-peak 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.

5th Street bus station

As previously described, there is an underpass with a public trail that extends from 5th Street under Highway 1 and to the Recreational Trail (but without a connection to the Scenic Trail). The Applicant would use this underpass trail area for a spur road coming off of the bus road and to a new park and ride bus station at 5th Street (out of the coastal zone), and would install a replacement trail alongside the spur road to allow pedestrians and bicyclists to continue to access the Recreational Trail via the highway underpass from the 5th Street area. The Applicant asserts that the proposed new station 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 (and ultimately the Scenic Trail, FODSP, and the beach between Marina and Sand City). While this is true as it relates to Line 20 users, it is also true that the 5th Street Station location is actually fairly inconvenient for such users to actually access the Scenic Trail, FODSP, and the beach. This is because there is no connection from the Recreational Trail to the Scenic Trail at this location, and users would actually have to walk/bike a third of a mile to 8th Street, and then another third of a mile along 8th Street to the

FODSP parking lot, and then finally to the beach, a distance of roughly three-quarters of a mile total (or over 2.5 miles if they used the Recreational Trail to gain access to the Scenic Trail at the connections nearer to downtown Marina or Sand City). This is not dissimilar from current Line 61, that provides bus access from Salinas to 8th Street (with a stop at the Veteran's Administration facility on 8th Street), where the walk/bike from that location via Line 61 to FODSP is actually shorter than it would be from the new 5th Street station.

In addition, the Applicant suggests that the proposed new 5th Street bus station would provide a public access benefit to the planned neighborhood slated to be constructed that is located just inland of the proposed station site by providing an accessible and affordable transportation option to recreational opportunities on the Monterey Peninsula, which would be true for that neighborhood if and when it is constructed.⁸¹

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 of the project. However, this is not so much a benefit as the Applicant providing a replacement trail for the existing trail that would be removed.

Scenic Trail extension

The Applicant proposes an approximately 700-foot-long extension of the Scenic Trail from where it currently terminates near the Sand City city limits (see Exhibit 1), and believes 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 southern terminus of the Scenic Trail 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. That said, it does offer some marginal improvement, as it would allow trail users to travel on a somewhat wider path located farther from the highway than the current connection to Sand City. In all, this too is not necessarily a public access enhancement so much as obligatory mitigation to protect existing access connections, and it too would be constructed on top of dune habitats, thus sharing many of the same issues in terms of habitat degradation as the bus road itself (see previous findings).

Impacts to existing access

As described above, the Coastal Act requires the protection of existing accessways, including specifically requiring that development adjacent to parks and recreational areas be sited to prevent degradation of those resources. The proposed project is located adjacent to the Scenic Trail, the Recreational Trail, and FODSP, which are all existing recreational areas that would be adversely affected by the proposed project, including as multiple existing unrestricted access connections between them would be

⁸¹ While some residents may live in the vicinity of the 5th Street station currently, most of the existing housing is unused and abandoned military barracks from old Fort Ord. There is extensive construction of housing planned or under construction in this entire area.

covered by the bus road and converted to crosswalks across the road. Put another way, the proposed bus road would reduce current public access utility overall, including by generally degrading the quality of recreational experience on existing remaining trails and FODSP by introducing additional road infrastructure and fast-moving vehicles between the two Trails where there currently are none.

Specifically, the proposed bus road would replace mostly dune habitats between the Scenic and Recreational Trails with a 30-foot wide road with large buses moving at up to 55 mph, in some places less than 10 feet and 20 feet away from the Recreational Trail and the Scenic Trail, respectively. In fact, at the 5th Street station entrance spur, the proposed bus road would actually cross over the Recreational Trail. These changes to current public access use degrade public recreational access opportunities in multiple ways. For example, where the proposed bus road crosses over the Recreational Trail and the two Scenic/Recreational Trail connectors, it would directly impact users' experience and overall access utility at those locations. While the project proposes crosswalks over the bus road to facilitate continued through access in such areas, and buses would come to a full stop at crosswalks regardless of the presence of pedestrians, replacing an existing unencumbered trail section with a crosswalk over a road where trail users have to navigate buses simply reduces accessway utility.

In addition, proposed buses using the bus road for up to 16 hours of the day (as early as 6am until as late as 10pm), even if limited to the 8 buses per hour as proposed, would lead to changes in these access facilities' ambiance, as vehicular noise, lights, and activities would make the access experience worse for users of the affected trails and FODSP. Put another way, close physical proximity to large, fast-moving vehicles on an otherwise unencumbered trail is expected to be unsettling for pedestrians and bicyclists, and would introduce significant development in the vicinity of trails for which the primary recreational benefit lies in their separation from the highway and in their relatively undeveloped surroundings, primarily in terms of the Scenic Trail, which is the more used/important of the two.

In short, while the proposed project would have some benefits to public access, it also comes with some 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 where none are present currently in a way that will interact with access users every day on the Trails and in FODSP, most directly where the bus road crosses over the Recreational Trail and at the proposed pedestrian/bicyclist crossing points. While some of these impacts could potentially be addressed via alternative siting and design, and access elements enhanced (e.g., with additional crossings (e.g., at 5th Street), signage, wayfinding, and other elements (e.g., a bus stop at the FODSP campground)), these are not proposed at this time. For all of the above reasons, the project as proposed fails to adequately protect existing, and maximize otherwise, public recreational access opportunities, and is thus inconsistent with the Coastal Act's public access and recreation provisions.

5. Public Views

Applicable Coastal Act 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.*

Consistency Analysis

The proposed project is sited directly adjacent to FODSP, a highly scenic and mostly undeveloped stretch of the Monterey Bay 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, the Recreational Trail, the Scenic Trail, and 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, the Scenic Trail, 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 the Scenic Trail, and the bus road would become another component of that visual backdrop.

However, in terms of public views from the Recreational Trail and the Scenic Trail, the bus road and the operations on it as described is likely to lead to some degradation in these views, especially when buses are moving along the road at high speed in close proximity (again, as close as 10 feet and 25 feet from the trails, respectively). 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 proposed 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 other parts of 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 the paved Recreational Trail and a paved Scenic Trail 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 4.2 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 be inconsistent with Section 30251.

6. Environmental Justice

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need to advance equity and environmental justice (EJ) and allows the Commission to consider coastal resource issues and impacts through that lens, both in CDP applications where the standard of review is Chapter 3 of the Coastal Act itself, as well as in appeals where the standard of review is the certified LCP, even when the LCP itself may be silent on such issues. The Commission’s affirmative authority stems from the following Coastal Act sections:

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 in 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 regardless of an individual's race, ethnicity, sexual orientation, gender identity, income, or place of residence. The Commission's EJ Policy provides a framework for

considering fair outcomes, and is focused on ensuring that the voices of environmental justice community members are heard in the Commission's process.⁸²

In analyzing the benefits and burdens of this project with respect to environmental justice, socioeconomic, demographic, and environmental indicators have been used to identify communities of concern as well as existing environmental burdens and cumulative patterns.

Specifically, 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. 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.⁸³ Looking at the cities which are connected by Line 20, all have several communities with large number of limited English proficiency households,⁸⁴ housing-burdened households,⁸⁵ individuals of color,⁸⁶ and communities with high exposure to pollutants, adverse environmental impacts, or sensitivities to pollution (according to CalEnviroScreen 4.0). Line 20 connects communities in areas where housing costs are, at least relatively speaking, lower than those on the Monterey Peninsula, to work, school, and recreational opportunities on the peninsula. Citing the importance of affordable public transit options for low-income populations and increasing coastal access opportunities, the Applicant provided Commission staff demographics and statistics for the ridership of Line 20 for 2023, which is overwhelmingly non-white and low-income (75% and 93%, respectively)⁸⁷ Based on this qualitative and quantitative information, it appears clear that there are communities of concern within the identified geographies that will be affected by the project. This warrants additional consideration pursuant to Section 30604(h) of the Coastal Act.

⁸² As indicated earlier, as used 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 low-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.

⁸³ See "MST 2023 Year in Review".

⁸⁴ Households where no one over age 14 speaks English very well (based on "linguistic isolation" indicator from CalEnviroScreen 4.0).

⁸⁵ 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).

⁸⁶ 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.

⁸⁷ The table provided by MST uses AB 1550's guidelines, which identifies "Low-income communities" as census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low-income by HCD's State Income Limits adopted pursuant to Section 50093 of the Health and Safety Code.

Analysis

Procedurally, the Applicant has done extensive outreach for the project, participating in hundreds of events and reaching diverse audiences through in-person and online events. The Applicant submitted a summary of their outreach efforts that details the many events, presentation materials, stakeholder lists, and an endorsement package with many individuals and community organizations. Additionally, Applicant-hosted events have included at least one bilingual customer service representative to capture comments and questions from Spanish-speakers.

During the Commission's independent outreach with affected communities, Commission staff heard general support for the project, as well as some concerns regarding cost and knowledge of the proposed improvements in the Spanish-speaking community. Commission staff was also informed that, despite proximity to the coast, many community members in Salinas have never been to the coast. The reasons cited included lack of transportation, time, and cost. In February 2021, the Applicant conducted a public survey where 72% of respondents said they would use the SURF! for access to recreation, more than any other feature. The Applicant states that the project would allow these communities to access the coast and Monterey peninsula for \$2, or \$1 for students, youth under 18, people with disabilities, Medicare card holders, veterans, and seniors.

The Commission strongly supports transportation improvements that reduce transit variability and travel times, promote affordable multi-occupancy travel options, and enhance coastal access and lower-cost recreation opportunities for environmental justice communities. It is a safe assessment that the proposed project would improve service for existing riders. It is also a safe assessment to conclude that new ridership would be induced by these improvements, as described earlier, and the improvements would be beneficial for all, but particularly for under-resourced communities that Line 20 serves. However, transit fees and fares may increase over time. The Commission may wish to consider safeguards to ensure that Line 20 remains affordable to lower-income households over the long term. Nevertheless, as proposed, the project has significant impacts to dune habitats, as described on Section 3, that also benefit all.

Conclusion

The Commission's Environmental Justice Policy ensures that EJ concerns are integrated with the coastal resource protections mandated by Chapter 3 and relevant local coastal programs. The policy seeks to ensure that benefits and burdens are distributed equitably, avoiding undue impacts on EJ communities while prioritizing benefits for those already burdened. However, these benefits alone do not offset the coastal resource impacts. As proposed, the project presents significant conflicts with coastal resource protections, and these benefits cannot serve as a justification to overlook other critical coastal resource safeguards.

7. Conflict Resolution

Applicable Coastal Act Provisions

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 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.⁸⁸ 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

⁸⁸ 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) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site”).

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.⁸⁹ Denial of a project cannot result in a 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

⁸⁹ 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 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.

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.

Analysis

As described above, the proposed project is inconsistent with a number of Coastal Act provisions, including those related to ESHA, public recreational access, and public views. With respect to public recreational access and public views, it appears clear that the project could be modified via conditions to appropriately address such inconsistencies in a way that ensures that an as-conditioned project does not significantly adversely affect these resources. And, in fact, that is precisely the case here (see the Approvable Project section below). That said, the ESHA inconsistencies cannot be cured via conditions, because there are no conditions that could (1) make the project resource-dependent, or (2) limit ESHA impacts to the degree that habitat values would not be significantly disrupted and degraded, if a bus road of this general type is to be accommodated within ESHA. As a result, the only way that the Commission could approve this project is through the above-described conflict resolution provisions of the Coastal Act.

Thus, the analysis that follows considers that question. In doing so, inconsistencies with public recreational access and public view provisions are not considered, because they are correctable, as indicated. In terms of the affirmative Coastal Act mandates that might be frustrated by a denial for ESHA reasons, the clearest involve Coastal Act provisions that speak to the need to provide and extend transit service (Section 30252(1)), and that require that energy consumption and vehicle miles traveled (VMTs) be minimized (Section 30253(d)).⁹⁰ The purpose of this project is to provide and extend transit service, thus meeting that affirmative mandate, and it is also intended to facilitate greater use of public transit, thereby minimizing energy consumption and VMTs, which are other affirmative Coastal Act mandates.⁹¹ In sum, in order to invoke conflict

⁹⁰ Section 30252(1) states: “The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service.” And Section 30253(d) states: “New development shall do all of the following: Minimize energy consumption and vehicle miles traveled.”

⁹¹ The Commission has concurred with submitted federal consistency reviews from federal agencies for a number of transportation projects through its federal consistency program between 2005 and 2020 (see, for example, CC-004-05, CC-008-07, CC-075-09, CC-052-10, CC-056-11, CC-048-12, CC-0003-15, CC-0004-15, CC-0005-15, CC-0001-18, and CC-0002-19). In many of those actions, the concurrences were based on conflict resolution, and balanced wetland and ESHA policies of the Coastal Act against

resolution, the Commission must conclude all of the following with respect to the proposal before it:⁹²

1. The project, as proposed, is inconsistent with at least one Chapter 3 policy;
2. The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources;
3. The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;
4. The project, if approved, would result in tangible resource enhancement over existing conditions;
5. The benefits of the project are not independently required by some other body of law;
6. The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to “create a conflict”; and
7. There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

facilitating provisions of transit services and minimizing vehicle miles traveled, similar to the case here. The Commission has also approved CDPs for certain types of Highway 1 and Highway 101 infrastructure projects when those roads are the primary roads to laterally traverse the coast (see, for example, Gleason Beach highway realignment (CDP 2-20-0282), the Refugio Road Undercrossing Bridges (CDP 4-22-0459), and El Camino Real Bridge replacement (6-22-0196)). And finally, the Commission has denied the use of conflict resolution in purported public access projects like the proposed Foothill-South (241) Toll Road in CC-018-07. These examples are meant to highlight that the Commission has exercised its discretion to invoke conflict resolution in certain transportation/public access infrastructure cases, but not in others. The point being that conflict resolution is an inherently fact- and site-specific exercise for the particular proposed project at hand, and it is not something that can be boiled down to simple affirmative statements that the Commission always invokes it for some cases and never for others.

⁹² 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.

Based on the following analysis, the Commission finds that proposed development meets all of the above criteria for applying conflict resolution, as follows.

1. Inconsistency Requiring Denial

The first conflict resolution criterion is that a proposed project must be inconsistent with at least one applicable Chapter 3 policy. In this case, and as detailed above, the proposed project is fundamentally inconsistent with Section 30240, which protects ESHA, and these inconsistencies cannot be corrected via conditions of approval. As a result, the project meets the first conflict resolution requirement.

2. Denial Would Lead to Affirmative Mandate Inconsistency

The second conflict resolution criterion is that the project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources. Here without the new bus road, the mandates to provide and extend transit service (Section 30252(1)), and to minimize energy consumption and VMTs (Section 30253(d)) would be left unfulfilled. With respect to the former, denial would mean that the status quo would remain, and the improved and extended transit service would not be provided, frustrating that affirmative Coastal Act mandate.

With respect to the latter, the Applicant indicates that the project is expected to add somewhere between 172,000-380,000 additional annual bus passenger trips over the next 20 years, which the Applicant estimates would lead to a corresponding reduction of about 2.6-6 million VMTs and 700-1,600 metric tons of CO₂ annually. This reduction in GHG emissions will help the fight against global climate change and its impacts (e.g., such as sea level rise in the coastal zone). The anticipated reduction in car trips also means that energy consumption would be reduced as well, and the energy necessary to power those vehicle trips would not be needed, and thus the associated impacts from its creation eliminated. If the project were denied, such energy consumption and VMT/GHG reductions would not be realized, and that denial action would also frustrate those affirmative Coastal Act mandates.

For all of these reasons, the project meets the second conflict resolution requirement.

3. Approval Would Be Consistent with the Affirmative Mandate

The third conflict resolution criterion is that the project, if approved, would be fully consistent with the Chapter 3 provisions that affirmatively mandate resource protection or enhancement, and that would not be met if the project were denied. Here, approval would lead to improved and extended transit service, fully consistent with Section 30252, and, as described above, would lead to energy consumption and VMT/GHG reductions, fully consistent with Section 30253. As a result, the project meets the third conflict resolution requirement.

4. Approval Leads to Resource Enhancement in Terms of the Affirmative Mandate

The fourth conflict resolution criterion is that the project, if approved, would result in tangible resource enhancement over existing conditions in terms of the Coastal Act's affirmatively mandated provisions. This is the case with the project for several reasons.

First, as discussed above, the project would not only provide and extend transit service, but it would improve existing services in the affected transit corridor. In fact, the Applicant anticipates that the project will result in improved transit time reliability (e.g., buses would more consistently show up at stops at the same time every day) and a roughly 12-minute decrease in transit time during peak commute hours. It would also add a bus stop just inland of Highway 1 that would allow riders on Line 20 to more easily access Fort Ord Dunes State Park. Thus, transit would be enhanced in this transit corridor as compared to the status quo.

In addition, the status quo is that this transportation corridor suffers from traffic congestion at times, and, more importantly, an overabundance of single-occupancy-vehicle commuters. The project would be expected to move a proportion of those commuters out of cars and into buses, thereby reducing energy consumption and VMT/GHGs. Thus, the project would be a resource enhancement in terms of energy consumption and VMT/GHGs as compared to the status quo.

For all of these reasons, the project meets the fourth conflict resolution requirement.

5. Project Benefits Not Required by Other Law

The fifth conflict resolution criterion is that the project benefits are not independently required by some other body of law. The Commission is unaware of any other body of law that would require the proposed project to be undertaken so that the project's benefits could be realized, and thus the project meets the fifth conflict resolution requirement.

6. Project Benefits Due Project's Main Purpose

The sixth conflict resolution criterion is that the project benefits must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict." Put another way, the project's Chapter 3 benefits associated with the affirmative mandates must be integral to the project purpose. Here, the mandated benefits of the project are inherent to the project itself. This is a transit project intended to get people out of their cars and to thereby reduce energy consumption and VMT/GHGs, and to enhance transit service. These benefits accrue directly to the essence of the proposed project, and thus the project meets the sixth conflict resolution requirement.

7. Lack of Feasible Alternatives

The seventh and final conflict resolution criterion is that there are no feasible⁹³ alternatives that would achieve the objectives of the project without violating any Chapter 3 policies. In this case, and at a high level, the project seeks to improve the function of MST Line 20 between Marina and Sand City. More specifically, the project is designed to decrease transit time and improve transit time reliability for Line 20 (particularly during rush hour) and increase the community's access to bus services by adding a new bus stop. There appear to be a variety of potential options that could

⁹³ Per Coastal Act Section 30108, "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

achieve these project objectives, some of which could do so without any Section 30240 ESHA inconsistencies, and each of these is discussed below. The Applicant considered all of these alternatives, however, and determined them to be infeasible.⁹⁴

As an initial consideration, there are some significant feasibility issues with any alternative project because the Applicant's dedicated funding of \$92 million is for this specific project, and portions of said funding will either not apply or expire if the Applicant pursues a different project, leaving alternative projects economically infeasible. Put another way, funding isn't directly available for other alternatives, which makes these alternatives of questionable feasibility with respect to economic factors. At the same time, however, the Commission recognizes that that type of funding issue cannot be the sole driver of feasibility or infeasibility, rather that a more typical analysis of alternatives might assign costs and benefits to each of them, and differences in costs between alternatives is the way to compare economic viability. Put another way, just because an applicant has lined up funding for a specific proposal, and that funding is not flexible enough to be used for valid alternatives to that proposal that might significantly lessen environmental impacts, does not mean that all other alternatives must be dismissed. If such were the case, almost any alternative could be eliminated as infeasible using that approach, and the Commission does not believe the conflict resolution provisions were intended to be so easily manipulated.

In addition, there is a temporal issue associated with any alternative other than the proposed project. Not only would other alternatives require funding that as of now does not exist, but acquiring such funding could take a very long time. In addition, most all of the alternatives considered would require time for more refined analysis, study, and coordination between interested and affected parties. The definition of feasibility in the Coastal Act requires that an alternative be "capable of being accomplished in a successful manner within a reasonable period of time". There is little doubt that all other alternatives to the proposed project would require further study and analysis in addition to the need for funding. And time is of the essence to achieve the affirmatively mandated resource benefits associated with the project. This is primarily because anthropogenic climate change poses what many consider an existential threat, globally but also to coastal resources, where swift action is necessary to reduce VMT/GHG emissions and curb the most potent climate impacts as soon as possible. In this context, actions that reduce VMT/GHG emissions in the short term come with greater coastal resource benefits than the same degree of VMT/GHG emissions reduction farther in the future. Swift action that leads to environmental benefits now is more beneficial than future such action of the same sort. As such, a many-year delay to implement an alternative project could result in a significant reduction in the coastal

⁹⁴ 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). Because of that, the Applicant has not prepared an EIR evaluation of the proposed project and alternatives to it, which would have been an opportunity to have a coequal evaluation of alternatives across the full set of constraints and mitigation requirements, including related to ESHA impacts and mitigation. Instead, the Applicant's evaluation of potential alternatives to the proposed project, each to a different level of detail (where most were fairly brief), was completed and submitted as part of the CDP application in 2024.

resource benefit of the VMT/GHG emission reductions the project is anticipated to provide.

Under these economic and temporal circumstances, it is not clear that any of the alternatives considered can be considered truly feasible at this time. This is more a function of the manner in which this proposed project has come forward (i.e., without an EIR level alternatives analysis that could be used to derive the least environmentally damaging feasible alternative, which alternative could then be provided funding), than it is related to issues with the various alternatives per se.^{95,96} And, because of this, the Commission is put in a difficult position where really any alternative raises questions as to its feasibility, given the economic and temporal challenges with any alternative. At the same time, it is important in the context of this conflict resolution criterion to identify alternatives that could be pursued, and each of them is discussed briefly below.

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 4.2-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 4.2-mile segment from either direction is two lanes, and then there is a third lane just within the 4.2 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 approach that has been taken along Highway 1 in San Francisco.⁹⁷

⁹⁵ It is also 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.

⁹⁶ And 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 (an 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 generally avoiding these kinds of conflicts for Caltrans projects.

⁹⁷ 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

The Applicant provided the Commission with an analysis of this alternative, and dismissed it as infeasible because 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. Although these are real concerns, they are inadequate to conclusively find that this alternative is infeasible. A suspected increase in highway congestion does not make this option infeasible because it is both only suspected (i.e., no supporting evidence that it would actually increase congestion was provided) and an increase in congestion may actually provide an incentive to get people out of single occupancy vehicles and into bus ridership and other alternative modes of transportation.

As for Caltrans support, it is true that such a project would require full support from Caltrans, and Caltrans has voiced some preliminary concerns about this option due to potential impacts to congestion. Again however, congestion impacts are, at this time, only suspected, as this alternative was not thoroughly studied. And Caltrans has indicated that it would need the alternative to be studied in order to come to a conclusion about whether it could be supportable. Additionally, in this analysis, the Commission is balancing ESHA versus increased public transit and reducing VMT, and increased congestion for cars would still meet the project's purposes of getting vehicles off the road and people into buses.

And finally, it is not clear that new flyovers, on-ramps, and exit-ramps would be necessary. If a highway lane was simply converted to bus-only or carpool and bus only during commute hours, it may result in material improvements to bus service even without extensive new infrastructure. However, such a project would also forgo some of the benefits that would come with the proposed project (e.g., without significant new connecting infrastructure, the 5th Street station would not connect to Line 20). Furthermore, the transit time and reliability improvements associated with the proposed project would not be as significant without new bus-only highway on/off ramps; buses would enter and exit the highway with the rest of traffic, and thus be subject to the time delays caused by that traffic, and it may be that the bus/carpool lane is still congested during rush hour (although unlikely to be the case if limited only to buses). All of these factors could reduce the effectiveness of the project. Also, this option would take substantially longer to implement than the proposed project, due to the need to further study this alternative in partnership with Caltrans, and it would require new funding sources.

In sum, this alternative is conceptually quite attractive because it would eliminate ESHA impacts, but it raises feasibility concerns related to economics and the length of time that it would take to implement, including the length of time until VMT/GHG reductions might be realized. For these reasons, this option is not currently feasible.

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

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.

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, this alternative would avoid ESHA entirely and would use existing developed/paved areas, making it an alternative with fewer environmental impacts than the proposed project. And other improvements to existing infrastructure could be made to improve the speed of Line 20 if it were moved to existing surface streets, such as traffic light prioritization. Even with these measures, though, the buses still will likely not travel as fast as either a dedicated bus lane or a bus on shoulder approach. By extension, there may be fewer people transitioning to using the bus and avoiding cars, as opposed to the proposed project, making it unlikely to meet that purpose of the project. While this is an attractive potential option for the way it avoids ESHA impacts, it suffers from the same economic and temporal issues identified above as well as potentially not achieving all of the project's goals of making public transit faster and more reliable, which makes this option currently infeasible.

Bus on highway shoulder

The bus on shoulder alternative involves use of the Highway 1 shoulder in the same 4.2 mile stretch of highway for bus use. This is the alternative explored the most thoroughly by the Applicant, including in its exploratory report from 2018.⁹⁸ The Applicant found that there is inadequate space on the highway shoulder for this alternative and that widened shoulders and relocated bridge supports would be required, leading to greater ESHA impacts than the proposed project. This alternative also does not address the concerns expressed by the California Highway Patrol (CHP) regarding the safety of bus on shoulder operations.

The Applicant's application did not specify why relocated bridge supports are necessary in areas where there is 15 feet or more beyond the existing outer paved edge of the shoulder and potential room in the highway median. But it did demonstrate that the slopes leading up to some supports may need to be steepened or, more likely, require new retaining walls. And the 5th Street highway overcrossing would need to be widened under this alternative.

The Applicant's conclusion that a bus on shoulder alternative would have greater impacts to dune ESHA than the proposed project appears to be based on the assumption that new on/off ramps and flyovers would be required to access the shoulder. As discussed above, if such ramps could be omitted from this alternative project, it would dramatically decrease the ESHA impacts associated with this alternative. However, the omission of such ramps would mean that the 5th Street station

⁹⁸ 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.

could not be incorporated into the project, and buses would suffer from delays when entering and exiting the highway.

Another permutation of this alternative would be 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, to simply to shift the travel lanes towards the median to create the space necessary on the shoulder to accommodate bus operations without any need for more pavement (or any other infrastructure changes, like to the 5th Street overpass). However, this would mean extensive reconfiguration of over 4 miles of highway and would be dependent on Caltrans approval, without any certainty that it would approve such an approach.

While this alternative is conceptually quite attractive because it would appear to have the potential to significantly reduce – if not avoid entirely – any ESHA impacts, it raises feasibility concerns related to economics and the degree of time that it would take, including the length of time until VMT/GHG reductions might be realized, and there is uncertainty over whether the Applicant could obtain other required approvals for this alternative. For these reasons, this option is not currently feasible.

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 4.2 mile stretch and locates 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 to accommodate additional guardrails, and the median is only 30 feet wide, including bridge supports in some locations; it would require new flyovers at each end of the project and to access the 5th Street station; it would require widening of the 5th Street overpass; and it is not supported by Caltrans.

While the unpaved median is as narrow as 30 feet in some places, including locations with existing bridge supports, the existing paved median shoulders are 8 to 10 feet wide, potentially 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, the Applicant did not explain why the lanes would need to be wider than 12 or 15 feet, if each bus lane in each direction were separated. And new ramps and flyovers are not necessarily a prerequisite in all locations for a project like this because 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 omission of flyovers would mean that the 5th Street station would also be omitted, eliminating a public transit stop that would provide coastal access. Conversely, and as with the shoulder discussion above, the traffic lanes could be shifted as well to create additional space, but it raises the same feasibility issues as discussed above. 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 that would require future study.

This alternative, too, is conceptually quite attractive because it would also appear to have the potential to significantly reduce – if not avoid entirely – any ESHA impacts, but it raises feasibility concerns related to economics and the degree of time that it would take, including the length of time until VMT/GHG reductions might be realized. It also raises feasibility issues over whether it would accomplish the project's goals as the buses would need to merge three lanes to access the median lanes and then merge three lanes over to get off of the freeway, thus potentially thwarting some of the project's benefits of increasing public transit reliability. For these reasons, this option is not currently feasible.

Single lane bus road alternative

The single lane bus road alternative would include the same bus road alignment as proposed, but with one lane instead of two. This alternative accounts for the fact that commute congestion along Highway 1 is almost exclusively in one direction at a time (southbound in the morning and northbound in the evening), so a single lane bus road would enable buses to bypass that traffic, with buses traveling southbound in the morning and northbound in the evening on a single lane bus road to avoid highway congestion. A single lane bus road would theoretically substantially reduce the footprint of the road and thus reduce ESHA impacts. The Applicant dismissed this alternative because it found that it would require a breakdown lane along its length that would be nearly the same width as the proposed second travel lane, and it would impede the utility of the 5th Street station, as the station would only be accessible to the buses that used the bus road and not those that used the highway.

It is unclear why the Applicant concluded that the additional breakdown lane would be required for the entire length of the new busway; one-way roads often have intermittent pull-offs for vehicles experiencing mechanical issues. However, while this alternative would reduce ESHA impacts, even if the breakdown lanes did indeed need to be the whole length of this busway, it would still lead to significant and extensive dune ESHA impacts, and it would not meet all of the project objectives. And in any case, it, too, raises feasibility concerns related to economics and the degree of time that it would take, including the length of time until VMT/GHG reductions might be realized. For these reasons, this option is not currently feasible.

Replace Recreational Trail with busway alternative

The Monterey Peninsula Recreational Trail replacement alternative would site the bus road along the same general alignment as proposed; however, it would be shifted inland towards the highway and atop the roughly 8-foot wide Recreational Trail. As discussed earlier in this report, the Recreational Trail is somewhat redundant and does not provide the same access opportunities as the Scenic Trail, and so its replacement would likely not significantly adversely affect coastal access. ESHA impacts would theoretically be reduced as 8 feet of the 30 foot wide road would be located where pavement already exists. However, the Applicant found that this alternative would increase ESHA impacts compared to the proposed project, as the Recreational Trail is located in more variable terrain, which would then require extensive additional grading of the dunes in order to construct the wider bus road. While this analysis did not evaluate the entire portion of the alignment subject to this CDP application, it does demonstrate that shifting the

busway to the Recreational Trail comes with its own ESHA-related complications that would reduce the theoretical benefits to ESHA that this alternative might have.

Furthermore, the Recreational Trail is not located within the TAMC-owned rail corridor, rather, it is located within the Caltrans-owned Highway 1 corridor, which complicates the Applicant's ability to use its project funding and would delay the project while the Applicant works out an agreement with Caltrans, assuming that Caltrans would agree to this alternative at all. As such, it is not clear that relocating the project onto the Recreational Trail would actually reduce ESHA impacts, and at the same time, it would likely substantially delay the project and thus the coastal resource benefits associated with it. In addition, this alternative raises the same feasibility concerns related to economics and the degree of time that it would take, including the length of time until VMT/GHG reductions might be realized. For these reasons, this option is not currently feasible.

Hybrid alternatives

In addition to all of the potential alternatives above, 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, the existing wide highway shoulders and the existing wide highway 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. However, all of the same economic and temporal issues would accrue to this alternative in the same ways as to the other alternatives, making any hybrid alternatives currently infeasible.

Alternatives conclusion

In short, each of the alternatives evaluated raises feasibility concerns related to economics and the amount of time that it would take to implement them, including the length of time until VMT/GHG reductions might be realized. For these reasons, none of these alternatives appear to be feasible at the current time as that term is defined in the Coastal Act, and thus the project meets the seventh and final conflict resolution requirement. As a result, the Commission is faced with a true Coastal Act conflict requiring the Commission to initiate conflict resolution pursuant to Sections 30007.5 and 30200(b).

Conflict Resolution

With the conflict among Coastal Act policies established, the Commission must resolve the conflict "in a manner, which, on balance, is the most protective of significant coastal resources", as stated in Section 30007.5:

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.

In the end, the Commission must determine whether its decision to either deny or approve a project is the decision that is most protective of significant coastal resources. In this case, and provided the project is modified to avoid coastal resource impacts to the maximum feasible extent, a conditioned CDP application approval that relocates the bus road onto the actual railroad tracks (i.e., the “ballast”, or fill slope, and track location) is the most protective of significant coastal resources, as discussed in more detail subsequently. It is also the most consistent with the Coastal Act’s environmental justice principles, and the Commission’s Environmental Justice policy as the approved project should particularly help underserved communities with better transportation options, including for access to the coast.

In coming to this conclusion, the Commission notes that Section 30007.5 identifies that broader policies may be more protective overall than specific habitat policies, and applies that logic here. In terms of those broader policies, an important consideration here is related to the ongoing impacts of climate change (including related to sea level rise and ever-increasing storm activity), and VMT/GHG reduction policies, which are quite important given the effect they can have on protecting coastal resources overall. The Coastal Act mandates that the Commission prioritize transit projects that reduce VMTs and reduce energy consumption, which leads to GHG emissions. And while the impacts to ESHA if the bus road location is moved onto the railroad tracks remain significant, the relative habitat value of the tracks area versus the proposed all-dune siting is less. Put another way, while the proposed bus road footprint, and even more so the dunes seaward of the site, are quite significant coastal resources, the habitat value within the railroad tracks themselves, while still significant, is lower. And while ESHA is ESHA no matter its level of degradation/value under the Coastal Act,⁹⁹ the Commission under conflict resolution has the discretion to balance what is most protective, and in this instance is choosing to prioritize a project that increases public transit and reduces VMTs and GHG emissions. That said, to meet the “most protective” test, the Commission has in past conflict resolution actions found it necessary to modify projects through conditions to avoid adverse coastal resource impacts, and to mitigate unavoidable adverse impacts, all to the maximum extent feasible. The following approvable project parameters do just that, as explained in the section that follows.

Approvable Project

As noted previously, while there are other promising alternatives that could provide for a dedicated bus road that avoids dune ESHA impacts entirely, the Commission acknowledges that they are not fleshed out enough at this time, including working with Caltrans to ascertain engineering feasibility as well as with funding partners to identify cost for such materially different projects/alignments, to determine them to be a fully feasible project currently, including from an economic and temporal perspective. In this light, it would appear that the most feasible alternatives are ones that stay within the TAMC-owned 100-foot corridor. And while the entire corridor is ESHA, as described above in more detail, the Commission’s Ecology Group also acknowledges that the

⁹⁹ See *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507–508.

relative value of such habitat is not uniform throughout the corridor. Some parts of the corridor are sandy dune bereft of vegetation (a natural feature in dune ecosystems), others are dune vegetated with listed and sensitive native plant species and communities, or sandy dune primarily covered in ice plant, and others still are covered with the ballast, timbers, and rails from the derelict train tracks, where even these are less and more covered by sandy dunes and directly occupied by sensitive species themselves. In other words, while these tracks have not been used by trains for several decades and thus have habitat value as they support significant resources and are readily used and permeated by native plant seeds blown by the wind and moving wildlife such as listed butterflies, their value is not the same as the adjacent areas. Put another way, the tracks and ballast area can be understood as relatively more degraded habitat area given their already developed nature, including with creosote-laden wood. Given the Coastal Act conflict resolution requirement to approve an alternative that has the least amount of impact on significant coastal resources (which, in this case, can be understood as the sandy dune areas adjacent to the disturbed/developed train tracks), the Commission finds that the least environmentally damaging alternative is to place the bus road on the track location itself. That is, to move the road slightly seaward from its current proposed alignment and onto the tracks and ballast area in order to minimize the area of dune surfaces that would be directly impacted, reducing such impacts by more than half.

Placing the bus road on the railroad tracks is something that the Applicant has evaluated as a potentially viable alternative in the past. In fact, as part of the project's alternatives analysis, the Applicant determined that it would be feasible from an engineering/technical and financial perspective given that all it would entail would be to move the proposed road a handful of feet away from the proposed alignment. And although there could be some additional construction complications with removal of the tracks, it most likely would also avoid certain other construction issues since the track area is already relatively flat and graded for transportation use, and thus could avoid a certain amount of grading and retaining walls needed for the adjacent dune alignment. The Applicant found the following:¹⁰⁰

While there may be additional costs associated with removing and disposing of the existing railroad infrastructure, there may be cost savings associated with less grading and retaining wall construction. Qualitatively, the comparative costs of implementation between this alternative and the project as proposed would be roughly similar.... Constructing a two-lane busway over the existing railroad tracks is technically feasible and would place the project in an area that is more environmentally disturbed.

The primary feasibility issue the Applicant identified, and thus why this alternative was dismissed, was with respect to whether TAMC would agree to such an alternative given that TAMC, as the property owner, was not supportive of a project that removed all of the train tracks. In fact, as part of the Applicant's lease agreement for the project, the Applicant agreed to limit track removal to the maximum extent feasible. The reason for

¹⁰⁰ From the Alternatives Analysis submitted to the Commission as part of the project application in March 2023.

this is that the rail corridor is identified for future train use, and thus measures that would weaken its ability to serve future trains do not align with TAMC's future vision for the corridor.

In light of this, a few things should be noted. First, the Commission does not believe that track removal as part of this bus road project today should in any way be understood to limit the ability for the corridor to provide for future train use. It is well established and understood by both MST and TAMC that any future train proposal would need to replace the existing tracks and ballast as they are derelict and unusable for modern train service. Indeed, a 2024 engineering evaluation memorandum regarding the tracks found that "the entirety of the existing Monterey Branch Line track section, including track, ballast, and sub-ballast, is insufficient for future uses of light rail."¹⁰¹ Thus, removing/replacing them, whether for the bus road today or a future train service in the future, is something that will need to happen regardless. This seems to already be implicitly acknowledged by the project design, where roughly a third of the total project alignment already necessitates the removal of the railroad tracks.¹⁰²

Second, the Commission sees no reason a bus and rail could not coexist on the same bus road infrastructure, including placing future light rail service directly on the road itself, a concept explored in the above-referenced memorandum, and as is done in many cities with light rail services sharing road space. In fact, building the road today may actually make it easier to build and operate rail service in the future given that the road will already be physically in place and all that would be needed would be placement of track. And if sharing the road is found to be infeasible or otherwise not preferable at some point in the longer term future, then another option could potentially be to replace the bus road with rail (again, made easier by virtue of the road already graded and developed for transportation use), while accommodating bus needs differently.

And third, and related, is that these are all hypothetical rail projects many years – decades really – from coming to fruition. The fact is there is no identified rail project, no funding for it, and nothing tangible proposed for evaluation. The Commission's intent of the bus on tracks alternative is not to frustrate future rail service, whatever and whenever that may be. Rather, while the planning and visioning on the specific parameters of what rail is to look like can move forward, the public – and the environment as it relates to VMT/GHG reductions – can reap the benefits of a functioning bus transit project. In short, the Commission finds the bus on track alternative as most Coastal Act consistent in this case, and can be accommodated in a manner that protects future potential rail services. TAMC has indicated that it agrees with this conclusion, and is supportive of facilitating the bus road in the railroad track

¹⁰¹ See Silkwood, Blake, PE. *Re: Monterey Branch Line – Existing Track Evaluation*. Kimley Horn. 9 April 2024.

¹⁰² Most track removal associated with the project is outside of the Commission's permitting jurisdiction, in the Cities of Marina and Sand City, with functionally all of the tracks in Sand City proposed for removal. That said, some limited track removal is already proposed within the Commission's jurisdiction, as previously described.

location in a way that can actually help facilitate train service atop the road in the future.¹⁰³

As such, Special Condition 1 approves the project, but relocates the bus road to the train tracks/ballast area. It also includes a series of conditions and performance standards to ensure consistency with Coastal Act resource protection requirements, including final plans that specify signage and fencing (e.g., only allowing them for identified safety and environmental protection reasons, and in any case reducing their number and visibility, and using natural materials and earth tones to effectively blend in with the surrounding aesthetic), lighting (e.g., again, only allowing for safety purposes; limiting luminosity, glare, and light spill; etc.), utilities (e.g., placing them underground or away from public view), and overall performance standards for the bus road to seamlessly blend in and be compatible with the overall dune aesthetic. Further, Special Condition 2 includes the Commission's suite of typical best management practices to ensure that construction activities minimize adverse coastal resource impacts to the maximum extent feasible, including on water quality and the sensitive dune environment. And Special Condition 6 codifies the Applicant's proposals for bus use hours and numbers, as well as the use of zero emission buses, and provides for a plan to maximize the bus's ridership to facilitate transportation and coastal access opportunities, including financial incentives for ridership (e.g., free passes, reduced fares, etc.), including culturally-appropriate outreach methods that may include digital, paper, and other media (and translated into non-English languages, particularly Spanish, and written in plain language), identifying the bus's coastal access opportunities, and identifying any other means to facilitate coastal access for underserved/inland populations, where the plan may include partnerships with local organizations that help underserved communities access the coast. In addition, that condition identifies that if the bus road is no longer used, then it would be removed and the underlying area restored.

Special Conditions 4 and 5 require mitigation for remaining unavoidable dune impacts. While placement of the bus on the tracks helps to avoid the most sensitive areas, it still is all ESHA and thus requires the Commission's typical impact mitigation measures (i.e., 3:1 acreage mitigation for permanent impacts, and 1.5:1 for long-term temporary). And while the Commission has more recently typically required dune creation as a key element of a no-net-loss strategy (i.e., 1:1 of the 3:1 mitigation is to be in the form of dune creation), the Commission can recognize the unique factors here by not requiring creation for the area that is current track/ballast. This is because this area is already covered with derelict infrastructure that represents a certain degree of development, and because there is an environmental benefit of removing creosote-laden wooden infrastructure from the ecosystem. All of this warrants a slightly reduced creation-based mitigation obligation. The track/ballast area totals approximately 9 acres, and this amount can be deducted from the 1:1 creation total. Thus, based on current estimates, the permanent impacts of the project would be about 16 acres, 7 of which (i.e. 16 total acres of disturbance minus the 9 acres that are track/ballast) would need to include creation as part of the total mitigation at a minimum ratio of 1:1. Put another way,

¹⁰³ See TAMC Board meeting notes from their August 28, 2024 meeting.

moving the bus road onto the tracks significantly reduces the amount of dune creation mitigation required, by more than half.

The balance of the mitigation would then be required in the form of substantial restoration, where the total estimated restoration mitigation is estimated to be about 60 acres.¹⁰⁴ As described earlier, the Applicant has worked with State Parks to identify about 60 acres of substantial restoration that could be undertaken within Fort Ord Dunes State Park, which could satisfy this requirement if done per the conditions. As noted previously, while this raises issues with respect to ‘double dipping’ on required mitigation and whether any of FODSP is appropriate for mitigation given it’s already required to be restored, it is also a reality that there is no identified funding for such restoration, no proposed project to do so, and the benefits all accrue to the public. In this case, the Commission can find the restoration at Fort Ord Dunes State Park to be appropriate, and the restoration plan requirements specified in Special Conditions 4 and 5 will help provide needed parameters for successful restoration.

As for dune creation mitigation requirements, while there is no identified project site at this time, there are several potential candidates, including several properties at the end of Tioga Avenue nearby in the same dune complex in Sand City where dune and beach restoration and public access improvements have long been identified (including removal of remnant industrial slurry tailings, relocation inland of the end of Tioga Avenue, etc.).¹⁰⁵ In any event, the Applicant and Commission staff can work together to identify appropriate dune creation locations within the Monterey Bay Dunes Complex. And Special Condition 7 includes a dune resiliency plan, which requires the Applicant to evaluate dune health over time, including identifying when certain measures are needed such as additional restoration, to ensure resiliency into the future.

With respect to public access, Special Condition 3 includes the Commission’s typical protocols for such issues through the preparation of a Public Access Management Plan. The objective and goal of the plan is to maximize public coastal access overall, identify measures to improve access (through signage, wayfinding, and interpretive features), to provide for new/improved lateral/vertical connections to existing trails and park entrances, and to also work in conjunction with State Parks to optimize seamless connections between inland areas and Fort Ord Dunes State Park and Marina State Beach, including facilitating public access along the Scenic Trail. Of note, the condition requires a series of measures to best integrate the new bus road into the area’s public access infrastructure, including a new trail connection near the Fifth Street Station to provide for easier bicycle and pedestrian connections with the Scenic Trail, and a new

¹⁰⁴ 16.6 acres of total permanent impacts at a 3:1 ratio = 49.8 acres, and 6.2 acres of long-term temporary impacts at 1.5:1 = 9.3 acres.

¹⁰⁵ Another potentially promising restoration/creation site is removal of the Recreation Trail and replacement with dune. While this obviously would normally raise serious concerns (i.e., the loss of a public coastal accessway), it’s also a reality that there is another, more heavily used and parallel trail on the seaward side of the bus road/train tracks in the Scenic Trail, and it may make some sense to focus access improvements there (including any necessary offsetting improvements should the Recreational Trail area be restored) in order to support dune habitat improvements in the corridor. The Recreational Trail covers approximately 4 acres, and thus would appear to be large enough to cover a substantial portion of the estimated 7 acres of required dune creation mitigation.

bus stop to connect to future bicycle and pedestrian access at Fort Ord Dunes State Park campground and beach accessway. The intent is to work with State Parks and identify a coherent and publicly accessible way to bring people from the inland side of the highway to the coastal parks and trails seaward of it, and have all parties come to the table with their respective good ideas to do so. The condition would codify all of this, including over time, and provide a means to appropriate and offsetting public access benefits in this important 4.2 mile coastal corridor.¹⁰⁶

Special Condition 8 includes the Commission's typical archaeological and Tribal protection protocols, including potential stop work orders during construction should artifacts/human remains be uncovered, and which must be identified on all required construction plans.

And as explained in Special Condition 9, the Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.

To ensure that the Applicant has a sufficient legal interest to carry out the project consistent with the terms and conditions of this CDP and to ensure that the proposed project is authorized by all applicable regulatory agencies, Special Condition 11 requires the Applicant to submit written evidence either of these other agencies' approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required.

This CDP authorizes the project proposed except as modified by the special conditions. As is typical of large and complicated construction projects like this, there can be the need for minor changes as circumstances dictate. Thus, this approval allows for such changes through either (a) a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (see Special Condition 12).

While the Commission has modified the project to address coastal resource issues, the project is ultimately the responsibility of the Applicant, including all risks and liabilities associated with it. Applicants are regularly required to acknowledge all such risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, Special Condition 13 requires the Applicant to assume all risks for developing at this location.

¹⁰⁶ Special Condition 10 also requires protection of any existing public rights in the project area, and states that this CDP is not meant to be used as evidence of any extinguishment of existing public rights.

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 14 requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

F. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. 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). Thereafter, the Applicant approved a resolution to utilize the CEQA exemption.

Nevertheless, the Commission notes that the Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(g)). And even if this project were not exempt from CEQA, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All of the above findings are incorporated herein in their entirety by reference.

Accordingly, the Commission finds that only as modified and conditioned herein will the proposed project avoid or mitigate significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed.

G. Appeal Substantial Issue Determination

1. City CDP Decision

On June 4th, 2024, the City of Marina City Council approved a CDP for about 500 feet of the bus road extending from the northern end of the project in the Commission's CDP

jurisdiction and towards downtown Marina. The City's Final Local CDP Action Notice (see Exhibit 4), which describes that action, was received in the Coastal Commission's Central Coast District Office on June 7th, 2024 and the Coastal Commission's ten-working-day appeal period for this action began on June 10th 2024 and concluded at 5pm on June 21st, 2024. Two valid appeals (discussed below) were received during the appeal period.

2. 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 of Marina CDP decision (for about 500 feet of the bus road extending from the northern end of the project in the Commission's CDP jurisdiction and towards downtown Marina) 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 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 waived the 49-working 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.¹⁰⁷ 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.

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).

3. 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 the Scenic Trail, impede access to the beach along an existing vertical beach

¹⁰⁷ 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.

access path, and impact sensitive habitats. See Exhibit 5 for the Appellants' appeal documents and contentions.

4. Analysis of Appeal Contentions

Public Access

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: (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. ...*
- 12. To provide suitable and sufficient area for recreation use and supportive public and private development.*
- 13. To give priority to visitor-serving commercial and recreational uses in order to fully develop the unique Coastal-oriented recreational activities of Marina and still protect the natural resource.*
- 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. And again, as stated previously, it is important to note that 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 maximized.

The Appellants contend that the City-approved project would negatively impact existing bicycle and pedestrian coastal access in the project area and would eliminate the ability for recreational hand car tour operations to continue, rendering the City-approved project inconsistent with many of the public access and recreation policies of the Coastal Act and LCP cited above. The primary focus of the Appellants' contentions is that the proposed project would sever the existing paved connector between the Recreational Trail and the Scenic Trail, which provides access to one of the primary

vertical beach accessways from the City of Marina (see Exhibit 5).

The trail connection in question is indeed critically important for coastal access; it is the only way Marina residents can access this segment of the Scenic Trail, which provides a passive recreational opportunity in the dunes and is essential for vertical access to the beach. However, while it is located within the Marina city limits, it is not within the City of Marina's certified LCP area. Rather, it is located within the Commission's retained permitting jurisdiction. As such, proposed modifications to the connector trail are subject to CDP application number 3-23-0288 and are thus legally unrelated to the portion of the project approved by the City and subsequently appealed by the appellants. See above for the manner in which such trail issues are resolved under that CDP application.

In terms of other public access impacts, the Appellants also raise concerns that the new bus road's close proximity to the Recreational Trail and the Scenic Trail (5-6 feet in some locations) poses a safety risk and would overall impact the recreational experience on these two trails due to the close proximity of fast-moving buses. While this may be true in some locations elsewhere in the corridor as previously described, in this small segment in Marina adjacent to the Reindollar Avenue station, the posted speed limit will be 15 mph, and buses will stop at a crosswalk. Northbound buses will slow significantly in preparation to stop at the new crosswalk crossing, and southbound buses will slowly accelerate after stopping at the crosswalk. All buses will stop at the crosswalk regardless of whether pedestrians are present. Thus, the same sorts of adjacency impacts on trail use apply here as apply in the above CDP analysis, but they are muted somewhat by the slower nature of the buses in this specific stretch.

As for impacts to the trail user experience, it is important to understand the location of the 500-foot portion of the project subject to this appeal. Del Monte Boulevard is directly adjacent (within 5 feet) to the Recreational Trail in this area and the Recreational Trail runs directly underneath Highway 1. The connection between the Recreational Trail and the Scenic Trail is south of the area in question, meaning that the portion of the Scenic Trail within this area is unused by the public because it dead ends with a locked gate just outside of the coastal zone (see Exhibit 1). That is to say, trail users at this location are dependent on the Recreational Trail, and the Recreational Trail is already directly adjacent to moving vehicles and subject to significant traffic noise in this area, and thus the introduction of buses is unlikely to significantly change that experience.

In terms of impacts to existing recreational handcar tour operations, while it is true that the bus road would preclude such operations going forward, the handcar operation only has temporary authorization to begin with. The CDP authorization for the handcar tours (CDP waiver 3-22-0800-W) expires on November 1, 2024. While the Museum of Handcar Technology (the operator of the handcar tours) has submitted a CDP application to the Commission, the application remains unfiled because the Museum of Handcar Technology must first obtain an extension to their current lease of the corridor from the corridor owner TAMC. TAMC has indicated that they do not intend to renew the lease, meaning that regardless of whether the bus road was constructed, handcar tours would cease to operate in November of this year. Furthermore, handcar tours are not a low-cost recreational amenity (prices are about \$85 per person for a 1:45 minute tour),

and free parallel access located farther from the highway is located parallel to the path of the tours on the Scenic Trail.

It is also important to note that this type of public transit project is specifically called for by Marina LUP policy 35, which states that the City shall “encourage continued and improved service by mass transit within the Coastal Zone.” As such, the City-approved project can be understood as an LCP priority for access to and along the coast.

In sum, while raising some similar public access issues as were identified in relation to the CDP application to the Commission, the nature of the issues is also decreased by virtue of the context associated with the 500-foot section of the project in question, and its more urban context generally. For all of these reasons, the City-approved project does not appear to raise substantial coastal access issues in this small Marina segment.

Sensitive Habitats

The City of Marina LCP provides a similar sensitive habitat framework, including limiting the uses within such habitats to those that are resource-dependent and not allowing significant disruption of 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 sensitive. The 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*)¹⁰⁸, 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 fasciculata*) [sic]¹⁰⁹, 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

¹⁰⁸ Note: this name has been updated since publication of the LCP – it is now *Euphilotes enoptes smithi*.

¹⁰⁹ Note the correct spelling is *Ericameria fasciculata*

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 significantly 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”).¹¹⁰

The portion of the proposed project subject to this appeal is located within the TAMC-owned rail corridor that runs through an area of remnant dune sandwiched between the Recreational Trail and the Scenic Trail. The derelict railroad tracks bisect the remnant dune. No special status plants, animals, or vegetation communities have been documented within this portion of the corridor by the Applicant, and vegetation is predominantly composed of non-native and invasive species. However, special status species and communities have been documented immediately adjacent to this area both by the Applicant and within the California Natural Diversity Database. As such, while the remnant dune and tracks are highly fragmented and degraded habitat, they still qualify as primary habitat (or, put a more familiar way, as “ESHA”) due to the proximity of special status species and its dune soils, which may reasonably hold a seed bank for those species given aeolian processes. The proposed project would be located partially on the railroad tracks and ballast at this location; however, it would also extend into other dune areas not so encumbered. The Appellants contend that the proposed project would impact sensitive habitats and degrade the beach environment.

It is true that the City-approved project would impact about a third of an acre of dune habitat (although given the distance from the beach, any such impacts would not degrade the beach environment as alleged). Such impacts are inconsistent with the LCP, which, like the Coastal Act, does not allow for non-resource-dependent development within primary habitat, nor development of this sort that would replace the primary habitat with a bus road. At the same time, the City-approved project is an essential component of the larger project that will provide improved low-cost public transportation that will benefit coastal resources by reducing vehicle miles traveled and greenhouse gas emissions associated with single-occupancy vehicles in the ways described earlier. Overall, these coastal resource benefits, particularly when viewed through an environmental justice lens, mean that on balance, the City-approved portion of the project (which, again, is essential for the overall functioning of the larger project), would be most protective of significant coastal resources. That said, the primary habitat impacts are still inconsistent with the LCP.

On that point it is important to note that a substantial issue determination is not a determination of whether a given project is consistent with the applicable LCP, but rather whether the locally-approved project has coastal resource problems of such a scope and magnitude that they rise to the level of raising a substantial Coastal Act access and/or LCP conformance issue. In other words, it’s a threshold evaluation of

¹¹⁰ 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.

whether the issues raised warrant the Commission's involvement. Yes, LCP consistency can be an arbiter used in to make that determination, but it is not required by law to be. In this case, while the City-approved project is inconsistent with the LCP's primary habitat protections, the project it enables overall would be most protective of significant coastal resources, and therefore the City's decision can be found to not raise a substantial issue given its unique factset and context.

Appeal Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of Coastal Act public access or LCP conformity such that the Commission should assert jurisdiction over the CDP application for such development. 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 for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to 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 this case, these five factors, considered together, support a conclusion that the City's approval of a CDP for this project does not raise a substantial issue of LCP conformance.

In terms of factual and legal support, the City reasonably found that the project would not adversely impact public access, as described above. However, in terms of impacts to primary habitat (or "ESHA"), the City found that the project is not located in primary habitat, and thus did not even analyze for primary habitat conformity, meaning that the City's approval did not have a high degree of factual and legal support.

In terms of the extent and scope of the City-approved project, while it is part of a large infrastructure project, it is only a small part of that overall project and can be understood to be small in scale – occupying under 500 feet of the corridor, with minimal impacts to public access and primary habitat. And while the project would impact primary habitat, which is generally considered a highly significant coastal resource, the real value of the particular habitat in question is minimal due to its degraded and fragmented state. However, the City's finding that the project area does not constitute primary habitat at all is troubling and raises some concerns about future projects located within degraded dune habitats that still constitute primary habitat. While this approach could be of somewhat concerning precedential value, the specific circumstances of this case are not generally applicable to other areas within the City's coastal zone; almost all other primary habitat in the City is not nearly as fragmented and degraded as this small portion of the rail corridor in question.

Finally, the project does raise issues of regional or statewide significance in that it is a portion of a major public transit project that raises significant societal and coastal resource questions, where benefits of the project would be particularly helpful for underserved communities and the climate, but where there are conflicts with several coastal resource protection requirements, and especially as it relates to dune ESHA.

In sum, while some of the five factors do not necessarily indicate that the project does not raise a substantial issue, taken together they do point towards a finding of no substantial issue. The portion of the project subject to the appeal is small in scale, with correspondingly small impacts to fragmented and degraded primary habitat, and primary habitat impacts have been minimized as much as possible. With that in mind it is also important to note that while the five factors listed in 14 CCR section 13115(c) are important and used frequently by the Commission they are not an exhaustive list, and the Commission is not “limited” to using those factors. In this situation, given the unique set of facts of this case, the City’s/community’s stated need for the project, and especially given the project is a portion of public transit project that will improve access to the coast for EJ communities while reducing VMTs and GHGs, there is also an additional element for finding no substantial issue.

As such and for the reasons stated above, the Commission finds that Appeal Number A-3-MRA-24-0026 does not present a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act.

H. Conclusion

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 is proposed primarily within undeveloped sand dunes seaward of Highway 1 and adjacent to Fort Ord Dunes State Park, mostly adjacent to train tracks (which is also located in the dunes) that have been essentially unused for decades. The Applicant’s existing bus 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 12 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 and reliable) transit service for its predominantly lower-income riders who use the bus to get to and from work and school on the Monterey Peninsula from homes in inland areas such as in Salinas, all of which is intended to facilitate increased transit ridership, which in turn is intended to help reduce vehicle miles travelled (VMTs) and greenhouse gas (GHGs) emissions and help to combat climate change.

The Applicant has discussed this project with Commission staff for over half a decade. And since that time, in countless site visits, meetings, phone calls, emails, and other correspondence, Commission 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 a bus road is not approvable in dune

ESHA consistent with the Coastal Act's ESHA provisions, and that alternative projects that avoid dune ESHA should be pursued instead. Commission 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 \$92 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 the Commission's opinion truly unfortunately, we collectively find ourselves in a position where a project with laudable objectives directly runs afoul of the Act's ESHA protection requirements.

And these are not simply minor such impacts, rather the proposed bus road and related development would be located entirely within dune ESHA,¹¹¹ where even the refined project currently proposed would lead to direct impacts to nearly 23 acres of these dunes,¹¹² and where subsequent bus operations would be expected to reduce habitat value and function over adjacent dunes that border the project as well (all as previously detailed above). And this is all within a truly significant coastal dune system, the Monterey Bay Dune Complex, that is the second largest extant such coastal dune system in California,¹¹³ 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 (FODSP) that lies adjacent to the project area. These dunes are some of the rarest and most ecologically important coastal habitats in California, supporting numerous ecological functions and values, but also providing increasingly important ecosystem services via global climate change natural resiliency for Highway 1 and inland communities here (including for Marina, Seaside, Sand City, and CSU Monterey Bay), where all such functions, values, and services would be diminished by the proposed 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 cross over these CCT facilities and connections between them that are important for beach access, replacing unrestricted access with crosswalks over the new bus road in most such cases, and in all cases the road would be quite close to them, running as close as ten feet from the Monterey Peninsula Recreational Trail in many places along the alignment, and as close as 25 feet to the Monterey Bay Sanctuary Scenic Trail. And the road and buses driving by for up to 16 hours of the day would reduce CCT public access and public view value and utility for these reasons.

¹¹¹ Again, except for a few discrete locations, the proposed 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.

¹¹² And where mitigation of such dune impacts could cost nearly \$30 million based on recent mitigation cost estimates applicable to the dunes in question (i.e., emanating from analyses in the recently approved Cal-Am desalination project).

¹¹³ Where the largest such system, the Guadalupe-Nipomo Dunes Complex in San Luis Obispo and Santa Barbara Counties, is actually the largest such coastal dune system in the world.

Ultimately, Coastal Act ESHA inconsistencies simply cannot be cured by conditions of approval, because no amount of conditions can make the bus road a resource-dependent use that does not lead to dune habitat loss and degradation. As a result, after Commission staff published a staff recommendation for denial for the August 2024 Commission meeting, the Applicant subsequently exercised their right to postpone that hearing, and since then MST and Commission staff have met regularly to discuss whether an approval was possible via conflict resolution,¹¹⁴ and if so, whether there were available project modifications that could reduce coastal resource inconsistencies. The good news is that Commission and MST staffs, as well as the underlying landowner (the Transportation Agency for Monterey County, or TAMC), have identified a path forward for just such an approval, balancing the mandates to provide and extend transit service, and to require that energy consumption and VMTs (and by extension GHGs) be minimized, against ESHA requirements, where staff's conclusions in this regard were driven by a choice to prioritize a project that broadly increases public transit and reduces VMTs and GHG emissions (and associated climate change driven problems, like sea level rise) against specific dune ESHA impacts here, but only if such dune ESHA impacts were significantly reduced. Where here that can be accomplished through a conditioned CDP approval that relocates the bus road onto the actual railroad tracks (i.e., the "ballast", or fill slope, and track location) in a way that also facilitates potential future rail service opportunities atop the road itself in the future. Put another way, such a project can help promote both rail and bus road development in a consolidated manner mostly atop an already developed/disturbed area as opposed to mostly atop natural dune features. TAMC has agreed to this approach, and the Applicant has indicated that they too are amenable to it. The Commission concurs on all of these points, and agrees that approval through conflict resolution is possible in this case.

In doing so, project dune impacts can be reduced because the existing rail track area is already disturbed by the tracks, which reduces the required dune creation mitigation (i.e., the most difficult mitigation requirement to satisfy) by more than half compared to the proposed project, and which allows the bulk of the dune restoration mitigation requirement to be satisfied by the Applicant's proposed partnership with State Parks in FODSP (all as further detailed above). The Commission notes that such a reduced dune mitigation package is only made possible by moving the project onto the railroad tracks, and by using the Commission's discretion in terms of application of mitigation ratios and requirements to a unique circumstance such as this. In addition, approval under conflict resolution also requires that other changes be made to reduce other sorts of coastal resource impacts as much as feasible for a project like this, and the project would also be required to be modified in several ways to accomplish this mandate (e.g., adding additional crossing points from inland areas through to the Recreational and Scenic Trails, adding access amenities (e.g., overlook and bench areas), limiting lighting, providing appropriate wayfinding and public access signs, adding a new bus

¹¹⁴ 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'), which can allow approvals of CDPs under specific circumstances for projects even when they include Coastal Act inconsistencies.

stop to connect with the planned FODSP campground location, ensuring that all development is sited and designed to blend into the natural environment, applying construction BMPs, etc.), all as more fully discussed above. Such an outcome also specifically aims to help underserved communities access the coast for recreation, employment, and school opportunities through improved and affordable transportation options, which also helps to further both Coastal Act and Coastal Commission environmental justice objectives.

5. APPENDICES

A. Appendix A – Substantive File Documents¹¹⁵

- 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
- Transportation Agency for Monterey County
- City of Marina
- City of Sand City
- California State Parks
- Caltrans
- California Department of Fish and Wildlife
- California Public Utilities Commission
- California 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.